

**GRAND RAPIDS CHARTER TOWNSHIP
BOARD OF ZONING APPEALS
MAY 12, 2009**

A meeting of the Grand Rapids Charter Township Zoning Board of Appeals was called to order at 7:00 p.m. with the following present: Chair Ronald Hall, Vice-Chair George Orphan, Secretary David VanDyke, Lee Van Popering, and Jim Kubicek. Also present were Township Planning Director Richard Sprague Jr. and Treasurer Clerical Assistant Kara Ronda.

1. Approval of the April 14, 2009 minutes.

Lee VanPopering, seconded by **Dave VanDyke**, moved to approve the minutes with no changes required.

Motion passed unanimously.

2. #2009-02 – Abraham Joshua – 3109 Lawton.

Abraham Joshua, the applicant, explained his views in requesting a Variance to the front yard setback.

- Sent his builder to meet with Rick Sprague to verify items regarding the addition, he was under the impression the builder had taken care of the matter.
- The builder spoke with Rick Sprague a second time to explain the circumstances of the addition they were building was only 96 sq ft and in the builders experience he felt that generally exceptions were required in case of projects over 100 sq ft. He also stated that the building inspector had come at this point.
- The distance of the porch they were constructing is 6 ft or 8 ft in excess of the limitations. The builder thought the limitations were only 25 ft but they are actually 33 ft.
- Apologized for putting the Zoning Board through this trouble, but at this point they are in the middle of completion of the porch.

Mr. Joshua explained;

- this is a little porch, open on 3 sides, allows family to utilize the property better and the porch is merely an access to the front door
- most of the land on the lot is located on the side of the house and inaccessible to them
- the original builder may have made some mistakes, perhaps misunderstanding the rules then, but the corner of the house is already a little more towards the road way than even the porch, 2 ft further towards the road way, and the variance he is seeking is actually 2 ft less than the existing corner of the house

Dave VanDyke stated after looking at the pictures provided and going to the property, he was curious about the different additions that were added to the north/northwest portion of the home over the years. He questioned the additions and when they were added on. Dave referred to the aerial and noted the home appeared to have an addition on the northern end of the home that was built on columns. Dave asked the applicant when that was added on. Abraham replied it was added on when the garage was added on.

Dave VanDyke explained what was done back in 1984 and asked Abraham if any building permits were ever pulled for any of the projects that were done to the home. Abraham stated he believes everything was done with done permits, according to his builder.

Dave VanDyke noted the different “bump outs” on the house do not appear original and questioned Abraham again if any permits were ever pulled for any of the work. Dave also noted the records we have may not be completely thorough, but was curious if any permits or if any of the additions made to the home were ever inspected by a building inspector. Abraham replied anything that was done was done with a permit.

Dave VanDyke noted those will show up on record then. He also questioned the addition on the front of the home that was already in progress. He noticed the addition is built on posts/columns and asked Abraham what the depth was for the columns? How far do the go down? Abraham replied 2 and ½ ft.

Dave VanDyke asked if the columns were inspected by an inspector. Abraham explained the builder came and looked at the structure then went to talk to Rick Sprague because the builder thought a permit was not needed because the addition is only 96 sq ft, 12x8. The builder than explained to Abraham in his experience a permit was not needed. Abraham also noted it was the builder’s intention in talking to Rick Sprague to obtain a permit.

Dave VanDyke thought that was correct if the structure was less than 100 sq ft, but when adding as addition to a permanent structure that is already over 100 sq ft, there needs to be a permit.

Ron Hall added that any addition must have a permit.

Dave VanDyke asked Abraham; anything on the front addition that was started would not have any building inspector inspections, correct? Abraham stated that was correct, that is why he was there.

Ron Hall stated the inspector showed up at that point and told Abraham to stop. Abraham stated he did not intend to violate any rules that is why he sent the builder to talk with Rick Sprague on two different occasions. Abraham also stated he did not start construction on the addition until fall.

Lee VanPopering explained under conditions now days the deck present is considered crawl space and the underneath side of that must be covered by 1 inch of concrete and it does not appear to be present. He added he saw no concrete under the floor at all. Abraham explained there is concrete in approximately 20% of the space because previously there was a concrete stoop and walkway. Lee then verified that the builder did not put any concrete down; it is merely the old porch.

Dave VanDyke asked Abraham to clarify if the intention was to keep the end of the addition open or not. Questioned if it would be open on three sides. Abraham verified he intends to keep two sides open.

