

**SHIAWASSEE COUNTY ZONING BOARD OF APPEALS
PUBLIC HEARING MINUTES
MAY 8, 2013**

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

Roll Call: Present: Ann Gamboe Hall, Julie Hales-Smith, N. Brad Hissong, Gerald Wardell, Larry Gramer, Fred Junger, and Henry W. Martin III. Also present: Linda Gene Cordier, Zoning Administrator.

1a. EXCUSED ABSENCES: Motion: Junger moved to excuse Hales-Smith from the April 10, 2013 public hearing. **Support:** Hissong. Motion carried: 7 ayes, 0 nays.

2. CONFIRMATION OF LEGAL NOTICE: Cordier informed the chair that the legal notice for the evening's public hearing was placed within the Shiawassee County Independent on Sunday, April 21, 2013. Chair Martin declared the meeting as legally published.

3. APPROVAL OF AGENDA: Motion: Gamboe-Hall moved to approve the agenda as printed. **Support:** Hissong. Motion carried: 7 ayes, 0 nays.

4. APPROVAL OF BOARD MINUTES: Motion: Gamboe-Hall moved to approve the April 10, 2013 board minutes as printed. **Support:** Hales-Smith. Motion carried: 7 ayes, 0 nays.

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

6. COMMISSIONER COMMENTS: None.

7. OLD BUSINESS: None.

8. NEW BUSINESS:

8a. Dimensional Variance Application #PZBA13-004

Applicant – Leon Turnwald, Burt, MI

Parcel Owners – Leon and Patrick Turnwald, Burt, MI

Site Location – 11960 Easton Road, Sec. 12, Hazelton Twp.

Tax Identification – 78-004-12-200-007

Request – Construct a fifth (5th) Self-Serve Mini Storage Building in the M-1 District within the setback requirements of a State or Federal Highway; Proposed 35' closest point from right-of-way

Zoning Ordinance Reference – Sec. 3.4. #c – 75' from right-of-way

Cordier provided a brief staff report on the pending application request. The site location is a corner lot located on the corner of Easton Road and M-13. Setbacks from a state or federal highway per the Zoning Ordinance are a minimum of 75 feet from the right-of-way line. Because this is a corner parcel, it also takes in a clear vision requirement for a corner parcel. The property was rezoned to M1 (Light Industry) under the 1982 Zoning Ordinance in 1992 by Mr. Turnwald to allow for the mini self-serve storage units that were a use allowed by right. There are currently four (4) mini storage units on site. The area contains a mixed use of districts; B-2 (General Business) to the south; to the north (NW corner) is B1 (Neighborhood Commercial) and to the west is A-2, Agricultural Production/Rural Residential. On the east side of M-13 is Genesee County.

Cordier continued that in 1999, a variance was granted to expand the existing legal nonconforming use to allow for an additional storage facility. That variance was approved on September 15, 1999. On January 9, 2008 a variance was granted to allow for the fourth (4th) building to be constructed. Mr. Turnwald is seeking approval to construct a building approximately 40'x130' in size and connect it to building #4.

The closest point of the building would be setback 35' from the clear-vision setback fenced area (angled fence) and 50 feet from the fenced area to the east.

Chair Martin opened the floor to Mr. Turnwald.

Leon Turnwald noted that this actually could be considered the sixth building as building number four (4) originally built in two sections and then connected. Turnwald confirmed that the property was rezoned to allow for the mini-storage buildings and that he has been before this board on a couple of occasions to add on because of the change of the 1982 Zoning Ordinance with the current 1999 Zoning Ordinance. I new if we wanted to add on we would be encroaching on the setback requirements within the ordinance and that I would have to come back before this board. Turnwald discussed the photographs submitted within his application. One of the pictures reflected what it looks like at the current time directly to the south of where he would like to build. There are semi-trucks parked all along the fence line right –up-to the road right-of-way. Turnwald also discussed the photograph of the area where the proposed building would be constructed if approved.

Turnwald presented additional pictures to the board members of various sites of storage facilities located outside of Shiawassee County (M-57/Seymour Road intersection, I-69 area within Swartz Creek area), M-47; Saginaw County, and M-57; Chesaning Storage Facility).

