

**MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS
HELD ON THURSDAY, JUNE 18, 2009, 2009 IN THE CLAY TOWNSHIP
MEETING HALL, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP,
MICHIGAN 48001 AT 7:30 P.M.**

1. CALL TO ORDER:

Chairperson Anthony Antkowiak called the meeting to order at 7:30 p.m.

2. ROLL CALL:

PRESENT: John Chamberlain; John Makuch; Chairman Anthony Antkowiak

ABSENT & EXCUSED: Marianne Diss; Brian Treppa

A quorum was established.

Also present: Michael Kras, Clay Township Building Inspector and Zoning Administrator

3. APPROVAL / AMENDMENTS TO AGENDA:

None.

4. APPROVAL OF MINUTES OF MAY 21, 2009:

Motion by Chamberlain, supported by Makuch to approve the Minutes of May 21, 2009.

Chairman Antkowiak: Requested corrections under Preface – change “Appellate” to “Appellant”. Also on page 4 under Report of Planning Commission Representative, last sentence change “and someone looking to put in a marine/car garage near the Colony” to “someone looking to put in a marine/car repair garage”.

Motion amended by Chamberlain, supported by Makuch to approve the Minutes of May 21, 2009 with the requested corrections.

AYES: All NAYS: None ABSENT: Diss; Treppa

MOTION CARRIED.

5. ZONING BOARD OF APPEALS PREFACE

Chairman Antkowiak read the Zoning Board of Appeals Preface: The Clay Township Zoning Board of Appeals or the ZBA primarily addresses practical difficulty based on lot size, location, shape or contour and/or location of existing buildings. We are guided by Section 27.05 of Ordinance No. 126. There are five members on the ZBA. All of which are here tonight. At least three members must vote affirmatively for a motion to grant a variance. Three members constitute a quorum. Each appeal before the ZBA will have a public hearing at which the Appellant will have the opportunity to present his or her case and if there’s any public comment, it would be provided at that time. Also, during this time, the members of the ZBA may ask questions of clarification. If a particular point gets belabored, the Chairperson has the right to limit comments. When a public hearing is closed, the Board will move on to

the deliberation of the particular variance that was requested. If you should disagree with the Board's decision, the Appellant has the right to take it to Circuit Court within thirty (30) days of the decision. When your appeal hearing is concluded, you are welcome to leave or stay, as you wish.

Chairman Antkowiak also explained the five criteria the ZBA uses to determine whether a variance should be approved. This information is provided to the Applicants when they receive their applications. He then read the five criteria into the record:

1. The strict enforcement of the provisions of the Ordinance would cause a practical difficulty and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district.
2. There are conditions and circumstances unique to the property which are not similarly applicable to other properties in the same zoning district.
3. The conditions and circumstances unique to the property were not created by the owner or his predecessor in title within the time following the effective date of the provisions alleged to adversely affect such property.
4. The requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district.
5. The requested variance will not be contrary to the spirit and intent of the Zoning Ordinance.

6. SCHEDULED PUBLIC HEARINGS:

Chairman Antkowiak: Explained that there are only 3 of 5 ZBA members present and although it constitutes a quorum, the Appellant has to have three ZBA votes of approval for the variance to be granted. He then questioned Mr. Tiffin as to whether he wanted to proceed with the public hearing with the 3 ZBA members in attendance or have his request postponed to the next ZBA meeting at which time 5 ZBA members may be present.

Mr. Tiffin stated that he wished to proceed with the 3 ZBA members in attendance.

Chairman Antkowiak opened the public hearing at 7:36 p.m.

2009-002, Eldon C. Tiffin, 9829 St. Johns Drive:

The Applicant is requesting a variance to allow a 17 foot front yard setback where a 25 foot front yard setback is required to allow the continuing construction of an attached three-car garage in order to remain in compliance. This hearing is authorized by Township Ordinance No. 126 and Section 27.04.

Chairman Antkowiak invited Mr. Tiffin to address the ZBA.

Eldon Tiffin: Presented the ZBA members with an aerial photograph of St. Johns Drive; a letter from Thomas H. Perkowski, President of Tom Phillip Homes, Inc. and Tom and Phillip St. Johns L.L.C.; a letter in favor of the variance from Mr. & Mrs. J. Pielack, 10165 St. Johns Drive; a petition signed by 6 residents of St. Johns Drive in favor of the variance; and a post card signed by Hugh Nielson, 9865 St. Johns Drive in favor of the variance. He also provided

