

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

Thursday, September 24, 2015

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
Bill McKeever
Absent: Rick Sovel (excused)
Also Present: Amy Neary, Planning Consultant, McKenna Assoc.

Chairperson Rosman introduced the Members of the Board to those present, as well as Amy Neary. 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. If the variance is used, it runs with the land; however, if it is not used, it expires.

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 Zoning Board of Appeals Meeting minutes of July 23, 2015, as presented.

MOTION CARRIED UNANIMOUSLY

PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA

None

UPDATE OF ACTIVITIES

Bill McKeever – Planning Commission

- A site plan was approved, located on the northwest corner of Pontiac Trail and Martin Parkway, for 299 rental apartment units.

Rick Sovel – Township Board, Library

- No report.

ITEM I: PA15-0010 – JOSEPH LEPAK – PUBLIC HEARING

Dr. Joseph Lepak of Commerce MI is requesting variances from Article 6 of the Commerce Township Zoning Ordinance to construct an egress window well that will encroach into the required side yard setback and total side yard minimum requirement located at 3480 Edgewood Park Drive. Sidwell No.: 17-12-351-080

Dr. Lepak, 3480 Edgewood Park Drive, Commerce Township, was present to address the request. He presented a letter from his neighbor to the north side. He gave a review and addressed the concerns of the Fire Department regarding 10' of clearance for access.

Chairperson Rosman opened the public hearing.

No comments.

Chairperson Rosman read the letter into the record, from Silverio and Shellie Vitello, 3468 Edgewood Park Drive, stating that they have no objections.

There were -0- returns and -1- letter.

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

Board Comments:

McKeever - I have no issues.

Pacheco - No issues.

Mills - The site was well marked and Dr. Lepak has explained where the lot line is. I have no problems with the request.

MOTION by Mills, supported by McKeever, to approve PA15-0010, the request by Dr. Joseph Lepak of Commerce MI for a variance from Article 6 of the Commerce Township Zoning Ordinance to construct an egress window well that will encroach into the required total side yard setback requirement located at 3480 Edgewood Park Drive.

Sidwell No.: 17-12-351-080

Approval of a four foot variance from the required total side yard setback. Upon ZBA consideration of the findings of fact stated in the Planner's Report and the six criteria for dimensional variances identified in the Zoning Ordinance and find that granting of the variance will result in substantial justice for the applicant, will not create any adverse impact on any adjacent property owners, 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 the neighborhood in which the property is located.

MOTION CARRIED UNANIMOUSLY

Absent: Sovel

ITEM II: PA15-0011 – CHRISTOPHER ILEY – PUBLIC HEARING

Christopher Iley of Commerce MI is requesting a variance from Article 33 of the Commerce Township Zoning Ordinance to construct a detached garage that will exceed the maximum height and number of stories located at 1376 Ladd Road.

Sidwell No.: 17-27-376-008

Christopher and Maria Iley, 1376 Ladd Road, Commerce Township, were present to address the request.

Christopher Iley - I would like to provide a little background on the property. It's an acre and a half that backs up to water. When I first bought it, there were two small summer cottages on the property. I combined the two small houses into one larger house using the existing footprint. The high water table did not allow for a basement. Even with combining the two homes, it still did not allow for a lot of storage. We have a bigger house, but we're still only at around resale value of about 25%. We are requesting permission to build a 2-story garage. The second story acting in place of a basement with the typical functionality and accessibility. Electricity and gas will be installed, but no plumbing or water.

If I could attach the garage to the house, we would not be here today. I have gone over this with my architectural team, who is here. We considered countless ways to attach the buildings without compromising value added features such as view or natural light, and without increasing the nonconformity.

Where it is positioned behind the house, it is surrounded by mature trees and out of the public view except to one neighbor. I've talked to my residential neighbor's and I have reviewed the proposal with them. They have no objections. If approved, this will make a big difference in our resale value.

Chairperson Rosman opened the public hearing.

No comments.

There were -2- returns and -0- letters.

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

Board Comments:

Rosman - How deep is the garage?

Christopher Iley - It is two cars deep, so 4 cars could fit inside it. With such a big property, we need the room for the cars, the lawn mower, and storage that would normally be in a basement. We don't want to clutter the yard with outdoor equipment. With a child, we accumulate stuff. This is a new house and we want things to look new and nice for as long as possible.

