

**SHIAWASSEE COUNTY  
ZONING BOARD OF APPEALS  
BOARD MINUTES – NOVEMBER 9, 2011**

- 1. Call to Order/Roll Call:** Chair Henry W. Martin III called the regularly scheduled monthly public hearing to order at 7:00 P.M. within the Board of Commissioners' meeting room located on the first floor of the Surbeck Building, 201 N. Shiawassee Street, in Corunna.

**Present:** Ann Gamboe Hall, Gerald Wardell, N. Brad Hissong, Willis Miller, Jacob Raleigh, Larry Gramer, and Henry W. Martin III. **Absent:** None. Also present: Peter J. Preston/Community Development Department Planner and Linda Gene Cordier/Zoning Administrator.

- 1a. Excused Absence:** Chair Martin stated that although there were no absences this evening, they needed to make a motion to excuse Jacob Raleigh from the July meeting and Brad Hissong from the August meeting.

**Motion:** Ann Gamboe Hall moved to excuse Jacob Raleigh from the July 13<sup>th</sup> public hearing and Brad Hissong from the August 10<sup>th</sup> public hearing. **Support:** Gerald Wardell. Motion carried: 7 ayes, 0 nays.

- 2. Confirmation of Legal Notice:** Cordier informed the chair that the scheduled agenda was published within the Shiawassee County Independent on Sunday, October 23, 2011. Chair Martin declared the hearing legally noticed.

- 3. Approval of Agenda:**

**Motion:** Gerald Wardell moved to approve the agenda as printed. **Support:** Willis Miller. Motion carried: 7 ayes, 0 nays.

- 4. Approval of Board Minutes:**

**Motion:** Larry Gramer moved to approve the July 13, 2011 board minutes as printed. **Support:** Willis Miller. Motion carried: 7 ayes, 0 nays.

**Motion:** Gerald Wardell moved to approve the August 10, 2011 board minutes as printed. **Support:** Willis Miller. Motion carried: 7 ayes, 0 nays.

- 5. Public Comments on Non-Agenda Items:** None.

- 6. Commissioner Comments:** None.

- 7. Old Business:** None.

- 8. New Business:**

- 8a. Dimensional Variance Application #ZBA11-010**

**Applicant:** Barry Fagan; **Property Owner:** Rose-Anne Blossom

**Site Location:** 109 South Byron Road, Lennon

**Tax Identification:** 78-008-24-100-002-02; Sec. 24, Venice Twp.

**Applicant's Request:** Erect a six (6) foot high solid wood fence in front of the dwelling along the northern boundary line of the parcel at a point of beginning being setback from Byron Road 143 feet.

**Ordinance:** Section 8.14.D. – Fences in front of a dwelling cannot exceed four (4) feet in height and have at least a 75% open area.

Mr. Fagan explained to the board that he had applied to construct a

small shed on the property including a privacy fence along the north and a portion of his rear property line and was not aware of the height requirement for fences until he received his permit in the mail, which explained the height requirement for fences in front of the home. Fagan stated his detached garage is located in front of the home and it was his intent to start the privacy fence even with the front line of the detached garage and extend it to the rear of the property. The fence would act as a buffer from traffic traveling along the M-21 corridor allowing them to store their recreational trailer and jet skis out of view.

Chair Martin asked Cordier to provide staff's report.

Cordier gave a brief statement that during the review of the application for the small shed and privacy fence she noted that the fence would exceed the maximum height requirements. The ordinance defines fences in front of the dwelling; they cannot exceed four (4) feet in height from the road right-of-way and must have at least 75 percent open air passage. She noted that for the most part are located closer to the road or meet the minimum 40 foot setback from the road right-of-way. In this particular case the home was built approximately 206 feet from the road with a detached garage constructed in front of the home. The garage sets back from Byron Road approximately 143 feet. The applicant was informed of the Ordinance requirements as it was stated on the Zoning Permit approval of for the shed. She wasn't sure if anyone visited the site, but the applicant has placed poles along the front line of the detached garage to the north and then along the northern boundary line. From the front line of the home to the rear the applicant has installed the six (6) foot high fence. After discussion with Mr. Fagan regarding fencing requirements, he opted to file a variance request.

Fagan responded that he understood the reasoning for a height limitation on a fence from the road to the home so it wouldn't obstruct vision; however, their home was located behind the detached garage. They would like a six (6) foot high fence located from the front of the garage and then extending to the rear of the property along the northern boundary line for privacy purposes to allow them to place their recreational vehicles and trailer from the public view of traffic traveling along M-21.

