



# CHEBOYGAN COUNTY ZONING BOARD OF APPEALS

870 SOUTH MAIN ST. ■ PO BOX 70 ■ CHEBOYGAN, MI 49721  
PHONE: (231)627-8489 ■ FAX: (231)627-3646

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING  
WEDNESDAY, OCTOBER 23, 2019 AT 7:00 P.M.  
ROOM 135 - COMMISSIONERS ROOM  
CHEBOYGAN COUNTY BUILDING, 870 S. MAIN ST., CHEBOYGAN, MI 49721

## AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

APPROVAL OF MINUTES

PUBLIC HEARING AND ACTION ON REQUESTS

1. David Hansen/James and Kaylin Caldwell - Requests a 3 ft. 8 in. side setback variance for construction of an addition to a single family dwelling in a Lake and Stream Protection (P-LS) zoning district (where an 8 ft. side setback is required). The property is located at 8991 N. Canal Dr. in Benton Township; Parcel No. 105-L29-000-028-00; Sections 18 and 19.

(\*This Public Hearing item was tabled to a time certain at the September 25, 2019 regular meeting.)

UNFINISHED BUSINESS

1. Continuing discussion regarding Draft Rules of Procedure.

NEW BUSINESS

ZBA COMMENTS

PUBLIC COMMENTS

ADJOURN

**CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING**  
**WEDNESDAY, SEPTEMBER 25, 2019 AT 7:00PM**  
**ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING**

**Members Present:** Charles Freese, Ralph Hemmer, John Moore, Nini Sherwood

**Members Absent:** John Thompson

**Others Present:** Michael Turisk, Carl Muscott, Cal Gouine, James Chase Caldwell, David Hansen, Debbie Willey, Russell Crawford, C. Maziasz, Michelle Freeman, Doug Rozek, Jim Brown, Renee Brown

The meeting was called to order by Chairperson Freese at 7:00pm.

**PLEDGE OF ALLEGIANCE**

Chairperson Freese led the Pledge of Allegiance.

**APPROVAL OF AGENDA**

The agenda was presented. Mr. Freese stated that “Discussion Regarding Proving Practical Difficulty For A Dimensional Variance Request” under New Business will be discussed prior to Public Hearing and Action of Requests. **Motion** by Mr. Moore, seconded by Mr. Freese, to accept the agenda as amended. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

**APPROVAL OF MINUTES**

Minutes from the August 28, 2019 Zoning Board of Appeals meeting were presented. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to approve the minutes as presented. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

**Discussion Regarding Proving Practical Difficulty For A Dimensional Variance Request**

Mr. Freese stated that he would like to review the standards and procedures that must be followed in making a decision on a variance request. Mr. Freese asked each of the Zoning Board of Appeals members to follow along with him with the template attached as enclosure A that has been provided to each member.

Mr. Freese explained that the first item of importance is the general findings, which is the listing of all the general pertinent facts pertaining to the request. Mr. Freese explained that the members should review each of these statements and make sure that they agree that they are accurate as they are relevant to the request. If they feel that they are not accurate or do not pertain to the request under consideration then they should make their views known and allow discussion to resolve any doubts. They should also offer any additional general findings of fact that they feel are applicable.

Mr. Freese stated the next thing to be decided upon is the question of whether the five factors under section 23.5.4 are met. Mr. Freese explained that to help clarify each of the questions under section 23.5.4, the facts in support or denial of the standards are broken into two groups A & B. An introductory sentence precedes each grouping to help explain and simplify how each group of facts relates to meeting the standard. Facts listed under “A” support the standard having been met. Facts listed under “B” deny the standard having been met. The standards are 23.5.4.1, 23.5.4.2, 23.5.4.3, 23.5.4.4 and 23.5.4 and not the explanatory sentences that follow the “A” or “B”.

Mr. Freese stated that any member of the Zoning Board of Appeals can disagree with any of the facts listed under A or B or may suggest additions or deletion of any of the facts, but the suggestions should be brought up in a timely manner so they may be discussed and added, changed or deleted, but once agreed upon, if the facts listed in “A” are agreed to be accurate and pertinent then the standard under consideration **has been met**. If the facts listed in “B” are agreed to be accurate and pertinent then the standards under consideration **has not been met**.

Mr. Freese went over a few specific factors which should be considered when making a determination whether each subsection under 23.5.4 have been met.

23.5.4.1 - Factors listed to be considered under this section are narrowness, shape, water or topography, however, additional items which must be considered include septic and well location and necessary setbacks from these items. Nonconformities are not considered as having been caused by the applicant. If alternatives to granting a variance are available regardless of how costly or how not aesthetically pleasing, they variance cannot be granted.

23.5.4.2 – Any changes in topography created by the applicant such as raised gardens, patios or other landscaping and changes to the waterfront such as creation of a boat well or construction of a boat house are considered as being self-created unless found to be nonconforming.

23.5.4.3 – A situation whereby regulations might be unnecessarily burdensome might be where complying with setbacks would not leave enough buildable area for a structure to meet standards of the regulation.

23.5.4.4 – An example of the minimum variance would be when dwellings on either side of the lakefront property are located within the front setback then the average of the distance of these dwellings is averaged in order to determine the variance for the front setback for the dwelling in the center rather than allowing the dwelling to be placed as close to the water as the dwelling encroaching furthest into the setback.

23.5.4.5 – If the majority of the other properties in the general area have the same features and allowed structures, then allowing the applicant the same would not be considered as having an adverse impact on the surrounding properties. This might justify allowing a variance for the same features.

As a general statement the cost of alternatives or their esthetic impacts cannot be a consideration in granting a variance.

### **PUBLIC HEARING & ACTION ON REQUESTS**

**Debra Willey** – Requests a 19 ft. front setback variance for construction of a garage and an addition to single family dwelling in a Commercial Development (D-CM) zoning district (where a 25 ft. front setback is required). The property is located at 6053 Prospect St. in Tuscarora Township; Parcel No. 161-I31-006-005-00; Section 24.

Mr. Turisk reviewed information included in the staff report.

Mr. Freese asked for public comments. Mr. Muscott pointed out that additional parking requirements generated by this construction would interfere with traffic on Prospect Avenue and also with parking for the funeral home on the other side of Prospect Street.

Ms. Willey stated that arrangements had been made for off-site parking for any overflow requirements and that they had made arrangements to share her parking areas with Lintz Funeral Home in the event of a funeral. Public comment closed.

The Zoning Board of Appeals revised the General Findings. The Zoning Board of Appeals revised #5 “The next door neighbor was granted a variance for a porch addition into the front setback in 2015. The Zoning Board of Appeals added the following to the General Findings:

8. A garage is an accessory structure common to this area.
9. The garage accessory to the dwelling of the east extends to within one foot of the front setback line.
10. The area to the east of the proposed garage site is occupied by the drain field.

The Zoning Board of Appeals revised and approved the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Mr. Hemmer, to approve the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

**David Hansen/James and Kaylin Caldwell** – Requests a 3 ft. 8 in. side setback variance for construction of an addition to a single family dwelling in a Lake and Stream Protection (P-LS) zoning district (where an 8 ft. side setback is required). The property is located at 8991 N. Canal Dr. in Benton Township; Parcel No. 105-L29-000-028-00; Sections 18 and 19.

Mr. Turisk reviewed the information included in the staff report.

Discussion was held. Mr. Freese discussed alternative locations for the proposed addition, however, it could not be determined whether space available would allow movement of the addition approximately 4’ to the north. Applicant requested the matter be tabled until October 23, 2019 to verify actual distances on the site plan. **Motion** by Mr. Freese, seconded by Mr. Moore, to table until October 23, 2019. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

**James Brown** – Requests a front setback variance of 26 ft. 6 in. to cover two existing decks accessory to a single family

dwelling in an Agriculture and Forestry Management (M-AF) zoning district (where a 50 ft. front setback is required).

The property is located at 7066 Mc Donald Rd. in Benton Township; Parcel No. 104-029-100-018-00; Section 29.

Mr. Turisk reviewed information included in the staff report.

Mr. Freese asked for public comments. There were no public comments. Public comment closed.

Mr. Freese stated that most dwellings in the area extend into the front setback to an extent comparable with that requested by the applicant and in fact the structure immediately across McDonald Road extends into the right of way.

The Zoning Board of Appeals added the following to the General Findings:

6. The dwelling, including the porches, are legal nonconforming structures as they were constructed prior to zoning.
7. Overhanging roofs on a permitted structure can extend two (2) feet into a setback.

