

**CITY OF CHARLEVOIX**  
**ZONING BOARD OF APPEALS MINUTES**  
**Wednesday, October 17, 2012 - 6:00 p.m.**  
210 State Street, City Hall, 2<sup>nd</sup> Floor Council Chambers, Charlevoix, MI

**(A) CALL TO ORDER**

The meeting was called to order by Chair Greg Withrow at 6:00 p.m.

**(B) ROLL CALL**

Members Present: Greg Withrow, Patricia Miller, Richard Clem, Ann Gorney

Members Absent: Gary Anderson, Larry Sullivan (alt.), Greg Bryan (alt.)

Staff Present: City Planner Michael Spencer

Clerk: City Clerk Carol A. Ochs

The Chair stated that there were four voting members present, constituting a quorum.

**(C) PLEDGE OF ALLEGIANCE**

**(D) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST**

Mr. Clem noted for disclosure that he lives within the 300 ft. notification radius for Project 2012-05 ZBA. However, he rents the property and the proposed project does not affect his view and he would have no financial gain based on his decision. It was determined Mr. Clem does not have a conflict on this item.

**(E) APPROVAL OF MINUTES**

The Board reviewed the July 18, 2012 minutes.

Motion by Miller, second by Clem, that the July 18, 2012 minutes be approved as amended. Motion approved by unanimous voice vote.

**(F) NEW BUSINESS**

1. Public Hearing for Project 2012-05 ZBA: Variance request from Mike and Kim Foster, 211 E. Lincoln Ave.

- a. Staff Presentation

City Planner Mike Spencer reviewed the staff report and answered questions from the Board. Mr. Spencer reviewed section 5.192 of the Zoning Ordinance referring to the determination of adjacent building setbacks. Mr. Spencer said that previously, when this section has been applied, the adjacent buildings had a straight footprint across the front yard setback. In this case, one adjacent property has a covered porch, while the other has an open porch. Mr. Spencer is asking the Board to determine if the porch line or the main building line should be used for the average setback; the applicant will need a variance either way, but the amount of variance would change.

The Board generally agreed that the extended porches should be included for the average adjacent property setback measurement. Mr. Spencer said that, in that case, one building setback would measure 16.5 ft., the other would measure 8.5 ft., which would make the Fosters required setback 12.5 ft. The Fosters are asking for an 8 ft. setback, which would require a variance of 4.5 ft. The small existing covered porch, which is being replaced as part of this larger porch project, currently has a setback of about 8 ft.

- b. Presentation by Applicant (if requested)

The applicant did not make a presentation.

- c. Call for Public Comment

The Chair opened the public hearing on Project 2012-05 ZBA at 6:11 p.m.

There were no comments.

The Chair closed the public hearing at 6:11 p.m.

d. ZBA Determination of Findings of Fact

The Board reviewed the findings of fact. Under section (5)(a), the Board added the following language: "The ZBA finds that applying section 5.192 results in an average front yard of 12.5 ft., therefore the requested variance is less than 6 feet and is consistent with the property on the east side."

The Board asked Mr. Spencer to delete item (6), "Conditions of approval," as the Board is not placing any conditions on the project.

e. Motion

Motion by Clem, second by Miller, to approve Project 2012-05 ZBA without conditions based on the findings of fact contained herein.

Motion adopted by the following yea and nay votes:

Yeas: Miller, Withrow, Clem, Gorney

Nays: None

2. Discussion about meeting notifications/scheduling

The Board generally agreed for the Planner to call members before scheduling a meeting to verify there will be a quorum present.

There will be an appeal and interpretation coming up in December. The Board agreed to schedule that for Wednesday, December 12, 2012 at 6:00 p.m.

**(G) CALL FOR PUBLIC COMMENT ON NON-AGENDA ITEMS**

The Chair called for public comment on non-agenda items at 6:25 p.m. There were no comments. The Chair closed public comment.

**(H) ADJOURNMENT**

Motion by Clem, second by Miller, that the meeting be adjourned.

There were no objections.

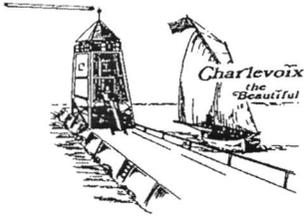
The meeting was adjourned at 6:25 p.m.

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Greg Withrow, Vice-Chairperson

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Carol A. Ochs, City Clerk



CITY OF CHARLEVOIX  
210 STATE ST. CHARLEVOIX, MICH. 49720

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OFFICE OF PLANNING AND ZONING  
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**ZONING BOARD of APPEALS DECISION AND ORDER**

**October 17, 2012**

Mike and Kim Foster  
8171 Lake Vista  
Richland, MI 49083

Dear Mr. Foster,

As you are aware, the Zoning Board of Appeals held a public hearing on October 17, 2012 to review your application for a variance for an addition at 211 E. Lincoln. The variance application was approved with the findings contained herein. This document serves as formal notification of the ZBA decision in accordance with the City of Charlevoix Zoning Ordinance and the Michigan Zoning Enabling Act.

Please keep in mind that the variance approval is for a period not greater than six months from the date of the decision. Section 5.286(7) states:

*(7) Expiration of Variances.* Each variance granted under the provisions of this Chapter shall become null and void six (6) months after the variance is authorized, unless construction or occupancy allowed by such variance or permit has commenced and is being carried to completion. However, the zoning board of appeals may grant a six (6) month extension upon the submission of a letter by the applicant providing reasonable evidence as to why the project cannot be commenced within the allowed time, and provided further, that an additional six (6) month approval extension may be granted by the zoning board of appeals upon the personal presentation by the applicant of reasonable evidence as to why the project cannot be commenced within the allowed time.

