

**SHIAWASSEE COUNTY ZONING BOARD OF APPEALS
BOARD MINUTES of APRIL 9, 2014**

1. CALL TO ORDER: Chair Henry W. Martin III called the regularly scheduled monthly public hearing to order at 7:00 P.M. within the County Board of Commissioners' meeting room located on the first floor of the Surbeck Building, 201 N. Shiawassee Street, Corunna, MI.

ROLL CALL: Present: Ann Gamboe Hall, Julie Hales-Smith, Glenn Love Jr., Fred Junger, and Henry W. Martin III. Absent: N. Bradley Hissong.

Also present: Peter J. Preston/Community Development Director and Linda Gene Cordier/Zoning Administrator.

1a. EXCUSED ABSENCES: None.

2. PROOF OF PUBLICATION: Cordier informed the board that the scheduled agenda was published within the Shiawassee County Independent on Sunday, March 23, 2014 and verification was within the file. Chair Martin declared the hearing as legally published.

3. APPROVAL OF AGENDA: Motion: Fred Junger moved to approve the agenda as printed. Support: Ann Gamboe Hall. Motion carried: 5 ayes, 0 nays, 1 absent.

4. APPROVAL OF BOARD MINUTES: Motion: Julie Hales Smith moved to approve the February 12, 2014 board minutes as printed. Support: Glenn Love Jr. Motion carried: 5 ayes, 0 nays, 1 absent.

5. PUBLIC COMMENT ON NON-AGENDA ITEMS: None.

6. BOARD OF COMMISSIONER COMMENTS: None.

7. OLD BUSINESS:

7a. Dimensional Variance #PZBA13-020

Applicants – John and Claudia Claucherty, Okemos, MI

Property Owners – Gladys Claucherty, Okemos, MI

Site Location – V/L Warren Rd., East side, Id. #005-03-100-002-01; Sec. 3, Middlebury Twp.

Request – Create a parcel size exceeding the maximum 2.5 acre lot size requirement within the A-2 Zoning District for a future build site; **Proposed** – 225' width by 560' depth; 2.89 acres

Ordinance – Section 2.7.2.A. of the 1999 Shiawassee County Zoning Ordinance; Minimum 1 acre and not larger than 2.5 acres

Tabled on February 12, 2014

Cordier informed the board that Mr. Claucherty had applied for a Land Division to create a 2.5 acre parcel and it had been approved by the Middlebury Township Assessor. However, the applicant had not submitted a request to withdraw the dimensional variance application request at this time. Preston added that there was no longer a need for the pending variance.

Motion: Junger moved to remove Variance Application #PZBA13-020 from the table. Support: Love Jr. Motion carried: 5 ayes, 0 nays, 1 absent.

Motion: Ann Gamboe Hall moved to deny the Dimensional Variance Application Request (PZBA13-020) of John & Claudia Claucherty seeking a variance from Section 2.7.2.A to allow for a parcel to be increased to 2.88-acres for the purpose of taking advantage of a build site for property located on Warren Rd., Section 3 of Middlebury Township (Parcel Id.# 78-005-03-100-002-01) based upon the following reasoning:

Reasoning: There no longer is a need for the variance by the applicant.

Support: Fred Junger.

Roll Call (Ayes to recommend denial): Ayes: Glenn Love Jr., Julie Hales-Smith, Fred Junger, Ann Gamboe Hall, and Henry W. Martin III. Nays: None. Absent: One. Motion carried to deny: 5 ayes, 0 nays, 1 absent.

7b. Approval of By-Laws for 2014. No action taken by the board.

NEW BUSINESS:

8a. Dimensional Variance #PZBA13-021

Applicant – Gregory P. Roddy, 5299 S. New Lothrop Rd., Durand, MI

Parcel Owner – June M. Roddy, 701 Princeton, Durand, MI

Site Location – 5305 S. New Lothrop Rd., Durand, MI

Tax Id. – 78-012-14-100-004, Section 14, Vernon Township

Request – Create a parcel size with less than the required road width/frontage within the A-2 Zoning District. Proposed – 121.96’ frontage by 242’ depth

Ordinance – Section 3.2., Table 3-1, Schedule A, Minimum road width frontage – 200 feet

