



Zoning Board of Appeals Regular Meeting Minutes, Monday, March 26, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, March 26, 2012 at 7:00 p.m. at the Orion Township Hall, 2525 Joslyn Road, Lake Orion, Michigan 48360.

ZBA MEMBERS PRESENT:

Loren Yaros, Chairman	Joe Geraci, Vice-Chairman
Mark Crane, TB Rep. to ZBA	Don Walker, PC Rep. to ZBA
Tony Cook, Alternate Board Member	

CONSULTANT PRESENT:

Tom Berger, Township Building Official

OTHERS PRESENT:

Michael Frontera	Wade Sullivan	Bruce Wiinamaki
Eugene McNabb, Jr.	Eugene McNabb	Don Hickmott
Jim Oliver	Frank Cobb	Phoebe Schutz

1. **OPEN MEETING:** Chairman Yaros called the meeting to order at 7:00 p.m.
2. **ROLL CALL:** Board Member Cook served as alternate for Board Member Dan Durham.
3. **MINUTES:** Moved by Board Member Crane, supported by Vice-Chairman Geraci to approve the March 12, 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-2012-03, Eugene McNabb, Jr., 680 E. Silverbell Road, Sidwell #09-36-100-004

Chairman Yaros noted that the Petitioner is seeking two variances from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Maximum Floor Area of Detached Accessory Buildings ~ Requesting a 600-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 1,000 square feet, in order to construct a 1,600-square foot pole barn that will result in Maximum Floor Area of Detached Accessory Buildings equaling 1,600 square feet; and, 2)Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Total Maximum Floor Area of All Accessory Buildings ~ Requesting a 452-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,500 square feet, in order to construct a 1,600-square foot pole barn that will result in Total Maximum Floor Area of All Accessory Buildings equaling 1,952 square feet.

Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, commented that what he has changed since his last time before this Board, was to change the 150-foot setback from the house. It's now within all the setbacks that the Township requires.

Chairman Yaros overviewed correspondence received from Mr. Derrick Hren, 4119 Bandury Drive, dated March 22, 2012, in support of the requested variances.*

Vice-Chairman Geraci noted that there is still the issue with the request of a hardship, which is what we need. Although the Petitioner has changed one issue, he still does not see a hardship portion that members need in order to make a decision on this for such large variances. The hardship needs to relate to the property itself. Also, the Petitioner has not done anything to lessen the variance request as far as the size of the building.

Mr. McNabb, Jr. noted that his need for the variance is due to the uniqueness of the land and the uniqueness of the house that was built in 1956 has a one-car garage and he feels that the uniqueness is his hardship. He also noted that he needs the 40'x40' building to store his belongings in.

Vice-Chairman Geraci suggested adjusting the size to 35'x35' would lessen the variance request. He noted that members are looking for the issue in this case that they can base their decision on.

Mr. McNabb, Jr. noted that this would be within 17 feet of what is next door to him and he doesn't understand what the problem is.

Vice-Chairman Geraci overviewed correspondence received from a concerned neighbor that wished to remain anonymous, dated March 9, 2012, in opposition to the requested variance, noting that it would be bad for the neighborhood and would bring down the value of the property around it.*

Board Member Walker inquired whether there is reason why Mr. McNabb, Jr. can't build a smaller building, or is it just that he believes he needs a larger one to hold all of his belongings.

Mr. McNabb, Jr. stated that he knows he needs a large building to hold his things, because he roped off the area that he would need. He also noted that the Township has granted variances for people to store their stuff. He noted that he has copies of minutes from about 15 cases that were granted. He proceeded to read parts of prior cases' minutes to the Board.

Chairman Yaros noted that the Board reviews each case individually. He then asked what his hardship is.

Mr. McNabb, Jr. noted that he has a very small garage and has a unique lot and he would like to build a pole barn for storage.

Board Member Cook noted that members are offering a compromise and inquired whether the Petitioner's request is set in stone.

Mr. McNabb, Jr. replied that he is pretty much set in stone here. He then gave copies of prior meetings' minutes to members for their review. He doesn't believe other applicants' hardships were significant.

