

**MANISTEE CITY ZONING BOARD OF APPEALS**

425 Sixth Street, P.O. Box 358

Manistee, MI 49660

**MEETING MINUTES**

September 15, 2004

A meeting of the Manistee City Zoning Board of Appeals was held on Wednesday, September 15, 2004 at 5:30 p.m. in the Middle School Library, 550 Maple Street, Manistee, Michigan.

**MEMBERS PRESENT:** Ray Fortier, Mark Hoffman, William Kracht, Marlene McBride and John Perschbacher

**ALTERNATES PRESENT:** Linda Albee and Craig Schindlbeck

**OTHERS PRESENT:** Mark Pressell (Pressell Engineering & Design), Mukesh Patel (378 River Street), Ken Borenitsch (394 River Street), Karl Wagner (554 Bryant Avenue), John Wagner (3496 Lindeman Road), Barry Bauman (552 Harvard Lane), Diane & Dick Hill (562 Bryant Avenue), Bob Davis (410 Cedar Street), Dennis Dunlap (91 Arthur Street), Rick Schafer (Lamar Advertising), Duane Nugent (President, S.S. City of Milwaukee, 111 Arthur Street), Jon Rose (Community Development Director), Denise Blakeslee (Administrative Assistant) and others

The meeting was called to order at 5:30 p.m. by Chairman Perschbacher

**PUBLIC HEARING:**

Mukesh Patel, 378 River Street (Manistee Inn and Marina)

Mark Pressell, Pressell Engineering and Design made a presentation on behalf of Mr. Patel. Mukesh Patel owns the Manistee Inn and Marina at 378 River Street. Mr. Patel would like to develop condominiums as allowed under Section 1616. Adaptive Reuse for Multiple Family Dwellings. Mr. Patel would like a variance to the water front set-back from 50 feet to 45 feet for the installation of balcony's. There would be three balconies constructed on each level with landscaping between the balconies on the lowest level. A variance was previously granted by the ZBA on January 9, 2003 for a reduction to the waterfront set-back from 50 feet to 39 feet for porches/decks. The previous request expired after 365 days because construction was not started and no extension was asked for by the applicant.

Mr. Patel is also asking for an interpretation of Section 1616.B.5 which reads:

*The number of dwelling units in an adaptive reuse building shall not exceed one dwelling for each 1,500 square feet of building envelope as defined herein.*

The definition of Building Envelope reads:

*Building envelope means that portion of a parcel excluding the setbacks and applied to that parcel by this Ordinance.*

Mr. Patel's argument is that the property that has a waterfront set-back requires a 50 foot set-back vs the property which is not adjacent to the water which would have a 6 foot set-back. If his building was not subject to the waterfront set-back, he would be allowed up to 18 units under that portion of the ordinance.

Mr. Rose read a memo prepared in response to the request (attached). Mr. Rose noted that in 1992 the Zoning Board of Appeals determined that no variance would be allowed less than 15 feet into the waterfront set-back to allow maintenance of the riverwalk on the River Channel.

Ken Borenitsch owns the building at 394 River Street and encouraged the Zoning Board of Appeals to amend the interpretation of Section 1616.B.5 as requested by Mr. Patel.

Mark Hoffman asked for clarification on the number of floors and balconies. Mr. Pressell said that their plans are to construct another story and half. The plan is for nine 12' x 5' balconies to be constructed which would allow room for a few chairs. The half story would have a roof top balcony.

Marlene McBride asked if the construction of the balconies would interfere with the driveway which provides access to the lower level parking spaces. Mr. Pressell said that the balconies will not intrude past the existing curb and will not encroach onto the pavement.

There being no further discussion the Public Hearing Closed at 5:45 p.m.

Karl Wagner, 552 & 554 Bryant Avenue

Mr. Wagner is requesting four variance's to allow Parcel #51-51-340-709-01 (554 Bryant Avenue) and Parcel #51-51-340-709-03 (552 Bryant Avenue) to be split into three parcels which requires the following variances to the R-3 Zoning requirements as follows:

Parcel A (554 Bryant Avenue) - variance to the Parcel Area requirements from 10,000 sq. ft. to 8,347 sq. ft. AND Variance to Street Frontage requirements from 100 feet to 66 feet.

Parcel B (552 Bryant Avenue) - variance to the Parcel Area requirements from 10,000 sq. ft. to 8,310 sq. ft.

Parcel C - (new parcel) - Variance to Front Yard set-back from 30 feet to 1 foot to convert existing Accessory Structure into a Single Family Home.

John Wagner, 3496 Lindeman Road is the son of Karl Wagner the applicant. John Wagner spoke of the construction of the home in 1963 and his interpretation of the ordinance. Mr. Wagner said that the City, by issuing the building permit, granted any variances required for the properties. He said that the City allowed the construction of the garage to within a foot of the property line and it should be allowed to maintain that set-back. He interprets the ordinance in place in 1963 as not requiring two front yards for corner parcels that the owner picked which side they wanted to meet the front yard set-back requirements. Mr. Wagner feels that this request will clean up a problem with the diagonal lots by creating rectangular parcels and feels the purpose of Zoning is to develop unused land.

