

CITY OF CHARLEVOIX ZONING BOARD OF APPEALS MINUTES
Wednesday, May 20, 2009 - 6:00 p.m.
210 State Street, City Hall, 2nd Floor Council Chambers, Charlevoix, MI

A) CALL TO ORDER

The meeting was called to order by Chairperson Withrow at 6:00 p.m.

B) ROLL CALL

Members Present:

Gary Anderson, June Cross, Mary Eveleigh, Patricia Miller, Greg Withrow, Alternate Larry Sullivan and Alternate Kim VanMeter-Sanderson

Members Absent:

None.

Staff Present:

City Planner/Zoning Administrator Mike Spencer
City Manager Rob Straebel
Assistant City Attorney Bryan Graham

C) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST

Member Eveleigh asked to be excused per the Zoning Board of Appeals Bylaws, Section 4.2. for item "Public Hearing for request for interpretation and appeal of Permit 2850 Project 09-03ZBA Applicants: Johnson, Camp, Saenger, and Reis". She requested the Board vote to allow her to withdraw as she has a private interest.

Chairperson Withrow advised the Board that Member Eveleigh lives within 300' of the property in question.

Motion made by Member Cross and seconded by Member Anderson to authorize Member Eveleigh to be excused. The motion was adopted by a unanimous voice vote.

D) APPROVAL OF AGENDA

City Planner/Zoning Administrator Mike Spencer advised the Board that Section 4.4(H) of the ZBA's By-laws allows the applicant to present a rebuttal at the end of the advertised public hearing's public comment period. The agenda shall be amended to reflect the addition.

Member Eveleigh reported to the Board that the By-laws Subcommittee has not met. If Board members have any questions on the model that was distributed at the last meeting, please contact her.

E) APPROVAL OF MINUTES

1. Motion to approve or amend March 11, 2009 meeting minutes.

The Board reviewed the March 11, 2009 minutes.

Alternate Board Member Sullivan asked for clarification on his status as a voting Board member. Chairperson Withrow advised that as Alternate Sullivan was a voting Board member at the March 11th meeting, he would be a voting member in approving the March 11th minutes.

Alternate Member Sullivan asked that the sixth line in the first paragraph on page two be amended to read:

"Given the size of the lot, it would not be possible for the applicant to comply with both the parking and landscaping requirements of the ordinance."

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and that verbiage in the first paragraph on page 4 is changed to read:

"Chairman Withdraw asked that the Board place a condition on approving the variance that the applicant (Alano Club) would have to comply with the landscaping plan (Exhibit 3) submitted with the variance application."

Motion made by Member Cross and seconded by Member Eveleigh to approve the minutes as amended. The motion was adopted by a unanimous vote.

F) CALL FOR PUBLIC COMMENT (Not related to agenda items) None

G) OLD BUSINESS- NONE

H) NEW BUSINESS

1. Public Hearing for request for interpretation and appeal of Permit 2850 Project 09-03ZBA
Applicants: Johnson, Camp, Saenger, and Reis.

Board Member Mary Eveleigh left the meeting at 6:09 p.m.
Alternate Board Member Larry Sullivan was designated as a voting Board Member in Ms. Eveleigh's absence.

- a. Staff presentation.

The ZBA has been asked to review specific sections of the Code and make findings of fact to determine the spirit and intent of the ordinance and determine what is in the best interest of the City of Charlevoix. The ZBA's decision must be based on evidence and findings of fact. The Board is asked to interpret only the sections that are ambiguous.

Chairperson Withdraw reviewed the ZBA's role with the Board. The Board will hear public comment this evening. The Board should refer to the written materials during the public comment period. Staff will prepare proposed findings of fact. The Board will take the three items (public comments, written evidence and draft findings of fact) and make their own conclusions of what is correct and if the project meets the zoning ordinance.

- b. Presentation by applicants.

Jennifer Schater of Brown Powers addressed the Board on behalf of Mr. & Mrs. Eldon Johnson, Mrs. Norma Camp, Mr. and Mrs. Eugene Saenger, Jr. and Mr. John Reis. The Charlevoix Circuit Court has remanded that the ZBA review the issuance of Zoning Permit #2850 by former City Planner Gerry Harsch and former Zoning Administrator Dianne Manore. She asked that the Board not "rubber stamp" the zoning permit, but that the Board review the decisions made and determine if the permit complies with the ordinance. It is not in the interest of the Board to allow mistakes to go uncorrected. There are a number of issues that the Board is being asked to review.

Issue A - Section 5.174 Lot of Record

Ms. Schater stated that Zoning Permit 2850 violates Section 5.174, which states that every building erected shall be located on a lot of record. The ordinance has a specific definition for a lot of record. Section 5.8 (13) defines a "lot of record" as a single parcel which has been recorded in the office of the register of deeds. Section 5.8 (11)

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"lot line" is the boundary line between two (2) lots or the line between the properties of two (2) different owners. A lot of record is a distinctive lot of land recorded at the register of deeds office, with its own legal description and has a separate owner.

Permit 2850 covers three separate lots of record, the lots have separate parcel ID numbers. Two of the lots are owned by the Anderson's and the third is owned by a LLC. A LLC can have many different partners, presently APJ LLC is made up of only the Andersons. The ordinance requires that all three properties be owned by the same owners.

The proposed structures are to be built over two separate lots of record. Section 5.174 of the zoning ordinance states that there shall be no more than one principal building and its permitted accessory structures located on each lot in any residential district. The site plan submitted with the zoning permit application specifically mentions three separate property tax ID numbers. The survey submitted with Permit 2850 by Ranger & Associates, Inc. shows three separate lots. To date, the three parcels have not been combined. Zoning Permit 2850 does not include a condition where the lots would be combined at a later date. The Section 5.12 (6) of the zoning ordinance defines a "zoning permit" as a standard form issued by the Zoning Administrator regarding proposed construction and use of structures thereon granting approval for the construction or use applied for. If a zoning permit is granting permission for whatever is noted on the permit, then they do not have to do anything more, unless a condition as been noted on the permit. Permit 2850 notes three parcels, that to date have not been combined; the zoning permit does not require that the parcels be combined.

Issue B - Section 5.5 (10) boat house – Issue C - Section 5.32 (8) – Issue F - Section 5.176 (1)

Issue B - Section 5.5 (10) boat house

Ms. Schafter reviewed Issue B with the Board. A boat house is an accessory building and the whole building, not part of a building, is to be dedicated to the exclusive docking and/or storage of boats and other recreational marine equipment. Webster's dictionary outlines the definition of "exclusive" as sole, excluding all others.

Permit 2850 proposed a 44' x 74' attached accessory building. The building includes a full bathroom, laundry room, and a garage. It is directly connected to a 3,679 square foot living area located on basement level 2. The MDEQ permit application also includes statements that the boat house includes a washroom, work area, storage and gathering space. The inclusion of 3,600 square feet in living area is clearly in variance with the definition of boat house, as outlined in Section 5.5 (10).

The phrase "exclusive" limits the use of the building to a boat house. The proposed accessory building has other uses incorporated into it: a garage, gathering space, hot tub and laundry facilities. These uses are not allowed in a boat house. It is nice to have these incidental uses, but these uses are not permitted.

