

**CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING
THURSDAY, DECEMBER 26, 2013 AT 7:00 P.M.
ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING**

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

Members Absent: None

Others Present: Scott McNeil,

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

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 November 27, 2013 Zoning Board of Appeals meeting were presented. **Motion** by Ms. Street, seconded by Mr. Moore, to approve the minutes as presented. Motion carried unanimously.

PUBLIC HEARING & ACTION ON REQUESTS

Robert Raymond/Paul Tranquilla - Requests a 28ft. front setback variance for construction of a porch roof to a dwelling. A portion of the lot is in a Lake and Stream Protection (P-LS) zoning district and a portion of the lot is in a Residential Development (D-RS) zoning district. The property is located at 4672 Second St, Aloha Township, Section 8, parcel #140-A01-008-006-00. A 30 ft. front setback is required in each of these zoning districts.

Mr. McNeil explained this request is for a 28ft. front setback variance. Mr. McNeil stated the applicant is seeking to put a cover over an existing porch which lies 2ft. from the front lot line. Mr. McNeil stated a 30ft. front setback is required. Mr. McNeil stated new construction is proposed in the setback area causing the need for the variance.

Mr. Tranquilla stated he is representing Mr. Raymond. Mr. Tranquilla asked for approval to build a roof. Mr. Tranquilla stated this will not hinder any views of the road or traffic. Mr. Tranquilla stated this roof is necessary to keep the snow off of the porch. Mr. Tranquilla stated the porch on top will be enclosed in the winter time to keep the snow off of the porch. Mr. Raymond stated the prevailing wind is from the west and snow builds up. Mr. Raymond explained that this variance is necessary as he now has leaking downstairs. Mr. Freese asked if Mr. Raymond believes this will keep the snow off of the porch. Mr. Raymond and Mr. Tranquilla explained that the porch will be enclosed with plastic in the winter time to block the snow. Mr. Freese asked if the porch will only be enclosed in the winter time with temporary plastic. Mr. Tranquilla stated yes.

Mr. Freese asked if there was any correspondence. Mr. McNeil stated there were two letters and the Zoning Board of Appeals received copies.

Discussion was held regarding a previous application for a variance. The Zoning Board of Appeals reviewed that a porch was previously approved by the Zoning Board of Appeals but not the railings and styles. Mr. Raymond stated that there was previously an enclosed porch and he requested approval for a variance to extend the porch by 6ft. and was denied. Mr. Freese stated the enclosed porch was torn down prior to the previous variance request. Mr. Freese stated there was only a porch (with no enclosure) and steps at the time of the previous variance request. Mr. Raymond stated he did not receive an approval to extend the porch so he built it back to the same size as it was before. Mr. Freese explained that the porch was a non-conforming structure and could not be rebuilt unless a variance was approved. Mr. Freese stated that a variance was not approved. Mr. Freese stated everything above the cement porch is illegal. Mr. Raymond apologized and stated he did not know that the porch could not be rebuilt. Mr. Brown asked if a permit was issued for the porch. Mr. McNeil stated there was a permit issued but he will have to review the permit. Ms. Street stated that this new construction appears to be residential living space. Mr. Raymond explained that he had obtained the necessary permits. Discussion was held.

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

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

5. Due to an ambiguous wording of the original variance, proper permits were issued for the reconstruction of the original two story porch.
6. The construction, as it presently exists, does not cause any further deterioration of the vision along Second Street with the addition of the proposed construction changes.

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. Brown, to approve the variance based on the General Findings and the Specific Findings of Fact under Section 23.5.4 with the stipulation that permanent walls will not be included on the second floor porch. Motion carried unanimously.

Mackinaw Laundry Services Inc./Chris Brown - Requests a 24ft. front setback variance for construction of an addition to a laundry facility. The lot is in a Commercial Development (D-CM) zoning district. The property is located at 11461 S. US 23, Mackinaw Township, Section 19, parcel #011-019-200-021-01. A 25 ft. front setback is required in this zoning district.

Mr. McNeil explained that this request is for a 24ft. front setback variance in a Commercial zoning district where a 25ft. front setback is required. Mr. McNeil stated the setback is from a 15ft. wide access easement to a dwelling located to the west of the proposed structure. Mr. McNeil stated the proposed structure will be built 1ft. from the drive easement which would require a 24ft. front setback variance.

Mr. Brown requested that he be recused as he is the applicant for this request.

Mr. Brown stated he is representing his employer, Leighio Family Trust, who owns Mackinaw Laundry Services. Mr. Brown stated that the Zoning Department advised him that they look at an access drive easement as an easement to a property. Mr. Brown explained that it is more of a shared driveway. Mr. Brown stated there is a driveway that is within the railroad right of way which is owned by the Village of Mackinaw City and is not shown on the plan. Mr. Brown stated this driveway accesses the well and was granted by Straits Corporation (who owned the property prior to the DNR). Mr. Brown stated they acquired the property in 2008 on a bank foreclosure. Mr. Brown stated an easement was drafted in 2001 to use the driveway to access the loading dock. Mr. Brown stated this is more of a shared driveway with an easement over it. Mr. Brown stated there is nothing in the Zoning Ordinance that addresses this shared driveway. Mr. Freese asked if setbacks are measured from an easement. Mr. McNeil referred to the definition of front setback and stated it references private right of way which have been deemed to include access easements right of way. Mr. Freese questioned if this would affect the setback. Mr. McNeil stated he verified with Mr. Schnell that it has been administered this way in the past. Mr. Freese stated there are probably a lot of easements that are affecting setbacks all over the county. Mr. McNeil stated there have been a few enforcement issues. Mr. McNeil noted that keeping track of easements is difficult. Mr. Brown stated this is a private driveway and the easement is a specific prescribed easement to that landowner only. Mr. Freese stated there is a difference between a road easement and a driveway easement to access a parcel.

Mr. Brown read the definition of a right of way from Zoning Ordinance #200, "An area determining the street or highway public limit or ownership used to accommodate a public transportation system and necessary public utility infrastructure. In addition to the roadway and utilities, it normally incorporates curbs, sidewalks and drainage facilities." Mr. Brown stated there is also a specific easement from the utility company for the power line. Mr. Freese stated this is where you will run into problems and asked if a utility easement affects setbacks. Mr. McNeil stated no and referred to the definition of front setback and noted that the term private access right of way is used. Mr. McNeil read from the definition of front lot line, "...In the case of an interior lot it is the line separating the lot from the abutting public or private road right-of-way...". Mr. McNeil stated this is a dedicated easement. Mr. Moore stated this is not a road; it is a driveway which is different than a private road. Mr. Brown stated there is nothing in the Zoning Ordinance addressing a private drive and through traffic. Discussion was held.

The Zoning Board of Appeals reviewed and approved the General Findings 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 (Moore, Hemmer, Street, Freese), 0 Nays

UNFINISHED BUSINESS

Zoning Board of Appeals Draft Rules of Procedure

Motion by Mr. Moore, seconded by Mr. Brown, to adopt the Rules of Procedure. Motion carried unanimously.

NEW BUSINESS

No comments.

ZBA COMMENTS

No comments.

PUBLIC COMMENTS

No comments.

ADJOURN

Motion by Mr. Moore, seconded to adjourn. Motion carried. Meeting adjourned at 7:49pm.

Mary Street

Mary Street, Secretary