**Zoning Board of Appeals (ZBA)**

**Meeting Minutes**

**Monday, July 10, 2023 6:00 pm**

1. **Call to Order -**6:00 pm
2. **Roll Call –** Chairperson Lasher, Board members: Collison, Martin-Halm, Cronin, and Madaras were present.
3. **Approval of Minutes from February 23, 2021** – Motion by Collison, support by Madaras. All ayes.
4. **Citizen Comments –** Chairperson Lasher asked attendees to reserve comments until the board got to the variance request. At that time each person would be given 5 minutes to comment.
5. **Old Business –** none
6. **New Business**
7. Variance Request for 221 W Thomas Street from Sherry Horrocks
* Chairperson Lasher opened the public hearing.
* Zoning Administrator Rebecca Harvey provided an overview of the variance request to allow for the retention of an existing 1020 sq ft accessory building on the subject site in the absence of a principal building/use.
* ZA Harvey stated that Zoning Ordinance Section 5.2 allows an accessory building in the R-A District, but by definition (Zoning Ordinance Section 2.2), an accessory building must be subordinate to a main building and located on the same lot as the main building/use
* Harvey noted that the single-family dwelling previously located on the lot was ordered to be demolished due to conditions of blight. She explained that the remaining garage does not have lawful nonconforming status in that the presence of the garage without the dwelling was caused by the removal of the dwelling.
* Harvey provided a review of the variance criteria set forth Zoning Ordinance Section 18.6, noting the following:

Not all of the 5 criteria have to be met in support of a variance approval or denial. The ZBA will make findings on each criterion and determine if (1) those findings in support of a variance outweigh those findings that do not support the variance, and 2) Variances can have conditions attached to them if they are related to the findings.

* In response to questions by the Board, Harvey outlined/explained the 5 variance criteria established by Zoning Ordinance Section 18.6:

Criteria 1 – That strict compliance with the Zoning Ordinance would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity with the Zoning Ordinance unnecessarily burdensome.

* ZA Harvey advised the Board to consider 1) whether a denial of the requested variance will prevent permitted use of the property, and 2) if reasonable options for compliance with the Ordinance are available, in applying this criterion.

 Criteria 2 – That a grant of the variance applied for would do substantial

 justice to the applicant as well as to other property owners in the

 surrounding area, or, in the alternative, that a lesser relaxation than that

 applied for would give substantial relief to the owner of the property

 involved and be more consistent with justice to other property owners.

* ZA Harvey explained that in determining if ‘substantial justice’ will be done, a review of existing building arrangements in the general area and if other similar variances have been granted is relevant in determining how a grant of the variance will impact the area and whether it will be consistent with how the ordinance has been applied to other property owners.

 Criteria 3 – That the hardship asserted by the property owner by way of

 justification for a variance is due to unique circumstances of the property.

* ZA Harvey clarified that the hardship is not to be based on the unique circumstances of the owner and/or applicant, but on the unique physical circumstances of the property.

 Criteria 4 – That the hardship asserted by way of justification for the

 variance is not self-created.

* ZA Harvey explained that not ‘self-created’ means the hardship is not a result of an affirmative action by a property owner/applicant, but rather is caused by the action of an outside force, such as a road widening.

 Criteria 5 – That, in granting a variance, the ZBA is ensuring that the spirit of

 the Zoning Ordinance is observed, public safety secured, and substantial

 justice done.

* ZA Harvey noted that each zoning standard is established to further a particular goal/objective in the Master Plan. In considering a variance request, the ZBA can consider if/how the requested variance will still serve to further the purpose of the standard in question.

