

**SHIAWASSEE COUNTY ZONING BOARD OF APPEALS  
BOARD MINUTES – SEPTEMBER 11, 2013**

**CALL TO ORDER:** Chair Henry W. Martin III called the regularly scheduled monthly Zoning Board of Appeals public hearing to order at 7:00 P.M. 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:** Julie Hales-Smith, Ann Gamboe Hall, Fred Junger, Gerald Wardell, Brad Hissong, and Henry W. Martin III.

**EXCUSED ABSENCES:** None.

Also present: Peter J. Preston, Community Development Director, Linda Gene Cordier, Zoning Administrator, and County Commissioner Robert McLaren.

**PROOF OF PUBLICATION:** Cordier informed the chair and board that the legal notice had been posted within the Shiawassee Independent on Sunday, August 25, 2013. Proof of publication on file.

**APPROVAL OF AGENDA:** Cordier informed the chair that 8d. (Travis and Jessica Woods) had submitted a statement that they were withdrawing their dimensional variance application as it was no longer needed.

**Motion:** Julie Hales-Smith moved to approve the agenda as amended with item 8d. removed.

**Support:** Brad Hissong. **Motion carried:** 6 ayes, 0 nays.

**APPROVAL OF BOARD MINUTES:** **Motion:** Gerald Wardell moved to approve the July 10, 2013 board minutes as printed. **Support:** Julie Hales-Smith. **Motion carried:** 6 ayes, 0 nays.

**PUBLIC COMMENTS ON NON-AGENDA ITEMS:** No comments.

**COMMISSIONER COMMENTS:** County Commissioner Robert McLaren stated the commissioners’ were moving forward with the 2014 budget. The commissioners had also accepted Margaret McAvoy’s letter of resignation and her scheduled last day with the County is Monday, September 30<sup>th</sup>.

**OLD BUSINESS:** None.

**NEW BUSINESS:**

**8a. Appeal #PZBA13-009**

**Applicant/Owner** – James R. and Shelly A. Vandendries, Lennon

**Site Location** – Brooks Road, Section 35, Venice Township, Tax Id. – 78-008-35-300-003-06

**Appeal** – Decision by the Community Development Department that a 40’ x60’ x14’ agricultural building can not be built on a vacant 10.494 acre nonconforming parcel of land.

Cordier provided a brief staff report. Cordier stated that she has had numerous conversations with the applicant with respect to the vacant 10.494 acre parcel of land that is considered non-buildable based on the fact it exceeds the maximum 2.5 acre lot size that can be created within the A-2 zoning district after June of 1999. The Zoning Board of Appeals has also confirmed that the definition of an accessory building is considered accessory to the principal use (dwelling). The

applicant has also purchased a 2.5 acre parcel adjacent to this parcel but it too is vacant. Cordier stated she had informed the applicant that if a home were constructed on the 2.5 acre parcel, they could apply to build an accessory building on that parcel. Cordier continued that in 2002, a Land Division was submitted to divide the parent tract into smaller parcels; the 10.494 acre parcel's Land Division certificate stated it was non-buildable. She asked the applicant if he had received a copy of the certificate when he purchased the land and he stated he had. Cordier stated after several conversations, the applicant decided to file an appeal.

Chair Martin asked the applicants for their input.

James Vandendries informed the board that he was a hobby farmer and that he and his wife wanted to raise their children with some good work ethics. The intent was to build a building to store his farm equipment in so it is kept out of the weather and out of the public view. He didn't want to create an eyesore. I would like the building to be able to store my farm equipment in. We are trying to do this the right way and would appreciate the board's approval on their request.

Chair Martin thanked Mr. Vandendries for his statement and continued by opening the floor for public comment in support of the applicant's request.

Speaker #1: Marsha Strong, 9980 Brooks Road, Lennon. Strong stated she felt the proposed barn would fit into the area quite nicely and had no objections, but wondered why the applicant couldn't build on the property.

Chair Martin stated the maximum lot size that can be created after the adoption of the 1999 Ordinance (June of 1999) is two and one-half acres and unless there is a permanent residence on the property, an accessory building cannot be built on it. Hearing no other comments, Martin opened the floor for public comment in opposition of the applicant's request. Hearing no opposition, Martin asked staff if the township had responded. Cordier stated she did not receive any correspondence from the township. Chair Martin closed the public hearing segment and called for board deliberation.

Wardell quizzed staff on the lot size requirements and definition of a farm of 20 acres or more.

Preston answered that the ordinance defines a farm as 20 acres or more. The applicant's parcel does not meet the lot size requirements; it is more than 2.5 acres but less than 20. The applicant was informed a zoning permit would be denied based on the lot size requirements.

Hall asked if the applicant could be granted a temporary zoning permit for a temporary structure.

Preston answered no as it would still relate to the principal use.

Hissong added that a temporary permit is valid for only one year.

