

**Wexford Joint Planning Commission
Zoning Board of Appeals
May 24, 2017
Wexford Road Commission Building**

The meeting was called to order at 6:30 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Beverly Monroe (Chair, JPC Member)
Benedict "Ben" Flies (Wexford Township)
Bill Swank (Antioch Township)
Carol Perrin (Selma Township)

Absent:

John "Jack" Prebay (Selma Township)

2. Business Meeting

a) Approval of Minutes

There were no Minutes to approve.

b) Approval of Agenda

Moved by Bill Swank to approved agenda, seconded by Ben Flies. Motion unanimously passed.

3. Public Hearings

Parcel - 2210-IS-14

Address 2379 E. Lake Mitchell Dr., Cadillac, Michigan 49601

Dimensional Variance(s)

The petitioner requests dimensional variance(s) from the Wexford Join Zoning Ordinance.
Requests a 6' setback on NE side where existing house located, an 8' setback on SE side, and
a 0' setback from E. Lake Mitchell Dr.

Staff Presentation: Bob Hall, Wexford JPC Planning and Zoning Administrator (ZA): ZBA hearing was properly published in the Cadillac Evening News and 300' notice was sent out according to the Michigan Enabling Act. Stated the purpose of this ZBA hearing is because Mr. And Mrs. Pankhurst requested a land use permit in order to demolish and rebuild on property that they own. After reviewing the appropriate site plan it was determined that they were requesting setbacks the Zoning Ordinance did not allow. The ZA report detail that the Pankhurst's were requesting a 6' variance on the NE side, an 8' variance on the SE side, but most importantly wanting to go right up to the property line on E. Lake Mitchell Drive. In response to the 300' notice an email was received by Karen Coon authorizing her brother in the audience to speak on her behalf. Also 2 phone calls were received. One from a person who did not want to identify themselves but their concern was losing a portion of the lake view with what the applicants were determining to do. Another phone call from Sandy Forrest on the 300' list who offered the same argument of losing a portion of the lake view. The staff report highlights the Zoning concerns. The Zoning Ordinance is already specific and does make allowances for the Zoning Administrator to allow certain setback of 10'. Once it drops below 10' there is no administrative authority for the Zoning Administrator. The applicant wants to maintain a 6' setback as is currently demonstrated and they wish to encroach into the opposite side yard and have a setback of 8'. The most important issue is that they wish to encroach into the front yard completely and go right to the property line. Other properties are already situated that way in the same area. Also, the ZBA needs to look at the surface area coverage. The lot can be treated as non-conforming and they could be given a Class-A extension which would allow them a building of up to 50%. (Note: The ZBA is the relief mechanism for the public community to no one has to go to the court for a judgement. In essence, they are the court for the community.) The applicants were complimented by being cooperative in giving everything that was asked, and they were given the options by the ZA. 1) They could accept the decision of the ZA, 2) appeal the decision of the ZA to the ZBA to grant relief where relief can be warranted. ZA offered to be a moderator and a help to the ZBA due to his experience with such cases.

Applicant Presentation: Sam and Marcia Pankhurst:

First, offered corrections to the to the ZA's measurements of square footage. They cited the rational for the appeal. They cite criteria for the appeal, stating that special circumstances exist which are depriving them of rights enjoyed by other home owners in the district. The granting of the variances will not alter the characteristics of the property. They cited the narrowness of the lot (less than 50'), proximity to the water must be maintained, and topography conditions which are unique to the area. All surrounding houses have the same drop-off. (Applicant shared pictures to the ZBA. Pictures show houses in both directions up to the property line.) Applicant presented the "grandfathering" of the side of the house where the 6' wall exists. In conclusion: Their goal is to demolish a very old structure and build a moderate size home that will look very similar to the other homes in proximity.

Chair Monroe opened the hearing to public comment.

Jeff Johnson, 2338 E. Lake Mitchell Dr, asked what they were doing, which was explained by

the Pankhurst's exactly what they were trying to accomplish. Stated that he had no problem with what they were doing.

Jo Ann Engels, 2301 E. Lake Mitchell Dr., stated that she and her husband had to get a variance in 1985, refuting the applicants that they did not know if any other neighbors had to get variances in the past.

Susan Anderson, 2350 E. Lake Mitchell Drive, stated she was concerned with the width of the house. Ms. Anderson spoke about the houses on the right and the left of the Pankhurst's house. Spoke about the view of the house across the street from enjoying the view of the lake. She spoke about the very tight gap there would be between houses which would concern safety. Her concern was the width was the issue, the depth was not the issue.