The Zoning Board of Appeals revised and approved the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Ms. Sherwood, to approve the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

**Michelle Freeman-Keyser Industries/Indian River Trading Post** – Requests a variance from section 17.19.8.1.B of the Zoning Ordinance (that indicates that the area of an electronic sign surface shall not exceed 75% of the total sign surface) to replace the existing menu board with a new digital menu board with an electronic surface greater than 75% of the total sign surface. The property is zoned Commercial Development (D-CM) and located at 6153 M-68 Hwy. in Tuscarora Township; Parcel No. 161-025-200-044-00; Section 25.

Mr. Turisk reviewed the information included in the staff report.

Ms. Freeman presented information regarding the application, proposed plan and changes in current sign technology.

Mr. Freese asked for public comments. Mr. Muscott stated that technology has caught up with the Zoning Ordinance. Mr. Muscott stated that this sign will be less obtrusive and this is driven by technology and worthy of a variance. Public comment closed.

The Zoning Board of Appeals reviewed the General Findings and added “Application of the .75 factor to the existing 23sq. ft. sign would allow an electric sign surface of 32.25 sq. ft.” as General Finding #9. The Zoning Board of Appeals reviewed and approved the Findings of Fact and the Specific Findings of Fact under Section 23.5.4. The Zoning Board of Appeals added “The sign is located on a driveway, screened completely on side by the building and on the opposite side by a fence and vegetative screening, thus not allowing the sign to be viewed from adjacent properties.” as General Finding #10. **Motion** by Mr. Moore, seconded by Ms. Sherwood, to approve the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried. 4 Ayes (Freese, Moore, Hemmer, Sherwood), 0 Nays, 1 Absent (Thompson)

#### **UNFINISHED BUSINESS**

No comments.

#### **NEW BUSINESS**

##### **Review and Revision of Zoning Board of Appeals Rules of Procedure**

Ms. Sherwood suggested changing the last sentence of section 3.5 to “He or she shall also perform such other duties as may be assigned or delegated to them by the Chairperson of the ZBA.” Discussion was held regarding section 4.4.

Mr. Freese stated that a new section 4.6 should be added:

#### 4.6 Meeting Cancellation

1. Meetings may be cancelled by the Director of Planning & Zoning after consulting with the Chairman, in the event that no new business is proposed or there is no old business that has been tabled to the date of the proposed meeting.
2. Meeting may be cancelled by the Chairman after consultation with the Director of Planning & Zoning in the case of severe inclement weather or other natural disaster.

Mr. Freese stated that the existing section 4.6. will be renumbered to 4.7. Mr. Freese stated that this sentence is to be revised to "The number of unexcused consecutive or nonconsecutive absences which can serve as a basis for removal from the Zoning Board of Appeals."

Mr. Freese stated that a new section 3.7 is to be added:

3.7 Training. Four (4) hours of career development training are required yearly. In house classes scheduled by the Planning Director shall count toward this requirement. Outside training may also count in whole or in part toward this objective if approved by the Planning Director.

Mr. Freese stated that the Planning Commission and the Zoning Board of Appeals will be meeting on 10/02/19 for a training session with Bryan Graham. Discussion was held.

**ZBA COMMENTS**

Mr. Moore questioned what is the justification for a 50ft. front setback in the Agriculture and Forestry Management Zoning District. Mr. Moore noted that a farmhouse that was built prior to zoning being enacted in Cheboygan County most likely does not meet the 50 ft. front setback requirement. Discussion was held.

**PUBLIC COMMENTS**

Mr. Muscott stated that he agrees with Mr. Moore and he believes that there are setbacks and other dimensional requirements in the ordinance that are arbitrary. Mr. Muscott stated that setbacks were originally designed for fire safety. Mr. Muscott stated that the American Sign Association has a model ordinance and our lumens for LED signs are far higher than what the American Sign Association recommends. Discussion was held.

**ADJOURN**

**Motion** by Mr. Moore to adjourn. Motion carried. Meeting adjourned at 9:29pm.

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John Thompson, Secretary

# CHEBOYGAN COUNTY ZONING BOARD OF APPEALS

David Hansen/James and Kaylin Caldwell

## Exhibit List

1. Cheboygan County Zoning Ordinance
2. Cheboygan County Master Plan
3. Variance Application (6 Pages)
4. Mailing List (2 Pages)
5. Staff Report (6 Pages)
- 6.
- 7.

Note: Zoning Board of Appeals members have exhibits 1 and 2.

**CHEBOYGAN COUNTY**  
**PLANNING & ZONING DEPT.**  
 870 SOUTH MAIN ST., PO BOX 70  
 CHEBOYGAN, MI 49721  
 (231) 627-8489 (TELEPHONE)  
 (231) 627-3646 (FAX)

**DIMENSIONAL VARIANCE APPLICATION**

\$110.00 APPLICATION FEE

RECEIPT #:	6940
CASH/CHECK:	CC
ACTION /DATE:	

**PLEASE PRINT**

**PROPERTY LOCATION**

Address 8991 N. CANAL DR	City / Village CHEBOYGAN	Township / Sec. Benton Twp. 37N 18+19	Zoning District P-LS
Property Tax I.D. (Parcel) Number 105-L29-000-028-00	Subdivision or Condo. Name / Plat or Lot No. LAHAIE'S ISLAND VIEW SUB LOT 28		

**APPLICANT**

Name DAVID HANSEN	Telephone 231-625-9661 231-420-2880 cell	Fax	
Address 7039 McDONALD RD	City & State CHEBOYGAN MI	Zip Code 49721	E-Mail david052357@gmail.com

**OWNER (If different from applicant)**

Name JAMES & KAYLIN CALDWELL	Telephone 231-445-0705	Fax	
Address 8991 N. CANAL DR	City & State CHEBOYGAN MI	Zip Code 49721	

Detailed directions to site, including nearest crossroad:

FROM HW27 & HW33 JUNCTION ; SOUTH ON M33 1/4 MILE  
TO CARTER RD - RIGHT, THEN 1/4 MILE TO WEST CANAL  
DR - RIGHT, THEN FOLLOW CURVE TO RIGHT, 1/4 MILE TO  
HOME ON LEFT.

**Please Note:** All applicable questions must be answered completely. If additional space is needed, number and attach additional sheets.

**I. Property Information**

- A. List all known deed restrictions: NONE
- B. This property is  unplatted,  platted,  will be platted. If platted, name of plat \_\_\_\_\_
- C. Present use of the property is: RESIDENTIAL
- D. A previous appeal has  (has not) been made with respect to these premises in the last one (1) year. If a previous appeal, rezoning or special use permit application was made, state the date \_\_\_\_\_, nature of action requested \_\_\_\_\_, and the decision \_\_\_\_\_.
- E. Attach a site plan drawn per the attached directions.

II. Detailed Request and Justification

1. State exactly what is intended to be done on, or with the property which necessitates a variance from the Zoning Ordinance.

See ATTACHED

2. A dimensional variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that practical difficulty exists by showing all of the following. All variance decisions made by the Zoning Board of Appeals are based on the following five (5) standards of the Cheboygan County Zoning Ordinance. Please explain how the request meets each standard.

a. That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic difficulty.

See ATTACHED

b. That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).

SEE ATTACHED

c. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome

SEE ATTACHED

d. That the requested variance is the minimum variance necessary to grant the applicant reasonable relief as well as to do substantial justice to other property owners in the district.

SEE ATTACHED

e. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.

SEE ATTACHED

The Zoning Board of Appeals members will visit the site prior to the public hearing. Please clearly stake the corners of the proposed building or addition and the nearest property line. Does the property owner give permission for County zoning officials to enter his or her property for inspection purposes?  Yes  No

Owner's Signature

Hayden Caldwell

Date

8-26-2019

AFFIDAVIT

The undersigned affirms that the information and plans submitted in this application are true and correct to the best of the undersigned's knowledge.

Applicant's Signature

Hayden Caldwell

Date

8-26-2019

II.

