

City of Charlevoix
Zoning Board of Appeals Regular Meeting Minutes
Wednesday, August 21, 2024 - 6:00 PM
Council Chambers, 210 State Street, Charlevoix, MI

1. Call to Order

Chair Hodgson called the meeting to order at 6:00 p.m.

2. Roll Call/Pledge of Allegiance

Chair: Richard Hodgson

Members Present: Shirley Gibson, Ann Gorney, Dan Reed (Alternate)

Members Absent: Tim Kish, Patrica Miller

Staff Present: Jonathan Scheel, Zoning Administrator

3. Inquiry Regarding Conflicts of Interest

4. Approval of Agenda

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

Motion passed by unanimous voice vote.

5. Approval of Minutes

A. April 17, 2024

Motion by Member Gorney, seconded by Member Gibson to approve the minutes of April 17, 2024 as presented.

Motion passed by unanimous voice vote.

6. Old Business

7. New Business

A. Public Hearing for Applicant William and Kelli Lockwood 1209 Bridge Street. Request for two Interior side yard variances of 9'6" and 1' 10"

i. Staff Presentation

Exhibit 1. Variance Application

Exhibit 2. Site pictures and map

Exhibit 3. Site Plan (proposed)

Exhibit 4. Misc documents

ii. Applicant presentation (if requested)

iii. Call for public comment

iv. ZBA determination of findings of fact

v. Motion

Staff presentation: Director Scheel stated the applicants were requesting a variance for parcel ID 052-369-038-00 from Subsection 153.087 of the Zoning Ordinance, which defines the dimensional requirements in the Commercial Mixed Use Zoning District. The variance requested is a 9'6" interior side setback variance and a 1'10" interior side setback. The site's

address is 1209 Bridge Street. The parcel has dimensions of 85' x 60', with an area of 5,100 square feet. The applicant is proposing constructing a residential unit upstairs which is a use by right in the Commercial Mixed Use District. The variance is for the deck and staircase. The legal, non-conforming building was built long before zoning regulations were in place. This is a corner lot on Bridge and Green Streets with two front yards and two side yards.

Applicant presentation: William Lockwood, III, stated he and his wife, Kelli Lockwood, purchased the building in 2016, and they intend to add living quarters upstairs. Mr. Lockwood stated they were looking to keep the parking they had available for the retail downstairs and if they did not get the variance, it would impact their parking. Mr. Lockwood stated they were looking to potentially have two (2) residential units upstairs.

Call for public comment: Phil Parr, concerned citizen, 108 Green Street, stated he had three questions based on the zoning variance: 1) because of the zero lot line would this Board enforce the applicant to add a privacy fence based on the zero lot line; 2) is there already a residential dwelling space upstairs?; and 3) is the residential space going to be used as a short-term rental?

Peggy Wenzel, 104 Wood Street, instead of having an overhang for the stairway at the front of Green Street, could they not have the stairway go up through the deck itself. Director Scheel explained the drawings included in the packet that showed the location of the staircase in the back corner.

Director Scheel stated Sherry Hammond, 101 Green Street (direct adjacent neighbor) came into the office with her concerns about this project, and she wanted him to relay those concerns to the Board including: the need for a privacy fence between the two properties, a fence where the staircase would be, and she doesn't believe there is a hardship for the variance and that it should stay 10' away from the property line, and she was worried about parking. Director Scheel stated there were some A/C units that came out of that building even further onto her property, but again it's legal, non-conforming.

Sherry Hammond, 101 Green Street, stated that on the west side of the building there are two cameras in place, one on each end of the house that do show that they are on her front door and she is still building on her property, but she felt the cameras were an invasion of her privacy. Chair Hodgson stated that he could sympathize, but it was not relevant to the variance request. Ms. Hammond stated she wanted to pursue this because she wanted the cameras taken down.

Member Gibson stated the applicant mentioned they have windows upstairs. Mr. Lockwood stated the windows were on the back side of the building and in 1998 there was a cap built over the building. Mr. Lockwood further explained the building had 2' x 4' walls from the ground up and at that time the back wall was put on their property and two air conditioners were placed on the ground, the units serve the downstairs store area. Mr. Lockwood stated they use the attic for storage, and they have one window air conditioner on the upper floor. Mr. Lockwood stated the cameras are in place to monitor their air conditioners, and he could adjust the cameras to block out anything other than their back wall and air conditioners.

