

SPRINGFIELD TOWNSHIP
ZONING BOARD OF APPEALS
August 15, 2012

Meeting is called to order at 7:30 pm by Chairperson Wendt.

In attendance: Dean Baker, Zoning Board Member
 Denny Vallad, Zoning Board Member
 Virginia Fischbach, Zoning Board Member
 Skip Wendt, Chairperson
 Bill Whitley, Zoning Board Member

Absent: None

AGENDA:

Board member Whitley moved to approve the agenda as presented. Supported by Board member Fischbach. Voted yes: Baker, Fischbach, Vallad, Wendt, Whitley. Voted no: None. Absent: None. Motion approved.

PUBLIC COMMENT: None

CONSENT MOTION: Minutes of the July 18, 2012 meeting.

Board member Whitley moved to approve the minutes of July 18, 2012 as presented. Supported by Board member Vallad. Voted yes: Baker, Fischbach, Vallad, Wendt, Whitley. Voted no: None. Absent: None. Motion approved.

NEW BUSINESS:

1. *Request from Bruce Hynes, 13650 Neal Road, Davisburg 48350 to allow the construction of an attached garage and 1.) grant an exemption for (1) historical barn building from the total Accessory Building floor area calculations 2.) grant a variance in a total accessory area of 492 square feet greater than the total allowable amount of 5400 square feet per Springfield Township Code of Ordinances, Chapter 40, Section 40-649(1) OR 3.) if a historical exemption is not granted, grant a variance to allow the construction of an attached garage resulting in a total accessory area of 2,142 square feet greater than the total allowable amount of 5400 square feet per Springfield Township Code of Ordinances, Chapter 40, Section 40-649.*

The property that is the subject of this request is located at 13650 Neal Road, Davisburg in Springfield Township and is zoned R1A, One Family Residential. P.I.#07-31-100-008.

Mr. Robert Futrell of Futrell and Futrell Builders introduced himself as appearing on behalf of Mr. Bruce Hynes. He stated that they are asking that the barn that is on the property that has been authentically restored be exempt as a historic building which would lower the requirement of the accessory building square footage requirement.

Chairperson Wendt asked Mr. Futrell if he had any documentation that supports the historical age or type of construction and that would support the historical significance of the barn being a historical building.

Mr. Futrell responded that it is a post and beam constructed building but he does not have any physical evidence. He stated that the barn was on the property when Mr. Hynes bought the property and when it was restored he went to Ohio and the Amish reproduced the boards for the siding. The barn has a tin roof and is finished off beautifully inside and it is used for family events.

Chairperson Wendt stated that he tried to visit the property twice and the gate was closed over the access drive.

Mr. Futrell stated that Mr. Hynes would be happy to set up a time so that he could look at it.

Chairperson Wendt stated that from a distance, it does appear to be well-maintained, but it is not possible to gain an accurate picture from afar.

Mr. Futrell stated that he has nothing on paper to prove the historical nature of the barn.

Mr. Hynes stated that he did not have anything in writing; he would have to research it.

Board member Vallad asked Mr. Hynes when he purchased the property.

Mr. Hynes responded about 20 years.

Board member Baker stated that he would have to see some additional information to rule on its historic significance. He stated that he tried to gain access to the property, but could not because the gate was closed.

Chairperson Wendt stated that this inability to view the property affects the outcome of the Board's decision. He stated that there is nothing substantial to affect part one of this application.

Board member Fischbach asked if there were other barns in Springfield Township labeled as historic and what is the criteria that were used to label them as historical.

Board member Vallad answered that this would be something telling him that it was unique in nature and architecture and an approximate time of construction.

Board member Fischbach asked about the time limit, would it be 50 years ago or 100 years ago. She asked for criteria by which the historic significance is judged or is it up to the Board to determine.

Chairperson Wendt stated that he has not seen anything published in the past. He stated that in the past they used information from the Historical Society, but before that it was word of mouth indicating that the barn had been around since the turn of the century. He stated that his feeling about the request is that it would be seriously impacting the decision of the Board to act on the barn and how the rest of the items were to be handled. He stated that he would be more comfortable tabling the item to give the applicant time to substantiate the historical significance of the barn.

Mr. Futrell answered that he could bring photos. He asked what resources were available because he is sure that permits were not applied for. He stated that it is an old barn.

Chairperson Wendt stated that he did not disagree but he needs something substantial in order to look at granting that portion of the variance.

Mr. Futrell stated that Mr. Hynes has a medical condition and has had several surgeries and he cannot walk from his house to where he has to park. He stated that Mr. Hynes has to get around in a golf cart type vehicle and he needs an attached garage so that he can park closer to his home.

Chairperson Wendt stated that he is not disputing this; he is looking for evidence that they can look at that is hard and fast and that they can use.

Mr. Futrell stated that he does not know what he can use and stated that there is no one that would build a barn like this now.

Chairperson Wendt asked the other Board members for their feedback.