1. Existing attached 24' x 24' garage will be converted to living space and a new 24' x 52' addition constructed consisting of; bedroom, home office, garage, laundry room, storage and mud room. The existing garage is 4' from the south lot line and new structure would be 4'-4" away. The applicants (Kaylin and Chase Caldwell) are a young growing family and the existing house is just too small. There is a real need for additional bedrooms. And as Kaylin works from home as an educational program developer, a dedicated home office is a necessity.
2.
  - a. The property is 90' wide x 245' deep. Because of the sloping terrain of the front yard (canal side), the addition can only be built on the back (road side). The available property to build this addition is restricted to a 75' x 90' area, which also has to accommodate a new 1800 sf septic field.
  - b. The variance is required due to the continually changing and restrictive Lake & Stream property codes regulating septic systems. It is inevitable that the aging septic field will need to be relocated to the same available 75' x 90' area.
  - c. If the variance is not granted; (1) adherence to the Environmental Health Dept codes would not be possible, or (2) new garage & storage would be restricted to only a single car width, requiring one vehicle and seasonal lawn equipment be parked outside, creating an unsightly neighborhood, or (3) if the new 24' width addition is moved north to comply with setback, it would not only butt up against the new raised septic field, it would block the existing required barrier free entry to the house.
  - d. The requested variance is indeed the minimum necessary to reasonably comply with all set back for both the septic and addition.
  - e. The requested variance will not impact the neighboring property owners as the new addition will not be any closer than the existing structure is already.

**SITE PLAN INFORMATION** Please include the following on your site plan:

- |   |   |
|---|---|
| 1. Property Line dimensions and Property shape.                             | 6. Parcels under separate ownership therein.                |
| 2. Front, Rear, & Side setback dimensions.                                  | 7. Road Right-Of-Way (ROW); access or utility easements.    |
| 3. Location, shape & size of all existing & proposed buildings on property. | 8. The existing and intended use of the lot and structures. |
| 4. Location of all drives and parking areas.                                | 9. Place North arrow in space provided.                     |
| 5. Rivers, lakes, wetlands, or streams within 500 ft.                       | 10. Other essential zoning information.                     |

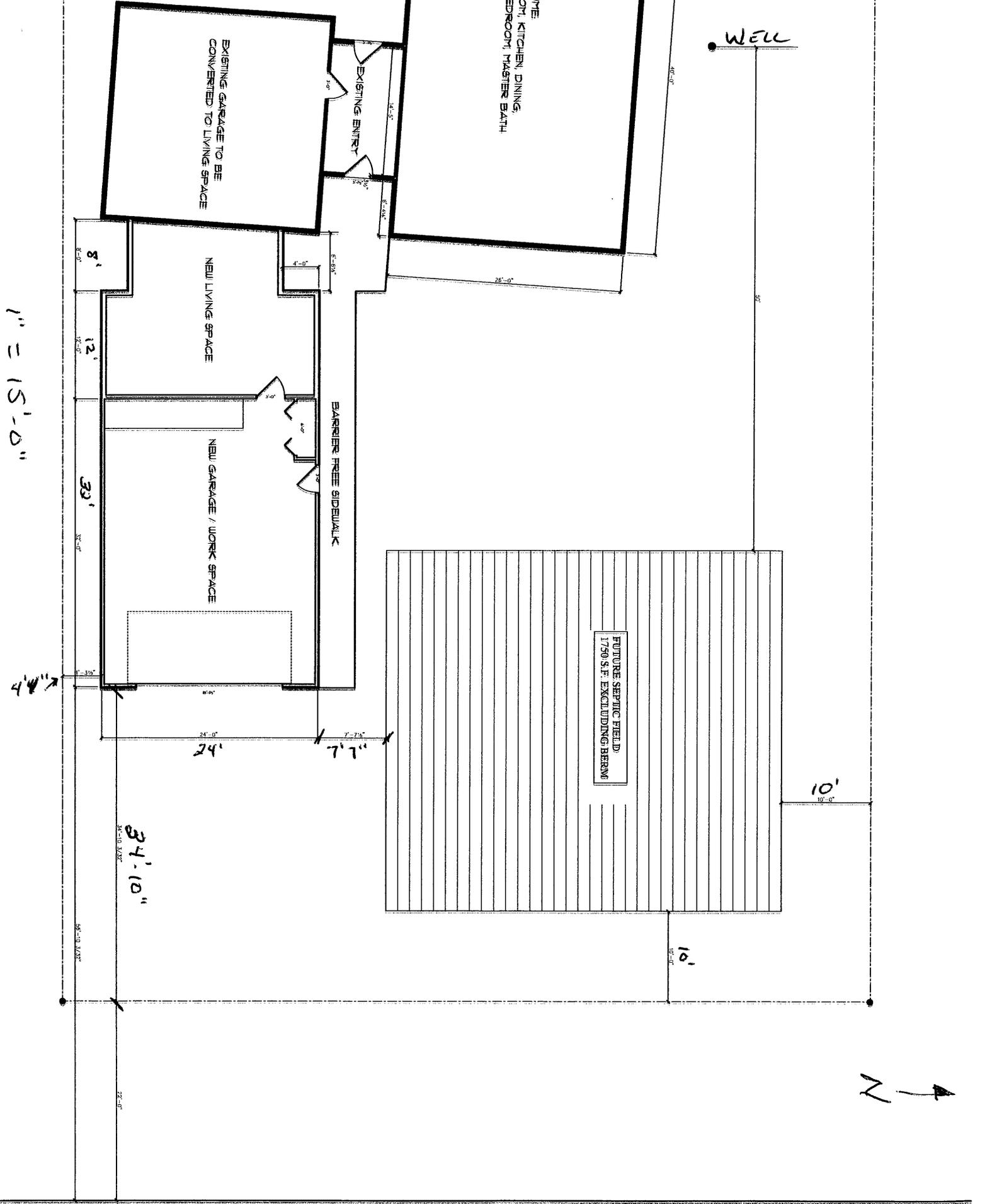
**Distance from property line to proposed structure:**

Front: 160' Rear: 34' Side: 4'4" Side: 60'

**Zoning District:**

**North:**

SEE ATTACHED 2 PGS



1" = 15'-0"

4'-4"

34'-10"

24'

7'-7"

33'

8'

NEW LIVING SPACE

NEW GARAGE / WORK SPACE

BARRIER FREE SIDEWALK

EXISTING ENTRY

HOME ROOM, KITCHEN, DINING, BEDROOM, MASTER BATH

EXISTING GARAGE TO BE CONVERTED TO LIVING SPACE

FUTURE SEPTIC FIELD  
1750 S.F. EXCLUDING BERM

WELL



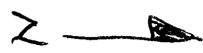
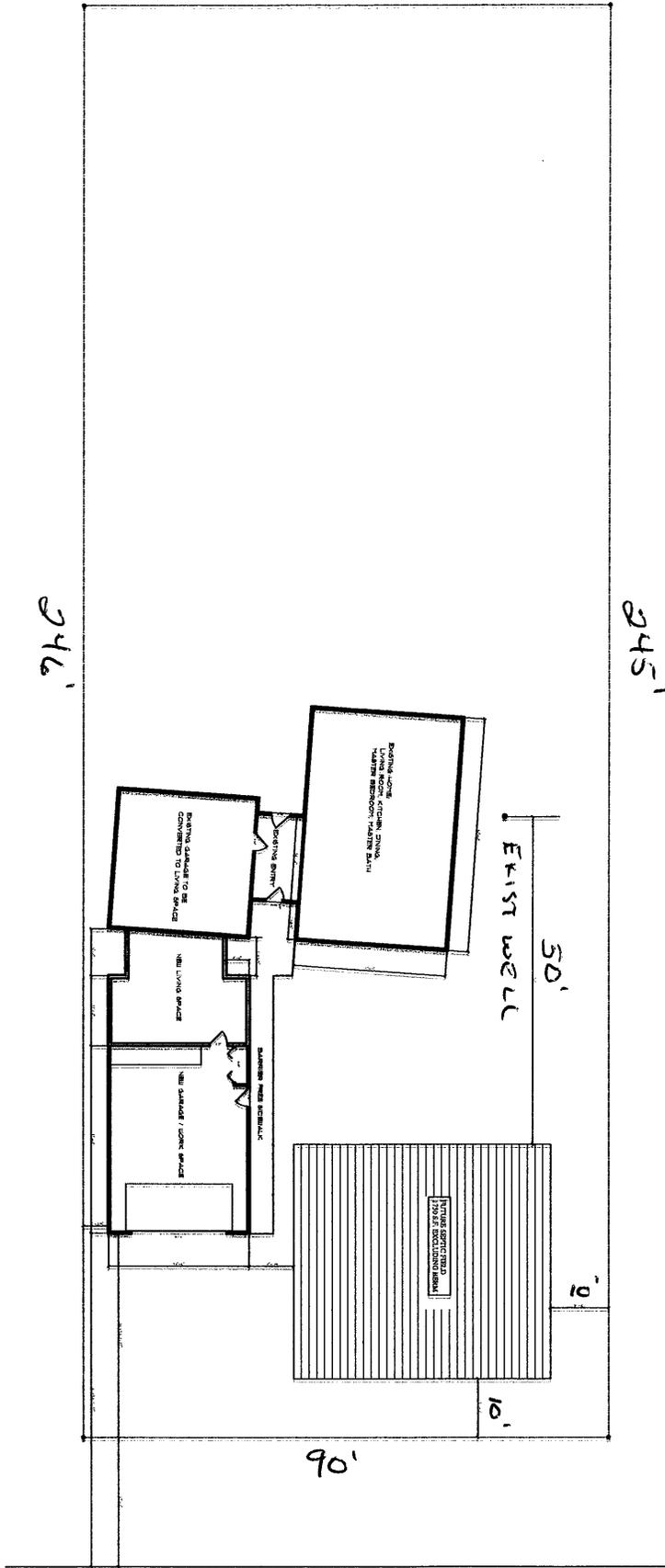
EDGE OF ROAD ASPHALT

