

**SHIAWASSEE COUNTY ZONING BOARD OF APPEALS
JULY 9, 2014 – BOARD MINUTES**

CALL TO ORDER: Chairman Henry W. Martin III called the July 9, 2014 Zoning Board of Appeals (“ZBA”) public hearing to order at 7:00 P.M. The hearing was held within the meeting room of the County Board of Commissioners on the first floor of the Surbeck Building, 201 N. Shiawassee Street in Corunna, MI.

ROLL CALL: Present: Julie Hales-Smith, N. Bradley Hissong, Fred Junger, Glenn Love Jr., and Henry W. Martin III. Absent: Ann Gamboe Hall. Also present: Linda Gene Cordier/Zoning Administrator and Michael Lafferty/Assistant County Planner.

Cordier informed the Chair that Ann had contacted the office and left a message that she would be unable to attend due to surgery.

EXCUSED ABSENCES: Chair Martin said a motion would be needed to excuse Ann and that a motion would be needed to excuse Ann and Julie from the June ZBA hearing.

Motion: Fred Junger moved to excuse Ann Gamboe Hall from the evening’s hearing; and; excuse Ann Gamboe Hall and Julie Hales-Smith from the June 11, 2014 board hearing. **Support:** Brad Hissong. **Motion carried:** 5 ayes, 0 nays.

PROOF OF PUBLICATION: Cordier verified the legal notice was placed within the Shiawassee Independent on Sunday, June 22, 2014 and a copy was available for review. Chair Martin confirmed the hearing as legally published.

APPROVAL OF AGENDA: **Motion:** Glenn Love Jr. moved to approve the agenda as printed. **Support:** Julie Hales-Smith. **Motion carried:** 5 ayes, 0 nays.

APPROVAL OF BOARD MINUTES: **Motion:** Fred Junger moved to approve the June 11, 2014 board minutes as printed. **Support:** Julie Hales-Smith. **Motion carried:** 5 ayes, 0 nays.

PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

COMMISSIONER COMMENTS: None.

OLD BUSINESS:

Dimensional Variance #PZBA14-001

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

Site Location – 2107 Ellsworth Rd., Perry

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

Request – Create a parcel that would exceed the maximum lot size within the A-2 zoning district

Proposed: 18.335 vacant acres m/l.

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

Postponed from April 9, 2014

Cordier informed the board that the applicant had met with the Perry Township Assessor and decided to apply for a Land Division to split the existing home off on a legal lot size and combine the resulting 18 acres with his 10 acres to create a legal conforming parcel. Movolson will be meeting with her tomorrow morning. The board will need to remove it from the table and then make a motion to accept his withdrawal. Cordier explained that his wife had been involved in a head-on crash and passed away and that she informed Movolson she would handle this for him tonight.

Motion: Fred Junger moved to remove application PZBA14-001 submitted by Charles and Pamela Movolson from the table. **Support:** Glenn Love Jr. **Motion carried:** 5 ayes, 0 nays.

Motion: Julie Hales-Smith moved to accept the verbal withdrawal based on the fact there was no longer a need for the variance. **Support:** Glenn Love Jr. **Motion carried:** 5 ayes, 0 nays.

Dimensional Variance #PZBA-14-006

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 exceeding the maximum square footage; R-1B zoning district

Proposed: 32'x40' x 19'

Ordinance – Section 5.3.1.B. – 800 square feet

Postponed from May 14, 2014

Cordier provided a brief update on the pending application request. The applicant originally submitted an application that would have required two (2) variances. Almond was seeking to construct a 32'x40'x19' accessory building for residential storage. The property is located within Dyer Terraces within Section 14 of Burns Township and zoned R-1B. The maximum size and height of an accessory building that can be constructed in this district is 800 square feet with a height of 15 feet from finished grade to peak.

The applicant met with her and Mr. Preston a couple of weeks ago and discussed options available. The applicant was informed that the Rewrite Committee and Planning Commission were considering proposing a text amendment to the Ordinance for the size and height of accessory structures within the residentially zoned districts ("R") based on the size of the parcel. Staff offered Almond the option to apply immediately for a zoning and building permit based on a building that would comply with the size and height requirements. If the Ordinance were to be amended, it might allow Mr. Almond the ability to apply for a permit to add on in the future without the need of a variance. Staff also discussed downsizing the height and size of the structure and submit a new site plan for this board to consider. The applicant chose to downsize the building and come back before this board. The applicant is now proposing a 32'x32'x15' accessory building. Only one (1) variance will be needed, which is a variance from the maximum square footage of 800 square feet.

