EMMET COUNTY ZONING BOARD OF APPEALS TUESDAY,
SEPTEMBER 17, 2019
EMMET COUNTY BUILDING
COMMISSIONERS’ ROOM
200 DIVISION STREET
PETOSKEY, MI 49770

MEMBERS PRESENT: B. ALEXANDER, T. DRIER, B. BATES, M. BUDAY

ALTERNATE MEMBER PRESENT: C. LIVELY (Alternate Member)

MEMBER ABSENT: J MALOTT

STAFF: N. SALAR, M. LINEHAN

I. Call to Order and Attendance
Chairman Alexander called the meeting to order at 6:00 PM. All members were present except Malott.

II. Minutes of August 20, 2019
Drier motioned approval of the August 20, 2019 minutes as presented. The motion was seconded by Lively and passed by unanimous voice vote of the members present.

III. Cases

1. CASE PZBA 19-011 Richard Simon for Vincent Simon Estate, Modification to private road width standard, 4028 River Road, Section 28, Bear Creek Township

Legal Notice: A request by Richard Simon for Vincent Simon Estate to allow access to more than three parcels on an existing private road less than 50 feet wide on property located at 4028 River Road, Section 28, Bear Creek Township. The property is tax parcel 24-01-19-28-100-008 and is zoned FF-1 Farm and Forest. The request is for an exception to allow a private road narrowing from 50 feet to 23.19 feet per Section 26.13.7 of the Zoning Ordinance.

Packet Items: Updated site plan

Salar noted that this case was reviewed last month. The parcel is on the west side of River Road. The request is for an access road of less than 50’ in width. This access is currently for five parcels. The parcel is zoned FF-1. The site plan survey was shown. Originally the request was for one point in the road to be 23.19’. It was revised after obtaining an easement from a neighbor and now is 40’ wide at the narrowest point. The access to the existing parcels is non-conforming and was created through quiet title. A letter of support and a letter of opposition was received. Along with the revised site plan an updated plan for parcel 2 that shows all buildings on the site was submitted. There is a shed and a barn which would fall in the easement and a building that would sit within the front setback. There are two residences on the lot both
which appear to have been permitted.

Alexander stated that he was happy to see that some property was able to be gained through the easement.

Richard Simon, applicant, stated that they were able to enlarge it some but still would need a 10’ variance. The narrowest part is now 40’ wide. Alexander asked what will happen with the electric poles and the buildings that are in the easements. Simon stated that they will have to apply with the power company to move poles. Alexander stated that he would think that the poles should be moved first. Are we only concerned with the section from River Road to the property? Salar stated that this is the area in which the bottleneck is, after that the easement is 50’ wide again. Alexander asked Simon if the neighbor was not able to give any more for the easement. Simon stated that he can’t because of her building located on 200-018.

Drier stated that her concern was with the mobile home to see if it was permitted. Since then, the permit has been found from 2003. She stated that she still is concerned about emergency and fire access. How would a motion be worded to be sure that the buildings and poles are removed? If this moves ahead, a motion would have to have restrictions included.

Lively stated that when he suggested the easement from the neighbor last month he was hoping that they would gain the whole width needed. The least common denominator in this whole situation is that restriction. Anything new developed on the larger parcel would require the 50’ wide access. He asked if another 10’ easement is possible from the neighbor. Salar stated that the 40’ is the front setback. The house would be in the setback if it was moved anymore. Simon added that there was a lawsuit settled for the driveway to the north and they won’t budge. He doubts that the other neighbor would be willing or able to give anymore.

Alexander stated that it seems that 40’ would be adequate if the road was wide enough but it isn’t very wide.

Bates stated that it seems that the parcel owners are stuck between a rock and a hard place but he does feel better about a 40’ wide access than he did last month.

Buday asked what happens when the larger parent parcel becomes something more in the future. Are they aware of the requirements for roads, turnarounds, etc. He cautioned making sure to look to the future with any decision made tonight. Any new development would be a whole new ball-game. This review is only for this section. Simon stated that this is a good point. He stated that he has all of the required specs from the County as to what they would need and would be required should they develop that land. He is aware of all of this. At this point they have gotten as far as this pinch point in the access. The steel building will be easy to move, the barn a bit more difficult. The power poles need to be moved.

