

**KEWEENAW COUNTY
ZONING BOARD OF APPEALS MINUTES
PUBLIC HEARING
October 10, 2007
Horizons School-Mohawk, MI 49950**

Meeting called to order at 6:00 p.m. by Chairman, Jim Vivian.

MEMBERS PRESENT: Jim Vivian, Chairman
Richard Powers, Member
Frank Kastelic, Member
Pauline Johnson, Member
Janet Shea, Member
Darleen Huovinen, Alternate Member-Recording Secretary

OTHERS PRESENT: Joan Nelson, Keweenaw County Zoning Administrator
Members of the public

Minutes of the August 21, 2007 ZBA Meeting were presented.

Moved by Kastelic supported by Shea, to approve, accept and file the minutes August 21, 2007 ZBA Meeting, as presented.

Motion passed without objection.

NEW BUSINESS:

Variance Request: Application No. ZBA-07-02
Michael P. Wade
14980 Winston
Redford, MI 48239

Location of variance request: Parcel # 42-103-52-000-011
5839 Five Mile Point Road
Allouez, MI 49950

Applicant is requesting a variance of five (5) feet from the required ten (10) feet Side Yard Set Back to allow for an addition to be built to the existing structure.

RE: Zoning Article V, Section 5.2, *Schedule A: Dimension Requirements For Residential Districts (RR) Minimum yard setback of principal structures for each recorded platted and non-platted area.*

Zoning Ordinance	Location	Allowed Side Yard set back	Proposed Side Yard Set Back	Variance Required
Article V, § 5.2 5839 Five Mile Point Road Allouez, MI 49950 10 Feet	5 Feet	5 Feet		

Applicant, Michael Wade:

- Given the way the lot is situated and the geography of the lot, the only possible way to construct a 400 foot addition to an existing home (to be used as future retirement home) would be with a variance.

LETTERS WRITTEN IN SUPPORT OF VARIANCE REQUEST:

- Paul Stimac – No objections

LETTERS WRITTEN IN OPPOSITION OF VARIANCE REQUEST:

- Kim Green: Do not change zoning requirements
- Lisa Stephens Payne: Serious objection to zoning request
- Ed and Sue Stevens-Do not change zoning requirements

PUBLIC COMMENT:

BOARD DISCUSSION:

- Kastelic: Inquired what Wade planned to do with family property, an additional 50 feet, held in trust which he would inherit. Wade responded he could not build an addition to his retirement home on that property due to the septic system going in that area.
- Kastelic: Per zoning ordinances, property owners can not add to an existing building if it is nonconforming.
- Wade: It's impossible to build anything on the home I now have. It would be too expensive for me!
- Vivian: John Soper said, in the process of updating zoning, that as long as you didn't make a building MORE nonconforming, it was allowed.
- Kastelic: The addition would make the building MORE nonconforming because the set backs are not adequate. Wade can build if he meets the zoning requirements.
- Wade: This is a hardship because I need additional space.
- Kastelic: You've owned the property for two years which should have been time enough for you to plan for construction which is in compliance.
- Johnson: Asked about a road between properties. Wade stated it was a slope not a manufactured road and there wasn't any encroachment.
- Kastelic: Asked licensed builder, Jim Martin, why he didn't know about the set back requirements before proceeding. Martin assumed the set back was 5 feet. Building permit was issued at 16 feet.
- Shea: Board needs to review Section 19.5 *Non-Use Variance Standards* to insure the standards are met. 19.5 (a) *That strict compliance with the Ordinance would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity with such restrictions unnecessarily burdensome*". Compliance would not be burdensome.
- Kastelic: Agreed with Shea.
- Nelson: The difference in square footage with a variance would be 96 square feet.
- Powers: The neighbors are not opposed to the addition.
- Shea: Very interested in public input, but the criteria must be met.
- Powers: Due to the lay of the land, the owner is very limited as to what he can do with the property. 19.5 (D) *The property problem was not created by the action of the applicant.*
- Vivian: If variance is issued, there won't be any harm to the neighborhood. Request for a motion.

Moved by Powers, support Johnson, to grant a five foot variance to Michael Wade for property located at 5829 Five Mile Point Road, Allouez, MI 49950 to allow for an addition to be built on an existing structure in that strict compliance with the Zoning Ordinance would unreasonably prevent the owner from using the property for a permitted purpose.

Roll Call: Kastelic: No
 Johnson: Yes

Powers: Yes
 Shea: No
 Vivian: Yes

Variance granted.

Application No. ZBA-07-01
 Tom Poynter
 704 Delaware Mine Road
 Mohawk, MI 49950

Location: Parcel # 42-310-52-008-016
 King Copper, Inc.
 783 Gratiot Street – Copper Harbor, MI 49918

Applicant is requesting a variance of five (5) feet from the required ten (10) feet Side Yard Set Back to allow a large enough room for an addition to an existing building for a proposed maritime museum.

