

**CHARTER TOWNSHIP OF GARFIELD  
ZONING BOARD OF APPEALS MEETING**

Wednesday, May 16, 2018 @ 6:00 p.m.  
Garfield Township Hall  
3848 Veterans Drive  
Traverse City, MI 49684

**A G E N D A**

Call meeting to order  
Roll call of Board Members

1. Review and approval of the Agenda and declaration of a Conflict of Interest
2. Minutes – April 18, 2018
3. Public Hearing
  - a. A request made by Dan Jonkoff/Reynolds-Jonkoff for an interpretation of Section 534.B of the Garfield Township Zoning Ordinance. The applicant is requesting relief from the Wetland buffer requirements through interpretation. The property is zoned I-L Limited Industrial and is located on the north side of Miller Creek Drive and with a property number of 05-022-012-50.
  - b. A request made by Dan Jonkoff/Reynolds-Jonkoff for a variance from the wetland buffer requirement in Section 534.B of the Garfield Township Zoning Ordinance. The applicant is requesting relief from the Wetland buffer requirements through a variance, pending the outcome of the interpretation request. The property is zoned I-L Limited Industrial and is located on the north side of Miller Creek Drive and with a property number of 05-022-012-50.
4. Other Business
5. Items for next agenda
6. Public Comment
7. Adjournment

The Garfield Township Board will provide necessary reasonable auxiliary aids and services, such as signers for hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities upon the provision of reasonable advance notice to the Garfield Township Board. Individuals with Disabilities requiring auxiliary aids or services should contact the Garfield Township Board by writing or calling Lanie McManus, Clerk, Ph: (231) 941-1620, or TDD #922-4412.

Charter Township of Garfield  
Zoning Board of Appeals Meeting

Wednesday, April 18, 2018 @ 6:00pm  
Garfield Township Hall  
3848 Veterans Drive  
Traverse City, MI 49684

Chair Rick Smith called the meeting to order at 6:00pm.

Board Members Present: Steve Duell, Lynne Fricke, Kent Rozycki, Scott Swan, Rick Smith

Staff Present: Michael Green

- 1. Review and approval of the agenda and declaration of a Conflict of Interest**  
Duell said that he uses the same law office for personal business, but not the same attorney. Board members had no issue with his participation for the Public Hearing.

*Rozycki moved and Duell seconded to approve the agenda as presented.*

*Yeas: Rozycki, Duell, Fricke, Swan, Smith  
Nays: None*

- 2. Election of Officers**  
*Duell moved and Swan seconded to retain Smith as Chair, Rozycki as Vice Chair and Duell as Secretary for the 2018 year.*

*Yeas: Duell, Swan, Fricke, Rozycki, Smith  
Nays: None*

- 3. Minutes –October 18, 2017**  
*Fricke moved and Rozycki seconded to approve the minutes of October 18, 2017 as presented.*

*Yeas: Fricke, Rozycki, Duell, Swan, Smith  
Nays: None*

#### 4. Public Hearings

##### a. Petrosky Request – Comfort Center, Inc.

A request has been made by William K. Petrosky for Comfort Center, Inc. for an interpretation of Article 6, Section 613.A.1(c) of the Garfield Township Zoning Ordinance. Section 613 is entitled “Outdoor Storage”; the subsection referenced above pertains to outdoor storage in Commercial Districts or Uses and states that “The Planning Commission may approve designated areas of product display for large inventory items (boats, campers, trailers, etc.) The applicant is seeking a determination that the outdoor furniture they sell fits under the umbrella of “large inventory items.” The applicant is requesting relief from the Outdoor Sales requirements through interpretation. The property is zoned C-G General Commercial and is located at 458 N. US 31 South with a property number of 05-021-064-00. Attorney Joe Zayaz spoke and said that Petrosky is asking for a reasonable interpretation of the Garfield Township zoning ordinance – specifically provisions 765.A and 613 A. He would like to place Adirondack chairs outside the building to display for sale. He currently has chairs outside his building on Garfield Avenue in the city. Zayaz handed out pictures of similar uses in the same area and argued that Section 613.A.1 (c) states that the Planning Commission may approve the “display of large inventory items such as boats, campers, trailers snowmobiles, RV’s swingsets or similar items.” He is asking that the Board consider large Adirondack chairs to be a “similar item.” Zayaz went on to say that Section 765 also contains a clause allowing “similar items” and maintains that the board could choose to interpret the ordinance to allow the chairs in the “similar items” category. Board members said this interpretation may set a precedent and all the items named were not portable like the chairs were. Zoning Administrator Mike Green said that for 30 days per calendar year, businesses could have a “tent sale” and such items as the chairs would be allowed. Board members gave an interpretation of “Large Items” and agreed that generally large items cannot fit through a door and take up a large amount of show room space. Township Attorney Scott Howard said that the ZBA’s job is to determine what the words “similar items” mean and any other follow up questions can be directed to Staff. He said that “similar items” are generally interpreted to be of the same class or character.