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the ZBA members with a copy of his interpretation of the Zoning Ordinance. He stated that he and his wife recently purchased the home at 9829 St. Johns Drive for his son and family to move into. He has lived at 7271 Bluebill since 1973. He submitted plans for the home that were approved as submitted. When they were preparing to install the footings and looking at the home from the street, if the home was built in accordance with the original plan, a good portion of the footing would have been over the top of the sewer and water. This is roughly a 30 x 30 addition for a 3-car garage. The original plans were for a garage with a storage area or bonus room. A temporary Inspector came out to do the inspection because the Building Inspector was in the hospital. He further stated he made a decision to change the size of the home to 24 feet wide instead and bring it out 42 feet and change it from a front-entrance garage to a side-entrance garage. This decision was made solely on what he thought the setbacks were. He further stated that originally St. Johns Drive was a 45 foot right-of-way. He met with the surveyors and they couldn't find the irons. He was under the impression that the street was in the center of the right-of-way, so he took the street as being the right-of-way and, unfortunately, it was a mistake because it brought the home too far into the required setbacks for R-1. On the east side or waterside of St. Johns Drive is R-1 zoning. The homes on the opposite side are R-2 zoning. In the R-2 zoning, the setbacks are allowed to be 15 feet. In the R-1 zoning, they are allowed to be 25 feet. He stated he made a calculated error. They constructed the house and he immediately changed the plans and had them back in for revision within two days to the Building Department. Mr. Kras came back and immediately issued a Stop Work Order. After reading the Zoning Ordinance and as seen from the satellite photos provided by the County, he put dimensions on the photo showing that on the yellow lines you can see the 15 foot setback and a red line showing the 25 foot setback. On page 1 of 7, you can see a blue line that represents the clause in the Zoning Ordinance that allows a person to build an average of distances 330 feet from each side of the direction from their residence. Almost all of the homes to the waterside within 330 feet are infringing and he has put the calculations on the page. They measured each one from the curb. The listed dimensions represent the addresses of the homes that are in violation and the distance that they are in violation to the 25 foot setback. He has spoken to several people on the street including the people on the adjacent property and spoke with Tom Perkowski. The neighbors and Tom Perkowski provided letters that state that they like what they see. He would like to note that all the homes on the waterside, based on the zoning requirements of that area, being only 40 feet wide, would require a variance even if they pull a permit to put in an air conditioner. Every home on that side of the street is not in compliance with the Zoning Ordinance. He feels that if this is to continue on St. Johns Drive, that it is bad that the Building Inspector has to be the person that goes out there and tells somebody while their building a structure or doing something that they're going to have to go before the Planning Commission or before the Zoning Board of Appeals based on what the requirements are. In the R-1 zoning, it requires a 65 foot wide lot. He wishes that he would have been able to have a conversation with the Building Inspector and with the Supervisor, and that he doesn't think that this would have come before the ZBA because he is in compliance because he sits 2 feet behind his adjacent neighbor. If you draw a line from his adjacent neighbor to the east 330 feet over to the next house that is infringing on the setback requirements, he sits behind the blue line and is in total compliance.

Makuch: Stated that Mr. Tiffin is not in an R-2 zoning, he is in an R-1 zoning.

Tiffin: Stated that is what he meant.

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Makuch: Stated that Mr. Tiffin had just stated that he was in an R-2 zoning and that there should be a 15 foot setback. It's not, it's an R-1 and it's a 25 foot setback. He further stated that he has a copy of the letter that Mr. Tiffin sent to the Township Supervisor that was addressed to Chesterfield Township and informed Mr. Tiffin that this is Clay Township. He further pointed out that the letter mentions non-waterfront property lines which is not applicable since the property is waterfront. He does not disagree with Mr. Tiffin that there are a lot of homes that are not currently in agreement with the current Zoning Ordinance, but many of those homes were built prior to 1989 when there was no Zoning Ordinance.

Michael Kras: Some of the homes were built under Ordinance No. 25. The Building Inspector at that time read the Ordinance as waterfront property being the front of the building. He considered the waterside the front of the building. That is the reason why some of the setbacks are within 25 feet up to the dwelling. They have garages at the front of them that are 3 feet off the property line. However, an attached garage is different from a dwelling.

Tiffin: According to the one section that he has highlighted the imaginary line is drawn and that allows you to conform with the rest of the homes on the street. He made it very clear in the satellite view that he provided as to how many homes in that area are closer to the street than he is.

Chamberlain: Stated that he is confused by Mr. Tiffin's statement and is trying to figure out the logic of where he is going with that. He questioned whether Mr. Tiffin is saying that as long as he's the same as everyone else that it's okay for him?

