

ZONING MINUTES
Cascade Charter Township
Zoning Board of Appeals
Tuesday, May 13, 2014
7:00 P.M.
Cascade Library Wisner Center
2870 Jackson Avenue SE

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

ARTICLE 2. Chairman Casey led the Pledge of Allegiance to the flag.

ARTICLE 3. Approve the Agenda

Motion was made to amend the Agenda by Member Neal to drop Article 9- Election of Officers and to change address in Article 6. Support by Member McDonald. Motion carried 4-0.

ARTICLE 4. Approve the Minutes of the December 10, 2013 Meeting.

Motion was made by Member McDonald to approve the Minutes as presented. Support by Member Neal. Motion carried 4-0.

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 # 14-3176 Scott McCallum
(Public Hearing)**

Property Address: 8810 Summerset Woods Ct.

Requested Action: The applicant is requesting a variance to construct a new accessory building 30 feet from the side property line. The building is required to be 40 feet from the property line.

Planner Peterson introduced the case. Summerset Woods's subdivision is in the southeast corner of the Township. In 2002 we amended the Ordinance to allow taller accessory buildings. Previous to this Amendment, the tallest accessory building allowed was 14 feet tall. We measure building height to the midpoint from the average grade on the bottom to the midpoint of the highest roof line. Their building has an average height of 17.5 feet high. The Applicant would be required to have it be 40 feet from the property line.

The Applicant is trying to take advantage of the grade on the site. They have a rear entrance. A two story accessory building is not completely uncommon in the Township. The building is too close to the property line and they need the setback reduced by 10

feet. The only other request like this we did not approve. I'm not recommending approval for this. I don't find anything especially unique about this that wouldn't apply elsewhere in the Township. My concern would be that if granted with no exceptional circumstances involved here you'd end up with a situation where someone with a little bit smaller lot could argue the same thing.

Member McDonald asked Planner Peterson about details of the amended ordinance. Is it 22 feet high with a 60 foot setback, 18 feet high with a 40 foot setback, and 14 feet high with a 10 foot setback? Planner Peterson stated basically it's up to 14 feet tall, its 10 feet for a side yard setback and then at 18 feet it jumps to the 40 foot side yard setback. Member McDonald asked if an average of this is 17 feet of half and 23 feet at the peak. Planner Peterson explained that even at 23 it's the measurement to their midpoint from the back of the house. Think of it almost like a walk-out where you have even taller structure that's measured from the midpoint to the back of building which would be the tallest portion of it. So it's actually taller than 23 feet to the peak, but we measure building height to the midpoint from the average grade. Member McDonald confirmed Planner Peterson's recommendation that it's bad precedent with no unique circumstances. Planner Peterson stated there was nothing exceptional about this accessory building. The applicant can certainly build an accessory building but they're not entitled to a two story accessory building.

Member Cousins asked Planner Peterson about the elevation to get the average. Does it matter where the retaining wall is? Planner Peterson stated you take the average grade and the midpoint of the roof line to get your 17 feet.

Chairman Casey requested the Applicant step forward for comment.

The applicant did so and introduced himself as Scott McCallum, 8810 Summerset Wood Court, Alto, Michigan. The reason we are trying to fit it on the property the way it is, is because the property is wedge-shaped and he's trying to keep the elevation of the garage matching the house while pulling it up as tight to the house as possible because the grade falls off quite rapidly behind the home. They figured as best they could and came up with this plan to keep the building square with the home and the same elevation. The applicant collects antique tractors and needs the storage below to put the tractors away during the winter months. He also takes them to farm parades and that's why he needs the extra storage.

Chairman Casey asked if the building would be used for any business purposes to which the applicant replied, "none whatsoever."

Member Cousins asked the applicant if he took the proposed garage and moved it about 8 feet west and 8 feet south what issue does that cause for you? The Applicant stated the angle of the watershed drops off quite quickly on that side so he was trying to favor the hillside, the natural drain so it could be tied into the home. He's also looked at turning the garage at an angle to match the property line which would make the back of the building instead of being 48 feet from the rear it would have been 40 feet. He wanted to give more natural grading between the properties. This set-up allowed for the most room at the highest point.

