

SPRINGFIELD TOWNSHIP
ZONING BOARD OF APPEALS
June 15, 2011

Meeting is called to order at 7:43 pm by Vice-Chairman, Bill Whitley.

In attendance: Dean Baker, Zoning Board Member
Jim Carlton, Zoning Board Member
Bill Whitley, Zoning Board Member
Denny Vallad, Zoning Board Member
Skip Wendt, Chairperson (arrived at 7:48 PM)

Board member Bill Whitley acted as the Chairperson of record for the meeting due to Chairperson Skip Wendt's late arrival.

CONSENT MOTION: Agenda.

Board member Baker moved to approve the agenda as presented. Supported by Board member Vallad. Voted yes: all. Voted no: none. Absent: Wendt. Motion approved.

PUBLIC COMMENT: None.

CONSENT MOTION: Minutes of the May 18, 2011 meeting.

Board member Carlton moved to approve the minutes of the May 18, 2011 meeting as presented. Supported by Board member Baker. Voted yes: all. Voted no: none. Absent: Wendt. Motion approved.

NEW BUSINESS:

- 1. Request from Steven C. Reschak, 7501 Stonevalley Bluff, Clarkston, 48348 to allow the construction of an accessory building (swimming pool, pool house and patio) resulting in a total accessory floor area greater than the total allowable amount of 1200 square feet per section 16.14 of the Zoning Ordinance.*

The property that is the subject of this request is located at 7501 Stonevalley Bluff, Clarkston in Springfield Township and is zoned R1, one family residential. P.I.#07-13-453-008.

Mr. Reschak stated that his goal was to build his pool house as previously described, but it was mentioned at the previous meeting that he would not be allowed to build it unless the accessory building total amount was under a certain amount for his lot size. He stated that he is confused about what is considered an accessory building by definition. He

stated that if his total amount exceeds that then he wants to get a variance to build the pool house.

Vice-chairperson Whitley stated that the accessory buildings were defined as the attached and the detached garages located on the property and the report that the Board members received have listed the total accessory building structure currently at 1592 square feet. He would ask for clarification because the Code Enforcement Services states the current allowance is 1150 square feet and the notice stated it was 1200 square feet. In either case, the existing accessory building square footage currently on the property far exceeds the allowed amount. He stated that the Board is being asked to approve an additional 368 square feet. This would take the total to 1960 square feet which would be an overage of 810 square feet. He stated that the Ordinance treats the detached and attached garages as accessory building.

Mr. Reschak introduced Carl Matisse, who is the builder for the pool house and Dave Butz, of Aquascapes pools.

Chairperson Skip Wendt arrived at 7:48 pm.

Mr. Reschak stated that by Springfield Township zoning ordinance, an accessory building was “a subordinate building located on the same lot with the principal building, and occupied by or devoted to an accessory use.” He asked if the garage space attached to the house with the living space above it would be accessory structure.

Board member Vallad stated that it is an accessory use to the residential structure. Whether it is attached or detached it becomes an accessory structure as defined by the ordinance and is limited based on lot size and other parameters.

Board member Carlton stated that the definition of a private residential garage in the ordinance is “an accessory building used primarily for the storage of self-propelled vehicles for the use of the occupants on the lot on which such building is located.”

Dave Butz asked if this takes into account the living space above it. He stated it almost seems as if they are carving out a space of the house which contains living space.

Carl Matisse stated that this is one of the issues that they discussed with another municipality. The attached garage, in the event that the space above was completed living space, not just storage or attic, would be space that would be a foot print on the lot and would not be counted as accessory structure. He stated that there are so many ways that you can slice the cake.

Board member Vallad stated that at one time accessory floor space above a garage or a barn was, at one time, counted towards the square footage requirement. This was amended over time.

Board members have a discussion as to when this amendment took place.

Carl Matisse stated that he built the home originally and there was no ZBA variance required at that time even though it was over the ordinance limit for accessory structure. He stated that there is a house about 5 houses away, on Stonevalley Bluff which has an even bigger pool house on the property. There was not a ZBA variance for this property either.

