



Zoning Board of Appeals Regular Meeting Minutes, Monday, October 22, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, October 22, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Joe Geraci, Vice-Chairman

Neal Porter, TB Rep. to ZBA

Mary Painter, Alternate

Don Walker, PC Rep. to ZBA

Dan Durham, Member

ZBA MEMBER ABSENT: Loren Yaros, Chairman

CONSULTANT PRESENT: Thomas Berger, Building Official

OTHERS PRESENT:

Doug Graham

Regina Meo

Tom Klingler

Lyndon Meo

Lawrence Smith

Scott Weaver

Eugene McNabb, Jr.

Phoebe Schutz

Greg Nowak

Jeff Lengel

Eugene McNabb

1. **OPEN MEETING:** Acting Chairman Geraci called the meeting to order at 7:00 p.m.
2. **ROLL CALL:** Loren Yaros was absent.
3. **MINUTES:** Moved by Board Member Walker, supported by Board Member Porter to approve the September 24, 2012 regular meeting minutes as presented. **Motion carried 5-0.**
4. **AGENDA REVIEW AND APPROVAL:** No changes were made to the agenda.
5. **ZBA BUSINESS**

A. AB-2012-21, Lawrence and Christina Smith/N.D. Graham, 4155 Rohr Road, Sidwell #09-31-126-016: Acting Chairman Geraci noted that the petitioner is seeking relief from Zoning Ordinance No. 78, Article V, Section 5.07, Minimum Lot Setbacks, Each Side Yard - requesting a 13-foot variance from the required 20-foot side yard setback in order to build a detached accessory building seven feet from the side property line.

Mr. Lawrence Smith, of 4155 Rohr Road, commented that it will be a two-car garage and he needs it for his classic car as well as workspace and a place to put his lawnmowers.

Acting Chairman Geraci inquired whether the shed in the back will be taken down.

Mr. Smith noted that it will be staying there.

Board Member Walker inquired why he needs so large a building.

Mr. Smith replied that he and his sons are into classic cars, so he's going to put his classic car in there, rebuild the engines in there as his hobby and also store his lawnmowers in the summer and store the snow blower in the winter.

Acting Chairman Geraci noted that this is Suburban Farms (SF) zoning district, so that is why there is the 20-foot side yard setback. The setback referred to is the south side. He inquired whether they could move it to the north.

Mr. Smith replied that if they move it more to the north it will be encroaching on his septic field and the driveway goes all the way up to the lot line as well, so it's going to be on an angle, so it's going to line up to the edge of the house as it is now. He talked to his neighbor and he doesn't have any issue and the garage would be lined up with his garage as well. It will look like all the other garages in the neighborhood. When he built the house, he had to bring in a lot of fill dirt around the family room, so that's why he built it where he did.

Board Member Porter inquired, even though there will be three buildings on here, you don't need a variance on the square footage, is that correct that you just need a variance on the side yard?

Mr. Smith replied, correct.

Board Member Porter inquired about the garage door on the north side.

Mr. Smith noted that that door is for the lawnmower to get in and out since he can't drive over the septic field.

Board Member Porter noted that it is well screened on the south side with the evergreen trees.

Members agreed.

Acting Chairman Geraci noted that the neighbor has no problem with this and that it fits in with what's in the neighborhood.

Board Member Painter inquired whether he will be putting the two trailers in the new garage.

Mr. Smith replied no, because he will be parking them behind the new garage where no one will be able to see them.

Acting Chairman Geraci offered time for public comments on this case. None were given.

Moved by Board Member Painter, supported by Board Member Porter regarding case AB-2012-21, Lawrence and Christina Smith/N.D. Graham, 4155 Rohr Road, Sidwell #09-31-126-016, that the petitioner's request for a non-use variance seeking relief from Zoning Ordinance No. 78, Article V, Section 5.07, Minimum Lot Setbacks, Each Side Yard, requesting a 13-foot variance from the required 20-foot side yard setback in order to build a detached accessory building seven feet from the side property line, **be granted**, because the petitioner did demonstrate that practical difficulties exist in this case and that they have set forth facts, which show that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome based on the following: 1) that there is

no other area of the property to be used, because of the septic tank; 2)because of the topography on the north side; 3)granting the variance requested would do substantial justice to the petitioner as well as to the other property owners in the area; 4)or that a lesser relaxation in the relief applied for would give substantial relief to the owner of the property involved and be more consistent with justice to the other property owners, based on the following: a)that the garage would be accessible from the current driveway and that no other would have to be laid; b)the petitioner's plight is due to the unique circumstances of the property, because there are the elevation problems on the north side of the property and the septic tank in the middle of the property, therefore, I move that we **grant the variance** and not set a precedent. Roll call vote was as follows: Painter, yes; Porter, yes; Durham, yes; Walker, no; Geraci, yes. **Motion carried 4-1.**

