



# Fruitland Township Zoning Board of Appeals Minutes of January 23, 2017

***CALLED TO ORDER:*** 6:00 p.m.

***PLEDGE OF ALLEGIANCE***

***PRESENT:*** Chairman John Warner, Board members Penny Larson, Cindy Campeau, Judy Marcinkowski and Eileen Stoffan.

***ALSO PRESENT:*** Attorney Kevin Even, Zoning Administrator Jensen, Recording Secretary Sally Dion and **13** interested parties.

***AGENDA:*** Motion by Penny Larson, second from Judy Marcinkowski, ***ADOPTED***, to accept the January 23, 2017 Zoning Board of Appeals agenda as written.

***5 AYES***

***NOMINATIONS/ELECTIONS:***

Motion by Judy Marcinkowski, second from Penny Larson, to nominate Eileen Stoffan as Chairperson.

Motion by Judy Marcinkowski, second from Penny Larson, ***ADOPTED***, to close nominations and elect Eileen Stoffan as Chairperson for the Zoning Board of Appeals year of January, 2017 to April 2017.

***5 AYES***

Motion by Judy Marcinkowski, second from Penny Larson, to nominate John Warner as Vice Chairperson.

Motion by Penny Larson, second from Judy Marcinkowski, ***ADOPTED***, to close nominations and elect John Warner as Vice Chairperson for the Zoning Board of Appeals year of January 2017 to April 2017.

***5 AYES***

Motion by Penny Larson, second from John Warner, to nominate Judy Marcinkowski as Secretary.

Motion by Penny Larson, second from John Warner, ***ADOPTED***, to close nominations and elect Judy Marcinkowski as Secretary for the Zoning Board of Appeals year of January 2017 to April 2017.

5AYES

**MINUTES:** Motion by John Warner, second from Judy Marcinkowski, **ADOPTED**, to accept the September 14, 2015 Zoning Board of Appeals minutes as written.

5 AYES**CORRESPONDENCE:**

1. Letter from R. Glenn Mathews received December 8, 2016 regarding application for Special Land Use Permit by Jennifer Venema.

Motion by John Warner, second from Judy Marcinkowski, **ADOPTED**, to acknowledge receipt of correspondence received on December 8, 2016 and that no action is required.

5 AYES

Chair Stoffan explained the purpose and function of the Zoning Board of Appeals.

**4734 Bluff Road****61-06-275-000-0004-00**

**Applicant William Josephson on behalf of owner Stephen R. Murrill, 4634 Bluff Road, Whitehall, MI, 49461, requests a variance from the following article: Article VIIIa, Inland Lakes District, Section 8.02a Site Development Standards, to (1) appeal the Zoning Administrator's denial of a zoning permit, which denial was on or about November 10, 2016 (pursuant to Section 19.03(A) of the Zoning Ordinance, (2) an interpretation of Section 8.02a (1) as to rear yard setback requirements (pursuant to Section 19.03(B) of the Zoning Ordinance and (3) a variance request (pursuant to section 19.03(C) of the Zoning Ordinance.**

***Correspondence:***

1. Carol Binnendyk, 5050 Bluff Road, **opposed**.
2. Marlene Smith, 4886 Bluff Road, **opposed**.
3. Joan Kalso, 4722 Bluff Road, **opposed**.
4. Kathy & John Woudstra, 5546 Channelview Drive, **opposed**.
5. Patricia Halic, 4662 Bluff Road, **opposed**.
6. Joanne Dehann, 4772 Bluff Road, **opposed**.
7. Kerry L. Ketring, 5516 Channel View Drive, **opposed**.
8. Steve & Cheryl Mairs, 4832 Bluff Road, **opposed**.
9. Allan & Anne Dake, 6860 South Shore Drive, **opposed**.
10. Chip & Susan Sawyer, 4602 Bluff Road, **opposed**.
11. Lawrence & Sandra Paggeot, 4782 Bluff Road, **opposed**.
12. Patricia J. & James W. Townsend, 4944 Bluff Road, **opposed**.
13. Tom & Chris Mallory, 4876 Bluff Road, **opposed**.
14. Donna Huldin, 4792 Bluff Road, **opposed**.
15. Frank E. Jeffers III, 4710 Bluff Road, **opposed**.
16. Jim Coddington, 5490 Channel View Drive, **opposed**.
17. Jon & Peggy Jacobs, 5530 Channel View Drive, **opposed**.
18. Richard Smies, 6840 South Shore Drive, **opposed**.

