

ZONING BOARD OF APPEALS MEETING  
August 19, 2021  
6:00 PM

The meeting was called to order by Chairperson Kathy Taylor at 6:00 PM. Roll call by Clerk, Cindy Schiminske, found the following Board Members present:

Kathy Taylor, Chairperson  
Bob Faynor  
Ernie Rivera  
Craig Coleman  
Donna Gilfus

Also in attendance: Bill Gabak, Jr., Zoning Officer  
Zoning Attorney Andy Leja  
Dennis & Barbara Zach  
John Dorio  
Chris & John Cobbs  
Dennis & Cindy Baney

Bob Faynor made a motion to approve the minutes of July 15, 2021, seconded by Craig Coleman. Approved AYES 5-0.

The purpose of this meeting was to hear the following requests:

1. Dennis Zach, 5392 West Lake Road, Tax Map #137.02-1-31.1, is requesting the following variances for an 8' x 10' storage shed: a north side yard area variance of 8 ft from the required 10 ft; a south side yard area variance of 4 ft from the required 10 ft (Bulk & Use Table, Lakeshore District); and a variance to the requirements of Section 7-16A(2)a for an accessory structure to be located in the front yard of the property.

Applicants stated that they have a unique piece of property in that there is a triangular piece of land which is about 20 ft wide on the shoreline, and from that, there is a long, narrow walkway into their yard. You can't even see the lake from their cottage. Where they want to place the shed would be adjacent to their neighbor on the right side. Mr. Faynor questioned why they are requesting a 4 ft variance to the white fence. The Board suggested they move that over 4 more feet so it would be an 8 ft variance instead of 4 ft. So, it would be an 8 ft variance on both the north and south side yards. Applicants were agreeable with that.

Chairperson Taylor reviewed the five criteria for granting the area variance with the Board Members.

Mr. Faynor made a motion to vote on the variance request, seconded by Chairperson Taylor, as follows: North side area variance of 8 ft, South side area variance of 8 ft and a variance for the structure to be located in the front yard of the property.

Roll call vote was taken by the Board.

Donna Gilfus	YES
Bob Faynor	YES
Ernie Rivera	YES
Craig Coleman	YES
Chairperson Kathy Taylor	YES
MOTION APPROVED	

2. John Dorio, 6012 West Lake Road, Tax Map #130.06-2-61, is requesting an interpretation of Section 8-22 regarding travel trailers.

Applicant stated that his interpretation of the law is that he cannot occupy or sleep in his camper for more than 45 days in a calendar year, since it says “occupy” right in the code, but he can keep the trailer on his parcel for however long it takes for him to reach that 45 day occupancy limit. But in reply to his position, the Zoning Officer stated that the physical occupancy of the unit is irrelevant. Applicant doesn’t see how that can be interpreted from the code that says “shall not use or occupy for more than 45 days”. He doesn’t understand how occupancy cannot be relevant, since occupancy is written in the code itself.

Mr. Gabak stated that his interpretation is that the trailer can physically remain on the parcel for up to 45 days within a calendar year. He informed applicant last fall that if he wanted to move the trailer off the property during the week and move it back for the weekend and use it, then it would count only 2 days towards the 45. But by leaving the trailer on the property continuously, his interpretation is that each of those days counts toward the 45 day total. He also stated that, unbeknownst to him until after this issue had come about, the former Zoning Code Officer’s interpretation of the law was the exact same interpretation that he had. He pointed out that if actual physical occupancy was the only thing counting towards the 45 day limit, then he would be responsible to continually check on every property with a trailer daily to see if someone is physically in it so that he could mark it down, which isn’t practical. Applicant agreed with that point. The Board asked applicant if he ever stored the trailer there in the winter, and he replied that he has not, because it is not permitted to be stored there. The Board noted that if the applicant is not permitted to store it there in the winter, when it’s on his property, he’s presumed to be using it.

The Board stated that they understood the applicant's dilemma and they don't disagree with the reason why he wants to use his trailer, but when it's on his property, on the lake, it's considered as being in use. It's not in storage. It is currently hooked up to water and sewer. That constitutes in-use.

There was discussion about storing the trailer on applicant's West Lake Road parcel. Mr. Gabak stated that it has to be stored between the garage and the road, on the hill, and it has to follow the applicable setbacks. It would also have to be approved by DOT because it's so close to the State highway.

Applicant asked if he would have to move any travel trailer off the lot to not count towards the 45 days. The Board stated that if it's compliantly stored, then it's not in use. If it's set up, it's considered in use. If he can store it properly, he can store it on the lot. If he cannot store it compliantly, and wants to store it there, he would have to make application for a variance to store it in the front yard of the lot.

