

-FINAL-

Zoning Board of Appeals Meeting of the Elberta Village Council

401 First Street | ELBERTA, MI 49628

August 15, 2024 @ 6pm

Call to Order 6:00 pm

Roll Call

Zoning Board of Appeals members present:

President Jennifer Wilkins – PRESENT | Pro Tempore Emily Votruba – PRESENT | Ken Holmes – PRESENT | Ryan Fiebing – PRESENT | Brett McGregor – PRESENT

Audience

Michael Cederholm (Frankfort Fire & Rescue), Gary Sauer (County Commissioner), Justin Towle (DPW), Josh Mills (Zoning Administrator), Thomas and Lynn Webster (251 Crapo), Marilyn Maslow (339 Crapo)

Approval of Agenda

Motion by Votruba, seconded by Wilkins, **to approve the August 15, 2024, ZBA Hearing agenda. All ayes. Motion passed.**

New Business: Public Hearing on Request for Variance

Thomas W. Webster, 351 Crapo Street
Tax ID# 10-06-506-007-00 (R-1 District)
Article 19: Side Yard Setback
Article 22.04: Nonconforming Structures

1. Summary by Chairperson (Wilkins)

The purpose of zoning ordinances are to establish zoning districts throughout the Village of Elberta, which the use of land, the use size, type, and location of structures and the use of natural resources are regulated to promote the health, safety and general welfare of the public and of the village.

Realizing that one size does not fit all, or in fact there may be legitimate exceptions, the State of Michigan has established the Zoning Board of Appeals (ZBA) to examine any special circumstances that may allow a variance from the zoning rules.

The ZBA has a unique, semi-judicial status. Once a decision is rendered, the decision can only be reversed by Circuit Court in Benzie County. Since this hearing is a legal procedure, the following meeting format is followed.

2. Open Public Hearing

a) Applicant Presentation Applicants Thomas and Lynn Webster requested a variance to add a bedroom and a bathroom to his property at 351 Crapo St. He cited addition's potential benefit of increased privacy for neighbors and outlined restrictions posed by existing structures. Said addition can't be put on other side of house because of exterior access to/egress from basement. Addition continues existing line of house

a. Comments from Zoning Administrator on Variance Mills stated requirements of Articles 19 and 22.04, concerning side yard setbacks and nonconforming structures. Zoning ordinance requires 10 foot setbacks in side yard. Existing house has a 6 inch setback. If granted, this would be a dimensional variance. Minimum sq ft requirement for residence is currently 800 sq ft; existing structure is 600 sq ft, so addition would in that way make the structure more conforming; putting the addition on the basement egress side would still require a variance since the setback there is 9 ft. Structure predates zoning; lot is 50 ft and structural footprint conforms

b. Read letters concerning variance No letters received.

c. Comments from audience in favor of granting variance Marilyn Maslow, a neighbor of the Websters', commented in favor

d. Comments from audience objecting to granting variance None

e. Rebuttal by those in favor of variance None

f. Rebuttal by those opposed to variance None

- 51 g. **Questions from members of the Appeals Board** McGregor asked when the property was purchased
52 (September 2021). Owners said build date was the 70s (Holmes thought 50s, for Wayne McPherson),
53 McGregor said in future proceedings testament to neighbors' favor or opposition should be in
54 writing (or heard firsthand at hearing).

55
56 **3. Public Hearing Closed by Wilkins at 6:17 p.m.**

57 **4. Discussion by ZBA**

58 Mills asked if the current decision could serve as a guide for future similar requests, which he thought were likely,
59 and therefore obviate the need for repeated variance hearings; i.e., in cases where an existing nonconforming
60 setback was at least not made worse, as in making the setback closer, just continuing the line/expanding the
61 footprint, but maintaining the distance. Fiebing said this case, of 6 inch setback, should be addressed in building
62 code not zoning code, for example with fire-rated wall assemblies. Mills mentioned onsite retention of water,
63 gutter/downspout; stormwater is dealt with in zoning code, not building code. Votruba asked if gutters would be
64 something ZBA could stipulate; Mills said yes. McGregor said in general, if it's not increasing nonconformity,
65 conforms with building code, and water retention is dealt with, it's OK. Fiebing agreed. Wilkins agreed, especially in
66 light of upcoming improvements, elaborations in zoning ordinance.

67 **5. Findings of Fact (Section 6.05)**

68 ZBA members discussed and voted on each criterion applicable to Nonuse Variances, as follows:

- 69 a) **Practical Difficulties condition met:** Votruba received clarification that the egress was
70 always there, and therefore basement access not a self-created problem. **All Yes**
- 71 b) **Substantial Justice condition met: All Yes**
- 72 c) **Public Safety and Welfare condition met: All Yes**
- 73 d) **Extraordinary Circumstances condition met: Fiebing, No; Votruba, No; McGregor, Yes;**
74 **Holmes, Yes; and Wilkins, Yes**
- 75 e) **No Safety Hazard or Nuisance condition met: All Yes**
- 76 f) **Relationship to Adjacent Land Uses condition met: All Yes**
- 77

78 **Motion** by Votruba, seconded by Fiebing, to approve the variance request with the condition that a
79 gutter be installed. **Roll call: Fiebing Aye | Holmes Aye | McGregor Aye | Votruba Aye | Wilkins**
80 **Aye. All ayes. Motion passed.**

81 **6. Other ZBA Business**

82 None.

83 **7. Adjournment**

84 6:37 pm by Holmes

85
86 Final minutes prepared and posted by

87 Emily Votruba, Trustee