

**CHARTER TOWNSHIP OF BANGOR
ZONING BOARD OF APPEALS**

MINUTES OF FEBRUARY 18, 2020 MEETING

A regular meeting of the Charter Township of Bangor Zoning Board of Appeals was held on the 18th day of February, 2020 at the Bangor Township Administrative Building, 180 State Park Drive, Bay City, Michigan, pursuant to notice of said meeting.

REGULAR MEMBERS PRESENT: Banaszak, Clements, Covaleski, DeShano, Sheriff

MEMBER(S) ABSENT: None

Mr. Banaszak called the meeting to order at 6:00 p.m. The Pledge of Allegiance was recited.

The first item on the agenda was election of officers. Mr. Banaszak explained he was appointed to a Township Trustee position and would not be able to be elected as Chair.

Ms. DeShano nominated Sandy Covaleski as Chair. Mr. Banaszak seconded the nomination. All members were in favor. Five (5) ayes, no (0) nays. Mr. Banaszak nominated JeanAnn DeShano as Vice-Chair. Ms. Covaleski seconded the motion. All members were in favor. Five (5) ayes, no (0) nays.

The next item on the agenda was approval of minutes of the December 17, 2019 regular meeting. *Mr. Banaszak moved to approve the minutes of the regular meeting as presented. Mr. Sheriff seconded the motion. Five (5) ayes, no (0) nays. The motion passed.*

A petition was filed by Mark & Suzanne Birnbaum for property at 214 Athlone Beach which is on the East side of Athlone Beach between Little Killarney Beach and Killarney Beach for the purpose of a 6' side yard variance to the North to be 6' (12' is required); a total side yard variance of 6' to be 14' (20' is required); and a waterfront setback variance of 11' to be 29' (40' is required) to be in line with adjacent dwellings for a new home. Property is zoned Residential.

Mr. Banaszak requested the hearing for GM Legends Holdings be heard first due to the size of the crowd for the Birnbaums.

A petition was filed by GM Legends Holdings LLC for property at 4443 Wilder Road which is on the North side of Wilder Road between Patterson and Wilder for the purpose of a 9' rear yard variance to be 31' (40' is required) and a 25,387 square foot variance to be 14,613 square feet for the existing lot size (40,000 square feet is required). Property is zoned Commercial.

Jon Ledy from Apex Engineers represented the request. Mr. Ledy explained variances were previously approved for the width of the existing lot and for a 32' rear yard setback. A new survey was done, and it shows the building being 31' off the rear property line. When before the Planning Commission for site plan review, the Commission stated a variance for the square footage of the lot should be requested to make the lot legally non-conforming. The site has not changed. Receiving the variances will allow rebuilding if something should happen.

Mr. Ledy added the Bay County Road Commission approved the new access to the property.

The Bay County Road Commission wrote they have no objection to the petition. Please note, the BCRC Board approved the reconfiguration of the existing driveway and drainage system for this proposed redevelopment at their regular meeting of February 12, 2020. The approval was for the design shown on the plan sheet included in the ZBA packet for this month (dated November, 2019).

Constance Bennett of 4460 Ward Road was opposed to the request.

There was no one in the audience for or against the request.

Mr. Banaszak stated the lot was non-conforming. There is a 1' difference in what was previously approved.

Ms. DeShano moved to approve the petition filed by GM Legends Holdings LLC for property at 4443 Wilder Road which is on the North side of Wilder Road between Patterson and Wilder for the purpose of a 9' rear yard variance to be 31' (40' is required) and a 25,387 square foot variance to be 14,613 square feet for the existing lot size (40,000 square feet is required). This is an existing lot of record and no changes are being made. Mr. Banaszak seconded the motion. A roll call vote was taken. Clements-aye, DeShano-aye, Sheriff-aye, Covaleski-aye, Banaszak-aye. Five (5) ayes, no (0) nays. The motion passed.

The petition by Mark & Suzanne Birnbaum was before the Board for property at 214 Athlone Beach which is on the East side of Athlone Beach between Little Killarney Beach and Killarney Beach for the purpose of a 6' side yard variance to the North to be 6' (12' is required); a total side yard variance of 6' to be 14' (20' is required); and a waterfront setback variance of 11' to be 29' (40' is required) to be in line with adjacent dwellings for a new home. Property is zoned Residential.

Ms. Birnbaum presented a packet of research she had done regarding similar variance requests. She stated variances for new dwellings have been granted on the beach where homes had been removed. Five specific properties were granted variances greater than what they are requesting.