Lee VanPopering commented that other than a couple pieces of siding and two small railings, the structure appears to be complete. Abraham replied it was not a very big project, basically just a deck and then decided to add a roof on for extra protection.

Lee VanPopering explained what the code calls for: If there is a roof that is attached to the house, then there must be footings that go down 42 inches minimum, and Abraham previously stated the footings only go down 30 inches. Lee expressed to build something not to code can not be waved.

Dave VanDyke explained to Abraham if the addition was built correctly hopefully someone came out to inspect the footings which entails taking down one of the posts. Dave also noted Abraham needed to have the hole inspected to make sure it is the correct depth. If the above was done correctly, it should not be a problem.

Lee VanPopering clarified the depth is measured to the bottom of the concrete that is holding the column up. Must be 42 inches to the bottom of the concrete, explained if the concrete comes up 10 inches then it only has to be 30 inches. He emphasized it needs to be built correctly.

Jim Kubicek asked Abraham if he heard correctly that builder was not present to represent himself and his client. Abraham clarified that the builder was not present, explained he lives beyond Belding, just got married last month and asked the board to please excuse his absence on those reasons.

George Orphan asked Rick Sprague if he knew the dates for the Regis aerial maps. Rick confirmed the photos were from 2003 and noted we will be receiving new photos this fall.

The board had a discussion regarding possibly the trees covering the roof of the house in the photos or if it was a shadow. Ron Hall confirmed there is a tree over the roof from the corner of the lot.

George Orphan directed a question to Rick Sprague asking him about access granted for an inspector to go out and inspect everything and make sure it was done accordingly and if it was not, if the applicant would have to fix it.

Rick Sprague clarified that this does happen. An inspector will go out and require at least one of the posts be dug up to verify the depth to make sure they are frost free protected, so the frost heave will not rip off from the roof line. They will also check other code requirements at that time.

Dave VanDyke asked Rick Sprague if we would have records going back to approximately 1984 to verify the other additions. Rick said unfortunately our records are not very good from that particular time frame.

Ron Hall opened the Public Hearing at 7:17 p.m. As there was no one in the audience wishing to comment, the Public Hearing was closed at the same time.

Ron Hall enlightened the board to the background of this home and lot, what was done in 1982. He recalled they had foreseen in 1982 the home would not have a front porch at that time. Explained two neighbors directly across the street do not have front porches and both those homes are close enough they would also have to have variances to do so and the same would go for numerous homes on Elmer with the same conditions.

Dave VanDyke observed the original proposal of the variance and how it was supposed to be built on the lot and noted it did not happen that way.

George Orphan mentioned it would also be helpful if there had been a survey presented to the board. Noted without an accurate survey, whatever they do they are merely guessing.

Lee VanPopering commented on the fact the porch was not built correctly. Lee has mixed emotions because the addition is not up to code and it must be up to code. He said he understands why Abraham wants a front porch, but does not excuse the fact it is not up to code.

Dave VanDyke asked Rick Sprague if there were any letters from the neighbors or any comments made at all regarding the addition to the home. Rick replied there had been no feed back from the neighbors and notices were sent out.

George Orphan declared without a survey they are working off the Regis aerial and noted the lines may have been shifted. He said if they were to come up with a proposal, unsure of what they use for numbers. Stated there is no base.

Rick Sprague informed the board in using the information provided along with the aerial, he took the distance from the road, 66 ft right of way and came up with the following; the addition would be approximately 16 ft to the front property line at the closest point. The right of way goes off at an angle and the house is not set parallel either. Based on the information given to him, Rick took the distance to the road, took out the right of way and came up with 16 ft. He stated it may not be perfect, but it is pretty close. Rick also noted the road is not in the center, the center line is not the center of the right of way as it typically is.

Ron Hall said the underlying problem he has is setting a precedence in the neighborhood for beginning to allow variances for front porches.

Jim Kubicek countered stating they do not set precedence; each case is to be determined on its own merit.

Ron Hall responded if they allow one to have it, the rest will come in and point to that one saying it is just like their property and will expect the same justifications.

Dave VanDyke added they do not want to set the example that just because someone starts a project ahead of time, we will approve it because they come in and beg forgiveness. Dave expressed his concern about these types of items going on, especially when he sees all the different bump outs and additions on houses. He said that is what we have our building codes for, can not just change dimensions because they feel like it.

Lee VanPopering agreed with what Dave said.

Jim Kubicek asked Rick Sprague if he recalled any of the conversations he had with the builder regarding this project.

