

**MINUTES OF THE
CITY OF ST. CLAIR SHORES
ZONING BOARD OF APPEALS
APRIL 1, 2021**

Present:

Tony Bellestri, Chairman
Steve Scavone, Vice-Chairman
Duane Michno
Mark Moffitt, Alternate
Thomas Budnick, Secretary
Lee Bertolo
Peter Stellas

Alternates:

Thomas McKenney

Absent:

Bill Lince, Excused

Also, Present:

Robert Ihrle, City Attorney
Shantelle Hubbard, Recording Secretary
Chris Rayes, Community Director

Call to Order

Chairman Bellestri called the meeting to order at 7:00 p.m., roll was called and a quorum was present. The Pledge of Allegiance was said by all. Secretary Budnick instructed the petitioner that it is understood by the Zoning Board of Appeals that their presence here tonight constitutes that they are a legal representative of the petitioner and that each statement of intent, promise and/or pledge, made by the petitioner or agent, either orally or in writing, permitted by ordinance shall be binding upon the petitioner and shall be a condition of set variance if approved.

It was moved by Vice-Chairman Scavone, supported by Commissioner Michno, to excuse Commissioner Lince from tonight's meeting.

A roll call vote was taken.

Ayes: All

Nays: None

Absent: Lince

Motion: Passed

Case No. 17-2021 – Jerry Monte for Village Super Market Inc. – 28510 Harper

Re: ASSESSOR'S PLAT NO 24 (L15, P6-7) LOTS 31-34; ALSO, STANLEY PARK SUBDIVISION, LOTS 253-255 EXC THAT PART TAKEN FOR HARPER AVE

Location: North of Martin, East of Harper

REQUEST: Petition to request for variance to allow the outdoor sale of seasonal products. (*Zoning Ordinance 15.263, Sec 35.37 (1), General Requirements*)

Jerry Monte, Sterling Heights, he is requesting a variance to allow the outdoor sale of seasonal products for five years. Chairman Bellestri asked if there any complaints. Mr. Rayes stated "no".

Chairman Scavone asked if there are any changes from the plans of the last few years. The petitioner stated that this will be in the front of the parking lot. No issues with the fire lanes. It will be from May 1st to October 31st.

Correspondence: None

Audience Participation: None

It was moved by Commissioner Michno, supported by Vice-Chairman Scavone, to approve the request for a variance to allow the outdoor sale of seasonal products from May 1st to October 31st for three years. They have always been in compliance.

A roll call vote was taken.

Ayes: All

Nays: None

Absent: Lince

Motion: Passed

Case No. 08-2021 – Annemarie Switchulis – 22588 Ardmore (tabled from 2/4/21 ZBA meeting)

Re: ARDMORE PARK SUBDIVISION (L22, P38) LOT 58

Location: South of Eleven Mile Rd, East of Jefferson

REQUEST: Request for five-foot total height variance for a new house. (*Zoning Ordinance 15.481, Schedule of Regulations*)

Carlo Romita, Rochester Hills, representative for 22588 Ardmore.

Mr. Ihrie, city attorney, asked the chairman as to his understanding the request for a variance was requested back on February 4th meeting and it was tabled to this meeting. So, he was asked regarding correspondence that was dated March 31, 2021 that was signed by some of the homeowners in the area. This particular letter can be acknowledged of being received and upon further consideration this matter was tabled so the petitioner has already made his request and the audience participation portion of this has actually already occurred. This is not a new matter it is a tabled matter unless there is something dramatically different than what was presented to the ZBA last time there is no need to hear the petitioner's request again because the board has already heard the request. The only exception there was an alternate that is here tonight that was not here two meetings ago. Chairman Bellestri agreed. The chair has two choices either allow the petitioner to proceed with only six members which they will need 4 votes because this is a dimensional variance four out of six as opposed to four out of seven or the chair could decide to go with all seven members including the alternate but at that point the chair in order to allow that alternate to vote would need to hear from the petitioner and need to hear from members of the audience essentially to enlighten the alternate. Either of those is appropriate if the ZBA wants to proceed without the alternate they could do so. If it does then the petitioner does not need to make his presentation unless there is something different than what he said before. There would not be public participation and they would not acknowledge the receipt of the

March 31st correspondence because that is public input after the fact that the matter was heard.

Mr. Ihrle stated that if it changed from a five-foot request and his understanding that it may have then the petitioner shall at least inform the board of that change.

It was moved by Secretary Budnick, supported by Commissioner Stellas, to continue the tabled meeting with the six members that were present at the February 4th meeting.

A roll call vote was taken.

Ayes: Budnick, Stellas, Bertolo, Michno, Scavone, Bellestri

Nays: None

Absent: Lince

Motion: Passed

Carlo Romita, Rochester Hills, general contractor for Annemarie Switchulis, he is requesting two feet for total height variance for a new house. They took the advice they reduced the total height from 35' to 32'. This is a 3' decrease in overall height tabled from last couple meetings ago. They are asking for a total 2' height variance due to the floodplain. Their concern is when the lake rises it puts the floodplain higher towards the home. This floodplain is not just for 22588 Ardmore Park home this is for the whole street. They feel with the new construction home they can control the building process of it if they can get a 2' variance to raise it up a little bit they can control damages if there is ever a flood. He mentioned the Jefferson Road in regards to the flooding.

Mr. Ihrle asked how has his request changed? Mr. Romita indicated that it has changed from a 5' request to a 2' request. That should be it for the petitioner. Mr. Romita stated that he went from 35' to 32' total height. The petitioner mentioned that the street of Ardmore Park allows 32' maximum.

A gentleman spoke out loud to be heard. Mr. Ihrle stated to the chairman that he recommends that this gentleman be advised that the issue has been brought to the board and it is the board consideration. Mr. Ihrle stated that if the chairman wants to entertain other people disputes it certainly have the right to. If they do that then he will recommend that everyone has to.

