

I. **Call the meeting to order.**

Chairman Zuehlke called the meeting to order at 6:30 p.m.

II. **Roll Call.**

Present: Dave Zuehlke, Chairman
Garry Crake, Vice Chairman
Ralph Woznick, Secretary
Will Allen, Board Member
David Maloney, Board Member

Absent: None

Also Present: Bob Vallina, Community Planning and Development Director
Colleen Pote, Stenographer
Doug Bradley, Building and Engineering Director
Stacy St. James, Environmental Coordinator
Applicants and general public numbering approximately 30

III. **Approve the Minutes**

MOTION AND VOTE:

Moved by Allen

*Supported by Woznick; RESOLVED, to **APPROVE** the Minutes of the September 15, 2009, regular meeting of the Zoning Board of Appeals as printed.*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

IV. **Approve the Agenda**

MOTION AND VOTE:

Moved by Crake

*Supported by Woznick; RESOLVED, to **APPROVE** the Agenda of October 20, 2009, regular meeting of the Zoning Board of Appeals as printed.*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

V. **PUBLIC HEARINGS**

NEW BUSINESS

Case No. 5317

Sidwell No. 13-15-277-018, Section 15, Lot 73, "Watkins Hills", T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

1. A variance from Section 2805.1 to allow the existing nonconforming building to be enlarged to contain a 367.5 sq. ft. proposed rear addition (no existing nonconforming building can be altered or enlarged in a way which increases its nonconformity).
2. A 4 ft. variance from Article 22 to allow the proposed rear addition to continue the existing building line and come to within 6 ft. of the west side property line (10 ft. minimum required).
3. A 3 ft. variance from Section 2407 to allow the proposed rear addition and its 0.67 ft. overhang to continue the existing building line and come to within 5.33 ft. of the west side property line (8.33 ft. minimum required).

Property Location: 4040 Silverbirch
Property Zoned: R-1A, Single Family Residential
Applicant: Robert Ensminger

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Dale Adams, Representative

Mr. Adams stated that the proposal is to construct an addition at the rear of the house that will provide additional living area.

Chairman Zuehlke stated that the existing house is nonconforming due to its location along the west property line, therefore the applicant is requesting a variance to allow the structure to be expanded.

During the public comment portion of the meeting, no comments were heard either in support of or opposition to the applicant's request.

Board Member Allen stated that due to the fact that the proposed addition continues the existing building line and does not further encroach into the setback he has no objection to the request in this case. He added that due to the configuration of the subject property a portion of the addition will have a greater setback than the existing structure.

MOTION AND VOTE:

Moved by Allen

Supported by Woznick; RESOLVED, to APPROVE Case No 5317

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 3696-A

Sidwell No., 13-03-353-005, 13-04-477-020 & 13-04-477-021, Sections 3 & 4, T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting a variance from Section 2609 to allow the landbanking of 47 parking spaces and provide a current total of 58 parking spaces for the proposed site redevelopment (105 parking spaces required).

Property Location: 4889 Dixie Hwy
Property Zoned: C-2, General Business
Applicant: Daniel Kurzmann

PUBLIC HEARING RECORD**Applicants and/or Representatives Present:**

Daniel Kurzmann, Applicant

Mr. Kurzmann stated that the existing building has been vacant for years. The plan is to redevelop the interior into a multiple tenant building. He is currently in lease negotiations with a potential tenant; this tenant will not require the number of parking spaces required by the ordinance. Therefore the request is to allow the number of parking spaces provided at this time to be reduced to 58 spaces. If the number of lease spaces are increased beyond the three proposed, in the future the parking will be expanded.

Chairman Zuehlke stated that the site consists of a nonconforming post-pylon sign. He then questioned if the redevelopment will include a new conforming sign.

Mr. Kurzmann stated that he anticipates redesigning the sign and is willing to remove the nonconforming sign and replace it with a new conforming sign.

Chairman Zuehlke stated that he appreciates the applicant's willingness since it is the will of the ZBA for the applicant to replace the existing nonconforming sign with a new conforming sign.