Preston answered the issue is the fact the Land Division Certificate states it is non-buildable as it relates to Ordinance language for a parcel size that can be created after 1999. The applicant is seeking the "non-buildable" status to be eliminated. The board may wish to discuss to what extent is the applicant's farming operation and type of equipment owned.

Vandendries answered that they till everything they own and lease from other landowners in the area.

Chair Martin asked how much land was being farmed at the present time.

Vandendries answered approximately 45-50 acres. He owns a combine, a couple of tractors, wagons, and some other implements that he would like to place inside a building.

Hall asked staff about the Right-to-Farm.

Preston replied that the issue is the lot size; the property is less than 20 acres. Preston informed the board that the Planning Commission has sent out to the townships on two-to-three different occasions since 1999 proposals to amend the Ordinance language on lot size requirements within the agricultural zoned districts. Each time the response has been to keep it the way it is and take requests to the ZBA board on a case by case basis. A lot of agricultural type operations can be operated on smaller tracts of land and meet the Right-to-Farm regulations. It may be time for the Planning Commission to consider a text amendment proposal again to send out to the townships.

Junger added he didn't feel this board had a lot of room to deviate from the Ordinance.

Preston stated the applicant has basically appealed the administrator's decision that the structure cannot be build on the amount of land proposed based on Ordinance language. That is why staff felt it was important to determine how much land was being farmed and type of equipment owned. Also there is no home on the adjacent legal conforming parcel.

Chair Martin asked if the applicant if he intended to build a home on the adjacent lot.

Vandendries answered that they had intended to but then the economy dropped so now the plans are on the back burner. He and his wife didn't want to go further in debt by building a new home. We do need a barn though.

Chair Martin asked if they were aware that the 11 acre parcel was non-buildable when they purchased it.

Vandendries stated yes, but didn't realize nothing could be built on it.

Preston explained that in the past the townships or assessors assigned to approve or disapprove Land Divisions would sometimes allow splits to be created even if zoning stated they didn't comply with the Zoning Ordinance regulations. Since that time, staff has been working with the townships to eliminate situations like the one before you this evening.

Hissong verified with the applicants that they resided on Lennon Road.

Vandendries stated that was true.

Hissong continued that the request is to build on a vacant parcel on Brooks Road. Once approval has been granted to build the building, this board would no longer have any control over the issue. The property may no longer be owned by you in the future and the next owner may not have a farming operation and want to use the building for another use. Then it becomes an accessory building on a vacant lot not used for the storage of farm equipment.

Hall asked if there was a remedy for this.

Smith stated a house would have to be built on the 2.5 acre parcel and then at that point he could apply to build a barn on the parcel with the house. Smith wondered if he could build something like a large garage.

Preston stated a dwelling must be on the property. The applicant could begin construction of the dwelling and after two inspections on the new dwelling construction (footing and backfill); the applicant could submit an application for an accessory building. Inspections are needed on the dwelling to confirm the applicant will continue on with the construction of the home. Under a prior Ordinance, inspections were required and an accessory building could be applied for at the same time as the dwelling application. However, the accessory buildings were built first and a lot of time, the dwelling was never built.

Junger agreed a house would need to be constructed on the 2.5 acres before an application could be submitted for the accessory building.

Hissong stated the board was being asked to interpret the Ordinance as it is currently written for a lot size within the agriculturally zoned district.

Chair Martin stated unless there was additional discussion, a motion was in order.

**Motion:** Brad Hissong moved that the Appeal Application #PZBA13-009, submitted by James R. and Shelly A. Vandendries (applicants/owners) of 11150 Lennon Road, Lennon, MI, seeking relief from the requirements of the 1999 Zoning Ordinance requirements (Section 5.3.1.C.) by allowing an agricultural accessory building (40'x60'x14') to be constructed on a non-buildable vacant 10.494 acre parcel of land that was placed on the tax rolls in 2005, located within the A-2 Zoning District, on Brooks Road, Section 35, Venice Township, Tax Id. 78-008-35-300-003-06, be **denied** based on information obtained during the public hearing. **Support:** Fred Junger. **Roll Call Vote: Ayes to Deny:** Gerald Wardell, Ann Gamboe Hall, Julie Hales-Smith, Fred Junger, and Brad Hissong. **Nays:** Henry W. Martin III. **Motion carried:** 5 ayes to deny, 1 nay.

**Discussion:** Junger suggested that the Planning Commission ask the Rewrite Committee to review the lot size requirements within the agricultural districts again for possible amendment. Martin agreed.

