

CITY OF NORTHVILLE
Board of Zoning Appeals
March 4, 2015 – 7:30 PM
City of Northville – Council Chambers
215 W. Main Street

I. CALL TO ORDER:

Chair Stapleton called the meeting to order at 7:30 p.m.

II. ROLL CALL:

Commissioners: Present: Rolland Stapleton - Chairman
James Bress – Secretary
Michelle Aniol - Alternate
John Callahan - Alternate
Patti Mullen
Ryan McKindles
Dominic Silvestri

Absent: Jay Wendt - excused
David Marold – excused

Also present: Sally Elmiger, Planning Consultant

III. APPROVAL OF THE AGENDA:

Motion Bress, support by Silvestri, to approve the agenda as published.

Voice vote: Ayes: All. Nays: None. Motion unanimously carried.

IV. MINUTES OF PREVIOUS MEETING: December 3, 2014

MOTION Silvestri, support by McKindles, to approve the December 3, 2014 meeting minutes as published.

Voice vote: Ayes: All. Nays: None. Motion unanimously carried.

V. CASES TO BE HEARD – BY CASE:

- A. Case is called.
- B. Appellant presents case.
- C. Board questions & comments.
- D. Public comments on the case.
- E. A motion (usually to grant the variance) is made and seconded; discussed then voted upon; the results are announced by the Chair.

VI. CASE #15-01

**TOM SMITH
206 RANDLOPH CREEK LANE
NORTHVILLE, MI 48167**

The applicant is seeking two variance requests for the property located at 206 Randolph Creek, Northville, Michigan. 206 Randolph Creek, parcel number 48-002-01-0585-305, is a relatively new lot that is accessed off of the north side of Randolph Street in the R-1B zoning district. The applicant is constructing a new home and is seeking two dimensional variances to allow construction of the home.

One variance is to allow a new front porch in the required front yard setback. The City's Building Official has determined that per Section 15.01 of the Northville Zoning Ordinance, the required front yard setback in this district is 25 feet. The location of the proposed front porch is setback 22.77 feet from the property line. Therefore, a variance for 2.23 feet is requested from the Board of Zoning Appeals.

The second variance is to allow lot coverage of 33.6%. The City's Building Official has determined that per Section 15.01 of the Northville Zoning Ordinance, the maximum lot coverage for this district is 30%. Therefore, a variance for 3.6% is requested from the Board of Zoning Appeals.

Zoning Appeals Secretary Bress read the case, calling specific attention to the Applicant's written comments regarding Item #6 of the Application for Board of Zoning Appeals:

The proposed house has the smaller spaces of living area (downsizing) with minimum required amenities. We feel, after lengthy design efforts to this stage, that a 2'3" encroachment for an open porch, with just front columns to protrude in a 63' frontage [sic]. Lastly, location of just (2) homes in this private setting.

Secretary Bress also referenced the January 5 Memorandum from Building Official Strong:

While not requested in the original application, we have determined that a variance is also needed for lot coverage to build the proposed home.

Secretary Bress noted that when reviewing the plan, Building Official Strong found that the proposed plan was a little larger than the building envelope.

Applicant Tom Smith, 21130 Equestrian Trail, Northville MI, was present on behalf of this variance request. Mr. Smith explained that they purchased the property in April 2014, and at that time they were shown a building pocket that would allow them to construct a home with a first floor master bedroom and a large garage. They designed their home based on this information, added the stone columns on the front, and had come to the City to request a 2.23-foot variance from the front yard setback requirement in order to add the stone columns to the front of the home.

When Building Official Strong reviewed their variance request, he found that because of the large private road easement within their lot lines they did not have enough area to permit the home as designed. Applicant Smith said that in 2000 the site was approved for a building pocket larger than the proposed home being discussed this evening, and he had supplied copies of the 2000 survey to the Board.

Mr. Smith concluded by asking for variances that would allow them to place the stone columns at the front of the home and build a first floor master as designed.

Chair Stapleton asked Mr. Smith to define the practical difficulty in this case. Mr. Smith explained that if they went by strict enforcement of the area standards, due to the easement passing through their lot they had to deduct 2800 square feet from the overall lot size.

