

VILLAGE OF EPHRAIM

FOUNDED 1853



EPHRAIM BOARD OF APPEALS MINUTES

Thursday, October 12, 2017, 4:00 p.m.

Village of Ephraim Office – 10005 Norway

Present: Diane Kirkland, Debbie Eckert, Sara Glenn, Paul Burton

Absent: Chair-Karen McMurtry, Keith Krist

Staff: Brent Bristol-Administrator, Andrea Collak-Clerk/Treasurer

Guests: Brad Russell, Amy Russell, Grace Held, Cindy Nelson, Hugh Mulliken, Karen Webster, Kate Lindsey

1. **Call to Order:** Meeting called to order by Collak-Clerk/Treasurer at 4:00 P.M.
Collak asked the committee members to appoint temporary chair for this meeting.

Motion per Kirkland to appoint Debbie Eckert as temporary chair for this meeting, seconded by Glenn, and motion carried.

2. **Quorum:** A quorum of the Ephraim Board of Appeals is present for this meeting.
3. **Compliance with open meeting law and public notice requirements**
Bristol confirmed that the agenda was posted in accordance with open meeting law and that public notice requirements have been met.
4. **Changes in Agenda:** None.
5. **Announcement of Proceedings:**

Chair Eckert read the Announcement of Proceedings Role of the Board

The Village Board of Appeals is an appellate board required by state law in any municipality that has adopted a zoning ordinance. The board does not have authority to amend or repeal any provision of the zoning ordinance. Its authority is limited to appeals regarding interpretations of ordinance provisions, and considerations of variances. The board functions like a court. Its purpose is to give a full and fair hearing to any person whose property interests are affected by these matters. Its job is to apply the zoning ordinance and appropriate legal standards to the facts of each case. The board meeting and public hearings are open to the public. A taped recording is being made of the proceedings.

Appeal of the Board Decisions

A decision of the board may be appealed by commencing an action in the circuit for this county within 30 days after the date of filing of the decision in the office of the board.

Instructions for Witnesses

Anyone wishing to speak should wait until called upon as a witness; address your comments and questions to the chair and state: Your name and place of residence, your qualifications to speak on this matter, the source of your information, and whether you favor, oppose, or are only providing information in this matter and your concerns.

6. **Brad Russell – 3055 Spruce Street –**

Public Hearing opened by Debbie Eckert. The notice was read into the record. This is case number 142, notices were sent out September 28, 2017 and the hearing date is October 12, 2017.

The subject property, parcel #121-24-0042E, is owned by Peter Smith (in process of being sold to Brad Russell) and located at 3055 Spruce Street. The property is zoned Commercial Center, the lot is approximately 3,600 square feet or .083 Acre in size.

Bristol in his notes stated that the building that presently sits on the parcel is in the state of despair and represents an un-inhabitable structure. The lot and existing structure are both non-conforming to the dimensional standards of the ordinance. The Russell's are looking to purchase the property, raze the existing structure and erect a new principal structure on the lot. This proposed structure as planned is not in compliance with village zoning. The lot by ordinance is too small to be built upon. As designed the structure is in violation of all 4 property line setbacks, and is also in violation of the ordinance which requires that parking for commercial transient lodging facilities not site the required parking within the front setback.

A regular zoning permit cannot be issued because the proposed construction is not in compliance with the village ordinance.

The Dickenson's are requesting:

- A Variance for the construction on a lot of less than 10,000 square feet per 17.17(2)b of the Ephraim Zoning Ordinance
- A 20' Variance from the 40' front setback per. 17.25(4) of the Ephraim Zoning Ordinance
- A 25' Variance from the 40' rear setback per. 17.25(4) of the Ephraim Zoning Ordinance
- Two 7' Variances from the 15' front side setbacks per. 17.25(4) of the Ephraim Zoning Ordinance
- A Variance from the requirement prohibiting commercial transient lodging parking from the front setback area

Burton asked if any of the variances are subject to interpretation. Bristol stated that a variance from the requirement prohibiting commercial transient lodging parking from the front setback area would be open to some interpretation but the other ones are dimensional standpoints and they are black and white.

Eckert asked committee members if they inspected the site.

Kirkland has seen the property from outside many times. Glenn only drove by the property. Eckert, at one point, showed the property to potential buyers but just from the outside. It would not be safe to enter the building, added Eckert.

Statement by the Applicant

Russell explained in his application that he is respectfully requesting a variance of 20' front (which includes 6' upper deck overhang on the north side); 15' rear; and 8' side (which includes 6' deck overhang on the west side along with 3' roof overhangs).

There is no reasonable use of the property without a "variance". Current setback requirements (40' front/rear and 15'side) essentially allows for "zero buildability" as the property is 80'x 45'.

The property does not conflict with uses on adjacent properties in the neighborhood (which consist of another cottage, the Old Post/Fish boil pit, and public parking lot) all zoned commercial as they are not seeking a variance to use otherwise.

The basic nature of the site is a cottage (residential/commercial) dwelling – permitted purpose of the area. Currently, the property has a very small, unsafe, and dilapidated cottage on it with no running water. It would seem reasonable to tear down and rebuild a safer structure that complies with current

building code and has running water and utilities. The public interest would be served in tearing down the unsafe current building and rebuilding an aesthetically appropriate cottage to match the Ephraim Visitor Center and nearby 'stone barn' that were once part of the same property.

The unique limitations are quite obvious as it is small size lot to build livable cottage under the code of 1000 square feet for single family dwelling. These factors prevent any ordinance compliance and the need for variances for 'reasonable use' of the property.

They have compromised much to create a plan that can satisfy basic building ordinances and codes to fit a very small, but suitable cottage within the physical dimensions of the property; and they have committed to maintaining and blending the historical/architectural/aesthetic beauty of the older buildings that were once all a part of the original property.

