

Council Chamber
Henry L. Brown Municipal Bldg.
One Grand Street
Coldwater, Michigan



February 19, 2020
4:30 p.m.
(517) 279-9501
www.coldwater.org

Zoning Board of Appeals Minutes

Regular Meeting

MEMBERS PRESENT: The meeting was called to order by Chairman Renshaw at 4:35 p.m. with the following members present: Mike Eddy, Dennis Cole and Gordon Swan.

MEMBERS ABSENT: Joseph Hayes, plus Alternate members Jim Bilsborrow and Jeff Holbrook.

OTHERS PRESENT: Administrator Dean Walrack, Assessor Deb Sikorski, Deputy Clerk Shauna Chávez and Clerk Susan Heath; Musa Ahmed, Don Reid, Jim Measel and eight others.

MINUTES

1. Regular Meeting of December 18, 2019.

Board Action: Motion by Member Cole, and seconded by Member Eddy, to approve the Regular Meeting of December 18, 2019, as presented. Motion Carried.

PUBLIC COMMENTS

None

PUBLIC HEARING

None

OLD BUSINESS

None

NEW BUSINESS

2. **ZBA 20-01** A request by the American Moslem Society, located at 129 Perkins St. for a 19 ft. dimensional rear yard variance to construct a building to within six ft. of a rear property line.

Zoning Administrator Dean Walrack presented the request by the American Moslem Society, located at 129 Perkins St. for a 19 ft. dimensional rear yard variance to construct a building to within six ft. of a rear property line. The zoning ordinance requires a 25 ft. rear yard. The applicant had previously received Site Plan approval for a multi-story building on this site which ultimately proved to not be fiscally viable. A new building design and site plan were developed in late 2019 which placed the building approximately three ft. from the rear property line at its nearest point, after which the applicant further modified the building plan and site plan to try to maximize this separation to a greater degree. The applicant is currently in the process of purchasing some additional land from the neighbor at 128 E. Washington St. which will place the building approximately 11 ft. from the nearest rear property line. This plan was reviewed by the Coldwater Planning Commission at its February 3, 2020 meeting, at which point it was tabled pending this review by the Zoning Board of Appeals. The plan as presented at that time did not anticipate the purchase of the additional 12 ft. from 128 E. Washington St. With the anticipated completion of this purchase, the applicant would still require an 11 ft. dimensional rear yard variance.

Administrator Walrack presented the applicable sections of the zoning code as well as the criteria by which the Zoning Board may grant such a variance.

1278.01 PRIMARY INTENDED USE IN THE A-2 ONE AND TWO-FAMILY RESIDENTIAL DISTRICT

This Zone District is designed primarily for single-family residences.

1278.04(d) REAR YARDS IN THE A-2 ONE AND TWO-FAMILY RESIDENTIAL DISTRICT

(c) Rear Yard. There shall be a rear yard of at least 25 feet.

The Zoning Board of Appeals may grant a “non-use” variance only upon a finding that practical difficulties exist. A finding of practical difficulty is when the applicant has demonstrated all of the following:

- A. That special conditions and circumstances exist which are peculiar to the land, land use, structure or building in the same zoning district so as to present such a unique situation that a precedent will not be established for other properties in the district to also ask the same or similar change through the zoning appeal procedure.

Petitioner’s response: Yes. Complex rear line. Size of building. Few other properties could be used.

Staff commentary: The ordinance is generally intended to apply to residential uses on smaller lots. The lot in question is an assembly of numerous formerly residential lots totaling approximately 2.25 acres. These lots had been platted with a variety of depths which creates a rear boundary which is deep in the middle and shallower on the east and west sides. The size, shape, and use of this property are not typical of the character that the A-2 ordinance is conceptualized to enforce.

- B. Such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

Petitioner's response: Yes. Community is growing. Community is living further from mosque.

Staff Comments: The site currently serves and is intended to serve as a Religious Assembly use. Additionally, it consists of a single-family residential use, a nonconforming commercial use, and a semi-improved parking lot capable of accommodating ~25 vehicles. The applicant intends to remove the residential and commercial buildings, construct a new mosque building while leaving the existing building, and create a formal parking area capable of accommodating 87 cars. In order to construct a building and parking lot of adequate size to accommodate their congregation, they will need to utilize as much of their property as possible.

