

**SHIAWASSEE COUNTY  
ZONING BOARD OF APPEALS MINUTES  
JANUARY 9, 2013**

1. **CALL TO ORDER/ROLL CALL:** Chair Martin called the regularly scheduled monthly public hearing of the Shiawassee County Zoning Board of Appeals (“ZBA”) to order at 7:00 P.M. within the County Board of Commissioners meeting room, 201 N. Shiawassee Street, in Corunna, MI. **ROLL CALL:** **Present:** Larry Gramer, Gerald Wardell, Julie Hales-Smith, N. Bradley Hissong, Fred Junger and Henry W. Martin III. **Absent:** Ann Gamboe Hall. Also present: Peter J. Preston/Community Development Director and Linda Gene Cordier/Zoning Administrator.
- 1a. **EXCUSED ABSENCE:** Cordier informed the chair the office had not received a phone call from Hall. Chair Martin stated no action would be taken this evening.
2. **CONFIRMATION OF LEGAL NOTICE:** Cordier stated the legal notice of the public hearing was placed within the Shiawassee County Independent on Sunday, December 23, 2012; verification was on file. Chair Martin declared the meeting legally published.
3. **APPROVAL OF AGENDA:** **Motion:** Julie Hales-Smith moved to approve the agenda as printed. **Support:** Larry Gramer. Motion carried: 6 ayes, 0 nays.
4. **APPROVAL OF BOARD MINUTES:** **Motion:** Larry Gramer moved to approve the November 14, 2012 board minutes as printed. **Support:** Julie Hales-Smith. Motion carried: 6 ayes, 0 nays.
5. **PUBLIC COMMENTS ON NON-AGENDA ITEMS:** None.
6. **COMMISSIONER COMMENTS:** None.
7. **OLD BUSINESS:**
- 7a. **Application #ZBA12-012**  
**Applicant/Owners** – Community State Bank, c/o Jeanne Weber, V.P.; St. Charles, MI  
**Site Location** – 667 East Six Mile Creek Road, Owosso, MI  
**Tax Id.** – 78-003-18-400-004-01; Section 18, New Haven Township  
**Request** – Multi-Dimensional Variance Request:  
**Variances Requested** –
  1. Variance from the minimum required road width/frontage requirements (Required 150 feet; Proposed – 72.82 feet)
  2. Variance from the Lot Width to Depth Ratio for a parcel under 20 acres in size (Required 4-to-1 ratio; Proposed lot size – 72.82’x855.87’ longest side)**Ordinance Reference** – Section 3.2 (Schedule A) and Section 5.2.7.  
Tabled from November 14, 2012

Cordier presented the staff report highlighting the application request, history of the property dating back to May of 2001 when the Land Division was approved and signed creating this parcel (182’x600’). At that time the proposed parcel would have complied with the minimum road width/frontage within the R-1A district and with the Lot Width to Depth ratios. A Zoning Permit, submitted by Stoddard Mobile Court and Sales on behalf of Doug Hickmott, was approved in July of 2001 for the placement of a single-family dwelling on the parcel known as 667 E. Six Mile Creek Road. The Zoning Permit was signed by Christina Volek, the County

Coordinator, at that time due to the fact the former Zoning Administrator (Don Platt) was on medical leave.

It was brought to the Community Development Department's attention in 2009 that false information may have been provided to the department with regard to the lot size. That the parcel lot width/frontage was 72.82 feet in width and not 172.82 feet as presented at the time the zoning permit application was submitted. A review of the file reflected that someone had added a one (1) in front of the 72.82 feet on the legal description and survey. The office did not have an original; it was a copy. Notification was mailed to Donna Hickmott of the discrepancy; however, no response was received.

In October of 2009, further review of the property file found a second violation to exist. It was discovered that the driveway accessing the site was not located entirely on the parcel and that a portion of the drive crossed over the front parcel. A second notice was mailed to Donna J. Hickmott. Again, no response was received. Staff determined that the parcel size violated the Lot Width to Depth ratio (4-to-1) based on the parcel's road width/frontage.