Chair Martin thanked Turnwald and opened the floor for public comments in support of the applicant's request. Hearing none; Martin opened the floor for public comment in opposition of the applicant's request. Hearing none; Martin asked if staff had received township input. Cordier stated she had not received any correspondence from the township. Chair Martin closed the public hearing segment and called for board deliberation.

Gramer responded that he had visited the site and felt the proposed structure would not be an issue. The semis on the adjoining property are parked a lot closer to the road than the proposed building will be.

Junger questioned the location of the fence and if he had installed it.

Turnwald answered that the property was originally used back in the 1980's to store equipment owned by the New Lothrop Hardware. The hardware had put up a cyclone fence for security reasons. Turnwald said he had taken the fence down and replaced it within the same location or pretty close. We may have moved it in a foot or so we could maintain the fence on the other side if needed.

FINDINGS OF FACT – Wardell and Gramer read the findings of fact:

Findings of Fact: Section 18.4.6 of the Ordinance outlines findings that must be made for the Board of Appeals to take action.

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

Staff: The petitioned parcel is a corner lot which creates two (2) front yard setbacks. The parcel maintains frontage along M-13 and Easton Road. The property has already been developed with little open space left for development. The only space left for the applicant to utilize for a fifth (5) building would be to the east of building #1 and connected to building #4. Due to the requirements of a 75 foot setback from a State or Federal Highway right-of-way and the clear-vision requirement for a corner parcel, the applicant cannot meet the minimum required setback from the fenced area with the size of building proposed.

ZBA Findings: Discussion: Junger asked if the 75 foot setback requirement from a state or federal highway the same within the 1982 Zoning Ordinance? Cordier replied it was; that language had not changed. **Board:** Concur with staff's findings.

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

Staff: The petitioned parcel is a corner parcel with additional frontage setback requirements from M-13 for clear-vision purposes on a corner lot. A typical setback for a corner lot on a secondary road would be 40 feet from right-of-way.

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 property consists of four (4) self-serve mini storage buildings. The only available open space left for development is to the east of building #1.

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 has been developed by the petitioned applicant and owners of the property. The petitioned 2.85 acre parcel has been an existing lot of record prior to 1982 and has maintained a minimum setback requirement of 75 feet from the road right-of-way along a State or Federal Highway since the adoption of the 1982 Zoning Ordinance.

ZBA Findings: Discussion: Junger felt that the property was developed by the applicant and could be considered self-created. Gramer felt it wouldn't be an issue if it weren't for the clear-vision setback requirement for the corner lot. Junger suggested the Planning Commission review the setback requirements from a state or federal highway including the clear-vision setback requirements. **Board:** Concur 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 petitioned property is already developed with four (4) self-serve mini storage buildings. The area is surrounded by a mix of developed commercial and residential uses. Additional impact is not anticipated if the variance were granted.

ZBA Findings: Concur with staff's 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 for which a special use permit is necessary.

Staff: If approved, a Minor Site Plan Review application prior to a Building Permit application would be required. Although under today's Ordinance would require a special use permit for a self-serve mini storage unit facility; this development began under the 1982 Zoning Ordinance as a use by right.

ZBA Findings: Concur 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: The development would otherwise comply with the Ordinance requirements for location of the proposed structure.

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: No error in judgment or administration appears to be evident.

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: The property has been developed for approximately 20 years as a self-serve mini-storage rental facility. No additional impact or precedent appears to be evident should the variance be granted.

ZBA Findings: Discussion: Junger felt this may be precedent setting. Gramer and Hall noted that the area was primarily agricultural and then all of a sudden you were at the intersection with a mix of commercial uses already developed. Turnwald stated he believed the former Shiawassee Sports Center building to the south had received a variance a few years back to be closer to M-13 as well. **Board:** Concur with 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: No additional impact on County or other governmental agencies appears to be evident should the variance be approved.

ZBA Findings: Discussion: Gamboe-Hall questioned if a fire truck would be capable of passing through the area (between the fence and new building) if needed. Turnwald felt a vehicle should be capable of passing through there; but noted none of the buildings have electricity to them. Junger again suggested that Chair Martin bring this up at the next Planning Commission hearing to consider reviewing the language for possible amendments. Cordier asked Turnwald what the setback was from the right-of-way of M-13 was to the proposed building. Turnwald replied he thought another 50 feet. Hissong said he would agree that maybe the Planning Commission should take a look at the language; however, after he completed a site inspection and the semis on the other lot were parked right out to the right-of-way, he felt the proposed request was reasonable. Gramer agreed and again noted that all of a sudden you have this commercialized area in the middle of nowhere. **Board:** Concur with staff's findings.

