

MINUTES

ZONING BOARD OF APPEALS

June 29, 2016

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, Lamble

Absent: Lewis, Polluch

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

Public Hearing of Case ZBA16-03

Adam Poll, Planning and Development Director presented the zoning use variance request as follows: Jeremy Sahr, 109 N. Second Avenue, Suite 101, is requesting a use variance in the Waterfront Development District (W-D) to allow for the use of an existing warehouse building to be used as a wine/beer manufacturing facility located at **215 Water Street** (commonly known as the Armory Garage property). Article 5.11B.

Property Address: 215 Water 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.

The Thunder Bay Winery has been in operation for a number of years. When they began production they operated out of the Center Building downtown, in a space attached to their tasting room. As production increased, they needed to expand, and rented an 800 square foot building in Alpena Township. They now need to expand again and would like to purchase the 3,200 square foot building located at 215 Water Street adjacent to the armory. The applicants have stated that this building would allow them to expand their production capabilities and potentially relocate their tasting room in the future.

The building currently is utilized as storage for fishing equipment for commercial fishing. Prior to that, the building was owned by the City of Alpena who sold the building with the intent it would become a retail fish market.

Surrounding uses for the building include Memorial Hall to the northwest which is utilized for laser tag, a long term public parking area, south Riverfront Park and the Thunder Bay River to the north. A salt storage facility is located to the southeast, and City Hall is located to the southwest.

Because the intent of the winery is to use the space for manufacturing only at this time, a use variance is needed as this type of use is not allowed in the Waterfront Development District. As a use variance is required, the board must analyze the request based on the four conditions listed above.

The building was built and designed to be utilized as a garage. It was initially utilized by the Armory for the storage of vehicles. Due to its style of construction, uses allowed in the Waterfront Development District, such as commercial and retail, would be very difficult at this location without significant modification to the building. In addition, its location adjacent to a legal non-conforming salt storage facility creates the appearance to give the area a more industrial appearance. Its current use as a storage of equipment would also not be allowed in the waterfront district.

The property is unique due to its location in the downtown and style of construction. Other buildings in the downtown were built for commercial retail or government purposes. This building was constructed as a storage building and is located adjacent to a salt storage facility. The location is unique for the applicants as it allows two portions of their business to be located

near each other, and the downtown location near the river and size of the building allows for potential use as a tasting room in the future.

The proposed use will not alter the essential character of the area. The building is now utilized for storage. All production areas would be located in the building and is very low impact. The proposed use was previously housed in the Center Building which was allowed as it was attached to a tasting room, and operated without any impact on the other commercial uses in that building. Any changes in the building would be positive for the area as the applicants have discussed improving the façade of the building in the future. Delivery traffic for the use of wine manufacturing is minimal.

The hardship is not self-created, because the building was constructed as a storage facility. Storage facilities are not allowed in the Waterfront Development District. Utilizing the building for a wine production facility with the potential to expand into a production area and tasting room, which are allowed by right. The applicants could locate in another area, but the downtown location makes sense as it allows them to possibly expand the building to a use allowed by right in the future, and it is unlikely the building can be utilized for commercial or retail use at this 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 would recommend approval of the request based on the fact it would appear to have minimal impact on the surrounding area. The buildings construction makes it very difficult to use it in the Waterfront Development District. The request would appear to be unique and it does appear to meet the four criteria.

Member Lamble asked if the building is currently being used to store fishing equipment. Adam Poll said yes.

Adam Poll said it was sold with the intent to use it as a retail fish market eventually.

Don Gilmet, Building Official, said the building was owned by the National Guard and trucks were stored in it. When the current owners bought the armory, the city had the right for first refusal to purchase the garage. The city then sold the garage to Gauthier's Spaulding, because they were relocating. When all that happened, storing trucks in that garage was a legal use. The city then developed the Waterfront Development District in 2010. All of this occurred prior to that. The only thing making this non-conforming is the fact you can't walk across the street and buy a glass of wine there.

Member Guest asked the building official for a clarification on the building. He asked Mr. Gilmet if the current owners had possession of the building before the new zoning ordinance, is that why they are using the building in a non-conforming way. Don Gilmet said yes.