Member McDonald stated to Mr. McCallum the ZBA struggles with setting a bad precedent with no unique circumstances. He's wondering how to get to that 40 foot setback and/or find some truly unique circumstance that may justify granting the request. The Commission has never allowed that height without meeting the setback requirements. He asked Mr. McCallum if the building could be extended out 10 feet. Mr. McCallum stated he wouldn't be standing in front of them if he could do that. He was trying to use the natural grade the way it is; it's really dug inside the hill. To do a one story garage for this property is not even feasible because you'd have to drop down to some flat plateau. Using the elevation the way it is this is the best spot for it. Member McDonald asked if he moved the building to the left would the grade be a problem. Mr. McCallum stated the grade just keeps dropping, dropping, dropping. He invited the Commission to come out and see the property.

Member Cousins asked if the lines on the map were topo lines. The Applicant confirmed they were. Member Cousins stated if he goes straight west it looks as if the property gets flatter. The Applicant stated that the land is flat.

Chairman Casey stated the Commission's position has to be the minimum variance and if you have other alternatives that's what the Commissioners are trying to help him with.

Member McDonald stated if the Applicant moved the building North you go from 30' to 15' so you are moving as far south as you can. If you could move it further south you would be in great shape but you can't because of the grade. The Applicant stated that this is correct.

Member Cousins asked if it was impossible to do that or did it make it very hard to work with. The applicant stated that nothing's impossible.

Chairman McDonald stated that if there has to be excessive removal of trees or land those can be considered unique circumstances. Planner Peterson stated that we have never used the removal of trees alone as a reason or circumstance to grant a variance.

Member McDonald asked if grade or topography could be taken into consideration. Planner Peterson stated that topography could be taken into consideration. I think you have to look at that in the total. Member McDonald stated that if the building moved 10' to the west there would not be an issue.

Member Cousins stated that he did a sketch and if the building moved 7' to the south and 7' to the West. The only issue would be moving the retaining wall and moves it back on the side of the garage. It does not look impossible but may be more work to fit it in. Member McDonald stated that then the building would be within setback requirements and he would not have to come before the Board.

The Applicant asked if when the Ordinance was created to take into consideration the walk-out type garage or simply the height of the overall building. Member McDonald stated the Ordinance was updated in 2002. Planner Peterson stated it takes into

consideration the height of the building. The emphasis was on the taller building in making sure they are further away from the property line. There was more of a concern of allowing taller buildings in smaller subdivision lots so that we did not have the situation of a taller building in our subs when this was intended for larger acreage lots.

Member McDonald made motion to open the meeting to Public Hearing. Support by Member Cousins. Motion passed 4-0.

No one wished to speak at the Public Hearing.

Member McDonald made a motion to close the Public Hearing. Support by Member Cousins. Motion passed 4-0.

Public Hearing is closed.

Member McDonald stated that he likes the plan and has empathy for the Applicant and how he is trying to keep it square with the house. However, Planner Peterson has stated that in the findings of fact this could be setting a bad precedent as there are no unique circumstances to allow this variance. Member Cousins also pointed out that while it may make it more difficult to build, moving the building about 7 feet would not require a variance. I think there are options for the building to be moved and I think that we should deny the request based on setting precedent.

Member Cousins stated that in reading the findings of fact, the exceptional or extraordinary conditions findings stated the variance could be avoided by having a shorter or smaller building.

Motion by Member McDonald to deny the variance as is based on finding of fact from staff that the building could be shorter, smaller, and could be moved to avoid a variance. Support by Member Neal. The motion carried unanimously. Case #14-3176 Scott McCallum has been denied.

**Article 7. Case # 14-3177 Art Van Pure Sleep
(Public Hearing)**

Property Address: 5925 28th Street SE

Requested Action: The applicant is requesting a variance to allow additional wall signage.

