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MINUTES  
ZONING BOARD OF APPEALS  
September 25, 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, Broers, Guest, Keller, Lamble, Lewis

Absent: None

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

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. Discussed adding a condition to the variance that both units may only be occupied if the homeowner is occupying one of the units.
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. 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

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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 with the following condition.

Both units may only be occupied if the homeowner is occupying one of the units.

Adam Poll did receive some letters and some phone calls relating to this variance.

Mr. and Mrs. Bott of 814 S. State Avenue submitted a letter to the zoning board stating they have owned their property for a number of years and the parking has been an issue at 826 S. State Avenue since the second garage was built on and it has become primarily a rental property. They said there is not much room on the small lot. Their concern is that if this variance is approved, anyone will be able to convert or add onto their garage to make a second residence.

Janet Winfield of 305 E. Blair Street submitted a letter to the zoning board stating the property at 826 S. State Avenue has for years violated city parking rules by parking on the sidewalk leading to Blair Street park, blocking or partially blocking the sidewalk. By creating a second residence at this address, more parking will be needed for renters and guests. These people will have nowhere to park and we can predict more sidewalk blockages. Why do you want to add to the parking problems by inviting more vehicles to this address? She disagrees with this proposal.

Adam Poll noted other letters as well and attempted to summarize those letters that were received.

Member Lamble asked Mr. Poll isn't this the same topic the board addressed once before.

Mr. Poll said he was having the city attorney review it. Because there was a phone vote, which was reviewed once before, the request was denied. If the applicant's wanted to appeal, we need to make sure it goes through correctly. That is why this topic is being brought up.

Chairman Anderson asked Mr. Poll why that would be considered a double residence.

Mr. Poll said the owners are looking at creating two residences. They are going to convert the garage to a separate residence that would not be accessible to the other residence. Since the owners are going to be there only a few months out of the year, that is why we have to go through this variance process instead.

Member Lamble asked Mr. Poll if he received any letters in support of this proposal. Mr. Poll said no.

Member Guest asked Mr. Poll if they were to pass a variance, the owner or a future owner would have to occupy one of the two residences.

Mr. Poll said unless the owner of the property is present both units cannot be rented out. Theoretically, if the owner should be present, if there are any issues with the tenant, they should be able to address them. If they are not present, they would not be able to rent out both. The owners would not be able to rent out the second unit. If they sell the property down the road, they would not be able to rent out the second unit.

PUBLIC COMMENT:

Mr. Eric Swenson, owner of 826 S. State Avenue, addressed the board. He said he is going to rent the house. He says he does not think it is good for the neighborhood or the town to have empty houses nine to ten months out of the year. He has engaged a professional management company to take care of the property and to rent it. His hope was, if he can do this, is to be able to rent the house on a one-year lease. He said they are not expanding anything outside the perimeters of the existing footprint of the property. He said there are currently three paved parking spaces outside of the house accessible by the driveway. There is a fourth space there that has grass. Mr. Swenson said he would be happy to replace the grass and put in a fourth parking space. The RV is temporarily parked there. The RV will not be parked on the property next year or any time in the future.

Marie Guthrie of 309 E. Blair Street addressed the zoning board. Her concern about Eric's petition is that public park is growing. The use of the park has increased and continues to increase. This is a public safety issue, because there are too many cars already at the park. There is congestion there. She asked where will they put the snow. She requests the board deny this request.

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

DISCUSSION BY BOARD MEMBERS:

Member Lamble said when we grant a variance like this, it's a variance that is going to run with the land. He looks at this from a standpoint where there really wasn't any change to this application. It has already been dealt with by this board and was rejected by a unanimous vote. It was himself that brought to the attention that he is not sure our provisioning articles allowed for a telephone vote. For the same reasons that were enunciated earlier, he would move that the application be denied.

Member Bray said he visited the site and feels parking does not seem to be an issue. There are three distinct spots to the building to the sidewalk, but it does not violate code. He does not really see the issue with the parking with probably two vehicles.

Member Keller said anyone who has a driveway at a residence in the city, if they have a couple of people come over, they park in the street. Now we are saying that he can't have other people

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park in the street when he has extra people.... we can. He feels the snow would not change anything. He feels the owner meets the criteria.

Member Guest made a motion to deny this variance.

This vote is to deny this variance.

ROLL:

Ayes to deny this variance: Guest, Lamble, Lewis

Nays to approve this variance: Anderson, Bray, Keller, Broers

Member Guest said if someone were to offer a motion to approve this, he thinks that they should make a recommendation to Mr. Poll where it would say that the owner must occupy one of the two units.

