

**CHARTER TOWNSHIP OF COMMERCE
ZONING BOARD OF APPEALS MEETING**
Thursday, October 27, 2011
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
David Law
Bill McKeever

Also Present: Jay James, Building Inspector
Hans Rentrop, Township Attorney

Chairperson Rosman introduced the Members of the Board to those present, as well as Jay James and Hans Rentrop. 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. Chairperson Rosman added that financial considerations cannot be considered when reviewing a variance request. She also quoted the following directly from the Commerce Township Ordinance:

Variances

The ZBA shall state the grounds upon which it justifies the granting or denying of a variance, and may consider lesser variances than that requested by an applicant. In granting a variance, the ZBA may impose conditions or limitations as it may deem reasonable in furtherance of the intent and purposes of this Ordinance.

A. Dimensional Variances

The granting of a variance from a particular area, setback, frontage, height, bulk, density or other dimensional (non-use) standards of this Ordinance shall require a finding of practical difficulties, based upon the following criteria:

1. *Strict compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose.*
2. *The variance will do substantial justice to the applicant, as well as to other property owners, and a lesser variance than requested will not give*

- substantial relief to the applicant or be consistent with justice to other property owners.*
3. *The need for the variance is due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district.*
 4. *The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors.*
 5. *The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the Township, and will not create a public nuisance or materially impair public health, safety, comfort, morals or welfare.*
 6. *The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return.*

APPROVAL OF MEETING MINUTES

Chairperson Rosman explained that the minutes from the Zoning Board of Appeals Meeting of September 21, 2011 were still being reviewed and corrected by staff.

Tabling was recommended by the Township Attorney until the staff review could be completed.

Pacheco – I was not present at the September 21st meeting, however I did receive a copy by email before tonight's meeting. Is there anything in there that may be different from what was discussed by the Board members?

The consensus of the Board was that the minutes accurately reflected the discussions that took place and the opinions as previously expressed.

MOTION by McKeever, supported by Law, to table the Zoning Board of Appeals Meeting minutes of September 21, 2011 to allow staff to complete their review.

MOTION CARRIED UNANIMOUSLY

UPDATE OF ACTIVITIES

Bill McKeever – Planning Commission

- No update to provide at this time.

David Law – Township Board

- The Board has been working on the budget and we remain hopeful to have it completed in a timely manner.
- Martin Parkway and the roundabout are on schedule. A ribbon cutting ceremony will be held on Tuesday, November 1st.
- At the last meeting, funds were approved to improve and expand the Library.

PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA

None

TOWNSHIP ATTORNEY DISCUSSION WITH BOARD

Prior to removing Item A11-06 from the table, the Township Attorney held the following discussion with the Board.

Hans Rentrop – You need to offer the applicant the option of keeping the item on the table as approval of the minutes has been tabled. In addition, if they prefer to proceed, I also recommend that you open the public hearing again to receive any remaining comments by the petitioner and/or public.

Rosman – Four of us were present at the last meeting, and Pacheco was not present, but he did receive the minutes by email.

Pacheco – I did receive them by email about 20 minutes before the meeting. I was able to read through them and I understand the position of the Board. I just wondered if anyone had anything to add prior to rendering an opinion.

Rosman – I read the minutes. While they may need some editing as indicated by staff, I did not find any mistakes in the discussion. The conversations appear to have been efficiently recorded as delivered.

Law, Mills and McKeever were in agreement that the minutes accurately reflected the content of the meeting.

Rosman – (To Margaret Schiano, Attorney for the Petitioner) Would you like to proceed with the review or keep the item on the table at this time?

Margaret Schiano – I am comfortable with proceeding if the Board is comfortable.

MOTION by Mills, supported by McKeever, to remove Item A11-06 from the table.
MOTION CARRIED UNANIMOUSLY

ITEM II: A11-06 – KEN SOVEL – Tabled from 9-21-11

Kenneth Sovel of Commerce Township MI is requesting a variance from Article 33, Section 33.01 of the Commerce Township Zoning Ordinance to maintain a gazebo on the waterfront which is located in the front yard located at 3466 Moberly. Sidwell No.: 17-16-405-021

Chairperson Rosman opened the public hearing

Margaret Schiano, Attorney, Schouman & Schiano, 1060 E W Maple, Walled Lake, MI, was present on behalf of the petitioner. She explained that the petitioner was unavailable to attend the meeting this evening; however, they had requested that she read the a letter into the record for the Board's consideration, which she did.

ITEM II: A11-06 – KEN SOVEL – Tabled from 9-21-11 (continued)

Chairperson Rosman asked if there were any comments from the public.

Penny Steyer and Richard Cioffi, 3450 Moberly, Commerce Township, were present. Penny Steyer approached and addressed the Board.

Penny Steyer – I would like to reiterate for the record, and clarify some of the things that were stated last time, especially for Mr. Pacheco.

I am the neighbor located directly to the south of Mr. Sovel. The land is not unique based upon the natural occurrences of the land. The land was altered by a previous owner which disqualifies it for the granting of a variance. It is also not unique because all of the properties on this street are extremely long at 500 feet or more in length.

There has been a significant physical impact to my lot as a result of this. Whether it is specific to the structure or not; I cannot speak to that without an engineer present. I have water in my home for the first time in 26 years. The environmental changes over the past few decades are the only thing that I can attribute this to.

I understand that a dimensional variance is related to the uniqueness of the property. I ask that you consider that, and that is all.

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

There were -0- returns and -0- letters. No additional letters had been submitted since the previous meeting and public hearing were held.