Issue C - Section 5.32 (8)

It is not possible to have an exclusive use of a building, if it is attached to the residence. Section 5.176 (1) and (2) outlines that an attached accessory building is a part of the principal residence. If the accessory building is attached to the residence, than the accessory building is not exclusively used as a boat house and does not comply with the ordinance. The definition of a boat house is that the building is to be used for the exclusive docking and/or storage of boats; hence the building must be detached from the principal residence. The proposed accessory building (boat house) does not meet the ordinance requirements for a detached accessory building.

Ms. Schafer referred the Board to the east and west building elevations. The elevations show that the boat house is attached to the primary residence. The drawing shows that the Anderson's accessory building has a height of at least 23' and is closer than 6' to the rear lot line. There is no provision in the ordinance for allowing an accessory building to have its own "attached accessory" building, such as the garage being attached to the boat house. An accessory use is incidental and subordinate to the principal use of the building and the structures are located on the same lot. The proposed building is divided up into various uses. If the boat house was a detached accessory building, the structure could be no higher than 16' or one story and be located no closer than 6' to the rear lot line. The building would also have to meet building code requirements that limit the square footage of detached accessory buildings.

The zoning ordinance requires a 50' setback from the water. It is the ordinance's intent to keep the lake shore low density and pristine. If the ordinance allows the Anderson's proposed development, the entire north shore of Round Lake can have residences/boat houses right to the water's edge. The residences would have no rear yard setbacks and the buildings could be up to 26' high.

Issue F Section 5.176 (1)

Section 5.176 provides three ways in which accessory buildings may be situated; (1) a part of or attached; (2) connected or (3) detached. Permit 2850 claims that the 44' x 74' boat house is attached to the principal building by (1) a tunnel, (2) a breeze way/terrace and (3) by a second area that is not clearly defined.

The Chairperson asked staff to clarify Section 5.176 (1) and the reference of an accessory building being connected to the principal building by a roofed porch, patio or breeze way in its write up.

Ms. Schafer showed the Board the three basement levels. Two of these levels connect directly to the garage/boat house. She asked the Board to determine if the underground tunnels could be used to attach the two structures. Section 5.176 (1) states that an accessory building may be connected by a roofed porch, patio, breeze way or similar structure. Those items are above ground. Should the word "attached" be interpreted the same as "connected"? Ms. Schafer stated that Mr. Anderson claims the patio work connects the boat house to the residence, the other items are underground. Is the underground tunnel a similar structure to the above ground roof, patio or breeze way? If underground tunnels are a sufficient connection, then we need to accept the fact that the City of Detroit is attached to and a part of the City of Windsor, because of the underground tunnels. A connection is not the same as "attached" or "a part of". There are underground sewer and water lines that connect residences. Would you say that the residences are connected to one another by those underground utility lines? Underground structures do not fall into the same definition that the ordinance gives us for a structure. Connected does not mean the same thing as attached. Attached literally means a part of, as in sharing a wall. A garage can share a wall with a house and no one is going to argue that they are attached. The question is what standards are to be applied to a connection. Can the connection be patio stones lying on the ground? If we allow that, then a home could be built on the top of the hill and you could run stones all the way down the hill to the waterfront to connect the accessory building. Any little building located on the lot could be connected by patio stones and not have to meet the 16' height limit or the building code square footage limitation. If the building is connected, it can be built higher and larger than a detached accessory building. What standards should be used for an accessory building, those for an attached accessory building or the standards for a detached accessory building? Or something in between?

If the connection is a breeze way or patio, is this sufficient to attach the accessory building to the principal structure?

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Issue E - Section 5.5 (1) - Building Code

Section 5.245 of the Zoning Ordinance states that the zoning ordinance shall be interpreted with other laws and codes. If those other laws and codes give stricter regulations, those regulations govern. Building code states that an accessory structure can not be over 3,000 square feet. Section R202 of the Michigan Residential Code defines an accessory structure as a structure not greater than 3,000 square feet in floor area. It makes no difference if the accessory building is attached or detached, it can not be over 3,000 square feet. The proposed boat house is 3,200 square feet and the adjacent garage area is another 470 square feet. The underground portion of the building which attaches the boat house to the residence is between 7,000-9,000 square feet. If we cut off the boat house building, the overall square feet of the accessory building is over 4,000 square feet. This item needs to be taken into consideration when determining if the accessory building is acceptable under the ordinance.

Issue G - Section 5.5 (1a) and 5.190

Zoning ordinance Section 5.190 requires that there be an adequate permanent access to the lower lot where the accessory building is located. At a minimum, a permanent access must include a right-of-way of at least 18'. Section 5.5 (1a) requires that an adequate permanent access provide access to personal vehicles, and safe maneuverability for parking, snow storage and emergency vehicles, storm water and utilities. The Anderson's claim that their permanent access is Dixon Avenue. The problem is there is no adequate permanent access to the entire lot; even if we ignore that site has three lots. There is no adequate permanent access to the lower level and the permit should be revoked until adequate permanent access to this massive lower level is properly addressed. The huge multi-use structure on the lower level of the property can only be accessed from a little 8' wide two track that runs across the petitioner's properties. The problem is that the grant of the easement allows Mr. Johnson to keep a gate on the property line. This gate is on Mr. Anderson's and Mr. Johnson's property line and is only 9'8" wide. So it is not possible for the easement to provide for vehicle, snow storage and emergency vehicles to access the lower lot. The entire lot needs to have adequate permanent access. The average fire truck is 14' wide and the fire code requires an access of 20'. The width of an ambulance is unknown, but Ms. Schafer believed that an ambulance is more than 9' wide.

Chairperson Withrow asked for confirmation on the width of a fire truck.

Ms. Schafer stated that the if the Board feels that Dixon Avenue is sufficient and the entire property has adequate permanent access, than if there is a fire or medical emergency at the lower level and given its nature it is likely, if there is not adequate permanent access, guess who will be sued? The Board needs to determine if the entire lot has adequate permanent access.

Chairperson Withrow asked if the same access would be required if the structure only contained a boat house? Ms. Schafer stated that she felt it would depend on the circumstances. Planner Spencer stated that it was not defined in the ordinance.

Issue H - Section 5.186 Grade

The R-1 section of the Code requires that all residences and accessory buildings be at least 15' from the side property line.

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Section 5.186. Grades. Requires that no premises shall be filled or graded so as to discharge surface runoff on abutting premises in such a manner that will cause inconvenience or damage to adjacent properties. When property is developed adjacent to existing developed properties, the existing grades shall have priority.

This seems clear, until we try to apply it to the boat house accessory building. The City zoning permit has different plans than what was submitted to the Michigan Department of Environmental Quality (MDEQ). Ms. Schafer referred the Board to the MDEQ's permit application submitted by APL Properties. The plans attached to the MDEQ permit application demonstrate a substantial grade issue that must be considered. The plans show that Mr. Anderson plans to dredge within 9' feet of the Johnson's property, place sheet piling in the 15' setback area and construct an artificial grade to cover up the intrusion of this boat well into the 5' side yard. The newly created grade appears to be 4'-5' higher than the existing grade. The proposed elevation at the side of the boat house is 590'. The existing grade is 581'. It is at this point, 590 in the middle of the building wall, that the boat house height is measured. Ms. Schafer stated that the change in the grade will cause surface run off onto Mr. Johnson's property.