In response to a question from Chair Stapleton, Mr. Smith said that the easement was on the property when they purchased it. However, the building pocket they were shown was much larger than they were now being told they could use. The building pocket on the 2000 survey showed 25-foot front and rear setbacks, with an 8-foot side yard setback on the north and a 7-foot side yard setback on the south.

Chair Stapleton confirmed with Mr. Smith that what he was calling a “building pocket” was actually the footprint within which a home could be constructed.

Mr. Smith continued that they were building a smaller footprint with less coverage than what was shown to be available on the 2000 survey.

Chair Stapleton commented that even with less coverage, they were still not in compliance with the 30% maximum lot coverage permitted. The requested variance to 33.6% lot coverage was about an 11% increase over standard.

Mr. Smith reiterated that when they paid for the lot they believed they were building within a certain footprint. They had only recently discovered – when the Building Official reviewed their original variance request for the front porch columns – that the lot area was smaller than they had understood because of the easement. They had purchased the lot and designed the home under a certain understanding, and now they were being told that they could not build that particular home.

Chair Stapleton said that the explanation given still did not meet the standard of *practical difficulty*. Mr. Smith said the practical difficulty was the easement decreased the lot size so much that under ordinance standard they could not build the home that they designed.

Member Silvestri explained that under the *practical difficulty* standard something more had to be shown than inconvenience.

In response to a question from Member Silvestri, Mr. Smith said that the detached garage shown on the 2000 survey related to another home planned for this site that was never built. Member Silvestri asked if the Smiths had verified the survey with the City or interacted with the City in any way to verify that the survey was true and accurate. Mr. Smith said that they had not; the survey reflected the approved building envelopes at the top of the lot split in 2000 and they had not seen any reason to interact with the City. Member Silvestri confirmed that the easement was in place when they purchased the property, and it was the same easement as was shown on the provided 2000 survey.

Member McKindles also confirmed that nothing had changed regarding the easement since 2000.

Chair Stapleton recognized Building Official Strong. Mr. Strong said that this situation was very unique because of the easement. Typically he looked at lots that had the full right for the development area and then from that point a public right of way was constructed. Normally there was a road, a curbing gutter, a greenbelt, a sidewalk and then the actual lot began. In this case there was an entire lot with a 30-foot easement going right through it. This caused a loss of almost 3000 square feet of building area that a normal lot would have. When the City looked at lot splits to approve them, zoning requirements had to be met for each lot. In this case something he felt that something got missed. While Mr. Strong normally

tried to stay neutral in cases that came before the Zoning Board, in this case the owners had purchased a lot based on an official document that was approved, and they proceeded with their plans based on that.

In response to a question from Chair Stapleton, Building Official Strong said the applicants knew the easement was there – the easement had not changed. But Mr. Strong believed that whoever approved the lot split had not been aware of the definition of *lot area* in the Zoning Ordinance, and that the easement had to be excluded from the lot area.

Secretary Bress noted that the 2000 survey showed the lot area less the easement, and that the total was clearly shown as 11,076 square feet.

In response to a question from Alternate Aniol, Building Official Strong said the relevant ordinance language was in Article 15.02 *Footnotes to the Schedule of Regulations*:

17. Land area for a public road right of way, private road right of way, or private road easements shall be excluded from the calculation of minimum lot size and lot area.

Building Strong referred to the *law of averages* referenced in Article 15 of the Zoning Ordinance. In most cases property owners had the ability average their front yard setback. In a normal street situation this could go 200 feet either way (*Section 15.02.16*) and get an average that typically reduced the front yard setback between 3 and 5 feet. In tonight's case, because of the unique situation regarding lot area, the homeowners did not have that benefit.

In response to a question from Member McKindles, Building Official Strong said the easement came to a dead end right past the property line.

In response to a question from Alternate Aniol, Applicant Smith said they had not looked at having the easement redescribed so that it was adjacent to the property line. Alternate Aniol said that by redescribing the easement, the applicant would not need a variance for a front yard setback.

Alternate Aniol asked the applicant to explain what he meant when he referred to a home "smaller than the building envelope." Applicant Smith explained that the dotted line on the 2000 survey outlined the building envelope approved at that time. The *Proposed House* on the Plot Plan dated 19 Dec 14 reflected the home they hoped to build.

