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WHITE LAKE TOWNSHIP

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WHITE LAKE TOWNSHIP ZONING BOARD OF APPEALS

June 22, 2017

White Lake Township
7525 Highland Road
White Lake, MI 48383

Ms. Spencer called the regular meeting of the White Lake Township Zoning Board of Appeals to order at 7:00 p.m. and led the Pledge of Allegiance. Roll was called: Mr. Erlich was excused.

ROLL CALL: Joseph Erlich – Chairperson - Excused
Gail Novak-Phelps
Mike Powell – Board Liaison
Josephine Spencer – Vice Chairperson
Dave Walz - Secretary

Also Present: Jason Iacoangeli, AICP, Staff Planner
Lynn Hinton, Recording Secretary

Visitors: 11

Approval of Agenda:

Ms. Novak-Phelps moved to approve the agenda as presented. Mr. Walz supported and the MOTION CARRIED with a voice vote. (4 yes votes)

Approval of Minutes:

- a. Zoning Board of Appeals Meeting of May 25, 2017

Mr. Walz moved to approve the minutes of May 25, 2017 as corrected. Ms. Novak-Phelps supported and the MOTION CARRIED with a voice vote: (4 yes votes)

New Business:

a. **File 17-012**
Applicant: Robert Hermanson
2699 Ridge Road
White Lake, MI 48383
Location: 2699 Ridge Road, White Lake, MI 48383, identified as 12-18-101-027
Request: Variance to Article 5.12 for fences

Ms. Spencer noted for the record that 24 property owners within 300 ft. were notified of the request. No letters were received in favor, no letters were received in opposition, and no letters were returned undeliverable by the U.S. Postal Service.

Mr. Iacoangeli reviewed his report dated June 15, 2017. This is a single family residential home zoned R1-D. The property is part of the England Beach neighborhood located on White Lake. The home uses a private septic system and a private well for water. The applicant is requesting a variance from the Township fence ordinance in order to be allowed to erect a 6 ft. privacy fence on the south side of the property in order to screen their home from the mechanical units and drains on the neighboring property. The Zoning Ordinance does not allow for 6 ft. fences on lake property. Ordinance 58 states, "On lakefront lots, privacy fences shall be a maximum of 4 ft. in height and shall not be located closer than 30 ft. to the shoreline". The Ordinance however does not regulate the size of landscape planting including such plants as arborvitae and other types of evergreen.

Bill Pierson, attorney in White Lake, presented for the Hermanson's. He stated they are looking for a variance from ordinance section 5.12; D.ii, which states fences are allowed everywhere in the township, except on lakefront lots. He is hoping to show the hardship with the neighbors home as close to the property line as it is, in addition to the air conditioner, generator and furnace drains that come out the side of the neighbor's house and drain material onto the Hermanson's property. They feel a 4 ft. fence, which is allowed under the ordinance, would do little to block the noise from the A/C. Also, the neighbor has a 4-car garage with a parking area towards the end where headlights shine into the Hermanson's window.

Back when the neighbor, (the Bartman's), home was built, they were allowed a variance to build close to the lot line, but they didn't know all their utilities would be there too. The Bartman's condenser sits off the deck of the Hermanson's home. The Hermanson's do not have A/C and the noise from the Bartman's A/C is creating a hardship.

Mr. Pierson submitted a letter from the township building official, Brent Bonnavier, who supports the request and feels it is reasonable, in his opinion. In this situation, they are only asking that the fence start at the end of the Bartman's home and extend part way down to the patio, totaling approximately 110 ft. They just want to block the utilities and noise from the A/C. Other plant types, which are not restricted, won't block the noise that a fence would, plus there is a narrow area at which arborvitaes would bush out. This would restrict the area between the property line and their home and hinder access to their patio.

Mr. Pierson submitted a petition signed by 19 neighbors supporting Mr. Hermanson's variance request. Ms. Spencer also read Mr. Bonnavier's letter into record.

Mr. Iacoangeli stated the variance request is to allow for a 6 ft. privacy fence. Any conditions and distance is up to the ZBA. The ZBA is not bound by the applicant's request of 110 ft. If the applicant chose to put up a 4 ft. fence beyond and up to 30 ft. from water, it is permitted under the ordinance. They are seeking a variance from the garage to end of home.

