

**CITY OF NORTHVILLE**  
Board of Zoning Appeals  
April 5, 2017 – 7:30 PM  
City of Northville – Council Chambers  
215 W. Main Street

**I. CALL TO ORDER:**

Chair Silvestri called the meeting to order at 7:40 p.m.

**II. ROLL CALL:**

Commissioners: Present: Michelle Aniol  
David Marold  
Ryan McKindles (arrived 8:03)  
Patti Mullen  
Dominic Silvestri  
Jay Wendt  
Lou Ronayne - alternate

Absent: John Callahan - excused

Also present: Sally Elmiger, Planning Consultant  
Brent Strong, Building Inspector  
4 residents

**III. APPROVAL OF THE AGENDA:**

**Motion Marold, support by Wendt, to approve the agenda as published.**

*Voice vote: Ayes: All. Nays: None. Motion unanimously carried.*

**IV. MINUTES OF PREVIOUS MEETING: February 1, 2017**

**Motion Aniol, support by Ronayne, to approve the February 1, 2017 meeting minutes as published.**

*Voice vote: Ayes: All. Nays: None. Motion unanimously carried.*

**V. CASES TO BE HEARD – BY CASE:**

- A. Case is called.
- B. Appellant presents case.
- C. Board questions & comments.
- D. Public comments on the case.

- E. A motion (usually to grant the variance) is made and seconded; discussed then voted upon; the results are announced by the Chair.

## **VI. Public Hearing – Ordinance Interpretation**

**At the February 1, 2017 Board of Zoning Appeals meeting, an applicant was seeking a lot coverage variance. The lot abuts an alley, and the property owner interpreted Section 18.11.6 to mean that a portion of the alley could be included in calculating lot coverage. In discussing this question, the Board decided that an interpretation was necessary to determine if an “alley,” as referenced in Section 26.02, has a public road right-of-way.**

Member Aniol called the Ordinance Interpretation. She noted:

- The applicant seeking the lot coverage variance was Mr. Czaplicka, who was present.
- Carlisle Wortman had provided a written review and interpretation.
- The Board received a letter from Mr. Czaplicka’s attorney, Mr. James M. Toner, Esq., stating the applicant’s case regarding the interpretation.

Mr. Toner’s letter was corrected to read 619 *Carpenter* Street.

Chair Silvestri invited the applicant to speak.

Mr. James M. Toner, Esq, 2139 Bishop Circle Drive East, Dexter, MI, spoke on behalf of the applicant. Mr. Toner made the case that whether or not the alley was a public right of way was a non-issue. He made the following points:

- The ordinance established that when calculating lot area requirements, if the lot adjoins a public alley, the calculation should use up to half of the area from the public alley.
- There were two lot area requirements in the ordinance. One was the minimum lot size and one was the lot area coverage. When counting the alley towards the lot area coverage, Mr. Czaplicka’s property was compliant. The question of whether the public right of way conflicted with the calculation for the lot area requirements wasn’t relevant.
- The definition of lot area was the horizontal area within the lot lines of the lot, excluding public or private road rights of way. Rights of way within the lot lines should be excluded. An adjacent alley that was not within the lot lines should be included.

In response to a question from Chair Silvestri, Mr. Toner emphasized that an alley should be included in calculations per the ordinance and that while lot area should not include a public road right of way that was within the lot lines, this was a case of an adjacent alley.

Planning Consultant Elmiger suggested that it would be helpful to hear from Building Inspector Strong.

Building Inspector Strong informed the Board as to some history of the calculations for lot area at 619 *Carpenter*. The initial lot area calculations were made without using half the alley. The architect provided the floor area square footage. This included the house, garage, and covered porches. However, later it was noticed that there was also a covered walkway between the garage and the house that was not included in the lot coverage calculations provided by the architect, and should have been. Two scenarios arose from this information: 1) If the alley was included in the lot area calculations, Mr. Czaplicka would need a variance of 2.5 feet to keep the shed. 2) If the alley were not included in lot area calculations, Mr. Czaplicka would need a variance of 146.5 feet to keep the shed.

In response to comments by Member Aniol and Mr. Toner, Building Inspector Strong confirmed that the walkway itself was considered part of lot coverage because it had a roof structure over it.

In response to a question from Mr. Toner, Chair Silvestri confirmed that even very small variances would have to be approved. Whether or not the alley was included in the lot average calculations, a variance would now be needed.

Mr. Toner stated that he was unsure if a variance would be needed at all – that there were many ways to measure square footage and he did not concede that 619 Carpenter was still two square feet over.

