

**CHEBOYGAN COUNTY ZONING BOARD OF APPEALS MEETING & PUBLIC HEARING**  
**WEDNESDAY, APRIL 22, 2015**  
**ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING**

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

**Members Absent:** None

**Others Present:** Scott McNeil, Mary J. Hebert, Sandra McKenna, Darleen Putnam, Carl Muscott, Tony Matelski, Frank Foster, Doug Fryczynski, Lois Ballard, Charles Maziasz

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 March 25, 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.

**PUBLIC HEARING & ACTION ON REQUESTS**

**Dennis Panagopoulos/Frank Foster**- Requests a 49.5ft. front setback variance to construct a porch (22ft. x 24ft.) in an Agriculture and Forestry Management (M-AF) zoning district. The property is located at 4316 Third Street, Aloha Township, Section 8, parcel #140-008-100-021-00. A 50ft. front setback is required in this zoning district.

Mr. McNeil stated this property is located in an Agriculture/Forestry Management zoning district and a 50ft. front setback is required. Mr. McNeil stated the applicant is proposing to add a porch that is 22ft. x 24ft. which will extend within 1/2ft. of the front lot line.

Mr. Foster stated that Mr. Panagopoulos wants to build a screened in porch. Mr. Foster stated he does not know if South Street is an abandoned street. Mr. Foster stated Mr. Panagopoulos would like to build this enclosed porch to improve the building.

There was no correspondence to be read. Mr. Freese asked for public comments. Mr. Maziasz stated the Aloha Township board does not have any issues with this variance request. Public comment closed.

Discussion was held regarding the south road being vacated. Mr. McNeil stated if the road were to be vacated the road is within the plat and any vacated portion of the road will go to the contiguous property owners of the plat.

Mr. Freese stated the property owner could construct the porch to the east without any problem. Mr. Freese stated he doesn't know the layout of the residence. Mr. Foster stated there are two bedrooms on the east and the living room is to the northwest (exiting to the porch). Mr. Foster stated it would not be feasible to walk through the bedrooms to access the screened in porch.

Mr. Freese stated this is a unique situation as the property is virtually part of the Village of Aloha but it is not actually part of the platted Village of Aloha. Mr. Freese stated the parcel is boxed in by the rail road grade and the park. Mr. Freese suggested using the same setbacks that are required in the Village of Aloha since this is a unique situation. Mr. Moore stated that one could argue that this property should be zoned Residential. Mr. McNeil noted that if the property is zoned Residential, the house would be located in the 30ft. front setback. Mr. Moore questioned if the porch really needs to be 22ft. x 24ft. Mr. Moore asked if the requested variance is the least amount necessary to build a porch. Mr. Moore stated 16ft. would be reasonable. Mr. Thompson stated that even 12ft. would be reasonable. Mr. Moore asked if Mr. Foster is authorized to request a different variance amount. Mr. Foster stated that Mr. Panagopoulos would be open to 16ft. which would leave a 9ft. setback from the edge of the road right of way. Mr. Foster noted that the road that is not used could be considered a buffer. Mr. Foster stated that the front property line is only adjacent to the road and not to someone else's

property. Mr. Freese stated the road could be used for other purposes if it is ever vacated. Discussion was held regarding the size of the porch. Mr. Freese stated he does not believe the property owner needs a porch that is this large. Mr. Moore asked what is the front setback in Village Center. Mr. McNeil stated 20ft. for residential use and there is no setback for commercial use. Mr. Freese noted that the side setback is 8ft. in the Village of Aloha and proposed that this parcel should be considered for this case as part of the Village of Aloha. Mr. Foster stated that this would reduce the size of the porch by 7 1/2ft. and the Mr. Panagopoulos will approve of the change. Mr. Moore stated a variance will not be necessary if the Zoning Board of Appeals considers this a side setback. Mr. Moore stated the Zoning Board of Appeals does not need to make a decision if Mr. Panagopoulos is willing to use this dimension. Mr. Freese stated the Zoning Board of Appeals will have to make a decision that this will be handled as a residential lot in accordance with the Village of Aloha restrictions with an address on Third Street. Mr. McNeil stated he believes this is a front setback, not a side setback, as the house and garage are oriented to the front and Third Street is toward that direction. Mr. McNeil recommended that the Zoning Board of Appeals approve a variance based on the criteria.

The Zoning Board of Appeals reviewed the General Findings and changed #6 to "Mr. Foster has agreed to reduce the requested variance by 7.5ft." The Zoning Board of Appeals added "The parcel is unique in that it is a residential use on a parcel that is zoned Agriculture/Forestry Management but is the only parcel between the Village of Aloha and the State Park and therefore will be treated as part of the Village of Aloha for this request." as #7. The Zoning Board of Appeals reviewed the Specific Findings of Fact under Section 23.5.4 and change 23.5.4.5 to "Granting a variance to allow an 8ft. front 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 in the neighborhood. The Zoning Board of Appeals 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 unanimously.

**Mary J. Hebert** - Requests an 8ft. side setback variance for an existing garage. The property is located at 4711 First Street, Aloha Township, Section 8, parcel #140-A01-010-001-00 and is zoned Lake and Stream Protection (P-LS). An 8ft. side setback is required in this zoning district.

