

**SHIAWASSEE COUNTY ZONING BOARD OF APPEALS
BOARD MINUTES – OCTOBER 9, 2013**

CALL TO ORDER: Chair Martin called the regularly scheduled monthly Zoning Board of Appeals public hearing to order at 7:00 P.M. within the County Board of Commissioners' Chambers located on the first floor of the Surbeck Building, 201 N. Shiawassee Street, Corunna, MI.

ROLL CALL: Present: Henry W. Martin III, Ann Gamboe Hall, Julie Hales-Smith, and Gerald Wardell. Absent: N. Brad Hissong and Fred Junger. Chair Martin noted there was a board quorum.

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

EXCUSED ABSENCES: Cordier informed the board that Junger had informed the board at last month's meeting he would be out of town and unable to attend the October meeting. Cordier stated she had not heard from Hissong.

Motion: Hall moved to excuse Junger. Support: Hales-Smith. Motion carried: 4 ayes, 0 nays.

Chair Martin stated they would wait for a motion to excuse Hissong until the next scheduled meeting after they hear from him.

PROOF OF PUBLICATION: Cordier informed the board that the legal notice for the evening's agenda was published within the Shiawassee County Independent on Sunday, September 22, 2013. A copy was on file for review. Chair Martin declared the hearing as legally published.

APPROVAL OF AGENDA: **Motion:** Hall moved to approve the agenda as printed. Support: Wardell. Motion carried: 4 ayes, 0 nays.

APPROVAL OF BOARD MINUTES: **Motion:** Wardell moved to approve the September 11, 2013 board minutes as printed. Support: Hall. Motion carried: 4 ayes, 0 nays.

PUBLIC COMMENTS ON NON-AGENDA ITEMS: None.

COUNTY BOARD OF COMMISSIONER COMMENTS: Commissioner McLaren commented on the County's 2014 budget. The commissioners would be moving forward with it at the next Committee of the Whole hearing. McLaren noted that at the last Board of Commissioners' hearing the commissioners approved raising the P.A. 214 to .10 mills for the Veteran's Affairs within the County. An Ad-Hoc Committee has been created to consider filing the County Administrator's position.

Hall asked if the position had been posted.

McLaren stated it will be posted within the Michigan Township Association of Planner's magazine. The committee has to decide if it will be full time and duties. Some believe an administrator isn't needed; however, he had talked with five (5) other counties and was informed that in this day and age it can't be done without one.

Hall asked who was on the Ad-Hoc Committee.

McLaren answered Commissioners Holzhausen, Bartz, and Stewart., Sheriff Braidwood and a representative from the Prosecutor's Office and thought it may be Attorney Dan Nees.

Preston stated he believed it was Attorney Mike Herendeen and not Nees that was appointed to the Ad-Hoc Committee.

Chair Martin noted the gavel was missing and wondered if staff should be purchasing one for their own use.

McLaren answered he wasn't sure what happened to it but would check into it.

OLD BUSINESS:

Dimensional Variance Application #PZBA13-011

Applicant/Owner – Allen D. Martin, Bancroft

Site Location – 6860 E. Grand River Rd., 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 – 7 ft from lot line; a 3 ft variance

Tabled from September 11, 2013; remained tabled

NEW BUSINESS:

Dimensional Variance Application #PZBA13-014

Applicant/Owner – James Spagnuolo, 10843 E. Garrison Rd., Durand

Site Location – 10843 E. Garrison Road, Durand, MI

Tax Id. - #78-012-11-400-029

Zoning District – R-1A, One Family Rural Residential

Request – Construct an accessory building that will exceed the maximum square footage requirements within the R-1A District

Proposed - Construct a 30'x40' accessory building in addition to the already existing 20'x24' detached garage; a total of 1,684-sf. A variance of 784-sf.

Ordinance – Section 5.3.1.A.1.a. – Not to exceed 900-sf

Cordier provided a brief staff report. The applicant had applied for a zoning permit to construct a 30'x40' accessory building back in July. During review of the application, staff noted the building would exceed the maximum square footage for an accessory structure within the R-1A Zoning District. A letter was written explaining the issue and that the permit could not be granted. The applicant's lot is approximately 1.93 acres in size and has been in existence dating back prior to the adoption of the 1982 Zoning Ordinance. Cordier stated she had sent out a copy of the tax map of the area within the board's packing to show the triangular area as being R-1A and R-1B (Lansing, Garrison and Byron Road), which dates back to at least 1982. An existing 20'x24' detached accessory building is located to the rear of the home. If approved, the total square footage of accessory structures would be 1,684-sf. A variance of 784-sf is being requested.

The applicant had noted within his application that a two-story building located at 10441 Garrison Road had been constructed within the R-1A district. She researched the property file and found that on April 4, 2000 a letter was mailed to the owner of 10441 Garrison Road that the Zoning Permit issued on June 6, 1999 approving the construction of a 34'x64' structure was granted in error. Although it was approved for a structure exceeding the 900-sf maximum accessory structure size; it also exceeded the maximum height requirement of 15 feet. The letter also noted

that no building permit had been approved by Vernon Township. The file did not a building permit was later secured in August 1999 by the township. No variance application or variance approvals were found.

