

TOWNSHIP OF SOLON
COUNTY OF KENT, MICHIGAN

At a regular meeting of the Zoning Board of Appeals of the Township of Solon, held at the Township Hall, 15185 Algoma Avenue, Cedar Springs, Michigan, on the 17th day of February, 2021, at 7:30 p.m.

PRESENT: Batchelder, Stout, Hays, Powell, VandenBerg

ABSENT: Tilburt

The following preamble and resolution were offered by Member Stout and supported by Member Batchelder:

RESOLUTION NO: 21-03

RESOLUTION DENYING VARIANCE FOR 17622 SIMMONS AVENUE

[Fosburg]

WHEREAS, Rick Fosburg ("Applicant"), has requested a variance for relief from the provisions of the Zoning Ordinance involving 1) requirements that private streets be maintained so as to afford emergency vehicle access in all weather conditions and 2) the requirement that a property with an accessory building must have a principal building, and also setback variances, on lands located at 17622 Simmons Avenue, NE, and legally described as follows:

Part Of Govt Lot 2 Com At Se Cor Of Govt Lot 1 Th S 0d 22m 49s E 444.24 Ft Along E Line Of Govt Lot 1 Ext Sly To Beg Of This Desc - Th S 0d 22m 49s E 194.56 Ft Along Ext E Line Of Govt Lot 1 Th N 83d 52m 00s W 462.91 Ft Th N 82d 15m 05s W 436 Ft M/L To Waters Edge Of Upper Lake Th Nely Along Sd Waters Edge 125 Ft M/L To A Line Bearing N 89d 50m 54s W From Beg Th S 89d 50m 54s E 802.78 Ft M/L To Beg * Sec 2 T10n R11w 2.90 A.

WHEREAS, the Applicant's request for a building permit was denied because the Property is not served by a public or private street that is in compliance with the Township Zoning Ordinance, including the requirement that the street affords emergency vehicle access in all weather conditions to the Property;

WHEREAS, on February 17, 2021, the Zoning Board of Appeals held a public hearing on the application for a variance to permit issuance of a building permit despite the lack of a conforming, legal private street, after the giving of notice as required by the Michigan Zoning Enabling Act.

~~IT IS, THEREFORE, RESOLVED AS FOLLOWS:~~

1. **Findings of Fact.** The Zoning Board of Appeals hereby makes the following conclusion and findings of fact in connection with the Applicant's variance application:

(a) The Property is zoned in the R-1 District and is located on a private street that was existence prior to December 1, 2006.

(b) Applicant recently purchased the vacant Property with knowledge that it could not be improved until the access issue was resolved.

(c) To reach the Property, an individual must cross a bridge which does not afford emergency vehicle access in all weather conditions, particularly for fire engines.

(d) Applicant has not shown that the Property can be accessed from the north for emergency access. His claims that a north easement is fit for emergency vehicle access were not substantiated.

(e) There currently exists a nonconforming accessory building on the Property, which was built in defiance of the Township and several stop-work orders.

(f) The nonconforming accessory building does not comply with setback requirements, nor is there a primary building on the Property.

2. **Requested Variances.** Applicant has requested the following variances:

not so general or recurrent in nature so as to make reasonably practicable an amendment to this Ordinance. Not satisfied for the following reasons:

- i. The Applicant has not presented any evidence that his property is unique.
- ii. The Fire Department has been aware of problems with the bridge for over 20 years.
- iii. The situation is not unique because private road maintenance is a common issue.
- iv. The Township has been presented no evidence that the bridge is safe for emergency vehicles.

(c) That literal interpretation of the provisions of this Ordinance would deprive the applicant of a substantial property right commonly enjoyed by other properties in the same zoning district. Not satisfied for the following reasons:

- i. The addition of a non-conforming building, in circumstances when such an increased use is not serviced by safe street access, is not a property right commonly enjoyed by other properties.
- ii. The Applicant bought the property with knowledge and with a warning that buildings could not be constructed because of lack of access. Although he cannot build until safe access is completed, he can enjoy the vacant lot he purchased on the lake.
- iii. It was common knowledge in the community that there were access problems to the property and that the private road could not support any further development without improvements to the bridge.

(d) That the authorizing of such variance will not be of substantial detriment to the adjacent and nearby properties and will not be contrary to the spirit and purpose of this Ordinance. Not satisfied for the following reasons:

- i. Granting a variance without sufficient emergency vehicle access is contrary to the spirit of the zoning ordinance. One purpose of the ordinance is to provide for safety in land use.
- ii. The Township fire trucks weigh over 22,000 pounds per axle and cannot safely cross the bridge. As noted, the Fire Department has known for years that the bridge is not safe for emergency access.

(e) **No nonconforming use of nearby lands, structures or buildings**

shall itself be considered grounds for the issuance of a variance. Not satisfied for the following reasons:

- i. The fact that some existing properties on Simmons Avenue have accessory buildings does not constitute grounds for this variance. Adding another principal residence increases the risk of a dangerous problem.
- ii. Mr. Robertson's 2015 variance is not a ground for approval of this requested variance. The facts surrounding Mr. Robertson's variance differ materially from the requested variance.

4. **Additional Findings.** In addition to the foregoing the Board finds that the request for a variance also does not meet the standards for a non-use variance based on practical difficulties for the reasons stated above and due to the health, safety and welfare concerns of allowing residential uses without sufficient emergency vehicle access.

5. **Additional Variances.** Since the variance from the emergency access requirement has been denied and the Zoning Board of Appeals finds that there is not safe access to the property for the proposed improvements, the Zoning Board of Appeals declines to consider the additional variances requested at this time, if any, until such time as safe access is secured.

AYES: 5

NAYS: 0

RESOLUTION DECLARED ADOPTED.

Brynadette C Powell

Solontwp. ZBA, Secretary

Feb 23, 2021