

SPRINGFIELD TOWNSHIP
ZONING BOARD OF APPEALS
November 21, 2012

Meeting is called to order at 7:30 pm by Board member Whitley who chaired the meeting in Chairperson Wendt's absence.

In attendance: Dean Baker, Zoning Board Member
 Virginia Fischbach, Zoning Board Member
 Bill Whitley, Zoning Board Member

Absent: Denny Vallad, Zoning Board Member
 Skip Wendt, Chairperson

AGENDA:

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

PUBLIC COMMENT: None

CONSENT MOTION: Minutes of the September 19, 2012 meeting.

Board member Baker moved to approve the minutes of September 19, 2012 as presented. Supported by Board member Fischbach. Voted yes: Baker, Fischbach, Whitley. Voted no: None. Absent: Vallad, Wendt. Motion approved.

NEW BUSINESS:

1. *Request from Jeff Mash, 9054 Patrick Drive, Davisburg, 48350 to allow the construction of a pole barn resulting in a side setback of twelve (12) feet rather than the fifteen (15) feet required per Springfield Township Code of Ordinances, Chapter 40, Section 40-572*

The property that is the subject of this request is located at 9054 Patrick Drive, Davisburg in Springfield Township and is zoned R-3, one family residential. P.I. #07-10-253-017.

Mr. Mash introduced himself to the Board. He stated that he put the barn in its present location to avoid cutting down two white oak trees.

Board member Whitley reiterated that the reason for the request is to avoid cutting down the trees.

Mr. Mash concurred.

Board member Whitley asked Mr. Mash what alternatives he looked at.

Mr. Mash replied that there weren't any because they have an engineered septic field to the east and there are more oak trees to the west that he had to avoid.

Board member Baker recognized that the structure is already complete and stated that usually they get these requests prior to construction. He asked Mr. Mash if he requested a building permit.

Mr. Mash stated that the company that sold him the pole barn told him that they would take care of all of it so it was a surprise to him when the ordinance officer came to the house; he stated that it was unintentional.

Board member Whitley asked if the agreement to get the permits from the contractor was verbal or written.

Mr. Mash answered that it was verbal. He apologized for the mistake.

Board member Baker stated that the footings on the drawing are 36", but our Building Code is 42". He stated that this is why permits should be obtained prior to construction so that the construction is done right and it is below the frost line.

Board member Baker recognized that the existing house is about 3 feet from the existing lot line.

Mr. Mash concurred.

Board member Baker reiterated that the applicant's current house is less than 15 feet and this lot is already a nonconforming lot with nonconforming setbacks. He stated that the setback variance being requested is no more than what already exists and he is not opposed to granting this variance.

Board member Fischbach agreed; it also does not encumber the neighborhood.

Board member Whitley stated that it is troubling that they have to consider a variance for a structure that is already built and the consequences of denial are significantly magnified for this structure.

Mr. Mash apologized to the Board.

Board member Baker moved to grant the variance request submitted for 9054 Patrick Drive, Davisburg, 48350 to permit a pole barn to exist at a side setback of twelve (12) feet rather than the fifteen (15) feet required per Springfield Township Code of Ordinances, Chapter 40, Section 40-572 due to practical difficulties at the site including an engineered septic field and the intent of the property owner to retain 2 large trees on the property. This variance request would not increase the

impingement that already exists on this lot due to existing structures that are already in a situation where the setback is less than 15 feet. Seconded by Board member Fischbach. Voted yes: Baker, Fischbach, Whitley. Voted no: None. Absent: Vallad, Wendt. Motion approved.

2. *Request Interpretation for Miller Farms – Determination that “Certificates of Occupancy” referenced in Article 40 Sec. 40-593(6)a, e & f refers to the condominium site development as a whole rather than individual homes within the condominium.*

a.) If the interpretation requested above is not approved and “Certificates of Occupancy” are determined to apply to houses as well as site development then approve a variance from Sec. 40-593(6) a & e to allow Supervisor to permit up to two (2) Certificates of Occupancy (not Temporary) for houses prior to posting Completion Escrow for final asphalt lift on road and to allow the Supervisor to approve schedule for issuance of Certificates of Occupancy (not Temporary) prior to posting Completion Escrow for landscape items AND

b.) Waive the administrative fee of 25% of actual completion costs required by Chapter 40, Sec. 40-35.

The property that is the subject of this request is located on Meadow Ridge in Springfield Township and is zoned R-2. P.I. #'s are 07-13-102-001 through 07-13-102-023.

Supervisor Walls asked the Board to look at Section 40-35 Performance Guarantees to see if they agree with the interpretation by himself and the Township Attorney. He stated that because the language of this and according to the minutes of the approval of this particular project it is their opinion that Section 40-35 does not apply.

Board member Whitley asked if it was typical that the requirements regarding performance guarantees were made part of the motion by the Township Board.

Supervisor Walls stated that he does not recall any Township Board action that included the condition of the performance guarantee.

Board member Whitley stated that when he examined the language of the preamble of Section 40-35, the wording says that the Township Board as a condition of the proposed use shall require the applicant to deposit a performance guarantee. In paragraph #2, however, the wording says that if the Township Board as a condition of approval of the proposed use shall require the applicant to deposit the performance guarantee. He stated the preamble is clear that they shall require and paragraph #2 uses the word if. He asked if the Township Board and the Planning Commission are going to address this conflict.

Supervisor Walls stated that they are working on it and paragraph #3 conflicts with the preamble as well.

Board member Whitley stated that when looking at the site, most of the work required by that performance guarantee is already done including road grading, utilities.

Supervisor Walls agreed and stated that the final lift of asphalt is not complete and the original developer only had a pathway and a gazebo left to do. He stated that much of the trees died. The only significant portion is the final lift of asphalt.

