

**SHIAWASSEE COUNTY  
ZONING BOARD OF APPEALS BOARD MINUTES  
MAY 14, 2014**

**CALL TO ORDER:** The Zoning Board of Appeals public hearing was called 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, MI by Chairman Henry W. Martin III.

**ROLL CALL:** Board members present: Glenn Love Jr., Ann Gamboe Hall, Julie Hales-Smith, N. Bradley Hissong, Fred Junger, and Henry W. Martin III. Absent: None. Also present: Peter J. Preston (Community Development Director), Linda Gene Cordier (Zoning Administrator) and Robert McLaren (County Commissioner).

**EXCUSED ABSENCE:** Chair Martin noted that a motion was in order to excuse Brad Hissong from the April 9<sup>th</sup> board meeting due to the fact Brad lost power to his house and his father-in-law is on hospice.

**Motion:** Fred Junger moved to excuse Brad Hissong. **Support:** Ann Gamboe Hall. **Motion carried: 5 ayes, 0 nays, 1 abstain (Hissong).**

**CONFIRMATION OF LEGAL NOTICE:** Cordier informed the board that the legal notice for the scheduled agenda was placed within the Shiawassee Independent on Sunday, April 27, 2014 and proof of publication was on file. Chair Martin declared the meeting legally published.

**APPROVAL OF AGENDA:** Cordier informed the board that she had inadvertently left off Charles and Pamela Movalson regarding 2107 Ellsworth Road, Perry, MI, under Old Business. It was postponed so the applicant's could research the feasibility of additional land divisions. New agendas were passed out prior to the meeting with the correction.

**Motion:** Fred Junger moved to approve the amended agenda. **Support:** Julie Hales-Smith. **Motion carried: 6 ayes, 0 nays.**

**APPROVAL OF BOARD MINUTES:** **Motion:** Glenn Love Jr. moved to approve the April 9, 2014 board minutes as printed. **Support:** Julie Hales-Smith. **Motion carried: 6 ayes, 0 nays.**

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

**COMMISSIONER COMMENTS:** County Board of Commissioner Robert McLaren informed the board that there was nothing much to report at this time. It was the Board of Commissioners' regular meeting week. The board was reviewing a couple of P.A. 116 agreements and also replacing a position that opened up in the Parole Probation Department due to an employee retiring.

**OLD BUSINESS:**

**7a. Dimensional Variance Application #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.** 78-013-08-400-001-02, Section 8, Woodhull Township

**Request** – Parcel exceeding the maximum lot size and lot width to depth ratios for a future single-family build site within the A-2 Zoning District; Proposed parcel size – 200'x880'/longest side; 7.811 acres m/l

**Ordinance** – Section 2.7.2.A. – Maximum lot size created after June 1999 – 2.5 acres and Section 5.2.7. - Lot Frontage/Depth Ratio: Parcels under 20 acres; 4 to 1 ratio

**Motion:** Fred Junger moved to remove Application #PZBA14-003 from the table. **Support:** Glenn Love Jr. **Motion carried: 6 ayes, 0 nays.**

**Staff Review:** Mr. Preston handed out an aerial view of the petitioned parcel to the board. Also passed out was a copy of the Land Division approval from Woodhull Township although the County had denied the Zoning review. The township approved it with a statement that it was non-buildable parcel and that the Road Commission had denied access, but didn't state why. The parcel was placed on the tax rolls in 2004. In 2006 a pole barn was constructed on the 7.811 acres without Zoning or Building permits or inspections. Preston discussed the value of the property of \$28,000, but wasn't sure if that would have included the value of the pole barn or if it was just the value of the land per acre.

The A-2 district's intent and purpose is to preserve farm land. Preston referenced the aerial noting there was no farm land visible to the rear of the existing barn. Mr. Hebert was not involved in the original division of the parcels. The parcels were already created and built upon. The property was sold to him on the pretense that it was a buildable parcel. This board has seen this scenario before. Preston asked the board to keep in mind that there are no alternatives to rectify this. The prior owner has had legal issues and is unavailable for a potential lawsuit. The Real Estate agent (Sue Hammond) acted as the applicant in 2003. The office has not received a lot of information as to why it was approved. We know that Mr. Hebert is now stuck with a parcel of land that is non-buildable, the property contains a building built without permits and is in violation, and cannot be used. The board should also keep in mind that there may be similar parcels out there that we don't know about at this point in time.

Board members Junger and Hall both stated that Sue Hammond was still active in selling real estate.

Chair Martin asked the applicant if he wished to comment.