Lively stated that if you look at some of the other subdivisions in the County they have a single ingress/egress and they don’t seem to be 50’ wide. Alexander stated that the fact that the requirement was 30’ wide for so long and was increased to 50’ tell him that it obviously became an issue and a need to expand that minimum. Last month it was mentioned that school buses didn’t go down that road. This could change at any time.
Drier stated that she is a little more concerned now after the comments that they are looking into what they would need to do with the property; it sounds like they are thinking of putting in more homes. They wouldn’t have gone and looked at drainage and such if they weren’t. Likely there would be families in there if this happened.

Alexander stated that the removal of the buildings and the power poles is something that will have to occur; the poles won’t be cheap to do. He stated that the applicant has said they’d like to divide the parcels and likely it will happen. Simon stated that there is no one in the family that can afford to put a road in there. There will be eight of them owning the larger piece. This would have to come back for approval and likely wouldn’t happen for 15-20 years down the road.

There was no public comment on this case.

Bates stated that this review would not be supporting a subdivision, it is allowing parcel two to be a stand-alone parcel. Alexander stated that the variance request is for the road width itself. Drier stated that she feels better that it is 50’ wide past this point.

Bates made a motion to approve Case PZBA19-011, Richard Simon for Vincent Simon Estate for a variance to the width of a private road to allow one additional lot split on tax parcel 24-01-19-28-100-008, 4028 River Rd, Section 28, Bear Creek Township as shown on the survey dated 9/10/19, based on the facts presented in this case, and because no good or practical purpose would be served by strict compliance with the standards of Section 26.13, the new lot and existing residential structure are conforming, the modification will not have a negative impact on adjacent properties and on condition that the 24x32’ barn (dilapidated) and “steel shed” be removed as well as the obstruction of the utility poles be adjusted to be outside of the 50’ easement to allow for a 40’ road width beginning at parcel 2 extending to the east edge of parcel 2 only. Any remaining portions or future portions of the easement are to be 50’ in width. The motion was supported by Lively and after some discussion and clarifications of the wording of the motion, passed on the following roll-call vote: Yes: Drier, Alexander, Bates, Lively. No: None. Absent: Malott. Abstain: Buday (wasn’t present during the last review, Lively voted as he was present during the original review.)

2. CASE PZBA 19-012 DWS Builders, Inc for Johnson Trust Company, Front and Waterfront Setback Variances, 6151 Graham Rd, Section 19, Springvale Township

Legal Notice: A request by DWS Builders of Michigan Inc for Johnson Trust Company for setback variances and expansion of a non-conforming use at 6151 Graham Rd, Section 19, Springvale Township. The property is zoned RR Recreational Residential and is tax parcel number 24-14-17-19-301-026. The request is for a front yard setback waiver (40 ft. setback variance) and a waterfront setback variance of up to 34 feet to allow a second story addition to the existing non-conforming cottage. The reviews are per Articles 23 and 25 of the Zoning Ordinance.

Packet Items: Request & location map, tax parcel map, application, variance request description, photos noting changes, floor plan-1st flr existing, 2nd floor addition plan-new, elevation plans, site plan, zoning evaluation, letter from Haggard’s P&H, letter from Nannie Turrell, three additional support letters passed out at meeting provided by applicant.
Salar presented this case. The parcel is located at the end of Graham Road on Crooked Lake. The aerial was shown. The parcel is zoned RR. There is an existing residence and existing guest cottage located on the parcel. The request is to allow a second story addition to the cottage. Photos, floor plans, and elevations were shown. The cottage is non-conforming both in use (there is an existing residence on the property as well) and location (it is located 1.5’ from the right-of-way and 13.5’ from the water). There is a utility pole that is very close to the building. Salar noted that current setback standards for this parcel would be 40’ from road right-of-way, 10’ on the sides, and 60’ from the water. What is being requested is 1.5’ from the road right-of-way and 32’ from the water. The township has recommended approval for this current request. There was a variance granted for a residential addition to the main residence in 1998. Letters from neighbors have been received both in support and opposition to the project.

Alexander asked for clarification on the distance to the water. The cottage is located 13.5’ from the water to the deck and 17’ to the cottage.

Julie Strickland, owner and Patrice Carlson, DWS Builders were present.

Carlson stated that they met with the township several months back and were asked to identify alternate options with the owner. They went back and forth on some options and decided to withdraw the previous case and start over at a later date. They have adjusted their plans and re-applied to the ZBA. The spiral staircase was originally outside of the building but they moved it inside on this plan. This will be the access to the second floor. The roofline is an A-frame now but they would like to flatten it so that they can get furniture up to the second floor. There is an existing bump out on the first floor now where utilities would be run upstairs. Carlson stated that she has discussed the utility pole with Consumers Energy. They do not want to move it unless it broke because it also accesses another parcel. They would like the mast moved to the front of the cottage and line installed underground from the pole in that area. They have advised her that even if the pole were to break they would likely only move it 8-10” from its current location. They looked at taking the power back to another pole but it still would have to go through trees and over a shed so that won’t work.