Chairman Zuehlke questioned if the proposed 58 parking spaces will be adequate for the 3 proposed units.

Mr. Vallina stated that 58 parking spaces are adequate for the three units proposed at this time. The applicant's long term plan to increase the number of units to five may require the parking area to be expanded in the future.

During the public comment portion of the meeting, no comments were heard either in support of or opposition to the applicant's request.

MOTION AND VOTE:

Moved by Crake

*Supported by Maloney; RESOLVED, to **APPROVE** Case No 3696-A with the following stipulations:*

- The existing nonconforming post-pylon sign shall be replaced with a new conforming sign, in accordance with the Zoning Ordinance, by June 30, 2010; or else this variance is void and the 47 additional parking spaces shall have to be installed in accordance with Zoning Ordinance requirements.*
- The applicant shall submit all future parking area expansion plans to the Township for planning and engineering review and approval.*

MOTION CARRIED UNANIMOUSLY.

(5 –0)

Case No. 2082-A

Sidwell No. 13-08-251-025, Section 8, Lots 63, 64 & 65, "Maceday Gardens", T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

1. A 21 ft. variance from Article 22 to allow the construction of an addition that will maintain and continue along the existing eastern rear building line and come to within 14 ft. of the east rear property line (35 ft. minimum required).
2. An 18 ft. variance from Section 2407 to allow the construction of an addition and its 1 ft. overhang to maintain and continue along the existing eastern rear building line and come to within 13 ft. of the east rear property line (31 ft. minimum required).

Property Location: 3170 Lansdowne
Property Zoned: R-1A, Single Family Residential
Applicant: Robert Tomczak

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Robert Tomczak, Applicant

Mr. Tomczak stated that the proposal is to reduce the garage area and add additional living area.

Chairman Zuehlke asked for and received clarification that the addition continues the existing building line previously established by the ZBA.

During the public comment portion of the meeting, no comments were heard either in support of or opposition to the applicant's request.

Board Member Allen stated that due to the fact that the proposed addition continues the existing building line established by the ZBA he has no objection to the request in this case.

MOTION AND VOTE:

Moved by Allen

*Supported by Crake; RESOLVED, to **APPROVE** Case No 2082-A*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 2675-A

Sidwell No. 13-06-406-010, Section 6, Lot 232, "Mountain View Country Club", T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

1. A variance from Section 2805.2 to allow a nonconforming building to be rebuilt (A nonconforming building destroyed by any means to an extent of more than 60 percent of its replacement cost at the time of destruction shall not be reconstructed except in conformity with the provisions of the Zoning Ordinance).
2. A 202 sq. ft. variance from Article 22 to allow the rebuilt house and 98 sq. ft. addition to contain a minimum area of 898 sq. ft. (1,100 sq. ft. minimum required in the R-1A Zoning District).
3. A 5 ft. variance from Article 22 to allow the rebuilt house and 98 sq. ft. addition to maintain the existing southern rear setback line and come to within 30 ft. of the south rear property line (35 ft. minimum required).
4. A 2 ft. variance from Section 2407 to allow the rebuilt house and 98 sq. ft. addition and its 1 ft. overhang to maintain the existing southern rear setback line and come to within 29 ft. of the south rear property line (31 ft. minimum required).
5. A 0.37 ft. variance from Article 22 to allow the rebuilt house to maintain the existing eastern side setback line and come to within 4.63 ft. of the east side property line (5 ft. minimum required).

6. A 1.37 ft. variance from Section 2407 to allow the rebuilt house and its 1 ft. overhang to maintain the existing eastern side setback line and come to within 3.63 ft. of the east side property line (5 ft. minimum required).

Property Location: 3825 Iris Drive
Property Zoned: R-1A, Single Family Residential
Applicant: Russell and Joyce Carson

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Russell Carson, Applicant
Kevin Schroeder, Representative

Mr. Schroeder stated that the existing house was damaged by a tree during a storm earlier in the year. After review by the insurance company and engineers it has been determined that it is more financially feasible to raze the existing structure and rebuild using the existing foundation.

