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**Township Planner**  
Jim N. Foulds

**Recording Secretary**  
Linda K. Parkinson

**ZONING BOARD OF APPEALS MINUTES  
WEDNESDAY, AUGUST 15, 2012  
7:00 P.M.**

The regularly scheduled meeting of the DeWitt Charter Township Board of Appeals was called to order at 7:00 p.m. by Chairman LaGrand.

The Pledge of Allegiance to the Flag was said by those present.

ROLL CALL by Secretary Reese.

**MEMBERS PRESENT:** Donald Riel, Christopher LaGrand, Robert Reese, Steve Gobbo, Jeff Carpenter, and Trustee Calder.

**MEMBERS ABSENT:** Andrew Richards.

**APPROVAL OF AGENDA:** **Calder moved to approve the Agenda as presented. Supported. MOTION CARRIED.**

**APPROVAL OF MINUTES:** **Gobbo moved to approve the minutes of the December 21, 2011 minutes with the correction that Reese's motion on page 2 be amended to add "be approved" after 12617 Airport Road. Supported. MOTION CARRIED.**

**CORRESPONDENCE:** Michigan Township Association – Township Planning & Zoning Decision-making Handbook was received by the Board.

**PUBLIC COMMENTS:** None.

**UNFINISHED BUSINESS:** None.

**NEW BUSINESS:**

- I. PUBLIC HEARING - Appeal 12-770002 – From Michael Stevens of Stevens Associates Builders,** requesting a ten and one-half (10.5) foot variance to the required fifty (50) foot rear yard setback requirement to allow the construction of a 536 sq. ft. great room addition to the existing residence located at 11663 Hidden Spring Trail, DeWitt, MI 48820, Lot #100 of Springbrook Hills Subdivision, in the east ½ of Section 6 of DeWitt Charter Township. If approved, the addition would be 39.5 feet from the rear property line.

- A. Open Public Hearing. **Chairman LaGrand declared the Public Hearing opened at 7:05 p.m.**
- B. Administrative Comments/Applicant/Public Comments.

Planning Assistant Tory Niewiadomski briefly reviewed staff's report dated August 9, 2012 advising that the applicant is Michael Stevens, representing the homeowners Anthony and Shannon Colarossi, for the property located at 11663 Hidden Spring Trail. The applicant is requesting a dimensional variance of 10.5 feet to the required 50 foot minimum rear yard setback requirement. If approved, the applicant would be allowed to construct a 536 sq. ft. great room that would be 39.5 feet from the rear property line. The applicant intends to remove an existing deck and construct the addition in a portion of that area. It should be noted that only a portion of the proposed addition would encroach into the rear yard setback.

Niewiadomski stated the existing home is located on the lot in an angled position toward the intersection of Hidden Spring Trail and Crofton Drive. This poses an issue for the location of the proposed addition. Staff has reviewed the applicant's current floor plan and the area at the south east end of the home is the only location to practically expand the family's living room area.

Niewiadomski pointed out that the subject site is located within the R4 (Residential Single and Two Family) zoning district. The surrounding properties are also zoned R4.

With respect to Basic Condition a) – *Granting the variance will not be contrary to the public interest or to the intent and purpose of this Ordinance*, staff finds that compliance with this condition is up to the discretion of the Board of Appeals. Setbacks and layouts in the vicinity of the subject site appear to be fairly uniform and most homes meet and exceed the rear yard setback. However, the proposed encroachment is fairly slight into the rear yard setback area. In addition, the property to the east which abuts the rear yard of this lot, appears to exceed the setback requirements and has substantial buffering of trees and vegetation. The applicant has also received 23 letters of support from residences within the vicinity of the applicant's home. There has been one correspondence received in opposition to the request. It is also important to note that the Township does not consider Homeowner Association By-Laws when considering variance requests.

Basic Condition b) states – *Granting the variance shall not permit the establishment within a district of any use which is not permitted by right, under special conditions, or by special use permit within that district*. Niewiadomski stated staff finds that request meets this condition.

