EMMET COUNTY ZONING BOARD OF APPEALS  
TUESDAY, FEBRUARY 18, 2020  
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 January 21, 2020

Buday motioned approval of the January 21, 2020 minutes as presented. The motion was seconded by Drier and passed by unanimous voice vote of the members present.

III. Cases

1. Case #PZBA20-001  Kyle Wright, FRONT YARD & WATERFRONT SETBACK VARIANCES, 8141 Marathon Way, Section 36, Maple River Township

Legal Notice: A request by Kyle Wright for a waterfront setback variance and front yard setback variance to allow construction of a new dwelling at 8141 Marathon Way, Section 36, Maple River Township. The parcel is a non-conforming portion of a platted lot (Devil’s Elbow Plat), zoned RR Recreational Residential and is tax parcel 09-14-36-151-002. The request is for a waterfront setback variance of 41 feet from the boat well to the dwelling, 9 feet variance from the traveled portion of the Crooked River, and 30 feet variance from the private road access. The Zoning Board of Appeals may consider up to a waiver of the front yard setback from the private road access. Review is per Articles 23 & 25 of the Zoning Ordinance.

Packet Items: request & location map, tax parcel map, application, 1/20/20 site plan, warranty deed, letter from Haggard’s P&H, site plan with notations and possible alternate option by PZCR staff, zoning evaluation, Maple River Township recommendation worksheet

Salar presented this case showing the location map on the PowerPoint. The lot is a legal non-conforming lot on Crooked River which wraps around the parcel resulting in two waterfronts. It is zoned RR and the request is to allow new construction of a residence with attached garage. The applicant is requesting setbacks of 19’ from the existing boat well and 51’ from the river. Maple
River Township had recommended approval with the adjustment put forward by staff. Their worksheet was passed out to the members tonight. Salar explained that on the staff revised site plan the house location was tweaked to better meet the setbacks. With the suggested change, the 60’ waterfront setback would be met but a road setback variance from the easement would still be needed as well as from the boat well. The applicant’s site plan along with photos of the site were shown. She did note that the parcel went under review of the Sanitary Code of Appeals in regards to the septic. The drain field location is limited to where it is shown on the plan due to their review and approval.

Lively asked why this is a non-conforming lot. Salar showed the approvable building envelope without variances which is extremely small and triangular.

Kyle Wright, applicant, was present. Alexander asked him about the township meeting and whether he is in agreement with the proposed changes to the plan. Wright stated that they did discuss at the township meeting and he is ok with it. Alexander asked if he was aware of the building envelope when the property was purchased by him a couple of years ago. Wright stated that he did. He was shown the building envelope and was told that it was a non-conforming lot. He decided to purchase and see if he could obtain the proper variances for what he wanted to do. Alexander asked if this was looked at before the purchase. Wright said that he had discussions with the realtor as well as with Doernenburg regarding the property and his options. He was told that due to the non-conforming status, he would be able to request the variances and would likely get some relief. Alexander stated that the proposed revision would allow for the required 60’ from the river but not from the boat well. Wright stated that he put the boat well in about a year ago with the proper permits.

Lively stated that the adjustment of the house to the east is what he was thinking would be acceptable. The setback from the water is more important that the side yard or the front yard setback. The lot line is actually on the other side of the 20’ easement. He asked Wright how far the easement goes. He stated that it goes all the way to the end. It is accessed by the neighboring property. Alexander asked if the easement was there when he purchased the property. Yes.

Drier stated that she has concerns about the neighboring property 151-001. Wright stated that he was told by another neighbor that that parcel had been for sale for about 25 years. Drier stated that she knows that we don’t take views into consideration but this would be one issue if the owner decided that they wanted to build on that parcel. Salar stated that during the Sanitary Board of Appeals meeting that parcel was discussed and it is highly unlikely that a septic would be able to be approved for that parcel. Bates stated that there appears to be a drain field there already. Salar stated that there is but it is not functioning. Wright stated that he was told that it had been put in prior to the parcel being put up for sale.

Lively stated that if the easement was not there it would be able to conform. Bates stated that it would be closer but not 100%.
Buday stated that he was glad to see that the township recommended approval with the proposed modifications. Wright stated that he just put the house in the middle when doing the site plan. Buday stated that this would be step one into making the request more conforming. The only thing he is hung up on now is because the boat well was put in, the setback from that cannot be met. He stated that he does believe there is a hardship but because the boat well was put in by him feels that it may be self-created. If it wasn’t there or was relocated, that setback could be met. He is ok with granting the road setback variance and with the house moved as proposed, the waterfront setback is met. Wright stated that it was there about a year ago. If it were to be moved, the setback to the drain field would have to be considered as well. Buday stated that this is not a deal-breaker for him but it is a piece of information he didn’t have before. He feels that the request is reasonable. He is having an issue with the requested setback from the boat well.

Alexander stated that he too thought that the boat well was there when the property was purchased as all of those lots have one. Buday stated that if the boat well were rotated and shifted slightly it would be close to the 40’ setback requirement. Salar stated that the setback is 60’. Buday stated that he wouldn’t be able to meet that even with rotating it.

