

CITY OF CHARLEVOIX
ZONING BOARD OF APPEALS MINUTES
Wednesday, July 18, 2012 - 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 Vice-Chair Richard Clem at 6:00 p.m.

(B) ROLL CALL

Members Present: Patricia Miller, Gary Anderson, Richard Clem, Ann Gorney, Larry Sullivan (alt.), Greg Bryan (alt.)
Members Absent: Greg Withrow
Staff Present: City Planner Michael Spencer
Clerk: City Clerk Carol A. Ochs

(C) PLEDGE OF ALLEGIANCE

(D) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST

Ann Gorney disclosed that she was a personal friend of Keith Warner, who has an interest in the 902 Bridge item. Greg Bryan has done work with both Silva and DCL.

The Board determined Gorney had no conflict. Mr. Bryan may have a conflict, as he may have business again with DCL in the future.

Alternate Larry Sullivan was the alternate designated as voting member rather than Mr. Bryan to avoid the appearance of conflict.

(E) APPROVAL OF MINUTES

The Board reviewed the April 4, 2012 minutes.

Motion by Miller, second by Gorney, that the April 4, 2012 minutes be approved as presented. Motion approved by unanimous voice vote.

(F) NEW BUSINESS

1. Public Hearing for Project 2012-03 ZBA: Variance request from DCL located at 8660 Ance Road.
 - a. Staff Presentation
City Planner Mike Spencer briefly reviewed the staff report and answered questions from the Board. Mr. Spencer reviewed issues on the property that make the alternate proposed location for the addition a better option. Mr. Spencer has also received letters of support from adjoining property owners Trison Company LLC and Michigan Scientific, as well as a letter of support from Haggard's Plumbing & Heating. Mr. Spencer answered various questions from the Board regarding the layout of the proposed project and stated that if this particular property was not a corner lot, the setback would only be 25 feet. The standard is 35 feet in an Industrial area and DCL is asking for the setback to go down to 10 feet. City Staff has reviewed the plan and does not see any issues with utility or emergency access.
 - b. Presentation by Applicant (if requested)
Sherm Chamberlain spoke representing DCL for their variance request. DCL wishes to grow their business by putting in this ^addition^ on. The proposed addition allows for the best workflow configuration. Mr. Chamberlain said to put the addition out to the east would be a hardship and would require extensive filling to bring the slope up to grade. It would also increase the amount of hard surface road for the project to accommodate shipping trucks. The filling would need to start in the township portion of the property, which is encumbered with a drainage easement for the surrounding properties. The fill would alter drainage patterns and the volume of water the drainage pond could hold. It is in the best interest of all the surrounding properties to let the retaining pond remain there. Mr. Chamberlain reviewed the details of the proposed project and answered questions from the Board. The proposed addition will not have an impact on vehicular

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traffic and the clear view on Ance Road will not be affected. The variance request is for the area of the addition, not the whole property.

Vice-Chair Clem asked about the drainage capacity of the pond. Mr. Chamberlain was not aware of the capacity. Mr. Spencer said that the project engineer, Al Ranger, would be looking at that as part of the development plan review process, which will be the next step if the variance is approved. Mr. Clem would like to know what the impact would be if more hard surface were added.

Mr. Spencer clarified that if the addition were proposed in the other direction, a variance still might have been needed.

Member Gorney asked if this was the minimum dimension that could be added to accommodate the manufacturing work space needed. DCL representative Alec Amstutz said that the plan for the addition was designed to maximize floor space. They are moving existing components on the floor to accommodate work flow. This is the proposal that works best for their needs.

Mr. Spencer reminded the Board ~~that this is the first variance they have reviewed in the industrial park.~~ Most of the other variances have been in residential zones, allowing the Board to develop standards for addition sizes. The "minimum variance necessary" on this request will be a little bit more subjective because there are no previous precedents.

Member Miller asked if the existing truck well could be moved to accommodate the addition to the west. Mr. Amstutz explained that the current truck well is below grade and inside the building. There would still be a variance needed for the road setback. Additionally, moving the addition to the west would require a reconfiguration of the entire work flow of the plant.