Ms. Schafer introduced Architect Randy Neumann. Mr. Neumann has studied the drawings and he advised the Board that the elevation drawings are incomplete. The Johnson property has an existing grade of 582.0. The proposed grade on the east side of the boat house is approximately 590.0. The MDEQ plans show a floating dock that is located outside the east wall of the boat well and is tall enough to allow someone to walk on the dock in the boat house. It's actually part of the boat house building. Mr. Neumann presented a sketch showing the MDEQ drawings and their elevations to the Board. [Exhibit 14]

Chairman Withrow asked what was the high water mark. Ms. Schafer stated that she believes that the high water mark is 581 or 581.5. Chairperson Withrow asked Mr. Neumann if the boat house was measured from the existing 581 or 581.5 elevation to the midpoint of the roof, would it meet the 26' height requirement? Mr. Neumann stated that the boat house would not meet the height requirement.

City Planner asked Mr. Neumann to submit a scaled copy of his drawing for the Board.

Mr. Neumann reviewed the plans with the Board. A boat well plan submitted to the MDEQ shows the placement of pilings on the east side of the boat house. The plan shows sheet pilings along the east wall and another set of piles 6' east of the boat house. The top of the piling is proposed at an elevation of 590' and the grade is being raised. The boat house plan shows a 60' x 6' floating dock located below grade and intrudes into the required side yard setback. Ms. Schafer voice concerns on the raised artificial grade being created. Ms. Schafer noted that there was nothing in the zoning permit application that discussed the underground intrusion. If underground structures were permitted, there is nothing to stop a person from building to the property line, placing dirt on the top of the structure and making it under grade.

Bryan Graham asked if Mr. Neumann had any evidence that the artificial grade would create a slope creating drainage onto Mr. Johnson's property. Ms. Schafer advised Mr. Graham that common sense would advise that an 8' height difference in a 9' area or a 12/12 slope would cause runoff. Mr. Graham commented that Mr. Neumann's drawing shows the encroachment blocked, what evidence is available that the slope will exist?

Member Sullivan asked if the structure was under grade and if the tunnels have to be considered in lot coverage calculations? Is it legal to have a structure underground and not include it in the lot coverage calculations? Planner Spencer stated that he does not know if the ordinance addresses the issue. The purpose of lot coverage is to ensure that we do not have over crowding lots.

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Ms. Schafer asked the Board to review the information submitted and determine at least one of the issues raised justify that the zoning permit can not stand.

Issue D - Section 5.32 (1)

Section 5.32 (1) states that there may only be one single-family dwelling on each lot. The permit has two structures. One is the residence and second is the accessory building that has a bathroom, laundry facility and gathering areas or living space. These items are on the drawings and make it a second residence. There is no kitchen, but this can easily be added. The boat house can qualify as a second residence. If the boat house is attached to the residence, than the underground areas can also be used as living area.

Member Cross understands that the lots along Dixon Avenue are non-conforming in size. She ask for information on the size of the lower lot. Ms. Schafer advised that the lot on the water is 61.35' in width.

Planner Spencer asked for clarification on the boat house square footage. Ms. Schafer confirmed that the main box of the boat house is 3,220 + square feet. The garage area is 470+ square feet and the area of the under ground out cropping is 6' x an unknown length. So the overall structure has at least 4,000 square feet in footprint. Ms. Schafer stated that Traver Wood, designer of the building, has confirmed the figures of the boat house and garage in prior testimony.

In closing, Ms. Schafer reminded the Board that it is not too late to correct situation. The permit has been issued, but nothing has been built. The permit can be revoked if it does not comply with all the provisions of the ordinance. It is important to avoid setting a precedent in the future that these kind of violations are acceptable. She asked the Board to consider revoking the permit and to see if there is another plan that can be submitted by Mr. Anderson that would fully comply with the zoning ordinance.

Chairperson Withrow asked if Mr. Johnson or other appellants have any comments to make at this time.

The Planner advised the Board that Mr. Johnson has submitted a letter to the Board. The letter was distributed.

Chairperson Withrow asked for a short recess. The meeting recessed at 7:26 p.m.
Meeting was reconvened at 7:34 p.m.

Mr. Eldon Johnson, of 306 East Dixon Avenue, read his May 20th letter to the Board [Exhibit 15]. He feels there are numerous violations in zoning permit 2850. He also asked the Board to review Section 5.242, Zoning Permit of the zoning ordinance.

5.272. Zoning Permits. No building or structure shall be erected or installed on any such lot, unless or until a zoning permit has been issued by the city for such building or structure. No permit shall be issued by the City of Charlevoix or any official thereof for the construction, erection, alteration, placing or moving of any building or structure on any parcel of land unless such structure or building is designed and the proposed location on its lot, is arranged to conform with the provisions of this chapter. ...

Mr. Johnson noted that zoning permit 2850 has three lots of record; there are three separate tax parcels. The zoning permit has a site plan that overlays the three lots as if the lines are not there. The plan gives the impression there is only one parcel. This is a violation of the zoning code. They are separate lots with separate requirements. Until the lots are joined under one ownership, the permit is in violation of the code.

Mr. Johnson reviewed the definition of an accessory use and boat house with the Board. Mr. Johnson reminded

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the Board that a boat house is to be exclusively for the dockage and storage of boats. He also reviewed Section 5.190 Adequate Permanent Access. Mr. Johnson briefed the Board on the history of the unnamed easement that runs parallel to Round Lake. This unnamed easement allows access to several lower level lots that do not have access to East Dixon Avenue. The prescriptive easement, with a limited scope of use, to two vacant parcels that only serves two docks with 4-5 boats and maybe 3-4 cars. In 2006, APJ Properties LLC requested a MDEQ permit for dredging and a Marina Operating Permit. The prescriptive easement was not to be used for a Marina. In 2007, zoning permit 2850 was issued. Mr. Johnson received notice in May from the MDEQ, that the zoning permit had been issued. He expressed dismay that the neighbors had received no notification on the massive construction project. Mr. Johnson immediately hired an attorney to look at the review and certification of the zoning permit. Zoning covenants were not up held in this case. He tried to come before the ZBA in July 2007, and was unable to be heard, as the appeal was not filed within 30 days of the issuance of the permit. They went to court and that is why we're here today.

Mr. Johnson reviewed a sketch with the Board [Exhibit 16]. Mr. Johnson agreed that we can only look at the requirements of the zoning code. Mr. Johnson stated that the purpose of a side yard is that nothing is to be built in the 15' area. The boat well shown in the MDEQ drawings show a 6' wide dock encroaching into the side yard setback. The boat well area is below grade.

The boat house building has over 3,200 square feet by itself and the garage has additional square footage. Then you have the roof of the lower level. This roofed area, which is located at elevation 590', is covered by dirt and encloses the 6' floating dock and is over 50' long. The building is 50' wide and the boat house is on a 61' wide lot. The Anderson zoning permit uses elevation 590' as the point to measure the height of the boat house. Mr. Johnson pointed out that the MDEQ plan requests dredging to elevation 570. This creates a 20' space for the boat below the finished grade. No structure of any kind can be built above grade. The height of the boat house is calculated from 590' not the existing grade of 582'. He estimates that the boat house's peak to be 2' above the height of the ridge. He feels the boat house is at least 8' too high. The accessory building is on the rear property line. A rear yard setback must be required. The Anderson's are saying that they can attached the accessory building to the principal, it eliminates the 50' setback from waterbodies. Mr. Johnson reminded the Board that if an accessory building is attached to the residence, the accessory building is allowed to be 26' high. If the accessory building is detached it is required to be lower.

