

BOARD OF ZONING APPEALS MEETING
FEBRUARY 17, 2015
7:00 P.M.

I CALL MEETING TO ORDER

The meeting was called to order at 7:00 p.m.

II ROLL CALL

Members Present: Joe Ramirez, Ed Knox, Lawrence Hawkins III,
Carolyn Ghantous, Dave Nienaber, Robert Weidlich and Jane Huber

Others Present: Randy Campion, Building Inspector

III PLEDGE OF ALLEGIANCE

IV MINUTES OF THE REGULAR MEETING OF JANUARY 20, 2015

Chairman Weidlich: Board Members, we have our Minutes from the
January 20, 2015 meeting. Does anyone have any additions or corrections to those
Minutes?

Mr. Nienaber: I move to adopt.

(Mr. Hawkins seconded the motion and with a unanimous "aye" vote from the
Board of Zoning Appeals Members, the January 20, 2015 Minutes were approved.)

V CORRESPONDENCE

Chairman Weidlich: We have no correspondence for this month.

VI REPORT ON COUNCIL

(Mr. Hawkins gave a summary report of the January 21, 2015 and
February 4, 2015 City of Springdale Council Meetings.)

VII REPORT ON PLANNING COMMISSION

(Mrs. Ghantous gave a summary report of the February 10, 2015 City of Springdale
Planning Commission Meeting.)

VIII CHAIRMAN'S STATEMENT AND SWEARING IN OF APPLICANTS

IX OLD BUSINESS

(No Old Business presented at this meeting.)

X NEW BUSINESS

- A. Chairman Weidlich: The first order of new business, the owner of
12185 Princeton Pike is requesting a variance to: (A) Install electronic price signs.
Section 153.523(I) "Electronic signs shall only be permitted per 153.531(D)(11)
and (12) and 153.538." (B) Install signs with a total gross area of 239.2 s.f.,

Section 153.531(C)(1)(b) "General Business (GB)...Maximum gross area of signs = (w x 1.5) + 40 square feet."

Mr. Jode Ballard: I am the Senior Manager of Development for Thornton's. You stated the variances correctly and we agree with the Staff report that the variances are in substantial conformance and the three variances being the proposed sign area is roughly a 10 ½% variance from the allowable and the directional sign setback is 21' as opposed to the permitted 25', so it is a 4' variance. The digital pricer, as Board Member Carolyn Ghantous mentioned, the LED pricers for gas is proposed to be included into the City's ordinances within the next year, as the Staff report mentioned. We agree with the Staff report and I am available for any questions.

(Mr. Campion read the Staff comments regarding this request.)

Chairman Weidlich: Members, do you have any questions for this gentleman?

Mr. Hawkins: How many other Thornton's are using these digital electronic pricing signs?

Mr. Jode Ballard: Roughly 80% of our stores and as we go back and remodel them we are retrofitting those legacy stores with those signs.

Mr. Hawkins: It is fair to say that is what the corporate headquarters or entity for Thornton's is wanting all the individual gas stations to go to?

Mr. Jode Ballard: Right, and one of the reasons we have gone to that style of sign is because we had a safety problem with a team member being hurt by putting up the manual sign; those letters can be pretty big and one of them fell on one of our team members in the Chicago area. I think that has been a number of years back but we have been slowly trying to refresh all of our signs. In the new locations, as we are talking about here, we were trying to go in from day one with the more appropriate sign.

Mr. Hawkins: Do you happen to know how far away that location is from I-275?

Mr. Jode Ballard: Off the top of my head, I think it is less than a mile.

Mr. Knox: The current regulation for commercial districts for signs states, "The electronic sign shall be of full color LED technology and with a maximum pitch that is spacing of 16mm or shall provide equivalent image quality. Will this sign meet or exceed that?"

Mr. Jode Ballard: Are you asking if it is going to be full color?

Mr. Knox: Yes.

Mr. Jode Ballard: We are planning to meet the draft ordinance which is, as I understand, intended to be codified later this year. Does that answer your question that you had?

Mr. Knox: No. I was wondering about the spacing more than anything else, on the LED themselves.

Mr. Jode Ballard: Would you mind repeating that?