Vice-chairperson Whitley asked if this other property also has a detached garage.

Carl Matisse responded yes.

Vice-chairperson Whitley asked if this property had a detached garage, attached garage and a pool house.

Carl Matisse responded yes. He stated that this other property did go to the ZBA for a 2 foot setback, whereas this case was a 10 foot setback request. It was granted and the pool house was constructed. He stated that the garage was larger and the pool house was larger. Mr. Matisse shared the documents with the Board members.

Vice-chairperson Whitley stated that this record was a ZBA request dated January 17, 2006. Property is located at 7280 Stonevalley Bluff and is near the subject house. The ZBA request was for a 2 foot side yard setback and in this case they did not address the accessory building square footage on the property.

Carl Matisse stated that the variance was granted and this is almost a duplicate of what Mr. Reschak hopes to accomplish.

Board member Baker asked about the size of the lot.

Carl Matisse stated that it is smaller.

Chairperson Wendt stated that one of the things that the Board has to consider is preexisting or things that happened in the past do not take a precedent to what is going on right now.

Board member Whitley stated that it is a point of reference, but it doesn't bear weight on the case in front of the Board tonight.

Chairperson Wendt stated that the Board at that time could have strictly looked at what the applicant was asking for, and not looked at anything in addition to, for example the accessory structure allowance for the property. This Board brought this issue up for the Mr. Reschak last month, but then did not have any idea of the current accessory square footage.

Vice-chairperson Whitley stated that if you read the application, it only references the side setback, not the pool house and if the matter was confined to that subject only, the discussion may never have gotten to accessory building coverage.

Mr. Reschak stated that he does not understand because the house was built with both garages and it exceeded what was allowed.

Board members concur that the allowed amounts have not changed.

Vice-chairperson Whitley asked if the Board discussed how the site plan was developed in reference to how the individual lots were going to be treated with respect to accessory usage.

Board member Vallad asked the applicant when the home was constructed.

Mr. Reschak responded 2007.

Board member Vallad asked what the lot size was.

Mr. Matisse answered .83 acres.

Board member Vallad stated that Bridge Valley is located in 2 townships and one township is developed in one manner, the other township is developed in a different manner. Bridge Valley in Springfield was developed as a Cluster Development based on zoning of 1 and ½ acres minimum to determine the number of lots available in the development. Then, the homes were allowed to be closer together to preserve property which was part of the site plan approval process. Then you are still allowed the same number of homes, but they are clustered on smaller lot sizes.

Vice-chairperson Whitley stated that for R1 zoning, (1 and ½ acre lot size), it allows 1000 square feet of accessory square footage plus 1 square foot per 100 square foot of additional lot space to a maximum of 1200 square feet.

Mr. Matisse stated that he had calculated this and it had totaled 1174 square feet allowable.

Mr. Matisse stated that the building of the pool house was an additional 168 square feet. He stated that the canopy was included in the CES calculations. He stated that they are asking for the variance for the 168 square feet to allow the pool house to be built. It is on the back of the lot, not really visible from the road and no neighbors have any objections. He states that the applicant is requesting that this variance be granted if indeed a variance is necessary.

Chairperson Wendt asked if there was one drawing that shows all of the proposed structures.

Board members concurred that this was included in last month's packet and they review the discussed plan with the applicant while they review the numbers for the existing accessory structures.

Chairperson Wendt asked what the hardship would be if the applicant put up a gazebo type structure that was covered, without walls, with roll-up siding for privacy.

Mr. Matisse stated that Kirco development would not approve this. They want a specific design that should look like it is part of the house.

Board member Carlton asked if he was talking about the home association.

Mr. Matisse stated that this was part of the deed restrictions of the development and they had to submit plans to insure that it would look like part of the house. The intent was for it to be a beautiful enhancement to the property.

