

**CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS AGENDA
January 19th, 2016 - 7:00 PM
VAN BUREN TOWNSHIP HALL
Board of Trustees Room
46425 Tyler Road**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

Chair Medina Atchinson	_____	Vice-Chair Amos Grissett	_____
Corresponding Secretary Joe Barnabei	_____	Commissioner Edward Miller	_____
PC Representative Robert McKenna	_____	Commissioner David Senters	_____
Trustee Jeff Jahr	_____	Director Ron Akers	_____
Deputy Director Matthew R. Best	_____	Recording Secretary Anna Halsted	_____

ACCEPTANCE OF AGENDA

MINUTES: Approval of minutes from September 8th, 2015 meeting
(Proper Voting Rules Discussion)
Approval of minutes from December 8th, 2015 meeting

CORRESPONDENCE

UNFINISHED BUSINESS

NEW BUSINESS

ANNOUNCEMENTS, COMMENTS, AND OPEN DISCUSSION

1. Status of Menards Variances

ADJOURNMENT

CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS
Minutes-Tuesday September 8, 2015
Van Buren Township Hall
46425 Tyler Road

The Meeting was called to order at 7:00p.m. in the Board of Trustees room by Vice Chairperson Miller. Members Present: Vice Chairperson Miller, Commissioner Atchinson, Planning Commission Representative McKenna, Commissioner Barnabi, Trustee Jahr; Absent-Excused Chairperson Commissioner Grissett. Others present, Director Ron Akers, Deputy Director Matthew Best, Patrick Sloan of McKenna and Associates, Secretary Smith, petitioner Diana Snider and 4 others.

APPROVAL OF AGENDA:

Motion to approve the agenda as presented Commissioner McKenna; Second Commissioner Atchinson Motion Carried.

APPROVAL OF THE MINUTES:

Motion to approve the minutes of the June 9, 2015 meeting commissioner McKenna; Second Trustee Jahr, Motion Carried.

CORRESPONDENCE:

None

UNFINISHED BUSINESS:

None

NEW BUSINESS:

1. Diana Snider- 10965 Van Buren Street- Case # BZA 15-016 Parcel # V125-83-056-01-0262-000

Prior to presentation Trustee Jahr reminded the petitioner that they must get a majority vote of full body not of members present to get a variance passed and asked if they still wanted to move forward or postpone until full board was present. The petitioner opted to move forward.

The petitioner is requesting three variances, Article 17 Section 17.02 Side yard setback District-R1-C , 2 ft. variance, Article 17 Section 17.02 Side Yard Setback –R1-C District 2.2 ft. variance, Article 4, Accessory Buildings, Structures and Uses Dimensional Regulations: setback from principal building, 7 foot variance. Patrick Sloan of McKenna and Associates presented a review of the case submitted, outlined in a letter dated September 2, 2015. BZA may grant a variance based on practical difficulty and the 9 factors outlined in the Van Buren Township Zoning Ordinance to determine practical difficulty.

The petitioner's builder presented signed letters from the neighbors all stating they are ok with the project as designed with the requested variances. The builder stated he could build a fire wall on both sides if that would help to pass the request.

The board discussed the standards of review required by the Zoning Ordinance listened to the case presented by the petitioner and the petitioner's builder, and asked questions regarding the

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matter to the petitioner, the builder, Mr. Sloan, Director Akers and one another in an effort to fully understand all sides of the matter.

MOTION Commissioner McKenna to deny variance based on it not meeting the 9 criteria to prove practical difficulty; as outlined in the letter from McKenna Associates Dated September 2, 2015 Second Trustee Jahr (with discretion) yeas: Miller, Jahr, McKenna, Nays: Atchinson, Barnabi. Motion neither passed nor failed as there must be at least four votes to pass a ruling. Variance request will be reheard at the next regular meeting of the BZA scheduled for October 13, 2015.

ANNOUNCEMENTS, COMMENTS AND OPEN DISCUSSION:

The board discussed a need for alternates and to fill position that was recently vacated. Director Akers indicated he would get with the Supervisor for any applicants that may be on file and Commissioner McKenna suggested if members knew people that would be an asset to let them know of the need to fill positions.

