

Springfield Township  
Zoning Board of Appeals Meeting  
Minutes of July 16, 2008

**Call to Order:** Chairperson Wendt called the July 16, 2008 Regular Meeting of the Springfield Township Zoning Board of Appeals to order at 8:00 p.m. at the Springfield Township Civic Center, 12000 Davisburg Rd., Davisburg, MI 48350.

**Attendance:**

**Board Members Present**

Skip Wendt  
Bill Whitley  
Jim Carlton  
Dennis Vallad

**Board Members Absent**

Dean Baker

**Staff Present**

Collin Walls

**Approval of Agenda:**

- **Board Member Whitley moved to approve the agenda as presented. Board Member Vallad supported the motion. Vote on the motion: Yes: Carlton, Vallad, Wendt, Whitley; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

**Approval of Minutes:** May 21, 2008

- **Board Member Carlton moved to postpone approval of the May 21, 2008 minutes until received by the Board. Board Member Whitley supported the motion. Vote on the motion: Yes: Carlton, Vallad, Wendt, Whitley; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

**Old Business:** None

**New Business:**

1. Matt Woodworth, 11850 Big Lake Road, Davisburg. P.I. # 07-28-151-037
  - a) Ordinance Interpretation: Determine that a ten (10) by twelve (12) foot shed located sixteen (16) feet from the shoreline is a boathouse and therefore exempt from the ordinary high water mark setback requirements set forth in Section 16.17 of Zoning Ordinance 26.

b) Variance Requests

- (i) If the interpretation by the ZBA is that a shed located sixteen (16) feet from the shoreline is not exempt as a boathouse, then grant a sixteen (16) foot setback from the ordinary high water mark, rather than the minimum fifty (50) foot setback required per Section 16.17 of Zoning Ordinance 26.
- (ii) Grant an eight (8) foot front setback from the edge of the road right of way, rather than the minimum fifty (50) feet required per Section 25 of Springfield Township Zoning Ordinance 26.

The property that is subject of the requests is located at 11850 Big Lake Road, P.I. #07-28-151-037.

Chairperson Wendt asked Supervisor Walls if any additional information is available regarding this request. Supervisor Walls responded no additional information has been received from the applicant and no letters from neighbors have been received.

Supervisor Walls stated he feels the biggest issue for this case is dealing with the definition of a boathouse because the zoning ordinance does not contain one. Based on what the Board decides regarding the definition of a boathouse will determine whether or not the first variance is necessary.

Chairperson Wendt stated his definition of a boathouse is a facility that should contain or cover a boat. He feels if this definition is applied to the building in question, it does not fit.

Board Member Whitley stated a boathouse can either have a boat floated into it or by use of a marine railway. The structure in question has neither of these attributes. He also stated he has never seen a boathouse that sits behind a rock wall at the water's edge and does not feel the structure in question fits the definition of a boathouse.

Board Member Carlton agreed. He looked up the definition of boathouse which states "building or shed usually built over water for sheltering a boat or boats." He thinks the definition is self descriptive and does not think the building in question is used for that purpose.

Board Member Vallad agreed that there should be some way to get the boat into the structure from the water.

Sarah Woodworth, 11850 Big Lake Road, stated the structure in question is used to store kayaks. She stated the structure is under the footage amount needed that required a building permit.

Chairperson Wendt stated what the Board is faced with is whether or not the building in question meets the definition of a boathouse, not a special utility building that would take care of a specific type of boat.

Supervisor Walls clarified that if the building meets the definition of a boathouse, then it is exempt from one of the setback requirements. The next step is if the building does not meet the definition, then a variance is needed from the setback requirement.

- **Board Member Whitley moved that the Zoning Board of Appeals determines that the structure in question does not meet the definition and the Board finds that in order to be defined as a boathouse, a structure needs to be a building that is accessible for a boat to enter by water or use of marine railway; this structure provides neither of those attributes. Board Member Vallad supported the motion. Vote on the motion: Yes: Carlton, Vallad, Wendt, Whitley; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

Chairperson Wendt stated he took his boat out on Big Lake today and observed three buildings in Bridgewater Bay that are similar to the structure in question. There are two on Longpointe Drive, one on Wertz Road, and one contiguous to the Woodworth's property. He stated these structures do not necessarily fall into pre-existing non-conforming conditions definitions because the Bridgewater Bay area is relatively new. The properties that have similar structures on Longpointe Drive have been built within the last five years. The structure on the property contiguous to the Woodworth's was built within the last six to eight years.