Tiffin: Stated that what he is saying is that there is a provision in the Zoning Ordinance that states very clearly that it allows you to be in the area between the line that's drawn between the homes. He sits 3 feet behind his neighbor which, in his opinion, if it would have been addressed originally and there weren't any mistakes on his part, this would have applied. This is allowing people to conform to the rest of the street. In his conversations that he has had with Mr. Perkowski, he indicated that when the original plat was recorded that there were some documents that give you land and use restrictions. He was not able to go to the County to get that information. The way he reads the Zoning Ordinance, he is in compliance. In 1985 or 1987, he addressed an issue for another resident where the ZBA drew the imaginary line between the houses and that was what they allowed the setbacks to be. He has a letter from the adjacent property owners that are anxious and that if they ever do anything with their home, they would like to be at the same setback and try to maintain the 15 foot setback or 33 feet from the existing curve. The original information that he received from the City when he started proposing the addition to the home was not properly documented. He was given a copy of his plat that showed 45 foot setbacks. When he ran into a problem and came in, he found out that Mr. Perkowski dedicated an extra 21 feet and when they built the road, they were able to move the road to the center of a 66 foot right-of-way. Mr. Kras, the Building Inspector, was not able to find out from the County where the road was placed when the road was constructed. It was his huge mistake by using the road as to what the property boundaries were. Mr. Kras had the Township Engineer come out and survey to find out exactly where the road was. He was led to believe the road was something other than it was, which is his mistake, wholeheartedly. He made the mistake. But, at the same token, when Mr. Kras called, the County couldn't even give him the information. He had to hire a surveyor to go out and check it.

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Chairman Antkowiak then invited the public to come forward and speak in favor or in opposition to the requested variance.

Thomas Braekevelt, 9831 St. Johns Drive: He presented a letter to the ZBA from his wife, Betty Braekevelt regarding opposition to the variance. He lives next door to the east of the subject property. When you face the subject home, he is on the right side. The construction had begun while they were wintering in Florida. He didn't pay too much attention to it because he assumed that there would eventually be a garage constructed. After looking at the garage, he realized how large it was. He found out that it is 42 feet long, which is beyond his home where he now cannot even view the street. He found out that the original plan was expanded and not approved through the Building Department. They are upset about the addition being so big and huge and feel that the Applicant could have gotten away with a 2-car garage instead of a 3-car garage. The Applicant could have stayed back to where everybody would be happy.

Chamberlain: Questioned Mr. Braekevelt if his residence had the garage that sticks out almost as far as the addition on the subject property.

Braekevelt: Stated that it does. However, he received a variance when he built the garage approximately 15 years ago and didn't start construction until he received approval from the Township.

Michael Kras, Clay Township Building Inspector and Zoning Administrator: Stated that Mr. Tiffin originally came in for a 27 x 31 foot garage. We approved his plan. He did provide Mr. Kras with a survey. He did have the building back far enough but there were discrepancies in the survey. The discrepancies were the fact that he had a 125 x 80 foot lot and he was showing that he had a 70 foot frontage. This would mean that he would have to have 13 feet of free space off the seawall. In checking the neighbors, most of the neighbors on each side had 2 feet. He spoke with the Township Assessor and she advised that all properties go across the same lot line across the back. So, if you add all the numbers, the numbers don't match. What he means is if you add the 41 feet and 27 foot building, it only leaves about 56 feet to the front, and he was claiming he had 70 feet. They asked Mr. Tiffin to provide a corrected survey but allowed him to begin work on the project. Mr. Kras further stated that he was in the hospital and Sid Brown went out and did an inspection. Mr. Brown stated that he had allowed Mr. Tiffin to dig and pour. At the time, the only portion of the footing that wasn't dug yet was the front of the 31 foot portion. Mr. Kras further stated that upon his return to work and reviewing the revised plans for Mr. Tiffin's project, the revised plans showed him to be well in the setback. At that time, he placed a Stop Work Order on the project and advised Mr. Tiffin that he will need to provide the Township with another survey. He did provide a second survey. The second survey basically said he had 70 feet to the front, and he advised Mr. Tiffin that it was wrong. Jon DeBoyer spoke with him and stated that he felt that Mr. Tiffin was now encroaching on the sewer lead. Mr. DeBoyer stated he had visited the project and saw them digging and told Mr. Tiffin that he needed to have an inspection before he poured. However, Mr. Tiffin poured and started the building without any inspection for that. He further stated that if the plans were going to be approved, he would have had to do another inspection on the footings. No additional inspection was done because the revised plans were not approved. Therefore, when he started work on the project, he lost his building permit to complete any work. According to the Code, when you do something unlawful, your building permit is revoked. When Mr. DeBoyer and he went to the property, he immediately found the front and rear survey pins. In

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reflecting on what Mr. Tiffin said regarding 330 feet each way, they didn't provide him with that information for the simple fact that he believes Mr. Tiffin is still encroaching on the average setbacks of the dwellings. And, if he was going to use it, he wouldn't accept any of Mr. Tiffin's numbers because he has already provided incorrect numbers on several occasions and required the Township sending out their surveyor, John Monte. The survey that Mr. Tiffin has provided to the ZBA is incorrect if you match it with the engineer's survey. His numbers are still all wrong. If Mr. Tiffin was to do 330 feet each way, he would want a surveyor of the Township's choosing to go out and survey each one of the houses for the average setbacks and that would be the only way he would allow Mr. Tiffin to do it. There is still a Stop Work Order on the project. The fees will have to be paid as well as the surveyor before any future work is going to be completed on the property.

