

Otsego County Zoning Board of Appeals

Approved Minutes for September 25, 2018

Vice-Chairperson Hoffman called the meeting to order stating the meeting would be relinquished to the Chairperson should he show up.

Call to Order: 6:00 pm by Vice-Chairperson Hoffman

Roll Call:

Present: Vice-Chairperson Hoffman, Secretary McCarthy, Ms. Bono, Mr. Brown, Mr. Glasser, Mr. Switalski
(Alternate)

Absent: Chairperson Sagasser, Mr. Colosimo

Staff Present: Mr. Mouch, Mr. Churches, Ms. Boyak-Wohlfeil

Public Present: Francine & David Musinski, Jack Udebrock, Jay Weller, Randy Stults

Approval of Minutes from November 28, 2017:

Motion made to approve minutes as presented by Mr. Brown; Seconded by Ms. Bono.

Motion approved unanimously.

Citizen Comment Regarding Items not on the Agenda: None

Public Hearing:

1. *David & Francine Musinski, property owners, request a variance for property located in Otsego Lake Township:*

*11927 Fantasy Dr
Frederic, MI 49733
091-210-000-625-01*

PZBA18-003 - The purpose of the variance is to allow a reduction in the side setback for a structure built.

The property is currently zoned RR/Recreation Residential.

Vice-Chairperson Hoffman stated the case *PZBA18-003* before the Zoning Board of Appeals, requested the owners present their case and opened the public hearing.

Public Hearing opened: 6:04pm

Francine Musinski presented the ZBA members with additional information from Enchanted Forest Property Owners Association and the neighboring property owner to the south of them, Rosemary Vitale. Mrs. Musinski gave some personal background information while the members reviewed the information.

David Musinski stated they had contacted Mrs. Vitale about purchasing the lot south of them, (she owned three lots to the south) but she did not want to sell. He asked about purchasing a piece of the lot but again was turned down. He then asked if she would object to a variance placed on the property and she stated she did not have a problem with that.

Ms. Bono questioned the reason why the neighbor did not want to sell.

Mr. Musinski stated she had wanted to retain all three parcels of property to pass on to her grandchildren.

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Mrs. Musinski stated they had included pictures of the prow style house they had built in the handout. They had gotten two quotes to find out the cost of moving the house five feet (5') and had gotten a cost of \$30,000. In addition, the sunroom would have to be detached, the garage would have to be detached and the well would have to be relocated. A new foundation would need to be put in place and the land would need to be excavated for trucks to maneuver the property. They figured with all the work involved, the cost would be about \$80,000. She stated they did not do this on purpose, this was a mistake; they were not gaining anything by it and apologized for the error.

Ms. Bono questioned the property markers used to measure the layout.

Mr. Musinski stated he had located the metal stake out front; there was a wooden stake at the back of the property, uphill and in a wooded area and that was what he used to measure from the front stake. When the Health Department inspector was out checking the septic location, he stated it looked like it was pretty close to the property line. Mr. Musinski stated at that point, he put a halt to everything. They got a metal detector and located the metal stake at the back of the property and then realized he was not 20' off the property line but only 6.8'.

Ms. Bono questioned why a survey was not done before they built.

Mr. Musinski stated he thought he had located the stakes but in hindsight, that would have saved him all this trouble. He used the wrong stake, it was his error, it had not been intentional.

Ms. Bono questioned if the builder had concerns about the property line.

Mr. Musinski stated he was the builder and as soon as he realized the error, he had all work on the house stopped.

Mr. Brown questioned why the house was built so close to property line to begin with when they had a large piece of property to utilize.

Mrs. Musinski stated the house was placed next to the driveway and past that the property went uphill; they would have had to excavate to move it further.

Ms. Bono stated she had gone out to the site and had wondered the same as Mr. Brown at the placement of the house; she thought it could have been moved over more to begin with but that was a moot issue.

Mr. Musinski stated the wooden stake at the back of the property was approximately 50' from where the correct stake had been found. If he had measured from the front stake to the correct one, the house would have been about 20' from the property line.