Mr. Powell stated that when walking from the driveway on the south side with a guest, there is a little concrete edging between the lawn and flowerbed adjacent to the house. He asked what they use the access for. Mr. Hermanson stated when they have guests, the guest can access from front to back and he also uses that walkway for lawn cutting, etc. They can't plant larger trees there because a landscaper did not think the sun would let anything grow in that location. Also, Mr. Hermanson stated that the A/C sits right in front of their steps going to the deck. Mr. Powell asked what they would do with the large existing trees in the line of the property line and whether they would have to cut down. Mr. Hermanson said the fence would break at the tree line and they would not cut the trees down. Mr. Powell stated he is personally concerned they would have to cut the trees down and questioned whether there is really a need to extend the fence to the mature tree. Mr. Hermanson stated he doesn't intend to remove the mature trees.

Ms. Spencer opened the public hearing at 7:28 p.m.

David Bartman, 2695 Ridge Road, stated that the photos submitted by Mr. Hermanson are skewed and attempt to find a practical difficulty. The claim that there are lights shining in the windows is not true. His existing driveway has been there for 50 years and has never changed. For Mr. Hermanson to say they want a fence because of headlights doesn't make sense to him. When he was granted variances to build his house, he purposely moved the house back 70 ft. from the lake for the Hermanson's. He stopped his whole construction project to accommodate them. His personal view has been hindered by the Hermansons. There are limbs from their tree touching his home and the main lake view is towards their house. The whole idea of 4 ft. fences on lakefront properties is to not hinder a view. If Mr. Hermanson is allowed a 6 ft. fence, it will block a window of his and hinder his view. The utilities stop at the end of his home and a 4 ft. fence would block the utilities.

Ms. Novak-Phelps asked whether the existing trees were blocking his view. Mr. Bartman stated they could see the lake through the trees from their kitchen window.

Mr. Bartman continued that the statements from Mr. Pierson are untrue. He is not 1 ft. from the lot line, nor do they park cars where headlights would shine in the Hermanson's home. Nothing has changed other than he built a new house, using the same driveway. He doesn't see a practical difficulty.

James Hock, 2865 Ridge Road, stated he signed the petition in favor of the Hermanson's request. He is a certified planner and he realizes this is unique situation. The ZBA created this situation by granting variances to the Bartman's. The building department indicated a whole house generator could be there too. The Hermanson's are looking for a variance to project sound away from their property. The ZBA has the ability to modify the request and maybe compromise to accommodate both parties.

Jennifer Fuga, 2345 Ridge Road, stated not too many people have fences and she feels shrubbery offers a better buffer than a fence.

With no other comments, Ms. Spencer closed the public hearing at 7:35 p.m.

Mr. Hermanson responded that the county has a copy of deed restrictions where mechanicals can't go beyond the transverse line, which also can't block their view. This is a site line setback. Out of his kindness, they gave the Bartman's \$1,500 allowance to cut trees and enhance his view. Also, Mr. Bartman asked them if he could slope their property, which he did and reversed their lot line.

Mr. Pierson noted there are numerous homes on White Lake with fences that clearly violate the ordinance, but Ms. Spencer stated that each case is unique and the ZBA can't consider those other homes.

Mr. Powell questioned what the hardship is. Mr. Pierson responded that it is mostly noise and visual pollution; noise from the A/C when they sit on their deck and have windows open, and guests seeing the mechanicals when they visit. Anyone walking would be able to see over a 4 ft. fence. Mr. Powell asked if the hardship would exist if this were 5 or 10 ft. off the property line. The issue of noise and the visual image is with this being on the side of the house.

Ms. Hermanson, 2699 Ridge, stated that she called the township the day the A/C was installed because the unit was so close. The township stated it had to be 5 ft. from the property line. Mr. Iacoangeli stated he would defer this to the building department as he is not sure mechanicals have to be 5 ft. from the property line.

Ms. Novak-Phelps stated that the ZBA approved the variances for the Bartman's to build their house, but she questioned what this does to utilities that get put in.

