

MINUTES

ZONING BOARD OF APPEALS

November 25, 2014

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, Dutcher, Guest, Lamble, Polluch

Absent: Lewis, Martindale

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

Public Hearing of Case ZBA14-07

Adam Poll, Planning and Development Director presented the zoning request as follows: Alpena Community College, 665 Johnson Street, is requesting a variance in the OS-1 Office Service District to allow for the installation of a 70 foot tall wind turbine, 20 feet taller than allowed on the ACC campus to serve the utility technology program. Article 7.40D

**Property address: 665 Johnson 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. Alpena Community College is requesting to install a wind turbine for the purpose of teaching the integration of wind power to the electric grid. Alpena Community College is constructing The Ferris Werth Electrical Power Technology Center, and has offered training as an electrical maintenance technician for a number of years. The addition of the proposed wind tower would allow the college to expand learning opportunities and better train students in this program. The parcel in question is unique in that it is very large and the proposed location is a wooded area not currently utilized by Alpena Community College.
2. Alpena Community College could construct a shorter wind turbine that does not exceed 50 feet in total height, but the loss of 20 feet may move the tower into an area that does not have the sustainable winds to effectively power the tower.
3. Alpena Community College would appear to be the only significantly affected property owner. There are other property owners that could potentially see the wind tower, including the A-Plex and Northern Lights Arena, but they would not appear to be adversely affected. The only residences nearby are owned by the college and utilized for student housing. Although some noise is generated by wind turbines, it would appear to be minimal.

4. Alpena Community College operates a utility technology program and has for some time. With a global emphasis on renewable energy, specifically utilizing wind for power generation, this would appear to be a skill that would be needed by students in this type of program.
5. Granting the requested variance would not appear to have a negative impact on the surrounding area. Alpena Community College owns a large parcel of land, and the proposed tower would be set back 220 feet from the property line and 250 feet from the nearest student residence. The only potential safety hazard would be the tower falling across the parking area to the north, which is located 55 feet away from the base of the tower. There are no required setbacks for a small onsite wind energy system, only that the tower is located in the rear yard. Due to the unique arrangement of Alpena Community College, the tower is located behind some residential student buildings yet is in front of the utility technology building. When asked why the tower would not be placed north of the utility technology building, representatives of Alpena Community College noted that the proposed location had access to the appropriate infrastructure required for the installation of the wind turbine and that it would be much more difficult to extend the required infrastructure to the location north of the utility technology building.

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.

Donald Gilmet, Building Official told the board members the utility technology building is a great site and will bring so much to Alpena. He figures people will come from all over to be able to train on things here that they cannot train on anywhere else. Don said on the building aspect, he does not have any concerns with anything with what they propose to do.

#### PUBLIC COMMENT:

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

Olin Joynton of 207 Tuttle Street, President of Alpena Community College addressed the board. He wants to express his appreciation for the reports that were delivered to the board members and his support on this variance. He said this matter has already been reviewed and approved by the property committee of the Board of Trustees. They are in agreement about a location that would be appropriate for structural purposes.

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 5:10 p.m. to deliberate for Case ZBA14-07.

Member Lamble made a motion that the variance be approved as requested. He said this is a technology that needs to be encouraged. Member Lamble said he thinks the location is a good idea, because it provides visibility for the community.

Member Anderson seconded the motion.

#### DISCUSSION BY BOARD MEMBERS:

There was no further discussion on this variance from the board members.

#### ROLL:

Ayes: Anderson, Dutcher, Guest, Lamble, Polluch

Nays: None

The variance to allow Alpena Community College to erect a 70 foot tall wind turbine to serve the utility technology building 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 ZBA14-07.

1. Alpena Community College is requesting to install a wind turbine for the purpose of teaching the integration of wind power to the electric grid. Alpena Community College is constructing The Ferris Werth Electrical Power Technology Center, and has offered training as an electrical maintenance technician for a number of years. The addition of the proposed wind tower would allow the college to expand learning opportunities and better train students in this program. The parcel in question is unique in that it is very large and the proposed location is a wooded area not currently utilized by Alpena Community College.
2. Alpena Community College could construct a shorter wind turbine that does not exceed 50 feet in total height, but the loss of 20 feet may move the tower into an area that does not have the sustainable winds to effectively power the tower.
3. Alpena Community College would appear to be the only significantly affected property owner. There are other property owners that could potentially see the wind tower, including the A-Plex and Northern Lights Arena, but they would not appear to be adversely affected. The only residences nearby are owned by the college and utilized for student housing. Although some noise is generated by wind turbines, it would appear to be minimal.

