

CITY OF THE VILLAGE OF CLARKSTON
375 DEPOT ROAD
CLARKSTON, MI 48346

ZONING BOARD OF APPEALS
Minutes FINAL
Tuesday, March 7, 2017 at 7:00pm

- 1) Meeting called to order 7:02pm
- 2) Roll: Arkwright, Catallo, DaCosta, Meyland, Basinger (participating via FaceTime) – present
Bill Basinger participated in the meeting via FaceTime, which is permitted through the
Open Meetings Act.

- 3) Approval of Agenda

Motion made by Arkwright to approve agenda, seconded by Catallo.

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger

Opposed: None

- 4) Minutes: Draft minutes from February 7th, 2017 ZBA meeting were updated and shared via
email, and review/discussion was moved to the end of the meeting.

Motion made by Arkwright, seconded by Catallo to move the minutes to the end of the meeting
agenda.

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger

Opposed: None

NEW BUSINESS

- 1) Application for Zoning Board of Appeals, 117 North Main Street (R1), setback(s) required for
new home construction. Applicants Steven and Leah McLean.

Steve and Leah McLean reviewed their application information. The current vacant lot at 117 North
Main Street is 55' wide, and they have worked with their architect to come up with a house plan that
will comply with the aesthetic and sightline requirements, and require minimal variances.

There are two variances that are being requested:

- 1) The chimney on the house extends 18" into the 15' setback requirement for the rear yard.
(CLARIFY the yard/side of the house)
- 2) On the South side of the house, there are two sets of proposed cantalievered overhangs, ap-
proximately 18" in length, that extend ~6" into the 10' side yard setback requirement.

The rest of the proposed home/structure complies with the ordinances, except as noted below:

There are existing steps at the rear of the proposed house that are in an easement, and may require that
the house move 5-6' east (toward Main Street), which is reasonable and would be considered.

Basinger raised an anomaly associated with the rear setback requirements, referring to the interpreta-
tion of Article XIII Schedule of regulations as requiring that the Mill Pond, or "rear" side, of any pro-

posed construction on the Pond must comply with the "Water Frontage setback" line, as established by the Planning Commission under footnote (o) thereof, for the following reasons:

That the current Schedule of Regulations (page XIII-1) "Rear" setback column refers to a footnote (p), however, the Schedule footnotes end with footnote (o), thus giving rise to an ambiguity in the ordinance requiring Board interpretation; and,

That footnote (o), which requires a "water frontage" setback line for the Mill Pond and other bodies of water, is nowhere referenced on that first page of the Schedule as might otherwise be expected; and,

That the current footnote (o) is identical to footnote (p) in the September 1998 draft of the Zoning Ordinance prepared by the then City Planning firm and that such footnote was relabeled as footnote (o) in the November 1998 draft by such Planners which draft Schedule of Regulations is, except for footnote (d) and updated numbering, apparently identical to that in the current ordinance as enacted; and,

That despite there being no footnote (p) in the November 1998 draft, a reference to footnote (p) was added to the Schedule's Rear setback column in that draft; and,

That footnote (m) requirements for Front Yard setbacks rather than simply incorporating the language regarding "water frontage" setbacks, instead only cross references it's applicability in the separate footnote (o); possibly to avoid confusion between a water "frontage" setback and a 'front' yard setback; and,

That for all of the foregoing reasons the reference to footnote (p) in the Schedule XIII Rear Setback requirements appears to be a simple legislative drafting error which should instead be read as a reference to footnote (o) to assure that the intent and purpose of the ordinance is fulfilled and the language of footnote (o) is not read to be mere surplusage and of no effect.

Arkwright asked whether a 55' wide lot was a non-conforming lot, under 14.02B the lot is grandfathered as buildable under the current zoning ordinance despite the current non-conformity.

Without clarification as to the rear yard (Millpond side) setback requirements, the ZBA could be limited as to potential variance consideration.

The proposed motion language reviewed above could be adopted by the ZBA, and forwarded to the Planning Commission for their review and recommendation at their scheduled meeting on March 20th, 2017.

The existing utility pole on the South side of the property was discussed. The house would stay in midline if it moves toward the street. The house is already moving 5' closer (then shown on the drawings) to Main Street as a result of the existing steps.

Discussion was reviewed based on the placement of the house on the property, relative to the existing barn on the property to the north (119 North Main Street?) If the proposed garage overlaps with the barn on the property to the north, then the existing utility line goes over the proposed house.

The Historic District Commission has informally reviewed the proposed construction, however has not provided official approval of the proposal. The HDC interpretation of the proposed construction is a Craftsman style, with the intent to maintain the components that blend with a historical structure.

Sharon Kramer Wellesly Drive, owner of 119/121/123 North Main Street, indicated her concern about losing consistency if the proposed house at 117 North Main Street is not aligned with other homes along North Main Street.

