

CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, MAY 27, 2015
ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

Members Present: Charles Freese, John Moore, Mary Street, John Thompson

Members Absent: Ralph Hemmer

Others Present: Scott McNeil, Gene St. Antoine, Kathy St. Antoine, Carl Muscott, Stuart Bartlett, Russell Crawford, Cheryl Crawford, Tony Matelski, Tom James, Bob Andrews, Charles Maziasz, Cris Jones

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. **Motion** by Mr. Moore, seconded by Ms. Street, to accept the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

Minutes from the April 22, 2015 Zoning Board of Appeals meeting were presented. **Motion** by Ms. Street, seconded by Mr. Moore, to approve the minutes as presented. Motion carried unanimously.

NEW BUSINESS

ZBA Training, Including Variances And Ordinance Interpretations

Mr. Graham provided a training session regarding variances, ordinance interpretations and appeals of Zoning Administrator decisions for the Zoning Board of Appeals and other requirements for the Planning Commission and Cheboygan County Board of Commissioners under the Zoning Ordinance and state law. (See Attachment A)

PUBLIC HEARING & ACTION ON REQUESTS

Meijer Inc./Mr. Chris Jones, Real Estate Manager - Requests a 123.8 sign surface area variance for a freestanding sign, a 441.5 ft. sign surface area variance for wall signage and a 1 sign variance for a canopy sign. The properties are located in a Commercial Development (D-CM) zoning district. The properties are located at 11001 N. Straits Hwy., 11003 N. Straits Hwy., 11115 N. Straits Hwy., 11071 N. Straits Hwy., 11065 N. Straits Hwy., 11047 N. Straits Hwy., 11031 N. Straits Hwy. and 10999 S. Tannery Rd., property code numbers 092-006-300-015-00, 092-007-200-027-00, 092-007-200-001-04, 092-007-200-026-00, 092-007-200-001-05, 092-007-200-025-00, 092-007-200-024-00, 092-007-200-001-03 and 092-007-200-001-02, Inverness Township, Sections 6 and 7. A freestanding sign is limited to 80 square feet of sign surface area, wall signs are limited to 300 square feet of sign surface area and canopy signs a limited to 2 per parcel in the Commercial Development (D-CM) zoning district.

Mr. McNeil stated that the applicant is requesting 741.5sf of wall signage. Mr. McNeil noted that the ordinance limits this to 300sf. Mr. McNeil stated the applicant is requesting 3 canopy signs which meet the size requirements. Mr. McNeil noted that the ordinance limits the number of canopy signs to 2. Mr. McNeil stated that the applicant is also requesting a 203.8sf freestanding sign. Mr. McNeil noted that the ordinance limits freestanding signs to 80sf.

Mr. Jones stated that 9 parcels are being combined into 3 parcels. Mr. Jones stated that the ordinance would allow 27 signs had the 9 parcels not been combined. Mr. Jones stated that since Meijer has combined the 9 parcels into 3 parcels, they should be allowed 9 signs. Mr. Jones stated they are only asking for 1 sign that is 203.8sf.

Mr. Jones stated the sign on Tannery Road meets the ordinance requirements. Mr. Jones stated he has no room to negotiate the size of the digits for the gas sign. Mr. Jones stated the digits are 18 inches. Mr. Jones stated the sign is 203sf. Mr. Jones stated he is willing to agree to 2 signs on the canopy which is allowed in the ordinance. Mr. Jones stated he will eliminate the Meijer sign on the front of the canopy. Mr. Freese stated this will eliminate one variance request.

Mr. Jones stated the building is far back from the road. Mr. Jones stated this is a 40 acre development with only one building on it. Mr. Jones stated the building will be approximately 700ft. off of Straits Highway and noted that an 80sf sign is tiny. Mr. Jones stated he is proposing 498sf for the main Meijer sign above the front door. Mr. Freese noted that

300sf is allowed for wall signage. Mr. Jones explained that there are way finding signs (such as pharmacy drive-up, fresh, home, bottle return, licensee and welcome) that will help customers determine which door to enter to find the goods you are seeking.

Mr. Jones stated there is a 410sf prototype sign that he could go with if there are any concerns about the Meijer sign being 498sf. Mr. Jones stated he believes the 410sf sign could be seen from Straits Highway.

There was no correspondence to be read. Mr. Freese asked for public comments. There were no public comments. Public comment closed.