Member Broers said the owner is only going to occupy the apartment four months out of the year. He said it sounds like this applicant is being punished because the piece of property that he owns and paid for, tends to care for, because it happens to be adjacent to public property, he is being treated differently. If he was in some other lot somewhere, where people park on the street all the time, have a house close to downtown, people park in city parking all the time, if you have guests or company. He is going the extra distance to bring in a property manager. There are good renters out there. He is not changing it; he is improving it.

Member Bray made a motion to approve this variance with the condition that the owner must occupy one of the two units.

Member Keller seconded the motion.

DISCUSSION:

Member Guest said his concern is not necessarily with Eric. His concern is with subsequent owners of the property and don't want to create a duplex for this property. Especially considering every person who responded about this variance, responded negatively.

Member Lamble agrees it is not the applicant. It's what happens down the line. Now we are expanding the use of this property. How are you ever going to enforce these restrictions on a subsequent owner. This is not creating a duplex. We will now be creating a multi-family, two separate locations on a half lot. He feels that is unacceptable.

Member Guest asked Mr. Poll what would happen if this variance is denied.

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Mr. Poll said if this proposal is denied, the applicant can rent the house, nothing is preventing that. If he was going to maintain permanent occupancy, he could go and get a special permit to allow construction of the second unit, but he would have to maintain his presence there.

More discussion ensued concerning this variance.

ROLL:

Ayes to approve this variance: Anderson, Bray, Keller, Broers

Nays to deny this variance: Guest, Lamble, Lewis

This use variance to allow the construction of a second residential unit within an existing attached garage has been granted with the condition the owner must occupy one of the two units.

This use variance meets the following criteria:

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).

#### Public Hearing of Case ZBA19-04

Adam Poll, Planning and Development Director presented the variance as follows: Cheryl Wekwert, 140 E. Bosley Street, Alpena, MI 49707 is requesting a variance to construct a ten foot wide covered porch on the front of her home, which will extend ten feet into a required front setback, five more feet than allowed. Article 3.31E and 5.7C1

#### **Property Address: 140 E. Bosley 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 lot the house sits on is a unique shape and the house is constructed closer to Bosley Street than would currently be allowed. The area is unique as there would appear to be several other homes with similar setback covered porches.
2. Strict compliance would allow for the construction of an open porch but would not allow for a covered porch to cover the whole porch. The porch could be constructed to be a five-foot porch, but that would not fulfill the needs of the applicant. The applicant also has a small rear yard, so constructing a deck would not appear to be an option.
3. The proposed request would appear to do substantial justice to the neighbors and the applicant. The proposed covered porch would appear to match the setback of her closest

neighbor, and several other surrounding properties have a covered porch closer to the front property line.

4. The need for a variance was not created by the owner. The lot is a unique shape and very shallow.
5. The proposed request would not appear to alter the character of the neighborhood. The covered porch would meet the setback of other porches in 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. The lot in question is very shallow and would not afford the applicant for a deck in the rear yard. The applicant is requesting a covered porch which would appear to match the setback of the adjoining neighbor and several other homes in the area.

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

PUBLIC COMMENT:

Cheryl Wekwert of 140 E. Bosley Street addressed the board. She said her house is on a pie shape lot so she can't go back, and the front would be right in line with the other houses on the street. The porch would blend in with the neighborhood.

Member Boers asked her if the masonry porch is existing or is it under construction. She said they were already approved for the masonry foundation just not the roof part. They do have construction going right now for the footing and the platform. What is in question is the roof part. Her understanding is once you put the roof on, it changes the circumstances. Adam Poll said it changes the definition because it makes it much easier to enclose it. The posts for the roof will be going on top of the platform.

Since no one else wished to speak either for or against this variance, Chairman Anderson closed the public comment portion of the meeting to deliberate for case ZBA19-04.

DISCUSSION BY BOARD MEMBERS:

Member Lewis made a motion to approve this variance as requested according to the city's criteria.

Member Lamble seconded the motion.

