

**SHIAWASSEE COUNTY ZONING BOARD OF APPEALS  
BOARD MINUTES – MAY 9, 2012**

1. **CALL TO ORDER/ROLL CALL:** Chair Martin 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, in Corunna.

Chair Martin introduced newly appointed board member Julie Hales-Smith to the board. Board member introductions were held.

**ROLL CALL:** Present: Larry Gramer, Julie Hales-Smith, Ann Gamboe Hall, Gerald Wardell, N. Brad Hissong, Willis Miller, and Henry W. Martin III.

Also present: Peter J. Preston/Director of Community Development, Linda Gene Cordier/Zoning Administrator. Commissioner Ron Elder arrived later. Chair Martin confirmed a full board.

- 1a. **EXCUSED ABSENCE:** No motion required.

2. **CONFIRMATION OF LEGAL NOTICE:** Cordier informed the chair that the notice for the evening's hearing was published in the Shiawassee Independent on Sunday, April 22, 2012, and a copy was available for review. Chair Martin declared the meeting legally published.

3. **APPROVAL OF AGENDA:** Chair Martin noted that Mr. Preston had another engagement and would need to leave by 8:00 P.M.; however, he would like to provide the staff report regarding the Durand Mini Storage. Martin stated if the Church of the Nazarene if they would have a problem if the Durand Mini Storage application was handled first.

Ken Themm, representative of the Durand Church of the Nazarene, stated he had no problem with the change.

**Motion: Willis Miller** moved to amend the agenda to handle 8a. before 7a. **Support: Brad Hissong.** Motion carried: 7 ayes, 0 nays.

**Motion: Larry Gramer** moved to approve the agenda as amended. **Support: Willis Miller.** Motion carried: 7 ayes, 0 nays.

4. **APPROVAL OF BOARD MINUTES:** **Motion: Ann Gamboe Hall** moved to approve the April 11, 2012 board minutes as printed. **Support: Willis Miller.** Motion carried: 7 ayes, 0 nays.

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

6. **COMMISSIONER'S COMMENTS:** Chair Martin noted that Commissioner Elder was not present.

- 8a. **DIMENSIONAL VARIANCE APPLICATION #ZBA12-003**

**Applicant** – Durand Mini Storage; 1003 N. Saginaw Street, Durand

**Property Owner** – Robert Michael, 2271 Woods West Dr., Flushing

**Site Location** – 1003 N. Saginaw Street, Durand

**Tax Identification** – 78-012-46-081-001 and 012-46-093-001, Section 15, Vernon Twp.

**Request** – Multi-Dimensional Variance: Create a land division from a parcel with existing buildings that would be located within the setback requirements of the M-1

Zoning District of the proposed new boundary lines  
**Ordinance** – Side and rear yard setback; 50 feet

Preston provided the staff report. The request involves property located north of the City of Durand and South of Lansing Highway on the west side of Saginaw Street. The property has been developed containing a number of buildings and mixed uses. The applicant would like to divide some of the buildings from the mini storage buildings in the back on this parcel. The setback requirement within the M-1 district is 50 feet from lot lines. The applicant has provided setbacks between the buildings proposed to be divided off; however, it isn't a true survey. If the board considers approval, staff is recommending a survey to verify setbacks with those that were provided. The aerial reflects some of the setbacks to be 25 to 30 feet apart. It appears there is adequate flow between the buildings and are o.k. under the building code; but the problem is property line conflicts with zoning. Some of the buildings also overlap the lot lines. An existing chain link fence separates the buildings from those located to the west. The property has been used as mini-storage facility for a number of years. It appears the parcels were combined into one description. Preston noted there was no real defined access drive from Saginaw Street. Preston discussed parking space requirements with the mixed uses of the buildings for zoning compliance. Again, the applicant is requesting the ability to divide off some of the buildings on the south side so an application for Land Division approval can be obtained.

Hissong asked if there were other options available such as creating a condominium instead of applying for a Land Division.