Basic Condition c) states – *Granting the variance will not cause a substantial adverse effect upon property values in the immediate or in the district in which the property of the applicant is located*. Niewiadomski stated there is no reason to believe that granting the variance would have a significant adverse impact on surrounding property values.

Basic Condition d) states – *The variance is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical*. Niewiadomski advised requests of this nature have been infrequent. Therefore, staff finds that the request does comply with this condition.

Lastly, Niewiadomski reviewed the request for compliance with at least one of the two Special Conditions stating the following:

Special Condition a) states – *Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district and when such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance and when such circumstances or conditions shall not have resulted from any act of the applicant in violation of a prior zoning ordinance applicable to said property.*

Niewiadomski stated that compliance with this condition is at the discretion of the Board of Appeals. The proposed addition constitutes a small area encroachment into the required rear setback. In addition, the adjoining home to the rear of the subject lot is set back beyond the minimum requirement, leaving considerable space between the homes. The property is adequately screened as well with mature vegetation and trees between the two properties. The applicant feels that being on a corner lot and having their home constructed on an angle presents them with extraordinary circumstances and practical difficulty to develop their property due to the buildable area left on the property. Whether these represent extraordinary conditions within the meaning of the ordinance is up to the discretion of the Board of Appeals.

Special Condition b) states – *Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.*

Niewiadomski stated, subject to the results of the public hearing, staff believes that the variance request is not necessary to preserve a substantial property right and could remain to be used for single family residential purposes, just like the neighboring properties. The request does not comply with Special Condition b).

Brief discussion followed regarding the fact that the applicant attempted to contact the owner of the adjacent property to the east and was unsuccessful  
Chairman LaGrand invited the applicant to speak.

Michael Stevens, Stevens and Assoc. Builders, 431 E. Jefferson, Grand Ledge, MI 48837, representing the homeowners Anthony and Shannon Colarossi, stated he was present for questions.

Gobbo questioned why the proposed addition was located at the corner of the existing residence rather than the rear.

Stevens stated the location of the proposed addition was placed at the corner of the structure so that the natural lighting would still come into the kitchen area. Stevens stated the addition would most likely still encroach into the rear yard setback if it were moved closer to the center of the structure.

LaGrand questioned if Mr. Stevens had calculated the square footage of the encroachment and if he had designed the addition so that it minimized the encroachment on the rear yard setback.

Mr. Stevens stated the total square footage of the encroachment is 138 sq. ft. which is approximately 1/5 of the proposed addition.

There were no further questions or comments.

- C. Close Public Hearing. **LaGrand declared the Public Hearing closed at 7:30 p.m. Supported. MOTION CARRIED.**
- D. Discussion and possible action by Board of Appeals.

Calder stated he visited the site and does not see how the proposed addition would negatively impact the surrounding properties.

Carpenter stated he also visited the site and likes the fact that the builder is proposing some brick work on the proposed addition.

**Gobbo moved that Appeal 12-770002 from Michael Stevens, to allow the construction of a 16 foot by 26 foot addition that would encroach ten and one-half feet into the minimum fifty foot rear yard setback of the property located at 11663 Hidden Spring Trail, be approved. Approval is based on a finding that the request meets all four of the Basic Conditions and Special Condition (a) listed in Section 42-70 of the Zoning Ordinance.**

**Supported.**

**ROLL CALL vote on motion:**

**AYES: 6      NAYS: 0      ABSENT: 1 (Andrew Richards)**

**MOTION CARRIED.**

E. Possible Certification of Decision.

**Gobbo moved to approve the Certification of Decision for Appeal 12-770002 with the addition to paragraph two to also read “ by 26 foot”. Supported. MOTION CARRIED.**

**II. PUBLIC HEARING – Appeal 12-770003 – From Dyck VanKoevering,** requesting the Board of Appeals make an interpretation to determine if Schavey Road should be designated as a rear yard for property located at 13640 Juniper Drive, DeWitt, MI 48820, Lot #28 of Hawthorne Woods East Site Condominiums, in the southeast ¼ of Section 18 of DeWitt Charter Township.

