

**ZONING MINUTES**  
**Cascade Charter Township**  
**Zoning Board of Appeals**  
**Tuesday, December 10, 2013**  
**7:00 P.M.**  
**Cascade Library Wisner Center**  
**2870 Jackson Avenue SE**

**ARTICLE 1.** Chairman McDonald called the meeting to order at 7:00 P.M.  
**Members Present:** Casey, Goldberg, McDonald  
**Members Absent:** Hammond, Vaughn  
**Others Present:** Planning Director Steve Peterson

**ARTICLE 2.** Chairman McDonald led the Pledge of Allegiance to the flag.

**ARTICLE 3.** Approve the Agenda

Motion was made by Member Goldberg. Support by Member Casey.  
Motion carried 3-0.

**ARTICLE 4.** Approve the Minutes of the October 8, 2013 Meeting.

Motion was made by Member Casey to approve the Minutes as presented. Support  
by Member Goldberg.  
Motion carried 3-0.

**ARTICLE 5.** Acknowledge visitors and those wishing to speak to non-agenda items.

No visitors present wished to speak on non-agenda items.

**ARTICLE 6.** Case # 13-3164 Shawn and Kathryn McCabe  
(Public Hearing)

**Property Address:** 6400 Cascade Road

**Requested Action:** The applicant is requesting approval to expand a legal  
nonconforming accessory building located in the front yard.

Planning Director Peterson introduced the case. The property is located just south of Cascade Road. The property is almost 4 acres and is zoned R-1 Residential. The building extends a few feet into the private road easement. That easement area is actually part of the property to the east. The proposed addition comes off the east side of the building. The building is legal nonconforming. The Applicant wants to add on to the building and our Ordinance states that you can add an addition to a legal nonconforming building if it meets today's standards. The building is located in the front yard and this is not allowed. Also, we would not allow someone's building to be on someone else's property. This does not comply with today's standards and does not meet any setbacks. The resident would need a variance for any changes to the building. The applicant is also requesting to add additional height to the building.

The building is currently about 12 feet in height. We do allow for taller buildings but they have a larger setback to accommodate the height. It is assumed that the building is not in the front yard so we do not have any increased front yard setback requirements.

We have had some variances granted for buildings in the front yard but they met the setback and zoning requirements for the area. We do allow for some accessory buildings in the front yard, but they must be at least 200 feet back from the property line and has access over a septic system. This does not meet the requirement as the house is only 111 feet back from the property line.

The aerial photo shows the neighbor that owns the private road has a building in the front yard and it is set back 75 feet from the private road. It meets the zoning setbacks for the area that is zoned R-1 Residential. Thirty five feet is the front setback that we require.

These are not exceptional circumstances that fit this property; it would have to follow the traditional Ordinance. I do not think it would be practical to amend the Ordinance as a result of this. This addition would also require a Special Use Permit. Additionally, I'm not sure we can issue a building permit for a structure on someone else's property.

My recommendation is not to grant the variance. If you are inclined to grant the variance, I would recommend that you table it until the Applicant can provide a detail of the second story addition in order to show the extent of the variance needed.

Member McDonald asked if the property around the Applicant's could be developed in the future.

Planner Peterson stated that there is vacant property that could be subdivided and built on.

Member McDonald asked if the private road easement was owned by the neighbor.

Planner Peterson stated that there is an easement for private driveways and utilities. The easement is owned by the neighbor.

Member McDonald stated that we have never allowed a building permit to build on someone else's property.

Planner Peterson stated that to his knowledge this has never been allowed.

Member McDonald stated that a Special Use Permit would have to be issued before a Building Permit could be issued.

Planner Peterson stated that the building would be over 832 sq ft. and would require a Public Hearing by the Planning Commission.

Chairman McDonald invited the Applicant to come forward to comment or answer questions.

