

**CHARTER TOWNSHIP OF ELMWOOD
ZONING BOARD OF APPEALS
REGULAR MEETING**

Wednesday May 3, 2023 at 7:00 PM

Location: Township Hall (10090 E. Lincoln Rd., Traverse City, MI)



ZBA Members:

Gary Bergstrom, Chair

Jeff Aprill, Vice-Chair

Jason Razavi, Secretary

Ray Haring

Jim O'Rourke

Randy Baidas-Alternate

- A. Call to order - 7:00 pm
- B. Roll Call
- C. Public Comment (Speakers to identify themselves by name and address, limited to 3 minutes each)
- D. Agenda Modifications/Approval
- E. Declaration of Conflict of Interest: *(Items on the Agenda)*
- F. Approval of Minutes: April 5, 2023
- G. New Business:
 - 1. Extension Request - Case #2022-02 - Erik Grruber and Chris Millward for a front yard variance request regarding property at 10238 and 10240 E Cherry Bend Rd., parcel # 45-004-320-001-00. The applicants received a 30 foot front yard setback variance to allow parking within the 30' front yard setback.
 - 2. Extension Request - Case #2022-03 - Erik Grruber and Chris Millward for a variance to reduce the required parking ratio, which is based on floor area, regarding property at 10238 and 10240 E Cherry Bend Rd., parcel # 45-004-320-001-00. The applicants received a variance to reduce the parking ratio for business and professional offices within the NC zoning district from 1 space per 200 sf to 1 space per 270 sf.
- H. Old Business:
- I. Comments from the Chair
- J. Comments from ZBA Members
- K. Announcements
- L. Public Comment (Speakers to identify themselves by name and address, limited to 2 minutes each)
- M. Adjourn - 9:00 pm or majority vote to extend meeting

**Charter Township of Elmwood
Zoning Board of Appeals
Regular Meeting
April 5, 2023
7:00 PM
Approved TBD**

A. CALL TO ORDER: Jeff Aprill called the meeting to order at 7:00 p.m.

B. ROLL CALL: Ray Haring, Jim O'Rourke, Jason Razavi, Jeff Aprill
Excused: Gary Bergstrom

C. PUBLIC COMMENT: None

D. AGENDA MODIFICATIONS: MOTION BY JIM O'ROURKE, SECONDED BY RAY HARING TO APPROVE THE AGENDA WITH MODIFICATION OF ADDING EXTENSION REQUEST FOR SLAGAL CASE G2. MOTION APPROVED 4-0.

E. DECLARATION OF CONFLICT OF INTEREST: None

F. APPROVAL OF MINUTES: FEBRUARY 1, 2023: MOTION BY JIM O'ROURKE, SECONDED BY JASON RAZAVI TO APPROVE MINUTES OF FEBRUARY 1, 2023 AS SUBMITTED. MOTION PASSED UNANIMOUSLY.

G. NEW BUSINESS:

1. Case #2023-02, #2023-03, and #2023-04, Requests by Jim and Melissa Hill regarding property at 0 S Briar Dr, 0 E Pico Dr, and 10651 E Grandview Rd, Parcels #45-004-260-018-00, 45-004-280-019-00 and 004-028-122-00 for a 250' front yard setback variance for seasonal outside storage of recreational vehicles, boats, snowmobiles on trailers, and empty cradles. A portion of these properties have been used for said use since before the Township adopted zoning, but the property owners would like to expand the use. The areas of the desired expanded use within the pre-existing fence are shown on the plan submitted with the application.

Jeff Aprill said we've looked at this one before, they were zoned residential, we rezoned it commercial and now what they've been doing for years, they want to store boats there, but they're in violation of the Ordinance because the Ordinance requires in this district that they be 250' off the road right of way.

Public hearing opened at 7:04 p.m.

Jeff Aprill stated they would handle this as one public hearing for all 3 parcels.