Mr. Hebert replied that he purchased the property through a real estate agent. When he contacted the county he found out it wasn't a buildable lot and that a pole barn had been constructed without permits or inspections and that the property had a code violation posted. We have been paying taxes on the property. We had no idea; we thought we had done everything right only to find out that we had been told a different story. If we would have known, we would not have purchased this property. The real estate agent informed us that they would take care of it and then retracted his statement.

Chair Martin noted that the Findings of Fact had not been reviewed last month and asked Mr. Preston to go through them with the board.

**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 petitioner has stated that they were informed by the real estate agent that the 7.811 acre parcel was buildable. The petitioner cannot obtain zoning and building permits based on the current lot size. The applicant is stuck with a seven (7) plus acre parcel that he can't do anything with. The property can be brought up to zoning code compliance if a variance is granted and includes the condition that the applicant purchase of all zoning, building and trade permits and secures inspections.**

ZBA Findings: It appears the pole barn is in good shape

Hebert informed the board that the pole barn is 30'x40'x12', has a cement floor, was fully insulated, has ceilings and was wired for electricity. The building, from the ground to the peak, is about 15' in height.

ZBA Board: Hall felt it was a complete hardship not created by the petitioner. If the variance were denied, it would be a complete taking of the property and the County could be liable. Martin felt the petitioner should pursue legal action against the real estate company.

Preston noted that at last month's hearing it was discovered that the parcel also violated the Lot Width to Depth ratios (4-to-1). The parcel width is 200 feet and the depth (longest side) is 880 feet. It exceeds it by 80 feet.

ZBA Board: The board concurred with all findings.

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

**Staff: The parcel was part of a Land Division review process in 2003. Although Zoning clearly stated it did not comply with zoning regulations for a lot size within the A-2 District, it was recorded and placed on the 2004 tax roll map. It was not readily identifiable when staff reviewed the request. Since that time we know that it exceeds the 2.5 acre lot size, it violates the 4-to-1 ratio, and the parcel is considered non-buildable. We have since received verification from the township that it was approved with statements.**

ZBA Findings: Junger questioned the fact the Road Commission had denied access during the Land Division Review process.

Hebert answered that he contacted the Road Commission after the April hearing. He was told it was due to vision requirements. He was told that if a tree were removed and a berm diminished, the Road Commission would come back out and look at it to consider approval of a driveway access. As it stands, it doesn't meet requirements for a driveway location. I will apply for a driveway permit if the variance is granted. Hebert said he didn't want to spend any more money until he knew where he stood with the property.

ZBA Board: Martin noted that a driveway permit could be one of the conditions of approval if the variance is granted. 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 existing property exceeds the maximum 2.5 acre lot size requirement within the A-2 District. The variance is necessary in order to bring the property into compliance and allow for the petitioner to obtain permits to build a single-family dwelling. The intent and purpose of the 2.5 acre maximum lot size is to preserve farmland. Permits cannot be issued for any development on the property as it currently exists.**

ZBA Findings: Hall noted there is absolutely no use for this property as is. Preston agreed; the pole barn is a violation of the zoning ordinance and can't be used. Hales-Smith added the applicant couldn't even put a driveway in unless a variance is granted. Junger noted that the parcel was created and a barn built without permits prior to the petitioner purchasing the land.

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: Records reflect the petitioned parcel and accessory building were not the action of the petitioner. The petitioner is now attempting to seek a dimensional variance from the maximum lot size in order to build a single-family dwelling. The applicant has owned the parcel since the winter of 2012. The parcel was placed on the rolls in 2004.**

ZBA Findings: 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 that further development of the property by allowing a single-family dwelling to be built would impact the surrounding property. The property is not actively being farmed.**

ZBA Findings: The board discussed the history of this parcel and asked if it had been a legal lot of record and split off from the 2.5 acre site with the existing home. Cordier stated no, that when the Land Division was submitted in 2003, the parent parcel contained 51 acres. The 2.5 acre site was a legal lot size. It is

apparent that the owner of the 2.5 acre parcel also purchased the 7.811 acre parcel. 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 for which a special use permit is necessary.

**Staff: Single-family dwellings are a permitted use by right within the A-2 zoning district with zoning and building permit approvals. A special use permit would not be required. However, the property is in violation of the construction of a pole barn without permits on a parcel and without a principal dwelling. No permits can be issued based on the existing issues of lot size and lot width-to-depth.**

ZBA Findings: Junger replied that once a home was built, the required permits and inspections for the pole barn could be obtained to bring the property into code compliance. The board concurred with all 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: Other than the petitioned parcel exceeds the maximum lot size with an existing accessory structure, and exceeds the lot width to depth ratio, the property would comply with Ordinance regulations.**

ZBA Findings: The parcel exceeds the 2.5 acre lot size requirement and exceeds the lot width to depth ratio by 80 feet. The board concurred with all findings.

