

SPRINGFIELD TOWNSHIP
ZONING BOARD OF APPEALS
REGULAR MEETING
December 18, 2019

Call to Order: Chairperson Whitley called the December 18, 2019 Zoning Board of Appeals meeting to order at 7:30 pm at the Springfield Township Civic Center, 12000 Davisburg Road, Davisburg, MI 48350.

In attendance: Dean Baker
 Bill Whitley
 Matt Underwood
 Denny Vallad
 Skip Wendt

Absent: None

AGENDA:

Board member Underwood moved to proceed with the agenda as presented. Supported by Board member Wendt. Vote yes: Baker, Underwood, Vallad, Wendt, Whitley. Vote no: None. Absent: None. Motion approved.

PUBLIC COMMENT:

None

APPROVAL OF MINUTES:

Board member Underwood moved to approve the minutes of the November 20, 2019 meeting as presented. Supported by Board member Vallad. Vote yes: Baker, Underwood, Vallad, Whitley. Vote no: None. Abstain: Wendt. Absent: None. Motion approved.

OLD BUSINESS:

None

NEW BUSINESS:

1. Request from Ann Rathsburg, 8630 Shore Drive, Davisburg, 48350 to construct a septic system with a distance to the high water mark of Dixie Lake of sixty-three (63) feet rather than the one hundred (100) feet required per Springfield Township Code of Ordinances, Chapter 40, Section 40-639.

The property that is the subject of the request is located at 8630 Shore Drive and is zoned R-3 One Family Residential. P.I. # is 07-10-402-056.

Ms. Ann Rathsburg introduced herself and her husband, John Dickie to the Board. She summarized the information submitted to the Board members. Oakland County believes that the proposed location is the best place to locate the replacement system because of the

location of the well, storm drain and soils that are located in the proposed location. She stated that the storm drain is located on the property which provides drainage for King Road and the new system must be away from this.

Board member Wendt stated that it appears that they are redoing the existing system.

Ms. Rathsburg replied yes, and they are upgrading it as well.

Board member Wendt asked if they were upgrading it from where it was originally installed.

Ms. Rathsburg replied yes.

Chairperson Whitley asked if it was a two tank system and is it replacing a single tank system.

Ms. Rathsburg answered yes. She explained that the new system will have a tank, then a filter system then another tank and out to the field.

Chairperson Whitley commented that this is a passive effluent filter between the two tanks.

Board member Wendt asked if the current system has a 1000 gallon tank.

Ms. Rathsburg replied yes. She confirmed that the new tank will be a 1500 gallon tank.

Board member Vallad asked if the original tank was installed based on three bedrooms.

Ms. Rathsburg answered yes.

Board member Vallad stated that it is a four bedroom now and verified that they needed to enlarge the field. There is an increase in field size.

Ms. Rathsburg stated yes; in fact, they will lose the driveway on the lower level because the field will be located there.

Board member Vallad stated that based on what the County provided and what he has dealt with before, he doesn't know how they can use that much water in a day's time.

Ms. Rathsburg commented that with only two in the home, it will take awhile to use this much water.

Chairperson Whitley stated that every request stands on its own. For all of the other variance requests that they have had for less than 100 feet from a body of water, the Board has stipulated some type of active after treatment and this proposal does not include an active after treatment. He recognizes that there are two tanks and a passive filter, but all the others have had some type of aftertreatment.

Board member Wendt stated that he agrees except for the fact that they are enlarging the system and the filter that is being incorporated in the system creates less of an effluent to get to the lake.

Board member Vallad commented that the proposed field is 20 feet above the water level.

Board member Wendt commented that based on his experience, the soil borings are about as good as you are going to get.

Ms. Rathsburg stated that Oakland County commented on how good the sand was in that location and this is probably why the existing system lasted 60 years.

Board member Wendt asked when the original field was put in.

Ms. Rathsburg replied that she doesn't know. She has been there 23 years and it was there before her. When she called Oakland County to find out, she was told that they did not have a record of it. The home was built in 1964.

Board member Wendt stated that if they are putting everything back in the same hole but with additional reinforcement, the County has made good suggestions regarding how to handle the septic system on this property.

Ms. Rathsburg stated that Oakland County thought that the existing location was the perfect spot for it.

Board member Wendt asked what led the petitioner to believe that she had to repair the system.