Mark Brissette, the Birnbaum's attorney, stated a 52' wide lot on the beach is the hardship element. The Birnbaum's did not create the hardship. The size of the lot was existing. Mr. Brissette gave an example of what a self-created hardship was. He stated the request is to have one side yard at 6' and the other at 8' for a total of 14' for total side yards. The Birnbaums would like their home to line up with the others along the waterfront.

Mr. Brissette stated the new home would compliment the area. Not everyone in the area has conforming setbacks. Those that do, are in the minority. Several greater variances have been approved. There will be no negative impact. Mr. Brissette stated the distance between homes is 18' and 17'. That is substantial.

Ms. Covaleski asked why the property was put on the market. Ms. Birnbaum stated they weren't sure they still wanted to build there after their last Zoning Board of Appeals hearing. The neighbors were not welcoming.

Ms. Birnbaum commented the home would look centered on the lot with the variances.

The Bay County Road Commission wrote they have no comment on the petition. Athlone Beach Road is a private roadway and not under the jurisdiction of the BCRC.

Rich & Kris Brown of 216 Athlone Beach wrote a letter of opposition to the request.

Donald Goeckel and Dianne Weidner wrote a letter of opposition.

Ellen Blakely of 206 Athlone Beach wrote a letter of opposition.

Robert Dwan of 212 Athlone Beach wrote a letter of opposition.

There was no one in the audience in favor of the request.

Bob Dwan of 212 Athlone Beach stated no ordinance changes have been made relative to the Birnbaum's last request. There are five standards that have to be met to approve a variance. The use of the property is not prevented. The lot is not peculiar. It has always been that way. They just can't do what they want to do with it. This is a self-created issue. Mr. Dwan wanted the requests denied. The Zoning Ordinance's integrity should be kept in place. He did not want the home closer than what was allowed.

George Killeen of 218 Athlone Beach stated this issue was dealt with in 2018. Only the dimensions of the home

have changed. The previous owner tore down the home. The issue is the same. It is self-created. Mr. Killeen stated the ordinance should be protected. The five rules for approval must be followed. This is nothing new. The depth and width of the property are the same. The request was denied in 2018 and should be denied now.

Kathy Staudacher of 330 Killarney Beach stated she designed the house adjacent to the Birnbaum's. It is possible to fit a home on the lot. The Brown's put in a lift for future access to their 2nd floor master bedroom. The home does not encroach onto the neighbor.

Ms. Birnbaum presented a letter in favor of their request from Tom Washabaugh of 232 Athlone Beach.

A brief discussion took place on the Killeen's home being 1.9' off the property line. The home was built in 1947.

Ms. DeShano commented the Zoning Ordinance was in place when the property was purchased. The Birnbaum's knew the size of the lot. Ms. Birnbaum stated they knew others had received greater variances than what they were asking.

Mr. Banaszak stated in 2018 the request was lacking information. However, even with the information presented, a home can be built on the lot without variances.

Ms. Birnbaum stated they would be willing to have 8' for each side yard and total side yards of 16'. Mr. Brown's lot is 60', not 52'.

Mr. Banaszak asked what the hardship was. The Board went over the handout that was presented.

Ms. Covaleski stated a home can be built on the property without side yard variances. The variances should have been requested before the property was purchased.

Mr. Birnbaum stated no similar variances were ever denied.

Ms. Covaleski stated she had no opposition to the waterfront variance request.

Mr. Banaszak stated the applicants were willing to compromise with their request and have side yards of 8' each. Ms. Clements was agreeable with that.

Mr. Banaszak moved to approve the petition filed by Mark & Suzanne Birnbaum for property at 214 Athlone Beach which is on the East side of Athlone Beach between Little Killarney Beach and Killarney Beach for the purpose of a 4' side yard variance to the North to be 8' (12' is required); a total side yard variance of 4' to be 16' (20' is required); and a waterfront setback variance of 11' to be 29' (40' is required) to be in line with adjacent dwellings for a new home. The applicants agreed to compromise on the setbacks. The size of the lot is unique. The home will be centered on the lot. Mr. Sheriff seconded the motion. A roll call vote was taken. Banaszak-aye, Clements-aye, DeShano-nay, Sheriff-aye, Covaleski-nay. Three (3) ayes, two (2) nays. The motion passed. The applicant has six (6) months to pull a building permit or the variance is null and void.

Having no other business before the Board, Mr. Banaszak moved to adjourn the meeting. Ms. DeShano seconded the motion. Five (5) ayes, no (0) nays. The meeting was adjourned at 7:18 p.m.

Respectfully submitted,



Barbara A. Potts
Zoning Board of Appeals Coordinator