In 2003 an Administrative Waiver was granted to the property owner of 4511 Brown Road allowing for a 30'x30' accessory building with an 8'x30' porch extension along the south side of the building. When the 1999 Zoning Ordinance was originally adopted in June of 1999, there was language allowing the Zoning Administrator to grant a ten (10) percent Administrative Waiver.

In 2004, the Zoning Board of Appeals granted a variance to allow for a 30'x40' accessory pole barn at 6789 Byron Road within the R-1B District, which has a maximum 800-sf limit for accessory buildings.

Cordier concluded that most parcels located within the residentially zoned districts (R), are smaller platted lots and limit the size of accessory structures. One of the reasons would be for on-site seepage systems and reserve areas. The Ordinance also has language for total lot coverage of all buildings on a parcel.

Spagnuolo informed the board he has purchased extra lawn equipment as he also takes care of his sister's property across the road. The purpose of the barn was so nothing had to be left outside in the weather, avoid vandalism, and not be an eye sore to his neighbors. He not only has lawn equipment, but a tractor with a blade for snow removal, lawn furniture, vehicles, and rot tiller to name a view of the items that would be stored inside. It would also leave him room for future adult toys such as a new vehicle, ATV, or camper.

Chair Martin opened the floor for public comment in support of the applicant's request. There was no public comment. Martin noted that staff received the following letter in support of the request:

"Shiawassee County Community Development: in response to the Variance Application by James Spagnuolo at 10843 E. Garrison Road, Durand, my wife and I (Jennifer and Jerry Marsich) at 10902 Garrison Road, have no problem at all with him building the 30'x40' pole barn on his property. It is far from the road and would hardly be seen. Jerry Marsich/September 26, 2013, 10902 E. Garrison Road."

Chair Martin opened the floor for public in opposition of the request. Hearing none, Martin asked if staff had received comments from Vernon Township. Cordier answered no correspondence had been received. Chair Martin closed the public hearing.

Preston informed the chair that the applicant should be given the option to ask that his request be tabled due to the fact there was just a board quorum for the evening.

Chair Martin informed the applicant that two (2) board members were not in attendance. The ZBA By-Laws requires four (4) votes to pass a motion and not just the majority of the members present. This board would have to vote unanimously to approve or disapprove his application this evening. If he didn't want to take that chance, he could ask that it be postponed.

Preston stated that if a motion didn't pass, a motion would have to be made to postpone the request.

Cordier added that if he proceeded this evening and the request was denied, he would have to wait one (1) year before he could come back before the board unless he had new information that had not been presented earlier this evening.

Spagnuolo stated he would like to continue with the hearing.

Chair Martin called for board discussion.

Hall questioned why he couldn't keep some of the equipment over at his sister's place if he was mowing her yard as well.

Spagnuolo answered that he had purchased a big lawn mower. His sister didn't have any room either. He also owned an older tractor with a blade for snow removal. His plans were to build the building way to the back of his property so it wouldn't be as visible from the road.

Hall informed Spagnuolo that the board can only consider a variance for the least amount needed over the requirements of the ordinance. We look at the smallest amount needed. The proposed building is pretty large. She asked if it could be downsized or if it could be attached to the other building. Hall suggested that if it were combined, maybe it was feasible to remove the existing wall to open up the floor space.

Spagnuolo stated the existing building was a small structure. It wasn't going to cost him that much more to build something a little larger allowing him ample space to store things in. He added that he also collects cars and didn't want to leave them outside. He was sure the neighbors didn't want to look at all the stuff setting outside either.

Hall said the problem is the variance goes with the land. If he were to move, the building would remain. It's not about what his need was for the building, it was about what the land could handle. It's obvious that he would want the items inside and not be an eye sore to the neighborhood, but the board has to consider the least amount needed.

Martin asked how many cars he had at the present time.

Spagnuolo answered four. If he had to downsize, he wouldn't be able to fit everything in. It would be left outside in the elements of the weather.

Martin asked what would be the smallest size he could go down to and still meet his needs.

Spagnuolo stated he had figured on the 30'x40' so he would have room to store everything inside.

Martin noted that he had mentioned that some of the items mentioned for storage had not been purchased yet.

The board discussed building a 900-sf building on his sister's property. Spagnuolo stated he had thought of that, but if she moved, he would be out of luck and back in the same boat is in now so to speak. He had thought of purchasing the property next door to him if the homeowner was interested in selling and then build a small building on that property. Spagnuolo wondered what the reasoning was for allowing only small sized accessory buildings.

Preston explained that was so the accessory building didn't overwhelm the lot size with buildings. Some communities base it on a portion of the accessory building per area of land. Preston noted

that the Planning Commission will be reviewing this section of the ordinance in the near future for possible amendment. In this particular case if the ordinance language had a scale based on amount of land owned; this case would not be an issue as the proposed structure (including the existing structures on site) would not overwhelm the property.

Spagnuolo asked if it would be feasible to have the property rezoned so he would be allowed to build the structure.