* ZA Harvey referenced the staff report provided on the application, noting the outline of the variance criteria and the relevant points of discussion related to each criterion.
* **Questions/Comments from the ZBA members:**
* Collison asked if the existing garage is in conformance with the ordinance. ZA Harvey stated that the existing garage met applicable setback, separation, and locational requirements when the dwelling was present on the site. The rear yard lot coverage standard was not met but had received variance approval in 2004. She clarified that with the removal of the dwelling, compliance with separation, locational and lot coverage standards are no longer be met.
* Martin-Halm asked if the garage remained, could the property be sold as a buildable lot. ZA Harvey stated that the subject property is a lawful nonconforming lot (due to size) and is thus considered a lawful building site regardless of whether a garage is on the property or not.
* Owner Horrocks stated that the truss breaking in the previously existing dwelling was an act of God. The garage is stable and a good building. She questioned her options regarding the garage – ZA Harvey confirmed that options include 1) variance approval to allow the garage to remain; 2)raze the garage;or 3) build a house to establish a principal building on the site to render the garage lawful. Horrocks stated she does not know what it would cost to build a house, but it was $30,000 to build a garage.
* Tecca asked the owner why she needed the garage. Owner Horrocks said that it provides protection for her lawn care company equipment. She stores snow plows in the back of the property.
* Cronin expressed concern that the property is currently being usedfor business purposes in a residential area.
* Collison asked Horrocks her intent for the property. Horrocks stated that it would be nice to build a house on the lot, but her health has made it a struggle to live.
* Collison asked if Horrocks would be able to build on the lot if a variance with time limits for building was granted. Horrocks replied that she doesn’t know if she would be able to buildwithin 2 years. She currently resides on a lake in Lawton.
* Cronin asked if the garage dimensions would meet the requirements for converting it into a house which would then allowthe building to be considered a primary residence (building). Horrocks stated that she had not contacted the Kalamazoo Area Building Authority (KABA) with this question.
* **Chairperson Lasher asked if there were any public comments or questions:**
* Chris Elwell, 1102 E G Avenue, stated that the owner takes care of the property. He asked if building the house does not happen, what will be the timeframe for the demo of the garage? He said the garage does not look bad. He would not want to see it turned into a storage unit. He believes the property is more valuable with a garage on it. In response to a question, ZA Harvey stated that the property was not zoned for commercial storage units.
* Chairperson Lasher advised that if the owner did not raze the garage within the timeframe, the City of Parchment would raze it and place a lien against the property.
* Bruce Rzepczynski, 92597 Lakeshore Drive – Lawton MI, stated that he uses the garage for making blown murals on helmets that he gives away.
* Rhea Brown, 52517 Stuck Road – Marcellus MI, friend of the owner and a person who has sat on a ZBA in another community stated that the owner cannot make a decision to build a house but may be able to turn the garage into a house. Modernizations are being done with pole barns and open floor plans. The garage may be conducive to being a single family dwelling. She was interested in knowing if the garage could be used as a home, not used for commercial purposes, but to live in it. She feels that Horrocks should not have to lose something that she has paid for and is in favor of a variance.
* Chairperson Lasher read a letter of support received from the Parham’s (603 Keyes Drive) into the minutes.
* No further public comment was offered on the matter and the public comment portion of the public hearing was closed.

**The Board then proceeded with a review of the variance criteria set forth in Zoning Ordinance Section 18.6. Specifically, the following findings with respect to the requested variance were noted**:

**Criteria 1**

* Chairperson Lasher opined that if denied, the applicant would still have reasonable use of the property.
* Collison clarified that to deny the variance would mean that the garage would have to be torn down.
* Madaras said that even if the garage was torn down, someone could do something with the property.
* Cronin said that in the future, they could build a permitted use on the lot. He reiterated that the garage is currently being used by the owner for mixed uses, not necessarily residential.
* Chairperson Lasher noted any issues of enforcement are up to the City of Parchment.
* In response to questions, ZA Harvey confirmed that the criterion is whether the property is usable for a permitted purpose without a variance; not for a purpose desired by the owner.

**Criteria 2**

* In determining substantial justice, a review of the zoning/land use/building arrangements on surrounding property was completed.
* It was noted that an accessory building on an otherwise vacant lot is not typical to the area; however, the property to the west is a large non-residential site in current stages of redevelopment and recovery (Mill PUD site) and that the presence of the garage on the property will not have a negative impact on adjacent property or the surrounding area.
* Support for the variance expressed by neighboring property owners was also noted.

