

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



June 3, 2020
4:30 p.m.
(517) 279-9501
www.coldwater.org

Zoning Board of Appeals Minutes

Electronic Regular Meeting

Any interested person or group may address the City Council on any agenda item or on any matter of City concern including items not on the Agenda during the agenda items designated Public Comment. The comment of any member of the public or any special interest group may be limited in time. Such limitation shall not be less than five minutes unless otherwise explained by the presiding officer, subject to appeal by the Zoning Board.

For individuals who may wish to give public comment, the method for providing public comment during this remote-participation meeting is to call the following toll-free number:

1-888-475-4499 or 1-877-853-5257 (Meeting ID: 828 6819 7762) Participant ID is not required.

Callers wishing to give public comment may call in before the meeting starts and wait in a virtual waiting room." Those calling in will be able to hear the audio of the City Council meeting, but their microphone will be muted. At the time for Public Comment, press *9 on your telephone, and you will be called upon. Callers who do not wish to give public comment are encouraged to view the meeting live-streamed on YouTube at, bit.ly/ColdwaterVideo or on Skitter channel 61.

MEMBERS PRESENT: The meeting was called to order by Chairman Mike Renshaw at 4:44 p.m. with the following members present: Mike Eddy, Gordon Swan and Joseph Hayes, plus Alternate member Jim Bilsborrow.

MEMBERS ABSENT: Dennis Cole and Alternate member Jeff Holbrook.

OTHERS PRESENT: Administrator Dean Walrack, City Attorney Megan Angell and Clerk Susan Heath; Devin Sullivan, Stephen Bagne, Jim Tedder, Shaker Alsoofi and four others.

MINUTES

1. Regular Meeting of February 19, 2020.

Board Action: Motion by Member Swan, and seconded by Member Eddy, to approve the Regular Meeting of February 19, 2020, as presented. Motion Carried.

Roll Call Vote:

Ayes: Mike Eddy, Gordon Swan, Joseph Hayes, Jim Bilsborrow and Chairman Mike Renshaw

Nays: None.

Motion carried.

PUBLIC COMMENTS

None

PUBLIC HEARING

None

OLD BUSINESS

None

NEW BUSINESS

2. **ZBA 20-02** A request by Michigan Electronic Transmission Company, LLC. on behalf of Ant Savings, for a variance from right-of-way planting requirements within an electrical transmission line easement on the property located at 505 E. Chicago St.

Zoning Administrator Dean Walrack presented the request by Michigan Electronic Transmission Company, LLC (METC) on behalf of the property owner to allow for the portions of the property which are now encumbered by an electrical transmission utility easement to be exempted from the requirements of any present or future Landscaping Ordinances which may necessitate the placement of trees. The Landscaping Ordinance requires one tree per each 30 linear ft. of parking lot right-of-way frontage.

The Michigan Electric Transmission Company has been working to construct a northern transmission corridor into the City of Coldwater over the course of the previous several years which includes a line from the Union City area to the substation on Jonesville Rd. near the Clemens Food Group processing plant and the transmission line running from that plant to a new substation on Butters Ave., which the utility easement crossing this property serves. This northern transmission corridor builds redundancy into the City's electrical supply which is currently only available from a single transmission line from the City's south. This property is one of several affected by the Electrical Transmission Easement.

The City's Landscaping Ordinance is intended to serve primarily as a means of enacting a public aesthetic during the development of individual sites by requiring certain vegetative features.

The

Michigan Electrical Transmission Company will donate a replacement cost to the City's forestry program so that the trees removed from this site will be replaced by an equal number of trees

off-site in a location which may have greater impact on the Public Realm.

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.

1297.01 INTENT AND SCOPE OF LANDSCAPING REQUIREMENTS

Whenever any yard (front, side or rear) of a use, other than a single or two-family residential use, is not designated for building, off-street parking, loading or unloading, or other purpose required pursuant to the zoning district requirements, such yard shall be landscaped with either approved natural materials or living plant materials, including grass. To this end, a detailed landscape plan showing the names, both common and botanical, location, spacing, planting and size of all plantings to be installed, and the location and type of all materials proposed to be included in the ZBA20-02 landscape treatment areas, shall be submitted as part of the site plan approved under the provisions of Chapter **1265**, Site Plan Review.