Chairperson Rosman requested that Jay James provide any insight possible with regard to meetings he and Kathleen Jackson had with the petitioner.

Jay James – I can only speak to the times I was present, as Kathleen Jackson did meet with them separately on other occasions.

Mr. Sovel did come in to try to reach an amicable solution. He discussed alterations of the gazebo, making it portable by removing it from the foundation, and all other possible solutions, including moving it closer to the house. He was open in trying to find a solution, even if it meant moving it all the way to the house.

Rosman – Wouldn't they still need a variance as it is not allowed in the front yard?

Jay James – Yes, and we also discussed the possibility of connecting it to the house which would then eliminate the need for a front yard variance as the structure would be attached. But, obviously it was built to be by the water and he does not want to do that. And, attaching it to the existing residence would be the only solution to solve the need for a variance.

Rosman – Hans, do you have anything to add.

Hans Rentrop – No, not at this time.

ITEM II: A11-06 – KEN SOVEL – Tabled from 9-21-11 (continued)

Board Comments:

Mills –

- I have a couple of questions for Margaret Schiano regarding the letter from Mr. Sovel.
- When did he start the work, and when was it completed?
- When was the warning letter sent?

Margaret Schiano – I can review the file for those answers. The Township warning letter was dated 12/9/10. The Sovel letter indicates that the structure was finished in June of 2010. When he actually began construction is unknown.

Mills – So he received the warning letter six months after completion?

Pacheco – I was under the impression that he had stopped construction.

Rosman – No, the warning letter was a “Stop Work” order which is standard. The letter did arrive six months after it was actually completed.

Mills –

- I will repeat my position for Jorge.
- I have some serious concerns regarding building a structure without any permits.
- This is a serious structure. It also has electricity. I have no idea how deep the wires are or if they were installed according to code without a permit.
- These could be major concerns to the Sovel family and others.

Law –

- My concerns were outlined pretty well in the minutes, and they are basically those indicated by Clarence.
- There was a lack of permits.
- There are 3 sizeable variances requested.
- And lastly, as to the question of the hardship being self-created, I can kind of see that it is.

McKeever –

- Again, I’m on the same line of thought as the rest of the Board.
- Although I sympathize with Mr. Sovel, I cannot in good conscience put his need first and make it a burden on his neighbors. And, it does directly affect the neighbor to the south.
- This need should not infringe upon her rights to have an open view of the water, nor should it create water issues on her property.
- I stand by my previous position.

ITEM II: A11-06 – KEN SOVEL – Tabled from 9-21-11 (continued)

Pacheco –

- You mentioned the Americans with Disabilities Act, indicating that this may be involved with it. How is this affected by the Act?

Margaret Schiano – They asked only for you to consider it.

Pacheco –

- So they did not state specifically why it should be considered.
- Unfortunately, I was not at the last meeting.
- I do have concerns about the variance.
- I am very sympathetic to the petitioner.
- The thing that really bothers me is that if we granted a variance like this, it would run with the land. It would stay there forever, despite who the landowner is.
- I might think differently if a variance applied only to his case, but it does go with the land and that is how variances work.

Rosman –

- I had many concerns.
- The Ordinance does not allow accessory structures in the front yard.
- I live on the lake, along with so many others, and we don't have lakeside structures to protect us from the sun.
- I am extremely sympathetic to his medical issue, however I did walk the property and did not see any other protective measures.
- Mr. Sovel does currently own an accessory structure which is located in the back yard on the street side where it is allowable (also considered a front yard for these purposes).
- My other concern is that the gazebo is located within 25 feet of the lake and is in a flood plain. No precautions were taken in consideration of the lake, the DEQ, and environmental issues of concern.
- This is not unique and was self-created.
- I am not comfortable with any variances and will vote against it.

MOTION by Mills, supported by McKeever, to deny Item A1106, the request by Kenneth Sovel of Commerce Township for variance(s) from Article 33, Section 33.01 of the Commerce Township Zoning Ordinance to maintain a gazebo on the waterfront which is located in the front yard located at 3466 Moberly. Sidwell No.: 17-16-405-021

The variances as requested and denied are as follows: 1) to have an accessory structure in the front yard, 2) to have a structure closer than 25' from the edge of the lake, and 3) to have a structure located in the floodplain.

Denial is based upon the fact that no permits were pulled and no precautions were taken to prevent erosion or to preserve the environment against the issues that arose with building a structure so close to the lake.

More specifically, denial is based upon the following in accordance with the Commerce Township Zoning Ordinance:

ITEM II: A11-06 – KEN SOVEL – Tabled from 9-21-11 (Motion continued)

- 1) Strict compliance with the specified dimensional standards does not deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose. Practical difficulty is not found here.
- 2) The variance is not necessary to do substantial justice to the owner, or to other property owners.
- 3) The need for this variance is not due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district.
- 4) The problem and resulting need for the variance is self-created.
- 5) The variance does cause adverse impacts to adjacent properties.
- 6) There is no alleged hardship or practical difficulty that will result from failure to grant this variance.

Denial is also inclusive of consideration of the Finding of Fact as presented in the Planner's report.

MOTION CARRIED UNANIMOUSLY

OTHER MATTERS TO COME BEFORE THE BOARD

Chairperson Rosman – Kathleen Jackson will be emailing the 2012 ZBA Schedule to all Board members. Please be sure to reply promptly to her with your comments on the schedule.

NEXT MEETING DATE: January 2012 Schedule not yet approved.

ADJOURNMENT

MOTION by Mills, supported by Pacheco, to adjourn the meeting at 7:34pm.

MOTION CARRIED UNANIMOUSLY

Jorge Pacheco, Secretary