

**SHIAWASSEE COUNTY
ZONING BOARD OF APPEALS MINUTES
NOVEMBER 14, 2012**

1. **CALL TO ORDER:** Chair Henry W. Martin III called the regular monthly Zoning Board of Appeals (“ZBA”) public hearing to order at 7:00 P.M. within the County Board of Commissioners’ meeting room, 201 N. Shiawassee Street, 1st Floor/Surbeck Building, in Corunna.

1a. **ROLL CALL:** Present: Gerald Wardell, Larry Gramer, Ann Gamboe Hall, Julie Hales-Smith, Willis Miller, and Henry W. Martin III. Absent: N. Bradley Hissong. Also present: Peter J. Preston/Community Development Director, Linda Gene Cordier/Zoning Administrator, and County Commissioner/Ron Elder. Cordier informed the chair that Mr. Hissong contacted the office the first part of the week and informed her that he would be out of town and would not be able to attend the meeting. **Excused:** Chair Martin stated Hissong would be excused unless there was an objection. There were no objections.

2. **CONFIRMATION OF LEGAL NOTICE:** Cordier informed the chair that the confirmation of the ZBA hearing was published within the Shiawassee County Independent on Sunday, October 28, 2012. Chair Martin declared the meeting legally noticed.

3. **APPROVAL OF THE AGENDA:** **Motion:** Willis Miller moved to approve the agenda as printed. **Support:** Julie Hales-Smith. **Motion carried: 6 ayes, 0 nays.**

4. **APPROVAL OF BOARD MINUTES:** Julie noted that on page seven, in the middle of the page; the motion stated 4 ayes, 0 nays and it should read 4 ayes, 1 nay. **Motion:** Julie Hales-Smith moved to approve the October 10, 2012 board minutes with the stated correction. **Support:** Ann Gamboe Hall. **Motion carried: 6 ayes, 0 nays.**

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

6. **COMMISSIONER COMMENTS:** Commissioner Ron Elder commented that he had the privilege of attending the board meetings over the past couple of years and that this board has done a really good job. The Commissioners have determined that funds available will not be as severe for next year as anticipated and all county employees that are currently on a 37-hour work week will be able to return to a 40-hour work week. Elder again thanked the board for a commendable job and felt that they deserved more than the \$25.00 reimbursement per person they were receiving based on all the hard work and time that they put into this.

7. **OLD BUSINESS:**

7a. **Application** – ZBA12-007

Applicant/Owners – Kevin S. Godfrey, P.O. Box 94, Morrice

Site Location – 2110 East Braden Road, Perry, MI 48872

Tax Identification – 78-015-33-100-001, Section 33, Antrim Township

Dimensional Variance Request/Lot Size Requirements - Divide off a parcel of land from a farm with an existing single-family dwelling and accessory structures on a parcel size that would exceed the maximum lot size requirements within the A-2 Zoning District

Proposed – 325’ road frontage width by 1290’ depth; 9.62 acres m/l

Ordinance – Section 2.7.2.A. of the 1999 Shiawassee County Zoning Ordinance – Parcels created after June 1999 within the A-2 District – Maximum Lot Size 2.5 acres

Variance Requested - 7.12 acres m/l

Tabled from September 12, 2012

Cordier read the following email received from Tracie Godfrey: “November 14, 2012; To Whom It May Concern: We would like to withdraw our variance at this time. Thank you for your time. Kevin and Tracie Godfrey”.

Preston informed the board that no action was needed based on their withdrawal.

8. NEW BUSINESS:

8a. Application – PZBA12-011

Applicant/Owner – Bradley H. Boettcher, Durand, MI

Site Location – 10120 East Newburg Road, Durand, MI

Tax Identification – 78-012-23-100-008, Section 23, Vernon Township

Request – Dimensional Variance Request from the maximum 2.5 acres lot size that can be created within the A-2 Zoning District

Variance Requested – 14.78 acres m/l

Ordinance -- Section 2.7.2.A. of the 1999 Shiawassee County Zoning Ordinance – Parcels created after June 1999 within the A-2 District – Maximum Lot Size 2.5 acres

