

SAUGATUCK TOWNSHIP ZONING BOARD OF APPEALS

May 6, 2004

The Saugatuck Township Zoning Board of Appeals met on May 6, 2004, at the township hall on Blue Star Highway, Saugatuck, Michigan 49453.

Present: Oyler, Phelps, and Wester

Absent: None

Also present: Z. A. Ellingsen, Tammy Kerr and members of the general public.

The public hearing was called to order by Chairman Oyler at 4:07 P.M. He read the public notice of the request by Tammy Kerr, 6131 Kingsway Ct., Saugatuck, for a variance to construct a swimming pool within the 75-foot setback area on property located at 6363 Silver Lake Rd. in R-2. The property fronts on the Kalamazoo River, and the house, currently under construction, sits 75 feet from the water's edge. This request would be contrary to the requirement stated in Sec. 40-277(1) of the Zoning Ordinance.

Oyler stated that this hearing was properly noticed, and he asked if there were questions about the public notice. Gerrit Sturrus, 6377 Old Allegan Rd., said it took him a long time to find out where this property was, and he wondered if the proper people had been notified of the request. Z. A. Ellingsen verified that those within 300 feet of the property were notified by mail, and notice was published in the Commercial Record.

Oyler pointed out that there are four areas of concern which the applicant addressed in her application, and he asked her to verbally review those for the Board and answer questions put by the Board members. Kerr explained that when she bought the long, narrow lot, there was a log cabin down below the bluff, and her idea was to take down the cabin and build her house on that spot, but she decided to move it back as far as she could into the hill. Then to conform to the Ordinance, she had to move it back another 10 feet to be 75 feet from the water. Because the lot is so narrow the gas and water lines, the driveway, and the septic drainfield take up most of the back of the lot. There is no room for a pool there. She said her two small boys like to swim daily, and she had heard that the river is contaminated, so she wanted a pool. It would be a below-ground pool with a liner and would be accompanied by a storage barn for life vests, etc. She added that her well water was contaminated, but she heard that public water is coming to that area.

Ellingsen explained that storage sheds under 200 s.f. do not need a building permit, but they do have to conform to setback requirements of the Zoning Ordinance. He reviewed the issue of Kathleen Markham's gazebo, which was built by the water, a variance denied by the ZBA, and upheld by the Circuit Court subsequently. Wester asked if a pool would be a "structure," as mentioned in Sec. 40-277(1), and Ellingsen replied, "Yes." He added that it is not an aid to getting down to the water, as a stairway would be. Ellingsen said he had consulted Atty Bultje about the Ordinance definitions of "Building setback" and "Structure." He said there is no question that this is against the Ordinance, because it is a concrete form, retaining earth. This 75-foot setback is "sacred ground."

Oyler read letters from Roy and Carol McIlwaine and from Dan Schnitta opposing the pool within the setback. Wester read a phone message from Charlie Palm, Silver Lake Rd., who was not opposed to the proposed project. Kerr delivered some letters in favor from Jeff Shashaguay, one of the builders; Tony Zahn; Sheila Barth; Arlene Serr, Palmer Dr.; and the Colbens, Silver Acres.

Gerrit Sturrus stated that he was opposed to building within the setback because it would set a precedent. The seawall is all that holds the pool back from falling into the river. He said seawalls are crumbling all

along the river because, with the lower water level, there is not enough water pressure to hold them back. All along the banks there are streams, so the pool won't stay put. Kerr said the Lamb's have a pool around the bend, and she didn't think they'd had trouble with it.

Ellingsen said Al Malkowski, the neighbor to the east, came into the office and said he was dead-set against the granting of the variance.

Wester made a motion to deny the variance, and Phelps seconded. Wester said he wanted to stay within the guidelines of the Ordinances that are currently in place, and he thought this request had the most negative responses of any he'd heard. He thought Kerr would have to come up with a better reason for the request, that if this variance were granted, everyone would want to build within the setback. Oyler said he was inclined to agree, and he cited the Circuit Court decision in the Markham case, upholding the ZBA denial, saying Kerr, like Markham, had not met the requirements to show a hardship. Phelps said he did not see any exceptional conditions.

One of the gentlemen accompanying Kerr asked if no other structures than docks were allowed, and Ellingsen replied that, because many of these river lots are on a bluff, an intermediate deck in connection with stairs would be allowed, so residents could rest on the way down to the river. He added that the definition of "Building Setback" inferred that no foundation or footings were allowed. Kerr asked if she could have a concrete patio in the front yard, and Board members said they were only ruling on the application presented. Kerr stated that if she could not have a pool or a patio, she needed to finish the lawn, etc. in time for the Parade of Homes within five weeks. She was advised to confer with Z. A. Ellingsen about whether she can or cannot pour concrete in this setback. It was made clear that the Board has been consistent in enforcing this setback requirement.

The motion carried unanimously, and the application was denied.

Meeting adjourned at 4:45 P.M.

Betty A. White, Recording Secretary