

APPROVED  
MEETING  
GLEN ARBOR TOWNSHIP BOARD OF APPEALS  
Thursday, June 27, 2019 at 1 pm  
GLEN ARBOR TOWNSHIP HALL

**PRESENT:** Don Lewis, Denny Becker, Bill Freeman, Harvey Warburton, Pam Lysaght, Zoning Administrator Tim Cypher, Recording Secretary Dana Boomer

**ABSENT:** None

**GUESTS:** 5, Alternate Andy Dotterweich

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

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

**CONFLICT OF INTEREST:** Members of the board eat at the Western Avenue Grill (WAG), and several know either or both of the parties. It was determined that these did not constitute a conflict of interest.

**APPROVAL OF MINUTES:** Becker moved, Lewis seconded to approve the minutes of June 12, 2019 as presented. All in favor (Lysaght and Warburton abstained), motion carried.

**PUBLIC COMMENT:** Cypher stated that he received a letter from Julie Lattimore regarding the case heard on June 13, 2019, presenting further arguments for why the variance should have been declined. This letter was forwarded to the board, and will be made part of the permanent file. Cypher will reply to the letter, telling Lattimore that the letter was distributed and giving her the options for appeal.

**ELECTION OF OFFICERS:** Becker moved, Lysaght moved to appoint Bill Freeman chair. All in favor, motion carried. Lysaght moved, Lewis seconded to appoint Denny Becker vice-chair. All in favor, motion carried. Lysaght moved, Becker seconded to appoint Harvey Warburton secretary. All in favor, motion carried.

The public hearing was opened at 1:07 pm.

1. **ZBA Case #2019-02** - John Martin requests an interpretation of the decision by the Zoning Administrator to allow a permanent fence to be placed on the property containing the Western Avenue Grill. The property is zoned Business; tax ID 45-006-122-094-00. The parcel is located at 6410 W. Western Avenue, Glen Arbor, Section 22, T29N, R14W, Leelanau County, Michigan.

- a. Presentation by Applicant – John Martin and Wendy Martin presented, along with their attorney Matt Vermetten. Wendy Martin stated that they respect the Zoning Ordinance, and think it is necessary to follow the Ordinance, to ensure the maintenance of the community and the preservation of property values. They followed the Zoning Ordinance when they renovated their building, and they feel that the WAG should have to follow the same rules. The fence, which is a permanent structure, placed by the WAG does not follow the setbacks, and as such is a blatant disregard of the rules. She stated that the

previous fence was a seasonal, collapsible fence, and that was fine, but the current fence is permanent and fixed.

John Martin stated that the WAG did not obtain the proper land use and building permits. When he contacted Cypher about this in April, Cypher issued a cease-and-desist order. The WAG removed the pergola-like structure that they had constructed, and so this is no longer an issue. At this time, they are concerned about the fence structure and the intrusion into the setbacks.

Matt Vermetten distributed images with the right-of-way line and setback lines shown in relation to the WAG building.

b. ZBA Questions/Discussion with Applicant – The board reviewed the application. They asked how far back into the setbacks the fence is intruding. John Martin stated that the fence is only a couple of inches from the right-of-way line (normally a 10' setback), and only a foot or two from the side yard lot line (normally a 5' setback).

Warburton asked whether the previous fence was a seasonal, removable fence or a permanent fence. The Martins are stating the former and the ZA and WAG owner are stating the latter. The WAG owner has provided pictures of what they state are the places where the prior permanent fence posts were cut off at ground level in order to replace the fence. Becker stated that this is an important point, because if the fence was a permanent structure, it could be grandfathered. Fences were not considered structures in the ordinance until 2016. Martin disputed this point. Prior Zoning Ordinances were consulted and the 2016 date for this change was determined to be correct.

The applicants and ZBA extensively discussed whether the fence was permanent or temporary prior to the fence that was put in this year. They also discussed whether the fence is in the same location as it has been in prior years.

The ZBA determined that the two main questions were: 1) was the prior fence permanent, and 2) is the fence in the same place as the prior fence. The Martins are unsure if the fence placement moved, but object to the characterization of the prior fence as permanent. Upon request, Cypher read the portion of the Zoning Ordinance which deals with "grandfathering", under Section XI.2, Non-Conforming Lots, "The rebuilding or altering of a non-conforming building or structure is possible if the rebuilding or altering does not increase the non-conformity in ANY way".

The applicant, Vermetten and the ZBA continued an extensive discussion of whether the current fence is allowed under Section XI.2.

Lewis disagrees with the characterization of a fence as a structure that must follow setbacks, and will be following up on this with the Planning Commission.

c. Public Comment (limited to two minutes per person unless extended by ZBA) –

Andy Dotterweich, speaking as a member of the public. He was also surprised to see that fences were now structures. He also pointed out that there are some portions of the ZO that allow fire-proof fencing structures in the business district up to the property line.

