

# DRAFT

## MINUTES OF THE ZONING BOARD OF APPEALS

A regular meeting of the Plainfield Charter Township Zoning Board of Appeals was held at Township Hall on January 16, 2007.

Members present were Dave Ridout Chair; Dan Wynalda, Vice Chair; Vic Matthews, Secretary; Bret Emerson and Bill Parris. Also present were Peter Elam, Staff Planner and Eric Brandt, Township Attorney.

Chair Ridout called the meeting to order at 7:00 p.m.; announced the agenda and read the Plainfield Charter Township Zoning Board of Appeals guidelines.

### 1. **Approve Minutes of August 15, 2006**

Mr. Parris, supported by Mr. Emerson, moved to approve the minutes of the Zoning Board of Appeals meeting of August 15, 2006 subject to minor corrections in spelling and grammar.

Motion carried unanimously.

### 2. **Brian Poeder, Jack L. Poeder, 7436 North Division Ave N.E. Section 8.05 (A) - R-1 Residential, Minimum Square Footage of Home**

Chair Ridout requested that Secretary Matthews read the application submitted by Brian Poeder on behalf of Phyllis Poeder (Jack L. Poeder Trust), 7346 North Division Avenue NE (Ducoma Private). The applicant has submitted an application requesting a variance to construct a 24' by 24' (576 square foot) seasonal home (cabin) where a minimum of 1,040 square feet is required per ordinance.

Chair Ridout opened the public hearing and found no residents who wished to speak on the issue. Mr. Peter Elam, Staff Planner, was recognized and informed the Board that the applicant wished to table the issue until the next meeting.

Chair Ridout closed the public hearing and accepted a motion to table the application until the next meeting in February.

Mr. Emerson, supported by Mr. Parris, moved to table the application of Brian Poeder until the February 20, 2007 meeting of the Zoning Board of Appeals.

Motion carried unanimously.

3. **Alan Vandermeer, 3935 Four Mile Road**  
**Section 3.01 (C) (a), (b) and Section 3.01 (E)**

Chair Ridout requested that Secretary Matthews read the application received from the applicant and owner of the property, Alan Vandermeer, 3935 Four Mile Road. Mr. Vandermeer is seeking a variance to retain a partially constructed nonconforming garage/accessory building located in the front yard that fails to meet the required setbacks and size requirements.

Chair Ridout opened the public hearing and recognized Mr. Alan Vandermeer who began his discussion of the variance by stating that he was embarrassed and ashamed to be here under these circumstances. He acknowledged to the Board that doing this without a building permit was the wrong thing to do and he apologized for wasting the time of the Board.

He asked for clarification of the grievance listed in Mr. Elam's memo under Section 3.01 (E), a 328 square foot variance to permit a 1,000 square foot accessory building where 672 square feet is the maximum permitted. He stated that he was in the process of building a 26' by 24' building that is 624 square feet in size. He did not understand the 1,000 square foot notation. Additionally, he corrected Mr. Elam's memo by explaining that if he moved the building to the north it would be on his neighbor's property and perhaps Mr. Elam meant east which would keep the building on his property. Mr. Elam acknowledged that the directional was incorrect in the staff report.

Mr. Vandermeer responded to Mr. Elam's memo under the following headings:

**A.) Whether strict compliance to ordinance requirements would be unnecessarily burdensome:**

Mr. Vandermeer shared that when the property was divided there was not 200 feet of frontage on 4 Mile Road, which was then a requirement. Further after taking 40-foot easements out of the property for a driveway, setbacks were left that were basically impossible to meet. The front of his home fronts on the private drive named "Bunning Lane" but he has an address on 4 Mile Road. His lot is lot

"C" and according to his survey the front door faces west, the front of the house is to the south so the building that he was building is actually in his back yard even though it seems to be in the front yard. Anything he wanted to do with his property requires a variance because the lot is basically an unbuildable lot. Lots B, C, and D have not been built and lot E has a large log cabin. These homes have all been before the ZBA seeking variances because of the setback issues.

He stated he placed the building in the front of his home because it was the most convenient place and because of what he wanted to use the building for. If he moved the building further to the east, it would be too far from the private drive. The building would be used to store his tools and construction materials. He stated that he was a building contractor and often kept materials from jobs that would not be economically or feasible to place in a landfill. He generally kept leftover material that is not returnable to lumber yards and saved it for the next job. He needed a place to keep the excess material between jobs. Without the storage facility, the stuff would be stacked in the yard and he did not want to do that. He wanted to keep it organized, keep his tools out of the weather and allow his wife to have the garage attached to the house for her vehicle.

He added, in regards to strict compliance, my nephew came to visit. And brought his GPS and discovered the neighbor's house has a garage on his front yard next to his driveway. Strict compliance is something that evidently can be changed if someone has a compelling reason.

