

**Charter Township of Elmwood
Zoning Board of Appeals Regular Meeting
Elmwood Township Hall (10090 E. Lincoln Rd.)
October 11, 2023 at 7:00 PM**

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

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

C. PUBLIC COMMENT: None

D. AGENDA MODIFICATIONS: MOTION BY JEFF APRILL, SECONDED BY JIM O'ROURKE TO APPROVE THE AGENDA AS PRESENTED. MOTION APPROVED 4-0

E. DECLARATION OF CONFLICT OF INTEREST: Jeff Aprill stated he has worked with Chris Fredrickson, but not on this project. No conflict found.

F. APPROVAL OF MINUTES: MAY 3, 2023: MOTION BY JIM O'ROURKE, SECONDED BY GARY BERGSTROM TO APPROVE MINUTES OF MAY 3, 2023 AS PRESENTED. MOTION PASSED UNANIMOUSLY.

G. NEW BUSINESS:

- 1. Case #2023-05 Request by Stephen Earl regarding property at 10945 S. West-Bay Shore Dr., Parcel #45-004-016-039-00 for a 10-foot water's edge setback variance to remove and replace rear deck in same location.**

Gary Bergstrom said it sounded straight forward, but asked Staff if she wanted to give a summary. Staff said that essentially, the Township originally adopted a water's edge setback in 1980, the deck was constructed in 1982, but she couldn't find a permit for the deck, if they did, then it could have been replaced in that same footprint, but because she couldn't find anything saying that it was permitted by the Township, that's why it's before them. She did note that the Zoning Ordinance does allow for a smaller deck with a water's edge setback. She had Findings prepared.

Gary Bergstrom said it looks like there is some question about whether it was really built in '82, or if it pre-dated the Z.O. Of course, if it did, as long as they stayed in the same footprint, they wouldn't have to seek a variance. But the burden would be on them to show that. Staff said they were able to locate an old letter that referenced the construction in 1982. She noted even if it was a pre-existing non-conforming structure, they couldn't remove and replace, they could repair without coming before them. She said think of it like a house; a pre-existing non-conforming house there and they wanted to tear down and build in the same location, they'd have to come before the ZBA. They can repair, they just can't alter it or expand.

Gary Bergstrom said, as he understands; it's 44' wide and 8' long. Staff replied, it fits the lot, it's a small lot, it's unique. Gary Bergstrom said he guessed the house itself is under 1,000 sq. ft. Staff said it was 838 sq. ft. according to BS&A.

Gary Bergstrom opened the public hearing at 7:05 p.m.

Gail of 10945 S. West-Bay Shore Dr. stated they purchased the home in 2005 and have been renovating it inside and outside since then. They realized the deck needed to be updated because it wasn't safe or up to code. They are not making it any bigger, they just want to build it exactly as it is, just new materials.

Staff asked if the bottom of the deck was enclosed.

Gail answered saying it wasn't.

Staff said that is helpful because the Township did receive a couple letters, one was from Heather Smith who works for the Watershed Center. If the deck was enclosed, if there was going to be any type of flooding, there would be more erosion, but if it's not, water can move freely.

Gary Bergstrom saw the letters from the neighbors that said there's a spring going through the property. Gail said the deck was 35' from where the culvert goes out.

Gary Bergstrom asked if that was still their property where it comes out of the culvert and heads east towards the bay. Gail responded, yes. They've never seen water come out of it, but they did measure it, and it's 35' from the deck.

Jeff Aprill said to Staff that she stated they could repair the deck but not tear it down completely. Staff responded, if they wanted to replace the boards only, there would be no issue, but they want to replace the footings, so they need approval.

Jeff Beamsley asked what the condition of the footings are. Gail replied, they're stable, but they're old and they want to make sure the deck is structurally sound.

Staff said any type of addition on this parcel would require a variance.

Jeff Beamsley asked, in general, how does the Township deal with non-conforming instances. He wondered how ultimately; they advance the cause of coded properties when they have so much non-conformity. Staff answered, if somebody is unable to conform to the Zoning Ordinance, that's part of the reason why the ZBA exists, the Board can't handle use variances, any member of the public can request a dimensional use variance from any dimensional aspect of the Ordinance. The Board reviews each request based on the Standards set forth in the Ordinance. If the Board finds all of those Standards have been

met, they have to grant the variance. If the Board finds that even one of those Standards have not been met, then they cannot grant the variance. Those Standards are located within Article 12 and she has Draft Findings that goes through those and presents just facts that have already been presented by the applicants and they incorporate information from the file and help the Board with their decision, but it's ultimately the Board that makes the decision.

Gary Bergstrom closed the public hearing at 7:19 p.m.

The Board went over the Basic Conditions required to grant a variance.