Mr. Knox: You are jogging my memory and I believe that we are going for 16mm; That answers my question. Thank you.

Mr. Ramirez: Will this sign have any variable information such as things other than the pricing that you have on here; for instance "Grand opening" or a date or product information of any sort?

Mr. Jode Ballard: No, these units are specific for our digits; numerals. We were familiar with your ordinances that there are no electronic message boards allowed for our size of retail. At this location we are not proposing that; we would love to have it but it is pretty clear in your ordinances that we are not allowed to.

Chairman Weidlich: Is this a relocation or a new location for you? You have one about a half mile up the road, that is why I am asking.

Mr. Jode Ballard: Yes, we do, on the other side of Princeton Pike and it is just outside the City limits. I would imagine we will see how they operate and if this new location cannibalizes the one that is in the County, then I would imagine that one would be a good candidate to lease out as another retail operation.

Chairman Weidlich: I was just curious because they are so close together.

Mr. Jode Ballard: This is going to be the dominant location because that location is landlocked and it is mid-block and not an ideal location. This proposed site would fit what we look for in today's market.

Chairman Weidlich: Will this development take this whole plot of land there, that whole strip mall area?

Mr. Jode Ballard: It will. We will have a fair amount of green space left over. It has a long frontage along Princeton Pike, so there will be some remaining property under the site plan that we are proposing.

Chairman Weidlich: Thank you. Does anyone else have any questions for the applicant?

(Nothing further was brought forward for discussion.)

I am going to say from my standpoint, since the City has got language drawn up and your company meets that language, I will be in favor of this application on the electronic signage. Does anyone have any deliberation or discussion?

Mr. Hawkins: Are we going to look at each one of these variance requests individually?

Chairman Weidlich: I was going to. Right now we are on the electronic signage.

Mr. Hawkins: With regard to the electronic signs I would note for the record that the relative location of where this is, is less than a mile from I-275 and it is fairly close to an intersection which creates a need for more visibility. I will also note that this has gone through Planning Commission and they have approved it and there is also, I won't say a pending ordinance, but it appears that there will be a future ordinance that is going to come before City Council that is going to amend the current law. But based on the aforementioned things, I think this would be appropriate for approval by the Board of Zoning Appeals.

Chairman Weidlich: Does anyone else have any further discussion?

(Nothing further was brought forward for discussion.)

Seeing there is nothing further, can we have a motion, please?

Mr. Hawkins: I would like to move to allow a variance for the owner of 12185 Princeton Pike, requesting a variance to install electronic price signs from Section 153.523(I) and I would note that the applicant will do the following: the permitted ground or pole sign associated with the gasoline sales may incorporate an electronic fuel price display that shall not exceed 40% of the permitted sign area. The electronic fuel price displays are not permitted on fuel canopies, the electronic fuel price displays shall use light emitting diodes or LED technology. The electronic fuel price displays shall come equipped with automatic dimming capabilities and shall automatically dim to a corresponding reduction ambient light and in no instance shall the electronic fuel price display cause light to trespass onto an adjacent residential district or use. The electronic price displays shall be static and may not display animated scrolling, moving or flashing messages or video.

(Mr. Nienaber seconded the motion and with seven "aye" votes from the Board of Zoning Appeals Members the variance request was approved.)

Chairman Weidlich: Let's move on to the square footage of the signage for the next variance.

Mrs. Huber: I make a motion to approve the total gross area of signage, 239.2 s.f. for 12185 Princeton Pike; which is 22.8 s.f. overage of what the Code would allow. (Mrs. Ghantous seconded the motion.)

Mr. Hawkins: I just want to note for the record, with regard to the square footage, it is only about 10 ½% from what the Code allows and is not a substantial variance request. Also, the signage that they have has some dead space on the borders of the word "Thornton's" and it is also not near a residential area.

Chairman Weidlich: Is there any other deliberation or amendment to the motion. (Nothing further was presented and Mrs. Huber polled the Board; with seven "aye" votes the motion for variance was approved.)

Chairman Weidlich: We will move onto the directional signage that is a 21' setback instead of a 25' setback. Any further discussion on that?

Mr. Hawkins: I note that again this is not a substantial variance request, it is only a 4' difference.

