

Milton Township
Zoning Board of Appeals
November 8, 2018

Members present: Chairman Anderson, Atkinson, Jankowski, Burdo, Kingon, Gray, and Kopkau

Also present: Weinzapfel, Hefferan, and 4 audience members

Anderson called the meeting to order at 7 pm and the Pledge was recited.

Approval of meeting minutes dated 9.13.18

Correct spelling of "September"

Correct spelling of "Burdo"

Correct spelling of "Jankowski"

Correct spelling of "Kopkau"

Motion to approve the minutes as corrected by Kingon/Atkinson. Motion carried.

Approval of Agenda

Motion to approve the agenda by Atkinson/Kopkau. Motion carried.

Variance Request: #2018-02: Owner Jeff Burkhart is requesting a variance request for his property at 11063 Lake Avenue, Rapid City, MI. Property tax No 05-12-655-070-00. Mr. Burkhart is requesting a 5.33 foot front yard setback and a 12.43 foot rear yard setback for a second story addition on his home

Anderson discussed public hearing procedure process with the applicant and the audience.

Jeff Burkhart gave a brief presentation regarding his existing structure. He would like to build a bedroom and a bathroom as a second story. He also had a new septic system installed when he bought the property which would accommodate the additional space. He didn't know about the non conformity when he bought the property.

Kingon asked Burkhart if the new addition would go any further into the setbacks? Burkhart: No. It will not go further into the setback area. It goes straight up. Jankowski asked are you maintaining the existing footprint of the building. Burkhart said yes. Burdo asked about the height. Burkhart showed on the drawing. Burdo said it seems like you are tight on your property? Burkhart said yes. Anderson said there is an easement on part of your garage because it's on the neighbor's property? Burkhart said yes. That's from before he purchased it. The house was built in the mid 1920s, long before zoning. Gray asked about the footprint of what's below the proposed addition? Burkhart said it's the two smaller bedrooms and the overhang will not go any further into the setback.

One letter in support was received from Rosemary Yeommans. Anderson read the letter.

Anderson asked if everyone has read the section in the ordinance on non-conforming structure and read from the ordinance. Looking at the drawings there is only six feet of the addition that

will be in the conforming area. Jankowski said when you read 117.503 building envelope, he only has a building envelop of 6 feet. Because of this, you can adjust the rear yard set back to 15 feet. You have to provide a building envelope because you can't build something 6 feet wide. The home must be at least 1350 sq. ft. If he meets that requirement, can he add to that, asked Anderson? Weinzapfel clarified that this was for people who didn't have a building envelope. It doesn't have anything to do with an existing structure. It's to bring something non-conforming, more into conformance.

Atkinson said everyone should read 117.500, the intent of non-conforming lots. That sums up where we are at with this. Anderson read 117.500 to the audience. Burkhart said then you want the house to go away? Anderson said no, but we are trying to get things into conformity. Burkhart said there are many homes up and down the road that appear to not be in conformity. When he bought the place, he didn't know about the non-conformity. The addition won't encroach any farther than it already is.

Atkinson said this is a tough one, but the ordinance is in place to discourage more non conformity. And when you increase the volume of non-conformity, it adds to the density. If we gave you that relief, then we would have to give it to everyone.

Burkhart said he bought a place that he thought he could enjoy for the rest of his life, but he didn't see this as something he would have to deal with.

Jankowski said it's only the front yard and back yard that is a part of this variance. Kingon clarified what Atkinson said about setting a president.

Anderson asked if anyone else would like to comment on the variance request: No one wished to comment.

Anderson asked if anyone who would like to speak for or against. No one wished to speak.

Anderson closed the public hearing to board deliberations and explained that procedure.

Legal notice for this variance request was placed in the Elk Rapids News on 10/18/18 and 300 foot notice on 10/16/18.

Burdo said this house is more than 100 years old. This little variance doesn't seem that it would change much. Atkinson said the ordinance was written to address those older homes. It's very clear. Anderson read from the ordinance that it specifically says no additional living space is to be created. As much as we'd like to approve this ordinance, we can't make exceptions because we open ourselves up to others who would want the same.