Discussion followed regarding the orientation of the proposed home, which included a 15-foot setback on the north in order to allow for adequate drainage on the site.

Member Silvestri said that he was still having a hard time seeing the *practical difficulty* necessary for variance approval. With 300-400 square feet removed from the building design, the applicant would still have a 3,300 square foot home without a variance being required. Had the applicant explored all options from a design perspective to still build within the legal building envelope? Applicant Smith said they had explored all options, and the home could not be built with a first floor master bedroom with almost 400 square feet removed from the buildable area.

In response to a question from Alternate Callahan, Mr. Smith said that the lot was not unbuildable if current standards were met; however they could not build the home that they had designed with a first floor master bedroom. They could build a two-story home, but they did not want to do that.

Member Mullen confirmed that the applicant's builder or architect had never gone back to the City to check the buildable area, and that nothing in the Zoning Ordinance had been changed from that time that would impact this lot.

Mr. Smith said that the only thing that had changed was the original approved building footprint.

The Chair recognized John LaCroix, Yesteryear Building Co., Northville, MI. Mr. LaCroix said he was the designer for this project. He reviewed the timeline regarding this property. Approximately 15 years ago the owner of the property, Randy Dickinson, had restored the front house and was going to split the rest of the property into 3 lots, as he could accomplish this split and still meet zoning requirements. Mr. LaCroix convinced Mr. Dickinson not to do this, but rather to split the rest of the property into 2 large lots, resulting in a more aesthetically appealing outcome. The property under discussion this evening was one of those lots, and had a large expanse with a flat front yard and driveway.

Mr. LaCroix said that the original variance request was for a small 2 foot 3 inch encroachment into the front yard setback for two piers that would not be significantly noticeable. Regarding buildable area, in 2000 the footprint shown was deemed legal, and the home proposed this evening was smaller than that original footprint. This was a unique situation, because of the easement going across the front of the property that was servicing the home at the end of the road. The easement constituted a unique situation that was the hardship in this case.

Mr. LaCroix added some comments regarding the vast front of the house, the treed setting, etc.

Mr. Smith said that his hardship was that under current standards, he could not build the house.

Alternate Callahan said that even under the 2000 survey, any builder would still have to submit plans to the City and comply with the Ordinance.

Member Mullen confirmed that the other homes on Randolph Creek Lane were constructed without the need for a variance.

In response to a question from Alternate Aniol, Planning Consultant Elmiger said the required width of an easement was 30 feet. In the current case, the easement had to be a private road because it was accessing three lots; less than that would require a driveway.

Member Silvestri said that the Board did not actually have a copy of the City's approved plot plan for this lot split. He understood that the City approved the lot split, but he was not sure that the City had actually approved the plot plan as presented this evening.

Member Mullen pointed out that the 2000 survey was not marked *approved* by the City. Was the approved plan available? What if there was no approved plot plan? What convinced the applicant that the plot plan was approved?

Mr. Smith said they received the drawing from the survey company. He had never seen anything that was stamped "approved." Mr. LaCroix said the plots were approved as far as meeting ordinance width and depth requirements, etc.

Chair Stapleton brought the discussion back to the matter at hand. The applicant was before the Board because he wanted to build a home that was not permitted under current ordinance standards.

Referring to the earlier question regarding the minimum width of the private road, Planning Consultant Elmiger quoted from the Manual of Uniform Criteria and Design Standards for Construction for the City of Northville, which listed the road serving the 3 lots being discussed this evening as a Type 3 Private Road, and stated that *“these types shall be centered on a 30-foot wide private road easement.”*

In response to a question from Alternate Aniol, Mr. Smith said the road easement was calculated as 30 feet wide x 93.77 feet frontage.

Member Callahan asked if there had been any attempt to recess the front pillars so that a variance was not needed? Mr. LaCroix said that aesthetically the pillars had been placed in the best location. Mr. Smith said he thought that could be done. The more important issue was the variance request for lot coverage.

At this point Chair Stapleton opened the public hearing.