Mr. Freese stated the Zoning Board of Appeals brought the increase in wall signage for large facilities to the attention of the Planning Commission. Mr. Freese stated the regulation was changed to increase the size allowed for large businesses. Mr. Freese stated that considerable thought went into the regulation and it was recently passed by the Cheboygan County Board of Commissioners. Mr. Freese stated that he believes that increasing the Meijer signage on the front of the building will not do anything more for the business than what would be allowed with the regulation being met. Mr. Freese stated the sign on the road is what will bring people into Meijer and when they get there they know where they are going. Mr. Freese stated the smaller "way finding" signs have their place but he can't see the need nor the justification for that much wall signage. Mr. Freese stated other counties have reduced the amount of signage that is allowed and big box stores have had to comply and they have done a good job. Mr. Freese noted that exhibit __ which is the Emmet County Ordinance is much more restrictive than the Cheboygan County Ordinance but which was able to be met by Meijer for their Emmet County store.

Mr. Moore noted that he would have like to see an elevation drawing to help envision the wall signage.

Mr. Jones stated he understands the points that are being made. Mr. Jones asked Mr. McNeil what is the total variance being requested since he is willing to reduce the main Meijer sign to 410sf. Mr. McNeil stated 351.6sf. Mr. Freese stated the ordinance allows 300sf and the total requested signage is 651.6sf.

Mr. Jones stated he has a prototype sign for the pharmacy drive up sign that is 35sf instead of 57.3sf. Mr. Jones stated he has a prototype sign for the fresh sign that is 30sf instead of 59.6sf. Mr. Jones stated he has a prototype sign for the home sign that is 24sf instead of 51sf. Mr. Jones noted that the licensee and bottle return signs are only 10sf and the welcome sign is 6.8sf. Mr. Jones noted that these are tiny signs. Mr. Jones stated this is a 200,000sf store which will be the biggest building in this city. Mr. Jones stated this store will be 50,000sf larger than the Gaylord store and Petoskey store. Mr. Freese noted that this changes the total signage to 525.8sf. Mr. Freese asked how much signage is on the other stores. Mr. Jones stated he can't recall and he would have to go back to the plans. Mr. Freese stated it is a lot less than what is being requested for this building.

Mr. Freese stated the total signage is 525.8sf and 300sf is allowed. Mr. Freese stated the variance being requested is 225.8sf. Mr. Jones stated this is the very best he can do.

Ms. Street stated that as a consumer (and not a Zoning Board of Appeals member) she is familiar with the Meijer name and has visited Meijer stores in other parts of the state. Ms. Street stated she understands the large sign being visible from Straits Highway. Ms. Street stated that most Meijer stores are very similar and she would know where the bottle return is located based on her very first visit. Ms. Street stated the necessity for all of the wall signs is not nearly as strong as the necessity for the freestanding sign. Mr. Freese stated the freestanding sign at the road is critical to direct people to the store. Discussion was held.

Mr. Jones stated there are 215 Meijer stores and he believes way finding signs are very important. Mr. Jones stated there are a lot of tourists and people with second homes in the Cheboygan area who may not be as familiar with Meijer. Mr. Jones stated if you live, work and shop in Cheboygan you are familiar and he understands the points that have been made. Mr. Jones stated he views this area with seasonality and way finding is important. Mr. Freese stated the Meijer sign for the convenience store is 100sf in Emmet County and 203sf in Cheboygan County. Mr. Jones stated it is unfair to compare one site to another without the physical dimensions, physical characteristics of each site and amount of frontage being considered. Mr. Freese stated he does not believe the size of the facility is going to be any different as far as the requirements on signage for Emmet County compared to Cheboygan County. Mr. Freese stated Cheboygan County's regulation is less stringent than Emmet County's regulation. Mr. Jones stated that this site has to be taken into consideration. Mr. Jones stated he would be willing to eliminate the bottle return sign.

Ms. Street asked if there are corporate standards that dictate the size of the sign. Mr. Freese stated that they generally comply with the local regulations. Mr. Jones stated he has been doing this for 22 years and stated that every municipality has different regulations. Mr. Jones stated he does try to meet the regulations. Mr. Jones stated he eliminated one variance request, 90sf from the Meijer sign, taken way finding signs out. Mr. Jones stated he is not asking for 9 signs as he is entitled to by the regulation. Mr. Jones asked for the Zoning Board of Appeals to vote on the request.

Mr. Thompson stated corporate regulates that you have to have the same look and feel at each location. Mr. Freese stated color and logo will allow for the same look but the size is dictated by local ordinance.

The Zoning Board of Appeals revised the General Findings:

1. The subject property is located in a Commercial Development (D-CM) zoning district.
2. The applicant is seeking a variance to allow wall signs with a total surface area of 515.3 square feet of sign surface area.
3. The structure upon which the proposed wall signage is to be placed is proposed to be located 680 feet from the westerly right of way of M-27.
4. The applicant is also seeking a variance to allow a freestanding sign with a total surface area of 203.8 square feet.
5. The proposed freestanding sign is proposed to be located 43 feet from the westerly right of way of M-27.
6. The entire subject property contains 41.6 acres with 390 feet of frontage on M-27.
7. Wall signs for the proposed structure are limited to 300 square feet of sign surface area, canopy signs are limited to 2 per parcel and freestanding signs are limited to 80 square feet of sign surface area in the Commercial Development District pursuant to section 17.19.8. of the zoning ordinance.