Commissioner Stellas wants to make the motion to deny request for a 2' variance initial and subsequent showings. Necessity to create another non-conforming area of the guiding principle the ZBA is not here to create non-conformity. This is a self-created by design. Overall, the individual heights in the floors raised the necessity to build that high and the basement from where it was ground level above to where the first floor was and this is self-created.

Vice-Chairman Scavone asked Mr. Ihrle can we ask the petitioner questions about the changes. He stated the board has a right to if they choose so.

Vice-Chairman Scavone asked the petitioner just pertaining to the height have any heights changed in the proposed floors? Mr. Romita stated that they brought the trusses down.

Vice-Chairman Scavone has any of the floors increased since he was here last. Mr. Romita stated that it stayed the same.

Chairman Bellestri stated that it was a 12/14 pitch now it is a 12/12 pitch. Mr. Romita stated "yes".

Vice-Chairman Scavone asked about the practical difficulty. It should be higher 2' higher because of the flood plain and the higher lake levels. Mr. Romita stated "correct". Vice-Chairman Scavone stated that there is a practical reason. Mr. Romita stated that the final revised prints will be turned in. It will be a proper print according to the City of St. Clair Shores.

Vice-Chairman Scavone asked Mr. Rayes there was some correspondence that there are other houses on this street that are 32 feet as part of the Ardmore Park Association. Is this true? Mr. Rayes stated he does know if there are homes 32 feet in height. Vice-Chairman Scavone stated that there was a gentleman on the letter from the last meeting stated that his house is 32 feet. There was an address and he could not find the variance. How did this person have a 32' in height for their house without a variance? Mr. Rayes stated he is not sure he will look into it.

Mr. Rayes stated that his understanding that they sent it to us and it is 32'. Vice-Chairman Scavone stated that the city ordinance is stricter. Resident spoke out stating that city council gave that resident permission to build that house at 32' total height. Mr. Rayes stated that there was a time that city council gave variances for height. The planning and zoning act took those powers away from city council so now it comes before ZBA.

Mr. Ihrie stated that the City of St. Clair Shores has many neighborhoods that have homeowner associations. Those homeowners' associations do set forth on a majority vote very early in the development of the homeowner's associations for various restrictions on how homes are built. Those are private restrictions they have nothing to do with the City of St. Clair Shores. City of St. Clair Shores addresses dimensional matters according to the ordinance. If the ordinance is appealed it goes to the Zoning Board of Appeals. Zoning Board of Appeals is not an enforcement body for homeowners' associations restrictions whether this particular homeowner association had a 34-foot restriction this should neither encourage or discourage the Zoning Board of Appeals to decide to grant or not grant this particular variance. What should govern this board is whether or not this request for a dimensional variance has met the four or five requirements that are in the law which have been repeated to this board numerous times including whether or not this problem is self-created, whether or not the property is still usable under the ordinances as they are written, etc. Those are the considerations that the board should make this decision on. And whatever the decision is the board should identify for the minutes why they made their decision and why they believe that those factors have been complied with. There are four or five factors if anyone of them have not been satisfied then the petition should fail. If all five have been satisfied then the Zoning Board of Appeals has the authority to proceed forward and approve the variance request.

Commissioner Stellas made a motion to deny. This problem is a self-created. The ceiling height that if in fact that it is not granted the property will still be usable at a lessor height

building. He has not met all of the requirements necessary to obtain the variance. The motion was not supported.

Commissioner Michno make a motion to approve with the reason that the petitioner is asking for 3 feet less than the original he had on paper which is allowed. This is a practical difficulty dimensional situation. He believes that he has confided with the five prongs of practical difficulty. It is not self-created because it has to do with the total design of the home. The pitch of the roof. This whole thing was designed before the ordinance was even changed.

Mr. Ihrle stated that many of these cases have an emotional component to it. This board recognizes that and he knows that the people in the audience are very much involved and have great interests in the decision that this board has made and will make. Even if a board member makes a mistake or says something or votes in a way that the public believes that it is wrong it does not give the public the right to speak out without being recognized. He would ask the public respect the board and the board respect the audience to get through this and do it in a way that it does not allowed the meeting to turn into a meeting that is disruptive and it will require the chair to take action. If that cannot happen then he will recommend that this meeting adjourn for a period and take a break and then we will come back and address other issues that are on the agenda and come back to this agenda item at a later time. He will respectfully request that we can get through this without speaking out without being recognized.

Commissioner Michno in regards to self-created problem. This is not a problem this house is not unlike those other houses on Ardmore Park. This is a beautiful house on Ardmore park. This home will actually beautify the neighborhood. His opinion the gentleman is designing the home that meets the criteria of the neighborhood.

Vice-Chairman Scavone stated that the practical difficulty here is that they have granted many variances of a couple feet. He thinks there is a legitimate practical difficulty here. He stated that 5' he doesn't feel that this would be prudent but 2' to get this up on a little higher ground. They don't want to build a new house so low to the ground where we had a lot of water coming over a lot of the seawalls along the lake. He thinks that it is responsible to build a house a little higher off of the ground to keep them somewhat dry and out of trouble. FEMA just raised the flood plain and a lot of people that have mortgages received letters stating that they now need flood insurance. And it is responsible of the petitioner to maybe raise it a little to get to a higher ground. Two feet is in line with what they granted to other residents along the lake shore. This is just his opinion.

It was moved by Commissioner Michno, supported by Vice-Chairman Scavone, to approve the request for a two-foot total height variance for a new house.

A roll call vote was taken.