Daryl Rice, 204 Randolph, Northville, said that his was the home adjacent to the subject property. He opposed approval of this variance request for the following reasons:

- The proposed home was huge with a four-car garage.
- The builder could build a home within the current building envelope.
- After consulting with a real estate agent, he felt the proposed construction would result in a lowering of his own home’s value.
- Some time ago the builder indicated he would build a home in the 2400-2800 square foot range. This discussion occurred after the builder removed all the trees in the rear yard without a permit. There was documentation in the City that 90-plus trees would be replaced or appropriate penalties paid. The builder had also suggested that he would berm the area between the two homes because of the tree removal. Mr. Rice had been offered that he would be able to choose the tree stock. He would like the 15-foot setback to be on his side of the property, to accommodate the verbal agreement made with the builder at the time the trees were removed.

Nancy Rice, 204 Randolph, Northville, also opposed the variance request. They had lived in their home for 8 years, and Ms. Rice commented on the historic nature of their home and Northville generally, and her dismay at a large mansion-like homes being planned next door. She gave some history regarding the original lot split, and said that the lot coverage standard was put in place for a reason. She saw no compelling reason for the standard to be relaxed in order to allow a huge home with a four-car garage.

Peter Booth, 330 High Street, Northville, said that his property was on the other side of the creek, adjacent to the property currently under construction. He said the previous owner of the property may have done the current owners an injustice in that he had established a pattern of going forward and then asking forgiveness. The rules were the rules, and they should be kept to. The tree issue was also important to him – there were 90 trees removed with the promise that they would be replanted. This had not been done. Mr. Booth mentioned his dismay at large homes being built throughout the City, and opposed the variance request.

Doris Booth, 330 High Street, Northville, agreed with comments already made. She would like to see the trees replanted as promised, and the City’s ordinances honored.

Chair Stapleton invited Mr. Smith to address the concerns as stated.

Mr. Smith said the builder would have to address the tree issue. They had made no agreement themselves to replace trees. Regarding the size of the home, this was not a big-foot home. It was a 3,000 square foot home with 3 bedrooms, with a 3,800 square foot footprint with the 3.5 car garage.

In response to a question from Alternate Aniol, Building and Zoning Inspector Strong said that the footprint of 3,724 square feet included the house and the garage.

Chair Stapleton said that he was ready to entertain a motion. The Board could address both variance requests in a single motion, or could made a separate motion for each. It was the consensus of the Board to address each variance request separately.

MOTION Bress, support by Callahan, regarding BZA Case #15-01, to grant the request for a dimensional variance from section 15.01 of the Zoning Ordinance for a front-yard variance of 2.23 feet as requested.

Chair Stapleton opened the floor for discussion of the motion. Alternate Aniol commented that she felt there was a way to eliminate the need for a variance; this was to redescribe the easement so that it abutted the front property line. The road itself would remain in its current position.

Members McKindles and Silvestri expressed some doubt as to whether a shift in the easement was possible. However, this was an option that should be explored.

Seeing that there was no further discussion, Chair Stapleton asked for a roll call vote.

Roll call vote:

Bress	no
Mullen	no
McKindles	no
Silvestri	no
Callahan	no
Aniol	no
Stapleton	no

Motion failed 0-7.

MOTION Silvestri, support by Bress, regarding BZA Case 15-01, to grant the request for a dimensional variance from Section 15.01 of the Zoning Ordinance for a 3.6% variance from the maximum lot coverage standard of 30%.

Chair Stapleton opened the floor for discussion of the motion. Hearing none, he called for a roll call vote.

Roll call vote:

Bress	no
Mullen	no
McKindles	no
Silvestri	no
Callahan	no
Aniol	no
Stapleton	no

Motion failed 0-7.

Regarding finding of fact, Member Silvestri said that the variance request did not meet the *practical difficulty* standard. What was demonstrated this evening was not that a home could not be built on this lot, but that the applicants could not build a home exactly as they wanted. There was still a large viable space available for home construction.

