



Wexford Joint Planning Commission

c/o Cherry Grove Township
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Cadillac, Michigan 49601

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DRAFT Meeting Minutes

Time & Date: 6pm, Wednesday, January 24, 2024

Meeting location: Wexford County Road Commission Meeting Room, 85 West Highway M-115, Boon, Michigan. Coordinates: 44° 19' 32.5" N, 85° 34' 53.4" W (44.325685, -85.581500)

A. Call to Order, Pledge of Allegiance, Roll Call

Present: Beverly Monroe, Chairman (Liberty)
Bill Swank, Vice Chairman (Antioch)
Jack Prebay, Secretary (Selma)
Judy Kowalski (Springville)
Carol Perrin (Selma)

Absent: VACANT (Cherry Grove)

Others Present: Robert Hall, Zoning Administrator
Ben Townsend, Assistant Zoning Administrator
Heather O'Connor, Recording Secretary

B. Approval of Minutes for December 20, 2023 – Motion to approve Meeting Minutes with **CORRECTION** made by Bill Swank supported by Jack Prebay and passed via voice vote. See ([Proposed Minutes](#)). **Correction – Meeting time was 6pm not 7pm**

C. Set / Amend Agenda - A motion to approve the Agenda as presented made by Judy Kowalski supported by Bill Swank and adopted as presented via voice vote.

D. Public Comment – Eight (8) members of the public were present. Cynthia Wotila on behalf of Drew Bizmack – requested to address response under item G.

E. Matters pertaining to citizens present at the meeting, in the following order:

1. Advertised Public Hearing: (Variance Request / Case # ZBA-2024-01) Cherry Grove Township (Member & Alternate – VACANT) Parcel #2110-WHB-39C
Cherry Grove Township Representative – (VACANT)
 - a. The Chair shall declare the public hearing open – Chair Beverly Monroe declared the public hearing open at 6:05pm
 - b. Planning and Zoning Administrator - Staff Presentation – Ben Townsend, Assistant Zoning Administrator delivered the Staff Report as mailed via USPS to the Board members (See [ZBA Staff Report](#)). No negative calls or emails or letters were received by Zoning Administrators regarding this application.
 - c. Applicant Presentation – Applicant, Rick & Chris Lawrence thanked the board for hearing the case. Mrs. Lawrence gave some background on their family. Mr. Lawrence stated he preferred the 35 feet from the water to align with existing homes vs the 50 ft required distance.

d. The Chair shall allow public comment – Chair Beverly Monroe opened the floor for public comment – Carol Perrin stated it was important that homes line up. Another stated that the new house is better aligned than the previous home.

e. The Chair shall declare the public hearing closed – With no further comments, Chair Beverly Monroe declared the public hearing closed at 6:28pm

2. Zoning Board of Appeals [Deliberations / Findings / Conclusions ZBA-2024-01]

The Zoning Board of Appeals may ask additional ‘fact-finding’ questions of the applicant, staff, or members of the public – It was noted by discussion that three (3) of five (5) the board members present had personally visited the Funke property, noting the proposed location of the Variance Request. The Standards of Review were discussed and reviewed in accordance with the variance request as follows:

Case # ZBA-2024-01

2.1 Property Description

2.1 Property Description – LOT 76 PLAT OF WHITE BIRCH PARK AMENDED
CG. SEC. 1 T21N R10W -CAPS-

2.2 Action Report –

Action Report – The Applicants are requesting an L-shaped house between 33 to 36 feet of the waters edge for the house. It this does not work for the ZBA, then the request is to come closer to the roadside setback.

2.3 Background:

1. This property is approximately 10,400 square feet in area. Thus, it does not qualify as a non-conforming lot or building as per ZO 4604.A.
2. The property is located in the R-2 Residential Zoning District
3. The property previously had a platted road going through the upper half of the property that has since been vacated by court order.