Kathryn McCabe, 6400 Cascade Road came forward. She stated when they bought this parcel of land it was originally for sale at just shy of 10 acres. Our neighbor wanted access to property down the road. We allowed them to purchase the road so we could purchase just the 4 acres. That is why our outbuilding is on their property. This purchase was made in 1998. The neighbor owns the whole section shown that is currently vacant land. That is how our garage ended up in the neighbor's yard. It is currently a two stall garage with a workshop. We could conform to whatever you need. We need a third bay in the garage because we now have a handicap accessible van and we need at least four feet to make it accessible. We do not need a full second story for the workshop. It is basically a loft or a big dormer. I submitted a photo that shows a dormer and it would mimic the dormer on our house. The dormer roof would increase by about six feet. The building would be a three stall garage with the stairs off to the side. At the center line of the garage a dormer would be bumped out. The Ordinance states you have to take a mark off the side of the garage and run it parallel to the roadway and that is all considered front yard. All of the area in front of this is mature trees and woodlands and an organic garden so we do not want to relocate the structure. This would be a huge improvement over what is currently here. We have approached the neighbor and asked him to allow access to the vacant land. He will not allow it because he wants to maintain the natural area. If we have to move the garage and all the paving it would be financially impossible for us. The improvements would add character and value to the neighborhood. It will not be a two story addition but a higher pitch change to the roof line. It would have been our property if we had not allowed the neighbor to buy the road for \$1.

The Applicant stated they are willing to adjust the plans in order to meet the Ordinance and rules of the Township. We do not expect you to break the rules. We are willing to adjust the footprint to conform or offset the garage in some way to accommodate the property lines and easements.

Chairman McDonald stated the issue is that we must follow our Ordinance as closely as we can and we look for very unique exceptions. One of the issues we are most concerned about is that it is a non-conforming building and on someone else's property. We have never issued a building permit to build on someone else's property and that is a precedent the Township does not ever want to go down. There would still need to be a Special Use Permit issued by the Planning Commission.

The applicant stated they would like to buy back that strip of road from their neighbor for \$1 (which is what they sold it for) and have it re-surveyed.

Chairman McDonald stated the property would still be non-conforming but the garage would not be on someone else's property.

Mr. McCabe stated the strip of road the neighbor owns was bought from the previous owner for \$1 before he sold the McCabe's their property.

Member Casey stated the road easement is 66 feet wide. If the McCabe's owned it and it was a road easement where would the road be?

Mrs. McCabe stated the road goes right down the center of the easement, but it doesn't extend the whole width of the easement. It's a 12 foot wide road.

Member Goldberg stated the road extends away from the garage by 20-30 feet. He does not have an issue with the building being in the front yard. The Zoning Board has issued variances for front yard buildings in the past. The issue for him is the garage is on someone else's land, it doesn't meet setback requirements for a residential area, (which is 35 feet) nor does it meet height requirements. The way to solve the first problem is to come to own the property. The second problem is you're not 35 feet back.

Member Goldberg wondered if there was a possibility the McCabe's could buy more property.

Mrs. McCabe stated the footprint of the garage could still be the same. They could move one wall here eight feet forward, and then have the stairs go up the back of the garage. If they put a dormer window in that same structure and made it a loft would they have to buy the easement and put in the easement or could they keep the footprint the same?

Member Goldberg stated they would have to buy the easement so that they would not be on someone else's land.

Planner Peterson stated for setback purposes the Township measures from the road easement so the easement would have to be shifted.

Member Goldberg stated they needed to buy the property in order to make things work and get a building permit.

The Applicant stated that they are willing to do whatever they need to make the project work.

Member Goldberg asked if the two lots were combined to one lot would you still need the 66 foot easement?

Planner Peterson stated that the Private Road Ordinance is triggered when you have more than one property accessing the same road. You cannot combine two lots in this case because there are two homes on the lots.

Member Goldberg stated the McCabe's need to come up with a plan that does not change the footprint of the building.

The Applicant stated she is sure that she could purchase some property back from the neighbor.

Planner Peterson stated that even with buying the property, you would not have enough easement for the changes.

Member Goldberg stated the Zoning Commission could be somewhat flexible with the easement line as long as the building is on the homeowner's property.

Member McDonald stated for clarity that Member Goldberg would be willing to grant a variance if, first and foremost, they do not build on someone else's property.

Member Goldberg stated that this is correct. As long as the Applicant builds any expanded portion of the garage on their property, within the current footprint of the garage, away from the road. If there is any expansion to the current footprint it can only go in one direction and that is toward the house and away from the road.

The Applicant asked for clarification. How is it that she was able to sell the property under the garage but now she is unable to build on the same building that she maintains ownership of.