ROLL:

Ayes: Anderson, Bray, Guest, Keller, Lamble, Lewis, Broers

Nays: None

The variance to construct a roof over the masonry porch which is under construction 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 ZBA19-05

Adam Poll, Planning and Development Director presented the variance as follows: Mary Lewandowski, 235 E. Campbell Street, Alpena, MI 49707, is requesting a use variance for the property at 239 E. Campbell Street in the R-2 One Family Residence District to allow the use of a second residential unit located within the home. Article 5.7B

**Property Address: 235 E. Campbell Street**

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 existing home appears to have been constructed as a duplex. Access to the rear unit above the garage is in the rear and the space above the garage would appear to be 1,200 square feet. The front portion of the home appears to be roughly 2,000 square feet between two floors. The house also has a very small yard and would not be able to be constructed today due to lot coverage restrictions.
2. The request is unique. The house was constructed as a duplex. It was then converted to a single-family home. Usually these situations are the opposite with a single-family home being divided, but the garage and rear unit were constructed to be a separate unit.
3. The proposed addition of a unit would not appear to alter the character of the neighborhood. There is plenty of off-street parking and plenty of square footage for both units. The house already appears to be a duplex.
4. The hardship does not appear to be self-created. The house was originally constructed as a duplex and was converted to a large single-family home.

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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. The home in question was constructed and used as a duplex for many years. Recently the home was not registered as a rental and converted back to a single-family home and lost its legal non-conforming status. Due to its layout and dimensions of the home on the lot, it would be difficult to utilize the home as a single-family dwelling. The use as a duplex would not appear to alter the character of the neighborhood as it adjoins a commercial use as well as other residential.

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

PUBLIC COMMENT:

Mary Lewandowski, 235 E. Campbell Street addressed the board. She said the house is setup as two places. It has two garages, two separate furnaces, two separate kitchens, two separate air conditioning units, etc.

Since no one else wished to speak either for or against this variance, Chairman Anderson closed the public comment portion of the meeting to deliberate for case ZBA19-05.

Member Lamble made a motion to approve this variance according to the city's criteria.

Member Broers seconded the motion.

ROLL:

Ayes: Anderson, Bray, Guest, Keller, Lamble, Lewis, Broers

Nays: None

The use variance to allow the use of a second residential unit located within the home has been granted.

This use variance meets the following criteria:

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).

Public Hearing of Case ZBA19-06

Adam Poll, Planning and Development Director presented the variance as follows: Timm Construction, PO Box 307, Alpena, MI 49707 is requesting a variance on behalf of Paul Baker and Mark Spencer to construct an attached garage located at 167 S. State Avenue, with a zero foot side yard setback in an R-2 One Family Residence District, six feet less than allowed. Article 5.7C1

**Property Address: 167 S. State Avenue**

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 property in question is unique as the lot is much smaller than a standard lot and measures 45 feet wide by 107.5 feet long. It is much narrower than the surrounding lots which are 64 feet and 82.5 feet wide. The house is 34 feet wide and that leaves 18 feet along this section of side yard.
2. Strict compliance with the regulations could potentially be met by moving the garage to the rear of the property, but the garage in order to meet setbacks would take up additional space and not allow for other uses of the rear yard. The applicant could construct a six-foot narrower garage in the proposed location, but the useable space of the garage would appear to be less than 10 feet wide which is about as wide as a typical parking space.
3. The proposed request would appear to do substantial justice to the neighbors and the applicant. There are many other houses and garages in the neighborhood with similar setbacks, with the most affected neighbor at 165 S. State Avenue having a garage that would appear to have a one-foot side yard setback.
4. The need for a variance was not created by the owner. Houses along State Avenue were generally constructed long before the city was zoned.
5. The proposed request would not appear to alter the character of the neighborhood. There are several houses and accessory structures with similar setbacks in 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 due to the smaller lot dimensions and location of the home on the lot as well as several other homes in the area with similar side yard setbacks for the home or garage. The request would appear to provide substantial justice for the neighborhood, as long as a condition is included requiring that no drainage can be directed onto a neighboring property.

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

Adam Poll received a letter from Jake Idema at 165 S. State Avenue in opposition to this variance.

Mr. Jake Idema states, with the proposed zero setback, a safe distance between structures of adjoining properties would be decreased. The current safety barrier is not optimum but is necessary to ensure that emergency services could be met on both properties, should a need arise. The proposed variance request does not appear to address the on-site drainage, runoff, and snow storage. There are great concerns that by granting the variance the total runoff going onto the Idema property would be increased and have a negative impact to the Idema property and potentially damage the home foundation. He would like this zoning variance request to be denied.

Member Keller asked Mr. Poll what the offset is between the two buildings. Mr. Poll said that the garage would have to meet additional fire code restrictions. Any building that is closer than five feet to a property line, or possibly ten feet, they would have to have additional firewall protection along that wall. That is part of the building code.

