

I. **Call the meeting to order.**

Chairman Zuehlke called the meeting to order at 6:30 p.m.

II. **Roll Call.**

Present: Dave Zuehlke, Chairman
Garry Crake, Vice Chairman
Ralph Woznick, Secretary
Will Allen, Board Member
David Maloney, Board Member

Absent: None

Also Present: Bob Vallina, Community Planning and Development Director
Colleen Pote, Stenographer
Doug Bradley, Building and Engineering Director
Stacy St. James, Environmental Coordinator
Applicants and general public numbering approximately 20

III. **Approve the Minutes**

MOTION AND VOTE:

Moved by Woznick

*Supported by Crake; RESOLVED, to **APPROVE** the Minutes of the July 21, 2009, regular meeting of the Zoning Board of Appeals as printed.*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

IV. **Approve the Agenda**

MOTION AND VOTE:

Moved by Allen

*Supported by Woznick; RESOLVED, to **APPROVE** the Agenda of the September 15, 2009, regular meeting as printed.*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

V. **PUBLIC HEARINGS**

NEW BUSINESS

Case No. 3085-B

Sidwell No. 13-32-100-045, Section 32, T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

1. A 502 sq. ft. variance from the maximum allowed accessory structure area established by the ZBA for the subject property on May 21, 1985 to allow the existing 1,800 sq. ft. detached accessory structure built in 1985 and existing 502 sq. ft. attached garage built in 1992 to encompass a total 2,302 sq. ft. (1,800 sq. ft. maximum allowed).
2. A 1,462 sq. ft. variance from the maximum allowed accessory structure area established by the ZBA for the subject property on May 21, 1985 to allow the existing 1,800 sq. ft. detached accessory structure built in 1985, the existing 502 sq. ft. attached garage built in 1992, and the existing 960 sq. ft. carport to encompass a total 3,262 sq. ft. (1,800 sq. ft. maximum allowed).

Property Location: 872 Lochaven
Property Zoned: SF-Suburban Farm
Applicant: Dennis Demeere

PUBLIC HEARING RECORD**Applicants and/or Representatives Present:**

Dennis Demeere, Applicant

Mr. Demeere stated that regarding request 1, the house, attached garage, and the 1,800 sq. ft. pole barn were built prior to his purchase of the property. He was not aware that a variance and proper approvals were not obtained at the time of construction.

Mr. Demeere stated that request #2 is to allow the existing carport to remain on the property. The carport provides storage area for a motor home, boat and other equipment. He then stated that he does not believe that this variance is necessary due to the fact that the structure does not have footings; therefore it is a temporary structure. He further stated that he believes that his request is for a waiver of the 30 day timeframe that a temporary structure is permitted to be located on a residential property.

Chairman Zuehlke asked for and received clarification that any temporary structure placed upon a parcel for longer than 30 days is considered a new structure and shall be subject to all ordinance regulations and building codes.

During the public portion of the meeting the following comments were heard.

John Risi, 890 Lochaven, stated that he has lived in his home for 35 yrs. Years ago when the pole barn was constructed the property owner at the time had the neighbors sign a letter of support. Since that time the property has changed owners, the current

owner is a good neighbor and although he uses the property for RV storage he has erected a fence to obscure the items, therefore he has no objection to the request.

Chairman Zuehlke stated that the Board is in possession of pictures and code enforcement inspection results of the subject property that indicate the owner has used the property as a recreational vehicle storage yard. Recreational vehicle storage yards are a commercial use and are prohibited in a residential district.

Chairman Zuehlke stated that he does not oppose variance #1 to allow the attached garage and detached accessory structure constructed in 1985 to encompass an area of 2302 sq. ft. due to the fact that it was an oversight at the time the house and attached garage were constructed. He further stated that he does not believe a practical difficulty exists in this case that warrants a variance to allow the carport to remain on the property which brings the total accessory structure area to 3,262 sq. ft.

