

ZONING BOARD OF APPEALS
July 20, 2005 at 8:00 p.m.
Springfield Township Civic Center
12000 Davisburg Rd.

Final
AGENDA

1. Roll Call

2. Approval of Agenda

3. Approval of Minutes:

Zoning Board of Appeals Meeting of April 21, 2005

4. OLD BUSINESS

5. NEW BUSINESS

a. Parcel # 07-10-277-011

Applicant: Donna & Herb Pauly
2476 Candlewick
Orion, MI 48359

Location: 8929 Lougheed Island, Clarkston, MI 48348

Request:

- a) To allow for a building height of forty-five (45) feet rather than the allowable maximum building height of thirty (30) feet for property located above.

Section 25.00 of Ordinance 26

b. Parcel # 07-13-400-002

Applicant: Stephen and Karen Werner
P. O. Box 368
Clarkston, MI 48347

Location: 7901 Holcomb Road; Clarkston, MI 48347

Request:

- a) To allow accessory floor area of 4,836 (four thousand, eight hundred thirty-six) total square feet with the intent to keep the existing accessory structure after creation of a 5.12 acre parcel (Unit 1) in the Towering Pines development located above

Section 16.14 of Ordinance 26

c. Parcel # 07-03-452-004

Applicant: Charter Township of Springfield
12000 Davisburg Road
Davisburg, MI 48350

Location: 10385 Rattalee Lake Road; Davisburg, MI 48350

Request:

- a) To allow a front yard setback of 50 (fifty) feet rather than the required 75 (seventy-five) feet to expand fire station located above.

Section 25.00 of Ordinance 26

d. Parcel # 07-33-251-003

Applicant: David Huntington
1394 Bynan
Pontiac, MI 48340
Location: 5157 Hillsboro Road; Davisburg, MI 48350
Request:

- a) To allow a front yard setback of 24 (twenty-four) feet rather than the required 75 (seventy-five) feet to build a home on property located above.

Section 25.00 of Ordinance 26

- 6. **Other Business:** ZBA Request for Interpretation
- 7. **Next Meeting Date:** Wednesday, August 17, 2005
- 8. **Public Comment:**
- 9. **Adjournment:**

**Springfield Township
Zoning Board of Appeals Meeting
Minutes of July 20 2005**

Call to Order: Chairperson Wendt called the July 20, 2005 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
Collin Walls
Jim Carlton
Frank Aiello

Board Members Absent

Dean Baker

Staff Present

Leon Genre
Mary Blundy

Approval of Agenda:

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

Approval of Minutes: April 21, 2005

- **Board Member Walls moved to approve the minutes of April 21, 2005 as presented. Board Member Carlton supported the motion. Vote on the motion. Yes: Wendt, Walls, Carlton and Aiello; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

Old Business: None

New Business:

1. Donna & Herb Pauly, 2476 Candlewick, Orion, MI. Property located at 8929 Loughheed Island, Clarkston, MI. Parcel I.D. # 07-10-277-011

The applicant is requesting to allow for a building height of forty-five (45) feet rather than the allowable maximum building height of thirty (30) feet for property located at 8929 Loughheed Island, Clarkston, Michigan.

Mr. Aaron Trobaugh, engineer for the applicants, provided pictures of the surrounding residents. Mr. Trobaugh noted that the house will be very low to the lake compared to many other residents as well as being at a lower elevation. He said he tried to make the lighthouse design proportional to the house and still provide enough living space. In regard to height restrictions, Mr. Trobaugh said an emergency fire vehicle cannot get to this house because it is on an island and the island has its own fire suppression system. Mr. Trobaugh provided letters from eight surrounding neighbors (Beemer, Cook/Mora, Sleiff, Cantu, Barley, Hawes, Martin and Goode) supporting the requested variance. **[Copies of these letters are on file at the Office of the Clerk, Springfield Township].**

Chairperson Wendt said he cannot justify any reason to allow the height of this building under the ordinance. Aside from a fire ladder not being able to reach it, he cannot find anything aesthetically in conformance with anything or the provided photographs that would convince him a structure that high is anything other than a weather beacon or a lighthouse on a shoal someplace either off Lake Michigan or someplace in the Atlantic or Pacific. Chairperson Wendt said this proposal is visually “in your face” on Dixie Highway in addition to the adjacent properties and does not conform with surrounding properties.

Board Member Carlton said he agrees and believes there is no reason the applicant cannot meet the height requirements and as far as living space, the house can be added onto without exceeding height requirements.

