

**Courtland Township  
Zoning Board of Appeals  
Monday, December 3, 2018 @ 7 PM  
Courtland Township Hall**

The special meeting of the Courtland Township Zoning Board of Appeals was called to order by Chairman Katy Nelson @ 7:00 p.m. Members present were Nelson, Bassett, Bergeron, Simon, and McIntyre. Attendance of others is attached.

**Approval of Agenda:** The agenda was approved by a motion made by Bergeron, supported by Bassett, as presented. All members voting yes. Motion carried.

**Appointment of Vice-Chairman** – McIntyre made a motion to nominate Brandon Bassett for Vice-Chairman, supported by Simon. Hearing no other nominations. All members voted yes. Motion carried.

**Minutes – July 11, 2018** Motion made by McIntyre, supported by Bassett, to approve the July 11, 2018 meeting minutes as presented. All members voting yes, Motion carried.

**Public Comment:** None

**Variance Request – Miles Builders Inc./David Hammingh, Jr./ 7275 Peninsula Dr., A release from Sec. 5.04 District Regulations, Side Yard Setback.**

Chairman Nelson noted they had received the updated survey, correspondence from the surveyor, builder, and Steve & Mary Flachs.

Public hearing was opened by Chairman Nelson @ 7:10 PM.

Don Miles of Miles Builders was present to note request. He is requesting a 16" variance on the North lot line @ 7275 Peninsula Dr. They are requesting this variance because a simple mistake was made at the time of surveying. The surveyor marked for the foundation and for an overhang. They did not learn of this until they were well into the framing stages of this. Immediately he went into correction mode to resolve this without having to tear down what was there at that time, foundation, cement, and framing. At that point he had a conversation with the homeowners and the neighbor, Steve & Mary Flachs, Lot 44, and tried to resolve and address the issue with a resolution that would help the neighbors be happy and hopefully the township as well. The homeowner, DJ and Katina are willing to give since a mistake was made. The homeowner has already agreed to move the AC and generator that was planned for the North side and put that on the south side of the lot where it could be a potentially be an eye sore but were willing to give to make a happy medium. Mr. Miles is requesting a 16" variance because of the bump out for the laundry room and full bathroom is. They cannot have that there without the bump out and would have to redo the whole configuration of that side of the home. We would be willing to do a skin rake on that part where the bump out is and just have 16" overhang on the rest of the whole entire north side. They could not do a whole skin rake on the north side because it would be a warranty nightmare with

wind, rain and snow build up in behind the fascia. The overhang on the end is subject to gutters backing up and get back inside the house. They are trying to keep it to the bare minimum and not asking for the two ft. originally approved and what they are asking for cosmetic is something that is appealing to the eye with it being a parade home and a dream home for the homeowners. Right now the setback is to the foundation. The mistake was made and it did happen. Many Townships do measure to the foundation, but Courtland Township measures to the overhang. Trying to find a happy solution for everybody. New prints were redrawn for the board's consideration to do their part to show they are trying to help and redo everything. They want to do whatever is necessary to make everyone happy.

Neighbor Steve Flachs stated when all this started Miles Bldr. had already agreed to put the AC and Generator onto the road side already prior to this issue, He had already given up the property line. Don Miles noted there is nothing to stop first responders. It is completely clear through to get down to the water and plenty of passage to get down there. There is 16 ft. 7 inches between the two buildings now, the Flachs' garage and the Hammingh new residence.

Members questioned the date when he knew it was in the wrong spot? He stated it was between Saturday, Nov. 10 and Nov. 14 approximately when there was a question what are they going to do. They poured the foundation a week prior to that. They did get a phone call from Colleen, ZA telling him there was an issue earlier, but he was out of town that week prior and were still exploring options to solve the issue.

Mr. Flachs and Mr. Glaza were standing out there when Glaza was staking the site and told Mr. Flachs he was 6 ft. from the lot line and Mr. Flachs said "Great, that is what it is supposed to be". Mr. Glaza did not realize it was to be 6 ft. measured to the overhang, not the foundation wall and that was where the confusion came in. Don Miles apologized and said nothing was intentional at all he realizes that. He just wished, if Steve would have said that should be measured to the overhang at 6 ft. there wouldn't have been an error. Don recognized it was not the Flach's responsibility to verify compliance. He recognized the confusion because he was the second builder for the job. He was trying to be extra careful and that is why he hired Glaza Surveying that was already familiar with the project. Normally he would have brought in his own surveyor he typically uses. He knows Mr. Glaza whole heartily made an honest mistake. It was not intentional. They had originally made sure the footprint of the home fit within the variance that was originally approved. The survey was completed and staked by Sept. 13, 2018 at 4:30 PM in the afternoon. A letter from James Glaza was written on October 22, 2018 explaining the mistake and received by the Township on November 5, 2018. Don Miles had responded acceptance of responsibility for continuance of building by email on Nov. 15, 2018. He was out of town when the original complaint came out and thought without seeing the plans they could eliminate the bump out not have an overhang or at least maybe a 6" overhang could be approved, that would not require an additional variance to be considered. He was in contact with the Township and building inspector right away. He thought some building inspectors had the authority to grant you "X" amount of leeway from a measurement in question, but that is not

the case in Courtland Twp. he found out. He was hoping that the homeowners and the Township could come up to some type of an agreement and not have to come before the board. Don Miles also wrote a letter to the Township via email on November 26, 2018 explaining the requested variance consideration for tonight's meeting.

