

BURT TOWNSHIP
Zoning Board of Appeals
Meeting Minutes, July 24, 2009

The regular meeting of the Burt Township Zoning Board of Appeals was called to order by Chairman Walt Lindsay on July 24, 2009 at 7 p.m. at the Burt Township Hall, Cheboygan Michigan.

Attendance: Walt Lindsay, Gary Street, Harold Koviak, Dave Poxson, Kim Kihnke.

Absent: Katie Parker

Also attending: Dan Swantek (Zoning Administrator) and Joyce Hutto (Recording Secretary).

Guests: Richard Keefer, Bill Perry, Catherine Perry, George Parker, Jr., Robert C. Kerzka, Arthur Pillen, Mr. and Mrs. Joe Ruicci.

Minutes- May 22, 2009

MOTION: Moved by Harold Koviak and seconded by Gary Street to accept the minutes of May 22, 2009 as published.

MOTION APPROVED

Public Comment Period

No public comments.

Public Hearings

Joseph Ruicci, 893 Indian Point Trail, Brutus MI 49716—Case #245

Joseph Ruicci has requested a waterfront setback variance to allow for the construction of a redesigned pergola (i.e. a portico) on the south side of the Ruicci residence. This structure is smaller than the proposed pergola denied by the ZBA at its April 24, 2009 meeting. The portico, which requires 2 vertical posts (rather than 4 posts for the original pergola), is 11 feet wide (same width) extending 4 feet (rather than 14 feet) from the south side of the building. Most, but not all, of the proposed portico would be located in the 75 foot waterfront setback.

Mr. Ruicci stated they are ready to remove the partially completed pergola by August 1, 2009 as previously required by the ZBA. He presented a sketch of the proposed portico, and stated his understanding that the portico would be located completely outside the 75 foot waterfront setback. Mr. Ruicci indicated that he was simply requesting an acceptance of the portico's design.

Dan Swantek (Zoning Administrator) responded that his measurements show the proposed portico extends into the 75 foot waterfront setback. He stated that on the side of the proposed portico closest to the southwest corner of the house (i.e. the west side of the portico), the point 4 feet from the exterior wall of the house measures 68 feet from the ordinary high water mark; thus, the portico would extend a total of 7 feet into the 75 foot waterfront setback. It was noted that the house is a non-conforming structure that legally extends 3 feet into the waterfront setback at the west side of the proposed portico, so the Ruicci's request that the ZBA approve the portico extending 4 additional feet into the waterfront setback. Dan Swantek stated further that, due to the angle of the house being different than the angle of the shoreline, the point 4 feet from the exterior wall of the house on the opposite (east) side of the proposed portico measures 75 feet

from the ordinary high water mark and thus would comply with the zoning ordinance at that point. Mr. Ruicci stated that his measurements likely were different than Dan Swantek's due to the manner in which the location of the ordinary high water mark was determined. Mr. Ruicci and the ZBA mutually agreed to be guided by the measurements taken by Dan Swantek. Mr. Ruicci said he is willing to reduce the portico structure extending above ground from the house from 48 inches to 42 inches if it would be helpful.

Harold Koviak commented that he feels the new design proposed by the Ruiccis represents a good attempt by them to comply with the ordinance. Gary Street stated that 48 inches is not an issue and he did not see a need to reduce the portico to 42 inches. Walt Lindsay mentioned that the Ruiccis would not be occupying any additional land surface with the portico since the two (2) vertical posts would be placed on the existing legally non-conforming (i.e. grandfathered) hard-surface pad; the balance of the portico would be totally above-ground and essentially in line with the eave and gutter on the south side of the house extending to the east.

No letters were received from neighbors regarding this application.

MOTION: Moved by Gary Street and seconded by Harold Koviak to grant a variance to allow the portico structure as proposed by the Ruiccis to extend up to seven (7) foot into the waterfront setback.