Rosman - When I was there I noticed power lines behind you. Is there any way you could move the garage further back closer to those lines, or will you bump into them?

Christopher Iley - There is an easement that has to be created by code, so we're getting as close as we can between the house and power lines. With an acre and a half, I'm not sure if we would want it on the other side of the power lines as it would be pretty far away from the house and main road.

We want it as close and functional as possible. Since using the two existing houses, the footprint, there is a very narrow gap between the property line and the houses. Part of the reason the house isn't connected is we need the ability to turnaround behind the house to avoid backing into the street.

Rosman - How far from the property line will the south side of the garage be?

Christopher Iley - 3 or 4', whatever the code is.

Mills - 3'.

Pacheco - 3'.

Rosman - 3' or 4'?

Mills, Pacheco - 3'.

Rosman - It should be 4'.

Pacheco - According to the drawings, it's 3'.

Rosman - It has to be a minimum of 4', am I right, Amy?

Amy Neary - For the side? I believe accessory structures can be setback 3'.

Christopher Iley - Whatever is required, it won't be any problem.

Pacheco - I had the same questions. I think he would require a variance if he keeps it at 3'. If he moves the garage 4' from the property line, then he wouldn't need it.

Rosman - He needs it for the height.

Pacheco - The variance for the height would be the only one he would need. It just seems awful high for the area, but there's nothing around there. Can it be moved farther back?

Rosman - That was my question with regard to the power lines. He will bump right into them.

Mill - My main concern is not the height of the garage. It's with the proximity to the wires. If you're on the roof working, from a safety perspective, the height is too close to the wires. I don't know why it can't be moved 4' to the east, beyond the wires. Obviously it's a longer driveway, but it would be away from the potential hazard of the wires.

McKeever - Have you looked into putting dormers on at roof height of the garage and still meeting requirements?

Christopher Iley - I do have plans for a smaller garage, but it doesn't give the same access and space.

McKeever - The garage footprint is twice the size of a standard garage as proposed. You're getting a full 2.5 car garage worth of storage just in the depth of the building. I don't see where I can justify voting in favor of a variance for the height based upon the size of this. I think you could lower the height of the roof and use dormers, and still achieve usable space above the garage space.

Discussion ensued regarding the ordinance requirements for height which specify 14' to the midpoint. The applicant presented his 3 proposals for garages and reviewed options with the Board. One was the proposal, one was single story, and the additional was more of what was suggested by the Board. Lengthy discussions continued regarding alternatives available to the applicant for constructing a garage that would be in compliance with the ordinance and eliminating the need for a variance. As presented, the plans showed the top of the ridge height at 18', with the midpoint estimated at 14'. It was determined that the applicant could alter the plans and conform with the ordinance and he would need to work with the Building Department to ensure that the height and setback are both actually in compliance.

MOTION by Pacheco, supported by Mills, to deny Item PA15-0011, the request by Christopher Iley of Commerce MI for a variance from Article 33 of the Commerce Township Zoning Ordinance to construct a detached garage that will exceed the maximum height and number of stories located at 1376 Ladd Road.

Sidwell No.: 17-27-376-008

The denial of the request is based upon ZBA consideration of the findings of fact stated in the Planner's Report and the six criteria for dimensional variances identified in the Zoning Ordinance and find that the requested variance is self-created and there is an alternative available to the petitioner that will conform to the requirements of the zoning ordinance.

MOTION CARRIED UNANIMOUSLY

ITEM III: PA15-0012 – GARY ROSTECK – PUBLIC HEARING

Gary Rosteck of Commerce MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to construct a new single family home that will encroach into the required front yard setback located at 9295 Tan Bay.

Sidwell No.: 17-11-456-017

Gary and Debra Rosteck, 8470 Pine Cove, Commerce Township, were present to address the request, along with their daughter. Gary Rosteck provided an explanation of the proposal. They believe the lot has unique characteristics, such as mature trees and lakefront property with a view. They are trying to maximize the view and save trees by navigating the driveway around the yard accordingly. There is also the septic and grinder station that they are attempting to work around.