Member McIntyre questioned if he reviewed the blue prints, looked at the variance when he designed the house? Seth Howe did the original blue prints and looked at the variance when creating the blue prints. The house would have still fit with an extra 6" on the South line with the way it was drawn in, with the bump out, if it had been built as drawn on the site plan/blue prints. Member McIntyre felt they are actually looking for a 2 ft 8" variance from the original approved foundation location was should have been 8 ft. from the lot line to the foundation. Don Miles stated the request is still less than what was requested the first time on 6/14/17. The original request was for a 2 ft. setback from the overhang.

Member Bassett asked if they had tried to make resolution with the neighbors. Miles said that last conversation was with Steve Flachs and was to reduce the overhangs to 16 inches and they seemed they could be ok with that. That was for the 16" overhang and a 16" variance all the way down the North side. Neighbor Flachs also stated he considered a financial settlement to go from 6 ft. down to 4 ft. set back. They did not make the mistake. He agreed to \$20,000 to agree to a compensation at the end of the day. He feels they should not be able to just take 4 ft. and say oops I made a mistake. Don Miles pointed out they are still on the Hamming's dirt and not encroaching on the neighbor's property. He felt the \$20,000 was a little out of the ordinary. He was trying to make resolution any way he can and try to make this a peaceful resolution considering all options so everybody is happy, Township, neighbors, homeowners. They all have to be able to continue to live next to each other.

Chairman Nelson if no bump out was an option now? Don Miles explained not really. They would have to appeal that decision because they would have to get rid of the main floor full bathroom and the laundry room it eliminate the doors access to get passage through the master bedroom and master laundry room on the second floor would have no access doors to get to it.. The bump out was already constructed when they were aware of the violation.

Don Miles further stated the neighbor was concerned with his home value being effected, so Mr. Miles had a realtor verify the home value will only increase with this caliber of home next to theirs and the 2 ft. overhang would not affect their values at all.

Mary Flachs, 7272 Peninsula Dr. letter dated November 27, 2018 was noted and placed on file. She was questioning the egress window that needs a 3 ft. base window well to be in compliance and that would then bump out farther than the 1 ft. 6" request. Colleen Brown, ZA, stated if the window well casing did not go higher

than 8" off the ground level, it would not require to be included in the variance. Don Miles stated that would not be greater than 8" above ground level with the window well. She was under the impression that Mr. Miles was aware of the issue prior to the bump out being added because of the discussion he had with her husband Steve about the overhang's and at that time the bump out was not present. Lastly she had requested Mr. Miles call her only and that not bother her husband who is sick. That request was ignored and Mr. Miles showed up knocking at her door. She had confronted the foreman for the job with some very simple requests, she thought, and was addressed with very little respect. She asked to be able to still use her side yard and keep it clear at the end of the day. She was blistered with name calling, verbal abuse and she is not comfortable to be in her own side yard. That is a hardship with this building project. They were trying to be agreeable to work together, but if they agree to a little bit, then there would be a little bit more they would take. The tree trimmer dropped a tree on a trellis and other plants worth over \$700.00 and has not been replaced yet as promised or compensated them for the loss. It was to still be in the works. The whole process seems significantly stressful to them. One year ago, she specifically asked the Township to enforce the variance that was given, we wouldn't have to deal with this new request.

Don Miles stated the issue with the tree trimmer was not hired by him and that was irrelevant with his case here. She called him on Sat. and he had someone there on a Sunday to move the sky trak as soon as possible, so he feels they are trying.

Katina Hammingh, 7275 Peninsula Dr., stated for clarification she had spoken to the tree trimmer and he had requested to come out and meet with Mary Flachs. Mary Flachs had denied meeting with them at that time. Mary stated she denied the meeting after two months of not hearing from them and changed her mind about meeting and she was getting a quote and submitting it to them for compensation.

Jim Glaza, Glaza Land Surveys, who did the surveying noted he had also surveyed the south lot line only for the Flachs in 2012 to establish the common line. So he was familiar with both sides. Early July, 2018 he was contacted by Mr. Miles to stake the foundation. Several, three sets of site plans were sent to him with regards to elevations of house. Also in the noted that a 6 ft. variance to set the house at. He has staked many homes over the years and have always gone from the vertical wall. The construction was delayed because of the tree company coming in to remove trees. So construction started quite a bit after that. His wife was his rod person to help him to do it. He spoke to Steve Flachs at that time quite extensively about what they were doing. He always wants to take the time to keep neighbors informed and to explain the process. He showed him the pins and marked 6 ft. off set. Not sure if he understood at the time. He wishes Steve would have said at the time that was not what we agreed on, but that was not his responsibility though. What he had been working from was what the township was from 2017 1<sup>st</sup> request the 4 ft. to the eve and 6 ft. to the wall. The second plan was to in March, 2018 that moved the house South, and then a third site plan that the house was still moved south, but the 4 ft and 6 ft. setbacks reappeared on the site plan, which happens a lot of times that variances and things change and the architect do still appear on his last site plan, so

