

City of Charlevoix
Zoning Board of Appeals Regular Meeting Minutes
Wednesday, June 15, 2022 - 6:00 PM
Council Chambers, 210 State Street, Charlevoix, MI

1. Call to Order

The meeting was called to order at 6:00 p.m. by Vice Chair Timothy Kish.

2. Roll Call/Pledge of Allegiance

Vice Chair: Timothy Kish

Members Present: Shirley Gibson, Ann Gorney, Patricia Miller

Members Absent: Richard Hodgson

Staff Present: Janet Koch, Zoning Administrator

3. Inquiry Into Potential Conflicts of Interest

None.

4. Approval of Agenda

Motion by Member Gibson, seconded by Member Miller to approve the agenda as presented.

Motion carried by unanimous voice vote.

5. Approval of Minutes

A. Minutes from the April 20, 2022 ZBA meeting

Motion by Member Gibson, seconded by Member Gorney to approve the minutes of the April 20, 2022 ZBA meeting as presented.

Motion passed by unanimous voice vote.

B. Minutes from the May 18, 2022 ZBA meeting

Motion by Member Miller, seconded by Member Gorney to approve the minutes of the May 18, 2022 ZBA meeting as presented.

Motion passed by unanimous voice vote.

6. Old Business

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

1. Staff presentation

Zoning Administrator Koch stated that the variance involves the existing garage on the south side of the property and it was a request to use it as an accessory dwelling unit (ADU). The applicant is requesting a variance from §153.117(D)9(b) of the Zoning Ordinance which defines the dimensional requirements for ADUs. The variance requested is a 4'4" side yard variance and a 6' front/side yard variance to allow a change of use for an existing structure. On May 9, 2022, the Planning Commission approved a Special Use for the property of a bed and breakfast establishment with the condition that the applicant provide topographic information regarding stormwater runoff to the Zoning Administrator.

Zoning Administrator Koch stated that there were letters of public comment included in the packet and that she had received several phone calls and a number of people did stop by the office to review the application and plans. Zoning Administrator Koch stated the residents directly across the street were in favor of it, the other residents expressed they had no concerns with the project, and one was not in favor.

Zoning Administrator Koch stated that she did want the ZBA to note that this is a non-conforming structure because it's inside of the setbacks under §153.290, however an ADU is in fact a use by right in the current zoning district, so there is essentially a conflict between those two different things. The possibilities for an ADU without the variance do exist, it would be possible for the applicant, instead of getting a variance, to remove the existing structure and to build a new one outside of the setbacks and be in full compliance. She stated that the ZBA should focus on the standards and not have short-term rentals be a part of the discussion.

2. Applicant presentation (if requested)

Beverly Barton stated that they bought the property from the Staley family last year and did their due diligence and received a special use permit from the Planning Commission. She stated that she was of the understanding after reading the Zoning Ordinance that they cannot rent out the garage and it was not their intention to rent the garage space. Their intent was to have a bed and breakfast in the main building and that they would live in the accessory dwelling unit (garage). She stated they have started to install the plumbing and they have put in the bedroom, bath and utility sink and they are coming before the ZBA for a variance because the Staleys owned both properties and that's probably why the garage was built 6" off the property line. She stated that they needed the kitchen to be able to live there and serve the bed and breakfast.

Discussion followed regarding the need for the kitchen to be outside of the main structure, not blocking the driveway with space for one vehicle inside the garage, and the possibility of two (2) current existing parking spaces which would cover the sidewalk,

3. Call for public comments

RJ Waddell, Planning Commission Chair, stated that he was glad to hear about the garage, there was no sidewalk along Sherman Street, and there were two driveways, one to the house and one to the garage. He stated that as an accessory dwelling unit it would be rentable, long-term or as a short-term rental. The way the bed and breakfast rules are written, it cannot be a rental as part of the bed and breakfast. Mr. Waddell stated that the Planning Commission approved the special use permit with the condition that they wanted a drainage map of the property. He stated the plan submitted by the Barton's architect showed that half of the garage that's being proposed as the ADU has an overhang over the neighbor's yard. Discussion followed regarding the issue of half of the building drains onto the adjoining property and the conditions placed on the special use approval.

Public comments were closed.

4. ZBA determination of findings of fact

Vice Chair Kish read each of the Findings of Fact and the Commission reviewed the staff recommendations included in the staff report as well.

Extraordinary Circumstances: No change.

Substantial Justice: Member Gibson felt that the owner can reasonably use the property without a variance.

Impact on the Surrounding Neighborhood: No change.

Public Safety and Welfare: No change.

Not Self-Created: Vice Chair Kish stated the property itself was purchased with the intent of using it as a bed and breakfast and it was known when the building was purchased that it was a non-compliant building. He stated it was clear that it did not meet the standards for an ADU when the property was purchased. Member Gorney agreed the garage had been in existence for many years, was built on the lot line and was not self-created.

Member Gibson read an excerpt from the ZBA Manual which stated, "our authority to allow people to break the law by granting variances should be used wisely, sparingly, and appropriately within the context of the community's planning and zoning framework. When the rules are consistently applied and enforced, all parties can know what to expect. When the ZBA is asked to change the rules as applied to a given site, this consistency is jeopardized. Our decisions can and will impact people and property throughout the community." Member Gibson stated the applicant should have gotten everything in place before the purchase so that no variances were necessary.

Zoning Administrator Koch stated that it is a use by right in R-2, but it is also a non-compliant structure.

Beverly Barton summarized the reasoning behind their choice to request the variance and what they could do if the variance was not granted. She stated that they did their research before the purchase and had spoken to the former Zoning Administrator in depth about their project.

RJ Waddell, Planning Commission Chair, stated five years ago when the Planning Commission established ADU's and when they created specifications for ADU's, it was for new construction, and he remembered someone asking about someone who already has a building that is out of compliance could that become an ADU, and the response at the time was to let the ZBA take care of that as it would be on a case by case situation.

Member Gorney questioned if the corner lot issue with two front yards would meet the substantial justice standard. Member Gibson stated that they weren't preventing the use of the property, but the owners wanted to do more than what's allowed. Zoning Administrator Koch stated that if the applicants built the ADU within the setbacks and inside the current building envelope, then there would be no need for the variance. The ADU itself would meet the setbacks inside of a non-conforming building in that scenario.

5. Motion

Motion by Member Gibson, seconded by Vice Chair Kish to deny Project 22-05 ZBA based on specific findings of fact that prove that the project does not meet the review standards in

153.038(F).

Motion failed by a 2 to 2 vote with Member Gibson and Vice Chair Kish voting in favor of the motion, and Members Gorney and Miller voting against the motion.

Motion by Member Gorney, seconded by Member Miller to approve Project 22-05 ZBA with the condition that there be no drainage onto neighboring properties and that there would not be a rental of the ADU based on specific findings of fact that prove that the project does meet the review standards in 153.038(F).

Motion failed by a 2 to 2 vote with Member Gorney and Member Miller voting in favor of the motion, and Member Gibson and Vice Chair Kish voting against the motion.

7. New Business

None.

8. Call for General Public Comment

None.

9. Adjournment

Vice Chair Kish adjourned the meeting at 7:35 p.m.

Sarah Dvoracek/fgm

Clerk

Timothy Kish

Vice Chair