Mr. Schroeder stated that after the application was submitted for the variances needed to replace the house using the existing foundation Mrs. Carson found a plan for a kit log cabin house that may fit on the existing foundation with some modifications. The option of the kit house would decrease the side yard variance needed but create the need for a front setback variance.

Chairman Zuehlke explained that the ZBA has the option of reducing a variance request, however, the ZBA can not increase a variance or approve variances that have not been advertised. Therefore if the proposed log cabin cannot be located within the envelope of the variances that have been requested and advertised, the case would have to be tabled in order to allow staff to revise the request.

Discussion ensued regarding the location of the existing house and whether the log cabin could be constructed on the subject property within the foot print of the existing structure.

Chairman Zuehlke stated that if the foundation is going to be modified to accommodate the kit house he believes that the house should be constructed to meet the requirements of the ordinance.

Mr. Carson stated that the extent of damage done to the house requires that it be torn down and rebuilt. After the application was made to the ZBA his wife found a kit log cabin house that they thought may serve their needs and be an alternative to a stick built house.

Board Member Allen stated that if the applicant prefers to locate the log cabin on the property the foundation should be replaced and the house should be located to meet the required setbacks.

Mr. Bradley stated that he believes the option of reconstructing the house using the existing foundation with no modifications is the best option due to the constraints that may apply regarding the fact that the water level on the property is only two feet below ground level and substantial cost will be involved to install a new foundation.

During the public comment portion of the meeting, no comments were heard either in support of or opposition to the applicant's request.

Mr. Carson stated that if the Board grants the variances as requested he will reconstruct the house using the existing foundation and forgo the option of the log cabin kit house.

MOTION AND VOTE:

Moved by Maloney

*Supported by Crake; RESOLVED, to **APPROVE** Case No 2675-A*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 3821-B

Sidwell No. 13-26-126-002 and 13-26-126-003, Section 26, T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

1. A variance from Section 3006.4 to extend the timeframe of the validity of the variances granted by the ZBA on September 16, 2008 to October 28, 2010 (Maximum timeframe for acting on variances is one year from the date of ZBA approval).
2. A variance from Section 2529.3.N to extend the timeframe of the validity of the site plan approved on October 28, 2008 to October 28, 2010 (Maximum timeframe for implementing an approved site plan is one year from the date of the site plan approval).

Property Location: 3510 Highland Road
Property Zoned: C-3, Extensive Business
Applicant: Saleh Alhalmy

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Saleh Alhalmy, Applicant

Chairman Zuehlke stated that the request in this case is for an extension of the timeframe of the validity of variances and site plan approval granted in 2008.

Mr. Alhalmy made no comment.

During the public comment portion of the meeting, no comments were heard either in support of or opposition to the applicant's request.

Vice Chairman Crake stated that due to the current economic conditions he has no objection to the request to extend the approvals.

MOTION AND VOTE:

Moved by Crake

*Supported by Woznick; RESOLVED, to **APPROVE** Case No 3821-B*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 2883-A

Sidwell No. 13-18-228-004, Section 18, Lot 75, "Williams Lake Grove Subdivision", T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting

1. A variance from Section 2805.1 to allow a nonconforming building to be enlarged in a way which increases its nonconformity (no existing nonconforming building can be altered or enlarged in a way which increases its nonconformity).
2. A 1.5 ft. variance from Article 22 to allow the proposed deck addition to continue the existing building line and come to within 4.5 ft. of the west side property line (6 ft. minimum required).

Property Location: 7054 Hatchery Road
Property Zoned: R-1A, Single Family Residential
Applicant: James R. and Lori A. Bonnell

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

James and Lori Bonnell, Applicants

Mr. Bonnell stated that the proposal is to increase the area of the deck in a way that will provide easy and safe access to the house from the deck. The deck addition is designed so that it will not impede the view.

During the public comment portion of the meeting, no comments were heard either in support of or opposition to the applicant's request.

Vice Chairman Crake stated that due to the fact that the deck addition will follow the existing building line and will not further extend in to the setback he has no objection to this request.

