

**WHITE LAKE TOWNSHIP
ZONING BOARD OF APPEALS
JANUARY 25, 2024**

CALL TO ORDER

Chairperson Spencer called the meeting to order 6:30 P.M. She led the Pledge Allegiance.

Roll was called:

ROLL CALL

Present:

Jo Spencer, Chairperson

Clif Seiber

Michael Powell, Township Board Liaison

Debby DeHart, Planning Commission Liaison

Niklaus Schillack, Vice Chairperson

Also Present:

Justin Quagliata, Staff Planner

Nick Spencer, Building Official

Hannah Kennedy-Galley, Recording Secretary

APPROVAL OF AGENDA

Member Schillack wanted to add a discussion regarding Meeting Efficiency and Effectiveness under Continuing Business as Item B.

MOTION by Member Powell, seconded by Member Schillack to approve the agenda as amended. The motion carried with a voice vote: (5 yes votes).

CALL TO THE PUBLIC

None.

APPROVAL OF MINUTES

A. December 14, 2023

MOTION by Member Schillack, supported by Member Seiber to approve the minutes of December 14, 2023 as approved. The motion carried with a voice vote: (5 yes votes).

OLD BUSINESS

None.

NEW BUSINESS

A. Applicant: Lee & Pat Brithinee

568 Burgess Drive

White Lake, MI 48386

Location: **547 Burgess Drive**

White Lake, MI 48386 identified as 12-27-429-004

Request: The applicant requests to construct a single-family house, requiring variances from Article 3.1.5.E, R1-C Single Family Residential Maximum Building Height and Minimum Lot Area.

Chairperson Spencer noted for the record 33 owners within 300 feet were notified. 2 letters were received in favor, 0 letters were received in opposition, and 1 letter was returned undeliverable from the U.S. Postal Service.

Staff Planner Quagliata gave a brief report.

Member Schillack asked staff how much of the proposed building height was above grade. Staff Planner Quagliata said almost all of the building was above established grade.

Member Seiber asked staff if the roof area was considered a story. Staff Planner Quagliata said if there was finished attic space, it would be considered a story.

Mrs. Pat Brithinee, Applicant, gave additional information to the ZBA to support her case. She took issue with the zoning ordinance. She said her intention was not to build a three-story house; she wanted a walk-out basement like the houses that were surrounding her property.

Member Powell stated there were two ways to evaluate a zoning ordinance: the words in the ordinance itself, and interpretation of the ordinance from the ZBA. He also stated the ZBA was the only Board in the Township that could allow "breaking of the ordinance," and the applicants needed to provide reasoning as to why they were requesting the ZBA to break the ordinance.

Member Powell asked the applicants why they needed all of the house levels as proposed. Mrs. Brithinee said the first floor would be used as a living space, and the lower level would be used as a "play room" and house the mechanical units. The roof was proposed to be pitched for a solar system, and the applicants wanted to utilize the space and create a loft on the upper level.

Adam Coppersmith, 3110 North Blair, said the proposed house height on the walk-out side was approximately 27 feet from the lowest point to the midpoint of the roof. He felt the house met the height requirement as proposed. The second floor could be altered to be storage space and accessed by an attic ladder only.

Building Official Spencer said there was not a height issue, there was a story issue. Staff Planner Quagliata said the proposed walk-out basement was the issue due to the fill needed. If the fill was eliminated and the upper level was unfinished, a variance would not be needed.

Member Powell clarified the definition of a story was the habitable living space. Staff Planner Quagliata said the question of stairs versus a ladder was irrelevant; it did not matter how the space was accessed.

Member DeHart asked the Applicant how high the septic field would be above grade. Mr. Brithinee said about three to four feet.

Member Seiber asked the Applicant about the written elevations on the plot plan. Mrs. Brithinee said that was not what was proposed. Mrs. Brithinee said the whole building could be dropped by one foot.

Member Seiber said the house could not be dropped more than one foot due to the floodplain. He added the other solution was eliminating the finished floor area in the attic space.

Chairperson Spencer opened the public hearing at 7:03 P.M.

Claire Steffes, 10043 Cedar Shores, read her letter into the record speaking in favor of the Applicants' request.

