



7/15/23 ZBA Meeting

Call to order 7:30 pm

Roll Call: Ed Blair absent, Brynadette Powell present, Gerald Skelonc present, Jon Stout absent, Jon Tilburt present, Lisa Crofoot (Alternate) present

Stand for pledge.

Approved May 17th, 2023, Meeting notes. Motion by Skelonc. Second by Blair. All Ayes

Approved Agenda Motion by Blair. Second by Powell. All Ayes

No public Comment.

Agenda Matters to be reviewed.

#1 Bill Otten with the Rogue River Watershed Partners. Short presentation on Riparian Buffer for Rogue River and its tributaries. Distributed handout.

#2 Public Hearing 7:50 PM– Mary Brennan. Dimensional Variance Request. 1605 18 Mile Rd.

Tilburt: We will listen to your request and supporting information but will not be able to act on anything because we are waiting to hear from the DNR with regards to Duke Creek and the Planning Commission needs to get involved.

Brennan: Apologized for us being in this position. Born and raised in West Michigan she moved back in 2020. Wanted water access and Duke Creek bisects her property. Landlocking 60 percent of her property to the north of Duke Creek. Talked to several resource people and can give their contact information if requested. Researched with the Michigan Barn Preservation Network. Referring to the Michigan Zoning Act, because she has 5 acres she has the right to 3 buildings or structures on the property. She has 3. She has the original homestead structure, the farmhouse, and the barn circa 1880. She also has the ability to potentially modify or extend or repair those three structures. She has two power lines with easements hindering her buildable area. Plus, septic system area. She found out that Duke Creek is a tributary to the Rogue River. She included a copy of the Natural Rivers Act and now knows she violated the act. She utilized the existing concrete footpad to the east of the barn, removed the existing small lean-to and replaced it with a substantial lean-to for a garage. This covered the existing concrete. She also believes that according to Michigan law, the concrete footpad is included as part of the barn. So, in theory, by removing the small lean-to and replacing it with the substantially larger lean-to, she was within the letter of the law. What she didn't know about was the 100' setback required from Duke Creek, where she built the lean-to. She referred to the aerial map and said there is no other location for her to build this garage. She feels she did not increase the impermeable surface by adding this lean-to. It was an existing concrete pad. She proposes that she engage an engineer to determine whether she has increased the impermeable area and thus the storm water runoff. She said granting this variance would be granting her the ability to enjoy her property the same as her neighbors. She stopped to ask if we had questions.

Tilburt: What were the three structures again?

Brennan: The home, the original homestead that is a 15x12 structure and the barn.

Gross: She has slightly over 5 acres so she is allowed to have 3 buildings with the total not to exceed 4,000 sq ft. This will come into play on this issue also. So this is a non conforming building.

Tilburt: A 5 acre parcel is allowed to have 3 accessory buildings, not including your house.

Brennan: I did not know that but that is great.

Tilburt: To confirm, are you saying the concrete pad is considered part of the building?

Brennan: I will be looking into that information. A statute or ordinance or something that references that. Referencing the footprint of an accessory building.

Tilburt: Was there a previous structure on the pad that the addition was built on?

Brennan: There was a small lean to the back of the barn and a silo on the concrete pad. Not another building.

Tilburt: I can see where you would think that you could build on the existing pad, because someone told you, but I do not believe it to be the case.

Brennan: A friend in Paw Paw who completed a similar project told me that the pad was part of the structure.

Tilburt: I would like to see that statute, if it does exist. Why did you think you could modify only one of the 3 buildings?

Brennan: Power lines and setbacks limit the structures I can modify.

Tilburt: From a practical standpoint you could only modify one building?

Brennan: Yes.

Tilburt: Are the power line easements included in your deed?

Brennan: I was told they were.

Gross: There are required setbacks for power lines roughly 15 ft. either side. May not be recorded.

Blair: The northern acres of your property. Are they buildable?

Brennan: I have been talking to EGLE. Wetlands could be a problem. I am exploring the ability to build a bridge across Duke Creek.

Blair: Caution of who you listen to and you may have been sold a bill of goods.

Brennan: I would have bought the property either way.

Blair: But you also built a structure without the proper permit.

Brennan: I did, and I apologize for that.

Blair: I read the apology.

Crofoot: Did you investigate building to the west of the barn?

Brennan: Considered that option but had concern for the power line setbacks.

Tilburt and Gross: Power line setbacks need to be verified.

Tilburt: The service feeder from the 3 phase power line can be relocated.

Brennan: It runs the entire length of property.

Tilburt: It does not show that on the sketch.

Powell: Any addition to this barn would be in the 100 foot setback.

Gross: Need to clarify that this is no longer a barn, it is an accessory building because it is no longer being used for agricultural purposes.

Tilburt: What is it going to be used for?

Brennan: Primarily used for storage and vehicles. I will eventually put a private dance floor in the hayloft. I own an Irish dancing school. It will not be used commercially but for private parties and that sort of thing. With a sprung wood dance floor in the belly of the barn.

Tilburt: That is a lot of vehicles.

Brennan: I have 3 cars, 2 trucks, and 2 tractors.

Tilburt: That doesn't take 2000 square feet.

Blair: I wonder if the power company would give you a variance so you could build under a line.

Gross: That is a safety issue.

Tilburt: We've had the owner presentation and questions from us. Now we will go to the public part of the hearing. State your name and address.

