

White Oak Township

Zoning Board of Appeals Hearing

June 30,

2022

The June 30, 2022 Zoning Board of Appeals hearing was called to order by Chairperson David Mullins at 6 p.m. In attendance were: David Mullins- Chairperson, Jeffrey Steckelberg-Vice Chair, Denver Doxtator, John Roger Graf, Richard Morrison, Bob McManaman-alternate, Judy McManaman-alternate, Leela A. Vernon, Clerk and Elizabeth Gailey. Mr. Mullins led us in the Pledge of Allegiance. The members of the board introduced themselves.

Chairman Mullins stated that the violation to be discussed tonight was that of Ron and Elizabeth Gailey, residing at 425 M-52, Webberville, MI 48892. The Gailey's had a pole barn constructed and did not apply for any permits. Their property is in White Oak townships Agricultural zone and our Ordinance requires a minimum lot size of 2.0 acres, so, had they applied for permits, it would have been rejected. Also, their pole barn does not meet the setback requirements as stated in the White Oak Township Ordinance. It is located 53 feet from the front road right-of-way. Our Ordinance requires 75 feet from the right-of-way. Her request for a variance is for a dimensional violation. The original violation also included the dimensions of their sign which our Zoning Administrator had determined that the sign was not in violation.

Elizabeth Gailey took the floor. She explained that she did not know that permits were required to build any structure in White Oak Township. She said that after speaking with Tom Brimhall, Zoning Administrator she was informed that they would not have been allowed to build the pole barn on that parcel because it is so long and narrow. She explained that the barn sits behind the house and the peaks to both the house and pole barn match. She stated that they "put the pole barn where it is because it looks best in that spot." She also stated that it could not have been built to the side because of the septic. Roger Graf asked to see the map where the pole barn sits on the property. There were no public comments at this time.

David Mullins opened the floor for questions from the members of the ZBA. Richard Morrison asked the size of the pole barn. Mrs. Gailey stated that it is 24' x 40' with a 6' lean to. It has a concrete floor, 10' door. Mr. Graf also asked Mrs. Gailey if, since her husband is a plumber, doesn't he usually do work that requires permits. Her answer was no, his job does not general require permits. Jeffrey Steckelberg stated that he is a skilled tradesman and he knows that you need to pull permits. That is his big concern.

David Mullins asked when the pole barn was built. Mrs. Gailey stated late 2020, November, she thinks.

Richard Morrison asked her how she became aware of the problem. Mrs. Gailey stated that they had roof damage and hired someone to repair the damage. Our Zoning Administrator was driving by and saw that they were re-roofing the house and he had not received a permit application, so he cited them. She stated that the builder had sent in the application and apparently sent it to the incorrect Township who then forwarded it to White Oak Township. Clerk Vernon stated that the Zoning Administrator received the application the next day, and that they should not have started the re-roof until the permit had been issued.

Richard Morrison stated that he was surprised that no one in her circumstance had any idea that when you put up a building you are required to get permits. Mrs. Gailey said she was unaware that permits were a requirement. Mr. Graf asked if the Gailey's could go back on the builder. Mr. Mullins stated that it is the property owner's responsibility to be sure all requirements of the Township Ordinance are fulfilled.

Mr. Steckelberg stated that when he had his pole barn built the builder asked if he wanted to pull the permit or if he wanted the builder to pull the permit. If the builder had to pull the permit, the cost of the pole barn would be greater.

David Mullins asked how large her property was. She stated that she did not know for sure but thought it was around 1.7 acres. Mr. Morrison stated that it might be closer to 1.54 acres but Mrs. Gailey may be correct. Mr. Mullins referred to the Official Notice of Zoning Violations, section 4.16 D of our Ordinance refers to Residential District. This does not apply because the parcel owned by the Gaileys is in the Agricultural district.

Richard Morrison said that we (White Oak Township) did not create the situation but you're (Mrs. Gailey) asking us to amend the ordinance that services the whole township. He also asked her how she intended to remedy the situation, it is a self-created situation and asked her what she proposes to remedy the situation. Mrs. Gailey stated that she was not sure. She said she had been told they would have to move the barn or tear it down. Mr. Steckelberg stated that if a permit had been pulled that this situation would not exist. The Clerk stated that the road right-of-way is 75' from the center line. Then any structure needs to meet our set back requirement.

David Mullins stated that he had received a note from the Zoning Administrator, Tom Brimhall. His letter stated that he thought the variance should be approved. The building is nice and kept up well.