Cordier provided a brief staff report of the applicant’s request. Cordier noted that she began discussing ordinance regulations for minimum/maximum lot sizes within the A-2 zoning district with Boettcher earlier in the summer. The applicant has submitted a dimensional variance request seeking to divide the existing dwelling and accessory structure from a 15.8 acre parcel (more/less). Cordier explained that previous administration reviewed a Land Division in 2001, at which time the parent tract contained approximately 25.2 acres. A request to create an 8.47 acre parcel and a 16.73 acre parcel was submitted and approved. The 8.47 acre parcel is a corner parcel with frontage on New Lothrop and Newburg and has since had a church built upon the property. The resulting property with the home also has frontage on both roads, but is an irregular shaped parcel. The home fronts Newburg Road. The intent is to divide the home off on a parcel in line with the parcel sizes directly to the east of this. If the board were to grant this variance, a survey would be required to make sure the house and accessory structure are on a minimum of one (1) acre to comply with zoning requirements. She also noted that if the variance were granted, it would leave the property directly to the rear of the home landlocked as the Fullmer Drain crosses through the property. She contacted the Drain Office to see if they would allow a culvert to be installed to allow farm equipment to cross over. The Drain Office stated they would, but a permit would be required from their department and they would need to oversee the installation of the project.

Cordier noted that both the parcels that were created in 2001 are noncompliant with the ordinance regulations based on the 1999 zoning ordinance regulations. The applicant purchased the property this past August and would like to divide the home from the rest of the farm. The application did not indicate if there was a hardship or unique circumstance as to why the house was to be divided off. She talked with him earlier in the day and asked if it was his intent to build a home on the remaining acreage or if his property was contiguous to this so it could be combined. Boettcher informed her that he had no plans to build on the property and that he resided further down the road. Cordier said he informed her that the home on this parcel was vacant and needed a lot of repairs. Boettcher would be installing a new seepage system in the very near future. He would consider renting it out, but would prefer selling it. Cordier stated that after the Land Division was approved in 2001, it appears the church purchased additional land to the south to even up their boundary line leaving the existing home now on 15.8 acres.

Chair Martin asked Mr. Boettcher if he wished to present his request and/or make a statement.

Mr. Boettcher replied that Cordier’s staff report was great and explained his intent. Boettcher stated he owns an 80-acre farm to the south of this on New Lothrop Road. He has started growing organic crops within his vegetable gardens and in his green house. He has no intentions of developing the property.

The house is of no value to him. Boettcher stated he guessed he was naïve when he purchased the property as he did not ask any questions. Basically its an old farm house that I would like to be able to sell and keep the rest of the land for farming. The only other option would be to rent it out, but it may not be in the best interest of the community. It could make someone a nice starter home. Rental units can be a headache in terms of upkeep. He again noted the home needed a lot of work on the inside, but he could fix it up and sell it. Boettcher added that he wasn't into making money from it. He just wanted the farm land.

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

Hall asked if he thought the parcel was two separate parcels when he purchased it.

Boettcher replied no. He knew it was one. The owner passed away and the property had been listed for sale for a long time. It's an awkward shaped parcel. The farm house is dilapidated. His plans are to retire in the spring and pursue his organic farming. The location of this parcel from his farm was convenient for him in terms of expanding his organic business. Boettcher said he had talked with the Drain Office also in what was required to cross over a County drain.

Wardell asked if the property was currently being farmed.

Boettcher answered yes by Bill Luchenbill; however, it does not adjoin Mr. Luchenbill's property. Luchenbill has approached him to see if he could continue farming the land.

Hall noted that to the east of the home was Laser's Flower Shop and wondered if he had thought about selling it to them.

Boettcher said he had talked to them, but they were trying to sell the floral shop and greenhouse. I thought about purchasing that for my organic business, but they were asking too much for it.

Wardell asked if there were any other options available so it could be divided off.

Preston replied the issue is within the ordinance. There is a maximum 2.5 acre lot size requirement since 1999. There is no other way unless the remainder could be combined with a contiguous parcel to create a parcel size of 20 plus acres. The parcel is already an illegally created lot that was allowed under the Land Division. If the home is split off it would be on a conforming lot, we would have one conforming lot and one non-conforming lot.

Gramer asked if he would be able to purchase an additional six acres to make it a legal parcel.

Boettcher informed the board that the owner of the farm to the south of this parcel had approached a friend of his and had made the comment that he would be interested in purchasing it. If that were true, one would have thought the neighbor would have tried to purchase it when it was listed for sale.

