

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

Thursday, October 28, 2010

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

Bill McKeever

Clarence Mills

Rick Sovel (arrived 7:38pm)

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 Pacheco, supported by Mills, to approve the Zoning Board of Appeals Special Meeting minutes of July 22, 2010, as written.

MOTION CARRIED UNANIMOUSLY

UPDATE OF ACTIVITIES (see continuation after Item III, Sovel)

Bill McKeever – Planning Commission

- The most notable item was Trilogy Health Care System. They came before the Planning Commission to secure a recommendation for phasing of their project.

Chairperson Rosman – Library

- We have a new librarian, and the library is doing great. They have nearly everything, and if they don't have what you are looking for, it can be ordered through their system. They will notify you by email when it arrives.

PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA

None

Zoning Board of Appeals

ITEM I: A10-06 – CHRIS FRY – PUBLIC HEARING

Chris Fry of Commerce MI is requesting a variance from Article 33 of the Commerce Township Zoning Ordinance to construct a non-obscuring fence that will encroach into the required front yard setback located at 4307 Creedmore. Sidwell No.: 17-10-451-006

Chairperson Rosman opened the public hearing.

The petitioner, Chris Fry, was present and spoke to the variance. Mrs. Fry was also present to speak.

Chris Fry – Thank you for allowing us to present our request to the board this evening. We live on Commerce Lake and would like to build a fence located two feet from the sea wall.

As you can see, we have a very small backyard. If we build the fence 25' away, we will have virtually no room due to the size of the yard.

We provided pictures and maps for your review.

(The Board received the submissions and had reviewed them. Chris Fry gave an overview of the documents.)

Our neighbors have larger backyards, allowing them more usable space to enable a fence to be located 25' from the shoreline; however our yard is narrow and as the home was built closer to the shoreline.

Mrs. Fry – We did not build the home. It was constructed by a builder and we had no involvement in the decisions.

Chris Fry – We did speak with almost all of the neighbors, especially the ones who share the shoreline with us. They are in agreement that this fence would have no adverse effects.

In fact, Jack and Susan Holden were almost insistent that we put up a fence because of their German Shepard – he could be dangerous around children.

This fence would not just serve as a barricade, but it is necessary for the safety of our family. We are trying to prevent the kids from the danger/adverse effects of the water.

Mrs. Fry – We are always outside with our children, but as responsible parents we would like to do anything we can for additional protection. They are in swim classes, and this would be yet another tool. It certainly would not be a crutch.

Chris Fry – There have already been two separate incidents where neighbor's dogs came at our Golden Retriever, and we want to prevent them from coming after our children. Although the neighboring dogs have not yet shown a tendency to attack children, there is the potential for danger.

Both Mr. and Mrs. Fry gave further detailed reviews of the pictures provided to the Board.

Zoning Board of Appeals

ITEM I: A10-06 – CHRIS FRY – PUBLIC HEARING (continued)

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

There were -3- returns and -1- letter.

Chairperson Rosman read the letter, from Robert Brown and Kathleen Burke-Brown, 4267 Creedmore, Commerce Township, MI, dated October 24, 2010, in which the Browns did not oppose the fence. Also included for the record was a letter of support signed by the following neighboring residents:

Sue & Jack Holden, 4293 Creedmore; Thomas Sullivan, 4283 Creedmore; Talal Hindo, 4339 Creedmore; Karen & Jeff Redwood, 4331 Creedmore; (Manosky), 590 Creedmore; Marcia Pfaff, 400 Creedmore; Diane Anderson, 324 Creedmore; Heidi (Love), 310 Creedmore; Kim Wheeler, 4282 Creedmore; Jennifer Kreutzer, 4315 Creedmore, including "note: correct the property line".

Board Comments:

McKeever –

- I understand why you want the fence and personally, I don't have an issue with it.
- However, the criteria that must be met is pretty specific, and I cannot see where you meet the three requirements according to the Zoning Ordinance. (Chairperson Rosman reviewed the requirements.)
- Although you may feel it meets these, I am expressing my interpretation.
- The lake did not crop up over night. It was there when you purchased the home.
- The house was laid out the way it exists and you can actually create an area to contain (children and pets).

Rosman –

- I can relate as I live on a lake. I moved there before having children and now have grandchildren too.
- I know that the staff spent quite a bit of time reviewing this portion of the Zoning Ordinance, and the current Ordinance does not allow fences in the front yard.
- The Ordinance was reviewed for more than two years and the public was provided the opportunity to comment.
- I do not see this as a hardship.
- Fencing around the deck with a gate could be done.

Mills –

- I only had one question as I did not understand if the fence was going to the waterline. That has been answered.

Pacheco –

- I feel very much the same as Rosman and McKeever.
- It may be a possibility that you can use something around the property within the porch area to prevent kids from going near the lake.
- To McKeever – In relation to the Finding of Fact statement, is there an amendment in process that would affect this, or does it only affect sideyards?

