

Minutes of
ZONING BOARD OF APPEALS
REGULAR MEETING
October 20, 2021

SPRINGFIELD
CHARTER TOWNSHIP



Sean R. Miller, Clerk

Call to Order: Chairperson Whitley called the October 20, 2021, Zoning Board of Appeals meeting to order at 7:30 pm at the Springfield Township Civic Center, 12000 Davisburg Rd, Davisburg, Michigan, 48350.

In attendance: Bill Whitley, Chairperson
Matt Underwood, Board Member
Skip Wendt, Board Member
Dean Baker, Board Member
Jim Carlton, Alternate Board Member

Absent:
Jason Pliska, Board Member

Staff Members Present:
Laura Moreau, Supervisor
Joan Rusch, Planning Administrator

Approval of Agenda:

Chairperson Whitley would like to add to the agenda the election of a new chairperson for the board, as he has been appointed to the Township Board and can no longer be chairperson of the ZBA. However, Chairperson Whitley has not yet been sworn in as a Trustee and can still chair this meeting tonight.

Board Member Baker moved to approve the agenda as revised. Supported by Board Member Wendt. Vote: Yes: Baker, Underwood, Carlton, Wendt, Whitley. Vote No: None. Motion approved.

Public Comment:
None

Approval of Minutes:

- **Board Member Wendt moved to approve the minutes of the August 18, 2021, meeting as presented. Supported by Board Member Underwood. Vote: Yes: Baker, Underwood, Carlton, Wendt, Whitley. Vote No: None. Motion approved.**

Old Business:

Minutes of
ZONING BOARD OF APPEALS
REGULAR MEETING
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None

New Business:

1. Request from Greg Westlake, 13180 Woodland Trail, Davisburg, 48350, for a variance to construct a garage with a front setback of sixty (60) feet, ten (10) inches instead of seventy-five (75) feet allowed per Springfield Township Ordinances, Chapter 40, Section 40-572.

The property that is the subject of this request is located at 13180 Woodland Trail in Springfield Township and is zoned R-1-A One Family Residential, P.I. #07-31-276-008.

Chairperson Whitley asked if there was anybody present to address this request.

Tim Brodoski and Greg Westlake came forward to address this request. Mr. Brodoski distributed information regarding well and septic information for two neighboring properties – 5100 Ormond and 4990 Ormond.

Mr. Brodoski explained that the challenge with this property is that the septic location conflicts with the garage setback. Placing the garage on the opposite side of the house would also conflict with required setbacks.

Chairperson Whitley commented that the other side of the house is a split level, so nothing would be solved by locating the garage to that side and would seem to make the situation worse.

Board Member Wendt asked if there was any other area that the garage could be built on. He stated that when he visited the property, he noticed that the property was wet and that there were slopes on it.

Mr. Brodoski confirmed that the property is wet and sloping. He explained that there is no alternate location that is suitable and beneficial.

Board Member Baker noted that the property is 10.6 acres and, according to Sec. 40-649, the parcel could have up to 5400 square feet of accessory space. The proposed structure is only 1086 square feet which is quite a bit less than allowed. He explained that there is no other place to put the garage that is accessible to the house that would not be encumbered by water and other features of the parcel while leaving the septic in place. Based on these circumstances, Board Member Baker feels comfortable granting this variance.

Minutes of
ZONING BOARD OF APPEALS
REGULAR MEETING
October 20, 2021

SPRINGFIELD
CHARTER TOWNSHIP



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Board Member Carlton suggested that the only other alternative would be to make the garage narrower.

Chairperson Whitley stated that the orientation of the garage does minimize the variance requested.

Board Member Baker moved to grant the variance request to construct a 1086 square foot garage which will result in a front setback of sixty feet, ten inches instead of the required seventy-five feet allowed per Springfield Township Ordinances Section 40 - 572. Five criteria to consider when granting a variance as specified in Springfield Township's Code of Ordinances Section 40-63(d)(1) have all been met. These criteria are:

1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
In keeping with that, while this is a 10.6-acre parcel, significant portions are unbuildable due to the bodies of water. The existing house, which meets the setback, and the septic, which is appropriately placed, encumber the buildable sites further. So, there are some peculiarities associated with this.
2. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.
Other individuals who have 10.6-acre sites that are totally buildable, would be able to easily find a way to build up to 5400 square feet of accessory structure on their lot, and they would be allowed to by the ordinance.
3. The special conditions and circumstances referenced in subsection (d)(1)(a) of this section do not result from the actions of the applicant.
The septic and house are already in place and have been pre-existing.
4. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
The request is for building only 1086 square feet when so much more is allowed, and the garage is not overly sized for a three-car garage.
5. The granting of the variance will be in harmony with the general purpose and intent of this chapter and master plan, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
This building will be in harmony and is not out of character with its location or any of the neighboring properties.

Support by Board Member Carlton. Vote: Yes: Whitley, Baker, Carlton, Underwood, Wendt. No: None. Motion approved.

