

**MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS  
HELD ON THURSDAY, APRIL 17, 2008 IN THE CLAY TOWNSHIP  
MEETING HALL, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP,  
MICHIGAN 48001 AT 7:30 P.M.**

1. **Vice-Chairperson Joanne Shirkey called the meeting to order at 7:30 p.m.**

2. **ROLL CALL:**

**PRESENT:** Trustee John Makuch, John Chamberlain, Marianne Diss, Vice-Chairperson  
Joanne Shirkey

**ABSENT:** Chairman Anthony Antkowiak (excused)

3. **APPROVAL/AMENDMENTS TO AGENDA:**

**Motion by Makuch, supported by Diss to approve Agenda as presented.**

**AYES: All                      NAYS: None                      ABSENT: Antkowiak (excused)**

**MOTION CARRIED.**

4. **APPROVAL OF MINUTES OF JANUARY 17, 2008:**

Vice-Chairperson Shirkey: Requested the following corrections:

Page 5, under Item 7, New Business:

Change "Vacant Parcel #74-14-541-0035-000 Fruit Road" to  
"Vacant Parcel #74-14-541-0135-000 Fruit Road"

Page 9, paragraph 2, line 2:

Change "Vacant Parcel #74-14-541-0035-000 Fruit Road" to  
"Vacant Parcel #74-14-541-0135-000 Fruit Road"

**Motion by Makuch, supported by Chamberlain, to approve the January 17, 2008 Minutes with  
the stated corrections.**

**AYES: All                      NAYS: None                      ABSENT: Antkowiak (excused)**

**MOTION CARRIED.**

5. **ZONING BOARD OF APPEALS PREFACE:**

Vice-Chairperson Shirkey: The ZBA addresses mainly practical difficulty based on lot size, location and/or shape or contour and location of existing buildings. We are guided by Section 27.04 of Ordinance No. 126. There are five members on the ZBA, four of whom are present tonight. Three (3) members must vote the same way for a motion to be granted for a variance. Three (3) members

constitute a quorum. You may speak when so directed. Everyone will have a chance to speak. If a particular point gets belabored, the Chairman has the right to limit debate. If you should not like the Board's decision, you have the right to take it to the Circuit Court. You have thirty (30) days to file with the Circuit Court. When the appeal you're involved with has finished, you are welcome to stay or leave.

Also, for each of the appeals, we will have a public hearing. I will open the public hearing, the Applicant will have an opportunity to present their case, and then we will open it to comments from the public. During that time, members of the Board may ask questions of clarification. Once we have heard all of the public hearing, we will close the public hearing and move on to deliberation of the particular variance.

**6. SCHEDULED PUBLIC HEARING:**

**2008-001      GORTON/RENATA GREENE      5360 MIDDLE CHANNEL DRIVE**

**Applicant is requesting a variance to allow a 30 foot rear yard setback where a 40 foot rear yard setback is required for the construction of a single family dwelling. This hearing is authorized by Township Ordinance No. 126 and Section 27.04.**

Vice-Chairperson Shirkey: Opened the public hearing at 7:34 p.m.

Gorton Greene: They are requesting the Board to review their proposal for a 10 foot variance setback requirement from their seawall. They are basing this upon the limitations and constraints of the lot. They believe the variance will have negligible effects on the neighboring property. This is mainly due to the large distance between their home and both of the neighboring properties. Attachment 1 of their proposal is a Site Plan that he put together showing the proposed home and where it's situated on the lot. Attachment 2 is an aerial view with measurements indicated thereon. The current cottage is located at a setback from the seawall of approximately 11 feet. A setback variance grant of 10 feet, building at 30 feet instead of 40 feet, would allow them to build a year around residence for their retirement in the upland portion of the lot and still increase their compliance with the current requirements by approximately 19 feet. On the aerial view in the center of page at the top he has indicated the location of the current cottage and also indicates the two neighboring properties to the right and left. The existing building was built in the 1930's and has been refurbished several times. Their initial plan was to enlarge the existing structure and maintain the location of the north wall (waterside) and expand the home by building onto the back towards the road on the upland portion of the property. This would have resulted in a demolition of more than 50% of the old structure, they discovered they would be affected by the new setback requirements, which precluded them from using the original foundation. This resulted in developing a new design that would accommodate their needs and fully comply with the current setback requirements. Even after considerable alterations and concessions to their proposed plans, the applicants determined that lot conditions precluded complete success in conformance and has required them to approach the Board to request a small variance of 10 feet. Attachments 1 and 2 illustrate the existing lot constraints that he is referring to and show how the requested variance will have negligible effects on both neighbors. Attachment 1, the Site Plan, shows the constraints of the existing lot conditions. It is important for them to rebuild the home in the same lateral position on the lot in order to maintain the septic system in the same location, which is an environmental protection measure, to preserve the existing trees on the lot, and maintain the current distance between their home and both of the neighbors. This lot has

