

ZONING MINUTES
Cascade Charter Township
Zoning Board of Appeals
Tuesday, July 14, 2015
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: Berra, Casey, McDonald, Neal
Members Absent: Hammond (Excused)
Others Present: Community Development Director Steve Peterson and those listed on the sign in sheet.

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

ARTICLE 3. Approve the Agenda.

Motion made to approve the Agenda as printed by Member McDonald. Support by Member Berra. Motion carried 4-0.

ARTICLE 4. Approve the Minutes of the June 09, 2015 Meeting.

Motion made by Member McDonald to approve the Minutes of the June 09, 2015 Meeting as written. Support by Member Berra. Motion carried 4-0.

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

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

ARTICLE 6. **Case #15:3250 Mike Distler**

Public Hearing

Property Address: 1989 Timber Ridge Drive

Requested Action: The Applicant is seeking a variance to construct a new accessory building in the front yard.

Community Development Director Peterson introduced the case. The request is for an accessory building to be constructed in the front yard of property. Director Peterson refers to aerial photos of the property. Timber Ridge is a series of private streets off of Buttrick on the west side, built 10 years ago. What is important to note, is that the front of the house to the road is defined as the front yard. Although the building requested is off to the side, it is technically defined as the front yard. That is why they are asking for a variance. The size of the building in question is just under 800 sq. ft. and does not require a special Planning Commission permit, only a building permit. Director Peterson refers to a series of aerial photos, which show a series of roads that actually go through the backside of the property, technically considered a thru lot, which means there is frontage on both sides of the property. The back of the property is set up different, as it is a wooded lot with a drop off which is why the back is not used for access.

The houses and roadways are not set up in a traditional fashion, thus causing some zoning issues different from traditional neighborhoods. Director Peterson refers to 9 past variances, 7 granted and 2 denied. The 2 variances that were denied were done so because they both had reasonable alternatives for building placement. In the opinion of Director Peterson, the exceptional issues in this case are the topography, the thru lot issue and the building itself which would be on the north side of the neighbor and in the property owners front yard. The building will be 27 feet from the northern property line, and if moved back into compliance, could be as close as 10 feet. Director Peterson would like to hear from the Applicant as to why there are no other options to justify the variance. He has recommended approval of the variance that they applied for. Director Peterson has spoken to a concerned neighbor on the north side, who responded to the Public Notice.

Chairman Casey asked the Applicant to come forward with comments.

Andrew Johnson, 10690 Bailey Drive, Lowell, of Johnson Homes came forward on behalf of the Applicant. Basically, we do not have a back yard that is level. The backyard is very steep and we cannot move the structure to the back yard. This is the best spot that is the most level for the accessory building.

Member McDonald made a motion to open the Public Hearing. Second by Member Berra. Motion passes 4-0.

Chairman Casey asked anyone with comments to come forward.

Clifford B. Tholen, 1957 Timber Ridge Drive, came forward. We are the property immediately to the north of the Applicant. We have a concern about the Findings of Fact that there were exceptional or extraordinary conditions or circumstances about this lot. The lot does slope but most of the lots in our neighborhood are rolling or have terraced terrain in them and all of the lots are heavily wooded. It is very apparent when you are buying property and this neighborhood has been this way for 20 years. We don't feel like there is anything extraordinary. That is the way the lots are when you purchased them. The other finding of fact that it will not be injurious to the neighborhood. The neighborhood is heavily wooded and we have never taken a tree down for landscaping purposes. We have been very careful to preserve the wooded nature of our property and our neighborhood. We feel like this type of structure will detract from that. This will be a large structure of 28' x 28' and given the way the lots are designed, this structure will be visible from every room in our house. Our view will be obstructed or injured or damaged by this kind of a structure. We are concerned about this and the impact this is going to have on the neighborhood. This is the first such request of this type in our neighborhood and I am afraid it will set a precedence. Chapter 17.03 1.7 of the Township Ordinance states "will the proposed building adversely affect or be injurious to the view of any adjoining property owner or occupant." Our house is well back into the property and this will affect the bordering of our front yard. The neighborhood has always been very conscience and protective of the trees and I ask that you not approve this variance.