Chairman Weidlich: I will add that is up against the 84 Lumber fence line too, so it is not near any business, so to speak. Can we have a motion please?

Mr. Hawkins: I move to grant a variance to the owner of 12185 Princeton Pike requesting a variance with regard to allowing a directional sign to be 21' from the west property line at the Crescentville Road entrance drive which comes from Section 153.531(D)(7) requiring directional signs to be located not less than 25' from the side lot line. (Mrs. Ghantous seconded the motion.)

Chairman Weidlich: Does anyone have any further deliberation or amendment to the motion as stated? (Nothing additional was presented. Mrs. Huber polled the Board of Zoning Appeals Members and with seven "aye" votes the request for variance was approved.)

- B. Chairman Weidlich: The next order of business is the owner of 584 West Kemper Road is requesting a variance to subdivide the property. Section 153.069(A) "Single household dwellings...shall have a lot width of not less than 80." Section 153.071(A) "Single household dwellings...shall have a minimum side yard setback of ten feet on each side..." Section 153.075(A)"The minimum area for single household dwellings in the RSH-L district shall be 2,000 square feet." Section 153.075(B)"A single two car garage and related parking area is required. The garage shall have a minimum floor area of 400 square feet."

Mr. Richard Lisi: I thank you all for the opportunity to come before you again. I won't take as long as I did the last time. I do appreciate the ability to come to speak to you again and try this. (At this time Mr. Rick Lisi presented slides demonstrating the property at 584 West Kemper Road.) The slides are just to refresh everybody's memory. I made an error when I figured out the floor space originally and I would like to correct that. I measured the three bedrooms and the living room and the kitchen, but I didn't add the halls or the closets. So, there is actually more space than what I thought; 1,398 s.f. That did not come to my attention until my realtor walked in there and said "I know this is bigger than what you have got written". He went ahead and measured and you will be able to talk with him about that. So, I was way off on my measurements. The first time we asked for the request, the neighbor back here was concerned about not having space back there that used to be

an apple orchard, so we changed this and cut it off so that this space is still open. If he would like I will plant an apple orchard there. But anyway it will be open, so he will still have that view that he had. Still, the way I would set it up, it allows for both properties to have approximately half an acre. The other thing that I did, that is different than the previous time, and Mr. McErlane had asked me to do it this way the first time and I did not because right here is where the garage is and I wanted to have the entire space for parking for the smaller of the two houses, but he said that didn't fit in with the 40' difference from here to the property line, we switched that so that would fall into compliance with zoning. The other zoning problems were the distance between the back of this building and the line; it is supposed to be 10'; it is 9'-1", however the neighbor here was o.k. with this building or with us renting or whatever we wanted to do. I got a letter from them, they had been at the last meeting, it came registered mail but it came a day too late for me to present it but I do have a copy if you would like to see it, showing that they are o.k. with the whole thing; it is notarized. Their garage is right up to the property line so they have no complaint with our house being just a few inches off. The other thing was the size of the garage; it is larger than what I put in but it still isn't in compliance, the size of the house still isn't 2,000 s.f. My thoughts are that if a person had the opportunity to purchase this piece of property, they could easily extend this house because there is plenty of room and they could do it at their leisure where they use the equity of the property once they buy it and get a little bit into it. So, it would give them something to look forward to. If I was going to own this to live in it, which I am not because I have a log home with 13 acres, my wildlife sanctuary, but I would make the garage here probably a room and add a garage here. So, I left this extension here, instead of coming all the way to the corner, I left that little bit here so if they added on they would have room from the property here to any new house that they would try to design or any addition that they are trying to build to make this within the code and make it more appealing. With the full half acre here, that is a lot of opportunity for somebody to have that house and the house is really a nice home, which I showed with the slide show. With that, David would you like to say something about the measurements?

Mr. David Hawkins: Sure.

Mr. Richard Lisi: This is David Hawkins, he is the realtor that was trying to help me sell it and told me to take it off of the market.