Mr. Czaplicka suggested that he could use an as-built measurement and that measurement might differ from the planned measurement by enough that it would make up for the two square feet. He stressed that the shed had been there for twenty years and that it was a part of the English garden he was putting in his yard. He emphasized that he had built a home consistent with Northville's historic character.

Chair Silvestri clarified that the request from Mr. Czaplicka was two-fold: 1) To interpret the ordinance in a way that would include the alley area for the lot coverage calculation and then 2) depending on that interpretation, a variance of either 2.5 or 146.5 feet would be needed.

Mr. Toner emphasized his understanding of the definition of lot area and of lot area requirements as only excluding public road rights of way within lot lines. Where there was an alley, concerns about density were somewhat mitigated, because alleys acted as a natural buffer with more space between homes and properties. The ordinance reflected that those particular lots could have larger buildings. If it made sense in the context of a minimum lot size, it also made sense in the context of the lot area coverage. 18.11.6 didn't change the definition of lot area. It simply instructed the Building Department on how to calculate minimum lot size and lot area coverage restrictions. This particular property had no public right of way and the alley was not within the lot; it was adjacent to the lot.

Mr. Czaplicka spoke about the need addressed by 18.11.6 in that many lots in Northville were very small and including half of the alley allowed homeowners such as himself to build a little larger and more modern home. He was a traditionalist and his home in every respect had honored the historic nature of the city.

In response to a question from Member Mullen, Mr. Czaplicka confirmed that the alley was in use. He noted that due to a large walnut tree in the alley, people ended up driving on his property.

Asked to contribute her thoughts by Chair Silvestri, Planning Consultant Elmiger said that her analysis was that 18.11.6 only applied to the size of the lot and not to lot coverage. Interpreting lot coverage to include the alley could hurt some property owners. A property that didn't meet the minimum lot size would be allowed 35% coverage. In some instances, adding the area from the alley could make a property greater than the minimum lot size, therefore reducing lot coverage to 30%. Additionally, a question that had come up in recent years was which line would then be used for setbacks: the center line of the alley or the lot line? It didn't make sense to include the area from an alley in lot coverage because this did not treat everyone fairly, giving people who have a conforming lot size and an alley an advantage over people with a non-conforming lot size or whose property didn't abut an alley.

Secretary McKindles arrived (8:03 pm).

Chair Silvestri opened the public hearing.

Joseph Hoffman, 625 Carpenter Street, said he was the previous owner of the subject site. He distributed a diagram showing his two current properties and the alleys adjoining them (625 and 724 Carpenter Street).

Mr. Hoffman strongly advocated for keeping the language of 18.11.6 as intended where the calculation of lot size for lot coverage included half the width of the alley. His latest addition at 625 Carpenter Street, three years ago, was based on this calculation, using half of the alley. He stated that the ordinance was very clear and gave some relief for homeowners that abutted alleys and dealt with traffic close to their property and gave those homeowners some breathing room. Additionally, he noted that he was the person who built the shed on 619 Carpenter and he felt that it disappeared into the sloping lot and up against the neighbor's garage.

Member Aniol inquired if the alleys next to 724 Carpenter had been vacated officially, since they were marked as not in use on Mr. Hoffman's diagram. Mr. Hoffman was unsure, but said that they were certainly not in use. Mr. Hoffman further clarified that he and his neighbors maintained the grass in the alley.

Planning Consultant Elmiger added that the DPW director had previously stated that the City was reticent to vacate alleys because they could use them for public utility access.

Mr. Hoffman agreed that the alleys in question were a utility easement and noted again that in terms of lot calculation for coverage, the alleys provided that extra breathing room. For him, at 724 Carpenter there was an extra 15 feet of breathing room on both sides due to the two alleys.

Planning Consultant Elmiger noted that she and Building Inspector Strong were interpreting the ordinance one way and it may have previously been interpreted another way by the previous Building Inspector, which was a good reason to have the Board make an interpretation.

Mr. Toner stated that the ordinance said requirements (plural) and so questioned how it could apply to one restriction and not the other – he reiterated his belief that the ordinance was meant to cover both minimum lot size and lot area coverage.

Janet Rarey, Center Street, whose daughter lived in Cabbagetown, wondered to whom the alley belonged. Member Aniol stated that the alley belonged to the City as a public way and not a public right of way, as defined by the ordinance. Planning Consultant Elmiger noted that the DPW director had previously stated that there was a public right of way over an alley according to the plat.

Member Aniol stated that there were two regulations: 1) If the property boundaries were described into the road, the area that was in the road couldn't be used in lot coverage calculations. 2) If the property was adjacent to the alley, the area in the alley could be used in lot coverage calculations.

