

Minutes of
**ZONING BOARD OF APPEALS
REGULAR MEETING**

May 19, 2021

SPRINGFIELD
CHARTER TOWNSHIP



Sean R. Miller, Clerk

Call to Order: Chairperson Whitley called the May 19, 2021, Zoning Board of Appeals meeting to order at 7:30 pm at the Springfield Township Civic Center with members of the public onsite in the Conference Room and remotely via phone/video conference per Michigan Department of Health and Human Services Order.

In attendance: Bill Whitley, Chairperson
Jason Pliska, Board Member
Skip Wendt, Board Member
Jim Carlton, Alternate Board Member

Absent:
Dean Baker, Board Member
Matt Underwood, Board Member

Approval of Agenda:

- **Board member Wendt moved to proceed with the agenda as presented. Supported by Board member Carlton. Vote: Vote yes: Carlton, Pliska, Wendt, Whitley. Vote no: None. Motion approved.**

Public Comment:

none

Approval of Minutes:

- **Board member Pliska moved to approve the minutes of the February 17, 2021, meeting as presented. Supported by Board member Carlton. Vote: Vote yes: Carlton, Pliska, Wendt, Whitley. Vote no: None. Motion approved.**

Old Business:

none

New Business:

1. Request from Jason Orzechowski, 9132 Sherwood Drive, Davisburg, 48350, for a variance to construct a deck with a rear setback of seven (7) feet instead of the twenty-four point five (24.5) feet allowed per Springfield Township Code of Ordinances, Chapter 40, Section 40-932.

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The property that is the subject of the request is located at 9132 Sherwood in Springfield Township and is zoned R-3 One Family Residential. P.I. #07-10-252-001.

Chairperson Whitley asked if Mr. Orzechowski would like to come forward and speak to this request.

Mr. Orzechowski stated he is requesting a variance in the setback for the deck. He explained that his home is currently on a nonconforming lot. Right now, the current setback is about six feet from the property line to the back of the garage. He stated that he is requesting seven feet from the back to approximately where the deck would end.

Chairperson Whitley asked if Mr. Orzechowski could describe the reasons he is requesting the variance.

Mr. Orzechowski explained that his home is on a nonconforming lot and there is not a straight 90-degree boundary on the property line; the house is set square to none of the property lines except for the side, everything else is set at an angle. The offset from the back setback would be cutting off the back of the garage and part of the house.

Chairperson Whitley noted the property is a corner lot, so there are two front setbacks to address.

Mr. Orzechowski added that in the back there is also a neighbor's driveway. He stated that all of the neighbors have signed a document saying they are completely fine with the construction of the deck.

Chairperson Whitley asked if the Board members had any questions for the applicant.

Board member Carlton asked if one follows the left property line up if this is the six-foot setback that goes through the neighbor's driveway.

Mr. Orzechowski confirmed Board member Carlton's understanding and mentioned that the seven foot is the extreme minimum setback mentioned. The other lot line would be a worse case of twenty feet setback.

Chairperson Whitley asked if the angled corner is the approximate location of the corner where the variance is being requested. Mr. Orzechowski confirmed this.

Board member Carlton asked about how the property owner determined the desired size of the deck to be 21 ft. x 14 ft. Mrs. Orzechowski replied that this dimension would be big enough to add stairs and an extra egress from the house.

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Chairperson Whitley commented that the seven-foot setback of the deck is actually greater than the minimum setback of the house. The deck would be nonconforming, but the nonconformity would not be increased.

Board member Wendt asked if the dimensions from the garage to the drive is eight feet. This was confirmed by the property owner. Board member Wendt asked what the setback for the garage would be if you took that corner and went back to the property line. Mr. Orzechowski replied that it would be six feet.

Board member Wendt commented that there is a pre-existing corner of nonconforming already.

Board member Carlton commented that he did not think the fourteen feet is excessive for the deck. The steps are flush to the garage, so it is not set out farther than needed which helps the aesthetics.

Chairperson Whitley asked for a motion if no further questions.