MOTION AND VOTE:

Moved by Crake

*Supported by Woznick; RESOLVED, to **APPROVE** Case No 2883-A*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 5316-A

Sidwell No. 13-12-303-006, Section 12, Lot 179, "Jayno Heights No 3", T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting a 7.5 ft. variance from Section 2521 to allow the existing shed to maintain a 2.5 ft. east side yard setback (minimum 10 ft. side yard setback required for detached residential accessory structures located within 10 ft. from the principal building).

Property Location: 3003 St. Jude Drive
Property Zoned: R-1A, Single Family Residential
Applicant: Anthony T. Jergovich

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Anthony Jergovich, Applicant

Chairman Zuehlke stated that the applicant in this case was before the Board on September 15, 2009. At that hearing the Board denied the request. Mr. Jergovich has since addressed the concerns the Board expressed regarding the inability to maintain the structure in its current location. Mr. Jergovich has substantially revised his request, resulting in his need for a lesser variance.

Mr. Jergovich made no comment.

During the public portion of the hearing the following comments were heard.

Linda Garrett, 2999 St. Jude, stated that she supports the request and that the shed is aesthetically pleasing.

Richard Kulick, 3007 St. Jude, stated that he supports the request.

John Fontana, 3011 St. Jude, stated that he supports the request, the shed enhances the property.

Chairman Zuehlke stated that the Board had received a letter of objection from a homeowner's association trustee expressing opposition to the request made on September 15, 2009, due to the fact that the shed was constructed in violation of the deed restrictions.

Vice Chairman Crake stated that the applicant in this case has addressed the concerns the Board expressed at the previous meeting and although he does not support the fact that the shed was constructed prior to approval by the ZBA he believes that in this case the lesser variance is warranted.

MOTION AND VOTE:

Moved by Crake

*Supported by Maloney; RESOLVED, to **APPROVE** Case No 5316-A*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Case No. 5318

Sidwell No.,13-22-178-007, Section 22, T3N, R9E, Waterford Township, Oakland County, Michigan

Requesting a 125 ft. variance from Section 2520.10 to allow storage of landscaping materials 25 ft. from the Highland Rd. right-of-way (building materials, sand, gravel, stone, lumber, equipment and other supplies shall be located within an area not closer than 150 ft. from any street right-of-way line).

Property Location: 4495 Highland Road
Property Zoned: M-1, Light Industrial
Applicant: Rob Breen

PUBLIC HEARING RECORD

Applicants and/or Representatives Present:

Robert Breen, Applicant
Carrie Jorissen

Mr. Breen stated that he has operated a landscape yard for several years and has recently moved his business from Pontiac Lake Road to the Highland Road location. He prepared a site plan that will conform to all Zoning Ordinance requirements except the requirement that storage of materials be located 150 ft. from a street right-of-way. The business has some storage area that will conform to the Zoning Ordinance, but not enough for a full-fledge landscaping operation. Therefore, strictly conforming to this requirement would substantially reduce the usable land area for this permitted use. The requested setback variance will allow area for materials to be stored. Due to the configuration of the property and the greenbelt landscaping that he is installing on the property, the proposed materials storage location will be screened from the road.

Chairman Zuehlke questioned if Mr. Breen had met with Township staff prior to moving his business to this property.

Mr. Breen stated that he met with Community Planning and Development Department staff, formally submitted a site plan, and staff informed him that his plan met all site plan requirements except one, that a variance would be needed to allow the materials to be stored within the required setback. Mr. Breen then immediately submitted his application to request the variance from the ZBA.

During the public comment portion of the meeting, no comments were heard either in support of or opposition to the applicant's request.

Chairman Zuehlke questioned if Mr. Breen was in District Court today regarding an issue as to whether Mr. Breen owns the materials stored on the property.

Mr. Breen responded that he was in District Court on a civil matter regarding materials ownership and not regarding the property use or the site plan. Mr. Breen stated that the District Court decided that it did not have jurisdiction over such civil dispute and that it appears the case will now be heard in Circuit Court.