*Duell moved and Rozycki seconded that Section 613.A.1(c) does NOT include the display of outdoor furniture under the list of “large inventory items” as the request DOES NOT meet the intent and purpose of the Zoning Ordinance.*

Yeas: *Duell, Rozycki, Fricke, Swan, Smith*  
Nays: *None*

5. **2017 Zoning Department Activities – Annual Report**  
Green reviewed the 2017 Annual Report with board members.
6. **Meeting Dates for 2018 Zoning Board of Appeals**  
Fricke moved and Swan seconded to approve the 2018 meeting dates for the Zoning Board of Appeals.
7. **Other Business**  
Board members agreed that the applicant needed to speak with Staff to determine what type of outdoor display is allowable under the ordinance.
8. **Items for next agenda**  
Green mentioned that there may be one item on the next agenda asking for relief from a wetland buffer. Green mentioned that due to recent issues, the Township Engineer is conducting more thorough stormwater reviews.
9. **Public Comment**  
None
10. **Adjournment**  
*Duell moved and Rozycki seconded to adjourn the meeting at 6:42pm.*

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Steve Duell, Secretary



# Charter Township of Garfield

## Grand Traverse County

3848 VETERANS DRIVE  
 TRAVERSE CITY, MICHIGAN 49684  
 PH: (231) 941-1620 • FAX: (231) 941-1588

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### ZONING BOARD OF APPEALS STAFF REPORT

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Meeting Date: May 16, 2018  
**Case #: 2018-02:** Interpretation Request  
 Owner: Dan Jonkoff/Jonkoff-Reynolds  
 Applicant: Dan Jonkoff/Jonkoff-Reynolds  
 Agent: Jeff Cockfield/Grand Traverse Engineering.  
 Property ID #: 05-022-012-50  
 Property Location: Miller Creek Drive  
 Zoning District: I-L Limited Industrial

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#### Request

The applicant is seeking an interpretation of Article 5, Section 534.B of the Garfield Township Zoning Ordinance, which states no structure or parking lot shall be constructed within twenty-five (25) feet of a regulated or unregulated wetland. The applicant would like the Zoning Board of Appeals to determine that an access drive leading from the parking lot to Miller Creek Drive (a private road used to access the parcel) is not a part of the parking lot and thus is not subject to the twenty-five (25) feet wetland buffer. Section 452.A(1) of the Zoning Ordinance states that “the Zoning Board of Appeals shall hear and interpret, upon request, the provisions of this ordinance in such a way as to carry out the intent and purpose of this ordinance.

#### Background

The interpretation request described above is the first of two requests being made by the applicant. The second request is for a variance from the twenty-five (25) feet wetland buffer as established in Article 5, Section 534.B as described above. The applicant has stated that they would withdraw the variance request if a determination is made by interpretation that the access drive is NOT defined as part of a “parking lot” under Section 534.B as a variance would be unnecessary. You will be provided a separate staff report for the variance request.

#### Staff Comments on the Interpretation Request

The applicant is of the opinion that the term “parking lot” as stated in Section 534.B does not include the access drive. However, Section 551.D.4 further explains that “Off-street parking spaces and parking areas shall be subject to the water body setback requirements of Section 534 and 535. It is my determination that the broader term of “parking areas” used in Section 551.D.4 is intended to include an access drive that serves as sole ingress/egress for the parking area and is not part of a private road that serves other parcels and is situated within an access easement. Based on this, I am recommending that the Draft Motion AGAINST be adopted that would consider the access drive as shown on the attached plans to be part of the “parking area” and is subject to the twenty five (25) foot wetland setback.

Draft Motion IN FAVOR

Motion to interpret Section 534.B, to determine that the existing or proposed access to the parcel does not need to meet the twenty-five (25) ft. wetland setback as it is not considered to be part of a “parking area”.

Draft Motion AGAINST

Motion to interpret Section 534.B, to determine that the existing or proposed access to the parcel does need to meet the twenty-five (25) ft. wetland setback as it is considered to be part of a “parking area”.