Kopkau said 117.500 is very plain in it's language. We didn't make this law, we just have to enforce it. It's only 5.33 feet and 12.43 on the backyard, but next week the neighbor is going to want 7 foot on the front yard and 14 feet on the back yard. I feel sorry for the applicant, but unfortunately he didn't know about the non conformity before he purchased it, but we have these rules that we must follow.

Jankowski said the house is non conforming. If it was vacant, he could have a 24-foot structure. The only part of the property that is conforming is the six foot wide section, which doesn't allow any addition to the second floor as he's requested. I don't feel it merits a variance as he's requested.

Gray agreed with Kopkau and said he doesn't know how we could grant a variance in light of 117.500 B4 and the precedent we would establish otherwise.

Motion by Atkinson to deny the variance request based on the finding of fact relating to ordinance 117.201, 117.305, 117.302, 117.500, 117.503, 117.603. Seconded by Kopkau.

Discussion by Kingon: regarding the standards regarding variances, he wants to state that the intent is very onerous. It's a reasonable request except for the statement of intent of the ordinance.

Roll Call:

Atkinson: Yea based on the afore mentioned ordinances

Kingon: Yea based on the existing rules do not allow enlarging a non conforming structure

Kopkau: Yeah based on the afore mentioned ordinance, and 117.502

Anderson: Yea based on the afore mentioned ordinance and 117.500 and 117.502.

Jankowski: Yea based on the fact that the structure is built on a non conforming lot and it doesn't meet the standards in 117.500, 117.502, and 117.503 regarding building on a non conforming structure

Gray: Yea based on 117.500 and 117.502

Burdo: Yea based on 117.500 and 117.502, 117.503.

Motion carried: 7-0

Variance Request: 2018-03: Owner Jason Ewert is requesting a variance request for his property at 10287 SW Torch Lake Dr. Rapid City, MI. Property tax ID: 05-12-815-001-00. Mr. Ewert is requesting a 47 foot front yard setback for placement of a storage building on his parcel.

No land use permit was applied for.

Mr. Ewert gave his presentation. Back in the summer, he created the second part of a rock wall. He was out of state when it was being done. He mentioned the need to have a storage building on the property to his contractor. He said he has a unique piece of property. There is an easement down below. The property very steep. If he complies with the ordinance, there are allowable areas, but there are other issues with those areas that would be more problematic than the current location. He proposes that the storage building would be buried into the hill and would be covered in stone so it would look like the hillside itself. If he put it where it could go, it would be too close to the easement or the neighbor to the north. His neighbor to the north is happy with where it is now versus in his line of sight, which would be acceptable to the ordinance. His plight is not due to something he's created, it's due to the topography of the land. The last thing he wants to do is create something that's unsightly. It currently looks bad because construction has

stopped. He'd be open to strict inspection to make sure it disappears into the landscape. If he puts it up above, it would be too close to the easement and then he would create sight line problems for his neighbors. Addressing the letter from Moritz and Isabel von Moeller, he said they seem to have an issue with the look of it. He would make sure it looked nice. He cited other neighbors that have structures that are within 50 feet of the lake and they aren't pleasing to the eye. He's here today to be in favor of where it's at. He'd like to finish it and make it look like part of the land. He doesn't agree with talking about how it looks before it's even completed. Based on safety, and the lay of the land, adhering to the regulations before him would create more problems than what we currently have.

Those speaking for or against the variance request:

Shandra and Doug Morse of 10299 of SW Torch Lake Drive. You have a picture of our shed. It's 29 feet from the water. There is an easement that goes through there. It's a 14 foot easement. He has a unique situation. His is not as wide as ours so he has limited space. We are not opposed to having a shed within 50 feet of the water, as well as other neighbors that have sheds within that 50 feet that are grandfathered. Our concern is that the shed is currently right at the water line. We are concerned with the 25 foot water front protection strip. This shed is a metal storage unit. He should be allowed to have a shed, but it should be 25 feet from the waterline. Talking to the other neighbors, there are others concerned about that as well.

Jankowski asked regarding their structure and if they have a permit? No they don't have a permit. They thought that if they replaced the trailer with a shed and they thought it was permitted. There is actually a 50 foot setback from the water. Doug Morse said if you are looking at protecting Torch Lake, it makes a big difference. Morse said he is a retired aquatic biologist, and he supports the 25 foot protection strip and you have an ordinance to do that. As to this parcel, they have a situation that is unique. There is not an opportunity to have a storage shed on the cliff.

