

Mason County Planning & Zoning Department

102 E. FIFTH STREET
SCOTTVILLE, MICHIGAN 49454
(231) 757-9272 • FAX (231) 757-9253

July 7, 2021

Minutes of the Mason County Zoning Board of Appeals meeting on July 7, 2021 7:00 p.m. held at 5300 W. US 10, Ludington, MI.

MEMBERS PRESENT: Jerry Jensen, Dick Anderson, Lois Krepps, Chuck Lange

MEMBERS ABSENT: None

OFFICIALS PRESENT: Cayla Christmas, Tammy Lowe

The meeting was called to order at 7:00 p.m. by Cayla Christmas

Cayla Christmas started the meeting by accepting nominations for chairman of the Zoning Board of Appeals.

A nomination was made by Dick Anderson for Jerry Jensen to be the chairman for the 2021 year. Mr. Jensen accepted the nomination. Jerry Jensen was elected as the 2021 chairman for the ZBA in a vote of 3 yes 0 no.

A nomination was made by Chuck Lange for Dick Anderson to be the vice chairman for the 2021 year. Mr. Anderson accepted the nomination. Dick Anderson was elected as the 2021 vice chairman for the ZBA in a vote of 3 yes 0 no.

A nomination was made by Jerry Jensen for Chuck Lange to be the secretary for the 2021 year. Mr. Lange accepted the nomination. Chuck Lange was elected as the 2021 secretary for the ZBA in a vote of 3 yes 0 no.

Zoning Board of Appeal Officers 2021:

Jerry Jensen – Chairman

Dick Anderson – Vice Chairman

Chuck Lange – Secretary

Chuck Lange made the motion to approve the October 21, 2020 meeting minutes as written. Second by Dick Anderson. Motion carried, 4 yes 0 no.

Dick Anderson made the motion to approve the November 4, 2020 meeting minutes as written. Second by Lois Krepps. Motion carried, 4 yes 0 no.

Additions to Agenda: None

Public Comment: None

Correspondence: None

Jerry Jensen opened the public hearing for application PZ21103, Acres Cooperative Inc., a request for a 17' variance from the required 50' rear yard setback to construct a 14' x 60' lean-to addition to an existing nonconforming building. The request was previously approved in 2018, but the applicant was unable to move forward with the project so the variance expired. The subject

property is located in Amber Township, parcel 001-013-026-10, access 709 W. US 10. Cayla Christmas presented the staff report and site photos. A portion of the staff report is below:

FINDINGS OF FACT:

1. Existing building is 60' X 72', used for storage and has open front (4,320 sf)
2. Addition is 14' X 60'—(840 sf)—a 19.4% increase in square footage of a nonconforming building. (The building location has not changed from the original proposal—it is approximately 13' from the property line. The original request assumed a 30' standard rear setback for the C-2 district, however Section 17.04a (Agricultural Storage Facility) requires a 50' setback for all buildings related to this use. The staff report was therefore modified from the original request, but the facts surrounding the location of the addition have not changed.)
3. The building is located 13' from the property line. The addition will not worsen the non-conformity.
4. While not currently in use, there are still physical remnants of the Co-op using a rail spur to load grain on to rail cars.
5. The 18' silo near the building will be moved if the variance is granted to build the addition.

Jean Long, Acres Cooperative Inc., explained they were unable to obtain a building permit within the first three years due to the inability at first to get engineered drawing for the building permit application. Ms. Long stated once drawings were obtained, they were unable to find a contractor to hire.

