**CITY OF ST. CLIAR**

**ZONING BOARD OF APPEALS SPECIAL MEETING**

**WEDNESDAY, November 16, 2022**

**ST. CLAIR CITY HALL**

**547 N. CARNEY, ST. CLAIR**

**CALL TO ORDER: Chairman Jim Bier – 7:00 p.m.**

**ROLL CALL: Chairman: Jim Bier Vice Chair: Doug Glassford**

**Secretary: Joann Westrick Member: Doug Vernier**

**Member: Ralph Gizowski Member: Diane Ives**

**Member: Burton Brooks**

**ABSENT: Ralph Gizowski**

**AUDIENCE: Janal Mossett, Linda & Gary Mackensen, Deborah Justa, Rebecca Casey, James Duhaime and Thomas Lutkenhoff**

**APPROVAL OF AGENDA:** *Joann Westrick made a motion to approve the agenda as presented for November 16, 2022, supported by Doug Vernier. All in favor, none opposed.*

**APPROVAL OF MINUTES:** *Doug Vernier made a motion to approve the minutes as presented for October 19, 2022, supported by Diane Ives. All in favor, none opposed*

**CORRESPONDENCE:** None

Jim Bier – I would entertain a motion to open the public hearing.

*Doug Glassford made a motion to open the public hearing, supported by Diane Ives. All in favor none opposed.*

**PUBLIC HEARING:** Gary & Linda Mackensen

1915 Vine Street

74-07-100-0004-000

Section 5.2 – Accessory Buildings and Uses

Dee Boulier – The petitioner is requesting to leave their 20 x 14 structure as is instead of cutting it down to 120 square feet. The applicant was approved to build a 900 square foot accessory building with the understanding that the original 240 square foot accessory building would have to either be cut down in size to 120 square foot or removed. The lot is 75 x 400-foot-deep lot. The petitioner had submitted which shows the building in question.

Jim Bier – Explained the process of the proceedings. Would the petitioner please approach the microphone and state you name and address.

Janal Mossett – 627 Fort Street, Port Huron. I am appearing on behalf of the petitioners. As you are aware the city has an ordinance that allows only one attached accessory structure, one detached accessory structure and one shed of 120 square feet or less.

The detached accessory structure can be a maximum of 900 square feet so what the Mackensen’s have is their home, an attached garage, the have the 900 sq ft pole barn and they have an existing shed in front of the pole barn. The existing shed is 240 sq ft.

I have brought in a blown-up picture because I wanted to point something out. We have the Mackensen’s house, the pole barn and the shed. The lot is 75 foot wide, 400 foot deep which is significant. A city lot with 400 feet of depth is fabulous. What the city would want, based on the ordinance, is for the petitioner to halve, HALVE their shed or tear it down. If they do this, then they comply with the ordinance.

We are seeking a variance to allow us to keep the other half of the shed. One hundred and twenty square feet. We would like to maintain the full 240 square feet of shed. I think what is extremely important to point out is the exceptional size of this lot. It is a very large lot. Ordinances, such as these, are often geared towards ensuring that you don’t have accessory structures take over a lot.

You can see from the pictures that these accessory structures they do not take over the lot. I walked the Mackensen’s property and there is so much green space, it’s beautiful. This is an instance where the purpose of the ordinance isn’t met by what we have because it is intended for smaller lots. We are not asking for changes to be made to the shed, we aren’t asking to expand it. We are just asking to keep it as is right now and not have to reduce the foot print by 120 square feet.

I don’t know what others are going to get up and say tonight. My clients have canvassed the neighborhood. They have talked to their neighbors; they have received a lot of support for this. Not one neighbor they talked to has said that they don’t want the shed. Some wrote letters in support of the Mackensen’s.

Reducing the foot print of the shed is a financial burden to my client. That shed is on concrete cement blocks. It has a cement floor, is a two story very well-built structure. It is in tuned with the characteristic of the neighborhood. It would take financially a lot of resources to cut it in half and reduce the foot print.

