



Agenda
City of Charlevoix Zoning Board of Appeals Regular Meeting
Wednesday, June 17, 2026 - 6:00 PM
Council Chambers, 210 State Street, Charlevoix, MI

- 1. Call to Order**
- 2. Roll Call/Pledge of Allegiance**
- 3. Inquiry Regarding Conflicts of Interest**
- 4. Approval of Agenda**
- 5. Approval of Minutes from**
 - A. Minutes of October 25, 2025
- 6. Public Comment**
 - A. An opportunity for the public to speak to the ZBA Members for up to 3 minutes about agenda or non-agenda topics.
- 7. New Business**
 - A. Election of Officers
 - B. Setting of 2026 Meeting Dates
 - C. Public Hearing for Applicant Pamela Himmelrich 421 Michigan Ave.
 - 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
 - i. Nine Foot Side Yard Variance Request at 421 Michigan Ave.
- 8. Old Business**
- 9. Board Comments**
 - A. ZBA Member questions, comments and other concerns
- 10. Adjourn**

Persons with disabilities who need an accommodation to fully participate in these meetings should contact the City Clerk's Office at 231-547-3250 or by email clerk@charlevoixmi.gov. A 24-hour notice may be needed for certain accommodations. An attempt will be made to grant all reasonable accommodations requests.

City of Charlevoix
Zoning Board of Appeals Regular Meeting Minutes
Wednesday, October 15, 2025 - 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

Members Absent: Patricia Miller

Staff Present: Jonathan Scheel, Director of Planning & Zoning

3. Inquiry Regarding Conflicts of Interest

None

4. Approval of Agenda

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

Motion passed by unanimous voice vote.

5. Approval of Minutes from

Zoning Board of Appeals Minutes of August 27, 2025

Chair Hodgson presented a written list of potential changes to the August 27, 2025 minutes

Motion by Member Reed, seconded by Member Gorney to approve the minutes of August 27 2025, as amended.

Motion passed by unanimous voice vote.

6. Old Business

Continuation of Cases 25-02 and 25-03 403 and 405 Antrim Street

Chairman Hodgson, stated he believed the memo from the City Attorney satisfactorily answered the questions and concerns of the board members from the August 27th meeting. He thought that the board should require a condition of approval that included delivering a Shared Maintenance Agreement (Shared Wall Agreement) to the Zoning Administrator for his and potentially the city attorney's review.

Motion by Member Gibson, seconded by Member Gorney to approve ZBA 25-02 with conditions based on specific finding of facts outlined in the Staff Report presented at the August 27, 2025 meeting that proves the project meets the review standards in 153.038 (F) of the City of Charlevoix Zoning Ordinance. Condition of the afore-mentioned Shared Maintenance Agreement.

Motion by Member Gibson, seconded by Member Gorney to approve ZBA 25-03 with conditions based on specific finding of facts outlined in the Staff Report presented at the August 27, 2025 meeting that proves the project meets the review standards in 153.038

(F) of the City of Charlevoix Zoning Ordinance. Condition of the afore-mentioned Shared Maintenance Agreement.

7. New Business

None

8. Public Comment

None

9. Adjourn

The meeting was adjourned at 6:22 p.m.

Charlevoix Zoning Board of Appeals

New Business

Title: Public Hearing for Applicant Pamela Himmelrich 421 Michigan Ave.

Date: June 17, 2026

Presented By: Sarah Dvoracek, City Clerk

Background:

The applicant is requesting is proposing to install an AC condenser on an existing legal nonconforming lot at 421 Michigan Ave, parcel ID 052-140-008-00. The variance requested is a nine (9) foot interior south side setback variance.

Recommendation:

Attachments:

1. zba3



June 2, 2026

NOTICE OF PUBLIC HEARING

Zoning Board of Appeals
Charlevoix City Hall - Council Chambers 2nd Floor
210 State Street, Charlevoix, MI 49720

Case Number: 26-01 ZBA
Parcel #: 052-140-008-00
Applicant: Pamala Himmelrich
Property Address: 421 Michigan Ave
Property Owner(s): HIMMELRICH A & C HIMMELRICH TRUSTS

The City of Charlevoix Zoning Board of Appeals will hold a public hearing on Wednesday, June 17, 2026, at 6 pm in the Charlevoix City Hall Council Chambers to evaluate a variance application for a dimensional variance at 421 Michigan. The applicant is requesting an interior side setback variance of 8 feet, from the requirements defined in §153.087 of the Zoning Ordinance.

