

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

*Thursday, July 25, 2013*

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  
Clarence Mills  
Rick Sovel  
Bill McKeever  
Absent: Jorge Pacheco (excused)  
Also Present: Kathleen Jackson, Township Planner

Chairperson Rosman introduced the Members of the Board to those present, as well as Kathleen Jackson. 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. She added that in order to have a variance approved this evening; applicants would need the approval of 3 out of the 4 Zoning Board of Appeals members present.

**APPROVAL OF MEETING MINUTES**

**MOTION** by Mills, supported by McKeever, to approve the Special Zoning Board of Appeals Meeting minutes of June 27, 2013, as mailed.

**MOTION CARRIED UNANIMOUSLY**

**UPDATE OF ACTIVITIES**

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

- We are in negotiations with the garbage contractor to extend and add services. We are keeping prices close to where they are now.
- The Board met regarding the progress on the water tower. The Board approved the revised schedule for the Zoning Board of Appeals.

Bill McKeever – Planning Commission

- We approved a couple of text amendments. Costco received site plan approval for adding four pump stations to their fueling center. These will be located east of the existing pumps. This is supposed to alleviate stacking of cars.
- We recommended approval of a cluster housing site plan for the property across from the Fire Station on Commerce Road.

**PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA**

None

**MOTION** by Sovel, supported by Mills, to remove Item PA13-0001 from the table.

**MOTION CARRIED UNANIMOUSLY**

**ITEM I: PA13-0001 – JAMES MAHER – TABLED FROM 6-27-13**

James Maher of Walled Lake MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to construct an addition that will encroach into the required side and total side yard setbacks as well as the minimum separation between adjacent homes located at 9555 Listeria.

Sidwell No.: 17-11-376-017

Rosman - The public portion has already been held for this item when it was tabled to allow for the petitioner to meet with staff to address concerns. Kathleen, can you share with us the details of the meeting you had with Jim?

Kathleen Jackson – Jay James and I met with Jim Maher after the last meeting. We made a few recommendations including that Jim try to contact the neighbor, and that he show on a separate plan how much of an addition could still be constructed on the house to the east if this request is approved. I believe they could add on 900 square feet.

Rosman – Jim, could you please explain what you did? I am confused by the drawing and still don't see where the neighbor can do anything.

James Maher stated that he put together a large drawing and additional reference materials, which he distributed. The first concern the Board had was sensitivity to the minimum of 10' from any other structure. The drawing showed the neighboring house to the east and, he'd shown an inset of 2' on the proposed addition. This inset would now allow for the 10' minimum separation between homes.

Discussion followed regarding the minimum size for a two car garage.

The overall 24' x 36' layout was discussed. This will allow for the home to be enlarged, creating a true master bedroom, a normal size living room, the 1-car garage, the mud room and an office.

Another request was to add the location of the septic field to the plans. That was added along with the tree and shed. Detail was added to the plans, along with an elevation drawing showing what the home will look like from the road.

James had reviewed several different options with staff, such as putting the garage in the backyard. It is a narrow lot and the septic field takes up the entire lot with no option to alter it to make it acceptable for Oakland County.

He did meet with the neighbor and walked him through the plan. The neighbor wrote a letter of approval and copies were provided to the Board. This leads to the question of whether or not the neighbor could ever build an addition onto his home. It is possible to construct an addition of 900 square feet and the plan reflected this sketch.

Chairperson Rosman stated that no additional letters or comments had been submitted, with the exception of the letter provided by James Maher from his neighbors, Karen & Frank Furca, 9535 Listeria Street, Commerce Township, which was dated June 17, 2013, in which they stated that they had no objections to the project.

**Board Comments:**

Rosman – How many bedrooms will there be? Is it two bedrooms and one office, or will the office have a closet also?

James Maher – It will be two bedrooms, and no, the office will not have a closet

McKeever – Where is the neighbor's drain field?

James Maher – If you look at the drawing, his drain field is about where mine is.

McKeever – So it is not anywhere in the area of the future addition?

James Maher – Correct.

McKeever – And on the east side, will you be using fire retardant materials because it is in the 4' setback?

James Maher – At this point, because we are maintaining the 10', our intention was not to do so.

McKeever – I can tell you I am not in favor of anything that doesn't have fire retardant materials.

Kathleen Jackson – The fire chief did not require it, but it is certainly within your purview to require 5/8" double thickness drywall.