Chair Martin asked the applicant if he wished to comment.

Mr. Almond stated he has downsized the structure to 1,024 square feet and the height would be 15 feet from ground level to the peak.

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

Hissong asked staff about the size of other accessory buildings in the area and previous board action.

Cordier stated she had researched the area and found that the accessory building at 11221 S. New Lothrop Road had received approval for a 24'x36'x16' accessory building by previous administration (864-sf and 1 ft on height) which was possibly handled by an Administrative Waiver. The 24'x24' lean-to to an existing garage at 11286 New Lothrop Road was in compliance as the parcel was located within the A-2 district which allowed for a larger structure. The 24'x24' garage at 11322 New Lothrop Road also was located in an A-2 district and in compliance. The detached garage at 11577 New Lothrop Road (768 sq ft) was in compliance and located in an R-1A district that allows up to 900 square feet. Cordier also noted previous board action on requests for accessory buildings proposed that would exceed the square footage requirements that had been denied, withdrawn, or approved.

Hissong asked Almond if the structure would be used for any type of commercial activity if the permit were approved.

Almond answered there would be no commercial activities.

Junger stated he had visited the site and had to commend him for moving all the vehicles off the property and asked if the intent was to store everything inside.

Almond stated yes, he owns quads and a boat that he would like to place them inside a building.

Junger said he also appreciated the fact that he had downsized the proposed building and lowered the height of it as well.

Cordier proceeded with the 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: Downsizing the size and height of the structure to conform without the need of a variance and/or a lesser amount needed should be discussed further with the applicant. The ZBA should discuss with the applicant other structures built in the immediate area that are also greater in size than the maximum square footage requirements under the Ordinance. The applicant has downsized the proposed building and lowered the height so only one variance would be needed if approved.

ZBA Findings: Junger commented that the Planning Commission and Rewrite Committee were considering amending Ordinance language on the size of an accessory structure within the residentially zoned districts so it is possible that could change in the future. Martin asked the applicant if he could downsize the building even more so the least amount needed to overcome the practical difficulty until such time the Ordinance language has been amended.

Almond answered he had downsized it as far as he could.

Board: The board concurred with all findings of fact.

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

Staff: No unique physical circumstances, topography or conditions were made known to staff at the time of submittal of the application.

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

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 ordinance does allow for a smaller sized accessory structure within this district. No physical circumstances or conditions were provided to substantiate a larger accessory structure other than personal desire.

ZBA Findings: Junger asked if the existing attached garage was a one (1) car garage.

Almond answered yes.

Board: Junger said that a one (1) car garage would limit the applicant on storage space.

Almond added that the garage is on a hill.

Board: Junger stated in this particular case it may benefit the applicant that he only has a one (1) car garage with limited storage space available. The board concurred with all findings of fact.

4) Finding that the practical difficulty was not created by the applicant and is related only to property that is owned or occupied by the applicant.

Staff: The request is to create a structure that will exceed the maximum square footage and possible height regulations. The ZBA should discuss the practical difficulty and if the applicant created the situation. The ZBA should discuss other properties in the immediate area that may have similar structures. Again, the applicant has downsized the proposed barn to 32'x32' and lowered the height to 15'. We've discussed the history of the other accessory barns within the immediate area as well as past variance applications.

ZBA Findings: Junger agreed the height of the building would no longer be an issue. Junger said expansion of the existing garage may not be an option due to the topography of the land. The board concurred with all findings of fact.

5) A statement of the impacts of the variance if authorized, the property values, use and enjoyment of the property in the neighborhood or district, and on the public, health, safety and welfare.

Staff: The ZBA board should discuss potential impacts that could be created by approval of the variance. It should be noted that previous variances have been denied concerning similar requests.

ZBA Findings: Junger felt that if all the vehicles were to be stored inside the building, it would be a positive impact to the surrounding neighborhood. Hissong said he would agree someone else could move in with a number of vehicles. Hissong asked if the applicant had considered adding on to the back of the existing garage.

Almond stated no because of the elevation.

Board: The board concurred with all findings of fact.

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

Staff: Accessory structures are a permitted use within the R-1B District; however, the structures are limited to a maximum square footage and height restrictions due to the fact the parcels are generally located within platted subdivisions and maintain smaller lot sizes with on-site seepage systems and reserve areas and a higher density of single-family dwellings. The Planning Commission has discussed the matter and referred it to the Rewrite Committee.

ZBA Findings: Love asked the applicant if the variance was approved would the building be used for strictly residential storage use.

Almond answered yes.