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

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

ZBA Findings: The Township overlooked the zoning ordinance regulations. The board concurred with all findings.

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

**Staff: There may be other parcels that were created after June of 1999 that exceed the 2.5 acre lot size requirement and placed on the tax rolls throughout the townships that are under the jurisdiction of the Zoning Ordinance that have been placed on the Tax Rolls that the department is unaware of and would be similar in nature to the pending variance. ZBA may wish to ask the County Planning Commission Board to revisit the agricultural district lot size minimum/maximum language again for possible amendment. The Rewrite Committee has compiled some potential alternatives for parcel sizes especially as it relates to the 12.5 acre ruling, which will be presented to the Planning Commission.**

ZBA Findings: The board concurred with all 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: Should the variance be approved, it doesn't appear it would impact the County or other governmental units in the provisions of services within the area. Other than the typical services such as ambulance, fire, and police; the addition of one home should not create an impact if the variance is granted.**

ZBA Findings: The board concurred with all findings.

Preston again noted that the parcel has 200 feet of road width; information was received this past week from the township verifying the township reviewed and approved the parcel with two (2) statements.

Chair Martin called for a board motion unless additional discussion was needed.

**Motion:** Fred Junger stated that based upon the review of the submitted materials, including description of proposed uses and a site drawing, offered the following motion reluctantly: **Approve 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) The proposal satisfies the basic findings as set forth in Section 18.4.6 of the Ordinance. The Board of Appeals has discussed the unique circumstances, practical difficulties, and the intentions of the applicant to develop the property. 2) The parcel is already recorded on the Woodhull Township Tax Rolls. 3) It was a considerable amount of time from when it was placed on the tax rolls until the petitioner purchased the property. 4) It is the most reasonable use of the property to be developed for a single-family home. 5) The property could not be used for anything else if denied and would be considered a taking of property.

**Conditions:** 1) A driveway permit is obtained for access to the property from the Shiawassee County Road Commission. 2) All permits required for the pole barn and inspections obtained and brought up to current code standards.

**Support:** Ann Gamboe Hall.

**Roll Call:** Ayes to Approve: Glenn Love Jr., Julie Hales-Smith, Brad Hissong, Ann Gamboe Hall, Fred Junger, and Henry W. Martin III. Nays: None. **Motion carried: 6 ayes, 0 nays.**

#### **7b. APPROVAL OF BY-LAWS**

**Motion:** Fred Junger moved to approve the By-Laws as printed for 2014. **Support:** Brad Hissong.

**Motion carried: 6 ayes, 0 nays.**

#### **7c. Dimensional Variance #PZBA14-001**

**Applicant/Owners** – Charles and Pamela Movalson, 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

**Postponed from April 9, 2014; to remain tabled**

#### **NEW BUSINESS:**

##### **8a. Multi-Dimensional Variance #PZBA14-004**

**Applicant/Owners** – Thomas and Therese Grant, 775 Riverbend Drive, Owosso

**Site Location** – 775 Riverbend Drive, Owosso

**Tax Id.** 78-002-46-000-020 (Lot 20 Riverbend Subdivision); Rush Township

**Request:** 1) Install in-ground pool within the front yard setback requirements, and; 2) Install a privacy fence exceeding the height requirements within a front yard

**Ordinance** – Section 5.3.1.E.1. – Swimming pools (Section 5.3.1.B.) and; Section 8..14.D – Fences located within a front yard shall not exceed four (4) feet and shall have at least 75% open area. Front yard setback – 40 feet from right-of-way

Chair Martin asked if the request was legally noticed. Cordier answered it was placed within the Independent and that the applicant, surrounding property owners, and township had been notified. Martin asked for staff to provide a staff report.

Preston provided the staff report. The petitioned parcel is located within Riverbend Subdivision and located within a loop of Riverbend Drive. The parcel has irregular road frontage on the road, a rear lot line of 410 feet and basically no side lot lines. The parcel contains an existing dwelling and small 10'x16' storage shed. The petitioners wish to have an in-ground pool with a concrete apron around it for lounge chairs and a playscape. They are also petitioning to install a six (6) foot privacy fence around the pool area. Preston discussed ordinance regulations on setbacks and height regulations within a front yard. A fence in the rear yard can not exceed six (6) foot and four (4) foot in the front yard. Setback for construction is 40

feet from the right-of-way. This parcel is unique due to the fact it maintains three (3) front yards due to the loop. The parcel is zoned R-1B and is part of a plat established in 1955. The proposed pool and fence will be located on the northern side of the single-family dwelling. There is no access change. The parcel does have some existing vegetation, which the board may wish to discuss if additional screening will be necessary. Staff does not feel the height of the fence would create an impact or problem if approved. No response from the township was received.

