CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
WEDNESDAY, OCTOBER 28, 2015 AT 7:00PM
ROOM 135 – COMMISSIONER'S ROOM - CHEBOYGAN COUNTY BUILDING

Members Present: Charles Freese, Ralph Hemmer, John Moore, Mary Street,

Members Absent: John Thompson

Others Present: Scott McNeil, Virgil Kirila, Cheryl Kirila, Tony Matelski, Russell Crawford, Cheryl Crawford, Lee Schley, Crystal Schley, Tom Chapman, Carl Muscott

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 Mr. Hemmer, to accept the agenda as presented. Motion carried. 4 Ayes (Moore, Hemmer, Freese, Street), 0 Nays, 1 Absent (Thompson)

APPROVAL OF MINUTES
Minutes from the September 23, 2015 Zoning Board of Appeals meeting were presented. **Motion** by Mr. Hemmer, seconded by Mr. Moore, to approve the minutes as presented. Motion carried. 4 Ayes (Moore, Hemmer, Freese, Street), 0 Nays, 1 Absent (Thompson)

PUBLIC HEARING & ACTION ON REQUESTS
Virgil Kirila – Requests a 3 ft. rear setback variance for construction of a garage (30 ft. x 40 ft.) in a Lake and Stream Protection (P-LS) zoning district. The property is located at 10883 High Bluffs Drive., Grant Township, Section 23, parcel #151-023-200-026-00. A rear setback of 12 feet is required in this zoning district.

Mr. McNeil explained that the applicant is requesting a rear setback variance to construct a garage on an existing foundation. Mr. McNeil stated the property is under one description with a private road dividing the lot. Mr. McNeil reviewed the site plan and noted the location for the proposed garage. Mr. McNeil stated a 12ft. rear setback is required from the roadway and the applicant wishes to build on the existing foundation which is 9ft. from the lot line thus requiring a 3ft. variance.

Mr. Kirila stated his family bought the property in 1966 and then bought the back lot in 1972. Mr. Kirila stated that his dad started this project in 1995 by putting in a new septic system and tank. Mr. Kirila stated the tank is behind the garage. Mr. Kirila stated his dad ordered the lumber and all of the permits were issued. Mr. Kirila stated on August 25th the trusses were delivered and that is the night that his dad passed. Mr. Kirila stated that they received a letter two days later from the zoning board saying that they had to stop the project because there was a problem with the way it is laid out. Mr. Kirila stated he later found out that the building was only 9ft. from the lot line. Mr. Kirila stated he has a current survey and there is a 70ft. separation between the front lot and the back lot. Mr. Kirila stated they would like to continue building this garage. Mr. Kirila stated it will be a one story garage with a 10ft. ceiling instead of a two story garage like his dad had originally planned.

Mr. Freese asked for public comments. There were no public comments. Public comment closed. Mr. Freese asked if there was any other correspondence. Mr. McNeil stated no.

Mr. Freese asked if the dad purchased the back lot later. Mr. Kirila stated that in 1972 one of the neighbors bought it all and then offered it to all the people behind their lakefront property. Mr. Kirila stated the only stipulation was that if the property is sold, the front lot must be sold with the back lot. Mr. Kirila explained that back then they did not know there was a 70ft. separation between the front lot and the back lot. Mr. Moore asked if this is when the road easement area was split out. Mr. Kirila stated no that the road was there years before.

Mr. Freese asked Mr. McNeil if all permits had been granted at the time the letter to cease and desist was issued. Mr. McNeil stated yes and that is why there was a cease work order that was issued. Mr. Freese explained that it was not clear in the letter. Mr. Freese stated in the letter it was noted that the road was a public county road which it is not.

The Zoning Board of Appeals reviewed the General Findings and added the following:

6. The right of way varies between approximately 69ft. and 70ft. in width.
7. The right of way narrows as it goes to the northwest.
8. At the time the cease and desist letter was issued in 1995 all permits had been issued and the pad and foundation were constructed prior to the issuance of the county letter.