The Board stated that they are trying to look out for the best interests of the applicant and the residents of the Town. The Zoning Laws are in the book and they state a limit of 45 days of use per year. If it's set up to be used, the 45 day limit applies. If the applicant can move it somewhere where it is in storage or somewhere else where it is not being used, he can bring it back on the weekends when he comes up and hook it back up, then he can have 22½ weekends on his parcel.

Applicant's question is then "if it's set up, it's considered in use?" The Board answered yes. Applicant asked if it has to be moved off the lot if he could store it there properly. The Board answered that if he could store it properly on his parcel – meaning he would have to unhook water and sewer – he could store it, otherwise he must move it.

Applicant replied he can't easily or properly store it behind the garage, as there's only a garage. There was a house on the parcel, but it burned down. What he would need is a variance to store the travel trailer on that lot if he wanted to store it in front of the garage, as that area is considered the front yard of the lot, even though it is about 250' from the water. The Board answered that he would have to apply for a variance to store the trailer in the front yard. It would be a separate application from the current one.

Applicant stated that he believes this section of the code needs to be rewritten, as it is very confusing. The Board advised him that he can attend a Town Board meeting and bring it up to the Town Board, who is in control of making changes to the Zoning Law. There was further discussion about the process for changes to that Law.

Attorney Leja asked the applicant if he wished the Board to proceed with the consideration of his application to interpret Mr. Gabak's opinion. The applicant wished the Board to officially proceed.

Attorney Leja advised the Board that as this is a request for an interpretation, there are no tests to apply here, you would basically have each Board member voicing their opinion and then having a vote on whether they agree with Mr. Dorio or with the Codes Officer.

Mr. Faynor agrees with the Codes Officer's position that the applicant cannot use that trailer for more than 45 days on the property. Mr. Dorio stated the question is, what does use mean, to which Mr. Faynor replied, it's available for you to use. Mr. Dorio asked, is he using his car? He would say the one he drove here he's using. Is he using the one in the driveway? It's not clear. Attorney Leja stated that if the car you have in the driveway at home is licensed and registered, it's ready for use. It's considered in use by DMV. But, if you leave it without plates and without registration, then it's considered not in use because you can't technically start it up and drive it legally on the road. Same thing with the trailer. If you have a trailer hooked up, it's prepared for use with electric, water, waste disposal. That's assumed to be in use, whether you're physically present there and actually using it or not on a daily basis. He thinks Mr. Gabak's point is that he can't possibly tell that day to day without going to the property to check. So Mr. Gabak has to assume that if it's there, it's present physically and it's hooked up, it's in use. That's the 45 days you're allowed. It doesn't have to be consecutive days.

Mr. Faynor stated that it's in use if it's not in storage between the shed and the road, and applicant doesn't have permission or room to put it there at this point. So where it's currently located, it's considered in use. Mr. Faynor reiterated that he agrees with the Codes Officer.

Mr. Rivera stated that he agrees with the Codes Officer. Mr. Coleman stated that he agrees with the Codes Officer, as well. He said the fact is the way this was written is the way it has been enforced for the last few years and that's the way the Town interprets it, so he would go along with the same thing. Donna Gilfus agrees with the Codes Officer. Chairperson Taylor also agrees with the Codes Officer.

Mr. Dorio asked when does he have to have it moved? Mr. Gabak stated that it was supposed to be moved by July 9<sup>th</sup>. The 45 days have been up. He stated that he would give applicant until August 27<sup>th</sup>.

Chairperson Taylor made a motion to affirm the interpretation of the Zoning Officer regarding Section 8-22, which provides that travel trailers can remain on a given property for a total of 45 days in a calendar year, whether physically occupied or unoccupied, seconded by Mr. Faynor.

Roll call vote was taken by the Board.

Donna Gilfus	YES
Bob Faynor	YES
Ernie Rivera	YES
Craig Coleman	YES
Chairperson Kathy Taylor	YES

MOTION TO AFFIRM ZONING OFFICER'S INTERPRETATION APPROVED

3. John Malek, 6022 West Lake Road, Tax Map #130.06-2-58, is requesting the following variances in order to construct a 12' x 5'4" bathroom addition and a 10'4" x 8' entry deck: Side yard setback requirements, maximum coverage requirements, minimum green space requirement, and non-conforming structure restrictions. See Bulk & Use Table Lakeshore District and Section 9C(2).