**PUBLIC COMMENT:**

Mike Schultz from Timm Construction Company, who also lives at 163 S. State Avenue addressed the board is representing the owners.

Member Broers asked Mr. Schultz if the gable end of the garage roof is going to be a zero overhang, or are you going to set the structure back a little bit. Mr. Schultz said that gable will be in line with the edge of the driveway. Mr. Broers said it was designed so there would not be any additional water runoff from the roof of the garage than there would be with water running onto the concrete now. It is well designed for these very tight quarters.

Mr. Schultz said when the roof is in place, the way the pitches will work, the rain will land on the concrete of the driveway when this is completed if this is approved.

Pam Idema from Lincoln, Michigan, who is representing Jake Idema of 165 S. State Avenue, addressed the board.

She has some objections to this variance request. She said the drawings that were submitted do show that the roof line would go into the air space of Jake's property. She said according to the drawing, the building is coming directly to the edge of the cement. She had another concern about the zero setback because of fires and safety hazards. The setbacks are there to ensure there is enough room and safety for all sorts of emergencies that can happen. She said she hears you talking about a firewall on the garage being established, but what about the Idema residence where all those safety precautions are not going to be there. In case of fire, she feels the risk is quite high. She also is concerned about the drainage. She said when people have a garage door, they normally put gutters in front above the door, so the drainage does not hit them coming off the roof. The snow removal is a concern as well. She hopes the variance request is denied.

Since there was no one else to speak either for or against this variance, Chairman Anderson closed the public comment portion of the meeting to deliberate for case ZBA19-06.

#### DISCUSSION BY BOARD MEMBERS:

Member Guest had a point about some of the concerns expressed by Ms. Idema, on behalf of Jake Idema, about the overhang. His understanding with the presentation by Mr. Schultz was that this is not valid, and the overhang would not encroach on their property. The issue of gutters has not been addressed by Mr. Schultz. Member Guest asked Mr. Schultz if gutters had been considered for this addition.

Mr. Schultz said they have, and they talked about this a while ago internally. That was an adamant no on their part to not have gutters. For the soul reason, that gutters would localize the water to one spot to a downspout and where would they have to take it. The consensus was to keep the water coming off the eave off the roof line to just naturally land onto the concrete and that resolves that issue. Otherwise, we are hindering it more than helping it if we have a gutter. On the rear side of the garage, that water will naturally land in the grass area behind the garage. It is not going to drain to a neighboring property.

Member Lamble asked what they are proposing as an eave adjacent to the adjoining property.

Mr. Schultz said the eave on the gable side of the garage will be one foot.

Member Lamble said, when you say that you are going to do a zero-clearance construction, the body of the garage is going to be one foot in, the eave is going to be the zero clearance. Mr. Schultz said that is correct.

There was no further discussion on this case.

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

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Member Broers seconded the motion.

ROLL:

Ayes: Anderson, Bray, Keller, Lamble, Lewis, Broers

Nays: Guest

The variance to construct an attached garage with a zero-foot side yard setback 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 ZBA19-07

Adam Poll, Planning and Development Director presented the variance as follows: CDA Pizza, Inc., P.O. Box 564, Escanaba, Michigan 49829 is requesting a variance to allow the existing building, located at 650 N. Ripley Boulevard to operate a restaurant with on premises consumption of food to operate with 15 parking stalls, four fewer than required, and utilize a drive-up window with three stacking spaces, two fewer than required. Article 3.30.E.13

**Property Address: 650 N. Ripley Boulevard**

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 property in question is unique as the lot is a very unusual shape due to the unique angle of Campbell Street. Due to this unique shape parking is limited. There is some

unutilized space on the lot behind the residential, but it would not appear to be appropriate for parking or access purposes.

The variance to allow for a drive-up window for picking up previously placed orders of food is unique due to the placement on the building. The only other location on the building that could be utilized would be behind the building or the side closest to the residential uses which would be less than desirable.

2. Strict compliance with the regulations could potentially be met by eliminating the indoor dining area and having a carryout only establishment, but in this case the business model requires on-site dining. The shape of the lot does not allow for utilizing any additional sections of the lot for additional parking. Some additional parking may be gained if the drive-up window is not utilized.

Strict compliance with regulations could not be met without routing traffic behind existing residential uses.

3. Granting the variance to parking requirements would appear to do substantial justice to the applicant and other nearby owners. The building is sitting vacant and utilizing it for the proposed use would not appear to have a significant negative impact on the area.