The property is zoned Residential 1. The application proposes installing an air conditioning condenser within one foot from the side property line. The Board of Appeals may approve, approve with reasonable conditions, or deny the application based on specific findings of fact.

Written and oral comments from the public are welcome. Written comments can be mailed or emailed to the Zoning Administrator until 4:00 pm the day of the meeting. The case file and plans may be viewed at the Planning and Zoning Office in the lower level of City Hall between the hours of 8 am - 4 pm Monday through Thursday, or by appointment.

Jonathan Scheel
Director of Planning and Zoning
Office of Planning and Zoning
210 State Street Charlevoix, MI 49720
planner@charlevoixmi.gov
(231) 547-3265



Please describe the type of construction or proposed use for a use variance:

Placement of air conditioner Condensing unit to be used with existing forced air HVAC system.

Dimensions of proposed construction excluding eaves: 13" (W) x 38" (L) x 55" (H)

Total square footage of proposed construction: 4.97 square feet

Height of proposed construction to the top of the roof: 55" (ground to top of unit) + slab

Height of proposed construction to the midpoint of the roof for gabled roof: N/A

Roof Type: (Examples: Gable, Hip, Gambrel, Mansard, Flat) Gable

Variance Requested: Front Yard Setback _____ feet from front property line.

Rear Yard Setback _____ feet from front property line.

Side Yard Setback 72 feet from front property line.

Lot Coverage: Request .036% coverage.

Setback

Use Variance Requested: Yes No If yes please describe the proposed use: Setback, not use variance, requested

What hardship or practical difficulties exist that prevents the property owner from being able to meet the requirements of the Zoning Ordinance?

See attached

Attach a scale drawing of the proposed construction. Please be as detailed as possible, as this will be used to determine if a variance can be approved in accordance with the Zoning Ordinance. Corrections or additions may be required by the Zoning Administrator to determine compliance with the Zoning Ordinance. Included:

Include all of the following:

- Lot or parcel dimensions.
- Existing building and dimensions, excluding eaves.
- Proposed building and dimension, excluding eaves.
- Front, site, and rear yard dimensions.
- Dimensions between existing and/or proposed buildings.
- Location and dimensions of all impervious surfaces including structures, sidewalks, driveways, patios, etc.

Boundary survey of property
magnified photo showing unit's placement and property line, as well as gravel pathway.

- Name of nearest road, easement, or dedicated right-of-way.
- Scale, North arrow.

AFFIDAVIT: I agree the statements made above are true, and if found not to be true, any Zoning Board of Appeals ruling that may be issued may be void. Further, I agree that any Zoning Board of Appeals ruling and subsequent permit that may be issued is issued with the understanding that the individual(s) in receipt of that ruling/permit will comply with all applicable sections of the City of Charlevoix Zoning Ordinance. Also, I agree to notify the City of Charlevoix Zoning Administrator before the start of construction and when locations of proposed uses are marked on the ground so that the Administrator may perform a site inspection. Further, I agree to give permission for officials of the City of Charlevoix, the County, and the State of Michigan to enter the property subject to this permit application for purposes of inspection. Also, I understand any zoning action by the Zoning Board of Appeals conveys only land use rights, and does not include any representation or conveyance of rights in any other statute, building code, deed restriction, or other property rights. I understand that the ZBA may impose conditions of approval and I agree to meet those conditions as outlined in the Decision and Order.