Preston agreed that would be an option. The buildings could be a part of the condominium with the parking area reflected as the common area.

Michael addressed the parking concern; the vehicles that park there now along the north side of the building was associated with the lawn care business located within the back.

Preston answered that the office needed to know what type of uses were in operation to determine the minimum number of parking spaces required for a particular use for zoning ordinance compliance.

Michael answered that he would like the ability to sell the buildings and property to Mark Stine. Stine currently occupies the building in the back for his business (Mark Stine Turf and Snow). Stine intends to keep the buildings for his own use. Curves and the Gym business, which were located within the front building, have moved out. The only parking area needed would be for his employees.

Preston responded that the office was concerned with future use of the buildings as well. Stine may not always be located there.

Michael explained that the original owner of the property had constructed the buildings over past years.

Preston informed the board that the yellow line on the aerial photo would be the new boundary line if approved. The red line reflected the current boundary line, which reflects the buildings overlapping the boundary lines.

Michael again noted he was attempting to separate the property with four existing structures. The aerial shows that the buildings and setbacks do not conform to ordinance regulations.

Chair Martin opened the floor for public comment in support of the applicant's request. Hearing none, Martin called for public comment in opposition of the request. Hearing none, Martin asked if the township had responded.

Cordier stated she had not heard from the township on this particular application.

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

Hissong asked if the property were divided, would each parcel have the required parking spaces required under zoning ordinance regulations?

Preston said this body was asked to consider the feasibility of dividing the property. If approved, staff will need to know the type of uses within the buildings to verify minimum parking space requirements based on the particular use.

Hissong asked if the division were allowed, would each parcel meet the minimum lot size requirements?

Preston answered yes.

Ann Gamboe Hall said she was concerned with parking and safety and asked if there would be enough room to get emergency vehicle equipment in and out of the area within the rear?

Stine answered his business and equipment dealt mainly with pick-up trucks. Nothing large scaled. There were no semi's. His business used mostly ¾ ton trucks and small trailers.

Hall asked about the front building being used by Curves.

Stine stated it was empty as Curves has moved out.

The board discussed the buildings in relation to the existing fence behind the front building as to vehicle access. Stine noted there was 20 feet between the back of the building and the fence, which was plenty of room for a regular pick-up to drive around back. The board discussed the drive between the proposed north boundary divisions and if there would be enough room on either side should one of the owners decided to place a fence to separate the two parcels.

Preston noted that over the years the platted lots were combined in with a legal description, which may be a problem for the township under the Land Division Act.

Gramer felt that if the board granted a variance, it would help clean-up the existing problem of the property lines going down the middle of the buildings. Gramer said he was concerned with whether or not a fire truck could get in between the buildings if needed.

The board reviewed the aerial photo depicting the existing and proposed boundary lines again. Michael believed the storage facility started in 1978. There originally had been a fence along the proposed northern boundary line, but had been removed. The American Legion owns the property to the south of this property. Hissong again suggested the option of a condominium development with a common parking area

Preston replied it could come down to that. The variance may be the easiest way to clean-up the property.

The board agreed, a variance would aid in the clean-up of the buildings that were constructed over lot lines. Wardell said he was concerned about the port-a-johns blocking the access between two of the buildings.

Michael explained that the My Can Company would be moving out in the near future if the property were sold.

Preston noted to the board the importance of a site plan defining ingress/egress and setbacks of the buildings to lot lines.

Hall asked if staff was asking for a site plan and a survey. Preston answered yes. Staff would be able to determine if they complied or this board could ask him to bring one back next month.

The board discussed whether or not a fence should be constructed separating the two parcels. Preston noted that if the motion included a stipulation that no fence be constructed between the two parcels and some one wanted to in the future, they would have to come back before this board. The board discussed requiring a site plan again. Preston stated that it would give staff a handle on what the buildings were being used for. Any time there is a change of use in a building, a Change of Use Certificate of Zoning Compliance is required to verify whether or not the proposed use would be appropriate within the zoning district and if other permits are required per zoning regulations.