Chairperson Spencer read two letters in favor of the Applicants' request into the record.

Chairperson Spencer closed the public hearing at 7:08 P.M.

Member Schillack said he initially was concerned about the lake views for the neighbors, but was not once he visited the site earlier today.

Member DeHart said the parcel was nonconforming and did not have the necessary slope to submerge a basement.

Member Powell said he understood the plight of the homeowners, but did not see a practical difficulty presented.

Member Seiber said the upper floor needed to be dropped three feet to use that floor as living space, and it could not be done due to the water table. The water table seemed to be a practical difficulty. The lot was undersized and had an unusual shape; he was amazed the Applicant met all the setback requirements.

Member Powell said the reason the house looked like a ranch was due to the garage being placed upon a five-foot artificial grade.

The ZBA discussed the standards from Article 7, Section 37 from the ClearZoning Ordinance:

A. Practical Difficulty

- Member DeHart said there was practical difficulty because the way the lot was platted and due to a high water table
- Member Powell said a basement could be constructed below the water table, but it was costly.

B. Unique Situation

- Member Seiber said the water table made for a unique situation.
- Member Schillack said he did not accept the water table as being a unique situation and added if there was a unique situation there would be nothing noticed differently from the outside of the house.

C. Not Self-Created

- Chairperson Spencer said the house proposed as it was made for a self-created problem.

D. Substantial Justice

- Chairperson Spencer said the house could be built without variances.
- Member Schillack said the Applicants would not be denying the neighbors substantial justice by obstructing view lines.

E. Minimum Variance Necessary

- Member Schillack said he was impressed at the Applicants' ability to meet the setbacks.

MOTION by Member Schillack to approve the variance requested by Lee and Pat Brithinee from Article 3.1.5.E of the Zoning Ordinance for Parcel Number 12-27-429-004, identified as 547 Burgess Drive, in order to construct a new house that would exceed the allowed building height by one (1) story. A 2,365 square foot variance from the required lot area are also granted from Article 3.1.5.E. This approval will have the following conditions:

- **The Applicant shall obtain all necessary approvals from the Oakland County Health Division prior to issuance of a building permit.**
- **The Applicant shall obtain all necessary permits from the White Lake Township Building Division.**
- **The plot plan shall be updated to show the proposed lot coverage.**
- **No mechanical units, including HVAC system or generator, shall be placed closer than five (5) feet to any side yard lot line.**
- **A foundation certificate shall be required prior to the backfill inspection by the Building Division.**
- **An as-built survey shall be required to verify setbacks and lot coverage.**

Member Seiber supported, and the motion carried with a roll call vote: (3 yes votes) (Schillack/yes, Seiber/yes, Spencer/no, Dehart/yes, Powell/no).

- B. Applicant: Timbercraft Homes, Inc.
2281 Elkridge Circle
Highland, MI 48356
Location: **3811 Ormond Road**
White Lake, MI 48383 identified as 12-07-329-037
Request: The applicant requests to construct a single-family house, requiring variances from Article 3.1.5.E, R1-C Single Family Residential Front-Yard Setback and Maximum Lot Coverage.

Chairperson Spencer noted for the record 12 owners within 300 feet were notified. 0 letters were received in favor, 0 letters were received in opposition, and 1 letter was returned undeliverable from the U.S. Postal Service.

Staff Planner Quagliata gave a brief report.

Member Seiber asked staff about the previous variance granted for lot deficiency and if it needed to be granted again. Staff Planner Quagliata said no, that variance ran with the land.

Bob Lowe, 2281 Elkridge Circle, Applicant, was present to speak on behalf of his case. He said the homeowners wanted to conform with the neighboring houses. The homeowners wanted to eliminate stairs on the house which was why the variance for the lot coverage was requested.

Member Schillack asked the Applicant why the variances were needed in regards to the land. Mr. Lowe said the parcel was limited in depth and there was a substantial elevation change on the parcel. He also wanted a septic field to accommodate a three-bedroom house, even though the house had two proposed bedrooms; he was thinking of the future.

Chairperson Spencer opened the public hearing at 7:29 P.M. Seeing no public comment, she closed the public hearing at 7:30 P.M.