Mrs. Marilyn Sleiff, 9270 Sherwood Dr., commented that she does not see how this would be seen from Dixie Highway.

Mrs. Donna Pauly, 2476 Candlewick, commented that the island sits low and in comparison everything else is up on hills and they would like to go 40 feet because any lower would look ridiculous and unbalanced.

Board Member Walls asked the applicant what is special that is peculiar to this structure or property that requires the extra height? Mr. Trobaugh said, to make the proportions proper the lighthouse would have to be enlarged. By shrinking the proportions, the living space inside would hardly fit even a bed.

Chairperson Wendt asked if there are two upper layers that are not living space? Mr. Trobaugh said correct, the upper layer is not a living space but there is a balcony on the second floor. Chairperson Wendt said, based on the drawings, that is not living space and does not justify the Board swaying from the ordinance.

Board Member Walls asked if the lighthouse is driving the need for the height variance request and if there is no lighthouse could the applicant construct the necessary expansion of living area without a height variance? Mr. Trobaugh said, he supposes you could. Board Member Walls said he does not see that as justification to grant a variance in height.

Ms. Denise Cantu, 9260 Sherwood, commented that she believes the proposal is beautiful and welcomes it.

- **Board Member Carlton moved to deny the request for parcel 07-10-277-011 to allow a building height of 40 feet rather than the allowed maximum building height of 30 feet because alternatives exist that could be closer to the ordinance or actually meet and not require a variance at all and no practical difficulties were shown that would justify the building height addition. Board Member Aiello supported the motion. Vote on the motion. Yes: Wendt, Walls, Carlton and Aiello; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

2. Stephen and Karen Werner, P.O. Box 368, Clarkston, MI. Property located at 7901 Holcomb Road; Clarkston, MI 48347. Parcel I.D. # 07-13-400-002.

The applicant is requesting accessory floor area of 4,836 total square feet with the intent to keep the existing accessory structure after creation of a 5.12 acre parcel (Unit 1) in the Towering Pines development located above.

Mr. and Mrs. Werner are present in regard to this request.

Chairperson Wendt explained that this was reviewed and approved two years ago and there have been mitigating circumstances why this has not gone forward. Board Member Walls explained that for reasons beyond the applicants control, he did not get his approvals from Oakland County Health Department and in that process the SLU expired and the variance expired.

- **Board Member Carlton moved to approve the accessory floor area of 4,836 total square feet with the intent to keep the existing accessory structure after creation of a 5.12 acre parcel, Unit 1 in the Towering Pines Development for Stephen and Karen Werner at 7901 Holcomb Rd. using the same motion made by the Zoning Board of Appeals on July 16, 2003 and this extension is by no fault of the applicant. This would include Lot #1 and all or part of the area shown as “park.” In addition, the 4.08 acre park would remain either as an easement through a land conservancy or similar method because the park and unit 1 could have been combined and no variance then would be necessary. Board Member Aiello supported the motion. Vote on the motion. Yes: Wendt, Walls, Carlton and Aiello; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

3. Charter Township of Springfield, 12000 Davisburg Rd., Davisburg, MI. Property located at 10385 Rattalee Lake Rd., Davisburg, MI. Parcel I.D. # 07-03-452-004.

The applicant is requesting a front yard setback of 50 feet rather than the required 75 feet to expand the fire station located at 10385 Rattalee Lake Rd.

Board Member Walls noted that he would abstain from the discussion and vote as he is representing Springfield Township in this request. There were no objections to this abstention.

Chairperson Wendt said this is a pre-existing, non-conforming situation that comes into play and the variance is good for the betterment, health and welfare of the community and there is adequate justification to allow this variance request.

Supervisor Walls explained that alternatives are not efficient for vehicle access as asked by Board Member Aiello because the fire department is attempting to construct an addition that would allow for a drive-thru bay and it cannot be put behind the existing building efficiently and be able to make the turn.

- **Board Member Carlton moved approve a front yard setback of 50 feet rather than the required 75 feet to expand the fire station located at 10385 Rattalee Lake Rd. due to special conditions which exist due to maneuvering room for emergency vehicles which are required for the growing Township and also the variance will be in harmony with the neighboring area and is for the good, health and safety of the community. Board Member Aiello supported the motion. Vote on the motion. Yes: Wendt, Carlton and Aiello; No: none; Absent: Baker; Abstain: Walls. The motion carried by a 3 to 0 vote.**

4. David Huntington, 1394 Bynan, Pontiac, MI. Property located at 5157 Hillsboro Road; Davisburg. Parcel I.D. # 07-33-251-003.

