

MINUTES  
ZONING BOARD OF APPEALS  
July 31, 2019  
Council Chambers, City Hall

CALL TO ORDER:

Chairman Elwood Anderson called the Zoning Board of Appeals to order at 5:00 p.m.

ROLL CALL:

Present: Anderson, Bray, Keller, Lamble

Absent: Guest, Lewis

Chairman Anderson opened the public hearing and explained the procedures for the hearing.

Public Hearing of Case ZBA19-01

Adam Poll, Planning and Development Director presented the variance as follows: Frederick Rouleau of 208 Hitchcock Street is requesting a variance in the R-2 One Family Residence District to replace an existing attached garage located two feet from the side property line with a home addition and storage area, also located two feet from the side property line in the same footprint as the existing garage. Article 5.7C and 3.32E

**Property Address: 208 Hitchcock Street**

Notices were sent to all adjoining property owners within 300 feet of the subject property.

To authorize a variance, the board shall find that all of the following conditions are met:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. Strict compliance with the regulations governing area, setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
3. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners;

4. The need for the requested variance is not the result of action of the property owner or previous property owners. It is not a self-created problem.
5. That the requested variance will not cause an adverse impact on the surrounding property, property values, or the use and enjoyment of the property in the neighborhood or zoning district and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City of Alpena.

**CONDITIONS:** The Zoning Board of Appeals may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in Section 9.9.

**FINDING OF FACT:** In granting or denying a variance, the board shall state in a written statement of findings of fact, which you can do verbally, the grounds upon which it justifies the granting of the variance.

Staff evaluation of the five conditions relative to this petition is as follows:

1. The existing home at 208 Hitchcock Street is unique in that it has a legal non-conforming 18' x 20' attached garage on the rear of the home. The applicant would like to knock down the garage to install a home addition in the same footprint of the existing garage with the same 2-foot setback from the side property line.

The applicant would also need a variance for lot coverage as after the new addition is complete the applicant will be covering 39 percent of the lot 4 percent more than allowed. Currently the same amount of the lot is covered by the garage and the lot coverage is considered legal non-conforming.

2. Strict compliance would not allow the applicant to build an attached addition unless it is six feet from the side property line and no larger than 185 square feet. That size and setback would not appear to meet the applicant needs. The lot is a half lot only 39 feet wide, significantly narrower than most standard lots.
3. The proposed request would appear to do substantial justice to the neighbors and the applicant. The proposed addition will be constructed on the same footprint as the existing garage and would not appear to have any more impact than the existing garage.
4. The need for a variance was not created by the owner. The lot is only 39 feet wide and the existing house and garage were constructed two feet from the side property line.

5. The proposed request would not appear to alter the character of the neighborhood. There is an existing garage there now and removing the garage and building a similar sized home addition would not appear to have a negative impact on the area.

In granting a variance, the board may attach conditions regarding the location, character and other features of the proposed structure as it may deem reasonable in furtherance of the purpose of this ordinance. In granting a variance, the board shall state the grounds upon which it justifies the granting of said variance.

Staff observations:

This request would appear to be unique as the new addition will be constructed in the same footprint of an attached garage that has been present prior to zoning and matches the setback of the home. The request would not appear to have a negative impact on the area.

Therefore, staff would recommend **approval** of the requested variance for both the setbacks for the new addition and the lot coverage to allow for the size requested. It would appear to fulfill the variance criteria listed in the ordinance.

PUBLIC COMMENT:

Since no one wished to speak either for or against this variance, Chairman Anderson closed the public comment portion of the meeting to deliberate for case ZBA19-01.

DISCUSSION BY BOARD MEMBERS:

There was no further discussion on this case.

Member Lamble made a motion to grant the variance according to the city's recommendations presented by Adam Poll.

Member Bray seconded the motion.

ROLL:

Ayes: Anderson, Bray, Keller, Lamble

Nays: None

The variance to replace an existing attached garage located two feet from the side property line with a home addition and storage area in the same footprint as the existing garage has been granted.

This variance meets all the following conditions:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. Strict compliance with the regulations governing area, setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
3. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners;
4. The need for the requested variance is not the result of action of the property owner or previous property owners. It is not a self-created problem.
5. That the requested variance will not cause an adverse impact on the surrounding property, property values, or the use and enjoyment of the property in the neighborhood or zoning district and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City of Alpena.

Public Hearing of Case ZBA19-02

Adam Poll, Planning and Development Director presented the variance as follows: Gary Rucinski of 216 Beebe Street is requesting a two-foot variance in the R-2 One Family Residence District to construct a shed four feet from the side property line.