Mr. David Hawkins: Dave Hawkins, LLC. As Rick stated, I was in the house before he bought it and looked at the back house and it just felt a lot bigger to me. So, I measured it according to appraisal guidelines, according to the Auditor's rules that they use in establishing square feet, which is outside to outside. The house comes up by the same criteria that your houses are listed with the Auditor at almost 1400'; 1398' and some change, which is actually 100' in change smaller than the front house. The front house does have a full basement; this is basically crawl space and no basement under it but it is above the median for Springdale. So, Mr. McErlane expressed concern that it wasn't a viable house because he thought it was 800 s.f., which we represented to him; it is not, it is considerably bigger. Another thing that Mr. Lisi didn't make clear, there will have to be easements and agreements on shared driveway and parking so that the back house will have ingress and egress, being able to park nicely. But the statutory dimensions of the split are pretty much preordained, they had to be that way.

Mr. Campion: How many square feet are you saying it is after you re-measured it?

Mr. David Hawkins: 1398' and change; so about ½', and that is exclusive of the garage, the garage is almost 200', is subtracted and that is not counted in the square foot of the house.

Mr. Richard Lisi: I would like to introduce again Darrel Powell.

Mr. Darrel Powell: I am an attorney, I work in real estate. I have done a lot of homework on this and I have done a lot of research for the variance request and I would like to thank you for coming out on a night like this to hear Rick's variance

request. The request tonight is for area variances and you have seen photographs of the property from last month and you know the excellent work that Rick has done. I want to show this area of variance doesn't deviate much from the property in the neighborhood as it already exists and in granting the variances changes little if anything, what's existed. Rick requests area variances in order to subdivide his property. Among those are variance for a house that is less than 2,000 s.f., the frontage width that is less than 80' on Kemper and a garage that is less than 400 s.f.; the fourth one, less than 10' on one side, is with the neighbor who Rick has a letter who is o.k. if someone could live in that house. The other three situations already exists on the block and I would like to talk about that a little bit. There you see a street map from Cagis, in the Hamilton County Auditor's website, it shows the fourteen properties facing West Kemper between Harmony on your left and Greenlawn on your right. Eleven residences already have less than 2,000 s.f., four of those are smaller than the building that Rick wants to have as a home. Three properties have frontages on Kemper less than 80' and one of those is Rick's western neighbor with a frontage of less than 20'. Two garages in this area have less than 400 s.f. This neighborhood doesn't look a lot different than what Rick wants to do. Rick has redrawn the proposed line to eliminate the variance from 40' rear yard setback; that was to accommodate a request from Mr. McErlane. He has also redrawn the line to allow for a full width plot at the rear portion and that was to accommodate a neighbor to the rear who did not like to see the rear portion divided. Finally there is a chart on the land showing living space, garage space and frontage on Kemper. Everything that is in yellow falls below the norm and this again is from Cagis data. The homes that I have in bold have square footage less than the roughly 1,400 that the second house that Rick has right now. Finally, I am sure you know the standard for an area variance is practical difficulties; Rick's problems, you have had them before are selling or insuring the property that has been discussed and I believe they show the existence of practical difficulty. Seven factors from the *Duncan v. Middlefield* Supreme Court Case are listed on this chart. Those factors are also included in the Springdale variance Staff comments, along with others. I will address these and I will address some of the others and my thoughts on those. The first one, whether the property in question will yield a reasonable return or is there a beneficial use? The real estate agent has told Rick to take the property off of the market, as it is now. The insurer will not insure it for full value and Rick risks losing a valuable building if he uses it uninsured. Is the variance substantial? There is an argument, there is a large numerical difference in the variances. For example 20' versus 80', however when you compare it to the features of the neighborhood, the next-door neighbor has 20' frontage. Eleven of the two houses have less than 2,000 s.f. It is not a lot of difference than what is already there. The essential character of the neighborhood or would there be a substantial detriment? Probably would not happen, little changes. The same houses and buildings have been there for years and Rick has done his level best to accommodate neighbors, the neighbor to the rear with the width of the open plot. Does it adversely affect government service? No. Water, garbage, sewer, electricity are all there same as it has always been for years. Was it purchased with the knowledge of zoning restrictions? Rick states, I believe, that he thought it was the dilapidated condition and not the zoning ordinances that prevented habitation. However, I realize that there is some controversy on the subject. *Duncan* did not intend the case for every factor to be met if granting an area variance. It states, for example, a property owner is not denied the opportunity to establish practical difficulties for example, simply because he purchased the property with knowledge of the zoning restrictions. So even if you impute Rick with knowledge, it is not necessarily the only thing that you can use to deny the variance. Can the owners' predicament be obviated through some method other than a variance? I would see little opportunity to change the zoning code for one property and given some opposition that we have had from neighbors for past request, I see little opportunity to rezone everything in the neighborhood. Now skipping ahead a little bit, two factors were included in the Staff comments that addressed topographic conditions and they address geography. Staff comments say that topographic conditions or geography do not create a practical difficulty; I agree, they don't. Two other factors addressed in the Staff comments address extraordinary circumstances. The comments generally state that any extraordinary circumstance is the second home, which the comments call an apartment and because the second home's existence is self created, there is no

