CHARTER TOWNSHIP OF PLYMOUTH
ZONING BOARD OF APPEALS MINUTES
REGULAR MEETING
THURSDAY, JULY 7, 2011

The meeting was called to order at 6:00 p.m. by Mr. Sturdy who, in the absence of Chair Jachym and Vice Chair Zdanek, agreed to preside, reserving the right to participate in debate, deliberation and to offer motions in matters before the Board.

MEMBERS PRESENT: Robert Doroshewitz
                    Robert Harris
                    Ray Sturdy, Jr.

MEMBERS ABSENT: Harry Jachym, Excused
                 Jim Zdanek, Excused

OTHERS PRESENT: Mark Lewis, Chief Building Official
                 Alice Geletzke, Recording Secretary
                 Numerous members of the public

ITEM NO. 1 - APPROVAL OF MINUTES

1. Regular Meetings – May 5, 2011

Moved by Mr. Harris, supported by Mr. Doroshewitz, to approve the minutes of the regular meeting of May 5, 2011 as presented. Ayes all.

ITEM NO. 2 - APPROVAL OF AGENDA

Mr. Sturdy suggested that Item No. 3 of the proposed agenda, approval of the Zoning Board of Appeals Meeting Schedule for calendar year 2012, be deferred until all board members are present to consider it.

Moved by Mr. Harris, seconded by Mr. Doroshewitz, to defer Item No. 3, 2012 ZBA Meeting Schedule, to a subsequent meeting. Ayes all.

ITEM NO. 3 – NEW BUSINESS

1. Application No. 1477- Marcus Raymond
   10462 Runyan Lake Pointe
   Fenton MI 48430

   Location – Vacant Lot (West of Beck Rd between Powell & North Territorial)
   Plymouth MI 48170 Tax I.D. #78-040-99-0008-000

   RE: Zoning Ordinance No. 99, Article 20, Sec 20.1 Height, Area, Lot Coverage, Yard Requirements and Floor Area
The applicant is requesting three variances:

The applicant is in an R-1-E zoning district and is requesting three variances. This is a pre-existing lot that does not meet the current zoning requirements to build a single family residential home. Applicant needs the following:

- A minimum lot area of 1 acre (43,560 SF) is required; the existing lot area is 13,559 SF.
- A minimum lot width of 150 feet is required; the existing lot is 74 feet wide.
- Allowable lot coverage is 15%, the proposed site design requires 16.9% lot coverage.

The property owner, Mr. Marcus Raymond, and his attorney, Ms. Abby H. Cooper, appeared for the Applicant. Mr. Sturdy indicated that he would ask the Applicant and his counsel to present the details of their variance requests and allow Board members to ask questions, seek clarification, etc. Following that, any members of the public who would like to comment on the proposals could come forward, provide their name and address, and present their comments to the Board. Then Applicant would have the opportunity to respond to any comments from the public and the Board would then commence deliberation on the matters at issue.
Mr. Sturdy noted that the three variances requested in Application No. 1477 appear to be virtually identical to those requested in Application Number 1470 submitted to the ZBA by the Liberty Hill Housing Corporation on February 25, 2010 and considered and rejected by the Board at its meeting on April 1, 2010.

Ms. Cooper and Mr. Raymond stated they were indeed the same variances. The Township Zoning Ordinance provides that variance applications that are not approved may be resubmitted to the ZBA after the passage of one year. Mr. Raymond stated that he was the owner of the property at the time of the April 1, 2010 meeting but was out of town and unable to attend the hearing at that time.