Rick Sprague recalled he met with the builder last November but vaguely remembers the meeting. Stated it was not a long meeting, the builder had a couple of questions and that was it. Rick did not recall exactly what was said, the only item he can think of was at that time they possibly were not going to put a roof over the porch because our unenclosed requirements are different. Rick explained if there is no roof over the addition, they are allowed to put a stoop within the set back, if there is a roof over the addition they are not because now it is a part of the structure.

Dave VanDyke inquired if the builder may have gotten confused regarding the 100 sq ft issue.

Rick Sprague said the builder would not have gotten that from their discussion because that is the first time he had heard of the 100 sq ft statement. Rick stated the only time he deals with not needing a building permit is on accessory structures that are not attached to the building and those are anything 200 sq ft or less and those do not require a permit. Any building code question he refers directly to the building official.

Lee VanPopering remarked that Dave VanDyke may be quoting a city deal with the whole 100 sq ft issue.

Ron Hall asked the board if anyone had a substantial feeling about the item at hand to make a proposal to the board or a motion.

Lee VanPopering said if the addition is done and finished properly, it will not be a detriment to the home.

Dave VanDyke explained his dilemma; if the addition was to be ripped off, will it look better or worse.

Jim Kubicek remarked the addition breaks up the outline of the house, fits on the lot, looks nice, and does not look odd.

Lee VanPopering moved to approve the variance, but it must comply with all building codes, and at this point it does not. Mr. Joshua must get with the builder and go back and do the right things and get it done correctly.

-Lee also stated the lot itself is odd, the area is odd and to deny him a front porch simply because he lives in an area with a bunch of odd things going on, including the road, would not be fair.

Jim Kubicek also asked that proof of a survey be required.

Lee VanPopering replied to Jim's comment and explained that the road is not in the right place.

Dave VanDyke seconded the motion with the additional language;

Motion to allow a 8x12 porch structure/enclosure on the front of the house with stipulation that it must comply with all building codes and inspections.

- Front yard setback for this porch at approximately 16 ft from the required 35 ft
- Porch cannot be any larger than it is right now

Lee VanPopering approved the additional language to the motion.

Board Discussion;

-Jim Kubicek: questioned if Abraham could enclose the other two sides

-Dave VanDyke: stated he would leave that up to the building inspector

-Abraham Joshua: replied he had no intentions of enclosing it completely, but putting metal railings on the side

-George Orphan: asked about the requirement of a survey in the motion that Jim had mentioned. He is having a hard time agreeing with Dave and Lee on this. Appears to him there have been numerous additions to the house over the years.

-Lee VanPopering: agreed with George

-George Orphan: stated one of our criteria is hardship and he does not see one with this

-Lee VanPopering: noted the fact Abraham built it without a permit he is not taking into consideration at this point. Stated if Abraham has to, he has to tear it down, but he can understand why Abraham wanted a front porch.

-Ron Hall: stated his problem is the fact that Abraham should have come to the board right from the get go and said he wanted to cover his front porch and it would be going to go into the setback. Ron noted he would have voted no because none of the surrounding neighbors have that. Number two states; "the variance is necessary for the preservation and enjoyment of a substantial property right that everybody else has", nobody else around him has a covered front entry porch. Ron would have denied this from the

beginning, not allowing a precedence set by allowing someone to build into the envelope of the setback, especially seeing as how Abraham already had a variance to be in that envelope to build the house in the first place.

Yes: David VanDyke, Lee VanPopering

No: Jim Kubicek, George Orphan, Ron Hall

Motion Denied 3-2.

3. #2009-03 – Westerhof CPA – 4234 Cascade Road.

Steve Witty from Nederveld representing the applicant, Westerhof CPA, is requesting Variances to the front, rear and side yard in addition to a sign variance for a proposed new office building adjacent to their current building.

Steve explained there are two parcels involved, 4234 and 4250 Cascade Rd, which are both owned by Ed and Jackie Westerhof who were both in attendance. Noted both parcels combined cover 1.02 acres and the property is zoned C-2.