**B.) Unique or Extraordinary Circumstance:**

He gave one reason for building near the private drive was his artificial knee and a closed head injury from an automobile accident. Walking is not easy for him. It is something he must be careful of and pay attention to daily. He located the structure near the road so that he would not have to walk a great distance back and forth on uneven terrain. He can back the truck into the garage, unload the material on a safe flat surface and not have to worry about walking back and forth across the yard. He added, his wife thinks the placing of the building is unsightly and does not like it, but it was his choice of being unsightly or be practical.

He continued, if you have visited the adjacent property you noticed there is stuff lying all over the place. Both of his neighbors have substantial wood lots, trailers, building materials, assorted odds and ends and just plain junk lying around. It was his intention to not have his property look like that. He stated, he did not like what he saw when he drove on the private road, but the neighbors own their property and have a right to live with their clutter.

The building is a 26' by 24' structure with only himself, his wife and son using the property. Mr. Vandermeer took exception to Mr. Elam's statement in the memo that reads as follows: "Staff has concerns about the message sent out to the community at large and the integrity of the zoning ordinance when variances are granted after the fact. Not to mention, it is unfair to those folks who follow the rules."

He stated that generally, he was a rule follower. He is a building contractor and if he does not follow the rules when dealing with clients and officials he would be creating problems for himself and his clients. The main reason he did not seek a building permit was because of the negative experiences he had on three separate occasions in the past when he did follow the rules and was treated rudely by township officials. He said he was fearful of another similar experience and did not want to put himself through that situation. He stated he had no excuse but that was his reasoning.

He ended his remarks by stating that he hoped the Board could find it within their generosity to let him use the building. He was willing to comply with whatever was necessary. If it needs to be torn down or moved, fines, because of not obtaining a permit, he was willing to deal with the issue.

Chair Ridout recognized David Kloote, Township Building Official. Mr. Kloote stated that the construction of the accessory building was brought to his attention after the fact. The building does not have frost protective footings and was built on a slab and that is in violation of the State Building Code. Additionally, if the Township allows the building to stay, without the frost protective footings, that is also a violation of the State Building Code. Since he did not get a permit, the applicant is in violation of the code, he is susceptible to fines that the Building Department has and/or since he is a licensed contractor, we can go after his license through the State of Michigan. He is fully aware of the codes and blatantly did not follow them.

Chair Ridout found no others who wished to speak during the public hearing; therefore, he closed the public hearing and returned discussion to the Board.

Chair Ridout recognized Mr. Elam who had quickly looked up John Spaans, 3843 4 Mile Road, property and the location of the accessory building at that address. The Zoning Board of Appeals at their February 20, 2001 meeting granted a 30 foot side yard setback variance for the proposed accessory building. (Location of the building would be 20 feet from the side property line instead of 50 feet.) The practical difficulty or hardship was listed as:

1. The Township changed the property zone from Agricultural to Rural Estate while the building permit was valid.
2. The Fire Department required a passing lane and a 30' by 40' turn around for the driveway due to its length.
3. The overall topography of the parcel.

Mr. Spaans wanted to build an accessory structure within his front yard. The ordinance at that time required that accessory structures in the front yard shall be setback a minimum of 50 feet from the side property line. Mr. Spaans requested to be 20 feet from the side property line, and therefore a 30-foot variance was requested. There was considerable discussion at the time, but the topography in the back of his home falls considerable. He clearly meets the front yard setback.

Mr. Elam continued, the building before the Board is only a few feet from the roadway or easement, which is completely different. Discussion of where the front, rear and side yards are located pursued. Mr. Elam confirmed that the front yard for Mr. Vandermeer's property is facing Bunning Lane. His address happens to be 4 Mile Road, which is consistent with a lot of other properties in Plainfield Township. That means that the front yard setback is facing Bunning Lane and the rear yard abuts John Bazen's property to the east.

On October 2, 1990, Mr. Vandermeer received a variance to build a home on the difficult lot. He received front and rear yard variances. This area is a development pattern that would not be permitted today. However, if it were approved, it would more than likely require recorded disclosure statements on the property that there would be difficulties getting building permits for the property.

If Mr. Vandermeer had come into the office prior to construction of this building, he could have located it behind the leading edge of the home. He would not had to meet the setback from the road right-of-way as the regular ordinances addresses that an accessory structure located behind the leading edge of the home designates where the front yard, rear yard and side yards are located. He could have put the structure in the side yard and been conforming at 60 feet. As discussed with Mr. Vandermeer when he did come to the office, it is unfortunate he did not do that. Mr. Elam explained that he could see a case where there may be an instance on the side yard or elsewhere where a variance is necessary. However in this case, the amount of nonconformity is extreme/unnecessary. We do not want to have any garage that close to the roadway even if the roadway is under utilized or only serves 6 or 7 homes. It is just not a safe idea, nor good aesthetics. The situation has been created clearly by the applicant and that makes it difficult all the way around.