Cordier provided a brief staff report. The applicant is seeking a variance to create a parcel that does not meet the minimum required road width/frontage requirements within the A-2 zoning district. Minimum frontage requirements are 200 feet along a public road. Proposed is a lot size width of 121.96 feet. The parcel is developed with an existing dwelling and a small shed behind the home. It is located on the east side of New Lothrop Road within Section 14 of Vernon Township and addressed as 5305 S. New Lothrop Road. The existing parcel currently contains approximately 13.35 acres, which is irregular in shape. There is a 25 foot easement located along the north side of the property to access the remaining acreage as well as an interior parcel known as 5299 S. New Lothrop Road. Directly to the south of the petitioned parcel is the Holly Drain. This irregularly shaped parcel has been in existence since the 1980’s or longer. If the petitioned variance is approved to split the existing home and shed on a lot size of 121.96’ x 242’, the remainder of the acreage would be combined with the interior lot. Cordier stated it would be considered as a land swap so to speak between mother and son. Nothing aesthetically will change in appearance. Due to the Holly Drain and existing home at 4501 S. New Lothrop Road north of Mrs. Roddy’s property, the ability to obtain additional road frontage was not an option.

Chair Martin asked the applicant if he wished to provide a statement at this time.

Gregory Roddy stated his mother would like the ability to give Parcel “A” to one of her granddaughter’s. Roddy informed the board he owned and resided on the interior parcel known as “B” on the 1984 survey. The remaining acreage is contiguous to Parcel “B” and would be combined with his property.

Chair Martin opened the floor for public input in support of the applicant’s request. Hearing none, Chair Martin opened the floor for public input in opposition of the request. Hearing none, Chair Martin asked if input from the township had been received. Cordier answered staff had not

received any township input. Chair Martin closed the public hearing segment and called for board discussion.

Hall questioned the acreage of the petitioned parcel as it currently exists.

Preston noted the tax map reflected it to be approximately 13.35 acres more or less, but wasn't sure of the location of the easement in relation to the remaining acreage. The resulting acreage in essence would be moved from Parcel "A" to Parcel "B" if the variance were approved. In staff's terms it is a swap or flip of land from mother to son so to speak.

Hall asked the applicant about the home on Parcel "A".

Roddy answered that his mother would like to sell the house to a relative.

Chair Martin said if there were no more questions, he would ask staff to review the Findings of Fact.

Findings of Fact: (Section 18.4.6 of the Ordinance).

1) *How the application of the Zoning Ordinance creates unnecessary hardship or practical difficulty in the use of the petitioner's property.*

Staff: The ZBA should discuss the uniqueness of the parcel that has been in existence for over 25 years in relation to the surrounding boundaries that prohibits the applicant to comply with Ordinance regulations. The parcel is already nonconforming. The legal descriptions describing the two parcels are basically being swapped from "A" to "B" so the applicant's mother can split the house off. Parcel "B" is accessed by the easement and the resulting acreage to be combined with Parcel "B" so the area is not landlocked.

ZBA Findings: Junger noted the parcels have been in dating back to at least 1980. The applicant has resided there since 1985. This board would not be changing the setting as it already exists. We can't change the road width as the frontage has been in existence for 35 years or more. The nonconformity is being changed only by changing the two parcels from one to the other. The board concurred with all findings.

2) *Identify the unique physical circumstances or conditions or exceptional topography that create practical difficulties.*

Staff: The ZBA should identify the characteristics of the petitioned parcel such as the Holly Drain creating one or more (if any) of the unique circumstances as it relates to this parcel. Again, the easement and the property configuration have been in existence for a period of time.

ZBA Findings: Love stated the easement will be part of Parcel "B" for access. Junger confirmed that this particular parcel has been in existence for 35 plus years. The board concurred with all 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 ZBA should identify the unique physical conditions or circumstances that are causing the difficulty in meeting the requirements of the Ordinance. This could include the Holly Drain and the configuration of the parcel due to the drain. Again, this configuration

of the two parcels has been in existence for a number of years. In order for the property owner to dispose of the home on Parcel “A”, something has to happen with the remaining acreage. The remaining acreage is being proposed to be attached to the interior parcel owned by the owner’s son.

ZBA Findings: The board concurred with all 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 ZBA will need to determine if the practical difficulty is the result of the applicant or if the practical difficulty is due to the physical surrounding of the area. Again, the Board has discussed the practical difficulty and configuration of the land that has existed over many years. A family member will retain the resulting acreage if the variance is granted.

ZBA Findings: Martin noted the Holly Drain borders the property to the south. Hall added the easement cannot be eliminated as it would land lock the interior property which would create another issue. Martin noted the parcels are family owned and, it may be self-created in a sense, but it has existed in this configuration for many years Hall agreed, but the easement is needed for the interior parcel and that owner has rights as well. The board concurred with all 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: It does not appear there would be an impact on the neighborhood or district. It appears there would be no additional impact on the public health, safety, and welfare within the immediate area either. The petitioned request is to basically swap acreage from one family member to another.