Steve explained;

- existing office building is on site along with room for approximately 40 existing parking spaces
- existing building is fully occupied, total of four users, one of which is Westerhof CPA
- would like to construct an additional building on site which would located to the west of the drive entrance that is located west of their site
- new building intended to provide for expansion, current intent is for Westerhof CPA to move into new building
- perusing additional building because current building is fully occupied
- proposed building would be approximately 3,006 sq ft in size, 40 parking spaces on site: realistically only need about half that amount right now, no new parking spaces proposed at this time, however if there becomes a need for additional parking spaces in the future, the plan that has been submitted does show a future deferred parking area to south of proposed building

Steve continued;

- primarily seeking yard variances to allow for the construction of the proposed building
- yard variances needed are:
 - o front yard: 65.4 ft (original ordinance requires 100 ft setback)
 - o side yard: 10 ft (original ordinance requires 30 ft setback)
 - o rear yard: 64 ft (original ordinance requires 75 ft setback)
- note the north and south line of the proposed building line up directly with the existing building and is consistent with what is already out there

- property to the west of the side yard is a small wooded area and immediately to the right of that is the exit ramp to the highway, there would be little to no impact to that area
- substantial trees and vegetation surrounding the area, the proposed building would actually fit right into the open area located west to the west drive
- Westerhof CPA submitted a narrative outlining the four items and reasoning to how this site does comply with each of those four requirements/criteria that need to be met in order to get the variance approved

Steve noted the second request is for an additional sign;

- the property covers two lots, ordinance allows one sign per lot
- noted the township used this property as one lot as opposed to two because it is under common ownership
- with an additional building, the Westerhof's would appreciate being able to have a second sign if possible for the second building
- there is over 300 ft of footage on Cascade Rd, lengthy distance

Dave VanDyke inquired if there are any tenants lined up for the proposed building at this time. Steve said no tenants are lined up right now. The existing building is fully occupied so the intent is for the Westerhof's to move into the new building. Steve also noted that new building would not be started until another tenant is secure.

Dave VanDyke questioned if the Westerhof's had considered changing the location or design of the building so they would not have to have so many variances. Steve explained the Westerhof's had looked at a doing a building addition as opposed to separate building, that would still require a front and rear yard setback but would eliminate the side yard setback. The reason the option to build was chosen was because it is more desirable and the Westerhof's were talking about making the new building lead certified. An addition was discussed, but the Westerhof's would prefer a new building. If the ZBA board has a problem with the new building, the Westerhof's may be open to doing the addition. Steve noted as far as the front and rear setback is concerned, once the front and rear setback required is applied, there is no envelope whatsoever left.

Jim Kubicek asked if the property to the west was state owned. Steve replied it was not. The piece of property next to it is a relatively narrow wooded lot, and then beyond that lot is MDOT property.

Jim Kubicek inquired if that was a buildable lot.

Ron Hall responded that lot is someone's backyard (in reference to the lot on the south side).

Ron Hall questioned if the new building had a sub-basement or second floor. Steve replied the proposed building is a one story building.

George Orphan asked if the existing structure was a remodeled house. Steve explained he did not believe so, but was not sure.

Residents in the audience stated it was indeed a house at one time.

Dave VanDyke asked Rick Sprague if this would have to go to site plan review. Rick said yes it would because it meets the zoning district requirements for use, but would have to go in front of the site plan review committee for other issues.

Dave VanDyke said with that in mind, from a site plan point of view, there are enough spots already for the parking requirement but that is existing stripped spots. The proposed building does not meet the requirements as far as size, aisle way, etc... Dave noted he has a problem with putting a new building on a lot that is so tight and in using the existing parking does not meet current requirements. Steve replied he had spoken with Rick regarding this issue and the drive out widths in front of the building are ok because there are parallel parking spaces.

Dave VanDyke explained that site plan review is going to ask why they should allow these parking spots from the existing building for a new building. Steve responded it has been this way ever since the parking lot went in. It has been there for years and years.

Dave VanDyke responded twenty years ago the parking lot was viable for the building, but when adding another building that would require a certain amount of parking. Dave remarked in essence the Westerhof's are taking some of the parking and using it for the requirement. He stated they have the spots there but do not have the size.

Rick Sprague inquired if there was enough room/width in the green space, located to the west, to take land out of it.

Dave VanDyke believes if the plan was redesigned they would lose some parking spots to meet current aisle widths and depths of parking spots.

Ron Hall asked Steve to verify the lot lines. Ron asked Steve to clarify the Westerhof's are wanting to build two buildings on one lot and nothing on the other. Steve replied that was correct.

George Orphan added without adequate parking (to Ron Hall's previous statement).

Steve explained the existing pavement is 17 ft off the property line and the requirement is actually 15 ft, so they could pick up 2 ft there and 3 ft from the retaining wall. This would bring the 19 ft dimension up to 24 ft, and likewise goes with the driveway.