A. Open Public Hearing. **Chairman LaGrand declared the Public Hearing opened at 7:35 p.m.**

B. Administrative Comments/Applicant/Public Comments.

Planning Assistant Tory Niewiadomski stated that the applicant has requested that the Board of Appeals make an interpretation to determine if Schavey Road should be designated as the rear yard for their lot located at 13640 Juniper Drive. He stated staff recommends the interpretation be acted upon before the Board of Appeals considers action on the applicant’s request for a setback variance to construct an 8 foot by 8 foot accessory structure on his property.

Niewiadomski advised there is no definition for staff to make a clear determination of what the rear yard is in a situation where the lot has street frontage on three sides. The subject site abuts Schavey Road to the west, Honeylocust Drive to the south and Juniper Drive to the east. It should be noted that anytime street frontage exists it is considered the front yard. However, staff typically would make a determination of a rear yard. Staff’s recommendation is that the Board finds Juniper and Honeylocust to be considered a front yard and Shavey Road to be a rear yard, rather than a front yard.

Niewiadomski presented several definitions within the Zoning Ordinance that may help the Board in their determination (see attached page 5 of staff’s report.).

Niewiadomski noted that staff has identified potentially four other properties within the Township that have this similar circumstance. Therefore, this will not be a common request that the Township will receive.

There was one resident who submitted a letter in opposition to approval of the variance. He was of the understanding that the applicant lived in his subdivision and was violating homeowner association by-laws. It was determined that the applicant lives in a separate subdivision.

In closing, Niewiadomski stated, based on the definitions of lot, front of, lot, through, and yard, rear, staff believes that in the situation where a lot contains street frontage on three sides, the true front yard shall be evidenced by the street frontage that a structure is addressed to. The side that is opposite the true front yard shall be considered the rear yard and shall conform to the standards for rear yard setback standards. And, the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots the rear yard shall in all cases be the opposite end of the lot from the front yard.

Calder stated at the time that this subdivision was developed there was discussion that there would be no curb cuts on Schavey Road and that all the homes would front opposite of Schavey Road. There was no consideration given to the fact that some lots would have three streets that abut the property. He agrees the rear yard should be along Schavey Road and the front yard should be considered as Juniper Drive.

LaGrand questioned if the Board does not concur with staff's recommendation, would the applicant still be able to request a variance for the proposed shed?

Niewiadomski stated the applicant would still be able to request a variance to the front yard setback (Schavey Road) if the Board does not concur with staff's recommendation. The applicant would be required to match the character of the principal structure.

LaGrand expressed concern that staff's recommendation would be setting a precedent that may affect other situations.

Niewiadomski explained that the applicant would still have to meet setback requirements.

LaGrand clarified that if the Board concurs with staff's recommendation, the applicant would actually be asking for a greater variance because the front yard setback requirement is 30 feet and the rear yard setback requirement is 40 feet. He does not understand why the Board of Appeals would want to create a situation where the applicant would have to ask for a greater variance.

LaGrand invited the applicant to speak,

Dyke VanKoevering, 13640 Juniper Drive, DeWitt, MI 48820, applicant, stated he would like to thank Township staff for helping him to understand the unique character of his lot. He considers the Schavey Road side of his lot at the backyard.

Gobbo questioned if the applicant intends to meet the criteria that requires the proposed shed to meet the character of the existing structure.

VanKoevering stated he has had conversations with staff and has agreed to construct the proposed structure to match the character of his home.

Stephanie VanKoevering, 13640 Juniper Drive, DeWitt, MI 48820, stated she thought the reason for the Board making a determination on which side of their lot is the rear yard, is in case they decide to construct anything else in the future the determination would have already been done. She questioned if staff thinks it would be advantageous to address where the back yard is so that they would not have to go through this process again, should they want to change something in their back yard in the future.

