

**Casco Township Zoning
Board of Appeals
Thursday, May 5, 2022, 7 PM**

Present: Chairman Matt Hamlin, Vice Chair Paul Macyauski, and Secretary Sam Craig,

Absent: Alex Overhiser and Matt Super

Also Present: Zoning Administrator Tasha Smalley, Applicant Dan Fleming, and Grant Holmes and Sue Applicants Carl and Herbert Weber, Recording Secretary Janet Chambers

1. **Call to Order:** The meeting was called to order by Chairman Hamlin at 7 PM for the purpose of hearing variance requests by two applicants. Dan and Karen Fleming and Carl and Herbert Weber. (Notice of Public Hearing Attachment 1).
2. **Approval of Agenda:** A motion by Macyauski, supported by Craig to approve the agenda as presented. All in favor. MSC.
3. **Public comment:** None
4. **New Business:**
 - A. **Dan and Karen Fleming of South Haven Michigan have petitioned for variances at 6756 109th Ave. (0302-009-017) to construct an addition to existing residence. The request is for rear setback relief and lot area. 1. The required rear setback is 50 ft., request is 10' of relief. 2. The lot area is not met (5.03). Required lot area 2.5 acres; the lot is 1.04 acres (300' x 150').**

Open public hearing at 7:02 PM.

- **Applicant Explain request, ZA staff report (Attachment 2):** Fleming explained that his whole house is in the rear yard setback and is Grandfathered in. He would like 10' of relief to put a deck on the front of his house.
- **Correspondence:** None
- **Audience for / against:** Jim Ridley lives across the Street from Fleming. Eldon Ridley, Jim's father is also a neighbor of Flemings. Jim Ridley said he and his father are in support of Fleming's request. The Fleming home has been there since way before zoning. There was a similar home built in 1991. Fleming should not be penalized for buying the property in the 70's. Flemings are good neighbors and take care of their property. Flemings are good neighbors who take good care of their property and Ridley has no problem with the variance. The original parcel was there years before zoning.
- **Any further discussion:** None

Close public hearing at 7:04 PM.

- **Discussion / decision of variance request:** Chairman Hamlin read through the standards taking comments from commissioners
 - 1) **Granting the variance will not be contrary to the public interest and will ensure that the spirit of the Ordinance is observed.** Macyauski said the spirit and intent of the rear yard

setback is intended for new homes. The Zoning Board of Appeals is an opportunity for grandfathered homeowners to come in and request a variance.

- 2) **The variance is being granted with a full understanding of the property history.** Yes. The house was moved onto the property in 1957. The basement was added in 1994. A bedroom and bathroom were added in 2005 and in 2018 a deck was added to the rear.
- 3) **Granting the variance will not cause a substantial detriment to property or improvements in the vicinity or in the district in which the subject property is located.** The addition is on the front of the house well outside of the front setback and cannot be seen from the back.
- 4) **The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practical or recurrent in nature.** Not too many will need to exercise this right, and the whole house is in the setback and may be the only house that is completely within the rear setback.
- 5) **That there are practical difficulties 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 property, that do not generally apply to other property or uses in the vicinity in the same zoning district. Exceptional or extraordinary circumstances include any of the following:**
 - A. **Exceptional narrowness, shallowness, or shape of a specific property on the date of this ordinance.**
 - B. **Exceptional topographical conditions.**
 - C. **By reason of the use or development of the property immediately adjoining the property in question.**
 - D. **Any other physical situation on the land, building or structure deemed by the ZBA to be extraordinary.**

The part that is extraordinary is that it was grandfathered in with the whole house within the rear setback.
- 6) **That granting the variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.** Fleming asked to speak. Fleming said as some of you know I have a low view of zoning. He said he filled out his form with his answers and in #6 where it says preservation of a *substantial* property right....” Fleming questioned the idea that we can determine what a *substantial* property right and not an *unsubstantial* property right is.

Macyauski said if you thought you were going to build a house now completely within the rear setback, it wouldn't happen.

Smalley said the ordinance called it a burden. It could be a huge burden if the variance was denied.

- 7) **That the variance is not necessitated as a result of any action or inaction of the applicant.** Correct. He is just trying to add on to the front of the house.

Isaac Fleming said if the whole addition was within rear setback, we are adding to the front. We are not encroaching as much as the current footprint. He said he did not think a variance request should be required.

Macyauski said the ordinance was written in 2006 and Fleming's house was grandfathered in. The purpose of variances was to give people in this situation some relief.

Isaac Fleming said it seemed rights were taken away but given back for a cost.

Macyauski said when the amount of the fees was discussed and decided they calculated the cost to the township of bringing the ZBA in and publishing the public notice. It was costing the township every time they gave a variance prior to the fee being raised.

