

**MINUTES ZONING BOARD OF APPEALS -VILLAGE of MACKINAW CITY**  
**9/02/2016 Circuit Court Remanded Public Hearing**  
**Appeal of Zoning Board Administrator Decision**  
**726 Lakeside Drive, Mackinaw City, MI 49701 Parcel #42-03-12-476-207**  
**Appeal #2015-AA-001- Miriam Hiser**

**7:00 PM**

**October 06, 2016**

**I. CALL TO ORDER/TAKING OF ROLL**

President Robert R. Heilman called the public hearing to order and with the following Trustees present—Belinda Mollen, Scott Newman, Mario Rodriguez, Robert Glenn, Tom Chastain, and Paul Michalak. Also present, Kenneth Lane-Village Attorney, Fred Thompson Jr.-Zoning Administrator and Lana Jaggi-Clerk Visitors – List Attached.

**II. CLOSED SESSION**

Motion Glenn seconded Chastain to go into Closed Session to review a confidential legal opinion from the Village attorney pursuant to Section 8(h) of the Open Meetings Act. Roll call: Yeas-Mollen, Newman, Rodriguez, Heilman, Glenn, Chastain, Michalak. Motion carried.

Motion Mollen seconded Newman to go back into ZBA open session. Roll call: Yeas-Newman, Rodriguez, Heilman, Glenn, Chastain, Michalak, Mollen. Motion carried.

**III. PUBLIC HEARING**

Pres. Heilman explained the procedure of ZBA and noted all submissions in regards to the agenda subject from interested parties including emails, regular mail and letters delivered to Village Hall and had been accepted, reviewed, placed on file and made a part of the record on appeal.

Pres. Heilman said with respect to public comment normal time limit allowed is three (3) minutes but will grant four (4) minutes per person.

**Public Comments:**

Jeffrey Jocks, Attorney for Miriam Hiser, began the public comments with the following-

- his explanation of ZBA protocol regarding zoning administrator decisions;
- his opinion that the zoning administrator was without discretion in relation to permit issuances;
- he reiterated why his client seeks reversal of the zoning permit issued for 726 Lakeside Drive based on the alleged zoning ordinance violation outlined in his September 29, 2016 letter to the ZBA;
- he summarized why he thought the zoning permit application submitted by John and Cathy Paquet was insufficient and inaccurate.

Sandra Jasinski, Attorney for John and Cathy Paquet, followed with her opinion that the ZBA determination was accurate during the original public hearing and it was remanded back to ZBA for better discussion and finding of facts to base their already accurate decision on.

Pres. Heilman offered, several times, for audience members to speak.

Public comment portion of hearing closed at 7:50 pm

Pres. Heilman moved to have the ZBA discuss each issue raised by appellant Miriam Hiser has provided in the September 29, 2016 letter from Mr. Jocks.

**Appellant Issue #1:**

Permit #2014-2P-010 violates the requirements for a corner lot because the property adjacent to 726 Lakeside Drive is a “street” by deed restriction, by usage, and definition under the Village zoning ordinance.

ZBA member Mollen started the deliberation by stating she does not consider it a violation of requirement because the adjacent property was never used as a street, street signs have never been placed therefore could not be considered a corner lot. ZBA Chair Heilman added that the adjacent property was never used as a street nor was the 726 property ever assessed as a corner lot. ZBA member Newman noted that when the Village Council and staff created an inventory of all Village owned property, the adjacent land was identified as “land”, not a “street”. ZBA member Rodriquez would testify that previous owners of 726 Lakeside never considered the adjacent land a street nor did they even utilize it themselves because of the vast number of trees and brush it contained.

After it’s deliberation, the ZBA agreed that the the zoning administrator did not consider the vacant Village property to be a street at the time of the issuing permit because it did not meet the definition of a street as specified in Section 2-102 of the zoning ordinance, it was never designated or used as a street because it was heavily wooded and a vehicle could never use it.

**Appellant Issue #2:**

Permit #2014-2P-010 was granted in violation with Sections 5-101 (E)(C) and 22-102 of the zoning ordinance because the garage exceeds 21 feet in height.

ZBA member Michalak stated if one does not consider the adjacent property a street then the height restrictions and setbacks should not be elements of conclusion.