The ZBA wouldn't normally get involved unless there was an adverse affect on surrounding properties, and as discussed earlier, the ZBA does not play a role in identifying the placement/setbacks associated with the house.

The Planning Commission will take the Pond View impact into account when the Planning Commission rules on the rear yard setback requirements. McLeans indicated concern about requiring the house to moved too far toward street, affecting their dramatic view of the Millpond. McLeans indicated they had shared their plans with the residents of the property to the South of 117 North Main Street, and that they were happy with what was shown.

Further discussion was held about placement of the house, however no formal decision has been made.

An inquiry was made as to whether DTE would fund movement/relocation of the utility pole on the property. Based on discussions with DTE by the property owners there was no confirmation of that possibility.

The location of the barn to the north of the property (which is 1' from the property line) and the location of the utility pole/line present hardships/practical difficulties.

Motion made by Basinger (via FaceTime), seconded by Catallo, that:

That the Board interprets the Article XIII Schedule of Regulations as requiring that the Mill Pond, or 'Rear' side, of any proposed construction on the Pond must comply with the "Water frontage setback" line, as established by the Planning Commission under footnote (o) thereof, for the following reasons:

That the current Schedule of Regulations (page XIII-1) "Rear" setback column refers to a footnote (p), however, the Schedule footnotes end with footnote (o), thus giving rise to an ambiguity in the ordinance requiring Board interpretation; and,

That footnote (o), which requires a "water frontage" setback line for the Mill Pond and other bodies of water, is nowhere referenced on that first page of the Schedule as might otherwise be expected; and,

That the current footnote (o) is identical to footnote (p) in the September 1998 draft of the Zoning Ordinance prepared by the then City Planning firm and that such footnote was relabeled as footnote (o) in the November 1998 draft by such Planners which draft Schedule of Regulations is, except for footnote (d) and updated numbering, apparently identical to that in the current ordinance as enacted; and,

That despite there being no footnote (p) in the November 1998 draft, a reference to footnote (p) was added to the Schedule's Rear setback column in that draft; and,

That footnote (m) requirements for Front Yard setbacks rather than simply incorporating the language regarding "water frontage" setbacks, instead only cross references it's applicability in the separate footnote (o); possibly to avoid confusion between a water "frontage" setback and a 'front' yard setback; and,

That for all of the foregoing reasons the reference to footnote (p) in the Schedule XIII Rear Setback requirements appears to be a simple legislative drafting error which should instead be read as a reference to footnote (o) to assure that the intent and purpose of the ordinance is fulfilled and the language of footnote (o) is not read to be mere surplusage and of no effect; and,

It is further Moved that the City Council be advised of this interpretation so that it may correct the apparent drafting error or make such other ordinance changes as it deems appropriate and that the Planning Commission also be so advised so that it might take action regarding the "Water Frontage" setback as appropriate.

The Board notes it makes no determination as to whether the project plans for 117 N. Main are or are not in compliance with such "Water Frontage" setback requirement, as such determination would be made in the first instance by

the City's Building Department Head.

In Favor: Catallo, Arkwright, Basinger (via FaceTime), DaCosta, Meyland

Further discussion was held about the placement of the house on the property, and concern that the findings from article o were not discovered previously. The ordinances are complicated, and have been updated/ revised/ clarified often since the last time a new home was constructed on the North Main Street Millpond.

Motion made by Basinger, seconded by Catallo:

As findings of fact, the chimney shown as drawn on the north side of the property will require a 20" variance for a width of 6', and the first floor cantalievers that enclose living space will require up to 18" variance on the south side of the property;

that the ZBA grant a 20" variance for placement of the chimney on the north side of the lot line on the drawing as presented, and an 18" variance on the south side of the property to accommodate the cantalievered sections (which enclose living space) and that these variances are to be granted on the condition that placement of the house not be changed as presented on the drawings except up to 20' towards Main Street, and also on the condition that the final placement of the house is in compliance with the rear yard/ waterfront setback, Article XII, footnote (o), as determined/ established by the Planning Commission.

In addition, the seven unique circumstances required for being granted a variance have been met.

This motion is based on the findings of fact:

- Width of existing lot
- 1' of proximity of occupied structure to the north of the property line
- Existing utility pole, of which movement could cause practical problems for homeowner
- In addition, the seven unique circumstances required for being granted a variance have been met

- The planning Commission will establish water frontage/ setback requirements and associated effect on surrounding properties

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger
Opposed: None

Motion made by Arkwright, seconded by Catallo to table review of the February 7th, 2017 ZBA Meeting minutes to the next meeting (April 18th, 2017.)

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger
Opposed: None

Motion to Adjourn made by Arkwright, seconded by DaCosta.

In Favor: Catallo, Arkwright, Basinger (via FaceTime), DaCosta, Meyland
Opposed: None

Meeting adjourned at 9:05pm

Respectfully submitted,

Scott Meyland
ZBA Chairperson