#### **8b. Dimensional Variance Application #PZBA13-010**

**Applicant/Owner** – Harold Asbridge, Haslett

**Site Location** – 9867 Braden Road, Section 33, Woodhull Twp., Tax Id. 78-013-33-100-018

**Request** – Seek a Land Division for a parcel with less than the minimum required road width/ frontage requirements along a public road from a nonconforming parcel of land

**Proposed** – 150.93'x400.5' (1.387 ac m/l) within the A-2 zoning district

Cordier provided a brief staff report. Mr. Asbridge had discussed with her the feasibility of creating a land division for a future build site from his 8.33 acre parcel. Mr. Asbridge's property was first created by Land Contract in 1965. It is an odd-shaped parcel with 100 feet of road frontage along Braden Road and 150 feet of frontage along Woodbury Road. The property extends back in and widens out. Mr. Asbridge accesses the site from Braden Road to his dwelling. The area proposed for land division would be the area that has 150 of road frontage along Woodbury Road and extend back 400.5'. It would make a clean division as it relates to the rest of the nonconforming parcel. It is not known if Woodhull Township was part of the original Zoning Ordinance adopted in 1957 or if they opted to come under County Zoning some time later. A lot under the 1957 Ordinance would have required a minimum of 200 feet road width.

As the office was destroyed by a fire in 1988, there was no way to verify dates. The Tax Map reflected that this parcel was placed on the Tax Rolls after the adoption of the 1982 Zoning Ordinance. It may have been viewed as a legal nonconforming lot by prior administration at the time of approval for the building permit. At the time the staff report was written, there was no verification that a variance had been granted. Cordier stated that if the board viewed the tax roll map of the area she had provided, they could see there was no additional road frontage available to purchase to bring the parcel into compliance with frontage requirements. All the lots surrounding the property were created years ago and are narrow as well. As there is a drainage ditch that crosses over the property, she sent Mr. Asbridge over to the Drain Office to verify he could cross over the drain to build on the other side if the variance were to be granted. A statement from the Drain Commission Office was included within the packet.

Chair Martin asked Mr. Asbridge to present his request.

Mr. Asbridge stated that he and his wife were both 80 years old this year. They built the home in 1983. It is a three-story home with five acres that is mowed. Between the mowing and snowplowing it has gotten to be too much and it was too hard on them going up and down the stairs. They would like to down size their home, they don't need all this room. We enjoy the area and would like to stay there but build a smaller home. The Drain Commission Office stated they could put a culvert in to cross the drain. There was an existing farm lane that could be used for the driveway; it would just need more gravel. If the board would consider granting the variance, it would greatly help them out.

Chair Martin thanked Mr. Asbridge for his presentation and opened the floor for public comment in support of the request. No comments received. Chair Martin opened the floor for public comment in opposition of the request. Hearing none, Chair Martin asked for township input. Cordier replied the office had not received any township correspondence.

Junger responded that the area appeared to be more in line with the lot sizes found in the R-1A districts and thought the Planning Commission and Township may want to look in to amending the zoning district map. There were a lot of homes already constructed on parcels with less than 200 feet of road frontage. Approval of this would be setting a precedent.

Hall questioned if it would set a precedent.

Cordier replied that the first County Ordinance was adopted in 1957. Not all townships came under County Zoning at that time. She wasn't sure when Woodhull moved to come under the County's jurisdiction. However, the lot was created in 1965. At that time, Subdivision Control was in effect. The majority of the time splits would be created and the Zoning and Building Department wouldn't see a legal until someone was ready to apply for a permit. This may have happened. In 1997, the Land Division Act went into effect and now parcels are reviewed for zoning and access compliance prior to the township review.

Chair Martin closed the public hearing.

Hall confirmed with Asbridge that the home was built in 1983.

Asbridge stated yes, they thought they were grandfathered in.

Hall asked if he had bought the land from the owner who had purchased it on a Land Contract.

Asbridge answered they had. He and his wife had resided on what was known as M-78 and then the State came through and bought them out when they were looking to construct I-69. We had to move and the former owner agreed to sell us the land.

Junger agreed with Cordier's earlier statement. The old Subdivision Control Act allowed four splits for parcels with 10 acres or less within a ten year period and anything over 10 acres didn't count. Unless someone called the department to verify lot size requirements such as road width and lot width-to-depth ratios, the department wasn't aware of any divisions being created. Junger discussed the applicant's lot size with staff.

Wardell asked if Asbridge could have two homes on one parcel.

Cordier answered no that Mr. Asbridge was seeking approval to split an area of 150'x400' from the rest of the property creating a separate lot and sell the existing home with the remaining land.

Asbridge stated he had talked with Environmental Health Department regarding the well and on-site seepage system if he is approved for the variance.

Chair Martin asked staff to go through 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: The existing parcel was created after the adoption of the 1982 and lacked proper road width/frontage for a build site at that time. It is not known if a variance was granted and/or how former administration viewed the build site in terms of being buildable. The applicant purchased the property in 1983. The proposed division would otherwise conform to the ordinance for a future build site and not interfere with the applicant's current access to the existing dwelling and barn.**

ZBA Findings: The parcel was created by Land Contract in 1965; it was placed on the rolls until after the adoption of the 1982 Zoning Ordinance. The board concurred with all findings.