extraordinary circumstance. I know that it became not a home because it fell out of the grandfathering, but just the same, the second building was always there and Rick just improved it mistakenly believing that doing so it could be occupied. Even if the condition were self created, if that knowledge is imputed to Rick, self creation in and by itself is not a reason to deny an area variance. Another factor addressed in the Staff comments discusses the necessity of the variance for preservation and enjoyment of substantial property rights possessed by others; selling the property and using the property as it is will be very difficult. Loan appraisers have stated they would lend in the current state only if both houses were allowed to be occupied. Insurers would not insure for any more than the out-building and Rick risks much more than that in using the building in an underinsured condition. Finally, the last factor on the Staff comments list, asks if authorizing the variance would be a substantial detriment to the adjacent property or will it materially impair the purposes of the code of the public interest. Staff comments gratefully say "No", and I agree. Then we get to the spirit and intent behind the zoning requirement and whether or not it would be observed and substantial justice done by granting the variance? The Springdale Zoning Code intends single household dwellings on medium size lots while preserving undeveloped lands. Rick proposed a single household dwelling on a medium size lot. The lot is about the same size as the neighbors. He doesn't intend to build an apartment, he doesn't intend to build a condo, he doesn't intend to run a business. His request is in the spirit and intent of the zoning code as to substantial justice, Rick's work is exemplary, you have seen it and I applaud it. Finally, in the balance of the benefit to the community of a denial, the benefit to Rick to grant this variance, I would submit Rick is favored. Denying the variance could actually work a detriment to the neighborhood. If Rick sells at a cut price, property comparisons could decrease and the neighbor's value can drop. People who may own the property in the future might not have the same incentive to maintain the property and it could decay. If you grant the variance, yes Rick is relieved of a tremendous burden; he can gain some of the expenditures that he has made on the property back, however the neighborhood enjoys higher property values and greatly improved property to future owners who have the incentive to maintain and I respectfully request that you grant this variance.

Mr. Darryl Pilgrim: I currently live a 584 West Kemper and none of this did we think would be a problem when we bought the property. We didn't know anything about how it would be a hard thing to insure the property, more or less to be able to put it back on the market for a fair value. Rick bought me this house; I have done a lot for him over the years and he was doing something out of the kindness of his heart to help me out. It is a very nice property and I think some of you have seen it and you know how it kind of looks. For awhile, I enjoyed being there but circumstances where I had a very bad blood infection which caused me to not be able to maintain it as well as I would like. I mow the lot as much as I can with my riding mower but on a lot that size it is very hard to get out there and trim everything because my knee goes out, sometimes it goes out and I am down for awhile before I can get back up and it hurts really bad. I wasn't here at the last meeting because I was in the hospital because I had to have surgery done on it again. The first time when it went out it was obvious that it was going to be a lot to maintain so we decided to go ahead and put it up on the market. I know I have heard that some people are saying that we are just doing this to try to flip the property, I have been in that house for almost four years and anybody knows that if you are trying to flip a property you don't be there for four years and try to get a profit out of it because it just doesn't work. It was going to be mine and my wife's home but due to certain circumstances I just can't maintain it anymore. I really feel for Rick because he put a lot into it, he really put a lot of money into this property and not knowing. He wasn't expecting to get any gain out of it but I feel sorry that I can't help him and I feel saddened that it is a property / house that had value at one time that somebody put their heart and soul in and now it is looked upon as it doesn't exist anymore and I feel bad. That is a house that somebody could make a home. I wish I could say more about why you should grant this variance but Rick said it all and Darryl said it all. The people that disagree with us, I bear no ill will toward them; I still say "Hi" when I see them. Everybody has their reasons for what they are doing and why they are doing it. Thank you.