The Zoning Board of Appeals reviewed the Specific Findings of Fact under Section 23.5.4:

23.5.4. 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.

Regarding wall signs;

The parcel is much larger and deeper than the average commercial parcel and the structure upon which the wall signs are to be placed will be located 680 feet from the west right of way of M-27 which are unique conditions.

This standard has been met. (Freese, Moore, Street, Thompson)

Regarding the freestanding sign;

There are no unique conditions or circumstances relative to the applicant's request.

This standard has not been met. (Freese, Moore, Street, Thompson)

Regarding the canopy sign;

This request has been withdrawn.

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).

Regarding wall signs;

The size of the parcel and configuration of the parcel due to available land and the distance of the wall upon which signs are to be located from M-27 creates a need for the requested variance, and is not self-created.

This standard has been met. (Street, Moore)

This standard has not been met. (Freese, Thompson)

Regarding the freestanding sign;

The size and configuration of the parcel and/or the need for a freestanding sign with more than 80 square feet of sign surface area is a self-created condition.

This standard has not been met. (Freese, Moore, Street, Thompson)

Regarding the canopy sign;

This request has been withdrawn.

- 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.**

Regarding wall signs;

Compliance with sign regulations will not unreasonable prevent the applicant from using the property for a permitted purpose and compliance with sign regulations are not deemed unnecessarily burdensome.

This standard has not been met. (Freese, Moore, Street, Thompson)

Regarding the freestanding sign;

Compliance with freestanding sign regulations will not unreasonable prevent the applicant from using the property for a permitted purpose and compliance with sign regulations is not deemed unnecessarily burdensome.

This standard has not been met. (Freese, Moore, Street, Thompson)

Regarding the canopy sign;

This request has been withdrawn.

- 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.**

Regarding wall signs;

Wall signs with a total of 741.5 square feet of surface area does not represent the minimum necessary.

This standard has not been met. (Freese, Moore, Street, Thompson)

Regarding the freestanding sign;

Granting a 123.8 square foot freestanding sign area variance will not do substantial justice to other property owners in the district and is not deemed the minimum necessary to grant reasonable relief.

This standard has not been met. (Freese, Moore, Street, Thompson)

Regarding the canopy sign;

This request has been withdrawn.

- 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.**

Regarding wall signs;

Granting the requested variance will not cause an adverse impact on surrounding property due to the large property size.

This standard has been met. (Freese, Moore, Street, Thompson)

Regarding the freestanding sign;

Granting the requested variance will not cause an adverse impact on surrounding property due to the large property size.

This standard has been met. (Freese, Moore, Street, Thompson)

Regarding the canopy sign;

This request has been withdrawn.

Motion by Mr. Moore, seconded by Ms. Street, to deny the variance request for the wall signage and freestanding signage based on the General Findings and the Specific Findings of Fact under Section 23.5.4. Motion carried. 4 Ayes (Moore, Street, Thompson, Freese), 0 Nays, 1 Absent (Hemmer).

UNFINISHED BUSINESS

No comments.

NEW BUSINESS

No comments.

ZBA COMMENTS

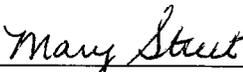
Mr. Moore questioned when 2 canopy signs per structure were added to the ordinance. Mr. Moore noted that the majority of gas stations in the county have 3-4 canopy signs. Discussion was held.

PUBLIC COMMENTS

No comments.

ADJOURN

Motion by Mr. Moore, to adjourn. Motion carried. Meeting adjourned at 8.32pm.



Mary Street, Secretary

**ZONING TRAINING SEMINAR
FOR
BOARD OF COMMISSIONERS, PLANNING COMMISSIONS,
ZONING BOARDS OF APPEAL, AND ZONING STAFF
by
Bryan E. Graham
YOUNG, GRAHAM, ELSENHEIMER & WENDLING, P.C.
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- I. General Overview
 - A. Zoning decisions are one of the most difficult decisions for local government. People that come before you may be your friends and neighbors. Therefore, you may have a tendency to make your zoning decisions on a personal level. This approach is contrary to Michigan law, could make your decision invalid, and could result in litigation against the county.
 - B. There are two different types of zoning decisions.
 1. Administrative decision by PC and ZBA: SUPs, site plan approvals, variances and sometimes PUDs
 2. Legislative decisions by the BOC: Amendments to the ZO (both text and property rezoning)
 - C. The administrative zoning decisions are discretionary in nature. Generally, the courts will strike down decisions that are the result of uncontrolled discretion. To avoid this legal difficulty, the law requires that discretionary administrative zoning decisions be based on standards or guidelines that are contained in the zoning ordinance.
 - D. It is therefore important for the county officials, property owners or professionals representing property owners to know the standards in the zoning ordinance that will be used to make any administrative zoning decision. Their responsibility at the public hearing is to present evidence (through the owner, neighbors, letters, etc.) that address the specific standards. It is not sufficient to explain the development proposal and indicate that this development is a "good idea" or a "bad idea." The focus of the meeting should not be on the specifics of the development, but rather on whether the applicant has presented information that the ZBA or PC can rely upon to find that the approval standards in the zoning ordinance have been met.
 - E. The process therefore requires that the PC or ZBA hold public hearings at which it receives evidence relevant to the standards that control the issue, makes findings of fact regarding those standards, and then based on the findings of fact and the standards make the decision.
 1. I have found from experience that the zoning applications should include questions directly related to the approval standards. By including such questions, the county will be receiving information directly related to the standards on which the ultimate decision must be made.

