

Casco Township  
4512 Meldrum Road  
Tel. (586)727-7524, Fax (586)727-3034  
e-mail: cascoclairdeputyclerk@comcast.net

Zoning Board of Appeal  
Special Meeting  
May 16, 2019  
7:00 PM

**Call to Order**

Chairman Pankiewicz calls the meeting to order at 7:00 PM with the Pledge of Allegiance.

**Present:** D. Allagreen, D. Goulston, A. Inson, H. Mancini, S. Pankiewicz

**Absent:** S. Bishop

**Motion – To Approve Minutes**

H. Mancini moves to approve the minutes of the Zoning Board of Appeals Administrative meeting held April 11, 2019. D. Allagreen seconds the motion. M/C

**Motion - to Approve Agenda**

D. Goulston moves to approve the agenda as submitted. D. Allagreen seconds the motion. M/C

Chairman Pankiewicz requests a motion to open the Public Hearing for Appeal 2019-2

**Motion – To Open Public Hearing Appeal 2019-2**

D. Allagreen moves to open the public hearing for Appeal 2019-2.  
H. Mancini seconds the Motion. M/C

Steven Miller and Dan Butruff are present at the hearing as well as members of the Zoning Board of Appeals listed above and Township Supervisor Ruemenapp.

Approved  
Dan Goulston  
Secretary  
July 11, 2019

## **Appeal 2019-2 Steven Miller, 5676 Hessen Road**

Steven Miller, 5676 Hessen Road, Casco, Mi 48064, Parcel ID #74-12-034-2005-100 requests a variance to Casco Township Zoning Ordinance #30, Article XIII, Section 13.04 to allow an accessory building in the front yard of the residence for storing agricultural equipment.

Section 13.4 Accessory Buildings #2 states "A detached accessory building shall not be located only in a rear or side yard.

The appeal states it is not practical or financially feasible to locate an accessory building in another place on the property due to the location of the house, a pond, septic field and property lines.

The appeal states that the pole building would not be visible from the road and there is more room for the pole barn in front of the house since the home is located so far from the road. He also states the building would complement the property and surrounding properties.

Mr. Miller explains that the most practical location for an accessory building is in front of the residence. The residence is far from the road. Septic field, property lines and a pond make locating an accessory building behind the residence impractical and drainage in back of the house is very poor,

Mr. Miller states that there are other properties in the immediate area with accessory and agricultural buildings in front of residences. He explains that the home was purchased in foreclosure and that the accessory building would add value to the property, not be visible from the road and not detract from the property since the residence is so far from the road.

D. Goulston states that a Michigan Appeals court decisions confirm changes to a property like the location of a residence,

ponds and buildings constructed by previous owners constitute a "self created hardship" even though the current owner may have had nothing to do with the actions of the previous owner or owners.

D. Goulston notes that the MSU Extension Service article entitled "Proving a Practical Difficulty for a dimensional variance dated October 27, 2014. explains that a "self created hardship" does not provide a reason for granting a variance and is not considered a "practical difficulty" caused by unique characteristics of the property.

He notes that there has been confusion about this in the past, including conflicting opinions from presenters at St. Clair County Workshops on Zoning Board procedures and decisions.

The MSU Extension Service article is based on principals applied by the Michigan Court of Appeals in court cases and clarifies the meaning of "practical difficulty" in the context of a request for a dimensional variance. D. Goulston provides the MSU Extension Service article to those present at the hearing.

Supervisor Ruemenapp states the Planning Commission was asked to look into a change in the Zoning Ordinance that would permit an accessory building to be constructed in front of a residence but the Planning Commission declined to provide a recommendation to the Township Board on several occasions.

D. Goulston notes that requirements were made less restrictive for a side yard accessory building but the Zoning Ordinance states an accessory building "shall not" be located in front of a residence and also states in Section 13.6 that a barn, defined in the Zoning Ordinance as a building housing animals, "shall not" be located in front of a residence.

D. Goulston states Appeals Court Decisions make clear that the actions of previous owners constitute self created hardships that may limit some options for a subsequent owner due to restrictions of the Zoning Ordinance or the expense required to conform to ordinance requirements.

D. Goulston is concerned that the location of the house, pond and septic tank constrain locating an accessory building behind the residence because they are a self created hardships. This is confirmed by Mr. Miller who states that if the house, pond and septic field built and or located in different locations it would be possible to put an accessory building behind the residence.

D. Goulston notes that the next door neighbor to the south has an accessory building behind a residence which is as far or further from the road than the residence on the property in question.

Mr. Miller state that drainage is so bad that the barn to the south behind the residence is inaccessible during parts of the year because of drainage problems.

D. Goulston states that he believes "self created" hardships are not sustainable reasons for granting a variance and doing so undermines the Zoning Ordinance. Granting this variance is inconsistent with decisions of the Township in the past when variances were granted for obvious practical difficulties due to characteristics of the property itself. He feels granting a variance in this case is unfair to residents who were required to relocate a planned residence or tear down an existing building so a residence would not be behind an accessory building.

Supervisor Reumenapp provides those present with copies of the minutes of the meeting when Mr. Miller was granted Variance 2015-1 permitting a pole barn to be constructed in front of his residence. Mr. Miller was unable to construct the barn before the expiration of that variance.

Chairman Pankiewicz states that Mr. Miller was granted a similar variance in 2015 and denying this request now is not appropriate. He feels the reasons for granting the original variance were valid and Mr. Miller should be permitted to build the accessory building he is proposing.