Jim and Melissa Hill explained, as Jeff had mentioned, we originally came in, there was a complaint about it and got notification and we needed to sit down with Sarah and find out where we needed to go. According to what she told me and what we needed to do, was start out with getting it rezoned, it's been rezoned to Neighborhood Commercial, thought that was the best fit for that piece of property. Roger Wares 3 lots next to us on the east side, along Grandview are all Neighborhood Commercial, on the south side is GC, the west side is a piece of swamp land, it's got its own setbacks around there or green strips or buffer, buffers along the backside, and a little bit along the Pico side, there's actually Pico on the east side, Briar Dr. on the west side, Grandview's on the south side. So, the way I understand it from Sarah is, with being a corner lot it has some different setbacks. When I bought it from Phil Sharnowski, there were trailers on the property, that's 20 + years ago, had trailers on that property, mostly boat trailers, there's a few camping trailers. There's one fire truck down there right now. A lot of the stuff for most of the year when it's greened up around there, you can't see anything, I've always checked with all my neighbors, my house is 3 doors away, I try to keep it neat and orderly, try to keep everything parked in a row, keep it mowed. I guess what I'd like to do is, I don't know if grandfathering it is a possibility, going back to what we've done for the last 20 years, but after we got it Neighborhood Commercial now it's been brought to my attention that we have to do something about the setbacks. For the 250' setback that I was told that you needed from the front of the property, you said Briar Dr. side?

Sarah Clarren responded, there are 3 separate parcels, but yes, it's a unique situation in more ways than one. The parcel that Jim is referring to is the one that is directly on Grandview and Briar. If you review the Zoning Ordinance in Section 5.6, we have a footnote section when it talks about setbacks. If there's a parcel that is zoned Neighborhood Commercial, and if it's a corner lot, the smallest length along the front lot line that would be the front lot line. Because the portion along south Briar Dr. is the shortest front lot line, that is the front lot line according to our Zoning Ordinance for Neighborhood Commercial.

Jim Hill asked, with the 250' setback, as you can see on the property, according to the way it stands, I don't have 250' north, south, east, or west. This is something that came up after we already went through and, we've got close to \$4,000 invested in this with surveys and fees, or starting the ball rolling on this and now we're back to square 1.

Sarah Clarren said, I would just make a couple modifications. Regarding grandfathering, which according to our Zoning Ordinance is referred to as pre-existing non-conforming. That Use would need to be in effect before 1969 when the Zoning Ordinance went into effect. It's my understanding, the whole 3 parcels were not used for that Use, there were other Uses there, it's not like the entire parcels were used for storage of outdoor boats, trailers, and snowmobiles. Because there's the desire to expand the Use, that's why we're going through this process. Any expansion of Use needs to conform to the Ordinance that's in effect at the date of whatever you want to do. This isn't square 1. The first step was re-zoning because the parcels used to be Zoned Residential 1 and as we all know, there's limited Commercial use allowed in R1. Having a couple boats stored on site, that could happen, but there's certainly more than that on site currently, and in my discussion with both of you, you want to expand that Use, that's why we're here.

Jason Razavi asked, how many boats are on site currently? Jim Hill responded, there are 4 boats, 2 campers, 2 trailers, and a fire truck.

Jim O'Rourke said there'll be more in and out now with spring.

Jim Hill replied, there will be more transients, it's very handy being across from the boat launch. Over the last 20 years there's probably ½ dozen people that come in just for the summer that'll leave their boats there for 3 months, 2 months, weeks at a time. We'll put their boat in at Elmwood Park and bring their trailer and truck back over while they go out for a week.

Jeff Aprill asked, the 2 parcels to the north and the 2 parcels to the west, they're not yours, they're somebody else's, but those will not be built on because they're wetlands, is that correct? Jim Hill replied, yes, and directly to the north of me on the back side there's a Lot between the fence and Turek's that holds a lot of water in the summer time. It would take a lot of Fill to do anything buildable.

Sarah Clarren said, and it would need to be permitted by EGLE and that process would probably be quite difficult because having any form of mitigation would be next to impossible.