Jerry Jensen read the standards for granting a variance from Section 24.05 (3) A through D of the Mason County Zoning Ordinance. The following is for the 17' variance request from the 50' rear setback:

- A. **The strict compliance with the ordinance would cause a practical difficulty and deprive the owner of rights enjoyed by all other property owners within the same zoning district.** The strict enforcement would cause a practical difficulty because the strict enforcement would make it very small or put it some place they do not have room. **Meets standard**, 4 yes 0 no.
- B. **The conditions and circumstances unique to the property were not created by the owner or his predecessor in title.** Jerry Jensen stated the original development was established prior to zoning's existence. There was no way to anticipate what would happen in the future at the time. Acres Cooperative Inc. did not create the problem. **Meets standard**, 4 yes 0 no.
- C. **The requested variance will not grant special privileges that are denied other properties similarly situated and in the same zoning district.** Approving the request would not grant special privileges as this request had previously been approved. **Meets standard**, 4 yes 0 no.
- D. **The requested variance will not be contrary to the spirit and intent of this Zoning Ordinance.** The request is not contrary to the spirit of the ordinance. **Meets standard**, 4 yes 0 no.

Dick Anderson made a motion to approve application PZ21103, a 17' foot variance from the required 50' rear setback to construct a 14' x 60' lean-to addition to an existing nonconforming building. Second by Chuck Lange. Motion carried, 4 yes 0 no.

Jerry Jensen opened the public hearing for application PZ21101, Moses Padilla (Kim Babcock, Jolly Plate), a request for approval to expand an existing nonconforming use with an outdoor seating area covered by pergola. The subject property is located in the Rural Estates (RE)

zoning district, Sherman Township, parcel 013-031-016-00, access 2516 N US 31. Cayla Christmas presented the staff report, a site plan, and site photos. A portion of the staff report is below:

FINDINGS OF FACT:

1. Jolly Plate is an existing restaurant with an apartment on the back.
2. The building was erected in 1955 as a bar/restaurant.
3. The land use predates zoning.
4. The parcel is on well and septic.

Jerry Jensen asked the applicant if he wanted to speak.

Moses Padilla stated the property owner was looking to improve the condition and curb appeal of the restaurant with the outdoor seating area as well as new siding on the building. Mr. Padilla added the pergola would be covered during inclement weather.

Jerry Jensen closed the public hearing.

Chuck Lange stated the proposed area meets setback requirements. Mr. Lange added neighboring properties would not be impacted by the small seating area.

Jerry Jensen read the standards for expanding a nonconforming use from Section 3.27, 2, d, 1-4 of the Mason County Zoning Ordinance.

- 1.) **Does not have a substantial detrimental effect on the use and enjoyment of adjacent uses or lots.** The expansion does not have a detrimental impact on adjacent land uses or lots. **Meets Standard**, 4 yes 0 no
- 2.) **Complies with all parking, sign, or other applicable regulations applicable to accessory uses for the area affected by the proposed enlargement, increase, or greater area.** The existing signage and parking on the property complies, and there will be no other changes. **Meets Standard**, 4 yes 0 no
- 3.) **Complies with any reasonable conditions imposed by the Zoning Board of Appeals that are necessary to ensure that the proposed enlargement, increases, or greater area will not prove detrimental to adjacent properties, the neighborhood, or the community.** There are no conditions to worry about nor any negative impact. **Meets Standard**, 4 yes 0 no
- 4.) **Is not larger than twenty percent (20%) of the original nonconforming area including parking and outdoor storage areas.** The addition would be an expansion of thirteen percent (13%). **Meets Standard**, 4 yes 0 no

Chuck Lange made a motion to approve application PZ21101, a request for approval to expand an existing nonconforming use with an outdoor seating area covered by a pergola. Second by Lois Krepps. Motion carried, 4 yes 0 no.

Jerry Jensen opened the public hearing for application PZ21102, Carrie McCarthy, a request for a use variance from the Mason County Airport Approach Plan (AAP) to allow for one (1) single-family residence in Zone 1. The subject property is located in Pere Marquette Township, parcel

010-014-200-036-00, access 117 N Jebavy Dr. Cayla Christmas presented a staff report and site photos. A portion of the staff report is below:

FINDINGS OF FACT:

1. The building was established as a dwelling unit in 1984.
2. The township's zoning ordinance was adopted in 1994 causing the parcel to be zoned Commercial (C-1) and the dwelling to become a legal nonconforming use.
3. The owner in 2004 went through a site plan review process to change the building's use to medical offices with no indication of residential use.
4. Act 110 of 2006 requiring municipalities to adopt AAP and related ordinance language if an airport was within jurisdiction boundaries; existing nonconformities were allowed to remain with the intent that any future changes must become more compliant with Airport overlay regulations.
5. The current owner/applicant purchased the property in 2019 and immediately used the building for both residential purposes as well as professional service offices (accounting).