Ayes: Michno, Scavone, Bertolo, Bellestri

Nays: Budnick, Stellas

Abstain: Moffitt

Absent: Lince

Motion: Passed

Case No. 15-2021 – Dr. James Lynch for Beaumont Hospital – 21400 Eleven Mile Rd

Re: CASPER HOFFMAN COMPANY'S SUPERHIGHWAY ALL OF LOTS 65-80, INCL PART OF LOT 241, ALL OF LOTS 242-248, VAC ALLY TO THE SLY LINE OF SD LOTS 65 THRU 80 INCL., PART OF VAC CEDAR AVE CONTIG TO THE SLY LINE OF SD LOTS 241 THRU 248 INCL AND PT OF LOTS 313 AND 314, DESC AS; BEG AT THE NE COR OF SD LOT 80, TH ALG THE NLY LINE OF LOT 65 THRU 80, AND THE SLY LINE OF ELEVEN MILE RD, 135 FT WIDE, S87°24'30" W 320.05 FT TH ALG THE WLY LINE OF LOT 65, EXT SLY AND THE WLY LINE OF SD LOTS 248 AND 313 AND THE EXTENSIONS THERE OF S2°51'55"E 324.17 FT, TH N87°24'30"E 41.50 FT; TH N41°30'47"E 59.86 FT, TH N87°24'30"E 149.50 FT; TH N2°2'30"W 40.70 FT; TH N87°24'30"E 98 FT TH N2°2'30"W 10.50 FT; TH ALG THE ELY LINE OF SD LOT 241, N1°58'30"W 64 FT; TH N18°38'14"W 47.85 FT; TH ALG THE ELY LINE OF SD LOT 80 AND ITS EXT SLY N2°28'50"W 120 FT TO POB

Location: South of Eleven Mile Rd, West of Harper

REQUEST: Permanent use variance to allow a mobile imaging unit within an O-1 Office District. (*Zoning Ordinance 15.200 Office Service District*)

Robert Kilpatrick, Chesterfield, MI and David Tremberth, St. Clair Shores, MI, they are here to get a permanent use variance for the mobile MRI unit and they have been coming here for three years. They would like to make it permanent. Nothing has been changed since the beginning.

Mr. Ihrle asked the petitioner if they have a certificate of need from the State of Michigan. Petitioners responded "yes". His understanding was that when there is certificate of need for a mobile unit that there must be a certain number of patients that get the MRIs at that mobile unit and at that point the unit moves inside the building. This is not an obligation it is a right to move in. The state will allow the mobile unit to stay outside even if they met the numbers. The petitioners agreed.

Correspondence: None

Audience Participation: None

Mr. Rayes stated to Commissioner Michno that this is not a temporary use request it is a permanent use request.

Commissioner Michno stated that it is not showing a picture. There is a four-pin unit. It is probably the power of the unit itself. Commissioner Michno said it was hanging loose. He believes that it was a 440 and it needs to be locked. The other box to the south of the door has a lock on it. He showed the petitioners the box with no lock on it. The MRI unit was not there. Petitioners stated that they will take a look at it.

Commissioner Michno stated that this is from a safety standpoint.

Vice-Chairman Scavone asked Mr. Ihrle setting aside that they are asking for a permanent use if they were to come back for 5 years for a temporary use. Mr. Ihrle stated that he does not think so.

Vice-Chairman Scavone asked if they have a Certificate of need for this location. The petitioners stated that they do. It is part of a mobile route.

Vice-Chairman Scavone stated that particular location it has been many years since they have been in front of the board. There are other mobile units in the city that they have been diligent of coming here every year. At this time, he would not be in favor for the permanent use. The city would lose control over monitoring things. Having it there it helps out a lot of citizens and residents of our city. And same with Commissioner Michno saw things that were not safe.

Commissioner Michno stated that they asked for a permanent use to accommodate them. Can we make it for one year? Mr. Ihrle stated that since that would be less in what they are asking for it would be a yes.

Secretary Budnick asked Mr. Rayes have we granted longer than a year for a situation like this? Mr. Rayes stated the last one we had was the gentleman on 8 mile and he is not sure what the board gave him. He doesn't think that the way we revised the ordinance allows for more than a year. He will look into it this type of temporary use as opposed to the outdoor flower sale.

Secretary Budnick asked the petitioner if there are any plans to build a permanent building for this in the future. The petitioners stated not at this time.

Commissioner Michno asked the petitioners if they consider changing it from permanent use to a one year. Mr. Ihrle stated that the board will have the lawful right to grant it for one year and next year they may apply for the same thing. We don't need to go through a new notice because they are asking for less than what was requested.

Commissioner Michno stated to the petitioners to maintain those locks carefully. This is for three days a week Friday, Saturday and Sunday.

It was moved by Commissioner Michno, supported by Commissioner Budnick, to approve the request for a use variance to allow a mobile imaging unit within an O-1 Office District for the period of one year and this will be for three days a week Friday, Saturday and Sunday and to maintain those locks.

A roll call vote was taken.

Ayes: Michno, Budnick, Moffitt, Scavone, Stellas, Bellestri

Nays: Bertolo

Absent: Lince

Motion: Passed

Case No. 16-2021 – Pratik Bhattacharya and Philip Fortier– 29924 Jefferson

Re: ASSESSOR'S PLAT NO 30 (L15, P13) LOT 12

Location: North of Twelve Mile Rd, East of Jefferson

REQUEST: Request for one-foot side yard setback variances on the north and south sides of property for a second story balcony on a new house. Request for an eleven-foot front yard setback variance for a new house. Request for an eleven-foot height variance for an architectural roof spire on a new house. Request for a variance to allow a third story within a single-family residential district. Request for a variance to allow a garage to be placed more than five feet forward of the front porch of a new house. Request for a variance to allow a garage to exceed 55% of the front façade of a new house. (*Zoning Ordinance 15.481, Schedule of Regulations*)

