Battle Creek Zoning Board of Appeals

Staff Report

Meeting: July 12, 2011
Appeal #Z-06-11

To: Zoning Board of Appeals

From: Glenn Perian, Senior Planner

Subject: Petition for a dimensional variance (Z-06-11) to permit the construction of covered porch 17' from a front property line at 340 Sherman Drive, Parcel I.D. # 6950-13-823-0.

Summary

This report addresses a petition from Brian and Mary Jo Bundy seeking approval of a Dimensional Variance (Z-06-11), to construct a covered porch 17' from a front property line.

Background/Project Information

The subject site is located on Sherman Drive. The residential lot is approximately 44 feet wide by 96 feet deep with an area of approximately 4,224 square feet and is located within the R-1B (Single-Family Residential) District. The minimum lot standards for the R-1B zone include a minimum lot width of 60 feet and a minimum lot area of 7,500 square feet. The subject lot does not meet the minimum width standard or lot area for the R-1B zone. The topography of the lot is generally flat with no observable grade changes. As you can see from the aerial on page two of this report, almost, if not all, of the houses on the same block of Highway Street have front yard setbacks that closer than the 30' setback required in the R-1B zone.

The current minimum front yard setback for structures in the R-1B district is 30' feet. There is an exception to allow **stairs and uncovered porches** that do not rise more than four feet above the ground to project into a required yard, however, the exception **does not apply** in this case because the stairs/steps are to be covered. The request is to allow the petitioner to construct a covered porch 17' from the front yard property line. We would like to bring to your attention that there are other homes in the immediate vicinity that have been constructed closer than 30' from the front property line and are considered legal nonconforming.

Legal Description

PRAIRIEVIEW ADD BEG 140 FT W & 356 FT S OF NE COR OF LOT 32 W 96 FT S 44 FT E 96 FT N 44 FT TO BEG, SOMETIMES KNOWN AS LOT 22 DAVISTA ALLOTMENT

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, June 23, 2011 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on June 20, 2011 to 28 property owners and occupants located within 300 feet of the subject parcel. Planning staff has received no comments relative to this request.

Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is generally located in a well established residential neighborhood on the northwest side of Goguac Lake.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

340 Sherman Dr. showing the front of the home

Analysis

The Appellant is requesting a front yard setback variance that would authorize the construction of a covered porch extending 8' from the front of the home and 17' from the front property line on Sherman Drive, contrary to limitations outlined in chapter 1286 of the Planning and Zoning Code. The Appellant has stated in the supporting material that the existing structure is already closer than the required 30' setback for front yards and is a nonconforming property. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report.

Is there something unique about this lot or property that makes relief necessary? We would agree that the lot area and width of the subject property is substandard for the R-1B zoning district along with a front yard setback that is currently closer than the 30' required. The lot size and setback for the home is consistent with others in the neighborhood. Furthermore, there are a number of homes that have setbacks closer to the road than what the Appellant is requesting for the proposed porch (see aerial on page 2).

Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we do not believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. The Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-06-11) based on the following findings contained in this staff report.

1) Staff finds that there is an unusual and practical difficulty specific to the property in question. The lot is narrower and smaller than that required for the R-1B district and other homes in the neighborhood are closer than 30' to the front property line.

2) Granting the variance and thereby permitting the applicant to move forward with the project in spite of the fact it is not in compliance with the zoning ordinance will not seriously affect any adjoining property or the general welfare of the public.

3) Staff believes that if the variance in question is granted the property will still be in harmony with the general purpose and intent of the R-1B district in that we think that the general character of the neighborhood has homes closer to the front property line than the 30' requirement.

4) Staff believes that if the Zoning Board grants the variance, the setback waiver will not serve merely as a convenience to the applicant and will alleviate some demonstrable practical difficulty so great as to warrant a variation to the Master Plan.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met, as well.

1) Staff believes that the Appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted. The lot is narrower and smaller in area than that required for the R-1B district and we don't think the general character of the neighborhood will be compromised.

2) Staff believes that there is practical difficulty associated with this request.

3) Staff believes that the practical difficulties are exceptional and peculiar to the property of the person requesting the variance for the reasons stated in item #1 above.

4) Staff believes that the alleged practical difficulties result from conditions which do not generally exist throughout the City in that generally speaking, the homes in the subject neighborhood are closer than the required 30' front yard setback.

5) The Appellant has furnished documentation to indicate that practical difficulties do in fact exist.

6) Staff does not believe the term "practical difficulty" is deemed financial hardship in this case.

7) Staff believes the alleged practical difficulty which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case.

8) Staff thinks that by allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.

9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.

10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Attachments

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-06-11),
2. Letter of authorization from Brian and Mary Jo Bundy to designate Doug Thiel to represent them at the hearing

Date: Jun 3, 2011 Appeal No. Z-0611

APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS
City of Battle Creek, Michigan

RECEIVED
JUN 3 2011
CITY OF BATTLE CREEK
PLANNING DEPARTMENT

An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: Brian & MaryJo Bundy

Address: 340 Sherman Dr Phone: 269 9656487

Name of Owner (if different from Appellant): N/A

Address: Phone:

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:
(Choose One) **Extend** **Erect** **Waive** **Use** **Convert** **Enclose**

Description:
Front yard set back of 30ft to allow 17 ft from front property line to build front porch

Contrary to the requirements of Section(s) 1278.01 of the Planning and Zoning Code, upon the premises known as 340 Sherman Dr Battle Creek, MI, in accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following area(s):
Request waiver for front-yard set back to allow porch (8ft) to be built approximately 17 ft from front property line

Property/Tax I.D. # No. 6950 - 13 - 823 - 0 **Size of the Lot:** Width 44 Depth 96

Size of Proposed Building: Width 24 Depth 8 Height

The following reasons are presented in support of this appeal (complete each section):

(a.) This property cannot be used in conformance with the ordinance without the requested variance because:
Due to the dimensions of the lot size and merging of Battle Creek Township and City of Battle Creek created a legal non-conforming property.