Board member Junger agreed that this wasn't the typical corner lot.

Chair Martin asked the Grants if they wished to comment on their request.

Tom Grant said they had visited each neighbor and explained what their plans were. The neighbors were all happy for them. The proposed fence would not be intrusive from the road. They have no other location to place a pool. They thought they had enough land to have a pool, but then they found out about the setback issue. Grant stated his drawing was pretty much to scale.

Therese Grant informed the board that they have four (4) grandchildren and she was diagnosed with Lupus which is similar to arthritis. She has a prescription for Aqua Therapy for the winter months. If they could have the pool, it would help her during the summer months.

Junger said he noticed a large tree next to the house where the pool is proposed.

Tom Grant answered that was correct and unfortunately it would have to be taken down.

Chair Martin opened the floor for public comment in support of the request. Hearing none, he noted the following two (2) letters were received:

Letter #1 – Steve Gill, 680 Riverbend Drive, Owosso. No objections.

Letter #2 – Clyde Joel and Joan L. Rugh, 720 Riverbend Drive, Owosso. We the undersigned give our approval (regarding proposed multi-dimensional variance request by Tom and Teresa Grant).

Chair Martin called for public comment in opposition of the request. Hearing none, Martin noted there was no township response, and closed the public hearing.

Board Discussion: Hall stated she had thought there was a 3<sup>rd</sup> variance needed for total lot coverage. Preston answered that when they researched the ordinance further, pools were exempt. Hissong discussed the fence and asked if it would surround the pool on three (3) sides. Preston stated yes. Martin asked if the Road Commission had reviewed this due to the setbacks from the road right-of-way.

Grant stated he wasn't sure and added that Chesaning Pools would be installing the pool and fence if approved. The reasoning for the height of the fence was to have some privacy otherwise with a lower fence everyone would be able to see what they were doing.

Hall noted that the board is to consider the least amount needed to overcome the practical difficulty when considering a variance and asked if they could downsize the area around the pool.

Grant stated they could possibly downsize the walkway around the pool from six (6) foot to four (4) foot. They were hoping to have a patio table along the east side. They could possibly consider maybe four (4) foot along the side of the pool. Mrs. Grant added that they wanted to add a playscape for the grandchildren within the fenced area as well so it would be easier to watch over them. Mrs. Grant said she would also like to do a little landscaping on the inside of the fenced area.

Hall responded that the board cannot take that into consideration when reviewing an application. The board needs to consider how little of a change can be made and still be able to grant a deviation.

Mr. Grant said he noticed a lot of pools around the area in Owosso that had pools closer to the road than what they were proposing.

Hall answered that a six (6) foot high fence does create a problem, especially when driving around a corner and that is why she suggested he consider downsizing the area.

Mr. Grant replied they would be happy even if it meant four (4) foot less and maybe down to 12 foot on the east side.

Hissong discussed the site plan and the setback requirements from the right-of-way. Hissong said he was concerned with downsizing around the pool area. A patio table chairs, and umbrella would have to be pushed right up along the fence to make it work. This just happens to be a very unique parcel that is mostly an entire front yard, which is not typical to other parcels. They have no back yard to place a pool. He was also concerned with the smaller walkway area around the pool if they brought the fence in closer.

Preston reminded the board it was the pool that had the setback issue and the fence had the height issue. A four (4) fence will not meet the needs for privacy due to the location.

Junger agreed it was a strange road as it looped around the parcel.

Chair Martin asked the board if they wished to discuss the need for landscaping or additional screening.

Junger said the trees were fairly large and felt additional screening was not needed. Adding more screening might do more harm than good.

Chair Martin asked staff to review 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 petitioner's property.

**Staff: The petition for variance would permit encroachment of an accessory use/structure within the required front yard setback and would permit fence height in excess of the minimum requirement. The provision establishing the front yard setback and lot density is not only an issue of continuity and consistency, but may also be considered a provision attempting to protect the public health, safety and welfare by restricting the proximity of a structure to the public right-of-way. The Board of Appeals should discuss.**

ZBA: The parcel has three (3) front yards and one (1) rear yard. Riverbend Drive has a speed limit of 25 miles per hour; the parcel is odd in shape. When the Ordinance was written, it didn't take into account how some parcels lay out differently such as this one. It would be no closer to the road right-of-way than the neighbor's pool. (Grant noted that the pool would be positioned further back than the pool at Dr. MacGregor's pool. The board concurred with all findings.

