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Jeff Carpenter



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**Township Planner**  
Jim N. Foulds

**Assistant Planner**  
Tory Niewiadomski

**Recording Secretary**  
Linda K. Parkinson

**ZONING BOARD OF APPEALS  
MINUTES  
WEDNESDAY, SEPTEMBER 19, 2012  
7:00 P.M.**

The regular meeting of the DeWitt Charter Township Zoning 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 Assistant Planner Tory Niewiadomski.

**MEMBERS PRESENT:** Donald Riel, Christopher LaGrand, Jeff Carpenter, Andrew Richards and Trustee Calder.

**MEMBERS ABSENT:** Robert Reese, III and Steve Gobbo.

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

**APPROVAL OF MINUTES:** **Calder moved to approve the minutes of the August 15, 2012 regular meeting as printed. Supported. MOTION CARRIED.**

**CORRESPONDENCE:** None.

**PUBLIC COMMENTS:** None.

**UNFINISHED BUSINESS:** None.

**NEW BUSINESS:**

**I. PUBLIC HEARING - Appeal 12-770004 – From Cheryl Janke**, requesting the following variances for property located at 15980 Elmira Drive, Lansing, MI 48906, Lot #23 of N. Rosewood Acres Subdivision, in the southeast ¼ of Section 28 of DeWitt Charter Township:

1. The applicant is seeking a twenty-five (25) foot variance to the required thirty (30) foot front yard setback requirement, as set forth in Section 5.18.1, Schedule of Regulations, of Zoning Ordinance 60 for the R5 (Residential Single and Two Family) zoning district for the placement of a pool along State Road.

2. The applicant is seeking a twenty-one (21) foot variance to the required thirty (30) foot front yard setback requirement, as set forth in Section 5.18.1, Schedule of Regulations, of Zoning Ordinance 60 for the R5 (Residential Single and Two Family) zoning district for the placement of a 9 foot by 6 foot storage shed along State Road.
3. The applicant is seeking a variance to place a privacy fence within the front and side yard of the property along State Road and Elmira Drive as set forth in Section 42-883, Fences, walls, and screens, of the Zoning Ordinance.
  - A. Open Public Hearing. **Chairman LaGrand declared the Public Hearing opened at 7:05 p.m.**
  - B. Administrative Comments/Applicant/Public Comments.

Assistant Planner Tory Niewiadomski reviewed staff's report dated September 13, 2012 pointing out the location of the site. He noted the applicant's residence is located in the northwest corner of the property. He stated the variance request is on three separate items. The applicant is requesting to be allowed to keep an existing fence within the front and side yard around the area where the pool is located. The existing pool is considered a structure. Whenever an accessory structure encroaches closer to a street than the principal structure, they are allowed considering it meets the 30 foot front yard setback. The existing storage shed also does not meet setback requirements. In addition, the shed would be required to match the character of the existing principle residence. It should be noted the applicant has indicated the applicant has moved the storage shed further north.

Niewiadomski advised the surrounding zoning consists of residential zoning districts (R5 and R3). The surrounding land uses are residential.

With respect to fencing, it is not allowed within the front yard unless it is decorative in nature, such as a picket fence or split rail fence. The applicant's fence does is not decorative in nature.

The Township Code Enforcement Officer became aware of the applicant's setback issues and in response, the applicant has applied for variances for the pool, shed and fencing. In closing, Niewiadomski advised another issue is that the section of State Road in the vicinity of the applicant's property there is an increased right of way.

Riel expressed concern with the applicant's fence blocking the clear vision triangle for traffic.

Niewiadomski concurred. He further stated part of the reason for privacy fences being prohibited in the front yard is for that very reason.

Hearing no further questions or comments, Chairman LaGrand invited the applicant to speak.

Cheryl Janke, applicant, 15980 Elmira Drive, Lansing, MI 48906, stated she did set her privacy fence 25 feet back to allow for the clear vision triangle. After she thought the fence was in compliance she was then notified that the shed and pool could not be located where they were on the property. She stated because of the way her house is situated on the lot there is no other place to put the shed and pool. The fencing was put up to provide privacy for the pool and contain her dogs. She was not aware that the shed must match the material of the house so she would be willing to paint it. She could relocate the pool to the west, however her yard slopes in that direction and could flood the neighbors property if the pool should leak.

Niewiadomski stated the current location of the pool is the best placement for screening due to the existing trees.

LaGrand questioned if the applicant has had the pool in other locations on her property.

Janke explained she has had different pools over the last five or six years but they have always been located in the same area. The current location provides the best screening.

LaGrand asked the applicant to verify the placement of the fence.

Janke advised the fencing is approximately 30 feet from the center of the road. The distance from the curb is not known because a new curb has recently been constructed. She would estimate approximately 15 feet from the curb.

Carpenter stated when he drove by the subject property he felt the current location of the pool was the best placement for screening purposes. He also noticed the yard does indeed slope to the west. In fact, the shed is barely visible from the road because it is sitting down in the lower area of the yard.

Janke stated she has moved the shed approximately 10 feet to the north towards the garage.