Barry Bauman, 552 Harvard Lane read a prepared statement (attached) in opposition to the proposed request.

Diane Hill, 552 Bryant Avenue said that the City has worked hard to update their zoning and feels that if Mr. Wagner is granted this variance it would set a poor precedence. Her home is located on four lots and asked if she could then construct three homes on her parcel? She spoke of the detriment it would create in the neighborhood this would create if this were allowed.

Karl Wagner said that he feels more houses would be good for the City because people would pay more taxes.

Bob Davis, 410 Cedar Street spoke in opposition of the project. Mr. Davis feels that the request to allow a one foot set-back in a residential district was too high a percentage of a variance and would be a detriment to the community and would be setting a precedence.

John Wagner spoke of the common set-back allowed under the ordinance. Mr. Wagner said that the home at 552 Bryant is 9'4" from the property line and that he would be allowed to build a home with the same set-back under this provision of the ordinance.

Dick Hill, 552 Bryant Avenue objects to the requests. Mr. Hill said that they live in a nice neighborhood and to allow an old accessory structure to be renovated into a home concerns him.

John Perschbacher read two letters received in response to the request. The first was from Ronald Gardin, in opposition to the request (attached). The second was from Evelyn Kohler, 557 Bryant Avenue who had no opposition to the request if it would help improve this location and the neighborhood (attached).

Jon Rose read a memo which was prepared in response to the request (attached). Staff recommends denial of the request as presented by Mr. Wagner. The two existing parcels comply with the zoning ordinance. Mr. Wagner is requesting approval of two substandard parcels in order to create a third buildable lot. The newly created parcel has an existing accessory structure that he wants to convert into a Single Family Home which would require a variance to the front yard set-back.

Mr. Rose responded to some of the statements made by John Wagner. Previous lot frontage was selected by the applicant under the old ordinance. Mr. Wagner could have selected Tamarack as the front-yard when he constructed the home at 554 Bryant Avenue which would have met the requirement of the ordinance.

Marlene McBride spoke of the conditions of the home at 552 Bryant Avenue and felt the accessory structure was in severe disrepair. John Wagner said they plan to sell the rental property, 552 Bryant Avenue and renovate the accessory structure into a single family home.

Bill Kracht spoke of the configuration of the lots and how frontage was established. Karl Wagner said that his parents purchased the property. He applied for and received approval for a building permit and wanted to keep the shop with his property.

Mark Hoffman asked clarification on exactly what is being asked for. He felt that there are conflicting statements being made by the Wagner's. John Wagner said that he could reduce the front wall of the accessory structure to the 9'4" set-back.

Jon Rose explained that an accessory structure is not allowed on a parcel without a primary structure. It is his understanding that Karl Wagner still wants to use this structure. Karl Wagner said that the accessory structure will be torn down in the future.

Barry Bauman said that an additional home would be detrimental to the neighborhood. He said that he checked the zoning before purchasing his home. He does not feel that another building site is appropriate for the neighborhood and expressed his concerns about creating two substandard parcels to achieve a third parcel.

Karl Wagner feels that building a new home would not be detrimental.

Linda Albee said that she felt the property in question is already crowded and that the construction of a third home on the site would be detrimental to the neighborhood.

Jon Rose said that if there were no accessory structure on the property the Zoning Board of Appeals would only be looking at one request for a reduction of the street frontage requirement for 554 Bryant Avenue then two rectangular lots could be created eliminating the diagonal lots. Mr. Rose said that the location of the accessory structure was being used as justification to create a larger building lot.

There being no further discussion the Public Hearing Closed at 6:28 p.m.

#### Dennis Dunlap & Lamar Advertising, 91 Arthur Street

Dennis Dunlap explained that this application would allow an existing billboard to be relocated which would allow MDOT an easement to eliminate standing water accumulation and provide drainage from U.S. 31. Two variance requests are included in the application. First is a variance to set aside 1,000 foot separation from any other billboard. The second request is for a variance to maintain the existing set-back from right-of-way.

Rick Schafer, Lamar Advertising spoke of the agreement they have with Mr. Dunlap. He said that they are willing to move but not remove the billboard because both Lamar and Mr. Dunlap would lose revenue. He

spoke of condemnation by MDOT and the costs associated with that process. Mr. Schafer said that they wish to keep the existing setback if the sign is relocated.

Duane Nugent, President, S.S. City of Milwaukee, 111 Arthur Street. Mr. Nugent spoke as the adjoining property owner and expressed his concern that the relocation of the sign would create an obstruction for people who use their facility. He asked if it could be setback further than requested so there will not be any visual obstruction.

Mr. Schafer said that the sign post would be state of the art and that they could use a cantilever post which would make the sign shaped like a flag with the post being set furthest from the road. He said that the sign post would be up out of visual view of a vehicle accessing U.S. 31 and the post would be 20" in diameter and does not believe it would create a visual problem.

Dennis Dunlap said that with the 10 foot minimum vertical clearance required in the ordinance he feels any one exiting their facility would be able to see down the road.

John Perschbacher read a letter that has been received from Richard Liptak, Michigan Department of Transportation (MDOT) explaining the public benefit of the US 31 storm water drainage improvement project (attached).