2. It is very important to make a good record of the public hearing. Minutes must be detailed and must summarize the comments made at the hearing. I strongly recommend the use of a tape recorder. The documents that the PC or ZBA is asked to consider in making its decision must be clearly identified and must be kept with the official record.
3. If an applicant or neighbor does not like the administrative decision, then he or she can ultimately take the matter to circuit court. The circuit court judge will then review the record to determine whether the decision was correct. As a result, the record made at the initial public hearing is extremely important.

II. Zoning Functions of the Board of Commissioners, the Planning Commission, the ZBA, and the Zoning Staff

A. Board of Commissioners

1. Ultimate Legislative authority
 - a. Enacts zoning ordinance amendments after recommendations from the county planning commissions
 - A. Traditional rezoning – See Rezoning Factors handout
 - B. Conditional rezoning – See Conditional Rezoning handout
 - b. Control budget – need to be sure to budget sufficient funds for training. If not, a resulting lawsuit would be more expensive in the long run.
2. Appoints Planning Commission and ZBA members

B. Planning Commission

1. Develop and periodically update the county master plan.
2. Review and recommend changes to the zoning ordinance.
 - a. Must hold at least one public hearing on any amendment to the zoning ordinance.
 - b. After the public hearing, the Planning Commission must transmit its recommendation **and a summary of the comments received at the public hearing** to the board of commissioners. (Normally this is done by letter with a copy of the public hearing minutes attached.)
3. Determine whether to grant special use permits. Section 18.7.
 - a. Must hold at least one public hearing.
 - b. Must apply the standards of the zoning ordinance.
 - c. If the applicant satisfies all standards in the zoning ordinance, the planning commission **must** approve the special use permit.

4. Determine whether to approve a planned unit development. Article 19.
 - a. PUD by rezoning.
 - b. PUD following SUP procedures – no rezoning required. County ZO uses SUP procedures.

C. ZBA

1. Make interpretations of the zoning ordinance where there is genuine ambiguity.
2. Hear appeals from the decisions of other zoning officials, with the possible exceptions of decisions relating to special land use permits or PUDs. State law provides that the ZBA can hear appeals from special use decisions or PUDs only if the zoning ordinance provides such an appeal. Section 23.3.1 provides no authority to hear appeals from PC Sup and PUD decisions.
3. Grant dimensional variances from the requirements of the zoning ordinance. Section 23.5.4.
4. Although the zoning ordinance (Section 23.5.3) contains standards for use variances, Section 604(10) of the zoning enabling act, MCL 125.3604(10) requires a zoning ordinance provision that requires a 2/3 vote of the ZBA to grant a use variance. Because the zoning ordinance does not have this 2/3 vote provision, the ZBA does not currently have the authority to grant use variances.
5. Therefore, the PC and ultimately the BOC must decide by a ZOA whether to grant the ZBA the power to grant use variances.

D. Zoning Staff

1. County employees, subject to supervision and policy as any other county employee – subject to ultimate supervision by County Administrator.
2. Job duties specified in job descriptions, which typically refer to the zoning ordinance. Examples: issue zoning permits, assist property owners with zoning applications, investigate complaints of ZO violations, work with Prosecutor's office to enforce ZO violations.
3. When zoning ordinance is ambiguous, the zoning staff may make the initial decision, subject to appeal to the ZBA, or he or she may request an interpretation by the ZBA.

III. Procedure for making discretionary administrative zoning decisions.

A. Conflict of Interest and Duty to be Impartial Decision Maker

1. Conflicts of interest.
 - a. New PC enabling act requires that conflicts of interests be defined in the ordinance creating PC or in the PC bylaws.
 - b. ZBA should define conflicts of interest in its rules of procedure.