Minutes of
ZONING BOARD OF APPEALS
REGULAR MEETING
October 20, 2021

SPRINGFIELD
CHARTER TOWNSHIP



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2. Request from Joanne Gentile, 8400 Rattalee Lake Road, Clarkston, 48348, to create a parcel which does not meet minimum lot width requirements with access to the parcel by access strip per Springfield Township Code of Ordinances, Chapter 40, Section 40-642.

The property that is the subject of this request is located at 8400 Rattalee Lake Road in Springfield Township and is zoned R-1-A One Family Residential, PI #07-01-400-008.

Chairperson Whitley asked if those present to address this request would come forward.

Joanne and Ralph Gentile stated that they are requesting a variance to access the back of their parcel with an access strip once their property is split.

Chairperson Whitley stated that he had requested further information from the planning administrator regarding other parcels with similar lot splits to make comparison in time with when those splits were made versus when the current ordinance was created. He distributed this information and requested that this information be made part of the permanent record. The referenced lot splits were created in 1999, 1991, and 1979. These all precede the existing current wording in the ordinance regarding lot splits.

Chairperson Whitley stated that according to Section 40-642(b)(4) the board shall not grant the variance unless, in addition to finding that all of the conditions enumerated in section 40-63(d)(1) have been met, the board also finds that all of the following exist and part (a) states that the minimum parcel size shall be five acres. Of the parcel sizes that result from this split, one is in excess of five acres, but one is less than five acres. By his interpretation, this does not meet the requirement. The parcels need to be in excess of five acres.

Ms. Gentile stated that, when speaking to representatives in the Supervisor's Office, she was told that the existing parcel had to be at least 2.5 acres and that the new piece had to be at least five acres.

Supervisor Moreau explained that this is her understanding of the ordinance.

Board Member Carlton commented that his understanding of the ordinance was that both parcels had to be five acres.

Ms. Gentile stated that if they went to five acres for each parcel, then the access strip would exceed the 660 feet maximum.

Board Member Baker explained that he had considered that as well. The ordinance states that for purposes of section 40-640, measurement of the width to depth ratio shall exclude the access strip. The front lot line for the lot or parcel shall be deemed to be the line closest and parallel to the public road that possesses the minimum width required by section 40-572.

Minutes of
ZONING BOARD OF APPEALS
REGULAR MEETING
October 20, 2021



There does not seem to be a way to meet this requirement and keep the access strip at 660 feet.

Board Member Carlton commented that under 40-642(b)(4)(b)(2) there must be two or more similar land divisions with a similar configuration within 2000 feet along a public road. According to the provided documentation there are only two parcels within 2000 feet when measured along the roadways.

Chairperson Whitley stated that the two comparisons on Rattalee Lake Road meet the ordinance requirements, but the third one on Knox does not.

Ms. Gentile stated that one of the two conditions in 40-642(b)(4)(b) does exist. The access strip cannot be made anywhere else because of the existing home and wetlands and the pond on the west side.

Board Member Carlton commented he does not think that this situation meets 40-642(b)(4)(b)(2). The question is if this request meets 40-642(b)(4)(b)(1).

Board Member Baker stated that this section of the ordinance is unique because it speaks towards the zoning board when variances are to be proposed. It is telling the Board what it can and cannot do. This is different from many other situations brought before the Board. This section of the ordinance seems to bind the ZBA, but it is clear in his mind that the variance shall not be granted unless **all** the conditions have been met. He commented that there would be no way to achieve this split because if changes are made to create five-acre parcels then the access strip is too long, or an angle is created, which section (f) seems to imply the front of the lot should be parallel to the road.

Supervisor Moreau explained that section 40-642(b) states that the creation of a lot or parcel that does not meet the minimum lot width requirements shall be allowed under certain conditions. Their 4.69-acre parcel does meet the minimum lot width requirement. What follows under (b) is for the creation of a lot or parcel which does not meet the minimum lot width requirements. Also, in section (4)(a), the minimum lot or parcel size shall be five acres applies to the creation of a lot or parcel that does not meet the minimum lot width requirement. The ordinance does not say that all resulting parcels shall meet the minimum requirement of five acres. Subordination of points within the ordinance is significant, and the administrative interpretation is that it is intentionally subordinate, and the five-acre requirement is only addressing the parcel that does not meet the minimum lot width requirement.

Minutes of
ZONING BOARD OF APPEALS
REGULAR MEETING
October 20, 2021

SPRINGFIELD
CHARTER TOWNSHIP

Sean R. Miller, Clerk



Chairperson Whitley stated that he could understand this administrative interpretation. He wondered what the Planning Commission's intent was when creating this ordinance. This ordinance does seem to prohibit the splitting of some parcels. He commented that the Planning Commission should review the wording of this ordinance, as both interpretations could be valid.

Board Member Baker commented that both proposed lots meet the required 4:1 width to depth ratio.

