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**SPRING LAKE TOWNSHIP
ZONING BOARD OF APPEALS MINUTES
JUNE 25, 2020 – REGULAR MEETING**

Present: Ellen delaRosa-Pearn, Jack Ketchum, Larry Mierle, George Postmus, Tom TenCate,
Rachel Terpstra
Absent: None
Participant: Lukas Hill, Community Development Director
Ron Bultje, Township Attorney

Pursuant to Executive Order No. 2020 – 129, the Township of Spring Lake Zoning Board of Appeals conducted its business via conference call to mitigate the spread of COVID-19. Members of the public were encouraged to dial in to this meeting. Members of the public were not required to register or otherwise provide information to attend.

I. Call to Order

The meeting was called to order by Ketchum at 7:02 p.m.

II. Approval of Minutes

Mierle moved to approve the minutes of the May 28, 2020 meeting as presented. Terpstra seconded the motion, which passed unanimously.

III. Adopt Agenda

TenCate moved to adopt the agenda as presented. Terpstra seconded the motion, which passed unanimously.

IV. Public Comment

A time for public comment was provided. There were no comments.

V. Custer – Variance request to allow retaining walls that do not meet required setbacks AND Waterfront Accessory Structure authorization at 18223 North Shore Estates Road

Ketchum stated that the two requests, a variance for retaining walls and a waterfront accessory structure authorization, will be considered separately. The first request to be considered is the variance.

Jim Ens (Miller Johnson) and Adrienne Peterson (Peterson Environmental), representing the Custers, presented the request. Ens stated he prepared a narrative titled “Presentation to Spring Lake Township ZBA – Custer Lakeshore Home Variance Request” outlining the issues to be discussed. Commissioners agreed they had received the narrative.

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Ens stated that one of the issues for the variance request is the retaining walls. He stated that the Township has a policy for revetments to defer to EGLE and the Army Corps of Engineers. An EGLE permit was obtained and construction was completed. After construction, it was determined that a temporary retaining wall needed to be made permanent. Ens stated that Hill told Peterson that the Township would defer to EGLE. A voice mail and email about the construction was received the day before construction began, and the messages were not interpreted to believe that construction shouldn't happen.

Ens stated that he addressed the six standards to be met for a variance in the narrative presented to Commissioners.

Postmus asked if the neighbor, John Fallon, is doing any erosion prevention work. Ens stated that Fallon has applied for an EGLE permit.

Peterson stated that the retaining walls are necessary to keep the dune from eroding and to protect the house.

Peterson stated that she was speaking for Dave Custer, who could not access the meeting. Custer tried to do everything by the book to save the cottage.

Postmus asked if the guest cottage had retaining walls on the property line, and how far the revetment extends. Peterson stated the retaining wall only runs to the big deck.

Mierle asked Hill to explain the necessity for a variance. Hill stated that the Zoning Ordinance has retaining wall standards that require walls greater than four feet tall to meet the side yard setbacks, which are ten feet in this case. There are portions of the wall which do not meet the setbacks and are greater than four feet tall. Some portions of the wall are right up to the property line. Hill stated a revetment is along the shoreline, designed to absorb energy with rocks. The Township has a policy to let EGLE regulate these structures. Retaining walls are on the bluff higher than the shoreline, are designed to retain sand, and are not exempt from the Zoning Ordinance so the standards apply.

Ketchum clarified that the north/south and east/west walls are retaining walls.

Postmus noted that the rocks going up the hill are on the Fallon property, which Custer placed with Fallon's agreement.

Ketchum stated that his understanding was that Custer and Fallon had an agreement to extend the revetment 50 feet to the south. However, only 25 feet were able to be installed due to equipment limitations. Peterson stated that there is an agreement because the property lines aren't straight and erosion was coming through the neighboring property. They were not able to place the entire 50 feet of revetment.

Terpstra asked about the retaining wall (east/west) along the south property line and why it was not built ten feet off the property line. Peterson stated that it is on the property line because it is next to the big deck. If the wall were shifted over there would still be erosion behind the wall.

The public hearing was opened at 7:30pm.

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Hill noted that several emails were received regarding this matter:

Jim Ens emailed his presentation supporting both requests.

David Ufer, 18235 North Shore Estates Rd, the neighbor to the north, supports the variance request as it protected the cottage, the neighborhood access point between the properties, and the road.

Jamie and Cheryl Buhr, 18240 North Shore Estates Rd, across the street from the Custer property, stated that they support the requested variance, which saved the access easement and the road access for all homes north of the property in question.

Derrick Velarde, 18270 North Shore Estates Rd, neighbor and president of the North Shore Estates Association, stated he was in favor of the variance as it was likely responsible for saving community beach access, a section of the road, and the house to the north.

Kathryn and Shawn McCabe, 18247 North Shore Estates Rd, stated that they are in favor of the variance as it saved the cottage, beach access and the road.

