

LEROY TOWNSHIP ZONING BOARD OF APPEALS

Minutes

May 25, 2021

The Leroy Township Zoning Board of Appeals met at the Leroy Township Hall, 6684 Paine Road, Leroy Township, on May 25, 2021 at 7 p.m.

Chairman Rudy Veselko called the public hearing to order with the Pledge of Allegiance.

Members present were: Rudy Veselko, Shawn Parker, Susan Hanna, Tim Toman and alternate, Al Erickson.

Absent: Greg Miller.

Also present were: Attorney, Ron Graham, Zoning Inspector, Noell Sivertsen and Julie Himmelman, Zoning Secretary.

Guest:

Applicants Linda Burhenne; Berndy Heckelmann and his daughter and son-in-law, Melissa and Todd Victor; and Michael Toman.

David Radachy, Director of the Lake County Planning and Community Development, Trustee Heather Shelton, and Dan Himmelman and Dane Hockman of the Leroy Zoning Commission.

Audience: Eric Stutzman of 13574 Shirley Park Drive, Dennis and Linda Dragolich of 13517 Carter Road, Ron Haycox of 13501 Carter Road, Mike Toman (son and grandson of the applicants), and Chis Pfeil of 13405 Carter Road

Minutes: The reading of the January 21, 2021 meeting was waived. Shawn made a motion to approve the minutes as written, Tim seconded. All were in favor.

Hearing 1: Linda Burhenne - setback variance:

The chairman read the Notification of Application: The purpose of the first hearing is a request by Linda Burhenne for a variance (21-03) to decrease the setback from 100 feet to 48.5 feet for a front porch at 13254 Girdled Road. A legal notice of the hearing was published on May 15, 2021 in the News Herald and on the township website and written notices were mailed to all parties of interest.

Rudy administered the oath to all who were to testify and asked the applicant to give testimony as to their request.

Linda Burhenne stated that she is requesting to add a 6 ½ foot porch on the front of her house. She has provided a picture of her historic home with a front porch. She stated her house was built long before there was zoning regulations and that her closest neighbor's house would still be closer to the road than the proposed porch.

Al asked about measurement and the placement of the steps. The zoning inspector stated that in general zoning practices steps are not considered as part of the measurement for setback.

The zoning inspector stated that she would recommend approving the variance.

The secretary stated there were no objections sent to her request.

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The chairman asked if there was any further testimony, for or against the requested variance. There was not.

The chairman asked for a motion to go into executive session. Susan made the motion. Shawn seconded and all were in favor.

Susan motioned to end Executive session. Tim seconded and all were in favor.

The chair asked for a motion to approve the applicant's request for a variance to decrease the setback from 100 feet to 48.5 feet for an open front porch at 13254 Girdled Road with the condition that it may not be enclosed at any time. Susan made the motion and Shawn seconded. Poll of the vote: Shawn, yes. Rudy, yes. Tim, yes. Susan, yes. Al, yes.

The motion was approved.

Hearing 2: Berndy Hecklemann - reduction in lot size and flag width.

The chairman read the Notification of Application: The purpose of the second hearing is a request by Berndy Hecklemann of 13415 Carter Road for a variance (21-02) to split his flag lot into two flag lots which would (1) create two private driveways with a reduction from 60' to 45' at the intersection of the public road; and (2) reduce both lots size from the 3 acres to approximately 2.2 acres and 2.3 acres. Chairman, Rudy Veselko stated that the publication of the meeting was posted in the News Herald on May 15, 2021, as well as the Township website. Legal Notices were mailed to surrounding property owners.

Rudy administered the oath to all who were to testify and asked the applicants to give testimony as to their request. Berndy Hecklemann's son-in-law and co-applicant, Todd Victor approached the board. He explained the map of the property. He stated that Berndy offered a portion of his lot to his daughter and son-in-law. Berndy currently has 90 feet of frontage on his flag lot. The proposal is for a split of the flag into two 45-foot frontage flags and each requiring a reduction of the 3-acre lot minimum.

Susan asked about the ability to have a septic and well on the second lot. Todd replied that they had a site survey for the septic. The report stated there were 2 potential spots for the septic. He did not have a hard copy but forwarded the digital copy to the Zoning Inspector to print at that time. Todd said they are aware that water is rare in that area and that they would just do holding tanks instead of the well.

Shawn asked about the current shared driveway on the Pheil property. The Phiels are another daughter and son-in-law of Mr. Hecklemann. The drive would continue to be shared up to a point of the flag and Todd would have a lifetime easement drawn up for the three properties if the variance is approved.

The septic report was reviewed. Grade, waterways and riparian setback issues were discussed.

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Shawn asked about any plans for the placement of the home. Todd stated that it would be a retirement home and they were not going to make a plan for the home unless they received the variance approval.

The zoning inspector stated that the lot-split would create two non-conforming lots from one conforming lot. She stated that the flag portion narrows from 90 feet at the road as it goes back to 63 feet at its narrowest point. Her recommendation was that if the lot-split was allowed that no future variances be granted on either property increasing the non-conformity of the lots and that a drive must be created if the lot was sold.