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### ZONING BOARD OF APPEALS STAFF REPORT

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Meeting Date: May 16, 2018  
 Case #: 2018-02.b: Variance Request  
 Owner: Dan Jonkoff/Jonkoff-Reynolds  
 Applicant: Dan Jonkoff/Jonkoff-Reynolds  
 Agent: Jeff Cockfield/Grand Traverse Engineering.  
 Property ID #: 05-022-012-50  
 Property Location: Miller Creek Drive  
 Zoning District: I-L Limited Industrial

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#### Request

The applicant is seeking a variance from Article 5, Section 534.B of the Garfield Township Zoning Ordinance, which states no structure or parking lot shall be constructed within twenty-five (25) feet of a regulated or unregulated wetland. According to the application, the current and proposed access drive off of Miller Creek Drive provides sole access to the property. Section 454.A of the Zoning Ordinance states that “the Zoning Board of Appeals may authorize a non-use variance relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of this ordinance, or to any other non-use related standard of this ordinance, that comply with the requirements of this section.”

The variance request described above is the second of two requests being made by the applicant. The prior request was for an interpretation regarding the twenty-five (25) feet wetland buffer as established in Article 5, Section 534.B as described above.

#### Background

As shown on the Location Map, the proposed site plan is located on the southerly of the two parcels shown. Both parcels are currently owned by Stuff-it Storage and have been offered for sale to Dan Jonkoff. In addition, Mr. Jonkoff appears to be working with the Grand Traverse County Drain Commissioner on a plan to use much of the northern parcel as a storm water basin for an upcoming Cass Road Storm Drain project; much of the northern parcel appears to contain wetlands and also features a small stream that flows southeasterly across the front of the parcel. Based on conversations I’ve had with Steve Largent, Grand Traverse County Drain Commissioner, it is my understanding that part of the plan includes removing the culvert and severing the gravel road connection to the back of the northerly parcel to increase storm water flow and help resolve long-standing flooding of properties along Cass Road. Steve Largent, Drain Commissioner plans to attend the meeting to provide more detail. Erik Perdonik, our Township Assistant Planner also plans to attend the meeting.



## Location Map



## Staff Comments

It is my The application is not clear and lacks vital information needed to make an informed decision on this request and determine 1) whether a variance is a necessity (have all other legal avenues been exhausted), 2) whether the granting of the variance would cause a negative impact on the site, and most importantly 3) would the granting of the variance preserve the intent and purpose of the Zoning Ordinance and not create a precedent for other requests.

First of all, the application only addresses the south parcel. The north parcel shown on the map above is not included nor is there any information to indicate whether it is buildable. Secondly, the applicant has failed to provide a wetland delineation map that has been approved by the Michigan Department of Environmental Quality; as you may recall, we required a wetland determination for a 2017 variance request in the Incochee Woods site condominium. Lastly, the application does not provide details of the agreement with the Drain Commissioner for the proposed Cass Road Storm Drain project and how or if this particular site will be integrated into the project. Because of this, I am making a recommendation to table the request unless the applicant provides this information at the public hearing.



## Proposed Findings of Fact

To qualify for a variance, the applicant must meet all the Practical Difficulty standards and General Criteria as described below. For each standard, staff comments are shown as highlighted and in [brackets].

### E. Approval Criteria

#### (1) Practical Difficulty

To qualify for a dimensional variance, the applicant shall be required to show "practical difficulty" by demonstrating compliance with all of the following criteria:

- (a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);
  1. **Possible finding in favor of the variance request:** *The existence of wetlands that wrap around the property and choke off access could be considered a "special condition or circumstance" and would not establish precedence for similar variance requests.*
  2. **Possible finding against the variance request:** *This condition is not met as parcels that include wetlands are a common occurrence throughout the Township. As a result, approving the request as presented would set precedent for other parcel owners seeking similar relief.*
  3. **Possible finding for tabling the request:** *The applicant has not provided enough information to determine whether this standard has been met.*
- (b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;
  1. **Possible finding in favor of the variance request:** *The request for a variance is a result of natural features that appear to have existed prior to the request.*
  2. **Possible finding against the variance request:** The site a
  3. **Possible finding for tabling the request:** *The applicant has not provided enough information to determine whether this standard has been met.*
- (c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance;
  1. **Possible finding in favor of the variance request:** *The property could not be developed as proposed without the variance, due to the fact that the required access road could not be built at least 25 feet from a wetland unless the applicant was able to obtain permits to fill in part of the wetland.*
  2. **Possible finding in opposition or for tabling of the variance request:** *The applicant has failed to demonstrate that all other lawful alternatives, including wetland fill permits or alternative site locations, have been considered.*
- (d) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance;
  1. **Possible finding in favor of the variance request:** *The applicant has demonstrated that the property could not be developed as proposed without the variance, due to the fact that the required access road providing sole access to the site could not be built at least 25 feet from a wetland.*
  2. **Possible finding in opposition or for tabling of the variance request:** *The applicant has failed to demonstrate that all other lawful alternatives, including wetland fill permits or alternative site locations, have been considered.*
- (e) For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full



compliance with the ordinance. *[Staff response: This hasn't been brought up by the applicants as a factor in their decision.]*