Richard Schaffner, 920 Lochaven, stated that he had submitted a letter of objection to the Board which included pictures of motor homes and boats currently stored on the subject property. He then stated that he does not object to the existing pole barn as it was erected years ago and is screened from view by trees. He went on to state that it is obvious to him that the owner has converted the property to a recreational vehicle storage yard. During the winter months the property is a sea of recreational vehicles covered with blue tarps and he believes that Mr. Demeere is going to increase the number of vehicles stored on the property, therefore he opposes the request to allow the carport to remain on the property.

Hearing no further comments, the public portion of the meeting was closed.

Board Member Allen stated that the applicant has not demonstrated a practical difficulty that warrants a variance to allow the carport to remain on the property. He further stated that based on the results of inspections performed by the Township and the pictures submitted to the Board he believes that the applicant has used the carport and the residential property as a recreational vehicle storage yard which is prohibited on a property zoned for residential use.

MOTION AND VOTE:

Moved by Allen

*Supported by Crake; RESOLVED, to **APPROVE** a 502 sq. ft. variance from the maximum allowed accessory structure area established by the ZBA for the subject property on May 21, 1985 to allow the existing 1,800 sq. ft. detached accessory structure built in 1985 and existing 502 sq. ft. attached garage built in 1992 to encompass a total 2,302 sq. ft.*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Moved by Allen

*Supported by Maloney; RESOLVED, to **DENY** a 1,462 sq. ft. variance from the maximum allowed accessory structure area established by the ZBA for the subject*

property on May 21, 1985 to allow the existing 1,800 sq. ft. detached accessory structure built in 1985, the existing 502 sq. ft. attached garage built in 1992, and the existing 960 sq. ft. carport to encompass a total 3,262 sq. ft. in that:

- *No practical difficulty exists in this case.*
- *Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.*
- *The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.*
- *The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.*
- *The request is self created.*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 5313

Sidwell No. 13-27-483-006, Section 27, Lot 80 exc SWLY 75 ft, all of Lot 81 also Lot 82 exc SWLY 75 ft., “Randgate Park”, T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

1. A variance from Section 2805.1 to allow a nonconforming building to be enlarged in a way which increases its nonconformity (no existing nonconforming building can be altered or enlarged in a way which increases its nonconformity).
2. A 3.28 ft. variance from Article 22 to allow the rebuilt and expanded attached garage to maintain and continue along the existing northern front building line and come to within 31.72 ft. of the north front property line (35 ft. minimum required).
3. A 0.28 ft. variance from Section 2407 to allow the rebuilt and expanded attached garage and its 1 ft. overhang to maintain and continue along the existing northern front building line and come to within 30.72 ft. of the north front property line (31 ft. minimum required).
4. An 11 ft. variance from Article 22 to allow the rebuilt and expanded attached garage to maintain and continue along the existing southern front building line and come to within 24 ft. of the south front property line (35 ft. minimum required).
5. An 8 ft. variance from Section 2407 to allow the rebuilt and expanded attached garage and its 1 ft. overhang to maintain and continue along the existing southern front building line and come to within 23 ft. of the south front property line (31 ft. minimum required).

Property Location: 4125 Lanette
Property Zoned: R-1A, Single Family Residential
Applicant: James Emery

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

James Emery, Applicant

Chairman Zuehlke stated that the request in this case is to allow a new garage to be constructed in the same location as the existing attached garage which has nonconforming setbacks.

Mr. Emery stated that is correct. The existing garage was built in 1952 and is in poor condition. The slab is cracked and the building is shifting, therefore the structure is not safe. The new garage will conform to current building codes.

During the public portion of the meeting the following comments were heard.

Michael Benedict, 4145 Grayton, stated that the proposed garage will be an improvement to the property, therefore he supports the request.

Hearing no further comments, the public portion of the meeting was closed.

Board Member Allen stated that he will support the request in this case due to the fact that the proposed garage will not increase the nonconformity and will improve the appearance and safety of the structure.