- 90' - CANAL

245'

246'

1" = 30'-0"



N. JAMES 210

104-019-200-001-00  
CALDWELL, JAMES CHASE  
8991 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-032-00  
CALDWELL, JAMES CHASE  
8991 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-031-00  
CALDWELL, JAMES CHASE  
8991 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-030-00  
VANBUSKIRK, MICHAEL  
8959 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-029-00  
DAHLQUIST, RICHARD & CAROL H/W  
426 VALE ST  
CHEBOYGAN, MI 49721

104-019-200-002-00  
LUTTRELL, JASON & JACQUELINE H/W  
8949 N CANAL DR  
CHEBOYGAN, MI 49721

104-018-400-008-02  
VANHIMBERGEN, DAVID & RONDA H/W  
948 WEST ISLAND VIEW DR  
CHEBOYGAN, MI 49721

105-L29-000-024-00  
SUMMERS, JENNIFER J  
9004 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-028-00  
CALDWELL, JAMES C & KAYLIN H H/W  
8991 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-025-00  
EUSTICE, DANIEL & SALLY H/W  
9006 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-019-01  
VANHIMBERGEN, DAVID & RONDA H/W  
948 WEST ISLAND VIEW DR  
CHEBOYGAN, MI 49721

105-L29-000-013-01  
EUSTICE, DANIEL JAMES  
8999 N CANAL DR  
CHEBOYGAN, MI 49721

104-018-400-009-00  
EUSTICE, DANIEL JAMES  
8999 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-032-00  
OCCUPANT  
8970 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-031-00  
OCCUPANT  
8960 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-030-00  
OCCUPANT  
8959 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-029-00  
OCCUPANT  
8969 N CANAL DR  
CHEBOYGAN, MI 49721

104-019-200-002-00  
OCCUPANT  
8949 N CANAL DR  
CHEBOYGAN, MI 49721

104-018-400-008-02  
OCCUPANT  
, MI 49721

105-L29-000-024-00  
OCCUPANT  
9004 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-028-00  
OCCUPANT  
8991 N CANAL DR  
CHEBOYGAN, MI 49721

105-L29-000-025-00  
OCCUPANT  
9006 N CANAL DR  
CHEBOYGAN, MI 49721



# CHEBOYGAN COUNTY PLANNING AND ZONING DEPARTMENT

CHEBOYGAN COUNTY BUILDING ■ 870 S. MAIN STREET, PO BOX 70 ■ CHEBOYGAN, MI 49721  
PHONE: (231)627-8489 ■ FAX: (231)627-3646  
www.cheboygancounty.net/planning/

## DIMENSIONAL VARIANCE STAFF REPORT

<b>Item:</b> Requests a 3-ft., 8-in. side setback variance to construct an addition to a single-family dwelling in a Lake and Stream Protection (P-LS) zoning district.	<b>Prepared by:</b> Jennifer Merk
<b>Date:</b> October 17, 2019	<b>Expected Meeting Date:</b> October 23, 2019

### GENERAL INFORMATION

**Applicant/Contact Person:** David Hansen

**Phone:** 231-625-9661

**Owner(s):** James and Kaylin Caldwell

**Requested Action:** The applicant requests a 3-ft., 8-in. side setback variance to construct an addition (24-ft. x 52-ft.) to a single family dwelling where a minimum of 8-ft. is required in a Lake and Stream Protection (P-LS) zoning district.

### BACKGROUND INFORMATION

\*Recall that this dimensional variance request was unanimously tabled by the Zoning Board of Appeals at its regular meeting on September 25, 2019 to a time certain, that being the regular meeting of October 23, 2019 in order for the applicant to verify measurements as depicted on the site plan and to confirm the number of bedrooms upon completion of residential improvements.

The subject property is a waterfront lot on the Cheboygan River and located at 8991 N. Canal Dr. in Benton Township. The applicant is proposing to construct a 24-ft. x 52-ft. (1,248 sq.-ft.) addition at the east side of the existing garage that is 4-ft. from the side lot line. The new addition will be 4-ft., 4-in. from the side lot line. Per section 17.1 of the Zoning Ordinance, a minimum of 8-ft. of side setback is required in a Lake and Stream Protection zoning district. The proposed addition will therefore extend 3-ft., 8-in. into the 8-ft. minimum side setback area.



*Figure 1. Location and zoning of subject property at 8991 N. Canal Dr., Benton Twp.*

**Surrounding Zoning:**

North: Lake and Stream Protection (P-LS)

East: Same

South: Same

West: Same

**Surrounding Land Uses:**

Residential land uses are located to the north, east, south, and west across the Cheboygan River.

**Environmentally Sensitive Areas: (steep slopes, wetlands, woodlands, stream corridor, floodplain):**

The subject property is located along a canal adjacent to the Cheboygan River, and therefore the shoreline area is considered sensitive.

**Public comments:**

No public comments have been received as of the time of this report.

**CHEBOYGAN COUNTY ZONING BOARD OF APPEALS**  
**Wednesday, October 23, 2019 at 7:00 PM**  
**Room 135 – Commissioners Room**  
**Cheboygan County Building, 870 S. Main St., Cheboygan, MI 49721**

**Applicant:**

David Hansen  
7039 McDonald Rd.  
Cheboygan, MI 49721

**Owner:**

James and Kaylin Caldwell  
8991 N. Canal Dr.  
Cheboygan, MI 49721

**Parcel:** 105-L29-000-028-00

**General Findings:**

1. The subject property is located in a Lake and Stream Protection (P-LS) zoning district.
2. A minimum side setback of 8-ft. is required in the P-LS zoning districts per Section 17.1 of the Zoning Ordinance.
3. The applicant is seeking a 3-ft., 8-in. side setback variance (to allow for a 4-ft., 4-in. side setback) to construct a 24-ft. x 52-ft. addition at the east side of an existing residential garage.
4. The existing residential garage is 4-ft. from the south side lot line.

**23.5.4. (Rev. 09/11/04, Amendment #36)**

A dimensional variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that practical difficulty exists by showing all of the following:

**23.5.4.1. That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic difficulty.**

- A. The physical conditions of the property that support granting the variance request are as follows:
  1. The existing garage (to be converted to living space and a residential addition constructed at the east side of the dwelling) is located in the required side setback, a steep slope exists at the front of the property (canal side), a future septic field will be installed at the back (road side), and a well is located north of the existing dwelling, which are unique circumstances and represent site constraints.

**This standard has been met.**

- B. The physical conditions of the property which support denying the variance are as follows:
1. There are no unique circumstances or physical conditions and the circumstances are due to the applicant's personal difficulty.

**This standard has not been met.**

**23.5.4.2. That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).**

- A. Actions which have occurred which support granting the variance which were not caused by the applicant:
1. The need for the variance is due to the location of the existing dwelling, the location of well, septic and drainfield and the topography of the lot, which are unique conditions and is not the result of actions of the property owner or previous property owners.

**This standard has been met.**

- B. Actions which the applicant has taken that results in the request for the variance and therefore require denial of the variance:
1. The proposed placement of the garage and dwelling addition is the result of actions of the current property owner and the need for the requested variance is self-created.

**This standard has not been met.**

**23.5.4.3 That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.**

- A. Zoning regulation requirements result in the following conditions which prevent use of the property or cause undue hardship:
1. Due to the location of the existing garage and dwelling structure, the location of the well, septic and drainfield and the topography of the lot, strict compliance with side setback regulations will be unnecessarily burdensome.