Jon Rose read a memo prepared in response to this request (attached). He said that the City would like to see MDOT make these improvements on US 31 and supports the relocation of the sign with an acceptable set-back from the right-of-way. Mr. Rose said that the existing sign is a legal non-conforming sign and whenever possible they should be eliminated or brought into compliance as required under the ordinance. Mr. Rose spoke of the benefits to the public if the MDOT project were to be completed. He said that the cantilever post proposed by Lamar Advertising may address the concerns expressed by Mr. Nugent.

Bill Kracht asked if the old sign structure located on the property would be removed. Mr. Dunlap said that MDOT would remove that sign while working on their project.

Mark Hoffman asked if the sign could be relocated to another location? Mr. Dunlap said that MDOT requires a 20 foot easement.

Marlene McBride asked if the sign could be moved back further to comply with the 30 foot set-back requirement. Mr. Dunlap said that it would interfere with future project development for that parcel. Mr. Dunlap said that he would like to continue the condominium development on this parcel.

Jon Rose said that the City would like to see MDOT make these improvements on US 31 and supports the relocation of the sign with an acceptable set-back from the right-of-way. The proposed set-back would have an impact on the neighboring property's driveway and recommends that the sign be located further back from the right of way from what is proposed in the request. Mr. Rose noted that the two curb cuts that are on this parcel will be removed during the MDTO project.

There being no further discussion the Public Hearing Closed at 6:45 p.m.

Chairman Perschbacher called for a 10 minute recess. Meeting resumed at 6:55 p.m.

**BUSINESS SESSION:**

APPROVAL OF MINUTES July 19, 2004

MOTION by Ray Fortier, supported by Bill Kracht that the minutes from the July 19, 2004 Zoning Board of Appeals Meeting be approved.

MOTION PASSED UNANIMOUSLY

MUKESH PATEL, 378 RIVER STREET

A Public Hearing was held earlier in response to two requests from Mukesh Patel, 378 River Street. The Zoning Board of Appeals reviewed each request as follows:

Variance to Reduce the waterfront set-back

Mukesh Patel, 378 River Street is requesting a variance to the water front set-back from 50 feet to 45 feet for the installation of balcony's.

Members of the Zoning Board of Appeals reviewed and discussed the Findings of Fact for this request.

Findings of Fact:

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District?  
5 - Yes Fortier Kracht McBride Hoffman Perschbacher  
0 - No
2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance?  
5 - Yes Kracht McBride Hoffman Fortier Perschbacher  
0 - No
3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance?  
5 - Yes McBride Hoffman Fortier Kracht Perschbacher  
0 - No

4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare?  
5 - Yes Hoffman Fortier Kracht McBride Perschbacher  
0 - No
5. Do the reasons set forth in the application justify the variance and is the requested variance the minimum variance that will make possible the reasonable use of the land, building or structure?  
5 - Yes Fortier Kracht McBride Hoffman Perschbacher  
0 - No
6. Does the requested variance include the allowance for a use which is not permitted in the Land Use District in question? [If Yes, the variance CANNOT be granted]  
0 - Yes  
5 - No Fortier Kracht McBride Hoffman Perschbacher
7. Are there any conditions, safeguards or guarantees, in conformity with the Ordinance, that the Board feels are necessary if a variance is granted?  
0 - Yes  
5 - No Fortier Kracht McBride Hoffman Perschbacher

MOTION by Ray Fortier, seconded by Marlene McBride that the request from Mukesh Patel, 378 River Street for a variance to reduce the waterfront set-back from 50 feet to 45 feet to allow the construction of balconies be approved.

VOTING ON MOTION TO APPROVE VARIANCE REQUEST AS FOLLOWS:

5 - Yes Fortier Hoffman McBride Kracht Perschbacher  
0 - No

MOTION APPROVING VARIANCE REQUEST PASSED UNANIMOUSLY

Request for Ordinance Interpretation Section 1616.B.5

Mr. Patel would like to develop condominiums as allowed under Section 1616. Adaptive Reuse for Multiple Family Dwellings. Mr. Patel would like the Zoning Board of Appeals to Interpret Section 1616.B.5 of the Ordinance which reads:

*The number of dwelling units in an adaptive reuse building shall not exceed one dwelling for each 1,500 square feet of building envelope as defined herein.*

The definition of Building Envelope reads:

*Building envelope means that portion of a parcel excluding the setbacks and applied to that parcel by this Ordinance.*

Bill Kracht said that he felt it was not the place of the Zoning Board of Appeals to overrule a definition of the Planning Commission. He expressed his concern about changing the interpretation creating more density on River Street. Mr. Kracht does not want excessive density created or corners cut on requirements for housing units established under this provision of the ordinance. Mr. Kracht said if the Planning Commission erred in their language they should re-word the Ordinance.

Mark Pressell said they are not going to create the 18 units that would be allowed by changing the definition. Their plans are to develop 15 units instead of the 13 units they are allowed under the current interpretation. He noted that the parking requirements of Adaptive Reuse for Multiple Family Dwellings requires two parking spaces for each unit. They can only meet the parking requirements for 15 units because 10 of their spaces on the parking deck are reserved for Public Parking leaving them with 30 spaces for the condominiums.

