

**SHIAWASSEE COUNTY ZONING BOARD OF APPEALS  
JUNE 11, 2014 BOARD MINUTES**

**CALL TO ORDER:** Chairman Henry W. Martin III called the regularly scheduled monthly public hearing to order at 7:00 P.M., Wednesday evening, June 11, 2014. The hearing was held within the County Board of Commissioners' meeting room located on the first floor of the Surbeck Building, 201 N. Shiawassee Street in Corunna, MI.

**Roll Call:** Present: N. Brad Hissong, Fred Junger, Glenn Love Jr., and Henry W. Martin III. Absent: Ann Gamboe Hall and Julie Hales-Smith. Also present: Peter J. Preston/Community Development Director, Linda Gene Cordier/Zoning Administrator, and County Commissioner/Robert McLaren. Cordier informed the chair that Julie had informed the board last month she would be out of town and unable to attend the hearing; however, she had not heard from Ann.

**Excused Absences:** Chair Martin stated he would handle the excused absences next month.

**CONFIRMATION OF LEGAL NOTICE:** Cordier informed the chair that the legal notification for the evening's agenda had been posted within the Shiawassee Independent on Sunday, May 25, 2014. Chair Martin declared the hearing as legally noticed.

**APPROVAL OF AGENDA:** Preston informed the chair that item 8b. (PZBA14-009) submitted by Gary Bohac regarding a parcel located within New Haven Township had withdrawn his request via a telephone conversation. Chair Martin noted the agenda would be amended by removal of item 8b. (PZBA14-009) and called for a motion on the amended agenda.

**Motion: Junger** moved to approve the amended agenda. **Support: Hissong. Motion carried: 4 ayes, 0 nays.**

**APPROVAL OF BOARD MINUTES:** **Motion: Junger** moved to approve the May 14, 2014 board minutes as printed. **Support: Love. Motion carried: 4 ayes, 0 nays.** (Hissong noted that the minutes were very thorough.)

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

**COMMISSIONER COMMENTS:** County Commissioner McLaren informed the board that this week was meeting week for the County Board of Commissioners and that he didn't have much to report at this time. The board would be considering approvals to refill positions that are or will be vacant due to recent employee retirement requests.

**OLD BUSINESS:**

**7a. 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**

Preston explained that the request had been tabled to allow the applicant's the opportunity to research land division splits that may or may not be available as well as other alternatives that may be available to them. Preston stated it was his understanding that the applicant's were still exploring other options and recommended it remain tabled for one more month.

Sid Grinnell (Perry Township Supervisor) informed the board that the Movalson's had met with the assessor and asked that the parcels be combined into one. They submitted their application and paid for it at the township level.

Chair Martin stated the request would remain tabled for one month.

**7b. 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

**Postponed from May 14, 2014**

Preston refreshed the board's memory and noted that this had been tabled at last month's public hearing in order for the applicant the opportunity to downsize the size of the structure and height and seek staff's assistance. The applicant was unable to meet with staff and nothing new was submitted prior to the public hearing. Preston stated he had talked briefly with Mr. Almond prior to the hearing and suggested that it remain tabled. Mr. Almond is to meet with staff tomorrow afternoon. Preston stated the chairman might want to confirm this with Mr. Almond.

Chair Martin asked Mr. Almond if he wished his request to remain tabled one (1) more month so he can meet with staff tomorrow afternoon.

Mr. Almond responded yes that he would.

**Motion: Junger** moved to keep application PZBA14-006 submitted by Allen Almond, 11281 S. New Lothrop Road, Durand, MI, tabled for one (1) additional month. **Support:** Love. **Motion carried: 4 ayes, 0 nays.**

**New Business:**

**8a. Dimensional Variance #PZBA14-007**

**Applicant/Owner** – Lamar B. O'Berry, 1250 W. Church Road, Morrice

**Site Location** – V/L in front of 1275 W. Winegar Rd., Morrice

**Tax Id.** – Parent #78-014-02-400-001, Section 2, Perry Township

**Request** – Create a parcel size that will exceed the maximum 2.5 acres within the A-2 Zoning District by dividing off 9.20 acres from parent parcel and combine it with an existing 1.86 acre existing developed parcel known as 1275 W. Winegar Road, Tax Id. 78-014-02-400-001-06, creating an 11.06 acre parcel.