## (2) General Criteria

Where the applicant is able to demonstrate "practical difficulty" by satisfying all of the criteria of § 454.E.(1), a dimensional variance may be granted if it meets the following general criteria:

- (a) The requested variance shall relate only to property that is under the control of the applicant; *[Staff response: The applicant owns the property, so this would be met.]*
- (b) No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance; *[Staff response: No reference was made by the applicant to any previously approved variances.]*
- (c) The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;
  1. **Possible finding in favor of the variance request:** *A wetland setback variance for an access drive would not be detrimental to the public health, safety and welfare provided that measures are put into place that would prevent direct runoff of storm water into the wetlands;*
  2. **Possible finding in opposition to the request:** *The applicant has failed to demonstrate that the proposed variance and elimination of the 25 ft. wetland buffer would not have be detrimental to the public health, safety and welfare.*
  3. **Possible finding for tabling the variance request:** *There is not adequate information available to properly determine whether this standard could be met.*
- (d) The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located;
  1. **Possible finding in favor of the variance request:** *The proposed location of an industrial building would be of similar character with the two other businesses located at the end of Miller Creek Drive.*
  2. **Possible finding in opposition to the variance request:** *The original filling of the site and the proposed site development within the required wetland setbacks has an adverse effect upon properties in the immediate vicinity due to the direct runoff of untreated or unfiltered storm water runoff into the adjacent wetlands, which drain into Miller Creek and eventually Lake Michigan (Measures could be proposed to mitigate this and incorporated into a condition of approval).*
  3. **Possible finding for tabling the variance request:** *There is not adequate information available to properly determine whether this standard could be met.*
- (e) The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.
  1. **Possible finding in favor of the variance request:** *There does not appear to be an alternative location for an access drive that would eliminate the need for the requested variance.*
  2. **Possible finding in opposition or for tabling the request:** *Due to the lack of information on the north parcel and lack of a DEQ wetland determination, the applicant has failed to demonstrate that this standard could be met.*

## (3) Special Conditions or Circumstances

Special conditions or circumstances to be considered for the purposes of § 454.E.(1) shall include, but not be limited to, the circumstances as described below:

### (a) Physical Conditions

The proposed project site contains physical conditions such as narrowness, shallowness, shape, or topography of the property involved that do not generally apply to other property or uses in the same zoning district.

**(b) Significant Vegetation or Natural Features**

The proposed project site contains significant vegetation or other natural features identified as Stream Environment/Wetland by the Garfield Township Master Plan.

**(c) Substandard Lot(s)**

The proposed project involves the utilization of an existing legal nonconforming lot(s).

**(d) Historic Resources**

The proposed project site contains historical significance.

**(e) Neighborhood Character**

The proposed project promotes the established historic or traditional development pattern of a blockface, including setbacks, building height, and other dimensional requirements.

### Alternative Motions

1. Motion to: **GRANT** the request for a variance from Section 534.B of the Garfield Township Zoning Ordinance to allow a required access drive to be constructed within the twenty-five (25) feet wetland setback area based on the Practical Difficulty standards and General Criteria for granting such request being met.
2. Motion to: **GRANT, WITH CONDITIONS** the request for variance from Section 534.B of the Garfield Township Zoning Ordinance to allow a required access drive to be constructed within the twenty-five (25) feet wetland setback area based on the Practical Difficulty standards and General Criteria for granting such request being met. *[the ZBA may place other conditions as deemed necessary to mitigate any potential negative impacts that would be generated by the granting of the variance request.]*

**Possible condition #1:** *Approval is contingent on storm water features designed to prevent the direct discharge of storm water from the proposed access drive into the surrounding wetlands, as certified by the township engineer.*

**Possible condition #2:** *In order to mitigate potential negative impacts from site improvements as shown on the proposed site plan, the applicant must agree to participate in the storm water plan proposed by the Grand Traverse County Drain Commission.*

3. Motion to: **DENY** the request for variance from Section 534.B of the Garfield Township Zoning Ordinance to allow required access drive to be constructed within the twenty-five (25) feet wetland setback area based on the Practical Difficulty standards and General Criteria for granting such request NOT being met.