Mr. Chamberlain briefly reviewed the workflow from unloading materials to loading finished product.

Mr. Chamberlain stated that the actual property line is in the middle of the road; the owners have granted the City of Charlevoix an easement for Ance Road to use for road and utility purposes. The addition will not impact any utility easements. The topographical issue with the property was not created by the applicant but is pre-existing. The best way for DCL to meet their future manufacturing needs is to put the proposed addition to the north.

Bart Wangeman from Colwell Wangeman Construction Company stated that this addition had been specifically designed to dimensions and equipment needed for the workflow for this line. The truck well couldn't be moved without great hindrance. Mr. Wangeman's opinion is that moving the addition to the east would restrict emergency access to the rear of the building.

c. Call for Public Comment

Vice-Chair Clem opened the public hearing on Project 2012-03 ZBA at 6:38 p.m.

Bob Jess said that he owns the property to south where water runs off. He is concerned with the plowing of snow. The back of his building has flooded in the past. Mr. Amstutz said that there had been concerns about pushing the snow toward the large end, partly because they would be putting timbers there as parking stops. They had discussed pushing the snow north, toward the Trison property, which would still slope toward the retention pond. Mr. Amstutz was not aware that Mr. Jess had flooding issues. Mr. Jess explained that he was in favor of the addition and the variance, but is concerned about his property if there is a big storm. Mr. Spencer clarified that the part of the development plan review process as the project moves through the Planning Commission and City Council includes a grading and drainage plan as a requirement of approval. During that process, the plan can make sure the additional hard space is not affecting other properties; an erosion or drainage problem cannot be created on a neighboring property.

Jim Hater from the Trison Company, which owns adjoining property to the east and north, sees absolutely no negative impact on either Trison parcel.

The Chair closed the public hearing at 6:44 p.m.

d. ZBA Determination of Findings of Fact

Mr. Spencer stated that these are draft finding of fact, and the Board may amend them as they find necessary. The Board reviewed the draft findings of fact. Member Miller proposed that the applicant may want the variance so as not to incur additional cost of using a different plan. Mr. Spencer explained that if the ZBA thinks the only reason the applicant is applying for this variance is because it's cheaper, they can consider standard (4)(a) as not being met. However, there are other factors, such as access and drainage, that the ZBA has to consider along with cost. Mr. Spencer is not sure the applicant has done a cost estimate in going the other direction; however they would need a variance in that direction as well. Member Anderson stated he viewed the addition as appropriate and convenient for the manufacturing work flow; putting the addition anywhere else wouldn't make sense. Member Gorney stated that putting the addition on the east side and getting a variance would be a lot more complicated in terms of drainage and access. Ms. Gorney also agreed that the addition on the north made the most sense for the manufacturing work flow from point to point. Member Sullivan stated that the grade of the slope may not be an issue because a lot of dirt will be moved around the site anyway. Mr. Sullivan is not familiar with the functionality of the plant and will need to take their word that the addition to the east would not work well for them. The Board generally agreed to the wording of (4)(a); Ms. Miller dissented.

The Board generally agreed to strike the sentence under (4)(b) regarding mining.

The Board discussed drainage and run off and expressed concern for Mr. Jess' property and adjacent property owners. Mr. Spencer stated that they could make an engineering review a condition of approval. Drainage will also be part of the development review process at the Planning Commission. The applicant did not object to conditions on approval regarding run off. The Planner will come up with some conditional language to add to the motion as the Board proceeds with its review of the findings of fact.

The Board generally agreed that the addition needs to be at the end of the building to be practical for their workflow.

e. Motion

Motion by Anderson, second by Sullivan, to approve Project 2012-03 ZBA based on the findings of fact contained herein with the following condition:

The applicant shall meet with a professional engineer and design a storm water management system to ensure drainage resulting from the development will not negatively impact adjoining property owners.