Mrs. Musinski stated she understood financial hardship is not taken into consideration but they had already invested \$100,000 into the house and with the cost of moving it and the cost of completion, it would be over \$250,000. There is no way they could recoup that cost. She stated it was their mistake but they did not feel it was to anyone's benefit to deny the variance. The house is half built, Guthrie Lakes is not seeing a big boom in houses, Otsego County would lose good taxpayers, their taxes and association dues were always paid on time and logically she didn't see who would win. Guthrie Lakes Association had approved it, the neighboring property owner had agreed to the variance and Otsego Lake Township Planning Commission had approved it.

Jack Udebrock, Otsego Lake Township Planning Commissioner, stated they had deliberated the case and thought it could be looked at in two ways in order to make a recommendation; you could take the hard line or you could look at the overall picture. They choose to look at the overall picture. Even though it was the property owners' mistake, his interpretation was you had to allow for mistakes, that was what the board was all about. If you take the hard line, then its clear cut, you don't need the board. He looked at in a localized manner; this revolved around the applicant and the person with the lot next door. They were out in the woods, on the southern boundary of the county with the government range behind them so there

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was no impact on the rest of the community. He did not think they were establishing precedent; each case needed to be looked at on its own grounds and as far as he was concerned, the punishment did not fit the mistake. The Commission deliberated and tried to find a way to recognize the minimum amount of property to resolve the problem.

Ms. Bono questioned if any members had spoken with the neighbor.

Mr. Udebrock stated they had not but they had requested the letter from the neighbor stating their approval and they were the only ones impacted by this.

Mr. Brown thanked him for his input and stated based on Otsego Lake Township's recommendation, if the local community was alright with it, he thought it should be supported.

Motion made by Mr. Brown to approve the case PZBA18-003 in support of Otsego Lake Township's recommendation; Seconded by Mr. McCarthy.

Vice-Chairperson Hoffman ruled the motion out of order until after closing the public hearing. He requested a statement from Mr. Mouch on the case before them.

Mr. Mouch stated he could only enforce the Zoning Ordinance as written so he would have to deny the request and enforce the setback for the district.

Ms. Bono questioned if a survey was required before a building was constructed.

Mr. Mouch stated there is nothing in the Zoning Ordinance that requires that. At one point in time, a staking inspection was required but because survey markers can get moved over the years by excavation and such, Land Use no longer required that. Measurements would be taken from where the property owner thought their markers were.

Vice-Chairperson Hoffman questioned at what point a structure was measured from the property line.

Mr. Mouch stated it was measured to the eaves of the structure.

Vice-Chairperson Hoffman asked if Mr. Musinski had any other further comments.

Mr. Musinski stated he had made a mistake, he admitted his mistake, he didn't try to hide the mistake, he had notified the County of what had happened and followed the procedure as he had been told and ended up here.

With no further comment, Vice-Chairperson Hoffman closed the public hearing.

Public Hearing closed: 6:35pm

Vice-Chairperson Hoffman stated before they discuss Mr. Brown's motion the Finding of Fact needed to be reviewed for agreement. He stated number five of the Finding of Fact read a variance for 3.2' and questioned if that was measured to the foundation.

Mr. Musinski stated it was. The measurement on the notarized letter from the neighbor was changed to 5.5' to include the overhang.

Mr. Brown stated the application stated 3.2' and requested clarification of the measurement.

Mr. Musinski stated the measurement from the property line to the foundation was 6.8' but with the addition of the overhang the variance request changed because it encroached closer to the property line.

Ms. Bono stated if number five of the Finding of Fact was changed then number four also needed to be changed to coincide.

Mr. Mouch questioned if the 5.5' was the variance requested.

Mr. Musinski stated yes.

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Mr. Glasser read Section 26.6.5 of the Ordinance stating the variance requested must be the minimum necessary.

Mr. Mouch stated the absolute number was unknown and suggested getting an exact measurement from the surveyor.