Applicant’s property is located in an R-1-E zoning district which requires a minimum lot area of 1 acre, a minimum lot width of 150 feet, and a maximum area lot coverage of 15% for construction of a residential dwelling. As indicated on the Department of Management and Budget Assessment and Equalization Division Property Map, the subject property is 0.35 acres in size and is one of five contiguous “sublots” that were once part of 2-1/4 acre “outlot” exception to the Plymouth Hill Subdivision which was platted with conforming 1 acre lots in 1951. It was suggested that the outlot had, at one time, been divided up as part of a probate settlement, but no specific information was available on that point. Mr. Raymond’s parcel is the southeasternmost of the 5 “sublots” in the outlot exception. A 0.45 acre parcel is located immediately north of Applicant’s property and a 0.71 acre parcel is located immediately north of that. Each of these parcels has frontage on Beck Road. The remaining two sublots, 0.62 and 0.40 acres respectively, are landlocked and are located immediately west of the three parcels that front Beck Road.

Mr. Raymond stated that he had acquired both the 0.35 acre parcel and the 0.45 acre parcel to the immediate north for speculative real estate purposes in 2005. He stated that he was able to find a purchaser for the northerly lot because the lot contained a small house, but he said that he was unable to sell the southerly lot because he could find no one willing to buy it unless a home could be constructed on it.

Ms. Cooper summarized the 30 page attachment she filed with the Application which contained seven pages of discussion and argument and 5 exhibits containing the same building plans that that had been presented at the earlier hearing, two letters, numerous photos and a copy of the Plymouth Hills Subdivision Plat. In her argument, she addressed six of the seven variance criteria that the zoning ordinance requires the Board to consider as a prerequisite to consideration of a variance grant. Mr. Sturdy indicated that her document and attachments would be considered part of the record in this matter. He also indicated that because much of the discussion in her document seemed to be aimed at rebutting the findings made by the Board at its earlier April 1, 2020 hearing, he would include the full record from that proceeding in the record in this matter as well.

Mr. Sturdy noted that Applicant had not addressed the seventh prerequisite set forth in the zoning ordinance, to wit: Section 31.11.3(g) which provides that the possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance. He
observed that in light of Applicant’s statements concerning his speculative purposes regarding the property, it seemed that this necessary finding could not be made.

Five neighboring property owners appeared and expressed their objections to the requested variances. Mr. Douglas Alexander of 11734 Amherst Court lives on Lot 41 of Plymouth Hills Subdivision which is located immediately west of the 5-subparcel outlot. Mr. Alexander indicated that he has resided at that location for 25 years. He stated that if the Applicant simply wanted to build a house a live there, he had no objection, but because a house constructed on the property could be used for any purpose allowable in the zoning ordinance, he was adamantly opposed to the proposed variances. He felt that construction of a small house on the property that could be rented out or used for other than single-family residential purposes could lead to a situation that would be detrimental to the neighborhood and the value of his property.

Ms. Audrey Martz of 11955 N. Beck Road lives on Lot 52 of the Plymouth Hills Subdivision, the lot immediately south of Applicant’s property. Ms. Martz and her son both appeared at the April 1, 2010 ZBA meeting and opposed the variances at that time on the basis that the proposed construction would lower her property value and exacerbate long-standing water runoff problems she had experienced from the adjacent property. She stated that the runoff water problems still continued and would likely get worse if a house were to be constructed on the small lot to her north. She noted that the layout of the proposed house was incompatible with the other homes in the immediate area, and, in particular, that the garage door openings would be directly facing the highway. She stated one of the very desirable features of her neighborhood was the privacy and open space that the one-acre zoning requirement in her area provided. She also stated that Applicant had at one time offered to sell her his property, but his proposed asking price was, in her words, exorbitant.

Mr. Richard Courtney of 11905 N. Beck Road lives on Lot 51 of the Plymouth Hills Subdivision in the home immediate south of Mrs. Martz. Mr. Courtney strongly opposed any grant of the proposed variances noting that they were extreme, particularly with respect to lot coverage which would change the open space character of the neighborhood.

Mr. Todd Zarotney of 12075 N. Beck Road lives in the home located on the 0.71 acre “sublot” in the northeastern-most corner of the 5 parcel “outlot”. He also owns the two landlocked parcels in the outlot that do not have Beck Road frontage. He raised a serious concern that if a house were to be built on Applicant’s narrow property, he would have no way to access his landlocked property, even if easements were to be provided.