Signed: Pamela M Himmelich
Date: March 17 2026

CERTIFICATE OF BOUNDARY SURVEY

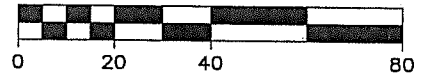
SHEET NO. 1 OF 2

CERTIFIED TO: PAM HIMMELRICH
14 MEADOW RD.
BALTIMORE, MD 21212

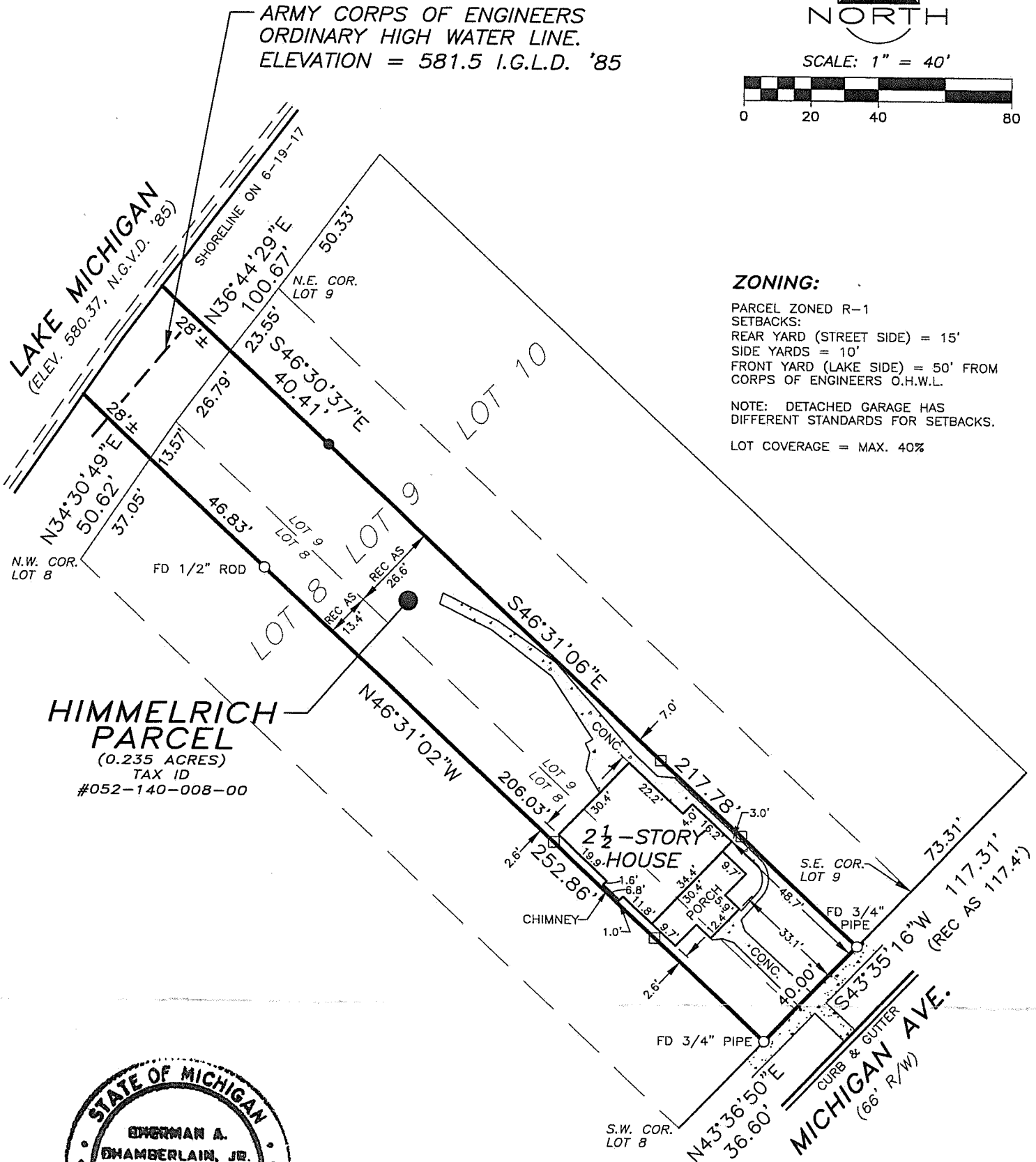
PART OF LOTS 8 & 9
CROUTER'S ADDITION TO THE CITY OF CHARLEVOIX
(LIBER 2 OF PLATS, PAGE 3)
CITY OF CHARLEVOIX, CHARLEVOIX COUNTY, MICHIGAN



SCALE: 1" = 40'



ARMY CORPS OF ENGINEERS
ORDINARY HIGH WATER LINE.
ELEVATION = 581.5 I.G.L.D. '85



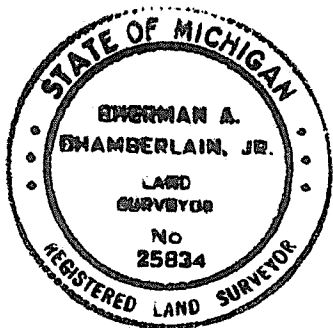
ZONING:

PARCEL ZONED R-1
SETBACKS:
REAR YARD (STREET SIDE) = 15'
SIDE YARDS = 10'
FRONT YARD (LAKE SIDE) = 50' FROM
CORPS OF ENGINEERS O.H.W.L.

NOTE: DETACHED GARAGE HAS
DIFFERENT STANDARDS FOR SETBACKS.