MOTION McKindles, support by Silvestri, as pertaining to the first motion for a front yard setback variance of 2.23 feet, that the record reflect the following findings of fact:

- **The applicant purchased the lot in April 2014, and the easement for the private road as part of the applicant's claim for *practical difficulty* was granted in 2000.**
- **All the conditions described by the applicant as reasons for request for variance existed in April 2014 when the purchased the lot.**
- **The proposed footprint of this home is 3,724 square feet.**
- **The parcel has a 30' x 93' easement for utilities and a private road that runs through all 3 parcels.**

Voice vote: Ayes: All. Nays: None. Motion unanimously carried.

MOTION McKindles, support by Silvestri, as pertaining to the second motion for a a 3.6% variance from the maximum lot coverage standard of 30%, that the record reflect the following findings of fact:

- **The applicant purchased the lot in April 2014, and the easement for the private road as part of the applicant's claim for *practical difficulty* was granted in 2000.**
- **All the conditions described by the applicant as reasons for request for variance existed in April 2014 when the purchased the lot.**
- **There is a 30' x 93' easement for utilities and a private road that runs through all 3 parcels on the west side.**
- **The easement for the private road was granted in 2000.**
- **The proposed footprint of the home is 3,724 square feet; this exceeds the allowed area permitted by the ordinance.**

Voice vote: Ayes: All. Nays: None. Motion unanimously carried.

6. PUBLIC COMMENTS

In response to a question from Peter Booth, regarding the condition of a recently paved portion of Walnut Street, Chair Stapleton explained that the BZA had no authority over the condition of roads, and the question should be directed to the Public Works Department.

7. DISCUSSION

Member Silvestri asked about the tree issue brought up this evening during discussion of the variance request. How did this get resolved? Was there an enforcement arm in the City that would address or follow up on this issue?

Planning Consultant Elmiger explained current process regarding tree permits. If someone removed trees without permission, some physical evidence was required in order to enforce the tree ordinance. Regarding the tree issue brought up this evening, if the trees were removed over 10 years ago and no stumps or physical evidence remained, it was difficult to have a basis to mitigate the situations.

Chair Stapleton recognized Daryl Rice. Mr. Rice said he was involved when the trees were removed, and he had pictures of every stump with a tape measure. He brought these pictures to the City, and the City wrote a letter say there were 30 plus trees that were larger than what the requirement was. Manager Sullivan had issued a letter to the Builder and to Mr. Rice, saying the builder had to put 90 plus trees back on the site or put funds in the tree fund, and the City should have a copy of this letter.

In response to a question from Member Mullen, Planning Consultant Elmiger said that if the builder could not plant all the required trees and still have room to construct a house, there were other options, including placing money in City's tree fund.

Chair Stapleton recognized Doris Booth. Ms. Booth gave her interpretation of who was responsible for planting the required trees.

Chair Stapleton explained that the BZA was not an arbitration panel and could not arbitrate who had responsibility for planting the required trees.

Peter Booth expressed frustration regarding resolution of this issue. He also had pictures of the removed trees.

Chair Stapleton explained that the purpose of the Board of Zoning Appeals was to give relief from the ordinance when relief was due because of unusual circumstances. The BZA had to give value to the Ordinance and to the people who wrote it. Regarding the tree issue, the concerns expressed this evening needed to be communicated to the City Manager, the DPW, and to Planning Consultant Elmiger, who was now responsible for tree permits in the City.

Dimensional Variance Criteria

Planning Consultant Elmiger led the discussion of this item. She reminded the Board that they had approved – as had the City Attorney – most of the language as of March 3, 2014, to modify the language they were using for dimensional variances and to simplify the language to make it consistent with what was required by the State. The Planning Commission had reviewed the proposed language and had suggested a few clarifying changes, especially regarding what was really meant by a *self-created hardship*.

Planning Consultant Elmiger directed the Board's attention to proposed Section 25.04.b.3 Not self-created, where the following language had been added:

Examples include claiming practical difficulty for a substandard lot when the owner has sold off portions that would have prevented the practical difficulty; building during the pendency of an appeal; making improvements in violation of the ordinance; and ignorance of the ordinance. Whether the applicant actually knew about the restriction is not relevant; it is their responsibility to discover such restrictions.

