

**ZONING BOARD OF APPEALS**

Monday, September 8, 2014

**AGENDA AND MINUTES**

CALL TO ORDER:

PLEDGE OF ALLEGIENCE:

APPROVAL OF AGENDA: *September 8, 2014*

INTRODUCTION OF MEMBERS:

CALL TO PUBLIC: *Agenda Items only – 3 minute limit*

APPROVAL OF MINUTES FOR: *January 2, 2014 Regular Meeting*

OLD BUSINESS:

NEW BUSINESS: *ZBA Case # 02-14 – Timothy & Katherine Choroba  
2767 Buttercup Court – Tax ID# 4710-15-301-053*

*ZBA Case # 03-14 – Matthew M. Hagerty, Esq for  
Mr. & Mrs. Scappaticci – 4511 Cedar Lake Road  
Tax ID# 4710-29-401-021*

*ZBA Case # 04-14 – Marion Township  
5585 Cedar Lake Road – Tax ID#4710-33-100-004*

CALL TO PUBLIC:

ADJOURNMENT:

**MINUTES - SEPTEMBER 8, 2014**

**MEMBERS PRESENT:** Larry Fillinger, Linda Manson-Dempsey, Larry Grunn, Claire Stevens and Dan Lowe

**MEMBERS ABSENT:** None

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**CALL TO ORDER**

Larry Fillinger called the meeting to order at 7:33 p.m.

**APPROVAL OF AGENDA**

Linda Manson-Dempsey motioned to approve the agenda as presented. Larry Grunn seconded. **Motion carried 5-0.**

**MEMBERS PRESENT**

The members of the Zoning Board of Appeals introduced themselves, and Chairman Fillinger welcomed new member Claire Stevens.

**CALL TO THE PUBLIC**

No response.

**APPROVAL OF MINUTES**

**January 2, 2014 Regular Meeting:** Linda Manson-Dempsey motioned to approve the minutes as presented. Dan Lowe seconded. **Motion carried 4-0** (Claire Stevens abstained.)

**OLD BUSINESS**

None.

**NEW BUSINESS**

**ZBA Case #02-14—Timothy & Katherine Choroba, 2767 Buttercup Ct., Tax ID #4710-15-301-053**

Timothy Choroba said they are applying for the variances for an accessory building because of difficulties with the corner lot, drainage, sloping yard, and the steep pitch the second driveway would require to access the building. Linda Manson-Dempsey asked about moving the building further up the hill. Mr. Choroba said that's where the septic is.

### **Call to the Public**

Dave and Debbie Asquini, 2851 Wheat Valley Dr., were present and strongly object to the proposed accessory building, as stated in their August 27 letter to the ZBA. One of the objections is that Mr. Choroba runs a Matco Tool business out of his home. They are concerned about constant deliveries and commercial trucks coming into the neighborhood on a daily basis. Linda Manson-Dempsey asked Annette McNamara if they have a Special Use Permit for the business. Ms. McNamara said no, but that issue would be dealt with separately from the variance request. Dan Lowe asked the applicants if they would be able to landscape around the building to provide some screening. Mr. Choroba said that was their intention. Claire Stevens asked how often deliveries are made. Mr. Choroba said UPS daily, the larger truck usually once or twice a month. Scott Lloyd said he would like to see the accessory building pushed back further. Claire Stevens said she is secretary of the Blossom Farms homeowner's association, but did not vote on this item, and this would not be considered a conflict of interest.

Letters opposing this request were also received from Blanche Kline, 3029 Wheat Valley Drive, and Wallace & Kimberly Hill, 2800 Buttercup Ct.

### **Motion**

Dan Lowe motioned for ZBA Case #02-14, Timothy & Katherine Choroba, 2767 Buttercup Ct., Tax ID #4710-15-301-053, to approve the request to relax **Section 6.19 #2** to allow a second driveway on a private road, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *The homeowner's association has approved this request for a second driveway on a private road.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The property is unique as it's a corner lot.*
3. The conditions and circumstances unique to the property were not self-created. *The conditions and circumstances are not self-created.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *There are other unique properties in the area that have two driveways.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The intent of Section 6.19 #2 is to prevent driveways right next to each other; the request is for two driveways far apart on different streets.*
6. The difficulty shall not be deemed solely economic. *The request is not economically based.*

Larry Grunn seconded. Roll call vote: Lowe—yes; Grunn—yes; Fillinger—no; Manson-Dempsey—no; Stevens—yes.

