

**MINUTES OF THE MEETING OF THE ZONING BOARD OF APPEALS,  
TUESDAY, OCTOBER 20, 2009  
6:30 P.M., IN COUNCIL CHAMBERS, CITY HALL,  
MIDLAND, MICHIGAN**

**1. ROLL CALL**

**PRESENT:** Board Members - Green, Higgins, Holthof, Lichtenwald, and Steele

**ABSENT:** Board Members - None

**OTHERS PRESENT:** Cindy Winland, Consulting Planner, Debbie Marquardt, Technical Secretary and 8 others.

**2. APPROVAL OF MINUTES**

It was moved by Steele and supported by Higgins to approve the minutes of the July 21, 2009 meeting as corrected on the findings of fact. Motion was unanimously approved.

**3. PUBLIC HEARINGS**

The Chairman explained the public hearing procedures and how the Board decides if the variance request is approved based on the five Zoning Ordinance criteria. Mr. Green reinforced that the variance goes with the property and not with the property owner.

- a. **No. 09-07** – Junior Achievement of Central Michigan for an area-dimension variance for a side yard setback on a corner lot at 501 Townsend and 502 Rodd Streets.

**Background:** Cindy Winland showed an aerial photograph of the subject property. The zoning on the property is Office Service and is completely surrounded by Office Service zoning. The Future Land use map shows this area as the Downtown district. The structure was a law office prior to its new location. It was moved kitty corner across the street.

**Criteria for granting a variance:**

- (1) Will strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters unreasonably prevent the owner from using the property for a permitted purpose?  
Staff noted that this lot could not accommodate this structure without a variance. JA is going to use the entire lot for office service purposes.
- (2) The variance will do substantial justice to the applicant as well as to other property owners.  
The applicant noted that the relocated building has a history to it. The house is similar in size and character to other houses in the area. This is a permitted use by right in the neighborhood and it is a good use of space, property and structure.
- (3) The variance requested is the minimum variance to provide substantial relief to the applicant and/or be consistent with justice to other property owners.  
Both the applicant and staff said this provision is met because they have removed as much as possible from the house to fit it into the space.
- (4) The need for the variance is due to the unique characteristics of the property not generally applicable in the area or to other properties in the same zoning district.  
The property has been residential since the early 1900's and now it is office service. They have acquired two lots to create as much space as possible.

- (5) The problem and resulting need for the variance has been created by strict compliance with the zoning ordinance and not the applicant.  
The applicant could only build an office building 20 foot wide and meet the required setbacks. This is an attempt to reuse a structure on an existing lot.

**Questions from Board:**

Mr. Higgins asked about the future land use map and should they take that into consideration. Winland explained that the reason the Future Land Use map is shown is to let the ZBA know how the property is planned for the future so that a variance does not impede future uses. Higgins said that since the area is shown as planned for the Downtown district in the future, there would be no inconsistencies in the setback if the variance is granted since it is the same for a street side yard in the Downtown district.

Mike Rush, President of Junior Achievement of Central Michigan spoke. He would like to explain the timing of the request of the variance. The land was donated on August 14<sup>th</sup>. Following that, JA raised \$180,000 to move the house. This is a one time chance for the organization to acquire a structure and land.

Mr. Higgins asked if they considered building on that property. They did not because they were offered the home and they could not have gotten the funding to build a new structure or purchase additional land.

Mr. Holthof asked if they were aware of the setback requirements. Mr. Rush stated they weren't until they decided what part of the building would be lopped off. Then they got the drawings together. They didn't look at purchasing other properties. The other properties adjacent to them have homes on them. Mr. Holthof said there are opportunities to purchase additional properties to situate the house on the lots and meet the yard requirements.

Mr. Green asked what the purpose of the house would be. Mr. Rush stated that it would be JA's main offices and house staff, volunteer training and hold programs.

Keith Wirth, Three Rivers Corporation prepared the documents for the meeting. The house is facing Indian Street. The front is encroaching over the set back by 7 feet 3 inches. The house next door is beyond the setback. No matter how they rotated the house this is the least amount of setback variance they could request. This house is going to be 2,500 square feet, including both floors. To build a 28 foot wide structure in the same location with the same variance would not be feasible for them cost wise. The proposed JA house will be sitting in just about the same footprint of the previous houses that was on the lot. The ZBA noted that the front lot line actually faces Townsend, according to the way the ordinance is interpreted.

