

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES
Wednesday, April 21, 2010 - 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: Richard Clem, June Cross, Mary Eveleigh, Greg Withrow and Alternate Larry Sullivan
Members Absent: Gary Anderson (excused) and Alternate Kim VanMeter-Sanderson
Staff Present: City Planner/Zoning Administrator Mike Spencer

Chair Withrow designated Alternate Sullivan as a voting member.

C) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST None.

D) APPROVAL OF AGENDA

The Board reviewed the proposed agenda. No changes were made to the agenda.

E) APPROVAL OF MINUTES

1. Motion to approve or amend February 23, 2010 meeting minutes

The Board reviewed the February 23, 2010 minutes.

Chairman Withrow asked that the February 23, 2010 minutes be amended to correct a typo on page 1, first line. The word "meting" to be changed to "meeting" and on page 3, under item b, second paragraph, sixth line, that the word "the" – be added to the last sentence. The sentence shall read "The application states that the home was built in the 1940's, and subsequent additions extend to the north and did not result in zoning violations."

Motion made by Member Eveleigh and seconded by Member Clem to approve the minutes of February 23, 2010 as amended. The motion was adopted by a unanimous voice vote.

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

G) NEW BUSINESS

1. Project 2010-02ZBA Variance Request Captains Corner LLC
 - a. Staff presentation.

The existing plaza sign for Captain's Corners is located behind the M-66 right-of-way line. The Michigan Department of Transportation (MDOT) right-of-way extends east of the sidewalk and is 150' wide. The applicant is requesting a sign that is clearly visible from M-66. The existing line of trees block the sign. The sign regulations (section 5.221(3)(d)) require that all signs be placed at least four (4) feet from the road right-of-way line. The proposed sign has been approved by MDOT to be placed in the road right-of-way. The applicant also proposes to use a high intensity reflective surface on the sign. Upon review of the ordinance:

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES
Wednesday, April 21, 2010 - 6:00 p.m.
Page 2

Section 5.217 defines "Illuminated Sign": A sign that includes artificial light by either emission, reflection, or refraction

The light source is from an external source (car headlights) and the sign is not internally lit. Both the DDA and the Planning Commission have recommended an amendment to the ordinance to permit this type of sign. The new MDOT traffic signs have this type of surface.

The Board concurred that a variance would not be required for the sign's reflective surface, as the sign is not internally lit. The sign reflects light.

b. Presentation by applicants (If requested).

Robert Scudder of Sign & Design, representing Captains Corners LLC, reviewed the proposed high intensity reflective sign with the Board. The proposed sign has space for seven businesses.

Member Clem asked for confirmation that MDOT has authorized the sign to be placed in the road right-of-way. He voiced concern that the sign's placement may interfere with seeing on-coming traffic, especially if a vehicle wishes to make a left hand turn onto M-66.

Member Sullivan asked if the sign's proposed location would also block the view of pedestrians walking along the sidewalk. People pulling into the parking lot, may not see the pedestrians.

The existing plaza sign will be removed.

c. Call for public comment - None

d. ZBA determination of findings of fact.

The Board reviewed the variance request and Staff's proposed review standards - findings of fact - conditions of approval.

Both Members Clem and Sullivan feel the proposed sign placement could create sight problems with automobiles or pedestrians at the drive intersection. The Board discussed relocating the sign northerly and to have the sign placed between the two entrance drives to allow an unobstructive view to vehicles and pedestrians.

The Board reviewed the standards, findings of fact and conditions of approval.

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 and physical conditions of the property, and is not due to the applicant's personal or economic situation. The ZBA finds that this standard is met since there is a row of trees located within the MDOT right-of-way that prohibit clear visibility of the sign from the applicant's property. The trees create a physical hardship that prevents clear visibility of the plaza sign. There is no evidence to suggest that the applicant is requesting the variance based on their personal or economic situation.

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES
Wednesday, April 21, 2010 - 6:00 p.m.
Page 3

- (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 is not self-created since the trees were not planted by the applicant and they are not located on the applicant's property.