MOTION by Ray Fortier, seconded by Mark Hoffman that for the purpose of Adaptive Reuse the definition of Building Envelope shall not include the waterfront set-back.

VOTING ON MOTION TO CHANGE INTERPRETATION AS FOLLOWS:

3	-	Yes	Fortier	Hoffman	Perschbacher
2	-	No	Kracht	McBride	

MOTION TO CHANGING INTERPRETATION PASSED BY A VOTE OF 3 TO 2.

#### KARL WAGNER, 552 & 554 BRYANT AVENUE

A Public Hearing was held earlier in response to four requests from Karl Wagner that would allow parcel #51-51-340-709-01 and 515-1-340-709-03 to be split into three parcels. The Zoning Board of Appeals took the following action on each request:

#### Parcel A (554 Bryant Avenue) variance to the Parcel Area requirement of the Ordinance

Mr. Wagner is requesting that a variance be granted to create Parcel A (554 Bryant Avenue) which would require a reduction in the Parcel Area requirement of the Ordinance from 10,000 square feet to 8,347 square feet.

Members of the Zoning Board of Appeals reviewed and discussed the Findings of Fact for this request.

Findings of Fact:



1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District?  
0 - Yes  
5 - No Fortier Kracht McBride Hoffman Perschbacher
2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance?  
0 - Yes  
5 - No Kracht McBride Hoffman Fortier Perschbacher
3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance?  
0 - Yes  
5 - No McBride Hoffman Fortier Kracht Perschbacher
4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare?  
0 - Yes  
5 - No Hoffman Fortier Kracht McBride Perschbacher

MOTION by Ray Fortier, seconded by Mark Hoffman that the request from Karl Wagner to create Parcel A (554 Bryant Avenue) which would require a reduction in the Parcel Area requirement of the Ordinance from 10,000 square feet to 8,347 square feet be denied.

VOTING ON MOTION TO DENY AS FOLLOWS:

5 - Yes Fortier Kracht McBride Hoffman Perschbacher  
0 - No

MOTION TO DENY REQUEST APPROVED UNANIMOUSLY

Parcel A (554 Bryant Avenue) variance to Street Frontage requirement of the Ordinance

Mr. Wagner is requesting that a variance be granted to create Parcel A (554 Bryant Avenue) which would require a reduction in the Street Frontage requirement of the Ordinance from 100 feet to 66 feet.

Members of the Zoning Board of Appeals reviewed and discussed the Findings of Fact for this request.

Findings of Fact:

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District?  
0 - Yes  
5 - No Fortier Kracht McBride Hoffman Perschbacher
  
2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance?  
0 - Yes  
5 - No Kracht McBride Hoffman Fortier Perschbacher
  
3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance?  
0 - Yes  
5 - No McBride Hoffman Fortier Kracht Perschbacher
  
4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare?  
0 - Yes  
5 - No Hoffman Fortier Kracht McBride Perschbacher

MOTION by Marlene McBride, seconded by Ray Fortier that the request from Karl Wagner to create Parcel A (554 Bryant Avenue) which would require a reduction in the Street Frontage requirement of the Ordinance from 100 feet to 66 feet be denied

VOTING ON MOTION TO DENY AS FOLLOWS:

- 5 - Yes Fortier Kracht McBride Hoffman Perschbacher  
0 - No

MOTION TO DENY REQUEST APPROVED UNANIMOUSLY

Parcel B (552 Bryant Avenue) variance to the Parcel Area requirement of the Ordinance

Mr. Wagner is requesting that a variance be granted to create Parcel B (552 Bryant Avenue) which would require a reduction in the Parcel Area requirement of the Ordinance from 10,000 square feet to 8,310 square feet.

Members of the Zoning Board of Appeals reviewed and discussed the Findings of Fact for this request.

Findings of Fact:

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District?  
0 - Yes  
5 - No Fortier Kracht McBride Hoffman Perschbacher
2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance?  
0 - Yes  
5 - No Kracht McBride Hoffman Fortier Perschbacher
3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance?  
0 - Yes  
5 - No McBride Hoffman Fortier Kracht Perschbacher
4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare?  
0 - Yes  
5 - No Hoffman Fortier Kracht McBride Perschbacher

MOTION by Mark Hoffman, seconded by Ray Fortier that the request from Karl Wagner to create Parcel B (552 Bryant Avenue) which would require a reduction in the Parcel Area requirement of the Ordinance from 10,000 square feet to 8,310 square feet be denied.

VOTING ON MOTION TO DENY AS FOLLOWS:

5 - Yes Hoffman Fortier McBride Kracht Perschbacher  
0 - No

MOTION TO DENY REQUEST APPROVED UNANIMOUSLY

Parcel C (new parcel) variance to the Front-Yard Set-Back requirement of the Ordinance

Mr. Wagner is requesting that a variance be granted to create Parcel C (new parcel) which would require a reduction in the Front Yard Set-back from 30 feet to 1 foot to convert an existing Accessory Structure into a Single Family Home.

Members of the Zoning Board of Appeals reviewed and discussed the Findings of Fact for this request.

