

**MELROSE TOWNSHIP  
ZONING BOARD OF APPEALS  
APPROVED MINUTES OF DECEMBER 20, 2017**

- I. CALL TO ORDER:** The meeting was called to order at 6 pm by Ch. Errol Lee  
**ROLL CALL:** Members Present: Ch. Lee, Todd Reeves, Lyon Stephens, David Beier, Zoning Administrator - Randy Frykberg and Acting Recording Secretary – Tom Mackie. Absent: Bart Wangeman (excused).
- II. APPROVAL OF AGENDA:** The proposed agenda was approved by consensus.
- III. APPROVAL OF NOVEMBER 9, 2017 MINUTES:** Todd R. motioned, 2<sup>nd</sup> by David B., to approve the minutes of Nov. 9<sup>th</sup> with the following three corrections:
1. Call to order time of 7pm should be 5:00pm.
  2. Agenda item to approve minutes of November 9<sup>th</sup> should be November 2<sup>nd</sup>.
  3. Motion to approve the minutes of Case ZBA 2-17 should be Case ZBA 3-17.

Motion to approve the minutes as corrected was approved with a vote of all ayes.

- IV. SCHEDULED PUBLIC HEARING:** Ch. Lee opened the Public Hearing at 6:04pm and described the procedure for considering the application. We will hear from Randy first and then from the applicant and then comments (each comment is allowed 5 minutes). The Public Hearing will then be closed and the Board will deliberate. The case is:

**Case # ZBA 5-17, Allen & Windsor Freemyer request to remove and rebuild a house at 01042 N Shore Drive (ID# 15-010-750-012-00)**

Randy stated:

The goal of this application is pretty much the same as approved previously, although the porch has been shortened and the project involves a complete teardown and rebuild rather than a remodel. He then reviewed the general facts as presented in his memorandum to the ZBA:

**GENERAL FACTS:**

1. On April 23, 2009, the ZBA approved a variance to “renovate/expand an existing non-conforming house at 01042 N Shore Drive”.
2. On September 20, 2017, WB Builders, on behalf of Freemyer, submits an application to the Township for work on a residence. The work was approved by ZBA on April 23, 2009 and approval had expired.

3. On September 29, 2017, the Zoning Administrator verbally told Allen Freemyer that a new approval from the ZBA is needed before he will issue a permit.
4. On November 2, 2017, the ZBA approved a conforming 28' X 29' addition to the northeast side of the house (expansion of a non-conforming structure) and a variance to rebuild the waterfront porch, making the porch 5 more feet from the water but only 7 ½' wide, and also expanding the porch by filling in the northwest corner by 6' X 7 ½' between the house and the porch.
5. On November 13, 2017, the Building and Safety Department asked if the Township approved a renovation of the existing house and a 10' wide porch. I told them they approved a 7 1/2' wide porch with 5 additional feet between the porch and the water, and only a structure renovation.
6. On November 27, 2017 the ZBA application was complete by Alan Freemyer requesting "Demolition and Reconstruction" of a nonconforming building in excess of 25% of the existing structure's area, and to reconstruct a lakeside porch 2 feet further from the water's edge than previously approved.
7. The remainder of the footprint will be the same.
8. A roof water retention area will be added as part of this project rather than adding this water directly to the lake via sheet runoff down the steep bank as occurs now.
9. The required 300' notices were mailed on November 30, 2017 to 14 properties.
10. The required Public Hearing Notice was published in the Monday, December 4, 2017 edition of the Petoskey News Review.

Applicant representative William Brown (W.B. Builders) stated they would like to begin work now and proceed as weather permits. Applicant representative Michael Pattullo (Shoreline Architecture and Design) noted the porch stays the same as allowed in the previous variance, but the house has been shortened by 2 feet. The lakeside setback will remain the same. Randy indicated the variance would be 17 feet from the water. Michael added the foundation would also be removed and replaced as it is not adequate for new construction. Randy noted the property is quite steep, but will be leveled somewhat with new construction.

Lyon Stephens left the meeting at 6:23 PM to respond to a Fire Department emergency call.

Ch. Lee asked for any applicant comment: Michael Pattullo stated the applicant is attempting to do the best they can, given the site limitations. The new plan represents an improvement over what is there now, and a remodel is not practical as it would not meet current building codes. In responding to a question from Todd, Michael indicated the house and garage are separated by about 5 feet. William Brown stated the project represents an improvement to the property, with better water drainage to the lake and improved aesthetics. Blair Brown expressed his support for the same reasons.

With no audience present to comment, Ch. Lee closed the Public Hearing at 6:30pm.

With only three ZBA members currently present, and a majority of five favorable votes required to approve this application, the members agreed to table a vote until Lyon returns. In the interim the ZBA will move to the next agenda item.

## **V. Other Matters to be Reviewed by the ZBA:**

- A. Legal Counsel Opinion on Time Frame Requirement:** Errol noted our decision at the November 2<sup>nd</sup> ZBA meeting to seek a written legal opinion concerning the legality

of refusing to renew a zoning permit for a variance when the provisions of the variance had not been utilized by the applicant within six months of issuance. Township Counsel (Peter Wendling) has now provided written concurrence with this decision.

**Dave Beier motioned to include this written legal opinion, as provided in a formal written letter and email, in the formal record and to recognize the Zoning Administrator was correct in his action. Motion seconded by Todd Reeves. All ayes, motion carried.**

#### **IV. (Return to Case # ZBA 5-17)**

Randy suggested we have previously allowed discussion in circumstances where a ZBA member is temporarily absent, but suggested we delay a vote until Lyon returns.