- (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. The ZBA finds that the proposed location will result in sight distance problems for traffic exiting the plaza looking southeast. Locating the proposed sign on the northwest side of the entrance approximately even with the first tree will result in improved sight distance.

Conditions of approval.

- (a) *The Board may attach reasonable conditions with the approval of a variance. These conditions may include those necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all of the following requirements:*

1. *Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.*
2. *Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.*
3. *Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.*

CONDITION 1: The applicant shall locate the plaza sign on the northwest side of the entrance approximately even with the first tree.

e. Motion.

Motion made by Member Clem and seconded by Member Sullivan to approve Project 2010-02 ZBA based on the findings and conditions as contained in this report.

Yeas: Members Cross, Eveleigh, Clem, Withrow and Sullivan
Nays: None.

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES
Wednesday, April 21, 2010 - 6:00 p.m.
Page 4

H) OLD BUSINESS

1. Review of Draft ZBA Bylaws

The Board reviewed the draft by-laws. The State of Michigan has a new Enabling Act and the Zoning and Planning Center has created "Model Rules of Procedure" for local ZBA's to consider. The draft document needs to be reviewed by the City's legal counsel.

The Board reviewed the draft document. The City Planner made recommended changes to the document.

Member Sullivan exited the room at 7:42 p.m.
Member Sullivan returned to the dais at 7:45 p.m.

The Board continued its review of the draft bylaws. The ZBA agreed to have written public hearing procedures drafted and attached to the Board's agenda and distributed at the meeting.

The revised document is attached and made part of the record as Exhibit A. The City Planner and Board members Sullivan and Eveleigh will meet to discuss the bylaws before it is sent to legal counsel for their review. The Board will review the bylaws at its June meeting.

I) REQUESTS FOR NEXT MEETING=S AGENDA

The Board will be discussing the Anderson appeal at its May meeting.

J) ADJOURNMENT

Motion made by Member Cross and seconded by Member Eveleigh to adjourn. Motion was adopted.

Meeting adjourned at 8:11 p.m.

Greg Withrow, Chairman

Linda Jo A. Weller, Recording Secretary

Carol A. Ochs, City Clerk



CITY OF CHARLEVOIX
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April 22, 2010

Captains Corner LLC
25900 West 11Mile Road
Southfield, MI. 48034

Dear Applicants,

As you are aware the Zoning Board of Appeals held a hearing on April 21, 2010 at 6PM to review your variance request application. The variance application was approved with the findings and conditions contained herein. The document serves as formal notification of the ZBA decision in accordance with the Michigan Zoning Enabling Act.

Also 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.

Should you have any questions please contact the City Planning Office.

Regards,

Greg Withrow
Chairman

REVIEW STANDARDS - FINDINGS OF FACT - CONDITIONS OF APPROVAL:

The following section is taken directly from the Section 5.286(4) of the Zoning Ordinance. During the public hearing on the April 21, 2010 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 and physical conditions of the property, and is not due to the applicant's personal or economic situation. The ZBA finds that this standard is met since there is a row of trees located within the MDOT right-of-way that prohibit clear visibility of the sign from the applicant's property. The trees create a physical hardship that prevents clear visibility of the plaza sign. 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 is not self-created since the trees were not planted by the applicant and they are not located on the applicant's property.

- (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. The ZBA finds that the proposed location will result in sight distance problems for traffic exiting the plaza looking southeast. Locating the proposed sign on the northwest side of the entrance approximately even with the first tree will result in improved sight distance.

(6) Conditions of approval.

- (a) The Board may attach reasonable conditions with the approval of a variance. These conditions may include those necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or*

activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Any conditions imposed, however, shall meet all of the following requirements:

- 1. Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.*
- 2. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.*
- 3. Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.*

CONDITION 1: The applicant shall locate the plaza sign on the northwest side of the entrance approximately even with the first tree.

ZBA MOTION

Motion to approve Project 2010-02ZBA based on the findings and conditions as contained in this report.