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

**Staff: The Board should identify the specific features of the land that lend to practical difficulties. These can include those outlined by the petitioner or developed in discussion by the Board. The Board should specifically discuss the configuration of the lot and public road. The Board should also discuss if the petitioned use is a reasonable use enjoyed by other properties.**

ZBA: Again the parcel has three (3) front yards, the parcel is an odd lot size configuration, other lots within the area are permitted to have swimming pools, and it shouldn't interfere with anyone's vision as they drive around the loop. The board concurred with all findings.

3. Specific findings (characteristics of the land) showing that because of 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 Board should assess if there is a circumstance or condition not resulting from any act of the petitioner subsequent to the adoption of this Ordinance and if such condition generally applies to their property or uses in the same zoning district. The Board should specifically discuss the configuration of the lot and public road. The Board should also discuss if the petitioned use is a reasonable use enjoyed by other properties.**

ZBA: The lot configuration and public road hinder the applicant the opportunity to have a pool, which is not an unreasonable use. It is unknown if there are other lots in the county that may have three (3) front

yards. It definitely is considered a hardship and not self-created. The closest access to the pool would be the garage. Instead of the neighbor's looking at the north side of the garage, they will be looking at a privacy fence. 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 Board should discuss practical difficulty in light of the lot configuration and assessment of the petitioned development as a reasonable use.**

ZBA: As owner of the property, they have agreed to downsize the area around the pool somewhat. 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: Adverse impact upon property values, use and enjoyment of the property in the neighborhood or district, and on the public, health, safety and welfare is not anticipated.**

ZBA: Concur 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 for which a special use permit is necessary.

**Staff: The proposal does not permit a use that is not permitted by right in the district and is not a use that would be subject to the application of Section 12.**

ZBA: The board concurred with all findings based on previous discussion.

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, it appears that the proposed development would comply with other requirements of the Ordinance.**

ZBA: After review of the diagram and discussion, the pool and fence would otherwise meet the standards. The board concurred with all findings.

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

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

ZBA: The board concurred with all findings.

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

**Staff: The Board of Appeals should discuss, given any unique circumstances or practical difficulty identified by the Board or the public at hand.**

ZBA: Martin noted he has visited other subdivisions and did not find a lot similar to this with the three (3) front yards. It is a very unique parcel configuration. The board concurred with all findings.

10. Findings on the impact if the appeal is approved, on the ability of the County or other governmental agency to provide adequate public services and facilities and/or programs that might reasonably require in the future if the appeal is approved.

**Staff: It does not appear that this variance would impact the County or other governmental unit in the provision of services.**

ZBA: Martin stated if approved there would be no change in service to the area. The board concurred with all findings.

**Motion: Julie Hales-Smith** moved that based upon the review of the submitted materials, including description of proposed uses and a site drawing, offered the following motion to **Approve** request PZBA14-004 submitted by Thomas and Therese Grant (775 Riverbend Drive, Owosso), a proposed 12' variance from the required 40' front yard setback to construct a pool 28' from the Riverbend Drive right-of-way and a proposed 2' variance from the required maximum 4' fence height in the front yard setback as legally described in Section 36, Rush Township, based upon the following reasoning:

**Reasoning:** 1) The proposal satisfies the basic findings as set forth in Section 18.4.6 of the Zoning Ordinance. 2) The ZBA has discussed the basic conditions referencing the petitioned variance and site.  
**Conditions:** 1) Bring the northern boundary (fence) in so it will reflect 4' back from where it currently is reflected on the site plan and along the eastern boundary (fence).  
Discussion: Special reasoning for the height of the fence based on the privacy from the road and based on the Building Code of a minimum five (5) in height and around the pool area. Entry to the pool area will be through the garage door.  
**Support:** Glenn Love Jr.  
**Roll Call:** Ayes to Approve: Brad Hisson, Ann Gamboe Hall, Fred Junger, Glenn Love Jr., Julie Hales-Smith, and Henry W. Martin III. Nays: None. **Motion carried: 6 ayes, 0 nays.**

**8b. Dimensional Variance #PZBA14-005**

**Applicant/Owner** – Jeaneen L. Jacobs, 1980 W. Bennington Road, Owosso

**Site Location** – 1980 W. Bennington Road, Owosso

**Tax Id.** 78-010-02-300-001, Section 2, Bennington Township

**Request:** Reinstate an expired Dimensional Variance from 2005 to create a parcel size exceeding the maximum lot size

**Proposed:** 292' width by 1080' depth; 7.2 acres m/1 with an existing home

**Ordinance** – Section 2.7.2.A. – 2.50 acres

Cordier provided the staff report. Ms. Jacobs is requesting the ZBA board to consider reinstating her expired dimensional variance that was granted to her in 2005. The variance granted her the ability to create a parcel size that would exceed the maximum 2.5 acres within the A-2 District. Ms. Jacobs is seeking approval to create that parcel that would contain 292 feet of road width/frontage along Bennington Road with a depth of 1080 feet. The parcel has an existing home that is located approximately 492 feet or more from the road. The on-site septic system is located approximately 100 feet from the rear lot line and about 70 feet from the proposed east boundary lot line. The front yard also contains a residential pond.