Mike Warnes – He owns property behind the WAG. He stated that Cherry Republic and Arts both have non-conforming fences, with patio areas right up to the sidewalk. He understands the Martins' concern, but the fence was previously permanent, and as long as there aren't umbrellas or other things hanging over the fence onto other properties. When the tree dropped on the fence in 2015, the fence held, it just bent, which means that the posts were buried and secured with concrete.

d. Applicant's Response to Public Comment – None

e. ZBA Discussion with Staff (if required) – Cypher summarized his staff report to the board. Becker asked if the various portions of the packet had been sent to the applicant too? Cypher stated no, but the staff report, correspondence, etc. are public information and readily available at the township offices prior to the meeting. The applicant and ZBA briefly discussed.

Mr. Vermetten stated that, in his opinion, because the fence is not exactly the same as the prior fence, it doesn't apply under Section XI.2, even if both fences are/were permanent.

Mr. Martin is also worried that the table tops that are now attached to the fence are new. The ZBA stated that this was not part of the case before them, but asked Cypher to look into this issue. The ZBA and Martins continued the discussion of nonconformity. Lewis feels that the discussion on fences as structures needs to be continued outside of the meeting, especially when things like patios are still not considered structures. Cypher will also be looking into umbrellas and other items hanging over the fence onto the neighboring properties.

f. ZBA Deliberation/Findings of Fact

**Did the applicant's allegations stated in the ZBA application # 2019-02 prove that the decision made by the Zoning Administrator as defined in his staff report was in error?**

Lewis is comfortable that Cypher did his job correctly, and see no reason to overrule the decision. Warburton agreed. Freeman stated that he feels that Cypher has adequately clarified to the applicants why he made his decision. Becker stated that, given that fences are considered a structure today, and non-conforming structures are allowed to be re-built, this is allowable. Lysaght pointed out that non-conforming structures are also able to be altered, as long as the non-conformity is not increased. She is comfortable that Cypher has done his research to ensure that the non-conformity has not increased.

Motion on the Request – Board Discussion –

**Becker moved to uphold the complaint and allegations by John Martin as defined in the ZBA application # 2019-02 which would overturn the Zoning Administrator's decision as presented in the ZA's staff report as discussed during this Public Hearing. Lysaght seconded.** There was no discussion.

Call the Question – A roll call vote was taken. **In favor: None. Opposed: Bill Freeman, Don Lewis, Denny Becker, Bill Lysaght, Harvey Warburton. All opposed, motion failed.**

The public hearing was closed at 2:14 pm.

**OTHER BUSINESS:** Cypher will be looking into the tables and umbrellas at the WAG.

Freeman asked to further discuss the letter from Julie Lattimore. Freeman summarized the prior hearing and the allegations in the letter that Mr. Pepler unfairly influenced the ZBA because of his membership on the Township Board. Freeman feels this is an unfair allegation, as no member of the ZBA discussed this issue with Pepler prior to the meeting.

Cypher has a call into the DEQ to discuss the allegation that there was another potential building envelope. The ZBA discussed, and at this time doesn't feel that there was mis-representation – it was presented that there was only one location that the DEQ would approve, given the impact on the wetlands. It is possibly true that there was another potential building envelope that the DEQ would not have given final approval on, given the impact to the wetlands that would occur when accessing the water from the building envelope. Cypher will be sending a reply to Lattimore, letting her know that the minutes from the hearing have been approved and what her avenues for appeal are.

Becker asked what the actions are that can be taken if the ZBA makes a decision on information that is later found to be incorrect. Cypher stated that anyone can appeal a decision, even a member of the board, and this could be used to overturn a decision that is later found to be based on incorrect information.

The ZBA briefly discussed portions of the bylaws that allow the ZBA to not hold a public hearing in the absence of the applicant. The ZBA felt comfortable waiting approximately 15 minutes for an applicant to appear after a meeting starts.

The ZBA briefly discussed whether the meeting packets should be sent to the applicant as well as the board. The ZBA would like to see the applicant have easy access to additional packet documents, without the township taking on additional liability in case something is missed. In lieu of a formal process, the ZBA would like to have it emphasized during the application process that it is the applicant's duty to ask the Township Clerk for additional documents, as the Township Clerk maintains a full file.

Andy Dotterweich reminded the board that there should be no discussion, even questions to the ZA, sent by e-mail to the full board in the lead-up to the meeting. The case is heard, discussed, and decided at the meeting. Using the "reply all" function of e-mail should not happen regarding cases.

Another ZBA meeting will be set to approve the minutes from this meeting.

**PUBLIC COMMENT:** None.

**ZBA COMMENT:** None.

**ADJOURNMENT:** Lewis moved to adjourn the meeting, Lysaght seconded. All in favor, motion carried. With no further business, Bill Freeman declared the meeting was adjourned at 2:39 p.m.

Respectfully submitted,

Dana Boomer

Recording Secretary