

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES
Wednesday, November 16, 2011 - 6:00 p.m.
210 State Street, City Hall, 2nd Floor Council Chambers, Charlevoix, MI

A) CALL TO ORDER

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

B) ROLL CALL

Members Present: Gary Anderson, Richard Clem, Mary Eveleigh, and Greg Withrow
Members Absent: Pat Miller (excused) and Alternate Larry Sullivan (excused)
Staff Present: City Planner Michael Spencer

C) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST - None.

D) APPROVAL OF AGENDA

The Agenda was approved as presented.

E) APPROVAL OF MINUTES

1. Motion to approve or amend the September 14, 2011.

Member Clem asked that the word "designed" be changed to "designated" on page 1, item b) ROLL CALL. The sentence to read "Alternate Member Sullivan was designated as a voting member."

Motion made by Member Clem and seconded by Member Eveleigh to approve the September 14, 2001 as amended. Motion adopted by unanimous voice vote.

F) NEW BUSINESS

1. Public Hearing for Project 2011-08 ZBA. Variance request from Cozy Bear LLC.
 - a. Staff Presentation

City Planner Mike Spencer addressed the Board. Normally, when an individual wishes to subdivide their property, they must follow the procedures outlined in Chapter 53, Parcel Division Ordinance. It was Staff's understanding that the applicant wished to subdivide the lot to exclude the alley. There is a home located at 101 Auld Street and a second home located south of the alley at 99 Auld Street. The second home was permitted by the Zoning Board of Appeals in 2003. There is a lot of history involved with this project. If a person wishes to subdivide a parcel, the resultant tracts of land must comply with the provisions of the current zoning ordinance. The existing homes and the accessory structures also need to comply with the ordinance setback requirements. The owner, Cozy Bear LLC, decided to submit a variance application, which is an allowable procedure under the City's Parcel Division Ordinance.

Yesterday (November 15th), Attorney Dan Barron approached the office stating he represents the applicant and it is their understanding that the lot is already a separate lot of record. Therefore, he feels the parcel division application is not necessary nor is the variance. Mr. Barron submitted title work to the Planning Office earlier today (November 16th). Neither the Planning Department nor the City Attorney has had the opportunity to review the materials. Staff needs to review the information and determine whether or not the southern portion of the lot (99 Auld Street) is a separate lot of record. The City Planner is requesting the Board to take public comment on the proposed variance request and to table its decision on the item until its December 21st meeting.

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The City Planner gave the Board:

- Letter Nancy and Jim Grant of Auld Street on the variance application.
- Letter from Jackie Hayes.
- Copy of Mr. Barron's November 16, 2011 letter with attachments.

b. Presentation by Applicant (if requested)

Dan Barron spoke to the Board. Mr. Barron represents Steven Roby (Cozy Bear LLC), owner of 99 and 101 Auld Street. Originally, the matter came before the Zoning Board of Appeals in October 2003. The Board discussed variances that ultimately permitted construction of a residence at 99 Auld Street. He asked the Board to recall that the application involved the razing of the Apple Tree, a historic Charlevoix structure. The Roby's wished to preserve the building. After the building was purchased, it was determined that the building could not be moved. The Roby's constructed a replica of the historic building and preserved some of the stone work. The building's fireplace was reconstructed and the front façade (alley side) is similar to the old Apple Tree building. The stones that could be moved were used in the construction of the structure. In 2003, the relocation of the historic building was the basis used to grant the necessary variances. At that time, there were a number of meetings held on the Roby's desire to preserve a piece of Charlevoix's history. One the significant issues was whether 99 Auld Street was a "lot of record". The findings for the variances granted in 2003 indicate that 99 Auld Street it was an existing lot of record. If the Roby lot was considered as one lot in 2003, the Zoning Board of Appeals would have had to grant a variance to allow the construction of a second home on the lot. This was not done. Mr. Barron stated that it was determined in 2003 that 99 Auld Street was a separate lot of record.

Chairman Withrow asked what does the 2003 case have to do with the variance being requested at this time. Is the applicant seeking a variance based on past record? Mr. Barron stated that the lot is an existing lot of record.