Gary Rosteck presented a letter from his adjoining neighbor, and a petition signed by his surrounding neighbors in favor of his proposal. He noted that two people were not actually residents of the subdivision; however, John Levinson and Peter Pace are on the lake board.

Gary Rosteck cited the McKenna review letter and clarified that the footprint on the first floor is 2,400 square feet and the remaining space is the patio. He added that they would not be in favor of reducing the size of the 3-car garage and he explained his reasoning as to why he feels this size is necessary.

Debra Rosteck stated that she had visited neighboring homes in an attempt to measure the distances from the garage to the road, the house to the road, because she was told that the Township takes the average footage and so many feet to determine the variance. Although she couldn't recall the formula, there were some homes that were really far from the road at the curve and their lots were pie shaped, but then there were at least 50% that were closer to the road than what is being requested.

Rosman - I'm not sure who told you that because I'm not familiar with it, but it could be more relevant on the lakeside than the roadside.

Debra Rosteck introduced her daughter who also wanted to speak. She added that she wants to save her tree that's right by the lake because it's her favorite tree and it has her swing on it.

Chairperson Rosman opened the public hearing.

Lauren Simpson, 3131 Mapledale, Commerce Township - I'm Vice President of the Beach Association for 393 homes. In the last 10 days, I've talked to about 30 people regarding this subject. Nobody has a problem with it. I commend the Rosteck's for designing it so that they do not have to back out into the road because this is in between two roads and although the speed limit is supposed to be 25, it's not that way and it's very dangerous. I'm in favor of this.

Rosman - Thank you very much for coming tonight.

There were -3- returns, -1- letter, and the 5-page petition submitted by the applicant which included 28 signatures from Maple Pointe Beach Association who had no objections to the proposal.

Chairperson Rosman read the letter into the record from Timothy Smith, 9287 Tan Bay, Commerce Township, along with the paragraph on the Petition in Support of Variance Request.

Chairperson Rosman closed the public hearing.

Board Comments:

Pacheco - I have a problem with this being too close to the road. Could it be moved back? I know she likes the tree, and I like it too, but to me there seems to be room enough to work around it.

Mills - I'm not sure which of the trees you're planning to preserve. I do compliment you on how everything was staked out; however, the trees to be preserved were unclear. However, when I looked from the street to the corner, in looking at the variance of 12', then I went to the lakeside to where the big tree is located close to the lake, if that is the one you're talking about, there's still quite a bit of distance between the house and that tree.

Gary Rosteck - We cut back the patio to get far away from that one big tree. But, the Smith's letter refers to this cedar in the corner. The root system would be encroached upon. It's on the property line and it's a mature white cedar. This and the maple would have to be eliminated.

Rosman - Is the other tree your neighbor's?

Gary Rosteck - It's right on the line, like 3/4 on ours.

McKeever - I'm in agreement with Jorge. If it can be made compliant with the ordinance, they have no choice but to make it compliant. I appreciate the love of trees, but this is the same situation we just reviewed.

Rosman - We are required to give the least amount of variance necessary in order for you to enjoy your property. Our point-of-view is, "Can this be compliant with the Zoning Ordinance?" It has been determined that by moving the house, that it can comply with the Zoning Ordinance. What you've run into is that, once upon a time, this was what was called an area of special concern. When Commerce was platted years ago, and subdivision were platted, there were varying sized lots. Since then, the Zoning Ordinance has been reworked and the area of special concern has been eliminated with the setbacks. This property is large enough to accommodate your house if you move it. I do understand wanting to preserve the trees, but sometimes they have to be removed.

Gary Rosteck - This decision impacts the neighbors too. I'm trying to be conscious and aware of them and take that seriously into consideration. I appreciate the need to stay in compliance, but if we move the house further, it gets into the grinder station too.

Debra Rosteck - It would still set us forward ahead of our neighbors, closer to the lake where we will be blocking some of their view.

Chairperson Rosman discussed the averaging formula with Amy Neary in regard to adjacent properties. Amy explained her understanding that when the Township evaluates next to a park like this, they take the minimum required which she believes is 35 and in no case is more than 50 required. Discussions continued with regarding to the adjacent park and neighboring residential parcel, the dimensions and requirements based upon the averages. Gary Rosteck noted that the lot was purchased in 2008 and he was notified that the area of special concern was dropped in 2010.