- C. The authorization of such variance will not be of substantial detriment to adjacent property and will not naturally impair the intent and purpose of this Zoning Code or the public interest.

Petitioner's response: Yes. Neighbors/property owners are welcoming, gained permission. Other properties are deep with no houses near rear line.

Staff Commentary: The building being built does not represent a change of use from which already exists on the property, in fact it removes a non-conforming use and installs a more formal and adequate parking arrangement. The owner of the property with the shallowest separation has submitted a letter of support and no negative public comments have been received by City Staff at this time.

- D. That granting of the variance requested will not confer on the applicant any special privilege that is denied by the provision of this Zoning Code to other lands, structures or building in the same zoning district.

Petitioner's response: Yes. Very few other props of this size & use.

Staff Commentary: The property is relatively unique in size, shape, and use.

- E. That the reasons set forth in the application for the variance justify the granting of the variance and the variance is the minimum variance that will make possible the reasonable use of the land, building or structure in the zoning district in which it is located.

Petitioner's response: Yes. Have adjusted plan for max separation. Complex rear line.

Staff Comments: The property in question is relatively unique within the district in regards to size, shape, and use; further, the A-2 One and Two-Family Residential District is intended to regulate residential uses on smaller lots. The applicant has redesigned the building once during this recent iteration, redesigned the site, and is attempting to purchase additional land from the neighboring property with the shallowest setback in attempts to comply with the ordinance as much as possible.

STAFF RECOMMENDATION

City of Coldwater Neighborhood Services Department Staff recommends that the variance be granted and that the request is justified by the shape of the lot's rear boundary; the limitation of this use to lots of a size larger than that which typically exists within an A-2 district; that this request is not enabling a use or form which is incompatible with the character of the neighborhood; that this request will not convey a special privilege to the applicant which would not be granted to a similar circumstance; and that it is warranted by

the characteristics of the property and the applicant's reasonable attempts to comply with the ordinance.

ACTION REQUIRED

Keep in mind that only variances meeting each of the five criteria should be approved, and that the criteria should apply to the land only. An affirmative vote of a majority (3/5) of ZBA members is necessary to approve this variance request.

Chairman Renshaw noted that Petitioner could postpone the decision on this request due to the absence of one ZBA member, with approval requiring at least three affirmative votes by the four members who were present – Petitioner Musa Ahmed asked that the variance process proceed.

COMMISSIONER DISCUSSION

- Expressed concern with approving a setback variance at the back of the property to allow 11 ft., rather than the required 25 ft.
- Expressed concern with side-yard setbacks not totaling 13 ft, especially with some setbacks less than 5 ft., and that such items were not included in the variance request.
- The applicant will work with the neighbors and the architect to ensure that all side yards comply with the expectations for new construction within the north portion of the lot: being a minimum of one 5 ft. yard and one 8 ft. yard.
- The applicant will work to redesign or re-position the building to gain further distance from the rear property line.
- Expressed concern that the nearby off-site parking lot is not being altered as part of this Site Plan.

Petitioner Musa Ahmed of the American Moslem Society spoke of his intent to contact his architect and engineer to begin looking at alterations for the site and he will reach out to the neighboring properties in hopes of acquiring additional lands.

PUBLIC COMMENTS TO DATE

- Notices were sent to all property owners within 300 ft. of the subject parcel and published in the February 5, 2020 edition of the Coldwater Daily Reporter. Four letters have been received by City of Coldwater Neighborhood Services Department Staff prior to this meeting.
- Brian Wright, 136 E Washington St., spoke in opposition to the variance request.

Board Action: Motion by Member Swan, and seconded by Member Cole, to table ZBA 20-01 pending resolution of set back and parking lot issues, as presented. Motion Carried. Variance tabled.

ADJOURNMENT – A Special Meeting may be scheduled 4:30 p.m. March 11, 2020, if a rear yard variance is still required after the applicant has spoken with the neighbors and architect.

Meeting adjourned at 6:07 p.m.

Susan E. Heath, CMC
City Clerk