During Mr. Elam's review of the application he looked at a number of things as follows:

1. Are there alternate locations available? Yes. Are the alternate locations difficult or not optimal, perhaps requiring the smaller garage to be relocated or removed? Yes. However, others in the township have done that without requesting a variance, come in and asked, and we tell them sorry you must tear it down or relocate it. Some people complain about it but it gets done. In this case, he has plenty of property and plenty of property behind the leading edge of the home to relocate the structure. Is the terrain difficult in spots? Yes, but there is enough adequate property to accommodate an additional structure or the site may require some grading. If he had come in we probably would have found a conforming way or come to the ZBA requesting a variance to a lesser degree. Now, it is near impossible to move this structure, and we are left with an annoying situation. All staff can do is recommend denial based on the facts presented. The building is not in character with the neighborhood. The setbacks of 50 and 80 feet are there for structures in the front yards is intended to keep structures away from the roads in the Rural Estate, Rural Preserve, Agriculture, rural atmosphere. To go from 80 feet to 2 feet from the roadway is a drastic change.

Chair Ridout asked Mr. Elam if there was a change in the new ordinance that would affect the 1,000 square foot requirement. Mr. Elam explained that when the variance violation came about, the Township was still under the old Zoning Ordinance where the square footage was measured in terms of a garage, an accessory building and each one was defined differently. The new Zoning Ordinance was passed on December 18th. All accessory buildings, detached or attached are considered accessory buildings as a whole and each zone is given a particular square footage as a whole. Mr. Elam had the Board review the new Zoning Ordinance and chart provided within the ordinance.

Chair Ridout recognized Mr. Parris who asked if the building was built on the roadway easement, and when work was stopped on the building. Mr. Vandermeer did not know whether or not the building was on the easement or not, but he stopped work on the building once he received the stop-work order from the Township. There were guys doing the roofing when the stop-work order came. The men cleaned up their mess and went home and the next day, Mr. Vandermeer came to the Township. The west side of the garage roof was already shingled.

Mr. Matthews led discussion in regards to the new ordinance providing for larger buildings, but the use of the facility for Home Occupation was a different matter. The old and new ordinance both state, "No home occupation shall be conducted in any accessory building or garage." Can't put up a pole barn and conduct business in the pole barn. Additionally, Chapter 3, General Provisions, Accessory Buildings & Structures, makes it very clear that accessory structures shall not directly be involved in any business. They are designated for personal use, not for business use. If you are running your business out of there or storing materials, warehousing, that becomes a use that is not permitted within that structure. Mr. Matthews cautioned Mr. Vandermeer to make sure what you use the structure for is approved before you use it for that particular purpose.

The current building may/may not be off the easement but it is within the road right-of-way and that is unacceptable. You cannot put a building in the road right-of-way. The right of way is 33 feet off the center of the easement. You have a 40 foot easement, the center of the 40 foot easement is 20 feet from the property line to the center of the easement and 33 feet to the east of that is the street right-of-way.

Mr. Vandermeer objected and stated that when he got his variance, he was distinctly told his front yard was Four Mile Road and that is his current address.

Mr. Matthews read from the Board of Appeals minutes dated October 2, 1990 as follows:

"Mr. Graham, supported by Mr. Meek, moved to grant a 35' rear yard measured at the south corner of the house and a 55' rear yard measured at the north corner of the house for the land located at 3935 Four Mile. Also, a front yard of 68', measured from the center of the private road easement is granted. These variances are granted because of the practical difficulties imposed by the topography of the site which severely limits the area available upon which a house may be placed."

Chair Ridout recognized Mr. Wynalda who stated that he had visited the property yesterday in the snow and noticed there were actually two other accessory buildings. Am I correct, you have a potting shed on the other side of the house down in the valley and that shed is located in the front yard? Mr. Vandermeer agreed. The shed was placed next to his wife's garden and is an 8' by 10' structure. Additionally, the secondary accessory building that sits directly behind the one you are building now; does that sit behind the face of the house?

Or when it was moved is it by chance in front of the house? Mr. Vandermeer could not answer the questions except to say he was not sure.

Mr. Wynalda asked at this point to read another section of the minutes of October 2, 1990 as it was a statement from Mr. Vandermeer. It read as follows:

"Mr. Vandermeer stated that he is requesting to have a 35' rear yard and a 35' front yard. The house will be located on the only relatively level area of the property. Because the land is served by a private road, and also because of its being only 180' wide, there is not sufficient room to build a house without a variance."