Member Goldberg stated that the land itself no longer belongs to the Applicant's property so they are unable to issue a building permit on land that the Applicant does not own.

Member Casey stated that he did not visit the property for two reasons. One as the height of the building was not known it would be impossible to grant a variance. Secondly, I do not understand how you got a mortgage on a piece of property that you do not own.

The Applicant stated that we had a mortgage on this property and it is now paid off.

Member Casey stated that he concurs with Member Goldberg. You must realize that we can only grant you the minimum variance. We need to know the height is under 14 feet, the size of the building, and the building must to be on your property. No township will grant a building permit for a property that the Applicant does not own.

Member Casey stated that we need to know what variance we are granting. Planner Peterson has directed you to get the information that we need in order to make a decision.

The Applicant asked if they bought the property would they then just need to submit a building permit?

Member McDonald stated that a variance would still be required.

Member McDonald stated that first you need to talk to Planner Peterson and find out what property you need in order to be building on your own property. I think we can be more flexible on the variance once we know you are building on your own property.

Member Goldberg stated that the Applicant also has to understand that any addition to the footprint of the building must be toward the house and not the road.

The Applicant stated that they can adjust the garage to expand forward. We will need to clear up the property line issue with the neighbor. I understand from Planner Peterson that even if we bought the property we would not meet the easement requirement to the road.

Member Goldberg stated you could not build horizontally because you could never get the 35 ft variance to the edge of the right of way.

The Applicant stated that they could build toward the house?

Member Goldberg stated that if they straighten out the property ownership issue than the Zoning Board is willing to work with you and possibly grant a variance.

Member Casey stated if all our requirements are met, we are sure what variance we are granting and that this is isolated to this circumstance, then it is very minimal to make this work. We understand economics is a concern for you, but do not bring this up as an argument because we can't make a decision based on economics.

The Applicant asked if Planner Peterson could give her the language to resubmit a request for the variance in the proper way.

Planner Peterson stated that the Applicant will receive a letter stating that this case has been delayed until you can develop your plans in accordance with this meeting. What member Goldberg is suggesting is that before you develop your plan you and I sit down and discuss options so you will know what to work on. It will be up to you to decide how much of the expansion you want to do or maybe you just want to add the height. Then when you come back before the Zoning Board they will know how much of a variance to grant if they need to issue one. I cannot decide for you how much of an expansion you require.

Member Goldberg stated that the easement could remain the same but the property below it could be conveyed to the Applicant.

Member Casey stated it is possible to purchase the land subject to the original easement.

The Applicant asked if it were possible to bring the neighbor to the next meeting to state he agrees to sell the land. Does the Township have an attorney to help us in this matter or someone that you recommend?

Member Casey stated that Member Goldberg has given you some advice. He suggested that you work with Planner Peterson. Planner Peterson has told you he will outline what you need. Then you talk to Planner Peterson and work it out. We cannot be the user and judge and the whole thing. It is up to you to work out the problem. Member Goldberg stated that you do not want to get an attorney involved prematurely until you have your plans done. But obviously it has to be an attorney that works for you, not the neighbor, and it has to comply with what Planner Peterson tells you. So your problem is beyond what we can help you with. We can't work with you when the property is not owned by the person who is making the situation.

**Member Goldberg made motion to open the meeting to Public Hearing. Second by Member Casey. Motion passed 3-0.**

No one wished to speak at the Public Hearing.

**Member Goldberg made a motion to close the Public Hearing. Second by Member Casey. Motion passed 3-0.**

Public Hearing is closed.

**Motion was made by Member Goldberg and supported by Member Casey to table the Applicants request for a variance to expand a legal nonconforming accessory building located in the front yard until the Applicant can come up with a new plan to address:**

- **Property Line**
- **Building Height**
- **Location of addition**

**The motion carried unanimously. Case #13-3164 Shawn and Kathryn McCabe has been tabled.**

**Article 7. Any other business.**

**Article 8. Adjournment.**

**Motion made by Member Goldberg to adjourn. Support by Member Casey. Motion carried. The meeting was adjourned at 8:01 P.M.**

Respectfully submitted,

Mel Casey, Secretary  
Ann Seykora/Debra Groendyk  
Planning Administrative Assistant