Ms. Rathsburg replied that the garbage disposal was gurgling and then they would have to get it pumped frequently.

Chairperson Whitley asked about the maintenance required for the effluent filter between the tanks.

Eric Kane, Universal Septic Services, stated that the filter gets cleaned every time the tank is pumped and with two people living in the home, that would be about every three years. The filter has a handle at the top and it gets pulled out and hosed off and returned. The County code now requires easy access at the surface and a handle right to the top so the filter can be easily withdrawn.

Board member Wendt moved to accept the applicants request as presented subject to the Oakland County permit based on the fact that the system is being improved and the engineering data substantiates replacement and there will be a better system in place than what currently exists. Supported by Board member Vallad.

Chairperson Whitley stated that he is going to vote against the motion. He believes the plan is an excellent one, but the Board has been consistent in the past regarding a requirement for active after treatment when septic systems have been at a distance of less than 100 feet. They have had considerable conversation about this topic over the last number of years as

they have considered septic systems and he believes that this is a standard that this Board should continue to hold.

Board member Wendt asked if he is saying that they need more control over the system.

Chairperson Whitley stated that the ordinance says 100 feet and there are numerous cases where 100 feet isn't possible given the layout, the geography, the size of the lots particularly around the lakes. In order to allow those properties to continue to be used, the Board has granted variances but, in every case, when it has been less than 100 feet, then the Board has stipulated a system that has an active after treatment. This is the way that the Board found to allow these properties to continue to be used. After the research that has been provided to the Board and the participation of the committee regarding alternative systems, this is a standard that the Board has held with universally over the last four or five years.

Board member Wendt amended his motion to add, "the system has to be cleaned at least every two years and the filtration system also cleaned in order to maintain its effectiveness."

Chairperson Whitley stated that the systems that have been approved in the past also have maintenance alarms and maintenance requirements and electronics that provide the notification and since this is a purely mechanical system, he doesn't know how this would be monitored.

Board member Underwood asked if the system that Chairperson Whitley was talking about minimizes the field size which would get them more distance from the lake.

Chairperson Whitley replied that this has been the result and in many cases those active after treatment systems will reduce the required field size which could also increase the distance from the lake. It is the difference between the purely conventional passive system versus the types of systems that have active after treatment which have been required in every other case. His concern has to do with when the Board varies from the distance of 100 feet, whether they are going to require a higher level system that provides active after treatment.

Board member Wendt stated that this system as compared to the average septic system is elevated and greater capacity than what would normally be prescribed by Oakland County. He is part of a lake board and this proposal from the Oakland County Health Division is significantly higher than if you were to put in a septic system somewhere away from the lake.

Board member Underwood asked if it was atypical.

Board member Wendt stated that it is a non-typical situation regarding distance from water to system because of soil conditions and elevations. He is suggesting that the system be checked no less than every two years. He doesn't know if the Township has anybody that would qualify to check the system if this became a condition of approval.

Supervisor Walls replied that he doesn't have the expertise.

Ms. Rathsburg answered that they would comply with the every two year stipulation.

Chairperson Whitley reiterated his opposition to the request.

Board member Wendt stated that he has never seen scientific fact showing the detriment to being less than 100 feet. He reiterated his support of this request.

Chairperson Whitley stated that the system proposed at this location isn't different from a system that would be proposed for a four-bedroom house at a location away from the lake. He has no fault with the design and placement but is questioning the consistency of this Board when granting variances for septic systems on the lakes and what the approach is going to be moving forward. He stated that when the Supervisor brought in an expert and he participated in a focus group to look at systems' designs, he was surprised that when asked scientific questions, the experts shrugged their shoulders and responded with, I don't know. There are so many variables and answers were not available. This leads him to question why the Board members think they have the answers. He asked shouldn't the Board be doing what they can to assure that, if they do grant variances, they are making sure that something higher than a standard approach to a septic system is used to maintain long term quality of the lakes.

Mr. Kane commented that in this particular system, when he dug through two spots, there was no leeching past six inches into the sand. He stated that every circumstance is different, and he urged the Board members to look at each individual situation separately.

