

**SAGINAW CHARTER TOWNSHIP BOARD OF APPEALS  
SAGINAW CHARTER TOWNSHIP HALL  
NOVEMBER 12, 2008  
7:00 P.M.**

**Members Present**

P. Brucker  
M. Faerber  
S. Gerhardt  
A. Brady  
J. Dambro

**Members Absent**

**Others Present**

B. Smith, Planner  
M. Mahlberg, Attorney  
C. Edlinger,  
Recording Secretary

Mr. Brucker called the meeting to order at 7:00 p.m.

**Minutes:**

Motion by Mr. Gerhardt, supported by Mr. Faerber, to approve the minutes of June 11, 2008.

VOTE:           5 Yeas           0 Nays           0 Absent           Motion Carried

**New Business:**

- A.    A-08-04** – Neal and Cheryl Vance of Saginaw, Michigan are requesting a variance from Section 1005.2.b of the Saginaw Charter Township Zoning Ordinance to allow a newly constructed covered porch to encroach approximately seven (7') feet into an established legal nonconforming front yard setback. (12-4-21-1211-000)

Mr. and Mrs. Neal Vance were present to answer any questions. Mr. Vance prepared a typewritten explanation for his variance request and read it into the record. (See attached.)

Mr. Peter Brucker then asked for public comments regarding this proposed variance.

1.     Ronald William Taschner, 1590 Hemmeter, stated the improvements are very nice and a boost to the neighborhood and he is in favor of the front porch addition.
2.     Judy Sargeson, 4440 Forsyth, stated the front porch addition is aesthetically pleasing and she is in favor of the front porch addition.

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3. Brian Fehrman, 1635 Vancouver, stated the property is clean and quiet with the new improvements.
4. Justin Fehrman, 1635 Vancouver, stated Mr. Vance improved the house a lot and under Mr. Vance's supervision, he learned a lot about house construction/repairs.

Mr. Brucker read into the record the following letter from James L. Mitchell, 4547 Howley Court:

"Dear Community Development Department:

I will not be able to be present at the scheduled Public Hearing requested by Neal and Cheryl Vance for a variance covering their newly constructed porch. If I could be present, I would speak in favor of granting such request.

This addition has added much to the attractiveness of their property and contributes to the appearance of the neighborhood."

There being no further public comments, the public hearing portion of this proposed variance was closed.

Discussion followed among the Board of Appeals members.

Mr. Brucker stated that the addition of the porch and roof was very attractive however the Board of Appeals cannot take into account the condition of the dwelling, how much money was spent, or how much the neighbors like the project. The Board of Appeals has to determine if it meets the code or why a variance should be granted based on if the applicant can prove the existence of a practical difficulty, if there are unique circumstances of the property, it is not self-created, and granting the variance would not give substantial justice to the applicant.

Mr. Gerhardt stated after seeing the pictures of the deteriorating foundation that this appears to legitimize the need for a covered porch. Mr. Faerber stated the house was built in 1928. Mr. Faerber inquired if the foundation was 42" in depth? Mr. Vance stated the footings were 42" in depth and he was not able to remove the old masonry because it ran inside the house and was part of the supporting footing for an addition to the house done many years ago. Mr. Vance stated he couldn't use the old masonry since it was no longer sound and could not bear the load. So he planted new footings just outside the old footings and abandoned the masonry below the new deck. The extra width of the masonry added 12" to the front porch. Mr. Vance stated he believes the additional extension of the porch deck was due to exceptional practical difficulties; and was not self created as it was an existing issue when he bought the house. Mr. Brucker stated what would be allowed would be a direct replacement of the porch/deck with no roof.

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Mr. Gerhardt compared the existing front building lines of the homes in the area and stated by looking at the aerial, it was obvious Mr. Vance's house was further out or closer to Hemmeter than the other homes.

Mr. Brady stated he was having a hard time justifying this variance request when the applicant was informed by the Township Building Department to cease and desist but chose not to. If the applicant had applied for a building permit, the setback issues, building issues would have been addressed by the building department and the planning department and discussed with the applicant.

Mr. Gerhardt stated if we grant this variance it should be conditional upon a deed restriction to be written by the planning department that the porch could never be enclosed.

Mr. Faerber was not comfortable with the Vance's violating the Township zoning ordinance.

Attorney Mark Mahlberg stated the existing porch, having deteriorated, could be fixed/replaced within the Zoning ordinance and building code requirements. The applicant would have only needed a 12" variance to replace the existing porch.

Mr. Gerhardt feels the roof addition will help protect the foundation.

Ms. Dambro inquired if the Township building inspector knew about the project? Ms. Smith stated as soon as the Township was aware of the project, building inspector Mr. Ray Hausbeck visited the site and spoke with the Vance's about pulling a building permit and advised them to also speak to the planning department, verbally and in writing. (See attached.)

