

**TOWNSHIP OF ARCADIA
MANISTEE COUNTY, MICHIGAN**

**MINUTES OF APRIL 30, 2021 SPECIAL MEETING OF
ZONING BOARD OF APPEALS ON VARIANCE OF DEBBRA ECKHOUT**

Members Present: - Michael Matteson, regular member
- Roger Brown, regular member
- Shannon Westgate, regular member, from the Planning Commission (attending the meeting via ZOOM from the East Lansing area)

Also attending the meeting was Thomas McCraner, alternate member (as a member of the audience); Craig A. Rolfe, Township Attorney; Katie Mehl, Zoning Administrator; Janice McCraner, Township Supervisor (assisting with the ZOOM connection); Brad Hopwood, Planning Commission Chairperson; Debra Eckhout, variance applicant, and her builder, Robert Clark; and three or four other persons from the community.

Chairperson Matteson called the meeting to order shortly after 6:00 p.m.

The proposed meeting agenda was approved by consensus of the members.

The next item of business was the approval of the proposed minutes of the prior Zoning Board of Appeals (ZBA) meeting on November 5, 2014. The Township Attorney indicated the Clerk was not able to presently locate the proposed minutes of that meeting held over 6 years ago.

Chairperson Matteson inquired if there were any public comments on non-agenda items. There were none.

Chairperson Matteson then opened the public hearing on the variance application of Debra Eckhout concerning the property at 15252 Iverson Road, and requested the Township Attorney introduce the variance application. The Township Attorney indicated the applicant was requesting relief from requirements of the Township Zoning Ordinance associated with placement of a 24' x 28' (672 sq ft) detached garage accessory building on the premises commonly known as 15252 Iverson Road (parcel no. 51-01-024-009-00) in the A-Agricultural District. He indicated this application required consideration of variances from Sections 4.05(a)(2) and 5.04(b)(1) to place the accessory building within the required front yard area 30' from the front lot line/Iverson Road right-of-way. He indicated these sections prohibit placement of an accessory building within the required front yard, and require a minimum setback of 50'.

Chairperson Matteson recognized the applicant, Debra Eckhout, and asked if she had any additional information to present to the ZBA in support of her variance request. Eckhout acknowledged her mistake in not applying for zoning approval, and indicated she

was not aware separate zoning approval from the Township was required when she applied for the building permit (administered by the State). She indicated the garage (which is substantially complete) was built where it is so when her parents move in with her she can more easily transition them from a wheelchair or walker to/from the car on slippery surfaces. She stated she just wanted to build something safe for her parents. Eckhout also stated approval of the requested variance would not be of any detriment to her neighbors, and the garage would have the same exterior siding as the house for visual appearance purposes. She indicated the garage could be attached to the house if she needed to do that. Eckhout also stated less variance relief would not be sufficient, because the current location for the garage is the best place pursuant to her safety rationale for that location.

Chairperson Matteson asked if there were any initial questions from ZBA members, or from the Zoning Administrator or Township Attorney. The Township Attorney initially stated that although the proposed garage had already been constructed at the location for which the applicant now requested variance relief, it was important for the ZBA to "pretend" the garage had not yet been built for purposes of deciding the variance application, as it was not permissible for the ZBA to either reward or punish the applicant for having the garage constructed in violation of the applicable ordinance requirements. The Township Attorney indicated the applicant's basis for the requested variance relief related to her personal circumstances, rather than to any special characteristics or conditions of the land itself, and asked several questions relating to the land. In response to these questions from the Township Attorney Eckhout stated the property was about 74 acres in size; and the area of the property further back from the road is lower than where the garage was built, and there are some trees in that area. Her builder, Robert Clark, stated there was a big fall-off in other areas of the property.

Chairperson Matteson asked if any written comments had been received with respect to this variance application. No written comments were noted as having been received.

Chairperson Matteson then asked if any audience members had any comments. The applicant's builder, Robert Clark, asked why the Township Attorney was even present at this meeting. One of the ZBA members indicated the ZBA members were all newly appointed and the Township Attorney was present to provide legal assistance and guide the ZBA through the process of considering this variance application in accordance with legal requirements.