Donn Bohde, Pratik Bhattacharya and Phil Fortier, the petitioners, we have five variance requests. There is an existing home that is on the property. This is a cottage that was built in the 40's rather especially with the high-water situation. The surrounding properties slopes down to the house. For many years the crawlspace was always filled with water. The house has to come down. They came with two things that had to be when designing the home. It had to be kind to the neighbors in terms of its design. It had to go to some degree to repair or to make it better with engineering situation being that the site is so low. With the increasing of the flood plain they had an engineering firm to create swales and a storm water sewer on the site itself. The hardship would be the site is only 48 feet wide it is a narrow site. They have done everything that they can do to meet the zoning ordinance. With the FEMA map changing in December, they had to come up with restrictions in terms of even though they can go to a 4 feet side setback they had to bring the building in even farther than that to create enough side yard so they can get a proper swale that carries their water to the storm sewer in the back of the property. By doing those things they have met the criteria in terms of the design when it comes to the engineering of the site and the hardship is that they are in the flood plains and the width of the property.

Mr. Bohde is going through the plans with the board. They don't have enough width to have a side drive. The house is only 37 feet wide because they need the additional side yards to create the swales and put in the piping for a storm sewer. They purchased stain glass windows from a church. They created a west and an east tower. The stain glass windows will be placed there. The garage is facing the north due to the size of the narrow lot. They have an agreement with the neighbor to the north that they can utilize one of those drives. Mr. Bohde stated that the garage was able to make use of the adjacent property driveway and 45 degrees on the end wall to alleviate any restrictions towards the neighbors. The second floor they have a library that is open. They are not asking for the height variance they are in compliant. They will have a mezzanine this area is only 62 sq. ft. The intention is to go up to that level to see the lake. They have followed the views out towards the lake there is no viewing to the neighbors. With the 45-degree end walls they have everything to make sure that the views are not impeded. He showed the model to the board. All of the roof areas within the maximum heights. They did a study with the actual views. They are actually improving the view of the lake from the neighbor house beyond what they have today.

The first variance has to do with the front yard setback and it is 95 feet from centerline of Jefferson Avenue to the front setback line. They are encroaching about 10 feet into the front yard setback they don't have any encroachments in the rear yard to not interfere with the views of the lake. The residence on the south encroaches more than 30 feet and the residence on the north encroaches about 12 feet. Traveling north bound they will not see the house on the north side. The reason why the garage is 45 degrees per agreement from the neighbors they gave them the opportunity to put in landscaping so traveling south no one will be able to see the garage to the south. Even they are encroaching the 10 feet they are only talking about 104 square feet of the area of the garage that is encroaching into the front yard. The hardship would be because of the width of the property and the width of the home itself. He went over the landscape plans.

Second variance is to permit an attached garage to exceed 55 percent of the frontage of the home. Looking at the pictures that they exceed more than 55 percent. It would be 55% of 37 feet would be 20 feet. The interior dimension is 19 feet. The intention of the zoning ordinance is no one wants to see large garage doors going up and down Jefferson by putting the vegetation there it will be not visualized going south.

The third request has to do with the garage in excess of five feet. It is difficulty to design it because it is at 10.8 feet exceeds the 5 feet so they are encroaching 5.8 feet into the separation. This would allow a nice recess area to create the porch and the main entrance into the house.

For the fourth variance Mr. Bohde stated that he should not need a variance request there is a third level. This is the loft. They are only talking about 42 sq. ft. just a library which faces the lake. He does not interpret this as a third level as much as it is a mezzanine. The zoning ordinance defines a "story" as "That part of a building except a mezzanine as defined herein, included between the surface of the next, or if there is no floor above, then the ceiling next above. The ordinance defines a mezzanine is defined as "an intermediate floor in any story which extends over only part of the main floor." The loft is within the maximum height restriction within the ordinance.

The fifth variance Mr. Bohde believes that this should not be considered. The building is so high linear to him as an architect that this fits with the gentleman being religious and having the stain glass as part of the design. It is essentially a church. The reason that it should not be considered because of Article XX Section 15.543. To him this should be exempt from the total height ordinance. Outside of these dimensions they do meet their requirements in terms of the zoning ordinance and the other requests.

Phil Fortier, petitioner, stated that they would like to start building the house. They have had many problems with the flooding of this house. The house is only 12 ft or 15 ft. from the lake. They had an engineer look at the house and he said there is no way that this house can take a second floor. They need to move the imprint of the house back. They designed this house to avoid blocking any one's view of the lake.

Correspondence: In the file

Audience Participation: Joe Vandermarliere, 29920 Jefferson, he has a business in St. Clair Shores. His house was built in 1929 during prohibition era. When updating his house, he kept it within the site lines to avoid any variances. They have worked very hard for the last two years updating it. He is not here to prevent the neighbor from building their house or improving their property. He does not agree with improving the value of their property at the expense of his property. He believes that there are six variances not five. Two variances pertain to the height of the property. The first one is the eleven-foot variance for an architectural roof spires and the second is the third story in a single-family district which they call it a mezzanine technically it is a third story. To his knowledge, no one has been approved for a third floor on Jefferson. The new house is not doing him any favors to his house. The height variance would reduce his visibility. It is outside the approved site lines ultimately resulting a hardship for his property. He consulted a third-party real estate agent who previously sold his neighbor's house to the south property last month. He provided a letter in advance stating how this was built and how it will impact his property value because his view from his master bedroom will be blocked. That is the major point in selling his property. The unique property lines of both of the houses result in their plan not fitting the plot resulting in six variances requested. The third story and height variance request result in a self-created hardship for his property. This can easily be avoided by adjusting their plans.

Mark Wood, Wildwood St., he is the associate Broker at Century 21 Town & Country Grosse Pointe. He sold them their house and his office listed the house that is just to the south of them. They were correct with the problems in the crawl when they bought the house. They have taken great care in choosing an architect. They talked about for several years on how to build something that beautifies the city and the shore line. He feels that this will increase the property values.