that is why he staked it as that. He felt very confident after talking with Steve he actually stated to me and asked him how far it was to the foundation and he said 6 ft. He felt marvelous he took the time with this gentlemen and felt they were both on the same page. He was flabbergasted that the 6 ft. was to the eve. Even though a lot of these lake lots are tight, he is used to that and it did not alarm to him that it was wrong. He was sorry for the misunderstanding and did not know what else to say. He thought that he did do his due diligence on staking the house. The survey he had was dated 6/20/18. The house is moved over and just changed the plans by sliding it over without changing the dimensions. He staked off the scaling dimensions on the survey. In his mind he was thinking the 6 ft. was the vertical wall. To clarify, the neighbor is not the paid professional, which is the surveyor's responsibility. The 6 ft. and 4 ft. reappearing on the last site plan, mislead him to stake the property the way he did. It should have said 6 ft. and 8 ft. He never has had the drip edge showing on plans before.

Member McIntyre stated she had researched neighboring townships and found Cannon, Plainfield, Solon, and Tyrone all measure from the drip edge.

Netrim Allendine, Address for Business is 108 Courtland Dr., Rockford, she is a real estate agent with Five Star Real Estate. She primarily works on lake sales of residential homes. She lives on a lake in Grattan Twp. so she is familiar with all the crazy issues around the lakes. She stated when you are talking the value of a home, she has never found it to be true that a home setback of 2 ft. less would affect the value of a home when it is on their own property. The existing cottage prior had a roof sinking and was likely to collapse. So the new build next to the neighbor's home will definitely add value. Her personal & professional opinion is that there would be no financial loss of value with the setback proposed. It will only improve the neighborhood.

Mary Flachs ~ 7272 Peninsula Dr., thought that their second lot would be devalued for sale, with the closeness of the proposed home to the lot line. Zoning Admin, Brown stated that although they show they own two lots from a legal description standpoint of when the property was originally platted, it is still considered one parcel for tax purposes and would not meet the guidelines to be split into two parcels for two residences. The lake frontage minimum width is not enough and the minimum square footage for two parcels would not be met as well.

Nick Grutter, 7254 Harbor Dr., commented the job site foreman has not been a good communicator and is not addressing neighbors well. The issue is the setback here though. He does not feel the Flachs' are trying to push back on the Hammingh's. He feels the apology is necessary and acknowledgement of the error from the surveyor to treat them with respect. If that mistake had not have been made, we would not be here today. The mistake would be very costly to correct and move the foundation over. Mr. Glaza felt he was nothing more than polite, and means no disrespect. He took his time to educate them when they were at the site to go over the plans. Mr. Glaza is frustrated with the situation as well. There was multiple

changes to the plan and dimensions that were noted. He very much apologized. It is a very tight lot and unfortunately there was confusion on the setback line.

Netrim Allendine further concurred with Mr. Glaza. She has worked with him many times and felt he is a very good communicator and does a very good job. He is a phenomenal surveyor and she would use him for the difficult jobs. She can see how this was a true mistake. When they draw their homes for sale in real estate they measure from the foundation wall. McIntyre suggested to be sure you call your Township with any questions.

Hearing no further comments, public hearing was closed by Chairman Nelson @ 7:58 pm.

The five standards of review were read and discussed as follows:

Standard #1 – Member Simon questioned strict compliance on day one or now?

Obviously it would be more costly at this point to comply. Not met.

Standard #2 – Member Simon felt this standard was met. No substantial detriment to the character of the area would be found. Member Bergeron agrees.

Standard #3 – Practical difficulty was not created by any action of the applicant. Not met, Chairman Nelson stated the mistake with the survey was found to cause practical difficulty in this situation and the bump out. Member Simon agrees.

Standard #4 – Member McIntyre stated exceptional narrowness, unique shape of property is met, but with the bump out it does not fit the conditions of the property, and standard is not met.

Standard #5 – Lesser variance than applied for option. Standard not met.

Motion was made by McIntyre, supported by Bassett, to deny the 16" variance request for bump out that is being asked for and the 16" overhang, as the wall of the foundation has already been moved 16" closer to the lot line than the previous variance area allowed. All five standards of review are not met. All members voting yes. Motion carried.

**Planning Commission Report** – No meeting in November. Next meeting is Dec. 18, 2018 for public hearing on Recreational Medical Marijuana.

**Township Board Report** – McIntyre reported the it was Supervisor Krygier's last meeting with normal business to report.

**Adjournment** – Meeting adjourned @ 8:05 pm by a motion made by McIntyre, supported by Bergeron. Motion carried.

Respectfully submitted,

*Colleen Brown*

Colleen Brown, Recording Secretary & Zoning Administrator