The Code requires an accessory building to not cover more than 30% of the rear yard area. The site plan calculations use a 50' rear yard setback requirement. The ordinance calls for a 35' rear yard setback in the R-1 district. The yard coverages violate the ordinance whether you calculate it by one lot or both lots.

Mr. Johnson questioned if the parcel had adequate permanent access, as required by the Code. The lower level is accessed by only an 8' easement. He also questioned if the proposed development has adequate parking for the both the residence and the boat house. The boat house and docks could have up to 19 boats. The ordinance requires one parking space for each 26' of dock space.

Mr. Johnson is asking for the City of Charlevoix to enforce the zoning code. The proposed uses on the lower level are not in compliance with the ordinance. Mr. Johnson stated the permit was issued without authority and did not follow the preamble section of the zoning ordinance. The proposed use is not allowed in the R-1 zone district. This type of boat house should be in marine commercial.

Eugene Saenger, Jr., owner of 210 East Dixon Avenue addressed the Board. He also owns a boat house that is located on the easement parallel to Round Lake. He wishes to discuss the process with the Board. The permit should not have been issued administratively. When this permit was issued in 2007, he had asked the Mayor if

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the City's zoning ordinances were in compliance with the State of Michigan Zoning Enabling Act. He was advised by Assistant City Attorney Graham that the city was "mostly" in compliance with the act. He needed to go to a number of courts in order to have this hearing. He is in the process of appealing the Anderson MDEQ permit. He voiced concerns that no one knows what is presently buried on the site and what will be found if the dredging is allowed to take place.

Mr. Saenger reviewed a GIS area map with the Board. The existing homes were built prior to the enactment of the ordinance and the existing structures do not meet the required setbacks. Mr. Saenger advised the Board that he had to obtain a variance to extend his deck 4' as his lot was an existing non-conforming lot of record. He had to notice the neighbors and have a public hearing, but the Andersons' plan got approved administratively. He stated that the Andersons have a number of other options and that City staff did not look at all the available options before issuing the zoning permit. He voiced concern that if the lots are not combined, Mr. Anderson could sell one of the parcels. He is depending on the City to protect his property rights. The boat house is attached to the garage, which is attached to the "Führer bunker complex", which is attached to the elevator and the house. He asked if an accessory building can be built attached to nothing. There is nothing in the ordinance that requires you to build the house before the accessory building. He has met with City staff several times seeking information to build a boat house, a deck, parking and upland dredging on his vacant lot and has repeatedly been told no. Where is the process? The magnitude of this project would make you think that a notice would be required. He depends on the process and the City employees to protect him.

Mr. Saenger reviewed the permanent adequate access requirements with the Board. The evening he met with the ZBA on his variance, the ZBA heard another case for the Blossom home. At the meeting, a discussion took place on whether the easement that crossed the Blossom property had been abandoned/vacated. He recalls Virginia Olsen being asked if the easement had been vacated/abandoned; and he recalls her answering "yes". Mr. Saenger stated that the easement over the Blossom property still exists; it was not abandoned. If the easement has been abandoned, it was done inappropriately. The Andersons have avoided the Thistle-down access that was in place for their use.

The former Planner and Zoning Administrator did not follow up on this key representation about that application, so who knows what has been done here. It is important to let the facts make the decision. If there is any ambiguity, you (the ZBA) can interpret it; if it is unambiguous you do not need to interpret it. Whatever is left out, you (the ZBA) can decide. Mr. Saenger asked the Board who was running things, the ZBA or the City Attorney. Staff's review of the Anderson project was done behind closed doors. The Andersons have had 2 years to combine the three lots. He is dismayed that his money has had to go to fight the issuance of the Anderson permit. He would have preferred to use the funds to improve his own property. The boat house roof line is over the Dixon Avenue grade line and is an aesthetic question. Mr. Saenger told the Board that Staff issued the permit improperly and exceeded their authority. Staff did not do their homework and no one knows what else was going on. If the City does its job, we will not have to. Mr. Saenger stated that "we are not going away".

c. Presentation by Anderson and/or agents. (If requested)

Mr. Anderson addressed the Board. He asked the Board to consider tabling the public hearing to another date, due to the late hour. There are a number of details to be reviewed to explain the incorrect information the Board has been given. There are a number of new documents and theories that need to be addressed and he wishes to have the Board's attentiveness at this late hour.

The Board generally agreed to continue the meeting.

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Mr. Anderson asked for a short recess. Chairperson Withrow agreed to the recess. Meeting recessed at 8:35 p.m.
Chairperson Withrow reconvened the meeting at 8:47 pm

Planner Spencer submitted three letters written to the Board. The letters were filed as Exhibit 11 - Letter from Mark Andresky, 209 East Dixon Avenue; Exhibit 12 - Letter from Vivian Cohen of 207 Belvedere Avenue, #34; Exhibit 13 - Petition in support of Zoning Permit #2850.

Chairman Withrow asked the Board if it would like to consider recessing the meeting to another day. Mr. Johnson stated that he would like the hearing to continue as it would be a hardship for him to return. The Board generally agreed to continue.

d. Call for public comment.

Jerry Puhl, representing WATCH (Water Air Team Charlevoix) stated that the organization has reviewed the permit and WATCH does not like the proposal. Round Lake is a jewel and needs to be protected. The public enjoys the Round Lake views. The City has just completed a multi-million dollar project to enhance the beauty of Round Lake. The Anderson's project will set precedence and will encourage adjacent homeowners to build along the north shore of Round Lake. WATCH feels that a project of this size is not suited for the shoreline of Round Lake. Mr. Puhl asked the Board to deny the construction.

Gabe Campbell, of 504 Newman Street, addressed the Board. He attended the Anderson's DEQ hearing. He spoke to the former City Planner and voiced his concerns with the concept of being able to build across existing building lines. There is no point in having a Code Book if you can build across lot lines.

John Winn, of 1225 Belvedere Avenue, spoke to the Board. Mr. Winn lives on Round Lake and if the project goes through he will look at it every day. He feels it is a good project. He is concerned that we are stomping all over individual rights. If the project meets the criteria set forth by the City Code you cannot say no to it. There are large boat houses all over Lake Charlevoix. The project either conforms or it doesn't conform. The Board needs to look at what is legal as opposed to what individuals may feel about the project.

The Chairperson asked if there was any other public comment. No other comments were available.

c. Presentation by Anderson and/or agents. (Continued)

Mr. Jim Anderson introduced his wife Patty and the people who have worked on his project: John Campbell, Traver Wood, Dan Barron and Jay VandeWyngearde.

Mr. Anderson referred the Board to his letter [Exhibit 8]. He has been in Charlevoix since the early 1970's. He purchased the adjacent lot in 2003 with the intent of merging the lots to build a retirement home. He does not understand the issues being raised. The parcel located at 304 East Dixon is owned by APJ Properties LLC. In the past, he has allowed friends to use the property. APJ stands for Anderson Patty and Jim. The parcels located at 300 East Dixon are in the Anderson's name. The parcel had two pieces when he purchased it. If he is permitted to build his new home, it is his intent to merge the parcels. If it makes so much difference, he will merge it tomorrow. He is looking for assurance that he can build his house. If he is unable to build the house, he wishes to retain the option to sell the lots. Mr. Anderson has spoken to legal counsel and no one feels the lots have to be merged to obtain a zoning permit. The lots will need to be merged prior to obtaining a building permit. The first step is to obtain a zoning permit and then after the permits are received, the lots are merged.