The Zoning Board of Appeals reviewed and approved 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 (Moore, Hemmer, Freese, Street), 0 Nays, 1 Absent (Thompson)

Monica Algate/T.B. Chapman Construction Inc. - Requests a 26ft. front setback variance to construct a sunroom addition (30 ft. x 15 ft.) to a dwelling in a Lake and Stream Protection zoning district. The property is located on 6901 Grace St., Tuscarora Township, Section 24, parcel #161-S79-000-008-00. A 40 ft. front setback is required in this zoning district.

Mr. McNeil stated the applicant is requesting a 26ft. front setback variance for construction of a 15ft. x 30ft. addition on a lakefront lot. Mr. McNeil noted that there is a 14ft. 3in. setback indicated on the site plan. Mr. McNeil explained that the notice references a 14ft. setback. Mr. McNeil stated that a 40ft. front setback is required from the high water mark which is established by the break wall.

Mr. Chapman stated he is representing the property owners for this variance request. Mr. Chapman stated this is a tight lot and the owners would like an addition built on the lake side. Mr. Chapman stated that with the setback line already going through the house, this addition would not be possible without a variance.

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

Mr. Freese asked Mr. Chapman if he knows when the pergola was constructed. Mr. Chapman stated approximately 15 years ago. Mr. Freese asked if any permits were issued for the pergola. Mr. McNeil stated there were no permits in the system. Mr. McNeil noted that the permit system goes back about 11 years. Ms. Street asked how old is the house. Mr. Chapman stated the house was built in the 1970's.

Mr. Moore noted that the sunroom is proposed to be built across the property line.

Ms. Street asked if a permit would have been required for the pergola. Mr. McNeil stated that a pergola would fall within the definition of a structure and a permit would have been required.

The Zoning Board of Appeals reviewed General Findings and added the following:

5 The house a legal non-conforming structure but the pergola shows no record of a permit being issued and therefore is non-conforming.
6. The legal non-conforming house extends into the front setback for almost the entire width.

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

Kim and Sandra Bruns - Requests a 7ft. front setback variance to construct a three season room addition (10 ft. x 18 ft.) to a dwelling in a Lake and Stream Protection zoning district. The property is located at 6642 Burchfield Road., Tuscarora Township, Section 24, parcel #161-H21-000-009-00. A 40 ft. front setback is required in this zoning district.

Mr. McNeil stated the applicant is seeking a 7ft. front setback variance from a canal. Mr. McNeil stated the canal establishes the front setback where 40ft. is required. Mr. McNeil stated the applicant is looking to place a 3 season enclosure on an existing deck. Mr. McNeil stated the new construction would be 33ft. from the canal thus requiring a 7ft. front setback variance.

Mr. Bruns stated they purchased the house in January 2015 and moved in June 2015. Mr. Bruns stated he wants to add a 3 season porch to the existing deck. Mr. Bruns stated that the contractor removed all of the decking when the roof was redone. Mr. Bruns explained that the decking was rotting and someone could fall through. Mr. Bruns stated that by using

Google Maps, he was able to determine that there are a handful of houses that are under 40ft. from the canal. Mr. Bruns noted that one is 35.5ft. and a couple are 20ft. from the canal. Mr. Bruns stated there are trees on both sides of his house and this addition would not affect the neighbor's line of sight.

Mr. Freese asked if there was any correspondence. Mr. McNeil stated no. Mr. Freese asked for public comments. There were no public comments. Public comment closed.

Mr. Freese stated there are a number of other permanent structures in the neighborhood on the canal that do encroach further than what Mr. Bruns has proposed.

Mr. Moore asked if this construction was pre-zoning. Mr. McNeil stated he believes it is pre-zoning. Mr. Moore stated it would be legal non-conforming.

