

1 **COMSTOCK CHARTER TOWNSHIP**

2 **ZONING BOARD OF APPEALS**

3 **MINUTES OF MEETING HELD ON JUNE 7, 2016**

4
5 A meeting of the Comstock Charter Township Zoning Board of Appeals was held on
6 Tuesday, June 7, 2016, beginning at 4:00 p.m. at the Comstock Charter Township Hall.

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9
10 Members Present: Randy Beister
11 Jeff Bogema
12 Steve Gazdag
13 Ronald Kuivenhoven
14 Roland (Gus) Taylor

15
16 Alternate Member Present: Jodi Colby

17
18 Also present were Township Attorneys Catherine Kaufman and Seth Koches, Zoning
19 Administrator Jodi Stefforia and three other interested persons.

20
21 **CALL TO ORDER**

22
23 Chairman Taylor called the meeting to order at 4:00 p.m.

24
25 **ELECTION OF OFFICERS**

26
27 Ms. Stefforia advised that as this was the first meeting of the ZBA in 2016, the Board
28 needed to elect officers. A motion was made by Mr. Gazdag, seconded by Mr. Bogema to elect
29 the following officers for the ZBA for 2016: Chairperson Gus Taylor, Vice Chair Ron
30 Kuivenhoven and Secretary Steve Gazdag. The motion passed unanimously.

31
32 **PUBLIC COMMENT ON NON-AGENDA ITEMS**

33
34 There were no public comments on non-agenda matters.

35
36 **REVIEW OF MINUTES OF 12/22/15 MEETING**

37
38 After review, a motion was made by Mr. Bogema, seconded by Mr. Beister, that the
39 meeting minutes of the 12/22/15 regular ZBA meeting be approved as presented. The motion
40 passed unanimously.

41
42 **VARIANCE REQUESTS – DAVID HITE – 7727 N. GLENEAGLE DRIVE**

43
44 Chairman Taylor said that the next item on the agenda was the variance request of David
45 Hite, owner of property at 7727 N. Gleneagle Drive.

1 Ms. Stefforia presented her staff report dated 6/7/16, which noted that the applicant was
2 requesting variances to allow the construction of a 792 square foot detached accessory building
3 with a side yard setback of two feet. Section 4.0.11(c)5(c) of the Zoning ordinance requires a side
4 yard setback of 17 feet given that the building has a proposed height of 17 feet.
5

6 Ms. Stefforia said that the property is located in the Kilowatt Lake Homesites subdivision
7 that was established in the 1960s. The home on the property was built in 1962. The applicant
8 purchased the home in October 2014. The application indicates that the proposed accessory
9 building will house a motor home, riding mower and provide storage for other household items.
10 Currently on the property, there is a 1,340 square foot home with an attached garage. The existing
11 garage (528 square feet) and the proposed accessory building (792 square feet) will maximize the
12 permitted square footage allowed for accessory buildings on lots of this size (27,443 square feet).
13

14 Ms. Stefforia continued with her report by noting that the Zoning Ordinance was amended
15 earlier this year to require minimum side and rear yard setbacks for detached accessory buildings
16 greater than 200 square feet in area equal to the height of the building. The Zoning Ordinance
17 allows side yard setbacks as close as 5 feet for a house and attached garage, where there is at least
18 10 feet for a side yard setback on the other side. If the proposed accessory building were attached,
19 a side yard setback of 5 feet from the west property line would be required as the house is more
20 than 20 feet from the east property line. However, as the applicant's proposed accessory building
21 is greater than 200 square feet in area and detached from the house, the required side yard setback
22 is the height of the building. The applicant proposes a building that is 17 feet high; therefore a 17
23 foot side yard setback is required. A two (2) foot side yard setback is proposed, thereby requiring
24 a 15 foot variance of the side yard requirement.
25

26 Ms. Stefforia also said that the applicant has proposed pole construction but with siding to
27 match the home. She also noted that the subject property abuts I-94 to the rear, with the rear yard
28 dropping off about 16 feet from the house to the property line. Because of the drop-off, the
29 applicant is not readily able to locate the proposed accessory building in the rear yard. The
30 applicant is requesting a variance to allow the new building to be adjacent to, but detached from,
31 the existing attached garage with a two (2) foot side yard setback.
32

33 Ms. Stefforia then outlined the standards for granting a non-use variance. She said that
34 the ZBA must make findings on whether conformance with the Zoning Ordinance is unnecessarily
35 burdensome; whether substantial justice will be done if a variance is granted; whether there are
36 unique physical circumstances on the property that prevent compliance with the zoning ordinance
37 requirements; whether the variance request is based on a self-created hardship; and whether the
38 spirit of the ordinance is observed, public health, safety and welfare secured and substantial justice
39 done if the variance is granted.
40

41 When reviewing these standards, as applied to the facts of this application, Ms. Stefforia
42 advised the ZBA to consider if conformance would be unnecessarily burdensome based on the
43 property's topography. She also asked if reasonable use of the property would remain if the
44 variance was denied and to consider whether it may be possible to construct the accessory building
45 as an expansion of the existing attached garage, thereby reducing the required side yard setback to
46 five feet and eliminating the need for a variance.