Zoning Board of Appeals

ITEM I: A10-06 – CHRIS FRY – PUBLIC HEARING (continued)

McKeever –

- That affects the side yards.

Pacheco –

- I also discussed this with several people and their thoughts were that if we approved the request, it would be difficult to reject similar requests in the future for lakeside fencing.
- As McKeever said, the wording of the requirements does not permit us authority to grant this variance.

MOTION by McKeever, supported by Pacheco, to deny Item A10-06, the request by Chris Fry of Commerce MI for a variance from Article 33 of the Commerce Township Zoning Ordinance to construct a non-obscuring fence that will encroach into the required front yard setback located at 4307 Creedmore. Sidwell No.: 17-10-451-006. The request is denied, with regret, on the basis of the fact that it does not meet the criteria for receiving a variance. **MOTION CARRIED UNANIMOUSLY**

ITEM II: A10-07 – CAMELOT HOMES, KATHLEEN MOORE – PUBLIC HEARING

Camelot Homes Inc., representing Kathleen Moore 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 rear yard setback located at 3530 Newton Road. Sidwell No.: 17-14-100-005

Chairperson Rosman opened the public hearing.

Berardo Capicchioni, Camelot Homes, 4597 Pontiac Trail, Orchard Lake, MI, was present along with Kathleen Moore to speak to the variance request.

Berardo Capicchioni – There was a house fire on this site and the insurance company is willing to rebuild the home. Kathleen Moore wants to keep the home where it was originally located on the site. The property has been in the family a long time, nearly 100 years. The home was located near the corner of the lot which is the family gathering spot where all the relatives stay during the summer months.

Ms. Moore helped me to design the new home and she does want a garage added. We considered putting the garage on the other side of the home, but encountered practical difficulty with a blind spot that would be evident on Newton Road. That location would be an accident waiting to happen as there is a lot of traffic and the neighbor's driveway and bushes obstruct the view. However, relocating the garage and drive 100 feet over off Tollhurst eliminates the blind spot, avoids the danger and improves safety, especially in snow and ice.

She first wanted a 2-car garage, but we cut it back to 1.5. With a 1-car garage, the door vehicle doors may not fully open, but they do with the 1.5 to assist her with accessibility. According to the plotted footprint, and in consideration of the new percolation test, there

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**ITEM II: A10-07 – CAMELOT HOMES, KATHLEEN MOORE – PUBLIC HEARING
(continued)**

was only one practical spot for the conventional septic field. If we relocated that, we may contaminate the wells.

By coincidence and fortune, this location for the garage works out perfectly with the Fire Department recommendations and the septic placement.

Kathleen Moore – This is my family's home. It has been used as a cottage, but I am looking to move there permanently in the future.

Berardo Capicchioni – And it is all handicap accessible.

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

There were -4- returns and -0- letters.

Board Comments:

Pacheco –

- I don't really have problem with the request.
- The only thing I need defined is where, or what, is the variance from? It is 7.1' from the rear... on the left side of the drawing?

McKeever – Yes, to the west. 35' is the requirement and it is just under 28'.

Pacheco – Ok, I see it now. I have no problem with the 7.1'.

Rosman – No problems.

McKeever – No issues.

MOTION by Mills, supported by Pacheco, to approve Item A10-07, the request by Camelot Homes Inc., representing Kathleen Moore of Commerce MI, for a variance from Article 6 of the Commerce Township Zoning Ordinance to construct a new single family home that will encroach into the required rear yard setback located at 3530 Newton Road. Sidwell No.: 17-14-100-005

Approval is for a 7.1' rear yard variance, to west side of the property. 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

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ITEM III: A10-08 – WESLEY FOG – PUBLIC HEARING

Wesley Fog of Commerce MI is requesting a variance from Article 33 & 6 of the Commerce Township Ordinance to construct a detached garage in a front yard and that will also encroach into both of the required front yard setbacks on Ottingshire and Steadfield. Sidwell No.: 17-02-154-013

Chairperson Rosman opened the public hearing. She reassured the petitioner that the Board members had all physically visited the site, and complimented him on a great job of staking out the property.

Wesley Fog was present along with his spouse, Mrs. Fog, and his father, Mr. Fog, to speak to the variance.

Wesley Fog explained how he located the markings from a previous surveyor that had been in the ground since 1972. He then proceeded to present a PowerPoint and reviewed the request.

Wesley Fog –As you can see on the PowerPoint, the road takes a turn here which is shown in yellow. And, as you know, the setback doesn't exist. I drew in the road that does not exist for reference.

I wrote a letter to the county and they confirmed that it is a private road; however, no one knows who has rights to it.

Rick Sovel arrived at 7:38pm after attending another Township meeting.

Rosman – But the road has not been abandoned.

Wesley Fog – Yes, I understand that.

Mr. Fog continued to review and describe in detail each of the distances from the lot lines, as they were staked, defining where the proposed garage would be constructed.

