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**CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS
REGULAR MEETING MINUTES
May 11, 2010**

Chairperson Watkins called the meeting to order at 7:00 p.m. Present: Glass, Kryza, Werner, Jahr, Wardwell, McKenna and Watkins. Absent excused: Foster and Crowe. Staff Present: Director Swallow, and Secretary Queener. McKenna Associates representative: Terry Croad. Giarmarco, Mullins & Horton, P.C. Representative: Steve Hitchcock.

Motion Jahr, second Glass to approve the agenda as presented.

Motion carried.

Motion Warner, second Wardwell to approve the minutes of June 18, 2009 as presented.

After discussion the Members had concerns regarding the length and detail of the minutes and requested Township attorney Mr. Hitchcock review the minutes prior to approval.

Motion Jahr, second Kryza to table the approval of the minutes of June 18, 2009 to the end of the agenda, so that Mr. Hitchcock has a chance to review the minutes.

Motion carried.

PUBLIC HEARINGS / NEW BUSINESS:

Item #1

Case # 10-003 VA
Location: Parcel Number V-125-83-085-01-0025-000, also known as 44305 Harmony Lane. This property is located on the south side of Harmony Lane, between Fisher Road and the South I-94 Service Drive.
Requesting: The applicant is requesting relief from ARTICLE IV, SECTION 4.14, ACCESSORY Structures and Uses, A. General Requirements, 4. Construction Standards, b. Roof Pitch of the Township Zoning Ordinance 06-02-92, as amended.

The petitioner was not present due to a misunderstanding and requested a postponement.

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Member Watkins read into the record a letter from Ronald Herczak dated May 11, 2010 (see attachment).

Director Swallow stated he spoke to the applicant explained that they have not met the four criteria to receive a variance, that this item has been postponed previously and there is a standing demolition order. Swallow further stated that he told the applicant that further delaying this meeting could be a problem.

Director Swallow stated a revised ordinance is on the Planning Commission agenda on May 12, 2010, and then the ordinance would have to be presented to the Board of Trustees for approval.

Member Watkins stated she feels since the applicant requested this item to be postponed the Commission should grant the request.

Motion Glass, Jahr second to open the public hearing. Motion carried.

Director Swallow stated the Accessory Structures ordinance has been interpreted by the Circuit Court to require that the specific standards at the beginning of the ordinance, which call for a minimum 4/12 roof pitch, should be applied to both attached and detached accessory structures. The current garage does not meet the 4/12 pitch, it has shallower pitch. The applicant is proposing to rebuild the garage by removing at least two of the walls, by lowering the roof to address the height issue, and creating a shed style roof to match the roof design of the home. The wall to east would be moved inward to accommodate the side yard setback, which is in violation, and they would rebuild the footings. The applicant is requesting a 2/12 pitch to match the existing home. The applicant has submitted their rationale for why they meet the practical difficulty criteria.

The applicant noted in his letter that if they went with the 4/12 pitch and the lower walls, the east wall would be 5 feet tall, which would not allow them to have a service door and it would prohibit uses of the garage such as storage and parking of tall vehicles. Additionally, the applicant has noted they are attempting to match the design of the existing home. However, they could meet the ordinance standards and have a usable design. Therefore, the applicant does not meet all criteria to show practical difficulty.

Mr. Hitchcock from Giarmarco, Mullins & Horton, P.C., stated based on the opinion of Judge Wendy Baxter, he does not think the BZA can vary from the 4/12 pitch requirements because of the provisions in Section 4.14(4) (a), Appearance, and decide that because of compatibility with the design of principal structure it can allow less than a 4/12 pitch. The discretion to require compatibility is limited by the other provisions of this section. Therefore, he is of the opinion Petitioner must meet the requirements of Article XIX Section 19.07 (3) in order for the BZA to grant a variance. In other words, the applicant must demonstrate practical difficulties under the four criteria of Section 19.07 (3).

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The Petitioner appears to be relying upon the fact that a 4/12 shed roof creates a five foot wall on the east side of the garage, that interferes with a service door, windows and interferes with the interior space necessary for the front of his truck because of the height. Petitioner has not explained why a shed roof is necessary as opposed to a traditional roof with a peak in the center with a 4/12 pitch running to the east and west edges of the garage. If petitioner cannot establish to your satisfaction that the shed roof is due to the “unique circumstances of the property”, the problem of the height of the east wall would appear to be self created.

Mr. Hitchcock referred to a letter dated March 29, 2010 stating the BZA members need to be aware that the Planning Commission has before it recommended amendments to the Zoning Ordinance that will eliminate the need for a variance if approved by the Township Board. I would recommend that the BZA take the testimony and document submitted by Petitioner and withhold a decision on this Petition, until a vote by the Township Board on the amendments.

Mr. Hitchcock further requested the Commission table the minutes of June 18, 2009 until he can review them.

Member Werner asked if the petitioners know about the potential changes in the Zoning Ordinance. If the proposed ordinance is adopted there will be no need for the variance request.

Director Swallow stated the applicant was made aware of proposed changes to the ordinance.

Member Glass inquired when the ordinance will be adopted.

Director Swallow stated the proposed ordinance is on the agenda for the Planning Commission. The next step is to present the ordinance to the Board of Trustees at two meetings, and then it could be adopted.

