



Zoning Board of Appeals Regular Meeting Minutes, Monday, August 13, 2012

The Charter Township of Orion Zoning Board of Appeals held a regular meeting on Monday, August 13, 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; Don Walker, PC Rep. to ZBA; Neal Porter, TB Rep. to ZBA; Tony Cook, Alternate for Dan Durham

ZBA MEMBER ABSENT: Dan Durham, Board Member

CONSULTANT PRESENT: Thomas Berger, Building Official

OTHERS PRESENT: Brandon Bauer, Joe Bird, Eugene McNabb, Jr., Eugene McNabb, Steve Brumitt, Kelly Demeritt, Philip Bone, Phoebe Schutz

- 1. OPEN MEETING:** Chairman Yaros called the meeting to order at 7:00 p.m.
- 2. ROLL CALL:** All members were present except Dan Durham. Tony Cook served as alternate for Dan Durham.
- 3. MINUTES:** Moved by Vice-Chairman Geraci, supported by Board Member Walker to approve the July 23, 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-2012-14, Brandon D. Bauer, 454 Fay Court, Sidwell #09-01-277-031: Chairman Yaros noted that the petitioner is seeking a variance from Zoning Ordinance No. 78, Article XXVII, Section 27.02,A,11, to construct a fence in an easement.

Mr. Brandon Bauer, of 454 Fay Court, was present.

Vice-Chairman Geraci inquired what brings the petitioner here today.

Mr. Bauer commented that one of his neighbors complained about the fence and the neighbor thought there was a ten-foot easement on the lake. In further looking into his lot, there is a 30-foot easement and he believes that there's a sewer underneath the fence. When he built the fence, he did read about the 30-foot easement. He wants to be able to keep the fence on the property line so he can keep his property line secure.

Vice-Chairman Geraci inquired what the survey was for that was included in his application.

Mr. Bauer replied that the previous owner of the house gave it to him and that was the land survey that was done by the company that is on the survey.

Vice-Chairman Geraci noted that it looks like someone just signed the plat, because when you go out to the site and even seeing the site by the aerial of what is really out there, his concern with the fence is that the road actually winds many times and does not follow what the plat depicts. If it is truly on the property line that would be ok, but we need to be sure that it's not on the road. You can't tell by this plat. We need to have something that tells us that it's not in the road. The plat shows that it's nice and perpendicular and when you're on the site, nothing out there is straight and perpendicular.

Mr. Bauer stated, that's correct.

Vice-Chairman Geraci stated, that's where I'm at, wanting to see some stakes, something from a survey, or somebody that says that that is your property line and it's not the road.

Chairman Yaros inquired whether he had found either of the property pins along the road, which is along the right-of-way line.

Mr. Bauer stated, no. Do I need to contact the survey company to come out and re-stake?

Chairman Yaros stated, yes to verify.

Vice-Chairman Geraci stated, to verify that your fence is on your property line and then my concerns will be over as far as the exact location.

Board Member Walker noted that that was his only concern also.

Board Member Porter inquired, what about taking that fence down if some maintenance has to be done?

Chairman Yaros replied that whoever owns the easement, such as the electric company or whomever, would tell the petitioner to take it down if they have to do work in there.

Board Member Porter noted that he doesn't want the Township stuck with a bill to put it back up or something like that.

Chairman Yaros stated, so an agreement to remove it if needed to do work. Do you understand that sir?

Mr. Bauer replied, yes, sir.

Chairman Yaros offered time for public comments on this case.

Ms. Kelly Demeritt, of 462 N. Conklin, commented that she lives across the street from the petitioner and that she was there when the survey was done and she believes that they are not on the road. She is also in favor of the fence.

Chairman Yaros stated, we do need verification of those pins and we can postpone action until you get that. Also, if you would agree to tear down the fence if the utility companies need to work in the easement.

Board Member Cook inquired whether the petitioner put up the fence or whether it was existing when he purchased the home.

Mr. Bauer commented that he had the fence installed by Home Depot.

Board Member Cook noted that when the petitioner returns to the ZBA with the survey, he would also like him to provide documentation from MISS DIG that says that it's ok to put the fence where you want it.

Chairman Yaros informed the petitioner that he can just call MISS DIG and they will stake it for free.

Mr. Bauer noted that he was told that it was a sewer, but never had it confirmed.

Chairman Yaros stated, when you call MISS DIG, they'll notify everybody that needs to be notified and then they'll come out and stake it and then you'll know where you're at as far as utilities.