ZBA Findings: The board concurred that there would be no additional demand if the variance were granted. The board concurred with all findings.

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 or which a special use permit is necessary.*

Staff: The petitioned variance does not permit the establishment of any use for which a special use permit is necessary.

ZBA Findings: The board 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: It appears that if the petitioned variance were granted, other than the proposed boundary line changes from one family member to another, everything else would remain the same and the “windshield view” of the property would not change.

ZBA Findings: The board concurred with staff’s findings.

8) *Findings on any error in judgment or procedure in the administration of the relevant zoning provisions.*

Staff: It is not readily apparent that an error in judgment or procedure has been made in administration of the Ordinance.

ZBA Findings: Junger asked if the parcel was in compliance for lot width and easement requirements under a prior Zoning Ordinance. Cordier answered it would have been under the 1957 Zoning Ordinance, however; not all townships came under County Zoning in 1957 and she

wasn't sure the exact year Vernon Township opted to come under County zoning. She believed the 1957 Ordinance required a minimum of 200 feet road width, however, she didn't believe the ordinance covered language on easements. The board concurred with all findings.

9) *The possible precedents or affects which might result from the approval or denial of the appeal.*

Staff: It is not known if there are other parcels throughout the county with similarities as the proposed petition. The board has seen a lot of different configurations in the past; however, this particular parcel is bordered by a County drain on one side and an access easement on the other side.

ZBA Findings: Martin added that this is why the board currently reviews them on a case by case basis. Love felt this was a good solution to the issue rather than let the home set idle. The board concurred with all findings of fact.

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: Approval of the variance does not appear to place additional demands on the County or other governmental agencies to provide public services. The only demand would be if improvements were made on the easement by creation of a public road.

ZBA Findings: The board concurred with all findings of fact.

Motion: Julie Hale Smith moved that based upon the review of the submitted materials, including description of the proposed use and site drawings, the request from Gregory P. Roddy/applicant, on behalf of June M. Roddy/property owner, for a dimensional variance from Section 3.2., Table 3-1, Schedule A, of the 1999 Shiawassee County Zoning Ordinance, as amended, to allow for the creation of a parcel with less than the required road width/frontage requirements in the A-2 District (121.96' x 242') at 5305 S. New Lothrop Road, Durand, MI, from Tax Id. 78-012-14-100-004, within Section 14 of Vernon Township, a variance of 78.04 feet be **approved** based upon the following reasoning and conditions:

Reasoning:

1. The proposal satisfies the basic findings as set forth in Section 18.4.6. of the Ordinance. Any additional reasoning as determined by the Board of Appeals.

Conditions:

1. The resulting acreage to be combined with Tax Id. 78-012-14-100-004-01.

Support: Ann Gamboe Hall.

Discussion: None.

Roll Call: Ayes to Approve: Glenn Love Jr., Fred Junger, Ann Gamboe Hall, Julie Hales Smith, and Henry W. Martin III. **Nays:** None. **Absent:** One.

8b. Dimensional Variance #PZBA14-001

Applicant/Owners – Charles and Pamela Movolson, 2110 W. Beard Rd., Perry

Site Location – 2107 Ellsworth Rd., Perry

Tax Id. – 78-014-22-400-002, Section 22, Perry Township

Request – Create a parcel that would exceed the maximum lot size within the A-2 Zoning District. **Proposed:** 18.335 vacant acres m/l.

Ordinance – Section 2.7.2.A. – Maximum lot size created after June 1999 – 2.5 acres

The staff report was provided by Cordier. Cordier said the Movolson's were petitioning the board for a dimensional variance from the maximum lot size requirements within the A-2 Zoning District. The property is located along the south side of Ellsworth Road within Section 22 of

Perry Township. The petitioners are seeking to split an existing home from the 19.435 acre parcel on a legal conforming lot size, which would leave the resulting parcel size of 18.335 acres. Cordier noted that in 2003, Real Estate Agent Sue Hammond of Re/Max Paragon submitted a Land Division application request on behalf of the former owner Helen Davis. Proposed were four (4) land division requests from the parent tract containing 26.966 acres. One of the four (4) requests did not comply with the Zoning Ordinance regulations for a lot size created after June of 1999. That proposal was for the existing home to remain on 19.435 acres which included an accessory building as well. The parcel contained more than 2.5 acres and was less than 20.01 acres. A review of the tax maps found all four (4) parcels were created and placed on the tax rolls. The 2003 application also noted there were "0" divisions remaining at that time. Cordier continued stating the Covenant Deed of December 30, 2013 did not grant any divisions per the Perry Township Assessor. Per the application packet, it is the intent of the petitioner to fix up the home and offer it for sale, which they felt would make a more affordable home for someone.