Motion adopted by the following yea and nay votes:

Yeas: Anderson, Clem, Gorney, Sullivan

Nays: Miller

2. Review of Lori Silva property at 902 Bridge

a. Staff Presentation

Mr. Spencer suggested Lori Silva and Keith Warner discuss their request with the Board before submitting an actual variance request to get the ZBA's opinion on it. Their request involves changing the configuration of their lots in order to accommodate a structure built over the lot line by the previous owner of both parcels. Mr. Spencer explained that to change a lot line required an administrative process, administered by the Planner/Zoning Administrator, which would go through the parcel division ordinance, even though a piece of property is not being sub-divided in

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this case. This particular project would not meet all the zoning requirements. Both lots are nonconforming; both structures are nonconforming. In this case, the applicants can apply to the ZBA to get the lot reconfiguration completed. Mr. Spencer reviewed the variance standards. Mr. Spencer's opinion is that this request would be stretching the standards because there is no physical condition on the property that makes a variance necessary. He asked the Board if this is a valid variance request by their criteria. The Board did not object to Mr. Spencer's opinion. Some members suggested that the same objective could be accomplished with an easement agreement rather than going through the ZBA.

Mr. Sullivan expressed concern about people using this method to go around the variance process. Mr. Spencer said that generally he explains to applicants what the ZBA looks at for criteria and that they are free to apply for a variance either way. Applicants could foreseeably approach the Board during public comment. Mr. Sullivan clarified that his concern was for the process, not necessarily for this particular situation. He doesn't think the Board should express an opinion before it is formally requested by application. The Board expressed general confidence in Mr. Spencer's ability to advise an applicant when they do not meet the criteria for the ZBA, and that the Board would be unlikely to approve it. However, applicants should always be advised they have the right to apply for a variance anyway.

b. Call for Public Comments

Vice-Chair Clem opened the item to public comment at 7:28 p.m. There were no comments. Mr. Clem closed the item to public comment.

(G) CALL FOR PUBLIC COMMENT ON NON-AGENDA ITEMS

Vice-Chair Clem called for public comment on non-agenda items at 7:29 p.m. There were no comments. Mr. Clem closed public comment.

(H) ADJOURNMENT

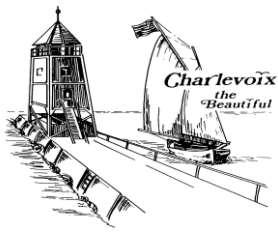
Motion by Anderson, second by Miller, that the meeting be adjourned.

Motion adopted by unanimous voice vote.

The meeting was adjourned at 7:29 p.m.

Richard Clem, Vice-Chairperson

Carol A. Ochs, City Clerk



CITY OF CHARLEVOIX
210 STATE ST. CHARLEVOIX, MICH. 49720

OFFICE OF PLANNING AND ZONING
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ZONING BOARD of APPEALS DECISION AND ORDER

July 18, 2012

Hahn Associates
Alec Amstutz
P.O. Box 125, 08660 Ance Road
Charlevoix, Michigan 49720

Dear Mr. Amstutz,

As you are aware, the Zoning Board of Appeals held a public hearing on July 18, 2012 to review your application for a variance from City of Charlevoix Zoning Ordinance. The variance application was approved with the findings and conditions contained herein. This document serves as formal notification of the ZBA decision in accordance with the City of Charlevoix Zoning Ordinance and the Michigan Zoning Enabling Act.

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.

Please contact the City Planning Office at 547-3265 if you have any questions or concerns.