Seeing that there was no more public discussion, Chair Silvestri closed the public hearing and opened discussion for the Board.

Member Aniol stated that the previous discussion could have an impact because the ordinance didn't identify alleys as public rights of way, but as stated, the plat may have established that the alley was a right of way. This would need to be verified.

Chair Silvestri stated that because the lot line didn't extend into the alley, whether the alley was a public way or a public right of way would not have an impact on this case. He restated the current objective to interpret 18.11.6 for the purpose of determining lot area coverage and whether the area of half the alley should be used in that calculation.

Member Mullen stated that it seemed clear that the authors of the language of the ordinance meant for the alley to be counted. She recalled Mr. Hoffman's case three years prior, when the alley was a part of the discussion and the alley was used in the calculations in that case. She recalled that others were at that meeting, including Planning Consultant Elmiger.

Chair Silvestri reminded those present that any prior cases did not have precedential value.

Planning Consultant Elmiger recalled that her role at the time of Mr. Hoffman's case was not to make recommendations, but to ensure procedure was followed. That role has since expanded to also making recommendations.

Chair Silvestri noted that since this was an interpretation of an ordinance the Board did not need to make a finding of fact.

Member Aniol suggested that in the past a number of alleys in the community were officially vacated and that perhaps the Planning Commission felt that they were providing justice to property owners adjacent to alleys that were not vacated, that those with properties next to a vacated alley got land and those next to a non-vacated alley were able to use the alley in their calculations.

Member Wendt noted that the only way to know for sure would be to find the meeting minutes from that discussion.

Chair Silvestri said that it was an issue that would probably need to be taken up at some point.

Member Aniol made a procedural point that if the Board wanted to be sure, the minutes should be provided.

Planning Consultant Elmiger stated that if the Board felt that the minutes needed to be found to go forward on the interpretation but wanted to allow Mr. Czaplicka to move forward, the Board could consider the larger of the two variances. Secretary McKindles noted that doing so would preserve the stricter interpretation.

Member Aniol pointed out that there was no date on the ordinance. Planning Consultant Elmiger said that she believed this language was in the 1998 version.

Member Mullen questioned if the applicant applied for the 146-foot variance and was denied and subsequently the ordinance was interpreted to allow the use of the area of the alley in the calculation, would the applicant be allowed to return? Chair Silvestri was uncertain, but stated that the applicant would have to concede, for that vote, that the alley couldn't be included.

Mr. Toner stated that they would not be prepared to make that concession, and again reiterated that they did not concede that the area of the buildings were two square feet over. This was something they had only just found out about and that they wanted to look at how it was calculated.

Chair Silvestri noted that they would have the opportunity to explore that, if they wished, before a vote.

Mr. Czaplicka stated that he planned to get as-built measurements to find the actual coverage.

Building Inspector Strong stated that buildings were designed a certain way, but in the actual construction it could be slightly smaller or slightly larger. If an as-built survey showed that Mr. Czaplicka made up the 2.5 square feet somewhere, then he would not need a variance.

Chair Silvestri stated that the need for a variance would still depend on the interpretation of the ordinance decided by the Board and suggested that the Board move forward with the interpretation and then table the remaining request for the variance. He asked the applicant if he was comfortable with this.

Mr. Toner stated that they were and that the first step had to be interpreting 18.11.6.

Member Ronayne questioned how the covered walkway had been missed, since it had not been mentioned at the previous meeting and now was causing more issues.

Mr. Czaplicka noted and Building Inspector Strong confirmed that the walkway had been there but was not originally part of the calculations. The surveyor had not used the covered walkway in his calculations. Neither the surveyor nor the architect understood the need for the covered walkway to be a part of those calculations.

Mr. Toner added that this change was based on a recalculation that was not created by the applicant.

Building Inspector Strong clarified that the initial numbers came from the architect and that when Building Inspector Strong re-familiarized himself with the case for this meeting that he realized that the covered walkway was not included in the numbers. Preferring not to sweep the matter under the rug, he had presented the information to the Board.

Chair Silvestri questioned Building Inspector Strong as to whether his determination on the need for a variance would change due to as-built drawings. Building Inspector Strong reiterated that currently there was a need for a 2.5-foot or 146.5-foot variance. If the Board ruled that half the alley could be used and the as-built showed that the applicant had made up the 2.5 feet somewhere, there would be no need for a variance.

Mr. Toner confirmed that they would prefer to get as-built calculations and then come back to the Board if necessary.

Member Aniol asked for clarification on lot area coverage and cantilevered projections, noting that the definition of lot area coverage stated that cantilevered projections should be included in lot area coverage.