2.4 Current Narrative:

1. The Applicant first contacted the zoning office in July of 2021, asking what the setbacks were for a plot on Lake Mitchell. This was followed by a back and forth on the property address to check to see if it had septic or sewer. Setbacks were given two times in the emails as 50' from the water, 20' from the front road property line, and between 10' and 15' from the sides, depending on the width of the property.
2. Current email application for a zoning permit and house plans were submitted by a builder, Miles Builders, LLC, on Wednesday, November 29, 2023. On the same day, ZA Hall sent an email return to the builder stating that the waterfront setback "must not be less 50' (fifty feet)." This brought a reply of asking Hall to call the builder about questions. Mr. Hall did speak with the builder.
3. A letter of denial on December 20, 2023 was sent to Mr. and Ms. Lawrence by Mr. Hall, stating that the "required waterfront yard setback of 50' (fifty feet)" was to be followed.
3. The applicant was advised of the variance process and provided a copy of Article 96; Appeals Board, from the Wexford Joint Zoning Ordinance in person at the office and asked to provide a brief narrative justifying the need for the requested variance.
4. Public Hearing Notification was published in the Cadillac News on: January 5, 2024; 23 days in advance of any required public hearing
5. 300 Foot Notices were sent out on January 5, 2024; 19 days in advance of any required public hearing.
6. Packets were sent out to the Zoning Board of Appeals members (and the Applicant on January 17, 2024.

3. Article 46: R-2 RESIDENTIAL DISTRICT

3.1 Section 4604 of Article 46 describes the regulations applicable to the specific zoning district – the following is presented for review by the Zoning Board of Appeals:

1. The minimum parcel area is: 7,000 (seven thousand) square feet; the subject parcel is where the house is located is approximately 10,454 (ten thousand, four hundred and fifty-four) square feet.
2. The minimum buildable area is: seven thousand five hundred (7,500) square feet, which makes this parcel not a non-conforming lot. In other words, it does conform to what the ordinance states is more than enough area to build upon.
3. The minimum parcel width is: seventy-five (75) feet – on a the road; the subject property has approximately 180 (one hundred eighty) feet on M-55 Highway, and 145 (one hundred forty-five) feet on Cherry Grove Lane.
4. Setback requirements are as follows:

Front: 4604.D.1.a	the required setback is 20'
Side: 4604.D.1.b(1)	the required setback is 15'
Waterfront: 4605.D.1.d	the required setback is 50'

4. **STANDARDS FOR GRANTING A DIMENSIONAL VARIANCE**

4.1 According to WJZO, Article 9607.F.2.a.(l) thru (5) - The following standards **shall** be used by the Zoning Board of Appeals when considering a variance request.

1. That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography

Staff Comments: This is the easiest reason for a zoning board of appeals to consider granting a variance in the zoning ordinance. The parcel involved in this appeal is wider than a normal parcel around Lake Mitchell and it is much deeper than a normal parcel. There was a small cottage that was very close to the water when it was demolished with a permit in 2019 with the WJPC. This demolition was to make way for a new house to be built on the property farther away from the water than the previous house was.

Applicant Comments: See Applicant Comments above

Board Comments:

This not a unique circumstance presently – it is a conforming lot now via the platted road being vacated

NO - 4

2. That the need for the requested variance is **not** the result of actions of the property owner or previous property owners (self-created).

Staff Comments: The current landowner has not altered the property since the adoption of the Wexford Joint Zoning Ordinance or acted to create the need for the variance. The owners demolished the previous cottage which was very close to the water due to the platted roadway in order to build a larger house farther away from the water.

Applicant Comments: See Applicant Comments above

Board Comments:

The applicant has had the road vacated

NO – 0 YES - 4

3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose **or** will render conformity with those regulations unnecessarily burdensome.

Staff Comments: One of the primary purposes of the Zoning board of Appeals is to ensure that: "...the spirit of the Ordinance is observed, public safety secured, and substantial justice done..." – this property is of such a good size to allow the applicant many variables for building the house in order to expand it to a size near to the applicant wishes.

