

**CHARTER TOWNSHIP OF LYON
ZONING BOARD OF APPEALS
MEETING MINUTES
November 17, 2003**

Approved as submitted January 20, 2004.

DATE: November 17, 2003
TIME: 7:30 PM
PLACE: 58000 Grand River

Call to Order: William Erwin called the meeting to order at 7:36 PM.

Roll Call: Present: William Erwin, Chairman
Michael Barber
Pamela Johnson, Clerk
Michael Hawkins
Tony Raney

Also Present: Dave Gillam, Township Attorney
Larry Phillips, Building Official

Guests: 7

1. Approval of the Minutes of October 20, 2003

Ms. Johnson made a motion to approve the minutes from the October 20, 2003 ZBA meeting as submitted. Mr. Barber supported the motion.

Voice Vote: Ayes: All
Nays: None
Abstained: Hawkins

Motion approved.

Mr. Hawkins abstained from voting since he was not at the October 20, 2003 meeting.

2. PUBLIC HEARINGS:

Dean Govan, 58400 Travis Road, New Hudson, MI 48165

Sidwell 21-09-100-054. Applicant is requesting a variance to allow him to replace an existing garage with a new one which will require a front yard setback variance of 35 feet. Tabled from October 20, 2003 meeting.

Dean Govan explained that he would like to tear down the existing garage and replace it with a larger garage. He stated that when Tyrrell Lane was put in the existing garage was moved to its present location. He stated that the existing garage does not meet the current setback requirements. He stated that the existing septic field prohibits him from moving the garage to the west to meet the setback requirements. He stated that the actual variance that he needs is 14'. The new garage would not be moved any closer to the road, it would be a little wider than the

existing one.

Mr. Hawkins stated that there are provisions within the ordinance that allow for modernization to an existing non-conformity provided that it does not exceed 25% of the market value for the structure. Mr. Gillam stated that the ordinance makes reference to the market value of the structure and not to the market value of the site. He stated that they would need to look at the market value of the garage itself. Mr. Hawkins stated that this would be the garage only and not the garage and the home put together. Mr. Gillam responded that this is correct.

Mr. Hawkins stated that the only way that he sees that a variance from the modification of a non-conforming structure could be granted would be that basically the applicant could rebuild the present garage at its present size and call it modernization. He stated that this could only be done if it did not exceed 25% of the structure value.

Mr. Hawkins stated that some of the issues that Mr. Raney brought up last month could be considered, such as the fact that there is dual road frontage, which would make this a unique situation.

Mr. Erwin stated that it may make it unique but they are still bound by not increasing non-conformities. He stated that the applicant is not being prohibited to use his property. Ms. Johnson concurred.

Mr. Hawkins noted that it is not a safety issue, the structure is not failing.

Mr. Phillips asked for clarification of not granting a variance to increase a non-conformity. He stated that in his mind he does not feel that this is true. He stated that he is not doubting the Board, but would like clarification for his own mind. Mr. Gillam stated that in this particular case they have a structure that is a non-conformity, in the sense that it does not comply with the setback requirements. He stated that what Mr. Govan is proposing to do is to rebuild a garage that is even larger than the one that already exists right now. Therefore, he would be increasing the square footage of a non-conforming structure and still would not satisfy the setback requirements.

Mr. Phillips stated that this is correct, but to seek relief from this, the Zoning Board of Appeals can give a variance for the increase in square footage increasing the non-conformity. He asked Mr. Gillam if this is correct. Mr. Gillam responded that under a very limited amount of circumstances, like the one that Mr. Hawkins was discussing earlier. He stated that the general rule and the purpose of the ordinances are to eliminate non-conformity.

Mr. Govan questioned if the garage never existed in the first place, would the Township allow a 900 square foot building to be constructed in this location. Mr. Gillam responded that this is a question that the Zoning Board would have to answer. He stated that as a general rule, if the applicant came in and asked for a variance for the setback and possibly the square footage, if the Zoning Board determined that there were practical difficulties and the criteria in the zoning ordinances were met, then he would think that they would grant the variances.

Mr. Phillips stated that he knows that each case is based on its own merits, but across the street from Mr. Govan there is a barn under construction now. He stated that this barn is 30' x 40' and received a 20' front yard setback from this Board because of the backyard having the septic field and tank. Mr. Gillam stated that this would be a totally different situation because of the fact there was not non-conforming situation there.

Mr. Hawkins questioned how long the garage would not have to be there for the applicant to legitimately come back and re-build something. Mr. Phillips stated that the minute the garage

comes down the non-conformity is gone. Mr. Hawkins stated that the applicant has a legitimate request for relief from dual road frontage, however, they are bound by Article 13 regarding existing non-conformities.

Mr. Govan questioned if enlarging the garage would it more negatively impact anything.