Building Inspector Strong explained that such projections would include bay windows and second story cantilevers that hung out over the first floor, but would not include a roof overhang.

Member Aniol wondered what were all of the dimensions and square footage of the structures at the property in question.

Chair Silvestri stated that it was not pertinent at this point since the applicant wanted the interpretation of the ordinance now and then planned to verify calculations.

Chair Silvestri called for a motion.

**MOTION McKindles** that Section 18.11.6 does not permit the use of half of the alley in determining all zoning calculations that use the term lot area.

Chair Silvestri asked that the motion be stated in the positive: that for purposes of determining lot area requirements, Section 18.11.6 does include the use of one half the alley abutting or adjacent to the lot . . .

Joe Rarey, Center Street, stated that it was very important when creating an ordinance to make it very clear what was and was not included, so that this problem didn't occur again. He suggested that the Board offer to the City Council an amendment to the ordinance of what language the Board would like included and to get it on the books.

Planning Consultant Elmiger commented that the current question was whether alleys applied to lot coverage.

Mr. Toner asked the Board to please recognize that the ordinance stated "requirements" (plural) and that it applied to both lot area requirements: lot area coverage and minimum lot size.

Member Wendt reiterated his desire to see the meeting minutes from when the ordinance was written.

After further discussion regarding process, Chair Silvestri indicated that he was ready for the motion.

**MOTION McKindles, support by Aniol, to have the Board of Zoning Appeals interpret 18.11.6 as allowing alleys to apply to lot coverage.**

Chair Silvestri asked if there was any discussion on the motion.

Member Ronayne questioned that if the motion failed, would the Board request the roofed sidewalk to be taken down, since it was used as part of the calculations for the coverage?

Mr. Czaplicka noted that the roofed sidewalk had already been approved and that such a request would become a hardship issue.

Chair Silvestri stated that this was something that would have to be addressed later.

Member Ronayne noted the connection to the next case where if a variance was not granted, a garage might have to be torn down. He stated that the variance would still be needed for the current case for either 2.5 feet or 146.5 feet.

Mr. Toner stated that they just needed to know about the alley at present and that they were not conceding that the covered walkway counted toward lot area coverage.

Chair Silvestri asked for a roll call vote:

<b>Wendt</b>	<b>no</b>
<b>Ronayne</b>	<b>yes</b>
<b>McKindles</b>	<b>no</b>
<b>Silvestri</b>	<b>yes</b>
<b>Marold</b>	<b>yes</b>
<b>Mullen</b>	<b>yes</b>
<b>Aniol</b>	<b>yes</b>

Therefore *the motion carried 5-2 (Wendt, McKindles opposed)*

## **VII. CASE # 17-02**

**CHESTER CZAPLICKA  
619 CARPENTER**

**The applicant is seeking a variance for additional lot coverage to retain a shed on premises zoned R-1B First Density Residential District, parcel number 48-001-02-0022-301. The City's Building Official evaluated the proposal, and has determined that the maximum lot coverage allowed for this parcel is 2,376 square feet. Retaining the shed would increase lot coverage to 2,440 square feet. Therefore, a variance for 64 square feet in area (or 0.8%) lot coverage is needed from Section 15.01 of the Zoning Ordinance to allow the shed to remain.**

As this case related to the discussion on agenda item VI, Chair Silvestri turned the discussion to the variance request.

Mr. Czaplicka stated that he was going to get the as-built calculations.

Planning Consultant Elmiger stated that the applicant would need to return with those new numbers, if he still needed a variance. If the case were adjourned to a certain, specified, date a new notice would not need to be sent.

Building Inspector Strong noted that the applicant could not get a full certificate of occupancy with a zoning ordinance violation on the property. He suggested that since the variance was a lesser one of only 2.5 feet, the case should be heard tonight and that subsequently the as-built calculations could be taken into account.

After discussion, members of the Board and Planning Consultant Elmiger indicated that a ruling could not be made on this variance without knowing the exact numbers. Planning Consultant Elmiger suggested postponing the case to the May meeting, which would not require the variance to be re-noticed.

Chair Silvestri indicated that he was ready for a motion.

Mr. Czaplicka asked for clarification and Planning Consultant Elmiger indicated that he would not need to return to the BZA if the as-builts showed his property was in compliance and he could simply get his permanent certificate of occupancy, as he would no longer require a variance.