Article 3. 11C3

**Property Address: 216 Beebe Street**

Notices were sent to all adjoining property owners within 300 feet of the subject property.

To authorize a variance, the board shall find that all of the following conditions are met:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.

2. Strict compliance with the regulations governing area, setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
3. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners;
4. The need for the requested variance is not the result of action of the property owner or previous property owners. It is not a self-created problem.
5. That the requested variance will not cause an adverse impact on the surrounding property, property values, or the use and enjoyment of the property in the neighborhood or zoning district and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City of Alpena.

**CONDITIONS:** The Zoning Board of Appeals may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in Section 9.9.

**FINDING OF FACT:** In granting or denying a variance, the board shall state in a written statement of findings of fact, which you can do verbally, the grounds upon which it justifies the granting of the variance.

Staff evaluation of the five conditions relative to this petition is as follows:

1. The additional shed would appear to match the setback of the existing garage and shed. While a shed could be built to the proper setback in other portions of the rear yard, it would impact other uses of the yard.
2. The strict compliance to the ordinance would negatively impact the owner's property. While the shed could be constructed to meet setback requirements, it would require the owner to move several other features of his rear yard.
3. The proposed request would appear to do substantial justice to the neighbors and the applicant. The addition of the shed would line up with the existing garage and would be screened by an existing privacy fence.
4. The need for a variance was not created by the owner. The existing garage was constructed prior to the zoning setback standards for accessory structures. This request would match the setback of the garage and shed.

5. The proposed request would not appear to alter the character of the neighborhood. There is an existing garage and shed with the same setback. The proposed shed would match the setback and be screened by a privacy fence.

In granting a variance, the board may attach conditions regarding the location, character and other features of the proposed structure as it may deem reasonable in furtherance of the purpose of this ordinance. In granting a variance, the board shall state the grounds upon which it justifies the granting of said variance.

Staff observations:

This request would appear to be unique as the new addition will be constructed to match the setback of the existing detached garage and would be screened from the neighbors by a privacy fence. The request would not appear to have a negative impact on the area.

Therefore, staff would recommend **approval** of the requested two-foot variance for the shed, setback four feet from the side property line. It would appear to fulfill the variance criteria listed in the ordinance.

PUBLIC COMMENT:

Since no one wished to speak either for or against this variance, Chairman Anderson closed the public comment portion of the meeting to deliberate for case ZBA19-02.

DISCUSSION BY BOARD MEMBERS:

Member Lamble made a motion to grant the variance according to the city's recommendations presented by Adam Poll.

Member Bray seconded the motion.

ROLL:

Ayes: Anderson, Bray, Keller, Lamble

Nays: None

The variance to construct a shed with a two-foot variance, four feet from the side property line has been granted.

This variance meets all the following conditions:

1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
2. Strict compliance with the regulations governing area, setbacks, frontage, height bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
3. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners;
4. The need for the requested variance is not the result of action of the property owner or previous property owners. It is not a self-created problem.
5. That the requested variance will not cause an adverse impact on the surrounding property, property values, or the use and enjoyment of the property in the neighborhood or zoning district and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the City of Alpena.

Public Hearing of Case ZBA19-03

Adam Poll, Planning and Development Director presented the variance as follows: Eric Swenson, 826 S. State Avenue, Alpena, MI 49707, is requesting a use variance for the property at 826 S. State Avenue in the R-2 One Family Residence District to allow the construction of a second residential unit within an existing attached garage. Article 5.7B

**Property Address: 826 S. State Avenue**

Notices were sent to all adjoining property owners within 300 feet of the subject property.

To authorize a use variance, the board shall find that all of the following conditions are met:

1. The building, structure, or land cannot be reasonably used for any of the uses permitted by right or by special use permit in the zoning district in which it is located.

2. The need for the requested variance is due to unique circumstances or physical conditions of the property involved such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
3. The proposed use will not alter the essential character of the neighborhood.
4. The immediate hardship causing the need for the use variance was not created by the property owner or previous property owners (self-created).

**CONDITIONS:** The Zoning Board of Appeals may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in Section 9.9.

**FINDING OF FACT:** In granting or denying a variance, the board shall state in a written statement of findings of fact, which you can do verbally, the grounds upon which it justifies the granting of the variance.