Cordier concluded that staff offered three options for the board to consider: 1) If the split were approved for a parcel size of 200'x240' with the existing home, the remaining 18.335 acres would need to be combined with the applicant's existing 10-acre parcel (14-22-400-007) which fronts Beard Road. 2) If the split were approved, allow the remaining 18.335 acres be sold as a separate buildable parcel. 3) Deny the application request.

Cordier passed out a memo received from the Perry Township Supervisor dated March 27, 2014 and read it aloud:

*Stephen E. Schweikert, Assessor Perry Township, 2270 W. Ellsworth Rd., Perry, MI.
RE: Land Division for Parcel 014-22-400-002*

I have talked with Mrs. Movalson concerning a Land Division on this parcel. She has decided to request a Variance. The covenant deed recorded on 12/30/2013 liber 1194 page 0259, does not grant any divisions. A division on this property was denied on 10/31/2003 for 19.435 acres because it exceeded the maximum lot size of 2.5 acres and less than 20 acres. In defense of the property, I do not have a problem with splitting the house and lot off and leaving the rest for farm land, but I do not want to violate the County rules. The whole reason for the 2.5 acres and 20-acre requirement is to preserve farm land.

Mr. Movalson stated the covenant deed was prepared by the bank. The bank had foreclosed on the property. The bank didn't look into anything else. He and his wife purchased it with the intent of fixing up the home for resale, which would be an improvement to the area. The 19.435 acres has been on the tax rolls for 10 years now.

Chair Martin thanked the applicant and opened the floor for public input in support of the applicant's request. Hearing none, Martin opened the floor for public input in opposition of the request. Hearing none, Martin called for township input.

Sid Grinnell, Perry Township Supervisor, noted that Charles and Pamela stopped into the township to discuss the property in question and the proposed division. The parcel was the result of the splits created and sold in 2003. The Movalson's were informed that they may have to combine the remaining acreage with their 10-acre tract. The township was in favor of the proposed split and that the resulting acreage be combined with the applicant's existing parcel.

Chair Martin stated that there was no need for a rebuttal and closed the public hearing segment to allow for board discussion.

Hall asked if the remaining acreage were combined with the applicant's 10-acres would it be within the same school district.

The board was informed it would be. Discussion continued on the Land Division review process. Preston noted that the assessor confirmed that it has been just over 10 years since the parcel was created and placed on the rolls. After a 10-year period, one-half of the divisions' rights may be available. The assessor would check to verify if there were any available. Preston added that if the resulting acreage were combined with the applicant's parcel, there would be no need for the variance as the property would contain over 20 acres.

Junger discussed the feasibility of further developing the 18 acres per the conservation design as outlined within the ordinance. Preston stated it would have to be researched to see how many splits may be available to further develop the property.

Chair Martin stated the applicant may wish to postpone the application to determine how many additional splits may be available.

Preston agreed, but again reiterated that if the applicant were to apply for a Land Division and combine the resulting acreage with their parcel, the variance would no longer be needed. Preston suggested it be postponed.

Motion: Fred Junger moved that the request from Charles and Pamela Movelson for a variance from Section 2.7.2.A. seeking a dimensional variance to allow for a vacant parcel size of 18.335 acres be created from Parcel Tax Id. 014-22-400-002, located on Ellsworth Road, within Section 22, Perry Township, that exceeds the 2.5 acre maximum lot size regulations be **postponed** based upon the following reasoning and conditions

Reasoning:

1. Additional information is necessary to assess the basic findings as set forth in Section 18.4.6. of the Ordinance.
2. The applicant research the possibility of future land divisions that may be available if combined.

Support: Glenn Love Jr.

Discussion: None.

Motion carried: 5 ayes, 0 nays, 1 absent.

8c. Dimensional Variance PZBA14-002

Applicant/Owner – Larry and Karen Hendershot, 8940 E. Monroe Road, Durand, MI

Site Location – Cole Road (south side); directly to the east of 5150 Cole Road

Tax Id. - #78-015-01-100-011, Section 1, Antrim Township

Request – Permit the expansion of an existing shed and allow two (2) 12'x16' lean-tos additions to be constructed on a parcel without a principal structure

Ordinance – Section 5.3.1.C. – Accessory buildings are secondary to the principal use