Chair Martin asked if there were any questions from the board.

Gamboe-Hall asked what the distance was from the garage to the house.

Fagan replied 42 feet. The fence will be placed approximately one (1) foot inside of the property line.

Wardell questioned whether or not this would be considered a multiple variance because of the height and it being a solid fence.

Preston stated no; it will be considered one variance as it goes hand in hand.

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

Speaker #1: Mary Lou Kingsbury, 10349 M-21, Lennon. Ms. Kingsbury informed the board that she owned the farm land across the road from this home. She wondered what the requirements were for notification of the hearing.

Cordier informed everyone that the ordinance requires notification to adjoining

parcels within 300 feet of the petitioned property.

Ms. Kingsbury said her concern was she believed there to be a couple of parcels available next to this property for potential build sites. What if the parcels are sold and the new owners have a problem with the fence. Would he have to remove the fence?

Chair Martin stated he didn't have an answer for that at this time. Martin opened the floor for public comment in opposition of the request. Hearing none, he asked if the township had responded. Cordier replied no. Martin closed the public hearing and asked for board comment.

Hissong replied he had visited the site. Ann Gamboe-Hall questioned the height of the proposed fence; especially if the property to the south was sold. The neighbor may not like it, but added technically there would be nothing they could do about it.

Gramer replied that it still will be considered a front yard fence even if the lot to the north of Fagan was sold. The fence will still be setback farther than the normal front yard setback requirements.

Ann Gamboe-Hall replied she understood the reasoning behind the request to maintain some privacy or buffer from the view of traffic traveling along M-21.

Preston replied that the Fagan's purchased a home with a detached garage in front of it. No variance was needed to place the garage in front of the front line of the home. However, a variance is needed for the fence because of how the ordinance reads "in front of a dwelling". It doesn't say from the road right-of-way to a build line. The Fagan's are still permitted to erect a six (6) foot high fence from the front line of the home to the rear lot line and a four (4) foot high fence in front of the home to the road right-of-way. Preston stated there was a distance of approximately 42 feet between the garage to the home.

The board asked Mr. Fagan why they were only fencing a portion of the east (rear) boundary line.

Fagan replied that they like the open view of the field behind them. They may add one (1) more section to the rear fence, but they haven't decided yet.

Gamboe-Hall discussed the fence and the fact it may be too close to the home for emergency vehicles to get between in case of a fire. She suggested that a four (4) foot high fence might be more appropriate to reach over in case of an emergency with hoses.

Fagan responded that the property would be open in the front, along the south side of the home, and in the back yard.

Gramer stated he felt the front yard was already established when the detached garage was allowed to be built in front of the home. Gramer asked the size of the garage and how far was it off the property line.

Fagan stated he believed about 15 feet; it is on an angle. He thought the garage to be 24'x36' or 24'x32'; it was a two-car garage.

Chair Martin stated unless there were other questions, he would proceed 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:** The existing home sets back approximately 206 feet from Byron Road. Although the applicant can comply with the four (4) foot high fence requirement, the placement of the fence proposed would start well beyond the typical 40 foot front yard setback requirement for structures. The ZBA board may wish to consider asking the Planning Commission to review ordinance language for review and possible amendment. There is a lot of inconsistency because a next door neighbor whose home was closer to the road than this could have a six foot high fence from the front line of that home to their rear yard and be in compliance with the regulations. Although it doesn't appear to be a practical difficulty, it is how the language applies to other developed parcels.  
**ZBA Findings:** Board concurred and agreed that the language should be reviewed by the Planning Commission.
2. ***Identify the unique physical circumstances or conditions or exceptional topography that create practical difficulties.***  
**Staff:** No practical difficulty or topography is apparent. The proposed fence would be placed in line with the existing detached garage located in front of the existing home and extend to the rear boundary. Based on location, it appears the height of the fence, as well as a proposed solid wooden fence, would not impede any vision problems as it will be located beyond the typical front yard setback requirements for a structure. Again, the ZBA may wish to recommend to the County Planning Commission to review this section of the ordinance for possible amendment. Although there is none shown, it is based on the front yard setback based on safety factors. It may be a problem with the ordinance language on fences, but there isn't a practical difficulty with the application.  
**ZBA Findings:** Board concurred with staff's 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:** Per the tax roll parcel map, this is the second residential parcel located south of the intersection of M-21 and Byron Road. The corner parcel is vacant. The surrounding area is open farm field. The applicant can comply with the four (4) foot height requirements. There may be other parcels with similar situations based on intersecting road and/or setback of a home beyond the minimum front yard setback requirements. Although the applicant can comply with the requirements of the ordinance, the applicant is seeking relief from the M-21 traffic by asking for a privacy fence for protection and view of their recreational vehicles.  
**ZBA Findings:** Board concurred with the 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:** It appears that no practical difficulty exists. The property was purchased through a foreclosure. Most single-family dwellings just meet the minimum front yard setback requirement of 40 feet from the right-of-way; this home sets back