Findings of Fact:

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District?  
0 - Yes  
5 - No Fortier Kracht McBride Hoffman Perschbacher
2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance?  
0 - Yes  
5 - No Kracht McBride Hoffman Fortier Perschbacher
3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance?  
0 - Yes  
5 - No McBride Hoffman Fortier Kracht Perschbacher
4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare?  
0 - Yes  
5 - No Hoffman Fortier Kracht McBride Perschbacher

MOTION by Ray Fortier, seconded by Marlene McBride that the request from Karl Wagner to create Parcel C (new parcel) which would require a reduction in the Front Yard Set-back from 30 feet to 1 foot to convert an existing Accessory Structure into a Single Family Home be denied.

VOTING ON MOTION TO DENY AS FOLLOWS:

5 - Yes Fortier McBride Hoffman Kracht Perschbacher  
0 - No

MOTION TO DENY REQUEST APPROVED UNANIMOUSLY

DENNIS DUNLAP & LAMAR ADVERTISING, 91 ARTHUR STREET

A Public Hearing was held earlier in response to two requests from Dennis Dunlap & Lamar Advertising. The Zoning Board of Appeals took the following action on each request:

Variance 1,000 foot separation between billboards

Mr. Dunlap and Lamar Advertising are requesting a variance to allow the relocation of an existing billboard which would allow MDOT an easement to eliminate standing water accumulation and provide drainage for

U.S. 31. This variance would set aside the 1,000 foot separation from any other billboard requirement of the ordinance.

Members entered into a lengthy discussion about the impact the sign would have on the adjoining property owner, if the sign could be relocated to a different location, how high the sign could be under the sign ordinance, what precedence would be established if approved, the benefit to the community and need to eliminate the drainage problem in this area, conditions that should be placed if approved and if a reduced set-back would be consistent with the intent of the ordinance.

Members of the Zoning Board of Appeals reviewed and discussed the Findings of Fact for this request.

Findings of Fact:

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District?  
5 - Yes Fortier Kracht McBride Hoffman Perschbacher  
0 - No
2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance?  
3 - Yes Hoffman Fortier Perschbacher  
2 - No Kracht McBride
3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance?  
5 - Yes McBride Hoffman Fortier Kracht Perschbacher  
0 - No
4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare?  
3 - Yes Hoffman Fortier McBride  
2 - No Kracht Perschbacher
5. Do the reasons set forth in the application justify the variance and is the requested variance the minimum variance that will make possible the reasonable use of the land, building or structure?  
3 - Yes Fortier Hoffman Perschbacher  
2 - No Kracht McBride
6. Does the requested variance include the allowance for a use which is not permitted in the Land Use District in question? [If Yes, the variance CANNOT be granted]  
0 - Yes Fortier Kracht McBride Hoffman Perschbacher  
5 - No

7. Are there any conditions, safeguards or guarantees, in conformity with the Ordinance, that the Board feels are necessary if a variance is granted?  
5 - Yes Fortier Kracht McBride Hoffman Perschbacher  
0 - No

Zoning Board of Appeals wanted the following language included in the Motion:

That the sign is being allowed so that MDOT can proceed with a project to improve storm water drainage for the public benefit on US 31.

Zoning Board of Appeals wanted the following conditions included in the Motion:

That the sign constructed shall not be larger than the existing sign  
The maximum height of sign and post shall not exceed 30 feet  
That the cantilever post for the sign shall be located farthest from US 31.

MOTION by Ray Fortier seconded by Mark Hoffman that the request from Dennis Dunlap and Lamar Advertising for a variance to set aside the 1,000 foot separation from any other bill board requirement of the Zoning Ordinance be allowed so that MDOT can proceed with a project to improve storm water drainage for the public benefit on US 31 be approved with the conditions:

That the sign constructed shall not be larger than the existing sign  
The maximum height of sign and post shall not exceed 30 feet  
That the cantilever post for the sign shall be located farthest from US 31.

VOTING ON MOTION TO APPROVE REQUEST WITH CONDITIONS AS FOLLOWS:

4 - Yes Fortier McBride Hoffman Perschbacher  
1 - No Kracht

MOTION TO APPROVE REQUEST WITH CONDITIONS PASSED BY A VOTE OF 4 TO 1.

Variance to set-back from right of way

Mr. Dunlap and Lamar Advertising are asking for a variance to maintain an existing set-back from right-of-way for a billboard that is being relocated to allow MDOT an easement to eliminate standing water accumulation and provide drainage for U.S. 31.

Members of the Zoning Board of Appeals reviewed and discussed the Findings of Fact for this request.

Findings of Fact:

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District?  
5 - Yes Fortier Kracht McBride Hoffman Perschbacher  
0 - No
2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance?  
1 - Yes Fortier  
4 - No Kracht McBride Hoffman Perschbacher
3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance?  
5 - Yes McBride Hoffman Fortier Kracht Perschbacher  
0 - No
4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare?  
1 - Yes Fortier  
4 - No Hoffman Kracht McBride Perschbacher

MOTION by Bill Kracht seconded by Marlene McBride that the request from Dennis Dunlap and Lamar Advertising for a variance to maintain an existing set-back from right-of-way for a billboard that is being relocated be denied.