MOTION AND VOTE:

Moved by Allen

*Supported by Woznick; RESOLVED, to **APPROVE** Case No. 5313*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 4734-B

Sidwell No., 13-19-426-024, Section 19, Lot 30, "Supervisors Plat No 14", T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting a 432 sq. ft. variance from Section 2521.6 to maintain the existing 240 sq. ft. shed and allow the proposed 960 sq. ft. detached accessory structure (768 sq. ft. maximum allowed for detached accessory structures).

Property Location: 7048 Howell Ave
Property Zoned: R-1A, Single Family Residential
Applicant: John E. Chester

PUBLIC HEARING RECORD**Applicants and/or Representatives Present:**

John Chester, Applicant

Mr. Chester stated that the existing garage was damaged by a tree and must be reconstructed. He would like to add additional area to the garage to accommodate motor vehicles and a boat. The boat is currently stored outdoors and has been damaged by wildlife, the expanded garage will allow the boat to be stored within the structure.

Chairman Zuehlke questioned what the existing shed is currently used for.

Mr. Chester stated that the shed provides storage area for lawn care equipment.

Chairman Zuehlke stated that the ordinance allows for a garage of 768 sq. ft. which is adequate area for vehicles and a boat.

Mr. Chester stated that the existing garage is not large enough accommodate his truck, therefore he would like to build a larger garage to allow all of the vehicles including the boat to be stored indoors. He further stated that there is adequate land area for a larger garage and that he believes the proposed garage will increase the property value.

During the public comment portion of the meeting no comments were heard either in support of or opposition to the applicant's request.

Board Member Allen asked for and received clarification that the applicant can construct a garage of 528 sq. ft. in area if the existing shed remains on the property. If the applicant removes the existing shed a 768 sq. ft. garage would be permitted without the need for a variance.

Board Member Allen stated that the applicant has options available that would allow a garage to be constructed that will accommodate both motor vehicles and a boat without variances; therefore he would not support the request in this case.

Board Member Maloney questioned if the applicant had considered the option of removing the existing shed in order to construct a 768 sq. ft. garage.

Mr. Chester stated that the existing garage must be replaced and that he believes the best option to increase the storage area is to build a larger garage. He did not realize that there would be an issue with the proposed larger garage, therefore he did not explore the option of removing the shed.

MOTION AND VOTE:

Moved by Allen

Supported by Woznick; RESOLVED, to DENY Case No 4734-B in that:

- *No practical difficulty exists in this case.*

- *Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.*
- *The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.*
- *The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.*
- *The request is self created.*

MOTION CARRIED WITH CRAKE AND MALONEY OPPOSED

(3 – 2)

Case No. 3518-V

Sidwell No. 13-04-476-001, Section 4, Lot 9, "Supervisors Plat No 49", T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

Requesting a variance from Section 202 of the Waterford Township Zoning Ordinance to allow the location of an 8 ft. x 16 ft. camper/trailer to be located on the subject property from November 23, 2009, through December 24, 2009 for purpose of selling Christmas trees.

Property Location: 5199 Dixie Hwy
Property Zoned: M-1, Light Industrial
Applicant: Nicolo Cardella

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Nicolo Cardella, Applicant

Mr. Cardella made no comment.

Chairman Zuehlke stated that the request in this case is to allow a temporary trailer to be placed on the property for the purpose of selling Christmas trees.

Board Member Maloney stated that Mr. Cardella has been conducting Christmas tree sales at this location for several years with no code enforcement issues, therefore he has no objection to the request.

MOTION AND VOTE:

Moved by Maloney

*Supported Crake; RESOLVED, to **APPROVE** Case No 3518-V
MOTION CARRIED UNANIMOUSLY.
(5 – 0)*

Case No. 5314

Sidwell No. 13-02-159-023, Section 2, Lots 131 & 132, “Bird Island No 1”, T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting an 8.75 ft. variance from Article 22 to allow the existing deck walkway and step structure to encroach into the minimum side yard setback along a line that would come to within 7.5 ft. of the north side property line at the furthest distance of the structure from the required setback and the proposed encroachment occurring along a 19 ft. length to come to within 1.25 ft. of the side property line. (10 ft. minimum required).