Wesley Fog – I do understand the easement and the rules for the front to the real street. The house across from mine has their garage at 10' from the lot line, so that is why I asked for 10' to keep it consistent.

Rosman – How high is the building?

Wesley Fog – It meets the code. My goal was to go along these lines, and I was unsure what I would actually build. Primarily, I wanted to define the *area* in which I could build. The overall drawing is centered and is aesthetically correct.

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

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

Zoning Board of Appeals

ITEM III: A10-08 – WESLEY FOG – PUBLIC HEARING (continued)

Board Comments:

McKeever –

- Given the area of the site and the facts, I couldn't ever imagine that there would be any issues with the request.
- Although the easement has not been abandoned, I don't foresee a problem.

Mills

- I think the front of garage should be in line with front of house as opposed to sticking out past it. That was my initial thought.
- Also, I had one question. There was a stake labeled as 18' – what did that refer to?

Wesley Fog explained that stakes were there to represent the lot line. The asphalt road stops, then there is 6' of grassy area before the lot line begins. I also painted an orange line.

Mills – So where that stake was would be facing the back side of the garage?

Wesley Fog – No, the front. The door is on Steadfield.

Pacheco – I am also in agreement with Mills – the garage would be better if it was in line with the house. If it is in accordance with that, I have no problem.

Wesley Fog – Ok. And again, I was really looking for the definition of the buildable area. I wasn't really ready to define the dimensions just yet, so it may not even go that deep.

McKeever – If you shorten it by 8', it would not be pushing into the area that dips down.

Sovel – You do understand that if approved, this is the maximum size the garage can be? You can make it smaller, but not larger...

McKeever – Yes, it cannot exceed this size.

Wesley Fog – Yes, I do understand and I will comply.

MOTION by Pacheco, supported by McKeever, to approve, with one provision, Item A10-08, the request by Wesley Fog of Commerce MI for variances from Article 33 & 6 of the Commerce Township Ordinance to construct a detached garage in a front yard and that will also encroach into both of the required front yard setbacks on Ottingshire and Steadfield. Sidwell No.: 17-02-154-013

A 15' front yard variance is granted, from both streets from Article 33.01, General Provisions, Accessory Structures. Approval of these variances is subject to relocation of the structure so that the front of the garage is in line with the front of the house.

Zoning Board of Appeals

ITEM III: A10-08 – WESLEY FOG – PUBLIC HEARING (Motion continued)

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

UPDATE OF ACTIVITIES (continued from Page 1)

Rick Sovel – Township Board & Library

On Tuesday, we passed the budget for 2011.

- Approved the Operating Millage of 1.14 mills which has remained unchanged for over 30 years.
- In August, voters approved the Special Assessment District (SAD) for Police & Fire. Voters ruled that the Police assessment not exceed 2.7 mills, and we assessed at 1.143, so it is at less than half. This supplement will bring back two deputies on 1/1/2011.
- On the Fire assessment, we were authorized to levy 2.0 mills, and have actually authorized .8, which brings back the Firemen that were laid off last year. The Fire Marshall has also made arrangements for coverage at the northwest area station.
- Lastly, a Township wide policy was passed and made effective immediately. Pets will no longer be allowed in Township buildings, including Township Hall, the Library, and Richardson Center. This is for liability and health related reasons. Pets are still allowed on the Township grounds, just not inside of the buildings.

ITEM IV: ELECTION OF OFFICERS FOR 2011

MOTION by Sovel, supported by McKeever, to elect Rusty Rosman as Chairperson of the Zoning Board of Appeals for 2011. **MOTION CARRIED UNANIMOUSLY**

MOTION by Sovel, supported by Rosman, to elect Jorge Pacheco as Secretary of the Zoning Board of Appeals for 2011. **MOTION CARRIED UNANIMOUSLY**

ITEM V: 2011 ZONING BOARD OF APPEALS MEETING SCHEDULE

MOTION by Mills, supported by Rosman, to accept the 2011 Zoning Board of Appeals Meeting Schedule as presented. **MOTION CARRIED UNANIMOUSLY**

OTHER MATTERS TO COME BEFORE THE BOARD

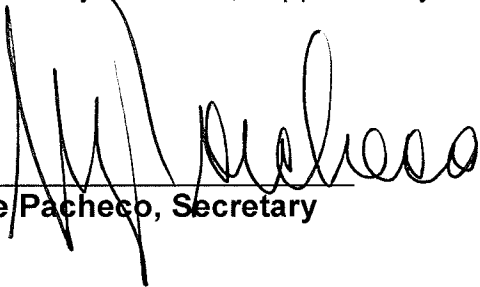
None

NEXT MEETING DATE: THURSDAY, January 27, 2011.

ADJOURNMENT

MOTION by Pacheco, supported by Mills, to adjourn the meeting at 7:59 pm.

MOTION CARRIED UNANIMOUSLY

A handwritten signature in black ink, appearing to read 'Jorge Pacheco', written over a horizontal line.

Jorge Pacheco, Secretary