B. AB-2012-22, Regina L. Meo, 838 Fairview, Sidwell #09-03-453-003: Acting Chairman Geraci noted that the petitioner is seeking two variances from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02, A, 8, Lot Size Up to ½-acre, Maximum Floor Area of Detached Accessory Buildings ~ Requesting a 402-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 750 square feet, in order to add a 576-square foot addition to an existing garage that will result in Maximum Floor Area of Detached Accessory Buildings equaling 1,152 square feet; and, 2)Section 27.02, A, 8, Lot Size Up to ½-acre, Total Maximum Floor Area of All Accessory Buildings ~ Requesting a two-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,150 square feet, in order to add a 576-square foot addition to an existing garage that will result in Total Maximum Floor Area of All Accessory Buildings equaling 1,152 square feet. In 1982 a variance was granted on this property that allowed the building of this structure without a principal structure, so there are no nonconformities, so according to the ordinance, it is an administrative nonconformity, so it's considered completely within reason.

Ms. Regina Meo and her husband, Mr. Greg Nowak, were present.

Board Member Durham inquired whether that means that what we're looking at tonight is the requested variance that the building is completely legal under ordinances and we're just looking for the expansion.

Acting Chairman Geraci replied, correct.

Board Member Durham inquired whether the current garage is full.

Ms. Meo noted that it is full and they have two vehicles and a four-wheeler with a snow plow in there.

Mr. Nowak noted that they have a few classic cars that they store in there, there's a couple that they store off-premise right now and it's as full as it could possibly be and they would like to bring their other things in out of the yard.

Board Member Painter noted that she also saw a small trailer, a large trailer, a pontoon boat next to your house, a paddle boat, and a covered car, and inquired how many of those will go into the new garage.

Mr. Nowak replied, most of them. The paddle boat will be gone, we gave that away. The trailer, the Harley, things that we do store off-premise and we do try to keep it looking very well and not being outside and we do have vehicles stored in different areas and this would make our lives a lot easier. When they purchased the property they thought they could keep everything inside and they outgrew it. They like to keep their cars inside and close so they can enjoy them.

Ms. Meo noted that they've got some sheds on the side and some tools and debris and she'd like to get rid of all that stuff, because it is an eyesore. Also, that it will enhance the property values of the surrounding neighbors and aesthetically it would be a great thing.

Board Member Painter noted that she has served on the Zoning Board of Appeals for several years and only remembers granting a variance once for an accessory building on a lot without a primary residence and it wasn't this one, so she was surprised to see that this was granted. She also spoke with their neighbor, Don Wade, when she visited the site and he said it was ok with him.

Ms. Meo noted that none of their neighbors had any objections to the variance.

Board Member Painter inquired if they bought the property at the same time that they bought their home.

Mr. Nowak replied that they bought the vacant property four or five years after they bought their home.

Board Member Painter noted that there are other places along the lake that do have garages across the street, but they've been there forever and ever, too.

Board Member Durham inquired when they bought the property that the garage is on.

Ms. Meo replied that it was approximately six or seven years ago.

Board Member Durham inquired whether the garage was there when they bought it.

Ms. Meo replied that it was there.

Acting Chairman Geraci offered time for public comments on this case.

Mr. Tom Klingler, of 39 Sheron, commented that he lives across from the subject site and that he is in support of the request and would like to see the site cleaned up since this request would allow a place for them to store their things.

Acting Chairman Geraci inquired about the large generator.

Mr. Nowak noted that that is for the pumping station that feeds off the lake.

Moved by Board Member Durham, supported by Board Member Walker regarding case AB-2012-22, Regina L. Meo, 838 Fairview, Sidwell #09-03-453-003, the petitioner is seeking two variances from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02, A, 8, Lot Size Up to ½-acre, Maximum Floor Area of Detached Accessory Buildings - requesting a 402-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 750 square feet, in order to add a 576-square foot addition to an existing garage that will result in Maximum Floor Area of Detached Accessory Buildings equaling 1,152 square feet; and, 2)Section 27.02, A, 8, Lot Size Up to ½-acre, Total Maximum Floor Area of All Accessory Buildings ~ Requesting a two-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,150 square feet, in order to add a 576-square foot addition to an existing garage that will result in Total Maximum Floor Area of All Accessory Buildings equaling 1,152 square feet. I would move that the petitioner's request for a non-use variance **be denied**,

because the petitioner has failed to demonstrate that practical difficulties exist in this case and that they set forth facts, which failed to show that compliance with the strict letter of the ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose or would render conformity with the ordinance unnecessarily burdensome, based on the following: 1)too much personal property seems to be the issue here and I believe that fails to rise to the level of practical difficulty; 2)the petitioner's plight is self-created and has nothing to do with the property per se; and, 3)the circumstances are because there are too many possessions and not quite enough storage. Roll call vote was as follows: Porter, no; Durham, yes; Walker, yes; Painter, yes; Geraci, yes. **Motion carried 4-1.**