He also states that preventing Mr. Miller from placing an accessory building in the large front yard away from the road makes no sense and prevents reasonable use of the property and no harm would occur by granting the variance.

D. Goulston concurs that the proposed building is reasonable, does not cause any harm and the Zoning Ordinance should have provisions covering these situations. The problem is that no provisions in the Zoning Ordinance currently cover the situation. Unfortunately, and to the contrary, the prohibition of a building in front of a residence has been enforced by the Township and appears in two places expressly covering both accessory buildings and expressly including barns from being located in front of a residence.

Supervisor Ruemenapp states that Columbus Township has provisions for allowing an accessory building in front of a residence if certain requirements are met.

Ira Township does not prohibit accessory building in front of a residence because many homes are located close a shoreline.

Chairman Pankiewicz states that Mr. Miller's description that drainage is a major practical impediment to building in the rear of the residence is a compelling reason to allow construction of the accessory building in front of the residence.

H. Mancini states that grades and drainage issues are common in construction and taking care of these problems is a normal part of the construction process. He notes that fill can be costly but is often needed, He is not sure this is the kind practical difficulty or expense that justifies granting a variance.

Supervisor Ruemenapp notes a considerable expense, such as fixing grade and providing drainage to build in conformance to a Zoning Ordinance is not always taken into considerations by a court when determining if a practical difficulty exists. Such an expense may constitute a real hardship and make it difficult for a resident trying to conform with ordinance requirements and use their property in a permitted and reasonable manner.

Chairman Pankiewicz and some member of the Zoning Board concur that the same reasons for granting a similar variance in 2015 should apply if a variance is granted in this case.

Zoning Board Members concur that the Planning Commission should review the ordinance and work on recommending changes that would cover situations such as presented in this appeal.

Chairman Pankiewicz closes the public hearing.

**Motion to grant Variance 2019-2**

D. Allagreen moves to grant the variance requested to #30 Article XIII Section 13.04 for Parcel ID #74-12-034-2005-100 located at 5676 Hessen Road to permit an accessory building to be constructed in front of the residence with the following conditions and requirements: Chairman Pankiewicz seconds the motion.  
M/C

The motion passes with Board Members D. Allagreen, A. Inson, S. Pankiewicz voting in favor.

D. Goulston and H. Mancini vote against for the reasons each stated in the forgoing discussion.

**Conditions and requirements**

- 1) The accessory building shall be located in the specific location described in materials submitted with the variance request describing a pole barn 64' x 40' located 500 feet from Hessen Road, 50 ft. from the north property line and 246 feet the south property line.
- 2) The accessory building shall be of the specific size, 64' ft x 40 ft, described in the material submitted with the variance request.
- 3) The accessory building will be used for storage of agricultural equipment..
- 4) Building permits must be granted and inspections completed within the time specified in the Zoning Ordinance and the building shall be in compliance with all other requirements of the Township and of the Zoning Ordinance or the Variance 2019-2 shall be null and void.

**Reasons for granting the variance:**

- 1) Locating the accessory building in front of the residence will not be out of keeping with the area since accessory buildings exist in similar locations in the vicinity
- 2) The location of the residence is toward the rear of the property with a substantial distance from the road providing a suitable location for an accessory building which would enhance the value of the property.
- 3) No negative impact of locating the accessory building in front of the residences is foreseen.
- 4) Locating the accessory building behind the residence is not practical due to the location of a pond and septic field.
- 5) Locating the accessory building behind the residence is impractical due to poor drainage in this area.
- 6) Granting the variance allows a reasonable use of the property without causing harm.
- 7) Granting a variance does not give a special privilege. It permits reasonable and permitted use of this property.

**Motion to Adjourn**

D. Goulston moves to adjourn. D. Allagreen seconds the motion.  
M/C

The meeting adjourned at 8:10 PM.

**VARIANCE 2019-2**

**GRANTED May 16, 2019**

A variance to #30 Article XIII Section 13.04 for Parcel ID #74-12-034-2005-100 located at 5676 Hessen Road owned by Steven Miller is granted a variance to permit an accessory building to be constructed in front of the residence with the following conditions and requirements:

**Conditions and requirements:**

- 1) The accessory building shall be located as described in the variance request 500 feet from Hessen Road, 50 feet from the north property line and 246 feet the south property line.
- 2) The accessory building shall be 64' x 40' as shown in the material submitted with the variance request.
- 3) The accessory building will be used for storage of agricultural equipment..
- 4) Building permits must be granted and inspections completed within the time specified in the Zoning Ordinance and the building shall be in compliance with all other requirements of the Township and of the Zoning Ordinance or the Variance 2019-2 shall be null and void.

**Reasons for granting the variance:**

- 1) Locating the accessory building in front of the residence will not be out of keeping with the area since accessory buildings exist in similar locations in the vicinity
- 2) The location of the residence is toward the rear of the property with a substantial distance from the road providing a suitable location for an accessory building which would enhance the value of the property.
- 3) No negative impact of locating the accessory building in front of the residences is foreseen,
- 4) Locating the accessory building behind the residence is not practical due to the location of a pond and septic field.
- 5) Locating the accessory building behind the residence is impractical due to poor drainage in this area.
- 6) Granting the variance allows a reasonable use of the property without causing harm.
- 8) Granting a variance does not give a special privilege. It permits reasonable and permitted use of this property.

Daniel L. Goulston, Secretary  
Zoning Board of Appeals

*approved  
May 16, 2019  
Daniel Goulston*