Property Location: 3811 Island Park Dr.
Property Zoned: R-1A, Single Family Residential
Applicant: Kirby A. and Joy A. Hutchinson

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Kirby Hutchinson & Joy Hutchinson, Applicants

Mr. Hutchinson stated that at the time he was making repairs to the existing deck he increased the size by adding a walkway from the existing deck to the driveway. The property has a slope of approximately 45°; the walkway provides easier access to the deck for guests and family members with physical challenges.

During the public portion of the meeting the following comments were heard.

An unidentified neighbor stated that the walkway enhances the property, therefore she supports the request.

Hearing no further comments, the public portion of the meeting was closed.

Chairman Zuehlke stated that the walkway makes passage to the deck more convenient, however, it is not required to access the deck from the driveway.

Mr. Hutchinson stated that at the time he was making repairs to the existing deck he made the decision to add the walkway, improving access to the deck and enhancing the property. He did not realize that the walkway was in violation of the ordinance.

Chairman Zuehlke stated that when the applicant was notified by the Township that the newly constructed walkway was in violation of the setback requirement he immediately responded to get the issue resolved.

Board Member Maloney questioned if the applicant had performed the work on the deck and walkway himself.

Mr. Hutchinson stated that he constructed the walkway himself.

MOTION AND VOTE:

Moved by Crake

*Supported by Allen; RESOLVED, to **APPROVE** Case No 5314 with the stipulation that a building permit be obtained and inspections be performed by the Building and Engineering Department.*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 5315

Sidwell No., 13-26-226-009, Section 26, Lot 74, “Lorraine Manor No 2”, T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

1. A 5 ft. variance from Article 22 to allow the proposed 175 sq. ft. covered porch to come to within 30 ft. of the west front property line (35 ft. minimum required).
2. A 2 ft. variance from Section 2407 to allow the proposed covered porch and its 1 ft. overhang to come within 29 ft. of the west front property line (31 ft. minimum required).

Property Location: 290 Lorberta Ln
Property Zoned: R-1A, Single Family Residential
Applicant: Brian & Katherine Funtik

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Brian & Katherine Funtik, Applicants

Chairman Zuehlke stated that the applicant would like to construct a covered porch that will provide protection from the elements.

Mr. Funtik stated that the proposal is to renovate the existing 5 ft. by 8 ft. uncovered porch by expanding it and creating a covered porch with a design that will match the style of the house and be in keeping with the character of the neighborhood.

During the public comment portion of the meeting, no comments were heard either in support of or opposition to the applicant's request.

Board Member Allen stated that the proposed porch is designed with a side entrance from the porch to the driveway. He then stated his concern that this is a safety issue for children exiting the porch and not being visible from vehicles that may be exiting the driveway. He concluded by stating that he would support the request if this safety issue is addressed by eliminating the side entrance from the porch to the driveway.

Mr. Funtik stated that he will address the safety issue Board Member Allen has brought to his attention.

MOTION AND VOTE:

Moved by Allen

*Supported by Woznick; RESOLVED, to **APPROVE** Case No. 5315 with the stipulation that there be no side entrance from the porch to the driveway.*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 5316

Sidwell No. 13-12-303-006, Section 12, Lot 179, "Jayno Heights No 3", T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting a 9.83 ft. variance from Section 2521 to allow the existing shed to maintain a 0.17 ft. east side yard setback (minimum 10 ft. side yard setback required for detached residential accessory structures located within 10 ft. from the principal building).

Property Location: 3003 St. Jude Drive
Property Zoned: R-1A, Single Family Residential
Applicant: Anthony T. Jergovich

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Anthony Jergovich, Applicant

Mr. Jergovich stated that he installed the existing shed to house mobility assistance equipment.

Chairman Zuehlke stated that he would like Mr. Jergovich to explain why he ignored the initial notice from the Township that the shed was constructed in violation of the zoning ordinance and without the benefit of a building permit.

Mr. Jergovich stated that he was advised not to respond to the notice or pay the fine that was issued by the Township.

