Wexford Joint Planning Commission
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Cadillac, Michigan 49601

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STAFF REPORT | Wexford Joint Zoning Board of Appeals
Case # ZBA-2025-02 [Selma Township]

1. **Applicant:** DeJaegher, Robert and Tish
   2986 N. State Road
   Owosso, Michigan 48867

   Site Address: 2529 N. Lake Mitchell Drive | Cadillac, Michigan 49601

   Parcel ID#: 2210-26-4407

   Zoning District: R-2

   Site Plan Drawings: Attached

   Legal Description: W 1/2 OF FOL: COM ON S R/W OF AA RR 875.45 FT S & 216.87 FT N80D 49'W OF NE COR OF SE 1/4 OF SE 1/4: N80D49'W 100 FT; S 43.6 FT TO LAKE; S72D16'E 103.64 FT; N TO BEG & PAR COM AT NE COR OF SE 1/4 OF SE/14 S 875.45 FT TO FORMER S ROW AARR; N80D49M W 266.87 FT TO POB: N80D49M W 50 FT; N 15.79 FT; S80D45M29S E 50 FT; S 15.74 FT TO POB. SEL. SEC. 26 T22N R10W - CAPS

   Public Hearing / Notice: Published May 12th, 2025 in the Cadillac Evening News

Action being requested: The applicant (owner of referenced parcel) is seeking dimensional variances in the north yard of the subject parcel to allow for the expansion of an existing nonconforming building (dwelling) on a nonconforming parcel by adding a 10' x 32' addition flush with the west end of the existing dwelling as per drawing(s) submitted by the applicant, as the Zoning Board of Appeals may find is appropriate.

Property Characteristics Summary (see EXHIBIT-A)

A. The property (Tax #2210-26-4407) is nonconforming in size, having approximately 3,900 square feet **LESS** than the minimum 7,000 square feet required, resulting in approximately 3,100 square feet of parcel area.
B. There is an existing 10' x 40' (400 square feet) single wide trailer on the parcel with an 8' x 24' addition [*all covered | half enclosed*] on the waterfront side, providing 496 square feet of living area. [*the required minimum dwelling size is 800 square feet*]

a. The existing trailer is positioned approximately 2.5' off the east side yard lot line and 7.5' off the west side yard lot line. [*fence lines / man-made boundaries do not appear to correspond to what may be the actual property lines*]
b. The nearest part of the 'structure' to the water's edge is approximately 19' at the west end and 22' at the east end.

C. There are NO encroachments being proposed towards the water or further into the existing side yard setback areas.
D. Front (roadside | north) yard
    a. There is currently a detached 10' x 12' deck and a 6' x 7' storage shed (accessory building) in the **'yard'** adjacent to the 'dogleg' of parcel #2210-26-4401 that is also labeled as N. Lake Mitchell Drive and used for access to multiple properties in the immediate vicinity. The accessory structures (shed and deck) constitute approximately 162' square feet of area.

ZONING DISTRICT STANDARDS
R-2 RESIDENTIAL

- Minimum parcel area required is 7,000 square feet
    - **FACT:** The subject parcel is approximately 2,150 square feet or only 30% of the 'required' minimum parcel area, thus deemed to be nonconforming.
- Minimum buildable area required is 7,500 square feet
    - **FACT:** Total lot area is only 2,150 square feet
- Minimum parcel width required is 100' (one hundred) feet
    - **FACT:** The subject parcel is only 50' (fifty) feet wide
- Minimum Front Yard setback required is 20' (twenty) feet from the property line or 53' from the centerline of the road – whichever is greater[1]
    - **FACT:** There is no 'actual' road frontage – access is obtained from a private adjoining parcel via a dedicated easement – because the parcel is nonconforming, the front yard setback required is the average setback of existing dwellings on either side or 25' whichever is greater[2]
- Minimum Side Yard setback required (based upon nonconforming lot) is 10'
    - **FACT:** The lot has an existing dwelling / trailer upon it and a survey is NOT available currently – it appears that the trailer is positioned approximately 1.5' off the east side yard lot line and 8.5' off the west side yard lot line. [*fence lines / man-made boundaries do not appear to correspond to what may be the actual property lines*]
- Minimum Waterfront Yard setback required (per Article 10, Section 1011) is 50'
    - **FACT:** There are NO encroachments being proposed towards the water
- Minimum dwelling / principal building size required is 800 square feet
    - **FACT:** The existing dwelling area size is approximately 496 square feet, and the applicant is proposing to add 320 square feet [for a total of 816 square feet]

[1] Article 5 – DEFINITIONS YARD (E): A parcel may have any combination of yards, so that it may not have a rear yard, it may have two front yards, etc.:
[2] Inconsistency noted with required setback for front yard averaging and required setback

Based upon the above **FACTS**, the required 'front / side' yard (easement) setback and waterfront setback total approximately 60' (sixty) feet, creating a negative setback leaving no building envelope. The **FACT** that a dwelling exists on the parcel allows us to assign yards based up definitions in our zoning ordinance – the parcel is deemed to be nonconforming by reason of its size – the dwelling is nonconforming by reason of its size (square footage).

