

MINUTES

ZONING BOARD OF APPEALS

October 28, 2015

COUNCIL CHAMBERS, CITY HALL

CALL TO ORDER:

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

ROLL CALL:

Present: Anderson, Bray, Dutcher, Guest, Lambie, Polluch

Absent: Lewis

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

Public Hearing of Case ZBA15-08

Adam Poll, Planning and Development Director presented the zoning request as follows: William Yockey, 106 W. Lewis Street, is requesting a variance in the R-2 One Family Residential District to allow a 10' x 20' shed to be constructed zero feet from the side and rear property lines, six feet closer than allowed and a variance to the 35 percent maximum lot coverage to allow for 35.6 percent lot coverage, 0.6 percent greater than allowed. Article 3.11C3

**Property Address: 106 W. Lewis 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 applicant's lot is unique in the fact that the applicant's home is on a reversed corner lot. Where a normal front yard would be located at the narrow end of the lot closest to the street, the applicant's home is on a corner and is addressed off of Lewis Street, the wider dimension of the lot instead of Second Avenue which is the narrow dimension of the lot. This creates a scenario where the applicant must maintain two front yard setbacks off of both Lewis Street and Second Avenue, and provides very little space to legally construct accessory structures.

The applicant previously had a legal non-conforming shed in the proposed location of the new shed, but once a legal non-conforming structure is removed, it cannot be rebuilt without a variance being granted.

The request is unique in that the applicant has very little yard to work with due to his location on the corner of Lewis Street and Second Avenue. He is requesting to construct a 10' x 20' shed with a zero foot setback in order to maximize his existing yard space.

In addition to the setback variance, the applicant is also requesting a variance to allow him to exceed the maximum lot coverage by 0.6 percent.

2. The applicant could set the shed back six feet from the side and rear property lines and six feet from the house, but it would move the shed directly into the middle of the existing yard and would eliminate the ability to use that yard for storage of vehicles. Allowing the shed to have a zero foot setback would allow vehicle storage in the future.

The applicant could construct a 10' x 12' shed and not exceed 35 percent lot coverage, but the applicant has indicated that he would prefer a larger shed for his uses.

3. The proposed use would not appear to alter the essential character of the neighborhood. The neighbor on Lewis Street already views a retaining wall, having the shed at a zero foot setback would not appear to impact the property. The neighbor on Second Avenue also has a retaining wall and a fence on the property line already. In addition, a shed was previously at the location for a number of years without incident. Both neighbors have indicated they are not opposed to the proposed shed location.
4. The variance is not self-created. The need for both variances comes from a large house that was legally built on a corner lot. A shed cannot be placed in the remaining yard legally and still allow room for vehicular storage.
5. If the variance is granted, it would not appear to have a negative impact on the area. Both neighbors have indicated that they are not opposed, and there was a shed in this location for a number of years without incident. Allowing a zero foot setback would allow the yard to be used for vehicular storage and keep additional vehicles out of the front yard and street. In addition, allowing a slightly larger lot coverage than allowed would not appear to negatively impact the area, but allow the applicant to utilize his existing garage for vehicular storage.

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.

Due to the ability to meet the criteria, staff would recommend **approval** of the requested variances to allow for a 10' x 20' shed to have a zero foot setback and allow a 35.6 percent total lot coverage. Also, when the shed is constructed, that any rain water is not directed onto the neighbor's property and is directed onto his own property.

#### PUBLIC COMMENT:

Chairman Dutcher asked if there was anyone who desired to speak either for or against this variance.

A letter was submitted to the board from James Daleski of 114 W. Lewis Street stating that he is William Yockey's neighbor to the immediate West, and he has no problem with him seeking a zero foot variance to build a storage shed.

A letter was submitted to the board from Cliff Broderson of 611 S. Second Avenue stating he is William Yockey's neighbor to the immediate South, and he has no problem with him seeking a zero foot variance to build a storage shed.

A letter was submitted to the board from Thomas M. Hendry of 10412 Forest Run Drive, Bradenton, Florida. He states the house and property which abuts this lot, 115 W. Maple Street, is part of the James W. Hendry Family Trust of which he serves as the Trustee. Unless there is a genuine and compelling reason for this variance, which I cannot at this time imagine, we would prefer not to have our back yard view six feet closer to the back of Mr. Yockey's shed.

