

APPROVED

MEETING

GLEN ARBOR TOWNSHIP ZONING BOARD OF APPEALS

Tuesday, March 23, 2021 at 1 pm

Via Zoom

PRESENT: Don Lewis, Bill Freeman, Harvey Warburton, Pam Lysaght, Andy Dotterweich, Zoning Administrator Tim Cypher, Recording Secretary Dana Boomer

ABSENT: Denny Becker

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: The approval of the July 15, 2019 minutes was added to the agenda. **Lysaght moved, Warburton seconded to approve the agenda as amended. All in favor, motion carried.**

CONFLICT OF INTEREST: None

APPROVAL OF MINUTES: **Lysaght moved, Warburton seconded to approve the minutes of July 15, 2019 as presented. All in favor, motion carried.**

PUBLIC COMMENT: None

ELECTION OF OFFICERS: The current officers are Bill Freeman as chair, Denny Becker as vice-chair, and Harvey Warburton as secretary. **Lysaght moved to reappoint the current officers; Warburton seconded. All in favor, motion carried.**

The public hearing was opened at 1:07 pm.

1. **ZBA Case #2021-01** - David Murphy on behalf of the Murphy Cottage, LLC, requests a 33 foot dimensional variance from Zoning Ordinance Section V.2, which requires a 40' setback off of the Road Right of Way, for a bedroom and bath addition. The existing dwelling already encroaches 8 feet into the front setback. The property is zoned Residential 1; Tax ID 45-006-790-028-00. The parcel is located at 5815 S. Lake Isle Avenue, Glen Arbor, Section 22, T29N, R14W, Leelanau County, Michigan.
 - a. Presentation by Applicant – David & Kathy Murphy were present as applicants. They are asking for space to add a bathroom and bedroom to their existing cottage. The requested addition is the only direction in which the cottage can be expanded, due to existing features such as the septic field. They considered adding a second story, but the existing foundation would not support this, and discussions with the architect determined that it was cost-prohibitive to add additional pilings to support a second story.
 - b. ZBA Questions/Discussion with Applicant – The board reviewed the application. Freeman stated that this is a small lot, with an existing encroachment into the setback. The Murphy's

purchased it 11 years ago, knowing about the size and encroachment. He also wonders about the possibility of adding a second story and what cost-prohibitive would be.

Cypher stated that there were two pieces of correspondence from members of the public. Eric & Carol Wilson object to the application based on the use of the home as a rental and environmental considerations; their letter was read to the ZBA. Shirley & Ken Hurlin support the application, as adjoining cottages are closer to the road than the addition would be; their letter was read to the ZBA.

Lysaght also wonders about “cost-prohibitive” – do the Murphy’s mean expensive in relation to their existing investment, or is it impossible? A number of property owners in Glen Arbor Township have ended up building up. In addition, she would like to know where people will park – it currently appears that people are parking where the addition would be. David Murphy responded that there are three parking spaces next to the road and these would not be impacted by the expansion. The ZBA and applicant discussed parking. The existing parking extends into the right-of-way. The ZBA and applicant then discussed the possibility of a second level. Murphy stated that they do not want to double the size of their cabin, and as they get older they would prefer to avoid placing additional stairs in their home. In addition, the cost of installing the pilings for a second level would be more expensive than the proposed addition, not to mention the cost of the construction of the second level. Kathy Murphy stated that the home is not a rental, and they have never used it as a rental; their family are the only ones that use it. It was a rental property before they purchased it, but they have never rented it since they owned it. Lewis asked whether the existing septic is adequate to handle the second bathroom. David Murphy responded that the septic system was installed less than three years ago, and so is very new. The plan is to expand the kitchen into the smaller existing bedroom, so the cottage will go from a 2-bedroom, 1-bathroom house to a 2-bedroom, 2-bathroom house. The health department bases septic sizing on number of bedrooms, so the septic is sized to handle the addition. The addition is 330 square feet.

The ZBA discussed the size of the expansion – it does not matter what the size of the expansion is, it will be an encroachment on the setbacks, as the house is already encroaching into the setbacks. Freeman stated that there are a number of other houses along the same road that are closer to the road than this one. Dotterweich asked if there are any characteristics that make this lot unique from others. David Murphy stated he does not believe so. Cypher stated they are all platted lots. Freeman asked if the house was on a slab or crawl space – Murphy responded that the porch is a slab, but the cabin is on a crawl space.

c. Public Comment (limited to two minutes per person unless extended by ZBA) – Bill Keller spoke; he lives directly across the street from the Murphys. He has no objection to the application, and would like to see it approved. The house is already legal non-conforming, and the next two adjacent neighbors are closer to the road than this expansion will make the Murphy house. There are so many large homes going up in the neighborhood that he would rather see a small first-level addition than an additional story. He agrees that the septic system

is brand new, and that while the property was listed as a rental property prior to purchase by the Murphys, it was rarely actually rented, and never since the Murphys purchased it.

d. Applicant's Response to Public Comment – David Murphy stated that going to a second story would also require additional stonework to the building, and would be extremely difficult and cost-prohibitive to match the existing stone. Kathy Murphy commented that they would like to remain a small, quaint cottage, and going to a second story would remove much of the quaintness of the cottage. They want to keep a small footprint, rather than adding a big addition. Their stonework chimney is a focal point of their cottage, and adding a second story would remove this facet. They would like to make the addition look as if it has always been there, rather than appearing to be big and brand new. They want to stay authentic to the original building.

e. ZBA Discussion with Staff (if required) – Cypher summarized his staff report to the board. Lysaght asked Cypher for guidance regarding whether considering the cost of a second story falls under the category of considering economics for hardship. In addition, she is concerned about the parking situation if the addition is built. Warburton also asked for guidance in these areas. Cypher summarized the requirements on not considering economic issues as hardships, summarized the discussion on possible hardships, and stated that expansion does meet other Zoning Ordinance standards, including lot coverage. Regarding parking, the Zoning Ordinance requires two parking space per dwelling, and mandates that no water be shed onto neighboring properties. Dotterweich is unsure how a variance can be granted as a hardship on this lot, when there are so many similar lots – and is concerned that granting this variance would be essentially gutting the 40' setback. He asked Cypher whether Cypher sees anything unique about this property. Cypher said that many lots in the Village are platted lots that have been that way since the founding of Glen Arbor, but that it is up to the ZBA to determine whether this approval is appropriate, based on the deliberations and findings of fact.

f. ZBA Deliberation/Findings of Fact

IV.41.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.