Applicant Comments: See Applicant Comments above

Board Comments:

Plenty of buildable area without hardship

4 NO – 0 YES

4. That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district.

Staff Comments: *There are two variances that are asked here. The applicant has asked the ZBA to approve building into the front water yard setback of thirty-five (35') feet. He also has the option of moving the house fifteen (15') feet closer to the road, which retains the fifty (50') foot water setback, but allows a two (2') foot distance from the road front property line, still with the garage being within twenty-two (22') feet of the road.*

Applicant Comments: See Applicant Comments above

Board Comments:

Looking for a compromise between setbacks – allowing for alignment of front or rear of houses – there is cooperation or compromise to be made in this case

5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district

Staff Comments: *No doubt the improvements as presented will cause no adverse effects on the surrounding properties, and undoubtedly it would raise all property values.*

Applicant Comments: See Applicant Comments above

Board Comments: No adverse impact as new house is further from water than previous cottage

The Applicant has demonstrated that a practical difficulty exists for this standard? – **4 NO – 0 YES**

Staff recommends: *That the Zoning Board of Appeals approves Applicant's Appeal by justifying the waterfront 35' which is an improvement of about 20' more than the previous cottage, or else approve moving the house back to the approximate 50' from the water and justifying the reason for the 2' from the front property line because there is still 22' from that point to the side of the road. Or the ZBA may approve any variation of the above as it sees fit.*

The Recording Secretary was requested to read back the Standards, discussion and agreement or disagreement for the motion by Bill Swank supported by Beverly Monroe to **APPROVE** the Dimensional Variance for ZBA-2024-01 **with conditions** to be 42 ft from the water and 15ft from the road easement.

Roll Call vote as follows:

Monroe – In Favor
Swank – In Favor
Prebay – Against
Kowalski – In Favor

The motion to approve the Dimensional Variance for ZBA-2023-01 **WITH CONDITIONS** was **APPROVED** with

Conditions: Relaxing the 50ft water setback to 42 ft and 15 ft from the road easement.

F. **Unfinished Business and Reports** (items considered here are taken up in the same order as established by the Appeals Board to fix a priority for consideration and work done in the planning office).

1. Findings / Conclusions, and Decision regarding (Appeal of Administrative Decision – Nonconforming Status / Case # ZBA-2023-03) Selma Township - (Carol Perrin) – Supplemental information received at December meeting has been reviewed until this meeting.

Cynthia Wotila spoke to the supplemental information was presented was not noted in previous minutes.

Specifically

- Dec 20th letter
- Response to Zoning Admin submission
- pages of deeds
- email exchange
- Mr. Miller affidavit
- Zoning Application
- Proposal for cement
- Proposal by Pioneer Builders
- Supplemental info packet
- July 27th letter & attachments including Mr Millers statement

Board comments:

Permit Application does not state use for mini-storage – Permit states Pole Building – no building plans were included – no building inspector report was included

Motion to Uphold without reservation that the decision of the Zoning Administrator to determine that parcel #2210-20-1101 was not nonconforming was the correct decision based on factual findings* made by Bill Swank, supported by Jack Prebay and passed unanimously via roll call vote.

***See Below** -----

CASE #ZBA-2023-03

RESOLUTION OF THE WEXFORD JOINT ZONING BOARD OF APPEALS TO AFFIRM THE DECISION OF THE ZONING ADMINISTRATOR REGARDING A WRITTEN DETERMINATION DATED JULY 12, 2023 CONCLUDING THAT THE USE(S), BUILDING(S), AND STRUCTURE(S) TAKING PLACE ON PARCEL #2210-20-1101 IN SELMA TOWNSHIP, WEXFORD COUNTY also known as: 3044 SOUTH 29 ROAD – CADILLAC, MICHIGAN ARE NOT NONCONFORMING USE(S), BUILDING(S), OR STRUCTURE(S) AND THEREFORE ARE VIOLATIONS OF THE WEXFORD JOINT ZONING ORDINANCE

Whereas, the Wexford Joint Zoning Board of Appeals shall hear and decide all matters as the Appeals Board is specifically authorized to act upon as provided by law, including an appeal of an administrative decision or determination; and,

Whereas, the Wexford Joint Zoning Board of Appeals did convene at a properly noticed and published special meeting on December 20, 2023 to conduct a public hearing regarding the July 12, 2023 written determination of the Zoning Administrator representing the Wexford Joint Planning Commission on behalf of Selma Township, Wexford County;

Whereas, the Wexford Joint Zoning Board of Appeals did accept written and oral presentations from the appellant in support of his claim of appeal regarding the written determination of the Zoning Administrator; and,

Whereas, the Wexford Joint Zoning Board of Appeals did accept written and oral presentations from the Assistant Zoning Administrator in defense of the written determination of the Zoning Administrator; and.

