

**CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS
Tuesday September 14, 2021
DRAFT MINUTES**

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to Van Buren Township residents; this Van Buren Township's Board of Zoning Appeals meeting will be conducted virtually as permissible under Public Acts of 2020 Act No. 254 and Declaration of Health Emergency in Wayne County.

Prior to the start of the meeting, the public was given instructions on how to take part in the meeting.

The meeting was called to order at 7:02 pm via Zoom by Vice Chairperson Amos Grissett.

PLEDGE OF ALLEGIANCE

ROLL CALL:

Present: John Herman, John Haase, Jeff Jahr (Planning Commission Alt.), Kevin Martin (Trustee), Amos Grissett (Vice-chair), Charles Larocque

Absent Excused: Aaron Sellers (Chair), Medina Atchinson (Planning Commission Rep.)

Staff: Dan Power (Dir. Of Planning & Economic Development), Matthew Best (Dir. Of Public Services), Tammy Dohring (Executive Assistant), Brittney Williams (Recording Secretary), Alysha Albrecht (Communication Specialist)

Planning Representative: Vidya Krishnan (Senior Principal Planner, McKenna)

ACCEPTANCE OF AGENDA:

Director Power corrected the date on today's Agenda from Wednesday September 14th to Tuesday September 14th.

Jahr motioned; Haase seconded to accept the Agenda as presented.

ROLL CALL:

Yeas (6): Haase, Herman, Jahr, Martin, Grissett, Larocque

Nays (0): None

Absent (2): Atchinson, Sellers

Motion Carried

APPROVAL OF MINUTES:

Haase motioned; Herman seconded to approve the minutes from the April 13, 2021 meeting.

ROLL CALL:

Yeas (6): Haase, Herman, Jahr, Martin, Grissett, Larocque

Nays (0): None

Absent (2): Atchinson, Sellers

Motion Carried

CORRESPONDANCE: NONE

PUBLIC HEARING (for non-new business items)

Herman motioned, Haase seconded to open the public hearing for non-new business items.

ROLL CALL:

Yeas (6): Herman, Haase, Jahr, Martin, Grissett, Larocque

Nays (0): None

Absent (2): Atchinson, Sellers

Motion Carried

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No Public Comments

Jahr motioned, Martin seconded to close the public hearing for non-new business items

ROLL CALL:

Yeas (6): Herman, Haase, Jahr, Martin, Grissett, Larocque

Nays (0): None

Absent (2): Atchinson, Sellers

Motion Carried

PUBLIC HEARING (new business items)

1. Case Number: 21-031 – Amy Wagner-Kotb

Location: 13295 Ormond Drive (tax parcel ID 83-080-01-0068-301), zoned R-1B, Single Family Residential District:

Request: A request by applicant and owner Any Wagner-Kotb to construct an 1,168 square foot addition to an existing nonconforming 1,186 square foot single family dwelling, requires a variance from the Van Buren Township Zoning Ordinance, as follows:

Article 14. Nonconformities, Section 14.106. Enlarging a Nonconforming use, subsection B.

Floor area expansion: 50.00% of floor area (593 sq. ft) permitted
98.48% of floor area (1,168 sq. ft) proposed
48.48% of floor area (575 sq. ft) variance requested

Herman motioned, Haase seconded to open public hearing for New Business Items.

ROLL CALL:

Yeas (6): Herman, Haase, Jahr, Martin, Grissett, Larocque

Nays (0): None

Absent (2): Atchinson, Sellers

Motion Carried

Public Comments:

Jim, residing at 13323 Ormond Drive, as the applicants neighbor to the South stated he had no problems with her petition to put on the addition.

Gary Thomas, residing at 13237 Ormond Drive, as the applicants neighbor to the North stated he thinks it would be a nice improvement to the property and has no complaints what so ever. He actually invites them to add onto their home.

No further public comments.