Board: Martin stated the board is concerned that it doesn't turn into a commercial business or mechanic's shop. The variance goes with the land and not the person. The board concurred with all findings of fact.

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

Staff: If the variance were to be approved, it appears that continued use of the property would otherwise be in compliance with requirements, standards and procedure in the Ordinance of the other structures and uses.

ZBA Findings: 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 on this property. However, possible administrative issues may exist on other properties where accessory structures exceed the maximum square footage requirements.

ZBA Findings: 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 precedents. Other properties with similar situations requesting larger accessory buildings within the residential zoned districts have been reviewed over the past year by the ZBA and denied.

ZBA Findings: The board noted past history of cases were reviewed earlier, the applicant has downsized the building to 32'x32'x15, which would need only one (1) variance at this time. 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 units in the provision of services as the property is already developed.

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

Discussion: Chair Martin discussed the amended site plan and asked where the septic system was in relation to the proposed build site. Almond answered it was to the south behind the corner of the house. Martin asked if he knew where his reserve septic system area was. Almond stated no. Hissong felt it might set precedence if the variance were approved. Hissong also asked if it would take four (4) unanimous votes to pass or deny the request. Chair Martin stated yes it would take four (4) votes to pass or deny.

Motion: Brad Hissong moved to **approve** the Dimensional Variance Request (PZBA14-006) of Allen Almond, from Section 5.3.1.A.1.b. to allow for a structure to exceed 800-sf (a variance of 224-sf.) for the purposes of constructing a residential accessory building (32'x32'x15') for vehicular and ATV storage on property located at 11281 S. New Lothrop Road, Durand, MI, Section 14, Burns Township, on Lot #3, Dyer Terraces, (Parcel Id. 78-016-40-003-000) 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 further develop the property.

Conditions:

1. Verification from the Environmental Health Department that the proposed building would not be built in the area set aside for the on-site septic system reserve area.

Friendly Amendment: Love – Use of the building for residential storage only and no commercial operation or auto mechanic shop within or on the property permitted.

Hissong moved to add Love's statement as Condition #2.

Support: Julie Hales-Smith.

Roll Call: Ayes to Approve: Glenn Love Jr., Fred Junger, and Julie Hales-Smith. **Nays:** Brad Hissong and Henry W. Martin III. Motion failed.

Motion: Fred Junger moved to **postpone** the Dimensional Variance Request (PZBA14-006) of Allen Almond, from Section 5.3.1.A.1.b. to allow for a structure to exceed 800-sf (a variance of 224-sf.) for the purposes of residential accessory building (32'x32'x15') for vehicular and ATV storage on property located at 11281 S. New Lothrop Road, Durand, MI, Section 14, Burns Township, on Lot #3, Dyer Terraces, (Parcel Id. 78-016-40-003-000) based upon the following reasoning and conditions:

Reasoning:

1. Additional information is necessary to assess the basic findings as set forth in Section 18.4.6 of the Ordinance.
2. Location of reserve septic system area.

Support: Julies Hales-Smith.

Roll Call Vote: Ayes to Postpone: Glenn Love Jr., Julies Hales-Smith, and Fred Junger. **Nays:** Brad Hissong and Henry W. Martin III. Motion failed.

Motion: Brad Hissong moved to **deny** the Dimensional Variance Request (PZBA14-006) of Allen Almond, from Section 5.3.1.A.1.b. to allow for a structure to exceed 800-sf (a variance of 224-sf.) for the purposes of constructing a residential accessory building (32'x32'x15') for vehicular and ATV storage on property located at 11281 S. New Lothrop Road, Durand, MI, Section 14, Burns Twp. on Lot #3, Dyer Terraces, (Parcel Id. 78-016-40-003-000) based upon the following reasoning and conditions:

Reasoning:

1. The proposal does not satisfy the basic findings as set forth in Section 18.4.6 of the Ordinance.
2. Concur with staff's findings that it would be setting precedent.
3. Self-created hardship.
4. Site Plan did not show the reserve area for the on-site seepage system.

Support: Julie Hales-Smith.

Roll Call: Cordier noted that an "aye" vote would be to deny. **Ayes to Deny:** Brad Hissong and Henry W. Martin III. **Nays:** Glenn Love Jr., Julie Hales-Smith, and Fred Junger. Motion failed.

Chair Martin stated it would remain on the docket and that next month there would be a full board; one member was absent this evening due to surgery. Martin suggested Almond contact the Health Department to see where his septic reserve area would be and add it to his drawing.