Mr. Nowak inquired whether the vote was complete.

Acting Chairman Geraci replied, yes the vote's complete.

Mr. Nowak noted that members are denying a request for them to enlarge the size of their garage on a piece of property that is across the street from their home and inquired whether that is correct.

Acting Chairman Geraci replied, yes.

Mr. Nowak then commented regarding the proposed Verizon Wireless Tower.

Board Member Porter noted that that was the Township Board Meeting and that he was there.

Mr. Nowak asked if the rationale behind denying this request is because they have too many possessions.

Board Member Durham replied, yes.

Mr. Nowak noted that he is disappointed and asked if this is the last step to the process.

Acting Chairman Geraci noted that there is an appeal process.

Ms. Meo inquired about getting a transcript of the meeting.

Acting Chairman Geraci replied that once the minutes are approved, you can come and get them any time.

Mr. Nowak noted that they have improved their property tremendously and that there is no one opposed to this request, that they are saying that they outgrew because of their passion for vehicles, and that this is a very unique situation because they bought the house on the lake and then years later the property across the street became available and they cleaned it up.

Acting Chairman Geraci commented that in order to obtain a variance, there are rules that members have to follow about practical difficulties and monetary things are not part of that. It's a topography issue, it's what the property holds, it's one of our rules and when you come back for the minutes you can get a complete run-down of what's required to get a variance and why.

Ms. Meo noted that for the record there was a Scott Weaver, of 59 Sheron, in attendance and that there was another neighbor there, back in the audience, however the recording equipment did not pick up

their response. She also noted that they are enhancing the neighborhood and feels that members missed that here tonight.

C. AB-2012-23, Jeffrey J. Lengel, 1261 Kern Road, Sidwell #09-13-228-009: Acting Chairman Geraci commented that the petitioner is seeking two variances from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02, A, 8, Lot Size Over 2.5 acres, Maximum Floor Area of Detached Accessory Buildings - Requesting a 516-square foot variance in Maximum Floor area of Detached Accessory Buildings, above the allowed 1,400 square feet, in order to build a 1,916-square foot detached accessory building; and, 2)Section 27.02, A, 8, Lot Size Over 2.5 acres, Total Maximum Floor Area of All Accessory Buildings - Requesting a 1,000-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,900 square feet, in order to build a 1,916 square foot detached accessory building that will result in Total Maximum Floor Area of All Accessory Buildings equaling 2,900 square feet.

Mr. Jeffrey Lengel, of 1261 Kern Road, commented that he is looking to build an out-building next to their house and because of the topography, to get the setback, there's a severe drop-off. He lives on a ridgeline and it drops off about 12 feet in that area. He needs to build a foundation to get the out-building up to grade, basically a basement. He's asking for the variance to be able to utilize that foundation reusable space. There is also a loft area in the two dormers, which are 30 square feet each and that would all be dead space if he weren't to put a floor in there also. The upper loft is just making storage space what would otherwise be dead space, because he is matching the 12/12 pitch of the house.

Acting Chairman Geraci noted that the footprint is roughly 26' x 32' and the topography in that entire area would be impossible to build really anywhere that you could put an accessory building that would have a basement.

Mr. Lengel noted that he only has five houses near him and that Bald Mountain State Park wraps completely around their property. All of his neighbors have signed a petition in favor of this request.

Board Member Durham inquired about how the calculations were done.

Mr. Tom Berger, Township Building Official, explained the calculations procedure and noted that all three floor levels are included in the calculations. Also, that the petitioner is only here for square footage variances.

Board Member Painter inquired what his business is.

Mr. Lengel replied that he is in sales.

Board Member Painter inquired if he would be storing any business equipment in the building or selling out of the building.

Mr. Lengel replied, no it will be a hobby room/wood shop on the main floor and will also store property maintenance equipment in the basement. The long trailer at his site is part of his business that is going back down to his warehouse this week. The little utility trailer will stay at the site and he will park that in the basement level.