Cayla Christmas stated she spoke with John O'Connor, Mason County Airport Manager, Fabian Knizacky, and Lynn Smith with Jennifer Moore from MDOT prior to the variance application being submitted. Ms. Christmas stated she was informed Mason County Airport Zoning was adopted under Act No. 23, which meant the Mason County Airport Zoning Board of Appeals could entertain a use variance.

Cayla Christmas stated the property was located in Zone 1 of the Mason County Airport Approach Plan (AAP) which did not allow residential use. Ms. Christmas added the property is located within a commercial zoning district within Pere Marquette Township, which also prevents residential uses; however, Pere Marquette Township officials had stated their Planning Commission would be willing to change the zoning district of the property to allow for residential use if the Mason County Airport Zoning Board of Appeals granted a variance for the use first.

Jerry Jensen opened the floor for the applicant to speak.

Carrie McCarthy stated she purchased the property when it was advertised as a dwelling on the upper level with office space on the lower level. Ms. McCarthy stated she used the lower level for her accounting business and resided in the upper level currently.

Kristin Lange, Pere Marquette Township Zoning Administrator, stated Pere Marquette Township said they would entertain a zoning change if the Airport Zoning variance was approved.

Jerry Jensen stated it was not "good zoning practice" to entertain use variances.

Chuck Lange stated that MCL 259.454 specifically stated, "A variance shall not conflict with a general zoning ordinance or regulation of a political subdivision." Mr. Lange added the proposed variance did conflict with the regulation of a political subdivision as it directly went against the zoning district of that parcel within Pere Marquette Township, which was Commercial.

Jerry Jensen stated the Land Use Guidelines for Zone 1 specifically stated, "prohibit all residential land uses." Mr. Jensen added he did not see a way to grant the variance for a residential use with that language present.

The Zoning Board of Appeals agreed the property should not have been listed as “residential” by the selling realtor.

Jerry Jensen read the standards for approving a variance present in MCL 259.454. The following is for a use variance from the Mason County Airport Approach Plan (AAP) to allow for one (1) single-family residence in Zone 1.

1. Would the literal application or enforcement of the regulations result in a practical difficulty or unnecessary hardship? A hardship would be created. Ms. McCarthy purchased the property on the basis of believing she would be able to operate her business from her home. **Meets standard, 4 yes 0 no.**

2. AND the relief granted would not be contrary to the public interest but do substantial justice? Would be contrary to the public interest. The Airport Approach Plan exists to keep civilians safe from incoming and outgoing air traffic. **Does not meet standard, 4 yes 0 no.**

3. AND would [the variance] be in accordance with the spirit of the regulations? Would not be in accordance with the spirit of the regulations. The Airport Approach Plan and airport zoning exist to keep civilians safe from incoming and outgoing air traffic. **Does not meet standard, 4 yes 0 no.**

Chuck Lange made a motion to deny application PZ21102 because all standards for granting a variance were not met. Second by Dick Anderson. Motion carried, 4 yes 0 no

Unfinished Business: None

New Business: None

Zoning and Building Director Report: Cayla Christmas stated the office had been busy with new permit applications. Ms. Christmas stated she did not know of any variance requests pending.

Planning Commission Report: Chuck Lange stated the Planning Commission had been meeting regularly. Mr. Lange stated the Planning Commission recently approved an application for a new Open Air Business moving from Pere Marquette Township and into Amber Township.

Public comment: None

Meeting adjourned at 7:49 pm.



Chuck Lange
Secretary, Zoning Board of Appeals