

**CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES**  
**Tuesday, February 23, 2010 - 6:00 p.m.**  
210 State Street, City Hall, 2<sup>nd</sup> Floor Council Chambers, Charlevoix, MI

**A) CALL TO ORDER**

The meeting was called to order by Chairperson Withrow at 6:01 p.m.

**B) ROLL CALL**

Members Present: Richard Clem, June Cross, Mary Eveleigh, and Greg Withrow  
Members Absent: Gary Anderson, Alternate Larry Sullivan and Alternate Kim VanMeter-Sanderson  
Staff Present: City Planner/Zoning Administrator Mike Spencer

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

Member Clem asked the Board if his residence was too close and to determine if he had a possible conflict. The Board confirmed that as Mr. Clem does not live within 300' of 124 Belvedere Avenue and that he did not have a conflict of interest.

**D) APPROVAL OF AGENDA**

Planner Spencer advised that Board that the By-laws require that officers be nominated. Chairman Withrow agreed to add Nomination of Officers to the agenda under Old Business.

**E) APPROVAL OF MINUTES**

1. Motion to approve or amend January 7, 2010 meeting minutes

The Board reviewed the January 7, 2010 minutes.

Board members asked that the following changes be made to the minutes:

- Page 1 - D) Approval of minutes - The word "the" be added to the first sentence.
- Page 4 – Third paragraph – replace word "expect" with "except"
- Page 6 - Section 5.5 accessory use. Correct typos.
- Page 9 – First paragraph – Sentence to be added at end of paragraph - Member Cross disagreed with this statement and believes that the Board is responsible for protecting property rights and the environment.
- Page 14 – Replace "than" with "then" and "compiled" with "complied".

Motion made by Member Clem and seconded by Member Cross to approve the January 7, 2010 minutes as amended.

Motion adopted by the following yeas and nays vote:

Yeas: Members Clem, Cross and Withrow  
Nays: None  
Abstained: Member Eveleigh

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

**G) OLD BUSINESS**

1. Nomination of Officers

Motion made by Member Cross and seconded by Member Clem to appoint Greg Withrow as Chair. Motion was adopted by a unanimous voice vote.

Motion made by Member Cross and seconded by Member Withrow to appoint Mary Eveleigh as Vice-Chair. Motion was adopted by a unanimous voice vote.

City Planner Spencer advised the Board that a Recording Secretary will continue do the minutes.

Member Eveleigh advised that Board that upon adoption of the new by-laws, the Board will have to elect a Secretary.

**H) NEW BUSINESS**

1. Project 2010-01ZBA. Variance Request: Keith and Alice Sherwood.  
124 Belvedere Avenue. Northwest corner of Hurlbut and May Street.

a. Staff presentation.

City Planner Spencer reviewed the variance request with the Board. The parcel is a through lot and has been in existence for many years. The lot has street frontage on three sides. Variances are being requested in the rear and side yard setbacks. The lot has a steep hill sloping down toward Belvedere Avenue to the north. The front lot line is located along Belvedere Avenue. The rear lot line is on East Hurlbut Avenue. May Street is adjacent to the side lot line.

The City Planning Office has received no written or oral comments on this project.

**STAFF ANALYSIS:** This property is somewhat unique in that it has streets bordering it on three sides and has a steep slope extending down to the north on Belvedere Avenue. Based on requests from property owners in this area and the topographic problems with the existing hill, the Planning Commission and City Council approved an amendment to the zoning ordinance making Belvedere Avenue the front yard on Block 5 of Masons Addition and Block 21 of Newmans Addition. This property is in Block 5 of Masons Addition so it is affected by that amendment.

Secondly since this is a corner lot, the front yard and side yard setbacks have to be equal under Section 5.43(3), or 25 feet along May Street. The intent of this regulation is to ensure adequate setbacks for site distance on street intersections. In this situation, this leaves a very narrow building footprint to work with. This narrow building footprint, combined with the steep hill bisecting the property, are the reasons why the applicant could not adhere to the dimensional requirements of the zoning ordinance. It is just not practical to build a detached garage at the base of the hill along Belvedere. The 35' rear setback also does not provide enough space on the top portion of the hill to construct an attached garage on the south side of the home.

b. Presentation by applicants. (If requested)

Jodi Alger, representing Keith and Alice Sherwood reviewed the project with the Board.

Member Clem asked for clarification on the width of the proposed garage. The ordinance asks that any variances be the minimum amount necessary. Member Clem asked if the garage door could be

narrower? Ms. Alger stated that the garage will be used for the storage of lawn mowers, bikes, as well cars.

- c. Call for public comment. - None
- d. ZBA determination of findings of fact.

The Board asked for clarification on the variances being requested. City Planner Spencer advised the Board that the applicant is seeking a 19' side yard variance and an 11' rear yard variance. The Board discussed the ordinance provision that requires the Board to grant only minimal variances needed to permit the applicant reasonable use of the property. The Board reviewed what would be a "reasonable" garage width and if the garage could be extended further to the south.

City Planner Spencer asked the Board to review Exhibit 3 – floor plan. The Board reviewed the floor plan of the existing and proposed additions and discussed what would be an excessive variance.

The Board reviewed the 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 including steepness, narrowness, and topography, and is not due to the applicant's personal or economic situation. The ZBA finds that this standard is met since there is a steep slope bisecting the property which creates a practical hardship for the applicant. 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. The requirements of a 25 foot side yard setback along May Street leave a very narrow building envelope. The 35 foot rear setback does not provide enough area for a garage on the top portion of the hill. 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 property and structures were in the same size, shape, and proportion long before the City of Charlevoix enacted the zoning ordinance. The tax assessment records indicate the lot and associated structures were created long before the zoning was enacted within the City. The application states that the home was built in the 1940s, and subsequent additions extend to the north and did not result in zoning violations.

- (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 proposed garage will not extend toward Hurlbut any closer than the existing home and other garages within the same block are located closer to the street than this project. The applicants are proposing a two car garage which is typical for a residential property, and not out of place in the current neighborhood. The height of the garage is much smaller than the height of home. 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.

The ZBA finds that typical garages are 24 feet wide; therefore a 26 foot wide garage is not the minimum variance necessary. The ZBA finds that a 17 foot side yard variance is required for a 24 foot wide garage. Due to the narrow building envelope the applicant is allowed a 14 foot rear yard setback variance.

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 the steep hillside on the north and east sides of home render a large majority of the lot unbuildable and unusable for an addition and attached garage. Strict compliance with the setbacks does not allow a wide enough building footprint for the garage and addition. Approval of the variance will not result in any sight distance problems with automobiles or pedestrians on the street intersections. The proposed garage will not extend toward Hurlbut any closer than the existing home and other garages within the same block are located closer to the street than this project. The applicants are proposing a two car garage which is typical for a residential property, and not out of place in the current neighborhood. The height of the garage is much smaller than the height of home. 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.

e. Motion.

Motion by Member Clem supported by Member Cross that Project 2010-01 ZBA is hereby approved with the following conditions.

- The garage width shall be reduced to 24 feet and no structure shall be located within 8 feet of the east property line.
- The new construction shall not be located within 21 feet of the south property line.