Reasons: The east side of the portico complies with the zoning ordinance, and three (3) feet on the west side of the portico extending into the waterfront setback is grandfathered. Allowing the portico to extend up to four (4) additional feet into the waterfront setback on its west side is consistent with the layout of the rest of the building and is supported by the unusual shape and topography of the land.

Roll call vote: Lindsay-yes; Street-yes; Kihnke-yes; Koviak-yes; Poxson-yes.

MOTION UNANIMOUSLY APPROVED

Richard Keefer, 3946 W. Burt lake Road, Brutus MI 49716. Case #248

Mr. and Mrs. Richard Keefer are the owners of Sunrise Resort Assn. Site #1, 3946 W. Burt Lake Road. This property is located to the immediate south of Cottage Shores Condominium Assn. Prior owners of the Keefer property constructed a pole barn on the site. It has since been determined that the northwest corner of the pole barn encroaches up to 1.7 feet onto the property of Cottage Shores. The Keefers propose to modify their pole barn to eliminate this encroachment. The Keefers' request a side setback variance of up to 10 feet to allow the balance of the pole barn as modified to remain in place on their property.

The property line encroachment issue has been addressed solely by Cottage Shores, the Keefers, other members of Sunrise Resort; the Township has not been involved in the negotiations to resolve the issue. Mr Keefer said several solutions have been proposed and considered. One solution is to modify the pole barn. Another solution is for Cottage Shores to sell the Keefers the land necessary to eliminate the existing encroachment. Mr. Keefer indicated that he felt such a sale would be more expensive than his modifying the pole barn. Mr. Kerzka, the attorney representing Cottage Shores, stated that a potential problem with the sale of land is that such a sale would alter the master deed of Cottage Shores, thus requiring the approval of all institutions holding mortgages of the individual Cottage Shores condominium owners. Mr. Kerka mentioned that any sale of land by Cottage Shores would need to be contingent upon all institutions that hold mortgages approving the transaction. Other solutions presented have included land lease

and the granting of an easement. Mr. Keefer stated that, after consideration, he concluded that modifying the pole barn is the best way to resolve the property line encroachment problem. There is a large ditch on the property of Cottage Shores approximately 30 feet north of the pole barn; the ditch ranges from 5 to 8 feet deep and 20 feet across. A driveway surrounds the pole barn.

Dan Swantek stated that he agrees the property line encroachment issue needs to be resolved and put in writing to confirm the matter is finalized. He indicated that the issue was thought to be resolved by the property owners before Mr. Keefer purchased his parcel. Dan Swantek also stated that the ZBA is not the ruling party on the encroachment issue and the solution needs to come from the parties concerned.

Gary Street indicated the encroachment matter is not a Township issue but rather a boundary dispute between the two property owners. He expressed concern with the precedent of granting such an extreme variance as requested.

Harold Koviak asked if a compromise could be reached between the two parties. Mr. Keefer stated that he would like to minimize the financial hardship of removing the pole barn and thus is seeking a variance. Mr. Kerzka indicated that Mr. Keefer has been cooperative in trying to get the issue resolved. Mr. Kerzka stated that the land on which the Keefer pole barn encroaches is common property of the condominium association and a large concern of the association is liability. Mr. Kerzka explained that if someone were to be injured in the pole barn, Cottage Shores could face a potential lawsuit. Mr. Kerzka indicated that Mr. Keefer's removing the encroachment by modifying the pole barn will resolve the issue, and he stated that the Cottage Shores fully supports Mr. Keefer in his request for a side setback variance.

Addressing the matter of precedent, Walt Lindsay mentioned that should the ZBA grant a full 10 foot side setback variance, it was very important to distinguish this case based upon its unusual facts and the unique circumstances.

MOTION: Moved by Harold Koviak and seconded by Kim Kihnke to grant a ten (10) foot side setback variance to support resolution by Mr. Keefer and Cottage Shores providing for Mr. Keefer to modify his pole barn to eliminate encroachment on the property of Cottage Shores.