**This standard has been met.**

- B. Factors that show no adverse effects caused by the zoning regulation conditions:

1. Strict compliance with side setback regulations will allow for additions to the structure in other locations or smaller structure additions and conforming to setback regulations will not be unnecessarily burdensome.

**This standard has not been met.**

**23.5.4.4 That the requested variance is the minimum variance necessary to grant the applicant reasonable relief as well as to do substantial justice to other property owners in the district.**

- A. Factors that show the variance cannot be reduced beyond that requested and still meet the needs of the applicant, and still not infringe upon the rights of the surrounding property owners:
  1. Due to location of the existing garage and dwelling structure, the location of the well, septic and drainfield and topography of the lot, the requested variance is the minimum necessary to grant reasonable relief and do substantial justice to other property owners in the district.
  2. The proposed addition will be 4-ft. 4-in. from the south side lot line thus more conforming to the side setback requirement in P-LS.

**This standard has been met.**

- B. Factors that show the variance requested is more than needed and/or would infringe upon the rights of surrounding property owners:
  1. The variance request for construction of a 24-ft. x 52-ft. garage and dwelling addition does not represent the minimum variance necessary to grant reasonable relief and other options for smaller additions to the existing structure exist and/or granting the variance will not do substantial justice to other property owners in the district.

**This standard has not been met.**

**23.5.4.5 That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.**

- A. Factors that show how granting the variance would not result in unfavorable impacts on the surrounding properties, neighborhood or zoning district:
  1. The existing garage (the location of proposed dwelling addition) is located 4-ft. from the south side lot line.

2. Granting a variance to allow a 4-ft. 4-in. side setback will not cause an adverse impact on surrounding property, property values and/or the use and enjoyment of property in the neighborhood or zoning district due to like conditions.

**This standard has been met.**

B. Factors that show how granting the variance would adversely impact the neighborhood or zoning district.

1. Granting a variance to allow a 4-ft. 4-in. side setback will cause an adverse impact on surrounding property and/or property values and/or the use and enjoyment of property in the neighborhood.

**This standard has not been met.**

## **DECISION**

### **TIME PERIOD FOR JUDICIAL REVIEW**

MCLA 125.3606 provides that a person having an interest affected by the zoning ordinance may appeal a decision of the Zoning Board of Appeals to the Circuit Court. Any appeal must be filed within thirty (30) days after the Zoning Board of Appeals certifies this Decision in writing or approves the minutes of its decision.

### **DATE DECISION AND ORDER ADOPTED**

Wednesday, October 23, 2019

\_\_\_\_\_  
Charles Freese, Chairperson

\_\_\_\_\_  
John Thompson

**CHEBOYGAN COUNTY**  
**ZONING BOARD OF APPEALS**  
Rules of Procedure  
**“CLEAN” VERSION**

1. **PURPOSE.** These Rules of Procedure are adopted to provide for the efficient and uniform administration of the Cheboygan County Zoning Board of Appeals (ZBA).
2. **MEMBERSHIP.**
  - 2.1 Regular Members. The ZBA shall be composed of five (5) regular members appointed by the Cheboygan County Board of Commissioners as provided in the Cheboygan County Zoning Ordinance. For purposes of these Rules of Procedures the phrase “members of the ZBA” shall mean the regular ZBA members and any alternate members designated to serve on a particular case.
3. **OFFICERS AND COMMITTEES.**
  - 3.1 **Officers.** The officers of the ZBA shall be a Chairperson, Vice Chairperson, and Secretary/Recording Secretary.
  - 3.2 **Election of Officers.** The officers of the ZBA shall be chosen from its members by the ZBA at its annual meeting held in January of each year. The term of office for each officer shall be one (1) year, or until his or her successor is chosen and assumes office.
  - 3.3 **Chairperson.** The Chairperson shall preside over all meetings of the ZBA.
  - 3.4 **Vice Chairperson.** The Vice Chairperson shall perform the duties of the Chairperson during the absence or disability of the Chairperson.
  - 3.5 **Secretary/Recording Secretary.** The Secretary/Recording Secretary shall supervise all clerical work of the board, assure that the minutes of all meetings of the ZBA are properly recorded and that notices for all meetings are duly given. He or she shall also perform such other duties as may be assigned or delegated to them by the Chairperson or the ZBA.
  - 3.6 **Vacancies.** If a vacancy occurs in the office of Chairperson, the Vice Chairperson shall assume the office of Chairperson for the remainder of the term. All other vacancies in offices shall be filled by the ZBA from its members for the unexpired term of the office.

3.7 **Training.** Four (4) hours of career development training are required yearly. In-house classes scheduled by the Planning Director shall count toward this requirement. Outside training may also count in whole or in part toward this objective if approved by the Planning Director.

#### 4. **MEETINGS**

4.1 **Regular Schedule.** The regular meetings of the ZBA shall be scheduled at the annual meeting in January each year and posted as required by the Open Meetings Act, as amended. If any regularly scheduled meeting falls on a legal holiday, the ZBA shall select an alternate date in the same month for the regular meeting. Notice of this alternate date shall be given as provided in Section 5.3.

4.2 **Special Meetings.** Special meetings of the ZBA shall be held at the call of the Chairperson or upon written request of a majority of the regular members of the ZBA filed with the Secretary/Recording Secretary. No less than eighteen (18) hours before the scheduled special meeting, the Secretary/Recording Secretary or his/her designee shall provide each member of the ZBA with a notice of the special meeting, specifying the date, time, place, and purpose of the special meeting. This notice shall be given personally to each regular or designated alternate member of the ZBA or left at the member's usual place of residence.

4.3 **Place of Meeting.** Meetings of the ZBA shall be held at the Cheboygan County building located at 870 S. Main Street, Cheboygan, Michigan, 49721, Commissioners' Room. Whenever the Chairperson determines that the place of the meeting will likely have inadequate space for members of the public, the location of the meeting may be changed to a larger meeting facility. A notice of the change in meeting location shall be prominently posted at the Cheboygan County building so that it is visible from outside and shall be published in a newspaper of general circulation within the county, if such publication can be accomplished prior to the meeting.

4.4 **Time of Meetings.** Meetings of the ZBA shall begin at 7:00 p.m., unless the ZBA, by a vote of a majority of its members, specifies a different starting time. The ZBA shall not begin considering any matter on the agenda after 10:30 p.m., except by unanimous consent of the members present. Matters on the agenda which have not been considered may be heard at an adjourned hearing, provided a motion specifies the time, date, and place of the adjourned hearing, or shall be placed on the agenda of the next regular meeting, or on the agenda of a special meeting, if one is called.

4.5 **Change in Schedule.** Changes in the schedule of a regular meeting shall not be made except by a vote of a majority of the entire ZBA.

If a quorum is not present at a regular meeting, the meeting shall be rescheduled, and a notice of the rescheduled regular meeting shall be posted as required in Section 5.3.

4.6 **Meeting Cancellation.** Meetings may be cancelled by the Director of Planning and Zoning after consulting with the Chairman, in the event that new business or tabled old business is proposed, or in the case of severe inclement weather or other natural disaster.

4.7 **Meeting Attendance.** Each regular member of the ZBA shall attend all regular and special meetings of the ZBA, unless excused by the Chairperson for good cause. A regular member of the ZBA with three (3) unexcused absences, the number of unexcused consecutive or nonconsecutive absences that can serve as a basis for removal from the Zoning Board of Appeals, may be removed from office by the Cheboygan County Board of Commissioners following notice and a hearing.

## 5. **PUBLIC NOTICE OF MEETINGS**

5.1 **Public Notice of Meetings.** The Secretary/Recording Secretary or his/her designee shall be responsible for providing the proper notice of all meetings of the ZBA. Notices shall comply with the Open Meetings Act, as amended, the Michigan Zoning Enabling Act, as amended, and the Cheboygan County Zoning Ordinance, as amended.

5.2 **Regular Meetings.** The Secretary/Recording Secretary or his/her designee shall post at the Cheboygan County building so that it is visible from outside a notice within ten (10) days after the first meeting of the ZBA in each calendar year indicating the dates, times, and places of regular meetings.

5.3 **Schedule Change.** Whenever the ZBA changes its schedule of regular meetings, the Secretary/Recording Secretary or his/her designee shall, within three (3) business days after the regular meeting at which the change was made, post at the Cheboygan County building so that it is visible from outside a public notice stating the dates, times, and places of the new schedule of regular meetings.