Member McDonald stated that the Township Ordinances are in place so that we have standards to allow for the most beautiful areas that we can in the Township. Some of the Ordinances are kind of general in meaning that it cannot be injurious to the

neighbors. I could paint my house orange and by the Ordinance I am entitled to do so, but my neighbors may find it injurious. There is subjectivity that comes into this as well. We try to have the Ordinances such that they are reasonable and consistent. The Applicant legally by Ordinance could build this structure and just put it further back so that it is then deemed to be in the side yard and not even require the Variance. If the Applicant chooses to do this it will be even closer to your property. The resident is within the Ordinance to build a structure that is legal, we cannot stop them from doing that. We have tried to entertain tree ordinances but they do not work. It becomes the task of the Homeowners Association to put in place rules within their Associations but we cannot dictate those. My point is, we look at the Finding of Fact, precedence and when there are exceptional findings. Now, if we do not grant the variance, the Applicant can slide the building slightly back and closer to your property line and not require the variance and can legally build the structure. I would ask how close you are to the property line as the structure will be 27' off the property line.

Mr. Tholen stated that they were approximately 20' from the property line. Member McDonald asked if there were trees between the structure and his home as the area is heavily wooded. Mr. Tholen stated that there will be trees between the structure and our views. Member McDonald stated that the Zoning Commission could force the Applicant to push the structure further back but we cannot prevent him from building a structure.

Mr. Tholen stated that a member of the Association would like to speak that may influence the Zoning Boards Decision. Member McDonald stated that the Township cannot dictate to an Association what their bylaws are.

Megan Magyar, 1847 Timber Ridge Drive SE, came forward as the President of the Timber Ridge Homeowners Association. In regards what Mr. Tholen stated, our Association is in the process or rewriting some of its bylaws. In the cul-de-sac next door to the Distler's, they have very strict bylaw codes that they must follow. The cul-de-sac that the Distler's live in is not so strict but we are intending to merge the two Associations. When they merge there will be a bylaw written about accessory buildings or structures be built on property. This concerns me that this could be approved before the bylaws are rewritten and approved or denied in September it could set a precedence.

Chairman Casey asked Director Peterson to clarify the Townships stance on Homeowner's Association.

Director Peterson stated that while we can appreciate the timing of the project, we do not get in the business of enforcing Homeowners Association bylaws. Our granting a permit does not have any bearing on what the Association may want to do. I understand that if this building is built and you change your bylaws it could be an issue for you.

Megan Magyar stated that we must follow the Ordinance but we can also make the rules stricter in our Association. Director Peterson stated that this was correct but we do not enforce them. We can still approve the variance and then it is up to the Homeowner's Association to enforce their deed restrictions.

Member McDonald asked if anyone in the Association spoke to Mr. Distler regarding this matter. Ms. Magyar stated that no one has spoken to Mr. Distler but the Bylaw changes have been in process since last September and several residents have come forward to complain about the structure being proposed.

Chairman Casey stated that the Homeowners Association should have registered those complaints with the Township. Ms. Magyar stated that she is not familiar with the proceedings. Chairman Casey stated that you now have a problem in making this retroactive but that is your Associations situation.

Andrew Johnson on behalf of the Applicant, stated that he believes that the Association is set up strictly for the road maintenance. I believe that this is Meets and Bounds so we are outside an Association. We did not tie in with any Association plan or bylaws on this section of the road.

Member McDonald asked the Applicant if there was any way they could further do some plantings or vegetation.

Mike Distler, 1989 Timber Ridge Drive, the homeowner stated that he was very careful of where they placed this structure. I am very proud of my house and the neighborhood and it is one of the reasons I selected Andy Johnson as my builder because I want this structure to be of the same quality as my house and to match the existing home perfectly. I want it to look like it was always there and part of the property. The location we selected will allow trees to surround the building. It will not be particularly visible from the road due to the tree coverage. I do not feel this building will detract from the house. It will not be a steel building but rather a brick structure that will match the house. One of the reasons I bought this lot is because it was not part of an Association that would prevent me from building a structure like this. To me I think it looks better to store a utility trailer and boat inside a building rather than outside to negatively impact my neighbors.

Chairman Casey asked if The Applicant had talked to any of his neighbors. The Applicant stated that he had and both neighbors he talked to were okay with it.

Member McDonald stated that he assumes that since the Applicant likes his wooded lot that he will keep as many trees as possible. He also asked what type of trees would need to be removed. The Applicant stated that most of the trees are oak and maple.

Member McDonald made a motion to close the Public Hearing. Second by Member Berra. Motion passes 4-0.

Member McDonald stated that he is always concerned whenever there is some negative feedback but I have to go back to what our Ordinance says and the Findings of Fact from Staff. If we denied the variance the Applicant could simply slide the structure closer to the property line and be within the Ordinance and could still build it anyway. I feel it is a better compromise to keep the location where it is today.

Member McDonald made a motion to approve the variance based on the Findings of Fact which demonstrates the exceptions of this case and there are similar precedence with unique lot configurations and unbuildable topography. Second by Member Berra. Motion passes 4-0.