Allowing the drive-up window could cause potential stacking issues. There would not appear to be a great deal of stacking space. The applicants have indicated that it would simply be a pickup window and orders would not be placed at the window which could alleviate some potential stacking issues as customers utilizing the window should not have to wait long for their food.

4. The need for a parking variance was not created by the owner, although eliminating the drive-up window may provide some limited additional parking.

The variance for the drive-up window is created by the applicant as there is currently no window present now, and the business could operate without a drive-up window.

5. The parking variance would not appear to be out of character with the neighborhood. The parking area is not proposed to change, although the existing parking area is not screened from adjoining residential as is currently required by the Zoning Ordinance. As a variance is needed, the Zoning Board of Appeals could consider requiring a six-foot tall privacy fence be added to screen the parking area from the nearby residences.

The variance for the drive-up window could be adverse to the neighborhood if stacking for that window backs up onto Ripley Boulevard. The applicants have indicated it would be for pickup only and that orders would not be placed at the window.

**DRAFT**

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 due to the shape of the lot. Granting the parking variance would not appear to have an impact on the neighborhood as adequate screening is provided. Adam would recommend requiring a six-foot privacy fence be added to screen the parking area from the nearby residences.

The drive-up window could cause issues if stacking backs up on Ripley Boulevard. There would appear to be enough stacking for three vehicles. The applicant has indicated that orders would not be placed at the window and that generally vehicles would not have to wait long at the window. That may be the case now, but another restaurant may have a different policy in the future creating an unsafe traffic situation.

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

Staff would recommend **denial** of the request for a drive-up window.

A letter from Arvilla Tews at 510 W. Baldwin Street was submitted. It states her home is directly behind 650 N. Ripley Boulevard and her fence borders the whole back of the building. She is totally against a drive-up window and stacking spaces. She does not want the traffic, noise, and mess that would come with a drive-up window. There is no room for a drive-up window. She always had a mess around her home and people walking through the yard next to her house from the 7-Eleven store that was there, and she does not want it again.

**PUBLIC COMMENT:**

Lee Fitzpatrick of 520 S. First Avenue, Property Manager for the apartment building which is closest to the parking lot addressed the board. They are not against the development in any way, they would just like a fence that separates the building from their property, if it is approved. They have a large lot behind their property their tenants use. We don't want that to become the overflow parking for it. We do not want our property to be the walk through to get to the pizza property. Their only concern is that it is kept private for their tenants.

Ron Tews on behalf of his mother at 510 W. Baldwin Street addressed the board. Their only concern was about the drive-up pickup window.

Pam Hunter of 508 W. Campbell Street addressed the board. The amount of garbage they had from the 7-Eleven was ridiculous. She recently put up a chain link fence to keep the garbage out.

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If they indeed use June Street, I would like a privacy fence to be put up and a fence to the ground to keep the garbage out. Also, to keep people from parking in the back and causing more commotion. She has helped mow that lawn for the past 30 years, she is not just talking where the house is, talking about coming all the way out to where that potential road could be and all the way over to where the trees are on June Street. She asked where is the employee parking going to be? She is all for Domino's pizza, just not in her backyard. Also, where are they going to put their snow.

Jenny Valley on June Street from Upper Cut Salon addressed the board. She is concerned about parking also. She has a parking lot and parking on the street. June Street does get busy. If they do put up a privacy fence, and it does not cross her parking or June Street, will they put a gate in so she can get to the pizza place too.

Since no one else wished to speak either for or against this variance. Chairman Anderson closed the public comment portion of the meeting to deliberate for case ZBA19-07.

#### DISCUSSION BY BOARD MEMBERS:

Member Guest asked if they will be voting on both the parking and the drive-up window variances at the same time.

Member Keller asked what about snow storage.

Adam Poll said they could potentially utilize the grass area alongside their building if they chose to.

There was no further discussion on this case.

Member Guest made a motion to accept the variance for the number of parking spaces and deny the request for a drive-up window, with the condition that a six-foot privacy fence that would go all the way down to the ground be added to screen the parking area from the nearby residences, as recommend by Adam Poll.

Member Lamble seconded the motion.

#### ROLL:

This motion is to approve the parking spaces and to deny the drive-up window.

Ayes: Anderson, Bray, Guest, Keller, Lamble, Lewis, Broers

Nays: None

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The variance for the parking spaces has been approved, but the drive-up window has been denied.

OLD BUSINESS:

Per Adam Poll, there was not any old business.

NEW BUSINESS:

Member Guest suggested if they could approve the July 31, 2019 meeting minutes at the next meeting.

Ayes: Yes

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