- c. Examples of conflicts of interest.
 - (A). The applicant is the child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, nephew, niece, aunt, or uncle of the planning commission or ZBA member or the member's spouse.
 - (B). The planning commission or ZBA member or the member's spouse, parent, child, or any relative residing in the member's household has a pecuniary interest in the outcome of the matter.
 - (C). The planning commission or ZBA member or the member's spouse resides on or has an ownership interest in land within 300 feet of the parcel regarding which the decision is to be made.
 - (D). The planning commission or ZBA member has made statements or taken any action outside the formal decision-making process that would suggest that he or she has prejudged the matter before the planning commission or ZBA or would in any way preclude him or her from affording the applicant and the public a fair hearing.
 - (E). The planning commission or ZBA member concludes in good faith that because of prior business or personal relationships with the applicant or with other participants in the public hearing process, or for other reasons, he or she cannot afford the applicant and the public a fair hearing.

2. Constitutional duty to be impartial decision maker.

- a. Decision must be based on the standards in the zoning ordinance and the evidence presented at the public hearing.
- b. Cannot base decision on personal desires or personal opinion.
- c. Must avoid making up mind before the public hearing. Members should not discuss pending matter (or matter that could come before PC or ZBA) with others, and should avoid making statements that he or she is in favor of or opposed to proposed development – especially before the public hearing is held.

B. Public Hearing

1. Gathering the evidence

- a. The chair must control the hearing. All comments should be addressed to the chair, and no one should speak, unless recognized by the chair. (Otherwise have chaos)
- b. If it is apparent that many people desire to speak at the public hearing, the chair can set a reasonable time limit. This limit, however, should not apply to the applicant.

- c. Applicant given opportunity to present proposal. Be sure to identify all exhibits the applicant wants considered.
- d. Public speaking in favor of application. Again identify exhibits.
- e. Public speaking in opposition of application. Again identify exhibits.
- f. Applicant should then be given an opportunity to rebut any comments made by the public.
- g. The public hearing should then be closed.

2. Deliberations

- a. PC or ZBA discuss the evidence and apply the standards of the zoning ordinance. The PC or ZBA then must make specific findings of fact on each of the standards of the zoning ordinance.
- b. The PC or ZBA can ask questions of the applicant and/or members of the public and receive the answers. However, be careful not to allow these questions and answers to result in a reopening of the general discussion.
- c. If the PC or ZBA feels it needs additional information to make the decision, it can adjourn the matter to a **specific time, date, and place** without the need to re-notice the public hearing. (Still need to post notice under the Open Meeting Act.)
- d. The PC or ZBA can also adjourn the matter to a **specific time, date, and place** to make its findings of fact without the need to re-notice the public hearing. (Still need to post notice under the Open Meeting Act.) This avoids the “midnight meeting” problem.

IV. Procedure for making legislative zoning decisions.

A. Must avoid actual conflicts of interests and the appearance of conflicts of interests

B. Example of situations to avoid.

- 1. The applicant or property owner is the child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, nephew, niece, aunt, or uncle of the BOC member or the member’s spouse. This is the same standard that the court rules use to determine when a judge is disqualified from hearing a case.
- 2. The BOC member or the member’s spouse, parent, child, or any relative residing in the member’s household has a specific pecuniary interest in the outcome of the zoning ordinance amendment or rezoning. The pecuniary interest must be more than speculation. Each situation must be analyzed individually.
- 3. The BOC member or the member’s spouse resides on or has an ownership interest in land within 300 feet of the parcel that is the subject of the rezoning request. (The potential rezoning could have an impact on the adjacent land values – either up or down.)

V. Questions.

**SOMEWHERE COUNTY
ZONING BOARD OF APPEALS**

DECISION AND ORDER

Applicant:

Hearing Date:

PROPERTY DESCRIPTION

The property of _____ and _____ Husband and Wife, described as:

ATTACH LEGAL DESCRIPTION

hereinafter referred to as the "property."

APPLICATION

WHAT APPLICATION SEEKS:

The Board having considered the Application, a public hearing having been held on _____, after giving due notice as required by law, the Board having heard the statements of the Applicant/Applicant's attorney and agents, the Board having considered letters submitted by members of the public and several comments by members of the public, the Board having considered _____ Exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned _____ under the zoning ordinance.
2. The Board finds that Section _____ of the zoning ordinance requires the following:
3. The Board finds that the Applicant desires a _____ feet variance from the above requirement to allow the construction of the following:
- 4.
- 5.
- 6.
- 7.

FINDINGS OF FACT UNDER SECTION 12.05 A. 3. a. OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 12.05 A. 3. a. of the zoning ordinance for each of the following standards listed in that section:

1. Strict compliance with the area setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unreasonably burdensome.
 - a. The Board finds that

 - b. The Board finds that

 - c. The Board finds that

 - d. The Board finds that

 - e. The Board finds that

2. A variance would do substantial justice to the applicant as well as to other property owners in the district.
 - a. The Board finds that

 - b. The Board finds that

 - c. The Board finds that

 - d. The Board finds that

- e. The Board finds that
3. The plight of the property owner is due to unique circumstances of the property.
- a. The Board finds that

 - b. The Board finds that

 - c. The Board finds that

 - d. The Board finds that

 - e. The Board finds that
4. The problem is not self created.
- a. The Board finds that

 - b. The Board finds that

 - c. The Board finds that

d. The Board finds that

e. The Board finds that

DECISION

Upon motion, seconded and passed, the Board RULED that the Applicants' variance request be GRANTED/DENIED.