Member Reed asked the applicant to explain more about how putting the deck with the posts out in front improves parking. Kelli Lockwood stated the design of the deck and the placement of the posts was to facilitate the parking that presently exists. Ms. Lockwood stated it was professionally designed, so the spacing would allow for the parking that they have now. Ms. Lockwood stated if they were unable to get the variance, the design would have to be in such a way that it would inhibit parking, which would increase parking on Green Street. Ms. Lockwood stated the way the deck is designed with the variance would allow them to retain the existing parking, it would not limit the parking spaces in the parking lot itself.

Discussion followed regarding the parking situation with the variance which would allow parking under the new deck in between the posts.

Member Reed questioned how they accessed the storage upstairs from the interior of the building. Mr. Lockwood stated they have a hatch that they climb through to go upstairs.

Laurie Azolas, 103 Green Street, referenced the french doors on the building where the stairway to the upstairs would be placed.

Sherry Hammond, 101 Green Street, stated her future plans included adding a driveway on that side of her house and if there were going to be apartments on the subject property she did not want the business on her side and the wooded area would be removed.

ZBA determination of findings of fact: Chair Hodgson began a review of each of the findings of fact. The applicant is requesting two interior side setback variances - one at 9'6" and the second one at 1'10".

(a) Extraordinary circumstances: Member Reed stated he was not sure if the second variance at 1.10' was the result of narrowness of the property. Member Reed stated that the lot had little to do with the property as to where the posts were constructed and has everything to do with the width of the car, so that variance was not really the result of where the property lines were or the size of the building, and it had everything to do with the car and how they could park it underneath. Chair Hodgson stated he thought that issue would come up under (b) Substantial justice. Director Scheel explained some of the challenges, with a small lot below the average lot size in the Commercial Mixed Zoning district.

Member Gibson stated she disagreed and that the property was not unusual without granting this variance, and they could still use the property. Chair Hodgson stated that concern fell under a different finding of fact.

Finding of Approval - #1 & 2: The ZBA finds that the need for the requested variance is due to unique circumstances regarding the property. The minimum lot size is 9,000 sq. ft. and the lot is substantially smaller (5,100 sq. ft) than most lots in the CM District, average 6,700 sq. ft. The ZBA finds that this standard is met as a result of the existing legal non-conforming lot length and area leaves very little room in the remaining yard, which substantially reduces the property's building area. The building is also legal, non-conforming.

Substantial Justice: Member Gorney stated she did not see that the 9'6'" would unreasonably

prevent the use of the property. Member Reed questioned if it was substantial justice to eliminate a parking spot that they would presumably need for living or business. Member Gorney stated that the posts were 6' apart on the north end of the building and the deck overhangs farther than the posts. Chair Hodgson read language from the Zoning Code: "No non-conforming building or structure may be enlarged or altered in a way that increases its non-conformity except in cases in which the setback of the building or structure is non-conforming by 50% or less of the distance required by this chapter. Only in these cases may the non-conforming setback be extended along the same plane as the existing non-conforming setback provided that in doing so the setback itself is not further reduced." Chair Hodgson stated, per the Code, the Board could not increase the non-conformity of a property. ~~Member Reed stated there would not be the same utilization of the property in the sense that real estate is going to be reduced with a solution that reduces or eliminates the variance.~~

Discussion followed regarding whether parking was something the Board should consider.

Chair Hodgson questioned if he articulated correctly that the variance request #1 didn't pass because it could be less and the conflict with the Code on increasing a non-conformity. Chair Hodgson stated that variance request #2 was the same, but without the conflict with the Code, because a similar result could be accomplished without a variance.

Motion by Member Gibson, seconded by Member Reed to deny Project ZBA 24-02 a 1'10" interior side setback variance based on specific findings of fact that prove the project does not meet the review standards in 153.038 (F)(2)(b).

Motion passed by unanimous voice vote.

Motion by Member Gibson, seconded by Member Reed to deny project ZBA 24-02 a 9'6" interior side setback variance based on specific findings of fact that prove the project does not meet the review standards in 153.038(F)(2)(b).

Motion passed by unanimous voice vote.

8. Other

A. Zoning Administrator's Report

Director Scheel provided the Board with a brief update on the current projects throughout the City.

9. Public Comment

10. Adjourn

Chair Hodgson adjourned the meeting at 7:20 p.m.