5.4 **Special Meetings.** No less than eighteen (18) hours before any scheduled special meeting, the Secretary/Recording Secretary or his/her designee shall post at the Cheboygan County building so that it is visible from outside a notice of the special meeting, including the purpose for which the special meeting is called.

6. **QUORUM AND VOTING.**

6.1 **Quorum.** A majority of the regular members of the ZBA shall constitute a quorum for the transaction of business at all meetings of the ZBA. The Zoning Board of Appeals shall not conduct business unless a majority of the regular members is present.

6.2 **Voting.** An affirmative vote of a majority of the entire ZBA shall be necessary to grant a variance, to reverse an order, requirement, decision, or determination of the zoning administrator or other administrative official or body, or to decide in favor of the applicant on any matter before the ZBA. Unless the Cheboygan County Zoning Ordinance requires otherwise, an affirmative vote of a majority of the ZBA members present shall be necessary to make all other decisions.

7. **REGULAR MEETING AGENDA.**

7.1 **Regular Meeting Agenda.** The agenda for a regular meeting of the ZBA shall be as follows:

- a. Pledge of allegiance
- b. Call to order.
- c. Roll call.
- d. Approval of minutes.
- e. New business, including scheduled public hearings.
- f. Unfinished business.
- g. ZBA comments.
- h. Public comments.
- i. Adjournment.

The ZBA reserves the right to alter the agenda by a majority vote of the members present at the meeting.

7.2 **Special Meeting Agenda.** Whenever the ZBA meets in a special meeting, the matters to be considered shall be stated in the notice of the special meeting. No other matters shall be considered, except when all regular members of the Zoning Board of Appeals are present and concur.

8. **CONDUCT OF MEETINGS.**

8.1 **Public Hearing Procedure.** The procedure for a public hearing of the ZBA shall be as follows:

- a. The Chairperson shall open the public hearing by announcing the matter to be heard and by summarizing the standards or other regulations of the zoning ordinance on which the ZBA's decision must be based.

- b. Determination by the Chairperson whether a time limitation will be imposed on members of the public wishing to address the ZBA during the public hearing.
- c. Staff report, if applicable.
- d. Compilation of list of all exhibits to be considered by the ZBA when making its decision.
- e. Presentation by the applicant or applicant's attorney or other agents.
- f. Correspondence and/or persons speaking in favor of the application.
- g. Correspondence and/or persons speaking in opposition to the application.
- h. Rebuttal comments by the applicant or applicant's attorney or other agents.
- i. Chairperson declares public hearing portion of the case closed.
- j. The ZBA begins its deliberations on the case.
  - 1. During deliberations the ZBA may solicit information from the applicant, applicant's attorney or other agents, or from members of the public. However, the solicitation of additional information shall not be construed as the reopening of the public hearing, unless so declared by the Chairperson. If the public hearing portion of the case is reopened, then the procedures for the original public hearing shall be followed.
  - 2. During deliberations the ZBA shall also specify in writing the findings of fact on which it bases its decision.
  - 3. If during deliberations the ZBA determines that additional information is needed to make its decision, it may adjourn the case to a specific time, date, and place to receive that additional information. At the adjourned time, date, and place, the public hearing portion of the case shall be reopened, but only to receive the requested additional information and other information relevant to that issue.
- k. At the conclusion of its deliberations, the ZBA shall adopt a motion documenting its decision.

8.2 **Members of the Public.** Members of the public wishing to address the ZBA during the meeting or during a public hearing shall first be recognized by the Chairperson.

8.3 **Time for Public Comments.** The public comment portion of the meeting (outside public hearings) shall be limited to 15 minutes, unless extended by a majority vote of the ZBA members present.

- 8.4 **Opportunity for Public Comment.** Each member of the public desiring to address the ZBA (outside public hearings) shall be given an opportunity to speak equal to the time allotted for public comments divided by the number of speakers desiring to address the ZBA during the public comment period, or five (5) minutes, whichever is less.
- 8.5 **Limitation of Public Comments during Public Hearings.** Prior to opening a public hearing, the Chairperson shall determine the number of individuals from the general public who may desire to address the ZBA during the public hearing.  
Based on this determination, the Chairperson may establish a reasonable time limitation for each member of the general public when addressing the ZBA during the public hearing. Members of the general public expressing a desire to address the ZBA may transfer their allotted time to another individual, who may act as a spokesperson for the group. The time limitation imposed pursuant to this section, however, shall not apply to the applicant or the applicant's attorney or other agents.
- 8.6 **Adjournment of Scheduled Public Hearings.** A property owner, agent or applicant who has a public hearing scheduled regarding an application submitted for a decision of the ZBA pursuant to the applicable provisions of the Cheboygan County Zoning Ordinance #200 shall be entitled to no more than two (2) adjournments of the public hearing. Any request for an adjournment under this rule shall be in writing and shall be received by the Planning and Zoning Department no less than four (4) business days prior to the scheduled public hearing. The Planning and Zoning Department shall be empowered to grant a request for an adjournment under this rule and at the time the adjournment is granted shall be empowered to schedule a new time, date and place for the rescheduled public hearing. If the property owner, agent or applicant fails to comply with the requirements of this rule, then the ZBA shall proceed with the public hearing as scheduled, unless the property owner, agent or applicant voluntarily withdraws the application then pending before the ZBA. Any such withdrawal shall require the payment of a new application fee in the event the matter is resubmitted.
- 8.7 **Written Statements Submitted by the Public.** All written statements (both during public hearings and outside public hearings) should be given to the Secretary/Recording Secretary or his/her designee prior to the commencement of the meeting or public hearing. All written statements and documents presented to the ZBA by an individual are considered public documents and shall be retained in the public record of the meeting.
- 8.8 **Disorderly Conduct at Meetings.** Individuals addressing the ZBA (both during public hearings and outside public hearings) should take into consideration the rules of common courtesy.

The comments by members of the public cannot be used to make personal attacks against members of the ZBA or county staff. The Chairperson may call to order any person who is being disorderly by speaking or otherwise disrupting the meeting, failing to be germane, speaking longer than the allotted time, yelling, shouting or speaking vulgarities.

Such person shall thereupon be seated until the Chairperson determines whether the person is in order. If a person is called out of order, he or she shall not be permitted to continue to speak at the same meeting or public hearing, except by a majority vote of the ZBA members present.

If the person continues to be disorderly to the extent that the ZBA cannot continue to conduct business, the Chairperson shall consider the person to be in breach of the peace and may request the assistance of a law enforcement officer to remove the person from the meeting. The ZBA shall have the right to adjourn the meeting if it is interrupted due to the disorderly conduct of any person. No person shall be removed from a public meeting, except for an actual breach of the peace committed at the meeting.

#### 8.9 Rehearings.

a. Except as provided in this subsection, a decision of the ZBA shall be final. The ZBA may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:

1. The applicant who brought the matter before the ZBA made misrepresentations concerning a material issue which was relied upon by the ZBA in reaching its decision.
2. There has been a material change in circumstances regarding the ZBA's findings of fact which occurred after the public hearing.
3. The county attorney by a written opinion states that in the attorney's professional opinion the decision made by the ZBA or the procedure used in the matter was clearly erroneous.

b. A rehearing may be requested by the applicant or by the Zoning Administrator, or a rehearing may be granted by the ZBA on its own motion, pursuant to the following procedure:

1. A request for a rehearing which is made by an applicant or the Zoning Administrator must be made within thirty (30) days from the date of approval of the ZBA's minutes regarding the decision for which the rehearing is being requested.
2. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the ZBA on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.
3. Whenever the ZBA considers granting a rehearing, it shall provide written notice to the applicant that a rehearing will be considered.

The notice may be served upon the applicant by first class mail at the applicant's last known address, or may be served personally on the applicant. The notice shall be provided not less than fifteen (15) days before the time set for the hearing. Service by mail shall be complete upon mailing.

In addition to serving the above notice on the applicant, all other notice requirements for the type of decision being heard shall be completed before the ZBA holds a hearing at which it considers whether to grant a rehearing.

4. If the ZBA grants a rehearing, then the rehearing on the merits shall not be held until all notice requirements for the type of decision being reheard have been satisfied.

8.10 **Robert's Rules of Order.** Except as modified by these Rules of Procedures and state or federal law, the ZBA shall follow Robert's Rules of Order, as Revised, for all procedural questions.