Preston explained that a rezoning request would be considered spot zoning and it would be very difficult to have the property rezoned. Preston noted that the concept for a variance to be considered is based on the least amount needed to overcome the practical difficulty. The board needed to determine what the practical difficulty was. Was it because he owned a larger parcel than normal within the R-1A district as compared to other lots zoned R-1A? Was it the fact he was responsible for taking care of a relative and needed extra storage space to house the equipment in; however, as he indicated the relative could move and then that need would no longer be there.

Hales-Smith asked Preston how other communities dealt with similar sized parcels and the allotted maximum size for an accessory building.

Preston answered that in Clinton County he believed it was 1,000-sf an acre and than additional square footage per area of land owned; however, he would have to research that and bring it back to the board.

Board members viewed the tax map reflecting the lot sizes within the area surrounding the applicant's application.

Chair Martin called for 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: Residential districts allow for accessory structures; however, the district regulates the maximum square footage permitted; and as long as it does not exceed the square footage of the ground floor area of the dwelling unit. A 20'x24' (480-sf) detached garage is in existence leaving 420-sf for an additional accessory structure. The basis for the maximum square footage requirements is to allow for a smaller sized accessory structure on a residentially zoned lot. No practical difficulty is readily identifiable.

ZBA Findings: There are smaller sized lots within the area; however, there was no real practical difficulty evident other than the size of the applicant's parcel. An adjoining parcel has over one (1) acre in size as well. The board concurred with all findings.

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

Staff: It appears the only physical circumstances or conditions that exist may be the fact the applicant owns just less than two (2) acres of land within a residentially zoned and developed neighborhood. The ordinance recognizes small residentially zoned lots, which restricts the accessory structure size so that the accessory use does not overwhelm the principal use.

ZBA Findings: 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 property has already been developed and includes an existing detached 480-sf accessory building. The applicant has the option to build another smaller addition or separate building by right without the need of a variance. The ZBA should discuss other potential methods for development thus eliminating the variance and/or consideration of a lesser deviation.

ZBA Findings: There are parcels similar in size surrounding the petitioned property and could seek the same request should the variance be approved if based on parcel size.

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 parcel was created prior to the adoption of the 1982 Zoning Ordinance and has remained zoned as residential since that time. No practical difficulty is readily identifiable.

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

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

Staff: Adverse impact on the surrounding area is readily identifiable should it be approved.

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: Accessory structures are a permitted use by right within the R-1A district, but are limited to 900-sf and square footage of the dwelling unit at ground level. A detached accessory structure is already in existence on the property.

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: Accessory structures are a permitted use; however, the applicant wishes to exceed the 900-sf maximum permitted for additional residential storage space.

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: Records reflect an anomaly was created by former administration on similarly sized lots in the area by allowing oversized structures to be built with variance approvals.

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 if approved. There are approximately a dozen or more residential lots within the immediate area that are zoned

residential but maintain over one (1) acre of land. It is more than likely there are similar sized lots throughout the County under jurisdiction of the 1999 Ordinance as well that are similarly situated.

ZBA Findings: Concurred with staff's findings.

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

Staff: It does not appear that this variance would impact the County or other governmental units in the provisions of services if approved other than the typical fire and police protection.

ZBA Findings: Concurred with staff's findings.

Motion: Ann Gamboe Hall moved to deny the Dimensional Variance Application Request (#PZBA13-004) submitted by Jim Spagnuolo from Section 5.3.1.A.1.c. to exceed the maximum 900-sf requirement for accessory buildings within the R-1A District at 10843 Garrison Road, Durand, MI, Section 11, Vernon Township (Tax Id. #78-012-11-400-029) based upon the following: **Reasoning:** 1) The proposal does not satisfy the basic findings as set forth in Section 18.4.6. of the Ordinance. **Support: Gerald Wardell.**

Roll Call: (Ayes to Deny) Julie Hales-Smith, Gerald Wardell, Ann Gamboe Hall, and Henry W. Martin III. **Nays: None. Motion carried to deny.**

Preston stated he would take discussion from this meeting to the next Rewrite Committee work session as well as to the County Planning Commission with regard to the size of accessory buildings based on lot size.

INTERPRETATION OF THE ORDINANCE: None.

ZONING ADMINISTRATOR'S REPORT: Cordier stated the only agenda item would be the pending application of Allen Martin's, which was tabled in September. She noted the cut-off date to receive applications for the November hearing was October 3rd and that no new applications were received. She asked the board if they wanted to hold a public hearing in November or did they want to cancel it? Chair Martin asked if she had received any correspondence from Al Martin. Cordier stated she had not. Chair Martin moved to cancel the November hearing. Cordier stated she would write Martin a letter requesting an update.

BOARD MEMBER COMMENTS: Wardell noted his term would be up in December and had contemplated whether or not to seek re-appointment. After discussion, Wardell stated he would submit a letter to the Commissioners seeking re-appointment.

PUBLIC COMMENTS: None.

ADJOURNMENT: **Motion: Wardell moved to adjourn. Support: Hales-Smith. Motion carried:** 4 ayes, 0 nays. Meeting adjourned at approximately 7:55 P.M.

Recording Secretary: Linda Gene Cordier

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

December 4, 2013
Approval Date of Minutes