

City of Charlevoix
Zoning Board of Appeals Regular Meeting minutes
Wednesday, May 18, 2022 - 6:00 PM
Council Chambers, 210 State Street, Charlevoix, MI

1. Call to Order

The meeting was called to order by Chair Hodgson at 6:00 p.m.

2. Roll Call/Pledge of Allegiance

Chair: Richard Hodgson
Vice Chair: Timothy Kish
Members Present: Shirley Gibson, Dan Reed
Members Absent: Ann Gorney, Patricia Miller
Staff Present: Janet Koch, Zoning Administrator

3. Inquiry into Potential Conflicts of Interest

Member Kish stated that he had worked with Harry Golski in the past on a couple of occasions related to real estate transactions. Member Reed stated that Mr. Golski had also helped him with a will.

4. Approval of Agenda

Motion by Member Gibson, second by Member Kish to approve the agenda as presented.

Motion carried by unanimous voice vote.

5. Approval of the Minutes from April 20, 2022

Chair Hodgson stated that he had just received the minutes and he proposed that the item be tabled until the next meeting and the Board concurred.

6. Old Business

A. Interpretation of 153.005 Definition of Building Height

i. Staff Presentation:

Previous Zoning Administrator Jonathan Scheel explained that the Zoning Administrator interprets the Zoning Ordinance and preceded to review the particulars of his interpretation of Zoning Ordinance, Section 153.005, *Definition of Building Height*, as reflected in the memo provided as part of the agenda packet. He explained the two possible interpretations of "building height" and responded to questions and comments from the Board members.

Chair Hodgson stated he felt the intent of the definition language was the maximum building height and 6' above that defines what "you can build within". He also noticed that the version in the memo is from 2020 and the latest is 2021 where they added the 50% coverage and when that happened part of the change (life safety structure) was dropped, therefore a correction to the Ordinance was needed. Chair Hodgson stated that the interpretation is "as written, 6' above maximum building height". Mr. Scheel stated for clarification based on that interpretation in the Central Business District it would be 6' above 40'. Member Reed stated that the interpretation needs to be spelled out in more detail.

Motion by Member Reed, second by Member Gibson to interpret maximum building height to

be consistent with that described under area and placement requirements later in this Chapter. **Motion carried by unanimous voice vote.**

Chair Hodgson asked the Zoning Administrator for a review of the Ordinance and its discrepancies from the Planning Commission

B. Public Hearing for Applicant **2022-02 ZBA**. Dimensional variance request from Charanndor LLC
- 205 Bridge Street

i. Staff Presentation

Chair Hodgson stated that it might be advisable if the applicant wanted to request tabling this item for the interpretation/correction needed related to the building height. The applicant advised that he would still need a variance for the corridor/staircase and elevator shaft as proposed in his application.

Former Zoning Administrator Jonathan Scheel stated that he believed with the flaws in the Ordinance that the ZBA would be derelict in their duties if it stopped the proceeding because of the flaws, but there are absolutely multiple other flaws in that Ordinance and the ZBA had to do its best under the circumstances with intent.

Zoning Administrator Janet Koch reviewed the staff report for ZBA-22-02 at 205 Bridge Street which included requests for two variances: one for the corridor/stairwell height (above the 40' maximum), and one for the elevator and elevator mechanicals (above the 46' maximum).

ii. Applicant presentation (if requested)

The applicant stated that the Board had the revised drawings for the project which included revisions to the location of the AC condensers and the privacy wall to align with the center of the building, limited the height of the privacy wall to 6' above the rooftop so the maximum is 46', shortened the remaining privacy wall in the front to be at the maximum 40' height. He believed that with those changes they did not need any variances for those items. The needed variances were for the elevator shaft height and the stairwell height. He stated he reviewed the building and fire codes which require two (2) stairwells at a minimum, and he described in detail the requirements discussed with John Cochrane, Building Inspector. He responded to questions from the ZBA members.

iii. Call for public comments

Jonathan Scheel stated that he did call the Building Inspector who gave him exactly the same response as the applicant just stated, but per the ADA and the Health & Safety Fire Code he called back and asked directly if the ADA is required because of the residential usage and he spoke to John Cook an inspector who stated that the Charlevoix Building Department was going to require both the elevator and the two staircases.

iv. ZBA determination of findings of fact

(1) Height variance request for corridor/stairwell.