Member Seiber noted the improvement to the front yard setback from the previous request.

The ZBA discussed the standards from Article 7, Section 37 from the ClearZoning Ordinance:

- A. Practical Difficulty
 - Member DeHart said there was a practical difficulty due to the size and topography of the parcel.
- B. Unique Situation
 - Member DeHart said the topography and slope was a unique situation.
- C. Not Self-Created
 - The Applicant did not plat the lot.
- D. Substantial Justice
 - Member DeHart said a house could be built on a nonconforming lot.
- E. Minimum Variance Necessary
 - Member Schillack said he was grateful the variance request was less than the previous request for the parcel.

MOTION by Member Seiber to approve the variances requested by Timbercraft Homes, Inc. from Article 3.1.5.E of the Zoning Ordinance for Parcel Number 12-07-329-037, identified as 3811 Ormond Road, in order to construct a new house that would encroach 20 feet into the required front yard setback and exceed the allowed lot coverage by 2%. This approval will have the following conditions:

- **The Applicant shall obtain all necessary approvals from the Oakland County Health Division prior to issuance of a building permit.**
- **The Applicant shall obtain all necessary permits from the White Lake Township Building Division.**
- **The title block on the site plan shall be revised to provide the correct street number (address) of the property.**
- **No mechanical units, including HVAC system or generator, shall be placed closer than five (5) feet to any side yard lot line.**
- **A foundation certificate shall be required prior to the backfill inspection by the Building Division.**

- **An as-built survey shall be required to verify the approved setbacks and lot coverage.**

**Member Powell supported, and the motion carried with a roll call vote: (5 yes votes)
(Seiber/yes, Powell/yes, Dehart/yes, Spencer/yes, Schillack/yes).**

- C. Applicant: Brian D. Pendley
5335 Wayne Road
White Lake, MI 48383
Location: **5335 Wayne Road**
White Lake, MI 48383 identified as 12-17-103-011
Request: The applicant requests post-construction variances to allow an accessory building (shed) within the natural features setback, requiring a variance from Article 3.11.Q, Natural Features Setback. A variance from Article 5.7.C, Accessory Buildings or Structures in Residential Districts is also required due to the wall height. A variance from Article 3.1.6.E, R1-D Single Family Residential Maximum Lot Coverage is also required.

Chairperson Spencer noted for the record 66 owners within 300 feet were notified. 0 letters were received in favor, 0 letters were received in opposition, and 1 letter was returned undeliverable from the U.S. Postal Service.

Staff Planner Quagliata gave a brief report.

Member Schillack asked staff if the shed was legally allowed to be approved in its current location. Staff Planner Quagliata said no.

Member Powell said the overhang was 18 inches off of the wall. He appreciated the Applicants attending this evening in full military regalia.

Brian Pendley, 5335 Wayne, Applicant, was present to speak on behalf of his case. He was under the impression he did not need a permit to build the shed based on state and federal laws. His wife, Gianna Pendley, was also present. Mr. Pendley said his structure was under 18 feet in height. The prior shed was nonconforming, and the lot was nonconforming as well. Mr. Pendley said he spoke with Building Official Spencer regarding building height and felt his structure was compliant. He said the shed was moveable.

Building Official Spencer said the building code was being meshed as an interpretation for the zoning ordinance, and the two were separate. The zoning ordinance would overlap the building codes in some instances. In regard to the Applicants' case, the second story on the shed required a permit. Mr. Pendley said the shed did not have a second story, there was only storage.

Member Powell said there were places that were not zoned that would rely on state codes and law. The Township relied on the zoning ordinance, as it was adopted by the Township. The natural features setback was not entirely dependent on where the water was, it was defined by the ordinary high-water mark.

Member Schillack asked the Applicant what about the land posed a practical difficulty for the shed's location. Mr. Pendley said the natural grade from the house was steep. The unique situation was due to the lot size.

Chairperson Spencer opened the public hearing at 8:03 P.M. Seeing no public comment, she closed the public hearing at 8:04 P.M.

Member Powell asked staff if the dimension for the shed wall was proposed as the maximum height. Staff Planner Quagliata confirmed.