Mr. Bob Houston of 11855 North Beck Road also appeared and raised a concern that a grant of the variances and construction of a house on the small parcel would reduce his property value and have a negative impact on the neighborhood.

It was noted that a letter dated June 28, 2011 from a Mr. Jeff Garcia had been received by members of the Board objecting to the proposed variances. Mr. Garcia resides at 11712 Amherst Court on Lot 42 of the Subdivision immediately west of Ms. Martz’s home. He
raised a number of issues, concurred with the Board’s earlier decision in April 2010, and strongly opposed the proposed variance requests. The Board provided the Applicant with a copy of the letter and indicated that it would be placed into the record.

The Applicant was permitted to respond to concerns raised by the neighboring residents and then the Board began its deliberations.

Mr. Doroshewitz and Mr. Harris had no immediate comments. Mr. Sturdy noted that these requests, as before, were not simply setback variance requests – the normal “dimensional” adjustment request that commonly comes to the Board for consideration when something doesn’t quite fit. Instead, he observed that the proposed variance requests were quite extraordinary. As noted in the earlier proceedings, the township has four zoning districts for single family dwellings: the R-1-E district which requires a 43,560 sq. ft. (1 acre) minimum lot size and a 150 foot lot width with 15% maximum lot coverage; the less restrictive R-1-H district which requires a 21,780 sq. ft. (1/2 acre) minimum lot size and a 120 foot width with 15% maximum lot coverage; the R-1-S district which requires a 12,000 sq. ft. minimum lot size and a 90 foot minimum width with 25% maximum lot coverage; and the R-1 district which requires a 7,200 sq. ft. minimum lot size and a 60 minimum width with a 25% maximum lot coverage. Applicant's proposed small house construction would not only violate the requirements of the R-1-E district, but its lot size and coverage do not even meet the requirements of the less restrictive R-1-H district. Further, Applicant's lot width does not meet the even less restrictive requirements of the R-1-S district.

He noted that Applicant's variance requests had all the characteristics of a radical rezoning proposal for a single parcel instead of a simple variance application. He said that it appears to be the equivalent of a “spot zoning” request, where the Board is asked to waive the minimum lot requirement of the zoning district to permit construction on a 13,449 sq ft lot were the ordinance requires 43,560 sq ft, the minimum lot width requirement of the zoning ordinance to permit construction on a 74 ft wide lot where the ordinance requires 150 ft, and the allowable lot coverage requirement where 16.9 % coverage is requested and the maximum allowable is 15%. Section 31.13 of the Township’s zoning ordinance expressly provides that the “Zoning Board of Appeals shall not have the authority to alter or change the zoning district classification of any property” and yet that would be the precise result if the Board were to grant the requests made in this Application.

Section 31.11 of the Ordinance deals with variances and provides that “In accordance with Public Act 110 of 2006, as amended, the Zoning Board of Appeals shall have the authority to adapt the strict application of any of the requirements of this Ordinance where strict application [emphasis added] would result in practical difficulty or unnecessary hardship due to conditions peculiar to the land, so that the land cannot be used or developed within the terms of the Ordinance.” Mr. Sturdy observed that having the authority to do something is not a mandate that that authority established be exercised in all cases. There is no absolute right to a variance when practical difficulty or unnecessary hardship are claimed. Moreover, the phrase “strict application” suggests that modifications of a somewhat minor nature are intended to be permitted, but not huge modifications where a
43,560 sq ft minimum area requirement is reduced to 13,559 sq ft and a 150 ft lot width requirement is reduced to 74 ft.