Chairperson Wendt stated that any of the structures on other properties appear to be much different in size relative to the building the Woodworth's have built. He feels the buildings have a specific use in that they store marine hardware (i.e. kayak, life jackets, etc.).

Sarah and Matt Woodworth provided pictures to the Board for their review. The pictures were taken from the water. Mr. Woodworth stated the pictures are of the property that abuts theirs and the property next to that, both of which have similar structures.

Board Member Whitley asked where the road right of way is relative to the building. He stated the notes from Supervisor Walls indicate 5 ½ - 6 feet but the variance request indicates eight feet.

Mr. Woodworth responded he does not know where the right of way is but the width of the existing roadway that is used on a daily basis changes when the road is graded.

Board Member Whitley asked if there is a dedicated County right of way or is it by user. Supervisor Walls responded that area of Big Lake varies, sometimes it is by user and sometimes there is a dedicated width. He stated the survey indicates a dedicated width but is clearly not the typical sixty-foot; it is his recollection that where there is a dedicated width, it is sixteen feet.

Board Member Whitley stated one of things this leads to is defining what the setback from the road can be if the right of way is unknown.

Chairperson Wendt stated the location from the lake to the front of the building can be established. The setback from the road is five to eight feet.

Board Member Whitley suggested using a distance from the high watermark which will avoid trying to define the building from a road boundary that is unknown or does not exist and that the lake level is a legally established level. Chairperson Wendt stated the lake level was established by the courts.

- **Board Member Whitley moved that the requested variance of sixteen feet rather than fifty feet from the high water mark of Big Lake be approved and for the building not to exceed twelve feet in depth perpendicular to Big Lake. The reason for defining the setback from the lake side only is because there is not clear definition of the road right of way and there is no way to define the variance from the road right of way. Further, special conditions leading to the granting of this variance is that the road divides the property and the available land between the roadway and the lake is very narrow. Also, the structure is consistent with other storage structures in the area. Board Member Vallad supported the motion. Vote on the motion: Yes: Carlton, Vallad, Wendt, Whitley; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

2. T.B. Holdings, LLC (Teresa Boyd), 10063 Dixie Hwy, Clarkston for variances needed for an outside deck already constructed at 10063 Dixie Hwy.,(P.I. # 07-10-279-001) as follows:
  - a) To allow a structure already constructed without a permit, as required by Section 18.03.4, or without site plan review and approval, as required by Section 18.07.1(b), of Zoning Ordinance 26.
  - b) To allow a zero (0) foot front setback at Graham Rd. rather than the minimum fifty (50) foot front setback required by Section 25 of Zoning Ordinance 26; and to expand or extend the nonconforming front setback at Graham Rd., contrary to Section 16.01 of Zoning Ordinance 26.
  - c) To allow, in a Local Business District, a use that does not take place within a fully enclosed building, as required by Section 9.05 of Zoning Ordinance 26.
  - d) To allow front yard and open space to be reduced to less than required by Section 3.03.3 of Zoning Ordinance 26.

Teresa Boyd and Attorney Larry Dressell were present in regards to this request.

Chairperson Wendt stated the application lacks information and continuity. He does not know how to react to a piece of property that is totally non-conforming and being asked to create further non-conformity.

Larry Dressell stated he did not prepare the application and agrees it is not as inclusive as it should be. He stated the intent was to construct a patio for outside dining. Mr. Dressell stated the structure was not meant to be a permanent structure. He stated a deck was constructed outside and once Ms. Boyd was notified not to put a deck out there, she stopped using it. He stated a deck is moveable, replaceable structure.

Chairperson Wendt stating he personally does not feel there is any justification to hear this case tonight.

Supervisor Walls stated for the record that a letter has been received from Clarence and Deborah Head, 10203 Graham Rd., Clarkston, indicating objection to the variances at least until the permit and site plan processes are followed. **[A copy of the letter is on file at the Office of the Clerk, Springfield Township].**

Supervisor Walls stated the application was incomplete but was received close to the deadline and there was not time to address application deficiencies with the applicant. He does not feel he has the right or authority administratively to return an application once it has been submitted.