Strickland stated that she understands that the cottage is non-conforming but it has been this way since they purchased the property. They are looking for more room for their family as it is very tight now when they are here. They simply want to go up for more space, not out at all. They have had letters of support from the neighbors and she brought three more tonight from their closest neighbors.

Bates stated that he visited the site and is curious as how the building is being used. It is labeled as a garage on the plans. The letter of opposition from a neighbor says it’s used as an Air BnB. Carlson stated that it is mislabeled on the plans, it is a cottage not a garage. It has been used as an Air BnB. Bates stated that it is incredibly close to both the road and the water. This is not an unfamiliar situation but it is quite close in this case.

Lively asked what the extent of the remodel will be. Carlson stated that the windows and siding will be done, the current roof on the cottage would come off, they’d frame for the new level, insulation, and move electric. The main level will not be remodeled. Lively asked if the house is on public sewer. Strickland stated that it is. Lively asked if there are any footprint changes proposed. The applicant replied, no.
Drier stated that she is concerned about the pictures that were shown. It doesn’t seem complete to her. Will there be an open second floor? Carlson stated that it would be an open second floor for sleeping space only. Drier asked if there is kitchen facilities. Carlson responded, no.

Lively asked if there will be insulation or electric work done on the first floor. Carlson stated that some electrical may have to be moved to get up to the second floor but there will be no interior wall changes. There was a permit issued in 1997 to raise the house and replace the foundation. Strickland stated that the cottage gets winterized and drained in October and is opened up again in May.

Buday stated that we would be allowing an increase in the non-conformity by 100% if the second floor is put on. He understands the owner’s want to do this but we have to remember that the variance runs with the land not the owners. He doesn’t see where the practical difficulty is. The site and buildings are very non-conforming and there are very significant encroachments into the required setbacks. Carlson stated that there is a great cost impact to do any work to increase living space in the main house. Buday stated that we cannot look at cost. Practical difficulty does not speak to him in this case. It is one thing to allow an increase in non-conformity if you can hang your hat on practical difficulties but this request is so outside of the boundaries. Regardless of the reasons that this owner needs the space now any variances would be there for the next owner.

Alexander stated that he shares a lot of these same feelings. A request like this is an uphill battle. He stated that his hat is off to the owners for enhancing the lot. We are to try to control non-conformities not allow them to be increased.

Lively read from Section 23.03.1. He stated that there is no additional land outside of the existing building being used or expanded. Alexander stated that by adding a second story they are doubling the potential usage. Bates stated that sometimes with non-conforming buildings we are looking at them because trees fall on them and people want to rebuild. This case is about wanting more room.

Bates noted that page two of the zoning evaluation was missing in the packets. A complete copy was given to him.

Alexander went through the review items as laid out in the zoning evaluation.

Strickland asked who wrote the opposition letter. A copy was given to her and Bates read the letter aloud.

Buday asked if they would be able to meet setbacks if the cottage was moved. The building envelope was pointed out on the site plan and it would not be able to be moved to accommodate setback requirements.

Bates stated that the primary residence has a variance granted for both the road, water, and side.

Lively asked what the present pitch on the cottage is. Carlson stated that it seems to be 6:12. He asked if the roof was replaced and an attic truss was used if that would still require a variance. Buday stated that it still becomes habitable space and would still increase the non-conformity. Lively asked if we have a zero tolerance then for increasing the non-conforming uses. Buday stated that the intent of this section is to not increase and not encourage non-conformities. This request is very far out of conformance. Alexander stated that if this were a request for a primary residence it could be a different situation but there is a primary use on the property that is still being used and this request is an expansion of a non-conforming
use. Buday noted that the County ordinance is often less strict than some of the local city or townships’ ordinances that have their own zoning. Alexander stated that we are trying to protect the waterfront with the increased setback requirements. Buday stated that a dimensional variance is different than a use variance; they have not shown a practical difficulty.

There was no public comment in this case.