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: There appears to be no hardship or practical difficulty to justify a dimensional variance. Previous administration did approve the division for zoning compliance. A variance is needed to allow him to sell the house separately from the land.

ZBA Findings: Concur with staff's findings.

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

Staff: There appears to be no unique circumstance or practical difficulty that would warrant a variance in order for the applicant to continue to use the property. Again the parcel was allowed to be created by land division by previous administration.

ZBA Findings: Concur 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: The property has an existing home with acreage that is being farmed. The division of the home from the existing acreage appears to be financial gain & not related to specific circumstances associated with the property. No hardship was evident at the time of application.

ZBA Findings: Concur with staff's 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 parcel configuration was not the result of the applicant; however, staff found no practical difficulty in the use of the petitioned property as it currently is reflected (maintains a single-family home and is being farmed). Again, previous administration approved zoning compliance within the 2001 Land Division application process.

ZBA Findings: Concur 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: It does not appear that approval or denial of the variance will affect property values or the use of property in the district in which it is located.

ZBA Findings: Concur 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: No special use permit is required to maintain farm land and the existing single-family dwelling is a permitted use by right in either circumstance if it is approved or denied.

ZBA Findings: Concur 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: In order for the applicant to pursue a Land Division request, a dimensional variance is needed to create a parcel that would exceed the 2.5 acre lot size. If approved, it would become one legal conforming lot and one legal non-conforming lot via the variance.

ZBA Findings: Concur with staff's findings.

- 8) Findings on any error in judgment or procedure in the administration of the relevant zoning provisions.
Staff: An error had been made by previous administration allowing the home on a parcel greater than 2.5 acres in 2001. A current review of the applicant's request appears no error has been made by administration with respect to the applicant's proposed request.
 ZBA Findings: Concur with staff's findings.
- 9) The possible precedents or affects which might result from the approval or denial of the appeal.
Staff: Approval of the variance would be precedent setting unless it has been proven that a hardship or practical difficulty will result if the variance were to be denied.
 ZBA Findings: Concur 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: Minimal impact, if any, on public services may be anticipated if the permit were granted based on intended use.
 ZBA Findings: Concur with staff's findings.

Preston continued with the additional standards for review.

1. Reasonable Use- Can the property be used in a manner consistent with existing zoning without the need of a variance?

Staff: Yes, the property has an existing home and is being farmed.

ZBA Findings: Agree.

2. Uniqueness- Is the need for the variance due to a unique circumstance and not general to conditions of the neighborhood.

Staff: No evidence supporting a physical hardship or circumstance was provided at the time of the application to support the need for a variance.

ZBA Findings:

3. Essential Character Affected- Will the variance effect the essential character of surrounding area?

Staff: No; allowing the home to be divided off the parcel will not change the the character of the neighborhood.

ZBA Findings: Agree.

4. Self-Created Hardship- Is the hardship or practical difficulty the result of the applicant's own actions with respect to the request.

Staff: The applicant purchased the irregularly shaped parcel with an existing home and accessory building this past summer. Again, the applicant did not include within the packet what the hardship or practical difficulty was. The request is to be able to apply for a Land Division to allow the home to be on a separate lot in alignment with the parcels directly to the East. It would recognize the previous administration's actions. It would not change the character of the area.

ZBA Findings: Agree.

Chair Martin stated unless there was additional discussion he would call for a motion.

Motion: Ann Gamboe Hall moved that the dimensional variance request from the maximum lot size requirements within the A-2 Zoning District as outlined within the 1999 Shiawassee County Zoning Ordinance requirements (Section 2.7.2.A.), submitted by Bradley H. Boettcher/applicant/owner with regard to Tax Id. 78-012-23-100-008, Section 23, Vernon Township, and located at 10120 E. Newburg Rd., Durand, MI; to create a **14.78** acre parcel more/less, a **variance of 12.28** acres more/less, by allowing

allow the home and accessory structure to be divided off the parcel on a legal lot size of a minimum one (1) acre through the State Land Division process be **denied** 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. **Support: Willis Miller. Roll Call: Ayes to Deny:** Gerald Wardell, Larry Gramer, Julie Hales-Smith, Willis Miller, Ann Gamboe Hall, and Henry W. Martin III. **Nays: None. Motion carried to deny: 6 ayes, 0 nays.**

8b. Application #PZBA12-012

Applicant/Owners – Community State Bank, c/o Jeanne Weber, V.P.; St. Charles, MI

Site Location – 667 E. Six Mile Creek Rd., Owosso, MI

Tax Id. – 78-003-18-400-004-01; Section 18, New Haven Twp.