VOTING ON MOTION TO DENY AS FOLLOWS:

- 4 - Yes McBride Hoffman Kracht Perschbacher  
1 - No Fortier

MOTION TO DENY REQUEST PASSED 4 TO 1

**OTHER BUSINESS:**

Communications:

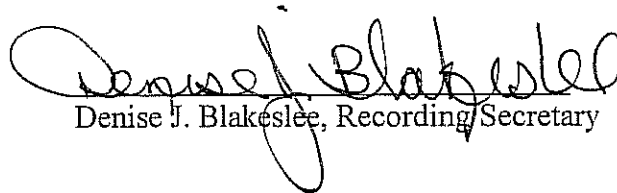
Members discussed Citizen Planner Training.

John Perschbacher read a card from Bill and Mary Beth Kennedy commending the Zoning Board of Appeals for the manner in which their request was handled.

**ADJOURNMENT:**

There being no further business meeting motion by Ray Fortier, seconded by Bill Kracht that the meeting be adjourned. Meeting adjourned at 9:00 p.m.

Respectfully Submitted




Denise J. Blakeslee, Recording Secretary



# Memorandum

TO: Zoning Board of Appeals Members

FROM: Jon R. Rose   
Community Development Director

DATE: September 3, 2004

RE: Request from Mukesh Patel, 378 River Street

Members, you have received a copy of the application for a Zoning Variance from Mukesh Patel. This application includes two requests as follows:

1. Request for a variance to reduce the water-front set-back from 50 feet to 45 feet to allow the construction of balconies which would provide residents with a view of the river. A similar request was approved by the ZBA on January 9, 2003 which granted a reduction to the waterfront set-back from 50 feet to 39 feet for porches/decks. The previous requests expired after 365 days because construction was not started. Since no extension was asked for by the applicant he is required to submit a new request to the ZBA.

The City of Manistee encourages the businesses on river street to utilize the portion of their buildings that front on the River Channel. We have historically granted variances to these buildings which reduced the water front set-back to accommodate porches, stairs, decks etc. This is one area that the Planning Commission is going to review in the ordinance re-write. Should a less restrictive water front set-back be established for the C-4 Zoning District on the River Channel -vs- the other districts with water front set-back requirements on Manistee Lake and Lake Michigan?

2. The Planning Commission and their consultant developed zoning language that was adopted by City Council for Adaptive Reuse for Multiple Family Dwellings. This language/amendment was developed in order to allow/regulate condominiums in the C-4 Commercial Zoning District (downtown area). This language allows condominiums as a Special Use in the C-4 Zoning District. A copy of the ordinance amendment is enclosed for your review.

Mr. Patel is asking for the Zoning Board of Appeals Interpretation of Section 1616.B.5 which reads:

*The number of dwelling units in an adaptive reuse building shall not exceed one dwelling for each 1,500 square feet of building envelope as defined herein.*

The City of Manistee Zoning Ordinance defines Building Envelope as follows:

*Building envelope means that portion of a parcel excluding the setbacks and applied to that parcel by this Ordinance.*

The set-back requirements for the C-4 Zoning District are as follows:

- Front Yard - zero (0) feet from property line or thirty three feet (33) feet from the centerline of a street, whichever is greater.
- Side Yard - zero (0) feet; except in the case of a corner parcel where the sideyard on the street side shall not be less than zero (0) feet from the property line, or thirty three (33) feet from the centerline of a street, whichever is greater.
- Rear Yard - six (6) feet
- Waterfront Yard - The minimum setback shall not be less than fifty (50) feet for any structure. This subsection shall not apply to boat docks, boat launching ramps and riverwalks.

Mr. Patel's makes his argument in the attachment "***Request for Ordinance Interpretation***". A portion of his argument is that since his building has frontage on the Manistee River the allowable number of dwelling units is less than a like sized parcel without river frontage (because of the 44 foot difference between the waterfront and rear yard setbacks).

If the building envelope was not subject to the waterfront set-back, the ordinance would allow 18 units. Jay Kilpatrick, the consultant who drafted the language, has indicated that he did not anticipate the application of the waterfront set-back to the building envelope.

September 14, 2004

Mr. John Rose  
Manistee City Zoning Board of Appeals  
Manistee, MI 49660

RE: Requested variances for 552 and 554 Bryant Ave.

Dear Mr. Rose and Zoning Board Members:

With all due respect to my good neighbor, Mr. Wagner, I am opposed to the requested variances for the following reasons:

The variances would create too many residences on too few lots for the neighborhood. Adding another house on the lots in question would be very uncharacteristic of what now exists in this neighborhood.

The regulations and standards of zoning are of extreme importance because they protect the character and real estate value of a neighborhood.

I would like to address the same "findings of fact" that the Zoning Board of Appeals has to consider.