Background | Narrative
The applicant has been communicating with the WJPZ staff for several months regarding the possibilities that exist on this parcel. Parcel size, existing improvements, expansion, setbacks, lack of road frontage, unique characteristics of the immediate area, minimum dwelling size, among other topics have all been discussed with the applicant.

The above discussion resulted in it being considered a moot action to have the applicant apply for a Land Use Permit and then have it denied prior to filing for a variance.

The applicant was advised that a variance could be applied for and be considered by the Zoning Board of Appeals. The applicant submitted their application for a variance to allow for the addition to the existing living area that will encroach into the required 'front' | (*easement*) 'side' yard setback area.

Payment of the requisite fee was received and recorded on May 2nd, 2025 – the notice of public hearing and notification to affected property owners were made on May 13th, 2025 – fifteen days in advance of this meeting.

Packets were sent out to the Zoning Board of Appeals members (and the applicant) on May 21st, 2025.

Zoning Administrator Comments and Observations:
The subject parcel at approximately 2,150 square feet and less than the minimum required width presents unique challenges for development.[3] The east (longest side) parcel line is approximately 51 feet long. The required waterfront setback in 'any' zoning district is 50 feet. Giving the benefit of doubt to the applicant and only requiring a side yard setback of 10', **leaves a NEGATIVE building envelope with a 30' width (due to irregular shape of the parcel)**.

[3] **1011. Water Protection** Notwithstanding anything to the contrary contained in this Ordinance, the following provisions shall apply:
A. No structure shall be built, located or constructed closer to the water's edge than fifty (50) feet for buildings, or one hundred (100) feet for nutrient sources (such as but not limited to drain fields, highly fertilized areas, manure storage), measured on a horizontal plane to the water's edge. In the event the water's edge recedes (moves landward), the setback line shall also be construed as to have moved landward a distance equal to the water's edge recession. ***In cases where parcels are smaller than the minimum parcel size allowed in the particular district so that applicable setbacks given here and in a particular district result in a building envelope less than 25 by 40 feet the Appeals Board shall grant a further reduction of side yard setback and/or a front yard setback prior to reducing the required waterfront setback***. This setback shall not apply to a dock, bridge, or stairs and path to the shore.

Section 1011.A of the Wexford Joint Zoning Ordinance gives some specific directions to the Zoning Board of Appeals in this circumstance (see footnote #3 | bottom of page #3).

Article 80: NONCONFORMITIES (zoning ordinance excerpts)

8003. Class A Extensions

B. If the nonconformity is that the **parcel is too small and already has existing uses and structures**; then the structures shall not be expanded more than:
1. fifty (50) percent of the ground area occupied by the structure at the time of adoption of this Ordinance, or
2. spatially possible while such expansion shall comply with all applicable setback regulations in this Ordinance.
whichever is less. Any expansion of the structure shall comply with all other provisions of this Ordinance. Nothing here is intended to prevent the acquisition of adjacent land to bring the parcel into compliance, or to lessen the nonconformity if the use is permitted in the zoning district.

- **FACT:** The subject parcel is deemed to be too small as articulated on page #2 of this report under the zoning district standard regarding minimum lot size
- **FACT:** The subject parcel has existing uses and structures as articulated on page #2 of this report under zoning district standards regarding minimum side yard setback and minimum dwelling / principal building size

Based upon the totality of all the included **FACTS**, it is determined by the Zoning Administrator that the Zoning Board of Appeals has the authority to consider the variance(s) requested or deemed appropriate to address this request based upon the findings required in Article 96 of the Wexford Joint Zoning Ordinance.

The Appeals Board shall base its decisions on variances from the strict requirements of this Ordinance so that the spirit of the Ordinance is observed, public safety secured, and substantial justice done based on the following standards:

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:

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.
    - **The Zoning Administrator FINDS**, at a minimum, that there are unique and physical characteristics of the property involved due to the nonconforming size of the parcel and that these characteristics are not due to the applicants' personal or economic 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).
    - **The Zoning Administrator FINDS** that the property owner has NOT taken any action that has resulted in the need for the requested variance(s).