Richard Morrison stated his concern about the setbacks not being observed and the lack of applying for permits, therefore at this time is not in favor of granting the variance.

Denver Doxtator asked if the variance was approved could we attach penalties. David Mullins stated that according to our Township Attorney, that is not an option. If the variance is approved that is the end of the process. Mr. Doxtator also stated that the pole barn looks like it should be there. Mr. Steckelberg agreed that the pole barn is very beautiful. Mrs. Gailey stated that they needed the pole barn for their business and because of the extra room her family has been able to do good stuff for the community. She stated that next time, no matter what they do, they will get permits.

Richard Morrison stated that if the variance was granted, there would be a line of people to try build without permits. That would be setting precedence, and he stated that he did not want to be in a position to set a precedent. He also stated that it is a nice looking barn.

Mrs. Gailey stated that the peaks of the two buildings match up esthetically pleasing. She stated that they could not put the pole barn in the back yard because there was not enough room.

Richard Morrison stated that most barns in the Township are behind the house. Mrs. Gailey said that years ago there was another structure where their barn is now. There was not enough room to put the barn in their back yard. The propane tank and another small barn there so it wasn't possible to put it back there. She stated that their yard is one big rectangle. Mr. Morrison asked where the septic field is. Mr. Graf asked if there there may be a problem if they try to sell the property. Mrs. Gailey said that they did want to sell and move closer to her husband's grandparents. They want to move as soon as they can.

David Mullins again referred to the incorrectly cited section of our ordinance which refers to the Residential district. Clerk Vernon stated that since the subject parcel is in the Agricultural district this section does not apply and the minimum lot size to build is 2.0 acres with 75' set back from the road right-of-way. This pole barn would not have been able to be built according to our ordinance. Mr. Morrison cited section 14.3 which states that "It shall be unlawful for any person to commence excavation for construction of any building or structure, structural changes in any existing building or structure, or moving

of an existing building, without first obtaining a Building Zoning Permit from the Zoning Administrator. No permit shall be issued for construction, alteration or remodeling of any building or structure until an application has been submitted in accordance with the provisions of this Ordinance showing that the construction proposed is in compliance with the provisions of the Ordinance, with the Building Code, and with other applicable ordinances.”

Bob McManaman asked about other out buildings on the property.

David Mullins stated that the issues as hand are that there are no permits and the pole barn does not meet the required set backs. There are 5 requirements in our ordinance that need to be met in order to grant the variance. If any one of those requirements are not met, the Zoning Board of Appeals must deny the variance request.

Mr. Mullins went through the 5 requirements , one at a time.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or class of uses in the same district or zone.
2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity.
3. That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.
4. That the granting of such variance will not adversely affect the purposes or objectives of this Ordinance.
5. In consideration of all appeals and all proposed variations to this ordinance, the Board of Zoning Appeals shall, before making any variations from the Ordinance in a specific case, first determine that proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonable increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Township of White Oak. Nothing herein contained shall be construed to give or grant the Board the power or authority to alter or change the Zoning Ordinance or the Zoning Map, such power and authority being reserved to the Township Board of The Township of White Oak in the manner provided by law.”

Richard Morrison said something about dimensional variances, but also stated that this problem was self-created. Bob McManaman asked Mr. Mullins to re-read #1- then stated that he felt

The Zoning Board of Appeals determined that #1 was not met. There are no circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district. Also, they determined that #4, granting of this variance would adversely affect the purposes or objectives of this Ordinance.

David Mullins said that the burden of proof is on the applicant. The Zoning Board of Appeals must uphold the ordinance. He repeated that to grant the variance all 5 requirements must be met.

Mrs. Gailey asked that if the variance application is denied, what her next step would be. Mr. Mullins told her she should check with her attorney.

David Mullins asked if there were any more questions. Since there were none, he asked for a motion. Jeffrey Steckelberg made a motion to take a roll call vote on whether or not the Application for Variance submitted by Ron and Elizabeth Gailey should be approved. Motion was seconded by Denver Doxtator.

Denver Doxtator – NO

Roger Graf – YES

Jeffrey Steckelberg – NO

Richard Morrison – NO

David Mullins – NO

The application for variance for Ron and Elizabeth Gailey has been denied.

Meeting Adjourned 6:51 p.m.

Respectfully submitted,

David Mullins, Chairperson
White Oak Township Zoning Board of Appeals