4. Alpena Community College operates a utility technology program and has for some time. With a global emphasis on renewable energy, specifically utilizing wind for power generation, this would appear to be a skill that would be needed by students in this type of program.
5. Granting the requested variance would not appear to have a negative impact on the surrounding area. Alpena Community College owns a large parcel of land, and the proposed tower would be set back 220 feet from the property line and 250 feet from the nearest student residence. The only potential safety hazard would be the tower falling across the parking area to the north, which is located 55 feet away from the base of the tower. There are no required setbacks for a small onsite wind energy system, only that the tower is located in the rear yard. Due to the unique arrangement of Alpena Community College, the tower is located behind some residential student buildings yet is in front of the utility technology building. When asked why the tower would not be placed north of the utility technology building, representatives of Alpena Community College noted that the proposed location had access to the appropriate infrastructure required for the installation of the wind turbine and that it would be much more difficult to extend the required infrastructure to the location north of the utility technology building.

Public Hearing of Case ZBA14-08

Adam Poll, Planning and Development Director presented the zoning request as follows: Casey Krey, 819 N. Second Avenue, is requesting a setback variance in the R-2 Single Family residence district to allow for the construction of a shed located two feet from the rear property line, four feet less than allowed. Article 3.11C4

**Property address: 819 N. Second 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 home in question is unique in that the only access to the rear yard from the parking area is through a gate that would be blocked if the requested shed met the rear yard setback. There are two existing storage buildings currently located in the proposed location of the new shed that would be removed that are approximately two feet from the property line, and allow space to access the rear yard from the existing gate. The neighborhood is unique in that the lots tend to be smaller and narrower than many other areas of the city. There are a number of other sheds/garages as well as houses that are closer than six feet from the property line.
2. A shed could be constructed six feet from the property line, but the current access to the rear yard via an existing gate would be lost. The two foot setback requested could potentially be enlarged by moving the proposed shed closer to the existing driveway. There is approximately 20 feet from the property line to the parking area and if the proposed shed was moved closer to the parking area, however, the applicant has indicated that he has a gate in the fence between the parking area and proposed location and was hoping to utilize a 3 foot path to access his yard. Moving the gate along the alley next to the property line is problematic due to a guy wire present for the utility pole on the property line.

3. There are currently two small storage sheds that do not appear to meet setback requirements. They would not appear to be legal non-conforming structures. It would appear the existing sheds have been in that location for some time without incident. There are also many other houses and sheds/garages in the area that are much built-up to the property lines and do not meet the six foot requirement. Also, the section of the lot adjoining the proposed location is a vacant rear yard. If the applicant did meet the setback required, the proposed shed would have to be located directly along the existing fence which is used to access his yard via an existing gate.
4. The lot is unique in the fact the location of the house only allows for vehicular parking in the existing parking area without taking up a large portion of the rear yard. The applicant has fenced off his rear yard and there is a gate located in the portion of the fence that connects the parking area to the yard. If the shed meets setback requirements, it would have to be constructed directly along the fence, and the rear yard would have to be accessed in another way.
5. Granting the requested variance would not appear to have a negative impact on the neighborhood. This neighborhood features many buildings that have setbacks of two feet or less. In this instance, there are existing sheds at the location which have not appeared to have been a problem in the past, and the adjacent yard of the affected neighbor does not have any buildings in the area.

Staff is recommending approval of the variance because of the unique features on the property.

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.

Member Anderson asked Adam if he received any feedback from the neighbors.

Adam said he did not receive any comments regarding this request from the neighbors.

Member Polluch asked if you can have more than one storage shed on a residential lot.

Donald Gilmet, Building Official said they can have more than one shed on a lot. Don said the requirement for accessory structures are taken not by number, but by total square footage. With any detached garage, shed, whatever that might be, you are allowed to have a maximum of 1,200 square feet total. You would have to have a footprint of your house and it would have to be 1,200 square feet. If the footprint of your house is 1,000 square feet, then you can have a 1,000 square foot detached garage or accessory structure. In this case, it does not come anywhere near what he is proposing to build.