CONDITIONS, IF ANY

1.

2.

3.

TIME PERIOD FOR JUDICIAL REVIEW

MCL 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

Chairperson

Secretary

Prepared by:
Young, Graham, Elsenheimer & Wendling, P.C.
P.O. Box 398
Bellaire, Michigan 49615
(231) 533-8635

**SOMEWHERE COUNTY
ZONING BOARD OF APPEALS**

DECISION AND ORDER

Applicants: John Smith and Jane Smith

Hearing Date: May 27, 2015

PROPERTY DESCRIPTION

The property of John Smith and Jane Smith Husband and Wife, described as:

ATTACH LEGAL DESCRIPTION

hereinafter referred to as the "property."

APPLICATION

WHAT APPLICATION SEEKS: Applicants seek a two feet (2') variance from the fifteen feet (15') side yard setback requirement to allow them to construct a 24' X 30' two (2) car attached garage on the east end of their home. A copy of the proposed construction plans are attached as Exhibit "A".

The Board having considered the Application, a public hearing having been held on May 27, 2015, after giving due notice as required by law, the Board having heard the statements of the Applicant/Applicant's attorney and agents, the Board having considered letters submitted by members of the public and comments by members of the public, if any, the Board having considered 2 Exhibits, and the Board having reached a decision on this matter, states as follows:

GENERAL FINDINGS OF FACT

1. The Board finds that the property is currently zoned R-1 under the zoning ordinance.
2. The Board finds that under the zoning ordinance the side yard setback in the R-1 District is fifteen feet (15').
3. The Board finds that the Applicant desires a two feet (2') variance from the fifteen feet (15') setback requirement to allow them to construct a 24' X 30' two (2) car attached garage on the east end of their home.
4. The Board finds that the Smith lot has 160 feet of road frontage and is 120 feet deep.
5. The Board also finds that development anywhere on the Smith lot is not impaired by slope, wetlands, or other natural features.
6. The Board finds that the Smiths have proposed to construct the two car attached garage on the east end of their house, because the utility room and kitchen are at that end of the house (where a garage would naturally attach) and because bedrooms are at the west end of the house.

FINDINGS OF FACT UNDER SECTION 12.05 A. 3. a.
OF THE ZONING ORDINANCE

The Board makes the following findings of fact as required by Section 12.05 A. 3. a. of the zoning ordinance for each of the following standards listed in that section:

1. Strict compliance with the area setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unreasonably burdensome.
 - a. The Board finds that a garage either attached or detached is a permitted accessory building in the R-1 District.
 - b. The Board finds that by constructing the garage on the western end of the house the Smiths can have an attached garage of the same size as proposed and still meet the side yard setback requirement of the R-1 District.
 - c. In addition, the Board finds that a detached, two (2) car garage measuring 24' X 30' can be constructed in the backyard and still meet the fifteen feet (15') rear yard setback requirement.
 - d. Finally, the Board finds that placing a garage in either of the two (2) conforming locations indicated above is not unreasonably burdensome, since there is no physical characteristics of the property that would prevent construction or make construction more costly in those locations.
 - e. The Board finds that strict compliance with the dimensional requirements of the zoning ordinance will not unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unreasonably burdensome.
 - f. The Board, therefore, finds that this standard has not been met.
2. A variance would do substantial justice to the applicant as well as to other property owners in the district.
 - a. The Board finds that the proposed variance would permit the Smiths to construct an attached two (2) car garage on their house and that this attached garage would make it easier for the Smiths in the winter months.
 - b. The Board finds that the neighbors directly impacted by the proposed variance are the Goods. The Board further finds that the closest building on the Good property will be over fifty feet (50') from the proposed garage and clearly outside the thirty feet (30') contemplated by the fifteen feet (15') side yard setbacks on both properties.
 - c. Finally, the Board finds that the Goods have written a letter in support of the Smiths' proposed variance and in fact prefer the attached garage over a detached garage in the backyard.
 - d. The Board therefore finds that the proposed variance would do substantial justice to the Smiths and would not harm the property owners in the neighborhood or in the R-1 District.