Strickland stated that this cottage is used as an Air BnB in the summer but is not used this way when her family comes up. It is not used when her brother in law comes up either. It was inherited with the stipulation that he is able to use the guest cottage but since there isn’t enough room, he hasn’t been able to bring his family with him. She stated that she gets the feeling from the opposition letter that they think that she wants more room for the purposes of the Air BnB but this is not the case and wouldn’t be a wise fiscal decision. They are not encroaching anymore towards the road or water and are not even going up as high as the maximum height. The trees are all staying and it keeps the taller building from looking like a monstrosity.

Alexander stated that the property looks fine but once a variance is there it carries on with the property.

Buday made a motion to deny PZBA19-012, DWS Builders of Michigan Inc for Johnson Trust Company for an expansion of a nonconforming use, a waterfront setback variance of up to 34 ft. and a front yard setback waiver of 40 feet to apply to an existing non-conforming cottage at 6151 Graham Road, Section 19, Springvale Township, tax parcel number 24-14-17-19-301-026 as shown on the site plan dated May 20, 2019, there is no practical difficulty demonstrated by the applicant and because the subject parcel is extremely out of conformity. The motion was supported by Drier and passed on the following roll-call vote:  Yes: Drier, Alexander, Bates, Buday. No: Lively. Absent: Malott.

3. CASE PZBA 19-013 Nicole Cornwell, Waterfront Setback Variance, 5444 Jones Landing Rd, Section 31, Bear Creek Township

Legal Notice: A request by Nicole Cornwell for a waterfront setback variance of up to 7.75 feet to apply to a porch at 5444 Jones Landing Rd in Section 31 of Bear Creek Township. The property is tax parcel 24-01-19-31-100-009 and is zoned R-2 General Residential. The request is to allow a covered porch within 52'4" of the Walloon Lake shoreline. Review will be per Section 22.11.1 and Article 25 of the Zoning Ordinance.

Packet Items: Request & location map, tax parcel map, application, email from James & Denise Jacob, site plan, elevations, zoning evaluation, letter from Haggard’s P&H, letter from Evan Lyall, letter from Patrick & Carol O’Keefe

Salar presented the location of this parcel which is on Jones Landing on the waterside. The parcel is zoned RR. The aerial was shown. There is currently a residence on the property with a porch on the lakeside. The proposal is to enclose a section of the porch which would encroach on the waterfront setback. Salar explained that there is construction at the site with permits. The portion of the porch that is to be enclosed would need a 7’8” waterfront variance. The township does not make recommendations on ZBA cases. Support letters have been received. Site plans, elevations, and photos of the site were shown. Salar explained that the current deck as is does encroach into the waterfront setback but it is low enough to be approved.

Nick Liebler was present for the applicant. He stated that they are currently doing construction on the
house to try to beat the weather. They had originally intended to put a bedroom on the waterfront side but decided to move it to the other side of the house to conform with setback standards. The house was purchased a year ago. The owners are looking to have a covered porch on the lakeside. He explained that the dashed line of the site plan is existing and they are only planning to enclose a section of the porch. It is currently one story open-air. The enclosed section will have no living area above it. The sun comes in very hot and low on the west and they are looking for a place that they can be protected from this and still enjoy their deck. He stated that from a practical difficulty standpoint he realizes that it is difficult. It is hard to argue since they have a home but the home is where it is and can’t be moved. There has been some work done on the south side of the house as well in order to clean up discrepancies dealing with well and LP tank locations. The previous owners had put them on the property without a survey. The new owners are working to remedy these encroachments.

Alexander noted that the ZBA location sign was not posted and therefore the site was difficult to find. Liebler stated that it was at the site but they have had to empty all of the contents for the remodel so it may have been lost. Alexander stated that the parcel is 2.5 acres and asking for more encroachment is hard. Is there any way of this porch being brought back or shrunk farther away from the waterfront? Liebler stated that the owners actually wanted more. He feels that the proposal is the minimum that they can do to both minimize the encroachment and still do them justice to give them what they want. Alexander asked about the dimensions of the porch. Liebler stated that at the largest point is 22’ in width and 16’ long.

Lively asked if there are steps down now. Liebler stated that there are steps but they are going to be landscaping as well so the grade may come up farther.

Buday stated that the plans show an area of deck to be removed. On the plans, both the deck and garage are called structures in both areas but one is a deck, one is a garage. The deck isn’t really a trade off as it is allowed as it is now. The landscaping isn’t finished so there may be more patios and such. The argument for practical difficulty has seemed to be that because everyone else has one, they should as well. He is concerned about the size; does it have to be that big? There is no floor plan to indicate the layout. Liebler stated that they want room for a dining table and seating. Buday stated that this is a want; there are many larger and many smaller decks along the lake.