Cordier provided the staff report. The Hendershot's are seeking a variance to allow for an addition to an existing 12'x16' accessory structure that is located on a vacant parcel. The existing shed was constructed in the early 1990's under the 1982 Zoning Ordinance regulations. The parcel is located directly to the east of the applicant's former home known as 5150 Cole Road. They lost their home to foreclosure last year and were forced to move out. At that point in time they added a 12'x16' lean-to on each side of the existing shed to store their belongings in and did not realize that permits were needed. The office received a call asking if permits were secured for the additions. Staff found no permits and sent the code enforcement officer out to investigate. At

that point the building was tagged with a “Stop Work Order”. When the applicants visited the office to apply for permits, they were informed of the fact it would be an expansion of a nonconforming use as the current ordinance does not allow for accessory structures on a vacant parcel. Staff suggested combining the parcel with the parcel that contained their home. The applicants stated they no longer owned the home so that was not an option. Again there is no principal dwelling on the property, the property is zoned A-2, and the board is being asked to consider allowing the expansion of the existing shed by permitting the two (2) additions. This parcel was created in 1985.

Chair Martin asked Mr. and Mrs. Hendershot if they had any additional comments.

Mr. and Mrs. Hendershot informed the board that they owned the home and resided there for 45 years. When they lost their home and were told they had so many days to move out, it left them with years of accumulation and no where to store it. They didn't want to throw everything away and they had to move quickly. They moved into the apartment November 1. Their former home contained 2900-sf. which contained 45 years of accumulation. They maintained fruit trees so there was equipment involved with that. Mrs. Hendershot stated her husband fixed up cars as a hobby and there were tools associated with that. They just couldn't leave stuff set outside. They have rented a storage unit, but again they just owned too much. They did have a large dumpster brought out to dispose of some things. Their son suggested adding on to the existing shed so that is what they did not realizing permits were needed. They were attempting to keep things out of sight.

Chair Martin thanked the Hendershot's and opened the floor for public input in support of the applicants' request. Hearing none, Martin opened the floor for public input in opposition of the request. Hearing none, Martin called for township input. Cordier noted the office had not received any correspondence. Martin closed the public hearing and called for board discussion.

Junger wondered how close the building was to the property line.

Mr. Hendershot stated 25 feet from the lot line.

Junger asked if the only structure on this property was the shed.

Mr. Hendershot replied yes. Mrs. Hendershot stated they had purchased it years ago and never had it combined with the parcel with the home on it as there was never a need to combine them. The house was on a lot size of 125'x270'. Now circumstances have changed and we would like to put a house on this parcel. They are considering looking into a modular type home. A home that would meet the square footage they need and could afford. They want to stay in the area because they have family members in this area. Mrs. Hendershot stated her sister-in-law resides on the other side of this parcel and was the person that turned the complaint in. Her sister-in-law has a driveway accessing her parcel on a 50 foot strip of land that is next to us.

Hall asked if the parcel had been perked for a septic system.

The Hendershot's answered no, but explained the property is sandy which would be favorable for an on-site system. The lot with their former house was clay soils.

Hall asked if the shed and additions were on a permanent foundation or could the building be moved.

Mr. Hendershot stated the building was permanent. The additions contain poles and the outside contains T-11 siding. The poles were placed on 6” pads and anchored in the ground. The poles were 48” in ground.

Findings of Fact:

1) *How the application of the Zoning Ordinance creates unnecessary hardship or practical difficulty in the use of the petitioner’s property.*

Staff: The parcel does not contain a principal structure. The original 12’x16’ shed has been in existence since 1992. The applicant no longer has the ability to combine it with their former property to the west. The ordinance defines an accessory structure as a subordinate use to the principal use of the property, which the applicant’s cannot comply due to the lack of a principal structure. There is no house and the structure is not being used as an agricultural structure.

ZBA Findings: The board concurred with staff’s findings.

2) *Identify the unique physical circumstances or conditions or exceptional topography that create practical difficulties.*

Staff: The applicant’s had to move out of their home due to foreclosure and needed a place to store their belongings. The additions were added to give them the extra storage space they needed. There appears to be no physical circumstances or conditions.

ZBA Findings: The board concurred 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 parcel complies with lot size requirements for a buildable parcel within the A-2 district. The shed is positioned so that a future dwelling could be built on this property that would then bring the property into compliance. If a home were on this property, a variance would not be needed.

ZBA Findings: Hall quizzed staff on whether or not a temporary permit could be granted. Preston answered no that would be a use permit, which is not allowed. The only temporary permits permitted are tied to emergency housing due to a house fire, and then a temporary housing permit can be authorized. Junger questioned the accessory structure on an unoccupied parcel of land. Preston answered the problem associated with accessory structures on a parcel without a principal dwelling has created zoning problems in the past. The parcels become used as recreational ground and overnight camping and use by ATV vehicles. The board concurred with all findings of fact.