Member Polluch asked Mr. Gilmet how far you would have to be from a lot line to put up a storage shed. Mr. Gilmet explained it starts out with six feet from a lot line and with good reason Adam, Don, or Mike Kieliszewski could give one foot back on any line variance without having to come to the Zoning Board of Appeals. Anything that gets closer than five feet to a lot line for a detached accessory structure requires a vote of the board to be allowed.

Casey Krey of 819 N. Second Avenue, applicant for the variance, addressed the board. He said he is trying to get the smaller sheds out of his back yard and try to have just one 14' x 24' shed to put his lawn mower, snow blower, bikes, etc. into it to try to put everything into one spot because he does not have room for a garage.

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 5:20 p.m. to deliberate for Case ZBA14-08.

Member Guest made a motion for the reasons stated by the city that they approve the variance as requested.

Member Polluch seconded the motion.

Member Anderson said due to the property's narrowness and physical constrictions of the property it should be approved and he supports the motion.

DISCUSSION BY BOARD MEMBERS:

There was no further discussion on the variance from the board members.

ROLL:

Ayes: Anderson, Dutcher, Guest, Lamble, Polluch

Nays: None

A variance to construct a 14' x 24' storage shed two feet from the rear property line 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 ZBA14-08:

1. The home in question is unique in that the only access to the rear yard from the parking area is through a gate that would be blocked if the requested shed met the rear yard setback. There are two existing storage buildings currently located in the proposed location of the new shed that would be removed that are approximately two feet from the property line, and allow space to access the rear yard from the existing gate. The neighborhood is unique in that the lots tend to be smaller and narrower than many

other areas of the city. There are a number of other sheds/garages as well as houses that are closer than six feet from the property line.

2. A shed could be constructed six feet from the property line, but the current access to the rear yard via an existing gate would be lost. The two foot setback requested could potentially be enlarged by moving the proposed shed closer to the existing driveway. There is approximately 20 feet from the property line to the parking area and if the proposed shed was moved closer to the parking area, however, the applicant has indicated that he has a gate in the fence between the parking area and proposed location and was hoping to utilize a 3 foot path to access his yard. Moving the gate along the alley next to the property line is problematic due to a guy wire present for the utility pole on the property line.
3. There are currently two small storage sheds that do not appear to meet setback requirements. They would not appear to be legal non-conforming structures. It would appear the existing sheds have been in that location for some time without incident. There are also many other houses and sheds/garages in the area that are much built-up to the property lines and do not meet the six foot requirement. Also, the section of the lot adjoining the proposed location is a vacant rear yard. If the applicant did meet the setback required, the proposed shed would have to be located directly along the existing fence which is used to access his yard via an existing gate.
4. The lot is unique in the fact the location of the house only allows for vehicular parking in the existing parking area without taking up a large portion of the rear yard. The applicant has fenced off his rear yard and there is a gate located in the portion of the fence that connects the parking area to the yard. If the shed meets setback requirements, it would have to be constructed directly along the fence, and the rear yard would have to be accessed in another way.
5. Granting the requested variance would not appear to have a negative impact on the neighborhood. This neighborhood features many buildings that have setbacks of two feet or less. In this instance, there are existing sheds at the location which have not appeared to have been a problem in the past, and the adjacent yard of the affected neighbor does not have any buildings in the area.

Public Hearing of Case ZBA14-09

Adam Poll, Planning and Development Director presented the zoning request as follows: Joe Donajkowski of 923 S. Third Avenue is requesting a setback variance in the R-2 Single Family Residence District to allow for the construction of a covered deck 8'10" from the street side property line. Article 5.7C

**Property address: 923 S. Third Avenue**

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 home in question is unique as it is a legal non-conforming use that was constructed prior to the adoption of the Zoning Ordinance. The existing home measures 10'10" from the property line along Liberty Street with an existing partially covered deck that is 8'10" from the property line. As the house in question is located on a corner lot and addressed off of Third Avenue, the required setback for a new home off of Liberty would be 20 feet. The applicant is proposing to construct a new covered porch, (which by ordinance definition qualifies as an enclosed porch) which would be allowed a maximum

of a 15 foot setback along Liberty Street. The applicant is requesting to construct the covered porch to match the existing 8'10" setback of the existing deck along Liberty Street.