**Criteria 3**

* It was noted that the removal of the house on the site is the only circumstance of the property creating the need for the variance and does not constitute a unique, physical limitation on the site preventing compliance.

**Criteria 4**

* Cronin asked the owner about the original damage.
* Horrocks explained that the damage came from a snow load on the roof in 2014. There were 22 other collapses in the community that year. The walls were splayed and the main frame was twisted. The insurance company did not want to pay.
* Rzepczynski addedthat there was a knot in the truss. Snow hit near the knot and it split apart.
* It was noted that the owner was ordered to demolish the house due to conditions of blight.
* Accordingly, the current condition/status of the property is and has been at the discretion of the owner.

**Criteria 5**

* The intent of the requirement that prohibits an accessory building on an otherwise vacant site (i.e. without a principal building/use) was referenced, noting that such an arrangement would not be consistent with the existing/desired neighborhood development pattern.
* It was recognized, however, that the property is a lawful residential building site and that there is potential for a dwelling to be established which would then render the garage a lawful accessory building.
* It was also noted that the existing garage is situated on the site such that all accessory building standards (setbacks, height, location, lot coverage) could be met with the establishment of a dwelling on the site.
* Chairperson Lasher raised the possibility of conditions of approval that would serve to ensure consistency with the intent of the ordinance, such as: 1) requiring that use of the existing garage be in conjunction with an on-site principal building/use not as an accessory building for an off-site use; 2) limiting the expansion or reconstruction of the garage unless a principal building/use is present on the site; and 3) requiring that a principal building be located on the site such to allow for the existing garage to meet the accessory building standards of Section 12.6.
* Collison said that conditions, such as a timeline for establishing the principal building, could also be considered as a condition of a variance.
* Madaras asked what would happen if the conditions were not met.
* ZA Harvey notedthat the City would use the process of enforcement for violation of the ordinance.
* Chairperson Lasher asked if a timeline condition of a variance could be extended. ZA Harvey stated that the owner can return to the ZBA and request an extension of the timeline, or an amendment of the variance granted. The ZBA would not be obligated to approve such an extension/amendment.
* Cronin asked Horrocks if she would be able to give a straight yes or no answer to the possibility of building a primary residence at the site.
* Horrocks said with her medical history, she could not answer that question.
* Cronin said he agreed with Collison that they cannot put this off for 5 years; they must look at other options. If approved, the option to build another house or manipulate the garage into a livable structure must come with a time limit.
* ZA Harvey noted that a timeline is a legitimate condition to consider but should not be related to the circumstances of the owner/applicant. The ZBA must not consider wealth, health, or other circumstances of this nature but rather how or what timeline is needed to ensure consistency with the intent of the ordinance.
* Martin-Halm stated that the ordinance **is** clearly written. It’s been several months/years waiting for the demo to take place. She feels that a grant of the variance will serve to extend the nonconforming situation on the property.
* Madaras agreed that it would extend the problem.
* It was noted that the above findings were based on the application documents presented and the representations made by the applicant at the meeting.
* Chairperson Lasher made a motion to grant variance approval from Section 5.2 so as to allow for the retention of the existing 30 ft x 34 ft (1020 sq ft) detached garage (accessory building) on the subject site in the absence of a principal building/use, based upon the findings of the Board on Variance Criteria #2 and #5 set forth in Zoning Ordinance Section 18.6, with the condition that a principal building/use is established on the property and receives a Certificate of Occupancy within two (2) years of this decision. Motion supported by Cronin.

Roll Call Vote: Collison – Aye

 Martin-Halm – Nay

 Cronin – Aye

 Madaras Nay

 Lasher – Aye

Motion approved.

* Chairperson Lasher stated that he appreciated the Zoning Board of Appeals members for their good discussion and input.
* In response to a question, ZA Harvey explained that the variance and the conditions of the variance run with the property, not the applicant.
1. **Board Member Comments** – none
2. **Adjournment** – Motion by Lasher to adjourn at 7:47 pm, second by Collison. All ayes.