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 existing 12’x16’ shed was built on the vacant land back in 1992. The only change was the applicant’s added an enclosed lean-to on each side without permit approvals. The only difficulty or change is the fact the applicants lost the property next door with the principal dwelling and they added two (2) lean-to additions to the existing shed without permits.

ZBA Findings: Junger agreed the applicants no longer own the property next door. The board concurred with all findings of fact.

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: It does not appear that the addition to the 12'x16' shed will create an impact on the surrounding property and on the public, health, safety and welfare of the area if approved. However, it would be precedent setting county-wide if the variance were granted creating a huge problem.

ZBA Findings: Junger answered precedent setting was very important and that a variance goes with the land. The applicants may not always own this and they couldn't be assured a new owner would comply. They may want to use the property for something other than storage as previously mentioned tonight.

Mrs. Hendershot replied that they have no intentions of selling the property. The property will some day go to their son and daughter.

Junger said that may be true, but this board can't take that into account. Hales-Smith asked if the building could be dismantled and rebuilt elsewhere.

Mr. Hendershot answered no, the poles were cemented in. In hindsight, they should have contacted the office first.

Hall asked if they would be able to relocate the building to another location.

Mrs. Hendershot answered no. Moving it to their son or daughter's was not an option and they currently rent an apartment in Durand. They already have one storage unit full.

The board concurred with all findings of fact.

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: Again, if the property could have been combined with the applicant's former property and/or if a dwelling existed on this property, a variance would not be required. A special use permit is not required for a residential accessory structure. If the board were to grant the variance request, it would be a use permitted by right with zoning and building permits.

ZBA Findings: Martin stated if the board approved the request, it would be setting a precedent. The board concurred with all findings of fact.

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: The property would otherwise be in compliance with the Zoning Ordinance regulations should the variance be granted, however; such issues such as setbacks from lot lines would have to be verified for compliance and the building would still be an issue.

ZBA Findings: Martin stated the drawing did have setbacks to the lot lines on it. The board concurred with all findings of fact.

8) *Findings on any error in judgment or procedure in the administration of the relevant zoning provisions.*

Staff: It is not readily apparent that any error in judgment or procedure has been made in the administration of the Ordinance.

ZBA Findings: The board concurred with staff's findings.

9) *The possible precedents or affects which might result from the approval or denial or of the appeal.*

Staff: The ZBA may wish to discuss the possible precedent this may set. It is not known if there are similar properties within the County that would have the same scenario and require a variance.

Mr. Hendershot informed the board he was retired. This parcel has apple and pear trees. He discussed having a road side stand and selling the fruit out front.

ZBA Findings: Love again mentioned the fact a variance goes with the property. Martin agreed and again stressed the fact it would be precedent setting. The board concurred with all findings of fact.

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 does not appear the approval of the variance would impact the County or other governmental units in the provision of services to the site.

ZBA Findings: Junger stated additional security to the site could be an issue as no one living there. The board concurred with all findings of fact.

Motion: Ann Gamboe Hall stated that based upon the review of the submitted materials, including the description of the proposed use and site drawing, she would move to recommend denial of the request submitted by Larry and Karen Hendershot for a variance from Section 5.3.1.C. to allow for two (12'x16') lean-to additions remain on an existing 12'x16' shed on Cole Road, Section 1, Antrim Township, (Parcel Id. 78-015-01-100-011), based upon the following

Reasoning:

1. The proposal does not satisfy the basic findings as set forth in Section 18.4.6. of the Ordinance.
2. There were no unique circumstances at the time or practical difficulty. If approved it would be setting a precedent for the future.

Support: Fred Junger.

Discussion: None.

Roll Call: Ayes to Deny: Glenn Love Jr., Julie Hales-Smith, Fred Junger, Ann Gamboe Hall, and Henry W. Martin III. **Nay:** None. **Absent:** One. **Motion carried to deny: 5 ayes, 0 nays, 1 absent.**

Discussion: Mr. and Mrs. Hendershot's son asked if his parents could keep the building on the property if they were to put a home on it. His parents would like to build a home there instead of renting if they can afford it.

Preston answered that a variance encumbers the property to that variance. If approved, it is connected to conditions of approval. This board cannot grant a temporary use permit.

The son asked if they could apply for a temporary permit with the condition it be reviewed periodically.

Preston again stated this board cannot grant a use variance and that would be what they would be asking for.

The son responded his folks can't move the structure and all the stuff that is stored within the building.