LOT COVERAGE = MAX. 40%

**HIMMELRICH
PARCEL**
(0.235 ACRES)
TAX ID
#052-140-008-00



SHERMAN A. CHAMBERLAIN, JR. P.S. NO. 25834

I HEREBY CERTIFY that I have surveyed and mapped the property hereon delineated and that the ratio of position closure of the unadjusted field data exceeds 1:5000; and that it complies with P.A. 132, 1970.

LEGEND:

1. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
2. BEARINGS ARE BASED ON PRIOR SURVEY'S OF CROUTER'S ADDITION TO CHARLEVOIX.
3. "O" DENOTES FOUND IRON/ROD FOUND IN PLACE.
4. 1/2" x 24" STEEL RODS WITH I.D. CAPS HAVE BEEN SET AT ALL POINTS MARKED WITH "●".
5. "□" DENOTES WOOD LATH & NAIL SET ON PROPERTY LINE.
6. ELEVATIONS ARE BASED ON I.G.L.D. DATUM OF 1985.

FERGUSON & CHAMBERLAIN ASSOCIATES, INC.
PROFESSIONAL SURVEYORS
103 W. UPRIGHT STREET, CHARLEVOIX, MICHIGAN 49720
(231) 547-6882 - FAX (231) 547-0021
EMAIL: info@fcasurveying.com

FIELD: 06-19-17	STAKED: MW - JT	DRAWN: IDS
JOB: SB-26330c.16	DATE: 06/29/2017	

What hardship or practical difficulties exist that prevent the property owner from being able to meet the requirements of the Zoning Ordinance?

(2) A dimensional variance may be allowed by the ZBA only in cases where the applicant has shown a practical difficulty in the official record of the hearing. The applicant must prove that all of the following conditions have been met:

(a) Extraordinary circumstances. There are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district. Exceptional or extraordinary circumstances or conditions may include:

1. **Exceptional narrowness, shallowness, small size or shape of a specific property on the effective date of this chapter:** 421 Michigan Avenue, built 105 years ago, was constructed on an exceptionally narrow 40' wide lot, land assembled from the two adjacent properties. By comparison, our neighbors' Michigan Avenue properties, up and down the street, range from 60 to 135 feet in width. 421 Michigan Avenue is the only house on the street without a driveway; there's just no space for one. While there is a small front and back yard, there is minimal property on either side of the home, making it impossible to meet the setback rules. A boundary survey by Ferguson & Chamberlain Associates, Inc. of June 29, 2017 is attached and shows details of this uniquely narrow property.
2. **Exceptional topographic conditions or other extraordinary situation on the land, building or structure.** In addition to the extraordinarily slim profile of the property, especially for a Michigan Avenue house, the back yard is small and sloped. Two towering and very old pines, with extensive root systems above and below the lawn's surface, sit just behind the house on the southwest corner. Last year, severe weather and winds off Lake Michigan took down several very large pine branches, along with the rain gutter that runs the width of our roof (it had to be fully replaced by Scott Keinath at Superior Gutters). This gutter drains onto the back, southwest corner of the yard, beneath the pine trees. Preventing water, from heavy rains and winter snows, from entering the basement has always been a daunting task. The sloped topography, water management, significant amount of pine tar and needles put down by the trees, as well as harsh weather conditions on the lake side, make the rear of the house an unviable option for a condenser unit.
3. **The use or development of the property immediately adjoining the property in question, whereby the literal enforcement of the requirements of this chapter would involve practical difficulties.** The extreme narrowness of our property on the north and south sides makes it impossible for us to meet the zoning setback provisions, as written. Inhospitable terrain, at the back of our home, makes that location an unwise and untenable choice (see the attached recommendation from RGM Services, Inc., our

Charlevoix HVAC contractor). We do not see any practical difficulties for our neighbors, or anyone else, that would result from placing a unit on our property, on the side of our home.

(b). **Substantial justice.** Compliance with the strict letter of the restriction's governing area, setbacks, frontage, height, bulk, density or other dimensional provisions would unreasonably prevent the use of the property. Granting of a requested variance or appeal would do substantial justice to the applicant as well as to other property owners in the district and such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. Any variance granted shall be the minimum necessary to allow the preservation of these substantial property rights. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance. We are requesting a setback variance to put a single, energy efficient air conditioning condenser unit on our property, immediately next to our house.

The property survey shows that our chimney extends out from the house a similar distance as the unit would (and has since the house was constructed in 1920). Aside from a slim concrete pad for the 13" (W) x 38" (L) x 55" (H) condenser unit to sit on, this is not a construction project. We do not believe installing this unit will disturb our neighbor's tranquility or impact our neighbor's use of their property. Their air conditioning units sit almost directly opposite of where we seek to put our single unit.