Mr. Powell stated that the ZBA is charged with granting the least to solve the practical difficulty. He is not convinced the proposed 110 ft. fence would look better. The ZBA could grant the height and restrict the length to solve the issue. He doesn't want a fence to take out trees and he doesn't think they need 6 ft. height all the way down the lot line.

Ms. Novak-Phelps moved to approve the variance requested by Robert Hermanson for the property at 2699 Ridge Road, File 17-012, parcel 12-18-101-027 in order to install a 6 ft. privacy fence along the south side of the home. The variance requested is to allow the fence to be a maximum of 6 ft. up to and from the west side for half the deck to extend to the east and to the edge of the garage. There was no support for the motion and the MOTION DIED.

Mr. Powell moved that approval be granted for a 6 ft. high fence approximately 35 ft. in length from the westerly end of the stairs to the front corner of the house living space. Mr. Walz supported.

Discussion on the Motion

Mr. Walz stated that the township is not saying the applicant can't have a fence. They are allowed to have a 4 ft. fence. For practical difficulty based on standards, this 4 ft. fence if installed, is not preventing the owner from using or enjoying their residence for its permitted use. He doesn't see a practical difficulty with this case. They would still have a barrier and a fence. When power goes out, there is generator noise all over the neighborhood. Ms. Novak-Phelps noted that this is right next to their door. Her concern is that something was put there and this is far beyond what was approved.

Ms. Spencer agreed with Mr. Walz in that there is no practical difficulty. A 4 ft. fence would buffer visually and with the sound.

The MOTION FAILED with a roll call vote: Powell – yes; Walz – no (for reasons stated in his earlier discussion points); Spencer – no (there is no practical difficulty and substantial justices are not being denied, and a 4 ft. fence would screen the noise and visual); Novak-Phelps – no (they are not denying substantial justice). (1 yes vote; 3 no votes)

Ms. Novak-Phelps moved to approve a 6 ft. fence, approximately 77 ft. in length from the west side of the home to the edge of the garage, where it is placed on the east side. Mr. Powell supported.

Discussion on the Motion

Mr. Powell feels the neighbor could put up an insulated fence around those units for the sake of the neighbor. The gas meter is 6 ft. up and it will be visible even if a 4 ft. fence is there. He doesn't think a 4 ft. fence will accommodate. He also feels the 77 ft. length is too long to go that far with the fence, but he is not opposed with a 6 ft. fence to block the utilities only.

The MOTION FAILED with a roll call vote: Powell – no; Spencer – no (there is no practical difficulty); Walz – no (for the reason that no practical difficulty exists and he feels the township is not preventing the fence from going in and not allowing the applicant to unreasonable use their home. Both these families have outstanding views of the lake and we are focused on looking at each other's home; Novak-Phelps – yes (based on her prior comments). (1 yes vote; 3 no votes)

Mr. Powell moved to allow a 6 ft. screen fence to be placed from the A/C condenser easterly for 20 ft. to just block the noise and view of the utilities. There was no support for the motion and the MOTION DIED.

Mr. Pierson requested that this case be tabled.

Ms. Novak-Phelps moved to table the fence height variance request for 2699 Ridge Road, parcel 12-18-101-027 to consider comments noted during this public hearing. Mr. Powell supported and the MOTION CARRIED with a unanimous voice vote. (4 yes votes)

Liaison Report:

Mr. Powell reported that he expressed concern at the last Township Board meeting over last month's variance request. He is asking for the Planning commission to look at changing the requirement for 20% lot coverage on R1-D lots.

Regarding this evening's case, Mr. Powell noted that West Bloomfield requires utilities to be roadside, they do not allow them on side yards. He would like to also recommend to the Township Board to remand this back to the Planning Commission. Ms. Novak-Phelps stated she still has an issue with this. The ZBA granted the variance for the home and the homeowner went and increased their boundary to put their utilities there. The ZBA gave the variance for the footprint of the building.

Next Meeting Date:

- a. Regular Meeting – July 27, 2017

Adjournment:

Mr. Walz moved to adjourn the meeting at 8:23 p.m. Mr. Powell supported and the MOTION CARRIED with a voice vote. (4 yes votes)