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.
    - **The Zoning Administrator FINDS** that strict compliance with the regulations governing area, setback, frontage etc., will create a negative buildable area, thus reaffirming the severe nonconformities already existing on the parcel.

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.
    - **The Zoning Administrator FINDS** that multiple properties in the immediate area of the subject property were all created by an unusual land division of parcel #2210-26-4401 (**see EXHIBIT-B**) that resulted in multiple nonconforming parcels (by virtue of the parcel size) and based upon a survey dated August 6th, 1964 – prior to the establishment of zoning in Wexford County.

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.
    - **The Zoning Administrator FINDS** that a distinct and determinable 'fact' cannot be ascertained as to whether the requested variance will have certain impacts on surrounding property. The Zoning Board of Appeals should form an independent finding regarding this standard.

The above findings are those of the Zoning Administrator. The Zoning Board of Appeals should discuss each standard of review and document additional findings of 'fact' that either support or do not support the final decision to grant the requested variances, deny the requested variances or partially grant and / or deny the requested variances.

Wexford Joint Zoning Ordinance excerpts for consideration by the Zoning Board of Appeals
8001. Purpose
Within the districts established by this Ordinance or by amendments thereto, there exist buildings and structures and uses of parcels, lots, buildings, and structures which were lawful before this Ordinance was adopted or amended and which would be prohibited, regulated or restricted under this Ordinance. These uses are referred to as nonconformities and may continue until they are discontinued or abandoned but are not encouraged to survive. These nonconformities are declared by this Ordinance to be incompatible with the buildings and structures and uses of parcels, lots, buildings and structures permitted by this Ordinance. It is further the intent of this Ordinance that such nonconformities shall not be enlarged, expanded or extended **except as provided herein** nor

be used as grounds for adding other buildings and structures and uses of parcels, lots, buildings and structures prohibited elsewhere in the same district. (**emphasis added by ZA**)

Article 5 – Definitions: SUBSTANDARD PARCEL means a parcel of record or a parcel which is described in a land contract or deed executed and delivered prior to the effective date of this Ordinance, which does not have adequate size, width or which is not big enough to provide for the minimum setbacks and building size required in this Ordinance.

Article 10 – General Regulations [*Section 1030 excerpt*): If there is not an area within a parcel of record which exists on the effective date of this Ordinance, or a subsequent larger parcel, large enough to allow any use of the parcel, then the Appeals Board may grant a variance from this provision in accordance with section 9801 et seq. of this ordinance:

8003. Class A Extensions
A nonconforming structure and use may not be added to, extended, reconstructed, structurally altered or expanded during its life; and a nonconforming parcel may not be used or built upon; except for any one or combination of the following and subject to the following restrictions. Class A nonconformities are uses or structures that existed as lawful uses or structures under the Wexford County Zoning Ordinance number 5 and which have been made nonconforming by the adoption of this Ordinance. Uses or structures that existed as lawful uses or structures under the Wexford County Zoning Ordinance and uses or structures first lawfully established under this Ordinance and which later become nonconforming by an amendment to this Ordinance are also Class A nonconformities. Class A nonconformities may be extended and altered as permitted in this Section.

B. If the nonconformity is that the parcel is too small and already has existing uses and structures; then the structures shall not be expanded more than:
1. fifty (50) percent of the ground area occupied by the structure at the time of adoption of this Ordinance, **or**
2. spatially possible while such expansion shall comply with all applicable setback regulations in this Ordinance.
whichever is less. Any expansion of the structure shall comply with all other provisions of this Ordinance. Nothing here is intended to prevent the acquisition of adjacent land to bring the parcel into compliance, or to lessen the nonconformity if the use is permitted in the zoning district.

The Zoning Administrator, based upon the FACTS of this case, cannot find any conclusive evidence in the Wexford Joint Zoning Ordinance that would support an outright denial of an expansion of the existing nonconforming use / structure on the nonconforming parcel. However, because the proposed expansion is NOT within the realm of approval of the Zoning Administrator, a variance to the standards is being requested.

For your review,

Robert (Bob) Hall
Planning and Zoning Director

Additional Exhibits:

EXHIBIT-C	AREA MAP
EXHIBIT-D	GIS 300' NOTICE MAP
EXHIBIT-E	300' NOTICE MAILING LABELS
EXHIBIT-F	SURVEY