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:** It appears the parcels were considered as one when the buildings were constructed. Unless a variance was granted, the property could not be divided.

**Board:** Other alternatives are available such as proceeding with the condominium process. Board concurred with findings.

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

**Staff:** Again, it appears that the parcels were considered as one tract when permits were granted allowing the structures to be built; in effect a single zoning lot with multiple uses.

**Board:** They are seeking the ability to divide the parcel with existing buildings currently overlapping lot lines. The board concurred with 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 conditions are specific to this property and not general to other properties in the area.

**Staff:** Due to the location of the existing buildings variances from the property lines appears to be a necessity in order to give the applicant the ability to divide the property to sell four of the existing structures.

**Board:** It is possible that it could be resolved another way, but we have to look at the fact if it would be reasonable. The board concurred with the 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 utilized as industrial property prior to the rezoning change in 1992 by the prior owner (Floyd Cole). Part of the property was known at that time as Durand Concrete. The rezoning request was to allow for a mini-storage facility. The history of the property was developed over a period of time. Now a request to divide the property is being considered, which is a reasonable use to do so.  
**Board:** 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:** No impact is anticipated on the neighborhood. The variance is needed in order to create new boundary lines around existing buildings. The adjacent properties are zoned industrial and currently used as industrial/commercial uses. The change will not be readily noticeable.  
**Board:** The board concurred with staff's findings that it will not change the use or character of the area if the variance were granted.
  
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:** The 1982 Zoning Ordinance allowed for General Building Contractor's Establishments by right within the M-1 District. Under the current 1999 Zoning Ordinance a new mini storage building would require site plan and special land use permit approvals. However, the property has been developed and there is no room for additional structures. We now have a handle on what uses are there and the applicant's intent for future use. At this time there is no other requirements required.  
**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:** The existing land use complies with the Zoning Ordinance; however, the nonconforming buildings overlap property lines. A variance is needed from the separation of the buildings from the new proposed lot lines, which would bring the structures more into compliance than what currently exists.  
**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 appears that information provided at the time of construction of the buildings for zoning compliance was incorrect. It is not known when the structures were built.  
**Board:** Concur with staff's findings.
  
9. The possible precedents or affects which might result from the approval or denial of the appeal.  
**Staff:** Other structures within the Grand View Addition that may be built on parcels containing more than one lot may be straddling lot lines, which if the properties were to be divided may also require a variance. Although it may be precedent setting, we are cleaning up

the property.

**Board:** 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 passage way between the buildings must remain open to accommodate emergency service vehicles if needed. Conditions added to the motion to seek a site plan and survey and allow staff to review them for issues on safety and setback compliance.

**Board:** Concur with staff's findings.

Discussion on the site plan was taken. Preston recommended that the site plan be provided prior to any property line adjustments so staff can review it to be sure it complies with zoning ordinance requirements. A boundary survey along with the site plan can be requested. If added to the motion, you would need to specify that. Gramer agreed that a survey would reflect the fence lines and lot lines because this would have a number of variances associated with it because of the location of all the buildings. Preston agreed that it would also assist the staff with future review of the parcels.

**Motion:** Ann Gamboe Hall moved that the multi-variance application request (PZBA12-003) for Durand Mini Storage/applicant and Robert Michael/property owner, on property known as 1003 N. Saginaw Street, Durand, MI; Tax Identification #78-012-46-081-001 and 78-012-46-093-001, within Section 15 Vernon Township, to allow the property to be divided leaving four existing buildings to be located within the side and rear yard setback requirements of the M-1 District as shown on the site plan be **approved** pursuant to Section 18.4.4.5 of the 1999 Shiawassee County Zoning Ordinance, as amended, testimony received from the public hearing, and based on the Findings of Fact within Section 18.4.6. with the following conditions:

1. Prior to any property line adjustments, the applicant to provide the County a Site Plan and Survey.
2. Access between buildings to remain clear for emergency service vehicles.