Mr. Hawkins responded that they can't even let the applicant rebuild the garage at its present size under modernization. He stated that there is a provision under modernization to allow the garage to be rebuilt at its existing size, however, because it is detached from the home, it would be considered a stand alone structure and only 25% of the value of the structure could be spent in modernization.

Mr. Gillam stated that if the garage came down tonight, then the issue of the non-conformity is gone. He stated that if somebody came in tomorrow asking for square footage and setback variances, then one of the things that the Zoning Board would be obligated to look at is the fact that there was an existing garage 24 hours prior. He stated that technically and legally, the applicant could come in and ask for the variances once the existing structure is torn down.

Mr. Govan stated that the new garage would not more negatively impact the adjacent property owners. He stated that the situation would not make the problem worse.

Mr. Phillips stated that if a variance was granted it would make the building a legal non-conformity. Mr. Gillam responded that this is correct, the structure would no longer be non-conforming.

Mr. Hawkins questioned when the structure was built. Mr. Govan responded that the garage was moved when Tyrrell Lane was constructed. Mr. Gillam stated that if the building pre-dates the zoning ordinance, then it is lawfully non-conforming and it does not fall within the entire section of non-conforming. He stated that then the Board could look at the entire issue of the setback under more general criteria.

Mr. Phillips stated that the Zoning Board was created to eliminate non-conformities. He stated that if they look at all the non-conformities in Lyon Township, they have an opportunity to get one of these non-conformities off the books by granting a variance. Mr. Erwin stated that this would not reduce the non-conformity. Mr. Phillips stated that it would by granting the variance. There was further discussion with regard to reducing non-conformities.

Mr. Gillam stated that another way to look at the issue, and is something that they have talked about in their office, would not be a decision made by this Board, but by the Township Board based upon a recommendation by the Planning Commission. He stated that the question would be whether or not they need to take a look at the language or the lack of language in the zoning ordinance, where they define what a front yard is. He stated that a number of the variance requests that come before the Zoning Board have to do with situation like this especially because of private roads. He stated that the way the zoning ordinance is written there would be two front yards. He stated that if they could better define where the front yard is, then situations like this may not require a variance.

Ms. Johnson stated that she could understand if the garage was in need of repair and the applicant had to rebuild it, but it is not. She stated the fact is that the applicant just wants a bigger garage.

Mr. Hawkins made a motion regarding Dean Govan, 58400 Travis Road, New Hudson, Sidwell Number 21-09-100-054, request for a front yard variance for establishment of a new garage on his property, the applicant has not demonstrated justification for modification of the existing non-conforming structure and would recommend to the Board that they deny the request.

Ms. Johnson supported the motion.

Voice Vote: Ayes: All
 Nays: None

Motion approved.

Mark Pomeranski, 52300 W. Twelve Mile Road, Wixom, MI

Sidwell 21-12-300-033. Applicant is requesting a variance of 26 feet from the required minimum of 30 feet to construct a shed. Variance from Chapter 36 Schedule of Regulations.

Mark Pomeranski explained that there was a shed on the property when they purchased the home and they planned to refurbish it, but in looking at the shed, the sides were giving out and it was basically falling down. He stated that he has removed the shed and would like to replace it with another shed. He stated that the Township does not require a building permit to construct a new shed because of the size of the shed, but because it is close to the property line a variance would have to be granted. He stated that the topography of the back yard slopes and the septic field is also located back there. He stated that because of these things, he cannot build the shed in another location in the backyard. He submitted pictures of the backyard for the Board to review so they can see the way it slopes.

Mr. Pomeranski stated that they have discussed this with the neighbor to the west that would be impacted by this. He submitted a letter from Walter and Mariesa Cosens which indicates that they do not have a problem with this.

Mr. Pomeranski stated that if they came forward to the north, the well is there and it would also provide a safety issue for the in-ground trampoline. He stated that the shed would be in a proximity where the children could jump off the shed and onto the trampoline, which would make it a safety issue.

Corrine Pomeranski explained how the land slopes in the rear yard.

Mr. Erwin questioned the acreage of the property. Mr. Pomeranski responded that it is a little less than two acres. Mr. Erwin questioned why they could not find another spot to place this building. Mr. Pomeranski responded that it could not be placed in the backyard with the way the rear yard slopes.

Ms. Johnson questioned why this shed could not be placed closer to the house. Ms. Pomeranski responded that this is where the well is located. She stated that on the east side of the home there are several trees.

Mr. Pomeranski stated that the plan was to put the shed elsewhere in the backyard, but they could not find a spot. Mr. Erwin questioned if the reason they could not find a spot was because the applicant did not want to take any trees down. Mr. Pomeranski responded that it is because the way that the land slopes on the west side. He stated that they would be building on the side of a hill.

Mr. Erwin stated that there is a tree line on the property and questioned why the shed could not be built in there. Mr. Pomeranski responded that the land already starts to slope before the 30'. Ms. Pomeranski stated there is not 30' from where the property begins before the land starts to slope.