Member Powell asked the Applicant about the balcony on the shed. Mr. Pendley said it was for aesthetics and to be used as a plant pergola. The shed was used to house emergency and lifesaving equipment.

Building Official Spencer said the structure had a more modern design, and if the peak were more standard, they would have met the maximum accessory structure height. The design was unique.

Member Schillack asked staff if there were septic and well on the property. Building Official Spencer confirmed. The well and the septic were not shown on the site plan. Member Schillack asked staff if the well and septic should have been called out on the plans. Building Official Spencer said he did not see it being an issue in this instance.

Member Seiber asked staff if the roof was ridged and shingled downward, would the height issue be satisfied. Building Official Spencer said it could be done, but he did not want to get hung up over wall height. The bigger issue was the shed overhang encroaching into the east side lot line.

The ZBA discussed the standards from Article 7, Section 37 from the ClearZoning Ordinance:

A. Practical Difficulty

- Member Seiber said the lot size created a practical difficulty relative to lot coverage only.
- Member Schillack said the lot size created an issue but he failed to see a practical difficulty in regard to the natural features setback.

B. Unique Situation

- Member DeHart said the lot size was a unique situation.
- Member Powell said the elevation of the lot presented a unique situation in moving the shed closer to the house.

C. Not Self-Created

- Member DeHart said the Applicant did not create the lot.
- Member Schillack said the design of the structure was a self-created problem.

D. Substantial Justice

- Member Powell said he saw substantial justice in regards to the lot width.

E. Minimum Variance Necessary

- Member Schillack said this was a post-construction variance, and there was not as much of an ability to minimize issues after construction was completed. He did see the square footage of the shed being minimal in regard to lot coverage.

MOTION by Member Seiber to approve the variance requested by Brian Pendley from Article 3.11.Q of the Zoning Ordinance for Parcel Number 12-17-103-011, identified as 5335 Wayne Road to allow the accessory building to exceed the allowed lot coverage by 3.5%. This approval will have the following conditions:

- **The Appellant shall obtain all necessary permits from the White Lake Township Building Division.**
- **By March 25, 2024 the Appellant shall move the accessory building to eliminate encroachment within five feet of the side lot line as the Zoning Board of Appeals is without authority to grant a variance with regard to the side yard setback. Once moved, an as-built survey shall be required to verify the setbacks and lot coverage.**

Member Powell supported.

The ZBA discussed the conditions of the approval. **Member Powell WITHDREW his support.**

MOTION by Member Seiber to approve the variance requested by Brian Pendley from Article 3.11.Q of the Zoning Ordinance for Parcel Number 12-17-103-011, identified as 5335 Wayne Road to allow the accessory building to exceed the allowed lot coverage by 3.5%. This approval will have the following conditions:

- **The Appellant shall obtain all necessary permits from the White Lake Township Building Division.**
- **By May 25, 2024 the Appellant shall move the accessory building to eliminate encroachment within five feet of the side lot line as the Zoning Board of Appeals is without authority to grant a variance with regard to the side yard setback. In addition, the Applicant shall re-locate the shed to outside of the natural feature setback and reduce the wall height to no more than 14 feet. Once completed, an as-built survey shall be required to verify the setbacks and lot coverage.**

Member Powell supported, and the motion carried with a roll call vote: (5 yes votes)

(Seiber/yes, Powell/yes, Dehart/yes, Schillack/yes, Spencer/yes).

OTHER BUSINESS

A. Election of Officers

MOTION by Member Powell, seconded by Member DeHart, to elect Josephine Spencer as Chairperson and Niklaus Schillack as Vice-Chairperson of the ZBA for 2024. The motion carried with a voice vote: (5 yes votes).

B. Meeting Efficiency

Member Schillack wanted the Board to think about ideas to make the ZBA meetings run efficiently. He wanted to hear from the public as well. Member DeHart said this evening's meeting went smoother without reading over all of the standards' language. Chairperson Spencer thought it was important to list at least one item for each standard.

NEXT MEETING DATE: February 22, 2024

ADJOURNMENT

MOTION by Member Schillack, seconded by Member Powell, to adjourn at 8:42 P.M. The motion carried with a voice vote: (5 yes votes).