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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?

Board: It is already developed as a mini self-serve storage facility. A variance is needed in order for the structure to be built. The board concurred with findings.

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

Board: Hall felt it was just an odd area; it goes from farm land to industrial. She wasn't aware of any other area that was similar to this. It's a built up area. The board concurred.

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

Board: No.

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

Board: Gramer felt that most of them generally are and that is why they are before this board. The board concurred.

Motion: Ann Gamboe Hall moved that the Dimensional Variance request (PZBA13-004) from Section 3.4. (c) of the 1999 Zoning Ordinance requirements from the setback requirement of the road right-of-way, as outlined within the M-1 Zoning District, submitted by **Leon Turnwald/Applicant, and Leon Turnwald and Pat Turnwald/Property Owners**, regarding Tax Id. 78-004-12-200-007, Section 12, Hazelton Township, addressed as **11960 Easton Road**, to allow for a **Fifth (5th) Self-Serve Mini Storage Building** be constructed 35 feet (closest point) and 50 feet from the road right-of-way of M-13 and Easton Road (a variance of 40 feet; closest point) of fenced area, be **approved** pursuant to Section 18.4.5. of the 1999 Shiawassee County Zoning Ordinance, as amended, and based on the Findings of Fact within Section 18.4.6. **Support:** N. Bradley Hissong. **Roll Call: Ayes to approve:** Ann Gamboe Hall, Julie Hales-Smith, N. Bradley Hissong, Larry Gramer, and Gerald Wardell. **Nays to deny:** Fred Junger and Henry W. Martin III. Motion carried: 5 ayes, 2 nays.

8b. Dimensional Variance Application #PZBA13-005

Applicant/Property Owners – Aaron & Sarah Budnick, Laingsburg, MI

Site Location – 9271 W. Scenic Lake Dr., Laingsburg

Tax Identification #78-013-50-075-000, Lot 75, Scenic Lake Estates #1, Woodhull Twp.

Request – Construct an addition to the existing home (12’x75’) within the setback requirements of the water’s edge; proposed 88’ from water’s edge
Zoning Ordinance Reference – Sec. 5.2.8. (Lots having water frontage); 100’ from water’s edge

Cordier provided a brief staff report of the applicant’s request. The applicant is requesting to construct a 12’x75’ addition to the rear of the applicant’s home. The site is located on Lot 75 of Scenic Lake Estates #1 with lake frontage. Parcels with lake frontage basically have to front yard setbacks. Setback from the water’s edge is 100 feet; however, the Zoning Ordinance has a provision that if the plat was adopted prior to 1982, the applicant has the opportunity to come before this board to encroach closer to the water’s edge provided a practical difficulty can be verified. Cordier stated the same ordinance language was adopted within the 1982 Zoning Ordinance. Scenic Lake Estates became a legal plat when it was registered with the Register of Deeds on March 24, 1971. The applicant is seeking to a 12 foot variance to allow the addition to be 88 feet from the water’s edge. Currently there is an open deck on the lake side of the home. An open deck can be closer than an enclosed structure. The new addition would extend an additional two (2) foot than the current deck.

Cordier said she reviewed records and noted the following variances within the vicinity of the request had been granted:

August 8, 2012 – A variance granted to allow for an addition to be 50 feet from the water’s edge.
November 10, 2010 – A variance granted to allow for an addition 54 feet from the water’s edge.
August 17, 2005 – A variance granted to allow for a new dwelling & garage; 43 feet from the water’s edge. (replacing the variance of October 13, 2004)
December 10, 2003 – A variance for an addition to dwelling for an enclosed pool 65 feet from water’s edge.

Chair Martin opened the floor to Mr. Budnick.