Chairman Antkowiak: In the survey Mr. Tiffin provided by G. C. VanPopprin dated May 26, 2009 it shows "new setback as-built" and "old setback".

Kras: Stated there has never been an old setback. The setback has always been 25 feet.

Chairman Antkowiak: Questioned whether the "new setback" is the appropriate setback from this property line?

Kras: Stated the side setback is wrong. He has 7 feet and it's 6 ft. 4 in. When a licensed surveyor goes out to the property, they actually give you the exact measurements. They give you the measurements right down to the inch, half-inch, they don't round everything off. He did call Mr. VanPopprin at his office and asked him about the rear survey line. Mr. VanPopprin told him not to worry about the rear survey and that the front survey line is what I needed to be worried about. He advised him that there was 125 feet of property, and you're adding another 15 feet to that property by saying that you're 13 feet off the rear property, the waterside, and giving him an easement of 13 feet. The numbers don't add up. Mr. VanPopprin told me not to worry about it and call Mr. Tiffin. He further stated that he won't accept anything from Mr. VanPopprin.

Makuch: Questioned Mr. Kras that in accordance with the Project Control Engineering survey, there are 17.1 feet from the front of the garage to the property line, and if Mr. Tiffin cut the garage back 8 feet, he would then have 25 feet, would make him compliant?

Kras: Stated that would be correct. He has also advised Mr. Tiffin that if he needed to cut the garage back, he would also have to remove the footings from the area.

Makuch: Questioned Mr. Kras as to what 70 feet he was referring to?

Kras: Stated if you look at Mr. Tiffin's first survey dated April 8, 2009 and April 15, 2009, he has 70 feet to the front. I kept explaining to him that there is a 13 foot difference at the rear where the neighbor's are only 2 foot different. What they did is when they put the seawall in, they actually put the seawall in front of the wood seawall and then cut the wood seawall off and basically the State allowed them to have 2 feet of easement.

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Tiffin: Presented photographs to the ZBA members of the home. Before he started construction on the site, he checked the files of what was existing for the home that he was adding onto and what was existing for the home that was next to him.

Chairman Antkowiak: Questioned Mr. Tiffin as to whether or not he got approval for the first garage that was 27 x 31?

Tiffin: Stated that he did.

Chairman Antkowiak: Questioned Mr. Tiffin as to whether or not he got approval for the garage that was 42 x 24?

Tiffin: Stated that he did not.

Chairman Antkowiak: Stated that from his perspective, all the other information is not going to tell them anything because we're dealing with this particular garage which is illegal.

Tiffin: Stated that if the plans meet the Building Code of 2003 or 2005, that he would like to pay for the additional review of the plans and have that built the way it is. If he goes back to the original plans, or shorten this up, which is not going to give him a 3-car garage, what he is looking at is that the homes on Bluebill where he lives are all on 62 foot wide lots.

Chairman Antkowiak: Stated that it was irrelevant. He further stated to Mr. Tiffin that the reason he is here is that he is seeking a variance because he has gone and built something into a setback that he is supposed to have. The information about all the other homes that are illegal and the houses on Bluebill do not have any relevance to the particular variance that he is requesting.

Tiffin: Stated that the only thing he has grounds for besides the fact that he admittedly is telling the ZBA that he made a mistake because of the information that was provided to him by the City with a 45 foot right-of-way for the road, is the issue that states right in the Zoning Ordinance whereas he can comply in a line that is in accordance with the way the street is.

Chairman Antkowiak: Stated that Mr. Kras has stated that in order to do that, you would have had to have had a greater survey.

Tiffin: Stated that there is a mistake made on the survey and it was something that he created himself. He would like to clear one issue up and that is that the gentleman next door did not get a variance that he could find in the file for any zoning compliance for his setback.

Chairman Antkowiak: Again stated that that was irrelevant to his particular case. The ZBA can only deal with Mr. Tiffin's variance based on what is in the Ordinance at this time. What happened to other people is not taken into consideration, it has nothing to do with the issue.