There was further discussion with regard to the slope of the land. It was noted that the applicant could bring in some fill dirt to level off an area for the shed. Mr. Erwin stated that he finds it very

hard to believe that there is no place to put this shed, especially on two acres of property.

Mr. Erwin stated that the ordinance has to place a hardship on the applicant and not the applicant placing a hardship on the ordinance. Ms. Pomeranski questioned if the topography of land would be considered a hardship. Mr. Pomeranski stated that it would seem that the Board is asking them to change the layout of the land in order to build this shed. Mr. Erwin stated that there are two acres, and he would assume that the applicant could find a spot to place a shed without going for a variance. Mr. Pomeranski stated that the layout of the land does pose a hardship in the fact that it prevents them from easily building a shed in a level spot.

Mr. Hawkins stated that best place on the property for the shed would be right where the trampoline is sitting.

Ms. Pomeranski stated that the shed could not be located where the driveway ends because there would not be 30' and then the 14' for the shed on flat land. Mr. Erwin stated that is why the Board suggested that the applicant bring in some fill to level out the land.

It was noted that the existing shed was in violation of the previous ordinance.

Mr. Erwin asked if there were any public comments. There were none.

Mr. Hawkins made a motion with regards to Mark and Corrine Pomeranski, 52300 Twelve Mile Road, Sidwell Number 21-12-300-033, request for a side yard setback variance for the construction of an accessory building be denied in that it cannot be demonstrated that the structure cannot be constructed in some other manner within the two acre parcel. Mr. Raney supported the motion.

Voice Vote: Ayes: All
 Nays: None

Motion approved.

Karl Wagner, 57813 Cider Mill Drive, New Hudson, MI

Sidwell 21-04-154-014. Applicant is requesting a variance of 4 feet from the minimum required side yard setback of 5 feet . Variance is from the minimum P.D. agreement.

Karl Wagner explained that when he purchased the home it was set up to have a walk-out basement and a deck on the rear of the home. He stated that this is the final home for his wife and himself. He stated that both he and his wife have a physical hardship, they both have arthritis. He stated that they noticed one of their neighbors has a deck that wraps around to the side of their home. He stated that this is what they would like to do also.

Mr. Wagner stated that when the deck contractor came to get the permit, they discovered that there was a problem with the setbacks to bring the ramp down the side of the home. He stated that the home is not centered on the property.

Mr. Wagner stated that the other alternative that he has is to put nineteen steps coming down from the deck into the rear yard. He stated that the deck is going to be very high because the land is very low. He stated that now he could probably manage to climb the nineteen steps but his concern is that in ten or fifteen years from now he will not be able to do so. He stated that his arthritis would probably not allow him to manage this many steps in the future.

Mr. Raney questioned how much space is between the homes. Mr. Wagner responded that there is 26'. There was brief discussion with regard to how the homes were placed on the lots. It was

noted that part of the planned development that there be 25' between homes.

Mr. Hawkins questioned if they are permitted to grant variances relative to the PD Agreement. Mr. Gillam responded that he believes that they can and have done it in the past.

Mr. Hawkins stated that the only trouble he has with this is if the neighbor moves and someone else come in, they have now compromised the new neighbor's entitlement to a 25' side yard between residences.

Mr. Erwin questioned why this could not be placed on the other side where there is more room. Mr. Wagner responded that the only concern on the other side is that the utilities are located on that side.

Mr. Erwin stated if they grant this variance, they will see more residents of this development come before the Board.

Mr. Erwin stated that putting the deck up is not necessarily the problem, but wrapping it around the side of the home is the problem.

Howard Taylor, Lot 82, stated that he does not have a problem with what is being proposed. He stated that he has seen the materials that Mr. Wagner intends on using and they are very high quality materials and would not be an eyesore.

Mr. Hawkins stated that any decision that they make would impact more people down the line.

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Mr. Barber questioned if there must be stairs from a deck. Mr. Phillips responded that there does have to be. Access can be from inside the home only.

Ryan Mathis, 30913 Bramley Court, questioned why this could not come off the deck and make a turn. Mr. Erwin explained that the applicant wishes to have this come from the deck level along the side of the house to the front of the house.

Mr. Hawkins made a motion with regard to Karl Wagner, 57813 Cider Mill Drive, Sidwell Number 21-04-154-014, request for a 4' variance from the minimum setback of 5' for the PD agreement for a minimal of 25' between residences, it is recommended that the Board deny the request because it would be infringing on the PD requirements established by the Township Planning Commission and Board of Trustees. Mr. Barber supported the motion.

Voice Vote: Ayes: All
 Nays: None

Motion approved.

3. GENERAL BOARD DISCUSSION

4. ADJOURNMENT

Mr. Erwin adjourned the meeting at 8:43 PM.

Respectfully Submitted,

Deby Cothery

Deby Cothery
Recording Secretary