PUBLIC COMMENT:

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

Jim Makowske addressed the board. He owns the Memorial Hall at 205 Water Street and he also owns the Laser Tag business that rents from Memorial Hall. His question was if there would be any odors coming from this activity that could affect the utilization of his building, obviously that would have an impact. Ultimately, the wine tasting traffic that would come through there he has no particular objection to. However, if that turned into a bar like environment where we have predominately minors that utilize his building on Friday and Saturday nights, there would be a concern on his part with the compatibility between the external traffic of that building to the external traffic of his building given to the nature of how his customers come and go during the hours that he keeps. He is assuming because there was not an issue with the Center Building there would not be an issue at this building with odors that would detract from his operation.

Janis Sahr of 3420 W. Nicholson Hill Road, Ossineke, MI addressed the board. Janis and her husband owns Thunder Bay Winery. They have been in the Center Building and they have never had a complaint of an odor. They only manufacture, usually in the fall, a few days that it ferments. You would have to be right next to the tank and you would never smell anything outside the building. Also they have kids that come from Scoops and walk right through the Center Building past their winery. They have not had any issues with minors. It is a very family oriented building. Families come in and the kids get sparkling juice and the adults drink wine. They are not rowdy and it is very quiet. It is a comfortable atmosphere.

Chairman Dutcher asked they don't plan to make beer. They are going to apply, with the board's permission, for a brewery license. They have no plans to make beer, because they do not have any brewery equipment. She said it is easier to apply for all three licenses, the brewery, the stillery, and winery all in one package from the Federal and State of Michigan. To get those licenses in their back pocket for future potential use. Maybe ten years or so down the road, build onto the building and changing it to add a tasting room.

Chairman Dutcher asked why they are in three locations instead of one. Janis said they are going to move out of the township into the city. She said they grew out of the Center Building in about nine months. They have great clientele and they are growing by leaps and bounds, about 50 percent each year they grow. They outgrew the township and they are looking for a building they can stay in for a long time and it looks like this property would match and fit their needs.

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 ZBA16-03.

DISCUSSION BY BOARD MEMEBERS:

Member Lamble made a motion to accept the variance as requested for the reasons stated by city staff. He thinks this is an appropriate use for that building.

Member Anderson seconded the motion.

ROLL:

Ayes: Anderson, Bray, Dutcher, Guest, Lamble

Nays: None

The use variance to allow for the use of an existing warehouse building in the Waterfront Development District to be used as a wine/beer manufacturing facility located at 215 Water Street has been granted.

Let the record show 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).

Public Hearing of Case ZBA16-04

Adam Poll, Planning and Development Director presented the zoning request as follows: Greg Burg, 628 W. Chisholm Street, is requesting a variance to allow for a proposed parking lot to be constructed with a zero foot side yard setback, five feet less than required located at 112 S. Eighth Avenue. Article 3.30.12a(2).

Property Address: 112 S. Eighth 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.

Burgies has been looking to acquire some office space for their business. The property at 112 S. Eighth Avenue has become available and utilizing the property as an office and for overflow parking would appear to be beneficial as it would allow them to expand their restaurant. The property is ideal as their existing overflow parking area is located across Chisholm Street. Burgies requested a rezone by the Planning Commission and City Council to rezone a portion of the property to P-1 so more of the lot could be used for parking.

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

1. The proposed lot is unique in that it is only 66 feet wide. Ninety degree parking stalls would be required in order to maximize the number of parking spaces provided on the site, they are required to be 19 feet deep with a 22 foot maneuvering lane. With the two rows of parking shown, that only leaves six feet of additional space. Any commercial parking area abutting a residential district is required to have a ten foot side yard setback, which can be reduced to five feet by staff if site constraints can be demonstrated. In this case, there appears to be demonstrated constraints, but the five foot setback is not being met as presented. The applicants are requesting that the additional six feet be utilized along Eighth Avenue as it is the most visible from the road.
2. The applicants would not appear to be able to add the spaces they need on the lot required due to the narrowness of the lot. If they changed the configuration of the parking lot to meet the ordinance standards, they would only be able to provide parking on one side of the lot.
3. The request for the variance would not appear to have a negative impact. The applicants are required to screen the parking area from residential uses, and will be doing that with a six foot privacy fence and plantings. If the applicants are not granted a variance, they could still potentially use the area for parking, but could only place stalls on one side and would lose five parking stalls. They could potentially mitigate some of that loss by adding two parallel parking stalls. Meeting the setback adjacent to the residential home at 629 Lockwood Street would not appear to be needed as the parking lot will be screened from the residence.
4. The building on the property in question has been utilized as a commercial office for many years. Burgies does not have enough on-site parking and the overflow parking they have requires crossing Chisholm Street which has a significant amount of traffic. Allowing the variance would allow Burgies to increase parking and the safety of their patrons.
5. Granting the parking setback variance would not have an adverse impact on surrounding properties. Granting the variance allows more parking on the site and the closest neighbor would be screened visually by a six foot privacy fence. If the variance is not granted, the site can still be utilized for parking and would still be required to be screened.