The applicant is requesting a front yard setback of 24 feet rather than the required 75 feet to build a home on the above referenced property.

Mr. and Mrs. Huntington are present in regard to this request.

Chairperson Wendt noted that the foundation is in place and is not in any realistic position to move because of other extenuating circumstances.

Mr. Huntington explained that the lot size is a triangle and the small part is at 13 feet and the large part at 267 feet. At the 267 feet, he does have part of the Huron River that runs through. He also has a power line that keeps him from going back further. Mr. Huntington said they cannot utilize a two-story house due to physical restraints and the house proposed is being designed as a handi-capped home with one level. Mr. Huntington said there are surrounding homes closer than what they are requesting.

Chairperson Wendt asked the applicant if he knew what the setback was before the foundation was set? Mr. Huntington said, no.

Board Member Walls said he has a copy of the plot plan approved by the Building Department when the permit was issued and asked how he got from the plot plan drawings to where he is at now with the house? Mr. Huntington said, he does not know. Mrs. Huntington said the contractor said the ground closer to the river was not stable and they had to move the house. Mr. Huntington said, in regard to the garage, he could place it elsewhere but would like to keep it. Chairperson Wendt said he cannot see the garage on the roadside.

- **Board Member Walls moved that the variance to allow a minimum of 50-foot front setback from the right-of-way line be approved for the reasons that the original error was mutual between the applicant and the Township and it is consistent with the only two homes that are close which are located across the street the proposed garage and the requested 24 foot variance are denied because numerous alternatives exist. Board Member Carlton supported the motion.**
- **Mr. Genre noted that Building Inspector, Derek Place originally denied the first foundation due to bad soils of the original location and asked if a reason in the motion is because bad soils were found. Supervisor Walls said, as long as there is verification of that, he would amend his motion to include reasons of bad soils. Vote on the motion. Yes: Wendt, Walls, Carlton and Aiello; No: none; Absent: Baker. The motion carried by a 4 to 0 vote.**

Other Business:

1. ZBA Request for Interpretation

Board Member Walls explained that there is a definition in the Zoning Ordinance that is “lot zoning” which is a term that is not used anywhere. We have some properties within the Township where almost all of them are pre-existing, non-conforming, under common ownership and separated by a road. Because of this we cannot combine the parcels into a single tax description. The Board of Appeals is being asked to determine if the word “lot” used in Section 3.03 subparagraphs 3 and 5 and the words “lot or parcel” used in Section 16.00 are synonymous with the term “lot zoning” as defined in the ordinance?

Board Member Walls said if the Board of Appeals concurs that if they are used and occupied as a single entity, then that was what was intended as the term “zoning lot.” Then if persons do come in and want to put a garage across the street, they would be able to do so.

Chairperson Wendt said, historically, that situation exists and as long as it is under single ownership. He does not know that there is any way to justify that because they were bought both together at one time, that it is a “lot zoning” or if one owns the lakefront parcel and then acquires the piece afterwards and then there are two separate parcels but both are being used.

Mr. Genre explained that when this arose in Independence Township, the Township required the person to record a deed restriction on the properties that they would be used together. If for example, the individual sold the lot across the street and there was a garage on it, the garage would get torn down.

Chairperson Wendt said he thinks for tax purposes, if an individual owns a property that is not contiguous due to a road and there are two separate parcel I.D. numbers and only one building on one of the two parcels, then he thinks that has some leeway to consider it as a common use – one parcel with two ID numbers. If a building is constructed on the other side, which cannot be done without a house on it, then it becomes a separate identity.

Board Member Walls commented that in these situations, a garage is not really a principle use, it is the same accessory use that someone else has with their garage on the same lot. The key is the use of the property.

Board Member Aiello said he does not know why one would consider those two parcels separate. However, perhaps the proper test is if they were commonly granted or if there is a deed restriction that makes one parcel designation disappear upon transfer of ownership. He believes there is a challenge in creating an easement that makes someone have to demolish their property upon transfer. Board Member Aiello said addressing the issues as they come up, case by case, is the best way to deal with this through the variance process.

Mr. Genre explained that he agrees with Chairperson Wendt's views and they should go through the ZBA.

The majority of the Board of Appeals agreed that these parcels should not be a common parcel for zoning purposes.

2. Special Workshop

Mr. Genre noted that there would be a special Planning Commission Workshop Meeting on September 1st with Attorney Greg Need and he would like the ZBA members to be there if available.

Adjournment:

Hearing no other Business, Chairperson Wendt adjourned the meeting at 9:07 p.m.

Susan Weaver, Recording Secretary