

CITY OF CHARLEVOIX
ZONING BOARD OF APPEALS MINUTES
Wednesday, August 3, 2016 – 6:00 p.m.
210 State Street, City Hall, Charlevoix, MI

A) CALL TO ORDER

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

B) ROLL CALL/PLEDGE OF ALLEGIANCE

Members Present: Gary Anderson, Greg Bryan, Ann Gorney, Art Nash, Greg Withrow

Members Absent: Bob Bergmann, Pat Miller

Staff Present: Interim City Planner Zach Panoff

C) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST

Member Bryan stated that he owned property within 300' of the subject location, the ReMax building on the corner.

D) APPROVAL OF AGENDA

No changes.

E) APPROVAL OF MINUTES

Motion by Member Gorney, second by Member Nash to approve the July 6, 2016 meeting minutes as presented. Motion passed by unanimous voice vote.

F) NEW BUSINESS

1. Public Hearing for Project 2016-008 ZBA: Variance Request from Michael Hedges – 106 W. Hurlbut Avenue

a. Staff Presentation

Interim Planner Panoff stated that the property owner was applying for a variance for the expansion of an accessory structure. The applicant wishes to construct a 24' x 26' attached garage and living space, and a 5' x 20' addition to an existing rear accessory building.

b. Applicant Presentation

Jodi Alger-Bergmann, Home Planning & Design Ltd., stated that when Mr. Hedges, owner, bought the property there were two 2-bedroom units in the main structure and three bedrooms in the carriage house. She proposed a one-bedroom unit at the front of the house, another one-bedroom unit upstairs, along with the owner's one-bedroom unit, for a total of three bedrooms. The owner wanted to offer weekly and monthly vacation rentals of the two one-bedroom units.

Member Bryan stated that the only problem he sees is parking. Interim Planner Panoff commented that the Planning Commission was looking to address parking issues as well. Member Bryan suggested that a limit on the number of cars be included in the rental agreement. Member Anderson questioned why the applicant needed a 2-car garage with the one-bedroom units.

Member Nash stated that the application referred to apartments, not vacation rentals. Mr. Hedges replied that the units could be annual, monthly or weekly rentals depending on the market. He was anticipating couples renting the units with one car per rental. Discussion followed regarding the zoning requirements for multi-family or rental units. Mr. Hedges stated he was trying to upgrade the property and noted that his neighbors were in favor of it.

Chair Withrow felt it was an improvement for the neighborhood, but that it violates three zoning ordinance requirements and he finds it difficult to approve multiple zoning violations. Member Anderson questioned whether a one-car garage would solve the lot coverage issue and Interim Planner Panoff responded affirmatively. Member Bryan stated that this is a case where zoning is not the solution to the problem as that whole area has problems with lot coverage. He felt that this would not change the nature of the neighborhood. Member Nash questioned what type of neighborhood was desired. Member Bryan indicated that the area includes more rentals and he felt that the Planning Commission and City Council need to address rental issues.

c. Call for Public Comments

None.

d. ZBA Determination of Findings of Fact

Chair Withrow proceeded to review the findings of fact:

- **Dimensional Variance:** requires exceptional or extraordinary circumstances that do not generally apply to other properties in the same zoning district. The property contains an existing accessory dwelling unit in the rear yard, which has been, and still may be, utilized as an existing nonconforming use with some repairs. There is no evidence to suggest that the applicant is requesting the variance based on their personal or economic situation.

Chair Withrow stated that he had difficulty with the last sentence and he questioned if anyone felt that they could address a dimensional variance as an acceptable issue. Member Nash stated that the personal situation is that the applicant wants a two-car garage whereas a one-car garage could fit within the property without a dimensional variance. Interim Planner Panoff confirmed that a 9' garage would fit without a variance.

- **Substantial Justice:** no concerns with the proposed draft findings for the variance.
- **Impact on the Surrounding Neighborhood:** no concerns with the proposed draft findings for the variance.
- **Public Safety and Welfare:** no changes.
- **Not Self-Created:** the ZBA finds that this variance is not the result of action taken by the current or the previous property owners that was in violation of the zoning regulations in effect at the time.

Chair Withrow questioned whether the Board thought the proposal was a good improvement. Member Gorney thought it was an excellent improvement and what struck her when she visited the property was the lot coverage. Chair Withrow noted that the Board has the capability and the duty to review applications for variance for the benefit of the community and they do not have to be exact. Member Bryan indicated that the property was on an alley, which made it unique. Interim Planner Panoff stated that if this received approval as proposed, it would result in less than 35% overall lot coverage (the limit is 40%.) The rear lot coverage from the line of the house back to the property line was the issue.

Chair Withrow questioned the language regarding "no evidence to suggest that the applicant is requesting the variance based on their personal or economic situation" and asked where that language is included in the zoning ordinance. Interim Planner Panoff stated that it was standard language used in the past, but it could be removed. Chair Withrow stated that removing the language eliminates the practical difficulty for him.

Chair Withrow reviewed the Use Variance section. He stated that he was reviewing the "draft findings for" because he felt that the majority believed that this project would be an improvement for the neighborhood. Member Nash stated that he was in favor of improvement, but felt the Board should not trump non-conforming use normally. Chair Withrow recalled the previous meeting where the Board had two applications which were denied because there were alternative options not requiring a variance. Discussion continued whether the Board wanted to continue non-conforming uses or allow expansion of a non-conforming use.

e. Motion

Motion by Member Bryan, second by Member Anderson, that the Board hereby approve Project 2016-08 ZBA without conditions based on the findings of fact contained herein. Chair Withrow asked that a couple of statements be added including: that basically the overall lot coverage is still acceptable and it continues a non-conforming use and does not create a new one. Member Bryan agreed.

Yeas: Anderson, Bryan, Gorney, Nash, Withrow

Nays: None

G) CALL FOR PUBLIC COMMENT ON NON-AGENDA ITEMS
None.

H) ADJOURNMENT

Motion by Member Gorney, second by Member Nash to adjourn the meeting. Motion passed by unanimous voice vote.
The meeting adjourned at 6:38 p.m.

Greg Withrow, Chair

Joyce Golding/fgm, City Clerk