Chairman Zuehlke stated that he does not believe that the ZBA should act on a case when there are legal issues that have not been resolved.

Ms. Jorissen stated that the legal case involves materials ownership and not the use of the property.

Board Member Allen stated that he concurs with Chairman Zuehlke in that this case should be tabled until the legal issues are resolved as he believes it could impact the use of the property.

MOTION AND VOTE:

Moved by Crake

*Supported by Allen; RESOLVED, to **TABLE** Case No 5318*

MOTION CARRIED UNANIMOUSLY.

(5 – 0)

Lane Gaddis, 1365 Whitney, requested to address the Board regarding a site plan involving the property at 4540 Highland Road that was approved several years ago. At that site plan review, a screening fence between the commercial property and the adjoining residential properties was required as part of the site plan approval. To date the fence has not been erected. Mr. Gaddis further stated that the property owner has removed trees in preparation for the fence but has failed to install the fence.

Chairman Zuehlke questioned if Mr. Gaddis had reported the fence issue to code enforcement for investigation.

Mr. Gaddis stated that he had not reported his complaint to code enforcement.

Chairman Zuehlke stated that the ZBA cannot address Mr. Gaddis's concern, however, he would forward the complaint for inspection by code enforcement.

Mr. Vallina stated that he would he would log Mr. Gaddis's complaint and ensure that code enforcement inspects the site for compliance with the site plan approval.

VI. **Adjourn the meeting.**

Chairman Zuehlke adjourned the meeting at 7:20 p.m.

October 20, 2009**Case No. 5317****Property:** 4040 Silverbirch**Applicant:** Robert Ensminger**Zoning:** R-1A, Single Family Residential**Site Use:** Single Family residential**Proposal:** To allow the proposed expansion of a legal nonconforming house.

Analysis: The existing house on the subject property was constructed prior to 1963 and possesses a legal nonconforming west side setback. The applicant proposes to expand this legal nonconforming building by constructing a 367.5 sq. ft. rear addition. The proposed addition will not conform to the 10 ft. side setback required by the Zoning Ordinance, although it will continue the existing nonconforming west side building line.

While the applicant's request is not excessive and does not extend beyond the existing nonconforming side building line, staff cannot support the applicants' request as it does not comply with the Zoning Ordinance restrictions on the expansion of nonconforming buildings.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 5317 I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

October 20, 2009**Case No. 3696-A****Property:** 4889 Dixie Hwy

Applicant: Daniel Kurzmann

Zoning: C-2, General Business

Site Use: Retail Business

Proposal: To allow the landbanking of parking space area

Analysis: The subject property contains a commercial building that has been in existence for over 40 years and has historically been used for a single commercial tenant. The applicant plans on redeveloping the interior of the building into a multiple-tenant building. The required parking for all five proposed lease spaces would be 105 spaces. The subject property possesses sufficient area to accommodate all required parking spaces. However, the applicant has indicated that due to the current economic situation, it is likely that the newly configured multiple tenant areas will not be fully leased. The applicant is requesting to postpone full development of the required parking areas until such time that all tenant spaces are leased and the parking is truly needed.

From a planning perspective, staff is not opposed to the applicant's request. Since the area is available on-site to provide for all parking needs, the Zoning Ordinance requirements can be achieved. Furthermore, it has become standard planning best practice to allow a portion of required parking areas that are not currently needed to remain as green area and not unnecessarily expand the impervious surface area. However, the Township's Zoning Ordinance does not currently allow use of such a practice and therefore staff is unable to support the applicant's request since it does not meet the letter of the Zoning Ordinance.

If the ZBA sees merit in this request, staff does recommend that the ZBA take this opportunity to discuss with the applicant the possibility of attaching a stipulation requiring the applicant to reduce the height of the existing non-conforming post-pylon sign and bring it into closer conformity with ordinance requirements in return for granting the requested variance. Staff also requests that if the variance is granted, the ZBA state for the record that the applicant shall submit all future parking area expansion plans to the Township for planning and engineering review.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 3696-A I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.

- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

October 20, 2009**Case No. 2082-A**

Property: 3170 Lansdowne

Applicant: Robert Tomczak

Zoning: R-1A, Single Family Residential

Site Use: Single family residential

Proposal: To build an addition

Analysis: The subject property is a corner parcel possessing a house and attached garage. The existing building possesses conforming setbacks; with the west front yard and south side yard setbacks exceeding the minimum setback requirements; with the north street side yard setback conforming to the street side setback requirement for a house addition established by the ZBA in October 1983; and with the east rear yard setback conforming to the rear yard setback for a garage addition established by the ZBA in July 1976. The applicant would now like to build an addition onto the south end of the building and reconfigure the existing attached garage to create a recreation room and reorient the garage area. This project will result in the proposed addition conforming to the west front and south side yard setback requirements, and will follow the existing east rear building line of the garage area. However, this east rear building line was established by the ZBA in 1976 only for the current attached garage area. Therefore, a variance is required to continue along this building line. While the proposed addition will continue along the existing rear building line and does not appear to negatively impact adjoining properties, staff is unable to support the request as it does not meet the letter of the Zoning Ordinance.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 2082-A I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.

- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.

October 20, 2009**Case No. 2675-A****Property:** 3825 Iris Drive**Applicant:** Russell and Joyce Carson**Zoning:** R-1A, Single Family Residential**Site Use:** Single Family Residential**Proposal:** To rebuild house on existing nonconforming footprint

Analysis: The subject property is an irregularly-shaped platted lot possessing an 800 sq. ft. house with nonconforming south rear and east side yard setbacks built prior to the adoption of the Zoning Ordinance. The house was severely damaged during the April 25, 2009 windstorm. The house needs to be rebuilt in order to restore its structural integrity. The applicant would also like to add a small 98 sq. ft. addition to the southwest corner of the existing footprint to be able to square off that corner of the house. Since this request is not self-created, the applicant is seeking only to restore use of the property as it has been enjoyed for over 60 years, compliance with the strict letter of the ordinance would unreasonably prevent the applicant from using the property and would render conformity with the ordinance unnecessarily burdensome, and practical difficulties exist in this case as a result of the irregular shape and small size of the platted lot, staff is not opposed to the applicant's request.

October 20, 2009**Case No. 3821-B****Property:** 3510 Highland Road**Applicant:** Saleh Alhalmy**Zoning:** C-3, Extensive Business

Site Use: Existing gas station

Proposal: To construct a new gas station/convenience store

Analysis: The applicant has been working on plans to redevelop the existing gas station. As part of this plan, the applicant applied for variances from the Zoning Ordinance. At the September 16, 2008 meeting, the ZBA granted the following variances:

1. *A 22 ft. south front yard setback variance from Article 22 to allow the proposed gas pump canopy to come to within 8 ft. of the south front Highland Road property line.*
2. *An 11 ft. east front yard setback variance from Article 22 to allow the proposed trash dumpster enclosure structure to come to within 19 ft. of the east front Cass Lake Road property line.*
3. *A 20 ft. greenbelt variance from Section 2606 to allow no greenbelt on the subject property along the Highland Road right-of-way and to allow the required greenbelt landscape materials to be located and maintained within the Highland Road right-of-way with the approval of the Michigan Department of Transportation.*
4. *A 20 ft. greenbelt variance from Section 2606 to allow no greenbelt on the subject property along the Cass Lake Road right-of-way.*
5. *A variance from Section 2522.4 to allow 11 trees for greenbelt landscape requirements.*
6. *A 25 ft. variance from Section 2540 to allow the proposed gas station building to maintain a 0 ft. natural feature setback from the wetland boundary on the subject property.*

along with the stipulation that approval is granted by MDOT for the location of the proposed landscape materials within the Highland Road right-of-way.

The applicant then received final site plan approval from the Planning Commission on October 28, 2008. The applicant continues to work on implementing the site plan in phases and is requesting extensions of the variances and site plan approval. The extension request is not excessive in the current economic climate and staff is not opposed to granting the requested extensions.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 3821-B I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.

- The request is self created.