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.

Adam Poll said the Planning Commission did recommend approval to rezone. Adam said hopefully the rezoning will be approved at the next City Council meeting.

PUBLIC COMMENT:

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

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 5:25 p.m. to deliberate for Case ZBA16-04.

DISCUSSION BY BOARD MEMBERS:

Member Lamble said he is familiar with this site. He said there is an existing structure on this site that is an eye sore to the adjacent neighbor, and if that is removed, it will be contemplated on this plan. He said it looks like a giant shed.

Adam Poll told the board that they will be taking down the shed.

Member Lamble made a motion to accept the variance as recommended by Adam for the reasons stated by city staff.

Member Guest asked Adam if they heard from any of the adjacent property owners.

Adam Poll said initially at the first Planning Commission meeting for this parking lot, which they voted 4-2 to grant their request, they did hear from a property owner from across the street, initially he was opposed, because he had concerns about his property values going down. Afterwards the Burgs were able to talk to that property owner and explain their request to him and then he was in favor of it.

Member Anderson seconded the motion.

ROLL:

Ayes: Anderson, Bray, Dutcher, Guest, Lamble

Nays: None

The variance has been granted to allow for a parking lot to be constructed at 112 S. Eighth Avenue with a zero foot side yard setback.

Let the record show to authorize a variance, the board shall find that all of the following criteria has been met for Case ZBA16-04.

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 ZBA16-05

Adam Poll, Planning and Development Director presented the zoning request as follows: Chad Mischley is requesting a variance to allow for the construction of a 40' x 60' new building with a zero foot side yard setback, five feet less than required, an 80 foot front yard setback, 60 feet more than allowed and a zero foot parking setback, five feet less than required to be located at **928 W. Chisholm Street**. Article 5.14C2.

Property Address: 928 W. Chisholm 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.

The applicant is requesting to construct a 40' x 60' building to be used for washing and repairing vehicles for Hudson's Auto. The applicant is proposing to set the building back 80 feet from the front property line along Chisholm Street and 20 feet from the alley. The applicant has indicated that the building would be a pole building design but would utilize decorative siding. The proposed plan shows a zero foot side yard setback which would require that a setback variance is obtained. The applicant would also like to have an outdoor vehicle sales area in front of the proposed building. The applicant has indicated that the auto repair would be for their own vehicles and would principally involve detailing, but some repair would be conducted as well.

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

1. The applicant's request is unique in that the applicant resides in the adjacent legal non-conforming residential home at 920 W. Chisholm Street, a site which he eventually plans to demolish and incorporate into the business. In addition, the proposed building is being constructed to support the primary use on the site of outdoor vehicular sales. Allowing a greater setback for the building allows the vehicles to be more easily viewed.
2. Strict compliance with the Zoning Ordinance regarding the front yard setback would appear to have a negative impact on the business. The building is proposed to support the primary function of the business which is outdoor vehicular sales. In the Commercial

Corridor District (CCD) buildings are required to be located close to the street with parking located in the side or rear to encourage walkability and pedestrian access. In this case, the vehicles are what the business is trying to display, and the building is being constructed to support the buildings.

The applicant could potentially reduce the size of the building to move the building away from the adjoining legal non-conforming residential use at 920 W. Chisholm Street. However, if the residential use is removed eventually as planned by the owner, the Commercial Corridor District allows a zero foot side yard setback.