(Mr. Campion read the Staff comments concerning this request.)

Chairman Weidlich: Is there anyone in the audience that would like to speak on behalf of this application.

(No one from the audience came forward to speak, at this time the public portion of the hearing was closed.)

Does any of the Board Members have questions for the applicant?

Mr. Hawkins: Mr. Lisi, with regard to the eastern portion of the property, along that property line, was there any thought about, and I know how the garage is situated facing west, was there any thought about a driveway going up as opposed to having to have an easement on the western side of the dominant property, the front house? In order for a person to access the back house they would have to have an easement to use the existing driveway on the western side of the property. Was there any thought about, in that front yellow portion on the eastern side of the property which would be for the back house, there being a driveway going up there. I know how the garage is positioned to the west but was there any discussion about seeing if that could work, as opposed to having an easement?

Mr. Rick Lisi: Right, that is correct. By putting it in that way the property owner has the right to request to put in the driveway, that would be their property so they could put a drive in there.

Mr. Hawkins: Is there enough space on the east property back around that?

Mr. Rick Lisi: Mr. McErlane told me that would be sufficient for a drive, if they wanted to put it in.

Mr. Hawkins: Thank you.

Mr. Nienaber: Mr. Lisi, if we put a driveway in that way the garage faces east / west while the drive would run north / south; so there wouldn't be anyway to pivot into the garage from what I can tell.

Mr. Rick Lisi: If there was a drive there, they would have to come up and then they would have to park in front of the house and walk around to get into the garage or there would have to be a door put on that side of the garage, at some point and time.

Mr. Nienaber: Do you contend at all that you either didn't understand or that the City didn't tell you that it couldn't be reused as a house?

Mr. Rick Lisi: The way I understood it was that I planned on using it as a photo lab and for my work with my Audubon program. In doing that and getting the permits to do all of the work, all the way along I had said that I am going to eventually try to get a variance. I was told all the way along, the Board probably would not approve a variance; I was never told that they would never approve a variance. So, that is not really correct the way it was written in there. I was just told that the Board would not probably approve a variance; "You are probably wasting your time", it was that kind of a conversation. I was never told dead straight out, "It is never going to happen". So, I really believed it was because of the condition of the house that it wasn't going to be used, it couldn't be used. Growing up in New England and seeing what we have done to old houses in Hamilton and Kentucky when I lived there, I have done a lot of work on a lot of houses and Darryl has helped me for thirty years, we have done an awful lot of work together and so we have made tremendous improvements and never to make a dollar; to me it is like Habitat for Humanity of my own, that is the way I look at it. I saw a job, I thought I had the skills with Darryl's help, that we could bring it back to life. I never dreamed I would have these kinds of issues and I wasn't planning on selling it, so the issue was when I found I couldn't plant trees, I couldn't plant wild flowers, I couldn't have a wildflower garden back there and let the grass grow, things changed. That's what I do its wildlife. I would like to plant trees and let things grow wild, with Tom as my neighbor you couldn't do that. He wanted it mowed and I wanted to have a good neighbor. There were a lot of things that happened

besides Darryl getting ill and having some problems. It just wasn't working out the way we saw it but it is a mighty fine house and I think I did what God wanted me to do.

Mr. Nienaber: One more question that is probably directed at your attorney more than you, from his presentation would the implication be that cities shouldn't zone properties and then push the issue through over time? When the City, back in the 60's then wrote a zoning ordinance saying, from this point forward these should all be single family lots; but we will let the one's in there be grandfathered, it strikes me that your argument is counter to that.

Mr. Darrel Powell: I think when individual situations happen, probably need to temper the strict letter with some kind of compassion for what happened. No, also say if he wanted to come in and start a business or something like that, I wouldn't but in this case what he is asking to do doesn't change the neighborhood. I think when these situations come up, that balance needs to be weighed. Thank you.