**Support:** N. Bradley Hisson. **Roll Call:** Ayes: Larry Gramer, Julie Hales-Smith, Gerald Wardell, Willis Miller, N. Brad Hisson, Ann Gamboe Hall, and Henry W. Martin III. Nays: None. Motion carried.

(Preston excused himself from the meeting.)

7. **OLD BUSINESS:**

7a. **Dimensional Variance Application – ZBA12-001**

**Applicant/Owner** – Durand Church of the Nazarene

**Site Location** – 9725 E. Monroe Road, Durand, MI

**Tax Identification** – 78-012-15-200-025, Section 15, Vernon Township

**Request** – Consider amending the Zoning Board of Appeals motion of February 8, 2012 allowing for a sign replacement with amber lettering by allowing white lettering as well

Ken Themm, representative of the church, was present. Themm explained that when the church went to order the sign they were informed that the sign company had upgraded their computer package to allow for white lettering. The church was asking approval to have the option of either white or amber lettering.

Chair Martin asked if the request had been properly noticed. Cordier stated yes that it had been advertised within the Shiawassee Independent. The Township and surrounding property owners

received notice by mail.

Chair Martin stated the following letter was received and read it aloud: *“May 1, 2012; Dear Shiawassee County Community Development: I will go along with the sign replacement with amber lettering allowing by white lettering as well. Thank you very much, Mrs. Helen Walper.”*

Themm stated Walper was the immediate neighbor to the east of the property line.

Discussion followed by the board on use of both white and amber lettering and whether or not it would be a distraction to those driving by. Themm felt it would be less of a distraction with white lettering.

Chair Martin asked for comments in support of the request. Hearing none, he asked for comments in opposition of the request. Hearing none, he asked for township input. Hearing none, he asked if the board had additional questions.

The board reviewed comments made at the February meeting regarding the colors available as red, green and blue. The board motion was based on the fact the applicant had offered the amber lighting.

Themm explained that from the time of the meeting in February and then placing an order in March, the sign company informed them they had upgraded their system and were now offering the availability of white lettering.

Hall informed the chair that she and Julie Hales-Smith were not at the February meeting and should be excused from voting on any amendment to the February motion.

**Motion:** N. Brad Hissong moved to amend the proposed amendment to the Zoning Board of Appeals motion of February 8, 2012 to read as follows: that the dimensional variance request from Section 9.3.1. (Religious Use) and Figure 9-1 (Setbacks) as outlined within the 1999 Zoning Ordinance requirements for the Durand Church of the Nazarene (applicant/property owners), referencing Tax Id. Parent Parcel Roll Number: 78-012-15-200-025, Section 15, Vernon Township, and located at 9725 E. Monroe Road, Durand, MI, to allow for a **ground sign to be erected (replacing the existing sign and using the existing foundation)** 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., and with the following conditions:

1. Color of LED held to “Amber” *and White lettering* only.
2. Changing of messages on flip board not to be activated between the hours of 10:00 P.M. to 6:00 A.M.
3. Size of sign limited to 40 square feet.

**Support:** Larry Gramer. **Roll Call:** Ayes: Willis Miller, Gerald Wardell, Larry Gramer, N. Brad Hissong, and Henry W. Martin III. Nays: None. Abstain: Ann Gamboe Hall and Julie Hales-Smith.