The size of the variance is 1' not 7' as reflected in the staff report.

Extraordinary circumstances: Chair Hodgson stated that extraordinary circumstances do not exist because heights could be adjusted to meet the requirement; the members agreed.

(2) Height variance request for elevator/elevator mechanicals (above 46' max.).

Extraordinary circumstances: Chair Hodgson stated that it was the design of the building and the selection of the elevator that requires the variance.

v. Motion

Motion by Member Reed, second by Member Gibson to deny the variance for the height variance request for the corridor/stairwell (above 40' maximum) based on extraordinary circumstances not being met. **Motion carried by unanimous roll call vote.**

Motion by Member Reed, second by Member Gibson to deny the variance for the height variance request for the elevator/elevator mechanicals (above 46' maximum) based on extraordinary circumstances not being met. **Motion carried by unanimous roll call vote.**

7. New Business

A. Public Hearing for Applicant **2022-07 ZBA**. Dimensional variance request from Harry Golski, PLC (Maurine Watts, Trustee) - 103 Grant Street

i. Staff Presentation

Zoning Administrator Koch stated the applicant is proposing to split an existing lot with two primary structures into two lots with one primary structure on each lot on parcel ID #052-252-002-00. The property is within the Earl Young Historic District, but the District did not need to be consulted on this application as there is no physical change to the buildings. She stated that with this request the parent parcel would be 7,333 sq. ft. and the second parcel would be 3,042 sq. ft. significantly less than the minimum lot width requirement of 6,000 sq. ft.; and it does not meet the minimum parcel width of 50'.

ii. Applicant presentation (if requested)

Harry Golski, Attorney representing the Wallace sisters, stated that should the width variance be granted for 46', the applicants would have no objection to that being granted conditional upon the applicants obtaining a vacation of the alley to the north of the parcel. When that condition was satisfied they would pick up 8.25' which would be added to the north/south line. He explained that this was an unusual situation in that the daughters inherited the property from their mother and this "problem" has been in existence for 100 years. He further explained the reasons for the request to split the property into two separate lots.

Member Gibson stated that the lot size was 10,291 sq. ft. and it appeared that they could make the split more conforming to the minimum lot size at approximately 6,000 sq. ft. for the one lot and 4,291 sq. ft. for the second lot. Mr. Golski stated that the homes are of different sizes and the lot sizes are somewhat more proportional to the size of the existing structures.

iii. Call for public comments

Jonathan Scheel stated that when he was Zoning Administrator he did discuss the alley vacation with the City Manager, Public Works Director, and the Electrical Division and none of them had an issue with the vacation of that alley.

iv. ZBA determination of findings of fact

Member Gibson stated that she believed that this was a perfectly conforming lot in the R-2 with an accessory dwelling unit (ADU), and the City now allows ADU's. She stated that if this is approved they will be setting a precedent that lots with an ADU can be split and she felt that would cause a lot of problems. Discussion followed regarding what lot size is big enough to warrant a variance, creation of a non-conforming lot, non-conforming use of two (2) residences on one parcel, and possible precedents regarding ADU's.

(1) Request for a variance from the required 6,000 sq. ft. minimum lot area required in the R-2, Zoning District of Table 153.072 (a).

Extraordinary circumstances as included in staff report:

(1) Exceptional or extraordinary circumstances or conditions exist on the parent parcel, including exceptional topographic or physical conditions, that do not generally apply to other lots, parcels or tracts of land in the City.

Member Gibson stated that she was not in favor of non-conforming lots. Zoning Administrator Koch stated that they could not consider the smaller residence as an ADU since it was built long before ADU's were regulated and has been a primary residence for many years. Member Kish stated that the City was allowing people to create ADU's and they were not forcing people to create ADU's. Chair Hodgson and Member Gibson did not feel the situation was extraordinary.

(2) The exceptional or extraordinary circumstances or conditions existing on the parent parcel are not the result of any act or omission by the applicant or his or her predecessors in title. Board agreed that the parcel was "grandfathered in". Discussion followed regarding whether or not this was a unique situation.