Chairman Yaros noted that by law, members base their decisions on what the hardship actually is.

Board Member Cook noted that some of these older cases were asking for much smaller variances and that there is still room for more compromise on Mr. McNabb, Jr.'s request. Mr. McNabb, Jr. replied that he is not willing to compromise when it comes to the size of the building.

Board Member Crane commented regarding some of the minutes that were provided by the Petitioner, which illustrates the point that each case is handled individually and on its own merits and on its own facts and circumstances. He then noted that Mr. McNabb had written on his application that his property is not unique.

Mr. McNabb, Jr. replied that it is unique because he has a one-car garage, but it is not unique compared to his neighbors.

Chairman Yaros offered time for public comments on this case.

Mr. Frank Cobb, of 700 E. Silverbell Road, commented that he lives right next door to the Petitioner. He has no objections to the proposed building. Also, in the last six or eight months, Mr. McNabb, Jr. has done many improvements to the site.

Moved by Board Member Crane, supported by Chairman Yaros regarding case AB-2012-03, Eugene McNabb, Jr., 680 E. Silverbell Road, Sidwell #09-36-100-004, that the Petitioner is seeking two variances from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Maximum Floor Area of Detached Accessory Buildings ~ Requesting a 600-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 1,000 square feet, in order to construct a 1,600-square foot pole barn that will result in Maximum Floor Area of Detached Accessory Buildings equaling 1,600 square feet; and, 2)Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Total Maximum Floor Area of All Accessory Buildings ~ Requesting a 452-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,500 square feet, in order to construct a 1,600-square foot pole barn that will result in Total Maximum Floor Area of All Accessory Buildings equaling 1,952 square feet. I move that we **deny** the request, because based entirely on the petition, the Petitioner has failed to set forth that the property in question is unique and has failed to demonstrate that there is a hardship that relates to the character of the property itself that justifies the variance from the zoning ordinance. Roll call vote was as follows: Geraci, yes; Crane, yes; Cook, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-2012-02, Michael Frontera, 452 Shorewood Court, Sidwell #09-03-405-004

Chairman Yaros noted that the Petitioner is seeking three variances from Zoning Ordinance No. 78, Single-Family Residential-3 (R-3) Zoning District, to construct a detached accessory structure: 1)Article VI, Section 6.07, Minimum Lot Setbacks, Each Side Yard ~ requesting a 4.3-foot side yard setback variance from the required 10-foot side yard setback (west side); 2)Article VI, Section 6.07, Minimum Lot Setbacks, Each Side Yard ~requesting a 5-foot side yard setback variance from the required 10-foot side yard setback (east side); and, 3)Article VI, Section 6.07, Maximum Lot Coverage - requesting a 2.87% variance over the allowed 25% in maximum lot coverage to construct a detached garage that will result in maximum lot coverage equaling 27.87%.

Mr. Michael Frontera, of 452 Shorewood Court, commented that based on their last meeting with the Board, there were concerns on the location of it as well as the size, so he addressed both

of those. He noted that he has a very unique lot that is only 21 feet wide in that area of the lot, so with the current zoning, he would only be able to build a one-foot wide garage without getting any variance and that is a hardship and that the shape of the property is a hardship. Most of the concern was with the house to the east, so he took a foot off the garage and moved it from 12 feet to 11 feet and he took that foot off the east property line. He also moved it closer to his water well, which gave more room between him and the neighbors.

Vice-Chairman Geraci noted that this lot is so unique, being 12-foot wide at the road and 30-foot wide at the lake, that it's nonconforming. It's an existing nonconformity that was purchased last year and he's done a great job in revamping the house, but if he could have attached the garage to the house and moved the well at that time, he would have actually lessened the nonconformity. No matter what he does now, he will add to the existing nonconformity.

Mr. Frontera noted that he does not want all of his belongings setting out in the yard and would much prefer to have a building in which to put them all away to make the neighborhood more attractive.

Board Member Cook inquired whether Mr. Frontera got more information on his water well.