Mr. Holthof asked if they should table the item until the site plan is approved. Mr. Wirth stated that they have been in constant communication with the city and they have had positive feedback on their plans. They will have to talk with MDOT about taking the main entrance off of Indian. Winland stated that it is customary and logical that a variance would be obtained prior to site plan approval and the applicant had been instructed to proceed this way by staff.

The Chairman closed the public hearing and directed the ZBA to enter into findings of fact.

Findings of Fact:

1. The property is in the Office Service zoning district.
2. The property is a corner lot.
3. The proposed location of the house is approximately the same setback as other buildings in the area.
4. It is a 60 foot wide lot.
5. It is an old house moved to the lot which is approximately 35 feet wide.
6. The speed limit on Indiana is 35 feet per hour.
7. They plan to merge the two lots.
8. The future goal of the city is to move this to a downtown district.
9. This house is adjacent to the RA-4 district.
10. The house was moved on September 14<sup>th</sup>.
11. The house is sitting on wooden blocks.
12. The zoning on the adjacent lots are Office Service zoning.

**It was moved by Higgins and supported by Steele to approve Petition No. 09-07 based on the findings of fact for an area/dimension variance at 501 Townsend and 502 Rodd Streets.**

Mr. Holthof stated that Junior Achievement is a great organization. The city is trying to move this from Office Service to Downtown, where there is also a 25 foot street side yard setback required. City Council is well aware of the constraints of the downtown area. He sees this as a new structure. There are opportunities to acquire the amount of property they need. The applicant has other options so maybe this should be tabled.

Mr. Rush stated that it puts them further back with the construction in the winter months if the request is tabled. He would like the answer sooner than later so they could get the building on a foundation. It will take about two months of work before they move in.

Mr. Steele stated that in general he thinks it is a fairly unique situation. It is a good utilization of resources. They could not use that site to make any kind of building that would be as cost effective. It is a nice looking building and it would be nice to keep it.

Mr. Lichtenwald thinks the criteria are met.

Mr. Higgins stated that the first criteria would make a narrow office. It would be a problem to build an office on the lot unless they purchased the lot next door. The variance does do justice to the applicant. The builder tried very hard to get the building in there.

Mr. Holthof has problems with it impacting Indian Street. The other issue is that there is nothing unique about the lot since all the lots in that area are 60 feet wide. The problem is self created because they are trying to put too much on this lot. He suggested that the ZBA add a condition to the request that the structure is placed with a zero setback on the northern side lot line in anticipation of the area being zoned Downtown one day. That way the structure will meet the setback requirements for the street side yard and the interior side yard in the current and future zoning district. Winland stated that the ZBA is not permitted to make this type of change to an applicant's request. If that request is made it will require a new public hearing notice. In this case the applicant is requesting a yes or no answer to the question at hand.

Mr. Green stated that the lot is not unique but what they are putting on it is. It is a difficult one. There is not a big difference in the impact of where the house was and where it is proposed.

Voting on the motion.

Green: Yes

Higgins: Yes

Holthof: No

Lichtenwald: Yes

Steele: Yes

The motion to approve Petition 09-07 was approved by a vote of 4-1.

- b. **No. 09-08** – Michael John Seymour for an area dimensional variance for an accessory structure at 8505 Sturgeon Avenue.

**Background:** Cindy Winland showed an aerial photograph of the subject property. The applicant is asking for a variance of 400 square feet to the size of an accessory structure. The applicant agreed to remove the current accessory structure. This parcel is 1.2 acres in size. There is plenty of space to meet the required setbacks.