ADJOURNMENT:

Motion to Adjourn Trustee Jahr, second Commissioner Atchinson Meeting adjourned at 8:40 p.m.

Respectfully Submitted by Karen E Smith

Vice Chairperson Ed Miller

Memo

To: Ron Akers
From: Patrick McCauley
Date: January 11, 2016
Re: ZBA Voting Requirements

A question has arisen as to the voting requirements of the Township's Zoning Board of Appeals ("ZBA"). The Zoning Enabling Act, MCL 125.3603(2) provides:

"The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance."

One significant difference between actions of ZBAs and other entities exercising zoning authorities is that a majority of the entire ZBA (not merely a majority of those present and voting) must take affirmative action to decide a non-use variance request or appeal. MCL 125.3603(2). A use variance requires a 2/3 vote of the ZBA to approve the request. MCL 125.3604(10). In some circumstances this might impose a hardship, for example, where only 3 members of a 5 person ZBA are present. Although a quorum is present, 2/3 of the 5 member ZBA is required for approval for a non-use variance.

A question has arisen as to the number of votes required to deny rather than approve, for example, a variance request. The enabling statute, however, does not speak to votes required to deny a request, but only to the number required to approve or grant a variance. Failure to receive the requisite number of votes of a majority of the entire ZBA to approve results in a denial of the request. Conversely, if the motion is made to deny rather than approve the request, a sufficient number of votes of the entire ZBA to deny it which would in essence preclude a majority of votes of the entire ZBA to approve would be sufficient to deny the request.

If you have any other questions or comments, please don't hesitate to contact me.

CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS
Tuesday-December 8th,2015
MINUTES - DRAFT

The meeting was called to order at 7:06 pm in the Board of Trustees room by Vice Chairperson Miller.

PLEDGE OF ALLEGIANCE

ROLL CALL:

Present: Miller, Atchinson, Barnabi, Senters, Jahr, McKenna

Absent Excused: Grissett

Staff: Akers, Best, Halstead

Audience: 6

ACCEPTANCE OF AGENDA:

Motion Jahr, Second Barnabi to support the agenda as presented

Motion Carried

APPROVAL OF MINUTES:

Trustee Jahr asked that the phrase "with discretion" be removed from the September 8th meeting minutes. He also stated that it takes four votes to pass a variance, but it is not clear if a majority vote is needed for a denial. Jahr requested staff to look into proper voting rules before approving the minutes from September.

Motion to postpone approval of Minutes Commissioner Barnabi, Seconded by Commissioner Senters.

Motion Carried

CORRESPONDENCE: None

UNFINISHED BUSINESS: The Sniders chose not to move forward with the variance request, but decided instead to build within the ordinance.

NEW BUSINESS

- 1.) **Election of Officers** - Jahr motioned to open nominations, Seconded by Barnabi. Atchinson was nominated for Chairperson, Grissett was nominated for Vice Chairperson and Barnabi for corresponding secretary. (Barnabi was nominated for chairperson, which he respectfully declined). Jahr motioned to close nomination, seconded by Atchinson. Jahr motioned to approve the unopposed nominations for office, seconded by McKenna.

Motion Carried

- 2.) **Adoption of 2016 Meeting Schedule** - The Township Board accepted the 2016 Meeting Schedule. The Board adopted the 2016 meeting schedule with the revised date of January 19th, 2016 to replace the January 12th, 2016 meeting due to conflict with the Board of Trustees meeting.

3.) BZA Training Session - Director Akers went over what the training packet contained for commissioners and briefly gave an overview of the 9 articles that discuss the roles and responsibilities of the BZA. Akers mentioned various training courses and classes available that could benefit members of the BZA.

ANNOUNCEMENTS, COMMENTS, AND OPEN DISCUSSION:

The Board welcomed David Senters as a new member. The Board welcomed Anna Halstead as the new Recording Secretary.

Chairperson Atchinson asked for an update on Menards. Director Akers gave an update of the plans and mentioned that Menards is planning on to starting construction in April 2016.

Motion Miller, second Barnabi to adjourn at 8:43 p.m.

MOTION CARRIED

Respectfully submitted,

Anna Halstead, Recording Secretary