

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

Thursday, May 22, 2014

2009 Township Drive
Commerce Township, Michigan 48390

CALL TO ORDER: Rusty Rosman, Chairperson called the meeting to order at 7:00pm.

ROLL CALL: Present:

Rusty Rosman, Chairperson

Jorge Pacheco, Secretary

Clarence Mills

Rick Sovel

Bill McKeever

Also Present:

Terry Carroll, Community Development Director

Sara Traxler, Director of Community Development,

McKenna Associates

Chairperson Rosman introduced the Members of the Board to those present, as well as Terry Carroll and Sara Traxler. She reviewed the requirements for receiving a variance from the Zoning Board of Appeals including the fact that all the standards are to be met by the applicant. She assured the applicants present that the sites of the proposed variances have been visited by the members of the Zoning Board. She also explained that if a petitioner's variance request is granted, they will receive their letter of approval by mail. It is imperative that the letter be presented when applying for a building permit. A variance is valid for 365 days from the date of the approval letter.

APPROVAL OF MEETING MINUTES

MOTION by McKeever, supported by Pacheco, to approve the Zoning Board of Appeals Meeting minutes of November 21, 2013, as written.

Discussion -

Pacheco - When I got these minutes, I saw that they were long and involved. I had to read them over at least a couple times. After reading them, I have to say that I commend you. They were very thorough.

Debbie Watson - Thank you, Jorge.

MOTION CARRIED UNANIMOUSLY

UPDATE OF ACTIVITIES

Rick Sovel – Township Board, Library, and Parks & Recreation

- Since our last meeting, we passed the budget.
- When you receive your tax bills for July 1st, there will be a notice in there that talks about hazardous waste collection for residents of Commerce Township. This will take place one day this year and residents will need to come into the Township to obtain a pass that will allow them to drop off anything. In the past few years, this has been done by checking driver's licenses, but this time will be done differently.
- The Township Board has agreed to build a new library. As it stands now, we are looking to have it built at Commerce and South Commerce at Dodge V. There is \$8 million put aside that has been collecting for many years so we will not be asking for any more tax dollars. The existing Library will be closed at some point in time, but most likely not until the new one is operational. If an offer was made

that could not be passed up, it could be necessary for the library to temporarily relocate.

Rosman -

- I know that West Bloomfield operated their library out of a storefront until their new building was constructed.
- I love the library and was happy to be there tonight before coming here.
- I also love our trash pickup. And in that regard, if you have anything extra to be picked up, call the toll-free number printed on your trash can ahead of time and they will be happy to pick it up. They do require advance notice for special pickups.

Sovel -

- Yes, and there have been improvements to the recycling program. We had many people say that the recycling bins were too small. Therefore, the Township worked out an agreement with the contractor. Residents can pick up a large label at the Township which can be placed on their own large container, up to a 32-gallon size, to be used for recycling. The reason for the sticker is to identify the contents of the container for the waste collectors.

Bill McKeever – Planning Commission

- We have a couple of new subdivisions going into Commerce Township.
- One is off of Commerce Road, west of Orchards.
- The other is right here behind the Township Hall and it's a condominium development that was just approved at the last meeting.

PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA

None

ITEM I: PA14-0001 - LENA BALLY – PUBLIC HEARING

Lena Bally of Commerce Township, MI is requesting a public hearing for the purpose of considering a variance from Article 6 of the Commerce Township Zoning Ordinance to build an addition to a single family home that will encroach into the required side yard setback at 1890 Ayrshire. Sidwell No.: 17-33-201-026

Chairperson Rosman opened the public hearing.

The petitioner, Lena Bally, 1890 Ayrshire, Commerce Township, was present along with Freddy Sackllah, 8481 N. Lilley Road, Canton, an attorney and good friend to the petitioner, to address the variance.

Freddy Sackllah explained how the addition had been constructed without the proper building permits and discussed the encroachment into the required setbacks.

Freddy Sackllah - Ms. Bally and her husband, Fadi Bally, had a large loss on their property when a huge water line broke upstairs and destroyed a portion of the home resulting in damages of \$104,000. Their only saving grace was to add 10' to the back of

the house and they were not thinking in the process. They had the mortgage and insurance companies inspecting the house at all times during reconstruction, and they thought they were complying as the mortgage company kept releasing funds as the work continued to meet inspections. They are sorry as they thought wrong. The addition was put up and all work was done according to code. They are now working with the legal and Planning Departments to fix things. They did do a survey but I don't know if you have the updated copy. I know that McKenna did a recommendation and if the Board is inclined, I will answer any questions you may have.

Lena Bally - Freddy has covered everything and we are really sorry.

Chairperson Rosman closed the public hearing as there were no additional questions or comments.

There were -0- returns and -0- letters.

Board Comments:

Mills - My first question is where was the building inspection, having not pulled any permits, as you said the insurance and mortgage companies were involved all along?