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never been filled all the way to the road as compared to the other surrounding inhabited lots. Their filled upland portion is the only land that can be built on. Both neighboring lots are filled from the channel to the road, allowing them to accommodate their homes, garages, and out-building needs. This is evident from the aerial view provided. Without the requested variance, their building would encroach on the lowland boundary on their property and would adversely affect the stability of the foundation and preclude the ability to safely walk around the end of the building without falling down the embankment, which is a drop off of about 3-1/2 feet occurring at approximately a 6 foot length and a steep angle. They have worked to design their home to fit in a distance from the 40 foot setback to the edge of the uplands portion of their lot. They have decreased the room sizes and reduced the building length from their original design in order to increase their compliance with the Ordinance. Their current design size is for a one-level ranch home of approximately 2,750 sq. ft. This home could be built with a 10 ft. variance in the setback. Attachment 2 indicates the distance between the neighboring home to the east is approximately 150 ft. The water view would be unaffected by the requested variance. The lateral land view (land only view) would increase by 10 degrees at the proposed 30 foot setback position. Only 3 degrees additional would be added by increasing to a 40 foot setback. Attachment 2 also shows that all of these viewing angle increases are essentially indiscernible because of the existing large amount of trees. The immediate neighboring land to the west is vacant undeveloped wetlands 200 feet in length. Immediately next to that is an additional 50 feet of undeveloped wetlands, which is an easement. Next to this is the neighboring home to the west which is a distance of approximately 280 feet from our home. Their water view would be unaffected by this variance and the lateral land view to the east increased by 5 degrees at a proposed 30 foot setback. This is represented on Attachment 2 by the increase from 166 degrees at the front of their current cottage to 171 degrees at the proposed setback. In this instance only 2 degrees of additional lateral land view would be provided by a 40 foot setback as opposed to a 30 foot setback. Their plan orients their home in the same fashion to their neighbors, it provides maximum separation between the homes, preserves the septic location, preserves the existing trees, and really does not affect the neighboring views.

Vice-Chairperson Shirkey then opened the public meeting to comments from the public.

Public in support of the proposed variance:

Leland Rodgers, 5454 Middle Channel Drive: He has no complaints with the proposed variance.

Jan Zboril, 5544 Middle Channel Drive: Stated that he is in favor of the proposed project.

Madelyn Rodgers, 5454 Middle Channel Drive: Feels that the Applicant did a lot of research from their report. She feels it will be a great addition to the neighborhood.

Renata Greene, 5360 Middle Channel Drive: Stated that she is in favor of the petition.

Public in opposition to proposed variance:

None.

Vice-Chairperson Shirkey closed the public hearing at 7:46 p.m.

Discussion then occurred between Board members.

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Makuch: Questioned the square footage of the proposed home?

Gorton Greene: Approximately 2,750.

Chamberlain: Questioned whether this included the garage?

Gorton Greene: No, it is just the home. It is a relatively large garage. They don't really have room for out-buildings, so they've proposed this for building costs and proximity of having everything in one area. They have plans to be able to use the garage for boat storage and possibly a woodworking shop.

Chamberlain: Again questioned that the house itself was approximately 2,750 sq. ft.

Gorton Greene: Approximately.

Makuch: In order to grant a variance, the Board has about five different standards that the Applicant has to meet because a variance is a variation to an established Ordinance. One of these standards is the strict enforcement of the provisions of this Ordinance would cause a practical difficulty and deprive the owners of rights enjoyed by all property owners owning property within the same zoning district.

Chamberlain: The only thing that bothers him about the petition is the size of the house. His concern is that they would be allowing a variance because they want a large house not because the variance is appropriate. He is especially concerned in regards to Subsection D, which states that the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district.

Vice-Chairperson Shirkey: Questioned whether this house would be moved back somewhat from where it is right now?

Gorton Greene: Correct, 19 feet back.

Vice-Chairperson Greene: Questioned whether this would put it approximately in line with the neighboring home?

Gorton Greene: Yes. If you drew a line from the front of the Snary's home to the front of the Rodgers' home, the tip of their home would be approximately 4 to 5 feet ahead of that line with a 30 foot setback.

Chamberlain: Questioned the height of the home?

Gorton Greene: We do not have any final plans, but it is a 7-12 pitch.

Chamberlain: Questioned whether the current property is fairly low lying?

Gorton Greene: They are basically right at flood plain. The elevation survey that was completed showed that they are 1/10th to 6/10ths of a foot over the flood plain from where they will be building.

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Makuch: Feels that in this particular circumstance, one might be able to argue that there is somewhat of a practical difficulty in that they are limited on where they can build due to the location of the septic field on one side, which cannot be changed. Also, if they didn't have the lowlands on the other side, they wouldn't have a problem pulling the house back. He doesn't feel that 2,750 sq. ft. is excessive for a home.