Sovel – In addition, we've also required brick on the exterior, and that the overhang be aluminum to reduce fire hazards. What is the distance between the garage and the east property line?

James Maher – It is 1' 9-5/8".

Sovel – So it is definitely still within the 4'.

Sovel and James Maher discussed potential additions onto the neighbor's home in relation to this project.

Sovel – What about construction? It doesn't appear that you can do this without going onto the neighbor's property.

James Maher – The neighbor had some years of construction work experience and he understands that. Our intention is not to put up a fence which will be consistent with the neighborhood.

Sovel – Okay, so it is 1' 9" and what do you envision being on the ground here?

James Maher – Grass.

Sovel – So when you're mowing, the neighbors may have an issue with you coming onto their property. We have to look at the best and worse case scenarios here.

James Maher – It is narrow, I agree, but we still have adequate room in there without going onto the neighbor's property. But you are right, we cannot control the future. We can still weed whip the area with almost 2' there. However, if you prefer to see something maintenance free there instead, such as rock, stone, gravel or concrete, we can do that also.

Sovel – Is the overhang past your property?

James Maher – No, the overhang is about 8" and we will run a gutter back from it.

Sovel – I don't have a good visual of the roof design. Will there be runoff onto the neighbor's property?

James Maher – No. Currently what we have is a reverse gable and it will not shed water in the direction of the neighbor.

Rosman – And you are putting on gutters?

James Maher – Yes, there will be gutters on all sides.

Sovel – Have we had a chance to verify this letter?

Kathleen Jackson – No, I just saw it for the first time today.

Rosman –

- I have a couple of concerns.
- First is the septic field in the back. How would you get any service there?
- Secondly, I am also concerned with this going from a 2-bedroom, 1-bath house to, in essence, a 3-bedroom, 2-bath house.
- You know the resident will put in a wardrobe and use the office as a bedroom as the reality of what happens in a house is different than what is planned.
- This is an old septic made to handle one bathroom.
- Are you also adding a laundry room that the house does not currently have?

James Maher – This is similar to many other lots that we own where the wells are in backyard. There is currently one laundry room in the back that goes into the septic. I

did find that the septic field was in very good condition. And, if service is needed, we do have 5' 7" on one side to utilize for servicing and pumping every two years. If it fails, I have no problems with hand digging it. It is not unlike the wells that we do.

Rosman – Are you planning to sell or rent?

James Maher – This is a rental investment.

Rosman – You and I both know the office will be turned into a bedroom. Can it be made a condition of the motion that this be used only as an office?

Extensive discussions ensued regarding enforcement of such a condition.

James Maher – We do have pretty tight lease agreements to cover this sort of thing.

Rosman – That is my biggest concern; pushing the envelope of what this is for. I know the County has approved this for 2 bedrooms, and I am concerned that we will have 3.

Kathleen Jackson – Jim, have you received County approval?

James Maher – I have not.

Rosman – Our primary concerns are with the health, safety and welfare of Commerce Township residents, and with the essential character of the neighborhood. A lot of these houses have garages. These were cottages and they did not think of these things back then. The office and septic now bother me, but it would put tremendous pressure on the Township to monitor this if it were restricted to only being used as an office.

James Maher – Part of my business is rental and investment properties, specifically in the Commerce Township area. I have taken some pretty challenged homes that have been foreclosed and turned them into remarkable living homes. I personally manage, organize and run our rentals. The last thing I want is to have a headache with an undersized septic. My rental agreement is a 16-page document outlining what they can and cannot do, and we do quarterly inspections. There is a capacity load and if there is any type of overload, it creates challenges, especially with the neighbors, et cetera.

Mills – Kathleen, do you have any idea when the sewer systems may be put through there so that he could hookup with a grinder pump?

Kathleen Jackson – I would imagine they will eventually put it through, but it is not available at this time. Jay could answer that, but I don't know; however, he did not seem to think that it would be available anytime in the near future.

Sovel – I understand the concerns with the bedroom issue and there is not a lot we can do, but I think that's okay. The issue to me is the use of fire retardant materials.

**MOTION** by Sovel, supported by Mills, to approve, with conditions, Item PA13-0001, the request by James Maher of Walled Lake MI for variances from Article 6 of the Commerce Township Zoning Ordinance to construct an addition that will encroach into the required side and total side yard setbacks located at 9555 Listeria.

