

**CLEVELAND TOWNSHIP ZONING BOARD OF APPEALS
DECISION AND ORDER**

ZBA CASE #22-02

Parcel #45-003-024-020-10

THE REQUEST

Tax ID 45-003-024-020-10; Owner, Anthony and Kelley Zywicki have submitted a request for several variances to this residential parcel from Zoning Ordinance Article V, Section 5.08 Setback Restrictions and Section 5.09 Building Lot Width and Area specifically, “No building or structure shall be built closer than forty (40) feet to the nearest right-of-way line of any public street or thoroughfare, no closer than ten (10) feet for side yards, no closer than ten (10) feet for rear yards, and no closer than seventy-five (75) feet to the water’s edge”. And “The yard area free of all buildings and structures shall constitute at least seventy-five (75) percent of the lot”.

The applicant seeks the following: 33 ft. variance from the water’s edge; 8 ft. variance from the side lot on north property line; 5 ft. variance from the side lot on south property line; 7 sq. ft. variance on the yard area used for structures. The property is located at 5650 S Lime Lake Rd.

SUBMITTALS

- 1) *ZBA Petition Application.*
- 2) *Letter against, Olson.*
- 3) *Letter of support, Sturgeon.*
- 4) *Letter of support, Morton,*
- 5) *Letter against, Froelich*
- 6) *Letter against, Reimink*
- 7) *Letter in support of variance for yard area, against variance for any side or lake setbacks, Van Poole.*
- 8) *Letter of support, Deaton.*
- 9) *Letter of support, Brandenburg.*
- 10) *Letter of support, Nisch.*
- 11) *Three pictures of exterior of house presented by Applicant legal counsel.*

FINDINGS OF FACT

- 1) *The Zoning Ordinance requires a 75’ setback from the water’s edge and a 10’ setback for side yards.*
- 2) *The Zoning Ordinance requires “the yard area free of all buildings and structures shall constitute at least seventy-five (75) percent of the lot.”*
- 3) *Applicant home was built in compliance with original land use permit in 2016.*
- 4) *Deck and side overhang were added later without a new permit, putting the property out of compliance.*
- 5) *This variance seeks to address a problem that was self-created.*

Findings of fact relative to the criteria for "practical difficulty" ordinance interpretation:

- 1) **Whether 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 applicant had a compliant site plan and corresponding Land Use Permit signed by the Zoning Administrator and Mr. Zywicki. No practical difficulty or unnecessary burdensome conditions existed as evidenced by the signed Land Use Permit dated 8/17/2016 with no related application for variance.
- 2) **Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.** The Zoning Ordinances which have been violated are established requirements within the Township, lawfully enacted to protect current and future property owners. Setbacks and lot coverage are established to provide safety in case of emergencies and water quality from contamination due to excessive runoff and erosion. Granting a variance for noncompliant, non-approved building additions would not be consistent with the spirit of the Township ordinances and do an injustice to other property owners at present and in the future.
- 3) **Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.** The applicants agreed to an approved and compliant site plan and Land Use Permit that allowed use of their property and protected the integrity of their neighbors' property rights in the present and future and secured the public welfare and safety. Since a compliant permit was issued, to allow an unnecessary variance would set a precedent rendering zoning ordinances void of meaning causing serious harm to the Township.
- 4) **Whether the applicant's problem is self-created.** All requested variances are after the fact of an agreed to, signed and approved site plan and Land Use Permit. The violations are self-created. The variances requested are not in the spirit of the Zoning Ordinances which protect the welfare and property rights of neighbors and lake riparian.

Motion: Deny all requested variances per Section 14.09 as Submitted by Applicants for the following: 33 ft variance from the waters edge, an 8 ft variance from the side lot on North property line, a 5 ft. variance from the South lot property line, and 7 sq. ft variance on the yard area.

THE MOTION ADOPTING FINDINGS OF FACT AND DECISION AND ORDER

Based on the consideration of the application received and all of the evidence and comments received in this matter, and based on the findings of fact specified above;

Motion by Manikas /2nd Novak to Deny all requested variances per Section 14.09 as Submitted by Applicants for the following: 33 ft variance from the water's edge, an 8feet variance from the side lot on North property line, a 5 ft. variance from the South lot property line, and 7 sq. ft variance on the yard area.

Those voting in favor: Dechow, Denton, Fisher, Manikas, Nowak
Those voting against: None

The motion was approved, and it is so ordered.

Date: May 17, 2023


Joseph Dechow, Chairperson