

Wexford Joint Planning Commission

% Cherry Grove Township
4830 E. M-55
Cadillac, Michigan 49601

www.wexfordjpc.org

Email: planningandzoning@wexfordjpc.org
(231)775-1138x6

STAFF REPORT/Zoning Board of Appeals Case # ZBA-2017-09

1. Application

Agent/Contractor: Burton, Jason
3226 Maplewood
Cadillac, Michigan 49601

Owner(s): Komisarz, Stanley and Karen
9436 N 31 Rd.
Manton, Michigan 49663

Site Address,
And Proposed Location 9436 N 31 Rd., Manton, Michigan 49663
Parcel ID# 2410-1531-02 – Greenwood Township

Zoned: Forest Conservation

Site Plan: Attached

2. Development Proposal

- 2.1 Property Description – Parcel ID# 2410-1531-02
- 2.2 Action Report – The Applicant is requesting a dimensional variance for a 32' X 44' Accessory Building from the Regulations and Standards listed in the Forest Conservation District of the Wexford Joint Zoning Ordinance. They wish to place their 1405 square foot Accessory Building fifty (50') feet closer to the road than their principal dwelling.
- 2.3 Background:
1. This property of forty (40) acres has an existing house with an already attached garage.

2. The Assessment Roll Description reads as follows: N ½ of N ½ OF SW ¼ -- 40 A M/L – GW Section 15 T24N R10W – MANTON – (ASSESSED W/ 15-3101 '00.

2.4 Current Narrative:

1. The applicant agent and Contractor (Jason Burton) submitted the initial Land Use Application on September 27, 2017. The accompanying Site Plan did NOT demonstrate compliance and a denial letter was sent to the applicant on September 28, 2017. The Assistant Zoning Administrator (AZA) pointed out immediately to the Contractor that the proposed Accessory Building was way too far in front of the principle dwelling, which is not allowed under the Ordinance.
2. Options were discussed with the builder and the AZA found the house at an angle and offered the relief which he could offer which was to use the corner of the dwelling closest to the road to affix the Side Yard in which the Accessory Building could be built to anywhere parallel to the road using that corner of the dwelling as a measurement to which the Accessory Building could be built within the confines of the Side Yard. The builder would not commit to whether he could place the Accessory Building in that area.
3. Therefore, a letter of DENIAL was sent to Applicant via USPS and email on September 28, 2017, explaining that the Wexford Joint Zoning Ordinance (WJZO) states that the Accessory Building has to be placed in the Side Yard or the Year Yard.
4. The owners called the WJPC Office the afternoon of September 28, letting the AZA known that they were really hurt by having to place the building elsewhere on the property. The AZA offered them options which we have given others who wanted to place an Accessory Building in front of a dwelling and closer to the road. The AZA let them know that there was nothing Administratively that could be done to give them relief. If they wanted a ZBA hearing, that would be the only relief they could have to be able to give them the place that they wanted to build.
5. The Owners called back on Thursday, September 28, 2017 and invited the AZA to meet them at their house to explain exactly where the building could be built in order to meet the Ordinance requirements. The AZA went to meet them at 1 p.m. on September 28. Since they were not at the house, the AZA made measurements from the road front corner of the house. Then from the road to the front of the Accessory Building lot. It was noted that the Accessory Building lot was fifty (50') closer to the road than the front corner of the house.
6. It should be noted that when I got to their house the cutting down of trees, and excavation was already done where the Accessory Building was proposed to go. Also, the lumber for the sides and the trusses were there on the outside of the excavation site. There were also roofing materials and nails. This is in violation of 8402 of the Zoning Ordinance.