Board Member Walker inquired why the petitioner needs this proposed building.

Mr. Lengel replied that it would be used to house some of the maintenance equipment for the grounds, the tractor, etc. The first floor is going to be a wood shop.

Board Member Walker inquired how large the existing garage is.

Mr. Lengel replied that it is a three-car garage.

Board Member Painter inquired what the loft area would be used for.

Mr. Lengel commented that he doesn't know yet.

Acting Chairman Geraci offered time for public comments on this case. No comments were given.

Board Member Durham asked the petitioner if there is anything that he could practically do that he is willing to do or able to do that could shrink or eliminate the need for either one of these variances and still accomplish what you want to accomplish.

Mr. Lengel replied, sure I'm willing to work with you guys. This is just the size I came up with, more aesthetically than anything else. I didn't want to get anything too big and that's why I shrunk the width of what I was originally planning on. It was more to break up that straight wall, but he could make it shorter or lose the dormers. I put them there because I think it looks nicer when the roofline is broken up or I could shorten the building a little bit.

Mr. Berger asked if there were any other buildings on the site that he doesn't know about because the square footage numbers are different.

Mr. Lengel noted that there was a shed on the property when they bought it, but it has been removed.

Mr. Berger noted that that could be the difference.

Mr. Lengel, Mr. Berger, and members discussed calculations and revising the plans.

Acting Chairman Geraci noted that the practical difficulty with the property itself is what is driving you to this multiple-story building.

Mr. Lengel, Mr. Berger, and members continued discussing calculations and revising the plans. Moved by Board Member Durham, supported by Board Member Porter regarding case AB-2012-23, Jeffrey J. Lengel, 1261 Kern Road, Sidwell #09-13-228-009, the petitioner is seeking two variances from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02, A, 8, Lot Size Over 2.5 acres, Maximum Floor Area of Detached Accessory Buildings – Requesting an amended 348-square foot variance in Maximum Floor area of Detached Accessory Buildings, above the allowed 1,400 square feet, in order to build a 1,748-square foot detached accessory building; and, 2)Section 27.02, A, 8, Lot Size Over 2.5 acres, Total Maximum Floor Area of All Accessory Buildings – Requesting an amended 832-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,900 square feet, in order to build a 1,748-square foot detached accessory building that will result in Total Maximum Floor Area of All Accessory Buildings equaling 2,732 square feet, in this case I would move that the petitioner's request for a non-use variance **be granted**, because the petitioner has demonstrated that practical difficulties do exist in this case and he has set forth facts that show that to build an accessory

building on his property with the unique topography, namely the fall-off to the rear, he has to in fact elevate the building to a point that it is going to essentially double the allowable square footage. Granting the variance request would do substantial justice to the petitioner as well as to the other property owners in the area. The petitioner's plight is due entirely to the unique circumstances of the property, in my opinion. This is based on the following: 1)the unique topography is dictating the plan; 2)the problem is not self-created, based on the preceding information, so I would move that we would **grant the amended request**. Roll call vote was as follows: Durham, yes; Walker, no; Painter, yes; Porter, yes; Geraci, yes. **Motion carried 4-1.**

D. 2013 Zoning Board of Appeals Regular Meeting Dates Resolution

Moved by Board Member Painter, supported by Board Member Durham to adopt the 2013 Zoning Board of Appeals Regular Meeting Dates Resolution as presented. **Motion carried 5-0.**

6. PUBLIC COMMENTS

Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, commented regarding case AB-2012-22, Regina L. Meo, of 838 Fairview.

Mr. Scott Weaver, of 59 Sheron, also commented regarding case AB-2012-22, Regina L. Meo, of 838 Fairview, and noted that they have taken very good care of their property and that he is disappointed in the board's decision on their case.

Ms. Lyndon Meo, of 63 Sheron, commented that she lives next door to her son-in-law and daughter, and that she is disappointed in the board's decision on their case.

Mr. Nowak commented regarding their disappointment in the board's decision on their case tonight.

7. COMMUNICATIONS: None.

8. COMMITTEE REPORTS: None.

9. MEMBERS' COMMENTS: Acting Chairman Geraci requested that the Ordinance Enforcement Officer investigate the Culver's restaurant site where the owner has a wood sign with 4"x4" posts that appears to be a temporary sign that shouldn't be there. Mr. Berger noted that he will have it investigated.

10. ADJOURNMENT: Moved by Board Member Painter, supported by Board Member Porter to adjourn at 8:30 p.m. **Motion carried 5-0** (Yaros was absent).

* on file