



Wexford Joint Zoning Board of Appeals

1/3 Cherry Grove Township
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DRAFT Meeting Minutes

Time & Date: 6pm, Wednesday, January 25, 2023

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)

Absent: Ron Vaughan (Cherry Grove)

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

B. Approval of Minutes for December 28, 2022 – Motion to approve Meeting Minutes as presented made by Jack Prebay supported by Judy Kowalski and passed via voice vote by Board Members present. See ([Proposed Minutes](#))

C. Set / Amend Agenda - A motion to amend the Agenda to include Election of Officers made by Bill Swank supported by Beverly Monroe and Agenda was adopted as amended via voice vote. 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.

D. Public Comment – Five (5) members of the public were present. No comments were offered.

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

1. Advertised Public Hearing: (Donigian Variance Request / Case # ZBA-2023-01)

Cherry Grove Township Representative – Ron Vaughan (Absent)

a. The Chair shall declare the public hearing open – Chair Beverly Monroe declared the public hearing open at 6:06pm

b. Planning and Zoning Administrator - Staff Presentation – Mr. Bob Hall, Zoning Administrator delivered the Staff Report as mailed via USPS to the Board members (See [ZBA Staff Report](#)).

c. Applicant Presentation – Applicant, Aram Donigian (in attendance via phone call), noted the following additional comments: circumstance is unique because the narrow shallow lots and old garage are difficulties for the applicants purposes; tearing down a garage is cost-prohibitive and unreasonable; the need is the applicants purpose for the property; the addition will help the applicant and surrounding properties to look nicer; there is a greater purpose for bending a few rules for better result; the lots are very old (30 years old) and vacant; feels there should be some exceptions and a grandfather clause as built in 1988 right on the property line; the board should be able to take some leniency when a landowner is wanting to improve the property; wants a 24 ft structure with an 8ft door in height for working on vehicles; substantial justice is subjective; a 24x15 is aesthetically displeasing; chose 24x24 as most economical, cost efficient, and aesthetically pleasing; will not adversely impact surrounding properties; will decrease road noise from M55 – does not know anyone not in favor of building the garage; hopes Board will be empathetic.

Question from Jack Prebay – does current garage sit on a cement slab? – A: slab with 2 or 3 brick concrete block walls and a breezeway attached with standard door

Question from Judy Kowalski – the purpose of the building is it working on trucks as a business? – A: No does not have a business – wants room to work on personal truck

Applicant thanked the board and if not approved would entertain suggestions

d. The Chair shall allow public comment – Chair Beverly Monroe opened the floor for public comment – Jim Barnes – lot owners on Lot 144 owns lot 129 tied to Applicants property – shares same thoughts as Applicant – wants to retire here – the lots are noisy and does not feel the proximity to the highway as desirable for single family dwellings and supports Applicants request. Would aesthetically improve the area – and would be in keeping with the existing building. Jill Schaffer – owns property to west of Applicant property – is 100% in favor of a building to separate from M55. Has full confidence Applicants requested building would be maintained. Chris - Maintenance for Applicant property – is for the Applicant request – will be an improvement.

e. The Chair shall declare the public hearing closed – With no further comments, Chair Beverly Monroe declared the public hearing closed at 6:43pm

2. Zoning Board of Appeals [Deliberations / Findings / Conclusions ZBA-2023-01]

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-2022-05**

2.1 Property Description

Property Description – LOT 148 & LOT 132 EXC HWY R/W PLAT OF MITCHELL PARK CG. SEC. 12 T21N R10W -CAPS- SPLIT ON 08/01/2022 WITH 2110-MPK-130 INTO 2110-MPK-148-01, 2110-MPK-130-01;

2.2 Action Report –

Action Report – The Applicant proposes to construct a 24' x 24' addition, connected via a 4' x 8' breezeway to an existing nonconforming accessory building (see applicant provided site plan included with this report).

According to the Cherry Grove Township Assessor, the subject Garage / Accessory Structure was built in 1988; this is the basis for the determination by the Zoning Administrator as a Class A nonconformity in accordance with Article 80, Section 8003.

Note: The applicant owns the dwelling on Cherry Grove Ln directly across from the subject property associated with this variance request. The RED oval indicates the area of proposed land use activity

2.3 Background:

1. The subject property (located between Cherry Grove Ln and M-55 Hwy.) with the existing **nonconforming** accessory structure / building comprises approximately .24 acres or 10,454 square feet; far exceeding the required minimum of 7,000 (seven thousand) square feet, thus classifying it as a **conforming** parcel under the Wexford Joint Zoning Ordinance.
2. The property is located in the R-2 Residential Zoning District

2.4 Current Narrative:

1. The Applicant and the Zoning Administrator began discussions related to this project as early as October 28th of 2022. Staff, giving the benefit of doubt to the applicant, ascertained through communications with the Cherry Grove Township Assessor and the Wexford County Building Department that while the property / parcel is deemed conforming, the existence of the structure is deemed as a Class A Nonconformity under Article 80, Section 8003 of the Wexford Joint Zoning Ordinance.
2. Through phone and email communication involving the exchange of aerial images and marked up drawings, it was determined that the applicant's proposal could not be administratively approved. Staff looked at several alternate ideas as to how the shape of the property and required setbacks affected where and how much building could take place.
3. Submission of the Land Use Permit and application fee were determined to be a moot point at this juncture and the applicant was advised of the variance process and provided access to Article 96; Appeals Board, from the Wexford Joint Zoning Ordinance via email and asked to give this due consideration before deciding to seek a variance. The applicant submitted the attached application and requisite fee to proceed with a variance request.
4. Public Hearing Notification was published in the Cadillac News on: January 7th, 2023; 18 days in advance of any required public hearing
5. 300 Foot Notices were sent out on January 10th, 2023; 15 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 13th, 2023.