ZBA members Michalak, Mollen, Newman, and ZBA Chair Heilman discussed the fact that the garage is attached to the existing building therefore it would be allowed to be the permissible 35 ft height and therefore there is no violation.

After it's deliberation, the ZBA concluded that the zoning administrator determined the proposed garage was an addition to an existing residential structure based upon the submitted permit application and supporting document. Therefore, such addition may be permissible up to 35 ft in height according to the zoning ordinance (Section 5-103).

**Appellant Issue #3:**

Permit #2014-2P-010 was granted in violation of Section 22-102 of the zoning ordinance because the garage exceeds applicable square footage requirements.

ZBA Chair Heilman and all six ZBA members offered in agreeance that, as with Issue #2, the garage is attached therefore there is no violation and a permit could be issued. ZBA Chair Heilman asked Zoning Administrator Thompson whether the residential structure at 726 Lakeside with the attached garage addition occupied less than 35% of the total lot and Mr. Thompson answered "yes".

After its deliberation, the ZBA agreed, as in Issue #2, the zoning administrator's determination that the proposed garage was an attached addition to the existing structure therefore its square footage was permissible under Section 5-103 of the zoning ordinance which regulate the total percentage of lot coverage.

**Appellant Issue #4:**

Permit #2014-2P-010 was granted in violation of the requirements of Section 24-109(F) of the zoning ordinance because:

- a. The permit application does not describe any work to be done on the second story.
- b. The permit application/site plan does not depict the correct building footprint (*i.e.*, it was constructed in a different location).
- c. The permit application does not accurately provide an estimate of the project cost.
- d. The permit application/site plan does not adequately depict the proposed construction

ZBA Chair Heilman summarized issue #4 is questioning whether zoning administrator Thompson was given enough sufficient information to allow a permit to be given. ZBA members Newman and Chastain responded “yes”. They simultaneously identified themselves as a licensed contractor and contracting business owner. Both ZBA members agreed in general permits are issued based on information that is given at the beginning of projects, which are in fact “proposals” as quit often projects change throughout the process. ZBA member Michalak pointed out that zoning administrator Thompson was once a licensed contractor himself and understands how that occurs. ZBA member Glenn agreed and offered that his personal experience of having garage built started small and ended large.

After its deliberation, the ZBA determined that Section 24-109 of the zoning ordinance designates authority to the zoning administrator to issue permits for additions to existing buildings. The ZBA agreed that the zoning ordinance provides discretion to the zoning administrator to determine if a submitted application meets the requirements of Section 24-109. The ZBA agreed that deviations from such requirements are within the reasonable discretion of the zoning administrator. Therefore, the ZBA agreed that it was reasonable for the zoning administrator to determine that the submitted application documents were adequate to be able to indicate the outcome of the completed project at 726 Lakeside Drive.

**Appellant Issue #5:**

Permit #2014-2P-010 was granted in violation of Section 4-106(C) and Section 5-101(A) of the zoning ordinance because it authorizes the construction of two single-family dwellings on the same parcel.

ZBA Chair Heilman polled each member asking if they thought garage is attached. All members concurred “yes”. ZBA member Michalak and Mollen said that even if the garage had its own kitchen it is for the same family and the garage is attached so it is one dwelling. ZBA member Newman said it is irrelevant what is inside the building now-the plans showed an attached garage which is what the permit was issued on.

The ZBA concluded that as they determined already, the zoning administrator determined that the garage addition was going to be attached to the existing residential building. Therefore, the ZBA agreed that two dwellings did not now exist at 726 Lakeside Drive.

**Appellant Issue #6:**

Permit #2014-2P-010 was granted in violation of the 25foot front yard setback requirement (Section 5-103(C)) because:

- a. Permit #2014-2P-010 violates the zoning ordinance because it allows a multi-family dwelling unit (Section 5-101).
- b. Permit #2014-2P-010 violates the zoning ordinance provisions relating to a corner lot.

The ZBA concluded that the zoning administrator's setback calculations were based on waterfront lots in R-1 district for garage addition which require a 10 ft. front yard setback from the adjacent road or street and a 7 ft. yard setback from the corresponding property line, and that the zoning administrator did not consider "guest quarters" within the addition to be a separate dwelling nor did he consider 726 Lakeside Drive a corner lot previously discussed in relation to issue #1.