19. Bruce Funnell, 4620 Bluff Road, **not opposed**, however, questions: 1) Can a home be built without a variance? 2) Are there exceptional or extraordinary circumstances which require a variance? 3) Can the home be built that will reduce the impact of privacy concerns, lake view reduction and related property value for all adjacent homes?
20. M. Pulver, 4670 Bluff Road, **opposed**.
21. Peter & Shannon Butterfield, 5102 Bluff Road, **opposed**.
22. Rick Trask, 4654 Bluff Road, **opposed**.
23. Tom & Bette Bierling, 5540 Channel View Drive, **opposed**.
24. William T. Trask, 4662 Bluff Road, **opposed**.
25. David A. Grooters, 4820 Bluff Road, **supports**.

***Public Hearing Open 6:17 p.m.***

**Attorney Rachel Novak, Rose & Rose Attorneys, 8787 Ferry Street, Montague, Michigan**, is representing the Murrill's. She explained the application is for three things, 1) Appeal of the Zoning Administrator's denial, 2) Interpretation of Section 8.02a (1) as to rear yard setback requirements, and 3) To request a variance.

She handed out a list of nineteen homes on Bluff Road that are closer than 100' from the Ordinary High Water Mark and some aerial photos of homes on Bluff Road and on Duck Lake Road. She questioned why averaging was not used for a home built in the past few years on Duck Lake Road on the lake. The house was allowed to be built 100' from the Ordinary High Water Mark.

She quoted the Zoning Ordinance as defining the word "shall" as always mandatory and not discretionary and the word "may" as permissive. She believes the Zoning Administrator interpreted as he should have with the way the language was/is written as "may" so it would be permissive allowing the 100' setback.

**William Josephson, 3425 Lakewood Road, Whitehall, Michigan**, references the home built on Duck Lake Road on the lake, he does not believe this house was approved as a historical setback it was approved because it was permissive to be 100' from the Ordinary High Water Mark.

**Attorney Susan Franklin, Hughes/Williams Attorneys, 120 Apple Avenue, Muskegon, Michigan**, is representing the Steven's.

She handed out data and pictures for 5830, 5832 & 5820 Duck Lake Road, a site plan of the Murrill parcel, including the parcel across the street with a note depicting that the septic location was denied by the Muskegon County Health Department to be placed between Bluff Road and the proposed new home and also included was data and pictures for 4622, 4634, 4640, 4654, 4662, 4670 and 4682 Bluff Road.

They agree with the Zoning Administrators denial of the zoning permit. The Duck Lake Road house does not affect neighbors who are up on the bluff. If given approval they will not only be taking away the view from the neighbors but themselves also.

The variance request does not meet requirements, there is no hardship. In the past the township has upheld the ordinances.

They are requesting the denial be upheld.

*Public Comment:*

**Tom Thompson, 5564 South Shore Drive, Whitehall, Michigan**, stated has lived on White Lake for many years; he is on the Planning Commission and is involved with several lake groups. When the average setback language was written the Planning Commission kept historic setbacks in mind.

He requested approval not be given until they have Muskegon County Health Department approval. His opinion is that the applicant can move the house back to meet the determined average setback.

He requested the variance be denied.

**Joel Mahoney, 4640 Bluff Road, Whitehall, Michigan**, stated the average setback must be used using the houses within 200'. He says one of the reasons they stated they requested to move the house closer to the lake was because his shed is very close to the property line and they were worried about emergency vehicles having access. He said he would be willing to remove the shed if they would agree to move the house to a reasonable setback.

He handed out a letter dated January 23, 2017 with the reasons of why he is aggrieved.

**David Stevens, 4622 Bluff Road, Whitehall, Michigan**, thanks the Board of Appeals members for their time and service.

He referenced the handout given by Susan Franklin and asked they pay close attention to the homes and there location in respect to each other and the lake. He said his family has been full time residents since 1978. The Murrill's only connection to the White Lake area is as tourist. They have not experienced the lake during high water times or during storms when the houses have been splashed upon, this is very low lying area.

He stated the previous Zoning Administrator upheld the Ordinances. There is a difference between White Lake and Duck Lake because Duck Lake levels are controlled by a weir.

He requested the variance be denied.