Diss: Also agreed that 2,750 sq. ft. is excessive for a home.

Vice-Chairperson Shirkey: Also stated that they need the area for the septic field.

Chamberlain: Feels that there is a practical difficulty given the size of the building and lot that they have to work with. He feels the buildable lot size they have to work with would be a practical difficulty.

Diss: Feels that they are dealing with a lot depth of 150 feet before it backs into the lowland, but they also have to deal with a septic field that they normally don't have to deal with on a lot that shallow.

Vice-Chairperson Shirkey: Stated that there also is no encroachment of the view. They have maintained the 45 degree view.

Diss: Stated that there is not much else the Applicants can do to move anything around on this property. She again reiterated that she does not believe a 2,700 sq. ft. home is excessive.

Renata Gorton: They were trying to allow for wider hallways to allow for walkers and wheelchairs to accommodate a possible handicap.

Chamberlain: Questioned the Board as to whether they agreed a practical difficulty exists because of the size of the lot and the useable space of the lot, and the conditions and circumstances unique to this property are the buildable space and requirement to maintain the septic field?

Diss: Stated that turning the house sideways or moving it is not going to help.

Chamberlain: Stated that the conditions and circumstances are unique to the property and were not created by the owner or its predecessor in title. Questioned the Board as to requirements of Subsection D?

Makuch: Reads from Subsection D: The requested variance will not confer special privileges that are denied other property similarly situated and in the same zoning district. He stated that there have been applications for several cases where they have had to work around septic fields and buildable area. He doesn't feel that 2,700 sq. ft. is not unreasonable. He feels that the important part of this property is the view of the channel and they are actually improving this since they will be moving a building that is 10 ft. from the seawall and moving it back 30 ft.

Diss: Normally all the lots are the same. Every property in the Applicants' immediate area is unique. Each property owner will have to be treated as a unique situation. What would apply to them would not necessarily apply to the person next door.

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Makuch: His opinion is that if they didn't have the lowland issue, they could pull the house back 40 ft. He believes that the Applicant wouldn't have made this application if that was the case.

Chamberlain: Reads the last requirement: The requested variance will not be contrary to the spirit and intent of this Zoning Ordinance. Stated that he didn't feel that this request would be contrary to Zoning Ordinance.

Makuch and Chairperson Shirkey: Stated that they also did not feel it would be contrary to the Zoning Ordinance.

**Motion by Makuch, supported by Diss to approve the request for 2008-001 Gorton/Renata Greene, 5360 Middle Channel Drive based upon a practical difficulty of the lot, the available building space on the lot, the location of the septic system, and that the situation was not created by the owner.**

**AYES: All**

**NAYS: None**

**ABSENT: Antkowiak (excused)**

**MOTION CARRIED.**

**7. REPORT OF PLANNING COMMISSION REPRESENTATIVE:**

None.

**8. OTHER MATTERS TO BE REVIEWED BY THE ZONING BOARD OF APPEALS:**

**A. Correspondence Received:**

Vice-Chairperson Shirkey: Received correspondence regarding a workshop regarding the new Michigan Enabling Act in the mail.

Makuch: He will make a copy of the correspondence and have it placed on the Township Board agenda for approval for anyone who is interested in attending.

**B. Zoning Board of Appeals Member's Comments:**

Diss: Suggested that the ZBA Preface contain an additional paragraph that states that the ZBA members physically go to see the properties that are before the ZBA. She doesn't feel the people understand that they do go out and look at the properties and that feel that they've got to explain to the Board their situation. She feels they would feel better knowing that the ZBA physically goes out and looks at the properties.

Vice-Chairperson Shirkey: Feels that tonight's Applicant was very well prepared.

Diss: Again stated that she thinks people would feel better if they knew the ZBA does that.

Makuch: Agreed that was not a bad idea. Further, Mr. Antkowiak did add a few things to the Preface and we can make this suggestion to him at the next meeting.

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Diss: Stated that she personally would feel better knowing that all the ZBA members had come to her property and looked at the problem firsthand and knew what they were talking about.

Vice-Chairperson Shirkey: Agreed with Ms. Diss, but stated that we do have to allow the Applicants to speak.

Makuch: Stated that as everyone was aware, Ron Nelson passed away at the end of March. His wife was very grateful for everyone's support.

Diss: He will be missed. He was a gentleman.

Vice-Chairperson Shirkey: He was an asset to the community.

**9. PUBLIC COMMENTS:**

None.

**10. ADJOURNMENT:**

**Motion by Makuch, supported by Chamberlain to adjourn the meeting at 8:10 p.m.**

**AYES: All**

**NAYS: None**

**ABSENT: Antkowiak (excused)**

**MOTION CARRIED.**

Respectfully Submitted,

Christine Holcomb  
Recording Secretary