

**CITY OF MASON**  
**ZONING BOARD OF APPEALS MEETING**  
**MINUTES OF FEBRUARY 12, 2020**  
**DRAFT – APPROVAL PENDING**

Sabbadin called the meeting to order at 5:30 p.m. in the Maple Room at 201 W. Ash Street, Mason, Michigan.

Present: Fisher, Harris, Madden, McCormick, Sabbadin, Wilson  
Absent: None  
Also present: Elizabeth A. Hude, AICP, Community Development Director

**PUBLIC COMMENT**

None.

**APPROVAL OF MINUTES**

MOTION by Fisher second by Wilson, to approve the Zoning Board of Appeals minutes from the January 8, 2020, meeting.

Yes (6) Fisher, Harris, Madden, McCormick, Sabbadin, Wilson  
No (0)  
Absent (0)

**MOTION APPROVED**

**PUBLIC HEARING**

A. Petition for variance from the City ordinances Chapter 94 Article X, Chapter 100 Tables 1, 2 related to a non-conforming structure, non-conforming uses and dimensional requirements, parking in the front yard and deed restrictions on property located at 513 - 515 W. South St. in Mason, MI, filed by Crockett Law Offices.

***Sabbadin opened the public hearing at 5:31 p.m.***

**Public Comments/Discussion:**

Greg Crockett, 2196 Commons Parkway, Okemos, along with his associate, Ben Fulger, same address, is the applicant of the petition. They are trying to fix a snafu that is over 20 years old regarding a 537 square foot variance that they are short on to make it a four unit. He made reference to the City of Mason tax assessor documents that are available from the BS&A website which also show it being a four-unit property. They stated that they spoke to the original builder's son and were told that it was built as a four unit but his dad didn't have any records or memory of the property. The bank foreclosed on it around 2007 and acknowledged it was a four unit, the realtor who sold it to Mr. Crockett's clients also listed it as a four unit, so this property has existed that way for a long time. Mr. Crockett stated that his clients used the property for a while and they always thought it to be two duplexes. Mr. Crockett's clients sold the property to Four

Points Management, who after checking into a mailbox issue, found that City records indicate it is only a two unit. There was also mention of deed restrictions at that time but nothing was ever enforced and it is past the statutory time frame to do so, plus the restrictions expire in five years. A decision was made by their clients to go to the City of Mason to see what could be done to correct the matter.

With regards to the request for a variance, Mr. Crockett stated that his clients and the new owners did not create the problem and believes they meet the criteria which states “the variance must be granted in order to avoid practical difficulties not created by the applicant that would result from strict application of the letter of this chapter.” The lot is 537 square feet too short of the required lot size, and they believe their only option would be to see if a neighbor would sell them a small piece of land. To have a four unit they would also need two more parking spots which they could not have on the back side of the property due to a slope in the property; it would be difficult to get heavy machinery in there so therefore it is impractical and, they again, did not create the problem.

Second, “a variance will not permit the establishment within a zoning district of any use not permitted within the district,” this district is zoned for up to eight units so having a four unit would fall into the permitted use.

Crockett continued with the third criteria, “A variance will not cause a substantial adverse effect to property or improvements in the zoning district and the immediate surrounding neighborhood”, which goes along with their position that the property has existed as a four unit for at least 20 years with no complaints or issues. He said the City wants to say that allowing the variance due to the ignorance of the owner is a slippery slope but he does not believe it is, because who’s ignorance is it? The taxing authority has a document for this property showing it to be a four unit. The bank and realtor should also have known better and not listed it improperly.

Fourth, “a variance will not be contrary to the public interest and will ensure that the spirit and intent of this Chapter will be observed, public safety secured, and substantial justice done.” They are not asking for anything extreme as the property is not going to be changed in any way. Property taxes will not change unless it reverts to a four unit. Substantial justice is very broad and the owners and former owners did not create this problem and the taxes have been paid as a four unit. A lesser remedy was suggested that it could be a three unit which would be okay but they would still have one unit sitting empty so the property value will continue to go down. Mr. Crockett finished by referencing the aerial satellite view of the neighborhood.

Harris asked if the property had been used as a four unit from the beginning. Crockett believed it had been, but they do not know for sure. Harris then asked if it is being used as a four unit now. Crockett said the current owner is only using it as two because that is what is allowed.

Pete Brown is representing Four Points Management who purchased the property in January 2019. In March of 2019, the City addressed the issue with his client who is currently in compliance but is letting two units sit vacant. He reiterated that Mr. Crockett did a good job with the timeline and that initially it seems that it was built as a four unit even though the permit was only pulled for a two unit. They are in the process of litigation in the Ingham County Circuit Court with Mr. Crockett’s client, and in an effort to rectify things everyone met with Director Hude where it was resolved to come to the Zoning Board of Appeals seeking a variance or any other help that can be given.

Sabbadin requested that Director Hude give her Staff Report findings before they ask questions.

Director Hude first referenced the handout she provided to the Board members regarding practical difficulty, what it is and what the criteria are, and the legal definition of practical difficulty. In the instance where facts are provided and all of the criteria are met, you are legally obligated to approve the variance but you have to have facts present to meet all five of the criteria. She defined practical difficulty in a legal sense, that there is a unique condition on the lot. Hude used as an example Exhibit B containing copies of the original plat of the four created lots, all equal size. To meet practical difficulty, there would need to be a unique condition on the lot related to the topography or other natural features that inhibit the lawful location of structure.