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There have been a number of litigation issues between Mr. Anderson and Mr. Johnson over the road easement that is located on the lower level. The plan adheres to the zoning code and there is nothing on his plan that is not already being done in other areas of Charlevoix.

Mr. Anderson stated that Mrs. Camp and Mr. Saenger rents out boat slips and runs a marina on their property. This is not allowed by the zoning ordinance; they do not have a marina operating permit. He follows the rules. He does not rent his boat slips. He allows his guests to use his slips at no charge.

Mr. Anderson is seeking to erect a home that will be comfortable for his extended families. They have 4 children and 6 grandchildren and a number of close extended family members. He is an avid boater and it's his dream to have a retirement boat that he can enjoy in the shoulder seasons. He wants to have the entire property be handicapped accessible. His son's mother-in-law is handicapped. Presently, the only way she can access the dock area is to drive to the lower level using the easement. The last time this was done, Mr. Johnson intimidated his family by yelling at them to close the gate. It is Mr. Anderson's desire to have the entire house handicap accessible. He has a lot of friends that are handicapped. His does a lot of philanthropic work with the Rehabilitation Institute of Michigan. Many of the people at the Institute are in wheelchairs. He invites them to his property, but he has difficulty in getting them to the water level. So he has asked that each level of his house be accessible. The house will have only one elevator, which will access the various levels of the property. It is his desire to have a home that is the essence of Charlevoix. The cottage will be made of wood, with rock trim, a steep roof line and extensive porches. He advised Site Planning that the project could not have any variances. Mr. Anderson stated he was afraid of being sued if he went beyond the rules. He met extensively with the City to learn what the rules were and his design has all the items as they are supposed to be. Mr. Anderson showed the Board artists rendering of his dream home on Dixon Avenue [Exhibit 17]. Mr. Anderson also presented to the Board a photo of the existing structures located at 300 and 304 East Dixon. The home located at 300 was demolished earlier [Exhibit 18]. The houses at 300 and 304 East Dixon measure 91' across. The proposed house is only 88' wide and is 3' less than the other two homes combined. The proposed home is similar size to the buildings in the area.

The main issue has been the boat house and how it is connected to the house. Mr. Anderson advised that Board that Mr. Wood will show the Board the details on how the boat house is connected to the house and Mr. Wood will also show the Board other examples of attached accessory buildings in the City.

Mr. Anderson showed the Board a model of the proposed house and boat house [Exhibit 19]. He showed the Board the various ways the house and boat house are attached. The residence and boat house are connected by a trellis/breeze way structure, by a patio and by the basement. The house is designed to permit his friends in wheelchairs to go from the house to the patio, breeze way and the boat house, without having to go outside. The buildings are connected. The ordinance states:

Section 5.176 (1) Authorized accessory buildings may be erected as part of the principal building or may be connected to the principal building by a roofed porch, patio, breeze way or similar structure ...

The drawings show that the house, patio and walkways are attached to the boat house. At elevation 612, there is an underground basement that is connected to the boat house by a trellis or a covered walkway. This is a landscape feature and landscape features were not included in the zoning permit plans. The second level of connection is the breeze way. This room has lots of windows on both sides and connects the first basement to the upper level of the boat house. The breeze way also has moveable walls that allow the room to be converted into a covered porch.

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There is a second basement that connects the house to the boat house's lake level. This permits individuals in wheelchairs to access the boat house's water level. The garage that is attached to the boat house will be used to store boats, not cars. When both garage doors are open, the building becomes a covered porch. The garage doors are designed to be open on both sides to give clear passage in case of emergency. The boat house has three levels that connect to the house; the trellis, the breeze way/covered porch and the underground basement area to the garage. If the boat house were to be removed, the elevator will still be constructed. There are no tunnels; the underground rooms are 24'-26' wide. If one were to say that a boat house has to be detached, how would you explain the Dow boat house? The Dow boat house has upland dredging and living space. It had to come before the ZBA for a setback variance. If attached boat houses were illegal, than the ZBA would not have approved the Dow boat house. Mr. Anderson advised the Board that Mr. Wood will show the Board construction details and various property grades. One of the issues raised in Mr. Graham's report [Exhibit 1] was that we plan to use the boat house as a boat house. There is enough room in the house for our guests. It is our intent to store and dock marine and recreation equipment in the boat house.

Mr. Anderson advised the Board that once the elevator is built, the use of the easement to access the boat house will be reduced between 50-80%. The easement is used to help those who have difficulty walking to get to the boat house. Portions of the house have been ridiculed. The building does not have a Führer bunker; it does not have tunnels, like the Windsor tunnel. It has a structure that is 24'-26' wide. It is a room in the house. The underground rooms do not block the views of adjacent property owners. He tried to build the boat house over the water, just like Mr. Saenger's, but the MDEQ does not permit individuals to build over the water anymore. WATCH does not want boat houses taking up Round Lake. The proposed boat house starts at the shore line and goes in land. The boat house will have little impact of the views of Round Lake and Mr. Wood will show this to the Board.

The new finished grade will level the property. It is Mr. Anderson's understanding that he could go out tomorrow and place a steel sheet pile wall and level his property without zoning permits. He is not raising the property; the majority of this property is currently at the elevation 590 level. The proposed waterfront grade between his property and Mr. Johnson's will be similar to the existing grade between Mr. Anderson's and Mr. Blossom's property.

Mr. Anderson advised the Board that the MDEQ required him to receive a Marina Operating Permit because a friend was using the property at 304 East Dixon. Mr. Anderson applied for the marina operating permit for that sole purpose. The MDEQ has since removed the requirement. Mr. Anderson has told Mr. Johnson, in writing, that it was not his intent to operate a marina or rent out boat slips and that the MDEQ has stated that a permit is not necessary. The marina operating permit issue happened years ago and Mr. Johnson is still worried about it. Mr. Anderson advised the Board that he does not want to rent any boat slips. He doesn't want the liability. Mr. Saenger and Mrs. Camp rent their boat slips. Mr. Anderson questioned Mr. Johnson's statement that there will be nineteen boat slips. He has two docks with one slip on each side, for a total of four slips. The City determines a boat slip as 26' of dock space. It has been said that if a dock is 90' long it could hold 6 boats. Theoretically, that could happen, but that is not what he is doing. The most boats he ever had on his property are: his boat, 3 guests, 2 jet skis and a ski boat. He could show the Board that Mr. Saenger's docks are stacked with boats, rental boats and jet skis. Mr. Anderson stated that if he has 19 slips per the Code, than Mr. Johnson has 13 and Mrs. Camp has 13. Chairperson Withrow advised Mr. Anderson that the Board is not interested in the slip issue at this time.

Mr. Anderson advised the Board that he loves Charlevoix and has been a part of the City since 1985. He wishes his children and grandchildren to be together to enjoy Charlevoix. He wishes to invest in Charlevoix. The house will not be cheap to build and the taxes will be burdensome, but he wishes to retire to Charlevoix. The building of

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the house will create local jobs. This will be his permanent home. He wishes to adhere to the law and he believes that they are meeting all the requirements of the code. He wishes to be treated like other citizens. Nothing is proposed in his construction that is not already being done in other areas of the City.