Dave VanDyke noted parking can not be pushed anymore towards Cascade Rd. He explained the Westerhof's need 42 ft in width of pavement to meet code; 18, 24, 42 for perpendicular spaces. They would have to restructure the whole lot to make it comply and going to lose some spots. Steve added they have 12 spots to lose.

George Orphan explained he was not understanding the properties. He asked Steve to explain ownership of properties. Steve noted both properties, 4250 and 4234, were under the same ownership and owned by Ed and Jackie Westerhof.

George Orphan questioned if one of the properties could be sold off.

Rick Sprague said requirements will be in an agreement given to themselves that the parking stays with those properties. Even if the property is sold off, must be used as parking for those properties. Steve noted the property could be sold but with the setbacks required they would have to get a variance to do anything.

Ron Hall referred to the minutes from the 1986 meeting; noted part of the original agreement was the area to the west was to be left alone, left as natural. Steve replied there is a green belt around the property, 10 ft on the west side and 13 ft on the north side.

Ron Hall verified the plan reads differently than what is being proposed; the Westerhof's actually want to build two buildings on one parcel? Steve replied that was correct.

Dave VanDyke asked about the original proposal; it states a 10 ft setback on the west side and leaves natural vegetation on the west and south side. Dave questioned the 10 ft variance.

Ron Hall replied he believes that actually had something to do with the driveway.

Rick Sprague clarified the confusion and explained the driveway was originally proposed to be off Cascade Rd, not Kenmoor. Explained the reason the original plan came back with a change variance request was because the driveway had to be changed.

George Orphan asked why and addition would not be a better solution? Steve replied the Westerhof's would like the new building to be lead certified because the existing building is not. Noted a new building also provides a separation.

Ron Hall opened the Public Hearing at 8:17 p.m.

James Kuipers, 929 Kenmoor, noted some items he sees in connection with this parcels variance request;

- greenbelt required for this zoning
- drainage and run off impact
- increased traffic and related hazards in a residential neighborhood
- parking lot; property owner should have to comply with all new rules
- C-2 zone and the setback rules were established for a reason
- detrimental impact on the neighborhood through decreased property values
- increase traffic and noise and general encroachment on the property rights
- 100% of this building will be in a non-buildable zone based on the normal setback requirements

- afforded the expansion already allowed under the non-conforming property statute

Dan Villalobos, 4255 Westchester, a 20 year resident and his biggest concern is the increased traffic. Explained it is already a busy intersection and hard for residences to get in and out of the neighborhood as is.

Michael Kavanagh, 4215 Westchester, is concerned with the extra volume of people. Twenty extra cars in the parking lot means twenty extra people.

Steve addressed some of the comments/concerns from the neighbors;

- more plants are not a problem
- the drainage plan will be reviewed and approved by the township engineer
- there will not be a substantial amount of increased traffic, site is located right off the highway, feel it is a good location
- very few lots are set up like this one, with the ability to add an additional building

Public Hearing was closed at 8:27 p.m.

Dave VanDyke touched on the non-conforming use issue. Explained there are certain rules of how much can be expanded on a building, but they would need variances all the way around to build the new building. Concerned new building does not fit.

Lee VanPopering stated there are more things wrong than right.

George Orphan commented on the fact the parking is so far away from the building itself, does not make any sense. Steve responded the reasoning for that was the workers would have assigned parking spots.

Rick Sprague explained they would need 35 spaces to meet medical requirements.

Jim Kubicek asked if there were any requirements on distance, from parking spaces to building. Dave VanDyke replied they do not have that, but they do have square footage requirements of an area.

Dave VanDyke commented on the buffer concern from Mr. Kuipers. Ron Hall added they can make them reestablish the buffer and Rick Sprague agreed.

George Orphan noted the Fire Department may have some interest on accessibility and the way the plan is laid out.

Lee VanPopering commented on the fact that there were variances granted on the original building and now they are asking for more variances, believes this is out of hand.

George Orphan mentioned tabling this and asking the Westerhof's to come back with a better option.

Dave VanDyke suggested changing the parking flow.

Lee VanPopering made a motion to deny the request due to too many things wrong.

George Orphan, seconded by **Dave VanDyke**, moved to have the applicant reconsider the application and to come back at a later date, at least one month from now.

The board commented that they would like to see something smaller.

Motion approved unanimously.

Ron Hall explained by tabling it, this gives the Westerhof's an opportunity to give the board a second option.

4. Update from Township Planning Director.

There are no items on the agenda as of yet for a June meeting.

The meeting was adjourned at 8:48 p.m.

Respectfully Submitted,
David VanDyke