New Business:

8a. Dimensional Variance #PZBA14-010

Applicant – Duane Dann, 5775 East Bath Road, Bancroft, MI

Property Owner – Shiawassee Outdoor Association

Site Location – 5775 East Bath Road, Bancroft, MI

Tax Id. – 78-015-24-100-999-12, Section 24, Antrim Township

Request – Replace an existing garage with a two-story 38'x56' garage within the setback requirements from the water's edge

Ordinance – Section 5.2.8. (Lots Having Water Frontage), #A. (100 feet)

Matt Lafferty provided the staff report. The property is located on the northern side of East Bath Road within an area known as the Shiawassee Outdoor Association. The association contains 35 members that share five (5) lakes and 500 plus acres. The members do not own their own land so there are no true boundary lines per se. The parcel in which the applicant has interest contains irregular road frontage on Bath Road. There currently is a 24'x32' dwelling with an attached covered deck and 24'x28' garage. The applicant is seeking to remove the existing garage and replace it with a two-story larger garage for recreational storage use. The petitioner is seeking relief from the water front setback requirement of 100 feet by allowing the closest point of the new structure to be 85 feet from the water's edge. Proposed is a 38'x56' (2,128-sf) attached building. The area is zoned A-2, Agricultural Production/Rural Residential, and the surrounding area is primarily single-family residential homes.

Lynn Bowne, Attorney at Law, representing Duane Dann and Mr. Dann were present. Bowne presented the board with a larger photograph of the area in color. Bowne noted the staff report was very good. The proposed addition couldn't be moved towards the road due to the setback requirements from the Consumers Power line which is 25 feet. The structure was built in 1952. The setback from the water's edge may have been different back at that time. The parcel is unique based on the fact it has water frontage, a swamp/wetlands area, and power line issues to contend with.

Duane Dann informed the board that he has not done anything to the existing home. It has been in the family for many years. His grandfather and grandmother first owned it, the home was passed down to his parents, and now it is in his possession. The foundation is secure. Dann stated he enjoys woodworking and restoring older cars. His parents used the property for their summer home and wintered in Florida. When they moved back, they used the place to store a lot of their belongings. The family has been in the association since he was two (2) years old. Dann stated he had lived up north, but has since moved back and works in Fenton. He stored his Pontiac cars at his brothers; however, his brother was moving and he had to relocate the cars and car parts. They are currently stored on the property under tarps. A two-story structure is needed so a lot of his car parts, car doors, engine blocks and woodworking tools could be upstairs. The building will be 32' in height.

Chair Martin thanked them for their input and opened the floor for public comment in support of the request. As no comments were received, Martin read the following letter:

May 10, 2014 -- Please be advised that the Board of Directors approved the construction for Duane Dann consisting of building modifications and additional storage space at 5775 East Bath Road at a board meeting on May 10, 2014. In reviewing the plans, the board approved all building placements in relation to the lot lines and the water front. In addition, the board understands the living space/storage ratio and approves the additional storage space. If additional approvals are required from the Shiawassee Outdoor Association please contact me at 248.672.0601. Thank you. Sincerely, Robert Stoutenburg, President, Shiawassee Outdoor Association.

Chair Martin called for public comment in opposition of the request. Hearing none, he asked staff if the township had responded. Cordier answered no. Martin closed the public hearing and called for board discussion.

Hissong questioned the condition of the existing home and if the building inspector had been out to inspect it.

Dann answered that he has replaced the windows and put a new roof on the home. When the new garage is built it will have vinyl siding and will then place vinyl siding on the house as well.

Chair Martin asked what was his purpose for adding a second story?

Dann said he needed the upstairs to store car parts in and planned on having a hoist. He collects Pontiac GTO's (1968-1969).

Junger asked if he was looking to operate a commercial business within the building.

Dann stated no. He restores his own vehicles and enjoys woodworking as a hobby.

Hissong asked if he fixed the cars up and re-sold them.

Dann answered no.

Hales-Smith asked Dann if he could downsize or move the building over because the board is to consider the least amount needed when reviewing a request.

Dann said he really scaled it down as much as possible and wanted to have the same dimensions on the second floor as the first. The property is owned by the Association and they decide if a tree can be cut down. Dann noted that there are very large trees. He is allowed to trim them, but not cut them down.

Junger discussed the location of the seepage system and asked if he knew where the reserve area was.

Dann answered that the system is located to the west of the house as that was the only area that would support a system.

Hissong wondered if there was a reserve area set aside or would he have to renovate the existing seepage bed should the system fail.

Dann answered he wasn't sure.

The board reviewed the applicant's site plan and proposed height of the building. Dann stated the height would be 32 feet. Cordier stated the height requirement in that area is 35 feet.