Jahr motioned, Haase seconded to close public hearing

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ROLL CALL:

Yeas (6): Herman, Haase, Jahr, Martin, Grissett, Larocque

Nays (0): None

Absent (2): Atchinson, Sellers

Motion Carried

UNFINISHED BUSINESS: None

NEW BUSINESS

Director Power stated the case background for request:

1. Case Number: 21-031 – Amy Wagner-Kotb

Location: 13295 Ormond Drive (tax parcel ID 83-080-01-0068-301), zoned R-1B, Single Family Residential District:

Request: A request by applicant and owner Amy Wagener-Kotb to construct an 1,168 square foot addition to an existing nonconforming 1,186 square foot single family dwelling, requires a variance from the Van Buren Township Zoning Ordinance, as follows:

Article 14. Nonconformities, Section 14.106. Enlarging a Nonconforming use, subsection B.

Floor area expansion:	50.00% of floor area (593 sq. ft) permitted
	98.48% of floor area (1,168 sq. ft) proposed
	48.48% of floor area (575 sq. ft) variance requested

Presentation by Township Staff

Director Power introduced the case analysis from the Planning consultant Ms. Krishnan. Stated that after she goes over her report he will have comments on the overarching findings the BZA is obligated to go through as part of a dimensional variance request.

Ms. Krishnan presented her review letter dated August 25, 2021.

We have reviewed the above referenced application submitted by Amy-Wagner Kotb requesting a variance to build an addition to an existing single-family dwelling. The following are our review comments based on the criteria in the Zoning Ordinance and the information provided:

1) That strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose and would thereby render the conformity unnecessarily burdensome for other than financial reasons.

The subject site is occupied by an existing dwelling constructed in the 1940's. The dwelling is nonconforming with respect to the front (lake) yard setback. The required setback is 30 feet; however, a portion of the existing dwelling is located at a setback of 29.45 feet, making it non-conforming.

The applicant is proposing to almost double the footprint of the dwelling by constructing an addition to

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its west. The proposed addition meets the setbacks requirements and the lot complies with the minimum required lot area and width standards. However, since the existing dwelling is nonconforming, the proposed addition is deemed by the Ordinance as an expansion of a non-conforming structure, and is limited to no more than 50% of the footprint of the existing dwelling. Strict compliance with the Ordinance standards would reduce the proposed addition to less than half the size proposed or would require the shifting of an existing wall, built decades ago by approximately 6". The Ordinance limitation for expansion of non-conforming structures was written with an intent to prevent prolonging or extending the life of a non-conforming structure. In this case however, the existing structure was built prior to the adoption of the Ordinance standards and is a legal nonconforming structure. Further, requiring the shifting of an existing wall by a mere 6" without knowledge of any others structural damage it may cause, can be construed as being unreasonable. Requiring the applicant to drastically reduce the size of the addition proposed is also not reasonable when the addition conforms to all setbacks and lot coverage standards. Granting of the variance in this case would allow for reasonable use of the property.

Ms. Krishnan went on to explain there is concern that granting of the variance to expand on a non-conforming structure beyond the 50% may set a precedent for similar requests from other lake side properties. However, we need to remember that every variance case stands individually on its own merit.

2) That a variance would do substantial justice to the applicant, as well as to other property owners in the district, (the BZA, however, may determine that a reduced relaxation would give substantial relief and be more consistent with justice to others).

A variance would do substantial justice to the applicant by enabling them to construct a substantial addition to meet their family's needs and is not averse to the interest of other property owners in the district or in the vicinity. The existing non-conformity has remained for decades and the proposed addition is in full conformance to the Ordinance standards.

3) That plight of the owner is due to the unique circumstances of the property. There are no unique circumstances associated with the property itself; however, the plight of the owner arises from the footprint of a structure constructed long before the zoning regulations for setbacks were put in place.

4) That the problem is not self-created. The requested variance is not a self-created problem. The addition proposed by the applicant is in full compliance with all other Ordinance requirements. The existing nonconformity is due to the original dwelling being constructed in the 1940's.

