

## MINUTES

### **LOWER SWATARA TOWNSHIP PLANNING COMMISSION**

**REGULAR MEETING  
MARCH 22, 2018 7:00 P.M.**

Meeting was called to order by Chauncey Knopp at 7:00 P.M. with the following present:

Chauncey Knopp, Chairman  
Eric Breon, Vice Chairman  
Kimber Latsha  
Dennis Fausey  
James Young  
Peter Henninger, Solicitor  
Ann Hursh, LST Planning & Zoning Coordinator  
Tonya Condran, Recording Secretary

Others in attendance:

Thomas Schaaf, Resident  
Matt Musser, Musser Home Builders

### **PLEDGE OF ALLEGIANCE**

### **APPROVAL OF MINUTES:**

Mr. Knopp asked if there was a motion to approve February 22, 2017 meeting minutes. Motion was made by Mr. Fausey to approve the minutes and seconded by Mr. Young. All were in favor. Minutes were approved.

### **OLD BUSINESS:**

None

### **NEW BUSINESS:**

**(Zoning Docket #2018-04) Special Exception for 1878 O'Hara Lane** - Review and discuss for recommendation to allow an accessory apartment on this property located in the Residential Suburban (R-S) zone. Applicant is asking for permission to convert garage into separate living space for owner's aging parents, as submitted by Musser Home Builders, Inc. on behalf of Thomas Schaaf (owner).

Matt Musser explained that he was here representing the contractor. He introduced the home owner, Thomas Schaaf. He went on to explain that Tom and his wife Kerri are interested

in converting their existing detached garage into a separate place for his parents to live. Included with converting the garage is going to be expanding the space. They will be building on to the garage with a new foundation, making the former garage into the proposed new living space.

Mr. Breon asked if it will still be a garage.

Mr. Musser said no, it will not be a garage anymore. He said currently it is a single story detached garage, roughly 21' x 21'. They are not planning to build up, they are planning to convert what is already there with an addition. So it would then be approximately 33' x 21'.

Mr. Fausey asked if would still not be attached to the home after the improvements.

Mr. Musser said no, it will not be attached to the home.

Mr. Breon asked about the sanitary sewer.

Mr. Musser said they would be connecting out to the street for a separate sanitary sewer connection.

Mr. Fausey asked about the water and electric connections.

Mr. Musser said the water and electric will come in from the existing main house.

Mr. Knopp asked how far the garage was from the house.

Mr. Musser explained that the distance is about 14 to 15 feet.

Mr. Breon asked if the only connection between the house and the garage would be the patio.

Mr. Musser said yes, the patio is the only "connection" between the house and garage.

Mr. Breon asked if the garage could be brought toward the house or if that would interfere with the driveway turning radius.

Mr. Musser said that yes and that this is the reason for the Variance, to encroach into the backyard setback. He said if they build towards the front, what that would do is create a challenging way of backing out of the driveway in front of the house garage, because his parents' cars would be parked in front of the living space. So that would just create a hardship or a

challenge with navigating out of that garage. That is the first challenge. The second part is that the structure then becomes too close to the main house if they build forward towards the street.

Mr. Young asked about the side yard setback.

Mr. Musser said they would not be able to build over to the side yard because they were too close to the line as it is.

Mr. Young asked what would preclude them from building towards the right when you are looking at the front of the house.

Mr. Musser responded that they had considered that. But if they move to the right, what that does is that it creates challenges with the roof lines. Right now there is a gable roof, so the only option without tearing off the whole roof, rebuilding and putting new trusses up, would be to put a reverse gable on to tie the two roofs together. He added that aesthetically it wouldn't look very pleasing nor is it practical to build a roof that way. Another thing about that is that it is a load-bearing wall on the right side so what that does is restricts what can be done with rooms and to create a floor-plan that will work for them would be challenging.

Mr. Young asked how far the back wall of the existing garage is from the property line.

Mr. Musser said currently with what exists now would be approximately 33'4" and they were proposing to add approximately 13' to the back.

Mr. Latsha asked if there is no immediate neighbor behind him on this side of the storm swale.

Mrs. Hursh pointed out that there is an adjoining neighbor.

Mr. Latsha asked if the storm swale easement was on both properties.

Mrs. Hursh said that it is just on Mr. Schaaf's property.

Mr. Young added that 1863 Bonnie Blue Lane is the property directly behind this one.