- e. The Board, therefore, finds that this standard has been met.
3. The plight of the property owner is due to unique circumstances of the property.
- a. The Board finds that the need for an attached garage is for convenience during the snowy winter months.
 - b. While the Board can sympathize with the Smiths, it finds that the need for the variance is not due to any unique circumstances of the property. In fact, the Board finds that there are no physical characteristics of the Smith property that would prevent the construction of either a detached or attached two (2) car garage on other portions of the lot in full compliance with the zoning ordinance.
 - c. The Board finds that the need for the requested variance is not due to unique circumstances of the property.
 - d. The Board, therefore, finds that this standard has not been met.
4. The problem is not self-created.
- a. The Board finds that a side yard setback variance is needed only because the Smiths desire to build a two (2) car attached garage in the proposed location.
 - b. The Board also finds that there are other locations on the Smith lot where a two (2) car garage could be built in full compliance with the zoning ordinance. See findings 1 b. and c. above, which are incorporated herein by reference.
 - c. The Board further finds that a one (1) car garage in the location proposed could also be built without the need for the requested variance.
 - d. The Board finds that the Smith's need for the requested variance is the result of a self-created problem.
 - e. The Board, therefore, finds that this standard has not been met.

DECISION

Upon motion, seconded and passed, the Board RULED that the Applicants' variance request be DENIED.

CONDITIONS, IF ANY

- 1.
- 2.
- 3.
- 4.

TIME PERIOD FOR JUDICIAL REVIEW

MCL 125.3606 provides that any party aggrieved by a decision of the Zoning Board of Appeals may appeal that decision to the Circuit Court within thirty (30) days after the Zoning Board of Appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the ZBA, if there is no chairperson, or within twenty-one (21) days after the Zoning Board of Appeals approves the minutes of the meeting at which the decision was made.

DATE DECISION AND ORDER ADOPTED

May 27, 2015

Chairperson

Secretary

Prepared by:
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**ZONING BOARDS OF APPEAL
TRAINING SEMINAR**

Statement of Facts

John and Jane Smith own a lot in Somewhere County 160' wide and 120' deep. The lot has no slopes, wetlands, or other unique natural features. Under the Somewhere County Zoning Ordinance, the property is zoned R-1. Jane Smith is a high school teacher in a community about 30 miles away. John Smith is a minister. The Smiths have three teenage children.

The Smith's house was built in 1985, ten years after the Somewhere Zoning Ordinance was first enacted. The Smiths have no garage. Because of the harsh winters in Northern Michigan and because the Smiths are a two car family (soon to be three), they have proposed to construct a two car attached garage on the east end of their house. The proposed garage would be 24' X 30'. They chose the east end of the house, since the utility room and kitchen were at that end of the house (where a garage would naturally attach) and bedrooms were at the west end of the house. They also chose not to build a detached garage in the back yard, because it would consume a major portion of their backyard. The Smiths have obtained a letter from their neighbors, Mr. and Mrs. Good, indicating that they have no objection to the requested attached garage. The closest building on the Goods' property would be located more than 50' from the proposed attached garage. In fact, the Goods indicated in their letter that they prefer the attached garage, since a detached garage in the backyard would block their beautiful view of the countryside.

In order to build the attached garage, the Smiths have approached the Zoning Board of Appeals for a two foot variance from the side yard setback requirement. Under the Somewhere County Zoning Ordinance the setback requirements are:

1. Front yard: 25 feet
2. Side yard: 15 feet
3. Back yard: 15 feet

Should the ZBA grant the requested variance?

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Section 12.05 - Duties and Powers of the Zoning Board of Appeals

A. The Zoning Board of Appeals shall have the following specified duties and powers:

* * *

3. **Variances.** The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from such dimensional requirements as lot area and width regulations, building height and square foot regulations, yard width and depth regulations, when all basic conditions below are satisfied.

a. The Zoning Board of Appeals may grant a variance wholly or partially only after the applicant has shown a practical difficulty, by demonstration of all of the following:

- 1) Strict compliance with area setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.
- 2) A variance would do substantial justice to the applicant as well as to other property owners in the district.
- 3) The plight of the owner is due to unique circumstances of the property.
- 4) The problem is not self-created.

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REZONING FACTORS

1. Is the proposed rezoning reasonably consistent with surrounding uses?
2. Will there be an adverse physical impact on surrounding properties?
3. Will there be an adverse effect on property values in the adjacent area?
4. Have there been changes in land use or other conditions in the immediate area or in the community in general which justify rezoning?
5. Will rezoning create a deterrent to the improvement or development of adjacent property in accord with existing regulations?
6. Will rezoning grant a special privilege to an individual property owner when contrasted with other property owners in the area or the general public (i.e. will rezoning result in spot zoning)?
7. Are there substantial reasons why the property cannot be used in accordance with its present zoning classifications?
8. Is the rezoning in conflict with the planned use for the property as reflected in the master plan?
9. Is the site served by adequate public facilities or is the petitioner able to provide them?
10. Are there sites nearby already properly zoned that can be used for the intended purposes?