The five foot side yard setback for the parking area could be met as well, but would appear to be unnecessary. Allowing additional parking area allows the display of more vehicles, and the affected property is owned by the applicant who resides there.

3. The most affected property would be the legal non-conforming home at 920 W. Chisholm Street where the applicant resides. The applicant has indicated that eventually he would like to remove the house and expand his business to the site. If the house is removed, the zero foot building side yard setback is allowed by right.

There does not appear to be a screening requirement in the Commercial Corridor District and the applicant may want a good view of the car sales area while he resides at 920 W. Chisholm Street. However, staff would have some concerns if the applicant sold the home for residential use. Staff would ask that if the applicant sells the home for residential use, that screening be required to be installed by the applicant at that time.

There could be some concern that the site plan shows access to the detailing/repair areas via the alley. The applicant has indicated that auto repair would only be for their vehicles and not the general public. In addition, if access to the repair area was established from the Chisholm Street side of the building that would reduce the vehicular display area.

4. The applicant has stated that the building is needed and the primary business is outdoor vehicular sales. His business has been in operation for quite some time, and is an allowable use in the Commercial Corridor District via a special use permit. The Planning Commission reviewed the request for auto repair and outdoor sales at this location and voted 6-0 to grant the special permit at their June 14, 2016 meeting. The side yard setbacks could be met but would shrink the useable area for vehicular sales. In addition, the building would be allowed a zero foot setback if the residence is removed.
5. The request would not appear to cause an adverse impact on the area. Approving the variance would allow a successful business to expand and the impact would appear to be limited to the residence at 920 W. Chisholm Street where the applicant resides. The applicant has indicated he would like to eventually incorporate that lot at 920 W. Chisholm Street into his business. If the applicant did end up selling the house to be used as a residence, a condition requiring screening could be added.

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 would recommend approval of the request because it does appear to be unique and the applicant does own the adjoining property next door. There would appear to be side constraints regarding setbacks. The primary use of the business is for vehicular sales and setting the building back to allow for maximum visibility would appear to make sense. Ultimately, Adam said he would add the condition if the applicant sold the residential property for a residential use, that screening be required along the commercial car lot.

Member Guest asked Adam if they do his condition as he recommended and if the house at 920 W. Chisholm Street were to be sold as a residential use, that screening would be required in the future. How would that be enforced?

Adam said they would have to monitor the situation. It's tough, it involves a variation of him telling us he is selling this as a residence and we would tell him to put up a six foot fence. If we go back two years later and if we miss it, it is a pain. It is not easy to enforce. Adam says he prefers the verbiage to remain, because he would like to be able to go back and be able to catch it. Basically the requirement is that any commercial parking area be screened from any residential use and that is not a requirement in the Commercial Corridor District.

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 5:35 p.m. to deliberate for Case ZBA16-05.

DISCUSSION BY BOARD MEMBERS:

Member Guest made a motion because the zoning request satisfies the five criteria that the board approve the variance with the condition that proper screening would be required if the residence were ever sold as another residence.

Member Anderson seconded the motion.

ROLL:

Ayes: Anderson, Bray, Dutcher, Guest, Lamble

Nays: None

The variance request to allow for the construction of a 40' x 60' new building with a zero foot side yard setback, an 80 foot front yard setback, and a zero foot parking setback located at 928

W. Chisholm Street has been granted with the condition if the applicant sold the residential property for a residential use, that proper screening be required along the commercial car lot.

Let the record show to authorize a variance, the board shall find that all of the following criteria has been met for Case ZBA16-05.

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:

Adam Poll said he did not have any old business.

NEW BUSINESS:

Chairman Dutcher asked if there were any additions or corrections to the minutes of the April 27, 2016 meeting. Since there were no additions or corrections to the minutes, Chairman Dutcher said the minutes are approved as printed.

This is Chairman Norman Dutcher's last Zoning Board of Appeals meeting after serving for 34 years. He is now retired as Chairman of the Zoning Board of Appeals. He will be missed.

ADJOURNEMENT:

With no other business to discuss, Chairman Norman Dutcher adjourned the meeting at 5:45 p.m.

Alan Guest, Secretary

Acting Chairman