

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

Thursday, April 26, 2012

2009 Township Drive

Commerce Township, Michigan 48390

CALL TO ORDER: Clarence Mills, sitting in as Chairperson, called the meeting to order at 7:00pm.

ROLL CALL: Present: Clarence Mills
Jorge Pacheco, Secretary
Bill McKeever
David Law
Absent: Rusty Rosman (excused)
Also Present: Kathleen Jackson, Township Planner

Chairperson Mills introduced the Members of the Board to those present, as well as Kathleen Jackson. He 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. He assured the applicants present that the sites of the proposed variances have been visited by the members of the Zoning Board. He also explained that if a petitioner's variance request is granted, they will receive a 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. He 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

Approval of the Zoning Board of Appeals Special Meeting minutes of February 15, 2012 was deferred. Only two members were present at this meeting that were also present on February 15th and therefore there was not a quorum of the original members required for such approval.

UPDATE OF ACTIVITIES

David Law – Township Board and Parks & Recreation Committee

- The Board has had two recent meetings, a regular meeting and a quarterly discussion.
- The main topic of discussion at the quarterly meeting was the potential water tower.
- At the last regular meeting, several items were approved including:
 - The Eagle Scout Project for the Pavilion in Dodge Park.
 - Improvements to the Byers farmhouse.
 - Sledding Hill Naming Contest:
 - An article appeared in the Spinal Column about this.
 - The contest will take place in the fall.
 - Students will submit ideas for names and a winner will be chosen.
 - A Movie in Park was approved.
 - An outdoor concert is also being discussed as well.

Bill McKeever – Planning Commission

- An overview of the water tower was presented at the last meeting along with renderings.
- The Commission has also handled some housekeeping of Zoning Ordinance language.

PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA

None

ITEM I: A12-05 – DAWN WILLIAMS – PUBLIC HEARING

Dawn Williams of Commerce MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to allow the deck to remain that is encroaching into the required rear yard located at 4658 Darlene. Sidwell No.: 17-09-478-026

Chairperson Mills opened the public hearing.

Ms. Williams was present along with her son, Tyler, and a friend.

Ms. Williams – First, I want to apologize for building the deck. I started to build it without permission from the Township. I should not have done that and I hope that you will accept my apology.

There is certain criteria to receive a variance. I will present the facts to you that I have accumulated based upon that.

Can this property be put to a use which conforms with the Zoning Ordinance without a variance? I believe that it cannot with the current setback requirements as I would only be allowed to build a 4' deck. It would interfere with the door wall below where the deck would have to be built. I have 3 door walls. One is a walkout and it is directly below where the deck would go. As for attempting to build a side deck, I would have to destroy the concrete stairs that go down to the patio from the walkout. The stairs were there when I moved in. It is difficult to put in a functioning, useful deck with the current setbacks.

Is the problem requiring a variance unique to this property? My lot is the first lot in the sub. I'd like for each of you to look at the plot of the sub (provided handouts to the Board members). The highlighted area is my lot which was leftover from the sub. It is the weirdest shaped lot with a very short yard. It is unique to the neighborhood. It is the only one shaped that way. It was leftover and is closest in from the street.

Is it due to the general conditions of the neighborhood? I'm not sure I understand this question. Could you explain what is meant by this?

Mills – Is it going to impact the neighborhood?

Ms. Williams – Building the deck, or the general conditions of the neighborhood...? Ok, no, it will not impact. As a matter of fact, I have a letter which you should also have on file. It is from the homeowner's association architectural control committee. They have personally inspected the deck. (She quoted the Mystic Forest letter dated August 17, 2009, which was in favor of her request, and was included in the packet.)

I also have two letters from the neighbors who live next to and behind me (copies were in the packet). They have both approved the deck and feel that it would not impact the general conditions whatsoever. And I would like it as it would look nicer than a barricaded door.

If the request is granted, will the essential character of the neighborhood be changed?

No. And finally, *Is the situation causing the need for the variance self-created?* I believe it is not. I was not even aware of the setback rules when I moved in. The house was constructed with the door in the kitchen, intended for a walkout to a deck in the future. I assumed I would have no problem putting a deck in there. The oddness of my lot and the way my home was when I moved in were out of my control. I don't feel that this was self-created.

I think I have addressed all of the items.

Mills – Would anyone else like to comment?

Tyler Williams – I think she has covered everything.

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

There were -0- returns and -3- letters.

Board Comments:

Pacheco –

- If I recall correctly, this was before the Board before.
- We have had an awful lot of petitioners requesting decks in their backyards that would encroach into the setbacks.
- We've had to decline a lot of the requests that came to us as they did not meet the ordinance.
- I believe that if something is done in favor of this case, from our point-of-view as a Board, it would create a "two-faced" type of message to the community.
- Eventually we succeeded in having builders put a statement into their plans if they were not allowing room for decks.
- The other thing that bothers me is that there was a deck constructed after the petition was denied.
- Are you the same person who was originally denied? (Yes.) I know that it was declined after quite a bit of consideration.
- I also have issues about whether this is a self-created problem or not. I believe that it is self-created.
- I have a problem with this petition and would like to hear the comments of the rest of the Board members.

McKeever –

- Jorge covered everything.
- I don't see anything that has changed other than you took it upon yourself to begin building the deck.

- If we were to grant a variance now, it would open the flood gates and create disregard for the proper procedures.
- This is a precedent we do not want to set.
- I can't and won't vote for this.