Jerry Bezy, St. Clair Shores, his brother and him are co-owners of the house to the north he believes that they will do a good job and they do not have any problems with all of it.

Mr. Bohde stated that the height of the building the height of the house is within the height restrictions the only limitation is the spire itself. Looking from the loft at the neighbor to the south the view of the neighbor's house the loft is way back towards the center of the building. He went over the plans. He stated that they are not interfering with any views.

Mr. Ihrle stated that in order to protect the record or with the specs of the criteria for these are all dimensional variances, could the chair or someone ask the petitioner if a smaller residence can be built on the property that would eliminate the need for one or more of the variances.

Chairman Bellestri asked the petitioner could a smaller residence be built on the property that would eliminate the need for one or more of the variances?

Mr. Bohne stated that they could build a smaller house on the lake front it would only eliminate one of the three requests. Mr. Ihrle stated that he wanted to board to consider that in terms of the variances whether or not they are self-created.

Commissioner Stellas asked Mr. Bohde if he heard correctly that his initial statement that he defined the loft of a mezzanine and reading the definition of a mezzanine he said that it was

contained within a story. The mezzanine would have to be dropped down into the second story to be considered a mezzanine not a loft.

Commissioner Stellas stated that they are asking for a one-foot side yard variance. Mr. Bohde stated that they are not asking for any side yard variances. They changed the plans to eliminate the one-foot side yard variance. This was done after the advertisement.

Commissioner Stellas said that they have owned this property for seven years. He would like to mention what Mr. Ihrie that a smaller size home would eliminate all of the necessities of the variances. Basically, the cause for these variances is desire for them to make this home in this fashion. They feel that the home they are trying to beautify. Commissioner Stellas stated that this is his definition would be self-imposed or self-inflicted. Petitioner stated that their hardship would be that they have to move away from the water because of the flooding all of the time. They are moving it back about 40 feet.

Commissioner Stellas stated that he understands that being on the water for seven years they also know that there is a lot of humidity and water does this and this is not a new item. How long is the agreement with the neighbor to utilize their driveway. He stated for years. So, a new purchaser of that property should it go up for sale they would have to renegotiate with them in order to get that easement. They can remove it. They are adding a storm sewer system under the driveway. The plans are from a civil engineer. Commissioner Stellas is talking about the utilization of the neighbor's driveway to access the garage. Mr. Bohde stated that they don't have to use their driveway it just makes it easier to get into the garage.

Mr. Bohde stated that he would like to revise his comments in regards to the design of the home being self-inflicted. Looking at the plans they are not looking at tremendously large size rooms. Because of the width restriction of 37' they have to make the building so much longer and in order to move that 10 feet off of the width of that it makes the design almost impossible. He stated it could be self-inflicted they could put a 1000 sq. ft. house on the property it's possible but why would anyone do that on a lakefront property.

Vice-Chairman Scavone stated in regards to Section 35.86 height limit it does state: "The height limitations of this ordinance shall not apply to chimneys, church spires, flag poles, public monuments, or wireless transmission towers." He asked Mr. Rayes if this is more for commercial property than not residential. Mr. Rayes stated that there are certain exceptions the antennas are under the FCC regulation so they cannot make it more restrictive. Chimneys are based on the code as well they cannot limit that because they need the height and distance for a roof. This is not a church it has church ailments. So, this would not be exempt from the height ordinance because it is a house.

Vice-Chairman Scavone stated that we don't particular protect site lines but on the lake when someone proposes a home, they look at the house the furthest point back on the north and the house to the south you try to draw a line and try to keep the house inside that line. It sticks out a little further. Is this allowed? Mr. Rayes stated that it is not specifically not allowed they try to do it the best as they can when the houses are more so in line and sometimes there saw toothed. If that garage weren't in the neighbor's yard where it is kind of an odd ball it makes it a little harder to restrict that line.

Mr. Ihrle stated they do not have a site protection ordinance in the City of St. Clair Shores and they try to do things. We have a setback both in the rear and the front. The law is the setback. If someone is within the setback they are in a lawful position if this happens to impede of a neighbor. Mr. Rayes may make suggestions. These are suggestions they are not requirements they are not policies, practices, or obligations of the city. Vice-Chairman Scavone asked if a house meets the side, front, rear yard setbacks the person building the house can place the house where they want within that approved envelope. Mr. Ihrle stated "yes".

Vice-Chairman Scavone stated that we have a new ordinance with the garage that they are aware of he thinks the ordinance needs some work because he does not think it totally takes in effect lake front properties. What we don't want on the lake and the canals someone to put a side driveway and put the house in the back of the property. It would not look attractive especially Jefferson and narrow lots. By putting the garage up and turning it the way, it is really adding a lot. He likes the angle. Most of the houses on Jefferson require the front yard setback. Many of the houses on Jefferson do not meet that. Are there any plans of widening Jefferson? Mr. Rayes stated "no plans". He disagrees with the definition of the mezzanine that looking at the cut away of their house that mezzanine would have to be an intermediate level so it would have to fall between two floors. They actually have it on the third floor. It is not allowed in our city and it definitely fits the definition of a third floor with the exception with the mezzanine and the spire it looks beautiful. He disagrees with the definition from the petitioner we have .

Commissioner Moffitt stated that the mezzanine with no windows will it be considered attic space for the third floor. Petitioner stated that the intention to provide a distance to the lake. We are kind of looking at something that they enjoy the view of the lake and still stay under the total height. Or board it up and make it an attic space and not enjoy the view. The height is because of something that they are going for the look not because of what we call the third floor or it could be attic space. Mr. Bohde stated the only thing that is different is the height of the roof it is raised a little but still within the ordinance requirement. The loft is at the top of the stairway it still needs the windows in there to let that natural light come inside the balance of the home. They have the furnace room located in the center of that stairway that goes all the way up. Depending on the requirements of the mechanical design they may need to have access to that upper level for a furnace room on that level. The only reason to have that is to have access to that floor. On the second floor the only access into that would be a door that is off of the stairway which makes it difficult to access.