Tiffin: Questioned the paragraph that states that you are able to maintain an average setback.

Chairman Antkowiak: Stated that he believed that Mr. Kras had addressed that issue. He further stated that Mr. Tiffin would have to have a survey showing what that is.

Makuch: Stated that he has the section that he feels needs some clarification. He further stated that Mr. Tiffin skillfully chose the non-waterfront property line. Section 311, No. 1 states the 330 foot average is applicable to the waterfront side. If you are a non-waterfront property owner, then it would reflect to the front of the house and that is what you are saying, but you are not applicable there. Where you would fall in that 330 foot average applies to the waterfront side only.

Tiffin: Stated that he approached the Building Inspector and asked him if he would lift the Stop Work Order if he moved the building back 8 feet. He told me absolutely not, that I had to continue going to the Planning Commission or Zoning Board of Appeals. All he is asking is if this is going to be denied, that he move the structure back, put another footing in and run the driveway out the front and not out of the side of this house. He would like to leave the footing in because he is either going to pursue the issue by getting the people on the street to have these issues clarified so that this does not have to come before the ZBA in the future, or he may decide to take to the Court. But, at this point in time, he would like to be allowed to leave his footing in because it will be underneath his driveway and he would like to maintain it there. Mr. Kras wasn't there, he doesn't know what Mr. DeBoyer from sewer and water said. He has a double lot. Normally, when you have a double lot, that lot should have had two sewer leads and two water stop boxes to it, but it doesn't. It only provided one sewer lead and one stop box. Unfortunately, when this person constructed this house, he didn't take into account the fact that this property had a sewer lead and a water lead where eventually the garage would go. What he is saying is that at the time he met Mr. DeBoyer at the site, he specifically told him three different things, two that he remembered. Mr. DeBoyer specifically asked him what he was going to do if the sewer runs through the footing, and I told him I would build a sleeve around it and if I do, I'll have you come and look at it. Mr. DeBoyer said that was fine. He questioned Mr. DeBoyer about what happens if the sewer is under the footing, and Mr. DeBoyer said it wasn't an issue. Mr. DeBoyer said that the sewer past the property line is my problem. It has nothing to do with the Township any longer. The utilities, after they reach the property line to your house, are always your responsibility. He was very upset that I didn't have him inspect this footing. As he recalled, Mr. DeBoyer only wanted to inspect this footing if it went through the foundation. The sewer is about an inch or two underneath the concrete footing and they tested the soil conditions there to be over 3,000 psf, which will hold up under any circumstances and will never affect that footing. His plans didn't include steel in the footing but he put a No. 4 bar on the top and a No. 4 bar on the bottom to make sure that he created a beam so that he would never have an issue with the sewer. The only thing he is requesting from the ZBA, if they are going to deny him his footage is to have his footings left there so that in the event he goes to Circuit Court and it's accepted at Circuit Court, he would like to be able to change the garage back to the original footing. He doesn't see any need to remove the footing that's going to be underneath his driveway.

Chairman Antkowiak closed the public hearing at 8:20 p.m.

Chairman Antkowiak stated that Mr. Tiffin had presented the ZBA with a letter from Mr. Perkowski which was in favor of his project; a letter from Mr. & Mrs. Pielack who are in favor of the project; what appears to be a general letter and a postcard with seven signatures in favor of the project; and a letter from Mrs. Betty Braekevelt in opposition to the project.

The ZBA then began its deliberation on the requested variance.

Chairman Antkowiak then questioned Mr. Kras as to whether Mr. Tiffin's statement was true that if he were to remove the part of the garage that is encroaching that you stated that he couldn't do that?

Kras: Stated that was true. He informed Mr. Tiffin that he would have to remove the footings. He further stated that he told him he was not going to remove the Stop Work Order unless Mr. Tiffin removed the footings.

Makuch: Questioned Mr. Kras as to why the footings needed to be removed?

Kras: Stated that the footings should not have been put in there in the first place and they are close or are suspected to be over a sewer.

Makuch: Question Mr. Kras that if Mr. DeBoyer were to sign off on saying that the footings were good would Mr. Kras then not have an issue with it?

Kras: Stated that is correct.

Chamberlain: Questioned Makuch as to what was the result of his conversation with Mr. DeBoyer?

Makuch: Stated that he understood that the sewer line comes in at kind of angle and the way the footings were, it was going to cut it real close. Also, if the sewer line is underneath a footing, it's not an issue. But, Mr. DeBoyer had asked that when the footings were being poured that he be called, and he was never contacted by Mr. Tiffin when the footings were poured. Also, there has been some conversation afterwards of at least trying to inspect that to make sure of that and he's been told different answers and basically has not been allowed to inspect the footing.