Chair Martin called for the Findings of Fact. Matt Lafferty proceeded with the requirement as outlined in Section 18.4.6. of the Ordinance.

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

Staff: The petition for variance would permit encroachment of an accessory structure within the required waterfront setback. The provision establishing the waterfront setback 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 waters edge. The Board of Appeals should discuss.

ZBA Response: Martin stated he was concerned with the safety of the water as run-off puts containments in the water, especially if something was built too close to the water. Algae in the water are created from run-off. Hissong agreed he was concerned with environmental issues. Martin and Hissong noted that they had recently attended a seminar on building too close to the water's edge and they had a different view on allowing buildings to be too close to the water's edge. Foreign matter can drain into the water creating more damage such as silt run-off from a roof. Martin noted that the Planning Commission's Rewrite Subcommittee had been looking at that with the possibility of amending the ordinance to reduce the setback to 50 feet; however, they have decided to have it remain at 100 feet at the present time. Long stated he was familiar with the area and knew the association was very fussy on what people could or couldn't do there. The association is pretty strict and didn't believe they would have approved this if it weren't unanimous. The board concurred with all findings.

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

Staff: The Board of Appeals should discuss unique physical circumstance, such as topography, wetlands, or vegetation that may be causing practical difficulties. The applicant notes that the home was built in 1952, Ordinances have changed, power line restricts location and unbuildable land as the practical difficulties.

ZBA Response: Martin stated the board agrees there are issues such as wetlands and power lines to deal with. Junger wondered if the power line could be moved.

Dann answered it would be nice but expensive. Attorney Bowne stated he had attended many seminars; however, there are a lot of structures very close to the water's edge. Bowne talked about the area and

Board: Love wasn't sure Consumers would relocate it and if they did, it would be very expensive.

Bowne stated he has attended many seminars, but was it referencing areas that had a lot more density or a lot of structures that were close together. This isn't dealing with parking lots or roads.

Dann said he would like to remind the board there was only 35 members within the association and no more will be permitted. There are 34 homes there.

Board: Junger noted that the board has to be careful as to not set precedence. Hissong questioned the practical difficulties. The board concurred that the difficulties were the power line, swamp land, and wetland areas with location of the building. The board concurred with all findings of fact.

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 of Appeals should discuss unique physical circumstance, such as topography, wetlands, or vegetation that may be causing practical difficulties. The applicant notes that the home was built in 1952, Ordinances have changed, power line restricts location and unbuildable land as practical difficulties.

ZBA Response: This was just discussed in number two. Junger stated one of the issues is the proposed size of the building. The applicant is stating it can't be moved. Is the ordinance restricting him from a reasonable use of his property? Would the 15 feet reduce or restrict him from use of the property? Hissong said he was concerned with the proposed height of the building and felt that should be redesigned to a lower height. The board concurred with all findings of fact.

4. Finding that the practical difficulty was not created by the applicant and is related only to property that is owned or occupied by the applicant.

Staff: If the Board of Appeals finds that practical difficulty exists with use of the eastern portion of the property, then it could be determined that such practical difficulty was not caused by the applicant.

ZBA Response – The applicant did not build the dwelling or existing garage. The applicant, however, has determined the size of the proposed new two-story garage. A garage cannot be built on the east side due to the above-grade septic system. The board concurred with all findings of fact.

5. A statement of the impacts of the variance if authorized, the property values, use and enjoyment of the property in the neighborhood or district, and on the public, health, safety and welfare.

Staff: 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 Response: The proposed two-story structure would be closer to the water's edge than the existing garage and maybe should be downsized. The property has been and is useable right now as it exists. The board concurred with all findings of fact.

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

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

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

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

Staff: If approved, it appears that the proposed development would comply with other requirements of the Ordinance.

ZBA Response: The board expressed concern that the use of the two-story attached garage, if approved, remained as a residential garage for personal storage use and as a storage area for his hobby of collecting older cars and that it not become a commercial endeavor or use of the building. The board concurred with all findings of fact.

Attorney Bowne reiterated that the property is part of an association. The association would not allow the site or building to be used as a commercial business.

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.

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

ZBA Response: The applicant should consider downsizing the proposed two-story garage if he is not allowed to cut down trees without the association's approval so he could still have the view of the lake from the window.

Attorney Bowne noted that on the site plan the raised septic system is 82 feet from the water's edge.

ZBA: The board noted that they have to view what is in place and what is the least amount needed to overcome the practical difficulty or if it can be constructed without the need of a variance. We need to consider what the D.E.Q. has determined with setbacks and water runoff. The septic system is to the east; is there a reserve area should that system fail or can the reserve be located in the same area. The board will need to look at all options. 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.