1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same Land Use District? My answer is "NO." These four lots are no different than any other four-lot properties in this block, other than they already have two homes. The adjacent properties all have four lots with one home, with two exceptions of one home on six lots and one on twelve lots.
2. Would the literal interpretation of the provisions of this Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same Land Use District under the terms of this Ordinance? My answer is "NO." The provisions of this ordinance would only allow two homes on these four lots. There is simply no way to configure the parcels differently to allow more homes. The owner is already up to the maximum that the lots would allow.
3. The special conditions and/or circumstances are NOT the result of actions taken by the applicant or the previous property owner since adoption of the current Ordinance? My answer is "NO." The circumstances ARE the result of actions taken by the applicant. These parcels are arranged in a very peculiar way. Lots 2 and 12 are joined on a diagonal touching only at the very tips of their corners to form one tax

parcel. The same is true for lots 1 & 11. I can only conclude that this was to get around the ordinances so that a second home could be built on Bryant Ave. Whoever was in charge of permits and zoning back then should have explained to the property owner that he was using up his future options.

4. Would granting of the variance be in harmony with the general purpose and intent of the Ordinance and would NOT be injurious to the neighborhood, or otherwise detrimental to the public welfare? My answer is "NO." If these four different variances were granted, it WOULD be injurious to the neighborhood. It would mean too many houses on too few lots. This would have a direct effect on the openness of our neighborhood and on property values.

The applicant supports his case by citing a vacant parcel, which is not for sale, on the south side of Bryant Avenue, parcel #51-51-362-721-09. This parcel is nonconforming for two reasons. It doesn't meet the minimum square footage of 10,000-sq. ft. or street frontage of 100 ft. I would hope that a building permit would not be issued for such a parcel!

As I understand it, zoning ordinances are in place to protect neighborhoods, and everyone has to adhere to the same rules. On rare occasion, if someone is at a disadvantage, then they might need a variance to bring them up to the standard of the neighborhood. However, in this case, granting these FOUR variances would greatly benefit the applicant to the detriment of the adjacent property owners.

I thank you for listening, and I thank you for your service to our community.

Sincerely,



Barry N. Baumann



70 Maple Street • P. O. Box 358 • Manistee, Michigan 49660

231-723-2558  
FAX 231-723-1546

September 8, 2004

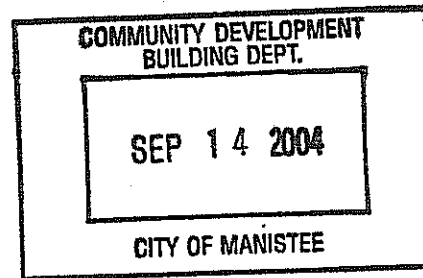
TO WHOM IT MAY CONCERN:

The City of Manistee Zoning Board of Appeals will hold a Public Hearing in the Middle School Library, 550 Maple Street, Manistee, Michigan to consider a request from:

NAME: Karl Wagner  
554 Bryant Avenue  
Manistee, MI 49660

LOCATION OF REQUEST: 552 & 554 Bryant Avenue

ACTION REQUESTED: Variance's necessary to allow Parcel #51-51-340-709-01 (554 Bryant Avenue) and Parcel #51-51-340-709-03 (552 Bryant Avenue) to be split into three parcels which would each require variances to the R-3 Zoning requirements as follows:



Parcel A (554 Bryant Avenue) variance to the Parcel Area requirements from 10,000 sq. ft. to 8,347 feet AND Variance to Street Frontage requirements from 100 feet to 66 feet.

Parcel B - 552 Bryant Avenue variance to the Parcel Area requirements from 10,000 sq. ft. to 8,310 sq. ft.

Parcel C - Variance to Front Yard set-back from 30 feet to 1 foot to convert existing Accessory Structure into a Single Family Home.

DATE/TIME OF HEARING: Wednesday, September 15, 2004, 5:30 p.m.

Interested parties are welcome to attend the hearing, or can comment in writing to: Jon R. Rose, City of Manistee, P.O. Box 358, Manistee, MI 49660, (231) 723-2558.

Sincerely,

Jon R. Rose  
Community Development Director

*I object to the requested  
variance.*

*Ronald Gordon 9/13/04*

JRR:djb

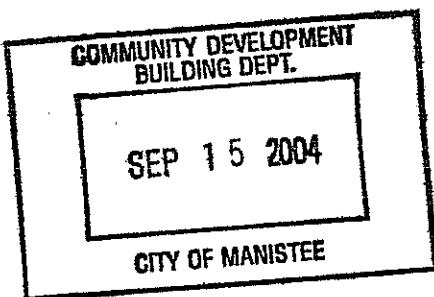
September 13, 2004

Att: JON R. ROSE - Community Development Director  
From: EVELYN KOLLER  
557 BRYANT AVE.  
MANISTEE, MI. 49660

# 51-51-362-721-05-409

Reply to VARIANCE REQUEST FOR LOCATION:  
552 & 554 BRYANT AVE.

I HAVE NO opposition to this VARIANCE REQUEST  
IF it will help to improve this location AND  
THE NEIGHBORHOOD.




Sincerely,  
Evelyn Koller

EVELYN KOLLER

# Memorandum

TO: Zoning Board of Appeals Members

FROM: Jon R. Rose   
Community Development Director

DATE: September 7, 2004

RE: Request from Karl Wagner

Members, an application has been received from Karl Wagner for four variances. Mr. Wagner would like to obtain the variance's necessary to allow Parcel #51-51-340-709-01 (554 Bryant Avenue) and Parcel #51-51-340-709-03 (552 Bryant Avenue) to be split into three parcels which would each require variances to the R-3 Zoning requirements as follows:

Parcel A (554 Bryant Avenue) variance to the Parcel Area requirements from 10,000 sq. ft. to 8,347 sq. ft. AND Variance to Street Frontage requirements from 100 feet to 66 feet.