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

**Staff: The nonconforming parcel is irregular in shape with two access points to the property via frontage from two public roads. The 8.33 acre-parcel was created before June 4, 1982. Due to the smaller sized lots that were created adjacent to the property prior to the applicant purchasing the 8.33 acres, additional road frontage to meet the minimum 200 foot road width frontage requirements from each road appears not to be an option.**

ZBA Findings: Again the parcel was originally created by Land Contract in 1965 and not placed on the tax rolls until after the adoption of the 1982 Ordinance. 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 only option available for the applicant to create a land division is to seek relief via a variance from the minimum required road width/frontage requirements based on the existing lot frontage.**

ZBA Findings: There may be other mechanisms in place to remedy this; however, we do not have the Master Land Use Plan in front of us this evening. The area may need changing. Woodhull Township hasn't adopted their Land Use Plan yet. There may be other areas that are similar in size that should be looked at. Preston responded that more than likely there are parcels scattered around the County that are small as well, it wouldn't be limited to just Woodhull. 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 applicant purchased the property as it exists in size in 1983. The applicant would like the ability to create a land division for a future build site. The proposed division would otherwise comply with Ordinance provisions for a build site.**

ZBA Findings: The property was originally purchased by another property owner on a Land Contract in 1965. The property was then sold to Asbridge in 1983. The practical difficulty of the lot size configuration was not 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: Development of the vacant parcel for a single-family residence would be a viable use of the land, would not be eliminating valuable farm land, and would appear not to be a detriment to the surrounding area if the variance were granted.**

ZBA Findings: Concurred with staff's findings.

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

**Staff: Single-family dwelling are a permitted use by right within the A-2 District.**

ZBA Findings: Concurred with staff's findings.

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

**Staff: Again, single-family dwellings are a permitted use by right within the A-2 District. A variance is needed in order for the applicant to seek a Land Division allowing for the 150.93'x400.5' parcel to be split from the parent parcel as reflected on the survey.**

ZBA Findings: Concurred with staff's findings.

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

**Staff: No apparent error is evident by administration as it relates to minimum lot size requirements within the A-2 District.**

ZBA Findings: Again it is not known when the township came under the County zoning and/or how the former administrator viewed it when the applicant applied for the building permit. The board concurred.

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

**Staff: It is unknown if there are other nonconforming parcels that are similar in nature that would require a variance before a parcel could be divided but it is likely there are similar parcels throughout the county.**

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 or variance is approved.

**Staff: The addition of one (1) single-family dwelling within the area should have little impact on the area for additional public services. A permit could have been permitted for a single-family dwelling if it had complied with the Ordinance regulations for a building lot within the A-2 District.**

ZBA Findings: Concurred with all findings.

**Motion: : Ann Gamboe Hall** moved that that Dimensional Variance application (PZBA13-010) request submitted by Harold Asbridge, 9867 Braden Road, Haslett, MI, seeking a deviation from Section 3.2, Schedule A, of the 1999 Shiawassee County Zoning Ordinance (A-2 District) by creating a Parcel Size of 150.93'x400.5' with frontage along Woodbury Road for a future single-family build site; and the resulting parcel with 100' frontage along Braden Road from Parent Tax Id. 78-013-33-100-018 within Woodhull Township, be **approved** pursuant to Section 18.4.5. of the 1999 Shiawassee County Zoning Ordinance, as amended, and based on the Findings of Fact within Section 18.4.6. with the no additional conditions. **Support: Gerald Wardell.**  
**Discussion: None. Roll Call: Ayes to Approve:** Julie Hales-Smith, Brad Hissong, Fred Junger, Gerald Wardell, Ann Gamboe Hall, and Henry W. Martin III. **Motion carried:** 6 ayes, 0 nays.

### **8c. Dimensional Variance Application #PZBA13-011**

**Applicant/Owner** – Allen D. Martin, Bancroft, MI

**Site Location** – 6860 East Grand River Road, Sec. 7, Burns Twp., Parcel Id.: 016-07-300-002-04

**Request** – Construct a 12'x25' addition to an existing accessory building within the minimum 10' side yard setback requirements.

**Proposed** – Seven (7) feet from lot line; a variance of three (3) feet.

Cordier provided a brief staff report of the property. It came to the attention of the Community Development Office that a building was being constructed at 6860 E. Grand River Road without receiving Zoning and Building permit approval prior to commencement. Dave Chrenka, the department's Code Enforcement Officer and Building Official, placed a stop work order on the site. Mr. Martin came into the office and met with her regarding the location of the addition to the lot line. Cordier stated she reviewed setback requirements with Mr. Martin and that a minimum setback of 10 feet from side and rear lot and from another structure was required. She suggested he move the addition forward or to the front of the existing building. Martin informed her that due to the design of the structure, that wouldn't be feasible. They discussed seeking a variance and the applicant was informed that if the board were to consider it, the ordinance states it must be for the least amount needed beyond ordinance requirements. Martin opted to apply for a variance due to the gas pipe line location crossing over a portion of the property, Consumers Power Line, reserve septic area, and his home. Cordier said while preparing the staff report she found that the existing 12'x16' accessory structure did not have a zoning permit on file. Also, Chrenka noted the property was in violation of the Zoning Ordinance due to junk and debris. There were dismantled automobile vehicle parts in the rear yard and miscellaneous junk. That violation has since been resolved and verified by Chrenka. Cordier noted the site plan didn't verify rear yard setback and the board will need to determine if the 10' minimum setback would be met. She also recommended that if the variance is granted, the applicant be required to secure both a zoning and building permit for the new addition and existing structure.