ZBA Response: The board was concerned with the possibility of an oil or gas spill in relation to hazardous materials seeping into ground water, local wells, and the lake. Junger noted that the gas station at M-21 and M-13 was required to install a mechanism to catch any oil or gas spillage. The board agreed a trap system collecting any spillage might be a condition if the variance was granted. The board asked if there will be mechanic's pit within the garage.

Dann stated no and added that he does not change any of his own oil; it is just easier to have it done elsewhere. There wouldn't be any oil or solvents to deal with.

ZBA: Hissong stated Dann may be up front, but what would happen should someone else move in.

Attorney Bowne stated the next person may use the property only as a hunting camp. Not everyone has a hobby in restoring older cars. This isn't a use variance

ZBA: One of the concerns is the setback to the water's edge. Cordier noted that the ordinance has a provision that if the lot was created before 1982, the applicant could seek a variance from the ZBA. The association was created in the early 1900's. Cordier noted this would be similar to past requests of petitions within Scenic Lakes or Lake Manitou. Hales-Smith asked Dann if the covered deck connecting the house and garage was already there or part of the new construction.

Dann responded that the covered deck was part of the cottage. He didn't want to change that as it was part of the original cottage that his grandparents had built.

ZBA: Hales-Smith asked if the deck could be downsized to allow the garage to be moved over so as to reduce the setback.

Dann stated it would interfere with the view of the lake but it could be an option.

ZBA: Junger felt the board should have some expert opinions before a decision is rendered as it relates to the setback from the water's edge. Martin stated he would like to see a lesser setback such as a five (5) foot variance. Hales-Smith said she would like to have additional information on the septic system area to rule out the possibility of building the structure on that side of the home.

Dann answered that he was concerned with the fact it might be postponed, but did agree with Hales-Smith. It could be possible to downsize the deck so the building could be moved over.

ZBA: Hales-Smith said if the entire deck was removed, the building could be moved over 10 feet.

Dann answered that by moving it over, the power line and the saving of the trees may become an issue. He would really like to have an answer tonight and again noted that it may not work moving the garage closer to the house because of the location of the power lines.

ZBA: Martin asked if he was willing to downsize the size of the garage.

Dann stated he really didn't want to and that was why he was asking for a variance.

ZBA: Hissong discussed the reasoning behind the size of the building which was to store his cars and boats in so they weren't left outside. Hissong continued that the size of the building could be considered a self-created hardship because of all the vehicles and other items Dann wanted to place inside. Junger agreed and asked if the building could be downsized so only a 5 foot variance was needed.

Attorney Bowne answered that his client was asking for a pretty small variance as it was; 15 feet wasn't a lot to be considered. The ordinance allows him to seek a variance. This is an older lot not a new development. The homes are older; Dann is trying to retrofit a building in to accommodate storage space. The raised septic system should be of no concern with the request before them. It was put in under a valid permit. The board has granted other variances allowing structures closer to the water's edge. This home was built in 1952.

ZBA: Hissong stated the applicant stated that his hobby was working on cars; that becomes an issue to us because of the setback from the water.

Attorney Bowne asked what were the concerns; health issues?

ZBA: Martin stated hazardous materials could leech into the groundwater or lake.

Attorney Bowne replied that was not an issue.

ZBA: Hissong answered that it was as the ordinance references the health, safety, and welfare of the area. Chair Martin called for a motion.

Motion: Fred Junger moved to postpone request PZBA14-010, Duane R. Dann, a variance application from Section 5.2.8.A., proposed 15' variance from the required 100' waterfront setback, to replace an existing 672-sf garage with a 2128-sf garage as legally described in Section 24, Antrim Township, based upon the following reasoning:

Reasoning:

1. Additional information is needed by the Zoning Board of Appeals in order to ascertain that the proposal satisfies the basic conditions as set forth in Section 18.4.6 of the Zoning Ordinance.
2. The Board should identify information that may be lacking in the petition.
 - a. Information on the Septic System (permit, reserve area).
 - b. Expert opinion of the potential health hazard caused from the setback of the building from the water's edge and a statement from Consumers Energy on the setback required for the power line.

Support: Julie Hales-Smith.

Roll Call: Ayes to Postpone: N. Bradley Hissong, Julie Hales-Smith, Fred Junger, and Henry W. Martin III. **Nays:** Glenn Love Jr. **Motion carried to postpone:** 4 ayes, 1 nay.

