



**ST JAMES TOWNSHIP, CHARLEVOIX COUNTY
FINAL DECISION OF THE ST JAMES TOWNSHIP ZONING BOARD OF APPEALS
ADMINISTRATIVE APPEAL OF ST JAMES TOWNSHIP PLANNING COMMISSION'S
DENIAL OF ZONING PERMIT S1922A**

For an appeal by right of this decision to be timely, it must be made to the circuit court for Charlevoix County in which the property is located within 30 days of the date of this order. (MCL 125.3606)

Appeal Number: ZBA-S1922A

Meeting Logistics: 10/17/23 at 4:00 pm at the St James Township Hall

Property Address: 38195 Michigan Avenue, Beaver Island

Applicant: Ben Fogg

Address: 5511 Quail Meadow Ct, West Olive, MI 49460

Phone: 231-499-0136

Type of Request to ZBA (variance, interpretation of zoning map, administrative appeal, other—please specify): Administrative Appeal of Permit Application S-1922A. Appeal of St James Township Planning Commission's decision to limit the size of the new home regarding the allowable foundation size.

ZBA Findings of Fact:

1. The ZBA finds that the existing home is 25' wide and 63' long while sitting on a combination block and slab foundation that is 25' wide and 77' long, with a 14' long unused section of foundation on the lakeside. This unused portion of the foundation is currently located beneath an existing deck. The applicant's proposed home is to be 25' wide and 77' long.
2. The ZBA finds that the definition of "Structure" per Zoning Ordinance Article III, Page 9, as "Anything constructed, erected or to be moved to or from any premises, which is permanently located above, on, or below the ground, including signs, billboards, septic tanks, drain fields, and fences." *Given that the unused portion of the foundation is part of the building, the applicant can make use of this foundation location to construct a new home. Note that one ZBA member preferred to use the "Building" definition found on Article III, page 2, to point out his claim that the building needs a roof and therefore, only the currently roofed part of the home is the buildable area (for a 63' length).*

3. The ZBA finds that the building use is non-conforming as it predates the applicable Marine Related Zoning District designation. Per Zoning Ordinance Article X, Page 1, Section 10.01, "Expansion of Non-conforming Structure or Use: a) Structures that are non-conforming because they do not meet the dimensional requirements of this Ordinance may be extended, enlarged, altered, remodeled or modernized even if the extent of the nonconformity is increased, provided the degree of the nonconformity (distance to the property line) is not increased, the other dimensional requirements for the District are satisfied, and the alteration complies fully with the requirements of the Northwest Michigan Community Health Agency, and carries ZBA approval." *Given that that the applicant plans to build within the existing footprint of the current foundation, the non-conformity is not increased and the setback distances from the two side yards, front, and rear yards are acceptable to the ZBA. It is worth noting that the Marine Related District Zoning Ordinance requires a 25' setback on the shoreline side if this was to be a new home (as opposed to replacement of a non-conforming building). This building has a 33' setback to the high-water mark located at the 580.5' elevation.*
4. The ZBA finds that non-conforming buildings and structures, as reported in Section 10.08 a1) on page 3 of the Zoning Ordinance describes that ". . . the Planning Commission may approve the replacement of a non-conforming building, . . . as long as the replacement building does not exceed the general height, size, . . .". *The Planning Commission briefly discussed the 16' height allowance for buildings in this District (Section 6.12 c). They did not, however, articulate a position in this regard, therefore, the height requirement is not an applicable consideration in this case. Further, the ZBA finds that this 16' height noted in the ordinance is for new buildings on unbuilt properties rather than non-conforming buildings being replaced.*
5. The ZBA finds that page 1 of the Zoning Ordinance, "Marine Related District, Section 6.12 a) Purposes" describes the purpose of this district which includes the statements, "This district is not intended to accommodate dwellings, residential accessory buildings, . . . although existing dwellings, residential accessory buildings, . . . are non-conforming uses. . . . While the replacement and reconstruction of existing buildings and structures is intended to be accommodated, it is intended to be done in a manner that results in no net loss of views to the Bay." *Note: It was presented to the ZBA that this portion of the 2004 ordinance was stricken from the ordinance per State of Michigan requirements. Even though this is no longer an ordinance, the removal of the front fence and trees that were part of the existing fence has substantially increased the views of the Bay as shown on the Permit Site Plan. The views are further enhanced with the trimmed trees along the south property line. The applicant stated that they do intend on adding in a split rail fence at/near the previous location. The ZBA finds that the applicant has enhanced the view of the Bay and done so as an advantage to the community.*

ZBA Decision: The ZBA finds for the applicant and, therefore, directs that the proposed building be allowed to be constructed as described within Permit S1922A and on behalf of the community that the grounds be kept clear of vegetation, except for moderate landscaping around the home and the new split rail fence to continue to allow the same view of the Bay.

Reasons for Decision: Based on the above findings, the ZBA finds that the administrative appeal has been found in the applicant's favor and, therefore, directs that the new home is allowed to be constructed within the foundation limits of 26' by 77' and with a 22' height as outlined in Permit S1922A.

Votes of ZBA Members:

Signature(s) of Designated ZBA Member(s):

(Yes) (No) RL Tisonow

RL Tisonow

(Yes) (No) Victor Van Duinter

Victor Van Duinter

(Yes) (No) R.S. Welke

Robert Welke

I, Tessa Jones, Deputy Secretary on behalf of the St James Township Zoning Board of Appeals, certify that on this date I witnessed the signatures set forth above and attest to the accuracy of this final decision report.

Tessa Jones

Tessa Jones, St James Township Deputy Clerk

10-24-23

Date