Calder noted this is similar to a variance at the last Zoning Board of Appeals meeting where the applicant has to meet front yard setbacks on two sides of their property.

Niewiadomski noted the location of the home on the property makes it very difficult to place anything on the back side or north side of the lot.

Brief discussion followed regarding the placement of the pool and shed might meet setbacks if State Road did not run along the south side of the applicant's property.

Carpenter questioned what the regulations were for fencing of pools.

Niewiadomski advised an above ground pool that is 4 feet or higher in height does not require fencing.

Lucas Heintzelman, 1482 Bennett, Lansing, MI 48906, contractor, stated the location where the applicant has planted arborvitae has had an existing fence for 7 to 10 years, prior to the Township having fencing regulations. She would just like to keep the fencing along her driveway and along her neighbor's property line. He stated that the applicant has changed her fencing several times upon the request of the Township in an attempt to come into compliance. Ms. Janke did not pull a permit for the fence because she had existing fencing and did not realize she needed a permit to add onto it. He feels she has tried very hard to comply with Township regulations.

LaGrand asked for clarification on what the applicant did to try to comply with regulations.

Heintzelman stated the first time the applicant was contacted she was told she was in violation of the right of way so Ms. Janke located the fence in a way she felt she was in compliance with the 25 foot right of way.

The second time Ms. Janke was told the fencing had to come down completely so she took the privacy fencing down and left the decorative fencing up. The section by the pool along the south lot line was existing before the ordinance was in place. It was installed approximately 10 years ago.

LaGrand questioned if staff had an idea of when the fencing regulations were adopted.

Niewiadomski stated the Zoning Ordinance has been in place since 1977. He is not certain when the section specific to fencing was adopted.

Brief discussion followed possible recent amendments to Section 42-883 "Fences, walls and screens".

LaGrand questioned if the applicant intends to keep the existing picket fence where it is.

Janke stated she would like to have the entire fencing be privacy in nature, or at the very least, keep what is up now.

Brief discussion followed regarding the fact that 35 notification letters went out. One letter of support of the variance request was submitted.

Hearing no further questions or comments, Chairman LaGrand invited public comments.

Glenn Heintzelman, 15940 Elmira Drive, Lansing, MI 48906, stated his house is just north of the applicant's house. He commended the applicant on how nice she keeps her house and yard. He feels the Township is harassing her. She has complied twice to everything she has been asked to do. One of the reasons Ms. Janke constructed a fence on his side was so their dogs would not bark at each other. He stated the applicant's fence does not obstruct the vision of vehicles. In closing, he stated the applicant's pool is not permanent and is not an eyesore. He feels the Zoning Board of Appeals should rule in Ms. Janke's favor.

Helen Foster, 1378 W. State Road, Lansing, MI 48906, spoke in support of the applicant's request.. She is a neighbor of Ms. Janke and has no issues with what she has done with her property.

- C. Close Public Hearing. **Hearing no further public comments, Calder moved to close the Public Hearing at 7:40 pm. Supported. MOTION CARRIED.**
- D. Discussion and possible action by Board of Appeals.

LaGrand suggested that each of the three items be handled individually.

Calder stated he is somewhat surprised to hear that an above ground pool is considered a "structure". Especially since it is portable and can be moved around.

Niewiadomski clarified that the Ordinance considers any pool that is able to contain more than 2 feet of water, it is considered a structure and is required to meet setbacks.

Janke stated she takes the pool down in the winter and stores it away.

LaGrand stated it is somewhat "fuzzy" to him that a removable pool is considered a structure. He is comfortable with approving the variance to allow the pool to remain where it is.

Calder pointed out that the pool is below the level of the fence. He stated he has no problem with approving the request to let the pool remain where it is.

**Richards moved that Appeal 12-770004 to allow the continued placement of a pool along State Road that would encroach twenty five (25) feet into the minimum thirty (30) foot front yard setback of the property located at 15980 Elmira Drive, Lansing, MI 48906 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. Special Condition (a) is met due to the sloping layout of the property.**

**Supported.**

**ROLL CALL vote on motion:**

**AYES: 5      NAYS: 0      ABSENT: 2 (Gobbo, Reese)**

**MOTION CARRIED.**

LaGrand stated with respect to the shed, the applicant has moved the structure to try to reduce the encroachment. It appears as if the issue of topography also plays a part in this request.

Carpenter noted the applicant's shed is fairly short. He questioned if the shed had to be a certain height in order to be considered a structure. He drove by the site and could not even see the shed until he got out of his vehicle.

Niewiadomski stated a structure is anything under 35 feet. He further stated, upon inspection of the property, there is a small area on the northwest portion of the site where the shed could be placed and may comply with the Township regulations.

Janke advised that is where she has her garden. She would prefer to keep it in the northwest corner of her yard.

LaGrand stated it seems as if the shed encroaches 11 feet into the 30 foot front yard setback. He suggested, if approved, the variance should be for 15 feet to give the applicant a little extra room.

Calder stated the only problem he sees with the shed is the fact that it does not match the character of the principle dwelling.

Lengthy discussion followed regarding the placement of the shed.

Janke offered to paint the shed to match her house.

