



VILLAGE OF PENTWATER
Zoning Board of Appeals
ON PENTWATER LAKE AND LAKE MICHIGAN
327 South Hancock Street – P.O. Box 622
Pentwater, Michigan 49449
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Regular Meeting Minutes – March 4, 2015

Chairperson Castor called the regular meeting of the Pentwater Zoning Board of Appeals Meeting to order at 7:00 P.M. with the Pledge of Allegiance.

ROLL CALL

Present: Damon Crumb, Bill O'Donnell, Gay Birchard, Norm Shotwell, Andrew Witt (Alternate), Nick Kassanos (Alternate), and Mike Castor.

Absent: Juanita Lamb, and Earl Raczkowski.

Others present: Zoning Administrator Sara Bizon, Deputy Clerk/Treasurer Barbara Siok, Village Manager Rob Allard, and Village Attorney Gary Nicholson.

APPROVAL OF AGENDA

Motion by Shotwell, second by Crumb to approve agenda as amended adding Public Comments after the approval of the Agenda; Public Comments within the Open Hearing and Public Comments after New Business before Adjournment.

Voice Vote: Ayes: 7, Nays: 0, Absent: 0

Motion carried.

PUBLIC COMMENTS ON AGENDA ITEMS: None.

APPROVAL OF MINUTES

Motion by Crumb, second by Shotwell to approve February 4, 2015 meeting minutes.

Motion to approve Minutes as amended, corrections: second page **Motion** to amend the by-laws... Zoning Administrator shall prepare **the recommended budget...**, and **move** Roll Call Vote on the amended Motion, above item C, by Crumb, second Shotwell

Voice Vote: Ayes: 7, Nays: 0, Absent: 0

Motion carried.

OPEN PUBLIC HEARING:

Motion to open public hearing on a variance request for the property at 801 N. 56th Street by Damon Crumb, second Bill O'Donnell.

Roll call Vote: Ayes: 7, Nays: 0, Absent: 0

Motion carried.

OPEN PUBLIC HEARING:

Zoning Board of Appeal Administrator, Sara Bizon stated this hearing is for a use variance request regarding a shed that was built at 801 N. 56th Street, Parcel # 64-044-560-080-00.

Mr. Bates obtained a zoning permit in November 2012 to build a house and was in discussion with the former zoning administrator on this matter. No building permit was issued for such residential building.

In February 2014 the Pentwater Assessor brought to attention of the Zoning Administrator that a 12 x12 shed had been erected on the property without a primary structure on the lot. Mr. Bates was informed that the zoning permit for the house was no longer valid and that a shed could not be on the property without a primary residence.

Bizon consulted with Village Attorney Nicholson and Village Manager Allard regarding options available to remedy the shed on the property. October 14, 2014, Mr. Nicholson filed suit, on the behalf of the Village against Mr. Bates to remove the shed. After filing suit, Mr. Nicholson gave Mr. Bates some options to try and remedy the situation. One of these options was to apply for a variance to retain the shed. November 10, 2014, Mr. Bates was provided with a copy of the Review Standards for a Variance. December 1, 2014, Mr. Bates applied for a zoning permit for the shed which was denied because he did not meet Section 3.08 (b) or Section 19.07 of the Zoning Ordinance. December 12, 2014, a letter was sent to Mr. Bates indicating the permit was denied and also provided with five documents:

1. Administrative Appeal Procedure
2. Petition for Appeal
3. Review Standards for a Variance
4. Chapter 18
5. Section 3.08

The application for a Variance request was received January 8, 2015 by the Village and due to notice requirements, the variance hearing is tonight. Property owners within 300 feet of the property were notified via US Mail and a Public Hearing notice was published February 12, 2015, in the Oceana Herald Journal.

The matter before you tonight is whether or not you approve the use variance to retain the shed at the parcel on 801 N. 56th Street which is currently zoned R-2.

Chair Castor asked if there were any questions for the zoning administrator.

Shotwell asked Bizon if she received any comments from adjacent property owners. Bizon replied that she had not received any comments.

Board discussion followed regarding a use variance, secondary storage structure without a primary building in an R-2 zoning area.