Cordier said the variance was approved for the 7.2 acre parcel with the following amendment to the original motion of June 8, 2005: *“Based on the lay of the land, the long septic system, it would not affect emergency services, it would not set precedent, no errors made by staff, and will not be used as farm land as it is 600-800 feet away from the existing house.”* Cordier continued noting that the applicant was seeking the same variance, which would allow her to proceed with applying for a Land Division. The remaining acreage will be combined with her two (2) son’s property.

Cordier noted that the ordinance states that occupancy of the land or premises as approved must take place within one year, or if construction or a permit has not commenced within six (6) months, the variance will become null and void. The reason for expirations on a variance is the Ordinance language could change or the circumstances or surrounding land may have changed which would change the basis for granting a variance. In this particular case, she is asking for the same lot size as originally granted, the ordinance language has not changed, and nothing has changed in the immediate area.

Brian Jacobs, son of Jeaneen Jacobs, said he was representing his mother as she was unable to attend. Brian said he currently resides on a 2.5 acre site to the east of this parcel. The yard is kept mowed all around the buildings and her home. A creek runs across the property and there is a swamp/wooded area. This was one of the reasons the septic system had to be placed so far back. His mother was just asking to have the same variance request approved so she can follow through this time with the land division.

Chair Martin opened the floor for public comment in support of the request. Hearing none; Martin asked for public comment in opposition of the request. Hearing none, Martin asked for township input. Cordier stated the office had not received any correspondence. Chair Martin closed the public hearing and called for board discussion.

Discussion: Hall questioned why a land division had not been done after the variance had been granted. Jacobs stated his mother did not realize it hadn’t been done. He and his brother were interested in purchasing the farm and that was when it was discovered. If it gets reinstated tonight, I will make sure the

land division is followed through. Chair Martin asked if they needed to review the findings of fact. Preston noted that the findings of fact were done in 2005; nothing has changed as Linda noted. If the board agrees with that, then just a motion would be in order.

**Motion:** Brad Hissong moved to **approve** the Dimensional Variance Request (PZBA14-005) of Jeanene L. Jacobs, from Section 2.7.2.A. of the 1999 Shiawassee County Zoning Ordinance, to reinstate a Dimensional Variance granted by the Zoning Board of Appeals on June 8, 2005, to allow for a parcel exceeding the maximum lot size within the A-2 Zoning District be created with an existing dwelling. A parcel size of 292' x 1,080' be created from Tax Id. 78-010-02-300-001, within Section 2, Bennington Township, and known as 1980 W. Bennington Road, Owosso, MI; 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; it is the same; nothing has changed.

**Conditions:** 1) Apply for a Land Division to create the division within six months from approval date of variance and record the division with the Shiawassee County Register of Deeds.

**Friendly Amendment:** Junger added that the remaining land will be maintained as farm land. Martin added the home is positioned to the rear of the property, Lilly Creek runs through it and a pond is in the front yard. Junger also noted that it was based on the original findings of fact as well. Hissong stated he would not object.

**Support:** Julie Hales-Smith.

**Roll Call: Ayes to Approve:** Ann Gamboe Hall, Glenn Love Jr., Fred Junger, Julie Hales-Smith, Brad Hissong, and Henry W. Martin III. **Motion carried: 6 ayes, 0 nays.**

#### **8c. Dimensional Variance #PZBA14-006**

**Applicant/Owner --** Allen Almond, 11281 S. New Lothrop Road, Durand

**Site Location –** 11281 S. New Lothrop Road, Durand

**Tax Id.** 78-016-40-003-000, Lot 3, Dyer Terraces, Section 14, Burns Township

**Request:** Construct an accessory building that would exceed the maximum square footage within the R-1B zoning district

**Proposed:** 32'x40' x \_\_\_\_

**Ordinance –** Section 5.3.1.B. – 800 square feet

Cordier provided the staff report. The applicant would like to build a 32'x40 pole barn. However, the parcel is located within a platted subdivision (Dyer Terraces) in Burns Township, which is zoned R-1B. The maximum size for accessory structures in this district is 800 square feet. Almond has requested a 1200 square foot building. No height of the proposed structure was provided; however, this district has a maximum height of 15 feet from grade to the peak. The applicant noted that there were a couple other accessory buildings within the immediate area that exceeded the 800 square feet. Cordier said she checked the following property files:

Lot 1 – 11221 S. New Lothrop Road (Dyer Terraces). In 2006 a permit was granted for a 24'x36'x16' accessory building (864-sf). It was signed by former administration and may have been considered under an Administrative Waiver; however, paperwork to verify that could not be confirmed.