Applicant would like to put in a small, first story bathroom. It is a very small residence, 500 sq ft on the downstairs and 500 sq ft on the upstairs. It has a small bathroom upstairs. As his parents and his wife's parents are getting a little older, it's getting a bit harder for them to climb the stairs. There is really not a great place for a small bathroom in his home on the first story. He would need about 5 ft to accommodate a stand up shower, a toilet and 12 ft down to basically fit everything in as close to the house as he could. That is really the only spot he could put it. The plumbing is right there and it would hook up nicely. He stated that his neighbors are okay with his plan.

On the front of the residence, it has about 2½ ft wide concrete steps that go in and they are small and it is hard for people to get in. So when you open the door, it's almost like a safety issue where they are stepping off to the side, and if someone has a package or something, they almost fall off. They would like to match the front of the house widthwise which is 10'4" and come out either 6 or 8 ft. He put down 8 ft on his application but he would probably only go out 6 ft. He just wanted to make sure he had enough room when the door is opened to step around it and get in. He calls it a deck only because he is not covering it, but it is more like a front porch. Mr. Gabak wanted to clarify the front yard. He stated the lake is considered the front yard so this would be considered the rear yard and entry.

Applicant went on to explain that the front porch (lakeside) is pretty much on top of the shoreline so to walk across that, they have some old railroad ties to walk across there to get to the stairs to get into the residence. Mr. Faynor asked if it's enclosed right now and applicant stated it is. Mr. Faynor questioned why the bathroom can't be placed there. Applicant stated he didn't have enough space on the depth lines. He looked into that first. Mr. Gabak stated that he would be keeping it within the footprint and not making it more noncompliant. The

applicant stated that the contractor said it would be very difficult. He would have to move it either out or towards the lake more so he would need a variance again.

The Board stated that they have an issue with the addition as it is already noncompliant and already encroaching on the neighbors. The deck, if it's the same width as where the steps go in, then we're talking about something that can't be fixed another way. You're only going to go 6ft and the same width to fix a hazard. They don't have a problem with that. There's no way to fix that any other way. As long as it's the same width as that little porch and you're only coming out 6 ft and then your steps down, it makes sense and makes it safer.

Chairperson Taylor reviewed the five criteria for granting the area variance for the entryway with the Board Members.

Chairperson Taylor made a motion to approve the 6 ft west side yard area variance for the entryway, seconded by Mr. Faynor.

Roll call vote was taken by the Board.

Ernie Rivera	YES
Craig Coleman	YES
Bob Faynor	YES
Donna Gilfus	YES
Chairperson Kathy Taylor	YES
MOTION APPROVED	

Chairperson Taylor reviewed the five criteria for granting the area variance for the bathroom addition with the Board Members.

Chairperson Taylor made a motion to vote on the requested variances to construct a 12' by 5'4" bathroom addition, seconded by Mr. Faynor.

Roll call vote was taken by the Board.

Craig Coleman	NO
Ernie Rivera	YES
Donna Gilfus	NO
Bob Faynor	NO
Chairperson Kathy Taylor	NO
MOTION DENIED	

4. John and Christine Cobbs, 6020 West Lake Road, Tax Map #130.06-2-59, are requesting the following variances in order to construct a 22' x 26' one-story addition, an enclosed entrance area (7' x 12') and a 24' x 24' non-attached garage: Side yard setback requirements, maximum

coverage requirements, minimum green space requirement and non-conforming structure restrictions. See Bulk & Use Table Lakeshore District and Section 9C(2).

Applicants want to add a 22' x 26' addition towards the lake. The house is set back from the lake. On the small bump out, they could put a furnace and a hot water heater in there instead of inside the house to give them more space inside. They also wanted a garage.

Chairperson Taylor set forth the requested variances as follows:

- Variance to Section 9C(2) covering additional construction on nonconforming lots;
- Variance to setbacks on House addition: SW side yard 6 ft, SE side yard 13 ft, NW Side yard 6 ft and NE side yard 8 feet; (20 ft required)
- Variance to setbacks on non-attached garage: S side yard 15.07' and N side yard 3 ft;
- Variance to maximum coverage requirements of 25% of total lot area

Applicants would be over by 171.65 sq ft on the maximum coverage requirements.

Chairperson Taylor stated that it was a nonconforming lot. The Board felt that on a nonconforming lot, they should stay within the original footprint. They explained that granting these variances would be making a nonconforming piece of property more nonconforming. The Board asked applicants if they could go up in height, but applicants stated it is already a two story building. The Board stated that would be an option if it was one story. You would keep your footprint and go up. Since they are already two stories up, there is nowhere to go. The footprint would not change if you are going up. But if you expand outward in any direction they would be increasing the nonconformity of their home.

