

**CITY OF CHARLEVOIX**  
**ZONING BOARD OF APPEALS MINUTES**  
**Wednesday, November 2, 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: Greg Bryan, Ann Gorney, Pat Miller, Greg Withrow

Members Absent: Gary Anderson, Bob Bergmann, Art Nash

Staff Present: Interim City Planner Zach Panoff

Chair Withrow indicated that there was a quorum present.

**C) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST**

None.

**D) APPROVAL OF AGENDA**

No changes.

**E) APPROVAL OF MINUTES**

Motion by Member Gorney, second by Member Miller, to approve the August 3, 2016 meeting minutes as presented.

Motion passed by unanimous voice vote.

**F) NEW BUSINESS**

1. Public Hearing for Project 2016-11 ZBA: Variance request from Nicholas Whitley, 1209 State St.

a. Staff Presentation.

Interim Planner Panoff presented background of the project and stated that the applicant was requesting a dimensional variance from the City's Zoning Ordinance for the construction of an addition to his home at 1209 State Street. The applicant wishes to construct a 14' x 16' addition to the north side of the home in the side yard, and a 17' x 4' addition to the east side of the home in the front yard. The proposed addition does not meet the setback requirements for side yards in an I-Industrial Zone. The existing home was present when the property was designated as part of the West Carpenter/State Street Industrial Overlay District as part of the 2013 Zoning Ordinance adoption.

Interim Planner Panoff noted that Industrial Zone setbacks were more restrictive and this issue involved side yard setbacks.

b. Applicant Presentation

Jodi Bergmann, representing the Whitleys, stated that this was a residential property and the City decided to zone it Industrial. She questioned the legality of changing the zoning to Industrial when families were living in three of the homes that were re-zoned. Ms. Bergmann indicated that the Whitleys wanted to add a master bathroom and add on to the living room. She stated that the additions met the residential setbacks.

c. Call for Public Comments

None.

d. ZBA Determination of Findings of Fact

No discussion.

e. Motion

Motion by Member Bryan, second by Member Gorney that the Board approve Project 2016-11 ZBA without conditions based on the findings of fact contained in the staff report.

Yeas: Bryan, Gorney, Miller, Withrow

Nays: None

2. Public Hearing for Project 2016-12 ZBA: Variance request from Tom Heckman and Linda Sawyer, 201 E. Lincoln Ave.

a. Staff Presentation

Interim Planner Panoff presented background of the project and stated that the owners were requesting dimensional and rear lot coverage variances from the City's Zoning Ordinance for an addition and new detached garage at 201 E. Lincoln Avenue. The applicants wish to construct a 10' x 43' carport addition to the existing home, and a new 24' x 27' detached garage in the rear yard. The proposal does not meet Section 5.27(2) for side setbacks, Section 5.46(1)(h) for rear accessory structure setbacks and Section 5.46(1)(f) for rear yard lot coverage.

Interim Planner Panoff referenced the conceptual photos on page 31 of the packet and explained that the applicant wanted to build a carport with storage above it. He stated that the main portion of the house would come within 4' of the west property line and the proposed garage would allow for a 3' rear yard setback. He indicated that the lot was 50' x 90' and the garage would need a rear lot coverage variance because the applicant was asking to cover 31.8% of the rear yard with the proposed detached garage. Member Miller questioned the less than 50% lot coverage as the diagrams made it look like the structures covered more than 50% of the lot, and Interim Planner Panoff replied that the lot coverage with the proposed structures was approximately 48%.

b. Applicant Presentation

None.

c. Call for Public Comments

None.

d. ZBA Determination of Findings of Fact

Member Gorney felt that the applicants wanted living quarters above the garage in the rear. Chair Withrow stated that he was inclined to table this matter until the applicants were present for a meeting. Member Gorney stated that she would like the lot coverage ratio re-calculated as it appeared to be over 50% and Member Bryan stated that he did not like the setbacks on the west side. Chair Withrow felt that Public Safety should be asked if other people build on the adjacent lots would that change their mind regarding access to the subject property once the proposed structures were built. He felt that they could not authorize a variance knowing that it impacts another property owner. Member Gorney questioned if the Project was tabled could the applicants come back to the Board with less than three variance requests. Chair Withrow stated that the applicants should be aware that the Board has a fair amount of hesitancy with respect to the variance requests.

e. Motion

Motion by Member Bryan, to turn down the Project and they could re-apply with a revised plan. No second to the motion.

Motion by Member Gorney, second by Member Miller to table this Project until such time as the applicants could be present at a meeting to present their proposal.

Yeas: Bryan, Gorney, Miller, Withrow

Nays: None

3. Public Hearing for Project 2016-13 ZBA: Interpretation request from the Planning Commission regarding current lots

a. Staff Presentation

Interim Planner Panoff explained that in the past few months the Planning Commission received questions related to determining the primary front yard for corner lots in single family residential districts, and the accompanying setbacks. The Planning Commission asked for an interpretation from the ZBA on these main questions:

1. Does the address of a property factor into determining its primary front yard?
2. Can the primary front yard of a corner property be changed if additions/alterations are made to the primary structure to reorient it on the site?
3. Which section of the Code takes precedent when determining the front lot line of a property?