Mr. Wade Sullivan, of 270 Sandy Oaks, (he may be working with Mr. Frontera on this project) commented that the well is shallow and that the pump and all the gear is in the basement. If the well were to go bad, he can't pull anything. He would have to drill a new well, so he'd have to change the location of the well.

Board Member Crane noted that he agreed with Vice-Chairman Geraci in that it would be an increase in the nonconformity and our policy is normally that we don't add to a nonconformity. However, this lot with the 12-foot width at the front is just so unique along with the fact that this Petitioner has given a good-faith effort at coming back here and putting his best foot forward. He is in favor of granting this since the Petitioner has lessened the variance requests as much as he can. Mr. Frontera shrunk the size of the building and moved it as far back as he can without actually being on top of the well and with those things, he believes that is enough that he believes that he is entitled to the variance.

Mr. Frontera noted that he would have the garage match the house and will fire rate the side walls.

Mr. Rob Turnbull, 384 Shorewood Court, commented that he a neighbor of the Petitioner. He is in support of this variance request and would like to see his neighbor's belongings stored in the building rather than setting out in the yard.

Moved by Board Member Crane, supported by Chairman Yaros regarding case AB-2012-02, Michael Frontera, 452 Shorewood Court, Sidwell #09-03-405-004, that the Petitioner is seeking three variances from Zoning Ordinance No. 78, Single-Family Residential-3 (R-3) Zoning District, to construct a detached accessory structure: 1)Article VI, Section 6.07, Minimum Lot Setbacks, Each Side Yard ~ requesting a 4.3-foot side yard setback variance from the required 10-foot side yard setback (west side); 2)Article VI, Section 6.07, Minimum Lot Setbacks, Each Side Yard ~requesting a 5-foot side yard setback variance from the required 10-foot side yard setback (east side); and, 3)Article VI, Section 6.07, Maximum Lot Coverage - requesting a 2.87% variance over the allowed 25% in maximum lot coverage to construct a detached garage that will

result in maximum lot coverage equaling 27.87%. I move that we **grant** these requested variances, because the Petitioner has demonstrated practical difficulties and hardship and has demonstrated that the hardship arises out of the very unique characteristics of the property in question. Specifically, the property is very, very narrow being 12 feet wide at the road and expands to 30 feet wide at the lake and with the location of the home and the home itself is within one foot of the west property line and given the location of the home and given the location of the existing water well and the sanitary sewer lead, with all those things taken into consideration as well as the fact that the home to the east is very, very close to the property line, in fact, appears to encroach onto the Petitioner's property on the northwest corner of the home. For all of those reasons it makes it very, very difficult for the Petitioner to be able to construct a garage at all without some sort of variance and as he pointed out, his garage would have to be one foot wide in order for him to not require any variances whatsoever. So, I believe that he has demonstrated hardship and practical difficulties and moreover, this is his second hearing before us and since his last time here he has made some additional changes to his plans and I believe that he has done everything within his power to absolutely minimize the variances requested here. He has shrunk the garage size by one foot in width and has moved it as close to the house as he possibly can without encroaching on the existing well. Finally, he has agreed to a condition of granting this variance, that he will double up on the fire rating on the east and west walls of the building. Also, that the Petitioner has agreed to remove the deck on the northwest part to have an opening between his home and the neighbor's home. Roll call vote was as follows: Crane, yes; Cook, yes; Walker, no; Geraci, no; Yaros, yes. **Motion carried 3-2.**

6. PUBLIC COMMENTS: Mr. Eugene McNabb, of 2981 Judah Road, commented regarding the dust problem at his home that is due to the trucks on the haul road at a gravel and mining site near his home. Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, suggested issuing a stop-work order on that work site until the company addresses the dust problem.

7. COMMUNICATIONS: Chairman Yaros noted that they have received packets of information, for the four gravel and mining sites, to take to the annual site walk on Saturday, March 31, 2012.

8. COMMITTEE REPORTS: None.

9. MEMBERS' COMMENTS: None further.

10. ADJOURNMENT: Moved by Board Member Crane, supported by Vice-Chairman Geraci to adjourn at 8:17 p.m. **Motion carried 5-0.**

*On file