Regards,

Richard Clem
Vice Chairman of the Zoning Board of Appeals

ZONING BOARD of APPEALS AGENDA ITEM

AGENDA TITLE: Project 2012-03 ZBA Variance Request: 8660 Ance Road

PUBLIC HEARING DATE: Wednesday, July 18, 2012 6:00 PM

- | | |
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| EXHIBITS: | <ol style="list-style-type: none">1. Variance application form.2. Site Plan, architectural rendering, & floor plans.3. Letter of support from John Haggard.4. Letter of support from Jim Hater of the Trison Company.5. Letter of support from Mike Castiglione of Michigan Scientific.6. Project file: 2012-03 ZBA and all contents.7. City of Charlevoix Zoning Ordinance. |
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I. **PROPOSAL:**

The applicants, DCL (Hahn Associates), are requesting a dimensional variance from the City of Charlevoix Zoning Ordinance for the construction of a 122'X66' addition to their existing building on the north side of the property. The property is located in the Industrial Zoning District at 8660 Ance Road. The proposal does not meet Section 5.114 for a side yard setback of 35 feet. The applicant is requesting a side yard setback of 10 feet which is a variance of 25 feet. The applicant proposes to move existing parking spaces from the current location where the addition would be constructed to the east side of the building. If approved, the applicant will then have to follow the development plan review process for approval of the addition.

There has been three letters of support (Exhibits 3-5) and no letters or comments of opposition to the variance.

The purpose of this Staff Report is to evaluate this proposal against the procedures and criteria outlined in Article XI, Section 5.286 of the City of Charlevoix Zoning Ordinance.

SITE:

The subject property address is 8660 Ance Road. This lot is roughly 625'X200' and is located on the southeast corner of Ance Road. (Ance turns 90 degrees.) The applicants also have an additional 18,000 square feet of property on the east side of the building. The property is relatively flat with the exception of a steep slope on the east side of the building.

Air Photo from 2004 (Property lines, addition location and size is approximate.)



Sheet 1 of 1	Project No.:	Sheet Title:	Date:	Drawn By:	 CITY OF CHARLEVOIX 210 STATE ST. CHARLEVOIX, MICH. 49720 (231) 547-3265 PLANNING GIS Coordinate System = IAD 83 Michigan State Plane, Central Zone, International Foot.
		Project:	Scale:	Checked By:	



Proposed addition extending from wood corner to the center of the building.



Steep slope on the property preventing DCL from building the addition to the east.

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

(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 the need for the requested variance is due to unique circumstances of the property. The lot east of the existing building has a steep slope extending down to the east where an old gravel pit used to exist. The change in elevation is approximately 25 vertical feet and the slope is very steep. The topographical conditions make it extremely difficult to expand the building to the east. The parcel is narrow compared to other industrial properties and the lot shape is irregular. There is no evidence to suggest that the applicant is requesting the variance based on their personal or economic situation. The ZBA finds this standard has been met.

- (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 topographic conditions were created prior to the industrial building being built. It is not known when the mining/pit was taking place on the property and mining operations are legally exempt from zoning. The ZBA finds that this standard has been met.

- (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 size of the addition is not excessive for an industrial manufacturing operation. The north side of the addition will still be roughly 30 feet from the road surface. The City Engineer reviewed the plans on July 9, 2012 and did not anticipate any problems with utility lines and future servicing of these lines. 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 district. The addition will not affect driving safety in the industrial park due to the location of the proposed addition. The addition is over 100 feet from the intersection and therefore does not compromise site distance. There is no sidewalk and there are no future plans for sidewalks in the industrial district.

The City Fire Chief and Police Chief reviewed the proposal on July 9, 2012 and did not have any safety concerns.

Without the addition to the north the facilities and the manufacturing business cannot keep up with the current demand. The location of the proposed addition is the only place suitable for expansion of the current building due to topography and existing site conditions.

(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.*

(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 existing topography challenges and irregular lot shape does not allow for the construction of the addition at 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 intersection. The applicants are proposing an addition that is not excessive for an industrial zone, and not out of place in the industrial park.

Given the size and location of the proposal the ZBA does not anticipate any adverse impacts to other property owners in the industrial park or zoning district.

III. ZBA DECISION:

Motion by Anderson, Supported by Sullivan to approve Project 2012-03 ZBA based on the findings of fact contained herein with the following condition:

The applicant shall meet with a professional engineer and design a storm water management system to ensure drainage resulting from the development will not negatively impact adjoining property owners.

Motion passed 4 for 1 opposed.