Mr. Wynalda stated by seeking a 35 foot front and rear variance you could not have possibly been asking for the north and south or you would have had to ask for 200 feet and that would not have been an issue in the first place. So the measurement had to have been that the front of the house faces Bunning Lane or you would not have been applying.

Mr. Vandermeer stated there had been a very contentious debate about that issue between himself, Mr. Heindricks and Mr. Spaulding, and that is why he has negative feelings about the Township. (Mr. Vandermeer had come to the Township on three separate occasions and meet with the same two persons, and it was always the same issue, we do not want you building on unbuildable property even though the splits were agreed to by the Township.)

Mr. Wynalda stated that he could relate to the frustration of some decisions that were made in the past by some officials, and he apologized if they caused grief.

Mr. Vandermeer noted that they certainly did cause grief, but his dealings with Mr. Elam and Mr. Kooienga had been very polite and he had not received any negativity during the meeting this evening.

Chair Ridout recognized Mr. Eric Brandt, Township Attorney, who explained that the standards in the new ordinance are clearer and the test is the practical difficulty test and therefore the unnecessary hardship test should no longer be in the vocabulary of the Zoning Board of Appeals. The test is the practical difficulties test and it is the easiest test to meet.

Mr. Wynalda, do we have a definition of practical difficulty. Mr. Brandt informed the Board that the language they could use was in the new ordinance.

Mr. Matthews explained to Mr. Vandermeer that he had two choices. (1) The Board could proceed and come to a decision or (2) he could ask the Board to table the issue. If a decision is made this evening, it will be made based upon the information presented. If the issue is tabled, perhaps you can work with staff about possibly putting the building in a different position. If there is a need to come back before this Board again because you do not quite fit the necessary setbacks on the side yard or front, then we can maintain this application as open and we can have another go at it. That basically saves you the filing fee and us a whole bunch of paper work. Mr. Brandt concurred that nothing was being done illegally and allowing the applicant the opportunity of tabling the issue was appropriate.

Mr. Brandt cautioned that technically even if the Township granted a variance today there had been a violation in the past. I can't speak for the Township, but they have not filed any citations yet. If it is tabled there has to be some understanding that there must be due diligence not just something that lingers. The building situation needs to be addressed because every day it continues it is technically a violation. If you don't do anything it is a violation.

Mr. Wynalda stated that there were three issues:

1. The applicant does not meet building code.
2. The applicant does not meet the zoning ordinance.
3. He does not meet his wife's liking and the applicant is on his own there.

The Township can do nothing about the State Building Code requirement, there is no option. That situation must be rectified.

After further discussion with the applicant, it was decided that the applicant would like to table the matter and work with staff.

Mr. Matthews, supported by Mr. Wynalda moved to table the variance application from Mr. Vandermeer until the February 20, 2007 meeting. Assuming that will give you time to work with staff and to make a decision on how to proceed. We would like to see some progress between now and next month and I am sure you do to.

Motion carried unanimously

**4. Approve ZBA Scheduled Meeting Dates for 2007**

Mr. Matthews supported by Mr. Parris, moved to approve the regular meeting dates of the Zoning Board of Appeals as listed on Resolution 200-7.

Motion carried unanimously.

**5. Election of Officers for 2007**

Chair Ridout allowed discussion and sharing of political views from all the Zoning Board of Appeals Board Members and after good-natured speeches nominations were voted upon.

Mr. Matthews, supported by Mr. Parris, moved to elect Mr. Dave Ridout as Chairman of the Zoning Board of Appeals.

Motion carried unanimously.

Mr. Matthews, supported by Mr. Parris, moved to elect Mr. Dan Wynalda as Vice Chair of the Zoning Board of Appeals.

Motion carried unanimously.

Mr. Wynalda, supported by Mr. Parris, moved to elect Mr. Vic Matthews as Secretary to the Zoning Board of Appeals.

Motion carried unanimously.

Officers elected as follows:

Mr. Dave Ridout, Chair

Mr. Dan Wynalda, Vice Chair

Mr. Vic Matthews

**6. Miscellaneous**

Mr. Elam welcomed and introduced the alternate to the Zoning Board of Appeals, Mr. Kerwin Keen to the Board Members.

Mr. Matthews shared that the Save-A-Lot store that requested additional signage for their store on Plainfield Avenue in June of 2006 had no better luck with any of the adjoining communities. The signs on the stores in other communities all read Save-A-Lot without the additional advertising of their products such as meat, dairy, frozen, etc. He thought it interesting that the community's thoughts were similar.

Adjourned at 8:20 p.m.

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Jackie Wiltzer                      Date  
Recording Secretary

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Vic Matthews                      Date  
ZBA Secretary

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