Board member Carlton moved to approve the request at 9132 Sherwood Drive for variance to construct the deck with rear setback of seven feet instead of 24.5 feet because of the special conditions and circumstances that exist because of the existing nonconforming lot. With the house at six feet from the rear setback the deck would be greater than six feet and have a seven-foot setback. The special conditions and circumstances are not a result of the applicant's actions. The variance would make possible reasonable use of the land and granting the variance would be in harmony with the neighborhood because the majority of the neighborhood has decks also. Further to note that the unusual size and shape of the lot were discussed as part of the special conditions of the variance. Supported by Board member Wendt.

Chairperson Whitley asked to add to the motion the comment that the unusual size and shape of the lot were discussed as part of the special conditions of the variance. Board member Carlton agreed to amend his motion; Board member Wendt agreed to support.

Vote: Vote yes: Pliska, Wendt, Carlton, Whitley. Vote no: None. Motion approved.

2. Request from Douglas W. Ritthaler, 11783 Old Oaks Drive, Davisburg, 48350, for the following setbacks to rebuild an existing detached garage: front setback of four point seven (4.7) feet instead of the twenty-five (25) feet front setback allowed and side setback

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of one point two (1.2) feet instead of the six point one five (6.15) feet allowed per Springfield Township Code of Ordinances, Chapter 40, Section 40-932. Also, to allow applicant to place a proposed home at the existing home's side setback line of five (5) feet instead of the six point one five (6.15) feet allowed per Springfield Township Code of Ordinances, Chapter 40, Section 40-932.

The property that is the subject of the request is located at 5681 Morning Drive in Springfield Township and is zoned R-2 One Family Residential. P.I. # 07-28-326-024.

Douglas Ritthaler explained that he and his wife are requesting the variance to replace their existing cottage with a practical year-round home where they intend to live during their retirement.

Chairperson Whitley asked for comments about the reasons for the location of the garage and the home.

Douglas Ritthaler explained that in the beginning stages of the design they started with the septic system and that system is designed around an Eljen type of septic system. Working with the site engineers and with the county they were able to get that current permit approved for the septic. That has influenced how the rest of the structure on the property is designed. Some special conditions they have had to deal with is that this is a fifty-foot parcel and is similar to the north and has a ten foot nontaxable parcel to the south. There is no additional land to be purchased. It has an original obsolete 1926 garage that has three divided sections, a very narrow side entrance, and low trusses so it is more of a barn than a garage. The structure isn't sealed and there are areas for animals to get in. At that age it is losing its usefulness. It currently sits on the lot line. They would like to stay on that line.

The existing south side is 2.1 feet off the lot line and on the lakefront is 1.3 feet off the lot line. The house is currently five-foot off the southern lot line. Under the ordinance of 40-932 they already have the ten feet that can be approved on the north side. They would be using the 50-foot width productively and the lot lines exactly where they are; not going closer to the lot lines. They sought and obtained through the last nine months a five-foot variance through the County to ensure they had a safe width to the garage for a practical two car garage. The five-foot variance would allow a sidewalk. The hardest part is of the site to build is the septic. It is needed now. They would like to start the building construction in the next couple years. When they look at the functionality of the lot they need to look at where the garage is to be able to produce an effective and safe construction site to build the home. Fifty feet is tight to do it and they need to look at the

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Eljen system which will save 37% of the space. They will need a tank system with a spray pump because of where the house is to correctly spray into the Eljen system. The septic system will cost approximately \$22,000. The spray system is below ground. There will be above ground for the electrical for the home.

Board member Carlton commented that when this was all put together the septic was the starting place. The distance to the south of the garage is currently 2.1 feet and that does not change. The west corner is going to 1.2 feet but is currently 1.3 feet. The garage is a little larger but stays in the same line. So, the setback is not going to be changed for the house.

Mr. Ritthaler confirmed that they absolutely required their site planner to not go past it. They came to the meeting prepared with a plan that was functional, practical, and followed the requirements. The property owner discussed problems with the current septic system to show the urgency of getting this problem addressed.

Board member Wendt asked how the septic field would be protected from traffic.

Douglas Ritthaler explained that there is a concrete slab at the driveway that is going to be cut back for that field, and they will put shrubbery or some type of block, so cars won't drive any farther onto the field. They will not go further past the garage. They can park in the driveway in front of the garage and on the road, but they would like the garage for safety when they age. The parking slab is not really four feet, as they still have 17 or 18 feet to park. In the front of the garage there is a stone area, and they would put the garage there.