October 20, 2009**Case No. 2883-A**

Property: 7054 Hatchery Road

Applicant: James R. and Lori A. Bonnell

Zoning: R-1A, Single Family Residential

Site Use: Single family residential

Proposal: To expand area of existing deck

Analysis: The easternmost portion of the existing house on the subject property was constructed prior to 1963, when the Township adopted its first township-wide zoning ordinance. While the house was expanded on the west side of the property after receiving a variance from the ZBA in May, 1989, the house maintains a nonconforming east side setback of 4.5 ft. The applicants currently enjoy use of a conforming deck structure attached to the rear of the house. The applicants are proposing to increase the size of the deck and would like to construct the deck so that it comes to within 4.5 ft. of the east side property line, continuing the existing building line.

While the applicant's request will not result in extending beyond the existing nonconforming east side building line and does not appear to be out of character with the surrounding neighborhood, staff is unable to support the applicants' request as it does not meet the letter of the Zoning Ordinance.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 2883-A I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.

- The request is self created.

October 20, 2009**Case No. 5316-A**

Property: 3003 St. Jude Drive

Applicant: Anthony Jergovich

Zoning: R-1A, Single Family Residential

Site Use: Single family residential

Proposal: Allow existing, non-permitted shed to be located 2.5 ft. of the east side property line.

Analysis: The applicant appeared before the ZBA at its last meeting on September 15, 2009. At that meeting, the ZBA denied the applicant's request to allow the existing shed to remain 0.17 ft. from the east side property line instead of the 10 ft. required for accessory structures located less than 10 ft. from the principal building. The applicant is now proposing to relocate the shed to within 0.34 ft. of the house overhang so that it will be 2.5 ft. from the east side property line.

While it is understandable that the applicant would want to enjoy use of a shed for the storage of mobility assistance equipment and that the applicant is proposing to relocate the shed to try and address the issue of maintaining the shed without having to enter the adjacent property, staff still cannot support this request because there is still room to locate the shed in a conforming location on the property and there is no practical difficulty. If the ZBA does find merit in the applicant's request, staff recommends that the ZBA stipulate that the shed shall conform to all applicable building code requirements.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 5316-A I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.
- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.

- The request is self created.

October 20, 2009

Case No. 5318

Property: 4495 Highland Road

Applicant: Rob Breen

Zoning: M-1, Light Industrial

Site Use: Currently vacant, previously used for boat sales and storage

Proposal: To conduct landscape business

Analysis: The subject property as recently as last year was used for boat sales and storage. This boat sales/storage use was conducted on the property for over 20 years. There was no greenbelt established on the subject property along its Highland Road frontage. The property is currently vacant. The applicant is proposing to relocate his landscaping business onto the subject property and has submitted a plan to establish a greenbelt along its Highland Road frontage in conformance with the Zoning Ordinance. However, the performance standards for all land uses established in the Zoning Ordinance requires that all building materials, sand, gravel, stone, lumber, equipment and other supplies shall be located within an area not closer than 150 ft. from any street right-of-way line. The applicant proposes to locate some of his landscape material bins 25 ft. from the Highland Road right-of-way line. While the applicant proposes to improve the subject property by establishing the required greenbelt and the proposed landscape business is not out of character with the previous use of the property and is not out of character with the adjoining businesses, staff is unable to support the request as it does not meet the letter of the Zoning Ordinance.

If the Zoning Board of Appeals chooses to deny the applicant's request, the following is a draft motion that will reflect such a decision:

Draft Motion For Denial

In the matter of ZBA case No. 5318 I move that the petitioner's request for non-use variances be denied because the petitioner did not demonstrate practical difficulties exist in this case. In that:

- No practical difficulty exists in this case.
- Compliance with the strict letter of the ordinance would not unreasonably prevent the petitioner from using the property and would not render conformity with the ordinance unnecessarily burdensome.
- The applicant has not provided any proof that the requested variances would ensure fairness for the owner of the subject property as well as surrounding property owners.

- The applicant has not demonstrated that there is anything unique about the property that would warrant the requested variances.
- The request is self created.