Charlevoix Fire Department Shift Commander Joe Schwartzfisher spoke to the Board. He advised the Board that the City of Charlevoix's widest piece of fire apparatus is 8'7" wide. The longest piece of equipment is 36' long. The Fire Department has been down Burns Street and on the easement quite a few times. The fire trucks fit down there. The Fire Department likes to be involved in pre-planning to ensure adequate emergency access for area homes and boat houses.

Traver Wood of Site Planning addressed the Board. He has been in Charlevoix for over 32 years and worked with Mr. Harsch for over 23 years. It is his job to assist clients in obtaining various permits. He started working with Mr. Anderson in 2002. Mr. Anderson asked to have a house for his family that captured the essence of Charlevoix. It was important to Mr. Anderson that the house abides by the policies of the City and State of Michigan. He did not wish to violate any of the zoning rules. The plan does not violate any zoning rules. It requires no variances. There is nothing being done here that is not being done some place else in Charlevoix without variances.

Chairperson Withrow asked that it be kept in mind, that just because it has been done in the Charlevoix in the past, without a variance, that it may not count. Mr. Wood stated that it was his understanding that past practices would have an impact. Chairperson Withrow confirmed that the Board would take that into consideration, but we have to abide by the zoning ordinance requirements. Just because it has been done by someone else, it doesn't count.

Mr. Wood reminded the Board that boat houses are an allowed use in the R-1 zone district. There is nothing that requires a boat house to be a detached accessory structure, nor is there anything that requires the boat house to be attached. Mr. Wood reviewed the various concepts with City staff. There has been a lot of discussion about tunnels. Mr. Wood states he used the term "tunnel" in the MDEQ drawings. This is a mis-conception. The residence and the boat house are connected in three separate ways. The first connection is by a patio, as shown by the model and the site plan. We know this constitutes as a connection as it is clearly stated in the ordinance. There are places around town where this has been done. This is clearly shown at the Colt residence on Lincoln near Potter Appliance. [Exhibit 20 - 101 East Lincoln]. The permit application describes it as a connected garage. This is the same type of connection that Mr. Anderson has at ground level. The Alexander home, next to the Grey Gables, [Exhibit 21 - 318 Belvedere Avenue] is an example of the garage being connected by lattice/trellis/arbor over the walkway. We know it is an attached garage as it exceeds the 16' height limitation. The words "attached" and "connected" have been used synonymously. At the time the zoning permit was issued for the Alexander house, it also had two separate parcels. The Board asked Staff to obtain information on the Alexander permit.

Member Cross asked how far the applicant will dredge into the shoreline. Mr. Wood advised the Board that the MDEQ permit application shows approximately 60' will be dredged.

Chairperson Withrow pointed out there are three levels of basements that will be cut into the hill. Mr. Anderson stated that the basement connection is only about 20' wide. The further down it goes, the smaller the connection will be. The elevator will be at the lowest level. The house would be located at elevation 624 and the boat house is at elevation 590, so there will be 34'.

Mr. Wood presented a revised A-4 plan. [Exhibit 22] It places the two plans and places them end to end. The

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plan reorients the area to clear up any confusion. This level has the exercise room that connects to the breeze way, which connects to the residence. He also showed the Board this location on the model. The room opens out onto a landscaped terrace. There are no long deep tunnels.

Mr. Wood presented the Board a new plan for the lower boat house [Exhibit 23]. The revised plan (A-3) reorients the area to clear up any confusion. The plan shows the building end to end as they will be built. On this plan, you see a long corridor that leads from the boat house to the lowest basement level of the house. This shows the garage or a portico or covered porch. The zoning ordinance requires 8 parking spaces for the boat slips. As Mr. Anderson outlined earlier, the building is not intended to be used as a garage. The space will be used as a covered porch and boat storage. The word "garage" was placed on the plan to assist him in meeting the Code's parking space requirements. The spaces do not have to be there. The parking spaces can be placed somewhere else. Mr. Anderson has shown the Board the various ways the house is connected to the boat house. The house is designed to meet Mr. Anderson's need for handicapped access for his friends and family to get to the ground level.

Chairperson Withrow asked for clarification on how the west side of the Anderson's lot is used as an example to show how the development would affect Mr. Johnson's property. Mr. Wood showed the Board the various elevation differences on the model and on the west property line photo [Exhibit 24]. The Blossom house is approximately 5-10' higher than elevation 590'. The retaining wall is built 2' on Mr. Anderson's property. There is a stone wall on the Blossom property that can be seen on the picture. The retaining wall replaced the old rip rap that was between the Anderson and Blossom property.

Mr. Wood advised the Board that there will not be two dwelling units on the property. The boat house does not have what it takes to be a dwelling unit according to the ordinance. The ordinance states:

A dwelling unit is a group of rooms located within a building and forming a single habitable unit with facilities which are used or intended for complete living facilities.

There is no space in the boat house intended to be used for complete living facilities. The boat house does not have any bedrooms or kitchen facilities. Anyone can argue that you can place a bed and a hot plate in the garage. But that does not make it a second dwelling.

Mr. Wood asked to review the size of the project and the number of slips with the Board. Chairman Withrow advised Mr. Wood that boat slips are not an issue.

Member Anderson asked for information on the east (Johnson) side of the boat house. A statement was made earlier that the boat house was not 15' feet from the side lot line and that the boat house was too tall. Mr. Wood referred the Board to a drawing that was part of the MDEQ application [Exhibit 25]. The drawing shows that the wall of the boat house is 15' from the side property line. The boat house meets the side yard setback requirement. There is an underground retaining wall that defines the boat well, which is located below grade. Structures that are below grade are not required to meet the side yard setback.

Chairperson Withrow asked Mr. Wood to confirm that elevation 590 would be the ground level all the way to the 582 lake elevation. He also asked if there would be 9' of unsupported dirt up to the lake front. There are 2 underground piling walls within 15' of the side yard. Mr. Wood stated that there is no unsupported earth anywhere. They have two walls within 15' of the property line. There is one wall below grade, which defines the boat well and a second wall is a retaining wall. This wall will prevent soils and other things from running off onto Mr. Johnson's property.

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Member Anderson asked if the top of the wall was going to be at elevation 590'. Mr. Wood verified that the top of the wall creates the 590 elevation around the boat house building. The zoning ordinance clearly provides for measuring building height from the finished grade. This has been done at numerous locations. City records indicate that the City Attorney supported this in a twenty year old memo. Drilling samples have been taken on the lot. The area is all sand. The rain from the roof runoff will not run on to Mr. Johnson's property. It will soak into the sand. Mr. Wood showed the Board an example of how finished grade has been used in the past. He presented a photo of the Beachouse condominium [Exhibit 26] built in 1990. The building is located in the R-4 district and the lowest grade is at elevation 602. The lake side of the building has a retaining wall that keeps the building at elevation 602 on the lake side of the building. The Beachouse has a small intrusion below elevation 602, to allow them to meet a BOCA building code requirement. The grade on the lake side is a created grade and provides a ground level exit for the units in the middle of the building. The photo shows landscaping that was included on the site plan. The Beachouse also has a tunnel which runs through the created grade. The tunnel provides access from the building to the lake. While it has been characterized that underground structures should adhere to setback requirements, these provisions are allowed in the ordinance and have not had to meet setbacks in the past. If someone would like to change the rules, that can be done. But Mr. Wood asks that it not be done in mid-stream.