Freddy Sackllah - Inspections were all done after the fact.

Lena Bally - Mr. Jay (James) came out and saw the building. I don't know if Mr. Carroll has seen it, but he told me what I needed to send him, including the architectural drawings, and what he needed to see if it was up to code. I am assuming he reviewed them and they were fine because when I went to court, they said we need to be in compliance with the Township and we need a variance.

Mills - Has the certificate of occupancy been issued?

Freddy Sackllah - No, but it was for the original house. It appears that they provided the certified architectural drawings and materials, and they used the pictures that were taken associated with studs and that kind of stuff so that the building department could be comfortable. Before they could finalize this, they had to deal with the variance.

Mills - Why was there no permit pulled in the beginning?

Freddy Sackllah - Basically, they had the loss and went to the insurance company. The insurance paid the mortgage company and then the reconstruction was supervised by the mortgage company. They were going to hire everything out but the contractors wanted more money. Fadi supervised and did handy work himself. He had different crews do the jobs and they weren't pulling permits. They assumed that when the mortgage company conducted six or seven inspections, that they were in compliance. They were wrong and they did not realize.

Pacheco - Who made these inspections?

Lena Bally - Chase Bank did the inspections to give us draws.

McKeever - So those were progress inspections but no one actually looked at the way this was constructed.

Mills - My main concern at this point is the structure and how it was completed, and for the future of someone else who may buy the house. Who knows if the framing and wiring was done correctly?

Freddy Sackllah - We appreciate that concern for the structure and we made sure that the architect did the drawing. We had the Building Department inspect and showed them the pictures that were taken of the studs, wiring and electrical. Understand that whatever steps the Zoning Board of Appeals wants us to take, we will take them and work with the Building Department. We do not have the certificate of occupancy yet. If you're willing to approve the variance for a foot or the encroachment amount, then we will go through the Building Department and do anything and everything necessary.

Pacheco - This is not referring to you at this point, but I have noticed in the past that we've had several people who came in to request variances and they did not get building permits before they did the work. They came in after the fact to get permits. That concerns me a lot because you never know who did the work and what they've done or how they did it. They may not have followed the basic requirements of the Township to get their permits. I'm surprised that they did not have to get the building permit for repairing the damage to the home. That's my concern and I don't know how to solve it.

Are there any objections to the variance request, from the people living right behind them, about having the house that close?

Rosman - The neighbors would have received a letter notifying them of the request. We did not receive a letter from them and they are not here tonight. Terry, have you had any calls or communications?

Terry Carroll - No, we have not.

Pacheco - If we make a motion to accept this tonight, I propose that we include a provision that the Building Department of Commerce Township does a thorough job of inspecting the work to ensure that it was built according to the codes.

McKeever - I am in agreement with everything that Jorge recommended with the Building Department. I am concerned as I don't know what level of investigation it would take to make them comfortable about signing off on this. Any motion would be contingent upon a full building inspection. What was done on the exterior?

Lena Bally - We used vinyl siding.

McKeever - Basically, you cannot have two structures within 10 feet of each other. In the past when we have allowed people to encroach into this side yard setback, we required that the exterior be constructed with flame retardant materials. If the neighbor ever wants to expand their residence, this setback could be further encroached upon.

Freddy Sackllah - We did talk with the neighbors and they did not appear to have any problems. I am an attorney, but I am here as a personal friend to the Ballys. I wish that the mortgage company would have said something about the permits.

McKeever - The builder of the project was Mr. Bally? Is he a licensed builder?

Freddy Sackllah - He did all of the work.

Lena Bally - He is not licensed. He owns apartment buildings and is a leasing manager.

McKeever - And he had no idea that permits were required?

Freddy Sackllah - Leasing of properties is really all he does.

Lena Bally - And he has a lot of friends in the business.

Freddy Sackllah - Yes, in subcontracting.

McKeever - So this was built by an unlicensed individual.

Sovel - Mr. Sackllah, you're an attorney so you understand a few things. And Mrs. Bally, your husband is not planning to be here tonight?

Lena Bally - No.

Sovel - Was that at your suggestion, Mr. Sackllah?

Freddy Sackllah - No. I've known them since I was 11 years old and I am an old family friend. We are very close and I am going to their house afterward this. I'm here as a friend.

Rosman - Please move on.

Sovel - The application was filed in your name, Mrs. Bally, and according to your statement, "My husband is in the business of remodeling homes and so we decided that he, along with the mortgage and insurance companies, would supervise and repair the home." You are contradicting what you said. From what I read here, I drew conclusions and the fact is that anyone who does remodeling knows that permits are required. Also, if he owns apartment buildings, he knows that even when replacing plugs, permits are required. Therefore, I flat out do not believe that he did not know the permits were required. To me, it sounds like it was an opportunistic time for the expansion with the money from the insurance company to remodel the entire home.

