

MEETING
GLEN ARBOR TOWNSHIP BOARD OF APPEALS
Thursday, April 19, 2018 at 1 pm
GLEN ARBOR TOWNSHIP HALL

PRESENT: Denny Becker, Bill Freeman, Pam Lysaght, Alternate Member Andrew Dotterweich, Zoning Administrator Tim Cypher, Recording Secretary Dana Boomer

ABSENT: Don Lewis (excused), Harvey Warburton (excused)

GUESTS: 4

CALL TO ORDER: Chairman Bill Freeman called the meeting to order at 1:00 p.m. with the Pledge of Allegiance.

APPROVAL OF AGENDA: Dotterweich moved, Lysaght seconded to approve the agenda as presented. All in favor, motion carried.

CONFLICT OF INTEREST: None

APPROVAL OF MINUTES: Lysaght moved, Becker seconded to approve the minutes of August 23, 2017 as presented. All in favor, motion carried.

PUBLIC COMMENT: None

The public hearing was opened at 1:05 pm.

ZBA Case #2018-01 - Elizabeth Brien, Trustee of the Theola K. Hemphill Trust, requests a variance from Zoning Ordinance Section XII.4, Fences, Walls, Screens, for a 2 foot addition to the allowed 6' fence height. The property is zoned Resort; tax ID 45-006-127-039-00. The parcel is located at 6375 S. Krull Lane, Glen Arbor, Section 27, T29N, R14W, Leelanau County, Michigan.

a. Presentation by Applicant – David Roe, attorney for the applicant, and Bruce Conybear, husband of Elizabeth Brien, spoke for the applicant. Conybear summarized the history and use of this property (which received a conditional rezoning and review by the Planning Commission) and the surrounding properties. The initial plan for a fence to isolate this residential parcel from neighboring commercial property was developed in 2015. Conybear stated that at that time there was no ordinance regarding fences. In the meantime, an ordinance regarding fences has been developed, and was put into place before construction started on the fence. The applicants state that they were not aware of the ordinance change before starting construction, nor did they contact the township to reconfirm. The fence was constructed to be 8' high, but a 2' high berm was added to the applicant property to make the height the required 6'. The neighbor is fine with the 8' fence height, and decided to not allow the applicant to place a berm that would reduce the fence height to 6'. The applicants would like to keep the fence height as it is, and construct a rolling gate of similar height. Conybear presented a number of satellite and ground level pictures of the location.

Roe spoke on the unusual aspect of a high-use commercial activity next to a residential parcel. The ZBA asked about the boats that are currently located on the easement, which would be blocked by the requested rolling gate. Cypher stated that these boats are not allowed to be located on the easement,

regardless of historical use, and need to be removed. The gate will be either left unlocked, to allow access by emergency vehicles, or if locked, a Knox Box will be used. The board and applicant briefly discussed the layout of the property.

b. ZBA Questions/Discussion with Applicant – Cypher stated that there has been no correspondence opposing the variance request, and one letter from the neighboring commercial property (owned by the Aylsworths) in favor.

c. Public Comment (limited to two minutes per person unless extended by ZBA) – None

d. Applicant’s Response to Public Comment – None

e. ZBA Discussion with Staff (if required) – Cypher stated that he does not provide a recommendation regarding approval or denial, and it is the ZBA’s duty to study the staff report, application, and other documents, and decide whether the application meets the required findings of fact. He corrected a statement that Mr. Conybear made, and stated that there has always been a fence ordinance in place, but previously a land use permit was not needed. The fence was not part of the Planning Commission approval of the property. He initiated his review of the fence due to a complaint from Mr. Aylsworth, while the fence was under construction. Cypher reviewed the allowed uses in the Resort District, and the potential methods of screening that could be used between a residential parcel and the long-existing commercial parcel owned by the Aylsworths. The applicants are allowed fences, but this district does not give the ZA discretion to work with the allowed heights (that discretion is only allowed in the Business district).

Cypher and the ZBA discussed the fence. The fence must be measured from both sides, so in this case, it is 8’ on one side and 6’ on the other due to one side being bermed. The board discussed the fact that the fence is set on the retaining wall, created from railroad ties, which is why it’s so high. If the fence had been set back from the retaining wall by a foot, it would have only been 6’ high on the neighbor side and wouldn’t be in front of the ZBA. If the Aylsworths had allowed a berm on their side, the fence would be 6’ high on both sides, and it wouldn’t be in front of the ZBA today. The gate was just formally made part of the application, but had been previously discussed in a general sense.

