

**CORRECTED MINUTES OF THE COOPER CHARTER TOWNSHIP
ZONING BOARD OF APPEALS HELD ON THURSDAY, DECEMBER 6, 2018**

A meeting of the Zoning Board of Appeals for Cooper Charter Township was held on Thursday, December 6, 2018, at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

Members Present: Gluchowski, Urban, Magura, Flowers and alternate, David Fooy.

Members Absent: None.

Also Present: Russ Wicklund, Township Planning Consultant; Applicant, Gregory Adamczyk; Mike Gallagher.

Chairperson Gluchowski called the meeting to order at 4:30 p.m.

Review and Approval of Minutes

Members of the Zoning Board of Appeals indicated that they had not received copies of the last meeting minutes and would defer action to a future meeting date. A motion to table approval of the Minutes of the July 21, 2018, meeting was made by Chairperson Gluchowski, supported by Comm. Urban. Motion carried 5-0-0.

Request for Interpretation for Gregory Adamczyk, 7613 Rolling Meadows Dr., Kalamazoo, Michigan, for a variance to exclude covered patio from maximum square footage allowance requirement.

Open Public Hearing

Mr. Wicklund stated that the applicant's request for interpretation and request for variance were processed as one request. The applicant submitted an application for a building permit which complied with the maximum square footage requirement of 864 square feet. However, when the building was constructed, it also included a covered porch extension, which extension is the subject of the interpretation and/or variance request. The porch extension has a foundation and support posts for an independent roof structure. Currently, this extension is a violation of the building application and of the zoning ordinance for square footage beyond the allowance of 864 square feet. Should the appeal be denied, the applicant seeks a variance of 96 square feet (6' x 16').

Mr. Adamczyk stated that there is clear definition for a primary structure and he believes his interpretation is correct. He went through the definitions in the zoning ordinance and how they apply to his structure.

When asked why he didn't show his intent to put two porches on when he turned in the blueprints, he stated he submitted his drawings to his contractor; however, the contractor did not use Mr. Adamczyk's drawings, but rather sketched in his own drawing on the application. Mr.

Wicklund stated that there was no detailed drawing on the application, just a box showing the dimensions.

Mr. Wicklund went on to explain how the square footages are determined. He stated that this is a violation of the building permit because what was built is inconsistent with the plan that was submitted. This is strictly an interpretation of what is under roof, whether enclosed or not, as part of an accessory building. Using floor area as part of an interpretation for dwellings is inconsistent and Cooper Township's ordinance states that. Any accessory buildings, porches, etc. are excluded from the determination of floor area because it is tied to the dwelling.

When asked to identify the process again, Mr. Wicklund stated that if the interpretation of the applicant appeal is approved, then there is no reason to go forward with the variance application. Chairperson Gluchowski stated that if the interpretation is that the porch is not included, they will not need a variance. If the interpretation is that the porch should be included, they will need a variance.

Attorney Homier stated that the Zoning Board of Appeals does not have the authority to rewrite the ordinance, to change the provisions of the ordinance, or to determine what it thinks might be right or wrong about the ordinance. It does have the authority to interpret those provisions of the ordinance that it finds ambiguous. Some of that is gleaned from the text of the ordinance and some from how the township in the past has interpreted those same provisions in the past. He believes that this is not the first time the township has interpreted those provisions in the same way and applied it in the same manner in other cases.

Chairperson Gluchowski stated that the ZBA needs to interpret the provisions of the ordinance. However, she thinks the intent of the ordinance was to limit the size of the building. Comm. Urban agreed with her statement, but thinks this is the reason for the ZBA's existence. Chairperson Gluchowski stated that that would be handled by variance, rather than the interpretation. Comm. Urban stated that there are grey areas of which the Planning Commission should be aware to possibly address.

Comm. Urban made a motion to deny the application for interpretation for the reasons stated on the record and based on the past application of accessory buildings and square footage.

Attorney Homier stated that he thinks the question the ZBA should answer on the request for interpretation is whether or not porches for accessory buildings are included in the maximum square footage allowed under the ordinance. The position of the applicant is that there could be a maximum square foot accessory building and one could put on the largest covered porch possible bounded only by lot coverage ratios.

Mr. Wicklund stated that the ordinance makes a distinct difference between a dwelling and an accessory building. If a front porch is added, the township requires that roof structure to be set back equal to what a principal building set back would be. It is never included in the floor area for a dwelling because the township does not want people to build very small houses with very big front porches so it's living space. The living space area is different than the square footage

standards for accessory buildings. The lot coverage issue depends upon the size of the lot. The township has consistently incorporated that into the calculation of square footage for accessory buildings based upon the area under roof.

Comm. Urban's motion fails for lack of support.

Comm. Urban made a motion to deny the request based upon an interpretation of the township's current ordinance with respect to square footage of porches and accessory buildings and that interpretation would be such that the square footage of the porch and/or overhang structure shall be considered included with the square footage area of the accessory building. Chairperson Gluchowski supported the motion.

Comm. Flowers agrees and believes the porch overhang should be included in the total square footage.

There being no further discussion, the motion passes 5-0-0.

Request for 96 foot variance by Gregory Adamczyk, 7613 Rolling Meadows Dr., Kalamazoo, Michigan to allow him to keep his porch.

Mr. Adamczyk and his co-worker, Mike Gallagher, addressed the Commissioners.

Comm. Urban doesn't think it is fair to penalize someone because they picked an interpretation based upon reading it which is different than the township's interpretation. He is in favor of granting the variance and would like to see the township address this issue to avoid a repeat of something like this in the future.

Comm. Magura agrees with Comm. Urban. Chairperson Gluchowski stated that since there is no strict letter to follow and it would grant substantial justice to the applicant. She noted that all the neighbors were notified and there was no feedback from anyone.

Close public hearing.

A motion to approve the variance for the additional 96 square feet as built was made by Chairperson Gluchowski, supported by Comm. Urban. Motion carried 5-0-0.

There being no other business, the meeting was adjourned.