**Criteria for granting a variance:**

- (1) Is strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose?  
The applicant answered that there is more than enough room to build the shed and it won't bother the surrounding neighbors. Staff noted that the property is being used for single family purposes.
- (2) The variance will do substantial justice to the applicant as well as to other property owners.  
With this new shed he will be able to store his trailers and campers so they are not outside for everybody to see.
- (3) The variance requested is the minimum variance to provide substantial relief to the applicant and/or be consistent with justice to other property owners.  
The applicant agreed with this statement. Staff thought that this was not the minimum necessary and in fact, no increase in size necessary.
- (4) The need for the variance is due to the unique characteristics of the property not generally applicable in the area or to other properties in the same zoning district.  
The applicant stated that it is a low density area and it would not hinder any other property owners. Staff stated that this lot is larger than most in the City overall but there is nothing unique about the property. There are provisions in the ordinance to address accessory structures on lots over 2 acres.
- (5) The problem and resulting need for the variance has been created by the Zoning Ordinance and not the applicant.  
Staff stated that the applicant could remove his current shed and build the new one with 800 square feet and be in compliance with the Zoning Ordinance.

**Questions from Board:**

Michael Seymour, 8505 Sturgeon Avenue spoke. The three lots facing Sturgeon Avenue have nothing to do with the subdivision on Tobaggan Run Drive. He is asking for a structure 10 feet wider to make it 30 feet wide to give him 400 extra square feet to put the trailer and camper in the building so it is out of the way so the neighbors don't have to look at it. There is only one shed on the property right now. He would meet all the setback requirements and he also meets the percentage of the property used in the rear.

Mr. Holthof asked about the description of the property. The property was annexed to the City and now it is all one piece.

Mr. Holthof asked if they considered increasing the garage. Not at this time. They would like to do something in the future to the house. The garage is currently a one car garage.

Mr. Higgins also asked if they considered adding on to the existing attached garage to achieve more storage space. This would not require a variance.

Mr. Holthof was unhappy with the applicant's responses on the application, feeling they were not thorough enough. Mr. Holthof suggested that the rear yard setback was not enough and asked the applicant if he would be willing to move the structure 12' from the rear property line if the variance was granted. Mr. Seymour would be willing to go further from the rear yard setback.

The Chairman closed the public hearing and directed the ZBA to enter into findings of fact.

Findings of Fact:

1. The property is zoned Residential A-1.
2. This property plus surrounding property on all three sides is City Forest.
3. The land across Sturgeon Avenue is not in the city.
4. The property is less than 2 acres, many lots in the area are similar in size.
5. The inhabitable part of the house is 1,700 square feet.
6. One communication and the person indicated they were not opposed to the variance.
7. The lot is 1.2 acres.
8. The maximum size structure would be 800 square feet.
9. The other shed would be removed.

**It was moved by Holthof and supported by Steele to approve Petition No. 09-08 based on the findings of fact for an area/dimension variance at 8506 Sturgeon Avenue with the condition that the setback for the rear and side yard is 12 feet and the existing accessory structure is removed.**

Mr. Higgins would agree with all of the comments and feels none of the criteria has been met.

Mr. Holthof doesn't have a problem with the criteria other than it is self created.

Mr. Higgins stated that other people in that area would want a storage shed that size if this one was approved.

Mr. Steele stated that there was a case about a year and a half ago and they granted that one. Are there any similarities? Each case is supposed to stand on its own merit. In the

other case there was a desire to secure his vehicle and equipment. It was a bigger lot and an odd shaped one.

Mr. Lichtenwald had no comments.

Mr. Green stated that he has some issues with this one and it does not meet any of the criteria.

Voting on the motion.

Green: No

Higgins: No

Holthof: No

Lichtenwald: Yes

Steele: No

The motion to approve Petition 09-08 was denied by a vote of 1-4.

**4. PUBLIC COMMENTS (not related to items on the agenda)**

None

**5. OLD BUSINESS**

None

**6. NEW BUSINESS**

2010 Zoning Board of Appeals meeting schedule.

Motion by Holthof, seconded by Steele to accept the proposed meeting dates as provided by staff. Motion passed unanimously.

**7. DECISION SHEET SIGNATURES**

**a. 09-06 review Findings of Fact**

Item 9 needs to be changed to correspond to the change in the minutes of the July, 2009 meeting.

**8. ADJOURNMENT**

Hearing no further business, the Chairman adjourned the meeting at 8:05 p.m.

Respectfully submitted,



Cindy Winland  
Consulting Planner