It was moved by Commissioner Scavone, supported by Commissioner Budnick, to deny the request for one-foot side yard setback variance because the petitioner withdrew the request.

A roll call vote was taken.

Ayes: All

Nays: None

Absent: Lince

Motion: Passed

It was moved by Vice Chairman Scavone, supported by Commissioner Bertolo, to approve the request for an eleven-foot front yard setback variance for a new house.

Being that there are no immediate plans to widen Jefferson per Mr. Rayes. Most of the houses being built and the existing do not meet the requirements.

A roll call vote was taken.

Ayes: All

Nays: None

Absent: Lince

Motion: Passed

Commissioner Stellas asked that the way it is written about the “request for a variance to allow a third floor...” if it is approved then it will allow a third story at 364 feet. Mr. Ihrie stated as long as it fits within the footprint of the lower level.

Commissioner Michno asked if we can define a mezzanine. Vice-Chairman Scavone stated that it is “an intermediate floor in any story occupying more than one-third of the floor area of such story, but which it extends over only part of the main floor.” Commissioner Michno stated that it extends over part of the main floor. Mr. Rayes stated it would have to drop down. Vice-Chairman Scavone stated that it does not meet our mezzanine standard.

Petitioner stated that if it were denied the third floor. He would propose to leave the exterior and build it exactly the same and eliminate the third floor.

Vice-Chairman Scavone asked would this be considered an architectural detail if there was no floor up there. Mr. Rayes stated that it would be a tall ceiling.

Commissioner Moffit stated this is 62 sq. ft. including a 20 ft. seating area. This is not considered a third floor living space. He said that they should put this in the motion that they cannot put in a third floor.

It was moved by Commissioner Scavone, supported by Commissioner Stellas, to deny the request for a variance to allow a third story within a single-family residential district. They did not prove a practical difficulty. It does appear that it is self-created. It does have a floor in the third story. He does not believe it is a mezzanine as presented and as what the board states and it does not follow the ordinance.

A roll call vote was taken.

Ayes: Scavone, Stellas, Michno, Bellestri

Nays: Bertolo, Budnick, Moffitt

Absent: Lince

Motion: Passed

It was moved by Vice-Chairman Scavone, supported by Commissioner Stellas, to approve the request for a variance to allow a garage to be placed more than five feet forward of the front porch of a new house being a lot of the houses on Jefferson have front yard garages and in order not to block the houses the lake view they put the garages in the front.

A roll call vote was taken.

Ayes: All

Nays: None
Absent: Lince
Motion: Passed

It was moved by Commissioner Budnick, supported by Commissioner Michno, to approve the request for a variance to allow a garage to exceed 55% of the front façade of a new house. The existing lot is only 48 feet wide. A standard size garage would exceed that.

A roll call vote was taken.
Ayes: All
Nays: None
Absent: Lince
Motion: Passed

It was moved by Commissioner Michno, supported by Commissioner Moffitt, to approve the request for an eleven-foot height variance for an architectural roof spire on a new house because it is small and it is two feet at the base.

A roll call vote was taken.
Ayes: Michno, Moffitt, Bertolo
Nays: Stellas, Budnick, Scavone, Bellestri
Absent: Lince
Motion: Failed

Mr. Rayes stated that there are other options. They can meet with him to discuss the options.

Other Business:

APPROVAL OF THE MINUTES FROM MARCH 4, 2021 ZBA MEETING

It was moved by Commissioner Michno, supported by Commissioner Bertolo, to approve the March 4, 2021, ZBA meeting minutes.

Ayes: All
Nays: None
Absent: None
Motion: Passed

Audience participation:

Jerry Ward stated that the board allowed a variance to allow a garage to exceed 55% of the front façade. If they wanted to, they can make it 110%. There was no percentage mentioned. The same holds true for a variance to allow a garage to be placed more than five feet forward of the porch.

Mr. Ihrle stated that there is audience participation there is great temptation for those who are speaking to engage in a dialogue with the members of the board and he understands that. This is a time for those to speak in audience participation to make comments and not to engage in a dialogue with the board members.

Jerry Ward stated in relation to the Switchulis's height variance the plans that they submitted to the association on 01/03/21 showed the second-floor finished height at 9'. The plans that they submitted on 02/08/21 showed the second-floor finished at 11'. This accounts for their request for a 5-foot variance which in fact was granted. The elevation of the house. The board is concerned of the water level. The current water level is 576 today. The site plans show the elevation of the property. The house sits at 580. The point there is like a 5- or 6-foot variance at the elevation of the house, that elevation is determined by the grade level, grade level is determined by the brick ledge of the adjoining houses. That house is at 580 the property dips down 5 or 6 feet before it gets to the canal. The board's rationale for granting this variance in the relation to the water level is foolish. He does not see that they had a hardship in relation to this issue. He will file an appeal.