Chairperson Rosman reviewed the 6 criteria to be considered by the ZBA when deciding upon a dimensional variance.

Rosman - I understand that this came as a surprise, but the need for a variance here is self-created. It is our job to determine if the petitioner has an alternative that does adhere to the Zoning Ordinance.

Mills - Is there any way that you can compromise and move the house to some degree to require a lesser variance?

Gary Rosteck - I think that because of the size of the 3-car garage, if I was to cut it back and lose space, with how the house is positioned to be oriented to the cove and bay, I might be at 9'.

Debra Rosteck - I'm so sorry but I have to leave to care for my 92-old father.

Rosman - I understand. Good night.

Debra Rosteck - Thank you.

Mills - When you say 9', are you saying you could move the house 9' toward the water?

Gary Rosteck - I was trying to reduce the request from 12' to 9'.

Open discussions ensued regarding preservation of trees, construction and damage it can cause to the root systems, the subdivision preferences to save trees, and potential for relocating the home on the lot. The trees, grinder pump and sewer line were addressed. Chairperson Rosman explained that moving those items may be necessary in order to accommodate the proposal.

Pacheco - We can also suggest that you don't need to have a 3-car garage.

Rosman - That's right, and that is also part of our restraint.

Amy Neary - I want to clarify the waterfront setback. Right now, the footprint, including the deck, is setback 58' to 55'. At the most, we could require 50'. Therefore, the home could be relocated 5'-8' closer to the water and bring the front yard setback closer into compliance with the ordinance. Also, the building footprint could be modified. There is an area between the garage and the home that could possibly be eliminated to bring the home closer into compliance with the setback as well.

Gary Rosteck - That is the stairway to the bonus room above the garage.

Mills - You may want to work to compromise on this. You need to consider moving the house a little bit toward the water and reduce the size of the garage to be in compliance with the front yard setback.

Extensive discussion continued regarding the potential for compromise, storage space, the possibility of reducing the garage to a 2-car size, and moving the house closer to the lake.

Gary Rosteck - I would consider reducing the request to a 7' variance on the front yard setback.

Discussions ensued clarifying his request which was initially for 12', and he stated he would be willing to reduce the request to 7' instead, as he would move the house 5' closer to the lake. Chairperson Rosman noted that this is new construction and it can be fit on the lot in accordance with the Zoning Ordinance.

Chairperson Rosman explained the voting process and that personal thoughts of the Board members cannot be applied. Gary Rosteck requested to have the Board vote on his revised variance request for 7'. He added that if he is denied, then he will have to make adjustments to conform to the ordinance. Amy Neary clarified that after he makes adjustments, if he finds that he still needs a variance, he can't come back to re-apply for another variance for a year after this request is denied. Gary Rosteck stated that he understood.

MOTION by Mills, supported by Pacheco, to deny Item PA15-0012, the request by Gary Rosteck of Commerce MI for a 7' variance from Article 6 of the Commerce Township Zoning Ordinance to construct a new single family home that will encroach into the required front yard setback located at 9295 Tan Bay. Sidwell No.: 17-11-456-017

The denial of the request is based upon ZBA consideration of the findings of fact stated in the Planner's Report and the six criteria for dimensional variances identified in the Zoning Ordinance and find that the requested variance is self-created and there will not be an unnecessary burden upon the applicant as a result of the variance being denied because a home with garage can be built on the lot in compliance with zoning ordinance requirements

MOTION CARRIED UNANIMOUSLY

OTHER MATTERS TO COME BEFORE THE BOARD

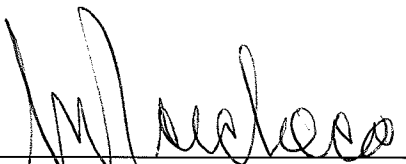
None

NEXT REGULAR MEETING DATE: THURSDAY, NOVEMBER 19, 2015

ADJOURNMENT

MOTION by Mills, supported by Pacheco, to adjourn the meeting at 8:16pm.

MOTION CARRIED UNANIMOUSLY



Jorge Pacheco, Secretary