Ms. Krishnan goes on to summarize the ordinance standards of approval Section 12.403 (D):

- 1) That the proposed appeal or variance is related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.**
Zoning is a valid exercise of the police power bestowed by the State of Michigan in the Michigan Zoning Enabling Act (PA 110 of 2006). The Zoning Enabling Act specifically gives local municipalities the authority to have a Board of Zoning Appeals and to grant dimensional variances when practical difficulty is demonstrated.
- 2) The proposed appeal or variance will not impair an adequate supply of light and air to adjacent property or increase the congestion in public streets.**

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Approving the variance will not impair an adequate supply of light and air to adjacent property or increase the congestion in the public streets. As previously noted, the proposed addition is in full compliance with the required setbacks and lot coverage standards for the district.

3) Will not increase the hazard of fire or flood or endanger the public safety.

The proposed addition is not likely to increase the hazard of fire or flood or endanger the public safety. The addition will be required to comply with all applicable building codes.

4) Will not unreasonably diminish or impair established property values within the surrounding area.

The proposed addition to the dwelling is in keeping with the architectural style of the structure and is no likely to diminish or impair established property values within the surrounding areas. Likely, the addition will add to the property value of the subject site.

5) Will not in any other respect impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

Allowing the proposed building addition is not likely to impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.

6) Will not alter the essential character of the neighborhood.

The proposed addition is a single-story living area addition to an existing dwelling and in keeping with the use of the district. The addition complies with all required setbacks and the lot coverage standards. The addition will not change the residential character of the neighborhood.

7) Is necessary to meet the intent and purpose of the zoning regulations; is related to the standards established in the Ordinance for the land use or activity under consideration, and is necessary to ensure compliance with those standards.

The purpose of zoning regulations is to provide for orderly and planned use of land. The request at this time does not alter the use of the land and is intended to accommodate the living needs of the occupants of the dwelling. The existing non-conformity is not being worsened and the proposed addition is compliant with all standards of the ordinance.

Ms. Krishnan stated the recommendation in her letter:

Subject to any additional information presented and discussed by the applicant, Board, and/or the public during the public hearing and incorporated into the record prior to any findings being made, we recommend that the Board of Zoning Appeals approve the requested variance for the property located at 13295 Ormond Drive.

The above recommendation is based on the following findings of fact:

1. Strict compliance with the ordinance will require the demolition and relocation of a wall which was built decades ago by 6" and can be construed as being unnecessarily burdensome.
2. Limitations to floor area expansion, would prevent the construction of the addition which otherwise complies with all requirements of the ordinance.
3. The existing non-conforming dwelling was constructed in the 1940's prior to the establishment of zoning regulations.
4. A variance would provide substantial justice to the applicant and is not averse to the interests of other property owners in the district.
5. The request for variance is not a self-created hardship.
6. The proposed variance is related to the valid exercise of police power.
7. A variance is not likely to impair light and air to adjacent property or increase the congestion in the public streets.
8. A variance is not likely to increase the hazard of fire or flood or endanger the public safety.
9. A variance is not likely to diminish or impair established property values within the surrounding areas.
10. A variance is not likely to impair the public health, safety, comfort, morals, or welfare of the inhabitants of the Township.
11. A variance is not likely to alter the essential character of the neighborhood.

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Director Power restates to the BZA, based on detailed analysis of the planner, that this request is not for a set back variance but it is for consideration of expansion on a non-conforming structure in a conforming part of the lot. To reiterate what Ms. Krishnan said, the BZA would review findings of facts for this specific request based on the criteria for a dimensional variance in the zoning ordinance. The BZA still needs to agree that a practical difficulty standard has been met based on the application materials and based on the analysis and standards that weigh into that. The strict compliance would prevent the owner from using the property for permitted use. That this will give justice to other properties in the district. There are unique circumstances of this property and that the problem is not self-created. The other dimensional variance criteria including that there is no impairment to the public health, safety or welfare. Will not alter the character of the neighborhood and any other standards laid out in the planner's letter. Reminds them that this is a unique case and there are items that apply to this case only.