RE: Zoning Article V, Section 5.2, *Schedule B: Dimension requirements For Non-Residential And Mixed Use Districts (RS-1) Minimum side yard setback of principal structures for each lot.*

Zoning Ordinance	Location	Allowed Side Yard set back	Proposed Side Yard Set Back	Variance Required
Article V, § 5.2 783 Gratiot Street Copper Harbor, MI 499918 10 Feet	5 Feet	5 Feet		

RE: Zoning Article V, Section 5.2, *Schedule B: Dimension requirements For Non-Residential And Mixed Use Districts (RS-1) Minimum rear yard setback of principal structures for each lot.*

Applicant is requesting a variance of fifteen (15) feet from the required twenty (20) feet Rear Yard Set Back to allow a large enough room to an existing building for a proposed maritime museum.

Zoning Ordinance	Location	Allowed Rear Yard Set Back	Proposed Rear Yard Set Back	Variance Required
Article V, § 5.2 783 Gratiot Street Copper Harbor, MI 499918 20 Feet	5 Feet	15 Feet		

Applicant, Tom Poynter:

- Property was a gas station. Tanks removed years ago.
- He is considering buying the property which was appraised at \$63,500 July, 2005.
- Property to be used as a potential maritime museum/ small gift shop.
- Lot size is 60' x 120' (7,200 Square Feet). Parking requirements for public buildings require one (1) parking space for each two hundred (200) sq. ft. Letter received from Keweenaw County Road Commission. Engineer Gregg Patrick had no objections to customers parking on 8th Street road right of

way in that it would get parked cars off M-26/Gratiot Street.

LETTERS WRITTEN IN SUPPORT OF VARIANCE REQUEST:

Gerald and Laura Anderson – Copper Harbor: Own the gas station (715 Gratiot Street) on the same block. Support project.

PUBLIC COMMENT IN SUPPORT OF THE VARIANCE REQUEST:

Don Kilpela.– Copper Harbor: Owns property immediately to the east of the location. That end of Copper Harbor would benefit from the proposed museum. Whole heartedly supports the project.

Jim Billings.– Copper Harbor: Not opposed to Poynter buying the property from Kilpela. Would attract business to west end of town.

- Vivian: Asked Poynter about plans for a pond on the property. Poynter stated pond would be part of the landscaping.

Poynter: There are 3 parking spaces in front of the building.

Sunberg: Concerns about the property lines. Gas station is right on the property line.

- Powers: Poynter’s measurements show the building is 3 ft. / 6 in. from west wall of the gas station.

Kilpela: Poynter’s measurements appear to match with property lines on his son’s property which was surveyed in 2006.

LETTERS WRITTEN IN OPPOSITION OF THE VARIANCE REQUEST:

Frederick Jansen-Copper Harbor. Concerns about inadequate parking and loss of property values in adjacent residential areas. Recommend lot be surveyed. Solution not a variance but for Poynter to build a smaller building or buy new property.

- Shea: Parking spaces are not adequate for a retail establishment.

Poynter: May cancel plans for a gift shop, then building would require one (1) space for each 400 sq. ft as a personal service establishment.

PUBLIC COMMENT IN OPPOSITION OF VARIANCE REQUEST:

BOARD DISCUSSION:

- Shea: Building will not fit under the category of a personal service establish. Only sees building as a retail store which would require one (1) parking space for every 150 square feet of usable floor area.

- Kastelic: Poynter has to very clear as to what the building will be used for in order for the board to insure parking requirements are met.

- Shea: Applicant is requesting excessive variances. West side-6 ½ feet, East side- 2 feet, North side- 13 ½. Board needs to define *personal services* to decide this issue.

Tom O’Callaghan: Issues were raised about parking in Copper Harbor on the Planning Commission. John Soper said Copper Harbor would be given consideration.

- Shea: ZBA is here to enforce the Zoning Ordinances.

Kilpela: Sixty percent of the retail businesses in Copper Harbor have no parking. Town is massively out of plumb and is not in compliance. If you go by the rules, you’ll run everyone out of business. ZBA should allow variances to move the community forward.

- Powers: Poynter has best parking available on Gratiot. He’s doing the best he can. Board needs to define personal service establishment.

Kilpela: If you don’t pass this variance, we may as well close Copper Harbor.

- Kastelic: This board is not sitting here in judgment if this is a good or bad business plan. We’re here to enforce zoning ordinances not to bend them. Under Article IV, Zoning Districts &

Permitted Uses, this business does not fit as a Personal Service Establishment. The board should look at Article IV, Tourist Service Establishments.