In 2012, the Community State Bank contacted the office to see if there were any outstanding violations or issues with the property. Staff informed the bank of the zoning issues. The bank submitted a multi-variance request with regard to the three issues and the request was placed on the November 2012 agenda. After the public hearing, the bank withdrew the variance request pertaining to the driveway setback. Cordier stated it was her understanding that since the November hearing, the bank has relocated the driveway on the property to meet the side yard setback of 15 feet.

Cordier concluded that the bank is in need of the two remaining variances in order to sell the home. Approval of the variances would clarify the parcel as a legal nonconforming lot and would allow future owners the option of applying for zoning, building, or trade permits in the future. Appearance wise; nothing will change if the variances are granted. The parcel and home have been in existence for 10 plus years. Asking the home to be torn down and/or removed from the site is not a reasonable solution to the problem. Additional road frontage is not an option as the lots in the area are small. Combining it with an adjoining parcel would be creating a non-conforming parcel based on a new configuration of the parcel size. Reduction of the lot to bring the property closer into compliance with the lot width-to-depth ratios is not an option based on the location of the home on the parcel, which is just within the requirements of the rear yard setbacks. Denial of the request may result in further legal action should the bank decide to take it to Circuit Court. Staff is recommending approval of the request. Cordier noted that although the Findings of Fact were completed in November, the board did have the option of going through them again if they wished to do so.

Chair Martin asked Jeanne Weber, Vice President of the Community State Bank, if she had additional comments to present to the board.

Weber stated the bank's concern was as presented to them from the real estate agent. Unless the issues are resolved so the lot is considered legal, a buyer would not be able to purchase home owner's insurance. If the home were to be destroyed, the owner would not be able to replace the home unless a variance were granted to re-build on the lot. The owner would have to take a chance that they could rebuild.

Chair Martin opened the floor for public comment in support of the request. Hearing none,

Martin opened the floor for public comment in opposition of the request. Hearing none, Martin called for township input.

Dan Winters, New Haven Township Planning Commission Chairman, stated the position of both the New Haven Township Planning Commission and the New Haven Township Board remained the same. The township was opposed to approval of the variances (a 5/0 vote to deny by both boards). The township is concerned that if this is approved it will open the door for others to submit fraudulent documents to obtain permits in hopes of never being caught.

Chair Martin asked Weber if she wished to comment.

Weber responded that the bank was the victim in this case. It was obvious that errors had been made as the result of the previous owner and that maybe due diligence had not been done, but the variances were needed so the property could be sold.

Chair Martin closed the public hearing and called for board deliberation.

Hales-Smith asked if the sole reason for the variances was so a purchaser could obtain home owner's insurance?

Weber said yes, mortgage companies require a home to be insured. If they can't obtain insurance for replacement value should the home be destroyed; they wouldn't be able to obtain a mortgage.

Hales-Smith asked what would happen if the variances were denied in terms of the property.

Weber said it would devalue the property and the neighborhood.

Hissong asked if the property was considered nonconforming; would someone be allowed to rebuild?

Junger responded that if the variances were granted, the property is considered legal nonconforming. It would allow someone to rebuild or apply for other permits in the future.

Preston agreed. The board is being asked to consider the lot size. Currently the parcel does not conform to the zoning ordinance; however, if the variances were granted it would be considered legal nonconforming and would allow the office to consider future permit applications.

Hissong questioned what would happen if the variances were denied. Would the home just remain empty?

Preston reminded the board that they had asked last November if there had been a title search disclosing the issues. Without the variance approval, no building activity would be able to take place. A house was allowed to be placed there by staff over 10 years ago. How it happened is not known, but the permit was signed and approved by the department. Maybe prior staff did not have the resources or knowledge of the discrepancy. The office would still have the enforcement for removal of the home if the variances were denied. Preston reiterated that the home has been on the site for over 10 years.

Junger noted that there may have been other departments at that time that didn't do a thorough

job when the permits were applied for and would appear there was more than one person to blame. The Road Commission didn't follow through with location of the driveway.