The board and Cypher discussed the zoning of the applicant property and surrounding properties, how fences are regulated in various districts and where fences are already located in the township. The board discussed why discretion is given to the ZA in the Business District but not in other districts. Cypher read Zoning Ordinance Section 8.7, which determines the discretion given to the ZA regarding fences in the Business District. Businesses in this district are required to have fences of at least 6’ shielding them from their neighbors.

f. ZBA Deliberation/Findings of Fact

IV.4.a: There are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this Ordinance. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

Dotterweich: Met

Becker: Met – The commercial use of the property next door is a practical difficulty.

Freeman: Met

Lysaght: Met

IV.4.b: A genuine practical difficulty exists because of unique circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district, and shall not be recurrent in nature.

Dotterweich: Met – This is a unique property, adjoining a commercial marina in the Resort District. If the commercial property were in the Business District, a fence would be required.

Becker: Met

Freeman: Met

Lysaght: Met

IV.4.c: The hardship or special conditions or circumstances do not result from actions of the applicant.

Board Discussion:

Dotterweich: Met – The inability to place a berm on the neighbor’s property has created this hardship.

Becker: Met

Freeman: Met

Lysaght: Met – Dotterweich is correct, and the gate should match the aesthetics of the rest of the fence.

IV.4.d: The variance will relate only to property under control of the applicant.

Dotterweich: Met

Becker: Met

Freeman: Met

Lysaght: Met

IV.4.e: The variance will be in harmony with the general purpose and intent of this Ordinance and will not cause a substantial adverse effect upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district.

Dotterweich: Met

Becker: Met

Freeman: Met – The goal of the fence and gate is to enhance the quality of life in the area.

Lysaght: Met

IV.4.f: Strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

Dotterweich: Met – Moving the fence into the property to allow the berm on the neighbor’s side would be unnecessarily burdensome and disallow use of a large portion of the applicant property.

Becker: Met

Freeman: Met – Seeing all of the commercial property makes it more difficult to rent, sell, or enjoy the residential property. Business District properties are required to have a fence of at least 6’, but that requirement is not present in the Resort District.

Lysaght: Met

IV.4.g: The variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.

Dotterweich: Met

Becker: Met – An 8’ fence prevents seeing the people and commotion happening on the commercial property next door.

Freeman: Met

Lysaght: Met

IV.4.h: The variance shall not permit the establishment, within a district, of any use which is not permitted by right within that zoning district.

Dotterweich: Met

Becker: Met

Freeman: Met

Lysaght: Met

1. Motion on the Request – Board Discussion –
Pam Lysaght moved to approve the Hemphill Trust dimensional variance request #2018-01 as presented in the application, which includes the existing fence and the gate to be built, due to the findings of fact as discussed during this Public Hearing. Denny Becker seconded. There was no discussion.
2. Call the Question – A roll call vote was taken. **In favor: Pam Lysaght, Bill Freeman, Andrew Dotterweich, Denny Becker. All in favor, motion carried.**

The public hearing was closed at 1:46 pm.

OTHER BUSINESS: Cypher stated that another meeting will need to be held to approve the minutes. In addition, the bylaws can be finalized at that meeting. Cypher updated the ZBA on the Roman appeal – the lawsuit is still pending. Two weeks ago, the judge granted the leave to proceed to the Court of Appeals. It is on their docket, and could take up to a year to be heard. The judge also granted a stay, which allows the township to go about business as usual with regard to land use permits. There are still some potential settlements that may happen between Dietzel and Roman. The PC is holding a public hearing at their next meeting to approve language to specifically allow accessory buildings. However,

Ms. Roman-Cowell's attorney has put the township on notice that they may file for a referendum if they do not approve of the language. The ZBA briefly discussed the issues contained within this case.

PUBLIC COMMENT: None.

ZBA COMMENT: The ZBA discussed upcoming meeting dates and scheduling.

ADJOURNMENT: **Becker moved to adjourn the meeting, Lysaght seconded. All in favor, motion carried.** With no further business, Bill Freeman declared the meeting was adjourned at 1:55 p.m.

Respectfully submitted,

Dana Boomer

Recording Secretary