Putting in air conditioning is something that many of our neighbors have already done or could do in the future, if they so choose. Without a zoning variance, we are not able to enjoy the same property rights as our neighbors up and down Michigan Avenue, in our zoning district, or in the general vicinity of our home.

(c) **Impact on the surrounding neighborhood.** The variance will not be detrimental to adjacent property and the surrounding neighborhood or interfere with or discourage the appropriate development, continued use or value of adjacent properties and the surrounding neighborhood as compared to other uses in the neighborhood. We believe that granting us a setback variance and allowing us to install a single air conditioning condenser unit on our property will not be detrimental to our immediate neighbor or the surrounding neighborhood in any way.

(d) **Public safety and welfare.** The granting of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, comfort, morals or welfare of the inhabitants of the city. The air condenser unit will not deprive our neighbor's access to light or air. The unit is only 55" high. There is a hedge between the two homes which acts as a privacy screen. The unit would not be visible to our neighbors next door or anyone passing by on the street. It would not be a fire hazard, endanger public safety, or impact the comfort, morals or welfare of the citizens of Charlevoix.

(e) **Not self-created.** The immediate practical difficulty causing the need for the variance request was not self-created by the applicant or previous owners of the subject property. 421 Michigan Avenue has been in our family for 72 years. During my parents, Anne and Jeff Miller's ownership, and now ours, we have sought to maintain the home's original integrity and character. While it would be wonderful to have a bit more space, we have always lived respectfully within our property constraints, mindful of our neighbors on either side. **We did not self-create this problem**, as we were not around in 1920 to assemble this narrow lot or build our house. However, as a result of this unusual predicament, we now seek a setback variance. **I believe we meet every special condition outlined above.**

We are responsible and proud Charlevoix residents, albeit for only four months a year. It is our hope that the members of the Zoning Board see that our request is reasonable and constrained in scope and that we would like to enjoy our property as our neighbors enjoy theirs. Thank you for considering our request.



RGM Services, LLC
5694 M 66 N
Charlevoix, MI 49720
(231) 459-4055

March 12, 2026

Re: Pam Himmelrich
421 Michigan Avenue
Charlevoix, MI 49720

To: Members of the Zoning Board of Appeals

We have been contracted by Pam Himmelrich to install air conditioning at 421 Michigan Avenue in Charlevoix. Following a thorough property evaluation (closely examining each side of the property), we have determined that the exterior south side of the residence is the only possible location for the unit, as it provides direct access to the furnace and electrical connections in the basement, works with the topography of the home, and is protected from the harsh winds and weather off the lake. From our extensive experience in the HVAC business, and for a number of common-sense reasons, installing the unit in any other location on the property would significantly diminish the system's performance, which would not meet our professional standards. We have been in business over twenty-five years and care deeply about our reputation as an honest and reputable HVAC contractor.

To accommodate the extremely narrow property line on the south side, we have selected a specialized tall, narrow condensing unit, compatible with the existing 410A gas A-coil currently installed on the Himmelrich's furnace. The outdoor condensing unit, standing at 13" x 38" x 55", would sit fully on the Himmelrich property. This high efficiency unit would be out of sight from the street and adjacent neighbors and would be protected from challenging weather conditions on the Lake Michigan side of the house.

It is noteworthy that the neighbors' air conditioning units are mounted almost directly across from where the Himmelrich unit would be placed.

It is our professional opinion that the exterior south side of the Himmelrich home is the only suitable location on the property for the installation.

If you have any questions, please contact our office at 231-459-4055.

Sincerely,

Thomas Moore

Thomas S. Moore
Owner

5. Courts: Permeable patios and practical difficulty: court reverses ZBA denial over self-created hardship and burdensome compliance

Case: *Crooked Lake Yacht Club, Inc. v. Emmet County*

Court: Michigan Court of Appeals (Unpublished, Decided February 18, 2026, No. 372425)

Concluding that defendant-ZBA's findings did not show "that its decision was based on substantial evidence or proper application of the law, the" court held that the trial court did not err in reversing the ZBA's decision denying plaintiff-CLYC's request for a dimensional variance. The trial court granted the variance on appeal. Three standards in defendant-county's ZO were at issue. Standard 1 required "that an applicant must meet to show that the proposed practical difficulty was not self-created[.]" The court found that in light of "where the clubhouse was located and the unique circumstances of the land where the patio was to be located—all of which predated the 25-foot zoning requirement—CLYC introduced substantial evidence in the record that this practical difficulty was not self-created.