Chairperson Wendt stated that he understood that, but by law the Board cannot create nonconformity and the applicant is asking them to create a greater non-conformity than what already exists. He stated that if the property is deed restricted, he doesn't know how this will pass the test.

Dave Butz stated that he has never dealt with these issues before. He stated that when this house was built, it went through site plan and numerous inspections. He stated that the accessory floor area never came up. Even though the Board stated that it fell through the cracks, he stated that it appeared to him like the definition has changed over time.

Chairperson Wendt stated that he does not see that at all. He stated because someone made a mistake, there now is a reference that the language has changed. He does not agree with this.

Dave Butz stated that there were numerous inspections that took place. He stated that the hardship is when you have young children and their guests, you don't want them walking through your house in their wet clothes. He stated that there is a bathroom in the pool house and changing area. This space allows them to gain full enjoyment of the facilities and he would suggest that this is a principle hardship. He stated that other uses of this structure would be feasible as well.

Chairperson Wendt stated that he has read the ordinance. The land, or some other conditions have to create the hardship, not the individuals making use of the property. This is how the statute reads. He stated that this is a self-made hardship.

Mr. Reschak stated that the pool is going to be placed in an area that cannot be seen from the road so it will not cause concerns and making it look like the lot is overbuilt. They didn't want to put it at the corner because they didn't want the neighbors to look at the side of the building. He felt that the pool needed to be back in the corner; it would be more convenient to have the pool house close to the pool.

Vice-chairperson Whitley questioned how the original building permit was issued with an overage of accessory structure without requiring a variance. There are two way to figure it, one is the 37,000 square foot on the lot as it exists, and the other is zoning district R1, which is a minimum 1.5 acres. The homes were allowed to be built on lots that were smaller than 1.5 acres with the provision that the developer provide other unusable area, hence the nature preserve. If you calculate based on the 37,000 square feet, then you come up with 1370 square feet of accessory use. But, if you calculate it based on the 1.5 acres, you come up with 1654 square feet of allowable use. If you compare the 1592 square feet that exist on the lot, then it falls within the ordinance. He stated that this is his interpretation.

Board member Vallad stated that the question is do you use unit size, or do you use zoning in the case of the cluster development. He stated that the preserve is held in common by all of the homeowners. He stated that he has looked through the cluster development files, but cannot find a reference to lot size. He stated that he cannot find a definition. He stated that Board member Whitley's interpretation makes sense to him. He stated that perhaps the original building permit was based on 1.5 acres because this was the dedicated land for this unit, although the applicant's construction is confined to the .83 acres.

Mr. Matisse asked how much more square footage does this allow.

Vice-chairperson Whitley stated 1,165 square feet based on the 1.5 acre lot size. He stated that this would allow them 62 more square feet.

Mr. Matisse stated that they could build a 62 square foot building there, but not a 168 square foot building there. So, they are asking for a variance for the additional 100 square feet so they can create something functional.

Vice-chairperson Whitley stated that Mr. Matisse is quoting 168 square feet, but they understand that the request was for 368 square feet.

Mr. Matisse stated that this is counting a canopy. He stated that the actual building is 12 feet by 14 feet.

Dave Butz stated that the workshop area located in the attached garage is part of the counted accessory square feet. It was constructed as adjunct to the garage which is part of the house. It has entry and egress. It has a living space above it and is used routinely. This should subtract from the square footage of the garage.

Board member Carlton asked if it has a garage door.

Mr. Reschak stated that it has man doors.

Board members asked Mr. Reschak to indicate on the drawing where the workshop was located.

Mr. Matisse indicated on the drawing where the workshop is located and stated that this area does not store vehicles.

Mr. Reschak stated that there is not a garage door. There are two man doors.

Vice-chairperson Whitley stated that if they use the high number of 368 square feet. This would be 1680 square feet against an allowable 1654 square feet using the consideration of 1.5 acre parcel. He stated that the other point was that the Code Enforcement officer considered the whole area with the roof at 368 square feet and the applicant is saying that the building itself is 168 square feet. He stated using the area of 12 ' x 14', this would equal 1480 square feet total.