**Calder moved that Appeal 12-770004, to allow the continued placement of a storage shed within the front yard along State Road that would encroach fifteen (15) feet into the minimum thirty (30) foot front yard setback of the property located at 15980 Elmira Drive, Lansing, MI 4806 be approved. Approval is based on the finding that the request meets all four Basic Conditions, except for the color of the shed, and Special Condition (a) listed in Section 42-70 of the Zoning Ordinance. Approval is with the condition that the applicant relocated the shed to a location that would comply with the Zoning Ordinance and paint the storage shed to match the character of the principle structure.**

**Supported.**

**ROLL CALL vote on motion:**

**AYES: 5      NAYS: 0      ABSENT: 2 (Gobbo, Reese)**

**MOTION CARRIED.**

LaGrand asked for discussion regarding the applicant's request for a variance to her fence. He noted it would be a good thing to give the applicant some certainty since she has attempted to comply with Township regulations without resolve.

Riel referred to correspondence dated December 21, 2011 to the applicant from Gary Cypher, Ordinance Compliance Officer. He stated it appears the issue is the height of the non decorative fence.

Calder asked for clarification of the definition of "decorative fence".

Niewiadomski stated the Ordinance's definition of decorative fencing (see attached).

Carpenter noted the fence is not of a consistent height. It appears the reason for this is to comply with one of the letters sent earlier this year.

Niewiadomski stated staff's interpretation is that the fence is not a dimensional issue that can be considered because it is not a permitted use in that portion of the yard.

LaGrand questioned if there was currently any placement of privacy fencing on the applicant's site that would be permitted, or where the Board has jurisdiction to grant a variance.

Niewiadomski noted there is privacy fencing behind the home and to the north that is appropriate. However, anyplace where the fence encroaches closer to the street right of way would not be permitted.

Discussion followed regarding the fact that the fencing requirements may have been amended in the mid 90's and that at some point the Planning Commission had the authority to approve fences in the front yard.

Further discussion followed regarding the fact that the Zoning Board of Appeals is uncertain as to whether they have the authority to grant a variance for the fence and perhaps legal counsel should be consulted.

Niewiadomski noted the Township Attorney sent a correspondence to the applicant on July 5, 2012 that states his opinion that portions of the fence, in terms of placement and height, are in violation of the Code.

Janke noted at the time she received the July 5<sup>th</sup> correspondence her entire fence was privacy in nature. She further stated she was advised by Township staff to submit for an appeal on the fence issue. This would imply they have the authority to make a decision. She feels her hardship is the fact that she is on a corner lot with very little rear yard.

Lucas Heintzelman stated some of the existing privacy fencing has existed for fifteen (15) years. He feels the fence is a legal non conforming structure.

Calder stated if the fence pre exists the regulations for fences perhaps a variance could be granted. He suggested staff obtain a legal opinion on the issue.

Discussion followed whether the fence would be considered decorative if the applicant cut the privacy fence down to four (4) feet in height.

LaGrand stated the questions for legal counsel would be as follows:

1. What is the scope of the Zoning Board of Appeals authority on the fence issue.
2. What is the nature of the issue on legal non conforming. When was the Ordinance effective and was the applicant's fence there prior to the effective date.
3. Any other guidance counsel could provide to the Board.

LaGrand stated he feels the applicant's request is reasonable. However, the Board is not certain if they have the authority to take action.

Brief discussion followed regarding referring this issue to the Planning Commission for a possible amendment to the Ordinance.

Janke stated there are other fences in her neighborhood that are placed in the front yard. She wonders why she is the only one being asked to come into compliance.

**Carpenter moved to postpone action on Appeal 12-770004 to allow the applicant to continue placement of a privacy fence within the front yard along State Road and Elmira Drive to allow staff time to obtain an opinion from Legal Counsel as to what authority the Zoning Board of Appeals has to act on this request and to refer to the Planning Commission for discussion on possible amendment to the Zoning Ordinance.**

**Supported.**

**ROLL CALL on motion:**

**AYES: 5      NAYS: 0      ABSENT: 2 (Gobbo, Reese)**

**MOTION CARRIED.**

- E. Possible Certification of Decision.

**Calder moved to approve the Certification of Decision for Appeal 12-770004 regarding allowing the applicant to continue the placement of a pool along State Road that would encroach twenty five (25) feet into the minimum thirty (30) foot front yard setback on property located at 15980 Elmira Drive, Lansing, MI 48906.**

**Supported. MOTION CARRIED.**

**Calder moved to approve the Certification of Decision for Appeal 12-770004 regarding the applicant to continue the placement of an existing shed that would encroach fifteen (15) feet into the minimum thirty (30) foot front yard setback on property located at 15980 Elmira Drive, Lansing, MI 48906, with the condition that the applicant paint the storage shed to match the character of the principle structure.**

**Supported. MOTION CARRIED.**

**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 held on August 27, 2012 and September 10, 2012.

**DISCUSSION: None**

ADJOURNMENT:

Carpenter moved to adjourn the meeting at 8:28 p.m. Supported. MOTION CARRIED.

  
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Linda K. Parkinson, Recording Secretary

  
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Robert Reese, III, Secretary