Law –

- I went by your home and it is very beautiful.
- I understand your desire to build a deck and the builders of your home have made it difficult.
- I do understand this from your perspective.
- I have a question for the Board members since I am new to the ZBA.
- I've heard references made to other deck requests being denied. Have other residents from *this* neighborhood come in for a deck and been denied?

Pacheco – I believe so, and the board has denied a lot of deck requests.

Law – For the same type of reasons?

Kathleen Jackson – Yes, and there was actually one other denial in this particular neighborhood.

Mills –

- My main concern is that there have been no inspections.
- At some point in time, someone else may move in there assuming that it was all built to the standards of the ordinance, but there have been no inspections.
- The beams or posts that support the deck – how deep are they? And, what type of footings were used?
- Without having an inspector to review this, we do not know.
- That is the main reason why there is an ordinance and it is necessary for permits to be pulled and inspections to be made. The structure needs to be built to the standards that have been established.

Ms. Williams – I am aware of that and as we built the deck, we documented everything. We took pictures and videos to prove that we met all of the requirements and codes. We do have proof so that shouldn't be a concern. I am willing to present this to show that it was built to code.

And, to address your concerns over previous variances, I was the only one from the sub that was denied. Each request should be considered individually, regardless of another case's decisions. Mine is different than others in the sub. My lot is unique to the sub as it was the first and many circumstances are different. The way the home is placed on the lot, the door off of the kitchen, the concrete steps. It is different in so many ways versus another case that was denied. I don't know how you could deny my request just because theirs was. It should be looked at solely and individually, and I have met all of the requirements.

I was here in 2009 for a 10' variance and I was denied. We came to the conclusion that I could build a 4' deck or a stairway down, but I did not realize that this would obstruct

the door wall below at that time. I was very nervous then and I could not respond. And a 4' deck is not functional. I can't put a table on it or a grill and it is useless. According to the Zoning Ordinance that I read online last night, one of the things that should be shown is that strict interpretation of the provisions would deprive the me of rights commonly enjoyed by others in the same zoning district. I have pictures of all of the decks throughout my sub and none are 4'. They are all enjoying much larger decks, and no one in the area would have a problem with mine. They would all like to see it. I have been through several situations since the last meeting. My biggest mistake was that I built it without permission and I do apologize.

Kathleen Jackson – I would add that when this came before the Zoning Board of Appeals in 2009 initially, it was tabled. I met with Ms. Williams to try to reduce the size of the deck and therefore the variance; however, there was no give on the part of the applicant. At that point, she came back a second time to the Board and was then denied. Staff did work with her in an attempt to reduce the size of the variance. And what has happened now is that it was built without permits. Regardless of any pictures or videos of the construction, the result is that the footings will have to be dug up. I don't want it to appear that there were no attempts by staff to work with the petitioner.

Pacheco – I do recall that we went back and forth on the matter a couple of times.

Ms. Williams – All I recall is that the I was told I could build a stairway down or a 4' deck and I was unwilling to agree with those options to build it without a variance.

Law – You mentioned that other homeowner requests in your neighborhood should not affect what we do on your case, and I agree with you. That is why I asked for the historical background on this matter. However, we are obviously required to satisfy the laws of the State and of the Township in granting a variance. I would also add that it is difficult for me because you have already built the deck. If I voted in favor now, what does that say to other residents? It sends a message that you can do whatever you want and that presents a different issue.

Ms. Williams – I don't see how that is relevant in this situation. Whether I built it illegally or not, it is irrelevant. If you read the Zoning Ordinance, that plays no factor upon the decision of this variance. I have met the five requirements and there is nothing in there that says "if she built without permission then she cannot receive a variance". To base your decision upon that would not be following the Zoning Ordinance.

Law – I am not basing my vote upon that fact. That is a side issue.

MOTION by Mills, supported by Pacheco, to deny Item A12-05, the request by Dawn Williams of Commerce MI for a variance from Article 6 of the Commerce Township Zoning Ordinance to allow the existing deck to remain that is encroaching into the required rear yard located at 4658 Darlene. Sidwell No.: 17-09-478-026 Denial is in consideration of the Finding of Fact as indicated in the Planner's Report, and is for the following reasons:

1. The need for a variance is self-created; and,
2. The house could be put to a use which conforms with the Zoning Ordinance without a variance; and,
3. The request is only 1' less than the previous, and the deck is still encroaching into the rear yard setback by 9'.

ROLL CALL VOTE:

AYES: Pacheco, Law, McKeever, Mills
NAYES: None
ABSENT: Rosman

MOTION CARRIED UNANIMOUSLY

OTHER MATTERS TO COME BEFORE THE BOARD

Mills – I have one item. When I read the analysis of this request and saw that it was to “allow the deck to remain”, I wondered why the petitioner would not want to just remove the deck instead of applying for another variance. Why did she want to come before the Board again?

Kathleen Jackson – She has a legal right to apply for a variance again. Her request was post 12 months. When she was initially issued that violation, she requested to come before the Board again. In addition, the new request is 1' different than the previous. A petitioner cannot apply for the same variance again within a 12-month period. She had not only exceeded that, but she had also changed the request by 1'.

Mills – Thank you. I was just curious as to why she would not just want to remove it.

NEXT MEETING DATE: THURSDAY, JULY 26, 2012

ADJOURNMENT

MOTION by Pacheco, supported by Law, to adjourn the meeting at 7:37pm.

MOTION CARRIED UNANIMOUSLY

Jorge Pacheco, Secretary