**8b. Dimensional Variance Application #PZBA-004**

**Applicant/Owner** – Timothy Colton, 608 East Main (Newburg Road), Durand

**Site Location** – 608 East Main (Newburg Road), Durand

**Tax Identification** – 78-012-22-200-016, Section 22, Vernon Township

**Request** – Replace an existing open rear deck with an enclosed sunroom on a legal nonconforming parcel within the rear yard setback requirements of an A-2 Zoning District

**Proposed** – 42 feet from rear lot line; a variance of 18 feet

**Ordinance Reference** – Section 3.2., Table 3-1, 1999 Zoning Ordinance, as amended, 60 foot rear yard

Cordier provided the staff report. The applicant submitted an application last year requesting to replace the existing 8'x12' open deck located to the rear of his home with a 12'x12' enclosed sunroom/porch to allow the applicant the option to sit outside free of insects and weather. Enclosed porches and decks require the same setback requirements as a principal structure. Colton was informed that his permit could not be approved and he had the option of replacing it with another open deck, seek a variance, or withdraw his application. Colton decided this Spring to seek a variance from the rear yard setback requirement. During review of the application, staff confirmed his parcel was a legal nonconforming lot (127'x150') and that the home dated back to the 1900's. The existing detached garage is located 3 foot off the rear and side lot lines within the southwest corner of the property and was built in 1957. Cordier noted the first County Zoning Ordinance was adopted in 1957 and not all townships elected to come under County Zoning at that time. It was her understanding that Vernon Township didn't come under County Zoning until later. Based on the lot size (0.43 acres), location of the house within the front yard setbacks (15.5 feet from right-of-way), and detached garage location; the request would be a request to expand a nonconforming use as outlined within Section 10.9 of the Zoning Ordinance. If approved, it would be located 42 feet from the rear lot line. Behind his property the area is low and wooded. The township clerk (Charlotte Clark) submitted a letter stating the township had received complaints from the City of Durand that the property has had an accumulation of junk and debris. The township didn't feel a variance should be granted. Cordier stated she had visited the site twice and found no junk. Ms. Clark called the office and left a voice message that she had noted the wrong parcel and that Mr. Colton's was not in violation. Cordier said she had discussed with the applicant the possibility of locating the enclosed porch along the side of the home as an alternative. Colton stated that because the lots were so narrow, it wouldn't provide much privacy as it would be relatively close to his neighbor's home.

Chair Martin asked the applicant if he wished to make a statement.

Colton stated he would like the opportunity to have an enclosed porch to place a table, chairs, and room to walk around them. He would like to be able to sit outside in a screened porch free of insects and weather.

Chair Martin opened the floor for public comment in support of the request. Hearing none, he asked for public comment in opposition of the request. Hearing none, Martin noted the township report had already been provided. Martin closed the public hearing for board deliberation.

Gramer commented that because it was a request for an expansion of a nonconforming use, there would be no findings of fact.

Colton noted that the existing deck was 46 feet from the lot line; he would like to enlarge it 4 feet because the existing size was too small for a table and chairs and still have room to walk around it. Colton again noted he would like the option to be able to sit outside in an enclosed porch.

Ann Gamboe Hall explained that the Z.B.A. was not suppose to expand a nonconformity because it would become more of a nonconformity. It already is nonconforming with the 8'x12' deck. We can't increase it.

The board discussed the parcel based on its nonconformity. Cordier explained that the existing

open deck was in compliance. The ordinance permits open decks and patios to be closer to a lot line than a structure capable of being enclosed. Cordier read from the ordinance the regulations for open decks.

Gramer asked Colton if relocating the porch to the side of the home would be an option. Colton said he could, but it would put it really close to his neighbor's home, but would rather not. It wouldn't give him any privacy.

**Standards for Review from Section 18.4.11:** Nonconforming use, buildings or structures may be structurally changed, altered, enlarged, moved, repaired, re-established, reconstructed, or changed to another nonconforming use upon appeal in cases of exceptional hardship upon a finding that failure to grant the relief requested will:

**A.** Unreasonably restricts continued use of the property or restricts valuable benefits that the public currently derives from the property as used in its nonconforming status.

**Staff:** The parcel was created and developed prior to the adoption of the first Zoning Ordinance in 1957, the proposed enclosed porch will be 42 foot off the rear lot line. The enclosed porch would allow the applicant the ability to sit in an enclosed structure within the rear yard free of summer insects due to the low-lying ground and woods that adjoins the back of his property.