**Appellant Issue #7:**

Permit #2014-2P-010 was granted in violation of Section 22-101 of the zoning ordinance because it allows parking areas, maneuvering lanes and driveways within a minimum yard setback.

After its discussion, the ZBA concluded that the zoning administrator review the permitted application and reasonably determined that the setback area would only be used for ingress and egress, which is permissible under Section 22-101 of the zoning ordinance, and that there was never any parking authorized by the issued permit.

**Appellant Issue #8:**

Permit #2014-2P-010 was granted in violation of Section 4-110(F) of the zoning ordinance because it adversely affects the drainage and stability of Lakeside Drive.

The ZBA discussed and concluded that with the vast amount of rainfall that has occurred throughout the current season there have yet to be any adverse effects shown.

**Appellant Issue #9:**

Permit #2014-2P-010 was granted in violation of Section 4-101 of the zoning ordinance because it allows permanent improvements within a public street right-of-way.

The ZBA concluded, that again, the zoning administrator reasonably did not consider the vacant wooded area to be a public street right of way. Therefore, the zoning permit did not authorize permanent improvements on a public street right of way.

**Appellant Issue #10:**

The resulting garage addition as built does not comply with Permit #2014-2P-010.

The ZBA discussed and concluded that this is a zoning ordinance enforcement issue and suggested that Village staff should investigate the alleged violations.

At the conclusion of the ZBA deliberations, Pres. Heilman called for a motion.

Motion Newman seconded Mollen to affirm the decision of the Village Zoning Administrator:

- In accordance with Section 24-104 of the zoning ordinance, the ZBA has received public comment, materials and documents relating to an appeal of the issuance of Zoning Permit #2014-2P-010 by the Village Zoning Administrator as filed by Miriam Hiser, whose property is located at 800 Lakeside Drive in the Village;
- After deliberation and consideration of such items, the ZBA affirms the decision of the Zoning Administrator to issue Permit #2014-2P-010;
- The ZBA sets forth the following findings of fact in relation to its decision:
  - The Zoning Administrator did not consider the vacant Village property adjacent to 726 Lakeside Drive to be a “street” at the time of permit issuance because the property: (1) did not meet the definition of a street under the zoning ordinance; (2) had never been designated or used as a street by the Village; and (3) was heavily wooded and unusable by motorized vehicles. The ZBA concurs with this determination for the same reasons.
  - Because the vacant Village property was not considered a street:
    1. 726 Lakeside Drive is not a corner lot under the zoning ordinance, so setback calculations were properly listed on the permit application. As a waterfront lot, Sections 5-101(E) and 5-103 of the zoning ordinance require a 10’ setback from Lakeside Drive and a 7’ setback from adjacent property lines.
    2. The issued permit did not authorize any permanent improvements within a public street right-of-way.
  - The Zoning Administrator has determined that the garage addition at 726 Lakeside Drive is connected to the existing residential structure. The ZBA concurs with this determination. Therefore:

1. The garage addition meets the height (maximum 35') and square footage requirements (no more than 35% of total lot) provided in Section 5-103 of the zoning ordinance.
  2. The garage addition does not constitute a separate or multi-family dwelling unit.
- The Zoning Administrator determined that the side setback area would only be used for immediate ingress and egress by the property owner, which is permissible under Section 22-101. No parking upon Village property was authorized by Permit #2014-2P-010.
  - The construction authorized by Permit #2014-2P-010 has not adversely affected the drainage or stability of Lakeside Drive or surrounding properties.
  - Finally, the ZBA finds that the issuance of Permit #2014-2P-010: (1) did not serve to violate any provision of the zoning ordinance; (2) was done in accordance with proper procedure; and (3) was within the reasonable discretion of the Zoning Administrator as provided in Section 24-109 of the zoning ordinance.
- Although the enforcement of zoning ordinance violations at 726 Lakeside Drive, whether perceived or actually occurring, are beyond the jurisdictional scope of the ZBA, we request that Village staff determine whether the structure constructed on that property complies with Permit #2014-2P-010.

**Roll Call:**

**Yeas: Rodriguez, Heilman, Glenn, Chastain, Michalak, Mollen, Newman. Motion carried.**

**Adjournment 8:20 pm**

**Respectively Submitted;**

**Robert R. Heilman; President**

**Lana Jaggi; Clerk**