Board member Whitley stated that he has the same concerns on deeming the structure a historical structure without any evidence by which to do that.

Chairperson Wendt suggested tabling the item for a month to allow the applicant to come up with something that the Board can use to impact the decision.

Mr. Futrell asked for a standard that they can use to evaluate.

Chairperson Wendt asked if Mr. Hynes could get a letter from the company in Ohio that did the work that would indicate that this type of construction was done during a particular time period.

Mr. Futrell stated that through his experience as a builder he recognizes the construction to be from the late 1800s to the early 1900s.

Board member Whitley stated that historical associations might be able to define the construction used in certain types of barns that would date the barn in question. It is worth exploring resources to define the date and would give the Board perspective on which they could base a decision.

Supervisor Walls suggested scheduling a time when the Board members were able to walk the property and view the barn for themselves. This might address a lot of their concerns and during this month they could look through assessing records.

Mr. Futrell and Mr. Hynes agreed that they would provide Mr. Hynes number so that Board members could make appointments to view the property. Mr. Futrell asked if the Board's observation was going to be all they need.

Board member Baker answered not for him, seeing the barn will give him some appreciation. He suggested that Mr. Hynes use whatever resources he can to help document the structure's age and find some type of scholarly work that is available that can support the dates of construction.

Chairperson Wendt suggested that the applicant contact Lawrence Technological University Architectural Department and have them evaluate the structure.

Board member Vallad asked what the 40' X 124' barn is currently being used for.

Mr. Hynes responded that he has a motor home, fishing boat and cars stored in this structure. He stated that he converted a tack room to house his ailing mother in to take care of her; she has since passed and the room is used for storage.

Board member Whitley moved to table the request from Bruce Hynes until the September 19, 2012 meeting pending presentation of more information upon which the Board could base a decision on whether the barn is a historical structure or not. Supported by Board member Vallad. Voted yes: Baker, Fischbach, Vallad, Wendt, Whitley. Voted no: None. Absent: None. Motion approved.

2. *Request from Henry Donald, 9489 Cherrywood, Clarkston 48348 to allow a lot split on the property resulting in 1.) a lot width of 112 feet which requires an eight (8) foot variance from the required 120 foot width per Springfield Township Code of Ordinances, Chapter 40, Section 40-642 and 2.) a lot area of 0.51 acre which requires an 0.49 acre variance from the required 1.0 acre per Springfield Township Code of Ordinances, Chapter 40, Section 40-572 and 3.) allow an access strip on a parcel less than five (5) acres per Springfield Township Code of Ordinances, Chapter 40, Section 40-642(b)(4)a.*

The property that is the subject of this request is located at 9489 Cherrywood, Clarkston 48348 and is zoned R-2, One-Family residential. P.I. #07-11-402-018.

Mr. David Birchler introduced himself to the Board as appearing on behalf of the applicant, Henry Donald. He stated that the Board members should have received the July 12, 2012 application package including the application and a proposed sketch of the layout as well as the characteristics of the two lots that would result from the proposed split. He stated that he is aware that the lot split would need to be approved by the Township Board, but in a meeting with Collin Walls, Township Supervisor, it was suggested that the applicant first seek the variances before appearing in front of the Township Board. He stated that he would like to highlight some points that were made in the original application and provide some supplemental information based on the memorandum received from Greg Need, Springfield Township Attorney. Mr. Birchler stated that he would like to answer some of the things that were pointed out by Mr. Need. Mr. and Mrs. Donald are already the owners of 9489 Cherrywood, Lot #44 of Jossman Acres. He stated that he believes that the lakefront portion of the property was outside of Jossman Acres. Mr. Birchler stated that Mr. and Mrs. Donald reside in the larger home which is on Susin Lake. They purchased the property on December 21, 2010 and at that time were unable to obtain a mortgage for which they were already prequalified because the lot in question had 2 homes on one lot and this is a technical violation of the Springfield Township Zoning Ordinance. Mr. Birchler stated that Mr. Donald met with the Zoning Board of Appeals in 2010 in an attempt to seek a resolution to that but that was not possible at that time and they are now seeking the Board's approval for 3 variances that are the minimum necessary so that the Township Board would be able to approve the lot division.

Mr. Birchler continued saying that there are 2 homes on the property and have been since the completion of the lakefront home in 1996. The Township believes that the Zoning Board of Appeals placed a restriction on the property in 1994 that prevents the continuation of the home closer to Cherrywood. He stated that prior to the Donalds' purchase, no restriction was ever recorded against 9489 Cherrywood. The Township acknowledges the value of the original home and it is assessed at 17% of the total value of the improvement of the property and Mr. and Mrs. Donald are paying the non-homestead rate on that original home. On January 12, 2011, the Township recorded an affidavit regarding the 1994 Zoning Board of Appeals motion. Mr. Birchler stated that he believes Michigan is a Race Notice State which is one if something is going to be attached to a deed that is going to apply to an individual that owns the property, it needs to be done before the individual buys the property. He stated that he wanted to point out that the Township was late in recording the affidavit and it is not really a deed restriction because Mr. and Mrs. Donald were not party to that decision. It is just a notification that there is a decision from 1994 that the Township believes applies to the property but was recorded after Mr. and Mrs. Donald purchased the property. He stated that they are only asking for the minimum variances necessary to provide the applicants with appropriate relief and to recognize the actual development that exists on this land since 1996. He stated that during the consideration of the variances that were being considered in 1994, the Board found that there was a practical difficulty associated with that lot and this is important. He stated that the motion approved in 1994 noted justification for the approval