1
2 With regards to substantial justice, Ms. Stefforia said the ZBA should consider if a lesser
3 relaxation of the standards would afford the applicant relief and also previous ZBA decisions. Ms.
4 Stefforia said that there have been 2 previous similar variance requests in 2012 and 2014. In the
5 2012 request, the ZBA denied the side yard setback variance, finding that the applicant could
6 satisfy the five foot required side yard. In the 2014 request, the ZBA granted a variance to allow
7 an accessory building to be placed in a front yard. While this request was dissimilar in terms of
8 lot size, it was similar in terms of topography and mature trees limiting other locations for an
9 accessory building on site. Ms. Stefforia observed that in this case, the accessory building may
10 be able to be attached to decrease the required side yard setback variance (or eliminate it).
11

12 Ms. Stefforia next said the ZBA should consider if there were any unique physical
13 circumstances on the property that would prevent compliance with the zoning ordinance
14 requirements. She said that the ZBA could consider the topography of the property and the extent
15 to which it prevents placing the accessory building in the rear yard in compliance with
16 requirements. The ZBA should also consider any comments from the applicant about the proposed
17 aesthetics and appearance of the roofline should the accessory building be attached to the existing
18 garage.
19

20 Ms. Stefforia advised that the ZBA should also consider whether the variance request was
21 self-created, noting that the topography of the lot was known to the applicant when he purchased
22 the property in 2014. As regards whether the spirit of the Ordinance would be observed, public
23 health, safety and welfare secured and substantial justice done, Ms. Stefforia advised the ZBA to
24 consider comments of the applicant and the public.
25

26 David Hite, 7727 N. Gleneagle Drive, addressed the ZBA. He said that he was unaware
27 of the revised zoning ordinance requirement that the setback equal the height of the accessory
28 building. He questioned about why he was not told about this change, although he had been
29 working with staff for a period for time on his variance application. He noted that the text
30 amendment was approved on April 24, 2016 and he submitted his variance application on May 6.
31 He was frustrated at not being apprised that the Planning Commission was considering
32 recommending changes to the Zoning Ordinance requirements regarding setbacks for accessory
33 buildings.
34

35 Mr. Hite said that he had spent a great deal of time designing the proposed accessory
36 building to be aesthetically pleasing. If he had to attach the accessory building to the existing
37 garage (to achieve a side yard setback) he would have to modify existing “eyebrows” on his house,
38 which would not be attractive. He feels that the Township staff was not forthright with him. He
39 bought this property in 2014 and checked the zoning requirements at that time. He feels if he
40 attached the accessory building to the existing garage it would look ridiculous.
41

42 Mr. Hite addressed the standards for a grant of a variance, noting that in regards to whether
43 compliance with the zoning ordinance would be unnecessarily burdensome, he did not have other
44 options to locating the accessory building because of the drop off in his rear yard, along with his
45 septic and utility locations. With respect to substantial justice, he noted that a variance had been

1 granted in 2014 in a similar situation and that he would have to cut down a lot of trees if he had to
2 place the accessory building elsewhere on the subject property.
3

4 Mr. Hite then questioned if the Zoning Ordinance text amendments revising the setbacks
5 for detached accessory buildings were even valid, as his attorney found no proof of publication of
6 the ordinance in the newspaper. Mr. Hite opined that it was his opinion that the Zoning Ordinance
7 text amendments were not valid and, accordingly, he should only be required to provide a five (5)
8 foot side yard setback. In any event, he does not agree with the text amendments that have revised
9 the required setbacks for detached accessory buildings, as he feels they improperly hamstring
10 property owners from using their property. He continued by stating that if anyone had told him
11 the required side yard setback was the height of the building, he would have saved his time and
12 money and not applied for a side yard setback variance.
13