Moved by Vice-Chairman Geraci, supported by Board Member Porter regarding case AB-2012-14, Brandon D. Bauer, of 454 Fay Court, Sidwell #09-01-277-031, to **postpone action on this case until the September 24, 2012 regular meeting**, to allow the petitioner ample time to provide a survey showing that the fence is not in the road and the actual location of the fence to his property line. Also, that the site will be staked by MISS DIG and that, as well as a list of the utilities, should all be on the survey. Roll call vote was as follows: Geraci, yes; Porter, yes; Cook, yes; Walker, yes; Yaros, yes. **Motion carried 5-0.**

B. AB-2012-15, Eugene McNabb, Jr., 680 E. Silverbell Road, Sidwell #09-36-100-004: Chairman Yaros noted that the petitioner is seeking three variances from Zoning Ordinance No. 78, Article XXVII as follows: 1)Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Maximum Floor Area of Detached Accessory Buildings ~ Requesting a 764-square foot variance in Maximum Floor Area of Detached Accessory Buildings, above the allowed 1,000 square feet, in order to construct a 1,764-square foot pole barn that will result in Maximum Floor Area of Detached Accessory Buildings equaling 1,764 square feet; 2)Section 27.02, A, 8, Lot Size 1 to 2.5 acres, Total Maximum Floor Area of All Accessory Buildings ~ Requesting a 616-square foot variance in Total Maximum Floor Area of All Accessory Buildings, above the allowed 1,500 square feet, in order to construct a 1,764-square foot pole barn that will result in Total Maximum Floor Area of All Accessory Buildings equaling 2,116 square feet; 3)Section 27.02, A, 5 ~ Requesting a 20-foot variance, from the required 150-foot distance between a principal building and a detached accessory building, which is taller than the principal building, in order to build a 14-foot tall pole barn 130 feet from the principal building.

Mr. Joe Bird, of 573 Nakomis, commented that he is the petitioner's friend and his attorney. He does live here in Lake Orion, but in this matter he is acting as his counsel. He noted that the petitioner has made many improvements to his home since he purchased it. He believes that it is necessary for the petitioner have a pole barn. This is a request for a non-use variance. He spoke with Mr. Dan Kelly, Township Attorney, today about non-use variances and that the standard is one of practical difficulty and not one of a hardship. The petitioner is a car collector and is a mechanic and also has more material goods to store since his divorce. The requested size of the building is almost a necessity in terms of the mowers and the maintenance equipment that is needed for a lot of that size and he does it all himself. The existing garage only fits one large-sized mower in it. With his modest car collection, a pole barn this size is an absolute necessity for a lot of this size. Not only practically speaking, if you have a lot like this, without a pole barn like that, it's almost an impossibility to maintain.

Chairman Yaros inquired, under the practical difficulty definition, what is the unique circumstance related to this property that we should grant this variance under?

Mr. Eugene McNabb, Jr., of 680 E. Silverbell Road, stated, I would leave that to Mr. Bird to explain that to you.

Chairman Yaros stated, is this situation self-created? That is one of the questions that we ask and since it is not yet built, I assume that it's self-created. Is that correct?

Mr. McNabb, Jr. stated, yes, it is self-created.

Chairman Yaros noted that the petitioner had been before the Board two times before this. The first time he asked for a 40'x40' building at the 130' distance. The second time he asked for a 40'x40' building at the 150' distance and now this time he is requesting for a 42'x42' building with a 130' distance.

Mr. McNabb, Jr. replied, that's correct.

Board Member Porter noted that to the peak of the building would be 25 feet and it seems like an extremely tall building for the size of it and inquired why he needs such height.

Mr. McNabb, Jr. replied that he has a Jeep that's tall and a trailer that is over ten feet tall that he carries his cars in and that he is going to install an air conditioner on top of it, so he needs a 12-foot door to get that vehicle inside the pole barn.

Board Member Porter noted that even with a 12-foot door with the recessed truss you're using, you could get by with a 10-foot side wall and put the door in the middle.

Mr. McNabb, Jr. noted that the way the doors are offset, the door is not designed to go in the middle.

Board Member Porter noted that if the door was moved to the middle, there would still be room for the other door beside.

Mr. McNabb, Jr. commented that then he couldn't get a 10-foot door and a 12-foot door in the face of that pole barn.

Board Member Porter replied that he thinks he could. There'd be 16 feet of a door, half of a 12-foot and all of a 10-foot on each side and each side would be 21 feet.