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'
Water: 1101 the required setback is N/A
Rear: 4604.D.b N/A

4.

Article 96, Section 9608.F.2.a

- 4.1 According to WJZO, Article 9608.F.2.a.

a. For Dimensional Variances: A dimensional variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that practical difficulty exists by showing all of the following:

STANDARDS FOR GRANTING A DIMENSIONAL VARIANCE

4.1 According to WJZO, Article 9607.F.2.a.(1) 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 and is not due to the applicants personal or economic difficulty

Staff Comments: Though this property/parcel may exhibit “a” unique physical condition (such as shape), it remains a conforming lot that exceeds the minimum special characteristics of a “buildable” parcel on its own. Furthermore, the parcel consists of a total of three (3) lots in contiguous ownership (130, 131, 132) that provides ample area to use for a permitted or special use in the R-2 Residential District in compliance with the WJZO. The applicant has not demonstrated that a practical difficulty exists.

Applicant Comments: See Applicant Comments above

Board Comments:

The applicant **has not** demonstrated to the Zoning Board of Appeals that a practical difficulty exists for this standard by:

The existing lots are plenty big enough for the requested garage – in a different spot than requested - pretty big area – when consider all three lots – there is not a difficulty

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. However, and after consultation with staff, the applicant has the “desire” to expand a nonconforming structure greater than the size permitted by the WJZO. The applicant by virtue of having been offered an alternative solution in compliance, has created the “need” for the variance.*

Applicant Comments: See Applicant Comments above

Board Comments:

There is not a NEED to not meet the setback with the size of the property – cannot build on to a non-conforming structure – foundation is a question.

NO – 4 YES - 0

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 (lots 130, 131, 132) exceeds the minimum size by more than thirty (30) percent. Specifically, rough calculations demonstrate that the property could easily support a 3600 square foot dwelling that meets all required setbacks and other standards contained within the specific R-2 zoning district. See image below:*



This image represents a 60' x 60' building / dwelling (3,600 square feet) maintaining the minimum required setbacks and fully contained on lots #130 and 131. The subject nonconforming structure sits wholly on lot #132. This image is a representation that strict compliance will NOT unreasonably prevent the property owner from using the property for a permitted purpose, thus demonstrating compliance is not unreasonably burdensome.

Applicant Comments: See Applicant Comments above

Board Comments:

According to ZA one option offered was to build across two lots and could then build up to 60x60 dwelling not a garage – the lots size would allow for a garage, yet not placed as requested and not a practical difficulty – plenty of buildable area

Does this prevent the owner from using the property – building a garage on the property?

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: Based on WJZO, Article 96, Section 9608.F.2.a.1,2 and 3 above, the applicant has not demonstrated that a variance is even necessary for substantial justice to be rendered because staff has demonstrated that compliance with the ordinance in all respects is easily obtained.

Applicant Comments: See Applicant Comments above

Board Comments: Plenty of space as mentioned in previous comments
Has Applicant demonstrated a practical difficulty exists?

4 NO – 0 YES

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: Staff believes that granting a variance in the absence of the applicant being able to demonstrate that any practical difficulty exists and failing to demonstrate that any of the above standards in Article 96, Section 9608.F.2.a 1 through 4 have been met, would, by its very nature, cause an adverse impact by encumbering and additional parcel/lot that is fully conforming and able to be developed as intended in the zoning district.

Applicant Comments: See Applicant Comments above

Board Comments: Applicant has not met 1-4 – again a nonconforming structure and adding on would cause an adverse impact

The Applicant has demonstrated that a practical difficulty exists for this standard? – **3 NO – 1 YES**

Staff recommends: that the Zoning Board of Appeals use the staff recommendations to guide and support their own independent findings of fact and conclusions that support a DENIAL of the requested variance(s) from the provisions of Article 80, Section 8003, Class A Extensions, that limits the expansion of a nonconforming structure to not more than 50 (fifty) percent, or spatially possible while complying with setback regulations.

The Recording Secretary was requested to read back the Standards, discussion and agreement or disagreement for the motion by Beverly Monroe supported by Bill Swank to DENY the Dimensional Variance for ZBA-2023-01.

Roll Call vote as follows:

Monroe – Deny
Swank – Deny
Prebay – Deny
Kowalski – Deny

The motion to approve the Dimensional Variance for ZBA-2023-01 was DENIED.

- 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. Staff Updates – Training Opportunities – Mr. Hall will send out training opportunities
- G. **Public Comment** – Chris – how can other monstrosities be built and not allow the Applicant? Does not think a hinderance. Mr. Barnes – confusion on the third lot as he is “going to” buy the third lot – to tear the garage down is a huge expense – to add a living space is a huge expense. Tammy – question is could it be approved if the Applicant changes structure and goes up on current garage?
- H. **Report / Comments from each member of the ZBA** regarding their respective participating municipality – None offered
- I. **Adjournment** – The meeting was adjourned at 7:22pm

Prepared by Heather A. O'Connor, Recording Secretary, for Board Members of the Zoning Board of Appeals.