Mr. Latsha asked how far 1863 Bonnie Blue Lane was from Mr. Schaaf's property line.

Mr. Musser said he would estimate that the house is 50 to 75 feet from the rear property line. He assured that there a pretty good distance.

Mr. Breon asked if there was water that ran through there often.

Mr. Schaaf said no.

Mrs. Hursh clarified that there is a pipe that directs water rather than a swale back there.

Mr. Schaaf said there are two storm grates back there that directs water into the pipe.

Mr. Musser said he has never witnessed it being swampy or wet back there in the few times he has been there.

Mr. Knopp asked for any other questions.

Mr. Latsha asked what the Planning Commission has to do with a Special Exception and a Variance Request.

Mr. Henninger said that the Planning Commission doesn't have to do anything with the Variance Request. But under the MPC and LST Ordinance, a Special Exception is deferred to the Planning Commission for comment and/or recommendation. Mr. Henninger went on to say that their request for a Special Exception is to allow accessory apartment dwelling in the R-S District and their position is that converting the garage would be an accessory apartment. He then added that the definition of an accessory apartment is "an independent dwelling unit incorporated within an existing single family detached dwelling." But this is a detached garage. So basically it would be like a second dwelling.

Mr. Henninger went on to explain that he is not the lawyer for the Zoning Hearing Board but he is the lawyer for the Planning Commission and the Board of Commissioners, and he feels what they are proposing is an accessory apartment. But again, to be an accessory apartment, it must be in the same dwelling. He stressed that this was his opinion and how he interprets the definition. The Zoning Hearing Board may interpret that differently. He feels what they are proposing would require a Variance Request, not a Special Exception.

Mr. Breon added that he feels if there was some way to connect the two buildings, it would make a stronger case for them.

Mr. Musser said that what he interpreted from the language is that it is a detached dwelling. And although it is true it is not an existing single family detached dwelling, it is an independent dwelling unit.

Mr. Henninger said granted it is an independent dwelling unit, but it is not within the existing dwelling structure. So therefore, in his opinion, if you extrapolate that, you are now converting an accessory building (which is the garage) into a second primary use because an accessory building or an accessory use is something that's incidental to the primary use. A garage is incidental and it is customary for a house to have a garage. It is not customary to have a second house. So he feels if that is put in there, they would really need to do a land development plan and have enough land to do a subdivision for separate lots, but they do not have enough space with the size of the lots up there in Twelve Oaks.

Mr. Breon said that although we can sympathize with the owner on wanting to have a single story place for his aging parents, but he feels they are asking the Planning Commission to kind of close their eyes and agree that it is sort of the same thing. He doesn't feel that is going to work, so he say they were trying to give them another option. He went on to say that he understands they are saying it is too close to move it forward into the driveway or towards the house, but he feels they would have a better chance with that and ask for an exception or variance for the driveway to go closer to the lot beside them so you would have more of a turning radius.

Mr. Fausey added that then we would look at the possibility of selling your home someday and the new owners decide to use that as an apartment rental which in no way would be allowed.

Mr. Schaaf said he agrees with what is being said, but the intent would not be for that to be used as a rental at any point at all. He said that he thinks as demographics change and people live longer, and as someone who has been looking for a home of this type where there are in-law quarters, they are few and far between, and but there are more and more desire for them. So he feels a house like he is proposing, with the in-law quarters in the garage and on ground level, will be in demand.

Mr. Young said he felt they were catching the spirit of what was intended in terms of an accessory apartment. The last phrase, "establish the purpose of providing an independent living unit for person or persons related by blood or marriage" but unfortunately they are not within the actual letter of that definition because when you go to dwellings single family detached it is "a building used by one family having only one dwelling unit having two side-yards." So he says they are essentially trying to establish two separate dwelling units on the same lot. The two are primary uses rather than accessory use. Mr. Young then brought up a letter that they had submitted that referenced two nearby properties on the same side of O'Hara Drive where existing accessory structures extended into the 30 foot rear setback. He asked if they were garages or sheds.

Mr. Musser said they appear to have either garages or sheds and they are towards the right of this home on O'Hara.

Mr. Young asked if they knew how much they encroached into the 30 foot setback.

Mr. Musser said that they exceed even the 20 feet.

Mrs. Hursh informed all that a shed would only be required to be 5 feet from a property line. Same with a detached garage.

Mr. Breon feels the setback issue is the lesser of the problems.

