



## Wexford Joint Zoning Board of Appeals

‰ Cherry Grove Township  
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### DRAFT Meeting Minutes

Time & Date: 6pm, Wednesday, August 28z, 2019

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, Roll Call, Pledge of Allegiance**

*Present:* Beverly Monroe, Chairman (Liberty)  
Bill Swank, Vice Chairman (Antioch)  
Jack Prebay (Selma)  
Ron Vaughan (Cherry Grove) Case ZBA-2019-05  
*Absent:* Ben Fleis, Secretary (Wexford)  
*Others Present:* Robert Hall, Zoning Administrator  
Ben Townsend, Assistant Zoning Administrator  
Heather O'Connor, Recording Secretary

**B. Approval of Minutes for July 24, 2019** – Delayed until the next ZBA Meeting as undelivered.

**C. Set / Amend Agenda** - With no corrections/additions, a motion to approve the Meeting Agenda as presented was made by Bill Swank, seconded by Beverly Monroe Fleis and passed unanimously by Board Members present.

**D. Public Comment** – Five (5) members of the public were present (see attached Sign-In Sheet). No comments were offered.

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

1. Advertised Public Hearing: (Carlson Variance Request / Case # ZBA-2019-05)

Cherry Grove Township Representative – Ron Vaughan

- a. The Chair shall declare the public hearing open – Chair Beverly Monroe declared the public hearing open
- b. Planning and Zoning Administrator - Staff Presentation – Ben Townsend, Assistant Zoning Administrator delivered the Staff Report (see documents [zba-2019-05\\_\\_carlson\\_staff\\_report](#) AND [zba-2019-05\\_support\\_docs](#))
- c. Applicant Presentation – Mr. Carlson stated the documents and presentation from the Assistant Zoning Administrator covered all points of request and noted that one (1) neighbor with an already obstructed view of the lake did not want his current view obstructed, nothing further was offered.
- d. The Chair shall allow public comment – Chair Beverly Monroe opened the floor for public comment. No further comments were offered by the public present.
- e. The Chair shall declare the public hearing closed – With no further comments, Chair Beverly Monroe declared the public hearing closed

2. Zoning Board of Appeals [Deliberations / Findings / Conclusions ZBA-2019-05]

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 four (4) of the board members present had personally visited the Carlson 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:

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Case # **ZBA-2019-05**

**Property Description** - 164 Sunset Point, Cadillac, MI 49601 – Proposed Location Parcel ID# 2110-10-1128 – Cherry Grove Township

**Action Report** - The Applicant is requesting a dimensional variance from the required Waterfront Yard Setback of fifty (50) feet as per the Regulations and Standards listed in Article 46 (R-2 Residential District) of the Wexford Joint Zoning Ordinance. Applicant wishes to build a Residential Attachment twenty (20) feet along the same line of water setback that he currently has with his cottage. The water setback of his cottage is currently approximately thirty-three (33) feet from Lake Mitchell.

**Background:**

1. This property is approximately **5102 square feet**; less than the required minimum of 7,000 square feet. The Applicant is proposing that his neighbor on the west side will deed him a strip of land which would make the total **6032 square** feet if his neighbor sells him the strip which is contained on his site plan.
2. The current impervious surface is approximately 1968 square feet, making the current impervious surface 38% of the property. The Ordinance calls for a 33% or more, making this not comply with the Ordinance. (4604.E.3)
3. Adding the neighbor’s proposed square footage to the present square footage of the lot (**6032 feet square**) and adding the proposed addition to the front of the house of **twelve (12) feet by twenty (20) feet** brings the total impervious surface area to 2208 square feet. This would make the future impervious surface at **36%**.

**NOTE: A total of 6690 square feet of property would be needed for an impervious surface of 2208 square feet to make the 33% allowed by law.**

4. The property is located in the R-2 Residential Zoning District, and the B2 Lake Mitchell Overlay Zone.

**STANDARDS FOR GRANTING A DIMENSIONAL VARIANCE**

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:** *By virtue of the ordinance standards, the subject property does exhibit one unique circumstance. The property is narrower than the required 75’ (seventy-five) feet.*

Board Comments: The property is already under the 50ft zoning at 33ft and the new addition is 34ft from the water; being further setback than the existing structure. The property is less than 7000sqft as a non-conforming lot even with the additional purchase of a portion of the neighbor’s property. There is no plumbing noted in plans for the requested addition.