Lewis: Met – ~~There~~ *This* is an existing non-conforming structure. He does not feel this is setting a precedent, because the ZBA is not talking about a new build, they are talking about changing an existing non-conforming structure. He believes the ZBA is getting distracted from the main question, and that the applicants are not asking for any encroachment that is more than neighboring properties.

Dotterweich: Not Met – There are many similar lots, and there are other options for building.

Freeman: Not Met – This application is setting a precedent for all of the other similar lots in the area.

Warburton: Not Met – He does not believe that this application meets the criteria for practical difficulty or unnecessary hardship.

Lysaght: Met – This is the most difficult determination of practical difficulties that she has come across in her time on the ZBA. There are a number of reasons for them to not build up that are not just economic based, and make this a practical difficulty.

IV.41.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.

Lewis: Met – The existing building and features make this property unique.

Dotterweich: Not Met – There are many other similar lots in the zoning district that are being built on without variances.

Freeman: Met - Due to the size of the lot.

Warburton: Not Met

Lysaght: Met – The existing building and features make this unique. New builds have the option of different well placements, septic placements, footing types, etc.

IV.41.c: The hardship or special conditions or circumstances do not result from actions of the applicant.

Lewis: Met

Dotterweich: Met

Freeman: Met

Warburton: Met

Lysaght: Met

IV.41.d: The variance will relate only to property under control of the applicant.

Lewis: Met

Dotterweich: Met

Freeman: Met

Warburton: Met

Lysaght: Met

IV.41.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.

Lewis: Met – The only requirement for parking is to have two parking spaces.

Dotterweich: Not Met – The plan and look of the expansion is in harmony. However, the encroachment on the right of way is concerning, especially with regards to parking. He feels this is not the minimum encroachment necessary.

Freeman: Met – They are trying to maintain the harmony of the neighborhood.

Warburton: Met

Lysaght: Met

IV.41.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.

Lewis: Met

Dotterweich: Not Met

Freeman: Met

Warburton: Not Met

Lysaght: Met – For the reasons given under the first finding.

IV.41.g: The variance requested is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the hardship.

Lewis: Met – He is hesitant because “minimum” is undefined and subjective. However, the applicant is not requesting something unreasonable or larger than necessary.

Dotterweich: Not Met

Freeman: Met – This criteria is subjective. Any shrinking of the expansion would still result in a request for variance.

Warburton: Not Met – There is no inherent inequality to start with, and therefore this is not the minimum necessary.

Lysaght: Not Met – This is a difficult criteria, but there are other options that are less than what is being requested.

IV.41.h: The variance shall not permit the establishment, within a district, of any use which is not permitted by right within that zoning district.

Lewis: Met

Dotterweich: Met – This is not applicable, because they are not asking for a use variance.

Freeman: Met

Warburton: Met

Lysaght: Met

Motion on the Request – Board Discussion – ~~The board discussed~~ *Lysaght asked* whether a vote could be taken, given that there were two ~~items~~ *requirements* on which the members had a majority of “not met” ~~votes~~; *the board discussed the requirements for approval*. Cypher stated that there was precedent for votes to be taken on requests *and requests for variance to be approved* for which some items had “not met” ~~votes~~, and he has found no case law that would disallow this. However, he cannot give legal advice to the ZBA. *The board and staff discussed whether an approval can be granted when there were criteria that had majority “not met”*. Lewis stated that over the years, the discussion and recording of discussion for ZBA meetings has become much more thorough, and so while each of the above findings are discussion items, the vote is required as a final decision. The board continued the extensive discussion on this topic, referencing state law, MSU Extension guidance documents, and the township Zoning Ordinance.

Lewis moved to approve the Murphy dimensional variance request #2021-01 as presented in the application due to the findings of fact as discussed during this Public Hearing. There would be a condition that the parking requirements of Zoning Ordinance Section IV.11 will be met in

such a way that there is no encroachment into the existing right of way. Lysaght seconded.
There was extensive discussion regarding the ability to take a vote on this topic.

Call the Question – A roll call vote was taken. **In favor: Bill Freeman, Don Lewis, Pam Lysaght.**
Opposed: Andy Dotterweich, Harvey Warburton. Motion carried.

Kathy Murphy thanked the board for their approval. She was very impressed with the amount and level of discussion; she is proud to live in Glen Arbor Township after hearing the discussion amongst the board today.

The public hearing was closed at 2:58 pm.

OTHER BUSINESS: Cypher stated that, as alluded to earlier, there is a PC subcommittee working on changes to the Zoning Ordinance. Every ZBA meeting is looked at as an opportunity to see where changes could or may be made to the Ordinance. Another ZBA meeting will be set to approve the minutes from this meeting – Boomer will send out a Doodle.

PUBLIC COMMENT: None.

ZBA COMMENT: None.

ADJOURNMENT: With no further business, Bill Freeman declared the meeting was adjourned at 3:01 p.m.

Respectfully submitted,

Dana Boomer

Recording Secretary