Chairperson Whitley commented that there are a lot of constraints when building a home because of zoning ordinances, but in addition to that it becomes very difficult for a well and septic system.

Board member Pliska commented that it looks like the plan is to build a new home on the existing footing from the current home.

The property owners explained that they would if they could, but the centers are not supported correctly and would be a major risk. For the south side they would replace the block exactly where it is. For the parcel to the left and north, no one has water issues. If they move that block to five feet instead of 6.15 feet, they will bring on soft dirt. If not, they will have a backfill area of 14 inches of soft dirt instead of 100-year-old compacted

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dirt. They cannot put the field where the garage is because of the compacted dirt, so they had to put the field where it is.

Chairperson Whitley asked for any comments or questions from the board, online participants, or in person.

David Vogt, 5668 Morning Dr., stated he lives across the street from this property, and he has access to the south side of the property. He commented that if the house will stay on the same footing, he has no problem with that. The garage is exactly where they said, 2.1 and 1.2, and he has no problem with a setback of 4.7.

Chairperson Whitley asked for more comments from the public.

Steve and Tina Swalec, stated their home is on the north side of the property in question and asked if section 40-932 negates section 40-931. They wanted clarification if the intent of section 931 was permitting legal nonconforming lot structures to continue until they are removed but not to encourage their survival and not to enlarge anything to create more nonconformity. Do nonconforming lots according to section 40-932 now allow them to go to the 10-foot and 5-foot setbacks?

Chairman Whitey offered the following explanation. Section 932 was created about three years ago to address the issues of many nonconforming lots. These houses were created before there were zoning ordinances in the townships. They are 50-foot lots. In this district, the minimum lot width is 120 feet. The township cannot go back and say a person cannot live there because the lots aren't big enough. What was happening was that virtually every homeowner in these narrow, nonconforming lots had to come to the Zoning Board of Appeals and go through the appeals process in order to do anything with their lots. It was suggested and requested that the Planning Commission and Township Board look if there was a way to treat the majority of these cases to make it easier on the property owners to deal with these requests administratively. That is what 932 does. It will allow the township zoning official, in this case the supervisor, to administratively approve variances and gives the guidelines within which administrative approval can be done. If that meets the request of the homeowner, then the case is done. If it does not, if the requester wants to go with a variance greater than what could be allowed through 40-932, then the next course is an appeal. And that is why this case is here tonight. It is not because the level of nonconformance is increasing, it is because the level of nonconformance exceeds what can be done administratively. The zoning official could not just say it is approved. It had to be taken to the Zoning Board of Appeals. It is not

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replacing 931. It is just giving a further definition on how to handle the high volume of cases and make it more efficient and cost effective.

Mr. and Mrs. Swalec responded that they understand why the case is at the Zoning Board. However, 40- 932 says a lot is not lawful with pre-existing, nonconforming use and said lot cannot be developed. The lot is already developed. It says that it has to meet A, B, and C in order to grant the ten-foot variance because there already is a 24 foot house on the property. The concern is that the new property will block their living room window. It says the official may grant a variance and allow the reduced setbacks as allowed below if he or she finds all of the following: A) The lot cannot be reasonably developed for proposed use with strict compliance with the requirements. B) A practical difficulty exists that was not created by the owner of the lot. C) The variance granted is the minimum necessary for reasonable use. However, they are not sure if the property owners meet all of the requirements stated in 40-932.

Chairperson Whitley asked for clarification of the question.

Mr. and Mrs. Swalec explained that the official may grant the variance and allow the reduced setback as allowed below providing that he or she finds all the following: A, B, and C.

Chairperson Whitley clarified that he is not that official, and neither is the board the official. The official that is being a referred to is the zoning official for the township and that designated position is the supervisor. The chairperson clarified that the decision of the official may be appealed to the Zoning Board of Appeals. If the applicant came to the official (the supervisor) and the supervisor made a decision with which the applicant did not agree, then the applicant could bring the issue to the Zoning Board of Appeals. The Zoning Board of Appeals could either agree with the official, or disagree with the official, or modify the official's decision. The board of appeals still stands as the backup to a decision which is made by one person.