1297.02 REQUIRED LANDSCAPING

(3) Right-of-way-front yard. Along the right-of-way lines of any street, road or highway, a front yard planting strip at least 10 feet in width shall be provided. Within the front yard planting strip at least one deciduous canopy tree or coniferous tree shall be provided for each 30 feet of frontage. Ornamental trees may be provided at a rate of one per 20 lineal feet of frontage. In addition, six deciduous or coniferous shrubs shall be provided for each 30 lineal feet of frontage. In addition to the required tree and shrubs, the remainder of the front yard planting strip shall be landscaped in grass, ground cover, and other natural landscape materials. Access drives from public rights-of-way through required front yard planting strips shall be permitted, but such drives shall not be subtracted from the lineal dimension used to determine the minimum number of plantings required.

(4) Trees and shrubs may be placed either symmetrically or asymmetrically throughout and around the parking area within planting strips and interior planting areas.

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: METC's acquisition of the Easement presents special conditions and circumstances that create a unique circumstance for only those limited number of properties that are traversed by the Transmission Line. This underlying conditions and surrounding circumstances are exceptional insofar as they relate to an eminent domain action, which was needed to acquire the necessary property rights for the operation and maintenance of a critical electrical infrastructure component that will benefit the residents and businesses throughout the area. To safely and reliably operate and maintain the Transmission Line, the Easement Area must be free of trees that, consistent with Transmission Line. Overgrown vegetation can lead to dangerous

conditions, including increasing the potential for fires. Additionally, outages caused by incompatible vegetation can result in substantial economic losses in commerce and have a dramatic impact on the community. For example, in the fall of 2017, a storm impacted the City of Coldwater's transmission line, leaving the entire City without power for 24 hours. The City Manager and Utility Director recognized that this type of outage had financial implications to the entire community. (See Letter, Exhibit F). Moreover, failure to grant the variance would result in the Property owner and its tenant being punished for something that they have no control over. The Property owner will not be the cause of any vegetation removal. Indeed, the Property owner had no choice as to whether the Easement would be imposed on its Property and, as such, should not be forced to suffer an adverse consequence to its Property as a result of an Easement necessary to protect the public by enhancing the reliability of electric service for the entire community.

Staff commentary: The property in question has recently become encumbered by an electric transmission line easement which is 160 ft. in width (80 ft. on each side from the high-voltage line in the center). There are a limited number of properties which such a transmission easement affect, and even fewer properties which have required landscaping within the easement area; 13 of the 113 properties zoned C-4 are within the easement area and six of these parcels are in single-family use and are not affected by the landscaping requirements of Chapter 1297.

- 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: The practical difficulties that will result if a variance is not granted will be far more than mere inconvenience or inability to attain a higher financial return. The landscaping required by Chapter 1297 can no longer be located in the Easement Area because they are not compatible with the Transmission Line. Not granting a variance to the Property owner here would negatively impact the Property owner, who did not create this circumstance and leave the area within the Easement in a nonconforming status. The Property has existed at this location in its current developed status for years. A minor variance to eliminate the need for certain vegetation in the Easement Area is warranted so that the Property can remain in conformity in this area notwithstanding the imposition of the Easement.

Staff Comments: The electrical transmission line is vital for the City's electric utility reliability, resiliency, and security; for these reasons, the line must be placed where it is and the easement kept clear of hazardous vegetation. The inability to be awarded this easement would result in the property owner being required to undergo a significant reconstruction of their site as a result of having the property which they had previously designated to satisfying City requirements involuntarily encumbered through an eminent domain process.

- 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:** The variance requested 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. It is very narrowly directed at vegetation in the Easement Area on the Property, which is incompatible with the safe and reliable operation and maintenance of the Transmission Line. The variance will enable the Property to function in a conforming status in the Easement Area and, because the Transmission Line already exists, the variance will not have any effect on the surrounding properties. The safe and reliable operation and maintenance of the Transmission Line will bring significant public benefits to the community in terms of electrical reliability. The importance of maintaining the reliability of transmission lines benefits all property owners in the community and the requested variance will not otherwise have a negative impact, thus resulting in substantial justice being done.

Staff Commentary: The variance will not be of substantial detriment to adjacent properties. The ordinance only specifies a general location of required landscaping, but not specific orientation [1297.02(e)(4)] and is generally not directed toward considerations like stormwater protection or screening, except in the case of adjacent residential uses. As such, Staff does not believe that the variance will cause a detrimental circumstance to adjacent properties. In fact, with the donation of the trees to the City's forestry program, the aesthetic concerns of the ordinance may be more significantly addressed with the planting of these trees in a park or streetscape. Notices were mailed to all properties within 300 ft. of the subject parcel and printed in the May 19, 2020 edition of the Coldwater Daily Reporter with no public comments as of the drafting of this report.