14 Chairman Taylor asked Mr. Hite what he had understood the requirements to be. Mr. Hite
15 said he understood that a five (5) foot setback was required. He prepared his plan for the accessory
16 building accordingly. He did not change his plan, but now was required to get a substantially
17 larger setback variance. He also said that he wants to keep his accessory building detached
18 because there is landscaping on the other side. He reiterated that he had devoted a lot of time and
19 energy designing this layout, including having a staked survey done in 2014. He is proposing to
20 separate the garage and accessory building because the Fire Department prefers access around
21 buildings. The Fire Department suggested a 42 inch separation (or larger). He reviewed his plans
22 with the Fire Department and the police department. He feels his accessory building will blend
23 into the neighborhood and will be aesthetically attractive.
24

25 Chairman Taylor asked the applicant if he had applied for a building permit in February.
26 Mr. Hite said that he had been talking about this project since last November with Township staff.
27 He understands that the Township Board approved the Zoning Ordinance text amendments in
28 April. He repeated again that someone should have told him that the setbacks would be changing.
29 He stated again that no one had told him that the requirements were changing and he is concerned
30 that his variance request now appears to be overreaching. He said again that if he had been told
31 about the extent of the required side yard setback variance, he would not have applied. He also
32 feels the value of his house will go down if he is forced to attach the accessory building to the
33 existing garage.
34

35 Ms. Stefforia told the ZBA that she met with the applicant on 12/4/15, at which time she
36 had no knowledge of upcoming Zoning Ordinance text amendments regarding accessory building
37 setbacks. She also said she talks to numerous people every week about accessory buildings and
38 does not recall every person and every inquiry.
39

40 Mr. Beister asked if there would be side doors on the building. Mr. Hite said there would
41 be doors on the east side. Mr. Hite said the accessory building would be located six (6) feet forward
42 of the existing garage, but would not be as far forward as the house. He also said that the accessory
43 building would be separated from the existing garage by 42 inches, for public safety. Ms. Colby
44 asked if there would grass in between the buildings. Mr. Hite said he may put concrete or pea
45 stone between the buildings to prevent weeds.

46 Chairman Taylor opened the public hearing at 4:30 p.m.

1
2 Phil Schmidt, 7720 Gleneagle, told the ZBA that he lives across the street from the subject
3 property. He said that Mr. Hite has provided a lot of information about what the accessory building
4 will look like, the size and dimensions. What he told the ZBA is exactly what he has told his
5 neighbors. He supports the variance request, as he thinks the accessory building will look better
6 detached (versus attached to existing garage).
7

8 Carol Schmidt, 7720 Gleneagle, said that Mr. Hite has done everything needed to make
9 this appropriate and to comply with the ordinances. He has been forthright with his neighbors
10 and she appreciates his integrity. She supports his request 100%.
11

12 Bill Harris, 7663 Gleneagle, concurs with his neighbors. He said Mr. Hite has been very
13 informative in terms of the appearance, materials and location of the building. He is in full support
14 of this request.
15

16 Laura Vogel, 7801 N. Gleneagle, had concerns at first about this request, but after hearing
17 Mr. Hite's presentation, she no longer has concerns.
18

19 Sandy Bloomfield, 2304 W. Gleneagle, thanked Ms. Stefforia for her work on this
20 application. She feels it is important for the Township to work with residents on their storage
21 needs. She realizes some people may have concerns, but the neighbors here support this request.
22

23 Mr. Hite commented that this will allow seasonal storage of his motor home, when he is
24 not using it.
25

26 Richard Barnes, 7705 N. Gleneagle, said he lives next door and supports his neighbor's
27 request.
28

29 Mr. Hite noted that even with two foot setback, there will still be thirty feet to Mr. Barnes'
30 garage wall. There will be significant separation between two accessory (storage) buildings. The
31 relationship will not be between storage and residential.
32

33 Mr. Gazdag asked if there was a fence on the property. Mr. Hite said no. Mr. Gazdag
34 asked if there was an overhang. Mr. Hite said there would be a six inch overhang. There was
35 discussion that the setback is measured from the overhang and that the separation between the
36 buildings would be reduced by 6" to maintain 5' on the other side.
37

38 Chairman Taylor said that while he sympathizes with the applicant about the change in
39 ordinance requirements, it is impossible for staff to know about everyone's individual plans. He
40 is concerned about a two foot setback. Two feet will be difficult to mow without trespassing. Mr.
41 Beister was concerned that everyone would want to build two feet from the property line.
42

43 Mr. Bogema felt there were unique circumstances on this lot, given the topography of the
44 rear yard. Ms. Stefforia said that perhaps the applicant could buy some property from the adjacent
45 neighbor to meet the required setback (as there was 30 feet between the proposed accessory
46 building and the neighbor's garage).