Mr. Musinski stated this was brought up at the Otsego Lake Township meeting so he had called the surveyor to verify the measurement from the property line to the foundation. The surveyor stated the overhang, drip edge and shingles needed to be included as well but were not. The overhang was exactly one foot with a $\frac{3}{4}$ " drip edge along with $\frac{5}{8}$ " for shingles; they felt the 5.5' variance would cover everything and was probably within an inch.

After discussion, it was determined the minimum variance requested would be 4.32' from property line to the eaves including the overhang, the drip edge and the shingles. (*SEE ATTACHMENT 1*)

It was also agreed the notarized letter stating a requested variance of 5.5' would still cover a variance request of 4.32'.

Finding of Fact numbers four and five were revised to include the amendment to the variance.

Additional items received were added to the Finding of Fact and Exhibit List as items presented at the meeting.

Vice-Chairperson Hoffman read aloud Section 26.6 Dimensional or Non-Use Variance requesting a roll call vote for each item.

Motion made by Mr. Glasser that the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district; Seconded by Mr. McCarthy.

Section 26.6.1

Roll call vote:

Mr. Hoffman: yes

Mr. McCarthy: yes

Mr. Glasser: yes

Mr. Brown: yes

Ms. Bono: yes

5 yes votes; Motion passed.

Motion made by Ms. Bono that the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district; Seconded by Mr. McCarthy.

Section 26.6.2

Roll call vote:

Ms. Bono: no

Mr. Brown: yes

Mr. Glasser: no

Mr. McCarthy: no

Mr. Hoffman: no

1 yes – 4 no votes; Motion failed.

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Motion made by Mr. McCarthy that special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district; Seconded by Ms. Bono.

Section 26.6.3

Roll call vote:

Mr. Hoffman: no

Mr. McCarthy: no

Mr. Glasser: no

Mr. Brown: yes

Ms. Bono: no

1 yes – 4 no votes; Motion failed.

Motion made by Ms. Bono that the special conditions or circumstances are not the result of actions by the applicant or predecessor in title; Seconded by Mr. McCarthy.

Section 26.6.4

Roll call vote:

Mr. McCarthy: yes

Mr. Glasser: no

Mr. Brown: yes

Ms. Bono: no

Mr. Hoffman: no

2 yes – 3 no votes; Motion failed.

Motion made by Mr. Glasser that the requested variance is the minimum variance necessary that will make possible the reasonable use of the land; Seconded by Mr. McCarthy

Section 26.6.5

Roll call vote:

Ms. Bono: yes

Mr. Brown: yes

Mr. Glasser: yes

Mr. McCarthy: yes

Mr. Hoffman: yes

5 yes votes; Motion passed.

Vice-Chairperson Hoffman requested an overall motion for the approval of the variance.

Motion made by Mr. Glasser for approval of variance PZBA18-003 based on clear and correct Finding of Fact and review of Sections 26.6.1 – 26.6.5; Seconded by Mr. McCarthy. (SEE ATTACHMENT 2 &3)

Roll call vote:

Mr. Hoffman: no

Mr. McCarthy: yes

Mr. Glasser: no

Mr. Brown: no

Ms. Bono: no

1 yes – 4 no votes; Motion failed.

Variance denied.

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2. *Steven Sulkey/Otsego Lake Rentals, property owner, requests a variance for property located in Bagley Township:*

Buck Rd

Gaylord, MI 49735

011-700-003-004-01 / 011-700-003-006-01

PZBA18-004 - The purpose of the variance is to allow a larger accessory building. The property is currently zoned RR/Recreation Residential.

Vice-Chairperson Hoffman stated the case *PZBA18-04* before the Zoning Board of Appeals, and questioned if the applicant was present. There being no one in attendance to present the case, Vice-Chairperson stated they would discuss the case with the information before them. He asked Mr. Mouch to comment.

Mr. Mouch stated based on the Zoning Ordinance and the scope of his authority, the case would have to be denied because the maximum square footage allowed in a RR Zoning District was 1200 square feet.

Ms. Bono questioned the size of the structure if the two lots were combined.