Dave Radachy stated that if the lots are approved at 45 feet each and narrows to less than that further in, the county would not be able to approve the lot-split, therefore the narrowest width of the flag (31.5 feet each) must be approved to be legal non-conforming by the county.

The chairman asked if anyone wanted to speak for or against. There was a written testimony from Ronald Haycox, but as he was present, he stated he would speak directly to the board. Mr. Haycox was against the variance for the following reasons: The narrow width of the flag lot was a concern, he felt the 3-acre minimum was important, and there is a creek running through the property that he believes to feed into Bates Creek which may be compromised by another septic system. Mr. Haycox also felt that the variance may affect his well water. There is also an approximate 30-foot-deep ravine that is approximately 80 feet wide near his property and the property to be split as well, that should be considered.

The board reviewed GIS maps with contours to understand the lay of the land and the creek.

Dennis Dragolich stated that he is also against the variance as he enjoys the isolation of the larger lots. That is why he purchased his property in Leroy. Mr. Victor responded that they would clear the bare minimum to keep the woods between the homes.

The chairman asked if there was any further testimony, for or against the requested variance. There was not.

The chairman asked for a motion to go into executive session. Rudy made the motion. Shawn seconded and all were in favor.

Susan motioned to end Executive session. Shawn seconded and all were in favor.

Shawn made a motion to approve the variance as presented by Berndy Heckelmann and Todd Victor. Tim seconded. Poll of the vote: Shawn, no. Rudy, no. Tim, no. Susan, no. Al, no.

The motion did not pass.

The secretary asked that the record show, that BZA member Tim Toman is excused prior to the third hearing as his brother is the applicant.

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Hearing 3: Bonnie Sue Toman and her son, Michael Toman - reduction of lot size due to lot split.

The chairman read the Notification of Application: The purpose of the third hearing is a request by Bonnie Toman and her son, Michael Toman for a variance (21-01) to split Bonnie Toman's property located at 5980 Paine Road leaving her original property at 1.9 acres, which is 1.1 acres below the 3-acre minimum. Chairman, Rudy Veselko stated that the publication of the meeting was posted in the News Herald on May 15, 2021, as well as the Township website. Legal Notices were mailed to surrounding property owners.

Rudy administered the oath to all who were to testify and asked the applicant to give testimony as to their request.

Bonnie Sue Toman was not in attendance. Michael Toman stated his house on Carter backs onto his mother, Bonnie Sue Toman's property, which is the property of the variance request. There is a 1,600-foot grass runway on her property. Mr. Toman stated he owns the property next to his mother's, as well. He stated that he most likely will buy his mother's house in the future, but just in case he doesn't, he doesn't want to lose the runway. The lay of the land was discussed.

Al asked if Mr. Toman had access to the runway from his property. Mr. Toman stated that about 1,000 feet of his property is adjacent to the runway and that if the variance was approved, his mother's house would be smaller than the three-acre minimum and the runway would just become part of his parcel. Access for him has always been there. He stated that if the variance is approved, he may build an additional hanger. The width of the runway is approximately 130 feet.

Mr. Toman's property on Carter Road would go from approximately 3 acres to 9 acres and his mother's property on Paine would then be under 2 acres.

Shawn asked if Mr. Toman looked at any other configurations that would allow for his mother's property to be at 3 acres. Mr. Toman stated that there was no feasible way to do so.

The Zoning Inspector stated that she had consulted with Dave Radachy regarding any alternative configurations which would require no variance or less variance needed. He came up with a few for the applicant to review. She also pointed out that Mrs. Toman's property would also need a frontage variance. Dave stated that he could not give a better recommendation as the runway was not marked on the plans he reviewed.

Dave stated that Mr. Toman could alternatively get an easement for use of the runway which he could maintain regardless as to who owns the property. This would bar future owners from building on the land or stopping Mr. Toman from using the runway. Susan stated that Bonnie Sue Toman's property would then remain conforming. Mr. Toman stated that he isn't interested in an easement.

Shawn asked if he had considered razing the rental home, he owns next to his mom's house and combining that lot with hers to leave her with 3 acres. Mr. Toman said he did not want to do so.

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Al addressed Mr. Toman stating that there were options that he could use, but the variance was the option he preferred.

Dave asked if the proposed lines gave the minimum amount of space needed to have the runway and the side setback. Mr. Toman stated that he would need all the land he requested in the split.

Shawn made a motion to go into executive session. Susan seconded and all were in favor.

Al made a motion to go back into public hearing. Susan seconded and all were in favor.

Shawn made a motion to approve the variance (21-01) as requested by Bonnie Sue Toman and her son, Michael Toman. Al seconded. Shawn, no. Rudy, no. Susan, no. Al, no.

The motion did not pass.

Mr. Toman asked why it was denied. The township attorney, Mr. Ron Graham stated that they did not have to respond. Rudy declined.

The secretary stated that there will be a meeting on June 22, 2021 for a variance and the review of the Cedar Hills CUP.

Shawn made a motion to adjourn. Susan seconded and all were in favor.

Respectfully submitted,

Julie Himmelman
Zoning Secretary