Drier stated that they bought the house a year ago and must have liked what they saw. They've gone right into construction and wanting more though. It sounds like wants to her and not sure that we should grant a variance for this.

Lively stated that although the structure encroaching would be a porch, it would have a roof over it which means a high possibility of being enclosed and becoming more living space or an all season room someday. He is having some difficulty with this. He is not sure that it is needed. It looks great on paper but there has to be a place to put it.

Bates stated that he has no concerns with the proposal. He feels like the existing footprint is coming back and appreciates that it is not encroaching on neighbors. This is the first case in a while that has had unanimous support from neighbors and that carries weight with him.

Lively asked if the water levels are up on Walloon Lake. It was explained that it is regulated by the Bear
River spillway. Bates explained that the ordinary high water mark that is on the plan is what the waterfront setback is measured from so the lake levels wouldn’t be looked at. Liebler stated that it does fluctuate a bit.

Drier asked the board if it would help anyone besides her to have a better diagram to review. She said that she understands what the request is but doesn’t have a vision of it being enclosed. Buday stated that it would be helpful. Liebler asked if it could be a condition of approval. Alexander explained that the request for more information is to be able to make a determination. If it were denied, a year would have to pass before it could be requested again. Liebler stated that they are chasing weather and if this information wouldn’t change the opinions he’s not sure it would be helpful or worthwhile. Drier stated that she can make a decision if need be but wanted to give that option. She wasn’t able to find the site so she wasn’t able to see it. Bates asked Drier what she is looking for that hasn’t been provided. There are elevations included in the packet. Drier stated that she is worried about the landscape extensions. Bates stated that if the concern is about what you might see it could become a condition of what you don’t want to see. If the concern is regarding it becoming a four-seasoned conditioned space, this could be a condition in a motion. Liebler stated that it could be labeled as uninhabited space. Alexander stated that this has been discussed many times before. If there is a roof over a porch it makes it very hard to enforce if after the fact someone decides to enclose it. Buday asked about the dimension from the face of the building to the gable end of the porch. Liebler replied 16’4”; 18’4” with overhang.

Liebler noted that although it is a good sized property, the majority of it is wetlands.

Buday went through the review points for this case. He stated that he doesn’t think that the issue is self-created as they bought a conforming house, they can still use the property, he is unsure on whether the request is the minimum variance necessary, and he doesn’t think that the variance would have any adverse impacts on neighbors. He stated that he is hung up on point two as there is a permitted use on the property.

Bates stated that he does agree with all of those points but he feels also that there have been several cases that may or may not check all of these boxes that we’ve reviewed. He stated that he is very good about not taking finances into consideration. This is the first case in a while that there have been no neighbor objections. The 7’ doesn’t bother him since the current deck is bigger than that. Bates stated that he is glad that there are multiple people on this board to make the decision. If it were a straightforward request it wouldn’t be here.

Alexander stated that it is a large piece of property. They obviously are not going to move the house.

Bates stated that he feels that if the house were smaller and on a cheaper lake it would be looked at differently. This is a massive property on an expensive lake that owners are dumping money into. He stated that he feels that this isn’t emotionally appealing. He thinks it would be approved somewhere else. He is trying to keep finances out of his decisions both positive and negative.

Liebler stated he feels that this is the minimum variance request option as they were hoping for a larger porch. They came in with the minimum that they needed without being greedy.

Drier made a motion to deny PZBA19-013, Nicole Cornwell for a waterfront setback variance of up to 7.75
ft. to apply to a porch at 5444 Jones Landing Rd. in Section 31, Bear Creek Township, tax parcel number 24-01-19-31-100-009 as shown on the site plan dated Received August 26, 2019, because there is no practical difficulty and there are options without a variance. The motion was supported by Buday and passed on the following roll-call vote: Yes: Drier, Alexander, Buday, Lively. No: Bates. Absent: Malott.

IV. Public Comments: None.

V. Other Business:

- There was continued discussion from last month regarding a checklist for township review. Also suggested was some sort of information to be handed out to the applicants regarding what the items to be reviewed will be. Perhaps a worksheet to be turned in by the applicant similar to the impact statement that is turned in for Planning Commission cases that would require them to respond to the review criteria with their application package.
- Enforcement Report: Distributed, some discussion

VI. Adjournment:
Alexander called the meeting adjourned at 7:51 PM.

Minutes Certification:

Mark Buday, Secretary Date