approximately 206 feet. The location of the fence would not impair anyone's vision if approved. The request is based on location and aesthetics.

**ZBA Findings:** 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:** Appears there would be no impact within the area if the variance were authorized based on the proposed setback of the point of construction of the fence.

**ZBA Findings:** Board agreed that it wouldn't create any impact and would provide screening from public view along the M-21 corridor for the homeowner.

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:** Fences are a permitted use within the A-2 zoning district and as outlined within Section 8.14 of the 1999 Shiawassee County Zoning Ordinance, as amended, as a use by right.

**ZBA Findings:** Board concurred.

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

**Staff:** Other than the requirement of height and type of fence permitted in front of the dwelling it appears to be in compliance with the section. Again the ordinance may need to be reviewed for a possible text amendment.

**ZBA Findings:** Board concurred with staff's findings.

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

**Staff:** It appears that no error in judgment has been made.

**ZBA Findings:** Board concurred with the findings.

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

**Staff:** It is unknown how many parcels within the County that may be similar in nature to the pending case if approved. The ZBA board may wish to have the Planning Commission review this section of the ordinance for possible amendment. After reviewing this tonight there are a lot of homes within the county that are located beyond the minimum setback requirement of the road right-of-way and would definitely be precedent setting.

**ZBA Findings:** This section of the ordinance needs to be reviewed. If you are going to allow a detached garage in front of the home then the front yard has been established because the building sets in front of the home. Most garages are in line with the existing home and/or behind the home. Board concurred with the 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:** No anticipated impact is perceived should the variance be authorized.

**ZBA Findings:** There still may be an issue with clearance between the fence and the

home should there be an emergency, but the area on the other side of the home is wide open. It is clear why the ordinance limited the height of a fence within a front yard. Board concurred with the findings.

**Motion:** Larry Gramer moved to approve the variance application request #PZBA11-010 submitted by Barry Fagan/applicant and Rose-Anne Blossom/property owner, to allow for a six (6) foot high solid wooden fence to be erected (**143**) feet from Byron Road and located in front of the dwelling, a variance from the 75% open air regulation and a two (2) foot height variance, on property known as 109 South Byron Road, Lennon, MI; Tax Identification #78-008-24-100-001-02, Section 24, Venice Township, based on Section 18.4.6. (Findings of Fact) and testimony and input received during the public hearing.

**Support:** N. Brad Hissong

**Discussion:** None.

**Roll Call: Ayes:** Larry Gramer, Willis Miller, Jacob Raleigh, Gerald Wardell, and N. Brad Hissong. **Nays:** Ann Gamboe Hall and Henry W. Martin III.

**Motion carried:** 5 ayes, 2 nays.

9. **Interpretations of the Zoning Ordinance:**

- 9a. **Section 5.3.1.A.1. – Accessory Buildings – Private Garages:** As accessory to an authorized used shall not exceed the ground floor area of the dwelling unit (or of a principal building in the R-M1 District)

Preston gave a brief staff report explaining the current text language regarding accessory buildings and structures. The section is divided into three categories, the first defining accessory buildings as private garages; the second being additional regulations for accessory buildings within a residentially zoned area; and, the third being an accessory structure located within an agriculturally zoned area.

The basis for a maximum size accessory structure is to provide continuity among residentially zoned parcels and to promote proportional relationships between a principal residential structure and an accessory structure. The intent was so an accessory structure constructed on a residentially zoned lot does not overwhelm the principal structure due to size. The intent is also to prevent accessory buildings for non-residential type businesses.

Preston continued that staff has encountered several instances where an applicant was seeking to construct a large sized accessory building on a smaller agriculturally zoned lot used for single-family residential. The general lot size is 2.5 acres or less. Staff has applied the sub-item 5.3.1.A.1. language which states a private garage used as an accessory use shall not exceed the ground floor area of the dwelling unit. In these particular cases, the small lot may be surrounded by large tracts of agricultural land and residential development may not occur within this area.