John Fallon, 18213 North Shore Estates Rd, stated he supports the waterfront accessory structure, but opposes the current placement of the retaining wall.

John Fallon stated that he sent a letter, and then his lawyer sent a new letter, which covers the issues. Right now, the east/west retaining wall is six feet ten inches tall at the southwest corner. Custer had EGLE permits for work done on the Fallon property, and EGLE permits require slope stabilization. Custer hasn't done any slope stabilization on the Fallon property, so Fallon will need to do the stabilization and will need to adjust the slope of the dune. This adjustment will make more of the retaining wall visible. He is okay with saving the cottage, but he doesn't want the retaining wall on the property line. He would prefer that the wall be four feet off the property line. The original north/south wall didn't have a permit, and the rocks up to the retaining wall didn't have a permit. They were supposed to build to the issued permit on the Fallon property and haven't properly followed the permit for 50 feet of revetment. A barge should be able to get to the shoreline because the old seawalls that are in the water need to be removed per the permit. He believes the wall was built on the property line for convenience only.

Paul Winter, representing John Fallon, stated that the letters which were submitted speak for themselves. The request is for a variance and it needs to meet the standards. Right now the Fallon lot is vacant, and if there were a house on the property the Board would see this issue differently.

TenCate asked about the retaining wall shown on Nederveld Sheet 4 of 7, and whether an additional 15-foot portion is to be installed. Peterson stated that it was originally proposed to EGLE to install the retaining wall all the way to the top of the bluff. After the rocks were placed they didn't need as much east/west wall. She stated that she understands why there was less urgency to control the erosion on a vacant lot.

Postmus stated that he would defer to the expertise of the contractors and engineers in designing the system.

Motion by TenCate, support by Mierle, to close the public hearing at 8:04pm. A roll call vote was taken and the motion was approved unanimously.

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Hill stated that Commissioners had the option to consider asking Bultje to prepare a resolution for consideration at a later date.

Bultje reminded the Commissioners that they were not considering the fact that the wall is installed and a permit was not obtained, as those factors are not considered as part of a variance decision. A variance will be needed for the wall because at least a portion of it is taller than four feet. He also confirmed that a revetment is for water and a retaining wall is for sand.

Commissioners deliberated and reviewed the criteria for the retaining wall variance. Commissioners agreed that the variance request met all criteria – i.e. the exceptional circumstances of high water, the necessity of the variance to protect the dwelling, the absence of a general or recurring situation, the absence of a self-created difficulty, all creating a situation of practical difficulties.. They agreed that placing the wall on the property line prevented additional erosion that threatened the deck and garage, and placing the retaining wall off the property line would result in further erosion between the retaining wall and the property line.

Motion by Postmus, support by Mierle, to approve the variance request to maintain noncompliant retaining walls, where at least a portion of the wall is taller than four feet in height and therefore requires a variance, as presented at 18223 North Shore Estates Road as it meets the criteria set forth in Section 112 I of the Zoning Ordinance, as discussed and agreed by the Commissioners, with the following conditions:

- a. The applicant will comply with any other local, state, and federal laws.
- b. The applicant will comply with all verbal representations as represented in these minutes.
- c. This variance applies to the retaining walls only, not the revetments.

A roll call vote was taken. The motion was approved unanimously.

Commissioners then considered the waterfront accessory structure.

Peterson stated that a small deck at the base of the dune was lost as the dune eroded. The intent is to replace the deck in the same location at the same size, but the retaining walls are in place. The deck meets the criteria as it is only 54 square feet, and is 21 feet from the lot line. It will not impede views because it is down the bluff, it will match the other deck, and dune grass will be planted after the dune stabilizes and it is the correct time to plant the grass. Peterson stated that the preferred time to plant dune grass is in the spring, but it could be planted in the fall.

The public hearing was opened at 8:43pm. There were no comments. Motion by Mierle, support by TenCate to close the public hearing at 8:44pm. A roll call vote was taken and the motion was approved unanimously.

Commissioners reviewed the criteria in Section 306 I 5 for waterfront accessory structures. Commissioners agreed the deck is less than 144 square feet, is at least 10 feet from side lot line, will not impede waterfront views, and is compatible with the architectural style and form of the dwelling – the remaining criteria of Section 306.I.5 are not applicable.

Motion by TenCate, support by Mierle, to approve the authorization request to rebuild a Waterfront Accessory Structure as presented at 18223 North Shore Estates Road as it meets the criteria

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in Section 306 I 5 of the Zoning Ordinance, as discussed and agreed by the Commissioners, with the following conditions:

- a. The applicant will comply with any other local, state, and federal laws.
- b. The applicant will comply with all verbal representations as represented in these minutes.
- c. Dune grass will be installed by May 2021.

A roll call vote was taken. The motion was approved unanimously.

VI. Adjournment

TenCate moved to adjourn the meeting at 8:53pm with support from Mierle. With a unanimous vote, the motion passed.

Respectfully submitted,

George Postmus, Secretary
Zoning Board of Appeals