Motion by Makuch, supported by Chamberlain to deny Variance Request No. 2009-002 for Eldon C. Tiffin, 9829 St. Johns Drive, based on the facts that the practical difficulty was self-created and the building, in its current condition, was constructed without approval. Should Mr. Tiffin elect to cut the building back and construct a smaller building to fall within the required setbacks, that a building permit is not to be issued until the footing is firmly inspected and signed off on by Mr. DeBoyer of the Water Department.

R/C VOTE: AYES: Chamberlain, Makuch, Chairman Antkowiak

NAYS: None ABSENT & EXCUSED: Diss; Treppa

MOTION CARRIED.

Tiffin: Requested clarification regarding the decision. He has no problem digging up the sewer for Mr. DeBoyer. He needs the Stop Work Order lifted to continue. What he would like to do is get the Stop Work Order lifted so that he could get a machine out there to dig the sewer

out for Mr. DeBoyer's inspection and at the same time trench and put the footing in to move the wall back.

Makuch: Stated that his motion was that when Mr. Kras receives verification in writing from Mr. DeBoyer that he has approved the footings as they are and the Building Department approves your plans, then Mr. Kras will lift the Stop Work Order.

Tiffin: Stated that at the same time he would like to trench for the relocation of the footing so he only has to have a machine out there once.

Chairman Antkowiak: Stated that was not what his motion stated and that they have clarified what was intended by the motion.

Scheduled Public Hearing – 2009-003 Thomas R. Stowers, 8536 Anchor Bay Drive:

The Applicant is requesting a variance of 9 feet 4 inches of the side yard setbacks where the northwest side yard is less than one foot and where a total of 15 feet is required to allow the re-construction of a single family dwelling on the existing footprint. This hearing is authorized by Township Ordinance No. 126 and Section 27.04.

Chairman Antkowiak again explained that there are only 3 of 5 ZBA members present and although it constitutes a quorum, the Appellant has to have three ZBA votes of approval for the variance to be granted. He then questioned Mr. Stowers as to whether he wanted to proceed with the 3 ZBA members in attendance or have his request postponed to the next ZBA meeting at which time 5 ZBA members may be present.

Mr. Stowers stated that he wished to proceed.

Chairman Antkowiak opened the public hearing at 8:35 p.m.

Chairman Antkowiak invited Mr. Stowers to address the ZBA.

Mr. Stowers: He is asking for a variance for 8536 Anchor Bay Drive. This house is eight houses past the third bridge. He stated that he bought the house in 1996 and it had a fire in February of 2008. He is ready to rebuild the house. He brought plans to Mr. Kras. Mr. Kras brought it to his attention that a variance is required to build on the existing foundation. He has had the existing foundation evaluated by an engineer and the report is that it is a good foundation to build on. When he applied for the variance, Mr. Kras brought to his attention that the wall on the east side of the house is within 3 feet of the lot line, and that he would have build that wall to meet the R 302.1 Fire Code. He consulted with an architect and the architect recommended changing the pitch of the roof from the way it is shown originally which goes to the neighbor on each side. In other words, the peak of the house would face the street on one side and the water on the other the side. To meet 302.1, he has changed it to be 90 degrees from that. He is also willing to build the fire-resistant wall. He spoke to his neighbor to the west that this affects the most who has a garage next to the subject wall, and he is okay with his plans. He prefers to go with new construction versus repairing the fire damage and to build on the existing foundation.

Chairman Antkowiak then invited the public to come forward and speak in favor or in opposition to the requested variance.

Cathy Thayer, 8542 Anchor Bay Drive: She owns the house next to this building. If you are facing the house they are on the left side. The house in question was moved from the other side of the canal. He owns both sides of the property, canal and lakeside. A garage was built on the canal side. When the garage was built in the late 1950's, early 1960's there probably were no zoning laws. They have been there since the 1940's. The garage actually overlaps onto their property. It hasn't been maintained so they have holes where they cannot keep the dirt on their property because it keeps going into the boat well in the garage. It is kind of a liability and a concern for them. Also, Mr. Stowers put cleats on his breakwater and welded a cleat on their breakwater and never asked for permission. The property is higher than theirs and she thought the Code called for all properties to be the same level. They get the water when it rains. He also installed a hoist for personal water craft and with the house the way it is, there is no way to get a vehicle back there to pick it up. They go around their house and cut across their property to load them on and take them in and out that way. The trees that were put in between the property are lindens. She has been told that they can grow up to 80 feet. There are five or six of them on the property line. Since Mr. Stowers property has a cement sidewalk, the roots are growing on their side. There is only 61 inches between their foundation and the trees. They would like to see the house smaller so that he can drive his vehicles across his property as opposed to across their property all the time.