Chairperson Withrow asked for the ground elevation on the west side of the boat house. Mr. Wood stated that this evening he has heard a couple of elevation numbers that he takes exception with. The elevation on both sides of the boat house will be at elevation 584, which is the bulkhead. Chairperson Withrow asked to receive details on how far the boat house walls were from the side yard, specific elevations for both sides of the boat house, with dimensions, so the Board can determine if the project complies or not. Mr. Anderson asked if they could present the information on a visual. Chairperson Withrow stated a print would be adequate and that the information should be forwarded to staff.

Mr. Wood used the model to show the Board that while they are raising the grade in general across the property, they were balancing the grade from west to east.

Member Miller asked to view the model. Mr. Wood gave the model to Member Miller. Member Sullivan asked if the model was going to be kept as an exhibit.

Mr. Wood entered in to the record a drawing of the Winn boat house [Exhibit 27 - 125 Belvedere Avenue] as an example on how height is measured. This boat house is in the marine commercial district, but height is measured the same in all zoning districts. Height is measured from the ground, not the lake level. There has been a characterization that the project includes a "huge boat house". He wished to point out that even though the new boat house would be larger, it is not going to be 3600 square feet. The boat house is 3066 square feet or 42' x 73', as shown as the site plan. The boat house is larger than the Elliott boat house, but smaller than the Dow boat house. If you look at all the boat houses on Round Lake [Exhibit 28], the Anderson proposal is less than the Chicago Club boat house, which is in the R-1 zoned district. The Chicago Club boat house has over 16,000 square feet and is upland dredged.

The Board has heard that the former Jerome lot is actually two parcels. Mr. Saenger has spoken that there are a number of things that can be done with the lots. Mr. Anderson is proposing to join the lots and preserve green space. The parcels must be combined to comply with the R-1 zoning ordinance.

The ordinance requires a 50' rear yard setback along the water front. The R-1 ordinance has a 35' setback requirement when the lot is not on the water front. Mr. Wood is confident that the project's lot coverage meets the requirements of the ordinance.

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Mr. Wood told the Board that the Anderson's were adamant with the appearance and that their home complies with the ordinance. He feels this project meets the requirements of the R-1 zone district. The plan complies with setback, lot coverage and height requirements in the Code. The house and boat house is an allowed use in the R-1 district. The boat house is consistent with the charm of Charlevoix. The project does not incorporate anything that has not already been done throughout the City.

John Campbell spoke to the Board. He has been a part of the community for over 38 years and has had the opportunity to do some great projects. He has worked with the law. The Anderson project complies with the law. Traver has worked on the project for many years to ensure this.

Member Sullivan asked for a short recess.
Chairperson Withrow recessed the meeting at 10:30 p.m.

The meeting reconvened at 10:42 p.m.

Dan Barron spoke to the Board on behalf of the Anderson's. He wished to address the legal issues involved. The ZBA is a quasi-judicial board and it is the Board's duty to determine if the project meets the requirements of the Code. Boat houses are an allowed use in the R-1 zone district. Boat houses capture the essence and character of the community. The Charlevoix Historic Committee is considering establishing a special historic district to preserve boat houses. The Anderson's proposal keeps with the character of Charlevoix. The boat house complies with the ordinance.

Mr. Barron reviewed the Brown Powers letter [Exhibit 2] with the Board.

Issue A - Section 5.174 Lot of Record, Issue G - Section 5.5 (1a) and Section 5.190. These sections deal with the separate lots of record and the unification of the three lots into one lot of record. In applying the ordinance, the Board needs to look at Section 5.174. The section indicates that the lots are to be combined prior to a building being erected, altered or moved, not prior to the zoning permit application. For clarification, the permit could have placed a condition that the lots be combined. The Charlevoix County Building Department, prior to the issuance to their permit would verify that the lots have been combined. There is nothing to prevent the application or issuance of a zoning permit. This practice has been done during the 25 years he has been involved in land use planning. There have been numerous situations where an applicant proposes to purchase a parcel, but the applicant wishes to be assured that he can obtain approval before he purchases the lot. Mr. Anderson has stated repeatedly that he intends to combine the three lots. Currently, there are three non-conforming lots of record. If you combine the ownership, the lots are merged and you have a new lot of record. It is doubtful that the lots can be separated if the project cannot go forward. The City likes to see conforming lots. The Anderson's will be creating a conforming lot of record. In the event that someone would start to build, they would be in violation of the zoning ordinance and the zoning permit. The zoning ordinance says you can not start the erection, alteration or moving of the building unless you have the lot of record. There are good reasons why an applicant has to submit an application for a zoning permit or site plan approval, before the actual combination or ownership of the parcel. This is consistent with the Zoning Ordinance. If the lots are not combined to create a lot of record, it would be a violation of the ordinance. The Anderson's will combine the lots, prior to construction.

The unifying of the lots will also affect the adequate permanent access of the parcels. Lots of record are required to have adequate permanent access. Once the three lots are combined, they will have what the ordinance defines as adequate permanent access to Dixon Avenue. The new lot of record will be situated on Dixon Avenue, which is a 100 year old platted street and satisfies the definition of an adequate permanent access, as specified by the zoning ordinance. It is nice that there is added accessibility to the boat house and the lower

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level of the parcel by the existing easement. It is nice that emergency vehicles can get down there. But that is just an added benefit. The ordinance is met; Dixon Avenue is an adequate permanent access.

Issue E - Section 5.5(1) Building Code - The Brown Powers letter indicates that the boat house exceeds the allowable size for accessory buildings and boat houses per the State of Michigan Residential Construction Code. There are two things to consider. First, this section of the Michigan Residential Code was amended in August of 2008, a year after this permit was issued. Secondly, the letter from James VandeWyngearde of Pepper Hamilton LLP dated May 12, 2009 [Exhibit 9, page 11] stated that this item was intended to apply to detached accessory buildings, not attached accessory buildings. This section is under the jurisdiction of the Charlevoix County Building Department. It is this department that should determine and enforce that aspect of the building proposition. Mr. Graham noted this is his memo [Exhibit 1, pages 7-8] as well. This is the County's jurisdiction; this is not a violation of the City's code.

The remaining issues noted in the Brown Powers letter – Issue B - Section 5.5 (1) boat house; Issue C - Section 5.32(8); Issue D - Section 5.32 (1) and Issue F - Section 5.176 (1) all deal with the boat house and that the boat house is not an attached accessory building. The ZBA has heard arguments and seen exhibits from Mr. Anderson and Mr. Wood that verify that the boat house is attached. Issue F - Section 5.176 refers to the basic characteristics of the structure. Section 5.176 of the ordinance states that an accessory building can either be attached or detached. The terms "attached" or "connected" are used synonymously, as Mr. Graham pointed out in his letter [Exhibit 1, page 6] by Webster's *Dictionary* definition, the words are interchangeable. The word "attachment" gives it stronger grounds for approval. Something is attached or physically affixed together, such as a wall, and a "connection" has something that unites the two parts. It does not have to have the physical connection. The counsel for the petitioners stated that even if there was a breeze way connection, the buildings would not be attached. If you look at Webster's *Dictionary*, it says "detached" is not connected. This is the common meaning of the word. The boat house is clearly an attached structure. Mr. Barron used the model to show the various ways the house and the boat house were attached by the protruding basement area, portico, the enclosed breeze way, the trellis, and the patio with stone work and gardens. The beach house is an attached structure. The elements attach the boat house to the house. Even if the boat house were not to be built, most of the structure would still be built to allow Mr. Anderson to have handicapped access to the lake level.