Niewiadomski stated that giving the Schavey Road side of their lot the classification of a rear yard would allow more options for what is allowed. However, the setback requirement would be greater.

- C. Close Public Hearing. **Hearing no further questions or comments, LaGrand declared the Public Hearing closed at 7:50 p.m.**
- D. Discussion and possible action by Board of Appeals.

Gobbo stated he does not feel an interpretation is necessarily required in order to meet the objective at hand. He suggested perhaps the Board could defer action on the interpretation with the possible recommendation to refer the matter to the Planning Commission. At that time the Ordinance Amendment Sub Committee could review this section of the Zoning Ordinance and study the impact of an amendment that would provide clarity.

LaGrand stated he concurs with Gobbo that it might be better to move forward to item III. on the Agenda and possibly come back to this item. Although the interpretation seems simple, it may be more appropriate for the Planning Commission to review and make a determination, since the decision could impact any potential new development in the Township.

Brief discussion followed regarding the fact that the appropriate thing to do would be to consider the applicant's variance request and refer this interpretation issue to the Planning Commission.

Calder suggested the interpretation be only for this particular lot.

LaGrand stated that would be hard to do because any interpretation is setting precedent.

Calder noted in most platted subdivisions the lots have designated front and rear yards on the plans. When visiting the subject site it is very clear where the front and rear of the house is located. The residence is addressed as being on Juniper Drive rather than Schavey Road.

**Gobbo moved to table the Public Hearing for New Business Item II. on the Agenda, on the interpretive action only. Supported.**

**ROLL CALL vote on motion:**

**AYES: 6    NAYES: 0    ABSENT: 1 (Richards)**

**MOTION CARRIED.**

**Gobbo moved to remove New Business Item II., Appeal 12-770003 (Interpretation) from Dyke VanKoevering from the table at 8:30 p.m. Supported. MOTION CARRIED.**

**Gobbo moved to refer to the Planning Commission the matter of properties having more than one front yard when the property abuts more than one street, for review of the Zoning Ordinance for the possibility of clarifying and/or amending the Ordinance so that**

**it is clear how a property will be treated in terms of the frontage, side and rear of the property. Supported.**

Calder reiterated that corner lots in a platted subdivision must have a designated front yard.

**ROLL CALL vote on motion:**

**AYES: 6 NAYES: 0 ABSENT: 1 (Richards)**

**MOTION CARRIED.**

E. Possible Certification of Decision. – **No Action.**

**III. PUBLIC HEARING – Appeal 12-770003 – From Dyck VanKoevering,** requesting a 12.5 foot variance to the required 30 foot front yard setback abutting Honeylocust and requesting a 11 foot or 21 foot variance to the required front/rear yard setback to be allowed to construct an 8 foot by 8 foot accessory structure that would be 19 feet from the property line abutting Schavey Road. The property is located at 13640 Juniper Drive, DeWitt, MI 48820, Lot #28 of Hawthorne Woods East Site Condominiums, in the southeast ¼ of Section 18 of DeWitt Charter Township.

A. Open Public Hearing. **Chairman LaGrand declared the Public Hearing opened at 8:00.**

B. Administrative Comments/Applicant/Public Comments.

Planning Assistant Tory Niewiadomski reviewed staff's report dated August 9, 2012 advising the applicant is requesting a variance to construct an 8 foot by 8 foot accessory structure that would be 19 feet from the property line located along Schavey Road and 17.5 feet from the property line located along Honeylocust Drive. Therefore, the applicant is requesting a variance of 12.5 feet to the required 30 foot minimum front yard setback requirement along Honeylocust Drive and a variance of 11 feet to the 30 foot minimum front yard setback requirement along Schavey Road.

Niewiadomski conducted his power point presentation showing an aerial view of the property which indicates the setback boundary lines. The existing residence is located on the northeastern most portion of the building envelope. The subject site is zoned R5 (Residential Single and Two Family). All of the properties surrounding the site are also zoned R5 and are all residential uses.