Board member Baker stated that when they started the conversation, they read the definition for the garage which is used primarily for the storage of vehicles. He stated that he is not convinced that because the applicant uses a portion of the space called garage for a workshop that this does not make it accessory structure. It may not be garage, but it is still accessory structure. He stated that he has a shed on his property, he does not house vehicles in it, but it is still accessory structure.

Vice-chairperson Whitley stated that this was a good point.

Board member Carlton stated that he has a workbench in his garage, but this is very different from the applicant's designated workshop area.

Board member Whitley asked if there were any additional comments to be offered by the applicant.

Mr. Reschak stated no, not at this time.

Chairperson Wendt made a motion that the request by Mr. Reschak be denied because there is no practical difficulty and the request does not fall within the zoning ordinance which covers accessory storage building area for the zoning R-1. Supported by Board member Baker.

Dave Butz asked if the Board members had just had a discussion that without counting the workshop area, the request was within the parameters of the ordinance.

Vice-chairperson Whitley stated that the discussion that he raised was based on the discussion that the workshop was not an accessory building. He stated that they heard discussion from two other Board members which questioned that interpretation and a motion was made.

Dave Butz questioned if you blocked off a designated section of a garage and define its use as living space in the house and it is not accessible to the garage except by the door, was it still accessory structure. Could you also create a mother-in-law suite?

Chairperson Wendt stated that if it was designed properly, it would have an entry way that went directly into the house and would be a living area. He stated that there is nothing delineated that this area was workshop, or studio.

Mr. Matisse stated that the Board determined that there was still 60 square feet left of space. He stated that what is requested is only 100 more square feet. He didn't know how it was calculated and if the overhangs and stairs were included. He stated that 100 square feet can disappear rather quickly.

Dave Butz stated that regardless of how you enter the space, you are not entering a garage.

Chairperson Wendt stated that what they are asking the board to do is stretching the limits of accessory storage structure.

Mr. Matisse stated if they stick with the original numbers, their request now becomes a variance for an excess of 100 square feet over the ordinance. This is counter productive to increasing the value of the community.

Dave Butz stated that this combined with the question of the workshop and the question of whether or not it should be counted in the accessory structure total allowance raises question. He stated that he has a workshop.

Board member Baker asked if he spent the night there.

Mr. Matisse stated that they are asking for 100 square foot increase. He stated they still might look at building a 60 square foot building, but it might not be approved by the association.

Vice chairperson Whitley stated that the Board cannot increase the nonconformity.

Mr. Matisse asked why did last month's set back variance pass.

Chairperson Wendt stated that they look at any detrimental effects, was it in harmony with the community, is there a large natural area and would it detract from the area. This cannot be rationalized as an absolute. He stated that this side lot line was invisible. But now, they are talking about putting up something that is visible and that is larger than what is allowed, preexisting, nonconforming properties do not set the precedence.

Dave Butz asked if everything was dropping through the cracks or have variances been previously approved and now they are not approved for another reason.

Chairperson Wendt asked if he was suggesting that there was favoritism shown.

Dave Butz stated no.

Chairperson Wendt stated that he is coming close to making that suggestion.

Vice chairperson Whitley stated that each case needs to be handled on a case-by-case basis.

Mr. Matisse asked if they could build a larger canopied open area with the 60 square feet bathroom area in the corner. He drew out a conceptual drawing.

Board member Carlton asked if the motion from last month stands; what happens to the pool decision.

Board member Baker stated that the question is would they allow the applicant to build the structure as presented. The pool and its location has already been decided. If applicant decides not to have pool house, they can leave. He stated that what is on the table is the drawings that were submitted for the pool house.

Vice chairperson Whitley read the motion from last month's minutes. It approved the setback for the pool house provided it does not create an excess of accessory structure allowed for the property. The issue that is in front of them is whether they can construct the accessory structure, pool house without exceeding the allotted amount.