Request – Multi-Dimensional Variance Request:

Variations Requested –

1. Variance from the minimum required road width/frontage requirement (Required 150 feet; proposed – 72.82 feet)
2. Variance from the Lot Width to Depth Ratio for a parcel under 20 acres in size (Required 4-to-1 ratio; proposed lot size – 72.82' x 855.87' longest side)
3. Variance from the boundary setback for a driveway (Required 15' setback; proposed – 2 ft)

Ordinance Sections: Section 3.2 (Schedule A); Section 5.2.7. and Section 6.3.1.J.

A staff report was provided by Cordier. The parcel was part of a Land Division application of 2001 from parent tract 78-003-18-400-004, which it was approved as proposed at that time. The proposed lot was 182' x 600'. The parcel is located within a R-1A Zoning District (one-family rural residential). A minimum of 150 feet road/width frontage is required within the R-1A District. In July 2001, the former owner (Doug Hickmott) applied for a Zoning Permit to construct a home at 667 E. Six Mile Creek Road. The Zoning Permit application packet included a survey that reflected the lot size to be 4.09 acres with 172.82 feet road width/frontage. A review of the survey and legal description within that application packet appears the "1" was hand-drawn on the document at the time it was submitted to the office.

After it was brought to the attention of the office, a letter was mailed to Donna Hickmott in May 2009 of the zoning violation on the lot's road width/frontage being only 72 feet and not 172.82 feet in width. No response was received.

On October 26, 2009, a second letter was mailed to Donna Hickmott as a second violation was found to exist on the property with respect to the driveway location accessing the property. The driveway crossed over onto the front parcel.

This past summer the Community State Bank contacted the office with regard to the property and the violations. The office was informed that the property had been foreclosed on. In order for the bank to sell the property, the violations needed to be resolved. It was discovered that the property would also violate the four-to-one lot width-to-depth ratio for a parcel under 20 acres in size. The bank was informed that a multi-dimensional variance would be needed. The bank has proposed relocating the driveway over so it is no longer on the front parcel; however, they are seeking the driveway setback to be two (2) feet off the boundary line. The ordinance requires a minimum of 15 feet setback. A ravine/ditch is located to the East boundary line that has filled in with trees. Cordier stated she visited the Drain Office to see if this was a county drain and, if so, what the setback requirements would be. She was informed that it was not a county drain. Cordier said she talked with the New Haven Township Supervisor and was informed that this ravine was believed to have been used years ago as a log float when there was a mill in the area.

Chair Martin opened the floor to the applicant.

Bob Wolak, representative of the Community State Bank in St. Charles, MI, was present and stated that Jeanne Weber was unable to attend the meeting. The bank has agreed, as stated, to relocate the driveway and fix the front parcel by placing top soil and seeding it. Due to the ravine and trees, they would like to hug the property line along the west boundary if possible. They can't change the lot frontage, it is what it is. It is the same with the lot width-to-depth ratio, they have no way of changing it. As the bank has possession of the property, the variances are needed so they can proceed with listing it to sell.

Chair Martin opened the floor for public comment in support of the applicant's request. Hearing none, the floor was opened for public comment in opposition of the applicant's request.

Speaker #1: Paul L. Gooch, Owosso. Gooch stated he was opposed to the variance request from the driveway setback requirement of 15 feet. The location of the existing driveway is already close to his house in the front. If it is granted allowing the driveway to stay close to the lot line and his house, it would be a detriment to the family of his home and property value. This home and lot was created in fraud. The location of the driveway would devalue his property.

Chair Martin called for additional comments. Hearing none, he asked for township input.

Township Input: Don Dickinson, New Haven Township Supervisor, replied that both the township's planning commission and the township board were unanimous in recommending denial of all three variance requests. Their main concern dealt with the location of the proposed driveway location. The township is opposed to allowing the driveway to be two (2) feet from the lot line. The township felt the whole house could be moved off the site. The township at that time did not review land division applications like they do now.

Wolak stated that they had heard the neighbor next door was interested in purchasing the property; however, he wasn't sure if that was correct or not or for what purpose.

The board said it couldn't be combined with the parcel next door if there was a home on that adjoining parcel. The ordinance language regulations are for one (1) home per parcel.