Cordier replied that the Road Commission was responsible only for site/access location. There only concern was the driveway would have had to meet the 15 foot setback from the boundary lines at the road. Beyond that was not there responsibility. As the driveway extended to the back it veered off the property line and crossed over the front parcel. Cordier noted that the owner of the front parcel was a relative at the time this home was being constructed.

Gramer discussed the survey and wondered if the title company reflected the discrepancy.

Preston answered that the document and survey reflected someone added a one (1) in front of the 72.82 feet. Unless it was disclosed to the title company, it wouldn't show up; however, the bank would have to disclose this information to the buyer.

Junger asked if the department had taken steps to prevent this from happening again.

Preston answered yes.

Hissong commented that it appeared the contractor came in and pulled the permits, the permits were approved, the homeowner went to the bank for the loan, and now there is a home on this parcel.

Junger directed his question to Dan Winters and wondered what the township would gain if the variances were denied and the home remained empty.

Winters replied the township felt there were other options available. The permits were granted under fraudulent information. The township doesn't want other people to think they can try to do the same thing.

Junger noted that it was up to this board to determine if it complied with the R-1A District requirements within Section 2.9. and the uses outlined in Table 2-2. Would granting it hinder future use of the property?

Preston responded that without variance approval, future building and zoning permits would be denied. The only other option is removal of the home. It couldn't be combined with another parcel unless the home was removed because the ordinance only permits one home per parcel. If denied it will more than likely end up in Circuit Court first.

Discussion continued on the lot size, flag lots and verification that the driveway had been relocated.

**FINIDNG OF FACTS:**

- 1) How the application of the Zoning Ordinance creates unnecessary hardship or practical difficulty in the use of the petitioner's property.  
**Staff: The petitioner has limited means of remedying the violations that exist on the petitioned property without variances granted from the Zoning Board of Appeals. If denied, the petitioner's next available option would be to file an appeal in Circuit Court. Information provided to the Community Development Department at the time the property was being developed in 2001 was based on false information. Zoning violations were brought to the attention of the owner in 2009**

**and given the opportunity to appeal, but never responded. The parcel was created under fraudulent means. The petitioner now has control over the property and has limited means to resolve the violations. It appears it cannot be transferred unless it meets zoning ordinance regulations. The ordinance was not enforced at that time. Asking to have the modular home moved off site is not reasonable. It wouldn't have a towing mechanism underneath. Based on the current road frontage is what has caused the four-to-one ratio violation. The next step to remedy this would be appeal to Circuit Court. The parcel has had a single-family dwelling on it for 11 years.**  
ZBA Findings: Concur with staff's findings.

- 2) Identify the unique physical circumstances or conditions or exceptional topography that create practical difficulties.  
**Staff: The practical difficulty is that false information had been given to the department by the prior owner of the property allowing the property to be developed. Since that time, it was discovered that the parcel was in violation of the Zoning Ordinance for lot width/frontage requirements, driveway access, and lot width to depth ratios. The driveway has since been relocated to comply.**  
ZBA Findings: Concur with staff's findings.
- 3) Specific findings (characteristics of the land) showing that because of the physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance. That the authorization of a variance is, therefore, necessary to enable the reasonable use of the property and that the condition is specific to this property and not general to other properties in the area.  
**Staff: The bank has foreclosed on the property and found out there were unresolved zoning violations. Until the violations have been resolved either via Zoning Board of Appeals approval and/or Circuit Court, the property would remain as an illegal nonconforming parcel. The petitioner has the option to seek Circuit Court action.**  
ZBA Findings: Concur with staff's findings.
- 4) Finding that the practical difficulty was not created by the applicant and is related only to property that is owned or occupied by the applicant.  
**Staff: The property was foreclosed upon by Community State Bank at which time the zoning violations relating to the petitioned property were made known to the bank through a title search. It may not have been made known to the bank until the title search.**  
ZBA Findings: The board concurred with staff's findings.
- 5) A statement of the impacts of the variance if authorized, the property values, use and enjoyment of the property in the neighborhood or district, and on the public, health, safety and welfare.  
**Staff: The property has already been developed; the driveway has been relocated within the boundary of the property. Permits to construct were issued based on false information. No additional impacts to the area are anticipated. The parcel was developed under fraudulent means based on illegal lot size and encroachment.**  
ZBA Findings: Leaving the home vacant would be a detriment to the township and neighborhood. The board concurred.