Salar stated that with the proposed revision to the request the requested variances would be from the boat well and from the easement.

Lively stated that his main concerns are the waterfront setback and the septic setback as those are the environmental concerns. What if the boat well was moved to the south property line at an angle? Salar stated that the boat well was approved by the DEQ at the current location and it likely wouldn’t be approved anywhere else as you’d then have to get permits to move it and also fill the area where you moved it from which would be a significant change from what they approved. Alexander stated that we wouldn’t gain much from having it moved. Wright added that there are wetlands on the south end. Lively asked which way the water will run off of the roofline. The elevation sketch was passed around.

Bates stated that this is hard because it is new construction. It was stated that the septic field location is the only location it can be correct? Yes. Bates stated that he would like to see the home scooted to the north where the septic is so that the full 60’ setback could be met and have the septic where the driveway is. Salar stated that the soil conditions will not allow the septic at any other location. It is already a mounded and engineered system.

Lively stated that another option would be to rotate the house so that the northeast corner was closer to the easement and square it up with the easement. Buday stated that this would maximize the waterfront setback and the house would then be parallel with the easement. Bates stated that he agreed that he’d rather see it pushed toward the easement. There was discussion and manipulation of the site plan to roughly see what they could gain from moving the house.

Drier asked Wright why the boat well was placed at its current location. Wright stated that he
wanted to keep it away from the property lines and there was a low point there. He wanted to do
the boat well, then the septic, and then the house. Bates stated that likely if the house had been
put in first he wouldn’t have been able to have the boat well.

Drier asked how we would go forward if the applicant wanted to adjust his plans to what was
discussed tonight. Wouldn’t an adjusted drawing be needed? Bates stated that he doesn’t feel
that we could make an approval motion without revised drawings.

Mark Drier asked if there are power lines on this easement? Wright stated that he believes they
are now underground.

Wright asked if they could just come up with a number that would be approvable from the boat
well without revising the drawings? Bates stated that we can but would only be able to make the
best guess and if this is off even by a small amount, he would have to come back and do this all
over again. Lively stated that Benchmark should be able to easily make the adjustments and he
could bring them back at the next meeting for review. Buday stated that he should advise them to
maintain 60’ waterfront setback at the northwest corner. Alexander added that if this was voted
on and was denied a year wait may be required to re-submit. By potentially postponing he stated
that he sees light if the discussed steps are taken.

Buday made a motion to postpone this case to allow the applicant time to submit revised plans.
The motion was supported by Bates and passed on the following roll-call vote: Yes: Lively, Drier,

IV. Public Comments: None

V. Other Business:
   • Enforcement Report: Distributed with some discussion on various cases.
   • Flagpoles: Lively stated that last month he discussed a proposal to bring to the Planning
     Commission regarding making changes or clarifications to Section 22.07.07. He feels that
     there is not a definition of deep use setback. He would like to see 60’ flagpoles allowed if
     there is a deep-use setback situation and that it should be reviewed on a case by case basis.
     Drier stated that if a motion were made it would then be brought up to the Planning
     Commission who would discuss and review and make a recommendation to the Board of
     Commissioners. If approved, the ordinance could then be changed. Bates stated that he
     would like to know how he came up with 60’. Alexander stated that 60’ was the height of
     the last flagpole that we reviewed that was erected. Lively stated that in the past a 45’
     flagpole was approved at another site. He would like a definition and some operational
     box that can be worked with. Bates asked what the highest flagpole in Emmet County is. It
     would likely be the flagpole on Tribal land. Buday stated that a motion should reflect the
     gray area that came up due to the last case reviewed. Bates stated that he likes the idea of
     allowing a higher pole in a deep use setback situation but wouldn’t want the height to be
     established any lower than the highest pole in the County. Buday stated that the height
     would be determined by the Planning Commission through their review and likely would be
     discussed with engineers and make comparison to other ordinances. Drier stated that each
case before us is a single decision but those decisions can affect other pieces of property. The minutes should be referenced if this goes forward to the Planning Commission for review. Bates stated that he is fine with 60’ as a placeholder. Buday stated that there is likely a connection with windmills and could have to do with fall hazards and engineered limits. Bates stated that it all has to do with how it is anchored as well.

Lively made a motion to recommend to the Emmet County Planning Commission that Section 22.07.7 be amended to include the following: Flagpoles proposed in a “Deep Use Setback” scenario, as determined by Planning and Zoning, shall not exceed 60’ in height. It is at the sole discretion of Planning and Zoning to determine the reference point from which “Deep Use Setback” would be defined and the maximum allowed height (not to exceed 60’) on a case by case scenario. The minutes of the January 21, 2020 ZBA meeting under ‘other business-flagpole ordinance’ should be referenced. The motion was supported by Bates and passed on the following roll-call vote: Yes: Lively, Drier, Buday, Alexander, Bates. No: None. Absent: Malott.

VI. Adjournment

Adjournment: Alexander called the meeting adjourned at 7:00 PM.

Minutes Certification:

Mark Buday, Secretary

Date