Board member Baker stated that this Board did not give direction to any applicants that said they must come forward with a particular system. Each individual chose the system that they brought to the Board. If this is an expectation, then the Township should go through the process and consider it as an ordinance. This does not exist right now and in this circumstance, it is not the obligation of the applicant to come forward with a particular system and say, "this is what I am presenting because of the Board's three-year history." The applicant is making their presentation based on the parameters of their individual lot. If the Board is not accepting of that, then they should just say they are not accepting of that. This is not a discussion for the Board to have with the applicant; this discussion might be more affiliated with the Planning Commission. Board member Baker stated that a motion was made and seconded and Board member Wendt offered an addition to the motion that has never been seconded.

Board member Wendt withdrew his amendment requiring maintenance every two years.

Vote yes: Baker, Vallad, Wendt. Vote no: Underwood, Whitley. Absent: None. Motion approved.

2. *Request from Al Deeby Chrysler Dodge, 8700 Dixie Highway, Clarkston, MI 48348 for reinstatement of a variance to allow the temporary storage of vehicles in a C-2 General Business District instead of the M-1 Light Industrial District approve on September 19, 2018. This variance granted on September 19, 2018 expired due to the applicant's failure to meet conditions of the approval. Applicant is requesting that the*

variance be reinstated to original term with an end date of September 19, 2020 due to the fact that the applicant has met conditions of the September 19, 2018 variance approval.

The property that is the subject of the request is located at 8731 Dixie Highway, P.I. #07-24-101-011, zoned C-2 General Business in Springfield Township.

Mr. Jim Scharl, Engineer, and Mr. Al Deeby, property owner, introduced themselves to the Board.

Mr. Scharl stated that the agenda spells out exactly what they are asking for. The landscaping has been completed. He pointed out the difference is that they removed 35 feet of existing asphalt and the landscaping that is in place is in complete compliance with the Dixie Highway Overlay District.

Chairperson Whitley commented that this was a variance condition at the time it was approved and as a result of construction, that is no longer a noncompliant portion of the request.

Mr. Scharl agreed. They are not asking for any longer distance of time than what was previously granted in September 2018.

Chairperson Whitley stated that the property had continued to be used for vehicle storage until some point in time when it wasn't any longer.

Mr. Deeby stated that when they missed the deadline, they were instructed to remove the vehicles and they did. He has offered to put money in escrow, and he has put \$150,000 to \$160,000 in landscaping. The idea of the placement of an escrow was rejected and he was instructed to remove the vehicles.

Chairperson Whitley stated that they brought it in compliance with the conditions of the variance and they are requesting the reinstatement until September 2020.

Board member Baker stated that this topic was before the Planning Commission earlier. The property that is in question is C-2 zoning and the request is to use it for vehicle storage which is allowed in M-1 but not allowed in C-2. He realized that what the Board is considering is a use variance. Use variances have a different status in the Michigan Zoning and Enabling Act. The State of Michigan spoke towards Use Variances and in this document they say that the authority to grant variance for uses of land is limited to the following: cities and villages, townships and counties that as of February 15, 2006 had an ordinance that uses the phrase, Use Variance, variances from uses of land to expressly authorize the granting of use variances by Zoning Board of Appeals. His interpretation is that if they had granted a Use Variance on this property for an M-1 use and they did it before 2006 and they had continued to renew it, this would stand because it was prior to the Michigan Zoning Enabling Act being passed. But this is a Use Variance that is being requested of the Township and according to the Michigan Zoning Enabling Act, it says that the Township cannot grant Use Variances unless it specifically has been in their ordinance that says they have that authority and it was there before 2006. He looked in the ordinance and he cannot find the language that says they have the ability as a Board to grant Use Variances. All of their variances are around dimensional conformances which are non-Use

Variances. It is not a principal use or Special Land Use under C-2 so they are asking for a Use Variances and the Board doesn't have the authority to grant that.

Mr. Scharl asked if the approval granted in 2018 was in error.

Board member Baker replied he thinks it was a mistake. This variance no longer has standing. He is not interested in reinitiating this variance.

Chairperson Whitley asked if the variance granted in 2018 ceased to exist when the conditions were not met?

Supervisor Walls replied yes, this is correct.

Chairperson Whitley commented that it ended the variance, it did not suspend it.

Supervisor Walls stated that it was the Township Attorney's opinion that when the condition was not met, the variance no longer existed.