**MOTION Aniol, support by Ronayne, to table Case # 17-02 for 619 Carpenter to the May meeting to allow the applicant more time to provide additional information to this Board.**

Chair Silvestri asked if there was any discussion on the motion. Hearing none, he asked for a roll call vote:

<b>Wendt</b>	<b>yes</b>
<b>Ronayne</b>	<b>yes</b>
<b>McKindles</b>	<b>yes</b>
<b>Silvestri</b>	<b>yes</b>
<b>Marold</b>	<b>yes</b>
<b>Mullen</b>	<b>yes</b>
<b>Aniol</b>	<b>yes</b>

Therefore *the motion carried unanimously.*

Planning Consultant Elmiger reminded the Board that in the deliberations of the BZA, specific criteria required evaluation and that any decision would only be based on those criteria.

#### **CASE # 17-05**

**DANIEL ROTH/ERIC STEMPIEN  
975 N. CENTER STREET**

**To consider two variance requests on premises zoned R-1B, First Density Residential District, at 975 N. Center St., Northville, Michigan, 48167, parcel number 48-22-34-331-013. The first variance request is from Section 18.04 to allow a detached garage (accessory building) to be used as habitable space. The second variance request is to permit a detached garage to be 9-feet taller than allowed by Section 18.04.**

Secretary McKindles called Case # 17-05.

Mr. and Mrs. Daniel Roth, 975 N. Center Street, were present on behalf of this application; Mr. Eric Stempien, 23800 Woodward Avenue, Pleasant Ridge, MI, was also present.

Mr. Stempien distributed two pictures of the garage cited in the variance request. He noted that there were originally five variance requests for this property, but that only two were still needed – the variance for habitable space and the variance for the height of the garage. The Roths purchased the property in 2015. It was constructed in 2000 or 2001.

Mr. Roth explained how the need for a variance came about:

- The applicant was relocating to Michigan and agreed to purchase the property in April 2015.
- During discussions with the appraiser, it became apparent that there was not a certificate of occupancy for the habitable space above the garage.

- During the subsequent discussion with the building supervisor, the applicant discovered a need for a variance.
- The applicant was two weeks out from closing and moving and had eight weeks before school would start, so a decision had to be made.
- The applicant made the decision to purchase the home, knowing that they would need to come to the BZA to seek a variance on whether the space was or was not habitable space.

Chair Silvestri confirmed that the applicant knew about the zoning violation before purchase.

Mr. Roth noted that it was discovered three months after the offer on the house was made.

Mr. Stempien said that there were pressures involved, including moving from Ohio, school starting, and getting the information just two weeks before closing. Regarding the habitable space above the garage, Mr. Stempien said that they rested on what they had presented in the written document that had been submitted to the Board. He then focused on the garage height:

- The building department determined that a 9-foot variance was needed, 14 feet being the maximum allowed under the ordinance and the measurement based on average grade of property being 23 feet.
- When addressing practical difficulty, he noted the uniqueness of the property. The lot extended quite a bit back, and had a topographical change with a significant grade that went down. The lot was shaped like a bowl. From the garage it went down and then hundreds of yards back there were neighbors that were higher up.
- Looking at the garage from the front, the garage seemed compliant; the problem came with the significant drop off in the back. When measuring, the four corners of the garage and the high point of the roof were used. This was a topographical problem.
- Addressing substantial justice, he noted that the purpose of the ordinance was met, even if the variance was approved. He illustrated his point with the pictures he brought and pointed out that from the front view the garage appeared to be normal-sized and perhaps small in comparison to others.

Chair Silvestri requested clarification on the dormer and whether there would be a height issue if the dormer was not present.

Building Inspector Strong explained that the original building plans did not show any kind of dormer coming off the back side of the garage. The previous building official who approved the final inspection would have confirmed that it met the 14-foot requirement. The issue was while the dormer was there, the City had no records of any permits being pulled to create the dormer and no documentation had been found that would show that the dormer had been inspected and approved. The dormer did increase the height substantially since the eave height on the dormer was used instead of the main roof. Questions that remained were: when was the dormer put on and was it approved? There was no documentation regarding that dormer.

In response to a question from Chair Silvestri, Mr. Roth stressed that he had not known about any problem with the height of the garage before purchasing the property and that it was not disclosed to him by the seller. He also noted that they had the original appraisal from 2001. The City stated that the plans didn't show the dormer, but the appraisal, which was about the same time as the certificate of occupancy, showed the dormer on the garage.

Further clarifying, Mr. Stempien noted that the house was built between 2000 and 2001 and that the appraisal picture was from 2001.

Building Inspector Strong commented that it was possible that minor changes were made during construction and that could include a dormer. However, generally as-built documents were submitted at completion to show those changes. There was no such documentation, but it was possible that the dormer was included and that some sort of oversight occurred.