- 8) **The variance, if granted, would be the minimum departure necessary to afford relief.**
Yes
- 9) **If involving a platted subdivision, that there is no practical possibility of obtaining more land and the proposed use cannot be located on the lot such that the minimum requirements are met.** NA

Smalley reminded commissioners they are also considering a variance for lot size. 2.5 acres is the required minimum lot size, and 1.04 acres is what he has.

A motion by Macyauski to grant the setback variance and minimum area variance. Supported by Craig. All in favor. Variances granted.

- B. Carl Weber and Herbert Weber of South Haven MI have petition ed for variances at V/L Maple Street and McMullan Way (0302-760-157-00) to construct a new residence and detached garage. Front setback (Maple St.) required 25 ft., request 12 ft. of relief (house); Front setback (Maple St.) required 25 ft., request 4 ft. of relief (detached garage).**

Open public hearing at 7:19 PM

- **Applicant explain request; ZA staff report (Attachment 3):** Grant Holmes and Sue Colburnact, who would like to purchase the property were present to represent the property owners Carl Weber and Herbert Weber. Holmes explained the garage door is entered from Maple Street. It is not a 2-car garage or even a 1-car garage. It will be used for storage and the design will emulate the house. There is a berm on neighboring property. It is bermed up to offset looking at the back of the garage. They have reduced the size of the garage to meet lot coverage requirements. The lot is 51 x 125. There are 2 front yard setbacks. There is a gravel area for parking. Setbacks are 25' on each front yard setback. This only leaves 15' for building. They have a smaller footprint with 2 bedrooms and 2 bath. Their plan is for a 28' house. There was a variance granted at 480 Beach Glass Street, which is a similar example on a corner lot of Beach Glass and Maple.
- **Correspondence:** 2 letters were received. One from Kelvin O'Meara & Melissa Loew (Attachment #4) in opposition to the variance request. A second letter was received from Sergio Pereira (Attachment #5) in support of the request.
- **Audience for / against comments:** None
- **Any further discussion:** None

Close public hearing at 7:28 PM

- 1. Granting the variance will not be contrary to the public interest and will ensure that the spirit of the Ordinance is observed.**

Macyauski said he wants to get cars off the street. McMullin Way has less traffic than Maple. Elm & Maple are the main traffic roads. Ten feet is the minimum setback for the smallest accessory building. Discussion ensued about options to keep garage further from Maple. After discussing options, the applicant agreed to turn the garage 45 degrees, which would meet the 25' setback from Maple Street. The applicant would still need the front setback (Maple Street) for the house.

Because there were only 3 commissioners present, the decision would need to be unanimous. Holmes said he will amend his site plan with the garage turned. No cars would be parking on Maple Street.

- 2. The variance is being granted with a full understanding of the property history.** Yes
- 3. Granting the variance will not cause a substantial detriment to property or improvement in the vicinity or in the district in which the subject property is located.** There is a similar variance on Beach Glass Street.
- 4. The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practical or recurrent in nature.** Exceptional narrowness would only allow a 25' wide home.
- 5. That there are practical difficulties 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 property, that do not generally apply to other properties or uses in the vicinity in the same zoning district. Exceptional or extraordinary circumstances include any of the following:**
 - A. Exceptional narrowness, shallowness or shape of a specific property on the date of this ordinance.**
 - B. Exceptional topographical conditions.**
 - C. By reason of the use or development of the property immediately adjoining the property in question**
 - D. Any other physical situation on the land, building or structure deemed by the ZBA to be extraordinary.**

The narrowness and two front setbacks make it difficult to have a typical 24' wide home. With setbacks they could only have a 15' wide home.

- 6. That granting the variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.**

Yes. There is a similar situation on Beach Glass.
- 7. That the variance is not necessitated as a result of any action or inaction of the applicant.**

It is on a historically platted lot and is a single lot of 51' x 125'.

8. **The variance if granted, would be the minimum departure necessary to afford relief.** The applicant is turning his storage building so as not to need a second variance.
9. **If involving a platted subdivision, that there is no practical possibility of obtaining more land and the proposed use cannot be located on the lot such that the minimum requirements are met.** He needs 10' more to meet minimum requirements. Neighboring property has already been purchased.

- **Discussion / decision of variance request:**

Motion by Macyauski 12' for home, deny request for setback garage, support Sam. All in favor.

5. **Old Business:** None
6. **Public comment:** None
7. **Approval of previous minutes – April 21, 2022:** postponed until next meeting
8. **Adjournment:** Motion by Hamlin, supported by Macyauski to adjourn. Meeting adjourned at 7:43 PM.

Attachment 1: Notice of public hearing

Attachment 2: Application and Zoning Administrator report for Fleming variance

Attachment 3: Application and Zoning Administrator report for Weber variance

Attachment 4: Letter from Kelvin O-Meara and Melissa Loew, 5/4/2022, In opposition to Weber variance

Attachment 5: Letter from Sergio Pereira, 5/2/2022, In support of Weber variances

Attachments available at Casco Township Hall upon request

Minutes prepared by Janet Chambers, Recording Secretary