In some additional comments from Debra Eckhout she acknowledged she did not give any regard to the zoning requirements when she received the building permit and proceeded to have the garage built at her preferred location.

When there were no further comments by audience members, or any further follow-up comments by the applicant, or the Zoning Administrator or Township Attorney, the public hearing was closed.

The ZBA then began its deliberation on the variance application, with legal advisement by the Township Attorney on the applicable basis for deciding the matter pursuant to the standards specified in Section 24.04 of the Township Zoning Ordinance. The members of the ZBA all confirmed they had individually viewed the subject property at some point before this meeting. Westgate stated even if some fill had to be added to prepare a compliant building site, which was not uncommon with construction projects, she understood the cost considerations associated with such fill was not a basis to grant variance relief. The Township Attorney advised her understanding was correct. In the initial general discussion among the ZBA the members indicated they saw no reason to grant any variance relief in the circumstances of the subject property. Brown stated there was sufficient area further back from the building site preferred by the applicant to place the building in compliance with the applicable requirements. He stated that area just another 20' or so back from the current location of the building was relatively level.

The Township Attorney advised the ZBA should make findings of fact based on the evidence in the record on each standard for variance relief specified in Section 24.04(a)-(h) of the Township Zoning Ordinance, and then apply those findings of fact so as to make a decision on the application. The ZBA then reviewed all the evidence in the record, including the information submitted with the variance application, and by consensus made the following findings as to each of those standards specified in Section 24.04 (with each standard repeated here):

- (a) That compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The members found this standard was not shown to be met, because the building could have been built in an adjacent area of the subject property in compliance with the applicable accessory building placement requirements. The members concluded the applicant's personal circumstances were not grounds to grant variance relief.

- (b) That special conditions or circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same zoning district.

The members found this standard was not shown to be met, because the conditions of the subject property were similar to many other properties in that area of the Township, with regard to having some wooded areas, and some rolling typography on parts of the property.

- (c) That the special conditions or circumstances do not result from the actions of the applicant.

The members found this standard was not applicable here, because of the prior finding that there were no special conditions or circumstances peculiar to the land itself.

- (d) That the authorizing of such variance will not be of substantial detriment to the neighboring properties and will not be contrary to the spirit and purpose of this Ordinance.

The members found the first part of this standard (approving the variance will not be of substantial detriment to neighboring properties) was shown to be met, because the location of the garage proposed by the applicant would not interfere with the use of any neighboring properties. The members found the second part of this standard (approval of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance) was not shown to be met, because granting the requested variance for the location preferred by the applicant would not be consistent with the purpose of the applicable requirements to site buildings further back from the road.

- (e) No nonconforming use of nearby lands, structures, or buildings shall in itself be considered grounds for the issuance of a variance.

The members found this standard was not applicable here, because the applicant did not attempt to support her variance request based on any other nonconforming situations.

- (f) That a lesser variance than that applied for would not give substantial relief to the owner of the property involved and would not be more consistent with justice to other property owners.

The members found this standard was not applicable here, pertaining to lesser variance relief than what the applicant applied for, because of the previous findings relating to no basis to grant any variance relief.

- (g) That specific conditions relating to the property are not so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.

The members found this standard was not shown to be met, because there were no relevant specific conditions relating to the subject property.

- (h) The variance relates only to property that is under control of the applicant and the lot or parcel is a legal lot or parcel of record or has been legally established.

The members found this standard was shown to be met, as the subject property was shown to be owned by the applicant (and was a legal parcel of record).

The ZBA determined there was no need for further discussion on the matter pursuant to the preceding findings. Matteson made a motion to deny the applicant's request for variance relief pursuant to the findings and evidence in the record. This motion was supported by Brown, and carried unanimously 3-0.

There being no further business to come before the ZBA at this time, the meeting was adjourned at about 6:55 p.m.

DATED: _____

Shannon Westgate, ZBA Secretary