**Ordinance** – Section 2.7.2.A. – 2.5 acre maximum

Preston provided a staff report on the pending request. The parcel is located about 1400 feet west of the Winegar and Morrice Road intersection within Section 2 of Perry Township. Parcel One contains 1.86 acres and is accessed by a 66 foot wide easement across Parcel Two. The parcel is

developed and is approximately 1,000 feet setback from Winegar Road. Parcel One is considered a legal non-conforming lot as it was created under the 1982 County Zoning Ordinance. Under today's Ordinance it wouldn't be, it would require a private road or public road development. The applicant is requesting to combine the 8.56 acres in front of Parcel One with the 1.86 acre parcel creating a 11.06 acre parcel which will create a parcel size exceeding the 2.5 acre maximum lot size requirements under the current Ordinance. There are two (2) ponds and designated low areas on the 8.56 acres making the area non-farmable. The intent of the A-2 District is to preserve farm land. Again, in this particular case the area lying in front of Parcel One and the road is non-farmable. Landscaping and vehicular circulation would not be an issue.

Chair Martin thanked Preston and asked the board if they had any questions for Preston at this time.

Junger questioned the ability to create another buildable parcel up by the road and if it should be considered.

Preston responded that the proposed parcel would comply with the lot width to depth ratios if combined; creating another lot could affect that. If another parcel was to be considered in the future, they would need to come back before the board for any future development or changes to the property.

Junger wondered if it should be considered as a condition if the board approved the request.

Mr. O'Berry responded that he had no problem with adding the condition.

Preston stated he wasn't in favor of placing a condition that states the property cannot be divided for future development because Ordinance language changes over time and the variance goes with the property.

Brief discussion followed by the board on consideration of a future build site along Winegar Road.

Chair Martin asked Mr. O'Berry if he would like to present his case or add any additional information at this time.

Mr. O'Berry stated no, it had been explained very well.

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

Sid Grinnell (Perry Township Supervisor) stated the Township Planning Commission had looked over the request and had no objections. Grinnell stated he had talked with Mr. O'Berry about the request and explained to O'Berry that the decision would be left up to this board.

Chair Martin noted that no correspondence had been received and there was no need for a rebuttal. Martin closed the public hearing and asked Preston 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 ZBA should discuss if the Ordinance imposes a practical difficulty or an unnecessary hardship. Staff does not believe that the resulting lot size would result in another build site and was highly unlikely at this point in time. Existing Ordinance requirements would require review by Staff or the Planning Commission. The Board should also discuss if there are other potential methods of achieving the intended result in conformance with the goals and objectives of the Ordinance.**

Board Member Comments: Concurred with staff's findings.

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

**Staff: The ZBA should discuss unique physical circumstance, such as topography, wetlands, or vegetation that may be causing practical difficulties. The owner describes Parcel as being limited for use due to wetlands and/or low areas and two ponds on the northern portion of the property.**

Board Member Comments: The board discussed with the applicant if the frontage (Parcel 2) was being farmed. O'Berry stated no. The board discussed the area and possibility of some of it being considered a wetland. 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 ZBA should discuss unique physical circumstance, such as topography, wetlands, or vegetation that may be causing practical difficulties. The owner describes that Parcel #2 is limited from the implementation of a variety of uses due to wetlands and/or low areas.**

Board Member Comments: The board concurred with all findings including the fact the property was low, contained two (2) ponds and wetlands.

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: If the ZBA finds a practical difficulty then it could be determined that such practical difficulty was not caused by the applicant but inherent to the physical circumstance of the property.**

Board Member Comments: The board again reiterated the area contained wetlands and low lying areas. The Ordinance changed the lot size requirements within the A-2 district in 1999; therefore, the practical difficulty was created by the County's change to the Ordinance language and not something created by the applicant. 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 the layout of the property in this manner would impact adjacent properties or the public health, safety and welfare of the community in general. Nothing will change from a windshield view perspective.**

Board Member Comments: Concurred with all findings of fact.

6. The proposed variance does not permit the establishment of any use which is not permitted by right within the district or any use or dimensional variance for which a special use permit is necessary.

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

Board Member Comments: Concurred with all findings of fact.

7. Findings on whether the proposed development complies with the requirements, standards, or procedures given in the Zoning Ordinance or an interpretation of the disputed ordinance provisions, if applicable.