Preston said staff was asking for an interpretation to either affirm staff's interpretation or reject it regarding the maximum size that an accessory structure can be built on a residentially zoned lot used for purposes in addition to the storage of motor and recreational vehicles such as workshops, general storage, or a personal hobby is or is not subject to the requirements of it being no greater in size than the principal structure. Preston noted that maybe a principal structure is a two story or a quad level style home, but would be limited to just the ground floor square footage of the home. If the intent is for just private garages only then maybe the

language needs to be rewritten. Preston stated tonight's request is for an interpretation.

**Motion:** Larry Gramer moved to affirm that the definition for a detached accessory structure on an agriculturally zoned residential lot can be used for purposes in addition to the storage of motor and recreational vehicles (workshop, general storage, and personal hobby) and would not be subject to the requirements greater than the size of the ground floor level of a residential structure. **Support:** Ann Gamboe Hall.

**Roll Call: Ayes:** Jacob Raleigh, Gerald Wardell, N. Brad Hissong, Willis Miller, Ann Gamboe Hall, Larry Gramer, and Henry W. Martin III.

Motion carried: 7 ayes, 0 nays.

- 9b. Section 5.3.1.H. (Outdoor Solid Fuel Furnaces), A.#3a.** An Outdoor Furnace shall be located no closer than one hundred (100) feet to any residential or commercially zoned or utilized property.

Preston explained that he had sent proposed language changes to the Rewrite Committee, but tonight he was asking for an interpretation on the location and placement of an outdoor solid fuel furnace on property within the County. Staff is receiving requests to place an outdoor solid fuel furnace on parcel sizes less than two and one-half (2½) acres in size. The language states it shall be located no closer than 100 feet to any residential or commercially zoned or utilized property. If the parcel is surrounded by agricultural farm land and actively farmed, does that mean the location of the outdoor solid fuel furnace would only have to meet the same requirements as for an accessory structure and not the minimum 100 feet. As stated in the previous interpretation, the intent was to provide continuity throughout the county for placement and use to protect the public health and safety of the neighborhood. Appropriate separation is needed between occupied structures and smoke generated from the outdoor solid fuel furnace.

Preston noted that the language was adopted into the ordinance in 2010. The language contains three setback requirements: 1) Setback of the unit from the property line of residential and commercial uses; 2) Setback of the unit between an institutional use such as a church or school; and 3) Setbacks between the unit and on-site structures. Preston informed the board that because he had forwarded the review of the language on to the Rewrite Committee at next week's committee meeting, no action was needed tonight other than to affirm that the rewrite committee needs to study the section on setback requirements and forward it on to the County Planning Commission for a possible text amendment.

**Motion:** Ann Gamboe Hall moved to forward the staff's evaluation on to the Rewrite Committee for further study. **Support:** N. Brad Hissong. **Motion carried: 7 ayes, 0 nays.**

**10. Zoning Administrator's Report:**

Cordier stated she had received one application request for next month's hearing.

Preston stated the board would need to enter a motion to forward to the Rewrite Committee to consider a text amendment to the fencing section with regard to front yard setback from the road right-of-way to the dwelling. Preston informed the board he was in the process of having the ordinance reformatted for easier reading as well as including all the major text amendments to it such as the Wind Energy, Medical Marihuana, and the Commercial Refueling. It will be reprinted and

hopefully it will be available on the County's Web Site by the first part of the year

**Motion:** Larry Gramer moved to have the Rewrite Committee review Section 8.14.D. with regard to the setback of fences. **Support:** Ann Gamboe Hall. **Motion carried:** 7 ayes, 0 nays.

Cordier stated she had sent everyone a 2012 Schedule for Acceptance of Application and Scheduled Hearing Dates for review and approval. She informed the chair they could be approved this evening and/or next month.

**Motion:** Larry Gramer moved to approve the 2012 Zoning Board of Appeals schedule as printed. **Support:** Ann Gamboe Hall. **Motion carried:** 7 ayes, 0 nays.

11. **Board Member Comment:** None.
12. **Public Comment:** None.
13. **Adjournment:** Chair Martin adjourned the public hearing at approximately 8:10 p.m.

Recording Secretary – Linda Gene Cordier

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Henry W. Martin III, Chairman  
Zoning Board of Appeals

February 8, 2012  
Date