Jeff Aprill asked, so this isn't the last step in the process either? Sarah Clarren said, it's a Special Use Permit, I will say and I've apologized to the Hill's and I apologize again. This is a ZBA process that I wasn't aware of. I did not realize it was a 250' setback for this

Use. That was something I wasn't aware of until this was going before the Township Board. At the hearing one of the Board Members asked specifically about that. In the Ordinance, we don't really have that type of setback, there are a couple of exceptions.

Jeff Aprill added, the reason that was put into place was to keep the M-22 corridor free of that kind of storage. That was the intent when that was put in. This is not on 22, it's well screened, but it's what the Ordinance says and we have to go by the Ordinance, but it wasn't intended for this lot.

Sarah Clarren responded, at the Township Board, and even at the Planning Commission level, when we're talking about rezoning, yes, we're talking about the Use, but that's really not the case at hand. When it was before the Planning Commission and then Township Board, it was just rezoning from R1 to Neighborhood Commercial and now it's not the Use itself, it's the setback request for the 250'. According to our Ordinance the setback is from whatever lot line to the building or structure. Right now, we're not talking about a building or structure, the Use itself in 9.8.f for outdoor seasonal storage is 250', it's only from the front lot line, it doesn't reference a rear or side. For the parcel that abuts both Briar and Grandview, it's Briar that is the front lot line.

The Board discussed the letter from Sarah Bourgeois. Jim O'Rourke asked, who authored this letter from Sarah Bourgeois? Sarah Clarren responded it is a print out of what was available online. The pink highlight is from the Hill's, everything else I'm making the assumption it's from Sarah Bourgeois because it was attached to Sarah's letter. Jim O'Rourke said, we believe the person indicated they wish to have a 30' front setback on Grandview and the area should not be allowed for storage. I believe we need to make this part of the record. Sarah Clarren answered, it's my understanding that all changes to that survey with the exception of the highlight are hers.

The Public Hearing closed at 7:38 p.m.

The Board deliberated and went through Findings of Fact.

SPECIFIC FINDINGS OF FACT UNDER THE ELMWOOD CHARTER TOWNSHIP ZONING ORDINANCE UNDER SECTION 12.6

The Board of Appeals may authorize specific variances from requirements of the Ordinance, with the exception of a use variance, provided all of the basic conditions listed herein and any one of the special conditions listed thereafter shall be satisfied.

1. Basic Conditions: A variance from this Ordinance:
 - a. Will not be contrary to the intent and purpose of this Ordinance.
 - i. The Board finds that seasonal outside storage of recreational vehicles, boats, snowmobiles on trailers and empty cradles are a permitted use within the Neighborhood Commercial district (through a SUP) and therefore it will not be contrary to the intent and purpose of the Zoning Ordinance.

The Board finds that this standard has been met.
 - b. Shall not permit the establishment within a district of any use unless such use is authorized by this Ordinance.
 - i. The Board finds the use is authorized under the Ordinance.

The Board finds that this standard has been met.
 - c. Will not cause a substantial adverse effect upon property, which includes, but is not limited to property values, in the immediate vicinity or in the district in which the property of the applicant is located.
 - i. The Board finds that the request includes storing boats on properties where outdoor storage has occurred, in some capacity, since before zoning went into effect.
 - ii. The property owner is attempting to comply with the Zoning Ordinance and seeking appropriate approvals to expand the use in compliance with the Ordinance.
 - iii. There is a pre-existing fence onsite and the proposed storage will be located within the pre-existing fence.
 - iv. The Board has not been provided with any evidence of substantial adverse effects.

The Board finds that this standard has been met.
 - d. Is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.
 - i. The Board finds that the conditions relating to this property are not so general or recurrent in nature.
 - ii. 0 S Briar Dr. is undersized and is irregularly shaped due to the layout of S Briar Dr. Further, 10651 E Grandview Rd is shaped like a parallelogram which impacts the front setback.