The building location and lot size were set before the ordinances were enacted. Based on these pre-existing conditions, if CLYC built a patio in the same size and location as requested, it necessarily would encroach on the waterfront setback. And CLYC introduced evidence that the patio had to be of that size and at that location. (Whether the evidence was, in fact, sufficient to show such necessity was subject to Standard 2.) Thus, in this respect, the ZBA decision for Standard 1 was based on neither sound application of the law nor competent, material, and substantial evidence." As a result, the trial court did not err in finding "that, if the ZBA had reviewed the request as if the patio had not been built, the standard would have been met because of the grandfathered building, location, lot size, and configuration."

The record also indicated "that the ZBA failed to consider the second prong of Standard 2. . . . Standard 2 can be satisfied by showing *either* prong: (a) unreasonably prevent use, or (b) unnecessarily burdensome. Therefore, the ZBA's findings on this standard did not represent a 'reasonable exercise of discretion.'" Further, CLYC presented "substantial evidence that it would be unnecessarily burdensome to comply with the ordinance." Finally, the court held that "the trial court properly analyzed the criteria when it found that Standard 3 was met" and correctly concluded "the ZBA's decision on Standard 3 was not a reasonable exercise of discretion." Affirmed. Source: State Bar of Michigan, e-Journal No. 85258, March 6, 2026.

Full Opinion: <https://link.edgepilot.com/s/57cd9f82/iawt0CM-YEKpNggqxUPQaw?u=https://www.michbar.org/Portals/0/opinions/appeals/2026/021826/85258.pdf>

Google Notebook Video Summary—This AI generated summary provides a different way to understand these cases (*let me know what you think!*) we're testing it out.



Shows that AC placement will not extend past existing chimney

Shows close up of proposed unit

Shows where permanent placement will be

Hedge on neighboring property covered by burlap





rear corner of property
SW corner

looking toward rear of property

South side of home dripline
and roots of neighbors trees

from backyard looking at rear
of home





neighbors AC units from rear of property.



neighbors AC units directly across from where new unit is proposed

neighbors AC units

neighbors AC units





indicates that the unit
would fall within
Himmelrich property



Shows chimney + unit
falling within Himmelrich
Property



**ZONING BOARD OF APPEALS
STAFF REPORT**

AGENDA ITEM:	<u>ZBA 26-01 Variance Request for 421 Michigan Ave.</u>
PUBLIC MEETING DATE:	June 17, 2026, 6:00 PM
PRESENTED BY:	Jonathan Scheel, Director Planning and Zoning

EXHIBITS:	<ol style="list-style-type: none"> 1. Notifications 2. Variance application dated 3-12-2026 3. Boundary survey 4. Site plan, 5. City of Charlevoix Zoning Ordinance, adopted 7-1-2024.
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1. PROPOSAL

The applicant is requesting is proposing to install an AC condenser on an existing legal nonconforming lot at 421 Michigan Ave, parcel ID 052-140-008-00. The variance requested is

#1) a nine (9) foot interior south side setback variance
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Section 153.087 of the City of Charlevoix Zoning Ordinance defines the dimensional requirements in the R-1 Residential Zoning District. The dimensional standards in the R-1 District are:

Front yard setback 15 feet	Interior Side yard setback 10 feet
Rear yard setback 25 feet	Street side setback 15 feet
Minimum Lot Size 9,000 sq ft	Maximum height 26 feet

The purpose of this Staff Report is to evaluate this proposal against the procedures and criteria outlined in Chapter 153.038 of the City of Charlevoix Zoning Ordinance, adopted July 1, 2024.