Chairperson Whitley stated that this is a condition tonight not of reinstating something because there is nothing to be reinstated; this would be the creation of a new variance. This was the Attorney's opinion.

Supervisor Walls stated that the Township Attorney did not give him any opinion on this appeal, but yes, when the condition of the approval was not met, then the variance no longer existed.

Chairperson Whitley stated that his logic says this would be a new variance.

Mr. Scharl stated that the Commission is cognizant of what has happened on that site in terms of landscaping. He reiterated the amount of money, trees and conformance to the Dixie Highway Overlay District.

Chairperson Whitley acknowledged the changes that have been made on the property. His comments are more in line with what action may be taken tonight. He asked if there was still a variance there to reinstate or did that variance expire so anything that the Board is considering tonight would be the creation of a new variance.

Board member Wendt stated that based on what Board member Baker presented, the Board cannot act.

Board member Underwood suggested getting Township counsel's opinion.

Chairperson Whitley commented that he also has concerns about how this was published since it was published as a reinstatement and there is nothing to reinstate. He asked if it was noticed in a fashion that allows them to act.

Board member Wendt stated that based on the comments by Board member Baker, can the Board even act? Is it prohibited by State law?

Chairperson Whitley stated that this is a legitimate question, but it was done sixteen months ago, and it no longer exists. He stated that if Board member Baker is correct, then it raises the question as to whether the Board can grant this variance and he is questioning how it was noticed.

Board member Baker stated that he doesn't think choosing those words in the Notice creates any issue. He read the definition of reinstatement and stated that the use of this word does not hamper the Board.

Board member Vallad commented that the September 2018 plan presented has a total of 79 parking spaces, but the November 2019 plan has 85 parking spaces.

Mr. Scharl replied that this is to make up for the difference of the additional 15 foot of asphalt that they lost in the front. It squares out the part in the back which has already been graveled. He pointed out that this variance was also granted in 2014 and 2016. If the Board made a mistake, it was made more than once.

Mr. Deeby stated that he did not know about additional parking; this is news to him. He stated that they have gone back and forth between the words, "vehicle display" and "vehicle storage". He stated that in his mind, all of his vehicles are display vehicles for sale and none of these cars are just for "storage". He stated that in the past, they were under the impression that "vehicle display" was acceptable in C-2 zoning and "vehicle storage" was not acceptable. He is wondering if they are tripping up on this same point again.

Chairperson Whitley stated that they spoke a lot about this language difference regarding the property on the other side of Dixie Highway. He stated that during the September 2018 meeting, the request is worded "to allow temporary display and storage of vehicles for two years in C-2". In the past, they were both asked for.

Board member Baker read the wording in the ordinance for the M-1 District and stated that it matches what is being requested here. He also read the ordinance section regarding Zoning Board of Appeals, Powers and Duties. The Board does not have the ability to change the land uses.

Chairperson Whitley stated that it is appropriate to ask for a legal opinion from the Township Attorney as to whether the Board can't, should or shouldn't and since they do not know at this point, he suggested that they need to be guided by a legal opinion.

Board member Underwood concurred.

Board member Wendt moved to Table action on this request pending legal opinion from the Township Attorney as to whether the Board has the authority to make the variance based on State Statute. Supported by Board member Underwood. Vote yes: Baker, Underwood, Vallad, Wendt, Whitley. Vote no: None. Absent: None. Motion approved.

Chairperson Whitley stated that the intent would be to address this at the January 2020 meeting, if it is not available at that time, they will have to make alternate plans at that time.

Board members concurred.

3. *2020 Meeting Dates and Election of Officers*

Board member Wendt moved accept the Officers of the Zoning Board of Appeals for 2020, Board member Whitley as Chairperson and Board member Wendt as Vice-Chairperson, and to accept the 2020 Meeting dates as proposed, being the third Wednesday of the month beginning at 7:30 pm. Supported by Board member Vallad. Vote yes: Baker, Underwood, Vallad, Wendt, Whitley. Vote no: None. Absent: None. Motion approved.

PUBLIC COMMENT:

None

ADJOURNMENT:

Board member Baker moved to adjourn the meeting at 8:39 pm. Supported by Board member Underwood. Vote yes: Baker, Underwood, Vallad, Wendt, Whitley. Vote no: None. Absent: None. Motion approved.

Erin Mattice, Recording Secretary