Mr. Mouch stated it would still only be 1200 square feet. He also mentioned one of the lots was under a land contract. He also stated the package was not complete; a lot line adjustment with a survey had not been applied for.

Ms. Bono questioned postponing the case.

Mr. Glasser stated they couldn't make a motion to postpone the case when the meeting date was uncertain.

Vice-Chairperson Hoffman stated they should make a decision based on the information before them.

Mr. Glasser suggested setting a meeting date for the next thirty days to postpone the case and allow the applicant to gather the additional information and appear before them.

Motion made by Mr. Glasser to postpone to a date certain October 30, 2018 6:00 pm to review case PZBA18-004; Seconded by Mr. McCarthy.

Ms. Bono questioned what would happen if the additional information was not received.

Mr. Glasser stated Land Use would notify them the packet was incomplete and the meeting would be canceled.

Vice-Chairperson Hoffman requested a roll call vote.

Roll call vote:

Mr. Hoffman: yes

Mr. McCarthy: yes

Mr. Glasser: yes

Mr. Brown: yes

Ms. Bono: yes

Applicant will be notified of new meeting date.

New Business:

1. Elections

Mr. Brown questioned if they could make a motion to keep the officers as is.

Mr. Glasser stated Mr. Sagasser does work for Otsego County and although the county attorney assured them there would not be problem as long as any conflict of interest was declared, Mr. Sagasser should have the

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opportunity to decide if he would like to continue as chairperson. Being he was not in attendance, they should postpone elections until a time certain.

Motion made by Ms. Bono to postpone the election of officers until a time certain, October 30, 2018; Seconded by Mr. Glasser.

Vice-Chairperson Hoffman requested a roll call vote.

Roll call vote:

Mr. Hoffman: yes

Mr. McCarthy: yes

Mr. Glasser: yes

Mr. Brown: yes

Ms. Bono: yes

2. Terms expiring:
 - a. Colosimo

Mr. Colosimo was sent an application to extend his term on the Zoning Board of Appeals. It should be submitted to Administration downtown so he can be reappointed by the Board of Commissioners.

Old Business: None

Communications: None

ZBA Member Items: None

Motion made by Mr. Glasser to adjourn the meeting; Seconded by Ms. Bono.

Motion approve unanimously.

Adjournment: 7:37 pm by Vice-Chairperson Hoffman

Mike McCarthy, ZBA Secretary

Christine Boyak-Wohlfeil, Recording Secretary

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ATTACHMENT 1:

Measurement from property line to foundation:	3.2'
Overhang:	1'
Drip Edge:	3/4"
Shingles:	5/8"
Total variance request:	4.32'

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ATTACHMENT 2:

**OTSEGO COUNTY
ZONING BOARD OF APPEALS**

**PZBA18-003
VARIANCE
091-210-000-625-01**

Revised:

Exhibit List

- Exhibit #1:* Application for case PZBA18-003 submitted by Applicant
- Exhibit #2:* Otsego County Zoning Map Effective Date March 20, 2010/Amended January 24, 2017
- Exhibit #3:* Otsego County Zoning Ordinance Effective March 20, 2010/Amended July 10, 2018
- Exhibit #4:* Copy of Otsego County Equalization Department record card/QC 1425/365
- Exhibit #5:* Aerial Site Plan
- Exhibit #6:* Survey
- Exhibit #7:* Public Hearing Notice
- Exhibit #8:* Letter to Otsego Lake Township Planning Commission dated August 27, 2018
- Exhibit #9:* Response from Otsego Lake Township Planning Commission dated September 12, 2018
- Exhibit #10:* Map and list of parties notified
- Exhibit #11:* Receipt #01315958
- Exhibit #12:* Finding of Fact/PZBA18-003
- Exhibit #13:* Variance Request from Enchanted Forest Property Owners approved July 12, 2018
- Exhibit #14:* Photographs of structure
- Exhibit #15:* Notarized letter from adjacent property owner dated September 13, 2018

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ATTACHMENT 3:

OTSEGO COUNTY ZONING BOARD OF APPEALS

**PZBA18-003
VARIANCE
091-210-000-625-01**

Revised: FINDING OF FACT

1. This is a proposal for a variance for a parcel located in Otsego Lake Township at 11927 Fantasy Dr Frederic, MI 49733. *Exhibit #1, Exhibit #5*
2. The property is located in a RR/Recreation Residential Zoning District. *Exhibit #2*
3. The current side setback requirement is 10 feet in a RR Zoning District. *Exhibit #3*
4. The structure recently built sits 6.8 feet from side property line as measured to foundation. *Exhibit #6*
5. A side setback variance of 4.32 feet to include the existing overhang, drip edge and shingles is requested. *Exhibit #1, Exhibit #6*
6. The purpose of the variance is to allow the reduction in side setback and bring into compliance the structure recently built. *Exhibit #1, Exhibit #6*
7. The proposed property is currently under the ownership of David & Francine Musinski. *Exhibit #4*
8. The proposed property is 1.15 acres. *Exhibit #4*
9. The Public Hearing Notice was published in the Herald Times on September 11, 2018. *Exhibit #7*
10. The requirements of Article 27 of the Otsego County Zoning Ordinance have been met. *Exhibit #8, Exhibit #9*
11. All property owners within three hundred (300') feet were properly notified of the public hearing. *Exhibit #10*
12. The Zoning Administrator has the authority to approve a reduction in setbacks up to 25%; only the Zoning Board of Appeals has the authority to approve a larger reduction. *Exhibit #3*
13. The Zoning Board of Appeals has the authority to approve a *Variance* request after review and fact finding of Section 26.6. *Exhibit #3*
14. The required fees have been collected by Otsego County Land Use Services. *Exhibit #11*
15. An approved variance request from Enchanted Forest Property Owners Association dated July 12, 2018 has been received September 25, 2018. *Exhibit #13*
16. Photographs of the structure built have been received September 25, 2018. *Exhibit #14*

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17. A notarized letter of approval from the adjacent property owner has been received September 25, 2018. *Exhibit #15*

FINDINGS UNDER ARTICLE 17

ARTICLE 17 SCHEDULE OF DIMENSIONS

17.1 Table 1 - LIMITING HEIGHT, DENSITY AND AREA BY ZONING DISTRICTS (See also [Article 21.1 Accessory Buildings](#) and [Article 22 General Exceptions for Area, Height, and Use](#))

Zoning District	R1 & R2	R3	RR	FR & AR	Reserved for future use	Reserved for future use
Min. Lot Area (Sq. feet)	20,000 .46 acre	40,000 .92 acre	20,000 .46 acre	88,000 2.02 acre		
Min. Front Setback (b)(j)	25 ft	25 ft	25 ft	50 ft		
Max. Front Setback	NA	NA	NA	NA		
Min. Side Setback	10 ft	10 ft	10 ft	20 ft		
Min. Rear Setback	30 ft (a, h)	30ft (a, h)	30 ft (a, h)	40 ft (a)		
Min. Lot width (k)	100 ft 150 ft Duplex	100 ft	100 ft	150 ft 300 ft Duplex AR		
Max. % lot coverage	25%	25%	25%	30%		
Max. Building height (l)	35 ft (g)	35 ft (g)	35 ft (g)	35 ft (g)		
Min. Ground Floor area of principal structure (Square feet)	720 (i)	720 (i)	720 (i)	720 (i)		
Min. Width of principal structure	20 ft (i)	11ft (i)	20 ft (i)	11 ft (i)		

Minimum front, side and rear setbacks, and maximum lot coverage modifications of up to twenty-five percent (25%) may be approved by the Zoning Administrator for nonconforming lots, as described in [Article 21.26.1](#) and [21.26.2](#).

Note a: Lots within five hundred (500) feet of lakes, ponds, flowages, rivers, streams: see [Article 18, LOTS NEAR WATER](#).