Mr. Jergovich stated that the shed is located at the side of the property near the existing drive. This location will allow a wheelchair ramp to be constructed if needed in the future. It also provides convenient storage for the mobility equipment eliminating the need to carry the equipment from vehicles. He went on to state that he has letters of support from the neighbors.

Chairman Zuehlke stated that the Board received a letter of objection from a Jayno Heights Landowner Board Trustee, indicating that the shed was constructed in violation of the deed restrictions. Chairman Zuehlke then questioned what body governs the property if the deed restrictions differ from the Township ordinances.

Mr. Vallina stated that both the Township ordinances and subdivision deed restrictions govern the property, however, the Township only enforces the Township ordinances. If the deed restrictions are more stringent than the ordinances it is the responsibility of the landowners association to enforce those restrictions.

During the public portion of the meeting the following comments were heard.

Jay Taber, 3110 Rosanne, stated that the shed is aesthetically pleasing and matches the style of the house, therefore he supports the request to allow the shed to remain in its current location.

Walter Nolen, 3006 St. Jude, stated that the shed enhances the property and is in keeping with the character of the neighborhood, therefore he supports the request.

Hearing no further comments the public portion of the meeting was closed.

Vice Chairman Crake stated that he cannot support a variance to allow the shed to remain within .17 ft. of the property line due to the fact that the shed cannot be maintained without trespassing onto the adjacent property.

Board Member Maloney stated that due to the fact that the shed is in keeping with the character of the neighborhood and that the owner of the adjacent property has no objection to the current location of the shed he would support the request.

Chairman Zuehlke stated that in its present location the shed cannot be maintained without trespassing onto the adjacent property. The current owner of the adjacent property does not object to the shed remaining in the present location, however, future

owners may have an issue with the shed being located so close to the common property line.

Board Member Allen asked for clarification of the shed use.

Mr. Jergovich stated that the shed is used to store mobility assistance equipment.

Board Member Allen questioned why the mobility equipment cannot be stored in the garage.

Mr. Jergovich responded that the equipment would prohibit motor vehicles from being parked in the garage. The shed provides convenient storage for the equipment as well as direct access to the house.

Board Member Allen stated that the applicant has options available to store the mobility equipment that would not require the shed being located to within 0.17 ft. of the property line. He further stated that he could not support a setback request that would require trespassing onto the neighboring property in order to maintain the structure.

Mr. Jergovich asked that the variance be granted with a stipulation that if the owner of the adjacent property objects to the location of the shed in the future the shed will be moved.

MOTION AND VOTE:

Moved by Maloney

*Supported by Woznick; RESOLVED, to **APPROVE** Case No 5316*

MOTION FAILED WITH ZUEHLKE, CRAKE AND ALLEN OPPOSED

(2 – 3)

Moved by Allen

*Supported by Crake; RESOLVED, to **DENY** Case No 5316 in that:*

- *No practical difficulty exists in this case.*
- *Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.*
- *The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.*
- *The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.*
- *The request is self created.*

MOTION CARRIED WITH MALONEY AND WOZNICK OPPOSED

(3 – 2)

VI. Adjourn the meeting.

Chairman Zuehlke adjourned the meeting at 7:17 p.m.

September 15, 2009**Case No. 3085-B****Property:** 872 Lochaven**Applicant:** Dennis Demeere**Zoning:** SF-Suburban Farm**Site Use:** Residential**Proposal:** To allow illegally constructed carport accessory structure to remain

Analysis: Prior to 1990, the subject property was part of the adjacent property known as 870 Lochaven. In 1985, the owner of 870 Lochaven requested and received a variance from the ZBA to construct a 30 ft. x 60 ft. (1,800 sq. ft.) accessory structure (*the maximum accessory structure area in the SF, Suburban Farm district is 1,444 sq. ft.*). In 1990 the 870 Lochaven property was split into two parcels, with the existing house located on the 870 Lochaven parcel and the 1,800 sq. ft. accessory structure located on what was identified as the 872 Lochaven parcel. In 1990 and again in 1992, the ZBA granted a variance to allow the 1,800 sq. ft. accessory structure to remain on the 872 Lochaven parcel without a principal building.