4. Can existing non-conforming buildings or conditions have an effect on determining which yard is which on a property?

Interim Planner Panoff referenced materials in the staff report including Section 5.11, *Lot Lines*, which includes language that reads: *For a corner lot, the front lot line shall be the shortest of the two lot lines tangent to the street right-of-way or road easement.* Section 5.50, *Setback requirements*, which reads: *A corner lot shall have two front lot lines; a principal front lot line and a secondary front lot line. The principal front lot line shall be the location of the traditional front entrance of the structure.*

Member Gorney disclosed that she lived on a corner lot and Chair Withrow stated this was not a conflict.

b. Call for Public Comments

Al Wojan stated that his sister asked him to speak on her behalf and informational copies with pictures that may aid the discussion were distributed. He briefly explained the history of why this issue was before the Board and fully reviewed exhibits included in the information he provided to the Board. He reviewed inconsistencies in the applications, and pictures of the property at Sheridan and Hurlbut Streets, and other corner lots in the City. He questioned who enforces the applicable ordinances and how a determination could be made with the obvious ambiguity in the Zoning Ordinance.

Madeline Renauld, 503 W. Hurlbut, stated that she now has a garage that was built 11' from her side yard because Interim Planner Panoff turned the property around to have the front yard face W. Hurlbut. She stated that it said in the Zoning Ordinance that the traditional front entrance is the front yard where the property owner has a door and she is supposed to be 25' from her side yard but she was only 11'. She indicated that there has never been a survey. Ms. Renauld recalled that Interim Planner Panoff measured from the fence to the garage and noted that the fence is not the property line, so she has a garage, a shed and a fence on her side yard and "nobody seems to want to do anything about it".

Ms. Renauld questioned why the Zoning Ordinance provides for the traditional front yard and said that "if it isn't clearly evident then the Zoning Administrator can make the determination of what the front yard is". She felt that Sheridan Street is her neighbor's front yard.

Mary Eveleigh, Planning Commission member, stated that it was very confusing based on the two sections in question as it was hard to determine lot lines on corner lots. She felt that the ZBA needed to determine what the Ordinance should say and eliminate any conflicts.

Chair Withrow indicated that the ZBA would review the issue and give an opinion, but it was up to the Planning Commission to make recommendations on Zoning Ordinance changes to be presented to City Council for consideration. Member Bryan commented that corner lots have been one of their main applications for variances.

c. ZBA Determination of Findings of Fact

Chair Withrow questioned whether staff had a preferred position on this matter and Interim Planner Panoff replied that he was in favor of clearing up the language. Chair Withrow questioned which provision Interim Planner Panoff thought was appropriate and easiest to enforce and Interim Planner Panoff suggested altering Section 5.11, the definition of a front lot line. He felt the sentence should be removed or altered to mirror previous ordinances or the first section of Section 5.60, whereby the principal front lot line shall be the location of the traditional front entrance of the structure.

Mr. Wojan felt that it was important if the traditional front entrance was used that the definition be clearly stated.

Member Miller questioned whether they would have to define a "traditional front entrance" and Interim Planner Panoff responded that it would be up to the Planning Commission. She questioned if the traditional front entrance would be the side where the address is and Chair Withrow answered that was generally the case. Discussion followed regarding normal lots, front entrances, side yards, rear and side setbacks, corner lots having two front yards and two side yards but no rear yard, and other provisions of the Zoning Ordinance relative to corner lots.

Mr. Wojan stated that in his search for answers he found it very difficult to find what he needed in the Zoning Ordinance. He said that when a zoning permit is issued the applicant has two years to activate that permit, and the adjacent property owner is not notified if there is no variance required. Once the zoning permit is issued the

adjacent owner only has 30 days to appeal the permit to the Zoning Board of Appeals. He felt that this issue should also be addressed.

Discussion followed regarding the building permit process.

Member Bryan recommended that the contradiction in Section 5.1, Lot lines (1) be removed, specifically the sentence that reads: "For a corner lot, the front lot line shall be the shortest of the two lot lines tangent to the street right-of-way or road easement." and leave Section 5.60 as written. Chair Withrow recommended that a change in the definition of a corner lot relative to rear yards should be changed as he felt there should be two front lot lines and two side yards.

d. Motion

Motion by Member Bryan, second by Member Miller for the ZBA to make its interpretations based on the findings of fact contained (specifically #3) and to also ask that the Planning Commission address the need to redefine a corner lot by eliminating the rear yard and including two front lot lines and two side yards. Motion passed by unanimous voice vote.

Findings of Fact #3: "The ZBA finds that Sections 5.11(1) and 5.60(1) of the Zoning Ordinance contain overlap and potential conflict in their language. It is recommended that the Zoning Administrator submit potential changes to the language in Section 5.1(1) to the Planning Commission for their consideration that removes the portion of the definition that states, "For a corner lot, the front lot line shall be the shortest of the two lot lines tangent to the street right-of-way or road easement."

**G) CALL FOR GENERAL PUBLIC COMMENT**

Chair Withrow referenced a home at the corner of Dixon and Mercer where 6' stakes with cables were installed to keep the deer out which looks a fence to him. He said there is another house on Dixon that has plastic fence above the normal fence to keep the deer out, both in the front yards. He stated that in theory, both are illegal according to the Zoning Ordinance. He recalled that the ZBA recently refused two zoning applications for different fence heights that are the same issue. He asked Interim Planner Panoff to consult with the City Manager to see what to do about the situation.

Ms. Renauld reiterated her concerns about the property next door to her home as discussed previously in the meeting.

**H) ADJOURNMENT**

Motion by Member Gorney, second by Member Miller to adjourn the meeting. Motion passed by unanimous voice vote. The meeting adjourned at 7:20 p.m.

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Greg Withrow, Chair

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Joyce Golding/fgm, City Clerk