Note b: Where the front yards of two (2) or more principal buildings in any block, or within five hundred (500) feet in existence at the time of the passage of this Ordinance (or amendment thereto), in the same zoned district or the same side of the road are less than the minimum front yard setback, then any principal building subsequently erected on the same side of the road shall not be required to provide a greater setback than the average for the existing two (2) or more principal buildings.

Note c: On the exterior side yard which borders on a residential district, there shall be provided a setback of not less than twenty (20) feet on the residential side in B1, B2, B3 and HX.

Note d: Loading and unloading space shall be provided in the rear yard in the ratio of at least ten (10) square feet per linear foot of front building wall. Loading space shall not be counted as required off-street parking. Loading zones may be located in other non-required yards if screened or obscured from view from public streets and residential districts.

Note e: Off-street parking may be permitted in the front yard, except that a ten (10) foot wide landscaped buffer is maintained between the front lot line (or right-of-way line) and the parking area.

Note f: No building shall be placed closer than forty (40) feet to the outer perimeter of such district or property line when said use abuts a residential district boundary.

Note g: Subject to approval by the Planning Commission, the maximum height of buildings may be permitted to exceed the maximum stated in the Schedule by up to fifty percent (50%) in R1, R2, R3, RR, B1, B2 and HX Districts; and up to one hundred percent (100%) in all other districts, provided that the applicant can demonstrate that no good purpose would be served by compliance with maximums stated, (as in the case of steep topography, a Planned Unit Development (PUD), or larger site); and further, there is no conflict with airport zoning height restrictions; fire safety is maintained subject to local fire authority approval; and the light, air and/or scenic views of adjoining property is not impaired. The Planning Commission and or

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Zoning Board of Appeals cannot allow a WTG height greater than allowed in [Section 21.47](#) or a Wireless Telecommunication Towers and Facilities greater than the height allowed in the Zoning District PRINCIPAL USES

PERMITTED or PERMITTED USES SUBJECT TO SPECIAL CONDITIONS. Also see [Article 22 GENERAL EXCEPTIONS FOR AREA, HEIGHT AND USE](#).

Note h: [Section 21.1](#) allows a rear setback of ten (10) feet for accessory buildings.

Note i: The foregoing standards shall not apply to a mobile home located in a licensed mobile home park except to the extent required by state or federal law or otherwise specifically required in this Ordinance.

Note j: In instances where the property is adjacent to a public right of way or ingress egress easement dedicated as permanent adequate access to one (1) or more lots, the setback shall be measured from that right of way or ingress egress easement.

Note k: Specific allowable uses have greater minimum lot widths as required in the Zoning District allowable use lists.

Note l: Specific allowable uses have greater allowable heights as stated in the Zoning District allowable use lists, [Article 21](#) and [Article 22, Section 22.3 Height Limits](#), of this ordinance

*****THE SCHEDULE OF DIMENSIONS GRANTS THE ZONING ADMINISTRATOR AUTHORITY TO APPROVE A REDUCTION IN SETBACKS UP TO TWENTY-FIVE PERCENT (25%)**

FINDINGS UNDER SECTION 21.26 NONCONFORMITIES

SECTION 21.26 NONCONFORMITIES

21.26.1 INTENT

It is recognized that there exists within the districts established by this Ordinance and/or by subsequent amendments, lots, buildings, structures, and uses of land and structures which were lawful before this Ordinance was passed or amended which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments.

It is the intent of this Ordinance to permit these legal nonconforming lots, buildings, structures, or uses to continue until they are removed but not to encourage their survival. Minimum front, side and rear setbacks, minimum lot width and maximum lot coverage modifications up to twenty-five percent (25%) may be approved by the Zoning Administrator upon a written finding that such a modification will have no adverse impact on the use or development of adjoining lots or threaten the public health or safety in any way.

21.26.2 NONCONFORMING LOT

A nonconforming lot is a lot that the boundaries of which are recorded in a plat, deed or land contract executed and delivered prior to the effective date of this Ordinance and the width, depth, and/or area of which does not meet the minimum dimensional requirements of the District in which it is located.