Aaron Budnick informed the board that he had provided an aerial view of the homes surrounding the lake, which included his home. As reflected in the aerial; most of the homes are closer to the water’s edge than his. Three homes to the east are a lot closer to the water. Plans are to remove the existing 10 foot wide deck and replace it with a 12 foot wide deck on the back and then extend the master bedroom out 12 foot. Budnick stated he had approached both his neighbors and they signed a statement that they had no objections.

Chair Martin opened the floor for board discussion.

Gramer questioned the addition; the drawing gives the illusion that it would be a full addition across the back of the home.

Budnick stated no. No; it will be two small additions with the open area in between. It will be bedroom expansions (both upper and lower).

Speaker #1: Jason Bowen stated the other side will be the upper garage extension and underneath an area for a boat house and that he had assisted Aaron with the application.

Chair Martin opened the floor for public comment in support of the applicant’s request. Martin stated he would assume Bowen was in favor of Budnick’s request.

Bowen stated he was.

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

Cordier replied no correspondence had been received by the township; however, the applicant provided her with the Scenic Lake Association approval. Copies of the statement were provided to the board.

Chair Martin read the following letter: *“April 24, 2013; Dear Board of Zoning Appeals: The Scenic Lake Property Owner’s Association (SLPOA) is in receipt of an application from the above referenced residents to consider a variance of our “Declaration of Covenants and Restrictions” with regards to an addition they wish to construct on their home which would take their rear building line to 88’ from the water’s edge. A majority of the SLPOA Board of Director’s have considered their request, along with our Architectural Committees’ recommendation on this matter, and we have approved their request as allowed under our Covenants. Should you need any additional information regarding this request, do not hesitate to contact me directly. Sincerely, Patricia A. Cook, SLOPOA President”*

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

Hissong responded that this was the third variance brought recently before this board to be closer to the water’s edge. Hissong wondered what the setback would have been in 1979.

Cordier answered that the 1957 Zoning Ordinance did not include any setback language from the water’s edge; however, the minimum rear yard setback for a residentially zoned district was 50 feet. That may have been what was used for setback purposes of new homes. The subdivision is pretty much developed with most of the homes in the area closer to the water than what the applicant has proposed tonight.

FINDINGS OF FACT – Read by Julie Hales-Smith.

Findings of Fact: Section 18.4.6 of the Ordinance outlines findings that must be made for the Board of Appeals to take action.

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

Staff: The plat became official March 24, 1971. The 1957 Zoning Ordinance would have been in effect at that time. The 1957 Ordinance did not have a minimum setback requirement from the water’s edge. A On June 4, 1982, the County adopted a new Zoning Ordinance. Section 12.2.10 (Waterfront Setback) required a minimum 100 foot setback from the water’s edge unless he/she sought a variance from the Zoning Board of Appeals. The property essentially contains two (2) front yards. A number of homes have been built closer to the water’s edge than the applicant’s. Since 1982, both the 1982 and the current Ordinance (1999) have a clause giving the applicant an option to reduce the 100 foot setback down to 50 foot. The applicant should have the same ability by extending the home closer to the water’s edge as the homes that are already within the 50 foot setback.

ZBA Findings: Concur with staff’s findings.

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

Staff: Again, this is an older platted subdivision that was developed under the 1957 Zoning Ordinance. The minimum rear yard setback would have been 50 feet at that time, which is a typical minimum rear yard setback from the rear boundary line within a residential zoning district. Most of the homes constructed are positioned less than 100 feet from the water’s edge.

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 home is positioned 100 feet from the water’s edge. Open decks can go closer to a lot line per the ordinance. The existing deck is 90 feet from the water’s edge. The applicant would like the same ability to construct the addition closer to the water’s edge as other homes within the immediate area of the subdivision.

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 applicant was not the original owner of the home; most of the homes built in the older subdivision were approved to be 50 feet from the water's edge.

ZBA Findings: Concur 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 applicant is seeking the same enjoyment and use of his property as the surrounding homes within the subdivision. No impact is anticipated if the variance is granted.

ZBA Findings: Discussion: Junger noted that the ordinance provides a clause that no future improvements unless a variance is granted. **Board:** Concur with staff's 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 for which a special use permit is necessary.

Staff: Single-family dwellings and residential additions are a use permitted by right. Typical Environmental Health, Zoning, Building and Trade permits are standard permits required for review and approvals prior to construction.

