

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES
Wednesday, April 20, 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 Chairperson Withrow at 6:00 p.m.

B) ROLL CALL

Members Present: June Cross, Richard Clem, Mary Eveleigh, Greg Withrow, and Alternate Larry Sullivan
Members Absent: Gary Anderson
Staff Present: Michael Spencer, City Planner

Selection of Alternate Sullivan to be voting member approved by the Board.

C) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST - None

D) APPROVAL OF AGENDA

Chairperson Withrow approved the agenda as submitted with the Board's approval.

E) APPROVAL OF MINUTES

1. Motion to approve or amend March 23, 2011 meeting minutes

The Board reviewed the March 23, 2011 minutes.

Member Sullivan stated that the minutes of March 23rd contained various typographical errors. The errors noted are as follows:

Page 2: Midway down the page the sentence: Member Clem asked **if** for details on the existing master bedroom area. Sentence should read: Member Clem asked for details on the existing master bedroom area.

The following paragraph on Page 2 contains the same error as above.

Following paragraph (second line) contains the sentence: The section of the house that includes the guest house bedroom and second bathroom **are** will be raised to the same level as the rest of the house. Sentence should read: Section of the house that includes the guest house bedroom and second bathroom will be raised to the same level as the rest of the house.

Following paragraph contains the sentence: **Mr.** Alger stated that the garage is proposed to be 24' wide and 26' deep. Sentence should read: Ms. Alger stated that the garage is proposed to be 24' wide and 26' deep.

Motion made by Chairperson Withrow and seconded by Member Eveleigh to approve the minutes of March 23, 2011 as amended. The motion was adopted by a unanimous voice vote.

F) CALL FOR PUBLIC COMMENT (Not related to agenda items) None

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G) OLD BUSINESS

1. Nomination of Officers

City Planner Spencer noted that the nomination of officers was needed. Member Sullivan recommended to retain all current officers and to close all nominations. Member Sullivan's recommendation was unanimously approved by the Board.

2. Public hearing for Project 2011-01 ZBA Ramsey Variance Request.

Chairperson Withrow asked for comments from staff regarding Project 2011-01.

a. Call for staff comments.

City Planner Spencer noted that Chairperson Withrow was absent during the previous meeting. City Planner Spencer asked if Chairperson Withrow was comfortable in reviewing Project 2011-01, Chairperson Withrow stated that he was comfortable reviewing the information.

Chairperson Withrow posed the question; How has the project changed? Does the house face Dixon Avenue? City Planner Spencer affirmed this question stating that the location of the front door had changed to face Dixon Avenue. Chairperson Withrow stated that the City Planner Spencer's affirmation gives him ample information to proceed with his review of Project 2011-01.

City Planner Spencer stated for members and the public that the project no longer requires a side yard setback variance and that the ZBA is in acceptance of the amended design.

Chairperson Withrow asked if there were any questions for the applicant from board members. The board members had no questions for the applicant.

City Planner Spencer noted that he recently received a letter from the property owner to the south of Project 2011-01.

Chairperson Withrow called for any public comment related to Project 2011-01.

b. Call for public comments.

Mr. Bob Neil resides across the street from the project at address 711 E. Dixon Avenue. Mr. Neil is speaking on behalf of both, his wife and John and Elaine Kurtz, all of whom are not present at this meeting. Mr. Neil informed members that neither he, nor John Kurtz has any objection to the current project revision, and approves of the project.

c. Exhibit.

City Planner Spencer read the above referenced letter. The letter states that the author, Shelly Boehmer (of lot 12 of Chicago Club Avenue) and various neighbors are not opposed to and support the current project, as well as commend the City of Charlevoix Zoning Board of Appeals.

Chairperson Withrow asked for any further comments regarding Project 2011-01 and no further comment was added. Chairperson Withrow closed the Project for discussion.

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The Board reviewed and finalized the following findings of fact:

d. REVIEW STANDARDS - FINDINGS OF FACT - CONDITIONS OF APPROVAL:

The need for the requested variance is due to unique circumstances. City Planner Spencer noted that there is no other location on the property to construct a garage and meet the setback requirements without a variance request.

The following section is taken directly from the Section 5.286(4) of the Zoning Ordinance. During the public hearing the ZBA must make findings of fact to determine if the proposal meets each of the following standards. The ZBA must find that this proposal meets all of the following standards based on findings of fact before considering a motion to approve. Staff has written the following recommended findings of fact as a starting point. The ZBA may add, modify, or delete any of the following findings.

(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 size of the lot and the placement of the home, which was built prior to zoning, creates a hardship that does not allow enough space to construct the garage while meeting the setback requirements. There is no existing garage on the property. The addition of a garage would better accommodate the applicants or future property owners for year-round living. 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 tax assessment records indicate the home was constructed in 1958, before the existing zoning was enacted in 1978.

- (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 applicants are proposing a 26X24, two car garage, which is a standard size for a residential property, and not out of place in the current neighborhood. Given the size and location of the revised proposal the ZBA does not anticipate any adverse impacts to other property owners in the neighborhood or zoning district.

(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 an attached garage in 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 a two car garage which is 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 distinct.

(6) *Conditions of approval.*

The Board did not require any conditions of approval.

Chairperson Withrow recommended accepting the amended language provided by City Planner Spencer regarding dimensional variances contained in the Project 2011-01 findings report. The Board agreed with Chairperson Withrow.

e. Motion

Member Clem motions to approve Project 2011-01 with the findings of the ZBA. Chairperson Withrow seconds the motion. A voice vote was conducted, and Project 2011-01 variance was unanimously approved by the Board.

H) NEW BUSINESS

1. Discussion of Interpretation Concerning Non Conforming Structures

City Planner Spencer noted that the ZBA is responsible for approving variance requests. The City Planner also noted a possible conflicting issue with the zoning ordinance. The variance request will be brought to vote at an upcoming meeting. City Planner Spencer went on to review zoning regulations using examples and citing portions of the zoning ordinance.

City Planner Spencer noted; non conforming structures, typically, do not need to meet set back requirements in the current zoning ordinance. Example given by the City Planner; shows non-conforming structure due to set back requirements.

City Planner Spencer further defines the City of Charlevoix Zoning Ordinance, Title V, Article VIII, Nonconforming Uses, Lots and Structures, Section 5.251. Continuance of Use.

Noted: Various members were not in agreement with the City Planner's interpretation of the zoning ordinance section on non conforming structures. Disagreements with interpretation include; subsection c "the availability of light and fresh air to neighboring properties." City Planner Spencer has a conflict with the language regarding "two conflicting sections" within the ordinance. The City Planner asked the ZBA to consider potential

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issues with variance requests, and that the discussions continue at the following meeting. The location of front door in comparison to the address of record was also a topic of conversation.

I) ADJOURNMENT

Chairperson Withrow motioned that the meeting be adjourned, motion seconded by Member Clem. Motion unanimously accepted by the board. The meeting was adjourned by Chairperson Withrow at 6:30 p.m.

Greg Withrow, Chairperson

Carol A. Ochs, City Clerk

Patrick Kilkenny, Recording Secretary