2. The applicant's home is located in such a manner that he would not be able to build a covered porch along any of his street frontages due to the existing setbacks of the home. The applicant is proposing to construct the porch in such a manner that would not be any closer to the property line than any portion of the existing deck and would appear to be in character of the neighborhood.
3. The applicants request would not appear to have a significant negative impact on the area. The existing deck is already 8'10" from Liberty Street and the addition on the covered porch would not be any closer to the street. A covered porch of the scale proposed by the applicant would not appear to be out of character for the neighborhood.
4. As the property is a legal non-conforming home that was legally built prior to the applicants purchasing the home, a change in the Zoning Ordinance was the cause of the non-conformity of the home.
5. Granting the requested variance would not appear to have a negative impact on the neighborhood. The proposed covered porch maintains the setback of the existing deck, and would not appear to have a negative impact on the area. The addition would appear to architecturally match the existing home as well, and would appear to enhance the property.

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.

Donald Gilmet told the board that an open uncovered porch is one kind and everything else with a roof is the same thing as if it was an addition. Don said he talked to Mr. Donajkowski, and he said he has no intention of enclosing the porch. If there is a concern about him enclosing it in the future, you can make it a condition on the approval of the variance that he would have to come back to the board for a variance if he wanted to construct walls to enclose it.

Member Lambie asked Mr. Gilmet if he would be able to put screens in on the porch. Mr. Gilmet said yes with screen material. Mr. Gilmet said if Mr. Donajkowski changed his mind sometime in the future to enclose the porch, and there was a condition he could not enclose it, he would have to come before the Zoning Board of Appeals for a variance to enclose it before Don could issue a building permit.

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 5:30 p.m. to deliberate for Case ZBA14-09.

Member Guest said he would like to include the condition in the variance that if the porch were to be enclosed in the future, Mr. Donajkowski would have to come back to the Zoning Board of Appeals for a variance.

Member Guest made a motion to approve this variance for the reasons stated by the city with the condition that any permanent enclosure of the porch would have to come to the Zoning Board of Appeals for re-approval.

Member Anderson seconded the motion.

#### DISCUSSION BY BOARD MEMBERS:

There was no further discussion on the variance from the board members.

#### ROLL:

Ayes: Anderson, Dutcher, Guest, Lamble, Polluch

Nays: None

A variance to allow construction of a 10' x 22' roof over the existing deck has been granted, with the condition that if the porch were to be enclosed permanently, he would have to come before the Zoning Board of Appeals for a re-approval.

Let the record show to authorize a variance, the board shall find that all of the following criteria has been met for Case ZBA14-09:

1. The home in question is unique as it is a legal non-conforming use that was constructed prior to the adoption of the Zoning Ordinance. The existing home measures 10'10" from the property line along Liberty Street with an existing partially covered deck that is 8'10" from the property line. As the house in question is located on a corner lot and addressed off of Third Avenue, the required setback for a new home off of Liberty would be 20 feet. The applicant is proposing to construct a new covered porch, (which by ordinance definition qualifies as an enclosed porch) which would be allowed a maximum of a 15 foot setback along Liberty Street. The applicant is requesting to construct the covered porch to match the existing 8'10" setback of the existing deck along Liberty Street.
2. The applicant's home is located in such a manner that he would not be able to build a covered porch along any of his street frontages due to the existing setbacks of the home. The applicant is proposing to construct the porch in such a manner that would

not be any closer to the property line than any portion of the existing deck and would appear to be in character of the neighborhood.

3. The applicants request would not appear to have a significant negative impact on the area. The existing deck is already 8'10" from Liberty Street and the addition on the covered porch would not be any closer to the street. A covered porch of the scale proposed by the applicant would not appear to be out of character for the neighborhood.
4. As the property is a legal non-conforming home that was legally built prior to the applicants purchasing the home, a change in the Zoning Ordinance was the cause of the non-conformity of the home.
5. Granting the requested variance would not appear to have a negative impact on the neighborhood. The proposed covered porch maintains the setback of the existing deck, and would not appear to have a negative impact on the area. The addition would appear to architecturally match the existing home as well, and would appear to enhance the property.

OLD BUSINESS:

There was not any old business.

NEW BUSINESS:

Member Anderson said he wanted to make a correction from a prior case. He said it was noted by the staff that we had made a precedent. He said this board does not make precedents. The board just deals with the criteria on its own merits and then say yes or no. Member Anderson said for the record, the Zoning Board of Appeals does not make precedents.

The minutes of the September 10, 2014 meeting were approved.

ADJOURNMENT:

With no other business to discuss, Chairman Dutcher adjourned the meeting at 5:35 p.m.

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Alan Guest, Secretary

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Norman Dutcher, Chairman