A single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the District; provided that yard dimensions and other requirements not involving area or width or both, of the lot shall conform to the regulations for the District in which such lot is located. Minimum front, side and rear setbacks, and maximum lot coverage modifications up to twenty-five percent (25%) may be approved by the Zoning Administrator. Modifications greater than twenty-five percent (25%) may be obtained only by approval of the Board of Appeals.

Where two (2) or more adjoining nonconforming lots are in existence under single ownership, such lots shall be used only in combinations which most closely satisfy the minimum lot size standards prescribed for the District in which said lots are located.

For definition purposes, "most closely" shall apply in situations where, for example, two (2) lots combined do not meet the minimum, but a third (3) lot would exceed the minimum by a greater amount than two (2) lots would fall short; hence, only two (2) lots need to be combined in this case.

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*****ANY SETBACK MODIFICATION GREATER THAN TWENTY-FIVE PERCENT (25%) MAY BE OBTAINED ONLY BY APPROVAL OF THE ZONING BOARD OF APPEALS**

FINDINGS UNDER ARTICLE 26/BOARD OF APPEALS

SECTION 26.6 DIMENSIONAL OR NON-USE VARIANCE

Where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would involve “practical difficulties” within the meaning of this Ordinance, the Zoning Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification as may be in harmony with the spirit of this Ordinance, and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this Ordinance shall be granted unless it appears that there is clear and convincing evidence that all the following facts and conditions exist:

- 26.6.1 That the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district.
- 26.6.2 That the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district.
- 26.6.3 That special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district.
- 26.6.4 That the special conditions or circumstances are not the result of actions by the applicant or predecessor in title.
- 26.6.5 That the requested variance is the minimum variance necessary that will make possible the reasonable use of the land.

*****THE ZONING BOARD OF APPEALS HAS THE AUTHORITY TO APPROVE A VARIANCE IF COMPLIANCE IS FOUND WITH THE SECTION 26.6**

Motion made by Mr. Glasser that the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district; Seconded by Mr. McCarthy.

Section 26.6.1

Roll call vote:

Mr. Hoffman: yes
Mr. McCarthy: yes
Mr. Glasser: yes
Mr. Brown: yes
Ms. Bono: yes

5 yes votes; Motion passed.

Motion made by Ms. Bono that the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district; Seconded by Mr. McCarthy.

Section 26.6.2

Roll call vote:

Ms. Bono: no
Mr. Brown: yes
Mr. Glasser: no
Mr. McCarthy: no
Mr. Hoffman: no

1 yes – 4 no votes; Motion failed.

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Motion made by Mr. McCarthy that special physical conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district; Seconded by Ms. Bono.

Section 26.6.3

Roll call vote:

Mr. Hoffman: no
Mr. McCarthy: no
Mr. Glasser: no
Mr. Brown: yes
Ms. Bono: no

1 yes – 4 no votes; Motion failed.

Motion made by Ms. Bono that the special conditions or circumstances are not the result of actions by the applicant or predecessor in title; Seconded by Mr. McCarthy.

Section 26.6.4

Roll call vote:

Mr. McCarthy: yes
Mr. Glasser: no
Mr. Brown: yes
Ms. Bono: no
Mr. Hoffman: no

2 yes – 3 no votes; Motion failed.

Motion made by Mr. Glasser that the requested variance is the minimum variance necessary that will make possible the reasonable use of the land; Seconded by Mr. McCarthy

Section 26.6.5

Roll call vote:

Ms. Bono: yes
Mr. Brown: yes
Mr. Glasser: yes
Mr. McCarthy: yes
Mr. Hoffman: yes

5 yes votes; Motion passed.

******* Motion made by Mr. Glasser for approval of variance PZBA18-003 based on clear and correct Finding of Fact and review of Sections 26.6.1 – 26.6.5; Seconded by Mr. McCarthy. *(SEE ATTACHMENT 2 &3)*

Roll call vote:

Mr. Hoffman: no
Mr. McCarthy: yes
Mr. Glasser: no
Mr. Brown: no
Ms. Bono: no

1 yes – 4 no votes; Motion failed.

Variance denied.