I believe that the ZBA recently reviewed a request for a variance of a fence that was already in place and from my review, it seems that the fence was in the wrong position. One board member to state that it seemed unreasonable punitive to require the applicant to remove the fence under the circumstances. We consider the circumstances; I say that because it incapsulates what we have here. It seems unreasonably punitive to require the Mackensen’s to halve their shed so that it is a mere 120 square feet. I don’t see much of a difference being made with that.

I don’t think that keeping the shed at 240 square feet changes the characteristic of the neighborhood or in any way goes entirely against the intention or purpose of the ordinance. This is why we are asking for the variance. If my clients had a lot that was half the size of the one that they have we would be looking at a different situation. The size of the lot, they are not alone in having a 400-foot-deep lot, the size of the lot lends itself to engaging in activities or in needing tools that might not be necessary if they had a smaller lot. In fact, some neighbors have temporary structures, whether it is storing boats on their property, they have tarps covering personal property. My clients don’t have that. If the situation remains the same and they are allowed to keep the shed as it, their property will remain inside. If they have to reduce the foot print or tear it down, because tearing it down is probably more cost effective, they are likely going to have to put a tarp over some of their property. I don’t think anyone wants to see in the city of St Clair. If any of you have questions, I would be happy to answer them.

Doug Vernier – I have a question. It was a year ago last February that they came in to ask for a variance. At that time we gave them the variance and they committed to taking that shed down. Why has that changed now? It is the same shed, why is it any different now? Why is our agreement not valid?

Janal Mossett – There was no variance requested last year. They had requested a variance to have their pole barn to be 1,200 square feet which was denied so they are not asking for something that they were previously approved for before. Are there any other questions?

Jim Bier – I am sure we will have some. Is there anyone else wishing to address the board?

Debbie Justa – 1945 Vine Street. I am approximately 3 houses west of the pole barn situation. I do not know of any neighbors along that section that have their lawn equipment or anything tarped in the back yard. Everybody has the same 75 x 400-foot lot. I have a 95 x 400-foot lot. Nobody has any extra buildings for their lawn maintenance or anything of that nature so I don’t know why he needs so much space to keep his equipment in.

I was not surveyed and all the neighbors that I’ve talked to they are against the additional building for the simple reason that when he applied for it last February, they said he could have one or the other. He went ahead the new building. When I called the city in September I was told that he was supposed to be taking the smaller one down. Then we got the notice that they want this exception to be able to be able to keep all of these buildings. Why does he need all of these buildings and nobody else does.

Everybody along that strip knew that we had deep lots, we knew that it increased our values. Everybody liked that green space and basically all of these structures in his back yard are decreasing the green space that we see when we walk into our back yards. I don’t see the reason for this variance of 2 buildings. I don’t think this should be done.

Jim Bier – Thank you. Is there anyone else? We have the review from Carlisle Wortman. Our planner did a pretty good job in writing this up. We are supposed to satisfy all of the basic standards in the request, of which in our ordinance there are several. In your written presentation you paraphrased all of that and commented on how you saw these were met or not met. You also did that in your verbal presentation.

Is there a true hardship that you can express on behalf of your clients, other than they don’t want to cover stuff with a tarp? Is there any other hardship or uniqueness to the property that makes it hard for them to live with 120 square foot shed?

Janal Mossett – The hardship is not in living with the 120 square feet; the hardship is having to reduce to the 120 square feet. In looking at the structure itself, of which we included pictures, it is two stories on concrete block on a concrete floor, there is a financial hardship. I know that ZBA can consider a financial hardship. I want to indicate that when they sought the building permit they weren’t told that it was either this or the shed. They were told that they can only have a 120 square foot shed. They were told that they would have to tear it down, reduce the foot print or seek a variance. That is why we are here seeking a variance because we think the size of the lot lends itself to having the structure maintained in place.