Mr. Bates proceeded with setting up a visual display of items he called props to explain why he thinks this is a dimensional issue. His props included pictures, posters, and three sizes of what he called buildings. The first building prop he said has walls and a roof being about 4 inches high and if he hid that under a bush there would no requirement to get a zoning permit, the reason because it is dimensional. A second building prop he described as teeny, with walls and a roof, 3/8 or 1/4 of an inch, dimensionally is different than the shed he put on his property but claiming that nobody would be of no concern if he put it under a bush, nobody would be concerned by this dimension, but if built something much bigger would be concerned. Third, approximately 18 1/2

by 14 inches, this building if put somewhere under a bush so you couldn't see it, on a size property 5200 sq. ft. property in Pentwater would be almost the same as the shed on his property. It is a size issue or a dimensional issue and says that he is applying for a non-use variance.

He said that when he asked to put the shed on the property he was told that he could have the shed as long as he applied for a zoning permit for a building but was not told that he needed to additionally apply for a zoning permit for the shed. When he was informed that it wasn't the case, he was told that an attorney would contact him and heard by way of the court.

Mr. Bates said that up to now he informed Pentwater citizens of the situation through his website libertyshed.org. He said that if he cannot have this non-use variance, his only recourse is to widen the number of people who are available to assist him and he will be sending it to Russ Limbaugh. He said that he wants Pentwater to win, but he doesn't want America to lose.

Mr. Bates said if he as to go that route and if any conservative groups are interested in constitutional rights and zoning issues then that would put Pentwater at a loss. He said that his goal is for both come out as winner.

Chair Castor asked the board if there were any questions.

Damon Crumb commented that Mr. Bates said that he thinks a little building on a property is meaningless, but the zoning laws in this Village like many villages and cities in Michigan are based on laws that are constitutional.

Mr. Bates replied that you could say that you should apply this situation equally to everyone, the other way, is to say that you should look at it proportionately so that when one person asking for shed on a small property that proportion has a much greater impact where a person like himself on a larger property has a much smaller impact. So proportionately seems less impact and unfair to be treated the same as a larger impact.

Bill O'Donnell asked Mr. Bates that he stated a dimensional variance would be easier to defend here or in the courts and never explained why it should be a dimensional variance.

Mr. Bates said that a non-use variance requires there is no possible use of the property other than to get a use variance, and that the property is worthless unless he gets the use variance. He said that he does not claim that, but he does claim that there are certain sizes of sheds/buildings that are completely irrelevant that you have no zoning rights over, and because that, there has to be something that is small enough that fits into the zoning rights. He said that could make them smaller and the difference between them and his shed makes the difference.

O'Donnell said that Mr. Bates repeated the fact that he cannot meet the requirements for the use variance and therefore wants to turn it over.

Mr. Bates said he does not want to change it from being a residence.

O'Donnell said that Mr. Bates stated the impact was through size demonstrated by his props, and asked if he (Mr. Bates) considered the impact of size on the Pentwater's zoning laws, that a small building wouldn't have an impact on the verbiage of the law as much as a large building.

Mr. Bates said that the law is designed only to authorize police power in order to protect its citizens and it is the only authorization, the Supreme Court of Michigan has stipulated that there has to be a point which a person's constitutional rights trumps zoning laws, and that because of the dimension of the shed that he has put on his property is more controlled by his constitutional rights than by Pentwater's authority given to it by the State to control its police powers.

Norm Shotwell asked if Mr. Bates if he requested a zoning permit for a residence.

Mr. Bates said originally he wanted to put a shed on the property and was told that the only way he could put a shed on the property was to put a residence on the property. He applied for a zoning permit for a residence, and was not told that he also needed a zoning permit for a shed.

Castor replied that he did not need a zoning permit for a shed if a principle residence was going up; if a residence building was on the property, he could put up the shed.

Mr. Bates said that he looked at the cost for a principle residence but the cost of building a principle residence and the cost of taxes didn't make sense. He said that he was only informed that since he didn't pursue building a residence on the property that the zoning permit was withdrawn. He was told that an attorney would contact him, and he waited for that. He received the court case notice. He said that he did not intentionally put the shed as an infringement of the property zoning laws, and his principle reason was that he wanted to camp on the property but was told he could not.

Andrew Witt asked Mr. Bates about the main use of the shed.

Mr. Bates said the shed was for storing gardening items for peach and apple trees.

Andrew Witt asked about the trees location.