Mr. Swalec asked if the supervisor in this role has not agreed to the existing layout.

Chairperson Whitley explained that he does not know if the supervisor agrees with this or not. The case is here because the request being made exceeds the level of variance that the authority of the zoning official to approve it administratively. It does not come down to whether the zoning official agrees or disagrees with the applicant. It defines the standards for making decisions. In this case the reason for the decision to bring to the

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Zoning Board of Appeals is that the supervisor could not approve the setback of less than 6.15. The Zoning Board of Appeals could, but the supervisor could not, even in this modified 932 that was made for administrative efficiency.

Mr. and Mrs. Swalec responded that they were not sure what they could say at this meeting. They do have line of sight issues outside the living room with the placement of the new structure that would impede their view of the lake.

Chairperson Whitley commented that this issue does come up and explained that no one owns the line of sight; they own property. There is nothing that can be done about this issue.

Mr. and Mrs. Swalec inquired if the space between the two houses mattered anymore.

Chairperson Whitley explained that the space between the houses still matters and that is why there is a required minimum of at least 10 feet. It also says that this 10-feet has to be cleared so that emergency vehicles can get through.

Mr. and Mrs. Swalec expressed concern that driving over the septic field may hinder emergency vehicles.

Chairman Whitley explained that the homeowners are taking the risk that someone may have to drive over the septic field in emergency situations and are willing to take that risk.

Mr. and Mrs. Swalec thanked the board for their time. They expressed concern that the minutes would be looked at with regards to section 40-932 where it does say they have to meet all of the following: A, B, and C.

Chairperson Whitley asked for more comments from the audience and board. He requested a motion to address this request.

The property owners clarified that they are leaving 10-feet for emergency vehicles, so they should not need to enter the Eljen system. At the other side, for safety reasons, they will be putting erosion and barrier fences all the way down both sides the lot line, so the construction site stays safe and within the property boundaries. The same excavator will provide services throughout the project and there will be no wet land at the project's completion.



Board member Carlton moved to approve the request at 5681 Morning Drive for variance allowing construction of garage to replace existing garage resulting in the front setback of 4.7 feet rather than 25 feet and also a side setback of 1.2 feet rather than 6.15 feet. And second variance to allow construction of a home to replace the existing home resulting in a side setback of five feet rather than the 6.15 feet allowed per code. Special circumstances exist which are peculiar to the land include an obsolete structure, a house being somewhat obsolete, the garage, which is not safe, and an out dated septic system. Also, because of the outdated septic system, it does not allow for the house to be used as a full house without having sewage back up issues. Adjacent lots on the lake have similar structures and garages similar to what the applicant is requesting. Special conditions and circumstances did not result by the actions of the applicants. The applicants did not create the circumstances they have. The variance is the minimum variance possible for reasonable use of the land. The septic dictated the placement of the garage and also the house. The septic is being rebuilt. Also, as far as the house goes, the setbacks did not increase at all and the garage setback increased by .1 feet, from 1.3 to 1.2. The granting of the variance will be in line with the general purpose of the ordinance. The house will fit right in with all the other houses that have been rebuilt in the Big Lake area. Supported by Board member Wendt. Vote: Vote yes: Pliska, Wendt, Carlton, Whitley. Vote no: None. Motion approved.

3. Discussion—Preference for meeting packet delivery and materials provided.

Supervisor Moreau discussed different methods of how Zoning Board members could receive packets before their meetings. She asked for feedback from each member of what they would prefer. One possibility is to create special mailbox cubicles on the upper level of the Civic Center where old telephone ports used to be. This would create access for board members to retrieve packets at their convenience during township office and library hours. Chairperson Whitley commented that this is possibly the most effective method. The supervisor commented that exceptions could be made for special circumstances. The supervisor also intends to include in their packets a template for the cover sheet and motions. There were no comments from the board members.

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Public Comment:

none

Adjournment:

- **Board member Wendt moved to adjourn the meeting at 8:30 pm. Supported by Board member Pliska. Vote: Vote yes: Carlton, Pliska, Wendt, Whitley. Vote no: None. Motion approved.**

Joan Rusch, Recording Secretary