**Board:** Allowing an enclosed porch would not be considered a hardship. The public will not benefit from it and he isn't restricted from continued use of the property.

**B.** Not have an adverse affect on surrounding property.

**Staff:** It is staff's believe that there will be no impact on the adjoining properties and surrounding area if the applicant is permitted to construct an enclosed rear porch 42 feet from the rear lot line.

**Board:** Concur.

**C.** Be the minimum necessary to relieve the hardship.

**Staff:** The applicant has asked for the minimum setback to the rear lot line necessary to allow for enough room to get around a table and chairs.

**Board:** They agreed the lot was small and that the house was nonconforming because it is within the front yard setbacks. If they allowed the enclosed porch to be built, then the home becomes even more nonconforming because it would be too close to the rear lot line. The board felt if it were considered a dimensional variance, they could review it under the findings of fact and have the possibility of deviating from the ordinance to grant it. The board asked Colton if he would consider dropping back down to an 8'x12' enclosed porch.

Colton asked was that his only option? He would really like a 12'x12' porch and that his neighbors on either side of him had no objections to his request.

Wardell responded that the board was being asked to break the law by increasing the size of the deck and allowing it to be enclosed.

The board continued discussion on the existing open deck versus the request. Colton stated he didn't understand what harm would be caused if he built the 12'x12' enclosed porch. The board responded that it was illegal. They were being asked to expand a nonconforming use. Colton

responded by asking wasn't that the purpose of this board to come before them to seek relief from the ordinance. The board answered that they can't make something more nonconforming than it already was. They might consider it if he stayed within the same footprint, but he was asking to increase it by 4 feet. Colton answered in other words make it 8'x12' or forget it. The board said they could sympathize with him, but they were being asked to increase an existing nonconforming use by allowing the enclosed porch to be within the rear yard setbacks. The board felt it was a unique situation based on what was considered nonconforming now, but that the open deck currently complied with setbacks. The board continued and didn't understand why the application had been changed from a variance to a nonconforming appeal. The board decided to wait for additional input from staff on how the application request was being interpreted.

**Motion:** Larry Gramer moved to table Application #PZBA-004, Timothy Colton, 608 E. Main Street (Newburg Road), Durand, Tax Identification 78-012-22-200-016, Section 22, Vernon Township, until the June meeting. **Support:** Ann Gamboe Hall. **Roll Call to Table:** Ayes: Julie Hales-Smith, Ann Gamboe Hall, Gerald Wardell, N. Brad Hissong, Willis Miller, Larry Gramer, and Henry W. Martin III. Motion carried.

9. **INTERPRETATION OF THE ZONING ORDINANCE:** None.
10. **ZONING ADMINITRATOR'S REPORT:** Cordier stated there would be two applications for the June 13<sup>th</sup> public hearing.
11. **BOARD MEMBER COMMENTS:** Ann Gamboe Hall stated she would be out of town on the 13<sup>th</sup> and may not make it back in town in time for the meeting.
12. **COMMISSIONER COMMENTS:** Commissioner Ron Elder spoke briefly to the board. He welcomed newly appointed Z.B.A. member Julie Hales-Smith to the board. Elder talked briefly about vacancies in various departments, unemployment in the area, and amount of people looking for work. Elder commented that he would be seeking re-election. He enjoyed working with everyone and thanked the board for doing a good job.
13. **PUBLIC COMMENTS:** None.
14. **ADJOURNMNET:** **Motion:** Julie Hales-Smith moved to adjourn the hearing. **Support:** Ann Gamboe Hall. Motion carried: 7 ayes, 0 nays. The public hearing adjourned at 8:55 P.M.

Recording Secretary: Linda Gene Cordier

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Henry W. Martin III, Chairman

June 13, 2012  
Approval Date of Minutes