Preston answered the ordinance is black and white. The only practical difficulty is the additions were built without approvals. If the building were strictly used for storage purposes and related only to agricultural use, then it possibly could be a different scenario. If the property and building were strictly agricultural use then you would need a letter from the Department of Ag granting approval; but just setting a box of apples or pears out front for sale by the road is not a full-fledge agricultural operation.

The son replied he was just trying to help his parents out.

Preston suggested that he and his folks contact the office to talk with him and/or Linda to discuss this further.

Junger informed Mr. and Mrs. Hendershot that this board denied three (3) variance petitions for accessory structures this past year.

Mrs. Hendershot wondered what they are options were now.

Preston noted that because the variance request was denied, the property remains in violation unless the structure is removed, a permit for a new home submitted and approved and construction commenced, or documentation that is falls under an approved agricultural use is submitted.

8d. Dimensional Variance #PZBA14-003

Applicant/Owner – James Hebert, 16646 Eunice Street, East Lansing, MI 48823

Site Location – Laingsburg Road (west side; south of Winegar/north of Britton Roads)

Tax Id. 78-013-08-400-002-02, Section 8, Woodhull Township

Request – Parcel exceeding the maximum lot size for a future single-family build site within the A-2 Zoning District; Proposed parcel size – 7.811 acres

Ordinance – Section 2.7.2.A. – Maximum lot size created after June 1999 – 2.5 acres

Cordier provided the staff report. Mr. Hebert submitted a petition seeking a dimensional variance on a parcel of land that exceeds the maximum 2.5 acre lot size for a future building site. The petitioner purchased a 7.811 acre parcel fronting Laingsburg Road within Section 8 of Woodhull Township that has an existing accessory building on it. After the petitioner purchased the property he discovered the accessory building had been built without permit approvals and that the parcel was not a buildable parcel as it exceeded the maximum lot size requirements within the A-2 Zoning District. The real estate agent had informed him at the time of purchase that it was a buildable parcel.

The petitioner was informed that the parcel didn't conform to the ordinance regulations for lot sizes. A review of the original Land Division application reflected that the department had denied the request for the 7.811 acre parcel based on the lot size. However, it was placed on the tax rolls in 2004. The accessory building was built sometime after that without zoning or building permit approvals. Staff suggested to the petitioner to take his findings back to the real estate agent. It was also suggested to see if the adjoining property owner to the north and west of

this property was interested in purchasing some of the land in order to bring the property more into compliance with lot sizes. The front adjacent parcel to the south would not be an option as the lot is already at 2.49 acres in size. Cordier stated it was also discovered that if approved, a second variance would be needed as the parcel exceeds the Lot Width to Depth ratios, which is a 4-to-1. The lot is only 200 feet in width and the longest side is 880 feet in length.

Cordier stated Woodhull Township had responded and recommended approval.

Mr. Hebert stated his request was pretty much as stated by Linda. We wanted to move to Laingsburg. His wife is a teacher with the Laingsburg Schools. When he found out it wasn't buildable he contacted the realtor. The realtor told him he would take care of it. He didn't hear back. When he contacted the Community Development Office, he was told it was non-buildable and may be required to tear down the accessory building. He has one child attending school in Laingsburg and another child attends school in Haslett. Hebert stated he had talked with an attorney and was told he could sue the county. Hebert stated he decided he would take his chances and come before this board first in an attempt to resolve the issue.

Hebert noted there is a house on "C". He talked to Mary, owner of Parcel "A" to see if she would purchase some of the property so he could bring the property more into compliance. She informed him no unless he wanted to give her the land. As stated earlier, Parcel "C" can't expand.

Junger asked if there would be enough room in front of the pole building to build the home.

Cordier stated she had not seen a site plan of the proposed build site and didn't know the setback of the barn from the road.

Hebert informed the board that the Township Assessor informed him that he noticed a barn had been built so he added it to the tax rolls even though he hadn't seen a permit. Parcel "C" is owned by Melinda Watkins and is currently on trial at Circuit Court.

Preston noted the owner of Parcel "C" was shot and killed by his wife and then the property was lost to the bank.

Hebert stated his realtor (Jeff Thornton) was with Coldwell/Hubbard/Briarwood and Bill McCloud was with the same real estate agent in Lansing. The property was sold to me at a very reasonable price.

Preston stated he would like to pursue legal counsel on this to see if the land was sold without a Land Division approval due to liability and regulations with the Land Division law.

Hebert stated his attorney said taxes have been paid on this parcel since 2006.

Junger asked if there were other options available so a variance would not be necessary.

Preston stated some options were already provided. The applicant did not create the practical difficulty. It has been placed on the tax rolls. The office doesn't always find out about problems like this until someone comes in to apply for permits. We don't know at this point if the township signed off on the Land Division application back in 2003.