9. **RECORD OF MEETINGS.**

9.1 **Recording Responsibility.** The Secretary/Recording Secretary or his/her designee shall be responsible for maintaining the official records and minutes of each meeting of the ZBA. The minutes shall include all the actions of the ZBA with respect to motions. The minutes shall include the names of ZBA members who present motions and ZBA members who second motions as well as the vote of the ZBA on such motions. If a roll call vote is taken, the record shall show the "yes" and "no" votes. However, if all members vote "yes" or "no", the minutes may then reflect motion carried or defeated by unanimous vote.

9.2 **Voting.** Whenever a question is put by the Chairperson, every ZBA member present shall vote on the question. If a member has a conflict of interest, such conflict of interest shall be fully stated on the record and its existence confirmed by a two-thirds (2/3) vote of ZBA members present at the meeting. Once the conflict of interest is confirmed and voted upon by the ZBA members present, the ZBA member with the conflict of interest shall abstain from participating in and voting on the case.

9.3 **Requests for Remarks to be Included.** Any ZBA member may request to have his or her comments printed as part of the minutes. If there are no objections by any ZBA member, the comments may be included. If there is an objection to including the requested comments in the minutes, the ZBA shall decide the matter by a majority vote of the ZBA members present.

9.4 **Public Access to Meeting Records.** The Secretary/Recording Secretary or his/her designee shall make available to the public the minutes of official meetings in accordance with the Freedom of Information Act. Minutes prepared by the Secretary/Recording Secretary or his/her designee but not approved by the ZBA shall be available for public inspection not more than eight (8) business days following the meeting. Minutes approved by the ZBA shall be available within five (5) business days after the meeting at which they were approved.

The Secretary/Recording Secretary or his/her designee shall promptly mail copies of minutes to persons who have subscribed and paid the required fee as determined by the Cheboygan County Board of Commissioners.

9. **EX PARTE COMMUNICATION.** The Zoning Board of Appeals desires to conduct all proceedings fairly, to create a record that includes all of the evidence upon which decisions were made, and to prevent the appearance of undue influence on its decisions. Therefore, for the purposes of these Rules of Procedure, ex parte communication shall mean oral or written, off-the-record communication made to or by Zoning Board of Appeals members without notice that are directed to the merits or lack thereof or outcome of a business item(s). If any such communications are received, the Zoning Board of Appeals member(s) shall disclose the nature of the communication at the Zoning Board of Appeals meeting(s) after the introduction of the agenda item(s) to which the ex parte communication regarded.

10. **AMENDMENTS.** These Rules of Procedure may be added to, amended or repealed in whole or in part. Proposed changes to these Rules of Procedure must be submitted in writing to the regular members of the ZBA at least one (1) month in advance of the meeting at which the proposed changes will be considered. A majority vote of the entire regular ZBA members shall be required to amend these Rules of Procedure.

11. **SEVERABILITY.** If any section, provision or clause of these Rules of Procedure or the application thereof to any person or circumstance shall be invalid, such invalidity shall not affect any remaining portion or application of these Rules of Procedure, which can be given effect without the invalid portion, or application.

These Rules of Procedure were adopted by the Cheboygan County Zoning Board of Appeals on \_\_\_\_\_, 2019.

CHEBOYGAN COUNTY  
ZONING BOARD OF APPEALS

By: \_\_\_\_\_

Charles Freese

Its: Chairperson

By: \_\_\_\_\_

John Thompson

Its: Secretary

DRAFT

**CHEBOYGAN COUNTY  
ZONING BOARD OF APPEALS**

Rules of Procedure\_

**WITH EDITS/"MARKUPS"**

1. **PURPOSE.** These Rules of Procedure are adopted to provide for the efficient and uniform administration of the Cheboygan County Zoning Board of Appeals (ZBA).
  
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  - 3.1 **Officers.** The officers of the ZBA shall be a Chairperson, Vice Chairperson, and Secretary/Recording Secretary.
  
  - 3.2 **Election of Officers.** The officers of the ZBA shall be chosen from its members by the ZBA at its annual meeting held in January of each year. The term of office for each officer shall be one (1) year, or until his or her successor is chosen and assumes office.
  
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3.7 Training. Four (4) hours of career development training are required yearly. In-house classes scheduled by the Planning Director shall count toward this requirement. Outside training may also count in whole or in part toward this objective if approved by the Planning Commission Director.

#### 4. MEETINGS

4.1 **Regular Schedule.** The regular meetings of the ZBA shall be scheduled at the annual meeting in January each year and posted as required by the Open Meetings Act, as amended. If any regularly scheduled meeting falls on a legal holiday, the ZBA shall select an alternate date in the same month for the regular meeting. Notice of this alternate date shall be given as provided in Section 5.3.

4.2 **Special Meetings.** Special meetings of the ZBA shall be held at the call of the Chairperson or upon written request of a majority of the regular members of the ZBA filed with the Secretary/Recording Secretary. No less than eighteen (18) hours before the scheduled special meeting, the Secretary/Recording Secretary or his/her designee shall provide each member of the ZBA with a notice of the special meeting, specifying the date, time, place, and purpose of the special meeting. This notice shall be given personally to each regular or designated alternate member of the ZBA or left at the member's usual place of residence.

4.3 **Place of Meeting.** Meetings of the ZBA shall be held at the Cheboygan County building located at 870 S. Main Street, Cheboygan, Michigan, 49721, Commissioner's Room. Whenever the Chairperson determines that the place of the meeting will likely have inadequate space for members of the public, the location of the meeting may be changed to a larger meeting facility. A notice of the change in meeting location shall be prominently posted at the Cheboygan County building so that it is visible from outside and shall be published in a newspaper of general circulation within the county, if such publication can be accomplished prior to the meeting.

4.4 **Time of Meetings.** Meetings of the ZBA shall begin at 7:00 p.m., unless the ZBA, by a vote of a majority of its members, specifies a different starting time. The ZBA shall not begin considering any matter on the agenda after 10:30 p.m., except by unanimous consent of the members present. Matters on the agenda which have not been considered may be heard at an adjourned hearing, provided a motion specifies the time, date, and place of the adjourned hearing, or shall be placed on the agenda of the next regular meeting, or on the agenda of a special meeting, if one is called.

4.5 **Change in Schedule.** Changes in the schedule of a regular meeting shall not be made except by a vote of a majority of the entire ZBA.

\_\_\_\_\_ If a quorum is not present at a regular meeting, the meeting shall be rescheduled, and a notice of the rescheduled regular meeting shall be posted as required in Section 5.3.

**4.6 Meeting Cancellation. –**

~~1. Meetings may be cancelled by the Director of Planning & Zoning after consulting with the Chairman, in the event that new business or tabled old business is proposed, or~~

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**5. PUBLIC NOTICE OF MEETINGS**

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three (3) **business** days after the regular meeting at which the change was made, post at the Cheboygan County building so that it is visible from outside a public notice stating the dates, times, and places of the new schedule of regular meetings.

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## 6. **QUORUM AND VOTING.**

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## 7. **REGULAR MEETING AGENDA.**

7.1 **Regular Meeting Agenda.** The agenda for a regular meeting of the ZBA shall be as follows:

- a. Pledge of allegiance
- b. Call to order.
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The ZBA reserves the right to alter the agenda by a majority vote of the members present at the meeting.

7.2 **Special Meeting Agenda.** Whenever the ZBA meets in a special meeting, the matters to be considered shall be stated in the notice of the special

meeting. No other matters shall be considered, except when all regular members of the Zoning Board of Appeals are present and concur.

8. **CONDUCT OF MEETINGS.**

8.1 **Public Hearing Procedure.** The procedure for a public hearing of the ZBA shall be as follows:

- a. The Chairperson shall open the public hearing by announcing the matter to be heard and by summarizing the standards or other regulations of the zoning ordinance on which the ZBA's decision must be based.
- b. Determination by the Chairperson whether a time limitation will be imposed on members of the public wishing to address the ZBA during the public hearing.
- c. Staff report, if applicable.
- d. Compilation of list of all exhibits to be considered by the ZBA when making its decision.
- e. Presentation by the applicant or applicant's attorney or other agents.
- ~~f.~~ f. Correspondence and/or persons speaking in favor of the application.
- g. Correspondence and/or persons speaking in opposition to the application.
- h. Rebuttal comments by the applicant or applicant's attorney or other agents.
- i. Chairperson declares public hearing portion of the case - closed.
- j. The ZBA begins its deliberations on the case.
  1. During deliberations the ZBA may solicit information from the applicant, applicant's attorney or other agents, or from members of the public. However, the solicitation of additional information shall not be construed as the reopening of the public hearing, unless so declared by the Chairperson. If the public hearing portion of the case is reopened, then the procedures for the original public hearing shall be followed.
  2. During deliberations the ZBA shall also specify in writing the findings of fact on which it bases its decision.
  3. If during deliberations the ZBA determines that additional information is needed to make its decision, it may adjourn the case to a specific time, date, and place to receive that additional information. At the adjourned time, date, and place, the public hearing portion of the case shall be reopened, but only to receive the requested additional information and other information relevant to that issue.
- k. At the conclusion of its deliberations, the ZBA shall adopt a motion documenting its decision.