2. BACKGROUND

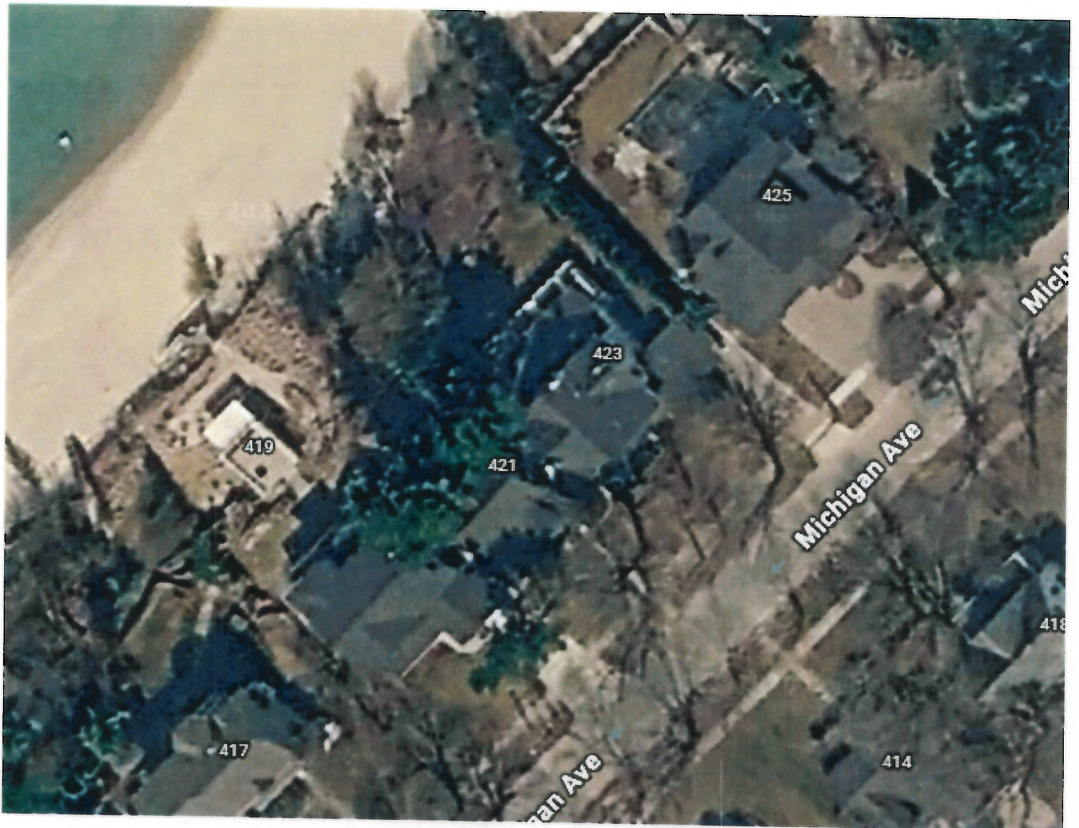
The variance application was submitted on March 12, 2026. The notice of public hearing was published in the Charlevoix *Courier* on May 29, 2026, and mailed to property owners within 300 feet of this parcel on May 29, 2025.

3. SITE

The subject property is located at 421 Michigan Ave. The tax description is: N 13.4 FT OF LOT 8 AND THE S 26.6 FT OF LOT 9 OF CROUTERS ADDITION. The parcel has dimensions of 40'x 270 +/-, with an area of 10, 800 square feet.



Aerial imagery from Charlevoix County Website 4-8-2026



Aerial imagery obtained from Google Earth 7-28-2025

4. STAFF ANALYSIS

Staff wrote proposed Findings of Fact that the ZBA will have to evaluate and make their decisions based on those proposed facts.

5. REVIEW STANDARDS - FINDINGS OF FACT - CONDITIONS OF APPROVAL

Regarding dimensional variances, § 153.038 (F)(1) of the Zoning Ordinance states that:

The ZBA, after holding a public hearing in accordance with the requirements of the Zoning Act, shall have the power to grant requests for dimensional variances from the provisions of this chapter where it is proved by the applicant that there are **practical difficulties** in the way of carrying out the strict letter of this chapter relating to the construction, equipment or alteration of buildings or structures, or of storm water management requirements so that the spirit of this chapter shall be observed, public safety secured and substantial justice done. §153.038(F)(1)

Section 604(7) of Public Act 110 of 2006, the Zoning Enabling Act as amended, states in part that: **“If there are practical difficulties for nonuse variances...in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done.”**

During the public hearing on June 17, 2025, the role of the ZBA is to adopt findings of fact to determine if the variance request meets the following standards. The ZBA must find that the variance proposal meets all the following standards based on findings of fact before considering a motion to approve. **Staff has drafted findings of fact of approval and of denial as a starting point for discussion.** The ZBA may add, modify, or delete any of the following findings on the hearing date.

General findings of fact for:

#1) request, 10’ interior west side setback variance at 421 Michigan Ave.

