

SPRINGFIELD TOWNSHIP
ZONING BOARD OF APPEALS
November 17, 2010

Meeting is called to order at 8:00 pm.

In attendance: Skip Wendt, Chairperson
Dean Baker, Zoning Board Member
Jim Carlton, Zoning Board Member
Bill Whitley, Zoning Board Member

Absent: Denny Vallad

CONSENT MOTION: Agenda.

Board member Whitley moved to approve the agenda as presented, supported by Board member Carlton. Voted yes: all. Vote no: none. Absent: Vallad. Motion approved.

PUBLIC COMMENT: None.

CONSENT MOTION: Minutes of the October 20, 2010 meeting.

Board member Carlton moved to approve the minutes with the following correction, page #5, paragraph #5, should be changed to read “charged with not creating a nonconformity”. Supported by Board member Whitley. Voted yes: all. Vote no: none. Absent: Vallad. Motion approved.

OLD BUSINESS:

- 1. Tabled from October 20, 2010 meeting: Request from Howard Carlson, 9014 Patrick, Davisburg, 48350 for the following variance: Allow the applicant to construct a garage resulting in a side yard setback of five (5) feet rather than the fifteen (15) feet required per Section 25 of Springfield Township Zoning Ordinance No. 26.*

The property that is the subject of this request is located at 9014 Patrick in Springfield Township and is zoned R-3 One Family Residential. P.I. #07-10-253-016.

Chairperson Wendt stated that this issue has been resolved and no longer needs to be handled by the Zoning Board. There has been resolution to the variance by the applicant

with the building department and the applicant is now in compliance with the zoning ordinance.

Board member Carlton made the motion to strike the request from Howard Carlson because the item has been finished. Supported by Board member Whitley. Voted yes: all. Vote no: none. Absent: Vallad. Motion approved.

NEW BUSINESS:

1. *Review of a variance granted August 18, 1994 for the property at 9489 Cherrywood (Sidwell No. 07-11-402-018) and consideration of draft deed restrictions as required by that variance approval. The variance granted allowed an existing home to remain on the lot as an accessory residential structure after a new home was constructed, and to restrict usage of the existing home to an accessory building.*

The property that is the subject of this request is located at 9489 Cherrywood in Springfield Township and is zoned R-2 One Family Residential. P.I. #07-11-402-018.

Chairperson Wendt asked if there was anyone present in regards to this request.

Mr. Howard Donald introduced himself to the Board as a person interested in purchasing the property.

Chairperson Wendt asked if Mr. Donald was aware of the history of this property.

Mr. Donald stated that he spoke to Chris Benedict in the Supervisor's office about this property and Mr. Benedict provided him with the minutes from ZBA meeting in 1994 in which the property was first considered. He stated that he found out that there was a problem when the mortgage company informed him that it was nonconforming.

Chairperson Wendt asked Mr. Donald if he was aware that there was not anything in our Zoning ordinance which allows two living residences on the same parcel.

Mr. Donald stated that he was aware of this. He stated that his attorney contacted Greg Need, Township Attorney.

Chairperson Wendt asked Mr. Donald if he explored any history beyond what was provided to him by the Supervisor's Office.

Mr. Donald stated no. He was aware that the previous owners went in front of the Zoning Board to ask for a variance to build a second house.

Chairperson Wendt asked Mr. Donald if he read anything in the minutes regarding the fact that the applicant needed more time because it took longer to build the home than the one year allowed, it was going to take three years.

Board member Whitley understood the request to review and approve a proposed deed restriction language for the subject property. He stated that his interpretation when reading this deed restriction is that it is in conflict with both the original application for the variance that was requested in 1994 and the wording of the motion that approved that variance in 1994. This deed restriction language will allow the accessory structure to be used for certain restricted habitation uses on the property in perpetuity. He stated that the original application allowed the applicant to request an accessory structure while the house was being built and to extend that variance for three years. He stated that this is a very specific time frame: three years. The motion, likewise, is very specific that was granted "to allow the variance to stand for three years rather than the one year permitted as construction of the second home is not anticipated within the one year timeframe." He stated that how he reads the action of the Zoning Board of Appeals in 1994 is to allow the accessory structure to be used for limited residential purposes for a time in excess of the one year allowed in the ordinance, but not greater than three years. He stated that this is also how the motion was worded. He stated that he did not know why the Attorney would ask the Board to review and approve a deed restriction that is in perpetuity when the original action was for three years.

Board member Carlton stated that he was on the Board in 1994, though he honestly does not remember this case. He concurred with Board member Whitley and stated that he read it the same way. He stated in the past they have never had two houses on the same lot except for a designated period of time, in this instance it was three years and then they were to go to the one house.

Board member Baker stated that just from the documentation presented to the Board for this consideration, he concurred with both Carlton and Whitley. He stated that all of the historic record from 1994 is intent on giving the landowner a variance that amounted to up to three years and that was the variance request that was granted, to permit that habitation of the first property while a second dwelling was constructed which would become the principal dwelling. He concurred that the request from the Township Attorney was asking the Board to approve the continuation of this accessory structure and its use with certain limitations in perpetuity.

Mr. Donald stated that the original property owner who made application in 1994 is not the current owner.

Chairperson Wendt stated that the Board was still dealing with the time frame and the schedule that was established from the time that the Board met and the criteria that they set. This set the clock in motion and created the standards by which this Township and the applicant had to adhere to. He stated what they were being asked to do tonight is to go beyond what was put in motion back in 1994.

Board member Whitley stated that he doesn't necessarily agree that they are being asked to do it. But if they adopt the language presented by the attorney, that would be the effect.

Chairperson Wendt stated that the intent in 1994 was evident, not necessarily crystal clear, but the overall effect was that there was a time limit placed.

Board members concurred.

Board member Whitley stated that he does not think that there was any lack of clarity about the time frame that was intended by the Board in 1994.

Chairperson Wendt agreed, however he noted that some things may have been interpreted since 1994 and were not put in writing. This would not affect their decision today. He stated that nothing was set as far as a time table regarding the final building permit and the filing of the deed restrictions. He stated that this is what he was talking about regarding items falling between the cracks, but he stated that it is obviously clear that there was a time frame set in the original motion.

Board member Whitley made a motion that the Zoning Board of Appeals not accept the proposed language offered by the Township Attorney as presented to the Board because it is not consistent with the variance that was requested in 1994, nor is it consistent with the approved variance and the action taken by the Zoning Board of Appeals in 1994, and that we find that the intent is to have just one residence on the property. Supported by Board member Baker. Voted yes: all. Vote no: none. Absent: Vallad. Motion approved.

ADJOURNMENT:

Board member Baker moved to adjourn the meeting at 8:15 pm, supported by Board member Whitley. Voted yes: all. Vote no: none. Absent: Vallad. Motion approved.

Erin Mattice, Recording Secretary