Board member Whitley stated that it may not be appropriate to require someone else to provide a performance guarantee when the work is substantially completed.

Board member Fischbach stated that they first have to determine if 40-35 applies.

Board member Whitley concurred.

Board member Fischbach stated that in her interpretation it sounds like it applies; whether or not the Township choose this option, it was up to them. She pointed out the conflicting language throughout the section.

Board member Whitley stated that they were trying to determine intent.

Board member Baker stated that the wording is not clear on whether the ordinance is demanding, suggesting or offering the option. In reading the minutes and the motion, there is no mention of a performance guarantee. The Township Board has not engaged in performance guarantees historically. There is no follow-up shown by the Township. He stated that there is not enough clarity to determine that section 40-35 would prevail in reference to this project.

Board member Whitley asked what the practice has been in relation to the Township and performance guarantees.

Supervisor Walls stated that they have done performance guarantees but he doesn't recall a case in which it was before a project began. In this case, based on the practice, the initial developer had not got to the stage when he had requested an inspection by the Township Engineer on the work that had been done. The typical process is development, moving towards its completion including roads, parking, landscaping then the trigger of when escrows are established is when you need certificates of occupancy for a home, a permanent occupancy permit. This is what the process has been. He stated that the fee ordinance now contains a different percentage for administration.

Board member Fischbach asked if a new developer has taken over.

Supervisor Walls stated that this situation is unique because the developer is gone after the project went through bankruptcy and the bank took it over. They have a new developer for the property that he has met with.

Board member Baker clarified that it has not been the practice to have a performance guarantee on land balancing on site development on the type of work that has taken place at this development at this point.

Supervisor Walls agreed.

Board member Whitley stated that they are being asked to waive the administration fee.

Supervisor Walls stated that they are only being asked that if they determine that Section 40-35 applies. If it does not apply, then that question does not come in front of them.

Board member Whitley clarified that they were only being asked to waive the administration fee.

Board member Fischbach asked what if they had a single occupant that wanted to get occupancy of a single home.

Supervisor Walls stated that the final trigger would not be the building of the home but the occupancy of the home. When the builder requires an occupancy permit on this home, that is when typically the discussion takes place regarding completion items on the development itself.

Board member Whitley stated that the question is waiving the 25% administration fee when the performance guarantee comes into play; the performance guarantee would come into play when the occupancy permit for the new home is requested. This sequence of events would remain the same but the question is will the Township require 125% or 100% of the performance guarantee when the occupancy permit is requested.

Board member Fischbach stated that her opinion is that 40-35 does not apply.

Board member Whitley stated that he thinks that it does apply but because of the conflict of the wording in the preamble and subsequent paragraphs and since this is completing the project; he stated that because of those reasons, his interpretation is that it does not apply.

Board member Baker stated that his interpretation is that it does not apply largely because of the language and it appears to be at the Board's discretion. He stated that it also has not been part of any follow up from the Board. He stated that they have sought follow up from the Township Attorney and his opinion is that it does not apply.

Board member Whitley stated that the practice of the Township Board has not been consistent; sometimes it is required and sometimes it is not.

Board member Baker asked if they would make their ruling on this topic first and then proceed through the rest of this.

Supervisor Walls stated that they should make an official determination first.

Board member Whitley concurred.

Board member Fischbach moved that Section 40-35 does not apply to Miller Farms, Oakland County Condominium Plan #1929, parcel numbers 07-13-102-001 through 07-13-102-023, due to past history and also ambiguity within the wording of the

Ordinance. Seconded by Board member Baker. Voted yes: Baker, Fischbach, Whitley. Voted no: None. Absent: Vallad, Wendt. Motion approved.

Board member Whitley stated that the next question is if the requirements to get a certificate of occupancy applied to the entire project in totality or applied to the dwelling.

Supervisor Walls concurred. The end result of the request would allow the issuance of 2 permanent certificates of occupancy and the problem in the language is the word “temporary.” If the ordinance applies to the homes that will be built on the site condominium units then the temporary certificate of occupancy will not be worth anything because the lending institution will not mortgage this property. They must have been thinking about a temporary certificate for the project as a whole. They have never issued a permit by the Building Department for a development. The grading, etc. comes with the site development approval and the Building Official gets involve when the building of the structure takes place. The Township has had numerous homes built in condominium developments.

Board member Whitley asked why this interpretation was different.

Supervisor Walls stated that he read it after a conversation with the prospective developer.

Board member Whitley summarized that the requirements of the site plan are managed by the combination of the Planning Commission and the Township Board and this is separate from what the Building Department does which is responsible for inspecting structures and making sure they are built in compliance with the building code and then the issuance of a Certificate of Occupancy.

Board member Baker stated that it is not their intent to do anything different than what Board member Whitley summarized above.

Board member Fischbach concurred.

Board member Baker moved that the Zoning Board of Appeal’s interpretation is that the intent of Section 40-593 Condominium Project Regulations do not apply to the issuance of Certificates of Occupancy for individual houses to be built within the Site Condominium Complex, though this situation was brought to the Board’s attention through the work that is currently underway relevant to the Miller Farms project, it is not limited in its breadth to this project, but is intended to be the Township’s viewpoint of all projects similarly managed through our site plan process. Seconded by Board member Fischbach. Voted yes: Baker, Fischbach, Whitley. Voted no: None. Absent: Vallad, Wendt. Motion approved.

ADJOURNMENT:

Board member Baker moved to adjourn the meeting at 8:24 pm. Supported by Board member Fischbach. Voted yes: Baker, Fischbach, Whitley. Voted no: None. Absent: Vallad, Wendt. Motion approved.

Erin Mattice, Recording Secretary