Staff evaluation of the four conditions relative to this petition is as follows:

1. The conversion of the existing attached garage to a separate living unit could be completed via a special permit process if the building owner is living in one of the units when the other unit is being rented. The applicants have noted that they will reside in the new unit for four months per year and rent the existing home out the rest of the time. They have indicated they do not intend to rent the new unit out, but a variance would not prevent it from being rented out in the future.
2. The need for the variance is due to the applicant only residing in Alpena for four months of the year and wanting to reside in the newly created unit at that time. The applicant would then be able to rent the existing residence. The applicant has indicated that they do not plan to rent the proposed new unit when they are not present.
3. The proposed addition of a unit would not appear to alter the character of the neighborhood. Parking could potentially be an issue but there would appear to be enough onsite parking for three vehicles.
4. The immediate hardship could be considered self-created as the applicant could reside in the home for four months per year as they had and could leave the house vacant the rest of the time.

In granting a variance, the board may attach conditions regarding the location, character and other features of the proposed structure as it may deem reasonable in furtherance of the purpose of this ordinance. In granting a variance, the board shall state the grounds upon which it justifies the granting of said variance.

Staff observations:

This request would appear to be unique as the new unit would be constructed in an existing attached garage and the footprint of the home would not change. There are some concerns regarding parking, but the applicants have indicated their drive area fits three vehicles and another could be in the small garage remaining attached to the home. Larger vehicles could be problematic, but similar situations can be found in the city. The request is also unique in that the applicants would only be living in the new unit for four months of the year. Even if the property is sold, it is unlikely given the new units size, that it would be used by more than one person.

Therefore, staff would recommend **approval** of the requested variance. It would appear to fulfill the use variance criteria listed in the ordinance.

PUBLIC COMMENT:

Mr. Eric Swenson of 826 S. State Avenue addressed the board. He said this house they bought is way too big for them, and they do not need all of that space. If they can make a small studio apartment in part of the garage that would allow them to have a residence where they can come and live during the summers. They are here for his wife's health. Their option while they are not here, is to leave the house vacant. He thinks that does not serve the community well, does not serve the neighbors well, and it does not serve them well to leave a house vacant. It is his understanding they would not be able to have a full-time renter in that house without this variance. His other option would be to rent the house short term. He thinks that does not serve the neighborhood well. A short-term renter is not going to be someone who is going to be as professional. He feels they could rent that house maybe to someone from the hospital or someone from the school system and hopefully be there for long term. That would give him the peace of mind knowing that someone is in the house and that it is not vacant. They have no intention ever to rent that second unit. They plan on living here. They are not going to flip the house, not turning it over. In terms of parking, he said there are three parking spaces. There is an additional space on the grass next to the house.

Member Lamble asked Mr. Swenson if there is a foundation under the garage. Mr. Swenson and Don Gilmet, Building Official said it is a concrete floor. Don Gilmet said there is a basement under the house, and some point in time, there is an attached garage that has since been converted into a room, then a new garage was added on with just a concrete slab. He said the Swenson's are not going to be here in the winter.

Gerald Yankie of 827 S. State Avenue address the board. They live directly across the street from the house at 826 S. State Avenue. He submitted a letter of objection, which states We strongly object to the zoning variance requested by the owners of 826 S. State Avenue for a rental apartment. You must already be aware that the house size and lot size ratios and setbacks do not meet the current zoning requirements and is a non-conforming lot. Under Section 3.32 of existing rules, your board has expressed an important guideline that states, do not "encourage the survival" of non-conforming property. If the second dwelling were to be used as a rental unit,

the Blair Street park area would suffer more vehicles and in and out traffic in an already busy place. More parking from renters in that area of Blair Street will only add to the traffic and stress on the existing parking spaces. Guests and renters parking connected with the rental unit could easily add more stress to the situation. The available parking space on this non-conforming lot is limited to a very small space between the sidewalk and structure. Many of today's motor vehicles exceed the length of the parking space available and therefore blocking a portion of the sidewalk. Blocking any portion of the sidewalk should in no way be allowed. We have talked with other residents in the area that would be affected by this variance application, with none supporting this variance proposal. There seems to be NOT ONE improvement or enhancement to our community brought about by this zone change. I strongly request you not allow this ordinance change.

A friend of the Swenson's addressed the board. He met them in Florida several years ago. Because Mrs. Swenson had breathing problems, he told them to try Alpena. When they came up to Alpena in a motorhome and stayed at Camper's Cove, she could then breath and other health issues seemed to disappear. The Swenson's have done a lot of work remodeling the house at 826 S. State Avenue that is subject to this appeal. They have done miraculous things converting the home to a very desirable place. It is very quality work, and I'm sure the addition would likewise be the same. These people are not slum landlords. The place has already been significantly improved.