Chair Martin closed the public hearing and called for board discussion.

Gramer discussed the location of the driveway from the drainage ditch and the ordinance requirements. Cordier responded that the minimum driveway width requirement for a driveway is nine (9) feet and must maintain a minimum of 15 feet from a property boundary line.

Chair Martin stated he had talked to Mark Stead from the Drain Office and was informed that there had been a mill in the area in the 1800's and it was a man-made canal and not a County drain. It was used to move logs down to the river.

Discussion on the title was handled. Wolak noted that the bank has possession of the property. Up until now, they were unable to fix it. The bank was the mortgagee.

Speaker #1 – Paul Gooch questioned the land between the ravine and the lot line in the rear regarding the location of the driveway.

Wolak said a contractor was contacted so the bank would have a rough estimate as to what it would cost to relocate the driveway.

Chair Martin read the township's reasoning for recommended denial for the record:

- a. The road frontage width cannot be changed as there is no adjoining property available to purchase to make it in compliance with the 150-width requirement.
- b. The irregular shape and depth to width ratio also cannot be changed to make it comply with the 4 to 1 requirement.
- c. With 72 feet of road frontage, there is a remedy to the current placement of the driveway that is too close to the property to the west in some places and encroaching the Gooch property in others. It would require extensive excavation and fill to create a driveway that is at least 15 feet from the Gooch property. This remedy has been rejected by the bank as a financial burden. However, a variance cannot be given solely due to financial hardship.

The board discussed the parcel reflected on the tax map, drive, and issues that may arise if it were combined with the neighbor's property because it would have two (2) homes. Preston agreed that increasing the road width/frontage is not feasible as there isn't any additional land available. It is the same with the lot width-to-depth ratio; there is no way to fix that. It had been previously approved. The board has to look at other alternatives, if any. If the bank were to consider withdrawing the variance request for the driveway location and install it to meet code, it would make it easier to consider the other two (2) variances.

Wolak stated he did not have any details to know if the ravine was a wetland or not and if it could be filled in. He noted the bank would withdraw the driveway setback location if it would help them with the remaining issues at hand.

Gramer replied he didn't believe it was a wetland and that it shouldn't be an issue.

FINDINGS OF FACT:

1.
 - 1) How the application of the Zoning Ordinance creates unnecessary hardship or practical difficulty in the use of the petitioner's property.
Staff: The petitioner has limited means of remedying the violations that exist on the petitioned property without variances granted from the Zoning Board of Appeals. If denied, the petitioner's next available option would be to file an appeal in Circuit Court. Information provided to the Community Development Department at the time the property was being developed in 2001 was based on false information. Zoning violations were brought to the attention of the owner in 2009 and given the opportunity to appeal, but never responded. The parcel was created under fraudulent means. The petitioner now has control over the property and has limited means to resolve the violations. It appears it cannot be transferred unless it meets zoning ordinance regulations. The ordinance was not enforced at that time. Asking to have the modular home moved off site is not reasonable. It wouldn't have a towing mechanism underneath.
 ZBA Findings: Concur with staff's findings.
 - 2) Identify the unique physical circumstances or conditions or exceptional topography that create practical difficulties.
Staff: The practical difficulty is that false information had been given to the department by the prior owner of the property that allowed the property to be developed. Since that time, it was discovered that the parcel was in violation of the Zoning Ordinance for lot width/frontage requirements, driveway access, and lot width to depth ratios. We heard from the petitioner tonight that they are willing to fix the driveway to be in compliance.
 ZBA Findings: Concur 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: The bank has foreclosed on the property and found out there were unresolved zoning violations. Until the violations have been resolved either via Zoning Board of Appeals approval and/or Circuit Court, the property would remain as an illegal nonconforming parcel. The petitioner has the option to seek Circuit Court action.

ZBA Findings: Concur with staff's 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 property was foreclosed upon by Community State Bank at which time the zoning violations relating to the petitioned property were made known to the bank through a title search. It may not have been made known to the bank until the title search.

ZBA Findings: Members questioned the original owner of the property. The board was informed the original owners were present this evening. Doug Hickmott stated they had the mortgage through the bank. 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: The property has already been developed; the driveway will need to be relocated within the boundary of the property. Permits to construct were issued based on false information. No additional impacts to the area are anticipated. The parcel was developed under fraudulent means based on illegal lot size and encroachments.