Mr. Ramirez: First off, I would like to note that unlike the last two meetings the neighbors decided not to speak against this zoning request. My question, Mr. Lisi, is the garage that is somewhere around 183 s.f., which is required to be 400 s.f., is that a fully operational garage at 183 s.f.?

Mr. Rick Lisi: Yes. It has all been redone and insulated, all new ceilings.

Mr. Ramirez: You are able to park a car in that garage?

Mr. Rick Lisi: A truck.

Mr. Ramirez: Thank you.

Chairman Weidlich: My one thing that I am wrestling with, Mr. Lisi, you said there is going to be an easement needed to get vehicles back to that house back there, I don't know how easements work personally, who sets them and who can deny it? Let's say for instance, if this were approved and whoever was the owner of 584 decided that they didn't want the people in 582 using their driveway any more, that would create a huge problem for whoever was in 582.

Mr. Rick Lisi: That is why you have to have a legal easement written up, so that it is a contract that both people understand who is responsible for what, who is responsible for removing snow, who is responsible for keeping it clear, where do you park and where don't you park. That has to be written up and put into a legal wording so that whoever buys that house buys it with that knowledge going in there of what they can do and what they can't do. I don't think anybody would buy especially the second house unless they knew they had the right to drive in and park and do the things that they would have to do to live there. I don't think they would buy it if they didn't have some agreement, it would be pretty foolish to do that, though I bought the place without knowing all of the ramifications that I was going to run into so there is some foolishness. The other aspect would be that, if that was the case and there was a real problem they would have to try to use the drive on the side and put their own driveway in and resolve that issue that way; I just don't see that as being the best way to solve that issue. I think that people can work something out and have an easement.

Chairman Weidlich: If they put their own driveway in then they wouldn't have a garage that is useable for their vehicle.

Mr. Rick Lisi: Correct.

Chairman Weidlich: If no one has anything for the applicant, is there any deliberation or discussion?

Mr. David Hawkins: Next door, Tom's house / his mother's house behind is a panhandle, Tom comes in her driveway and there is a single drive there. It is the

same situation, other than they probably don't have an agreement but there should be before it is sold. When you draw up an easement with a maintenance agreement and all of these things that Rick was talking about trying to get codified, that is done and it is done a lot. It is done particularly in developments where there may be a road with a creek and nice developed land on the other side of a creek; everybody comes in across one bridge and across that creek, they have statutory frontage on the road but you wouldn't know it to look at how they come in and out. If done properly they are done with an easement and with maintenance agreements. So, there is never an argument later when it is time to put down the asphalt who pays what.

Chairman Weidlich: Does anyone else have any questions for the applicant?

(No questions were brought forward.)

We will move on to deliberations and discussion on the evidence as it has been presented.

(Nothing further presented.)

Can we move on to a motion, please?

Mr. Knox: I move to grant a variance to the owner of 584 West Kemper Road to Section 153.069(A) "Single household dwelling shall have a lot width of not less than 80'."

(Mr. Nienaber seconded the motion.)

Mr. Ramirez: Is this variance for 584 or for 582, since 582 would be the property that would need the variance; correct?

Chairman Weidlich: I believe it is 584 that is being divided, especially at the road, is that correct Mr. Campion?

Mr. Rick Lisi: I was told that 582 does not exist right now.

Mr. Ramirez: When we grant a variance, it will be for the property at 582 for the variance for the side yard.

Mr. Campion: I would think you are correct.

Mr. Knox: I amend my motion to say 584 - 582?

Chairman Weidlich: And Mr. Nienaber seconded that. Do we have any further deliberation on the motion or amendments to it?

(No deliberation or amendments presented.)

Mrs. Huber, would you poll the Board?

(With 6 "no" votes and 1 "aye" vote from Mr. Ramirez, the request for variance was denied.)

Since that was denied, would you want us to continue with the other three variance requests that you had, or do you want to stop it here?

Mr. Rick Lisi: Alright, go ahead.

Chairman Weidlich: Members, we are going to move on to the second variance for the side yard setback, 9'-1" versus 10' required by Code. Does anybody have anything for the applicant on that?