Chair Martin asked Al Martin to present his request.

Al Martin stated he proposed addition would be 63 feet from the rear lot line. He had been informed that he didn't need a permit to put up a structure that was less than 200 square feet in size. The front of the building has a sliding door so adding on to the front wouldn't work. Martin stated he was a sheet metal worker by trade; plans are to have the addition match the existing building. He was trying to build something that he could afford. Martin stated he needed the extra storage space to park his garden tractor, roto tiller, and ATV in and added that they would like to use their garage as a garage. The existing shed was moved onto the property from Flint. Martin passed out photos he had taken to show the property had been cleaned up. The area where he wanted to add on is basically a dead corner.

Chair Martin opened the floor for public comment in support of the request.

Speaker #1 – Greg Gulick, 6815 E. Grand River Road, Bancroft. Gulick stated he was just curious as to why a 10 foot setback was required.

Preston explained that most jurisdictions regulate setback distances for the public health, safety, and welfare. The ordinance regulates the location of the building and its intended use to determine what the minimum setback would be. In some cases it is more than 10 feet. There are some communities that do allow a five (5) foot setback.

Gulick asked what would happen if he decided to put up a farm fence along the property line separating him and Martin.

Junger noted that legally he could put a fence on the property line if he and the neighbor were in agreement to that.

Speaker #2 – Cheryl Gulick, 6815 E. Grand River Road, Bancroft. Cheryl noted that she was Greg's wife. She stated she believed in the good neighbor policy, but what is to keep the next person from wanting to do the same thing?

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

Cordier answered that she had not received any correspondence from the township.

Al Martin informed the board that it wouldn't be worth the effort to build it if he had to downsize the addition because of the amount of space that is needed. He again noted that this area of his lot is a quiet corner and it isn't visible from the front because of the trees. To meet the 10 foot setback requirement would take a big chunk out of his building.

Hall asked if he knew what the minimum setback was from the gas pipe line.

Al Martin answered that he was told it was 20 feet when he built his home.

Hall asked if the existing building could be moved over if the gas pipe line stated he could be closer than 20 feet.

Martin stated the building could be moved.

Hissong discussed the fact he would need a zoning and a building permit for the existing 12'x16' building and the proposed 12'x25' addition because now the building would have over 200 square feet. He would also have to meet the building code requirements even for the existing 12'x16' structure.

Brief discussion followed with regard to setback requirements from the gas pipe line and Consumers Energy. Chair Martin closed the public hearing and asked staff to provide 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: It does not appear that the Zoning Ordinance is creating the unnecessary hardship with respect to the minimum side yard setbacks. Gas pipe lines cross over the petitioned property; and the septic and reserve field is located along the north property line. The applicant built the existing accessory structure without permit approval and was stopped during the construction of the addition.**

ZBA Findings: Concurred with staff's findings.

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

**Staff: Again the gas pipe line crosses over the property on an angle and Consumers Energy lines crosses east/west over the front portion of the property. This left a small area for a build site for the permanent dwelling with an on-site seepage system and reserve area and still maintain setbacks from the easements. The ZBA should discuss if these are practical difficulties.**

ZBA Findings: Hall stated the applicant may be able to move the building over closer to the gas pipe line if the pipe line company authorizes it. Chair Martin discussed trusses. Discussion followed on the size of the building and meeting building code requirements. Mr. Martin also discussed the septic tank location and was told he had to stay a minimum of 45 feet from the tank. Other areas within the rear yard were discussed as reflected on the site plan. 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: As stated, the parcel is unique due to the angle of the pipe line crossing over the property, Consumer Energy lines, and setback requirements from the easements. Due to the only location of the home with the on-site seepage system and reserve area, has left the petitioner with possible little area for the placement of an accessory building. The ZBA board should verify if additional space is available to the east.**

ZBA Findings: The board confirmed with Mr. Martin that the building would be 63 feet from the rear lot line. Preston asked Mr. Martin if the 12'x16' existing building was pole style or on footings. Mr. Martin replied it was on a 6" slab. Wardell stated in the pictures it looked like it extended out further than the slab. Mr. Martin stated it was just some extra cement. The board asked if the building could be moved. Mr. Martin stated yes, but it would be a lot of work but it could be done. 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 applicant constructed the first building without zoning approval. The existing building might have been positioned so that an addition to the structure would not have required a variance if proper permits had been obtained.**

ZBA Findings: It was a self-created hardship. 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: If the variance is granted, it doesn't appear there would be a significant impact on the surrounding area.**

ZBA Findings: 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: Accessory buildings are a permitted use on a residentially zoned lot with a permanent dwelling with Zoning permit approval for site location of the proposed structure.**

ZBA Findings: 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: The proposed addition to the existing accessory building would require the existing structure to come under permit as well if a variance were granted and the property brought into compliance by removal of all junk and debris as cited.**

ZBA Findings: The junk and debris issues have been resolved. The board concurred with all findings.