- Shea: Zoning Administrator would have to make the decision as to what the “use” the business would qualify as in the Zoning Ordinance if it is not strictly defined.
- Powers: When you consider the number of people who would visit the proposed museum, it would be a retail store.
- Nelson: Deferring to what Planning Commission mentioned for Copper Harbor, would lean toward considering this as a Personal Services Establishment zone.
- Kastelic: Poynter is asking for three set backs and would have less than half of the parking required. Can not justify stretching the ordinances.
- Vivian: Board can’t shoe horn this issue. Article XIV, page 14-5, states “... *parking standards shall be established by the Planning Commission after receiving the recommendation of the Zoning Administrator based on the mix of proposed uses...*”
- Shea: Not applicable. That applies to Planned Unit Developments.
- Powers: Is there any way Poynter can modify his plans to make the building smaller so he can meet the parking requirements?

Poynter: If 2 feet is removed from the back, 50 sq. ft. will be taken off the building.

- Shea: *Article XIV, Off Street Parking and Loading, §14.2.3 Right-of-way: No parking space located within or along the traveled portion of any street shall be counted toward the off-street parking requirements set forth in this Ordinance.* But, Section 14.2.5 addresses *Joint Use of Parking Areas*. If it can be shown in a record of agreement that parking will be shared by adjacent property owners it may resolve some of the parking issues.

• Johnson: Parking problems in Copper Harbor is a seasonal issue.

• Shea: Board must adhere to *Article XIX, § 19.13 Findings Of Fact* to insure a decision isn’t arbitrary.

• Vivian: Recommended board review each issue of *Article XIX, § 19.5 Non-Use Variance Standards*.

• Powers: For Poynter to use this property, he must have a variance.

• Johnson: No problem with granting a variance. Building is cockeyed. Can’t be used for much else.

• Kastelic: Board can not let emotions get in the way of enforcing the Ordinances. If we sit here long enough, we could justify the request for three variances and inadequate parking. How far can ZBA bend the ordinances? *Cited Article XIX, §19.5 (H), That the variance is the minimum variance that will make possible the reasonable use of the...building...in the zoning district in which it is located.* Poynters request would not qualify as a minimum variance.

Poynter: Requesting 1 set back due to the building location, 2 set backs to gain footage.

• Shea: ZBA can not look at variance requests as individual cases. Must apply *FINDINGS OF FACT*. If ZBA grants a variance for Poynter, it must be decided per the criteria. Original building is non-conforming. New building must be build to conforming standards. Unnecessary hardship is not demonstrated. ZBA reviewed each criteria of *Article XIX, §19.13, Findings Of Fact*:

1. NO
2. NO
3. NO
4. *Poynter creating own difficulty*
5. *Statement of impacts may be argued*
6. NO
7. *NOT IN COMPLIANCE*
8. *Powers: not aware variances are precedent setting*

Shea: *ZBA must make equitable decisions and not be arbitrary*

9. *NOT APPLICABLE*

• Shea: After review of the *Findings Of Fact* the only way to comply would be to size the

building to meet the ordinances. Can still use property within the guild lines of the zoning. Not a practical difficulty. Zoning Ordinances can not be thrown out the door. If building is built to fit, Poynter will not need a variance.

- Vivian: Must take each town and hamlet into consideration because they're all different. Can't argue all the issues. Must satisfy the community. Poynter wants to make this a better community. Keweenaw County is old. Must adhere to the wishes of the community. ZBA only heard one person in opposition to this request.

Poynter: Won't buy property if variance isn't granted. Not worth time and effort to build if made to comply.

- Vivian: Asked Poynter is demolishing the gas station would be better. Poynter stated if was a good shell and he will let it stand.

- Shea: Requested ZBA to revisit *Findings Of Fact* and discuss if some common ground could be found.

- Vivian: Board discussion ended. Asked for a motion.

- Powers: If ZBA is bound by the Findings Of Fact, can't vote yes.

- Vivian: If it must be 100%, we'll never get anything done in Copper Harbor.

- Kastelic: Disagree. Ordinances must be followed. Speaking to the Zoning Ordinance not what a great museum Poynter is building.

- Vivian: Not disregarding ordinances, but must be realistic.

- Kastelic: The land is not suitable for the proposed use.

- Shea: Not a personal issue. Facts speak for themselves. Poynter does not meet the criteria for a variance. Recommend tabling. Poynter to reconsider his options. Reschedule hearing.

- Kastelic: If ZBA reschedules, we need assurance from Poynter that what he brings to a new meeting will more in compliance with the ordinances.

Motion by Vivian, support Shea, to table the ZBA discussion until Wednesday, October 24, 2004 at 6:00 P.M. at which time the ZBA will hear a new proposal from Tom Poynter.

Motion passed without objection.

Meeting adjourned at 8:50 P.M.

Respectfully submitted:

Darleen M. Huovinen

Addendum:

New Business Agenda Items Not Addressed:

- Zoning Violations Complaint Form
- Correspondence-Sherman Township
- Zoning Violation Citations Written To Date
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Recommend adding the above items to the October 24, 2007 ZBA Meeting Agenda