Mr. McNeil stated Mrs. Hebert is requesting a 0ft. side setback variance. Mr. McNeil stated that Mr. Lindsay is Mrs. Hebert's attorney and will be representing her tonight. Mr. McNeil noted that a mortgage survey was provided by the applicant. Mr. McNeil stated in the packet there is background information relative to a 2002 variance request and subsequent permits that lead to the construction of the garage. Mr. McNeil stated letters were submitted today regarding this request and have been included as exhibits.

Mr. Lindsay stated this situation is unique in that a variance was requested in 2002 before the Zoning Board of Appeals. Mr. Lindsay stated the variance was requested before the garage was built. Mr. Lindsay stated in 2002 the Zoning Board of Appeals and the Zoning Administrator thought that there was a 33ft. right of way for Center Street and that a variance was not needed. Mr. Lindsay stated that the previous owner was given the approval to build the garage in 2002. Mr. Lindsay stated 9 years later Mrs. Hebert and her husband purchased the home and the bank did not require a survey at that time so no encroachment was found. Mr. Lindsay stated in 2014 (12 years after the garage was constructed) Mrs. Hebert applied for a mortgage loan and a mortgage survey was required and it was discovered that there is an encroachment. Mr. Lindsay stated the Aloha Fire Department and the Road Commission do not have any objections to a variance being granted even though Center Street is a water access street. Mr. Lindsay stated by granting a variance it will simply affirm what has been problem free for 12 years. Mr. Lindsay stated that without a variance being granted the house is not marketable, title insurance can't be obtained and the house can't be used as collateral for a mortgage loan. Mr. Lindsay noted that property values will go down if the house is not marketable.

Mr. Lindsay referred to Section 23.5.4.1 and stated that you can't find a more unique circumstance. Mr. Lindsay stated that the previous owner took all of the necessary steps to obtain a variance and to obtain all of the required permits. Mr. Lindsay referred to Section 23.5.4.2 and stated that the previous owner followed all of the necessary steps to obtain the required permits. Mr. Lindsay stated this situation was created by approval from all county officials including the Planning and Zoning Department and the Zoning Board of Appeals. Mr. Lindsay referred to Section 23.5.4.3 and stated owning a home is not just for the purpose of living in it as people use their homes as collateral for loans and for increase in equity as they may sell in the future. Mr. Lindsay stated that without a variance this property is unmarketable and can't be used as collateral. Mr. Lindsay referred to Section 23.5.4.4 and stated the garage has been there for years and they are asking for a variance to allow the garage to remain as it is currently. Mr. Lindsay stated this is the minimum variance necessary. Mr. Lindsay referred to Section 23.5.4.5 and stated letters were received from neighbors who do not oppose this request. Mr. Lindsay stated the township does not have any objections to this request.

Mr. Freese asked for public comments. Mr. Maziasz, Aloha Township Supervisor, stated that over the years they have not had any issues with this garage being in this location. Mr. Maziasz noted that this is one of the nicer homes in the Village of Aloha. Mr. Muscott noted that this would not be an issue today if a survey was required by the Zoning Board of Appeals 12 years ago. Mr. Muscott stated he is sympathetic to the applicant and that a variance would solve this issue. Mr. Lindsay stated that most people do not order a survey when they buy a residential property. Mr. Lindsay stated a survey is normally ordered when it is required by a bank. Public comment closed.

Board held discussion. Mr. Freese stated that in 2002 the Zoning Board of Appeals relied on the drawing that was provided by the applicant. Mr. Freese stated on the drawing there was 58.5ft. from the house to the edge of the pavement on Center Street which was more than adequate for the setback, however, this distance was incorrect. Mr. Freese stated subsequently there was a foundation inspection done and it passed. Mr. Freese stated all of the necessary permits were applied for and approved. Mr. Freese stated the Zoning Board of Appeals relied on this information even though it was incorrect. Mr. Freese stated he believes the property owner has a vested right and that the garage should remain where it is without any further problems. Mr. Freese stated this type of situation will not be as likely to happen now as there is mapping available. Mr. Moore stated that even if a setback inspection was done there is no guarantee that the pavement is the center of the right of way.

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

8. Previous Zoning Board of Appeals hearing had relied on the applicant's drawing which indicated a 58ft. distance from the house to the edge of the pavement which would have been more than adequate for an 8ft. side setback had the drawing been accurate.
9. All necessary permits and inspections were made by the county without finding any problems before, during and after the construction of the garage.
10. #8 and #9 lead to the conclusion that the owner has a vested right for the current location of the garage.

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 unanimously.

#### **UNFINISHED BUSINESS**

No comments.

#### **NEW BUSINESS**

Mr. Freese introduced John Thompson who is a new member of the Zoning Board of Appeals.

#### **ZBA COMMENTS**

No comments.

#### **PUBLIC COMMENTS**

No comments.

#### **ADJOURN**

**Motion** by Mr. Moore, to adjourn. Motion carried. Meeting adjourned at 7:38pm.

  
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Mary Street Secretary