**City of Marine City**

**Zoning Board of Appeals**

**December 7, 2022**

A regular meeting of the Marine City Zoning Board of Appeals was held on Wednesday, December 7, 2020 at 260 South Parker St., Marine City, and was called to order by Chairperson Weil at 7:04 pm.

The Pledge of Allegiance was led by Chairperson Weil.

**Present: Chairperson Kim Weil; Board Members Mark Bassham, James Turner; Planning Commissioner Graham Allan; City Commissioner Rita Roehrig; City Manager Holly Tatman, Deputy Clerk Michele Goodrich**

**Also in Attendance: City Attorney Robert Davis; Building Official Tracy Kallek**

**Training Session**

City Attorney Davis presented and discussed the Zoning Board of Appeals 2022 Training Packet.

**Communications**

None.

**Approve Agenda**

Motion by Planning Commissioner Allan, seconded by Board Member Turner, to approve the Agenda. All Ayes. Motion Carried.

**Public Comment**

None.

**Approve Minutes**

Motion by Board Member Turner, seconded by Planning Commissioner Allan, to approve the Minutes of the Regular Meeting of the Zoning Board of Appeals held March 4, 2020. All Ayes. Motion Carried.

**Unfinished Business**

None.

**New Business**

Public Hearing – Variance #22-01: 452 S. Market St.

Chairperson Weil announced that the Zoning Board of Appeals would conduct a Public Hearing to receive public comments for and against the proposed Variance request by David Papin and Marilyn Papin at 452 S. Market St.

Motion by Chairperson Weil, seconded by Planning Commissioner Allan, to open the Public Hearing on Variance Request 22-01: 452 S. Market St. at 7:38pm. All Ayes. Motion Carried.

Chairperson Weil read aloud a letter received at the City Offices on 12/06/2022, submitted by Chris and Suzanna DeVeny in opposition of the variance request.

Chris DeVeny spoke in opposition of the variance request, and informed the Board that his family was still dealing with the aftermath of the fire that destroyed the Papin’s garage and the damage it caused to his family. He stated that he wanted his neighbor to be able to have a garage, he just did not want it so close to his home. He advised that he was more concerned with the safety of his family than maintaining a relationship with his neighbor.

Marilyn Jean Papin spoke to the existing conditions on her block regarding the proximity of garages to homes and questioned how to remedy structures being so close together throughout the City, as a whole.

David Papin spoke in favor of the variance request. He informed the Board that he would like to rebuild his garage on the existing footprint and that he had no basement or attic to store his supplies. He stated that the fire was an act of arson.

Tracy Kallek, Marine City Building Official, informed the Board that the process to rebuild the garage structure included filling out a building permit application, which the applicant knew would be denied, the next step was to fill out a Zoning Board of Appeals application with the denied building permit to bring before the Board. Through an investigation into the permit application, it was determined the original garage was poured 1.52’ from the lot line as found by surveyors for a project at a neighboring property, and the submitted plot plan showed 3 feet, which was determined to be not accurate and the garage was considered non-conforming. He further explained to the Board that the current project was being worked on without proper permits and that the walls were framed. Additionally, there was a 6’ DTE easement, on each side of the power line, that put the proposed garage in the DTE Right of Way and that the Board could not grant a variance on a DTE Easement. To bring the garage into the schedule of regulations, it would need to adhere to the 3’ setback.

William Klaassen, City Commissioner and former Marine City Building Official, stated his opinion that there was a previous variance granted for the garage back in the 1990s.

Deputy Clerk Goodrich read a statement from the City Clerk in an email to the Board: “Specifically related to the alleged variance from the 1990s: no records of said alleged variance exist per the Building Department.” Building Official Kallek also stated that the ZBA Minute Book was reviewed and they were in sequential order dating back to 1997, with no record of a variance.

City Attorney Davis reminded the Board that there was an intervening statute and referenced Statue 160.212. “Should any structure be destroyed by any means to an extent of more than 60% of its replacement cost, exclusive of the foundation at the time of destruction, it shall not be reconstructed” outside of the existing ordinance.

Chairperson Weil questioned if the only way to conform was to cut 3 feet off the structure and if the applicant’s situation was unique enough to warrant a variance.

Board Member Bassham stated that they had to recognize the DTE easement.

Chairperson Weil confirmed that the Certificate of Occupancy was null and void because of the 60% loss.

Marilyn Papin commented that the issue of structures being too close together was all over the City.

Board Member Turner stated that the structure could be rebuilt, it just needed to be moved.

Chairperson Weil called to the audience three times, requesting if anyone wanted to be heard on Variance Request 22-01. Hearing none. Motion by Board Member Turner, seconded by Planning Commissioner Allan, to close the Public Hearing at 8:17pm. All Ayes. Motion Carried.

Building Official Kallek reminded the Board that DTE required 6 feet on either side of a utility pole. City Attorney Davis stated that the ZBA did not have the authority to enforce DTE’s rights.

Chairperson Weil questioned if the Certificate of Occupancy was no longer valid as the fire took down the entire structure. City Attorney Davis responded that was correct because the rebuild was under the intervening statue which required a return to compliance.

Planning Commissioner Allan asked the Building Official if there was a reason the whole garage could not be moved to eliminate the fire danger and fire risk. Building Official Kallek responded that there was not.

Board Member Turner stated that the applicant’s hardship would be the cost associated with tearing out the foundation and footings.

Building Official Kallek stated that there were many ways around removing the existing footings in the building code. Planning Commissioner Allan stated that one remedy would be to remove the whole garage and bring the entire structure into compliance.

Building Official Kallek informed the Board that they were not there to design the structure for the applicant however, reminded them that there were ways to achieve everything necessary to adhere to the setbacks and still allow for a garage structure.

Planning Commissioner Allan stated that unfortunate as it was, there was already an experience with a fire and that the new structure needed to be brought into compliance with the requirement for 3’ setbacks and that even though there are other buildings in the City that have a similar issue, we cannot create solutions by extending the problem. He made the motion to deny the variance request 22-01.

Board Member Bassham stated that they needed to abide by current statutes.

City Attorney Davis stated that what he believed Planning Commissioner Allan was conveying, was that there was nothing in the record to justify the intrusion into the 3 foot setback; that there were no peculiar circumstances or anything unique.

Motion by Planning Commissioner Allan, seconded by Board Member Bassham, to deny variance request 22-01: 452 S. Market Street, based on the information that it did not meet the 3 foot setback requirement, that there was already an experience with fire that showed the risk and that extending a variance was not the correct way to bring everything into compliance. Planning Commissioner Allan further stated that he believed there was a way to slide the garage over and accomplish everything the applicant wanted to. The applicant did not demonstrate a practical difficulty and did not demonstrate that compliance with the ordinance was impossible. The applicant did not provide any evidence of a unique property condition to justify the variance request. Roll Call: Ayes: Weil, Allan, Bassham, Turner, Roehrig. Nays: None. Motion Carried.

Turner and Roehrig qualified their vote: voting against the variance based on the information presented and the compromise offered that the Building Official and applicant work towards a solution in the building of a new structure.

**Adjournment**

Motion by Board Member Turner, seconded by Planning Commissioner Allan, to adjourn at 8:37 pm. All Ayes. Motion Carried.

Respectfully submitted,

Michele Goodrich

Deputy Clerk

Shannon Adams

City Clerk