Member McKindles asked why this language was not under 25.04.b.1, *practical difficulties*. Planning Consultant Elmiger said that *practical difficulty* was a general term, and all the criteria were actually used to determine practical difficulty, not just the one that is called *practical difficulty*. The other elements referred to things that contributed to a *practical difficulty*.

Member McKindles clarified that the new language in 25.04.b.3 Not self created, were examples of a self-created claim for practical difficulty.

Member McKindles suggested that the language could be tweaked. The examples given were claims that didn't pass muster. Perhaps the language should be changed to:

Examples of *unsuccessful claims*

Member Callahan suggested another change:

Examples of unsuccessful claims *include but are not limited to*

Member McKindles asked if the new language had been approved by the City Attorney. Planning Consultant Elmiger said that the City Attorney had approved all the other changes, but had not yet seen this particular change being discussed this evening. She had wanted to get input from the Board before providing the language to the Attorney.

Member McKindles said he was in general agreement with the proposed change. He might have further recommendations for specific language, and would contact the City Attorney with those later.

Cider Mill

Planning Consultant Elmiger directed the Board's attention to the December 7, 2011 BZA minutes, in which meeting the BZA had reversed the determination of the chief Building Official regarding wine tasting at the Cider Mill, and had decided that the wine tasting was not an expansion of a non-conforming use. The Cider Mill was planning an expansion of their business that currently included a wine tasting room and a wine production room in an existing building. Now the Cider Mill wanted to expand the wine tasting so that it occupied the entire building and construct a new wine production building. The Cider Mill property owner wanted to make sure that the current BZA agreed with the 2011 determination that the wine tasting and wine business at the Cider Mill was a conforming use.

Planning Consultant Elmiger further explained that the property owner was not asking for a formal determination this evening, but rather he wanted to call the situation to the Board's attention. If the Board felt that they needed to make a formal determination, the property owner would make a formal application to the BZA.

Alternate Aniol wondered if the Board could reverse an earlier Board's decision.

In response to a question from Member Mullen, Planning Consultant Elmiger said that no plans had yet been submitted for a new building, and different questions would have to be resolved concerning the building. The owner wanted to make sure the Board still felt that wine tasting and wine making was a conforming use.

In response to a question from Alternate Aniol, Planning Consultant Elmiger said that no pre-application meetings had been held with the applicant. Right now the applicant/owner was trying to discover how best to proceed.

Chair Stapleton commented that this was a search for red flags. Planning Consultant Elmiger agreed.

After discussion, the consensus of the Board was that if the applicant wanted a formal determination, he should apply for this. He would need to provide enough information to the Board so that they would

know what they were deciding. Planning Consultant Elmiger said that she would talk with the applicant about doing a planning evaluation before making a formal application to the Board.

Dimensional Variance Criteria, follow-up discussion

In response to a question from Member McKindles regarding the earlier discussion regarding dimensional variance criteria, Planning Consultant Elmiger said the Board had earlier decided to strike 3. *Public safety and welfare* and 5. *no safety hazard or nuisance*. Member McKindles remembered that those two criteria were going to be combined into one.

Planning Consultant Elmiger said that the reason those criteria were removed related to the training the Board had early in 2014. The trainer had suggested there were four major items that had been taken through the courts to support practical difficulty. Those were the items that were retained.

Member McKindles suggested striking the last sentence of proposed 25.04.b.3, as the information in the sentence was covered in the previous phrase:

~~*Whether the applicant actually knew about the restriction is not relevant; it is their responsibility to discover such restrictions.*~~

Member McKindles suggested striking the following phrase in proposed 25.04.6.5:

~~*...at its discretion and with the information provided by the applicant ...*~~

Member McKindles indicated that these were modifications he had spoken of earlier, and he would not need to email any further modification to the City Attorney.

Planning Consultant Elmiger said that she would make these changes and forward them on to the City Attorney for review and response.

Seeing that there was no more discussion or business to be covered, Chair Stapleton asked for a motion to adjourn.

8. ADJOURNMENT:

Motion McKindles, support by Callahan, to adjourn the meeting at 8:39 p.m.

Voice vote: Ayes: All. Nays: None. Motion Unanimously Carried.

Respectfully submitted,

Cheryl McGuire, Recording Secretary

Approved as published 05/06/2015