The Zoning Board of Appeals reviewed the General Findings and added the following:

4. The deck is legal non-conforming.
5. A number of other homes in the general area on this canal encroach in the setback as least as far as the proposed variance.

The Zoning Board of Appeals reviewed 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 (Moore, Hemmer, Freese, Street), 0 Nays, 1 Absent (Thompson)

Joseph Antkoviak/Crystal and Lee Schley – Requests a use variance for a manufacturing use (manufacturing of ice) in an Agriculture and Forestry Management zoning district. The property is located at 10999 North Extension Road., Munro Township, Section 11, parcel #080-011-200-004-00. Manufacturing is a use which is not permitted by right or with a special use permit in an Agriculture and Forestry Management zoning district.

Mr. McNeil stated this is a request for a use variance on property that is currently used for a well drilling business. Mr. McNeil stated that the property was first issued a special use permit for the existing use in 1991 and there was an amendment in 2003. Mr. McNeil stated the applicants are applying for a use variance for an ice making manufacturing use. Mr. McNeil stated this parcel is located in an Agriculture and Forestry Management Zoning District and manufacturing uses are not allowed in this district.

Mrs. Schley stated this parcel is already permitted for a commercial use and that the parcel is adjacent to the expressway. Mrs. Schley stated that the delivery trucks are not any bigger than the trucks used by the well drilling business. Mrs. Schley stated they are wholesalers so there will be no additional traffic. Mrs. Schley stated there will not be any changes to the building as there is already a well and electricity which is what they need to conduct their business.

Joseph Antkoviak stated that he had a good business at this location for over 10 years. Mr. Antkoviak stated this is a commercial building that is well built. Mr. Antkoviak stated there are 2 wells and there is 3 phase power. Mr. Antkoviak stated he covered a 50 mile radius out of this location and it worked out well. Mr. Antkoviak stated this would be a good location for this business.

Mr. Freese asked if there was any correspondence. Mr. McNeil stated no.

Mr. Freese asked for public comments. Mr. Muscott asked if this will replace the applicants location in Tuscarora Township. Mrs. Schley stated yes.

Ed Antkoviak stated that he lives next to this building. Mr. Antkoviak stated that in reference to noise and similar issues, he does not believe this business will be any different than the well drilling business. Mr. Antkoviak stated it is similar to a seasonal business and there will be about the same amount of truck usage. Mr. Antkoviak stated he would not have any issues having the proposed business at this location.

Public comment closed.

Mr. Moore stated that calling this type of business a manufacturing business is a stretch. Mr. Moore stated that this use could be considered similar to mineral extraction, a sawmill or agricultural processing which are permitted uses in the Agriculture and Forestry Management Zoning District. Mr. Moore stated that this is not a manufacturing business that is

similar to Moran Iron Works. Mr. Moore noted that water is being taken out of the ground and it is being frozen. Mr. Freese and Mr. Moore stated that this is more of a processing use than a manufacturing use.

The Zoning Board of Appeals reviewed the General Findings and added the following:

5. Ice making is more of a mineral extraction operation than a manufacturing use.

The Zoning Board of Appeals reviewed the Specific Findings of Fact under Section 23.5.3. The Zoning Board of Appeals added "The proposed use will have the same or less impact than then present use." to 23.5.3.1.1. The Zoning Board of Appeals added "There are properties along I-75 that are used for similar purposes." To 23.5.3.2.1. **Motion** by Ms. Street, seconded by Mr. Moore, to approve the use variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.3. Motion carried. 4 Ayes (Moore, Hemmer, Freese, Street), 0 Nays, 1 Absent (Thompson)

William Totten - Requests a 125 ft. front setback variance to construct an addition to a dwelling and a deck in a Natural Rivers Protection zoning district. The property is located at 5447 Big Sky Trail, Koehler Township, Section 35, parcel #172-P23-000-054-00. A 200 ft. front setback is required in this zoning district.