Niewiadomski reviewed pictures submitted by the applicant of his lot. He pointed out that if the applicant did not have Schavey Road abutting his property, he would have no problem with meeting the current Zoning Ordinance setback requirements. The issue becomes compounded because of street frontage on three sides of his lot. This triggers the 30 foot front yard setback on three sides of the lot. If this issue did not exist, the applicant would be allowed to construct a storage shed up to 5 feet from the rear or side property line.

With respect to the request meeting the Basic Conditions, Niewiadomski stated the following:

*Basic Condition a) – Granting the variance will not be contrary to the public interest or to the intent and purpose of this Ordinance.*

The proposed construction of an 8 foot by 8 foot accessory structure would not require a building permit due to its size. However, the applicant does not have a reasonable ability to place an accessory structure on their property due setback requirements. If the applicant resided on a typical corner lot without frontage on three streets, the applicant would have no issue with meeting the ordinance standards and could place an accessory structure 5 feet from a

rear or side yard that does not have frontage on a street. Typically, a parcel has a defined rear yard but in this scenario there is no defined rear yard based on the ordinance language.

The proposed construction of an 8 foot by 8 foot accessory structure would not be contrary to the public interest or the intent and purpose of this Ordinance.

*Basic Condition b) – Granting the variance shall not permit the establishment within a district of a use which is not permitted by right, under special conditions, or by special use permit within that district.*

The proposed accessory structure is considered a use by right in the R5 (Residential, Single and Two Family) zoning district. Granting these variances would not allow uses not already permitted within the district. Staff finds that the request complies with this condition.

*Basic Condition c) – Granting the variance will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.*

There is no reason to believe that granting the variance would have a significant adverse impact on surrounding property values. The exterior of the accessory building has to match the material and color of the exterior of the principle structure that it is accessory to. It has been noted that several properties within the neighborhood have accessory structures behind their homes. The location of the proposed accessory structure is in the back corner of the property where there is berming and would be screened with coniferous trees. The size of the structure is minor at 8 foot by 8 foot and would not require a building permit if it were able to meet current setback standards. The use presented during the public hearing on this appeal, no facts exist which would demonstrate that granting of this request would cause an adverse effect on property values.

Staff finds that the request complies with this condition.

*Basic Condition d) – The variance is not one where the specific conditions relating to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions reasonably practical.*

Requests of this nature have been infrequent. Additionally, requests of this type have not been consistent so as to demonstrate the need for an amendment to the Zoning Ordinance. Staff finds that the request does comply with this condition.

With respect to Special Conditions, Niewiadomski stated the following:

*Special Condition a) – Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district and when such circumstances or conditions shall not have resulted from any act of the applicant subsequent to the adoption of this Ordinance and when such circumstances or conditions shall not have resulted from any act of the applicant in violation of a prior zoning ordinance applicable to said property.*

Staff finds that there is an exceptional circumstance that the property owner is located on a lot with frontage on three streets. These circumstances are rare within the township and have presented a situation where home owners are going to have issues developing their property. Staff has only identified four other parcels that have this situation within the township.

*Special Condition b) – Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.*

Subject to the results of the public hearing, staff believes that the variance request is not necessary to preserve a substantial property right. The applicant is able to use the property for single family residential purposes, just like the neighbors.

LaGrand stated there seemed to be a lot screening on the subject site.

Niewiadomski stated there is a lot of berming and coniferous trees along the Schavey Road frontage.

Calder questioned if the proposed structure was moved to the northwest corner, would a variance on Honeylocust Drive be needed.

Niewiadomski stated there is significant berming in that area that would make it difficult to place the proposed shed in the northwest corner of the lot.

Chairman LaGrand invited the applicant to speak.

Dyck VanKoevering, 13640 Juniper Drive, DeWitt, MI 48820, applicant, stated he did spend a lot of time figuring out the best placement for an accessory building in his yard. Heavy screening exists in the area proposed for the structure. That location made the most sense. He also plans to place a decorative fence on the back side of the structure with additional landscaping. To move the location further north, a number of existing trees would need to be removed.