Mr. Henninger said the job of the Planning Commission is to report. It says, "No application for a Special Exception permit shall be granted by the Zoning Hearing Board until said board has first received and considered an advisory report on the application from the Planning Commission with respect to the location of such use in relation to the needs and growth pattern of the Township of Lower Swatara and where appropriate with reference the adequacy of the site area and arrangement of the buildings, driveways, parking areas...." So the report can say that we recognize the need for this type of use and it meets with the spirit of the Special Exception for this type of use in the district; however, we question the applicability because of the definition of accessory apartment, as proposed. Mr. Henninger added that, legally, he thinks this is a big problem.

Mr. Latsha asked if putting a breezeway between the two buildings would make a difference.

Mr. Henninger doesn't know if that meets the requirements for it to be considered one building. Breezeways are intended to connect a house to a garage, but we are not talking about a garage anymore, we are talking about two dwelling units.

Mr. Latsha asked if an accessory use is another household for a dependent.

Mr. Henninger said the argument could be made that twenty years ago it was not an accessory use but today maybe it is becoming more so.

Mr. Latsha said he felt the definition of accessory use is not clear; they could build if we weren't going to argue whether it is a legitimate accessory use. Maybe a little connector would make it legitimate. But we would almost have to amend the Ordinance to fix that or make it clear.

Mr. Henninger said that “Usual and Customary” is an accessory apartment for aging parents or in-laws. He said it is more now than it was 20 to 40 years ago. But is it Usual and Customary at this point?

Mr. Fausey asked if the address would still remain the same.

Mr. Musser said they just assumed it would.

Mr. Musser told Mr. Henninger that he respects what he is saying.

Mr. Henninger said he has to give his opinion, that is his job. He said one of the other issues is not doing excessive changes to the exterior.

Mrs. Hursh added that it read “without any substantial external modification”.

Mr. Henninger said he does feel that taking off the garage doors and putting in windows is anything substantial. But when you are going 10 feet out one way, it becomes a little more difficult.

Mr. Musser explained that what they have done in the past with in-law quarters, is they built off the back of the house. And that is something they haven’t discussed. But Musser Home Builders has done that in the past and it has worked out quite well. Mr. Musser asked what they should be aware of if they were to consider that move.

Mr. Henninger advised that they would still have to go through the Special Exception process but they would be within the same building.

Mrs. Hursh informed him that things he would have to look at are easements and no more than 30% impervious coverage. She also pointed out that on their submitted plan they have the size of the lot as 15,682, but the County tax parcel map lists them at 15,750; so they actually have more land to work with than what they thought.

Mr. Henninger thinks that they have a better chance on getting a Variance on 31% lot coverage than going through with this proposal.

Mr. Henninger feels that the Planning Commission should make the following recommendations to the Zoning Hearing Board:

1. Although the application for Special Exception meets the spirit of the Ordinance, specifically Section 27-503.3 which permits accessory apartment dwellings in the Residential Suburban District by special exception, the Planning Commission is not

convinced that the application, as submitted, complies with the definition of Apartment, Accessory, set forth in Section 27-203 list of definitions. The Planning Commission believes the definition requires the accessory apartment to be within the dwelling and the application proposes the apartment in a detached garage.

2. The Planning Commission recognizes the changing ways of society in that our parents and grandparents are living longer and longer and the cost of long term care outside of their home or a family member's home continues to become more and more onerous. We recognize the need to provide for alternative arrangements for our aging population.
3. The Planning Commission does not make any recommendation or report regarding the requested Variance for the rear yard setback.

Mr. Knopp asked for any other questions or comments.

Mr. Knopp asked for a motion to accept Mr. Henninger's suggestion to submit the above to the Zoning Hearing Board.

Mr. Young made the motion. Mr. Latsha seconded. All were in favor.

Mr. Henninger will work with Mrs. Condran to have the report ready for the Zoning Hearing to be held on Wednesday, March 28, 2018.

Mr. Henninger also reminded Mr. Musser and Mr. Schaaf that there are other options depending on how the hearing turns out next week.

**OTHER BUSINESS:**

None.

**ADJOURN:**

A motion was made by Mr. Fausey and seconded by Mr. Latsha to adjourn the meeting. Motion unanimously approved.

Meeting adjourned at 7:33 P.M.

Respectfully Submitted,

---

Ann M. Hursh  
Planning and Zoning Coordinator