1
2 Chairman Taylor was concerned about setting a precedent. Mr. Beister felt this was a self-
3 created situation. Mr. Bogema said that he did not see anything that would prevent the grant of
4 this variance request. He feels there are unique physical circumstances on this property because
5 of the drop off in the rear yard. He also said a similar variance was granted in 2014.
6

7 The audience members interjected at this point with comments regarding the
8 appropriateness of the request and the preference for a detached accessory building (with a
9 variance) versus a detached accessory building.
10

11 There being no additional public comment, Mr. Bogema moved, seconded by Mr. Beister
12 to close the public hearing. The motion passed unanimously. The public hearing was closed at
13 4:50 p.m.
14

15 The ZBA began their deliberations. Mr. Bogema said again that he felt this property has
16 unique physical circumstances supporting the grant of a variance and that the standards are
17 satisfied.
18

19 Attorney Kaufman noted that topography is a condition of the land.
20

21 Mr. Gazdag said that there are several similar accessory buildings in the area already.
22 Chairman Taylor reiterated his concern about a two foot setback for a 17 foot high structure. He
23 feels that other alternatives are available and that a two foot setback in a residential area is too
24 close. He noted that the applicant could attach the accessory building to the garage (thereby
25 needing a lesser variance) or could explore buying property from his adjacent neighbor to meet the
26 required setback. Mr. Kuivenhoven asked if the applicant could build a 20 foot wide accessory
27 building (versus a 22 foot wide building). Mr. Hite said a 20 foot building would not meet his
28 needs. He also said if he had a less than 3 foot separation between the garage and accessory
29 building, he felt it was useless to separate them at all.
30

31 Ms. Stefforia said if the applicant could provide a five foot setback, it would be in keeping
32 with previous setback requirements.
33

34 Attorney Kaufman advised the ZBA to consider the standards required to grant a variance
35 and to apply those standards to the facts of this application.
36

37 Mr. Kuivenhoven stated that, in his opinion, the grant of the requested variance would
38 provide substantial justice because if the applicant was forced to attach the accessory building to
39 the garage, in order to provide a five foot setback requirement for an attached accessory building,
40 he would have to increase the height of the building, which would be less attractive and have a
41 bigger impact on the neighbors. Forcing the attachment of the accessory building would also
42 violate the intent of the zoning ordinance, as it would force the increased height of the building.
43 Mr. Kuivenhoven also felt that the topography was a unique circumstance of the land, which would
44 support the grant of a variance. He felt that the ZBA could find either way on whether the hardship
45 was self-created. Last, he felt that the relationship of the proposed buildings (garage to accessory
46 building), in addition to the topography of the site, the fact that this was a platted lot and the support

1 of the neighbors, lead to his support for the grant of the variance. He would also look to add
2 conditions about the materials of the accessory building.
3

4 Mr. Hite said he was going to install a six foot concrete apron in front of the building, to
5 make it residential in appearance. His driveway is asphalt.
6

7 Mr. Kuivenhoven asked if the accessory building would have gutters. Mr. Hite said it
8 would.
9

10 Upon motion of Mr. Kuivenhoven, seconded by Mr. Bogema, to grant a side yard setback
11 variance of 15 feet (17 feet required, 2 feet provided) to allow the construction of a 792 square
12 foot accessory building, subject to the following conditions:

- 13 1. Siding of the accessory building is to match that of the house
- 14 2. Roofing of the accessory building is to match that of the house
- 15 3. Colors of the accessory building is to match that of the house
- 16 4. Gutters are to be installed on the accessory building to contain runoff on the subject
17 property.
- 18 5. A six foot concrete apron is to be installed in front of the accessory building to
19 maintain a residential appearance
20

21 The motion is based on a finding that this property is distinguishable from other properties because
22 the accessory building could be attached to the existing attached garage in compliance with the
23 ordinance, but doing so would have a greater negative impact on the aesthetics of the
24 neighborhood.
25

26 Ayes: Bogema, Gazdag, Kuivenhoven. Nays: Beister, Taylor. The motion passed, 3-2.
27
28

29 ADJOURMENT

30
31 There being no further matters to come before the Board, upon motion of Mr. Kuivenhoven
32 to adjourn the meeting, seconded by Mr. Beister, the motion passed unanimously. The meeting
33 was adjourned at 5:20 p.m.
34

35 _____
36 Roland Taylor

35 _____
36 Steve Gazdag

37 _____
38
39 Randy Beister

37 _____
38
39 Jeff Bogema

40 _____
41
42 Ronald Kuivenhoven
43