Mr. Sturdy noted that Public Act 110 was recently amended by Public Act 12 of 2008. Section 604 (7) of Public Act 12 provides that “If there are practical difficulties for nonuse variances … in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may,” and he emphasized the word “MAY”, “grant a variance …. so that the spirit of the zoning ordinance is observed, public safety secured and substantial justice done.” He stated that these statutory standards embodied the Rathkopf principles for determining whether variances should be considered when practical difficulties are shown, as established in the National Boatland case decided by the Court of Appeals in 1985.

Mr. Sturdy then considered the first three of the seven threshold findings that the Board had to make before a variance grant could be considered under the ordinance. In particular, these were as follows:

(a) Practical Difficulties. Compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, or other dimensional provisions would create practical difficulties, unreasonably,” and he emphasized the word “UNREASONABLY” “prevent use of the property for a permitted purpose, or render conformity with such restrictions unnecessarily burdensome. …”

(b) Substantial Justice. Granting of a requested variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same district and in the same vicinity, and would provide substantial justice to the applicant as well as to other property owners in the district [emphasis added] and

(c) Public Safety and Welfare. The variance will not endanger public safety or create a public nuisance, be of substantial detriment to adjacent property, or materially impair the intent and purpose of this Ordinance or the public interest [emphasis added].

Mr. Sturdy indicated that he would find that whether the Applicant’s difficulty is characterized as practical or not, the current one-acre lot area requirement, 150 ft lot width and 15% lot coverage maximum are reasonable requirements. They match the requirements of the lots in the Subdivision surrounding the outlot of which Applicant’s property is a subparcel that was established many years ago. In this specific situation, denial of Applicant’s proposal to build a small house on the tiny lot is not unreasonable.

Applicant’s argument that there is an entitlement to the variances sought because otherwise the lot cannot be used for the construction of a residence is a fallacy. If it were true, the owners of the vacant 0.40 acre and 0.62 acre sublots immediately west of the Applicant’s parcel could claim the same right and demand the necessary variances to construct more small houses on those small lots. Moreover, if the argument were valid, then presumably
Applicant’s lot could be divided in half, sold to different owners, and the right to build two houses demanded. That would be nonsense.

Mr. Sturdy stated that the information presented by the neighbors also establishes clearly that substantial justice cannot be provided to other property owners in the district, especially to the owner of the one acre lot immediately south of and adjacent to the property at issue. He would find that the variances requested would be of substantial detriment to the adjacent property immediately south of the parcel and to the other neighbors who objected to the proposed construction, both in terms of diminished property value and reduced privacy, which are intended to be protected by the zoning district’s area lot size and property width requirements.

Finally, Mr. Sturdy would find that granting the variances requested would materially impair the intent and purpose of the zoning ordinance. He believed that when this area was designated as an R-1-E zoning district many years ago, it clearly was not the intent of the township to permit homes to be built on much smaller lots in the district. On several occasions within the last few years, the Township Planning Commission and the Township Board have reviewed the existing zoning classification of all areas within the township and on none of those occasions did the township believe it should change the classification of this parcel. The zoning ordinance states that the purpose of the restrictions in the R-1-E, R-1-H, R-1-S and R-1 residential districts is to ensure that development in those designated areas proceeds in a manner consistent with the existing and desired residential character of the Township. The districts are intended to be differentiated by density and yard requirements to provide a reasonable balance and variety of single family living environments. A grant of the extraordinary variance requests sought by the Applicant in this matter would clearly conflict with this purpose and be contrary to the spirit of the ordinance.

Based on all of the above findings, Mr. Sturdy moved that the request in Application No. 1477 be denied because the information considered establishes that if the variances were to be granted, the spirit of the zoning ordinance would not be observed, public safety would not be secured and substantial justice would not be done. Seconded by Mr. Doroshewitz. Ayes all.