8b. Multi-Dimensional Variance Application #PZBA14-011

Applicant/Owner – Larry Streeter

Site Location – 11017 S. New Lothrop Road, Durand, MI

Tax Id. – 78-016-14-100-007, Section 14, Burns Township

Request – Allow an Outdoor Solid Fuel Equipment (wood burner) to remain 10'2" from the dwelling and 11' from south lot line

Ordinance – Section 5.3.1.H. (Outdoor Solid Fuel Furnaces), #3.a. and c. (100 feet from any residentially zoned property and 50 feet from a principal structure (dwelling)).

Cordier provided a brief staff report. It came to the attention of the department that the applicant installed an outdoor wood burner without Zoning and Trade Permit approvals or inspections. The applicant was notified of the Zoning Ordinance regulations and zoning violation. Upon submittal of the applications, it was noted the location of the outdoor wood burner could not meet the setback requirements. The applicant's lot is only 135' wide by 200' deep. The outdoor wood burner is only 10'2" from the house and 11' from a lot line. The ordinance requires it to be a minimum of 50 feet from a dwelling and 100 feet from a residential lot line. The language was adopted by the Board of Commissioners and became effective in March of 2010. The applicant has talked with staff and indicated that due to the design of the outdoor wood burner, it needed to be 10 feet from the house. One neighbor offered to sell him some road frontage; however, the neighbor has little road frontage and which would jeopardize access to his parcel.

The petitioner's parcel is considered a legal non-conforming lot of record. Cordier stated she had included a tax map of the area with the staff report to reflect the location and to verify additional width was not available to purchase in order to eliminate one or both of the variance requests and/or reduce the setbacks needed.

Larry Streeter informed the board that he has had an indoor wood burner to heat his house for 25 years. He decided to move it outside so he wouldn't have the mess of bringing the wood inside. He installed the outdoor wood burner a couple of years ago; it doesn't use water. It is a forced air system so that is why it had to be close to the home. He hadn't realized a permit was needed. If the unit has to be moved further away, it wouldn't be as efficient.

Chair Martin thanked Streeter and opened the floor for public comment in support of the applicant's request.

Speaker #1: Jeffrey Mark Rowe, 11069 South New Lothrop Road, Durand. Rowe informed the board that he owned the property behind Larry's home. Rowe continued that he has allowed Larry to use his property for 25 years by cutting wood for his wood burner. Larry has been very respectful of his property. Rowe said he never minded the smell of the smoke from the wood burner and that his drive was just to the south of Larry's property. Larry is like family to him and he had no objections to his request. Anything this board could do to help Larry would be appreciated.

Chair Martin stated the following statement was received:

To Whom It May Concern (regarding Mr. Streeter's outdoor wood heater). We have no concerns or complaints, signed neighbors:

-Chris Hutchinson, 11013 New Lothrop Road, Durand, MI

-Jeffrey M. Rowe, 11069 New Lothrop Road, Durand, MI

-Miles K. House, 11058 New Lothrop Road, Durand.

Chair Martin called for public comment in opposition of the request. Hearing none, Martin called for Township input. Cordier stated she had not heard from the township. Chair Martin closed the public hearing and called for board discussion.

Hissong asked if Streeter stored his wood in the back yard.

Streeter answered yes.

Hissong asked if he had applied for permits or inspections to place the unit there.

Streeter answered no as he hadn't realized permits or inspections were needed. Streeter said he would apply for them if the variance was approved. He didn't want to pay for the permits and then find out the variance was denied. Streeter noted that the unit does not use water; it is all forced air.

Chair Martin asked if his insurance company knew it was that close to the house.

Streeter answered that the insurance company actually recommended the 10 foot setback.

Chair Martin asked if he had anything in writing from the insurance company to verify that.

Streeter answered no but he could get something. The manufacturer's instructions also provided setback requirements and again noted that it was not a boiler system.

Chair Martin asked if the request was postponed, would he be able to bring back verification from the insurance company that they recommended the 10 foot setback.

Love said he had contacted his insurance company to see what they would require. They said 10 feet would possibly be the closest, but it would depend on the circumstances. Love said he has had one in his basement for about nine (9) years, and the insurance company has inspected it twice.

The board discussed the ordinance language that was adopted and if they had to be UL approved. Cordier read the following: *“The outdoor furnace shall be listed by the Underwriters Laboratories, Inc. (UL) and shall only utilize fuels as recommended by the manufacturer of the furnace.”* Hissong suggested that if it is approved, the motion include a condition that no wood be stored within 10 feet of the dwelling or outdoor wood burner.