The Board finds that this standard has been met.
 - e. Will relate only to property that is owned or occupied, or where the applicant has equitable interest.

- i. The Board finds that the Hills own the properties in which they are seeking a variance.

The Board finds that this standard has been met.

- f. Shall not be the result of a condition created by the applicant.

- i. The Board finds that while the properties housed a well-drilling business (pre-dating zoning), in some capacity, there was boat storage onsite.

- ii. The clearing of much of the land was done before zoning went into effect and before the Hills purchased the property.

- iii. The Hills did expand the use without the appropriate approvals, but are now seeking the appropriate approvals.

The Board finds that this standard has been met.

- g. Shall be assessed for the possible (precedential) effects, which might result from the approval or denial of the appeal and which would be contrary to the intent and purpose of this Ordinance.

- i. The Board finds that this is an extremely unique situation and is not aware of possible precedential effects.

The Board finds that this standard has been met.

- 2. When all of the foregoing basic conditions can be satisfied, a variance may be granted when one of the following special conditions can be clearly demonstrated:

- a. Where there are practical difficulties, which prevent carrying out the strict letter of this Ordinance. These difficulties shall not only be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.

- i. The Board finds that this standard has been met.

- b. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district. Such circumstances or conditions shall have not resulted from any act of the appellant subsequent to the adoption of this Ordinance.

- i. The Board finds

The Board finds that this standard has / has not been met.

- c. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.

- i. The Board finds

The Board finds that this standard has/ has not been met.

DECISION

Motion to approve the Decision and Order as modified.

AND

MOTION BY Jim O'Rourke, SECONDED BY Jason Razavi to grant the Applicant's variance request for cases 2023-02, 2023-03, and 2023-04 based on the previously found Findings of Fact, with 1 condition.

CONDITIONS

1. The Zoning Board of Appeals is not granting approval for the proposed use, but for the required setback for the proposed use. As required by the Ordinance, the owner must apply for and obtain approval for Seasonal Outside Storage of Recreational Vehicles, Boats, Snowmobiles on Trailers, and Empty Cradles from the Planning Commission.

Zoning Board of Appeals

Cases 2023-02, 2023-03, and 2023-04

Exhibit List

- A. Elmwood Township Zoning Ordinance
- B. Zoning Board of Appeals application (submitted by Applicant) containing:
 - 1. ZBA Application Form
 - 2. Letter dated 3/1/2023
 - 3. 'Site Plan' (annotated) - Matthew Dontz - 1/10/23, last rev. 2/5/23
- C. Public Hearing Notice with Mailing List
- D. Aerial of surrounding area
- E. Letter from abutter Sarah Bourgeois dated 4/5/2023
- F. Decision and Exhibit List

(1:04:53) MOTION BY JIM O'ROURKE, SECONDED BY JASON RAZAVI TO APPROVE CASES #2023-02, #2023-03, AND #2023-04 TO GRANT THE APPLICANT'S VARIANCE REQUEST BASED ON THE PREVIOUS FINDINGS OF FACT WITH CONDITION THE ZBA IS NOT GRANTING APPROVAL FOR THE PROPOSED USE, BUT FOR THE REQUIRED SETBACK FOR THE PROPOSED USE AS REQUIRED BY THE ORDINANCE AND OWNER MUST APPLY FOR AND OBTAIN APPROVAL FOR STORAGE OF RECREATIONAL VEHICLES, BOATS, SNOWMOBILES ON TRAILERS, AND EMPTY CRADLES FROM THE PLANNING COMMISSION. ROLL CALL-RAY HARING-YES, JIM O'ROURKE-YES, JASON RAZAVI-YES, JEFF APRILL-YES.

MOTION APPROVED UNANIMOUSLY BY A ROLL CALL VOTE.