Member Wendt inquired if the slope of the land was included in calculations. Building Inspector Strong replied in the affirmative, stating that the building height was from the average grade plane to the midpoint of the roof and in this case, due to the size of the dormer, to the midpoint of the dormer.

Mr. Stempien requested that the Board keep in mind that because of lot shape and size, the dormer did not create an issue that the ordinance was written to address. The garage was on the back side of the house of a very large, long lot. The front view was what would affect others and the front of the garage did not appear large, and appeared smaller than some others in Northville. The neighbors to the back were very far back and were behind trees. Considering substantial justice, it would also be a considerable cost to restore the garage to the original plans. He noted that the applicants had not known about the height problem before purchasing the property.

Member Mullen wondered why the applicant was bringing the request now and if there had been any complaints.

Mr. Roth noted that there had been no complaints, but this was simply part of the commitment they had made to the Building Inspector when purchasing the property and that it was only through the process of seeking a variance in the last few months that the height problem was discovered. There had been no urgency since the space in the garage was not being used as habitable space.

Chair Silvestri mentioned a zoning violation by the previous homeowner in 2014 and Building Inspector Strong clarified that that violation was for the habitable space and not for height.

Building Inspector Strong noted that when the applicant was purchasing the home, they had discussed the habitable space issues by phone. Later, Architect Greg Presley, who was present that evening, provided drawings and the realization was made that the dormer on the back made the structure too tall. The dormer was likely added to provide room for a kitchen in the upper level, which was not in the plans. Building Inspector Strong made the determination that the dormer was probably added without a permit, but it could have been added at the time of construction. He had not been aware of the picture from the appraisal and if it could be reasonably said that the previous building official approved it, then there would be no need to discuss tearing down the dormer.

In response to a question from Secretary McKindles, Building Inspector Strong clarified that the Board was just looking at the height of the dormer, which might have been added without a permit, when considering this variance and if the variance were denied the applicant would need to remove the dormer. After further discussion, he noted that if it was found that the dormer was approved by the previous building official due to the picture in the appraisal being in close proximity to the final inspection date, then he believed that the City would not require the applicant to take the dormer off.

Building Inspector Strong confirmed that the previous owner did get a certificate of occupancy sometime in 2000. He also stated that with something of this magnitude, the applicant would not simply be told to tear off the dormer, but that the city attorney would need to be contacted regarding what actions to take.

Member Ronayne located information from MLS public records data that there were different liens on the property for construction in 2000 and concluded that it must have been around 2000 when the owner received the certificate of occupancy.

Discussion regarding dates of the certificate of occupancy and the appraisal followed: these dates were very important to this case. Building Inspector Strong noted that if a previous building official approved the dormer, there would be no need for the variance. He also noted that it would not have been possible to get a full certificate of occupancy unless the garage was finished.

Building Inspector Strong left the room for a few minutes to try and locate some of the information and Mr. Stempien also stepped aside to see if he could locate the picture from the appraisal.

Chair Silvestri invited comments from Mr. Greg Presley from Presley Architecture, 108 N. Center St., whose firm designed 975 N. Center Street.

Mr. Presley noted that he was not the original architect on this property. He stated that he and Building Inspector Strong had a difference of opinion on the height of the garage. The measurements he took went from the high average of the eave of the dormer down to the four corners of the garage and he came up with a 19 foot 11 inch average. With 14 feet allowed, the garage was only 5 feet 11 inches out of conformity with the dormer in place. That was quite a difference than the 9-foot variance request.

Responding to questions from Secretary McKindles and Chair Silvestri, Mr. Presley stated that with this interpretation, even without the dormer, the garage would still be out of compliance by about 1.5 feet. Mr. Presley noted that he had talked to Building Inspector Strong about this difference. Additionally, he would guess that the dormer was put in at the same time as the building.

Mr. Stempien was able to locate an electronic copy of one page of the original appraisal. While there was no date on that page, it did show the name of the original owner and did have the picture showing the dormer. He passed around his device showing the picture.

Mr. Roth noted that they could provide the full appraisal, however they didn't have it electronically and it was not with them today.

Chair Silvestri opened the public hearing.

Mr. Rarey noted that he lived nearby. He agreed with the previous statements about the garage looking fine from the front street level. He had no issue with the height of the garage. He wondered why, when violations of city ordinances came up and inhibited the transfer of property, the City didn't put a lien out that required the current owner to put up a bond to correct the deficiency before transferring the title to the property.

Chair Silvestri noted that steps had to be taken before such an action. In the case in question, it appeared that an ordinance violation was sent out and no further action was taken, but that in this case, the applicant was aware of the circumstances before they closed on the house.

Mr. Roth stressed that he had not been aware of the height problem.