**Staff: If the variance were to be approved, it appears that continued use of the property for single-family residential purposes would be in compliance with requirements, standards and procedure in the Ordinance.**

Board Member Comments: Junger noted that the Ordinance language was established to help preserve farmland and eliminate the development of long skinny ten (10) acre parcels. This particular parcel has been established as non-farmable. There would be no loss of farmland. The board concurred with all findings of fact.

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

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

Board Member Comments: Junger stated Parcel One had been approved as a build site for a single-family dwelling under the 1982 Zoning Ordinance and was in compliance with regulations at that time. There was no error in judgment or procedure. The board concurred with all findings of fact.

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

**Staff: The ZBA may wish to discuss possible precedent and if other properties exist that are similar and may require variance as well. The owner has cited that the parcel has limited development and/or use potential due to wetlands and/or low areas.**

Board Member Comments: Junger added that each case is reviewed by this board on a case by case basis. There would be no precedent set. Hissong agreed and added that Parcel Two will be combined with Parcel One if approved. O'Berry agreed, Parcel One is owned by his daughter and son-in-law. His son-in-law is a conservationist and has no plans to develop the property. O'Berry said he wanted to take care of this so his daughter would have this should something were to happen to him. The board concurred with all findings of fact.

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

**Staff: It does not appear that this variance would impact the County or other governmental unit in the provision of services. Again from a windshield view nothing will change.**

Board Member Comments: The board concurred with all findings of fact.

Discussion: Junger asked staff again if something should be mentioned about future development rights. Preston answered that he felt there were other mechanisms to control any development in the future and reiterated his concern about attaching a statement that another parcel can never be created from this parcel once there were joined together because rules can change over the years.

Chair Martin called one last time for board discussion; hearing none he called for a motion.

**Motion:** Junger moved that based upon the review of the submitted materials, including description of proposed uses and a site drawing, offered the following motion: **approve** the request from Lamar B. O’Berry for variance from Section 2.7.2.A to allow for a legally non-conforming parcel (Parcel Id. #78-014-02-400-001-06) to be increased in size from 1.86-acres to 11.06-acres by incorporating an adjacent vacant parcel (Parcel Id. #78-014-02-400-001) through combination of parcels, as legally described, in Section 2 of Perry Township 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 should discuss unique circumstance, practical difficulties, and the intentions of the applicant to develop the property. The Board has discussed all unique circumstances and the fact the practical difficulty was due to the Ordinance language change.

**Conditions:**

1. Parcel combination shall occur within six (6) of the Board of Appeals approval of said variance or otherwise be determined to be null and void.

**Support:** Love. **Roll Call Vote:** **Ayes:** Brad Hissong, Fred Junger, Glenn Love Jr., and Henry W. Martin III. **Nays:** None. Motion carried: 4 ayes, 0 nays.

**8b. Application Withdrawn/Multi-Dimensional Variance Application #PZBA14-009**

Applicant/Owner – Gary Bohac, 5353 McCaffrey Road, Owosso

Site Location – 5301 and 5353 McCaffrey Road, Owosso

Tax Identification – 78-003-20-200-002 & 78-003-20-400-006, Sec. 20, New Haven Twp.

Request – Divide existing dwelling from farm (5301 McCaffrey Road) with less than the required rear yard setback to boundary line, driveway setback from boundary line, and accessory buildings (5353 McCaffrey Road) within setback requirements

Ordinance – Section 3.2., Schedule A., Section 5.3.1.C., and Section 6.3.1.J.

**INTERPRETATION OF THE ZONING ORDINANCE:** None.

**ZONING ADMINISTRATOR’S REPORT:** Cordier stated that Mr. Hemenway had left a voice message and asked the board to consider amending the height requirement of 15 feet for accessory buildings within the residential zoning districts while the committee was considering amending the square footage of accessory structures within the “R” districts. Cordier also noted the next hearing would be July 9th. There will be two (2) new applications to review as well.

Junger informed the board that he will not be available for the August 13<sup>th</sup> public hearing if one is scheduled.

**PUBLIC COMMENT:** None.

**ADJOURNMENT:** **Motion:** Hissong moved to adjourn. **Support:** Love. **Motion carried:** 4 ayes, 0 nays. Meeting adjourned at approximately 7:35 P.M.

Recording Secretary: Linda Gene Cordier

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

July 9, 2014  
Approval Date of Minutes