ZBA Findings: Concur 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: If approved, staff will verify all other standards of the Ordinance will be met.

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: No error in judgment or administrative procedure is evident.

ZBA Findings: Discussion: Junger again noted that the 1982 and current Ordinance has provided a clause; which was extremely helpful during the review of this request. **Board:** Concur with staff's findings.

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

Staff: Again this is an older subdivision with homes that were approved to be built closer than 100 feet to the water's edge. Since 1982, there has been Ordinance language allowing an applicant to go up to 50 feet from the water's edge with ZBA review and approval.

ZBA Findings: 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: The expansion of the dwelling does not appear to have additional impact on the County or other governmental agencies for public services if approved.

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?

Board: The property has been developed with a residential home; the variance is needed to allow for an addition to expand existing floor space. The board concurred.

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

Board: No; however, a variance is needed as outlined within the ordinance pertaining to water's edge setbacks on parcels platted prior to 1982. The board concurred.

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

Board: No.

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

Board: No; the applicant is exercising is right based on Ordinance language.

Motion: **Fred Junger** moved that the Dimensional Variance Application Request (PZBA13-005) from Section 5.2.8. (Lots Having Water Frontage) of the 1999 Shiawassee County Zoning Ordinance, as amended, submitted by Aaron Budnick/applicant, and Aaron and Sarah Budnick/property owners, for property identified as Tax Id. 78-013-50-075-000, within Woodhull Township, and addressed as 9271 W. Scenic Lake Drive, Laingsburg, MI, to allow for the construction of a 12’x75’ addition to the rear side of the dwelling within the setback requirements of the water’s edge (88 feet from rear build line to water’s edge), a variance of 12 feet be **approved** pursuant to Section 18.4.5. of the 1999 Shiawassee County Zoning Ordinance, as amended, based on the Findings of Fact within Section 18.4.6. **Support:** **Larry Gramer.** **Roll Call: Ayes to approve:** Gerald Wardell, Larry Gramer, Ann Gamboe Hall, Julie Hales-Smith, N. Bradley Hissong, Fred Junger, and Henry W. Martin III. **Nays:** None. Motion carried: 7 ayes, 0 nays.

Cordier informed the applicant that there was an eight (8) day wait on the motion. If no objections are received, she would complete the “Notice of Action” and mail to him and he could apply for the necessary permits for the addition.

9. INTERPRETATIONS OF THE ZONING ORDINANCE: None.

10. ZONING ADMINISTRATOR REPORT: Cordier stated the board would be meeting in June as she had received one “multi-variance” request for a parcel in Woodhull Township.

11. BOARD MEMBER COMMENTS: Wardell stated he would like to take a moment and discuss the safety and security of the board members when visiting sites. He noted that when looking for a site he found that he may drive past it, turn around, and then sometimes visit the site or drive slowly past it. With neighborhood watch programs or even without them, the neighbors may be a little nervous with a strange vehicle in the neighborhood. He suggested that maybe Magnet signs be purchased stating they are with the Zoning Board of Appeals to place on the driver’s door. He provided an example of a magnetic vehicle sign. He also had priced them out and felt they were reasonable in cost. Cordier stated that she informs the applicant that board members may be visiting the site prior to the meeting. Wardell answered that was fine, but the neighbors would not know that. After further discussion, Cordier stated she would pass the information along to Mr. Preston.

Chair Martin noted the Planning Commission Rewrite Subcommittee has a reformatted Zoning Ordinance that they are going through, which would also include proper placement of text amendments that have been approved. The committee is also reviewing the ordinance for consideration of other text amendments or changes that may be needed prior to holding a public hearing for adoption and duplicating. Martin suggested that someone from the Board of Appeals meet with Linda to go over the Board of Appeals and Variance section for review and recommendation to the Planning Commission. Ann Gamboe Hall and Brad Hissong volunteered.

12. PUBLIC COMMENT: None.

13. ADJOURNMENT: Motion: **Fred Junger** moved to adjourn the public hearing. **Support: Brad Hissong.** Motion carried: 7 ayes, 0 nays. Meeting adjourned at approximately 8:22 p.m.

Recording Secretary – Linda Gene Cordier

Henry W. Martin III, Chairman
Zoning Board of Appeals

June 12, 2013
Approval Date of Minutes