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

**Staff: There doesn't appear to be any error in judgment or administration of the Zoning Ordinance.**

ZBA Findings: The board concurred with all findings.

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

**Staff: It is unknown if there are other similar type parcels that may be limited to available space to construct a structure and still meet minimum setbacks.**

ZBA Findings: It would depend what the practical difficulty may be on the property. It would have to be unique to that particular parcel. 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: Other than the typical public service of police and fire protection, no additional impact on public services is perceived.**

ZBA Findings: The board concurred with staff's findings.

**Motion: Ann Gamboe Hall** moved that Dimensional Variance #PZBA13-011 submitted by Allen D. Martin, 6860 E. Grand River Road, Bancroft, MI (applicant and property owner)

requesting a deviation from Section 5.3.2.1.C.2. of the 1999 Shiawassee County Zoning Ordinance, as amended, to allow for an accessory structure to be constructed **seven (7) feet** from the property side line, a variance of **three (3) feet**; on property known as Tax Id. 78-016-07-300-002-04, Section 7, Burns Township, be **postponed**, and that the applicant contact the Gas Company to see if a smaller structure can be located closer to the easement and eliminate the need of the variance.

Discussion: Junger recommended adding to the motion that there was lack of information on the drawing and it was not to scale.

**Amendment to Motion: Ann Gamboe Hall moved to amend her motion to state:** The Dimensional Variance #PZBA13-011 submitted by Allen D. Martin, 6860 E. Grand River Road, Bancroft, MI (applicant and property owner) requesting a deviation from Section 5.3.2.1.C.2. of the 1999 Shiawassee County Zoning Ordinance, as amended, to allow for an accessory structure to be constructed **seven (7) feet** from the property side line, a variance of **three (3) feet**; on property known as Tax Id. 78-016-07-300-002-04, Section 7, Burns Township, be **postponed**, with the following conditions: 1) The applicant contact the Gas Company to see if a smaller structure can be located closer to the easement and eliminate the need of the variance. 2) Provide information that was lacking and provide a site plan to scale. **Support: Julie Hales-Smith. Roll Call: Ayes to Postpone:** Gerald Wardell, Julie Hales-Smith, and Ann Gamboe Hall. **Nays:** Brad Hissong, Fred Junger, and Henry W. Martin III. **Motion failed.**

Preston stated the board needed to take action on the request. It either has to be approved, denied, or tabled for additional information; but a motion is needed.

Discussion: Hissong stated the request for a deviation from the side yard setback was self-created. The applicant should have contacted the office first to see if a permit was needed; but he didn't. Junger agreed. Hall said she agreed with the board, but thought if it was postponed it might give the applicant time to approach the Gas Company. Wardell stated he felt enough information had been provided this evening to make a motion. Chair Martin agreed with Hall; there should be additional information provided. Hall stated a scaled drawing should be provided and that maybe Consumers Energy would allow a structure to be closer. Hall said she still felt it should be tabled for at least a month.

Al Martin stated he would research whether or not he had to stay 20 feet away from the easement and if he could move it closer he would. Martin stated he didn't want to go through this; if he received different information then he wouldn't need a variance and wasting everyone's time. He would just withdraw his application request.

Junger replied he wouldn't want to withdraw his application at this point. Junger added what if he couldn't move it anywhere else and be in compliance with the Ordinance. If he withdrew his application, he would have to start all over and resubmit an application fee. If the board were to consider tabling it until he found out, he would still be able to come back if needed.

Preston agreed and recommended to Martin that he not withdraw his request tonight.

Al Martin stated he would try to get in touch with the Michigan Gas Pipe Line and Consumers Energy to find out if he can move the building closer.

**Motion:** Fred Junger moved to table Dimensional Variance Application #PZBA13-011 submitted by Allen D. Martin, 6860 E. Grand River Road, Bancroft, MI (Tax Id. 78-016-07-300-002-04).

Discussion: Wardell wondered what the difference was; the motion earlier was to postpone. Hall responded that her motion to postpone had conditions. Wardell questioned the site plan.