Planner Peterson stated that this is the strip mall to the west of Wal-Mart. On the end cap is where Art Van wants to locate a new store. The way we regulate wall signage for commercial strip malls for multi-tenant buildings is you get 1 square foot for each lineal foot of store frontage. We did just do a new set of amendments in regard to wall signage and for years we only allowed 1 wall sign. Period. We did change that recently so that you could have multiple wall signs as long as it added up to a total square feet of wall signage allowed.

The building sits back about 130 feet from the roadway. 100 feet is normal so it is a little farther back than normal. This site was subject to a variance request a few years ago.

They were allowed to have a sign out there that did not meet the setback requirements. The ground sign is a little bit shorter than the normal 20 foot to 30 foot signs that you typically see on 28th Street. We have dealt with a lot of sign requests over the years and we do not grant very many as we are pretty tough, quite frankly, on signs in Cascade Township compared to our surrounding communities. In our development of projects, when we are able to look at a project in its entirety we have done some tradeoffs. Maybe they reduce the amount of signage out by the road and allow more signage on the building. We look at the total amount of signage they are allowed and allow them to divide up their signage within those limits. In terms of variances for additional signage we have not done much at all that I can ever recall. The commercial strip mall is really not that unique. The Applicant stated that it was unique to their business but multi-use commercial buildings are not unique to the Township. They are allowed 45 sq. ft. and they are requesting 100 sq. ft. My sense of this, is that if you were to grant a variance like this you would be starting the amendment process for our Sign Ordinance. We would have no choice but to allow other business' more wall signage if we called the end units unique. The Sign Ordinance was changed to allow multiple wall signs but within the current standards. We specifically indicated that we were not allowing additional square footage to do that.

Member Cousins asked for clarification. Is the Board being asked to approve two signs as well as additional square footage? Planner Peterson stated that multiple signs are allowed so it is more an issue of total square feet. They are allowed 45' sq. ft. based on the store frontage.

Chairman Casey requested the Applicant step forward for comment.

Michael Rupert, Corporate Architect for Art Van Furniture stepped forward as the Applicant. The Applicant stated he would like to make a few points that he feels makes this project unique. The Applicant stated that most communities measure from the center line of the road not the right of way because you have traffic going in both directions. This measurement is 190' from the centerline of the road which makes it difficult to see signage at 45MPH from both directions on a strip mall. Secondly, a lot of communities allow signage in proportion as it relates to the entire façade. The increased signage that we are asking for by increasing two signs to 100 sq. ft. the proportion of that signage is 3.8% of the total façade which is really small. A lot of communities allow up to 10% coverage of the total façade. Thirdly, this is a corner lot and there are two streets. In other communities when a unit is on a corner lot they allow signs on both facades and count both facades equally toward signage. Lastly, this is a unique building as it sets down approximately 8 feet down from the road bed. Additionally, the signage is blocked more by the vegetation on 28th Street.

Member Cousins asked about the use of measurement from the centerline in most communities. Is that from personal experience or have you surveyed. The Applicant stated that it was his experience.

Member McDonald made motion to open the meeting to Public Hearing. Support by Member Cousins. Motion passed 4-0.

No one wished to speak at the Public Hearing.

One letter was received from Tolson Enterprises the property owner.

Member McDonald made a motion to close the Public Hearing. Support by Member Cousins. Motion passed 4-0.

Public Hearing is closed.

Chairman Casey asked if the side road was a public or private street. Planner Peterson stated that Charlevoix Woods Drive is a private street.

Member Cousins stated that the second sign is in fact allowed but must be within our specifications. Secondly, having driven by the site the fact that the building is lower actually makes it easier to see and puts the façade below the trees. The pylon sign was added with the variance and is very visible from the road going east or west. I have never been in a community where the measurements were taken from the middle of the road. It has always been the right of way.

Member Neal stated that when the monument sign was allowed, great consideration went into the decision with this situation in mind.

Motion by Member McDonald to deny the variance based on finding of fact from staff based on the potential precedent that could be set. Support by Member Neal. The motion carried unanimously. Case #14-3177 Art Van Pure Sleep has been denied.