was due to the fact that the lot is unique in its shape and configuration which are typical of a practical difficulty finding. Mr. Birchler stated that the Township Board in December 2010 indicated that the property doesn't look odd or out of place with the two structures; the two homes are built on the extreme ends of the property. Mr. Birchler stated that Greg Need's memo indicated that a further evaluation of other lots in the subdivision ought to be part of the consideration and he pointed out that Lots #51, #52 and #53 of Jossman Acres are similar to their request because they are much less than an acre in size and they also front on Cherrywood and do not have frontage on the lake. This makes them similar to the lot that they are trying to create. He pointed out that there is neighboring property to the Donalds that does not have road frontage or an access strip. He stated that they are trying to create a conforming access strip to access the lake front home. He stated that they are respectfully requesting their approval of the 8 foot variance from the minimum lot width and the .49 minimum acre requirement as well as a 20' X 200' access strip for the lakefront home. Mr. Birchler stated that these minimum variance requests would allow the Donalds to maintain their lakefront home on a conforming R2 parcel and they would maintain the original home in a manner consistent with their homestead and the neighborhood. He further stated that there would be no visible change to the property, nor to Cherrywood, Susin Lake or the Jossman Acres subdivision. He stated that Greg Need's memo indicated that the applicant seemed to be indicating that there was a financial hardship because the applicant could not obtain a mortgage. He stated that the argument speaks to practical difficulty and the Township's passive acceptance of the two homes on the property for the past 16 years is recognition that this situation is acceptable. He stated that they are only seeking the simplest remedy to formalize what has existed for 16 years.

Chairperson Wendt asked Mr. Birchler if financial hardship was not the reason, why did the applicant want to revisit the Zoning Board of Appeals' decision from 1994 and 1996. He stated that just because the Township did not actively pursue the 3 year time period denoted in the original decision in 1994, this doesn't indicate a statute of limitations because of an omission or clerical error.

Mr. Birchler stated that if the Township intends to begin enforcement action, this might make things easier and he does not believe that the Township has any intention to try to enforce the agreement between them and Michael Kalusch, the applicant in 1994. He stated that there is no agreement between the Township and Mr. and Mrs. Donald; they did not agree to this restriction and they purchased the property understanding that the property had 2 homes on it and they did pay for both of those homes. He stated that there was nothing that turned up in a title search that indicated any limitation on the property. He stated that the only issue that they were confronted with was the fact that the bank would not consider a mortgage until the homes were sitting on their own lots. He stated that they are trying to resolve this issue and satisfy the bank's demands and to represent on paper what exists on the ground.

Board member Fischbach stated that according to Section 40-642 regarding minimum frontage, Section (b)(4) indicates that the variance may not be granted unless all of the conditions have been met. One of the conditions is that the minimum lot area is 5 acres.

She stated that based on the Ordinance language, she doesn't see how they could even grant the variance.

Board member Vallad stated that this language is there for this type of lot. He stated that the Township has been approached in the last 24 years several times with potential lots splits; the regulations are there to prevent this type of land division. This background was behind the requirement of a minimum of 5 acres in order to have an access strip. He stated that the property that is next to the Donald property was done within a family and are all family splits that resulted in a land locked parcel. He stated that when Harbortown was developed an area was split between several parcels on Cherrywood and these parcels were then lake front parcels. He stated that the record for the Kalusch variance was clear; the home would not remain a residence beyond a 3 year period. He stated that the minimum acreage for an access strip variance is still in conflict with this request. He stated that the lot width variance is not that significant, but if you take all 3 together, these cannot be granted. He concurred with Board member Fischbach.

Board member Whitley moved to deny the request from Mr. and Mrs. Hank Donald for the following reasons: the existing lot presents no practical difficulty, that it supports any of the 3 requested variances and further 40-642(b)(4) stipulates that a variance shall not be granted unless a set of following conditions have all been met, the first condition is that the minimum lot or parcel size shall be 5 acres which neither the existing lot nor the proposed lot meets. Supported by Board member Fischbach. Voted yes: Baker, Fischbach, Vallad, Wendt, Whitley. Voted no: None. Absent: None. Motion approved.

ADJOURNMENT:

Board member Whitley moved to adjourn the meeting at 8:15 pm. Supported by Board member Vallad. Voted yes: Baker, Fischbach, Vallad, Wendt, Whitley. Voted no: None. Absent: None. Motion approved.

Erin Mattice, Recording Secretary