Secretary McKindles noted for the record that the Board had received three letters from local residents. Two lived on Center Street and one on Grace Street and all registered opposition to the habitable space variance request. Two were silent as to the height request and one was in favor of granting the height request.

Mr. Rarey said that he would support the height request, but that he agreed that there was no need to have people live in the garage. He confirmed that he had not written the letters in question.

Mrs. Rarey agreed that she had no problem with the height of the garage. However, both she and her husband did have a problem with the habitable space request. She stated that while an official complaint had not been made, it was apparent that the previous owners had people living in the garage. There were many extra cars in the driveway and the light was often on in the upper level of the garage. She stated that while the current owners might not bring in extra people, future owners made no such promise. She vehemently objected to the variance request for habitable space.

Building Inspector Strong returned and reported:

- May 5, 2000 the property received a temporary certificate of occupancy.
- August 26, 2000, right after the home was built, the property received a full certificate of occupancy.
- The previous owner tried to sell the property and there was an article in the paper.
- September 21, 2000 Mr. Starling, building official at that time, wrote a letter to the realtor, which referenced that article and mentioned the second floor apartment over the garage. Mr. Starling's letter stated that the realtor needed to correct the information being sent out, as that space was not habitable space, which was not allowed. There was no mention about the height of the building.

Mr. Stempien noted that without the dormer, there would have been no livable space, so that the dormer must have been in place at the time of the letter.

Mr. Presley added that the stairway which was built at the same time as the garage led up to an area which would not have had any head height without the dormer, indicating that the dormer was there when the garage was built. He also stated that Building Inspector Strong's findings also indicated that the dormer was built at the same time as the garage.

Member Aniol noted that with this new information, the height of the garage no longer needed a variance.

Chair Silvestri directed the Board to address the first variance request to allow the use of the detached garage as habitable space.

Mr. Stempien reminded the Board that there was no intent to use the space or to rent out the space, but that they were fulfilling their obligation to seek a variance. The situation was not created by the present owners.

Mr. Roth confirmed that since moving onto the property, no one had lived in the garage and that it was not rented out.

Member Ronayne mentioned that he found it surprising that no questions were apparently raised when the owners had to tap into the sewer and would have had to provide plans for the plumbing.

Member Aniol stated that a bathroom by itself didn't constitute habitable space.

Planning Consultant Elmiger confirmed that plumbing and bathrooms were not considered habitable space according to the building code and the zoning ordinance. Kitchen and living space such as bedrooms made habitable space.

In response to several questions from Member Aniol, Mr. Stempien noted that there was not an unreasonable zoning designation. The uniqueness of the land allowed for the extra space in the garage and that it was space that could be enjoyed by the family. The problem was not created by the applicant but by the previous owners. The applicant had little or no choice than to proceed with closing on the house in order to start his new job and get his children into school. With two weeks before closing, he could have pulled out or gone through with closing with the contingency attached to seek a variance for habitable space. Mr. Stempien agreed that it was a balance of risk. Mr. Stempien noted that there was no intention to use the space for multi-family and no extra people would be living on the property so that it would not have an affect on the capacity of the roads or infrastructure. He agreed that it could be used in such a way, but that the Board could make a condition on the variance such as disallowing renting out the space. He stated that it would not affect the character of the neighborhood because, again, it was not going to be used for additional people.

Mrs. Rarey stated that there could be a problem with the sewer because the house used a private sewer.

Mr. Roth noted that the property was on a sub line of the sewer that affected a few houses.

Mrs. Roth added that at the building of the house, it was deemed that the sewer at the street was not sufficient to carry the sewer from the house. She stated that two houses, theirs and a neighbor's, were on their own sewer line.

Responding to questions from Member Aniol, Building Inspector Strong stated that there were two sewer systems there – one at Center Street and one, he believed, at N. Ely. The sewer at the property, as well as two others, was a short section coming out of Ely rather than connecting on Center. The City was responsible for sewers in the rights of way. If the sewer were in the back yard, then it would be a shared tap between a certain number of homeowners. They then tap into the city system. Building Inspector Strong confirmed that the sewer would still be attached to the city sewer system, but indirectly.

There was continued discussion about the sewer usage. Chair Silvestri concluded that without direct evidence of the sewer issue, it was not pertinent to the variance in question.

Chair Silvestri closed the public hearing.

Member Ronayne stated that he had gone to the house and looked at the garage and he agreed with previous comments that the height was, visually, not a problem.

Member Aniol stated that she still had some concerns on the variance for habitable space.