Bob Cole, 2318 E. Lake Mitchell Drive, Recently built and met requirements of the Zoning. He agrees with the 2' variance and supported what the applicants were doing.

Dwight (unintelligible), but Karen Coon's brother), 2381 E. Lake Mitchell Dr., on the northwest side of the Pankhurst's house, is in favor of granting them the variance. The 2' variance is okay and the front variance is equivalent to what everyone else on the street has.

Public Hearing Closed by Chair Monroe

Deliberations:

Chair Monroe: Chair stated that there are five different issues, the 6' setback, the 8' setback, the water side, the street side, and the percentage of the building on the land. Monroe read from 9604 B from the Zoning Ordinance concerning the ZBA. "No nonconforming use of neighboring lands, structures, or buildings, in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance. (WJPC Zoning Ordinance sec. 9604-B)" Chair stated as a result of ordinance, the ZBA cannot look at other properties as it pertains to this property. Asks consideration of the 6' setback.

Mr. Flies: Reasoned when it comes to the 6' setback that only goes for the existing structure and not for a new building. It would be bad for the Pankhurst's for siding repairs due to scaffolding being 7' by 7'.

Chair Monroe: Stated the ZBA is looking at the 8' side now. Asked for a motion on the 8' setback?

Mr. Swank: Moves for the setback in the affirmative.

Mr. Flies: Second

Vote: Ayes unanimous. Nays: none

Mr. Hall: Cautioned that one of the jobs of the ZBA is to recommend to the Planning Commission that if we have a case that they believe should change the code to include other criteria that they should make that recommendation to the entire Commission.

Chair Monroe: Asked the ZA if the water side is okay?

Mr. Hall: Responded in the affirmative.

Chair Monroe: Relied upon Article 73, the Lake Shoreline Overlay District, Page 111, and asked the ZA if the house is within the "impervious surface" ordinance?

Mr. Hall: Answered in the affirmative.

Chair Monroe: Chair then discussed the roadside setback variance, asking the ZA what the

setback calls for in the ordinance.

Mr. Hall: Answered that it is a 20' setback. Or 53' to the centerline of the road.

Chair Monroe: The issue is between going from 20' down to 0' seemed like a lot. Stated that she did site inspection, and the houses on either side are on the street. But noted there are houses that are back a ways.

Mr. Swank: Stated that he was out there for quite a while, and he noticed there were several houses that were up to the street. Stated that he did not think it would effect the property because there were several houses on each side that had done the same and have the same setback.

Ms. Perrin: Stated that she did a site inspection and agreed the houses on either side are right up to the street. Testified that she watched over the years everybody getting closer and closer to the road. And it was tough for people across the street who wanted to see the lake.

Chair Monroe: Stated that she had a problem going right to the property line. The ZBA needed to be careful because we are setting precedent for later that might come back to hurt us. She wondered if there was a lesser setback that the ZBA could live with.

Mr. Flies: Said he liked the idea of the 10' setback for the street side. He asked about the problem of maintenance and snow removal?

Mr. Swank: Stated that he did not think there would be a problem.

Chair Monroe: In her experience on ZBA's, they have never given a 0' setback. Suggested someone make a motion on this and see how the vote falls.

Mr. Swank: Moved on the zero setback that we approve this variance.

Chair Monroe read the Zoning Ordinance concerning what the Appeals Board relies upon.

"1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.

2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.

3. That the special conditions and circumstances do not result from the actions of the applicant.

4. That granting the variance will not alter the essential character of the area. (WJPC ZO 9604 - A - 1-4)"

Motion to approve the application for variance(s) to the Pankhurst's property made by Mr. Swank, seconded by Mr. Flies.

Roll Call vote:

Chair Monroe: No

Mr. Flies: Aye

Mr. Swank: Aye

Ms. Perrin: Aye

The motion was passed three votes for to one against.

Any unfinished business?

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NOTE from Mr. Hall: In the future the each member of the Zoning Board of Appeals should have hard copies of the Ordinance.

Public Comments:

Bob Cole: Suggested to the ZBA that the ZA should have more days to work.

Response by board was that the situation has been addressed.

Susan Anderson: Stated the board should have taken more time to consider this issue.

Motion to Adjourn by Mr. Swank, seconded by Mr. Flies. Motion unanimously passed.