Chair Martin called for the Findings of Fact per Section 18.4.6. of the Ordinance. Cordier reviewed the following:

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 outdoor furnace within the required setback from a residentially utilized property and setback from a principal structure. The Board of Appeals should discuss if there are any apparent practical difficulties.

ZBA Response: The unit is forced air and not a boiler system. The size and shape of the property would not allow the applicant to meet the Ordinance requirements for setbacks from the house or lot line. 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 also discuss if the petitioned use is a reasonable use enjoyed by other properties.

ZBA Response: The house was built in the 1970’s. No neighbors have objected. The Township provided no objections. The board concurred with all findings of fact.

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 other property or uses in the same zoning district. The Board should also discuss if the petitioned use is a reasonable use enjoyed by other properties.

ZBA Response: Junger said that on the negative side if Streeter had applied for his permits before the installation of the outdoor wood burner, he probably would have had to apply for the variance to seek relief because of the uniqueness of the lot.

Streeter stated that everyone he had talked with stated they weren’t required to obtain a permit to place an outdoor wood burner.

ZBA: Junger answered they may have installed their wood burner prior to the County adopting text language on Solid Fuel Equipment. Hissong said he would have to agree with Junger’s earlier statement, there is no place he could put it on his property and meet the setback requirements. A variance is definitely needed. The board concurred with all findings of fact.

4. Finding that the practical difficulty was not created by the applicant and is related only to property that is owned or occupied by the applicant.

Staff: The Board should discuss practical difficulty in light of the lot configuration and assessment of the petitioned development as a reasonable use.

ZBA Response: The board concurred that the same practical difficulty was mentioned in number three (3). The board concurred with all findings of fact.

5. A statement of the impacts of the variance if authorized, the property values, use and enjoyment of the property in the neighborhood or district, and on the public, health, safety and welfare.

Staff: 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 Response: Martin felt he created the problem by installing the unit without permits or inspections; however, the applicant supplied the board with the manufacturer's requirements for placement in relation to the house. Hissong noted that maybe the UL standards do require it to be closer to the home; but that wouldn't be known until it is inspected. The board concurred with all findings of fact.

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

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

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

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

Staff: If approved, it appears that the proposed development would comply with other requirements of the Ordinance.

ZBA Response: 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.

ZBA Response: Junger replied that the ordinance language may need to be reviewed again based on whether or not it is a forced air system or a boiler system. 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 Board of Appeals should discuss, given any unique circumstances or practical difficulty identified by the Board or the public at hand.

ZBA Response: The property is considered a legal non-conforming parcel due to its size which cannot be changed. Although the neighbor offered land to the south of Streeter's lot, it was not an option based on road frontage requirements which would have left the neighbor's home in violation of the ordinance. 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.

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

Motion: N. Bradley Hissong moved to approve request PZBA14-011 submitted by Larry Streeter (11017 New Lothrop Rd. Durand, MI) for a proposed 89' variance from the required residentially utilized property setback under Section 5.3.1.H.A.3.a and a 39' 10" variance to setback from a principal structure under Section 5.3.1.H.A.3.c to construct an outdoor solid fuel furnace as legally described in Section 14, Burns 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 Zoning Ordinance. The Board of Appeals should discuss the basic conditions in reference to the petitioned variance and site.

2. Due to the dimensions and size of the lot, the location of the outdoor wood burner would require variances no matter where it was placed.

Conditions:

1. No storage of wood within 10 feet of the outdoor wood burner or within 10 feet of the house.
2. A copy of the letter from the insurance company to the petitioner approving the location of the outdoor wood burner 10 feet from the dwelling and that it is on the petitioner's policy.

Support: Glenn Love Jr. Roll Call: Ayes to Approve: Julie Hales-Smith, Fred Junger, Glenn Love Jr., N. Bradley Hissong, and Henry W. Martin III. **Nays:** None. **Motion carried:** 5 ayes, 0 nays.

Interpretation of the Ordinance: None.

Zoning Administrator's Report: Cordier stated the next hearing will be held on August 13, 2014. Junger informed the board he would be unable to attend the August meeting.

Public Comments: The board congratulated Hissong on his recent retirement and recent retirement party. Junger said he was surprised to know that Hissong sang and presented him with a microphone for a karaoke machine. Hissong thanked everyone.

Adjournment: Motion: Julie Hales-Smith moved to adjourn. **Support: N. Bradley Hissong. Motion carried:** 5 ayes, 0 nays. Meeting adjourned at approximately 9:50 P.M.

Recording Secretary: Linda Gene Cordier

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

August 13, 2014
Date