(3) The granting of the variance shall not be injurious or otherwise detrimental to adjoining lots, parcels or tracts of land or to the general health, safety and general welfare of the City.

Chair Hodgson stated that this was a very small lot which could create additional problems if the owner wanted to add anything else to the property.

(4) The resulting lots, parcels or tracts of land with the variance granted shall be compatible with surrounding lots, parcels or tracts of land.

Member Gibson stated that the small lot does not meet the standards.

(5) The variance granted shall be the minimum variance that will make possible the reasonable use of the parent parcel.

v. Motion

Motion by Member Gibson, second by Member Reed to deny the project 2022-07-ZBA based on specific findings of fact that proves the project does not meet the review standards in 154.08 as there are no extraordinary circumstances and is self-created.

Motion carried by a 3 to 1 vote with Member Kish voting no.

B. Public Hearing for Applicant **2022-04 ZBA**. Dimensional variance request from Timothy Shindorf - 217 West Garfield Street

i. Staff Presentation.

Zoning Administrator Koch stated that the applicant was proposing to construct an attached two-story garage which requires a variance of 8.7' from Section 153.117(D) of the Zoning Ordinance which defines the dimensional requirements for accessory buildings. The corner lot (Grant & Garfield) has two housing units on the property, an older nonconforming mobile home and a newly remodeled home.

ii. Applicant Presentation.

Tim Shindorf stated that his family has owned the property for many years. He stated that he wanted to build a 24' x 26' garage and attach it to the house with a small breezeway and the reason was because the house is on a cement slab and where the two lines come into the house one in the front and one 20' to the back is the only place that he had to undermine the house to get up to Code footing and blocks put in. Member Kish questioned why the new garage couldn't be built in the same area as the small garage that would be demolished and Mr. Shindorf stated there was not enough room for the garage he wanted to build. Mr. Shindorf stated that he rented out the mobile home on the property.

iii. Call for public comments.

Tim Wojan, adjacent property owner, stated that there was a traffic problem in that area and the proposed garage would cause issues with the traffic and he was against granting of the variance. He felt that the property owner could remove the mobile home trailer which would provide more space for the garage.

Bruce Livingston, 803 Grant, questioned the purpose of the second story of the garage. He felt that he would need a variance to the front of the house and Chair Hodgson stated that was not part of the request before the Board. Mr.. Livingston expressed concern about the second story of the garage turning into a living area in the future.

iv. ZBA determination of findings of fact.

Chair Hodgson questioned if the breezeway and garage would come under that limitation where the maximum height was 16' and he felt right away that he could not build the two-story plan. Zoning Administrator Koch confirmed that the maximum height for the garage could only be 16' with the attached breezeway.

Chair Hodgson reviewed the Findings of Fact:

Extraordinary circumstances: Chair Hodgson stated that the applicant could build the garage in another area on the property that would not require variances or eliminate the breezeway.

v. Motion.

Motion by Member Gibson, second by Member Kish to deny 2022-04-ZBA based on specific findings of fact that proves the project does not meet the review standards as there are no extraordinary circumstances and is self created. **Motion carried by unanimous roll call vote.**

C. Public Hearing for Applicant **2022-05 ZBA**. Dimensional variance request from William and Beverly Barton - 401 Antrim Street

- i. Staff Presentation
- ii. Applicant presentation (if requested)
- iii. Call for public comment
- iv. ZBA determination of findings of fact
- v. Motion

Zoning Administrator Koch stated that there was a public hearing notice issue and she would send out the revised notice next week and this case would come before the ZBA in June.

D. Public Hearing for Applicant **2022-01 ZBA**. Dimensional variance request for Turn Key Property Services (Jordan Irish) - 808 East Dixon Avenue

- i. Staff Presentation
- ii. Applicant presentation (if requested)
- iii. Call for public comment
- iv. ZBA determination of findings of fact
- v. Motion

This case was withdrawn.

8. Call for General Public Comment

Mrs. Shindorf questioned why their case was denied and Chair Hodgson explained the extraordinary circumstances.

9. Adjournment

The meeting adjourned at 8:31 p.m.