Board member Baker stated that the Board's role is to look at the property and to look at the special conditions that exist at that site, drainage features, slope, things that the applicant had no control over. If these conditions exist and they cause you to push the pool into the setback, etc. The Board needs to look at the site and the literal interpretation of the ordinance is such that these conditions do not allow you to use your lot the way that others can use their lot, this gives them the opportunity to consider variances. He stated that by asking for the additional square footage of accessory structure, this is no longer about the property. This is about what you want to do with the property. The applicant is asking the Board to suspend their requirements to honor the ordinance when the hardship is not the property's making. It is a choice. It is not the property causing the issue. He is not in favor of voting for the structure. He stated if they could redesign it so they are within the acceptable number.

Mr. Matisse stated that if they stay within the 5' x 12' area that is the enclosed area and the rest if covered by canopy.

Board member Baker stated he has to look at the entire Board's vote.

Dave Butz asked if they were looking at the outside dimensions or the inside dimensions.

Board members concurred that it was the outside dimensions.

Board member Baker stated that he felt that the workshop was accessory structure.

Mr. Reschak asked how the rest of the Board felt.

Vice chairperson Whitley stated that they have not been asked to consider this in the request.

Mr. Matisse asked how they get to that interpretation. He stated that the Township has multiple definitions and interpretations.

Vice chairperson Whitley stated that it is incumbent on the applicant to bring the dimensions to the Board. He stated that he would have a hard time drawing a conclusion on rough drawings.

Mr. Reschak asked what they would need to determine if the workshop was accessory.

Vice chairperson Whitley stated that they would need exact dimensions of the area. If there is a motion made to table for a month and then come back with more information. He stated that this is for the applicant to consider, whether he is willing to wait.

Board member Baker stated that he is willing to support a motion to table until next month.

Board member Vallad stated that there is a lot of interpretation to be done. They need to be given proper information, do they go with 1.5 acre to determine accessory structure.

Chairperson Wendt stated that it appears that the lots were given 1.5 acres of accessory structure.

Dave Butz asked what constitutes the workshop interpretation of accessory structure.

Vice chairperson Whitley stated without specific language in the ordinance, it was on the Board to interpret the meaning. They need to interpret the ordinance when an ambiguity arises. The information needed would be in the motion to table. He would have to have detailed dimensions and they would have to have time to research the ordinance. There are two decisions, is it accessory or not, and then what is the size of this area.

Board member Carlton asked for pictures of the area.

Mr. Matisse asked if they needed the usable dimensions of the workshop measured.

Board members concurred that it is the exterior dimensions.

Vice chairperson Whitley stated that the Board has bent over backward to accommodate every solution but they are bound by the ordinance. He stated that the dimensions are in

half a foot. He stated that there are two issues, how big the workshop is and the interpretation on whether this workshop is accessory structure or not. He wants the applicant to understand the expectations.

Chairperson Wendt withdrew his previous motion. He made a motion to table the applicant's request in regards to the square footage. For the July meeting, applicant must supply the Board with all information required as far as engineering drawings that delineate the square footage of all accessory usage and how it is used to allow the Board to make a judgment that is accurate and adheres to the Township ordinances. Supported by Board member Carlton. Voted yes: all. Voted no: none. Motion approved.

Mr. Matisse asked if the stairways were assessed as accessory structure.

Board members stated the applicant should bring complete drawings to the July meeting.

Board members had a discussion regarding the site plan for the cluster development of Bridge Valley, to gain clarity on the assumption made that the accessory structure allotment was based on 1.5 acres.

Board member Vallad stated that they could look at all appeals done since that timeframe. They could look at any discussion made at the Planning commission level.

Board members asked Erin Mattice to look through records to gain any clarity regarding the lot sizes in the cluster development.

Ms. Mattice stated that she would examine the files and provide it to the Board.

ADJOURNMENT:

Chairperson Wendt moved to adjourn the meeting at 9:11 pm, supported by Board member Carlton. Voted yes: all. Voted no: none. Motion approved.

Erin Mattice, Recording Secretary