Chairman Anderson asked Don Gilmet about the vehicles. Mr. Gilmet said in the city you can not block any sidewalk for any amount of time with a vehicle. With that being said, that happens all the time. Don said he and Adam had a conversation about that, because they have a small motorhome that's not blocking the sidewalk at all. That was one of their concerns if that motorhome is there, is there going to be space for the renter, whoever is renting the front part of the house, to park their car. That is something that we address through zoning, because of the requirements for having an apartment. Somebody could park between the sidewalk and the curb on the grass, if they want. That is a legitimate parking spot in the City of Alpena in a residential area.

Member Lamble said this request is expanding a non-conforming use that you are now permitting an additional occupancy space. In the long view, if that house is sold, now we have expanded that non-conforming use. We can't come back in after the fact to restrict it. Don Gilmet said the only thing that is not expanding is the footprint of the house.

Adam Poll said the non-conforming portions of this particular property are the dimensions and the setbacks. Because the dimensions of the property are not being changed, and because there is a provision that does allow a home in the zoning ordinance to be utilized if the owner is there. I'm not considering this a non-conforming use, in the fact they are not changing any dimensions, and I don't consider it expanding a non-conforming use in the fact you are adding another unit, because that is allowed if the owners are there. So, what I'm looking at is the owners are not going to be there the entire time.

Mr. Yankie told the board he is not questioning the character of the owners of this property. He is questioning the zoning board's decision to further a non-conforming lot. He thinks the board is not taking this particular area into consideration. This is a view corridor off U. S. 23 South to the lake. Blair is a water park with a lot of kids going back and forth on bicycles to the park. It is going to be a busy area with vehicles.

He heard there is going to be a parking space inside the garage. He said the garage is approximately 650 square feet and when you take away the space for a car inside it, you have to take that area out of the 650 square feet of the garage in order to determine what the living space is going to be.

Mrs. Swenson addressed the board. Her understanding with this unit they bought, is they were going to stay in it, we got here, and this thing is huge. There is a 2 ½ car garage that they would be happy using 450 square feet of it. Currently with the zoning, it is her understanding we can come stay in the house for three or four months a year and then leave and rent it. First, they decided to remodel it to bring it up to standards of today. Then we would get it inspected so it can be rented. She said then they would have two options, we could go short term rental or long term. They talked to people about getting in touch with the hospital with the doctors having issues finding rentals here. Our idea is not to make a living off this house. Our idea is being able to afford to come to Alpena three or four months a year, because we are renting it part-time and we can come. We would prefer to do a long-term rental rather than short term rental. It is better for us, because we feel like we would be able to get tenants in there that are more reliable that are not college kids.

Since no one else wished to speak on this case, either for or against, Chairman Anderson closed the public comment portion of the meeting to deliberate for case ZBA19-03.

#### DISCUSSION BY BOARD MEMBERS:

Member Lamble said he would take a longer view, because if we allow this, he would characterize this as an incursion into the neighborhood. If we start expanding these kinds of uses, it is not the applicant that I am concerned with, it's what happens when the applicant no longer owns the property. That is his major concern.

Member Bray's concern is the same thing. What if the property gets sold in the future?

Member Keller had the same concerns.

Member Lamble made a motion that the application for this variance be denied.

Member Bray seconded the motion.

ROLL:

Votes to deny this variance:

Ayes: Anderson, Bray, Keller, Lamble

Nays: None to approve.

The variance to allow the construction of a second residential unit within an existing attached garage has been denied.

Chairman Anderson told the Swenson's they have the ability to go to court on this case.

OLD BUSINESS:

Per Adam Poll, there was not any old business.

NEW BUSINESS:

The minutes from the November 28, 2018 meeting were approved as printed.

COMMUNICATIONS:

Member Lamble had a concern about the makeup of tonight's meeting is that they do not have a quorum. In the absence of a quorum, I'm not familiar enough to know whether we have any provision in our by-laws to have a telephone vote taken. If it's not there in the by-laws, whatever actions we have taken tonight aren't having any affect.

Adam Poll said he will need to verify if the telephone vote is proper. He will make sure they get that squared away for the applications that were approved.

Chairman Anderson said that's in case they have to use the same procedure again.

Adam Poll said in the future when they do get a quorum, is amend the by-laws that would allow for that.

Since there was no more business to discuss, motion was made to adjourn.

ADJOURNMENT:

With no other business to discuss, Chairman Elwood Anderson adjourned the meeting.

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Alan Guest, Secretary

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Elwood Anderson, Chairman