**Amendment:** Fred Junger moved to amend his motion to state “Dimensional Variance Application #PZBA13-011 submitted by Allen D. Martin, 6860 E. Grand River Road, Bancroft, MI (Tax Id. 78-016-07-300-002-04) with the following conditions: 1) Site drawing drawn to scale. 2) Documentation from the Michigan Gas Pipe Line and Consumers Energy of setback requirements.” **Support:** Ann Gamboe Hall. **Motion carried; 6 ayes, 0 nays.**

#### **8d. Dimensional Variance Application #PZBA13-012**

**Applicants** – Travis and Jessica Woods, Owosso

**Owner** – Ronald Stewart, Owosso

**Site Location**—N. McCaffrey Road, Section 5, New Haven Township, Tax Id. 003-05-300-003

**Request** – Create a Land Division for future build site on a parcel size that would exceed the maximum 2.5 acre lot size requirements within the A-1 District.

**Proposed** – Approximate 5-acre parcel; irregular in shape

**ACTION** – Applicant’s withdrew application request.

#### **8e. Dimensional Variance Application #PZBA13-013**

**Applicant/Owners** – Anthony and Debra Newman, Corunna

**Site Location** – 8340 E. Juddville Rd., Section 33, Hazelton Township, Tax Id. 004-33-100-001

**Request** – Create a Land Division to divide off an existing dwelling and buildings from a farm on a parcel size exceeding the maximum 2.5 acre lot size requirements within the A-2 District.

**Proposed** – 970’x405’

The staff report was provided by Preston. The applicant is proposing to divide the original homestead and accessory structures from a 40-acre tract of land on a proposed parcel size that would exceed the 2½-acre maximum lot size and sell the 31 acres as farmland. Newman would be retaining the house, corn crib and barn for future housing and raising of beef cattle and feed storage on 9.01 acres more/less. The proposed division of 9- acres would create a lot that would be large enough and wide enough for a division into two (2) lots.

Preston noted the property is located within the A-1, Agricultural Production, zoning district and intended for agricultural production and management purposes. The area surrounding the proposed parcel is also primarily agricultural with limited residential. The parent parcel is rectangular in shape and has approximately 1,320 feet of road frontage along Juddville Road. The existing home and accessory structures are positioned primarily in the northeast corner of the overall parent property. The remainder of the property is cultivated with no accessory structures. There is a drainage ditch centrally located which runs east to west across the property.

Preston added that when the 1982 Ordinance was adopted, at which time the A-1 Zoning District went into effect, the property contained 160 acres with the original homestead and buildings. In 1994, a 216’x502’ parcel was divided from the parent and then in 1995, 117.52 acres was split off and recorded which left the resulting 40-acre tract.

Preston continued that although staff realizes the 1999 Ordinance defines a farm as 20-acres or more, the Right-to-Farm Act does allow agricultural use of property on less than 20-acres as long

as the property is zoned for agricultural use and meets the Generally Accepted Agricultural Management Practices (“GAAMPS”) as set forth by the Michigan Department of Agriculture.

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

Tony Newman noted he had made an error on his site drawing, he had originally stated it was 1420’x1420’, but actually it is a 1320’x1320’; 40 acres. Newman said his intent is to maintain the 9-acres so his grandchildren can raise beef cattle and participate at the County Fair. If he downsized the parcel to comply, it would leave this small area basically in limbo as the drainage ditch runs east to west behind it and then turns along the east property line and heads north.

Preston discussed Newman creating a warranty deed and quick claiming it back to himself granting “0” division rights on the 9-acres.

Newman answered that he wouldn’t have a problem with that because he didn’t want someone living next to him; he may be living out there for another 10 years or more. The problem is the fact the drainage ditch cuts it off behind the barn. The septic system and reserve area are located on the west side of the home so he couldn’t reduce the side yard on that side.

Wardell asked what type of equipment he had.

Newman replied he had small equipment for farming of corn, soybeans and hay. Currently, the field is planted with corn. Originally he had planned on farming it himself, but he became too busy. He just started purchasing some equipment.

Chair Martin opened the floor for public input in support of the applicant’s request. Hearing none, Martin opened the floor for public input in opposition of the request. Hearing none, Martin asked for township input.

Cordier noted that Hazelton Township had responded. The following letter was read:

*August 21, 2013*

*Dear Mr. Preston:*

*Letter to the Shiawassee County Zoning Board of Appeals to inform you, Tony Newman was present to go over the split he wants in Shiawassee County.*

*Hazelton Township Board: Motion by Hart, supported by Sheridan, to allow Tony Newman to split farm at 8340 Juddville Road, according to plans submitted to our board. Motion carried, Roll Call Vote: Pope-yes, Hart-yes, Knieper-yes, and Sheridan-yes. 5 yea. Approved unanimous.*

*Hazelton Township Board held this meeting on August 12, 2013 at 7:00 PM. In the Community Hall, 7507 Orchard Street, New Lothrop, MI 48460; Parcel No. 004-33-100-001, in Township. Need for any information call 810.638.5516.*

*Sincerely, Rebecca M. A. Hart, Hazelton Township Clerk.*

Hall asked how far the barn was from the drainage ditch.