Dave Frankling resides at 44269 Harmony Lane, stated he opposes this item being delayed, he feels this has been going on long enough. I do not oppose the roof pitch change; the ordinance should not be changed. If the variance is approved the work could start right away. The neighbors do not oppose the changed plans. Frankling also inquired about the side yard setback.

Director Swallow stated the side yard setback is not part of this variance request and the garage would still need to be modified to meet the setback.

Linda Frankling resides at 44269 Harmony Lane, stated the Board of Zoning Appeals is the correct board to hear this appeal. She inquired if the Planning Commission approves the revised accessory ordinance, will the height of the existing garage be allowed?

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Director Swallow stated the structure will still exceed the height of the existing principal structure, which will not be allowed under the revised ordinance.

**Motion Glass, Kryza second to close the public hearing.
Motion carried.**

Member Warner feels as the Board should base their review on the current ordinance, and postpone consideration of the variance to allow the applicant to attend and present any additional information.

Motion Glass, Warner second to grant the requested postponement until the next scheduled meeting on June 8, 2010 due to the fact the applicant could not attend the meeting for property located at 44305 Harmony Lane, Parcel Number V-125-83-085-01-0025-000.

Roll call:

Yeas: Jahr, McKenna, Warner, Kryza, Glass, Wardell and Watkins

Nays: None.

Absent: Foster

Motion carried.

Member Jahr requested that the drawings that are submitted by the applicant be made clearer and include additional details.

**Motion Glass, Kryza second to postpone the minutes of June 18, 2009 to the next regularly scheduled meeting.
Motion carried.**

Item # 2

Case # 10-005 VA

Location: Parcel Number V125-83-085-99-0020-000, also known as 44401 S. I-94 Service Drive, Willow Creek Assisted Living. The property is located on the south side of I-94, between Harmony Lane and Monterey Drive.

Requesting: The applicant, Willow Creek Assisted Living, is requesting relief from ARTICLE XVII, Section 17.02 Schedule of Regulations, Minimum Yard Space, of the Township Zoning Ordinance 06-02-92, as amended.

**Motion McKenna, Wardwell second to open the public hearing.
Motion carried.**

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Director Swallow stated the applicant would like to add an awning for bad weather for the residents and visitors of Willow Creek Assisted Living. The building was constructed about 15 feet from the front setback line. The proposed canopy is 30 feet deep, so they are requesting a 15 foot variance.

Ziad El-Bab, engineer for the project, stated the applicant is requesting a 15 foot variance from the front yard setback requirement. The variance would allow construction of an overhead canopy for two-way automobile drop-off and pick-up at the front of the existing Willow Creek Assisted Living Facility. He feels if the canopy is reduced it would not allow for a sidewalk. When an ambulance comes to the site it can take up to 45 minutes to load or unload, and then people cannot get out of the building.

Terry Croad, McKenna Associates representative, stated to obtain a variance the applicant must show practical difficulty. The site is currently being used as an assisted living facility, which is a permitted use of the site. The existing facility was constructed in conformance with the existing front yard setback requirements. There does not appear to be any substantial justice issues with the requested front yard variance. The rear lot line is irregular due to a drainage ditch/ravine. However, the facility was previously constructed and met all of the setback requirements. Thus, there does not appear to be any unique circumstance of the property. It appears that when the facility was first constructed, a 15 foot canopy could have been built. The applicant is requesting a 30 foot canopy, which would encroach into the required front setback.

The applicant is required to meet all of the standards for practical difficulty. If the applicant can meet these tests, then McKenna Associates recommends that the applicant reduce the length of the canopy to accommodate only one-way traffic, thus reducing the encroachment into the required front yard setback.

Mr. Croad stated he spoke with the applicant and suggested reducing the canopy to 15 feet instead of 30 feet and reducing from two lanes of traffic to one lane of traffic under the canopy for drop off. The applicant's concerns were whether a 15 foot canopy would be large enough for an ambulance. Croad requested the applicant provide the footage needed for an ambulance and at this time has not provided the information.

Member Kryza inquired about the handicap parking.

Croad stated the applicant is proposing moving the parking, he feels the plan can be redesigned to provide the one-way traffic under the canopy or connecting the canopy to the existing building and eliminating two of the proposed pillars. There are a few different options the applicant could look at.

Member Watkins inquired about the use of the rear door and about the need for two-way traffic under the canopy.

Ziad El-Bab stated the back door is used for delivery and there is a storage shed behind the building which would prohibit its use.

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Member Jahr stated the property is close to the I-94 Service Drive and a 15 foot variance would make it even closer. If the canopy is 30 feet there will not be enough room for two way traffic and cars will be stack up with no where to go. The applicant has not shown practical difficulty and the Township planner has shown that the canopy could be constructed to comply with the Township Ordinance.

Member Warner stated the applicant is creating the problem with the construction of the canopy, and inquired if there was another type of canopy that could be constructed which will not need the requested variance.

**Motion Glass, Warner second to close the public hearing.
Motion carried.**

**Motion Wardwell, McKenna second to postpone the request for a 15-foot variance for Parcel Number V125-83-085-99-0020-000, also known as 44401 South I-94 Expressway until the next regular schedule meeting of June 8, 2010.
Motion carried.**

GENERAL DISCUSSION:

**Motion McKenna, Kryza second to adjourn at 9:30 p.m.
Motion carried.**

Respectfully submitted,

Patricia Queener,
Recording Secretary