The Russells have consciously considered the planning, zoning, and village ordinances; as well as, what land can suitably support, while allowing for reasonable living quarters. They intend to create a livable space of 35' X 15' from 26' X 17' to reasonably accommodate a small living room, kitchen, study, one bedroom loft, 1.5 bathroom, and laundry room on three levels, creating 970 sq. ft. to satisfy the under 1,000 sq. ft. maximum standard, while staying within the building code height of 28'. This transient lodging for single family does not need to be ADA compliant.

Correspondence:

Bristol reported that there was a correspondence received in regard to this matter.

Alan Stover from Ephraim Guest House, Unit # 403, is opposed to the variances requested by Brad and Amy Russell as proposed reduction in the 40' rear setback would only allow a 15' rear yard and with proposed height of 28' would destroy all privacy in the adjacent area. The proposed reduction of the side setbacks from 15' to 7' would bring the building almost out to the public parking lot. The proposed reduction of the front setback from 40' to 20' would eliminate the rental parking which would then spill over the public parking lot. This is not request for a couple feet, but about 50% or more reduction in the standards set by the Ephraim Zoning Code. The present lot is not causing financial hardship to the new owners because they do not have to buy it. The lot is usable for something else but not this plan.

Walt Fisher, owner of the property located at 3052 Spruce Street in Ephraim stated in his letter that parcel in question was originally part of a larger parcel, and that the Village of Ephraim bought the majority of the original parcel and created the public village parking lot which exists today. The remaining part of the original parcel is now too small to be built upon under present ordinance. At present, the property is a hardship on the present and any potential buyer. Fisher would rather see the proposed building there than it remain a vacant lot or an expanded parking lot. Although none of the four property line setbacks can be met, by relocating the proposed building towards the center of the site, it does come closer to meeting the required setbacks than the existing building. Fisher supports variances for this project as submitted, because it presents a well thought out design for the site and the neighborhood.

Guy and Lori Webster, residents at 3047 Spruce Street in Ephraim stated in their letter that the amount of variances goes against the Ephraim Village plan to keep the Village "quaint", especially considering it is located in the "historic" area of the Village. The Village should consider this property as a green space or an addition to the adjoining parking lot.

Gary and Mary Evenson, residents at 3047 Spruce Street, Unit #1 in Ephraim were strongly opposed to the approval of any of the six variances. If six variances are approved for a single housing project, it appears that existing building codes are being ignored and a perceived precedence may be set for future projects. They should rather see the Village acquire the property and enlarge the public parking lot as Spruce Street is often congested with parked cars.

It was confirmed that there was no ex parte communication.

Witness or Visitor Statements:

Burton complimented Brad and Amy Russell on the amount of thought they gave to the property in question but stated that the ordinances are the documents that have preserved Ephraim to remain Ephraim. Burton is not comfortable with the amount of requested variances and basically throwing out the ordinance for this project.

Kate Lindsey spoke on behalf of the Edgewater Resort which shares a lot line with the property in question. The association had several concerns about changing the front setback from 40' to 20' and without having a certified survey to determine where the lot line currently is with three rental cottages along that lot line.

Hugh Mulliken feels that property lines are not properly determined. Mulliken believes that the lot needs to be unique with wetlands, steep slopes, power or sewer lines going through it in order for setbacks to be changed. The zoning ordinance should not impose too much of the impact on the lot itself. Asking for six variances for a single housing project and getting those approved would set a huge precedent in these matters, added Mulliken.

Regarding to comment Walt Fisher made in his correspondence Bristol did some research on the property in question and found out that going back as far as 1950 the lot in question at 45' X 80' was a standalone lot.

Kirkland has a problem with such a small parcel being redeveloped. The current owner imposed the unnecessary hardship because he did not keep the building up. The Village and Edgewater Resort wanted to buy it in the past but Smith family wanted to keep it as a cottage. Kirkland believes that the lot should only be used for driveway.

The Board of Appeals handbook states that only small increment of relief should be granted on any variance, added Kirkland.

Glenn appreciates an effort put into the project but she is having a problem with the level of variance needed. We are tasked with giving some relief to the zoning code but this is an extreme situation, added Glenn.

Public Hearing Closed by Chair Eckert

Findings of Fact:

The Zoning Administrator Bristol filled in the statistics of the property on the findings of fact form. These are an area variances under section(s) 17.17(2), 17.25(4), 17.25(4)C(7)f of the ordinance.

Conclusions of Law:

Unnecessary Hardship:

Eckert feels that unnecessary hardship was not proven. The property should be considered unbuildable lot, added Eckert.

Kirkland believes that current owner let the property go to the point where it has to be torn down and imposed the unnecessary hardship.

Glenn agrees that there is no unnecessary hardship. The property was not passed down to the Russells, they do not have to buy it and thus it is not forced situation.

Burton agrees that there is no unnecessary hardship.

Unique Physical Property Limitations:

Committee members agreed that there are no unique physical property limitations that prevent the owner from meeting proper setbacks.

No Harm to Public Interest:

Majority of the public seems to think that it would be harming by granting these variances and ignoring existing zoning ordinance, stated Eckert.

Glenn does not agree that the actual structure would cause any harm to the public interest. However, all three criteria have to be met.

Kirkland believes it will be contrary to the public interest partially because of observing the spirit of ordinance.

Motion per Kirkland to deny the requested variances without any conditions/mitigations from the Board of Appeals, seconded by Eckert; Kirkland – aye, Glenn – aye, Eckert -aye, and Burton –aye, and motion carried.

7. Adjournment

Motion per Glenn to adjourn the Board of Appeals meeting at 5:06 P. M., seconded by Kirkland, and motion carried.

Recorded by,
Andrea Collak - Clerk/Treasurer