Bonnie Zibiski: The property was my grandmother's and my dad's. The lean-to that was on there was about half the size of the lean-to that is there now. I feel the new structure is bigger than the concrete pad that was there.

Blair: I question if the structure must have added concrete for structural support.

Brennan: Yes, concrete was added to support the posts.

Powell: What was the size of the slab originally?

Brennan: I believe it was 44 x 54.

Tilburt: The building does show as 44 x 54.

Brennan: Yes. And the term 'lean-to' has been loosely used. It is a closed structure and modification to the barn. It has a garage door, electric garage door and sliding doors on the other side.

Mike Forrest: 1748 18 Mile rd. Lives across the street. The zoning should stay in place to protect Duke Creek. It is a special waterway and we should do whatever we can to protect it. I also feel that it was not designed to conform with the structure it was added to.

Bob Ellick: 1528 Hanna Ave. I have several issues with regards to this property. Duke Creek is a very sensitive area with brown trout. It is a huge deal with the State of Michigan and that's one of the best kept secrets in the State. This is a large attraction to the area.

Easements on the property. There is no survey, and everyone is guessing.

Concrete does not create the same impermeable effects as the roof of a building. Roofs do heat water for after a rain. This will affect the runoff to the creek. The warm water will affect more than the creek. It will also affect the wetlands.

A building should not be built just because there is concrete there. The building itself is a concern. No building permits or inspections were done on this structure. From the aspect of the building inspector. This building must be looked at before approval of the variance. I am surprised that nobody mentioned to her to get with the township before building this structure. This is significant for the township and very important for the water.

Tilburt: Just one comment on Bob's remarks. I do not agree that water off a roof and water off a concrete pad would necessarily be different with heat.

Ellick: It's the same amount of water but does not have the effect of a 6/12 pitch roof run off.

Tilburt: Brennan did say she was going to get an engineer to check the runoff situation.

Blair: It's not that its more run off, but much closer to the creek with less time to cool.

Tilburt: Brennan. When you get the engineer involved ask the issue of the temperature of the runoff water.

Brennan: I will talk to engineers about adding vegetation and trees may help. I am familiar with living on a natural waterway. I pledge to do what's necessary to maintain the integrity of it.

Crofoot: Did you have an actual builder build this structure?

Brennan: Her contact continually told her she did not have to get permits because the barn was built prior to 1930.

Gross: As we look at this structure now. We keep referring to this structure as a barn. It is now an accessory building and is a legal non-conforming structure. Because it is non-conforming, when something was torn off, it can not be replaced.

Brennan: This was talked about, and Jerry was about to give me the zoning ordinance.

Gross: It was ready when we realized the setback issue. Then revoked this application.

Skelonc: Once the original use changed because it was no longer being agriculturally used, then the zoning changes.

Gross: No, when a structure no longer conforms to the zoning, it becomes a legal non-conforming structure in current zoning. A legal non-conforming structure cannot be replaced or added on to unless it becomes compliant with current zoning.

Tilburt: The building inspector did get a letter from a reputable engineer.

Ellick: I got the letter from the engineer but have several questions about this letter.

Tilbert: Brennan. Please contact your engineer and have questions answered from building inspector Ellick.

Al Myers: 1560 18 Mile. I am around the corner. That location floods. It has flooded several times in 40 years.

Tilburt: No other public discussion tonight. Closed public comment at 8:40. Now the board can say anything they would like to about the subject.

Skelonc: Major concerns on the amount of water, controlling this water and associated runoff. This is a big endeavor and wishes owner good luck.

Blair: This is an example of not following the rules. She has a possibility of a great financial loss. Has the possibility of problems with Duke Creek. Problems with building codes and violations. You're doing a lot more work now when this could have been caught early. This can cause great financial and environmental stress. This is a good example of what not to do.

Powell: Building and asking forgiveness is extremely tough, especially when you come to the zoning board of appeals. Giving someone a variance is extremely heavy on a township. I am sure there are several buildings and pieces of concrete along Duke Creek. Giving someone a variance because there was concrete present, is going to open the flood gates to future variances. This also brings bigger problems of adding onto a small building. We have the size factor that is going to be an issue when setting precedence.

Tilburt: So, we have enough clarity to give her some direction. She has to talk to her engineer again.

Ross: After the applicant heard all our discussion, she could also come back and ask for something else at the next meeting. The applicant has a month to work with the township.

Brennan: I can work with Gross and see what other solutions may be available.

Tilburt: Structural engineer and the storm water civil engineer and talk with Gross and Ellick. Keep communicating with Gross.

Motion by Blair to table this issue. Second by Skelonc. All ayes.

Old business:

Correspondence Received.

A. Variance request Lewandoski. Attached garage @ 3218 Rau Dr. ZBA was given items and sketches.

B. 2024 Meeting Schedule distribution.

Report from township representative.

Stout not present

Report of the planning commission representative.

Tilburt: Cedar Springs Retail management not heard from presently.

New business:

Tilburt: None

Motion for adjournment. Motion by Skelonc. Second by Blair. All ~~yes~~.

Adjourned at 8:56 pm

5130 61

Next Scheduled ZBA Meeting: Wednesday, December 13, 2023

Secretary:

Date:

Brynnette Proctor
1-3-2024

To Clerk
1/2/24