Mr. Ewert said no gas would be stored in the structure. The unit is about 4 feet up in the air, not at the water level. He maintains that there are several structures that are within 50 feet of the water. He has other proposed sites that do meet the 50 foot setback. And if he does, then the easement isn't as accessible. He's all for the environment and doesn't want to harm the water.

Bill Hefferan of 101 East Elk Lake Drive. His grandfather built the Ewert home. He's familiar with the area. He's shocked that a contractor wouldn't pull permits. Our master plan is very clear about how we want and expect to protect our shores. If we allowed this structure, it would not meet the spirit or the intent of the master plan.

Anderson closed the public hearing to board deliberations.

Legal notice for this variance request was placed in the Elk Rapids News on 10/18/18 and 300 foot notice on 10/16/18.

Correspondence received from Moritz and Isabel von Moeller in opposition to the variance request. Anderson read this letter.

Burdo asked how far off the water proposed site 1 is? Ewert: It's about 75 feet. Burdo: The shipping container has two doors? Ewert: Yes but I could make it a normal door. Burdo: Does it open into the easement? Ewert: No. It would go long ways into the hillside and the doors would open to the north or south, not to the east which would be the easement.

Burdo asked regarding proposal 2, how far is that from the water? Ewert: That would be 50 feet from the water and 10 feet from the water but that would create sight problems for my neighbor to the north.

Atkinson said that this board has an excellent history in maintaining of the 50 foot setback from the water. This would go against our greenbelt ordinance, our shoreline protection ordinance and if we allowed you to do this, we would have to allow someone else who thought a railroad car would be allowable. The silver lining for you is that you haven't completed this project, because I cannot support anything in the 50 foot setback.

Ewert asked how others have done it? You have a 50 foot setback. Those other structures are in violation. Anderson: Regarding the people who spoke during the meeting, that is a separate issue.

Kingon asked when Ewert knew about the zoning ordinance. He always knew but he thought his builder would do what he was supposed to do. Kingon said the homeowner is ultimately responsible for pulling permits. Ewert said he takes responsibility for that.

Gray discussed proposal 2: The shed would run east/west and you can pull it back from the easement and it would be less in the site line. It is an option. Most of the sight line from his garage.

Jankowski said if you read the measurements correctly on proposal 1, the eastern side of the structure would be 42 feet from the lake. Ewert said he measured today and he said he can get 50 feet. Gray's suggestion of flipping it would gain 12 more feet. I know when I applied for the variance, I know it's not about how it looks. Jankowski said anything beyond where it is now, that's not where we are here to consider. Right now it's too close to the water's edge and it's in violation of several of the ordinances. Jankowski said he couldn't approve this.

Anderson said we are here to only look at the current location, not at his other proposals. Anderson said he measured the property and there is a black board and then added in the 10 feet and when he got to the edge of the water, he was only at 47 feet.

Motion by Atkinson to deny the variance request based on the finding of fact 117.201, 117.222, 117.305, 117.323, 117.502, 117.503, and 117.603 and 117.305. Seconded by Kopkau.

Roll Call:

Atkinson: Yea based on the afore mentioned ordinances

Kingon: Yea based on the afore mentioned ordinances and this was a self created problem

Kopkau: Yea based on the afore mentioned ordinances 117.201, 117.222, 117.305, 117.503, and 117.500. This is a self created problem.

Anderson: Yea based on 117.201, 117.305, 117.503, 117.603.

Jankowski: Yea based on 117.201, 117.503 and the finding of fact.

Gray: Yea based on the afore mentioned ordinances

Burdo: Yea based on the afore mentioned ordinances.

Motion carried 7-0

Correspondence

None

ZBA Members Comments

Kopkau suggested Weinzapfel look at other violations in the area.

Old Business

None

New Business

None

Report from Planning Commission Representative

We are opening up vacation rental ordinance again.

Adjourn

Motion to adjourn by Kopkau at 8:20. Seconded by Burdo. Motion carried.