Whereas, the Wexford Joint Zoning Board of Appeals did allow an opportunity for public comment in accordance with the Michigan Open Meetings Act, Act 267 of 1976 under rules established; and,

Whereas; the Wexford Joint Zoning Board of Appeals recognizes no established standards of review in the Michigan Zoning Enabling Act, PA 110 of 2006 for an appeal of an administrative decision, and therefor will employ the so-called substantial evidence test found in Art VI, Sec. 28 of the Michigan Constitution for judicial review of decisions by administrative officers, which decisions are to be upheld if they are found to be authorized by law and supported by competent, material, and substantial evidence on the record. Employing this standard, and having reviewed the evidence presented by all parties:

The Wexford Joint Zoning Board of Appeals makes the following findings of fact:

1. That the Zoning Administrator determined the location of parcel #2210-20-1101 and correctly determined that it is located in the Rural Residential zoning district; and,
2. That the Zoning Administrator interpreted the Wexford Joint Zoning Ordinance and determined that 'mini storage' buildings are not a permitted or special use under Article 37 in the Rural Residential District, referencing the NAICS (North American Industry Classification System) as required by the Wexford Joint Zoning Ordinance; and,
3. That the Zoning Administrator considered the evidence presented to him by the applicant and performed his own, independent due diligence by searching historical zoning records including the previous Wexford County Zoning Ordinance #5, to determine if 'mini storage' buildings were lawful uses of the subject parcel prior to the adoption of the Wexford Joint Zoning Ordinance; and,
4. That the Zoning Administrator was unable to locate any permits or other zoning authorization for the 'mini storage' units located on the subject parcel under the prior Wexford County Zoning Ordinance #5; and,
5. That the Zoning Administrator was unable to locate any authority under the Wexford County Zoning Ordinance #5 to construct, operate, maintain, or use 'mini storage' units on the subject parcel, with or without a land use permit.

Based on the foregoing, the Wexford Joint Zoning Board of Appeals makes the following conclusions of law:

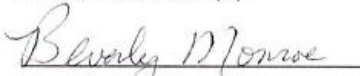
1. The Zoning Administrator correctly determined that the subject parcel is located in the Rural Residential land use district and governed by Article 37 of the Wexford Joint Zoning Ordinance;

2. The Zoning Administrator correctly determined that there was no evidence that the 'mini storage' units currently on the subject property and that were located on the property at the time of adoption of the Wexford Joint Zoning Ordinance were lawfully on the property at the time of the adoption of the Wexford Joint Zoning Ordinance;
3. The burden of coming forward with evidence of non-conformity is on the applicant seeking to have a property or structure determined to be lawfully non-conforming;
4. Therefore, the Zoning Administrator properly determined that the use(s), building(s), and structure(s) on parcel #2210-20-1101 are not nonconforming under Article 80 of the Wexford Joint Zoning Ordinance;

Therefore, based on the foregoing findings and conclusions, the Wexford Joint Zoning Board of Appeals hereby affirms, in its entirety, the July 12, 2023 written determination of the Zoning

Administrator concluding that the use(s), building(s), and structure(s) on Parcel #2210-20-1101 in Selma Township-Wexford County also known as: 3044 South 29 Road-Cadillac, Michigan are not nonconforming and are further confirmed as violations of the Wexford Joint Zoning Ordinance.

Therefore, further; the Wexford Joint Zoning Board of Appeals submits this resolution affirming and certifying its decision in this matter in compliance with the Wexford Joint Zoning Ordinance, Article 96, Section 9608.H, and the Michigan Zoning Enabling Act, Act 110 of 2006 (as amended), Section 125.3606(3).


Beverly Monroe
Zoning Board of Appeals Chair

Decision Date: 1/24/2024



2. Election of Officers - Slate of current officers:

Chair Beverly Monroe
Vice Chair Bill Swank
Secretary Jack Prebay

Motion to maintain current officers made by Bill Swank, supported by Beverly Monroe and passed via roll call vote.

- G. **Public Comment** – Dave Fox (Wexford) in reference to Lawrence Application – Richard Harvey (Boon) asked Mr. Fox to send a representative to WJPC – Staff thanked ZBA for deliberations and working compromise
- H. **Report / Comments from each member of the ZBA** regarding their respective participating municipality – None offered
- I. **Adjournment** – The meeting was adjourned at 7:50pm