ZBA Findings: The board concurred.

- 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 dwellings are a permitted use within the R-1A district. Again the property was developed under false information. Variances are needed to rectify the zoning violations that exist. Variances on the four-to-one ratio and lot width frontage will be needed as the petitioner has agreed to withdraw the driveway setback variance.

ZBA Findings: Concurred with staff's findings.

Doug Hickmott informed the board that the driveway has been there for over 50 years. It was in existence before they ever applied for a dwelling permit.

Preston replied that was different, it was access to a farm field. Compliance with driveway locations for new dwelling structures must be met.

Hickmott stated the drive is the access to the farm field in back of the property.

- 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: Information provided to the Community Development Staff in 2009 noted that the legal description had been altered by writing in a “1” in front of the “72”. Actual frontage being “72” feet. Also, the driveway access crossed over the boundary of the property and was not in compliance with the 15 foot setback requirement. Irrespective of the drive being in place for 50 years, it now serves a parcel of land divided off with a dwelling on it.
 ZBA Findings: Concur with staff’s findings.
- 8) Findings on any error in judgment or procedure in the administration of the relevant zoning provisions.
Staff: Administration had relied on information provided to them at the time of development for accuracy. Administration later was informed the legal description for road width/frontage and setback requirements for a private driveway were inaccurate. Administration notified the owner of the discrepancies in an attempt to remedy the existing violations in 2009. Staff did what they could do at the time by notifying the property owners.
 ZBA Findings: Concur with staff’s findings.
- 9) The possible precedents or affects which might result from the approval or denial of the appeal.
Staff: Precedent would result of both approval or denial of the appeal based on:
1) Approval may result in other petitioners that willfully submit false information to obtain the necessary zoning and building permits for construction or to through the Land Division process for creation of illegal lot sizes for future build sites.
2) Denial of the appeal, however, would deny the use or severely limit any use on the petitioned parcel.
The variances are needed to allow the bank to dispose of the property and have a legal nonconforming parcel.
 ZBA Findings: Concur 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 is staff’s opinion that no impact on the County or other agencies would incur as the property has already been developed and will not be expanded.
 ZBA Findings: Concur with staff’s findings.

Additional Standards for Review:

1. **Reasonable Use-** Can the property be used in a manner consistent with existing zoning without the need of a variance?
Staff: The property was developed as single-family residential. Variances are needed to rectify the existing violations and allow the bank to dispose of the property.
 ZBA: Verification that there is a clear title has not been disclosed. Preston added that if the home were to burn down and there was no variance approval; no one could rebuild unless they came before this board to seek relief to build on an illegal nonconforming parcel. The board agreed with staff’s findings.

2. **Uniqueness-** Is the need for the variance due to a unique circumstance and not general to conditions of the neighborhood.
Staff: False documentation was provided to the Community Development Department at the time of proposed development for a single-family home in 2001. The property is in foreclosure. Variances are needed to resolve the issues so the property can be sold. Again, it is not known at this time how the property was transferred.
ZBA – Concur with staff’s findings.
3. **Essential Character Affected-** Will the variance effect the essential character of the surrounding area?
Staff: Zoning and Building Permits were approved in 2001 for the placement of a modular home and garage; again based on false information. The area will not change in character. The bank intends to relocate the driveway onto the property within its own boundary. With the exception of the driveway, it will not change. The driveway can be located within the setback requirements on its own parcel.
ZBA – Concur with staff’s findings.
4. **Self-Created Hardship-** Is the hardship or practical difficulty the result of the applicant’s own actions with respect to the request.
Staff: The applicant was the lien holder of the property and may not have been aware of the zoning violations that exist until the property was foreclosed on.
ZBA: Concur with staff’s findings.

Chair Martin discussed the issue with the title at the time of closing and how the violations were made known. Wolak stated he was unable to answer that. Board members questioned the survey and legal description and wondered if surveys were required as a part of the land division process.

Preston informed the board that some townships require them and some do not. Cordier replied that the survey and description was correct, but it appears that when the paperwork was submitted with the zoning permit application packet for the new home a “1” was inserted on the survey and within the description to match the land division certificate lot size and a copy provided to the office. It wasn’t the original copies.

Chair Martin again asked if the bank was willing to withdraw the dimensional variance request on the driveway location.

Wolak answered yes they would move it so it was 15 feet off the boundary line.

