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# LANDMARK STRATEGIES

## MEMORANDUM

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**DATE:** April 4, 2008  
**TO:** Leighton Township Zoning Board of Appeals  
**FROM:** Mark A. Sisson, AICP, Planning Consultant  
**RE: Rekeny Variance**

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The applicant is requesting variances to allow construction of a 20 ft. x 20 ft. private garage on a lot that does not support a principal structure. The specific variances include:

- a. A variance to allow placement to within one foot of the rear property line. Section 12.10 (b) requires detached accessory buildings to be not less than 5 feet from the property line.
- b. A variance to allow the combined width of both sides yards to be less than 20 feet. Section 12.10 (b) and by reference Section 7.04 (c) allows a 7 foot minimum side yard and a combined total for both side yards of 20 feet. A 13 foot side yard is therefore required to compliment a 7 foot minimum. The proposal will have one side yard of 7 feet and another side yard of 11 feet, for a total of 18 feet.
- c. A variance to allow placement of the structure on the lot, absent the existence of a principal building on the same lot. Section 12.10 (f) prohibits this. The applicant owns and resides in the home located directly across the street.

In 2001, several variances were granted to the previous landowner pertaining to this lot and three adjacent lots (see Minutes of May 2001). One set of variances allowed a garage structure on the subject lot in the location and size as that now proposed by the applicant. That structure was not built and the variances have since expired. Following are the conditions that were imposed when the ZBA granted the original variance:

1. Maximum twenty (20) feet wide by twenty (20) feet deep accessory building.
2. Minimum one (1) foot rear setback.
3. Minimum clear setback from the road shall be eleven (11) feet.
4. Minimum seven (7) feet west side yard setback.
5. Minimum eleven (11) feet east side yard setback.
6. Maximum six (6) inch overhang on rear of building.
7. That a deed be registered to tie Lot 2 to Lot 9, restricting the usage of Lot 2 as accessory use of Lot 9 and prohibiting independent use of Lot 2.

If the requested variances Item 7 relates to the fact that the subject lot (Lot 2) and lot 9, along with adjacent Lots 1 and 10, were at that time, all owned by the same person. All of the lots (1 and 2 and 9 and 10) are each nonconforming, and those that are side by side/adjacent are required by Section 12.03 (b) to be joined as one building site. The variance allowed Lot 1 to be instead be separated from Lot 2 and joined to Lot 10, and for Lot 9 to be separated from Lot 10 and joined to Lot 2.

The record is not clear, but there were and still are concerns about allowing the setback variances. The primary concern is the narrowness of South Shore Drive and the closeness of existing structures to the street. Adding new structures with the same or similar setbacks could add to the congestion in this area and deter any future ability of the Road Commission to acquire additional street right-of-way and improve and widen the road for through traffic.

Since 2002, South Shore (145<sup>th</sup> Avenue) has been truncated just to the east and through traffic is no longer an immediate concern or factor. It is my assumption that the ZBA factored in the closure of South Shore in its decision to grant the variance, even though the date of closure was at that time not yet a foregone conclusion. The street was closed in 2002 when the street system through Green Lake Ridge was completed out to 2<sup>nd</sup> Street.

If the variances are to be granted, it is recommended that previous variances and conditions are reinstated and that the record include findings of fact and a rationale for approval. The following findings could be considered, based upon the standards found in Section 16.12.

- a. Requiring that the accessory building adhere to the required setbacks (side and rear yard) would limit the size of the structure to no greater than 15 ft. x 17 ft. and not allow the parking of two vehicles inside. No other accessory building exists for the home on Lot 9. Further limiting the size of the structure creates a practical difficulty for the home owner's and their ability to store household items.
- b. The size of the lot is small and fairly unique and the circumstances relative to the principal structure are not generally applicable to other homes in the area. Allowance of a reasonable use on the lot requires special consideration given the physical layout of the lot relative to the street, and topography of the rear.
- c. Allowance of the variances will allow the applicant reasonable use of his property, consistent with the variances and general rights enjoyed by other property owners in the districts. Denial of all of the variances would deprive the applicant of an ability to place a structure of significant size. The Zoning Board of Appeals has granted many variances that in essence have allowed the placement of larger, more "useful" structures even though smaller less useful or significant structures could have been built.

- d. No detriment to surrounding properties or to the street function is found. The steep topography of the lot to the north is such that new development near the lot line is not likely and the rear yard variance on this lot is therefore not likely add to the potential for overcrowding. The separation between the proposed structure and the neighboring structure to the east will be 15 or more feet. This distance is more than the 14 feet that is allowable between buildings when both properties support structures at the 7 foot side yard minimum. Street setback is substantial and maintains the average established by buildings adjacent. 142<sup>nd</sup> Ave is no longer a through street and operates as a cul-de-sac.
- e. The circumstances of the property were not created by the applicant.