Some discussion on procedure followed. Planning Consultant Elmiger reminded the Board that this was not a use variance, but a dimensional variance. A use variance would ask, for instance, to run a business in an area where that was not permitted use. The current request was still for a permitted use for a residence; the request was to allow the habitable space in the garage.

Building Inspector Strong added that even if the variance request for habitable space over the garage were granted, the property would still have to be used for single-family residential use.

Chair Silvestri indicated he was ready for a motion.

**MOTION McKindles, support by Aniol, to accept the following findings of fact:**

1. That the applicant has failed to show that the compliance with the strict letter of the restrictions would create practical difficulty.
2. That the applicant has failed to show that the granting of the requested variance or appeal would do substantial justice to the applicant.
3. That the applicant has failed to show that the problem and resulting need for the variance did not result from his or her actions or the applicant's predecessors.
4. That the applicant has failed to show that the variance request is the minimum necessary to permit reasonable use of the land.

Chair Silvestri asked for a roll call vote.

<b>Wendt</b>	<b>yes</b>
<b>Ronayne</b>	<b>yes</b>
<b>McKindles</b>	<b>yes</b>
<b>Silvestri</b>	<b>yes</b>
<b>Marold</b>	<b>yes</b>
<b>Mullen</b>	<b>yes</b>
<b>Aniol</b>	<b>yes</b>

Therefore *the motion carried unanimously.*

Chair Silvestri asked for a motion on the variance request.

**MOTION McKindles, support by Aniol, to deny the application for the habitable space variance request.**

Chair Silvestri asked for a roll call vote.

<b>Wendt</b>	<b>yes</b>
<b>Ronayne</b>	<b>yes</b>
<b>McKindles</b>	<b>yes</b>
<b>Silvestri</b>	<b>yes</b>
<b>Marold</b>	<b>yes</b>
<b>Mullen</b>	<b>yes</b>

**Aniol**            **yes**

Therefore *the motion carried unanimously.*

Secretary McKindles said that, regarding the second variance request, he would propose a finding of fact that it was no longer necessary. Chair Silvestri agreed.

**MOTION McKindles, support by Wendt, to accept the following findings of fact:**

The variance requested in respect to the height of the garage is not necessary due to what was found here today.

Chair Silvestri offered and Secretary McKindles accepted the following amendment:

Based on facts from the testimony of Building Inspector Strong, the applicants, and Mr. Presley, it appears that a previous building inspector may have approved the addition of the dormer either prior to or at the time of issuing the final certificate of occupancy and that the dormer was not built after the fact or without approval.

Chair Silvestri asked for a roll call vote.

**Wendt**            **yes**  
**Ronayne**        **yes**  
**McKindles**      **yes**  
**Silvestri**        **yes**  
**Marold**          **yes**  
**Mullen**          **yes**  
**Aniol**            **yes**

Therefore *the motion carried unanimously.*

**VIII. PUBLIC COMMENTS:**

None.

**IX. DISCUSSION:**

Chair Silvestri asked if there was any further discussion.

Member Wendt noted that Planning Consultant Elmiger would try to find the meeting minutes that dealt with using the alley in lot area coverage calculations. He stated that if the minutes couldn't be found, the issue would need to be addressed by the Planning Commission.

Chair Silvestri commented that the interpretation made was consistent with what was received three years ago by Mr. Hoffman. If the BZA interpretations were consistent, the Planning Commission could just say yes or no to those interpretations, in terms of ordinance intent.

Member Wendt clarified that the City Council had final decision-making authority on any ordinance recommendations made by the Planning Commission.

Secretary McKindles noted that it seemed very clear that where there were inconsistencies in the ordinance that the Board was to adhere to the stricter ordinance.

Chair Silvestri said that he had been forwarded information from the Michigan Chapter of American Planning Association, and while they didn't have any authority over this Board, they said that if there was conflict or ambiguity, especially when dealing with ordinance interpretation, to side with the applicant.

Member Mullen commented that it was clear to her that alleys should be used. Secretary McKindles disagreed and Member Aniol noted that if the ordinance were clear this discussion would not have been needed.

Member Wendt said the reason for his "no" vote was that he needed more information and wanted time to get that information.

Member Marold stated that information gathering could be done; and based on that information it could be made crystal clear for the future.

Planning Consultant Elmiger stated that the Planning Commission would be clarifying this ordinance so this shouldn't be an issue in future.

## **X. ADJOURNMENT:**

**Motion Marold, support by Aniol, to adjourn the meeting at 9:44 p.m.**

***Voice vote: Ayes: All. Nays: None. Motion Unanimously Carried.***

Respectfully submitted,

Anna McGuire, Recording Secretary

Approved as published 05/03/17