Does the Variance Request meet the Standard for Granting a Dimensional Variance - YES

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:** *Previous owners built more than is allowed per impervious surface in the current Zoning Ordinance, but it is not the Applicant's creation. However, the enlarging of the house would create a larger impervious surface than at present. This is somewhat alleviated with the purchase of a portion of his neighbor's property, but the impervious surface would still be at thirty-six (36) percent.*

Board Comments: Current area is 6052sqft; the additional purchased property from neighbor would be a total area of 6691sqft; still under the 7000sqft and continues to be noted as a non-conforming lot. Impervious surface calculation – 1968sqft plus the addition equals 2208 area of impervious surface. The total percentage of impervious surface area is calculated at 32.9% which is under the requirement of 33%.

Does the Variance Request meet the Standard for Granting a Dimensional Variance - YES

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..." – Strict compliance will prevent the Applicant from building his Residential Addition which is why he is coming to the Zoning Board of Appeals seeking a variance for the project. However, the thirty-three (33%) percent impervious surface requirement is not a decision in the purview of the ZBA, as the WJZO states in section 7208.C.1 – "Impervious areas including Building, paved parking, and drives shall not exceed 33 percent of the total site."*

**Board Comments:** Side boundary (property line) should be at least 10ft. With intended purchase of portion of the neighbor's property, the side boundary (property line) increases to 11ft. The addition being 34ft from the water is further from the water than the existing structure which is 33ft from the water.

Does the Variance Request meet the Standard for Granting a Dimensional Variance – 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:** *The applicant is requesting the variance while offering to purchase a section of land of his neighbor to the east of him, showing that he is attempting to purchase adjacent land to improve the setback of the new portion of the house. The Applicant, with this land purchase, does relieve his already close property lines to his house. Although with the land purchase Applicant still will not be in the proper side setbacks of ten (10) feet.*

**Board Comments:** The Board noted the updated plat map and description noting the new side setback, with purchase from the neighbor, would be 11ft and within compliance of at least 10ft setback. Also with the purchase of the additional property, the impervious surface will be under 33%.

Does the Variance Request meet the Standard for Granting a Dimensional Variance - 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:** *The Applicant has made arrangements with his neighbor to his west to purchase additional property. This property cannot be expanded due to a permanent shed ten (10) feet from the proposed property line. However, the impervious surface has been addressed by the Wexford County Drain Commissioner in a letter to the WJPC concerning going beyond the 33%.*

**Board Comments:** With purchase of property from the neighbor, there is an increase in the overall area of property owned by the applicant.

Does the Variance Request meet the Standard for Granting a Dimensional Variance - YES

The Recording Secretary was requested to read back the Standards, discussion and agreement or disagreement for the motion by Bill Swank to APPROVE the Dimensional Variance for ZBA-2019-05 as the request does meet all five (5) of the standards of review. It was seconded by Ron Vaughan to APPROVE the ZBA-2019-05 Variance Request. A Roll Call vote was taken:

Monroe – Approve  
Swank – Approve  
Prebay – Approve  
Vaughan – Approve

The motion to APPROVE the Dimensional Variance for ZBA-2019-05 as noted by above Roll Call vote.

3. Advertised Public Hearing: (Bandeem Variance Request / Case # ZBA-2019-06)

**Greenwood Township – Carol Perrin - Absent**

- a. The Chair shall declare the public hearing open – Chair Beverly Monroe declared the public hearing open
- b. Planning and Zoning Administrator - Staff Presentation – Robert Hall Zoning Administrator delivered the Staff Report (see document [ZBA-2019-06\\_Bandeem\\_StaffReport](#))
- c. Applicant Presentation – Mr. Bandeem offered no further comment to the Staff Presentation.
- d. The Chair shall allow public comment – Chair Beverly Monroe opened the floor for public comment. Ms. Donna Crosby, neighbor across the street from the Bandeems, noted her assent and support of the variance request.
- e. The Chair shall declare the public hearing closed – With no further comments, Chair Beverly Monroe declared the public hearing closed

4. Zoning Board of Appeals [Deliberations / Findings / Conclusions ZBA-2019-06]

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 the three (3) board members present had personally visited the Bandeem 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:

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Case # **ZBA-2019-06**

**Property Description** - LOTS 84 & 85 HIAWATHA BEACH PARK SEL. SEC. 36 T22N R10W And: [2210-HB-083] COM AT SE COR LOT 83: W'LY ALONG LOT LINE 26 FT; N'LY PAR TO E-LINE 4 FT; E'LY TO A PT ON E-LINE 3 FT 2" N OF BEG; S'LY TO BEG. HIAWATHA BEACH PARK SEL. SEC. 36 T22N

**Action Report –**

- A. The Applicant is requesting a dimensional variance of approximately 7-1/2' (seven and one half) feet from the required water-front yard setback of 50' (fifty) feet as per the Regulations and Standards listed in Article 46, Section 4604.D.1.d (R-2 Residential District) of the Wexford Joint Zoning Ordinance. Applicant wishes to place the proposed 416 square foot addition between the existing dwelling and the water.
  