- 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: There will be no special privileges conferred on the Property owner that will affect any lands, structures, or buildings within the same zoning district. The minor variance requested here only involves vegetation in the Easement Area and will not have an impact beyond the Easement Area.

Staff Commentary: The presence of this easement is unique to only 13 of 113 parcels within the C-4 General Business District. Additionally, replacement trees will be donated to the City's forestry program.

- 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: A lesser variance than requested would not achieve the goal of ensuring the area within the Easement remains in conforming status, while at the same time allowing use of the Easement Area for the Transmission Line. The only trees and/or landscaping subject to removal by METC are located within the Easement Area itself and, as such, there will not be a significant impact on the landscaping of the Property as a whole. **Staff Comments:** The applicant is requesting variance only over the

landscaping in the area covered by the Electric Transmission Utility Easement. Additionally, five trees are being donated to the City's forestry program to offset the five trees being removed from this property. The request is arising from the involuntary encumbrance of the entire N. Michigan Ave. front yard by the Easement.

STAFF RECOMMENDATION

City of Coldwater Neighborhood Services Department Staff recommends that the variance be granted and that the request is justified by the condemnation of an 80 ft.-wide portion of the lot for an Electric Transmission Utility Easement; the lack of area outside of the Easement available for planting; that this request is not enabling a use or form which is incompatible with the character of the neighborhood or incompatible with the intent of the Zoning Code; 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.

Board Action: Motion by Member Hayes, and seconded by Member Swan, to approve ZBA 20-02, for the reasons presented by Administrator Walrack in the above report and verbally at the meeting, to remove five trees from the right-of-way-front yard of the property at 505 E. Chicago St., to be planted off-site by the City of Coldwater's forestry program, as presented.

Roll Call Vote:

Ayes: Mike Eddy, Gordon Swan, Joseph Hayes, Jim Bilsborrow and Chairman Mike Renshaw

Nays: None.

Motion carried. Variance granted.

3. **ZBA 20-03** A request by Michigan Electronic Transmission Company, LLC. on behalf of National Real Estate II, LLC., for a variance from right-of-way planting requirements within an electrical transmission line easement on the property located at 500 E. Chicago St.

STAFF RECOMMENDATION

City of Coldwater Neighborhood Services Department Staff recommends that the variance be granted and that the request is justified by the condemnation of an 80 ft.-wide portion of the lot for an Electric Transmission Utility Easement; the lack of area outside of the Easement available for planting; that this request is not enabling a use or form which is incompatible with the character of the neighborhood or incompatible with the intent of the Zoning Code; 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.

June 3, 2020 – 4:30 p.m.

Board Action: Motion by Member Hayes, and seconded by Member Swan, to approve ZBA 20-03, for the reasons presented by Administrator Walrack in the above report and verbally at the meeting, to remove six trees from the right-of-way-front yard of the property at 500 E. Chicago St., to be planted off-site by the City of Coldwater’s forestry program, as presented.

Roll Call Vote:

Ayes: Gordon Swan, Joseph Hayes, Jim Bilsborrow, Mike Eddy and Chairman Mike Renshaw.

Nays: None.

Motion carried. Variance granted.

4. **ZBA 20-04** A request by Michigan Electronic Transmission Company, LLC. on behalf of Financing VI Healthcare Property, LLC., for a variance from right-of-way planting requirements within an electrical transmission line easement on the property located at 90 N. Michigan Ave and 199 Orleans Blvd.

STAFF RECOMMENDATION

City of Coldwater Neighborhood Services Department Staff recommends that the variance be granted and that the request is justified by the condemnation of an 80 ft.-wide portion of the lot for an Electric Transmission Utility Easement; the lack of area outside of the Easement available for planting; that this request is not enabling a use or form which is incompatible with the character of the neighborhood or incompatible with the intent of the Zoning Code; 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.

Board Action: Motion by Member Hayes, and seconded by Member Swan, to approve ZBA 20-04, for the reasons presented by Administrator Walrack in the above report and verbally at the meeting, to remove nine trees from the right-of-way-front yard of the property at 199 Orleans Blvd., to be planted off-site by the City of Coldwater’s forestry program, as presented. Motion Carried. Variance approved/denied.