Ron Michalak: Stated that he owns the lot and one-half next to the Thayers on Anchor Bay Drive. He further stated that no one asked him for permission to drive across his property to cross Ms. Thayer's property to get to their property. He objects to continuing a wrong. He feels the house is over-sized for the property. The homes are very close to each other in the area and with a fire it could very easily transport from one home to another. He stated that he feels to maintain a home with only 1 foot left of free space is wrong. He further stated that if Ms. Thayer ever sold her house, which is small, someone would probably come in and want to build a standard-sized home. On the west side of the Mr. Stowers' lot is a garage and if somebody ever wanted to build a home there, there is only 1 foot to the property line. So, he will prevent someone else from being able to build a home on that lot. He further stated that by perpetuating the large volume that his current footprint makes, he is impeding upon the abilities of both of the adjoining lots to be able to fill their full capability of a standard home because there just won't be room there, they would be infringing upon the situation. So, between the concern for safety and infringement upon other people's property, he does not support Mr. Stowers maintaining the standard footprint. It's a 40 foot lot. You have a 15 foot setback. You build a 25 foot wide house just like everybody else does, you don't build a 35 foot or almost 40 foot house. He would like to see Mr. Stowers be compelled to do so as he rebuilds his house.

Kras: Stated that what Mr. Stowers is talking about as far as fire separation is he only has 3 inches on the one side. Mr. Stowers has been advised that he has to meet the Code, which would mean that he would have to put a fire wall there. The whole wall would be a fire wall and the roof material going in at least five feet would have to be non-com lumber. Mr. Stowers is willing to deal with these Code issues. Mr. Stowers' survey shows that he is encroaching on the other property line in the garage area.

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Chairman Antkowiak: Stated that the ZBA is not dealing with the garage on the canal side of the property. The variance is in regards to the home on the waterside of the property. The encroachment issue would be a civil matter.

Stowers: Stated that he bought the property in 1996 and the garage was already there. He understands what Ms. Thayer is talking about in regards to the dirt washing out from behind the seawall. He will try and make the necessary repairs. He is just trying to rebuild the house that was there. He further stated that he does not own personal water craft and if someone is driving across her property, it may be the other neighbor who has a hoist on his seawall. The lift on his seawall was there when he brought the property and he has never really had a use for it. He stated was not aware that he had welded the cleat to her property and will remove it, if necessary. Also, the trees that are between the property, to his knowledge, are pear trees and he keeps them trimmed so they stay small.

Makuch: Questioned Mr. Kras as to whether there is an issue with the roof?

Kras: Stated that currently the pitch on the roof goes to the neighbors. His eaves would probably be three inches in, but the gutters would actually be encroaching on the neighbors' property. What Mr. Stowers has done is turned the house around so that the eaves will be to the front and back of the house.

Makuch: Questioned the difference in square footage between the old house and the new one?

Stowers: Stated the footprint of the new construction is actually going to be smaller than the old construction because there is a protrusion on the existing construction that goes towards the water that he believes was built on a slab that doesn't have a good foundation and he doesn't want to build that footprint. That will be removed and not built. The overhang on the street side, which extends out approximately another 8 to 10 feet and the cement work underneath that is going to be removed and not replaced. Actually, the front of his house is coming away from the water by approximately 9 feet. He further stated that he now has the funding and has an escrow account. If this variance is approved today, he will get the demolition permit tomorrow. The contractor is ready to go. He expects that this should be completed in 90 to 120 days. He also feels that this will increase the value of the property. He further stated that there is a practical difficulty if he had to dig up the existing foundation and put in a new foundation and change the plans. He does not have the funding to change the floor plan and the increase in the cost of construction. He would then have to really consider just making repairs to the existing home. He really doesn't want to go into that direction.

Chamberlain: Questioned Mr. Stowers as to whether there were more detailed plans than the drawings that were given to the ZBA?

Stowers: Stated that these are the plans that were submitted to Mr. Kras.

Kras: Stated that these are just concept drawings.

Chamberlain: Again questioned whether actual plans exist and have been approved?

Kras: Stated they have not.

Stowers: Stated that whatever Mr. Kras needs they will provide them. He further stated that Mr. Kras has requested more information and he will get Mr. Kras whatever he needs.

Chairman Antkowiak questioned Mr. Kras as to whether the Appellant would be able to rebuild or repair the existing home and stay under the amount to prevent a non-conforming structure to be refurbished?

Kras: Stated that Mr. Stowers probably would not be able to do so. He would have to go to the Assessor. They take the assessment of the building only without the property or the garage, and determine how much they have to actually put into this building to bring it into compliance. Being that the whole rear of the building is damaged, they would probably have to gut the whole building so they would have to bring the wall on the property into compliance, too. He would say that it probably would not be able to be done.