1. The subject parcel 052-140-008-00 is zoned Residential (R-1).
2. According to Charlevoix County Records, the subject parcel is owned by (A) (C) Himmelrich Trust
3. The subject parcel and structures were established prior to current City Zoning
4. The subject property is a part of two platted lots and is 40 feet wide and 10,800 sq ft in size
5. The minimum lot width in the R-1 District is 60 feet. All other lots on Michigan Ave meet or are larger than 60 feet.
6. The setbacks for R-1 are; side yard 10 feet, front 15 feet and rear 25 feet
7. The maximum height for R-1 is 26 feet
8. The existing primary structure is legal non-conforming built one foot from the south side property line and within 3 feet to the north side property line.
9. The owner proposes installing an AC condenser unit on the south side of the main structure

§ 153.038(F)(2) states that a dimensional variance may be allowed by the ZBA only in cases where the applicant has shown a practical difficulty in the official record of the hearing. **The applicant must prove**

that all of the following conditions have been met. (The Zoning Administrator has written potential Findings of Fact to address the conditions below.)

- (a) Extraordinary Circumstances. Exceptional or extraordinary circumstances or conditions may include: 1) Exceptional narrowness, shallowness, small size or shape of a specific property on the effective date of this chapter; (2) Exceptional topographic conditions or other extraordinary situation on the land, building or structure; and (3) The use or development of the property immediately adjoining the property in question, whereby the literal enforcement of the requirements of this chapter would involve practical difficulties. § 153.038(F)(2)(a)

Finding of Approval - #1

The ZBA finds that the need for the requested variance is due to unique circumstances regarding the property. The structure and lot are legal nonconforming built and split prior to the zoning ordinance. The ZBA finds that this standard is met as a result of the existing legal nonconforming structure which substantially reduces the property's side lot buildable area.

Finding of Denial - #1

The ZBA finds that the lot is sufficient size to accommodate the placement of the AC unit and the location has no bearing without the need for variances.

- (b) Substantial Justice. Compliance with the strict letter of the restriction's governing area, setbacks, frontage, height, bulk, density or other dimensional provisions would unreasonably prevent the use of the property. Granting of a requested variance or appeal would do substantial justice to the applicant as well as to other property owners in the district and such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. Any variance granted shall be the minimum necessary to allow the preservation of these substantial property rights. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance. § 153.038(F)(2)(b)

Finding of Approval - #1

The ZBA finds that this standard is met as a result of the existing legal nonconforming structure would not be considered large with a foot print of 12,000 sq feet. There is not a maximum lot coverage in the CM district.

Finding of Denial - #1

The ZBA finds that air conditioning is not a substantial right and the property can be used for residential purposes without the need for variances,

- (c) Impact on the Surrounding Neighborhood. The variance will not be detrimental to adjacent property and the surrounding neighborhood or interfere with or discourage the appropriate development, continued use or value of adjacent properties and the surrounding neighborhood as compared to other uses in the neighborhood. §153.038(F)(2)(c)

Finding of Approval - #1

The ZBA finds that the request will be of minimal to no impact to the adjacent property owner or the neighborhood. The ZBA finds that the request meets this standard as the adjacent property to the south also has an AC unit built close to the property line adjacent to the proposed AC unit.

Finding of Denial - #1

The ZBA finds that a two story addition could have a detrimental effect on the neighboring property to the west, with its large scale that could dominate the front street side and west side yard.

- (d) Public Safety and Welfare. The granting of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or increase the danger of fire or endanger the public safety, comfort, morals or welfare of the inhabitants of the city. §153.038(F)(2)(d)

Finding of Approval - #1

The ZBA finds that the standard is met as the applicant's request will not negatively affect public safety and welfare.

Finding of Denial - #1

The ZBA finds that the two story addition may have a future detrimental effect on light and air circulation to the neighboring property.

- (a) Not Self-Created. The immediate practical difficulty causing the need for the variance request was not self-created by the applicant or previous owners of the subject property. §153.038(F)(2)(e)

Finding of Approval - #1

The ZBA finds that the standard is met as the applicant's request is not self-created due to the parking lot being constructed outside current setback requirements long before current regulations were put in place.

Finding of Denial - #1

None

Section 504 of Public Act 110 of 2006, the Zoning Enabling Act as amended, states the following:

- (4) Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:
- (a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
 - (b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
 - (c) Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.

6. ZBA ROLE AND OPTIONS

The City of Charlevoix Zoning Board of Appeals has the following options for the variance application, project ZBA 26-01 for 421 Michigan Ave.:

1. Deny project ZBA 26-01 based on specific findings of fact that prove the project does not meet the review standards in 153.038 (F).
2. Approve project ZBA 26-01 without conditions, based on specific findings of fact that prove the project does meet the review standards in 153.038 (F).

3. Approve project ZBA 26-01 with conditions, based on specific findings of fact that prove the project does meet the review standards in 153.038 (F).
4. Postpone the decision on project ZBA 26-01.