Reasons: This case involves very unique circumstances. The property line encroachment dispute between Cottage Shores and Mr. Keefer was thought to have been resolved prior to the time the Keefers purchased their property. When Cottage Shores advised Mr. Keefer that the encroachment issue needed to be addressed, the two parties reviewed a number of options and then mutually agreed that Mr. Keefer modify the pole barn to eliminate the encroachment.

Cottage Shores is fully supportive of the ZBA granting Mr. Keefer a 10 foot side setback variance. The topography of the land is such that the Cottage Shores property immediately adjacent to the Keefer pole barn is not buildable due to the wide, deep stream approximately 30 feet from the property line. Further, the requested variance will not cause an adverse impact on surrounding property, property values or the use and enjoyment of the property in the neighborhood or zoning district.

Roll call vote: Lindsay-yes; Street-no; Kihnke-yes; Koviak-yes; Poxson-yes.

MOTION APPROVED

Both Mr. Keefer and Mr. Kerzka agreed to send a letter to Dan Swantek confirming the resolution of their property line encroachment dispute. Mr. Keefer also agreed to advise Dan Swantek when modification of the pole barn was completed.

Other Business

Jim Parker, 10240 Brutus Rd. Brutus Mi

The April 24, 2009 Memorandum of Agreement with Jim Parker was reviewed. It was noted in particular that item 6 of the agreement provides “any excess boat hoists, docks or parts on the premises shall be removed by August 1, 2009” and item 8 states “the shed in the northeast corner will be removed by August 1, 2009.” Mention was made that, as of July 24, the shed in the northeast corner of the property has not been removed. Harold Koviak stated that to document the status of the property, Dan Swantek should take pictures in early August and note should be taken of any failure by Jim Parker to comply with the agreement.

MOTION: Moved by Harold Koviak and seconded by Gary Street that if it is determined Jim Parker has not abided by the April 24, 2009 Memorandum of Agreement, Walt Lindsay as chairperson of the ZBA contact Tim MacArthur, Township Attorney.

MOTION APPROVED UNANIMOUSLY

Reports

Dan Swantek (Zoning Administrator) reports that zoning permits have been issued to David Streenstra and Jerome Randolph pursuant to the variances previously granted by the ZBA. The Garlinghouse home on Elmhurst road will be raised and then set back down in order to address foundation issues.

Harold Koviak (Burt Township Board Representative) reports the annual Dump Day was successful. Harold thanked the many volunteers. Dump Day will be held next year at the East side transfer station. The Township’s recycling drop-off is located on the East Side only with containers for cardboard, plastic and newspapers; the container for cardboard only was recently added. Improved parking for the boat ramps at Mundt Road and Hoppies is being worked on. Beginning with this year’s summer property tax billings, 100 % of the Pellston school mileage is being collected. Art Pillen was introduced as the new trustee on the Burt Township Board.

Gary Street (Planning Commission Representative) reports the Planning Commission has completed review of the Master Plan and the updated Plan will be presented to the Township Board; the goal is for final adoption by the end of this calendar year. At its recent meeting, the Planning Commission decided against recommending that the zoning ordinance be amended to provide a lower height for buildings constructed on narrower lots. The Township’s Trail Committee is making progress with its work; it is anticipated that an engineering contract will soon be issued. A Trail Ride along the route of the proposed trail from Topinabee to Brutus, sponsored by the Top of Michigan Trails Council, will be held August 22, 2009.

ZBA Members Comment Period

No ZBA member comments.

Public Comment Period

No public comments.

Next Meeting: September 25, 2009, 7 p.m. Burt Township Hall. Deadline for submitting requests for a public hearing to Dan Swantek: September 7, 2009.

MOTION: Moved by Harold Koviak and seconded by Gary Street to adjourn

MOTION APPROVED

Meeting Adjourned at 9:05 p.m.

Respectfully Submitted

Joyce Hutto, Recording Secretary.