Mr. McNabb, Jr. noted that there is 26 feet of door plus an entry door.

Board Member Porter replied that there is not an entry door on his drawing.

Mr. McNabb, Jr. stated that there should be an entry door on the face of the building also.

Board Member Porter stated that there would be room for that also on the other side. He doesn't believe the petitioner needs that much of a peak for run-off, even here in Michigan for the snow. He has a 60-foot wide building with a three-foot peak and has had no problem at all.

Mr. McNabb, Jr. noted that this would not be the tallest building in their neighborhood.

Board Member Porter noted that he'd like to work out a compromise with him. If this were down low where the neighbors can't see it, it would be a lot more pleasing to the neighborhood. He noted that he did not visit the site.

Mr. McNabb, Jr., noted that there is only one neighbor that can see into his back yard in the Summer. In Winter with the trees without leaves, it's a little different. There are four houses along the side of his property and his property is 375' long. The front two can't see into his back yard. The third house can see into his back yard. The fourth house cannot see into his back yard. The neighbor directly behind him cannot see into the back yard either. So, it is really only one neighbor that can see there. The roof is a 6/12 and he can drop that down to 4/12 pitch to get the height down.

Board Member Porter inquired what he needs the 14 feet for, for a 12-foot door.

Mr. McNabb, Jr., replied that you've got to have 14-foot side walls to get a 12-foot door in, because you have to have a header across the top of the door.

Board Member Porter noted that he doesn't believe he needs two feet. It's something to think about.

Mr. McNabb, Jr., noted that he can drop it down to a 4/12 pitch, which would shorten it, he's guessing at five feet. There are taller homes in the neighborhood.

Board Member Porter noted that he is not saying that it's going to be the tallest building in the neighborhood. That's not his point. His point is what you see from the road. If it's down lower and you don't notice it so much, then people won't complain so much.

Mr. McNabb, Jr. replied that you won't be able to see it from the road. It's back in a hole. There is a berm across the front of his property and he put 15 eight-foot Blue Spruce Trees across the front behind the 40-foot Blue Spruce Trees that were already there. The only spot that you can see through is the 18-foot driveway and that shoots straight back to the pole barn and there is going to be a gate there probably next Summer. No one will be able to see that pole barn as they're driving past his house.

Board Member Porter noted that members have to look at this case for the future as well if a future owner removed the trees there would be a problem.

Mr. McNabb, Jr., replied that his neighbor has a pole barn that he believes has a 12-foot door.

Mr. Bird commented that this is not a situation that is self-created. When the home was purchased, it was condemned. Since you could only fit a couple of small lawnmowers in that garage, there's simply inadequate space to be able to have the maintenance equipment that you need. The situation was there before that the prior person didn't seek to have more storage to be able to maintain that lot. They let it go and it turned into blight and was condemned, so it was not self-created. Common sense logic, I got your point, from the legal standard no it was not self-created by that test. In terms of uniqueness, in terms of the legal standard, he addressed it in the summary that he put together on the petitioner's behalf. The uniqueness is that the small home and garage there are much too small for that large lot. The others in the area already have pole barns. Since he has more stuff now to be protected due to his divorce, we would recognize and go back to the previous submission, the 1,600 square feet and are here

also to compromise. Something needs to be done to preserve what he's already built and keeps this lot and home in the condition that it supports the rest of the community.

Mr. McNabb, Jr. inquired, would you agree that looking down that back yard that nobody could even see that thing the way it stands?

Chairman Yaros stated, I will agree 100% that you've done a real nice job with the berm in the front with the trees and you pretty much sheltered everything. My personal opinion is that I don't have a problem with that height because of the shielding all the way around that lot and that even with the 130 feet it's not a problem, because it actually puts you in line with the next-door pole barn. A question I have is, what size do you need? You asked for 42'x42' and your lawyer said that 40'x40' would be acceptable.

Mr. McNabb, Jr. replied that he will agree to do a 4/12 pitch with the roof to bring it down a little bit and he will go with a 40'x40' pole barn.

Vice-Chairman Geraci stated, I completely agree that the garage is inadequate for today's vehicles, for anything. However, I don't see a practical difficulty on the property, therefore, nobody wants to deny him a storage facility or garage. The ordinance of 1,000 square feet is almost 2½ times the size of a standard 20'x24' garage, but even with that, we go over and even to keep it rounded off to a standard pole barn 30'x35', which is 1,050 square feet, isn't enough for the petitioner and that's where I am agreeing on what his issue is with the small garage, but he still can't get along with a 2½ times larger garage than the average home would have. I have family members collect cars and they have lifts and they store four cars in a 3-car garage. There are other alternatives other than size here and that's where I'm at with the practical difficulty.