11286 New Lothrop Road. In 2001 a permit was issued to construct a 24'x24' lean to (576 square feet) to an existing garage within an A-2 District. Complied with the A-2 district regulations.

11322 New Lothrop Road. In 1991 a permit was issued to build a 24'x24' (576 square feet) detached garage within the A-2 District; complied. In 1995 a permit was issued to build the same size building; first building had not been built and permit expired.

11577 New Lothrop Road. Zoned R-1A. Maximum square footage for accessory building is 900 square feet. In 1995 A permit was approved to build a 24'x32' (768-sf) detached garage. Complied with the district size requirements.

Cordier provided a brief history of similar petitions that have come before this board and board action:

2014 – R-1A District (900-sf). Denied a request to construct a 1200-sf building with a proposed height of 18'10".

2013 – R-1A District (900-sf). Denied a petition to construct a 1684-sf building.

2009 – R-1B (800-sf). Withdrew a request to build a 32'x48'x28' two-story barn.

2007 – R-1B (800-sf). Approved a request to construct a 28'x36' (1008-sf) building.

2004 – R-1B (800-sf). Approved a 30'x40' pole barn.

2003 – R-1A (900-sf). Administrative Waiver granted for a 30'x30' barn with an 8'x30' (240-sf) overhang for use as a porch.

Mr. Almond informed the board that he owns quads and dirt bikes and would like a place to keep them in. He owns almost an acre of ground. All the materials for the barn have been purchased. He hadn't realized there was a maximum size building requirement.

Chair Martin opened the floor for public input in support of the applicant's request.

Speaker #1 – Brad Wilkinson, 11286 S. New Lothrop Road. Brad informed the board he resided across the road from Allen. Allen has plenty of room on his property for a garage and would have no objections to Allen building the accessory building. Brad didn't believe it was a subdivision. There are fields behind my home as well as Brad's.

Speaker #2 – Brenda Wilkinson, 11286 S. New Lothrop Road. Brenda stated she had no objections with Allen building a building and believed it was definitely needed. If the building were built, it would be nice to see Allen keep everything inside instead of in the yard.

Chair Martin called for public comment in opposition of the request. Hearing none, Martin asked if the township had responded. Cordier stated the office did not receive any correspondence. Martin closed the public hearing and asked if the board for additional comment.

Hissong asked Almond if he was building the accessory building to operate a commercial business. Hissong noted there were several vehicles within the yard.

Almond replied he was not. His girlfriend needed a car so he had purchased one and then on the same day purchased five (5) more to fix and thought she could take her pick. Another vehicle belonged to his buddy. There was no commercial activity going on.

Junger stated appearance wise it looks like a commercial operation. It's one thing if the car just needed a battery, but it appears to be headed towards a junk yard.

Almond said his intent was to pick up one or two cars and let his girlfriend decide which one she wanted. The construction materials were already purchased including the doors and had no idea it was going to be a problem.

Chair Martin asked Almond what the height of the building would be from grade to the peak.

Almond answered maybe 19 feet; he could probably lower it to 18 feet.

Chair Martin replied that the Ordinance states it cannot exceed 15' to the peak within the R-1B district.

Hall discussed downsizing the building with Almond as he was asking for a rather large variance. Almond answered he would like the building as large as possible.

Junger explained that the Ordinance states the minimum amount needed to overcome the practical difficulty. The board is looking for the smallest amount needed when considering a variance.

Hall suggested downsizing to possible a 32'x36'' (1152-sf). Hall then asked staff about administrative waivers.

Preston answered that the Rural Zoning Enabling Act prohibits them. In the past language typically allowed a 10-to15 percent waiver, but again staff can no longer grant them.

Hall continued noting that no hardship was presented and suggested Almond seeks a postponement to allow him time to consider downsizing the building. She recommended that he bring back a drawing such as a blueprint as to how the building would be constructed.

Hissong discussed various reasons the board considers when approving a variance such as a practical difficulty or a physical condition that prohibits a person from meeting the Ordinance requirements.

Chair Martin asked Almond if he wished to continue with the request or seek a postponement for one month.

Almond replied again that he would like to have a garage as large as possible.

Preston explained that the Rewrite Committee, a subcommittee of the Planning Commission, is working on possible Zoning Ordinance text amendments which would include sizes of accessory structures within the "R" districts based on the size of the lot.

Junger recommended to Almond that he consider postponing it for one month and suggested he make an appointment to meet with staff to assist him if needed. He would not have to reapply or pay additional fees to have it handled in June.