Newman answered approximately 50 feet.

Hissong noted the drainage ditch runs straight across his property from east to west.

Newman replied that was correct.

Chair Martin noted that the minimum setback of an accessory building housing animals from a lot line is 50 feet.

Newman informed the board that they currently only raise chickens but have plans for beef cattle. Years ago this was known as the Hanchett farm. They raised a lot of beef and operated two livestock yards.

Chair Martin noted they would proceed with the Findings of Fact unless the board had additional questions.

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

**Staff: The ZBA should discuss if the property were to be larger than 2.5-acres and only to the extent to take into account setbacks of the existing structures in a practical difficulty or an unnecessary hardship. In this particular case, the applicant wishes to extend beyond the 2.5-acres to the point that the property can support a minimum level of livestock. 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 and Master Plan.**

ZBA Findings: The drainage ditch is creating the practical difficulty; it extends east to west across the property and then extends to the north along the eastern boundary lot line. The intent is to raise and house livestock on the additional property. GAAMPS was discussed and number of acres needed based on the number of animals. The parcel contains natural features separating this from the farm. The board concurred with all findings.

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

**Staff: The ZBA should discuss unique physical circumstances such as topography, wetlands, or vegetation that may be causing practical difficulties. It should be noted that an east-west drain is located on the property, which may inhibit crop farming to the north of the drain where the proposed division should take place.**

ZBA Findings: Again the east-west drain could prohibit the farming the area east of the home and farm buildings. 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 ZBA should discuss if other development alternatives are available and how the division of land is in conformance with the intent of the County's planning policies. It should be noted that an east-west drain is located on the property, which may inhibit crop farming to the north of the drain where the proposed division should take place.**

ZBA Findings: The location of the home and accessory buildings on the farm in relationship to the drain also plays a key role in the proposed division. It's an A-1 district, the original home and

buildings were located in the middle of the agriculturally zoned 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: If the ZBA finds that the east-west drain is an encumbrance and a practical difficulty with use of the northern portion of the property, then it could be determined that such practical difficulty was not caused by the applicant.**

ZBA Findings: The drain was put in over 32 years ago. 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 development of the property in this manner would impact adjacent properties or the public health, safety and welfare of the community in general.**

ZBA Findings: The board concurred with staff's findings.

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

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

ZBA Findings: Agricultural practices are a use by right. 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: If the variance were to be approved, it appears that continued use of the property would be in compliance with requirements, standards, and procedures in the Ordinance.**

ZBA Findings: The applicant will need to work with the Department of Agriculture to make sure he is in compliance with the GAAMPS regulations for manure management. 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 administration of the Ordinance.**

ZBA Findings: Concurred with staff's findings.

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. It should be noted that an east-west drain is located on the property, which may inhibit crop farming to the north of the drain where the proposed division should take place.**

ZBA Findings: The property has unique features that include an east-west drain crossing over the property. The additional acreage requested is along Juddville Road; the drain makes a 90° turn and heads north along the east boundary line. The septic system to the home is located along the west side of the house. (Newman added that D.E.Q. will not let him fill the ditch in.) 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 units in the provision of services.**

ZBA Findings: Concurred with staff's findings.

**Motion: Fred Junger** moved to approve the Dimensional Variance request (PZBA13-013) by Anthony and Debra Newman from Section 4.3.49.C. to allow for a parcel to exceed 2.5-acres for the purposes of continued agricultural use for property located at 8340 Juddville Road, Section 33, Hazelton Township (Parcel Id.#78-004-33-100-001) based upon the following reasoning and conditions: 1) The proposal satisfies the basic findings as set forth in Section 18.4.6 of the Ordinance and 2) The east-west drain crossing over the property. **Support: Brad Hissong.**

**Discussion:** Hall noted it should comply with GAAMPS.

**Amendment: Junger amended his motion to include #3)** The applicant's request for 9-acres for continued farm use include "0" land divisions. **Support: Brad Hissong.**

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

**INTERPRETATION of the ORDINANCE:** None.

**ZONING ADMINISTRATOR'S REPORT:** Cordier replied the next scheduled hearing will be Wednesday evening, October 9, 2013. Junger stated he may be out of town that evening.

**BOARD MEMBER COMMENT:** Junger asked if staff could purchase the new Plat Books for board members. Preston stated he would look into it. Junger noted his is dated 1999.

Preston informed the board that the county was moving forward with the grant which will enable them to digitize the maps.

**PUBLIC COMMENT:** None.

**ADJOURNMENT:** **Motion:** Ann Gamboe Hall moved to adjourn. **Support:** Julie Hales-Smith. **Motion carried: 6 ayes, 0 nays.** Meeting adjourned at approximately 9:36 p.m.

**Recording Secretary - Linda Gene Cordier**

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

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October 9, 2013  
Approval Date of Minutes