Sandra Skinner stated that she had to file a FOIA to get the February 4th meeting minutes and she did a little search. Centerline, Troy, Ann Arbor and Eastpointe have their ZBA meeting on virtual. Minutes online are Roseville, Grosse Pte. Woods, and Harrison Township. She would like to know who to work with to open up the meeting minutes to the public. This should be duly noted that these meeting minutes are closed to the public. One of the residents asked for the video tape through FOIA method and was denied. When it comes to the public, they feel what are they trying to hide. There was no one she can talk to at the City of St. Clair Shores and she was not allowed any feedback. Responsibility of the ZBA - During the February 4th meeting, one of the members of the board said that they heard the residents speak about a lot of different items and they are very limited to what the board can do. She does not believe this. She did some research from the Zoning Board of Appeals handbook published by Michigan Municipal League and it stated that "variances are not intended to relieve requirements of the zoning ordinance that are simply preventing applicants from doing what they wish" and that includes architectural use. She spoke at the last meeting and other neighbors did and we changed our design so we did not have to come to the board. It also said that "Zoning board of Appeals was intended to serve a safety valve in those rarely rare circumstances where the application of Zoning requirements involves practical difficulty for non-use variances or unnecessary hardship for use variances. In the meeting on February 4th the owner started to cry and a board member said don't worry we will get you what you want. Why does one home in the community must have all of these height variances where others in the community do not have a practical difficulty architectural design or hardship or found ways to overcome it. Please note we are not neighbors trying to design this house or hinder developments in St. Clair Shores. But want to support the zoning ordinance as written, as evidence by the design changes we have gone forward to comply. If the board does not deny the request for the Switchulis house and from Ardmore Park but she expects flood gates will open up with precedence architectural design and anything goes. And what grounds should you not get approved for in future variances. She is asking that the board be strong that is their role or simply change the zoning. There are a couple of the board members that are trying to make everyone happy. The last thing we were not allowed to speak about the Switchulis's house and she went to go back to the meeting minutes and the reason from Carlo Romita was it was strictly

architectural design. They were allowed to make a decision on the comment that was made about flooding. She went through the notes and nothing in the notes from February 4th meeting mentioned flooding. But they denied the public to make a statement when there was new information to make a decision on. So, they set up precedence no more new information was made of this decision that referenced about flooding. This building is two feet lower than the lot. She said look at the water tap raise it up three feet and that is where the house starts. Rules of order - she stated that she was late for the meeting but someone told her that the meeting was not brought to order. There was a motion on the floor to deny the roof variance. There was silence. Silence does not mean that the motion was tabled. New information was used but public comments were silenced.

Sam Gizzi, 22578 Ardmore Park, stated that his house is impacted by the Switchulis house. The big problem is the garage it is 42 feet in front of the house. They gave a 28 feet exemption. Granting waiver on height because of the lake level that is a false premise. The height of the house is based on the brick level. They cannot raise two feet higher than the neighbor's house it will flood the basements of the adjacent houses. His house is the highest point in St. Clair Shores they are only two doors away so they are pretty high up. Whatever problems they have are self-created, they moved the house because of the garage so far back close to the lake. They are digging a boat well so now the lake is 40 feet closer. So, if there any water problems they are self-inflicted. They received a variance without a hardship for the garage. Today is the height of the building. If they don't have the hardship if they can get the support of the neighborhood people that are close proximity and say we like the project it isn't a problem and let it happen. No one knew anything about it. The project didn't go well. The Switchulis did not talk to anyone about this project. He said that everyone would have appreciated if they let them speak. They felt that they did not have all of the information.

Shawn Lilly, 22609 Ardmore, he has been there for 24 years. They have a strong street association. They are proud of their community. We look to the board to help protect their investments, their street and their homes with the ordinances. The facts in what he sees when granting some of the variances something in which is the design is not self-induced hardship and not self-created but they are granting a lot of the variances not based on that standard. They seem to be using a slightly different standard. He participated in the February 4th meeting and the five-foot variance was tabled it was not discussed. This meeting it was discussed a five-foot variance. Now it changed from five feet to two feet and then it was stated that there is no audience participation. Disappointed in them that they look to them to protect their interests. They should take in consideration the neighborhood. There is a good example where they did not protect their interest, he stated that it is the house next to him it looks like a bank. They put commercial brick on it. The house continuing to sink it is actually pulling down his foundation and it is shading his roof causing mildew and deteriorating. The board is not protecting the interest of the people of Ardmore. He is not sure that it has to do with them looking at larger newer projects for tax rates or revenue. When the agenda item changed from 5' to 2' variance it was a new item they need to open it up to the residents and they should put extra weight on the problems. He thinks that they ignore the neighbors directly to the east and west. On Ardmore they took no considerations to that. This house will block a lot of the water views.

Edward Pokoj, 22606 Ardmore Park, longtime resident. We granted some of the Switchulis variances not only there was an egress window in the back of the house they are within 15

feet of the utility easement. This is a lack of consideration and a lack of attention that the board was given. There are a lot of issues that are going on and on. No protection of the residents.

Larry Beaver, 23017 Ardmore, this is a waste of our tax money. He stated to Commissioner Michno that those plans were drawn up in November the ordinance changed in September.

Michael Ciuchna, 23026 Ardmore, when they look at the ordinance on the setback it was five feet from the front of the garage to the front of the facade. They are asking for a 28-foot variance they don't even consider the fact the variations on the drawings. They are 43 feet from the front to the front of the façade. The house is pushed 43 feet back in front of the garage. There were revisions on his drawings that don't exist. There were things that were added. The numbers don't add up. He believes that this should be revisited. This is not protecting their interests or their property values.