There have been comments this evening that the boat house could not be an attached structure. Issue D - Section 5.32 (1) states that boat house is a second dwelling unit and that there are two dwelling units on the property. The zoning ordinance states:

Section 5.6 (5) Dwelling: Any building or portion ... designed for ... residential purposes containing one (1) or more dwelling units.

Section 5.6 (8) Dwelling unit: ... rooms ... forming a single habitable unit ... which are used or intended for complete living facilities.

Mr. Barron stated that in order for the boat house to be a dwelling, it has to have complete living facilities. This structure does not have a kitchen or bedrooms. It is not intended to be used that way. If these items were added, it would be at that point, violation of the zoning ordinance. This is a distinguishable structure and it is attached to the residence.

Issue C - Section 5.32(8) the applicants contend that a boat house cannot be an attached accessory building. Ms. Schafer has argued that a boat house must be used exclusively as a boat house. Mr. Barron reviewed various ordinance definitions with the Board. The ordinance indicates that a boat house can be an accessory

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building. The ordinance also indicates that an accessory building can be attached. The argument seemed to be that a boat house had to be used only for the dockage and storage of boats. The definition of a dwelling is that a dwelling is a portion thereof which is designed for residential purposes, not the whole portion. A portion of this building is being used exclusively as a boat house. The ordinance allows a building to have segregated uses. One part of building will be used for dwelling purposes and the other portion shall be used exclusively as a boat house, which is consistent with the ordinance.

Mr. Barron commented on Issue H - Section 5.186 - Grade. It is their belief that a retaining wall is not a structure for setback purposes. This has been the case in numerous other City projects. The Anderson's are not committed to the proposed building materials. They could use rocks, rip rap or other structures to help filter and drain the water. We have been told that the ground in this area is sand that will absorb the flows. If in the future, storm flows entered onto Mr. Johnson's property, it would be a violation of the zoning ordinance. The Charlevoix County Soil Erosion Department has analyzed the property and they have issued a permit allowing the construction. The County does not feel there is any prospect for surface discharge onto the adjacent property. Based upon prior interpretations, Mr. Barron does not feel that the retaining wall is encroaching into the side yard setback.

Mr. Barron said the last issue was the boat house and how the Code defines an accessory structure. The Code states that a boat house is for the exclusive docking and/or storage of boats and other recreational marine equipment. Charlevoix's boating community considers boating and the boat dockage as an active situation. People lounge on their boats when the boat is moored. They hook power up to the boat when it is at the dock. People use water to wash their boats, when it is moored at their docks. These activities are part of docking the boat. It is not a passive situation. The boat house has facilities to serve the people using the docks. The boat house has restrooms; this is part of dockage in Charlevoix in the summer season.

The Anderson's have gone to great lengths to come up with a proposal that complies with the zoning ordinance. We have the interpretations and the direct ordinance language that have been used to prepare the proposal. Mr. Barron asked the ZBA to use the ordinance language to determine if the permit complies. There is a strong basis, using Webster's and the precedents that have been applied over the years, that the zoning permit complies.

In closing, Mr. Anderson reminded the Board that he is proposing to take two existing non-conforming lots and make one conforming lot of record. He is proposing to take two non-conforming houses that sat on the lot lines and create one conforming house that has conforming uses. He is proposing to remove some of the boat slips. He is not renting the boat slips. He is looking to decrease the use of the easement by building the elevator. He is trying to help Charlevoix and the neighborhood. He wishes to create a friendly neighborhood for all people, even those who have challenged this proposal. If a public building was built today, a handicapped access would be required. He wishes to provide handicapped access for his family and friends. He has been working on this project since 2003 and has been in litigation on Zoning Permit 2850 for two years. Mr. Anderson wishes this to end soon. He wishes to build without any variances.

e. Rebuttal from applicants

Ms. Schafer addressed the Board. If the boat house is attached, it violates the provision that the boat house be used exclusively for dockage. "Exclusive" means "excluding all others" and a boat house must be the entire building, not a portion of a building. If the applicant wishes to say it is attached, there is a problem calling it a boat house.

The building code limits the size of the boat house. This provision was adopted in 2006 and was in effect at the time the zoning permit was considered. It makes no difference if the structure is attached or detached; the size is limited to 3000 square feet by the building code. It is important to keep this provision in mind when considering a structure in the R-1 zone, not the marine commercial zone, which was one of the comparisons.

The side yard encroachments do not involve a retaining wall. They're talking about a part of the building sticking out 6' into the required side yard setback. Mr. Anderson is covering up the encroachment with dirt and telling us that it is a new finished grade. The existing grade is elevation 582 not elevation 590. There is an 8' high structure encroaching into the side yard. The grade of the building cannot be created by placing dirt on top of a roof. The fourth point is the height of the boat house. You cannot pile dirt up to the side of a building and measure from that point. A buildings height is measured from the lowest point of the building.

Mr. Anderson and Mr. Wood have stated that they want no variances. If a variance had been requested, then the neighbors would have known what was being proposed.

Ms. Schafter stated that several comments have been made this evening that Mr. Anderson does not plan to use the garage as a garage. The Andersons say that the garage area would be used as gathering area. This is the first time this comment has been made. It's called a garage on the plans, but will not be used as a garage. Also, helping the handicapped is an honorable goal, but the question here is if Mr. Anderson's building is not allowed by the zoning ordinance. If we could rely on what Mr. Anderson says, we would not need a zoning ordinance. The zoning ordinance is making sure there is a procedure and a guarantee that buildings comply with the zoning ordinance. Mr. Johnson stated it is a protective covenant to follow the zoning ordinance.

Mr. Johnson thanked the Board for its review and asked the Board to enforce the zoning code and systemically lay out the side yard, height and rear yard encroachments. There is no way an attached or connected accessory building can eliminate the need for a rear yard setback. He has tried to show the Board the facts that will guide them to make their decision.

Chairperson Withrow closed the public comment portion of the meeting.

e. ZBA discussion and/or questions for staff, property owners, agents, etc.

Chairperson Withrow advised that staff and legal counsel will prepare a proposal for the Board. The Board will look at both positions and staff's recommendation. The Board will look at everything. Staff will give the Board alternatives to select from. The Board will determine the right answer.

f. Motion

Motion made by Member Anderson and seconded by Member Cross to adjourn consideration of the deliberation on Case #09-03 ZBA until June 24, 2009 at 6:00 p.m., in the Charlevoix Council Chambers. Motion was adopted by a unanimous voice vote.

1) REQUESTS FOR NEXT MEETING'S AGENDA None.

J) ADJOURNMENT

Motion made by Member Cross and seconded by Member Cross to adjourn. Motion was adopted by unanimous voice vote.

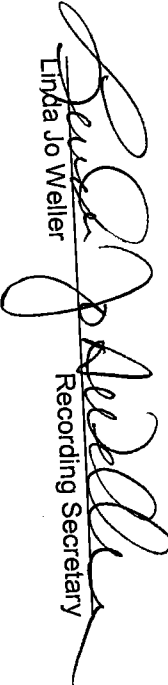
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Meeting adjourned at 11:23 p.m.




Greg Witkow

Chairperson



Linda Jo Weller

Recording Secretary



Carol A. Ochs

City Clerk