#### **The ZBA Board finds that:**

1. The lot at 01042, identified as Property ID # 15-010-750-012-00, is in the R-1 Zoning District.
2. R-1 Setback requirements are 50' front (lakefront), 10' side (because of the narrow width of the lot), 35' rear and 100' width.
3. The lot is non-conforming because it is about 62' wide and covers about 11,270 sq. ft. The district requirement is 100' wide and 20,000 sq. ft.
4. No overhangs are shown or requested in the project, so all measurements, variances and approvals refer to a zero overhang.
5. The present structure has a typical overhang of 1 foot and is shown on the drawings for the existing house, but not for the reconstruction. According to the Zoning Ordinance, setbacks are measured from the dripline (including overhangs).
6. The covered porch of the present structure is about 28' from the waterfront. With the proposed reconstruction, the porch will be moved back 7 more feet from the waterfront, and the house will be narrowed, making the new porch 10 feet deep. This would require a waterfront variance of 17 feet (Section 12.4 C. of the Zoning Ordinance).
7. The proposal also expands the porch in the northwest corner of the house, to within 5' of the road right of way and 33' of the water. This would require a waterfront variance of 17' and a side yard (Zoe Street) variance of 5 feet (Section 12.4 C. of the Zoning Ordinance).
8. Conformance with Zoning Ordinance Section 6.11, Walloon Lake Shoreline Protection Overlay District, was affirmatively determined in November, 2017.
9. The lot is very steep, sloping 43' from the rear property line to the waterfront.
10. A detention area for roof water runoff, as shown on the 11/16 site plan, is planned for the southeast side of the property rather than adding this water directly to the lake via sheet runoff down the steep bank as occurs now.
11. The required 300' notices were mailed on November 30, 2017 to 14 property owners.
12. The required Public Hearing Notice was published in the Monday, December 4, 2017 edition of the Petoskey News Review.

**Section 12.4 C Variance Criteria:**

**The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from dimensional requirements. It shall be found by the Zoning Board of Appeals that any variance granted:"**

1. **The variance will not be contrary to the public interest or to the spirit and intent of the Ordinance.** The proposed new porch, further from the lake than the existing porch, with the addition toward the road on the northwest side of the house, will be set back 7 feet further from the lake (no overhang) than the existing structure. A variance of 17 feet is needed. Storm-water treatment will be improved. ALL AGREED
2. **The variance does not permit the establishment within the zoning district of any use that is not permitted by right within the district.** Residential uses are an allowed use in the R-1 District. ALL AGREE
3. **The granting of the variance will not cause any adverse effect to property in the vicinity or in the Zoning District or the Township.** The Board finds that the proposed northeast expansion will not have a negative impact on property values, and would maintain the general character and trend of Melrose Township development. The project should improve the treatment of storm-water prior to it flowing into Walloon Lake. ALL AGREE
4. **Does the variance relate only to property under control of the applicant?**  
Yes. ALL AGREE
5. **Does the variance affect only property subject to exceptionally or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity?** Dave and Errol initially expressed concern the circumstances are neither exception or extraordinary, although they agree this will be a desirable improvement. Allen Freemyer (by phone) indicated the property has been in his family for 30 years; they didn't just buy it and want to enlarge. Michael noted much of the property is unbuildable. Dave stated he will vote in support, but asked Randy to research the wording of this standard. The Board finds that the house was built prior to zoning and there are exceptional or extraordinary circumstances or conditions affecting this property (very steep from the road to the water, with only a small area level enough to build upon, even with major excavation and retaining walls added). ALL AGREED
6. The proposed project meets the above 5 criteria in Section 12.4 C for a variance. ALL AGREED
7. Granting the variance would observe the Spirit of the Ordinance and provide for substantial justice. ALL AGREED

Lyon returned to the meeting at 7:15pm

**“Due to the findings of fact as stated above, Dave B. motioned to approve Windsor and Allen Freemyer’s Zoning Variance Application for a variance to demolish and reconstruct a nonconforming building, including the covered deck and foundation, increasing the distance of the structure from the water by 7’ and expand the front yard deck on the northwest side of the existing non-conforming house at 01042 N. Shore Drive (Property ID # 15-010-750-012-00). Approval requires a variance of 17’ from the 50’ waterfront setback and 5’ from the 10’ side yard setback. This approval is based upon:**

- 1. Zoning Variance Application submitted by Allen Freemyer, dated November 16, 2017;**
- 2. Preliminary Site Plan, which includes a water retention area, revised 16 November, 2017 by Benchmark Engineering; and**
- 3. Proposed elevations Sheets # A-2.0 and A-2.1 by Shoreline Architecture, printed October 5, 2017.**

**Specifically, the variance approval provides for:**

- 1. Demolition and reconstruction of the existing house; and**
- 2. A 17’ reduction from the 50’ waterfront setback; and**
- 3. A 5’ reduction from the 10’ side yard setback.**

**Todd R. seconded the motion. 4 AYES, 0 NAYS, MOTION PASSED**

**VI. Communications and Correspondence received: None**

**VII. Zoning Board of Appeals Members:**

**Dave B. motioned to seek a legal opinion on the definition of “Exceptional or Extraordinary” as it would specifically apply to property on North Shore Drive. Lyon S. seconded the motion. ALL AYES, MOTION PASSED**

**VIII. Report of Planning Commission Representative: Not provided.**

**IX. Citizen Comments: None**

**X. Next Meeting: Scheduled for Wednesday, January 10, 2017 at 5:00 PM.**

**XI. Adjournment: At 7:27 PM.**

Acting Recording Secretary: Tom Mackie \_\_\_\_\_

ZBA Secretary: Todd Reeves \_\_\_\_\_