In considering the foregoing, it is important to recognize that the considerations are general in nature, may overlap somewhat, and that there may be other factors not listed. When pondering the above questions, the decision maker must also give due consideration to (a) the general character of the area in which the subject property is located, (b) the property itself and its attendant physical limitations and suitability to particular uses, (c) the general desire to conserve property values and, (d) the general trend and character of population development. The community should evaluate whether other local remedies are available.

The decision maker should not focus on any one concern among the various factors to be taken into consideration when passing upon a rezoning request.

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CONDITIONAL REZONING

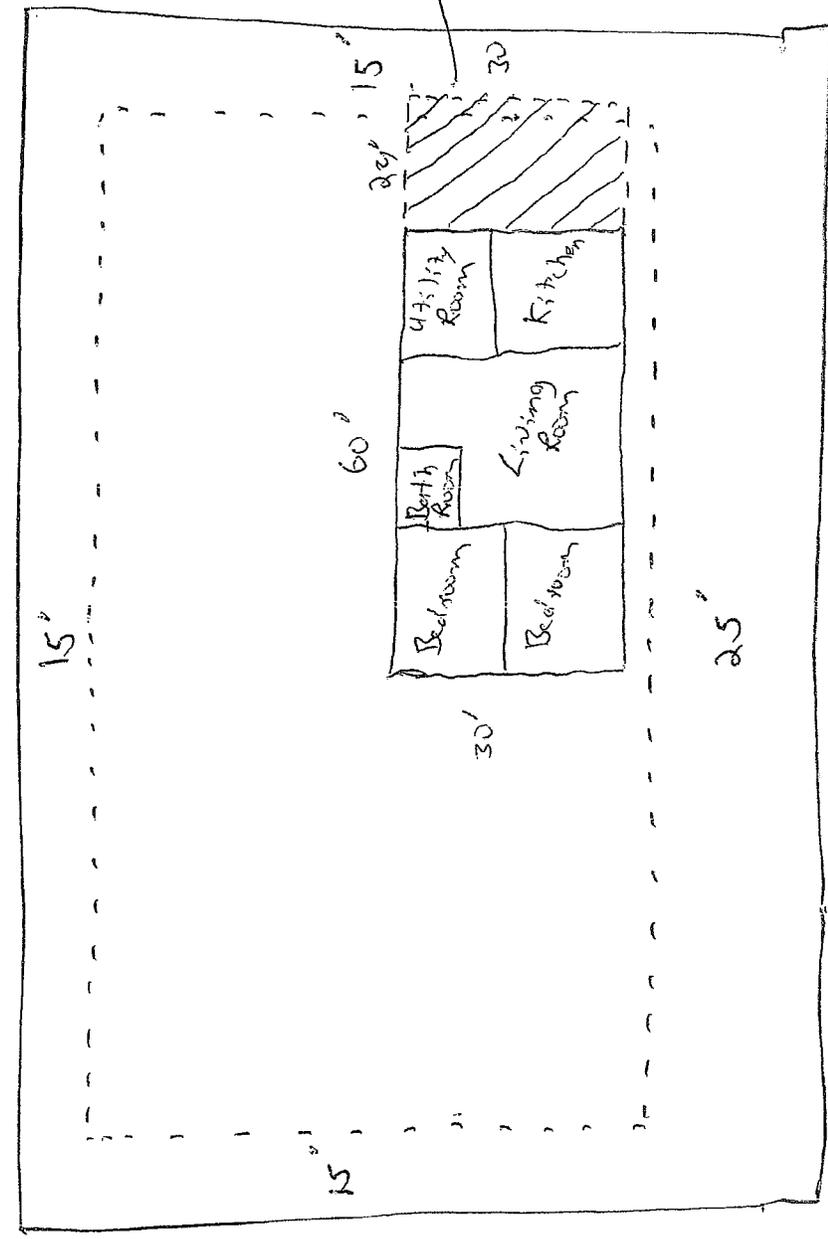
Section 405 of the Michigan Zoning Enabling Act, MCL 125.3405, authorizes conditional rezoning. This statutory section provides:

- (1) An owner of land may voluntarily offer in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map.
- (2) In approving the conditions under subsection (1), the local unit of government may establish a time period during which the conditions apply to the land. Except for an extension under subsection (4), if the conditions are not satisfied within the time specified under this subsection, the land shall revert to its former zoning classification.
- (3) The local government shall not add to or alter the conditions approved under subsection (1) during the time period specified under subsection (2) of this section.
- (4) The time period specified under subsection (2) may be extended upon the application of the landowner and approval of the local unit of government.
- (5) A local unit of government shall not require a landowner to offer conditions as a requirement for rezoning. The lack of an offer under subsection (1) shall not otherwise affect a landowner's rights under this act, the ordinances of the local unit of government, or any other laws of this state.

N ↑

Smith Property

160'



Goods House

Proposed
2 Car
Garage

Public Road

120'