Applicant asked the Board if they are unable to do the addition or the bump out, could they go ahead with the garage. The Board stated that they would still be increasing the nonconformity of the lot. Attorney Leja explained that nonconforming means that it doesn't conform to the current zoning code. It was built before the current zoning laws took place. You're allowed to keep it the way it is. But if you want to try to change it any further, you have to change it in compliance with the code. Especially with lots like theirs on the lakefront, the dimensions are so weird that you can't comply with the code. He continued to explain that the object of putting in those requirements was to eventually, over time, try to encourage people to combine lots and then build conforming structures on those combined lots. That was the ultimate goal, but it would likely take place over generations.

Mr. Gabak stated that the applicants bought the lot next to this property. If they combined them, it would be a compliant lot and then they could tear the house and camp down and build a larger home. They don't have to do it, only if they wanted to. Attorney Leja stated that the zoning code is encouraging people to put the bigger lots down by the lake and not have these tiny little slivers all along the lake.

Applicant questioned whether they could do anything. Attorney Leja said they can't expand their nonconforming footprint by adding more structures or expanding out. You can go up to a maximum height of 35 ft but you can't go out, as that increases the nonconformity. So, you can't add a garage or anything like that either. It all increases the nonconformity. If they were allowed to do that, you would have a stream of people coming in here asking to put sheds and buildings and garages and everything. The whole lakefront would be covered with structures. There would be no greenspace at all.

There was further discussion about variances. A neighbor in support of applicant stated that the only option is to combine the two lots. Attorney Leja stated that's an option. They don't have to do it. They can leave it the way it is right now. But if they want to expand the footprint and add on to the house, they can't do it with the acreage they have now. They have to add on acreage in order to make that happen. They could build a brand new house that would be conforming in the middle and it could be bigger. However, if they were to combine the lots, they can't add an addition to the existing white house. They would have to tear them both down.

There was further discussion about applicants' adjoining lot. They would like to add an addition onto the current structure and wanted to know what they would be allowed to do.

Chairperson Taylor reviewed the five criteria for granting the variance to Section 9C(2) covering additional construction on nonconforming lots with the Board Members.

Chairperson Taylor made a motion to deny the variance to Section 9C(2) covering additional construction on nonconforming lots, seconded by Mr. Faynor.

Roll call vote was taken by the Board:

Donna Gilfus	DENY
Bob Faynor	DENY
Ernie Rivera	DENY
Craig Coleman	DENY
Chairperson Kathy Taylor	DENY
MOTION DENIED	

Chairperson Taylor reviewed the five criteria for granting the area variances to the setbacks on the house addition with the Board Members.

Chairperson Taylor made a motion to vote on the variances to the setbacks on the house addition: SW side yard 6 ft, SE side yard 13 ft, NW side yard 6 ft and NE side yard 8 ft , seconded by Mr. Faynor.

Roll call vote was taken by the Board:

Craig Coleman	DENY
Ernie Rivera	DENY
Bob Faynor	DENY
Donna Gilfus	DENY
Chairperson Kathy Taylor	DENY
MOTION DENIED	

Chairperson Taylor reviewed the five criteria for granting the area variance to setbacks on non-attached garage with the Board Members.

Chairperson Taylor made a motion to vote on variance to setbacks on non-attached garage: S side yard 15.07 ft and N side yard 3 ft, seconded by Mr. Faynor.

Roll call vote was taken by the Board:

Bob Faynor	DENY
Donna Gilfus	DENY
Ernie Rivera	DENY
Craig Coleman	DENY
Chairperson Kathy Taylor	DENY
MOTION DENIED	

Chairperson Taylor reviewed the five criteria for granting the area variance to maximum coverage requirements of 25% of total lot area with the Board Members.

Chairperson Taylor made a motion to vote on variance to maximum coverage requirements of 25% of total lot area, seconded by Mr. Faynor.

Roll call vote was taken by the Board:

Donna Gilfus	DENY
Bob Faynor	DENY
Craig Coleman	DENY
Ernie Rivera	DENY
Chairperson Kathy Taylor	DENY
MOTION DENIED	

There was discussion about paving the driveway, combining the lots, whether the house would have to be torn down before they start building, setbacks, distance from lake, floodplain, etc.

There being no further business, Chairperson Taylor made a motion to adjourn the meeting, seconded by Mr. Coleman. Time was 7:38 PM.

Respectfully submitted,

Cindy Schiminske  
Clerk, Zoning Board of Appeals