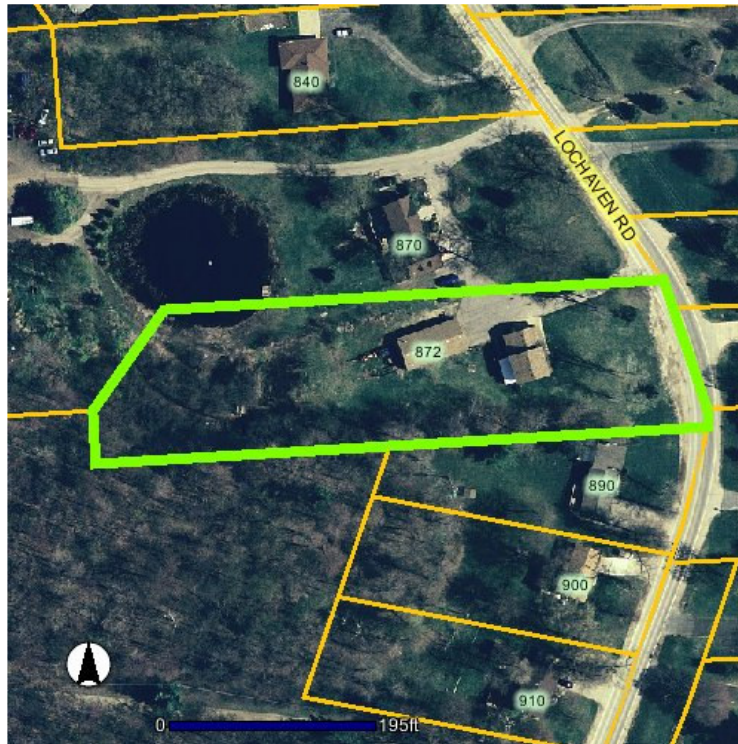
This issue was resolved in 1992, when a house with an attached 502 sq. ft. garage was constructed on the subject property. However, in researching this case, it was discovered that while the applicant obtained a building permit to construct the house and attached garage, there was an oversight on the part of the Township to require the applicant to request and receive a variance from the ZBA before allowing the construction of the attached garage. The first variance for this case is being requested by staff to legitimize the existence of the attached garage area and remove an unintended nonconforming situation that has existed since the Township approved construction of the attached garage in 1992.

In 2005, the subject property was purchased by the applicant. As can be seen in **Photo 1** on the next page, the area behind the pole barn is unimproved. In April of this year, the Township received a complaint that the subject property was being used illegally as a recreational vehicle storage yard and that a 960 sq. ft. carport structure was constructed illegally onto the rear of the existing 1,800 sq. ft. accessory structure. Evidence as shown in **Photo 2** confirmed the existence of these violations.

Staff is not opposed to variance #1 as the existence of the attached garage was processed in 1992 through the construction permitting procedures in good faith on the part of the property owner at the time and compliance with the strict letter of the ordinance would render conformity with the ordinance unnecessarily burdensome.