Mr. Bird commented that sometimes a lift isn't economically feasible. Based on the measurement of the stuff that he has, this is his practical necessity. He also noted that he believes that the petitioner does not want to store items in his yard.

Vice-Chairman Geraci stated, you started off with a practical difficulty being a dimensional, but now you end up with a monetary hardship, which we don't even really consider a lot as weighing our decision, so I'm looking at it as strictly a dimensional issue with the property. This stuff didn't appear overnight that he owns. Owning too much stuff isn't an issue once you purchase something that you know you're never going to fit it all into.

Mr. Bird stated, I have reviewed some of your decisions with Mr. Kelly and I know each case is different and everybody has to have their own case on its own merits. There are cases in which stuff, literally, from the petitioner was identified and they said they just need space for their stuff. Stuff that they could have gotten rid of, stuff they had with them, and they were passed on a dimensional variance, unanimous votes. So very weak requests have passed this body in the past on that. There is a cost implication that is a practical reality that someone has to deal with in terms of adjusting this and trying to engage you and meet you halfway. Mr. McNabb is trying to lower this and meet that concern of what would happen 50 years down the road when he's gone and he's willing to back up on the space and find some other place for the newly-acquired junk that he's gotten. He's willing to compromise.

Mr. McNabb, Jr. noted that his property was condemned when he purchased it. He noted that he is willing to compromise.

Vice-Chairman Geraci inquired whether he would be willing to go with a 40'x40' pole barn.

Mr. McNabb, Jr. stated, yes.

Board Member Walker noted that the petitioner's property is looking very good. However, it does still bother him that when the standard is a practical difficulty and he does not see a practical difficulty here. He's not as willing to work with the petitioner unless he is more willing to work with the Board.

Mr. McNabb, Jr. asked that he explain why at the last meeting a petitioner was granted a variance to accommodate his stuff since you have to meet the same standard.

Board Member Walker noted that it is the same standard, but every case is different and the facts are different.

Chairman Yaros noted that there were many issues with the case at the last meeting that do not occur in this case. Regarding the case at hand, he noted that a 40'x30' gives you the same frontage and gives you the two doors, 1,200, you'd need a 52-square foot variance for the 1,500 square feet, and to him that would be a reasonable solution.

Mr. Bird commented regarding how he negotiates.

Board Member Cook indicated that the previous case had different circumstances than this case.

Mr. McNabb, Jr. spoke about the previous times he was before the Board. He then noted that he is willing to lower the building and to do a 40'x40' pole barn.

Chairman Yaros offered time for public comments on this case.

Mr. Eugene McNabb, of 2981 Judah Road, commented in support of the petitioner's variance request.

Mr. Philip Bone, of 1497 Heights Road, commented in support of the petitioner's variance request.

Mr. Bird indicated that if they are not granted the variance, they would not put junk cars on the property.

Moved by Vice-Chairman Geraci, supported by Board Member Walker regarding case AB-2012-15, I move that the petitioner, Eugene McNabb, Jr., of 680 E. Silverbell Road, Sidwell #09-36-100-004, request for a non-use variance from Zoning Ordinance No. 78, Article XXVII: 1)Section 27.02,A,8, Lot size 1 to 2.5 acres, for a maximum floor area of detached accessory buildings, request for a 600-square foot variance over the allowed 1,000-square foot for a total of 1,600 square feet; 2)a total maximum floor area for all accessory buildings requesting 600-foot variance over the allowed 1,500 square feet for a total of 352 square feet existing; and, 3)Section 27.02,A,5, request for a 20-foot variance of the 130-foot distance from the principal building and a detached accessory building that is taller than the main structure of the required 150-foot distance to construct a 40'x40'x14' pole barn, that the petitioner **be denied**, because the petitioner has not established that practical difficulty exists. The petitioner has not established 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 and can comply with the ordinance by building a compliant

accessory building that would be over two-and-a-half times larger than the average 20'x24' two-car garage. The petitioner has not established that the purpose of the variance will not be a detriment to the public safety and welfare, nor unreasonably impair or diminish the petitioner or the property owners in the district and gives no evidence to the contrary. The petitioner has not established that unique circumstances or a practical difficulty exists regarding the narrowness, the shallowness, the shape, or the area of the subject property. The variance relates to the user, not the land in question as required by our ordinance in Section 30.07 of Zoning Ordinance No. 78. The petitioner has not established that a practical difficulty exists for the variance, therefore, it is self-created. They can have up to 1,000 square feet of accessory usage and can stay within the ordinance. The petitioner has not established that even with the granting of the variance, the spirit of the ordinance will be observed, public safety secured, and that substantial justice is done, because the practical difficulty doesn't exist and that the size of the structure is still two-and-a-half times larger than a normal garage. Roll call vote was as follows: Porter, yes; Cook, no; Walker, yes; Geraci, yes; Yaros, no. **Motion carried 3-2.**