Please contact the City Planning Office at 547-3265 if you have any questions or concerns.

Regards,

A handwritten signature in black ink, appearing to read "Greg Withrow", is written over a horizontal line.

Greg Withrow  
Chairman of the Zoning Board of Appeals

<b>AGENDA TITLE:</b>	<b><u>Project 2012-05 ZBA Variance Request: 211 E. Lincoln</u></b>
<b>PUBLIC HEARING DATE:</b>	Wednesday, October 17, 2012 6:00 PM

- |                  |                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EXHIBITS:</b> | <ol style="list-style-type: none"><li>1. Variance application form.</li><li>2. Site Plan, existing conditions drawing,</li><li>3. Elevation drawings. (Front. E. Lincoln looking north.)</li><li>4. Elevation drawings. (Side. West side of home looking east.)</li><li>5. Project file: 2012-05 ZBA and all contents.</li><li>6. City of Charlevoix Zoning Ordinance.</li></ol> |
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**STAFF REPORT:****I. PROPOSAL:**

The applicants, Mike and Kim Foster, are requesting a dimensional variance from the City of Charlevoix Zoning Ordinance for the construction of a covered porch at 211 E. Lincoln Avenue. The proposed addition totals roughly 231square feet, with eaves, and is proposed for the south (front) and side (west) of the home. This project would also include the replacement of an existing 9'X6' covered porch on the front. The proposed addition does not meet Section 5.43(2) setbacks required for front yards in an R-2 Zone. Section 5.92 Adjacent Building Line Setback is applied to this this project, thereby reducing the variance requested.

There have been no public comments received on this project.

**SITE:**

The subject property address is 211 E. Lincoln Avenue. This lot is roughly 60 X100 and is located on the north side of Lincoln between May and Alice Streets.

Air Photo from 2004 on next page (Porch location and size is approximate.)



E. LINCOLN AVE.



Sheet <b>1</b> of 1	Project No.:	Sheet Title: Project:	Date: Drawn By:	 <b>CITY OF CHARLEVOIX</b> 210 STATE ST. CHARLEVOIX, MICH. 49720 (231) 547-3265 <b>PLANNING GIS</b> FAX (231) 547-3617 <small>Coordinate System = NAD 83 Michigan State Planes, Central Zone, International Foot</small>
		CHARLEVOIX, MICHIGAN	Scale: Checked By:	

## II. REVIEW STANDARDS - FINDINGS OF FACT:

### (4) *Variance General Standards.*

- (a) *The need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, area, or topography and is not due to the applicant's personal or economic situation.*

The ZBA finds that that the need for the requested variance is due to unique circumstances of the property. The small lot size and the placement of the home, which was built prior to zoning, creates a hardship that does not allow enough space to construct the front porch while meeting the setback requirements. The City's archival Sandborn Maps indicate the structure existed in 1927 when setbacks were not a requirement of the City. There is no other location on the property to construct a front porch. There is no evidence to suggest that the applicant is requesting the variance based on their personal or economic situation.

- (b) *The need for the requested variance is not the result of action taken by the property owner or previous property owners that was in violation of zoning regulations in effect at the time the action was taken (self-created).*

The ZBA finds that this variance is not the result of action taken by the current or the previous property owner that was in violation of the zoning regulations in effect at the time. This variance request is not self-created since the property and structures were in the same size, shape, and proportion before the City of Charlevoix enacted the zoning ordinance. The City's archival Sandborn Maps indicate the structure existed in 1927 when the City did not have zoning.

- (c) *The requested variance is the minimum variance necessary to grant substantial relief to the applicant while at the same time minimizing any adverse impacts to other property owners in the general neighborhood or zoning district.*

The ZBA finds that the applicant is requesting the minimum variance necessary and will not create any adverse impacts to other properties in the neighborhood or zoning district. Approval of the variance will not result in any sight distance problems with automobiles or pedestrians on the street intersections. The proposal was discussed with City Department heads including the police and fire department who did not express any public safety concerns. At roughly 231 square foot (with eaves), the porch is a modest size for a residential property, and not out of place in the current neighborhood. Given the size and location of the proposal the ZBA does not anticipate any adverse impacts to other property owners in the neighborhood or zoning distinct. The front porch will be an architectural improvement to the home and improve the esthetics of the neighborhood.

### (5) *Special Findings.*

- (a) *Dimensional Variances.* To obtain a variance from the dimensional requirements of this Ordinance (area setback, frontage, height, bulk, density, or other dimensional requirements), the applicant must establish that strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.

The ZBA finds that placement of the home does not allow for the construction of a porch at a different location on the property that would meet the setback requirements. Approval of the variance will not result in any sight distance problems with automobiles or pedestrians on the street intersections. The applicants are proposing modest sized porch typical for a residential property, and not out of place in the current neighborhood. Given the size and location of the proposal the ZBA does not anticipate any adverse impacts to other property owners in the neighborhood or zoning district.

The ZBA finds that applying section 5.192 results in an average front yard of 12 ½ feet, therefore the requested variance is less than 6 feet and is consistent with the property on the east side.

### **III. ZBA DECISION AND ORDER:**

Motion to approve Project 2012-05 ZBA without conditions based on the findings of fact contained herein.

Motion passes 4-0.