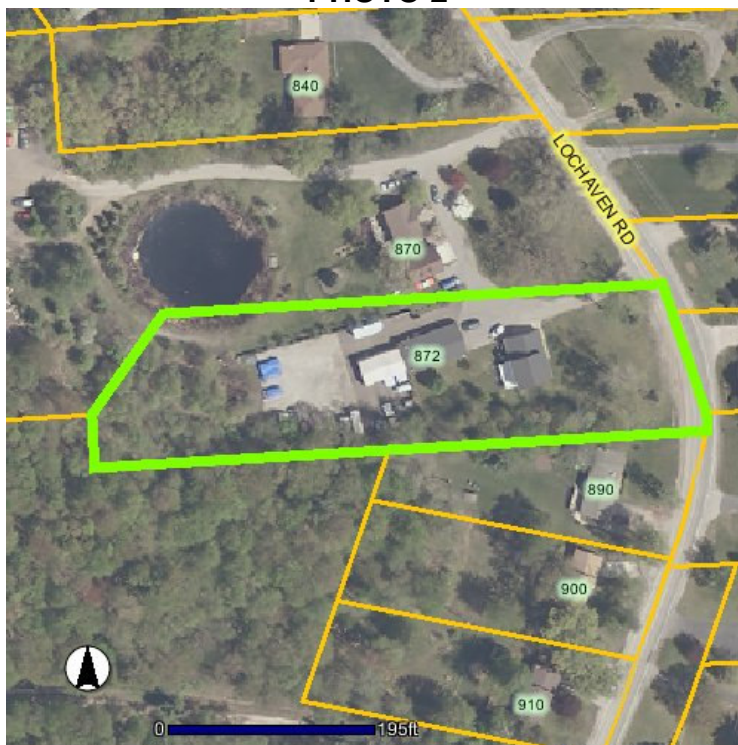
Staff is strongly opposed to variance #2 as there is no practical difficulty existing in this case, the request is self-created as the applicant constructed the 960 sq. ft. structure illegally without benefit of building permits, the applicant has not provided any proof that the requested variance would ensure fairness for the owner of the subject property as well as surrounding property owners, compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome since (*with approval of variance #1*), they enjoy the use of 2,302 sq. ft. of accessory structure area, and the applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.

PHOTO 1



872 Lochaven Road – 2005 Aerial View

PHOTO 2



872 Lochaven Road – 2008 Aerial View

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 3085-B I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

September 15, 2009

Case No. 5313

Property: 4125 Lanette

Applicant: James Emry

Zoning: R-1B, Single Family Residential

Site Use: Single family residential

Proposal: To rebuild and expand attached garage

Analysis: The subject property is an irregularly-shaped corner parcel possessing a house and attached garage with nonconforming setbacks built prior to the adoption of the Zoning Ordinance. The applicant would like to reconstruct and slightly expand the existing attached garage. This project will result in the rebuilt attached garage following the existing building lines. While staff is unable to support the request as it does not meet the letter of the Zoning Ordinance, the applicant is proposing to improve the existing building by continuing the existing building line and will not exceed the Zoning Ordinance height, story, or garage area restrictions.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 5313 I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

September 15, 2009**Case No. 4734-B**

Property: 7048 Howell Ave

Applicant: John E. Chester

Zoning: R-1A, Single Family Residential

Site Use: Single family residential

Proposal: To demolish existing detached garage and construct a 960 sq. ft. detached accessory structure

Analysis: The applicant has an existing 522.6 sq. ft. detached garage with a nonconforming side yard setback and a 240 sq. ft. shed with a nonconforming side yard setback, the total of which are within the maximum total areas allowed for detached structures and for all accessory structures. The applicant would like to demolish the detached garage and construct a 960 sq. ft. accessory structure and keep the 240 sq. ft. shed. The applicant's proposal would exceed the total square footage allowed for detached accessory structures located on a property. Therefore, staff cannot support the requested variance as it does not conform to the letter of the Zoning Ordinance.

If the Zoning Board of Appeals chooses to approve the applicant's request, staff does request that the following stipulations be enacted:

- that the applicant shall apply for a demolition permit for the existing garage on the subject property as soon as, if not before, they apply for a building permit for the 960 sq. ft. accessory structure, and shall demolish the existing garage within three months of the issuance of the demolition permit, and

- that the applicant shall not receive a final certificate of occupancy until the existing garage has been demolished.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 4734-B I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

September 15, 2009

Case No.3518-V

Property: 5199 Dixie Hwy.

Applicant: Nicolo Cardella

Zoning: M-1, Light Industrial

Site Use: Vacant

Proposal: The applicant would like to sell Christmas trees on the subject property.

Analysis: The applicant received approval from the ZBA last year to sell Christmas trees on the subject property. The applicant would like to operate again this year. No Code Enforcement complaints were received regarding the activity last year.