Article 8.

Case # 14-3184 Jon DeGraaf
(Public Hearing)

Property Address: 6960 Thornview Drive SE

Requested Action: The applicant is requesting a variance to allow an accessory building in front of his house.

Planner Peterson stated the property is a residential property located off a private street off of Thornapple River Drive, north of 60th Street. The private street does not go right along the property line. We measure setback to the private road right of way. As the survey points out there is 300' to the property line and 165' to the right of way of Thornview Drive. We do not allow accessory buildings in the front yard but we do have some exceptions. We did amend the Ordinance to allow some accessory building in the front yard with the site constraints that you were at least more than 200' back, you had to drive over your septic system and remove a bunch of trees. The 200' property line would prevent it from happening in a typical subdivision lot. In this particular case they are relocating an existing shed and replacing the existing shed with a new one at the 160' mark. What is different about this one is that this is more traditional variance request as there really isn't anywhere else to move that building away from the 200' distance because the house is built on a ridge. We have had a few of these types of cases. A total of seven variance requests where we have approved five and denied two. The two denials were because they had reasonable alternatives to relocate the building.

In my opinion, I felt this one was worthy of a variance. A little bit different in that this building would actually line up with the neighbor's house next door. It would not protrude or feel like it was in someone's front yard. I think you have a whole set of circumstances, the topography, the lot and the way the road is built that set this one apart from others. Based on the circumstances, a variance is warranted. I recommend that you grant their variance as they have requested.

Chairman Casey stated that this topography is much more severe than the previous case. Planner Peterson agreed. This is not just an inconvenience, they really are unable to move the location of the building.

Member Cousins asked if Planner Peterson received anything showing the topography of the site. Planner Peterson stated that he does not have anything that shows the topography.

Member Cousins asked if it were one variance or two. Planner Peterson stated that it was one variance. Member Cousins asked for clarification as they were moving one shed and replacing it with another. Planner Peterson stated that it could be two separate variances if that is your prerogative. Member Cousins asked if the other shed had a variance or if it was non-conforming use. Planner Peterson stated that the shed that is being moved is less than 200' sq. ft. so a building permit would not have been necessary.

Member Cousins stated that in Staff Report Item 7, we have a Provision Ordinance that allows accessory buildings in the front yard but it has to meet all three conditions. Planner Peterson stated that that is the intent.

Chairman Casey requested the Applicant step forward for comment.

Jon & Kelly DeGraaf, 6960 Thornview stepped forward for comment. Jon DeGraaf presented a picture of the site showing the topography. He stated that there is a ridge and a ravine on the property that wraps around the property. To the west and the south is a drainage field as well. Kelly DeGraaf stated that the neighbor was given a variance to move their shed because of the drainage field.

Member Cousins asked if the property dropped off at the back of the shed or at the front wall of the garage. The Applicant stated there is a slight amount of flat space to the south of the shed but it drops very rapidly. There are existing trees that I would like to keep as well. About 10 feet from the current location is where it starts to drop very rapidly.

Member Cousins asked if they relocated the shed to the other side of the house, would it be right in front of the drain field. The Applicant stated it would be north and east of the drain field so not over the drain field at all.

Member McDonald made motion to open the meeting to Public Hearing. Support by Member Cousins. Motion passed 4-0.

No one wished to speak at the Public Hearing.

Member McDonald made a motion to close the Public Hearing. Support by Member Neal. Motion passed 4-0.

Public Hearing is closed.

Member McDonald made a motion to approve the variance request as written and documented on staff's report. Support by Member Cousins. The motion carried unanimously. Case #14-3184 Jon DeGraaf has been approved.

- Article 9. Any other business**
- **Community Planning Principles**
 - **Rules of Communication**

Article 10. Adjournment.

Motion made by Member McDonald to adjourn. Support by Member Cousins. Motion carried unanimously. The meeting was adjourned at 8:10 P.M.

Respectfully submitted,

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