CITY OF LUDINGTON
BOARD OF ZONING APPEALS
Minutes –September 8, 2004

A regular meeting of the Ludington Board of Zoning Appeals was held on September 8, 2004 at the Ludington Municipal Building, 400 S Harrison St., Ludington, MI, and was called to order by Ken Vanderbilt, Chairperson at 7:00 p.m.

PRESENT: Tom Tyron, Ken Vanderbilt, Joe Moloney, Leon Vandawater, Brian Purtee and Bonnie Vaught.

ABSENT: (excused) John Markov

ALSO PRESENT: Building Inspector, John Healy, City Attorney, Roger Anderson and Recording Secretary Carol Ann Foote

ROLL CALL: The roll call gave the above results.

AGENDA APPROVAL: A motion was made by Bonnie Vaught to approve the agenda, seconded by Joe Moloney. Motion carried unanimously.

MINUTES: A motion was made by Joe Moloney to approve the minutes of August 17, 2004, as written, seconded by Bonnie Vaught. Motion carried unanimously.

PUBLIC HEARING:
None

OLD BUSINESS:
Consideration of a request by Gregory A. Dykstra for a three foot side yard setback variance in order to construct an addition to the existing dwelling at the following described property: TINKHAM'S SUBDIVISION OF TINKHAM'S ADDITION LOT 5 BLOCK 17, also known as 510 N. Harrison St.

Tom Tyron made a motion to un-table the issue, seconded by Bonnie Vaught. Motion carried unanimously.

Roger Anderson, City Attorney, explained the August 17, 2004 Zoning Board tie vote. Since the motion was to deny the request and the vote was tied, the motion died. The vote did not approve the request or deny the request. If the motion was to approve the request and the vote was tied, the request would have been denied. Bonnie Vaught asked if the Zoning Board followed Robert's Rules of Order. Attorney Anderson said that there were no requirements by the City to follow Robert's Rules, but generally, they did follow them. Bonnie Vaught wanted to know what would happen if she made a motion to approve the motion, then voted against it. Attorney Anderson said that it would probably raise some questions. We don't follow Robert's Rules to the letter. Some things are common sense. Joe Moloney stated that they could have potentially the same problem with an even number of members, if they were to have the meeting. Brian Purtee said that you would have to wait until after the motion was made.

Ken Vanderbilt told the Board that the Planning Commission had responded to their request to review
side yard set backs on corner lots. He read the recommendations from the Planning Commission. No text changes were recommended with the exception of Section 500.10:1 (1) concerning porches. The following recommendation for the definition of porch is: "an entrance or recessed space at the entrance to a building either covered or uncovered. An open porch shall be considered as post or cantilever supported with any railings with at least 50% open spaces uniformly distributed. If walls, windows, or screens, etc, are present, it shall be considered an enclosed porch.

It was also recommended that Section 500.10:1 (1) be revised to read: "Terraces, steps, uncovered open or covered open porches and other similar features shall not be located closer than 5' from a side or front lot line.

Ken Vanderbilt iterated that these were proposed text changes. There will be a public hearing in October. Leon Vandawater commented that if these changes were approved, a variance would not be needed.

Ken Vanderbilt said that this was not a non-conforming structure. They cannot take the placement of the structure on the property into consideration. When considering practical difficulties, we have to look at the lot itself. We are only concerned with the three feet that is being asked for. Also remember, the ordinance does allow a 14 inch overhang into the 7 ½ ft. setback. He then opened the issue for discussion.

Bonnie Vaught stated that she did not have any unanswered questions. Joe Moloney said that he had the same information as last time.

Practical Difficulties:

Joe Moloney, no. Bonnie Vaught, no. Brian Purtee said that it was possible to build this structure and stay within the guidelines of the Ordinance. Leon Vandawater said that Mr. Dykstra has no choice. It is something he has to do in order to make it look proper. He is required to add five feet. If the text changes go through, he will be free and clear in October. Ken Vanderbilt stated that they could not make a judgment by something that may occur in the future.

Brian Purtee made a motion to deny the request for a three-foot side yard setback variance, seconded by Joe Moloney.

Tom Tyron said that he was troubled by this. This was referred to the Planning Commission and they came back with recommendations for an ordinance change. Obviously, we cannot change the law, but it seems to me Mr. Dykstra needs to expedite this. Having to wait two months for an ordinance to pass seems strange to me. The recommendation is going to be approved. It troubles me that this would be alright after it is approved.

Brian Purtee addressed a question to Roger Anderson and John Healy. He wanted to know, if the text changes were approved and went into effect, could Mr. Dykstra apply for a building permit at that time? Roger Anderson told him yes. John Healy said that he could, up to five feet.

Brian Purtee stated that he would let the motion stand.

A roll call vote showed the following:

Moloney, Purtee, Vaught and Vanderbilt: In support of the denial

Tyron and Vandawater: Opposed to the denial

Motion carried and the variance request was denied.

NEW BUSINESS:
Bonnie Vaught told the Board members that she thought that it was difficult having only seven members without alternates. She feels that a message should be given to City officials that more members need to be appointed.

COMMENT AND COMMUNICATIONS:
Kaye Holman, City Councilor at Large and Planning Commission Text Committee member, addressed the Board. She said that she has been talking to John Healy about a training session for the Zoning Board members. She said that everyone should talk to people about serving on the ZBA. She commented that the Zoning Board was very important. They took the ordinances and super defined them. She said that it was hard to find volunteers, but to her it was a great experience. She asked the members to remember that the ordinance is the law. She stated that she felt they did the right thing with their decision.

Ken Vanderbilt said that he would like to thank the Planning Commission for their fast response to the ZBA's request.

ADJOURNMENT:

Bonnie Vaught made a motion to adjourn the meeting at 7:45 p.m., seconded by Joe Moloney. Motion carried unanimously.

Respectfully submitted,
Carol Ann Foote, Recording Secretary