He handed out a letter dated January 23, 2017 from him and his wife Diana with reasons why they are aggrieved.

**Carol Norwood, 5542 Channel View Drive, Whitehall, Michigan**, stated her and her husband bought a small cottage on the lake, tore it down and rebuilt, however, they followed all the rules.

She believes if the variance is allowed it is going to create a huge problem.

**Attorney Rachel Novak, Rose & Rose Attorneys, 8787 Ferry Street, Montague, Michigan**, stated that the Muskegon County Health Department did not disapprove the septic system, for engineering purposes it was decided to be put on the parcel across the street.

She does not believe the house on Duck Lake Road that was approved at 100' from the Ordinary High Water Mark was approved according to historical setback.

She stated according to courts a view is not promised across neighboring properties.

**Board Member Marcinkowski** asked about the concern of emergency vehicles, was this because of the close setbacks from neighbors?

**William Josephson** stated that is correct.

**Board Member Marcinkowski** asked Mr. Josephson if he filled out the Zoning Application because if he did why the question (Will it hamper access by emergency vehicles or personnel?) was answered no then.

**William Josephson** reiterated Rachel Novak's comment that a view is not guaranteed across other parcels according to law.

**Tom Thompson** stated the Planning Commission had view in mind when they worked on fence language.

**Brad VanBergen, Winberg Construction, 8868 Water Street, Montague, Michigan**, will be building the Murrill home, he stated the Murrill's are nice people and want to do what is right; they do not want to be bad neighbors.

He also stated like Rachel Novak did earlier that the Muskegon County Health Department did not disapprove the location of the septic system as shown on the site plan, however, they did suggest it would be better across the street and that was agreed to.

**Public Hearing Closed 7:32 p.m.**

**Board Comments:**

Chair Stoffan asked Zoning Administrator Jensen to explain why this application was denied.

Zoning Administrator Jensen addresses the letter dated November 8, 2016 sent to William Josephson denying the application and gave reasons for denial.

Board Member Marcinkowski asked Zoning Administrator Jensen about the Duck Lake Road house that was approved at a 100' setback from the Ordinary High Water Mark.

Zoning Administrator Jensen stated that was approved in 2013 by the previous Zoning Administrator, the zoning language was a little different, with no notes from the previous Zoning Administrator other than the Zoning Permit being approved he could only think it was approved by one of two parts of the language at that time.

Board Member Warner stated the Planning Commission frequently struggles with ordinance language, however, he believes that the average of existing principal buildings on adjacent lots within two hundred (200) feet on each side of a proposed building be used for the rear setback on a property located on a lake.

Zoning Administrator Jensen stated as far as which word "may" or "shall" should be used in the language, he would have to say after further thinking that "may" should because that would allow for the setback to be moved back. If it was shall it would have to be at that exact setback.

Board Member Marcinkowski thanks all for their input. This will be a tough decision.

Chair Stoffan explained they will be ruling on the following three things, 1) Appeal of the Zoning Administrator's denial, 2) Interpretation of Section 8.02a (1) as to rear yard setback requirements, and 3) To request a variance.

She said it was time to review the Variance Decision Checklist.

William Josephson asked if he could speak.

Attorney Even advised the Public Hearing was over, however, the board could make a motion to suspend if they chose to.

Motion by John Warner, second from Judy Marcinkowski, **ADOPTED**, to suspend.

**5 AYES**

William Josephson advised that the Murrill's do not want to request the variance now, they only want ruling on the Appeal of Zoning Administrator's denial and the Interpretation of Section 8.02a (1) as to rear yard setback requirements. The Murrill's only want to do what is legal.

Motion by Judy Marcinkowski, second from John Warner, **ADOPTED**, to unsuspend.

**5 AYES**

Motion by Judy Marcinkowski, second from John Warner, **ADOPTED**, to **CONCUR** with Zoning Administrator Jensen's denial letter dated November 8, 2016.

**5 AYES**

Motion by Judy Marcinkowski, second from John Warner, **ADOPTED**, to **AFFIRM**, that Zoning Administrator Jensen properly denied the zoning permit as stated in the letter dated November 8, 2016.

**5 AYES**

**ADJOURNMENT**

Motion by Penny Larson to adjourn the January 23, 2017 Zoning Board of Appeals meeting at 7:52 p.m.

Respectfully Submitted,

Sally Dion  
Recording Secretary