Roll Call Vote:

Ayes: Joseph Hayes, Jim Bilsborrow, Mike Eddy, Gordon Swan and Chairman Mike Renshaw.

Nays: None.

Motion carried. Variance granted.

5. **ZBA 20-05** A request by Shaker Alsoofi for a variance from Section 1298 to resume operation of a Two-Family Residential use in an A-1 One-Family Residential District on the property located at 63 Smith St.

Administrator Walrack presented ZBA 20-05 A request from Shaker Ahmed Alsoofi, located at 63 Smith St. for a use variance from Section 1298 to resume operation of a Two-Family Dwelling use in an A-1 One-Family Residential District.

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.

1260.07(f) DEFINITIONS

(40) DWELLING, TWO-FAMILY — A building designed exclusively for occupancy by two families living independently of each other.

(86) NONCONFORMING STRUCTURE — A structure lawfully existing at the time of the adoption of this Zoning Code, or any amendment thereto, and which does not conform to the regulations of the district in which it is located.

1264.04 ZONING BOARD OF APPEALS POWERS AND DUTIES

(e) Notwithstanding the authority granted under the Michigan Planning Enabling Act (P.A. 110 of 2006, as amended), the Zoning Board of Appeals is, under the terms of this Zoning Code, without authority to grant land use variances unless such variance is brought forth as an appeal from one or more of the provisions contained in Chapter **1298** (Nonconforming Uses).

1276.01 INTENT OF A-1 ONE-FAMILY RESIDENTIAL DISTRICT

This Zone District is designed to be a large lot single-family residential district intended to provide a low-density environment of predominantly single-family dwellings.

1298.01 NONCONFORMING USES CONTINUANCE OF EXISTING USE OR STRUCTURE

The lawful use of any land or structure, exactly as such existed at the time of the enactment of this Zoning Code, may be continued, although such use or structure does not conform to the provisions of this Zoning Code. Further, it is the intent of this Zoning Code that nonconforming structures shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses that would be prohibited elsewhere in the same zoning district. A limited exception to this prohibition may be permitted to allow some nonconforming enlargement, expansion, or extensions as described below in Section 1298.05.

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 response: The house used to be two-units before. I have the needs to provide my family member another section of the home to live.

Staff commentary: This home was previously a Two-Family Dwelling. It still retains separate entrances and a relatively large parking area.

- 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 response: I need to have another living place to provide my other family members.

Staff Comments: The applicant may have purchased the home under the impression that it still retained its ability to

- 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 response:** It was existing before. The family needs the section in the home. No real change to the family house structure.

Staff Commentary: The home had previously served as a Two-Family Dwelling and still retains structural elements of a Two-Family Dwelling. A Public Hearing Notice was published in the May 19, 2020 edition of the Coldwater Daily Reporter and mailed to all property owners within 300 ft. of the property. No Public Comments have been received.

- 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 response: It is for family-based needs. No violation to the City zoning rules at all. **Staff Commentary:** Few other properties throughout A-1 One-Family Residential Districts will have previously served as Two-Family Dwellings.

- 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 response: No big change is going to happen. The house used to be two units before it should be approved under the current City zoning rules and regulations.

Staff Comments: The request is to resume operation of a Two-Family Dwelling in a structure which previously operated as this use and which is still structurally conducive to the use.

STAFF RECOMMENDATION

Staff recommends that a use variance be granted to operate the nonconforming Two-Family Dwelling use. This location had operated as a Two-Family Dwelling use under previous ownership and the property still retains much of the structural character of this Two-Family Dwelling use. After a year of lack of operation, the site has lost the legally nonconforming status

of the Two-Family Dwelling use and the applicant is petitioning the City of Coldwater Zoning Board of Appeals for the opportunity to resume that use.

Board Action: Motion by Member Swan, and seconded by Member Eddy, to approve ZBA 20-05, for the reasons presented by Administrator Walrack in the above report, the property's previous use, no complaints, no special privileges and it is a minimum variance, to allow the operation of a Two-Family Dwelling use in a location upon which the use previously operated, as presented. Motion Carried. Variance approved/denied.

Roll Call Vote:

Ayes: Jim Bilsborrow, Mike Eddy, Gordon Swan, Joseph Hayes and Chairman Mike Renshaw.

Nays: None.

Motion carried. Variance granted.

ADJOURNMENT – Next meeting Wednesday, July 15, 2020 at 4:30 p.m.

Meeting adjourned at 5:14 p.m.



Susan E. Heath, CMC
City Clerk