ARTICLE 7. Case #15:3251 Derek Benedict

Public Hearing

Property Address: 1961 Steketee Woods Lane

Requested Action: The Applicant is seeking a variance to construct a new accessory building 10 feet from the side property line. The building is required to be 40 feet from the property line.

Community Development Director Peterson introduced the case. Steketee Woods Lane is a private street running off the end of Oliver Woods. The placement of the structure is why there is a variance request. This case is different than the previous case in that the building is over 832 sq. ft. and will require a Special Use Permit from the Planning Commission. The location itself is 10' away from the side property line. As the building is taller than 14 feet it requires an extra setback. The setback they are choosing is the minimum of 10' which is the setback for a 14' tall building. I did not find any old variances that we had granted for allowing a building of this height to be so close to the property line. My recommendation is that you deny this request as there are other options in this case. I recommend they build a slightly shorter building or make a different roof line. I recommend we deny the variance.

Member Berra asked if anyone had commented on the Public Hearing notice. Director Peterson stated that a few people had inquired but no comment for or against the project.

Member McDonald asked Director Peterson what the intentions were for the Ordinance to go from 10' setbacks for a 14' building to 40' setbacks for buildings between 15'-18' tall. Director Peterson stated that it was based on having a wide enough lot to accommodate such a large building. Director Peterson stated that we wanted buildings to move further away from the property line when they get taller.

Chairman Casey asked the Applicant to come forward with comments.

Derek Benedict, 1961 Steketee Woods Lane came forward as the Applicant. I am applying for this with the understanding that 10' may be asking a bit much. The building is a foot and a quarter over the allowable height. There is a bit of a limitation of the house and the patio. I cannot go much further but if it could be approved with a 20' setback, there may be a bit of play and I could move the structure. I was going for the best case scenario. I am willing to concede a little bit there. Due to the topography of the lot it does not allow for an easy way to get in and out of the building. I do have signatures from the neighbors to the north and south stating they are okay with the structure. The purpose of the building is for storage of classic cars and an ultra-light.

Member McDonald stated is that the Zoning Commission does not have a problem with

the structure and what it will be used for but we do not want to set a precedence by allowing the structure to be built so close to the property line. There are options for you to adjust the project without setting precedence.

Chairman Casey asked if the Applicant was willing to move the structure or if there were other design options that would get him closer to compliance. The Applicant stated the he has a utility trailer that requires a certain height to the building in order to store the trailer inside the building. In trying to keep the house as similar to the house as possible the roof pitch really cannot be adjusted.

Member McDonald made a motion to open the Public Hearing. Second by Member Berra. Motion passes 4-0.

Chairman Casey asked anyone with comments to come forward.

Brett Bielski, 1005 Waltham, owns the property next the Mr. Distler to the south. Derek was proactive in talking to the neighbors before he built. The building is quite large and it was not what my wife and I were expecting to have next to us in the wooded area. That being said, Mike has a lot of toys and he needs to have storage for them. I guess I understand the precedent but if he is willing to move it back another 10 feet we think it's a fair concession.

Member McDonald stated that this isn't a matter of design or use, it's a matter of precedence. There are no real exceptions to make this unique without setting a precedence.

Chairman Casey stated that the Zoning Board of Appeals can only grant the minimum variance required.

Member McDonald made a motion to close the Public Hearing. Second by Member Berra. Motion passes 4-0.

Member McDonald stated that the back of the lot has topography that would not allow the structure to the rear of the property. That being said, if the height of the building was lowered by a foot and a quarter, they would not need to be here. Director Peterson stated that this is correct. Director Peterson stated that if the Applicant is willing to move the structure back another 10' feet to 20' feet it would be acceptable.

Member McDonald asked if it was possible to move the structure back 10'. The Applicant stated that the patio could be shortened to allow room for movement. Any more than 10' would be difficult with the pool filter and patio. The Applicant stated that the roof line may be lower than I thought if we continue the roof further. Director Peterson stated that the height measurements would not change unless you went from 10' walls to 8' walls or changed the roof pitch or a combination of the two.

Member McDonald stated that we would be willing to make an exception if you would have a larger setback. The Applicant stated that he would be willing to change to a 20' setback.

Member McDonald made a motion to approve the variance with conditions. The conditions required being a 20' setback from the side property line, building height set at no higher than 15.25' and that the project goes before the Planning Commission for a Special Use Permit for the size of the building. Support by Member Berra. Motion Passed 4-0.

ARTICLE 8. Any other business.

ARTICLE 9. Adjournment

Motion by Member Berra to adjourn the meeting. Support by Member McDonald. Motion Passed 4-0. Meeting adjourned at 7:15 PM.

Respectfully submitted,

Ann Seykora/Julie Kutchins
Planning Administrative Assistant