Mr. Ihrle spoke to the ZBA from the podium to reaffirm the role of the Board. Mr. Ihrle stated the Ordinances passed by the legislative branch of St. Clair Shores, City Council, are law. State law says sometimes those ordinances cannot be complied with, therefore that Ordinance requirement can be appealed to the Zoning Board of Appeals. The old rule that if there are repeated requested for relief from the same requirement it is probably an indication that that part of the ordinance needs to change. If someone comes to the Zoning Board of Appeals requesting multiple variances it is likely an indicator, they probably want to put something on that property that should not be erected on that property. When someone buys a piece property and tear down the house and then want to put something on that property it would be fine if they do it within the ordinance. If not, they come to the Zoning Board of Appeals. Sometimes a petitioner presents a plan that architecturally that they want to put on the property, and they cannot do it because they design outside the parameters of the Ordinances. They then bring it to the board and make a great pitch and they ZBA feels they are being put in the middle because the petitioner has not practical difficulty and the Board has to make a hard decision. If the petitioner is asked if they could put a smaller house on this property to eliminate some of the variances and the answer is yes but it would be a much smaller house that response does not meet the standard for a variance. When the petitioner choses to buy property where the Ordinance allows for a 1,000 sq. ft. house but they propose putting in a 3800 sq. ft. house it is likely they purchased the wrong size parcel to build that house. Another self-created hardship is when a petitioner purchases a property, and they decide to split in two lots. They then come before the Board and complain that they cannot put the house on the lot they just split – this is self-created. A lot is undevelopable when they cannot put a house on a property. Wanting to build a bigger house on a smaller lot is a self-created problem. When a petitioner proposes a spire that exceeds the Ordinance, is the property developable without the spire? They like it, other people like it, it makes the neighborhood look nice, none of those are reasons to grant a variance. The city got sued on this and the lawyers that sued ask where in the minutes where the city found a practical difficulty and ask where did they find a practical difficulty in granting the variance? Mr. Ihrle outline there are five elements the Board needs to consider when granting a variance. Mr. Ihrle stated that we need to either deny variances that are not hardships of that the City Council needs to review the Ordinance and decide if they want to make changes to allow for items not currently permissible. The Board simply has standards that they must comply with. Sometimes there are gray areas. Here is what the law says as long as they are giving the reason why they approve something the Circuit

Court will almost never second guess their decision. If it is not in the minutes, it is hard to defend. Granting variances should be the minority not the majority. The standard as to what should go on a piece of property which was set by City Council is the law. To change the law, they have to have certain findings. We need to be able to hold up our meeting minutes and say they may not agree with what the Board says but here are the reasons why. We must be careful when granting a variance and Mr. Ihrle he does not envy their position. The default position that they should have to answer is going to be no unless the petitioner can prove to the Board that they fall within these exceptions. The petitioner has the burden to prove to the Board. Mr. Ihrle outlined the following standards for granting a variance:

- 1) The property within itself for dimensional variance has unique conditions and circumstances that exist which are peculiar to that land or structure or building which are not generally applicable to other lands, structures and buildings in a district.
- 2) That the literal interpretation of the provisions of the ordinance will deprive the applicant.
- 3) The special conditions and circumstances that the petitioner brings before the board did not result from the actions of the petitioner itself. That is self-created.
- 4) The granting of the petition would not generally be in harmony with the neighborhood
- 5) The variance will not be injurious to the neighborhood or otherwise detrimental to general welfare of the city.

From a ZBA perspective the petitioner has to prove all five. If ZBA finds that one of them was complied with is justification to deny the request. We will get sued in these highly emotional ones if the detail stuff has not been taken care of. The judges will probably second guess them they don't second guess ZBA as long as the detail work is done in the minutes.

Commissioner Stellas stated one of the things that they sometimes face is the fact that on the sheet itself it is asking the petitioner as to what is their hardship. The second page is a listing of what is considered the hardship and we do not want people arguing with someone that they are taking an application. Does the staff have the right to say that this application is incomplete and deny their application? Mr. Ihrle stated, the staff probably could say they did not fill it out completely. To say fill it out and come back again Mr. Ihrle stated that he doesn't think the staff should. Dimensional variance should be practical difficulty.

Mr. Rayes responded to Commissioner Stellas concern that the petitioners want us to them the answer to the question, so, they put nothing on the application. Mr. Rayes stated the petitioner usually do not have a reason that meets the standards, they think if they pay the fee to appear they can get a variance.

Commissioner Stellas stated what is their hardship or practical difficulty and they cannot tell us we should say no.

Mr. Ihrle stated that this is what we hear about 80% of the time. Their practical difficulty is unless the Board grants them the requested variance, they will not get what they want on this property. That is what is mostly being said so what happens? ZBA thinks that their baseline position is how would they get that if they do not give them a height variance or side yard that was never the question. The question that should be asked is, is the property developable if they put something smaller on the property? The petitioner response would

be to say that is not what they want. That is not the issue. If that were the issue the City Council would have passed Ordinances that say we want to make sure that this guy can build a house of this size, with this height and with these dimensions and we want to make sure that we pass ordinances for that guy to get what they want. If they didn't pass those ordinances that is the legislative body say to not pass it. There are exceptions it is up to the Board to find those exceptions. If the City Council starts to get complaints and calls the city is saying that they cannot build what they want, if there is enough of those calls this is how the City Councils generally consider making changes to the Ordinances.

Commissioner Michno was talking about residents that spoke during audience participation.

Mr. Ihrie would like to set a time to go over the procedures with the ZBA board.

Vice-Chairman Scavone stated he is talking about Switchulis house a couple months ago he made the motion but why he made the motion that house it was all about the garage in the front. The last three or four homes that were built on this street that they approved all had the similar footprint as this house. The garage in the front with a side entry garage. Vice-Chairman Scavone felt it was conforming with many of the neighboring newer homes on the street.

Mr. Ihrie stated practical difficulty they need all five issues. Whoever is making the motion states that they approve the motion and they mention all five prongs and it was not self-created. It is second by another board member. When roll call is made each person voting states "for the reason stated by the motion maker I vote yes". Each one of them can address all five issues. Motion to deny should have reasons why. They will do the same thing with unnecessary hardship.

Vice-Chairman Scavone would like an annual review by one of the attorneys just to keep them on course.

Adjournment:

It was moved by Commissioner Bertolo, supported by Commissioner Moffitt, to adjourn the meeting at 10:09 p.m.

Ayes: All

Nays: None

Absent: None

Motion: Passed