MOTION BY JEFF APRILL, SECONDED BY GARY BERGSTROM TO APPROVE THE VARIANCE NECESSARY TO ALLOW THE INSTALLATION OF A NEW DECK IN THE DECK'S CURRENT LOCATION BASED ON THE PREVIOUSLY FOUND FINDINGS OF FACT WITH THE CONDITIONS THAT 1) THE AREA UNDERNEATH THE DECK WILL NOT BE ENCLOSED AND 2) THE DECK SHALL BE REPLACE IN-KIND AND SHALL NOT INCREASE IN SIZE OR ENCROACH FURTHER INTO THE SETBACKS THEN IT CURRENTLY DOES. ROLL CALL VOTE: JEFF BEAMSLEY-YES, JEFF APRILL-YES, JIM O'ROURKE-YES, GARY BERGSTROM-YES. MOTION APPROVED UNANIMOUSLY.

2. Case # 2023-06 Request by TCWC Holding Company LLC at 9432 S. Center Hwy, Parcel #45-004-008-009-20 for a 10-foot height variance to construct a 45-foot -high portion of the building for equipment used in distillation in the Agricultural-Rural Zoning District. Maximum height allowed is 35 feet per section 5.4 of the Elmwood township Zoning Ordinance.

Gary Bergstrom opened the public hearing at 7:34 p.m.

Chris Frederickson owner/operator of Traverse City Whiskey 9440 S. Center Hwy.

Gary Bergstrom asked Chris, when he was before them almost 4 years ago, they had just purchased the property.

Chris Frederickson replied, yes, when they approached the ZBA several years ago, they had just purchased the property and were in the planning phase of the property. Since then, not a whole lot has changed. They have been navigating the challenges of bringing a facility like that, it's a big deal for them, there's been a lot of hurdles in the way that they've had to navigate, and he was there on behalf of Traverse City Whiskey to ask for a renewal of the approved variance.

Gary Bergstrom asked, that 10 feet beyond the height restriction in the Zoning Ordinance that's something based on their distilling knowledge, they need that extra 10 feet.

Chris Frederickson replied, yes, over the course of time the project has been planned, they purchased the equipment to successfully run the venture. They have the equipment, it just needs to be installed, and to clarify, the variance is supporting a very specific part of the building, it is not the whole building. It is one front section of the building that encloses the production equipment for the facility.

Gary Bergstrom asked if it was 20 x 20. Chris was going off memory, but thought that sounded right.

Jeff Beamsley said that was his only question, because he isn't familiar with the history, before they built, they requested the variance.

Chris responded, yes. He clarified, there are two buildings on the property that are part of the project. There's the building that Jeff Beamsley referenced that's in the back which is the barrel warehouse, and then the big building which is the former Stanek and Cherry Growers fruit processing facility. They are rehabbing the old building, that is a big part of the project, and as part of that rehabilitation, there's a 20 x 20 foot section in front of the building that houses the equipment and they're asking for the variance; currently they're capped at 35' and that variance would allow an extra 10' for them to fit the production equipment inside.

Jim O'Rourke noted someone mentioned fire protection. On the County building level was there something and is the 45' for fire protection. He asked if there was going to be flammables in that area. Chris answered, it is a height issue, but there is no direct impact to anything that touches the fire safety or fire suppression. There is fire suppression everywhere.

Jim O'Rourke commented the ZBA is just re-doing the approval they obtained in the past.

Gary Bergstrom asked Staff, even though the ZBA gave them a variance, the time frame on that has expired, they still have to go through the process and basic conditions. Staff said, yes, there have been a couple of changes. She also noted that she incorporated into the record the Minutes from 2021 when the Board approved it as well as the decision. They have not received letters for or against the project.

Gary Bergstrom closed the public hearing at 7:43 p.m.

The Board went through the Basic and Special Conditions.

Jeff Aprill suggested adding the condition to limit it to the exact size of that area. Staff agreed and said they could say the height variance is specific to the area as shown on the site plan dated 8/29/23.

MOTION BY JEFF APRILL, SECONDED BY JIM O'ROURKE TO APPROVE THE VARIANCE REQUEST FOR CASE 2023-06 BASED ON THE PREVIOUSLY FOUND FINDINGS OF FACT WITH THE CONDITION THAT THE INCREASED 10 FOOT VARIANCE IS SPECIFIC TO THE AREA AS SHOWN ON THE SITE PLAN DATED 8/29/23. ROLL CALL VOTE: JEFF BEAMSLEY-YES, JEFF APRILL-YES, JIM O'ROURKE-YES, GARY BERGSTROM-YES. MOTION PASSED BY A UNANIMOUS VOTE.

3. DISCUSSION ON NEXT MEETING DATE: Staff relayed that at this time, there are no new applications for November or December. If the Board meets in December, staff will not be able to be present for the regular scheduled meeting and they would have to change the date. The Board discussed other dates in December, but made no motion to change the schedule.

H. OLD BUSINESS: None

I. COMMENTS FROM THE CHAIR: Gary Bergstrom said it's been a continuing pleasure to work with them all, and welcomed new member, Jeff Beamsley.

J. COMMENTS FROM ZBA MEMBERS: None

K. ANNOUNCEMENTS: None

L. PUBLIC COMMENT: None

M. ADJOURN: MOTION BY JEFF APRILL, SECONDED BY JEFF BEAMSLEY TO ADJOURN MEETING AT 7:57 PM. MOTION PASSED.