It has been staff's contention that if it was the intent of the Transient Merchant Ordinance to allow a trailer to be associated with the sales activity, then it should have been included in the Ordinance. While the need for shelter is understandable, especially during the winter, staff is unable to support the request with the current ordinance requirements in effect.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 3518-V I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

September 15, 2009

Case No. 5314

Property: 3811 Island Park Dr.

Applicant: Kirby A. and Joy A. Hutchinson

Zoning: R-1A, Single Family Residential

Site Use: Single Family Residential

Proposal: Allow existing, non-permitted deck walkway and steps to remain within 1.25 ft. of the north side property line.

Analysis: In July 2009, the Building and Engineering Department received a complaint that a rear deck addition with steps and a walkway along the north side of the house was built on the subject property without a building permit. After the complaint was verified, the Building and Engineering Department notified the property owner of the building permit requirement. The property owner immediately appeared at the Building and Engineering Department to obtain a building permit. At that point, the Building and Engineering Department informed the property owner that due to the fact that the deck did not conform to the side yard setback requirements, the applicant had to go to the ZBA for variances before a building permit could be issued. The only portion of the deck structure that does not conform to the side yard setback requirements is a 76 sq. ft. wood walkway and steps leading from the walkway to the deck. The walkway extends across an area where there is a 4 ft. change in the slope of

the property. The applicants state that the walkway was constructed to provide easier exterior access to the deck from the front of the property.

While it is understandable that the applicant would like to provide easier external access to the deck, the applicant could have located the walkway in such a manner as to require a lesser variance and the applicant built the deck without benefit of building permits. Therefore, staff cannot support the requested variance as it does not conform to the letter of the Zoning Ordinance. However, if the ZBA finds merit in the applicant's request, staff recommends that the ZBA stipulate that the deck, steps, and walkway shall conform to all applicable building code requirements.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 5314 I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

September 15, 2009

Case No. 5315

Property: 290 Lorberta Ln

Applicant: Brian & Katherine Funtik

Zoning: R-1A, Single Family Residential

Site Use: Single family residential

Proposal: To construct a covered porch.

Analysis: The applicant would like to remove the existing 40 sq. ft. porch with aluminum awning and construct a 175 sq. ft. porch with a roof structure to cover the porch. The desire to construct such a covered porch and be out of the elements is not

unreasonable, however, staff is unable to support the construction of a covered porch that does not meet the required setback as it does not conform to the letter of the Zoning Ordinance.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 5315 I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

September 15, 2009

Case No. 5316

Property: 3003 St. Jude Drive

Applicant: Anthony Jergovich

Zoning: R-1A, Single Family Residential

Site Use: Single family residential

Proposal: Allow existing, non-permitted shed to remain within 0.17 ft. of the east side property line.

Analysis: In June 2009, the Building and Engineering Department received a complaint that a shed was built on the subject property too close to the east side property line and without a building permit. After the complaint was verified, the Building and Engineering Department notified the property owner of the building permit and ZBA requirements. The property owner did not respond to this warning. The Building and Engineering Department thereupon issued a civil infraction violation notice on July 24, 2009, requiring the property owner to correct the violation on or before August 24, 2009. Soon after the violation notice was sent, the applicant submitted an application to the ZBA requesting the necessary variance. The applicant in this case constructed a shed that is located 0.17 ft. from the east side property line instead of the

10 ft. required for accessory structures located less than 10 ft. from the principal building. The applicant states that the shed is used to house mobility assistance equipment.

While it is understandable that the applicant would want to enjoy use of a shed for such storage, the applicant does have room to locate the shed in a conforming location on the property and the applicant built the shed without benefit of building permits. Therefore, staff cannot support this request because there is no practical difficulty and the request is self-created. If the ZBA does find merit in the applicant's request, staff recommends that the ZBA stipulate that the deck shall conform to all applicable building code requirements as well as require the applicant to obtain a maintenance access easement from the adjoining property owners to allow for maintenance of the east side of the shed.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 5316 I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.