Hall asked Don Dickinson if the township would have a problem then if the other two variances were considered for approval.

Dickinson replied that the township cannot vote on a variance request, but can recommend. They had voted to deny all three requests because they did not want to set precedent. The township reviews it only for advisory purposes. The township realizes it has an existing home and that it could end up in court. The board was highly opposed to the location of the proposed driveway; the other two variances can’t be fixed.

Gramer asked if the two variances could be handled together or if they should be separate.

Preston replied it could be handled as two.

Wardell asked how much frontage was needed for the lot so a variance wasn’t needed.

Preston answered that within the R-1B District a minimum of 150 feet is required. The petitioner would need about another 77 feet.

Motion: **Larry Gramer** moved that the Multi-Dimensional Variance request from the required road width/lot size requirements for a parcel within the R-1A Zoning District, from the Lot Width-to-Depth Ratios for parcels under 20 acres in size, and from the setback requirements of a private driveway of a property boundary line as outlined within the 1999 Shiawassee County Zoning Ordinance requirements (Section 3.2., Schedule A/Lot Frontage; Section 5.2.7., Lot Frontage/Depth Ratio, and Section 6.3.1.J., Curb Cuts and Driveways) submitted by Jeanne Weber, V.P. on behalf of Community State Bank of St. Charles, MI (applicant/property owners) with respect to Tax Identification #78-003-18-400-004-01, Section 18, New Haven Township, and located at **667 East Six Mile Creek Road, Owosso, MI 48867**, **approving the following:**

1) **The lot width/frontage along Six Mile Creek to be 72.82 feet; a variance of 77.18 feet;**

2) **Lot size of 72.82' x 855.87'/longest side; a variance of 564.59 feet from 4-to-1 ratio**

be **approved** pursuant to Section 18.4.5. of the 1999 Shiawassee County Zoning Ordinance, as amended, based upon the Findings of Fact within Section 18.4.6, and additional testimony received from the public hearing and with the following condition: Variance request number 3 is taken off the table (driveway setback location). **Support: Willis Miller.**

Roll Call Vote: Ayes to Approve: Julie Hales-Smith, Willis Miller, and Larry Gramer. **Nays:** Ann Gamboe Hall, Gerald Wardell, and Henry W. Martin III.

Preston informed the board that a motion to table this until next month when a full board was present was needed.

Motion: **Larry Gramer** moved to table Dimensional Variance Application #PZBA12-012 by the Community State Bank until the next scheduled hearing. **Support:** Julie Hales-Smith.

Discussion: Wardell asked that the bank check on the title before the next meeting.

Motion carried: 6 ayes, 0 nays.

9. **Interpretations of the Zoning Ordinance:** Cordier explained that the issue on the Vernon Township Zoning Map had been resolved and an interpretation was no longer needed.

10. **Zoning Administrator's Report:** Cordier stated she had provided a 2013 Zoning Board of Appeals schedule for consideration of approval.

Motion: Ann Gamboe Hall moved to approve the 2013 ZBA Schedule Date for Meetings. **Support:** Willis Miller. **Motion carried: 6 ayes, 0 nays.**

Cordier informed the board that the notice for the December 5th ZBA hearing would have to be emailed to the Independent the next day and she had no way of knowing if Brad Hissong would be available for the meeting for a board quorum. Cordier stated the bank's variance would be the only item on the agenda and did they want her to schedule a meeting or did they want to cancel the December meeting and place it on the January agenda.

Chair Martin replied they would cancel the December meeting as a board quorum couldn't be verified before tomorrow.

11. **BOARD MEMBER COMMENTS:** None.

12. **PUBLIC COMMENT:** Don Dickinson asked if the driveway setback variance request will be back on the agenda. Preston answered no, the bank withdrew the variance request on the driveway.

Hall stated she wanted to thank Commissioner Elder for attending their meetings each month and providing information to the board.

Chair Martin reminded everyone the meeting was cancelled for December. Cordier stated she would send out a memo that the meeting has been cancelled.

13. ADJOURNMENT: Motion: Willis Miller moved to adjourn. **Support:** Gerald Wardell.
Motion carried: 6 ayes, 0 nays. Meeting adjourned at approximately 8:35 p.m.

Recording Secretary - Linda Gene Cordier

Henry W. Martin III, Chairman
Zoning Board of Appeals

January 9, 2013

Approval Date