Adam Poll told the board that Mr. Hendry's property at 115 W. Maple Street does abut the alley, but in this case it does not abut the house in question. There was an alternative suggestion inquired why he couldn't just attach the proposed shed to his existing garage. That could be done. The applicant was not necessarily interested in that because they have already poured a slab. If he was going to attach it to the existing home, he would need to set footings into it as well.

Don Gilmet, Building Official told the board that anything within five feet of the property line would have to have one-hour fire rated walls both sides. He will need exterior drywall on the outside of the building before he puts his final finishes on.

Member Guest asked Don Gilmet if that was a condition of the building permit.

Don Gilmet said he will not need a building permit, because it is 200 square feet. He will need a zoning permit. With a zoning permit, they issue the permit, then go look and make sure it is in the right spot. Don said no matter what you build, in the State of Michigan or the City of Alpena, you have to comply with the building codes.

In this case, Don or Mike will have to go over there and make sure he has the one-hour fire rated protection all the way around.

Member Guest asked the building official if that was a condition of any variance they would do. Don said they could include that in their conditions to have the shed comply with the building codes.

Member Bray asked Don Gilmet about the length of the 10 foot and the 20 foot walls of the shed. He asked Mr. Gilmet if both those walls are sitting directly on the property line. Don said yes. Member Bray said to get the one-hour rating he does not just do it on the inside, but it has to be done on both the inside and the outside of the walls. Don said the fireproofing would have to be done on all sections of the walls that fall within five feet of the property line.

Member Lamble said you are going to have the fire rating, for all practical purposes, all the way around the building. Mr. Gilmet said that would be the easiest way.

James Daleski of 114 W. Lewis Street addressed the board. He is not opposed to the shed variance. His neighbor, Mr. Yockey, just put a new driveway in, paid for a new sidewalk, and is putting a new fence in. He is making the neighborhood look nice.

Mr. Yockey's daughter, Jacqueline, addressed the board. She just wanted to add that currently they do not have any space for parking. With the shed they can put things inside of it so it would be aesthetically pleasing for the neighborhood. She said, I don't think he would have a problem fireproofing it. He would like to have the length of the shed to store the outdoor furniture, the grill, and other things to store in there.

Since no one else wished to speak on this case, either for or against, Chairman Dutcher closed the public comment portion of the meeting at 5:15 p.m. to deliberate for case ZBA15-08.

#### DISCUSSION BY BOARD MEMBERS:

Member Guest suggested that if a motion were presented, that the motion would include two conditions that the shed comply with existing building codes, specifically the fire rated walls as discussed, and the rain water would be directed to the applicant's property.

Member Anderson said it has aesthetic features in value, is functional, reasonable, and meets criteria.

Member Guest suggested the applicant install a rain gutter to direct the rain water onto his own property.

Member Anderson made a motion to approve the variance to allow a 10' x 20' shed to be constructed, with the conditions that it comply with existing building codes, specifically the fire rated walls, and the rain water to be directed onto the applicant's property with a rain gutter.

Member Lamble seconded the motion.

#### ROLL:

Ayes: Anderson, Bray, Dutcher, Guest, Lamble, Polluch

Nays: None

The variance to construct a 10' x 20' shed zero feet from the side and rear property lines with the conditions to comply with existing building codes, specifically the fire rated walls, and the rain water to be directed onto the applicant's property with a rain gutter has been granted.

Let the record show to authorize a variance, the board shall find that all of the following criteria has been met for Case ZBA15-08:

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.

**OLD BUSINESS:**

There was not any old business.

**NEW BUSINESS:**

Adam Poll said there were a couple of typing mistakes in the draft minutes of the August 26, 2015 meeting that need to be corrected. The minutes were reviewed and mistakes were taken care of.

Chairman Dutcher entertained a motion to approve the August 26, 2015 minutes as corrected.

Member Lamble moved to approve the corrected minutes.

Member Anderson seconded the motion.

ROLL:

Ayes: All

Adam Poll told the board that Sunrise Mission is appealing the Zoning Board of Appeals decision to the Circuit Court. Member Lamble asked Adam Poll if they filed. Adam said he was told they filed, but he has as yet to see an official document stating that. If they did not file within their 30 day window when they were officially notified, then they lost their ability to do so from what he understands.

ADJOURNMENT:

With no other business to discuss, Chairman Dutcher adjourned the meeting at 5:30 p.m.

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Alan Guest, Secretary

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Norman Dutcher, Chairman