Exhibits:

Application Form
Applicant’s “Attachment to Application for Zoning Board of Appeals” (30 pages)
Dept of Management & Budget Tract & Plat Map of SE ½ of Sec 29, Plymouth Twp
Plymouth Twp Zoning Ordinance No 99 Map
April 1, 2010 Record of proceedings in Application No 1470
Letter dated June 28 2011 for Mr. Jeff Garcia to Charter Township of Plymouth Board of Appeals
2. Application No. 1478- JAMES & KATHY SULLIVAN
46330 LAFONDE CT
PLYMOUTH MI 48170

LOCATION – 46330 LAFONDE CT (LOT 116)
PLYMOUTH MI 48170  Tax I.D. #78-036-04-0116-000

RE: ZONING ORDINANCE NO. 99, ARTICLE 20, SEC 20.1 HEIGHT, AREA, LOT COVERAGE, YARD
REQUIREMENTS AND FLOOR AREA

<table>
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<tr>
<th>Variance No.</th>
<th>Zoning Ordinance Section/Standard</th>
<th>Location</th>
<th>Required Front yard Setback</th>
<th>Proposed Front yard Setback</th>
<th>Variance Required</th>
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<tr>
<td>1478</td>
<td>Ordinance 99, Article XX, Sec 20.1</td>
<td>46330 LAFONDE CT Garage Addition</td>
<td>Thirty (30) Feet</td>
<td>Eighteen (18) feet</td>
<td>Twelve (12) Feet</td>
</tr>
<tr>
<td>1478</td>
<td>Ordinance 99, Article XX, Sec 20.1</td>
<td>46330 LAFONDE CT Front Porch Addition east side</td>
<td>Thirty (30) Feet</td>
<td>Twenty-eight (28) Feet</td>
<td>Two (2) Feet</td>
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<tr>
<td>1478</td>
<td>Ordinance 99, Article XX, Sec 20.1</td>
<td>46330 LAFONDE CT Front Porch Addition west side</td>
<td>Ten (10) Feet</td>
<td>Eight (8) Feet</td>
<td>Two (2) Feet</td>
</tr>
</tbody>
</table>

The applicant is requesting three variances:

- Front yard setback to build a 12 x 12 garage addition, required setback 30 feet, proposed setback 18 feet, variance requested 12 feet.
- Front porch addition to the east side front of home, required front yard setback 30 feet, proposed front yard setback 28 feet, variance requested 2 feet.
- Front porch addition to west side front of home, required side yard setback 10 feet, proposed side yard setback 8 feet, variance requested 2 feet.
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Applicant James Sullivan addressed the Board and answered questions. He cited the unusual shape and extraordinary topography of the lot, and noted that each of his neighbors supported the proposed variances. Two of his neighbors appeared to demonstrate their support.

The Board carefully reviewed each of the seven threshold criteria for consideration of the variances requested. Upon finding that each of the criteria had been met, Mr. Harris observed that the proposed addition would be a substantial benefit to the local area.

Moved by Mr. Doroshewitz, supported by Mr. Harris, to approve the variances requested in Application No. 1478 at 46330 Lafonde Ct. Ayes all.

Exhibits:

Application Form
Applicant’s Letter dated June 7, 2011 to Plymouth Township Zoning Board of Appeals
Dept of Management & Budget Tract & Plat Map of SE ¼ of Sec 29, Plymouth Twp
Proposed Site Plan

Moved by Mr. Harris, supported by Mr. Doroshewitz, to adjourn the meeting at 7:15 p.m. Ayes all.

Respectfully submitted,

Raymond O. Sturdy, Jr.

Raymond O. Sturdy, Jr.
Acting Chair and Secretary
Zoning Board of Appeals

NOTE: Upon granting a zoning variance, a building permit is required.
If denied, the applicant may appeal to Circuit Court.

The Charter Township of Plymouth will provide necessary reasonable aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon two weeks notice to the Charter Township of Plymouth. Individuals with disabilities requiring auxiliary aids or services should contact the Charter Township of Plymouth by writing or calling the Human Resource Office, Charter Township of Plymouth, 9955 N. Haggerty Road, Plymouth, Michigan, 48170, (734) 453-3202, TDD users: 1-800-649-3777 (Michigan Relay Service).