The hardship to us is financial. My clients would also say that it relates to the items that they own and that they feel that they would potentially need to have these items out in the open. I was out there the other day and I did see temporary structures and tarps covering items in the neighborhood. Some people, especially right now have a boat or a camper, my clients won’t have that. If they are not approved for this variance, you may see that in their yard.

Jim Bier – Would you recognize that this situation is a self-created situation?

Janal Mossett – When they bought the property the shed was there. I recognize that when they built the pole barn that is what creates the issue. Having one of the structures outside of the parameters of the ordinance but I would say that the one structure that is outside of the parameters is not the one that they added. We wouldn’t have this problem if it was an existing 120 sq ft shed. That 240 sq ft shed was there when they bought the home.

Jim Bier – They did understand when the applied for the building permit that there was a dilemma.

Janal Mossett – They understood there was a dilemma and they knew that they would have an opportunity to ask for a variance.

*Doug Vernier made a motion to close the public hearing, supported by Burton Brooks. All in favor, none opposed.*

Jim Bier – As we discuss this petition, we may have more questions.

Doug Glassford – It just seems to me that we have already had this discussion in February 2021. I thought the understanding was that if they were going to build this one then they have to either reduce or tear down the existing one. That is my recollection. I am a bit concerned that now that they have put up the new structure, they want the old one also.

Jim Bier – Dee are there any issues with the new construction?

Dee Boulier – There are no issues. The only thing that I want to clarify is that their attorney talks about it as a shed, it is an accessory structure by definition because of the size. At 120 square feet and 900 square feet structure that is permitted. If you approve the variance and let it remain at 240 square feet, it would still be an accessory structure.

Doug Vernier – When they were going to build the pole barn, they understood that there was an issue and rather than adjusting the size of the pole barn, they assumed that we would pass the variance.

Joann Westrick – Is there a reason that you didn’t apply for the variance before you constructed the pole barn?

Gary Mackensen – 1915 Vine Street. The reason I didn’t apply for a variance in the beginning was complicated because we wanted to build the building and then Covid came in. We couldn’t get anyone to build the building and the price doubled. Everything went on hold and we didn’t know what we were going to do. It messed up scheduling, planning and trying to be able to afford it.

Doug Vernier – How did that stop you from applying for a variance?

Gary Mackensen – We didn’t know that we would needed a variance because we didn’t know if we would have the building.

Jim Bier – Once you started the new accessory structure and you still had the original accessory structure did you plan to tear it down or plan to keep it?

Gary Mackensen – We knew something had to be done and asking for a variance was one of the options.

Janal Mossett – I just want to indicate, because there has been some discussion about what the Mackensen’s knew and when. It is the right of the Mackensen’s to ask for a variance and not something they should be penalized for. They discussed it with me, they have pondered over it and they would like to keep the original accessory structure.

Jim Bier – The right to make a variance request is for any citizen at any time. Dee’s job is to enforce the ordinance as written and if there is a need on behalf of a resident of the city to consider if there is a need for a change to be considered. Everyone is entitled to a variance request.

I have reviewed the Variance Review submitted by Carlisle Wortman:

1. Will not be contrary to the public interest and will not be contrary to the spirit and intent of this Ordinance. CWA Finding: The intent of the zoning ordinance is to prohibit accessory buildings from becoming the predominate and principal use of a property. Section 5.2.1 states “By definition an accessory building is clearly incidental to the principle building housing the main use….” Following through, Section 5.33 requires that detached structures do not exceed the lesser of 900 square feet or 65% of the floor area of the main structure plus a 30% coverage of the required rear yard. The application does not contain land area information in which to draw a conclusion.
2. Shall not permit the establishment within a zoning district of any use which is not permitted by right within the district. CWA Finding: A shed is permitted in the R-1 Single-Family zoning district.
3. Will not cause any adverse effect to property in the vicinity or in the zoning district of the City. CWA Finding: Meeting the spirit and intent of the zoning ordinance is important to eliminate adverse effects. Refer to the response in Standard A to this effect. In regard to meeting the area maximum of 120 square feet of floor area, the ZBA may consider mitigating facts that the shed exists; is not being changed in size and location; and, the property appears deeper than many single-family lots in the R1 district.
4. Is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable. CWA Finding: The lot appears to be deeper than many single-family lots in the R-1 zoning district which does not make this case recurrent.
5. Affects only property subject to exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity, and have not resulted from any act of the applicant. CWA Finding: This standard is partially met. The lot appears to be deeper than many single-family lots in the R-1 zoning district making it an exception. However; it has no irregular shape so the shape is not extraordinary and the construction of the larger pole barn is an act by the applicant.
6. Must be granted in order to avoid practical difficulties or unnecessary hardship which would result from enforcement of the strict letter of this Ordinance. CWA Finding: The applicant is asked to describe a practical difficulty or unnecessary hardship. Our review of the information does not see either.

Item A – I concur with their findings. We have heard from one neighbor tonight who doesn’t want this variance allowed. We did appreciate the correspondence from other neighbors who are in favor of allowing the structure to stay.

Item B – The finding from the planner is that a shed is permitted. Two accessory structures are not permitted. When we grant a variance, we do not change the ordinance.

Item C – I feel this can be subjective. My concern would be that future neighbors would come for the same requests.

Item D – The planner states that the depth of the lot makes this request no recurrent.

Item E – This type of clause is generally used for odd shaped lots.

Item F – I don’t see a practical difficulty or unnecessary hardship, so I concur with the planner.

**Finding of Fact:**

Doug Glassford – Yes, it is a giant lot but in the same breath you are allowed one accessory building. You have a really nice one in the back. I remember from when you came before us that you do motorcycles and stuff like that. There were concerns from one of the neighbors that you would be racing motorcycles in your backyard. My recollection was that if we do this then we have to do that so my recommendation is to either reduce it to 120 q ft or take it down.

Doug Vernier – I didn’t feel comfortable that knowing that something had to be done and that a variance hadn’t been asked for before the start of construction of the new building. It makes it hard for me to see the hardship and some of the neighbors aren’t happy with it. If we allow this then the other neighbors would be asking for the same thing and pretty soon we wouldn’t have an ordinance.

Diane Ives – You talked about the exceptional or extra ordinary exceptions. We grant variances based on these not just a want.

Burton Brooks – I wasn’t on the board the last time the Mackensen’s came but I have had an opportunity to review. I saw that you had three options for relief: eliminating it, reducing it or the appeals process. I am in concurrence that this should be reduced down to 120 square feet.

Joann Westrick – I concur with what has been said. They need to reduce or eliminate.

Jim Bier – My concerns, as I stated earlier, I don’t see the granting of two accessory buildings as an appropriate variance for that neighborhood. The lots are large but it doesn’t change the circumstance. The ordinance was written perhaps it didn’t take into account various lot sizes but it does establish the nature of the neighborhoods that exist in compliance with the ordinance. I don’t see there is a need for us to grant a variance. The economic hardship is not one that we typically take into account.

With that being said, I would entertain a motion to approve the variance request.

*Joann Westrick made a motion to approve the variance requested at 1915 Vine Street, property #74-07-100-0004-000, of a variance of 120 square feet requirement to 240 square feet. Section 5.2 – Accessory Buildings and Uses. Supported by Doug Glassford.*

*Roll Call*

*Jim Bier – No*

*Doug Glassford – No*

*Joann Westrick – No*

*Doug Vernier – No*

*Diane Ives – No*

*Burton Brooks – No*

Jim Bier – Motion denied. Thank you everyone for coming. Thank you for your input. If there is nothing else, I would entertain a motion to adjourn.

*Doug Glassford made a motion to adjourn, supported by Joann Westrick. All in favor, none opposed.*

Meeting adjourned at 7:45 p.m.