Lena Bally - We did take all of the drywall out.

Sovel - You did not follow the right steps. Personally, I think he knew all of the steps and tried not to do them. I understand that you were dealing with the mortgage and insurance companies. The agreements they provide you with specifically state that it is the homeowner's responsibility to comply with all local Zoning Ordinance requirements. Although they don't cover that part of the process, it is my belief that this was done with some intention.

My concern is that the drywall would have to be completely removed on the addition to allow the Township to fully inspect it. Otherwise, there could be wires tied together. I also agree with Bill that we usually require brick or some other fire retardant material on the exterior.

Lena Bally - We did vinyl like it was.

Sovel - But if you had come to us, we would have told you to use fire retardant materials on that one wall. It would have been part of the discussion if you had come in on a regular basis.

Freddy Sackllah - Clearly there were problems at the time.

Rosman - We understand that it was a stressful time.

Freddy Sackllah - It was complicated. I know that they were trying to cut costs expense wise. We will do whatever the Building Department asks of us. We will easily comply the requirements. I know that what you've said comes from your wisdom and knowledge, but tearing the whole thing down would not be easy.

Lena Bally - My husband and I will do whatever you ask.

Rosman - I have several concerns. Had you come to the Building Department, they would have explained the setback and this addition would never have been allowed. The plumbing and electrical needs to be inspected properly. I know it is not nice or easy to open it up, but you understand and will do what is required.

You have children to consider who live with you in this house. I know for a fact that if your next door neighbor's house burned down, the insurance man would go to the Township to see if the proper permits were pulled. If they were not, they won't pay a penny. So are you truly willing to do whatever it takes?

Lena Bally - Yes.

Rosman - Sara, Terry, do either of you have anything to add?

Sara Traxler - I have nothing to add, thank you.

Terry Carroll - I would like to ask, if the Board sees it as permissible, that if the inspectors feel they have enough knowledge from the photographs to be comfortable, that they be allowed to skip removal of the drywall.

Rosman - We would leave that up to the Building Department's discretion as we are unable to say that one is better than the other.

Sovel - As a Board, we need to discuss the exterior.

Rosman - I understand that the north wall is done in vinyl siding. If they took this off to add a fire retardant material, could they then put the siding back up over it?

McKeever - They could use cement board.

Pacheco - Can I suggest that if we make a motion to approve, we specify that we want this to meet the specifications for fire resistance? Then we could let the Building Department make sure that it complies when they do their inspections.

Sovel - The Building Department inspection would be following the code which does not require fire retardant materials.

Sara Traxler - If you are making this motion to approve, I would say that it should satisfy the Building Department and building code fire retardant levels for other buildings that trigger this requirement.

Sovel - That would include materials with a one-hour burn time, et cetera.

Rosman - The code would provide the proper wording.

Sara Traxler - As it is stated in the building codes, this should be treated as if it triggered the fire retardant codes.

Pacheco - Does the code state something about the distance between the property line and the wall? I don't think it does.

McKeever - That is a level covered by the Fire Department.

Mills - This coincides somewhat with my background and my concern is with the electrical. I hear what you are saying about minimizing the amount of drywall to be removed from the walls for inspection, but I have seen electrical done many times with little to no electrical tape being used and wires were just wrapped together. Can you identify the person who did your electrical work? Are they licensed? If they are, it is good to know their background and the other jobs that they have had successfully completed. If that comes back with a high level of positive feedback, than minimizing the drywall to be removed and relying upon pictures may be feasible. If you don't have the pictures, and/or cannot identify the electrician, I would be very cautious about what is behind these walls.

Pacheco - The Building Department is capable of deciding the type of inspection and how deep it should go by tearing up pieces of the wall.

Rosman - And the petitioner has agreed to that.

MOTION by Sovel, supported Mills, that the Zoning Board of Appeals approve, with conditions, Item PA14-0001, the request by Lena Bally of Commerce Township, MI for a variance from Article 6 of the Commerce Township Zoning Ordinance to build an addition onto a single family home that will encroach into the required side yard setback at 1890 Ayrshire. Sidwell No.: 17-33-201-026

A 4' side yard setback is required, and the home is at 3.48' on one side and 3.43' on the other. Therefore, the variance from Section 41.09.A of the Charter Township of Zoning Ordinance is granted for .52' and .57' respectively.

Approval is subject to the following conditions:

1. The Commerce Township Building Department must meet with the electrician who did the work on the home and determine after discussion if the walls need to be opened up for proper inspection; and,
2. The interior is required to have double 5/8" drywall on the interior north wall; and,
3. The vinyl siding on the exterior north wall will be removed, cement board will be installed for the purpose of complying with fire retardant specifications, and then the vinyl siding can be put back up; and,
4. All inspections, permits and fees must be paid for; and,
5. Inspections will be completed prior to occupancy, within six weeks by July 10, 2014; and,
6. Approval is in consideration of the Findings of Fact as stated within the Planning Report dated May 19, 2014.