Sidwell No.: 17-11-376-017

Approval is specifically for a 2.3' variance for separation between adjacent homes variance, a 2.4' side yard variance and a 6.7' total side yard variance from Article 6.

Approval is subject to the following conditions:

1. The use of fire retardant materials to be used on one wall, including 5/8" double-thickness drywall on the interior, and the use of brick, aluminum trim, fascia, soffit and gutter on the exterior; and,
2. Verification as to the validity of the letter submitted by Karen & Frank Furca, 9535 Listeria Street, Commerce Township, MI; and,
3. Removal of the existing shed; and,
4. That there will be no bedroom/sleeping furniture in the room that is designated as the office on the plans; and,
5. When sanitary sewer becomes available in the neighborhood, the petitioner will hookup; and,
6. The results of the septic system testing will be submitted and the Oakland County Health Department will have to sign off before the building permit is released.

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 Department's report.

**Discussion -**

Sovel - Is Hardie Board an option?

Kathleen Jackson - I'm not sure of the flammability rating.

Rosman - Brick as approved by the Fire Marshall.

Kathleen Jackson - The Fire Marshall is not requiring any additional fire retardant materials.

Kathleen Jackson - Jim, you have run tests on the septic?

James Maher - Yes, we inspected it and it is a good working system.

McKeever - Has the property been vacant?

James Maher - Yes, it's been vacant for a little while, but we ran proper testing.

**MOTION CARRIED UNANIMOUSLY**

**ITEM II: PA13-0006 – THOMAS ZINK – PUBLIC HEARING**

Thomas Zink of Commerce MI is requesting variances from Articles 6, 33 & 39 of the Commerce Township Zoning Ordinance to construct an addition onto an existing non-conforming accessory structure that will encroach into the required front and side yard setbacks located at 8685 Edgewood Park Drive. Sidwell No.: 17-12-351-064

Chairperson Rosman opened the public hearing.

Thomas Zink, 8685 Edgewood Park Drive, was present and provided a review of the request.

Thomas Zink – We want to construct 3 walls on the back of the garage. The garage has been there since 1970 and we can't really do anything about it, even if we don't do the addition. We would like to add extra space and move the large garage door over to the side which will get us off the street.

We are too close to the street but if we are trying to comply with the 25' as the sub would like us to do, we would be at the front door. This is a short front yard and we can't do anything about that.

The neighbor to the east is at 2.7' off the lot line. It looks like the biggest problem he has is a screened porch that comes almost to the lot line. This is used for storage. The neighbor to the west is in favor. I have submitted a letter of intent and had the property surveyed.

John Creed, 8855 Edgewood Park Drive, Commerce – I'm one of the representatives of the homeowner's association. I will let you know that we spoke with the Zinks and have explained the proper procedures for approval on the subdivision associations side. This has not yet been reviewed.

Chris Hill, 8497 Edgewood Park Drive, Commerce – I am here more about the process of what is going on with this. We have a procedure in our organization that says you are to contact the association board before going to the Township. They missed that part, but we have had numerous discussions with the Township Supervisor and Building Department regarding this. A couple of years ago, the Township used to say, go talk to your board first, but this is no longer happening.

Before construction, this must be submitted in writing and approved by our board.

There are court cases, including one Michigan Supreme Court case, upholding the association's deed restrictions.

There has been failure at the Township end. We have written you letters and met with you. We feel as if we are being ignored. We have precedents set.

Rosman – Two things; we are a board and we are not employed by the Township. The Zoning Board of Appeals does consist of representatives from the Township Board and the Planning Commission. Kathleen, could you please explain further?

Kathleen Jackson – First of all, if you went to the Supervisor and to the Building Department, then you bypassed the department that is the coordinator of this Board. Secondly, although you may have precedents and standing, you are not a governmental organization. And, although the Supreme Court may have upheld your restrictions, the Zoning Board of Appeals is governed by the state statute and they may not take into consideration the subdivision's deed restrictions and rules.

We have had requests tabled and have asked the petitioners to go back and speak with their association, but that is a civil matter which is outside the boundaries of this Board. This Board has to adhere to the Commerce Township Zoning Ordinance. That is their

duty. They are legally bound to uphold the Ordinance and they are the only Board within the Township that is allowed to vary the law.

So, whereas we have accepted information from subdivision associations and have always welcomed it, and the Planning Department provides notice up to 300', which may or may not include your association president, the ZBA is not bound by the association rules.