Almond stated he would agree to postpone his application.

**Motion: Glenn Love Jr.** moved to **postpone** Dimensional Variance Application #PZBA14-006 submitted by Allen Almond, 11281 South New Lothrop Road, Durand, MI; Tax Id. 78-016-40-003-000, Lot 3, Dyer Terraces, Section 14, Burns Township, for one month and be scheduled on the June agenda, to allow the applicant to downsize the accessory structure and height and return with drawings of the proposed garage. **Support: Brad Hissong. Motion carried:** 6 ayes, 0 nays.

**INTERPRETATION OF THE ZONING ORDINANCE:** Cordier informed the board that staff was bringing the following text language forward even though both she and Mr. Preston felt they had interpreted the language correctly. Section 5.5.3. (Permitted Yard Encroachments) was handed out.

Cordier stated the department had received telephone calls from a citizen residing in Woodhull Township asking if a concrete slab could be poured along the side of his garage and extend to the lot line for the intended use of parking vehicles. Staff had informed him no. He then asked if a concrete slab could be poured along side the garage and extend it to the lot line if it were to be used as a patio or terrace. Staff again stated no as a setback was required based on the use.

Board Discussion: Board members felt the language was clear and that it had been interpreted by staff correctly. A slab to park vehicles on next to the garage would have to maintain the same setback as a driveway, which is 15 feet from a lot line.

**Motion: Fred Junger moved** that the ZBA Board concurs with staff's interpretation of Section 5.3.3. (Permitted Yard Encroachments) as written. **Support: Brad Hissong. Motion carried:** 6 ayes, 0 nays.

**ZONING ADMINISTRATOR REPORT:** Cordier replied the next hearing would be June 11<sup>th</sup>.

**BOARD MEMBER COMMENTS:** Julie Hales-Smith informed the board that she would not be in attendance on June 11<sup>th</sup> as she would be out of town. Chair Martin stated he, too, may be out of town and unable to attend the hearing and would contact staff to confirm.

**PUBLIC COMMENTS:** Speaker #1: Ann Gamboe Hall stated that although it has nothing to do with the public hearing, she wanted to invite everyone to attend the Owosso Community Players play at the newly renovated Lebowsky Center. The play “Shrek” is being held. Speaker #2: Nathan Hemenway, 100 E. Six Mile Creek Road, Owosso. Hemenway stated he was in attendance as he has the same issues that have been coming before this board relating to the size of an accessory structure within the “R” districts. Hemenway said he resides within the R-1A district which only allows up to 900 square feet. He wondered how the Rewrite Committee worked on language change and was it open to the public.

Preston answered that the Rewrite Committee has been working on proposing a text amendment to this section. The purpose of the maximum square footage size was so it would not overwhelm the home on the parcel. A lot of the parcels are rather small in size.

Hemenway informed everyone that he had asked last fall how other communities handle this and was informed that Clinton County based their language in proportion to the size of the lot. Hemenway felt that would be a fair way to handle accessory sizes in Shiawassee County.

Preston agreed and stated he wrote the language for Clinton County and reiterated that the language was currently being reviewed with the Rewrite Committee. The committee will take it to the Planning Commission, the board will direct staff to mail it out to the townships for a fifty (50) day review, and then the Planning Commission will hold a public hearing before all recommendations are taken before the County Board of Commissioners for final review and adoption.

Junger commented that there appear to be a lot of one (1) acre lots next to larger lots within the “R” districts.

Hemenway agreed and informed the board he owns a nine (9) acre parcel within the R-1A district. He has the same dilemma. He attended tonight’s meeting as he was interested in the process.

Preston informed everyone that the committee and staff had gotten off tract with the ordinance changes, but they are back on tract now. They are anticipating bringing all changes and corrections such as typos to the ordinance in its entirety. However, if the ZBA feels this area is of concern they can request the Planning Commission to direct the Rewrite Committee to move forward on it. The Rewrite Committee would not be meeting this month (May), but was scheduled to meet again in June.

Hemenway responded that he was just curious how the process worked.

Hales-Smith informed Hemenway that County needed citizens such as him to participate by serving on the boards. She informed him that if he was interested, there was currently an opening on this board.

Preston agreed. If he was interested, he could submit his letter of interest to the County Administrator.

**ADJOURNMENT: Motion:** Junger moved to adjourn the public hearing. **Support:** Hall. **Motion carried: 6 ayes, 0 nays.** Meeting adjourned at approximately 9:15 P.M.

Recording Secretary: Linda Gene Cordier

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Henry W. Martin III, Chairman/Zoning Board of Appeals

June 11, 2014  
Approval Date of Minutes