LaGrand questioned if Mr. VanKoevering had spoken with any neighbors regarding the variance request.

VanKoevering stated he had answered a few questions that neighbors had. He specifically spoke to the neighbors on the south side of Honeylocust because they would be most impacted by the proposed location. They had no issue with the request.

C. Close Public Hearing. **Hearing not further questions, Chairman LaGrand declared the Public Hearing closed at 8:20 p.m.**

D. Discussion and possible action by Board of Appeals.

Reese stated there should be some type of action taken on the applicant's request due to the fact that it could take several months for the Planning Commission to amend the Ordinance.

Calder questioned if anyone checked the plat that was registered with Clinton County to see if a front yard was determined.

Niewiadomski stated he believes there was an "F" for "Front" on the Juniper Drive side.

LaGrand stated he is not sure if this would be controlling for the Zoning Enabling Act.

Calder suggests the reason the house is orientated as it is would be because Juniper was listed as the front. Therefore, Schavey Road would be the rear yard.

Calder moved that Appeal 12-770003, to allow the construction of an 8 foot by 8 foot accessory structure that would encroach 12.5 feet into the 30 foot required front yard setback along Honeylocust Drive and encroach 11 feet into the 30 foot required front yard setback along Schavey Road of the property located at 13640 Juniper Drive, be approved. Approval is based on a finding that the request meets all four of the Basic Conditions and Special Condition a) listed in Section 42-70 of the Zoning Ordinance, based on the topography of the property, given the sloping nature of the property and existing drainage areas.

**Supported.**

**ROLL CALL vote on motion: AYES: 6 NAYS: 0 ABSENT: 1 (Richards)  
MOTION CARRIED.**

**REFER BACK TO NEW BUSINESS ITEM II. (8:30 p.m.)**

E. Possible Certification of Decision.

**Gobbo moved to approve the Certification of Decision for Appeal 12-770003. Supported.  
MOTION CARRIED.**

**VI. Election of Officers for the Year 2012.**

Chairman LaGrand opened the floor for nominations for the office of Chairman.

Gobbo nominated Christopher LaGrand for the office of Chairman. Supported.

**Hearing no further nominations, Gobbo moved to close the nominations for the office of Chairman and cast a unanimous ballot for Christopher LaGrand for Chairman. Supported.**

**ROLL CALL vote on motion:  
AYES: 6 NAYS: 0 ABSENT: 1 (Richards)  
MOTION CARRIED.**

Chairman LaGrand opened the floor for nominations for the office of Vice Chairman.

Calder nominated Steve Gobbo for the office of Vice Chairman. Supported.

**Hearing no further nominations, Calder moved to close the nominations for the office of Vice Chairman and cast a unanimous ballot for Steve Gobbo for Vice Chairman. Supported.**

**ROLL CALL vote on motion:  
AYES: 6 NAYS: 0 ABSENT: 1 (Richards)  
MOTION CARRIED.**

Chairman LaGrand opened the floor for nominations for the office of Secretary.

Gobbo nominated Robert Reese, III for the office of Secretary. Supported.

**Hearing no further nominations, Gobbo moved to close the nominations for the office of Secretary and cast a unanimous ballot for Robert Reese, III for Secretary. Supported.**

**ROLL CALL vote on motion:**

**AYES: 6      NAYS: 0      ABSENT: 1 (Richards)**

**MOTION CARRIED.**

**The Zoning Board of Appeals Officers for the year 2012 are:**

**Christopher LaGrand, Chairman**

**Steve Gobbo, Vice Chairman**

**Robert Reese, III, Secretary**

PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

TRUSTEES REPORT:

Trustee Calder gave a brief report on business conducted and action taken at the regularly scheduled meetings of the Board of Trustees.

DISCUSSION: None.

ADJOURNMENT:

**Gobbo moved to adjourn the meeting at 8:45 p.m. Supported. MOTION CARRIED.**

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Linda K. Parkinson, Recording Secretary

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Robert Reese, III, Secretary