MOTION CARRIED UNANIMOUSLY

ITEM II: PA14-0002 – Darren and Lorena Fuerst – PUBLIC HEARING

Darren and Lorena Fuerst of Commerce Township, MI are requesting a public hearing for the purpose of considering a variance from Article 6 of the Commerce Township Zoning Ordinance to construct a swimming pool in the required front and side yard setbacks at **5255** Oak Hill Trail. Sidwell No.: 17-05-300-026

Chairperson Rosman noted a correction to the agenda. The address was printed as 525 and was corrected to reflect **5255** Oak Hill Trail.

Chairperson Rosman opened the public hearing.

Darren and Lorena Fuerst, 5255 Oak Hill Trail, Commerce, were present along with their contractor, Dave Sementilli of Artistic Pools and Concrete, 3240 Owen Road, Fenton, MI, to address the variance request.

Dave Sementilli - The Fuerst's have a huge piece of property that is 8.5 acres, but their backyard is small. The majority of the land consists of front and side yard. The proposed pool will be in a wide open area. The distances from the septic and well have been met. There are no wires or obstructions in the designated area and this meets the

Building Department's conditions. We are requesting a variance as there is no other area in which to put the pool.

The Board had received a drawing in the packet prepared by the contractor. Lorena Fuerst also presented another drawing to the Board to further depict where the pool would be located.

Chairperson Rosman closed the public hearing as there were no additional questions or comments.

There were -0- returns and -0- letters.

Board Comments:

McKeever - I have no questions. This is very straightforward.

Sovel - And you will get all of the permits?

Dave Sementilli - Absolutely.

Pachecho, Mills and Rosman also had no problems with the request as presented.

Rosman - Your property is beautiful and I met your horses while I was there. Sara, Terry, do either of you have anything to add?

Sara Traxler - No, thank you.

Terry Carroll - No, ma'am.

MOTION by Mills, seconded by McKeever, to approve Item PA14-0002, the request by Darren and Lorena Fuerst of Commerce Township, MI for a variance from Article 6 of the Commerce Township Zoning Ordinance to construct a swimming pool in the required front and side yard setbacks at 5255 Oak Hill Trail.

Sidwell No.: 17-05-300-026

Approval is for the reason that the proposed will not be materially detrimental to the public health, safety and welfare, and it will not be materially injurious to the property or improvement in such zone or district in which the property is located. Approval is also in consideration of the Finding of Fact as stated within the Planning report.

MOTION CARRIED UNANIMOUSLY

After the motion, Lorena Fuerst shared a touching story about rescuing a thoroughbred horse six months after she and Darren had taken possession of their property. The horse was later discovered to be a descendant of Secretariat. The thoroughbred now resides on their property along with another rescued horse. The story was previously published in the Milford Times back in 2012.

OTHER MATTERS TO COME BEFORE THE BOARD

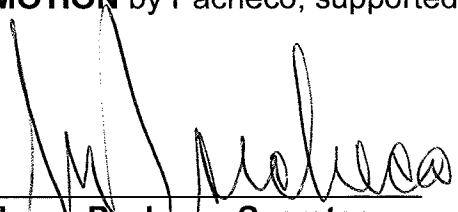
- McKeever noted that the project at 3988 Vanstone, for which a variance was approved in November 2013, is at a complete standstill and he had heard that there were complaints about the property being in disarray.
- Mills discussed a homeowner who had her application for a deck denied last year. He stated that the home now sits vacant.
- Pacheco discussed requesting better drawings from petitioners. The Board discussed and reviewed staking requirements with Mr. Carroll and explained that if a property is not staked properly, the item does not have to be heard by the Board.
- Rosman discussed McKenna's role in the Commerce Township Planning Department with Sara Traxler.
- Open discussions took place regarding fire retardant materials and measures for achieving fire resistance. It was noted that in accordance with the Zoning Ordinance, no fence should be installed between houses when there is an encroachment into the side yard setback, such as the property at 1890 Ayrshire Drive, and Mr. Carroll made a note to discuss this with the Building Department with regard to their upcoming inspection of the property.
- Mr. Carroll informed the Board that everyone had received a revised copy of the Zoning Ordinance, which included recent updates regarding outdoor storage. Mr. Sovel requested that PDFs of the revision be forwarded by email to the Board members.

NEXT REGULAR MEETING DATE: THURSDAY, JULY 24, 2014.

ADJOURNMENT

MOTION by Pacheco, supported by Mills, to adjourn the meeting at 7:58 pm.

MOTION CARRIED UNANIMOUSLY



Jorge Pacheco, Secretary