C. AB-2012-16, Stephen Brumitt, 2503 Toby Road, Sidwell #09-29-426-018: Chairman Yaros noted that the petitioner is seeking relief from Zoning Ordinance No. 78, Article XXVII, Section 27.02,A,4, by seeking an eight-foot rear yard setback variance, from the required ten feet, in order to construct a shed two feet from the rear property line.

Mr. Stephen Brumitt, of 2503 Toby Road, was present.

Chairman Yaros asked the petitioner to explain why he wants this variance.

Mr. Brumitt noted that he has a corner lot (which gives him two front yards) that gives him a 35-foot setback on both streets for any building, so there is very little space to put the shed in the yard. He also noted that the neighbor that lives behind him told him today that she has no objections to it. He would also like to plant trees along behind the shed to keep his grandchildren from going into the neighbor's pool.

Chairman Yaros noted that with a corner lot, that does limit the space to build a shed.

Vice-Chairman Geraci indicated that a corner lot does present a difficult situation. There is not much of a back yard. You have a side yard and that's it. He then inquired whether its close proximity to the garage would be an issue.

Mr. Tom Berger, Building Official, commented that since they are both detached accessory buildings that are incidental to the primary use, the garage is a lot closer to the house and if anything were to happen within that structure, he'd be more concerned. The primary structure, which is the residence, would be the distance he'd be concerned with, too, with the accessory building. It's like if your garage is attached and you had to create your fire separation with a minimum time element. In this case, where the shed is, he's going to move it even further away from the house to be able to put it back. He doesn't have a problem with that.

Chairman Yaros offered time for public comments on this case.

No comments were given.

Moved by Vice-Chairman Geraci, supported by Chairman Yaros regarding case AB-2012-16, I move that the petitioner, Stephen Brumitt, of 2503 Toby Road, Sidwell #09-29-426-018, request for a non-use variance from Zoning Ordinance No. 78, Article XXVII, Section 27.02,A,4, for an eight-foot rear yard setback variance from the required ten feet to construct a shed two feet off the rear property line **be granted**, because the petitioner has demonstrated that practical difficulties exist. The petitioner has established 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, because of the corner lot having two fronts, these setbacks push the home to the middle of the small lot. The petitioner has established that the granting of the variance request will not be a detriment to public safety or welfare and would do substantial justice to the petitioner as well as the other property owners in the district, because this is an older plotted subdivision and this seems to be the norm of the surrounding lots with their small sheds. The petitioner has established that unique circumstances exist regarding the shallowness and area of the subject property because of the corner lot with two frontages. The petitioner has established that the need for the variance was not self-created, because of the stated hardship due to the unique circumstances related to the property. The petitioner has established that the granting of the variance will not impair the intent or purpose of the ordinance, nor will it set precedent. Also, this Board acknowledges receipt of correspondence received from the neighbor at 2504 Mueller Road, stating that they have no problem with this going in at the proposed two feet from the property line location*. Roll call vote was as follows: Cook, yes; Walker, no; Geraci, yes; Porter, yes; Yaros, yes. **Motion carried 4-1.**

6. PUBLIC COMMENTS: Mr. Eugene McNabb, of 2981 Judah Road, commented regarding case AB-2012-16 that he is concerned that no one will maintain the two feet behind the shed.

7. COMMUNICATIONS: Chairman Yaros thanked the Recording Secretary for the Board of Trustees and the Planning Commission meeting minutes that are in the meeting packets for members' information.

8. COMMITTEE REPORTS: None.

9. MEMBERS' COMMENTS: Vice-Chairman Geraci noted that he will not be attending the August 27, 2012 regular meeting due to his vacation.

10. ADJOURNMENT: Moved by Vice-Chairman Geraci, supported by Chairman Yaros to adjourn at 8:15 p.m. **Motion carried unanimously.**

* on file