**Motion carried 3-2.**

### **Motion**

Dan Lowe motioned for ZBA Case #02-14, Timothy & Katherine Choroba, 2767 Buttercup Ct., Tax ID #4710-15-301-053, to approve the request to relax **Sections 8.01 F3 a and 6.07 #3 & #10** and grant a 25' front yard variance on the NE corner of the building and allow an accessory structure in front yard, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *The request is necessary because of the location of the drain field and it's a corner lot.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The property is unique as it's a corner lot.*
3. The conditions and circumstances unique to the property were not self-created. *The conditions and circumstances are not self-created.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *There are no special privileges; this request is granted because of the location of the drain field.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The request is not contrary to the spirit and intent of the ordinance as the building will be located as far back as possible due to the configuration of the lot.*
6. The difficulty shall not be deemed solely economic. *The request is not economically based.*

Larry Grunn seconded. Roll call vote: Stevens—yes; Manson-Dempsey—no; Fillinger—yes; Grunn—yes; Lowe—yes.

**Motion carried 4-1.**

**ZBA Case #03-14—Matthew M. Hagerty, Esq. for Mr. & Mrs. Scappaticci, 4511 Cedar Lake Rd., Tax ID #4710-29-401-021**

Matt Hagerty, Myers & Myers, was present along with the property owner, Mr. Scappaticci. The request is for a front yard setback reduction for a newly-construction deck. The applicant replaced an existing deck and the new construction is a few feet larger than the previous deck. The original deck did not meet the required 50' front yard setback. Letters of support were received from Ken Fackender, 4581 Cedar Lake Rd., Bob & Debbie Keier, 4561 Cedar Lake Rd., and Kim Halstead, 4512 Cedar Lake Rd.

Larry Grunn asked what material was used. Mr. Scappaticci said mostly cedar with Trex on top. Claire Stevens said she looked at the plat and the subdivision plat measurements are from the high water mark.

Linda Manson Dempsey motioned for ZBA Case #03-14, Matthew M. Hagerty, Esq. for Mr. & Mrs. Scappaticci, 4511 Cedar Lake Rd., Tax ID #4710-29-401-021, to approve a 20' variance from the high water mark on the NE corner and 21' variance from the high water mark on the SE corner, considering the following criteria:

1. How the strict enforcement of the provisions of the township zoning ordinance would cause an unnecessary hardship and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district. *The deck was already there and the homeowner has only made improvements.*
2. The conditions and circumstances unique to the property, which are not similarly applicable to other properties in the same zoning district. *The property is unique due to the water's edge.*
3. The conditions and circumstances unique to the property were not self-created. *The conditions and circumstances are not self-created, and letters of support were received from surrounding property owners.*
4. Why the requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district. *The requested variance will not grant special privileges.*
5. Why the requested variance will not be contrary to the spirit and intent of this zoning ordinance. *The request is not contrary to the spirit and intent of the zoning ordinance.*
6. The difficulty shall not be deemed solely economic. *The request is not economically based.*

Larry Grunn seconded. Roll call vote: Stevens—yes; Manson-Dempsey—yes; Fillinger—yes; Grunn—yes; Lowe—yes.

**Motion carried 5-0.**

**ZBA Case #04-14—Marion Township Interpretation, 5585 Cedar Lake Rd., Tax ID #4710-33-100-004**

Annette McNamara is asking the ZBA members for an interpretation of the zoning ordinance with regard to land use permits that are issued for construction of a principal dwelling and accessory structure. She would like the ZBA members to review Section 4.03 C #9—Certificate of Zoning Compliance and what is the earliest point that this can be issued. She is also asking them to review Section 6.07—Accessory Uses & Structures. The situation has arisen where a permit was issued for both structures, but only the accessory structure is being built.

Dan Lowe suggested asking the attorney if they can be prevented from using the structure until the home is built. Scott Lloyd said the buildings should go up simultaneously.

Ms. McNamara said she will discuss further with the attorney and provide input at the next meeting.

Dan Lowe motioned that the construction of the principal structure and accessory structure must be done concurrently, and the township attorney should review and agree with the ZBA's motion. Larry Grunn seconded. Roll call vote: Stevens, Manson-Dempsey, Fillinger, Grunn, Lowe—all yes. **Motion carried 5-0.**

**CALL TO THE PUBLIC**

No response.

**ADJOURNMENT**

Linda Manson-Dempsey motioned to adjourn the meeting at 9:05 pm. Claire Stevens seconded. **Motion carried 5-0.**