Stowers: Asked for an explanation of the 40% rule.

Chairman Antkowiak: Explained that if he was to refurbish the existing structure and it cost more than 40% of the assessed value, you then still would be in the same situation you are now.

Thayer: Stated that she is still concerned about how they will be able to get equipment on the property to do the work due to the size of the house on the lot.

Michalak: Questioned with a larger house, how will he have access to the front of his house?

Stowers: Stated that the chimney located on the side of the house that is next to Ms. Thayer's home will not be there and the trees may also need to be removed. He further stated that he will not have a need to bring things to the front of his house and has access to the water on the piece of his property across the street.

Chairman Antkowiak closed the public hearing at 9:12 p.m.

The ZBA then began its deliberation on the requested variance.

Makuch: Questioned if he built on the existing footprint, will he need a variance for lot coverage? He assumes that if that was an issue that would have also been a requested variance.

Kras: Stated that was correct.

Chamberlain: Stated that the 3 inches on the one side is very scary.

Chairman Antkowiak: Stated that practical difficulty is based on the property and not on the financial aspect.

Makuch: Stated that he believes you can make an argument for practical difficulty on the lot size and the fact that the square footage is not being increased and that it is being built on the original footprint. He feels that if they allow the practical difficulty, he is not against building on the original footprint as long as the square footage isn't increase and he is going to have to

meet all building codes in terms of fire retardation. What does bother him is that there is very little room. He understands the surrounding neighbors' concerns.

Chamberlain suggested going through the five criteria for approval of a variance. He stated that he is in agreement with Mr. Makuch that the 40 ft. lot size makes it tough and, in his opinion, does create a practical difficulty for building any house in that area for dealing with setbacks.

Chairman Antkowiak: Stated that he is also in agreement with same.

Chamberlain: Questioned whether it would alter the essential neighborhood character? He further stated that Anchor Bay Drive has an awful lot of houses doing the same thing. The houses all seemed to be pretty close to the same. In relation to whether it would deprive the owner of rights by others in the same district, he questioned what has been done in the past?

Makuch: Stated that they have not gotten into a lot of setback issues, it has been more of people trying to build a 6,000 square foot house on a 40 ft. lot and it's a lot coverage issue, for which you're only allowed 30%.

Chamberlain: In relation to whether the conditions and circumstances are unique to the property and created by the owner, he stated that, in his opinion, they were not created by the owner.

Chairman Antkowiak and Mr. Makuch also agreed that they were not created by the owner.

Chamberlain: Questioned whether the requested variance will be contrary to the spirit and intent of the Zoning Ordinance?

Chairman Antkowiak: Stated that he felt it was not contrary to the spirit and intent of the Zoning Ordinance. He further stated that in terms of the fact that the Ordinance does say 65 feet, there are existing places that are not going to get any larger. Consequently, the intent of the Ordinance is hazy in that regard.

A discussion then occurred amongst the ZBA members regarding the five criteria in relation to the requested variance.

Motion by Makuch, supported by Chamberlain to approve Variance No. 2009-003 for Thomas R. Stowers, 8536 Anchor Bay Drive, based upon the following facts: It is an undersized lot which does create a practical difficulty, the home will either be the same size or smaller built on the original foundation and the ZBA has granted variances for the same in the past. However, for the granting of this variance the Appellant must meet the following conditions: The Appellant must meet all other conditions of the Zoning Ordinance in terms of land coverage and encroachments on properties from eaves and roofs, all conditions in the Building Code in terms of any requirements for fire suppression materials, and that the square footage of the new building does not exceed the existing square footage of the present building.

R/C VOTE:

AYES: Chamberlain; Makuch; Chairman Antkowiak

NAYS: None ABSENT & EXCUSED: Diss; Treppa

MOTION CARRIED.

7. REPORT OF PLANNING COMMISSION REPRESENTATIVE:

Antkowiak: Stated that he had nothing to report.

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

a) Correspondence Received:

None.

b) Zoning Board of Appeals Members:

Makuch: Suggested that the Planning Commission may want to look at amending the Ordinance in relation to setbacks and the uniqueness of areas such as Anchor Bay Drive.

A discussion then occurred amongst the ZBA members regarding the Zoning Ordinance and the different conditions and circumstances in various areas of the Township.

9. PUBLIC COMMENTS

None.

10. ADJOURNMENT

Motion by Makuch, supported by Chamberlain to adjourn the meeting at 9:33 p.m.

AYES: All NAYS: None ABSENT: Diss; Treppa

MOTION CARRIED.

Respectfully submitted,

Christine Holcomb
Recording Secretary