Presentation by the Applicant

Amy Wagner-Kotb, the applicant that resides at 13295 Ormond Drive (tax parcel ID 83-080-01-0068-301). Appreciates the synopsis provided by the Township representatives, we support the case they have outlined that is similar to the letter that was submitted to the BZA dated July 5, 2021 regarding their beliefs of how it would fit on the lot. Nothing else to add to what the Township representatives outlined other than the history of her home that was built by her grandparents during WWII while working at Willow Run. When this house was built in the 40's it was considered compliant regarding the setbacks of minimal non-conformity of 1.5 inches on one side and 6 inches on the other side. We believe this will be an improvement for both the neighborhood and the Township. We just wish to update, modernize and have a house nice here on the lake that is contributing to the community. Nothing further to add to what the Township representatives provided, in agreement with those statements.

Director Power directs the BZA to look at the packet to see the site plan with the addition shown, if approved, on the west side. Additionally, goes through the photos attached in the packet.

Todd Ballou, the architect of the proposed project at 13295 Ormond Drive. Nothing to add, everyone did a great job talking about the project. The main point to make was the large difference between the effort to literally follow the ordinance, which in this case would be moving the wall 6 inches vs the benefits that would be gained which would be almost unnoticeable. That large difference makes for their hardship.

Board of Zoning Appeals Discussion

John Herman tells Amy the packet she presented to us, he had originally thought he would have to go down and see what was going on in person and if he could look in the backyard, but the packet that was put together by staff and Amy was full and complete which is appreciated. Hope Amy builds a house, once approved, that is a lake front house because the house they have now there are no windows in the rear to oversee the lake. Does not personally have any problems with this because of all the facts that were stated.

Amos Grissett stated it was built in 1940 which is 81 years ago. A lot can happen in 81 years such as shifting of land, erosion of water sides and everything else. 6 inches is important to us but almost guaranteeing that when the house was built it was done properly. If you look at Pictured Rock 3-4 weeks ago they had roughly 4 to 5 feet of land that shifted to the lake, that would naturally make the lake closer than it was when they built it. So, there are a lot of little things we have to take into consideration because it was initially conforming even though there weren't actually any laws to say you had to do that. With that as well as all the things Amy has put together the facts remain that she has done a good job showing why she feels that she should be able to do this without any problem. Mr. Grissett has no problems with it.

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Jeff Jahr asked staff or Mr. Ballou to talk about the lake side property line and how it was located. Knows that some of the lake lots there are different standards for determining the property line. Simply curious as to how it was determined, in this situation if anyone has any information on it.

Todd Ballou, the architect, states they have a survey that located the water line as well as the house that provided the setback for them. Nothing they measured, they are relying on the professional surveyor to tell them they are 6 inches over the line.

Jeff Jahr commented on the standards for granting the variance, he believes it looks like strict compliance with this moving an 80-year-old brick wall 6 inches does seem, from an engineering stand point, unnecessarily burdensome. Believes the variance granting it would grant substantial justice to the applicant. As we heard from the property owners near by the relaxation would grant substantial relief. It does appear that this is unique to the property and is simply 6 inches over the line issue, doesn't believe the problem is self-created. Also believe that if this addition is put on there is another out building that is being removed from the property which in turn would make this property more compliant although it still will be an existing legal non-conformity it is more in compliance when the building is gone. Really believe this is a reasonable request at this time.

John Herman added they had a couple surveys done not just relying on one.

No further comments.

Board of Zoning Appeals Action

Herman motioned, Haase seconded, to grant approval for the variance for enlarging a non-conforming use request to Amy Wagner-Kotb, based on the McKenna letter dated August 25, 2021.

ROLL CALL:

Yeas (6): Herman, Haase, Jahr, Martin, Grissett, Larocque

Nays (0): None

Absent (2): Atchinson, Sellers

Motion Carried

Director Power added there are still training opportunities put forward by the Michigan Township association, Michigan association of Planning and Michigan State University land use extension, among others. Keep eye out for training opportunities from us because the BZA does have to attend 2 training classes each year. Find the opportunities you would like to attend and we will help you sign up.

Haase motioned, Herman seconded to adjourn meeting 7:51pm

ROLL CALL:

Yeas (6): Herman, Haase, Jahr, Martin, Grissett, Larocque

Nays (0): None

Absent (2): Atchinson, Sellers

Motion Carried

Respectfully submitted,

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Brittney Williams, Recording Secretary