Motion by Mr. Gerhardt, supported by Mr. Brady, to grant a twelve-inch (12") variance for the porch/deck from the previous legal non-conforming porch due to specific site conditions relative to the house, including the existing foundation, and the specific practical difficulty with the construction of the porch/deck.

VOTE:            5 Yeas        0 Nays            0 Absent            Motion Carried

Motion by Mr. Gerhardt, supported by Mr. Faerber, to approve the cover over the deck due to providing weather protection, given the placement of the house, the age of the dwelling, the existing condition of the foundation, the lack of a cover over the previous porch; that this creates a practical difficulty and that this approval be conditioned upon the recording of a deed restriction prohibiting the enclosure or modification of the deck/porch and its cover.

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VOTE:	3 Yeas	2 Nays	0 Absent	Motion Carried
	Gerhardt	Brucker		
	Brady	Faerber		
	Dambro			

- B. A-08-05** – Kimberly McDonald-Garcia and Pete Garcia of Saginaw, Michigan is requesting a variance from Section 305.3 and 305.4.c of the Saginaw Charter Township Zoning Ordinance to allow a newly constructed addition onto a shed to encroach six (6') feet into a required side yard setback and to encroach three (3') feet into a rear yard setback. (12-4-16-1346-000)

Mrs. Kimberly McDonald-Garcia stated that it is approximately thirty-two feet (32') from the rear of their house to the neighbor's fence and over the years they have made many improvements to their house and rear yard. They have a 12' x 12' shed in the rear yard but needed additional storage so in 2006 they constructed a 4' x 12' addition onto the existing shed. Mrs. McDonald-Garcia feels their lot is unique because it is a small lot and they also had a survey conducted by Wilcox Professional Services that shows her neighbor's shed (Mr. North) encroaches two inches (2") into their lot.

Mr. Peter Brucker then asked for public comments regarding this proposed variance.

1. Mr. North, 2643 Kuhlman, stated that his neighbors, the McDonald-Garcia's, constructed a 12' x 12' shed and then put an addition onto the shed. He contacted the Township Building Department because he had concerns with the amount of backfill dirt the McDonald-Garcia's brought in with this project, their dog and that everyone in the Township should be treated the same. He also had a survey conducted by Wilcox Professional Services and states the McDonald-Garcia's encroach into his lot.

Mr. Brucker read the following letter from Lorene D. Hart, 2655 Kuhlman Drive, Saginaw, Michigan into the record:

"With reference to the variance request A-08-05. The zoning ordinance is set and we must hold to those specific criteria that were established. To have a building permit issued the contractor/builder needs to show his plans to get a permit. Apparently the builder did not follow the plans. Now they are asking for a variance. We must follow the requirements as written."

Mr. Brucker also read into the record the following notes from Bridget Smith, Planner, who received a phone call from Betsy Rezler, 2627 Kuhlman Drive, Saginaw, Michigan who stated:

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“She would not be able to attend the meeting tonight but that she had three concerns relative to the request:

1. She is concerned about the deck and the fence, as she stated, their height makes it possible for the dog to jump over the fence.
2. She stated she does not like the fact that the property owner altered the grade of the rear yard by bringing in additional topsoil. She stated this is spilling through her fence and negatively impacting runoff.
3. She stated that the shed is located very close to the property line.”

There being no further public comments, the public hearing portion of this proposed variance was closed.

Discussion followed among the Board of Appeals members.

Mr. Brucker stated that these are valid concerns; however, they cannot be used in determining whether or not the shed would be allowed to encroach six feet (6') into the side yard setback. The Board of Appeals must determine if there is a practical difficulty or uniqueness to this variance request that would allow them to break the Township code.

Mr. Faerber inquired about the different setbacks for the different size accessory structures. The ordinance states that a 12' x 12' accessory structure can be located within two (2') feet of the rear and side property lines and ten feet (10') from the dwelling. If the accessory structure is larger than 12' x 12' then it must be located at a minimum five feet (5') from the rear property line, eight feet (8') from the side property line and ten feet (10') from the dwelling. By enlarging the accessory structure it is now in violation of the zoning ordinance.

Motion by Mr. Faerber, supported by Ms. Dambro, to DENY variance request A-08-05 because the applicant can be compliant with Township codes, it is personal preference of the applicant, and to include staff analysis as a finding of fact and to require the accessory structure to be compliant by June 1, 2009.

VOTE:            5 Yeas        0 Nays        0 Absent                    Motion Carried

**Receive and File All Correspondence:**

- A.     A copy of the August 20 and September 17, 2008 minutes from the Planning Commission.
- B.     A copy of the June, July, August and September, 2008 issues of Planning & Zoning News.
- C.     Code of Ordinances updates.

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**Other New Business:**

**Adjournment:**

Motion by Ms. Dambro, supported by Mr. Faerber, to adjourn the meeting at 8:25 p.m.

VOTE:            5 Yeas            0 Nays            0 Absent            Motion Carried