Mr. Knox: I was going to make a motion; I move to grant a variance to the owner of 584 - 582 West Kemper Road to Section 153.071(A) "Single household dwellings shall have a minimum side yard setback of 10' on each side."

Mr. Nienaber: I believe we need to amend Ed's variance to allow a variance from the 10' down to 9'-1" on the east side of the property.

(Seconded by Mrs. Ghantous.)

Mr. Campion: As it sits right now, it is classified as an accessory structure. It is not a residence. An accessory structure is allowed to be, I believe 5' from the property

line. It doesn't require a variance in its present state; it is only if it is considered as a residence so I would recommend the Board not move on this because it does not require a variance.

Chairman Weidlich: I agree, good point. Then the third variance request would be for the dwelling unit of 1,398 s.f. versus the 2,000 s.f. required by Code. Again, that is an accessory structure.

Mr. Campion: That would not apply either.

Chairman Weidlich: How does the Code view the 183 s.f. garage, since it is inside the structure?

Mr. Campion: Well, you are required to have a two-car garage. The present Code says that every house should have a two-car garage but at this point I don't think I would rule on these last three because it isn't a residential dwelling unit and it is an accessory building.

Chairman Weidlich: That is my thought but I wanted to give Mr. Lisi an opportunity. I guess we are done, Mr. Lisi on this, the way it sounds this evening.

Mr. Rick Lisi: Can I ask a question? I was told right from the beginning that you could use that as an extension of the house, as any room you could use in the house. But you really can't because you can't use it if my mother wants to visit or if I want to take my kids and have them stay with me for a week. So, if that is the case then I really can't use it the way you can any other room in the house, it is not part of the house. I don't understand that. That is the way it was presented to me at first.

Mr. Campion: It can be used as an accessory building to the residence. If you have a residence as a sleeping dwelling that you live in, in the first house and if you wanted to use the back building as a workshop or a studio, artist studio; the same way if you put a gazebo in your backyard, it would be an accessory.

Mr. Rick Lisi: But if my son came to visit with his wife and his kids, they could not stay in that for the weekend.

Mr. Campion: No, it is not a residence. It is an accessory structure because the zoning code only allows one residence in this district.

Mr. Rick Lisi: But that was what I was told from the beginning, so that is what I had in mind.

Mr. Campion: I have to testify that I was in the room twice when you were told that very thing that I just said, it could be an accessory structure for you to use as an artist studio or as a photography studio but not as a sleeping residence; I was present.

Mr. Rick Lisi: But that was after I already bought it though.

Mr. Campion: This was before you bought it; I remember it.

Mr. Rick Lisi: O.K., thank you for your time.

Mr. Hawkins: I would just say, it is academic but in terms of the side yard setback being 9'-1" to the east, to the west, it makes the setback if 582 were in existence and the Board had to consider a variance for that. I would have supported that. It is academic if you don't get to the point of it being considered a residence but for that variance, I think it is something that would not have been substantial. The other issues in terms of the dwelling size and the consideration of the entity that would be 582 and the garage size of the entity that would be 582, I wrestle with those a little bit, I think they are very close. You put in a lot of money already and I am not advocating that you go put in more money, but those things reaching what would be necessary the Board may find that helpful, I don't know, in terms of their overall

viewpoint of it. You are in a tough spot and you have sunk a lot in this already and then you go and add another 28 x 28 s.f. room or something and then expand the garage. It is academic, I am just letting you know without making it more difficult for Mr. Forbes.

Mr. Nienaber: I was just going to discuss that the garage isn't an issue because the property has a two-car garage, it is no longer meaningful at this point.

XI DISCUSSION

Mr. Nienaber: On a business issue, I am wondering whether the clipboard, by the time we start a meeting should be up here to assure that everybody that wanted to speak has signed in.

Chairman Weidlich: Good point.

XII ADJOURNMENT

Mrs. Huber moved to adjourn, Mr. Knox seconded the motion and the Board of Zoning Appeals meeting adjourned at 8:34 p.m.

Respectfully submitted,

_____,2015_____
Chairman Robert Weidlich

_____,2015_____
Secretary Jane Huber