Mr. Bates said he put in five trees and explained how a storm blew a large tree down across his drive and he brought up a chain saw and some seed to store in the shed since he only comes up a few times for a few hours, and not very often.

Norm Shotwell asked if Mr. Bates principle use of the property was for agriculture.

Mr. Bates said his current use is walking around and enjoying nature, not applying for a use variance to turn the property into a tree nursery or intend selling from the property or becoming commercial.

Castor said that the zoning for this property is R-2.

PUBLIC COMMENTS: Castor asked if there were any public comments. No questions or comments. Castor explained how the board would deliberate and make a decision.

Chairperson Castor entertained a motion to close the public hearing.

Motion by Shotwell to close the public hearing, second by Kassanos. No discussion.

Roll call Vote: Ayes: 7, Nays: 0, Absent: 0

Motion carried.

UNFINISHED BUSINESS: None

NEW BUSINESS: Castor entertained a motion to amend By-Laws Article XI Expenditures Sec.1, as stated in the minutes to be revised to reflect, “The Board through the Zoning Administrator, shall prepare the recommended budget for the ensuing fiscal year for submission to the Village Manager.”

Motion by Shotwell to amend the By-Laws Article XI Expenditure Sec.1, second by Witt.

Roll call Vote: Ayes: 7, Nays: 0, Absent: 0

Motion carried.

Chairperson Castor entertained a motion to approve the request for a use variance.

Motion by Shotwell to approve the request for a use variance, second by Birchard.

Chair Castor read;

FINDINGS OF FACT 1. “That the building, structure, or land cannot yield a reasonable return if required to be used for a use allowed in the zone district in which it is located.”

O’Donnell said the request does not meet this standard; the land would yield a reasonable return and without a shed would not suffer any economic loss. Shotwell agreed. Crumb said it doesn’t apply. Castor said he agreed.

FINDINGS OF FACT 2. “That there are unnecessary hardships in the way of carrying out the strict letter of these regulations which are caused by exceptional or extraordinary circumstances or conditions applying to the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the vicinity in the same zoning district. Exceptional or extraordinary circumstances or conditions include:

- a. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this Ordinance;
- b. Exceptional topographic conditions;
- c. By reason of the use or development of the property immediately adjoining the property in question; or
- d. Any other physical situation on the land, building or structure deemed by the Board of Appeals to be extraordinary.”

Castor said that he does not see any hardships; there are storage alternatives in the area and for the limited time the applicant is here, question if the fruit trees are viable. Witt said that the fallen tree damage was not a hardship. O’Donnell said in context nothing would cause the language to be modified. Kassanos agreed.

FINDINGS OF FACT 3. “That the proposed use will not alter the essential character of the neighborhood.”

Shotwell said in this case it does meet standard 3 and would not alter the character. O’Donnell said the essential character is R-2 and the zoning would go with the land not the owner. Castor said this would change the character of the neighborhood if allowed a shed on an empty lot. O’Donnell said that if you carve out one lot you have changed the character of the neighborhood.

Damon said changing zoning has not been requested. Kassanos said if the shed is there, it would change the character of the neighborhood, if a neighbor builds a house they would be looking at an empty lot with a shed.

FINDINGS OF FACT 4. “That the variance is not necessitated as a result of any action or inaction to the property prior to the variance request by the applicant of his/her representative.”

Shotwell said that it does not meet that standard. Castor said the shed was put on the property prior to the variance request.

FINDINGS OF FACT 5. “Approval of a use variance shall require an affirmative vote by two-thirds (2/3) of the membership.”

Castor said that is not a point to be deliberated.

Castor asked the board if there was further discussion. Birchard asked for clarification, and the Motion was repeated “To approve the request for a use variance.”

Roll call Vote: Ayes: 0, Nays: 6, Abstain: 1 (Crumb), Absent: 0

Motion for the variance is not approved, stated Chair Castor.

Castor explained that to validate the vote either another meeting will be called or that he could provide a certification with his signature that will validate the vote. He told Mr. Bates that he has the opportunity to appeal the decision.

PUBLIC COMMENTS: None.

ADJOURNMENT

Motion by Shotwell second by Kassanos to adjourn the meeting.

Voice Vote: Ayes: 7, Nays: 0, Absent: 0

Motion Carried

Castor adjourned the meeting at 8:31 PM

Respectfully submitted by,

Barbara Siok
Deputy Clerk/Treasurer

Date