CITY OF LUDINGTON
BOARD OF ZONING APPEALS
Minutes –August 17, 2004

A regular meeting of the Ludington Board of Zoning Appeals was held on August 17, 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, John Markov and Bonnie Vaught.

ABSENT: (excused) Brian Purtee

ALSO PRESENT: Building Inspector, John Healy and Recording Secretary Carol Ann Foote

ROLL CALL: The roll call gave the above results.

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

MINUTES: A motion was made by Bonnie Vaught to approve the minutes of March 16m 2004, as written, seconded Joe Moloney. Motion carried unanimously.

PUBLIC HEARING:
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.

Greg Dykstra, 510 N. Harrison St., told the Board that the reason he needed this variance was that in the 40's, the existing garage was built in such a manner that it was not very safe. It is made of 2 x 4 construction. I have been battling this problem for years. Mr. Dykstra presented pictures of the structure. It will not handle weight load, and with snow and ice build up it collapses and leaks. It is not ventilated and has poor insulation. The porch area was constructed the same way. They nailed the 2 x 4's into the eaves of the existing house. Over the years, the eaves have failed and are now collapsing. That portion of the house is basically unusable. Electrical sockets are filling with water in the wintertime and insulation is mildewing. It is a continual problem. I am attempting to remove the roof off the rest of the house and use engineered trusses to truss the end all the way over to include the entryway and porch. Building under the existing rules, the porch would be about 1 ½ ft. wide.

Tom Tyron asked if this would extend to the existing garage in the alley. Mr. Dykstra said that he would actually be shortening it by five feet to stay away from the garage. He said all he was asking for was three feet towards Fitch St. to allow him an adequate size porch.

Joe Moloney asked if the issue was the length of the trusses, not the width. Mr. Dykstra stated that he wanted to go over the entryway. Bonnie Vaught asked if he wanted a covered porch. Mr. Dykstra said that it would be a covered porch. Joe Moloney asked if the entire porch would be encroaching in the setback or just the stairs. Mr. Dykstra said that it would be the entire porch and he would build the stairs within that space.

Bonnie Vaught stated that he could be within five feet of the lot line with an uncovered porch. Mr. Dykstra said that in order for things to fit right, he was asking for the variance. He said that all of his neighbors to the east have porches that come out further than his. Tom Tyron asked if there would be room for a sidewalk after this was done. Mr. Dykstra told him that there would be. He stated that this was necessary to have a safe, usable part of his house.

Close Public Hearing.

The recording secretary sent out fifty-four notices and had five responses. The Chair read the five letters and they were all in favor of Mr. Dykstra's request.

The Board then went through the standards for a dimensional variance.

1. Practical Difficulty:

Bonnie Vaught said that there was no practical difficulty. Leon Vandawater stated that after looking at the situation, in order to make it look right, he had a problem. Tom Tyron said that the house placement was unique. That would be a difficulty. John Markov said that the house was placed too far to the south. Bonnie Vaught stated that it would be the property itself that should be unique, not the structure. She said there are many houses on corner lots that have been placed in a different position because you have two streets abutting the property. It doesn't make this particular property unique.

John Healy told the Board that typically in zoning, it would be the land itself. For example, if you cannot satisfy a setback because there may be a lake, river, stream or hill. Normally a practical difficulty would be with the land itself. In zoning, there is no definition for a variance as far as property. It is your responsibility to determine the practical difficulty, if one exists and the reason it does exists. You will need to evaluate what the intent and purpose of the Ordinance is and try to uphold the Ordinance itself. If someone cannot comply with the Ordinance, what is unique about the property that prohibits compliance?

Bonnie Vaught stated that this particular property is similar to many corner properties that have two streets. Perhaps this should be addressed in the Zoning Ordinance. I don't think this property is unique because there are so many just like it. A porch can be built without encroaching. This may be something that should be addressed by the Planning Commission.

Ken Vanderbilt stated that the practical difficulty has to be more than a personal inconvenience. Tom Tyron said that you have to meet certain requirement in terms of an entryway. Seems to me this is a practical difficulty because he can't even put in a set of stairs without violating the setback. Bonnie Vaught said that he could build it uncovered.

Leon Vandawater, Tom Tyron and John Markov said that there were practical difficulties. Bonne Vaught, Ken Vanderbilt and Joe Moloney said that there were not practical difficulties.

2. Detrimental to the adjacent properties:
The Board agreed unanimously that the variance would not be detrimental to adjacent properties.

3. Is the variance in keeping with the intent and purpose of the Zoning Ordinance:

Bonnie Vaught said no. Leon Vandawater stated that anytime you have a variance it is not in the intent of the Zoning Ordinance.

4. Does the hardship or practical difficulty involve more than personal inconvenience and financial hardship:

Bonnie Vaught said no. Leon Vandawater said that he did not have a choice but to remodel and it fits in.

Bonnie Vaught made a motion to deny the request for a three-foot side yard setback variance, seconded by Joe Moloney. Roll call vote showed the following results:
Joe Moloney, yes Tom Tyron, no Ken Vanderbilt, yes Leon Vandawater, no John Markov, no Bonnie Vaught, yes

Tom Tyron made a motion to refer the issue to the Planning Commission, seconded by Bonnie Vaught. Motion carried unanimously.

Bonnie wanted to know what to do about the tie vote. John Healy stated that he would have to get a ruling from legal council. You may consider tabling until we get a ruling.

Joe Moloney made a motion to table the issue until a determination was made on the procedure for a tie vote, seconded by Bonnie Vaught. Motion carried unanimously.

Bonnie Vaught made a motion to reconvene on Wednesday, September 8 at 7:00 p.m., seconded by Joe Moloney. Motion carried unanimously.

OLD BUSINESS:
None

NEW BUSINESS:
Bonnie Vaught commented that the Michigan Planner that the members receive monthly was not helpful to her. If it would save money, she did not want to receive it. The other members, with the exception of Joe Moloney, agreed with her. Mr. Moloney stated that it was helpful to him, especially relating to the Planning Commission.

COMMENT AND COMMUNICATIONS:
Greg Dykstra stated that he wanted to find out the rule on a tie vote. Another meeting may not be necessary. The situation now is that there is a time constraint and I will have to proceed. The permits need to be in place.

ADJOURNMENT:

Bonnie Vaught made a motion to adjourn the meeting at 8:05 p.m., seconded by Leon Vandawater. Motion carried unanimously.

Respectfully submitted,
Carol Ann Foote, Recording Secretary