- 6) The proposed variance does not permit the establishment of any use which is not permitted by right within the district or any use or dimensional variance for which a special use permit is necessary.  
**Staff: Single-family dwellings are a permitted use within the R-1A district. Again the property was developed under false information. Variances are needed to rectify the zoning violations that exist (four-to-one ratio and lot width/frontage) to allow the petitioner the ability to sell the home.**  
 ZBA Findings: Concurred with staff's findings.
- 7) Findings on whether the proposed development complies with the requirements, standards, or procedures given in the Zoning Ordinance or an interpretation of the disputed ordinance provisions, if applicable.  
**Staff: Information provided to the Community Development Staff in 2009 noted that the legal description had been altered by writing in a "1" in front of the "72". Actual frontage being "72" feet. Also, the driveway access crossed over the boundary of the property and was not in compliance with the 15 foot setback requirement. It appears the driveway issue has been remedied.**  
 ZBA Findings: Concur with staff's findings.
- 8) Findings on any error in judgment or procedure in the administration of the relevant zoning provisions.  
**Staff: Administration had relied on information provided to them at the time of development for accuracy. Administration later was informed the legal description for road width/frontage and setback requirements for a private driveway were inaccurate. Administration notified the owner of the discrepancies in an attempt to remedy the existing violations in 2009 with the aid of the township.**  
 ZBA Findings: Concur with staff's findings.
- 9) The possible precedents or affects which might result from the approval or denial of the appeal.  
**Staff: Precedent would result of both approval or denial of the appeal based on:**  
**1) Approval may result in other petitioners that willfully submit false information to obtain the necessary zoning and building permits for construction or through the Land Division process for creation of illegal lot sizes for future build sites.**  
**2) Denial of the appeal, however, would deny the use or severely limit any use on the petitioned parcel.**  
**The variances are needed to allow the bank to dispose of the property and have a legal nonconforming parcel.**  
 ZBA Findings: If the home were to remain vacant could affect the adjoining property owners. Concur with staff's findings.
- 10) Findings on the impact if the appeal is approved, on the ability of the County or other governmental agency to provide adequate public services and facilities and/or programs that might reasonably require in the future if the appeal is approved.  
**Staff: It is staff's opinion that no impact on the County or other agencies would incur as the property has already been developed and will not be expanded. The property has been developed for over 10 years.**  
 ZBA Findings: Concur with staff's findings.

**Additional Standards for Review:**

1. **Reasonable Use-** Can the property be used in a manner consistent with existing zoning without the need of a variance?

**Staff: The property was developed as single-family residential. Variances are needed to rectify the existing violations. If denied, the parcel is considered illegal and enforcement by the department would be pursued.**

ZBA: Board concurred with staff.

2. **Uniqueness-** Is the need for the variance due to a unique circumstance and not general to conditions of the neighborhood.

**Staff: False documentation was provided to the Community Development Department at the time of proposed development for a single-family home in 2001. The property is in foreclosure. Variances are needed to resolve the issues so the property can be sold. At that time the County did sign a permit to allow construction to commence. The county has not found any other similar situations as the request before them.**

ZBA – Concur with staff’s findings.

3. **Essential Character Affected-** Will the variance effect the essential character of the surrounding area?

**Staff: Again, Zoning and Building Permits were approved in 2001 for the placement of a modular home and garage based on false information. The area will not change in character.**

ZBA – Leaving the home vacant would be a detriment to the area. The board concurred with staff’s findings.

4. **Self-Created Hardship-** Is the hardship or practical difficulty the result of the applicant’s own actions with respect to the request.