Supervisor Walls suggested the Board may find assistance with these request in Section 16.01 of the Zoning Ordinance which states in part “it is further the intent of the ordinance that non-conformities shall not be enlarged upon, expanded or extended, not be used for adding other structures or uses prohibited elsewhere in the same district”. He stated in a C-1 Zoning District any use outside a fully enclosed structure is not allowed.

Supervisor Walls stated he talked to Ms. Boyd several weeks ago regarding the deck and proposed use and she mentioned one other business within Township, which is the Frosty Boy. He stated by ordinance definition, the Frosty Boy is classified as a different kind of business. He did go back and check the Frosty Boy site plan which included the patio and outside seating and because the restaurant is considered a carry-out restaurant, there is an exception to the no-outside use rule on the zoning ordinance.

Supervisor Walls stated one of the questions to be resolved is whether or not the variance is the minimum necessary for reasonable use of the land. The application indicates it is, but there is no support for that statement. He stated the building has been previously used for many years as a restaurant without outdoor dining and unless the applicant has other information to provide to the Board, he does not see that outdoor dining is necessary for reasonable use of the property. He stated it is difficult to address whether or not denying the variances would deprive the application of rights commonly enjoyed by others because it is the only facility in the Township defined as a sit down restaurant.

Supervisor Walls stated the property is non-conforming in lot size, parking, parking spaces, greenbelt, landscaping and setbacks. He noted the property was this way when the applicant acquired it and it is an unusual site as it has front setbacks on three sides.

Teresa Boyd, 10063 Dixie Hwy., stated she feels the outdoor dining is necessary because the restaurant is a non smoking facility and she has customers who are smokers and has had many requests for outside dining. She stated the deck that was built was temporary and was used for a Cinco de Mayo celebration, which she got permission from the Liquor Control Commission to do.

Ms. Boyd stated she called the Township and was told there was no ordinance addressing outside dining. Chairperson Wendt asked Ms. Boyd who at the Township gave her that information. Ms. Boyd responded she did not know who she talked to. She stated that she was a property owner and should be able to do what she wanted.

Chairperson Wendt asked Ms. Boyd if she was aware that Springfield Township is a zoned community and that buildings and other practices are controlled zoning ordinances. Ms. Boyd responded she did not know that.

Board Member Carlton stated other restaurants occupied that facility without outdoor dining and asked Ms. Boyd why she needs outdoor dining. Ms. Boyd stated previous restaurants had smoking indoors and she does not. She also does not feel she should make her non-smoking customers walk through second hand smoke.

Ms. Boyd acknowledged she did not obtain a building permit and that should have been taken care of by the individuals that constructed the deck.

Board Member Carlton stated he does not feel special circumstances exist on this property and the variance requests are not in harmony with the Master Plan, nor is it the minimum variance required.

- **Board Member Whitley moved that the request for variance be denied for the following reasons:**
- **The condition of the subject deck has been caused by the owner.**
  - **Structure was built without a permit as required by Section 18.03.4, and without site plan review and approval, as required by Section 18.07.1(b), of Zoning Ordinance 26.**
  - **Based on visual observation, the structure is a permanent structure.**
  - **Increases non-conformity of a pre-existing non-conforming property and specifically would result in a zero (0) foot front setback at Graham Rd. rather than the minimum fifty (50) foot front setback required by Section 25 of Zoning Ordinance 26; and would expand the existing nonconforming front setback at Graham Rd., contrary to Section 16.01 of Zoning Ordinance 26.**

- It would allow, in a Local Business District, a use that does not take place within a fully enclosed building, as required by Section 9.05 of Zoning Ordinance 26.
- Result in front yard and open space to be reduced to less than that required by Section 3.03.3 of Zoning Ordinance 26.

**Board Member Carlton supported the motion. Vote on the motion. Yes: Carlton, Vallad, Wendt, Whitley; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

**Adjournment:**

- **Board Member Whitley moved to adjourn the meeting at 8:42 p.m. Board Member Carlton supported the motion. Vote on the motion: Yes: Carlton, Wendt, Whitley, Vallad; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

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Renee Wilson, Recording Secretary