Member Eveleigh stated that originally there was a garage on the lot, which was to be replaced by an "art studio". She did not understand that the building would be used for someone to live in.

Mr. Barron stated that the City was advised in 2003 that the building would be used as a single family dwelling.

Chairman Withrow asked Mr. Barron if he feels that a variance is needed. Mr. Barron advised the Board that he does not feel a variance is required.

Chairman Withrow asked the Board if they feel a variance is required. Members Clem and Anderson stated that the Board needs to verify the information that has been submitted this evening.

Mr. Barron asked that the City make an Administrative Decision and assign a new tax parcel number to 99 Auld Street.

Member Eveleigh advised the Board that it is her understanding that the parcel has two residences with a public alley running through the middle of the parcel. Mr. Barron confirmed that the alley is a not owned by Mr. Roby and that there is a public alley and that the parcels are described separately.

Mr. Barron feels it is premature to continue discussing the project until the administrative review is complete. He does not feel any variances or lot split approvals are necessary.

Member Eveleigh agreed that the Board needs to look at this and review the materials that have been handed out this evening.

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c. Call for Public Comment

Jennifer Nash of 102 Auld Street addressed the Board. She stated that the residence located at 101 Auld lacks off street parking. Auld Street narrows as it curves in front of the residence and the use of the street for parking creates a traffic hazard. Local residents use the alley daily and its intersection adds additional congestion to the area. The parking of additional motor vehicles on Auld Street or in the alley would further restrict traffic flows and impair driver's vision. She requested the Zoning Board of Appeals require the owner of 101 Auld Street to park their vehicles on their property and not on the street.

Jack Lessenberry, potential buyer of 101 Auld Street addressed the Board. He stated that he is willing to put an additional parking area on the parcel.

Bruce Herbert of 406 Michigan Avenue addressed the Board. He agrees with Ms. Nash's concerns on parking. He would like the Board to consider granting the variance request to create two lots as Mr. Roby is a good neighbor.

Dan Barron asked the Board that he be permitted to make additional comments when the hearing is reconvened.

Chairman Withrow closed the public hearing at 6:31 p.m.

d. Zoning Board of Appeals determination of findings of fact.

Member Anderson advised the Board that he was a Board member in 2003 when Board reviewed the case. He asked Staff if the Board had discussed whether there were one or two parcels in 2003. City Planner Spencer advised the Board that he has reviewed the 2003 file. In the file are a couple of drawings that show the "lot" and there is another sketch that shows a site plan. There is no certificate of survey. The site plan shows 99 Auld as a separate lot, but that does not mean that it is a legal lot of record. The Zoning Board of Appeals approved variances in 2003 and there is a finding that states it was a separate lot. But he does not know what information the finding is based on. The Zoning Board of Appeals was given certain information in 2003 and if that information has changed, then there's a question if the finding is legally binding.

Member Clem asked if there were two deeds. The City Planner advised the Board that there is only one deed.

Chairman Withrow asked if there were two lot descriptions. Mr. Barron advised the Board that there were two lot descriptions.

e. Motion

Motion made by Member Clem and seconded by Member Anderson to table Project 2011-08ZBA until its next meeting. Motion adopted unanimous voice vote.

City Planner Spencer advised the Board that their next meeting was scheduled to be held just before Christmas (December 21st) and asked if the Board desired to move the meeting up a week to December 14th. The Board agreed to amend its meeting date.

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G) OLD BUSINESS –

Mary Eveleigh asked to have the Board's bylaws on the next agenda. She is also waiting for a legal interpretation from Mr. Graham.

H) CALL FOR PUBLIC COMMENT (Not related to agenda items) – None.

I) ADJOURNMENT

Motion made by Member Anderson and seconded by Member Clem that the meeting be adjourned.
Motion adopted by unanimous voice vote.

The meeting was adjourned at 6:35 p.m.

Greg Withrow, Chairperson

Linda Jo Weller, Recording Secretary

Carol A. Ochs, City Clerk