Parcel B - 552 Bryant Avenue variance to the Parcel Area requirements from 10,000 sq. ft. to 8,310 sq. ft.

Parcel C - Variance to Front Yard set-back from 30 feet to 1 foot to convert existing Accessory Structure into a Single Family Home.

Review of the history of these parcels revealed that the Wagner Family constructed a second primary structure in 1963. The zoning requirements in 1963 were more stringent than they are in our current ordinance. The Parcel Area requirements were 12,000 square feet with 100 foot of street frontage. I was not employed by the City at the time the parcel was split into the two parcels but, the diagonal lots met the 100 foot street frontage requirement. The diagonal split may have also been permitted to allow Mr. Wagner to retain the accessory structure as part of the property with the new home which Mr. Wagner moved into. As awkward as these parcels are they do meet the requirements of the previous and current Zoning Ordinance.

I would like to first address Mr. Wagner's request to split the two parcels into three parcels. The R-3 Zoning District requires 10,000 square feet of parcel area with 100 feet of Street Frontage. If you add the two parcels together there is a total of 31,240 square feet of parcel area. Under the Zoning Ordinance this would permit three parcels which could be configured to comply with 10,000 square foot Parcel Area Requirements. The two parcels each have primary structures on them. Because both houses are located on Bryant Avenue, the existing home that is not located on the corner lot (554 Bryant - Parcel A) is unable to meet the street frontage requirement with only 66 feet of frontage available.

Mr. Wagner is requesting approval of two substandard parcels; Parcel A (554 Bryant Avenue) with 8,547 square feet of parcel area and Parcel B (552 Bryant Avenue) with 8,310 square feet of parcel area in order to create a third buildable lot. There is an existing accessory structure that Mr. Wagner said he would convert to a single family home. This building is in disrepair and currently sits within the front-yard set-back and would require a variance to the front-yard set-back from 30 feet to one foot.

Staff recommends denial of the request as presented by Mr. Wagner.

JRR:djb



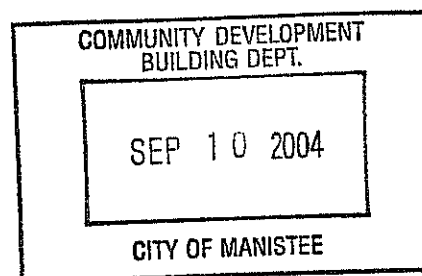


JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TRANSPORTATION  
CADILLAC TRANSPORTATION SERVICE CENTER

GLORIA J. JEFF  
DIRECTOR

September 7, 2004



Mr. Jon Rose  
City of Manistee  
70 Maple Street  
Manistee, Michigan 49660-0358

Re: US-131 Storm Water Drainage Improvement Project

Dear Mr. Rose:

This letter is being written to explain the public benefit of the US-131 storm water drainage improvement project near Monroe Street that is currently under contract.

Our records show that the existing drainage system in this area was originally placed in 1949. For a number of years it served as a combined sewer system until a separate sanitary sewer system was constructed in 1979. Throughout the years, the highway and the adjoining area has changed dramatically and continues to be redeveloped. The sewer system and outlet have remained unchanged over this same period of time. The result is that the current sewer collection points, pipe size and outlet no longer function adequately. The result is flooding during heavy rain events. It has been noted that during one of these events, the storm water will temporarily pond on the highway until it crests the curb and then flows over land into Manistee Lake.

The adjoining property owner, Mr. Dunlop, has worked in cooperation with the Michigan Department of Transportation (MDOT) to develop a plan and provide the required property easement to MDOT to construct and maintain the new drainage outlet.

It should be noted that current EPA regulations require some form of treatment to storm water prior to out letting into a lake or stream. These requirements are being met by the installation of storm water treatment structure. This treatment structure and the required piping and drainage structures take up the entire drainage easement and necessitate the removal of the billboard at this same location.

It is in the public interest of both highway safety and water quality that this project go forward.

Sincerely,


Richard E. Liptak, Manager  
Cadillac Transportation Service Center

REL/dm

c:\logltr\rose-131stormwater

Memorandum

TO: Zoning Board of Appeals

FROM: Jon R. Rose   
Community Development Director

DATE: September 8, 2004

RE: Request from Dennis Dunlap & Lamar Advertising

Members, you have received a copy of a request from Dennis Dunlap and Lamar Advertising for the relocation of a billboard. Also enclosed is a copy of a letter from Richard Liptak, Michigan Department of Transportation (MDOT). MDOT is requesting the support of the relocation of the billboard which would allow them to make storm water drainage improvements on US 31.

The City of Manistee would like to see MDOT make these improvements on US 31. While we support the relocation of the sign to the new location we would like to see the sign set-back from the road increased. The applicant says that the existing sign sets adjacent to the right-of-way and would like the sign relocated with the same set-back. I would recommend that the sign be located further back from the right-of-way so there is not so much impact on the neighboring driveway.

JRR:djb