Rosman – Mr. Hill, I have been on this Board for 28 years and we have always had the deepest respect for the subdivision associations. We all live in the Township, but the sub rules are something we cannot address. I can tell you that he cannot build without permission from us; however, in the purview of your sub, your rules may parallel ours, but with all due respect, they do not intersect at all.

Mr. Hill – With all do respect, I am not saying that we trump you in any way whatsoever. We just want to have the process as it was in the past.

McKeever – You're requesting to have us monitor the associations and that is not something that we have to deal with.

Kathleen Jackson – I have a solution. Paula Lankford in the Planning Department sends out the agendas to numerous recipients. You can ask to be put on the list for the agendas which are sent out a week before the meeting. Other associations have requested this and it would give you a heads up.

Rosman – Thank you very much, Mr. Hill. We are now moving back to Mr. Zink and his appeal. Please provide your email address to Paula so that the office can try to help you solve these problems.

Karen Schlumberger, 8639 Edgewood Park Drive, Commerce - They did do the reverse process here. They have to bring in plans to the association. The plans need to indicate where the houses are in conjunction with the garage, and also address drainage issues.

Rosman - Mrs. Zink, do you have anything to add?

Mrs. Zink - No, thank you.

Chairperson Rosman closed the public hearing.

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

**Board Comments:**

Mills - First I would like to say that this was nicely staked. It provided a good visual of where you wanted to run the edge of the garage to approach the south. I really didn't see any problems. I did not think about drainage, but I did not see any physical problems.



Rosman - When I was there, he explained to me about the gutters. He too is concerned about the drainage.

Sovel - Mr. Creed, are you on the board for the association?

Mr. Creed - Yes, I'm on the architectural committee and oversee building. As I explained, we review plans for three reasons. First, we consider the opinions of the neighbors on both sides. Secondly, we make sure there are no issues from a past precedent that has been set. And lastly, we ensure that it is not against any of the current sub rules.

Mr. Hill - And fourth, we make sure it is not against the Township Ordinance.

Sovel - We haven't done anything as far as fire issues on a garage like that, have we, such as double-thickness drywall?

Kathleen Jackson - Yes, you have required the same fire retardant materials on detached accessory structures, depending on the distance to other structures.

Sovel - What's your feeling on this?

Rosman - I feel this is far enough away from the house.

McKeever - This is an existing nonconforming structure?

Rosman - Yes, and they are increasing a nonconforming structure.

McKeever - But they are not getting any closer to the property line?

Rosman - It is closer to the principal house, but it is still far enough away that it is not necessary to have fire retardant materials.

Kathleen Jackson - I'm not sure if garages are held to a higher standard due to flammable materials, but I can check and let you know. This is very close to the adjacent garage and the other structure which is the enclosed porch.

Kathleen Jackson - You can certainly require it when it is close to an adjacent accessory structure.

Sovel - I'm fine with it. I just hope you will be able to work with your association.

Rosman - Now Mr. Zink, you said this would be a side entrance so you won't be pulling into the front at the street? You will be pulling into where I walked on the grass, correct?

Mr. Zink - Yes.

**MOTION** by Mills, seconded by Sovel, to approve Item PA13-0006, the request by Thomas Zink of Commerce MI for variances from Articles 6, 33 & 39 of the Commerce Township Zoning Ordinance to construct an addition onto an existing non-conforming accessory structure that will encroach into the required front and side yard setbacks located at 8685 Edgewood Park Drive. Sidwell No.: 17-12-351-064

Approval is specifically for a 0.3' side yard variance from Article 6 & 33 and a variance to construct an addition onto a nonconforming detached garage from Article 39.

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 Department's report.

**MOTION CARRIED UNANIMOUSLY**

**OTHER MATTERS TO COME BEFORE THE BOARD**

Discussion regarding progress with the circle driveway on Newton Road.

Rosman stated that she will attend the September 26<sup>th</sup> meeting. Mills will not be present as he will be attending "Taste of the Lakes".

Kathleen Jackson stated that Arkan Jonna has withdrawn his variance request and plans to put the sign back in its original location.

**NEXT REGULAR MEETING DATE: THURSDAY, SEPTEMBER 26, 2013.**

**ADJOURNMENT**

**MOTION** by Mills, supported by Rosman, to adjourn the meeting at 8:13 pm.

**MOTION CARRIED UNANIMOUSLY**

  
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**Jorge Pacheco, Secretary**