7. In the spirit of cooperation, the AZA let them know that a perfect area for the Accessory Building would be on the right side of their house, ten (10') feet away from the house, in the Side Yard. The owners agreed that this would work, but the fact that the excavation was already done kept them from going that direction.
 8. Appeal to the ZBA was made on October 19, 2017 for a Dimensional Variance Request.
 9. Requested and received a copy of the Survey with the ZBA Application.
 10. In the spirit of cooperation, the WJPC Zoning Office decided to wave the triple fees for before the permit site excavation and clearing of trees as per WJZO 8402. We only desired compliance with the Ordinance which would be the least intrusive means to protect the Ordinance.
3. Standards for consideration by the Zoning Board of Appeals under the provisions of Article 80, Section 8003.C [Class A Extensions] with Staff Comment and Recommendations
- 3.1 According to WJZO Article 8003.C – The following standards shall be used by the Zoning Board of Appeals to review requests for variances under this Article.
1. It is documented by the applicant the parcel existed prior to January 1, 2016, and

Staff Comment and Recommendations: This is true concerning this property that it did exist prior to January 1, 2016.
 2. The parcel was not made smaller after January 1, 2016, and

Staff Comments and Recommendations: This is true of this forty (40) acres of property.
 3. It is documented by the applicant that contiguous land, or enough contiguous land, cannot be purchased, and

Staff Comments and Recommendations: It would not matter if the applicant purchased contiguous lands in that the main problem is the Accessory Building is already being placed fifty (50') feet closer to the road than the Principal Dwelling.
 4. The parcel is large enough to accommodate required on-site sewage, if needed; well, with proper isolation; as determined by the District Health Department, and

Staff Comments and Recommendations: A septic and drain field is located on the Site Plan, as is a well.
 5. Other standards for issuing a variance by the Appeals Board are met.

Staff Comments and Recommendations: Again, the Application for Land Use Permit was applied for “**after the fact**” of the site excavation and clearing which goes against WJZO 8402 which states: “Activity Prior to Permit – No site excavation, clearing, landscaping, or promotion of the new land use shall occur until after the land use permit has been issued.”

4. Standards for granting a variance with Staff Comments and Recommendations

4.1 According to WJZO Article 9604 – The following standards shall be used by the Zoning Board of Appeals when considering a variance request.

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.

Staff Comment and Recommendations: There are no special conditions or circumstances which exist that are peculiar to the land, structure, or building involved which are also not applicable to other lands, etc. **Recommend ZBA reject the arguments of the Applicant** because everyone else in the Zoning District have to go by the same Ordinance when it comes to Accessory Buildings. To approve their variance would make the Zoning Ordinance moot when it comes to a direction of placing Accessory Buildings.

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.

Staff Comment and Recommendations: Staff notes that the alternate site of the Accessory Building given by the Zoning Officers would allow the Applicants all the rights commonly enjoyed by other properties in the same district under the terms of the Ordinance. **Recommend the ZBA deny the Variance for this reason also.**

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

Staff Comment and Recommendations: Applicants and their Agent and builder already cleared the trees and excavated the land BEFORE application was made to the WJPC Zoning Office, which resulted in the special conditions and circumstances for this ZBA hearing. They were unwilling to place the Accessory Building in the place recommended by the WJPC Zoning Officers because they already paid the builder to excavate the land for the proposed building and had already cut trees to make room for the building. It was made clear to them several times that a phone call to the WJPC Office before starting excavation would have

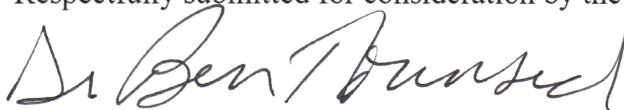
saved them the headache of even having to go to the ZBA for a variance. So, this is a direct result of the "actions of the applicant."

4. That granting the variance will not alter the essential character of the area.

Staff Comments and Recommendations: *Granting this variance will alter the essential character of the area. It will cause every property owner to think they can do the same as this Applicant and place any and many Accessory Buildings wherever they wish on their property as long as they can get the ZBA to go along with it. This will result in "Zoning Gone Wild" in an area which the WJPC wishes to preserve the natural beauty of the Forest Conservation District.*

Final Staff Comment and Recommendation: ***Recommend*** that the Zoning Board of Appeals ***DENY the variance*** and suggest the Applicants, if still wanting an Accessory Building, either determine a place where the AZA suggested that they can have an Accessory Building in compliance with the WJZO, or they can come up with an additional site plan which would also be in compliance with the WJZO.

Respectfully submitted for consideration by the Wexford Joint Zoning Board of Appeals,

A handwritten signature in black ink, appearing to read "Dr. Ben Townsend". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Dr. Ben Townsend
Assistant Planning and Zoning Administrator