Hales-Smith asked if it would be feasible to create additional lots in the rear.

Preston stated no, there was not enough road frontage. The board is looking at a lot that is unbuildable due to size, lot width to depth, and an accessory building that was built without permit approvals or inspections. Preston questioned if this would be precedent setting and the possibility of additional parcels that may be similar in nature. We don't know if the township signed it even though staff denied the zoning review.

Junger asked what recourse would they have if the township granted it and would it be precedent setting for other cases.

Hebert questioned it being precedent setting when he did not create the situation; didn't create the parcel and didn't construct the building.

Junger discussed the fact the township assessor drove by and saw the barn and placed it on the rolls without checking to see if permits had been approved for the barn.

Chair Martin opened the floor for public input in support of the application. Hearing none, Martin called for public input in opposition of the request. Hearing none, Chair Martin noted the following letter had been received by the township supervisor:

March 19, 2014

*To: Appeals Board
From: Pamela Slee, Supervisor, Woodhull Township
Re: James Hebert PZBA14-003*

The request is to be heard on April 9, 2014 by your board and our Planning Commission will not meet to take this issue up until April 16, 2014, therefore; I would like to request that the Appeals Board grant the variance request for Mr. Hebert.

I have discussed this with our Township Assessor, Wayne Griffith, and both he and I feel that having talked with Mr. Hebert in the past he bought the property in good faith believing he would be given a building permit.

His facts stated in his request are consistent with what he had discussed with both the Assessor and me.

Woodhull Township also would welcome a new home.

The pole barn on the property shows that it was constructed in 2006 and has been placed on the tax roll.

Thank you for your consideration in grating Mr. Hebert's request.

Chair Martin closed the public hearing segment and called for board discussion.

Hebert noted that his attorney was from Flint, but he chose to seek a variance from this board on his own at this time.

Discussion followed about the attorney's suggestion to him on recourse through the county by filing a lawsuit. The board discussed the real estate agent's involvement and the township's involvement. Staff recommended that the petition be tabled for further research.

Chair Martin asked the applicant if he wished to have the request postponed for one month so staff could investigate documentation or would he want to proceed.

Hebert stated he had purchased the property in 2012 and found out in 2013 it was non-buildable. He added he considered every avenue feasible before he submitted his application to come before this board. Hebert said if he is denied, he wouldn't be able to use the property. He wouldn't be able to sell the property as he would have to disclose the information. He would end up paying taxes on land that he couldn't utilize. He would have wasted his money that he invested. He wouldn't even be able to use the barn.

Preston explained that if the Zoning Board of Appeals were to deny his request, he would have exhausted all possible options and he could proceed by filing in Circuit Court.

Hebert responded he didn't want to spend more money on legal fees.

Preston suggested postponing the petition to allow staff more time to research additional paperwork that was not known at the time the application was submitted. It would allow staff additional time to talk with the township supervisor and assessor if needed; as well as with the real estate agent.

Hebert discussed emails he had received from the broker and his agent. He also stated the real estate agent paid the filing fee for the variance.

Chair Martin asked Hebert again if he wished to postpone his petition based on the fact staff was seeking additional time for further research.

Junger commented that it would be worth Hebert's time to have it postponed so additional information could be verified and brought back to this board before a decision was rendered.

Preston agreed; it appears there are a lot of loose ends and all the pieces are needed. Did the township and assessor just place the property on the tax roll or did the previous owner have it recorded.

Hebert agreed with having the petition postponed.

Motion: Fred Junger moved to postpone Request #PZBA14-003 by James Hebert for a variance from Section 2.7.2.A to allow for a parcel to exceed the maximum 2.5 acre lot size requirements within the A-2 District by allowing a parcel size of 7.811 acre with 200 feet road width frontage for the purpose of constructing a single-family dwelling. Parcel location: Section 8, Woodhull Township, fronting Laingsburg Road, and identified as Tax Id. 78-013-08-400-001-02, based upon the following reasoning and conditions:

Reasoning: 1. Additional information is necessary to assess the basic findings as set forth in Section 18.4.6 of the Ordinance.

Support: Glenn Love Jr.

Motion carried to postpone: Ayes: 5; Nays: 0; Absent: 1

9. Interpretation of the Zoning Ordinance: None.

10. Zoning Administrator Report: None.

11. Board Member Comments: None.

12. Adjournment: Motion: Chair Martin adjourned the hearing. **Support: Love.** Motion carried: 5 ayes, 0 nays, 1 absent. Meeting adjourned at 9:18 p.m.

Recording Secretary: Linda Gene Cordier

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

May 14, 2014

Date of Approval