- 8.2 **Members of the Public.** Members of the public wishing to address the ZBA during the meeting or during a public hearing shall first be recognized by the Chairperson.
- 8.3 **Time for Public Comments.** The public comment portion of the meeting (outside public hearings) shall be limited to 15 minutes, unless extended by a majority vote of the ZBA members present.
- 8.4 **Opportunity for Public Comment.** Each member of the public desiring to address the ZBA (outside public hearings) shall be given an opportunity to speak equal to the time allotted for public comments divided by the number of speakers desiring to address the ZBA during the public comment period, or five (5) minutes, whichever is less.
- 8.5 **Limitation of Public Comments during Public Hearings.** Prior to opening a public hearing, the Chairperson shall determine the number of individuals from the general public who may desire to address the ZBA during the public hearing.  
Based on this determination, the Chairperson may establish a reasonable time limitation for each member of the general public when addressing the ZBA during the public hearing. Members of the general public expressing a desire to address the ZBA may transfer their allotted time to another individual, who may act as a spokesperson for the group. The time limitation imposed pursuant to this section, however, shall not apply to the applicant or the applicant's attorney or other agents.
- 8.6 **Adjournment of Scheduled Public Hearings.** A property owner, agent or applicant who has a public hearing scheduled regarding an application submitted for a decision of the ZBA pursuant to the applicable provisions of the Cheboygan County Zoning Ordinance #200 shall be entitled to no more than two (2) adjournments of the public hearing. Any request for an adjournment under this rule shall be in writing and shall be received by the Planning and Zoning Department no less than four (4) business days prior to the scheduled public hearing. The Planning and Zoning Department shall be empowered to grant a request for an adjournment under this rule and at the time the adjournment is granted shall be empowered to schedule a new time, date and place for the rescheduled public hearing. If the property owner, agent or applicant fails to comply with the requirements of this rule, then the ZBA shall proceed with the public hearing as scheduled, unless the property owner, agent or applicant voluntarily withdraws the application then pending before the ZBA. Any such withdrawal shall require the payment of a new application fee in the event the matter is resubmitted.

8.7 **Written Statements Submitted by the Public.** All written statements (both during public hearings and outside public hearings) should be given to the Secretary/Recording Secretary or his/her designee prior to the commencement of the meeting or public hearing. All written statements and documents presented to the ZBA by an individual are considered public documents and shall be retained in the public record of the meeting.

8.8 **Disorderly Conduct at Meetings.** Individuals addressing the ZBA (both during public hearings and outside public hearings) should take into consideration the rules of common courtesy.

The comments by members of the public cannot be used to make personal attacks against members of the ZBA or county staff. The Chairperson may call to order any person who is being disorderly by speaking or otherwise disrupting the meeting, failing to be germane, speaking longer than the allotted time, yelling, shouting or speaking vulgarities.

Such person shall thereupon be seated until the Chairperson determines whether the person is in order. If a person is called out of order, he or she shall not be permitted to continue to speak at the same meeting or public hearing, except by a majority vote of the ZBA members present.

If the person continues to be disorderly to the extent that the ZBA cannot continue to conduct business, the Chairperson shall consider the person to be in breach of the peace and may request the assistance of a law enforcement officer to remove the person from the meeting. The ZBA shall have the right to adjourn the meeting if it is interrupted due to the disorderly conduct of any person. No person shall be removed from a public meeting, except for an actual breach of the peace committed at the meeting.

8.9 **Rehearings.**

a. Except as provided in this subsection, a decision of the ZBA shall be final.

The ZBA may grant a rehearing under exceptional circumstances for any decision made by it. Exceptional circumstances shall mean any of the following:

1. The applicant who brought the matter before the ZBA made misrepresentations concerning a material issue which was relied upon by the ZBA in reaching its decision.
2. There has been a material change in circumstances regarding the ZBA's findings of fact which occurred after the public hearing.
3. The county attorney by a written opinion states that in the attorney's professional opinion the decision made by the ZBA or the procedure used in the matter was clearly erroneous.

- b. A rehearing may be requested by the applicant or by the Zoning Administrator, or a rehearing may be granted by the ZBA on its own motion, pursuant to the following procedure:
1. A request for a rehearing which is made by an applicant or the Zoning Administrator must be made within thirty (30) days from the date of approval of the ZBA's minutes regarding the decision for which the rehearing is being requested.
  2. A request for a rehearing made by the Zoning Administrator or a rehearing granted by the ZBA on its own motion may be granted at any time as long as the applicant has not been prejudiced by any delay.
  3. Whenever the ZBA considers granting a rehearing, it shall provide written notice to the applicant that a rehearing will be considered.  
\_\_\_\_\_ The notice may be served upon the applicant by first class mail at the applicant's last known address, or may be served personally on the applicant. The notice shall be provided not less than fifteen (15) days before the time set for the hearing. Service by mail shall be complete upon mailing.  
\_\_\_\_\_ In addition to serving the above notice on the applicant, all other notice requirements for the type of decision being heard shall be completed before the ZBA holds a hearing at which it considers whether to grant a rehearing.
  4. If the ZBA grants a rehearing, then the rehearing on the merits shall not be held until all notice requirements for the type of decision being reheard have been satisfied.

8.10 **Robert's Rules of Order.** Except as modified by these Rules of Procedures and state or federal law, the ZBA shall follow Robert's Rules of Order, as Revised, for all procedural questions.

9. **RECORD OF MEETINGS.**

9.1 **Recording Responsibility.** The Secretary/Recording Secretary or his/her designee shall be responsible for maintaining the official records and minutes of each meeting of the ZBA. The minutes shall include all the actions of the ZBA with respect to motions. The minutes shall include the names of ZBA members who present motions and ZBA members who second motions as well as the vote of the ZBA on such motions. If a roll call vote is taken, the record shall show the "yes" and "no" votes. However, if all members vote "yes" or "no", the minutes may then reflect motion carried or defeated by unanimous vote.

9.2 **Voting.** Whenever a question is put by the Chairperson, every ZBA member present shall vote on the question. If a member has a conflict of interest, such conflict of interest shall be fully stated on the record and its existence confirmed by a two-thirds (2/3) vote of ZBA members present at the meeting. Once the conflict of interest is confirmed and voted upon by the ZBA members present, the ZBA member with the conflict of interest shall abstain from participating in and voting on the case.

9.3 **Requests for Remarks to be Included.** Any ZBA member may request to have his or her comments printed as part of the minutes. If there are no objections by any ZBA member, the comments may be included. If there is an objection to including the requested comments in the minutes, the ZBA shall decide the matter by a majority vote of the ZBA members present.

9.4 **Public Access to Meeting Records.** The Secretary/Recording Secretary or his/her designee shall make available to the public the minutes of official meetings in accordance with the Freedom of Information Act. Minutes prepared by the Secretary/Recording Secretary or his/her designee but not approved by the ZBA shall be available for public inspection not more than eight (8) business days following the meeting. Minutes approved by the ZBA shall be available within five (5) business days after the meeting at which they were approved.

The Secretary/Recording Secretary or his/her designee shall promptly mail copies of minutes to persons who have subscribed and paid the required fee as determined by the Cheboygan County Board of Commissioners.

9.10. **EX PARTE COMMUNICATION.** The Zoning Board of Appeals desires to conduct all proceedings fairly, to create a record that includes all of the evidence upon which decisions were made, and to prevent the appearance of undue influence on its decisions. Therefore, for the purposes of these Rules of Procedure, ex parte communication shall mean oral or written, off-the-record communication made to or by Zoning Board of Appeals members without notice that are directed to the merits or lack thereof or outcome of a business item(s). If any such communications are received, the Zoning Board of Appeals member(s) shall disclose the nature of the communication at the Zoning Board of Appeals meeting(s) after the introduction of the agenda item(s) to which the ex parte communication regarded.

10. **AMENDMENTS.** These Rules of Procedure may be added to, amended or repealed in whole or in part. Proposed changes to these Rules of Procedure must be submitted in writing to the regular members of the ZBA at least one (1) month in advance of the meeting at which the proposed changes will be