2) Extension Request by Slagal

Sarah Clarren noted, the Slagal's have requested an extension request. They do list a couple of reasons in their email due to the high-water tables as well as the Board did condition this project, it did need to remain 1 story. They did apply for a Land Use Permit with a cat walk which was more than 1 story, so I couldn't issue a Land Use Permit, so they are working on revising those plans. There was an email after this saying they're going to be filing shortly, but variances are only valid for 1 year without that extension request. I did prepare a memo indicating what the Zoning Ordinance says; if you believe an extension should be granted, please use the recommended motion.

MOTION BY JIM O'ROURKE, SECONDED BY RAY HARING TO GRANT A ONE YEAR EXTENSION FOR CASE #2022-04 REQUEST BY JUSTIN SLAGAL REGARDING PROPERTY AT 9320 E CHERRY BEND RD FOR A 22' FRONT YARD SETBACK VARIANCE TO REPLACE AN EXISTING DWELLING WITH A NEW DWELLING MOTION APPROVED UNANIMOUSLY.

H. OLD BUSINESS: None

I.COMMENTS FROM THE CHAIR: Jeff Aprill said, I appreciate everybody's input tonight, that was a difficult case.

J. COMMENTS FROM ZBA MEMBERS: Jim O'Rourke commented, in all the years I've been on the ZBA, this has been the most difficult mess, and I'm glad because of Sarah's work, hopefully we're putting it to bed.

K. ANNOUNCEMENTS: Sarah announced, we may or may not have a meeting next month, I will keep you all posted.

L. PUBLIC COMMENT: None

M. ADJOURN: MOTION BY RAY HARING, SECONDED BY JIM O'ROURKE TO ADJOURN MEETING AT 8:16PM. MOTION PASSED.



blueprint.
PARTNERS

April 18, 2023

Sarah Clarren
Planner / Zoning Administrator
Elmwood Township
10090 E Lincoln Rd
Traverse City, MI 49684

RE: Request for variance extension
Parcel ID 004-320-001-00
10238 E. Cherry Bend Rd.
Case #2022-02

Dear Sarah:

We continue to be in discussion with the road commission attempting to resolve right of way items concerning the Sylvia Street portion of our project. Since this matter is still ongoing, we are requesting that our variances obtained during the May 4th Zoning Board of Appeals meeting be extended for one year. A final site plan will be developed that we can bring before the planning commission upon reaching a resolution with the road commission.

We are seeking the extension per Section 12.7 (A). Evidence of our ongoing attempts includes our right of way application which was submitted on February 24th and as of the date of this memo, has not received a formal reply.

Attached is our email correspondence.

We want to make the improvements that the ZBA reviewed and that the neighbors came out to support and are continuing our efforts to move forward with this beautification project.

Best Regards,

Erik Gruber
Partner/Founder

Chris Millward
Partner/Founder

To: Elmwood Township Zoning Board of Appeals

From: Sarah Clarren, Planner/Zoning Administrator

Date: April 25, 2023

RE: Extension Request

On 4/18/2023, Erik Gruber and Chris Millward requested an extension to their ZBA approvals, Cases 2022-02 and 2022-03. The hearings for both cases were held on May 4, 2022 and the minutes were approved on May 18, 2022.

Per the Zoning Ordinance, The ZBA may grant two (2) extensions, for up to one (1) year for each extension, for an approved variance provided that the applicant applies for such an extension prior to the date of the expiration of the variance and provided that:

- A. The applicant presents reasonable evidence that the development has encountered unforeseen difficulties beyond the control of the applicant.
- B. The requirements that necessitated the variance and the variance standards have not changed.

If you believe an extension should be granted, please use the recommended motions:

Motion to grant a one-year extension for Case #2022-02 which was a request by Erik Gruber and Chris Millward for a 30 foot front yard setback variance to allow parking within the 30' front yard setback.

AND

Motion to grant a one-year extension for Case #2022-03 which was a request by Erik Gruber and Chris Millward for a variance to reduce the required parking ratio for business and professional offices within the NC zoning district from 1 space per 200 sf to 1 space per 270 sf.