(b.) This problem is due to a unique situation not shared in common with nearby property owners because:

Nearby property owners are currently have nonforming front yard set backs closer then what we are requesting. (ALSO SIZE OF Lot is smaller than Neighbors.)

(c.) Granting the variance would not alter the essential character of the area because:

Same as above

(d.) The problem is not self-created because:

Merger created non-conforming lots

(e.) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

N/A

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. ***In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.***

Mary Jo Bundy
(Print Appellant Name)

Mary Jo Bundy
(Signature of Appellant)

340 Sherman Dr. 49015-3136
(Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.

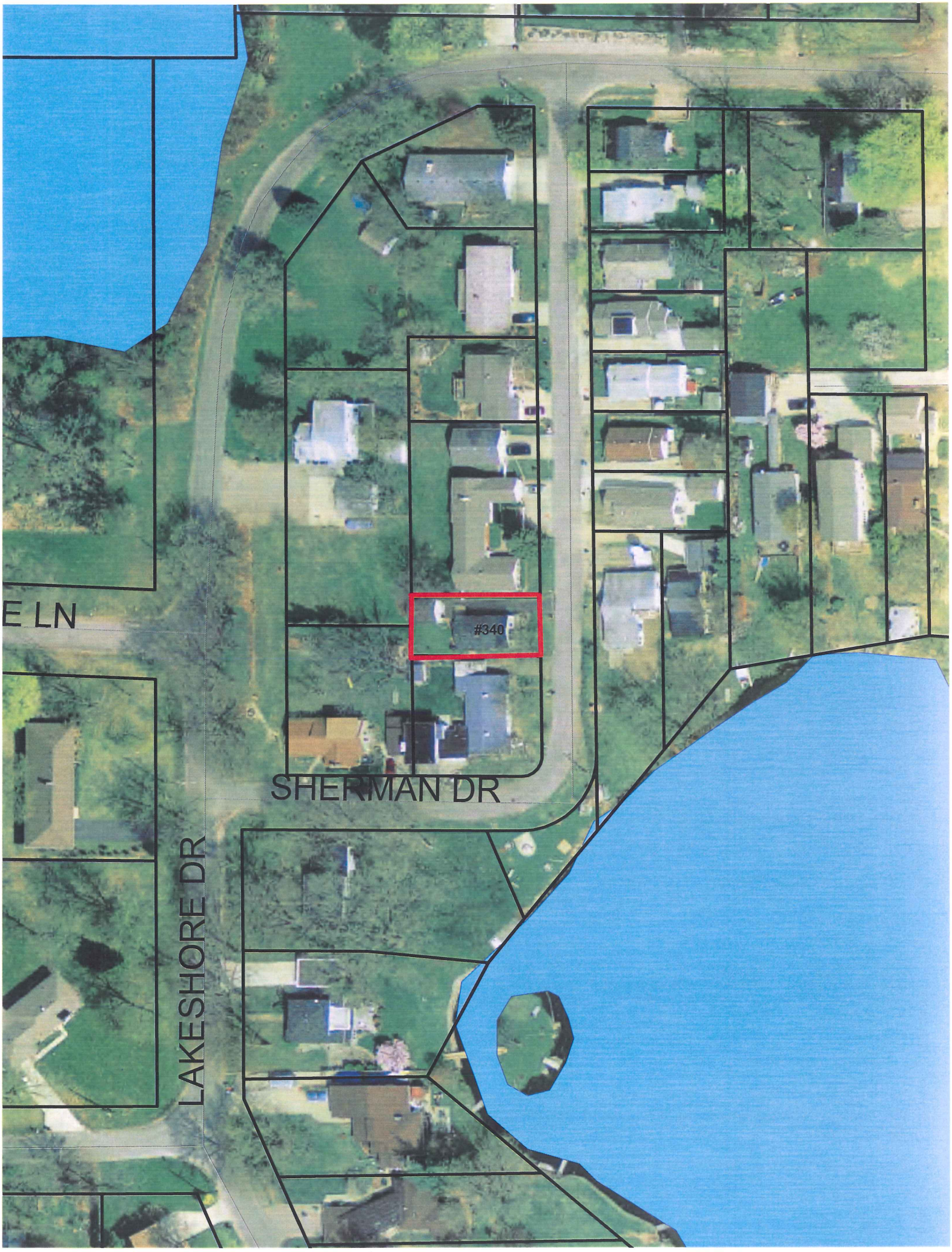
May 26, 2011

To Whom It May Concern:

This is our proxy to designate Mr. Doug Thiel to represent us to apply, explain and answer questions in our behalf to apply for a variance at 340 Sherman Dr.

Mary Jo Bundy + Brian Bundy

Brian and Mary Jo Bundy
340 Sherman Dr
Battle Creek MI 49015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#340
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