Mr. McNeil stated the applicant is seeking to construct an addition and a deck in the Natural Rivers Protection Zoning District where a 200ft. setback is required. Mr. McNeil stated the existing dwelling lies within the setback area and is currently located 75ft. from the river. Mr. McNeil stated the applicant is seeking to extend the existing deck and dwelling structure addition along the same line on the waterfront thus a variance of 125ft. is being requested.

Mr. Totten stated that they purchased this home in February 2015. Mr. Totten stated the only option for an addition to the house is on the north side or the east side. Mr. Totten stated the raised septic system is the west side of the house. Mr. Totten that he wanted to follow the same pattern 20ft. further south and not be any closer to the river. Mr. Totten stated the DNR typically allows an addition as there is an existing structure. Mr. Totten stated they will not be any closer to the river and they are not removing any trees or shrubs. Mr. Totten stated they are not disrupting the water banks.

Mr. Freese asked if there was any correspondence. Mr. McNeil stated no. Mr. Freese asked for public comments. There were no public comments. Public comment closed. Mr. Freese asked if there were any comments regarding this request from the DNR. Mr. McNeil stated no.

Mr. Freese stated this is the same situation that the Zoning Board of Appeals runs into often. Mr. Freese stated the house is closer to the river than the setback allows. Mr. Freese stated the proposed addition is not to be any further into the setback than what is already in existence. Mr. Freese stated the Zoning Board of Appeals has generally approved additions to structures that conform to that premise. Mr. McNeil stated he believes that this structure predates the legislature on the Natural Rivers.

The Zoning Board of Appeals reviewed the General Findings. The Zoning Board of Appeals reviewed the Specific Findings of Fact under Section 23.5.4. **Motion** by Mr. Moore, seconded by Ms. Street, to approve the variance request based on the General Findings and the Specific Findings of Fact under Section 23.5.4 with the stipulation that no incursion closer to the river takes place. Motion carried. 4 Ayes (Moore, Hemmer, Freese, Street), 0 Nays, 1 Absent (Thompson)

UNFINISHED BUSINESS
No comments.

NEW BUSINESS
No comments.

ZBA COMMENTS
Mr. Moore stated there is a county ordinance about address signs. Mr. Moore stated that posting an address sign should be a requirement for Planning Commission or Zoning Board of Appeals inspections. Mr. Freese asked that Mr. McNeil review this with legal counsel. Mr. Moore stated it would make it easier for the Planning Commission and Zoning Board of Appeals members to find the property. Discussion was held.

PUBLIC COMMENTS
Mr. Muscott stated that when he started to build he had to go to the Road Commission to get a permit for the driveway. Mr. Muscott stated then he had to have an address assigned. Mr. Muscott noted the ordinance states that a green sign

with white reflective numbers is to be posted. Mr. Muscott stated there are very few of these signs around. Mr. Muscott noted that there is a lot of new construction.

Mr. Muscott referred to the variance request for Monica Algate and noted that the property lines do not go all the way to the lake. Mr. Freese stated this is typical of a platted subdivision. Mr. Muscott asked if zoning states that the 40ft. setback is from the lake or from the property line. Mr. Freese stated it is from the high water line.

Mr. Muscott referred to the variance request for William Totten and stated that on some of the canal lots the front of the house faces the road and the canal is in the back yard. Mr. Moore stated the water is the front of the property for lake, stream and canal front lots, by definition in the ordinance. Discussion was held.

Mr. Muscott asked if the setback had been sufficient would the Zoning Board of Appeals approve building a deck off the property. Mr. Freese stated there is no kind of variance that could be granted that would allow someone to build off of their property. Mr. McNeil noted that some plats have a dedication stating that lots will run to the water.

ADJOURN

Motion by Mr. Freese to adjourn. Motion carried. Meeting adjourned at 8:10pm.

Mary Street

Mary Street, Secretary