- B. The applicant is requesting to extend the existing structure along the same plane of an existing side-yard setback which is less than the minimum required of 15' (fifteen) feet. The current setback of the southwest corner of the existing dwelling is noted to be 8'-8" (eight feet and eight inches)

**Background:**

- 1. This property is approximately 12,516 square feet; more than the required minimum of 7,000sqft
- 2. The property is located in the R-2 Residential Zoning District

**STANDARDS FOR GRANTING A DIMENSIONAL VARIANCE**

- 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: By virtue of the ordinance standards, the subject property does not appear to exhibit unique circumstances. The property (two lots combined) meet the minimum parcel area requirements as well as the buildable area minimum.*

**Board Comments:** The three (3) Board members present visited the Bandeen property and noted the property meets the minimum parcel area requirement (over 7000sqft)

Does the Variance Request meet the Standard for Granting a Dimensional Variance - YES

- 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: This subdivision was originally platted in 1910. There is no record of the lot(s) having been altered and / or subdivided with the exception of Parcel #2210-HB-083 that effects the garage in the northeast corner of the property.*

**Board Comments:** Noted was the Zoning change, not of the petitioners doing and the original building proposal was within the zoning PRIOR to the zoning change, also not of the property owners doing.

Does the Variance Request meet the Standard for Granting a Dimensional Variance - YES

- 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..." – the property is currently being utilized as a permitted use. The desires of the applicant are to encroach farther into the waterfront yard setback at the northwest corner of the dwelling [see 2.2.A above] and to extend along the same plane of the nonconforming side yard setback at the southwest corner of the dwelling [see 2.2.B above].*



**Board Comments:** Discussion noting the property is currently inhabited and should the request be denied, it would not cause continued intended use. With the addition the 50ft water setback would be encroached at 48ft and side setbacks would be 8ft.

Does the Variance Request meet the Standard for Granting a Dimensional Variance - MIXED

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: The applicant is requesting variances to be approved while simultaneously using the property in a permitted manner absent any variances being granted. The property is currently consistent with the surrounding character of the neighborhood.*

**Board Comments:** The Board entertained and reviewed public comment from a neighbor property owners who supports the Bandeen Variance Request.

Does the Variance Request meet the Standard for Granting a Dimensional Variance - 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: The applicant has made conscious efforts to minimize the impact on the surrounding property by proposing to demolish a substantial portion (all of that which lies on the two subject parcels related to this application) of the nonconforming accessory structure / building that straddles the property line(s) with the neighboring parcel to the north*

**Board Comments:** The Board again referenced the public comment in favor and supporting the Bandeen Variance Request as well as noting the proposed structure would pose minimal impact (48ft vs standard 50ft setback from water) and took into account the proposed demolition of the existing garage on the road front side of the property. Also noted was no impact to the drainage ditch on the southside of the property and it is in harmony with the existing structures in the neighborhood.

Does the Variance Request meet the Standard for Granting a Dimensional Variance - YES

The Recording Secretary was requested to read back the Standards, discussion and agreement or disagreement for the motion by Jack Prebay to APPROVE the Dimensional Variance for ZBA-2019-06 as the request meets all five (5) of the standards of review. It was seconded by Bill Swank to APPROVE the ZBA-2019-06 Variance Request. A Roll Call vote was taken:

Monroe – Deny

Swank – Approve

Prebay – Approve

The motion to APPROVE Dimensional Variance for ZBA-2019-06 was passed as noted by above Roll Call vote.

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).

**(see attached proposed language)**

1. Discussion regarding Accessory Building placement on parcels / lots.

A. Discussion regarding Zoning Districts, Lot sizes, setbacks

B. Discussion regarding R-1 and R-2 (not waterfront)

C. Discussion regarding R-1 and R-2 (waterfront)

Discussion ensued regarding defining language proportionally, if a non-conforming property, utilities placement, setbacks and gradient height, undevelopable greenspace, distance from road, visibility, topographical considerations, “larger the lot, more leeway”

- G. **Public Comment** – No further comments/items were offered by members of the public present
- H. **Report / Comments from each member of the ZBA** regarding their respective participating municipality – None offered
- I. **Adjournment** – It was moved by Beverly Monroe to adjourn the meeting at 7:37pm.

Prepared by Heather A. O'Connor, Recording Secretary, for Secretary