Mr. Gentile stated that there is a third parcel on Rattalee Lake Road that has an access strip and is within 2000 feet of their lot.

Board members reviewed the aerial photo provided with their packets and determined that parcel 07-12-201-010 is a similarly created parcel with an access strip that is within 2000 feet of this proposed split, so criteria for 40-642(b)(4)(b)(2) is met.

Chairperson Whitley stated that the way this ordinance is written, it is open to interpretation. A different group of people reviewing this ordinance should reach the same conclusion. This ordinance should not be left open to interpretation and thereby creating inconsistencies. It is unclear if all parcels are required to be five acres or if only the new parcel is required to be five acres.

The Board discussed how this ordinance should be interpreted. The factor bringing this appeal before the ZBA is that one of the proposed new parcels will not meet the minimum road frontage. The Board understands the importance of interpreting this ordinance correctly for the applicant and also to be consistent for future requests.

Chairperson Whitley stated that by following deductive reasoning, section (4)(a) flows back to paragraph (b) as the qualifier – doesn't meet minimum lot requirements. So, (4)(a) applies to parcel B and this parcel exceeds five acres. This is the logic presented by the administrative interpretation.

The Board reached a consensus that only the lot accessed by the access strip has to meet the five-acre minimum.

Board Member Carlton moved to approve the request to create a parcel which does not meet minimum lot width requirements with access to the parcel by access strip per Springfield Township Code of Ordinances, Chapter 40, Section 40-642. When looking at the five criteria in 40-63(b)(1) that need to be met for granting a variance:

Minutes of
**ZONING BOARD OF APPEALS
REGULAR MEETING
October 20, 2021**



1. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
2. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.
3. The special conditions and circumstances referenced in subsection (d)(1)(a) of this section do not result from the actions of the applicant.
4. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
5. The granting of the variance will be in harmony with the general purpose and intent of this chapter and master plan, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

the requirements have been met.

The lots meet the requirement for 40-642 (b):

Notwithstanding subsection (a) of this section, the creation of a lot or parcel which does not meet minimum lot width requirements, in this case parcel B provided in the documentation, shall be allowed under the following conditions and procedures:

- (1) Applicant did make a request to the ZBA.
- (2) The applicant did provide drawings showing lot lines, proposed lot lines, access, and locations of buildings,
- (3) The board may refer the application for review and recommendations from the township fire chief, township engineer, or township planning consultant, but this was not necessary.
- (4) The board shall not grant the variance unless, in addition to finding that all of the conditions enumerated in section 40-63(d)(1) have been met, the board also finds that all of the following exist:
 - a. The minimum lot or parcel size shall be five acres.
 - b. One of the following conditions is found to exist:

There are more than two land divisions which exist within 2000 feet of this parcel along this roadway that have the “flag” lot.

Minutes of
**ZONING BOARD OF APPEALS
REGULAR MEETING
October 20, 2021**

SPRINGFIELD
CHARTER TOWNSHIP

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- c. Access to the lot or parcel does have the 20-foot width frontage on a public road.
- d. No portion of the access strip is going to be used for building purposes.
- e. No other lots or parcels will be allowed use of the access strip for ingress or egress purposes.
- f. For purposes of section 40-640, measurement of the width to depth ratio does not include the access strip. The front lot line for the lot or parcel is the line closest and parallel to the public road that possesses the minimum width required by section 40-572.
- g. The access strip is 660 feet and does not exceed 660 feet in length.

(5) The Zoning Board of Appeals may require the construction of a driveway within the access strip before the land division is processed, but this is not necessary.

Supported by Board Member Wendt. Vote: Yes: Whitley, Baker, Carlton, Underwood, Wendt. No: None. Motion approved.

3. Elect new chairman

Chairperson Whitley stated that he would take a nomination or a volunteer for the chairperson position.

Board Member Baker stated that he would serve the remainder of the term until the election at December's meeting.

Chairperson Whitley commented that a new member will be appointed to the ZBA by the Township Board to replace Jason Pliska.

Board Member Carlton moved that Board Member Baker assume the chair of the ZBA until elections are held for the following year in December or the next regular meeting thereafter. Supported by Board Member Underwood.

Board Member Wendt asked if a reason should be given. Chairperson Whitley stated that the comments at the beginning of the meeting because of his appointment to the Township Board and can no longer serve as chair serves as the reasoning for this action. It is already on the record as why.

Minutes of
ZONING BOARD OF APPEALS
REGULAR MEETING
October 20, 2021

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Vote: Yes: Baker, Carlton, Underwood, Wendt, Whitley. No: None. Motion approved.

Public Comment:

None

Adjournment:

- **Board Member Baker moved to adjourn the meeting at 8:40 pm. Supported by Board Member Underwood. Vote: Yes: Baker, Underwood, Wendt, Whitley, Carlton. No: None. Motion approved.**

Joan Rusch, Recording Secretary