**Staff: The applicant was the lien holder of the property and may not have been aware of the zoning violations that were in existence until the property was foreclosed upon. The bank may have relied on the signed zoning and building permits at the time of the mortgage.**

ZBA: Concur with staff’s findings.

Gramer asked how the department plans to oversee applications in the future so this doesn’t happen again. Gramer noted that he has 30 years as a Zoning and Building Official and is responsible for one township; however, the county is responsible for 14 townships. Gramer noted that within his 30 years he has never received a falsified document.

Preston informed the board that before someone can apply for a zoning and building permit verification of a Land Division or legal lot is reviewed. Preston noted that Cordier reviews all legal documents and he can verify that she checks them diligently for zoning compliance before permit approvals.

**Motion: Larry Gramer** moved that the Multi-Dimensional Variance request from the required road width/lot size requirements for a parcel within the R-1A Zoning District and from the Lot Width to Depth Ratios for parcels under 20 acres in size as outlined within the 1999 Shiawassee County Zoning Ordinance requirements (Section 3.2., Schedule A/Lot Frontage and Section 5.2.7., Lot Frontage/Depth Ratio, submitted by Jeanne Weber, V.P. on behalf of the Community State Bank of St. Charles, MI (applicant/property owners) with respect to Tax Identification #78-003-18-400-004-01, Section 18, New Haven Township, and located at **667 East Six Mile Creek Road, Owosso, MI 48867, approving the following:**

- 1) **The lot width/frontage along Six Mile Creek to be 72.82 feet; a variance of 77.18 feet;**
- 2) **Lot size of 72.82' x 855.87'/longest side; a variance of 564.59 feet from 4-to-1 ratio**
- 3) **Driveway location inspected by the department to verify the minimum 15' side yard setback has been met.**

be **approved** pursuant to Section 18.4.5. of the 1999 Shiawassee County Zoning Ordinance, as amended, based upon the Findings of Fact within Section 18.4.6, and additional testimony received from the public hearing. **Support: Julie Hales-Smith.**

**Roll Call: Ayes to approve:** Gerald Wardell, Brad Hissong, Fred Junger, Julie Hales-Smith, and Larry Gramer. **Nays:** Henry W. Martin III. Motion carried to approved: 5 ayes, 1 nay.

**Discussion:** The board asked staff to conduct a site inspection to verify the driveway had been relocated to meet the minimum 15 foot side yard setback requirement from a boundary line. Preston replied the department would verify the driveway location complied with ordinance regulations.

**Introduction of New Member:**

Chair Martin introduced Fred Junger to replace the vacancy of Willis Miller. Miller was term limited. Board members introduced themselves, stated what township they resided in, and gave a provided a brief statement of their background.

**8. NEW BUSINESS:**

**8a. Election of Officers**

Chair Martin opened the floor for nomination of Chairman.

**Motion:** Larry Gramer moved to elect Henry W. Martin III as Chairman for one year. **Support:** Julie Hales-Smith. Motion carried: 6 ayes, 0 nays.

Chair Martin opened the floor for nomination of a Vice Chairman.

**Motion:** Julie Hales-Smith moved to elect Ann Gamboe Hall as Vice Chairman. **Support:** Brad Hissong. Motion carried: 6 ayes, 0 nays.

**9. INTERPRETATION OF THE ZONING ORDINANCE: None at this time.**

**10. ZONING ADMINISTRATOR REPORT: Cordier stated that no applications were received for the February meeting and asked if the board wished to cancel the meeting. **Chair Martin** moved to cancel the February 13, 2013 ZBA hearing.**

**11. BOARD MEMBER COMMENTS: None.**

**12. PUBLIC COMMENT: None.**

**13. ADJOURNMENT: **Motion:** Junger moved to adjourn. **Support:** Gramer. Meeting adjourned at 7:50 p.m.**

**Recording Secretary:** Linda Gene Cordier

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Henry W. Martin III, Chairman  
Shiawassee County Zoning Board of Appeals

April 10, 2013  
Approval Date of Minutes