Director Hude continued her review of the handout and criteria for granting a variance – that it will not be harmful to neighbors or the community as a whole, is consistent with the intent of the Code was not made necessary by prior action of the applicant, it was not created by design, is tied to the unique characteristic of the lot, and lastly, is not based solely on financial return. Director Hude then referenced the comments from the report prepared by the City’s consultant, Mark Eidelson of Landplan - that the criterion has not been met – we do not know when the four units were created as a building permit was never pulled for the work which is the mechanism for knowing whether it complies. Exhibit A is referred to which is the original permit that shows approval of a duplex, and a copy of the deed stating a restriction to two units, and a floor plan which clearly shows two kitchens. Hude checked with the water department and there are only two water meters for the property. The applicant included in their application a letter stating that ‘both units are licensed for adult foster care.’ The term ‘both’ refers to two units. In Exhibit B Hude referenced a letter sent to the owners, in 2013, from the Zoning Official that stated the property is a duplex two-family with the addresses being 513 and 515 W. South St. The assessor record is an observation not a legal status. There is no building permit on file for the extra two kitchens and bathrooms that were installed to create four units. With regard to the deed restriction, no one in the city has authority to change the deed. Hude also included in Exhibit A correspondence she had with Four Points Management and Ben Fulger that states that according to City records the property was a two-family duplex. In the emails she discussed options for use of the property. The site is eligible for up to three units based upon size, and it is zoned residential multifamily. While the use as multi-family is allowed, there are additional zoning requirements that need to be met, one being parking. She did discuss ways they might meet the requirements such as a petition to change the law with regard to density, decreasing the lot size requirement to have four units.

ZBA member Fisher asked if there would normally be four water meters if there were four units? Hude replied that the permit was for two units so the number of water meters is consistent with what was approved, but sometimes lawful structures will have one water meter installed for two tenants.

ZBA member McCormick asked how long it has been the policy of the City to allow parking in a front yard of residences? Hude noted it is not consistent with the ordinance now and there are some exceptions in commercial districts. She is honoring the building permit and the property as pre-existing, non-conforming though it would not be allowed to be built as is today.

Mr. Brown followed up on what had been said and acknowledged that the Board can’t do anything for the deed restriction as that is a private issue and they are stuck with it as a two unit, but once they get beyond

the deed restriction, how do they turn it into a four unit. He sees there are two main issues. First, is the minimum lot size. Can they get a variance to accommodate the 537 square foot exception that they are short to allow the property to be a four unit, if so, then second, there is a parking issue. The current ordinance requires two spaces for every unit, so they would need to determine where they can get eight parking spaces to accommodate the number of units.

Mr. Crockett also shared per a photo provided of the property, there was a concrete slab on one offset side of the driveway where there is a car parked and there was a gravel area on the other side of the driveway where they would park 2 cars. He also noted after Director Hude's remarks that they could check into parking behind the property and using Beacon Lakes.

Director Hude clarified that the variance has to be related to an issue regarding the lot: topography, soil or shape of the lot. The structure needs to meet the zoning requirements, which this one does not, as there is no evidence it was ever approved as a four unit. The interior also needs to meet minimum square footage requirements and she has nothing to verify what is inside, there is no updated architectural floor plan. Hude also noted that the Planning Commission would be the proper authority to involve if they wished to seek a permit for three units, and if they wish to file a petition to change the ordinance for lot size requirements.

Mr. Crockett stated that the interior square footage is a deed restriction and is not relevant. Hude remarked that it is a requirement of zoning and noted footnote number 7, minimum area per dwelling unit. If there was a current architectural floor plan that would provide the finding of fact, then she would be able to determine whether it meets the requirements or not.

***Sabbadin closed the public hearing at 6:10 p.m.***

Sabbadin noted a typo in the Staff Report calling it an appeal for a variance. He noted that nothing has been denied by Director Hude so there is no appeal. He stated that this is a yes or no decision based on what the parties have provided. The facts that are known are that it was built in 2000 as a two unit and at some point, was changed without permits to a four unit and is now non-conforming. The practical difficulty is not the City's issue, someone made a mistake and did not look up the deed. The facts are that it is a two unit. The zoning allows the property to become a three unit, but not a four.

Wilson agreed with Sabbadin and noted that there are other solutions. He believes it to be a financial issue and doesn't meet the threshold for a variance in multiple ways.

MOTION by Fisher second by Wilson, to deny the variances being requested based on the facts in the staff report that there is no practical difficulty related to a unique physical feature of the land, and that the denial does not render the property to be unusable.

Yes (6) Fisher, Harris, Madden, McCormick, Sabbadin, Wilson  
No (0)  
Absent (0)

MOTION APPROVED

**UNFINISHED BUSINESS**

A. Staff update on 882 Stag Thicket & 93four & 965 Franklin Farms

Staff met with Ron Enger, Engineer, and the LaMacchia's, and they are working toward a grading plan so they can secure the proper permits to move forward on their project. They were given a deadline of March to turn in their information.

Hude was going to get in contact with the City Attorney for an update on the Franklin Farms case, but didn't have a chance to. Staff did turn in everything that was requested by the Circuit Court and it was accepted.

**NEW BUSINESS**

None

**LIAISON REPORT**

Sabbadin referenced the City Manager's report from January 31, 2020.

Madden reported that Council held a joint meeting with the Planning Commission to discuss the CIP.

Sabbadin reported that Planning Commission met Tuesday and had a very good follow up discussion regarding the CIP.

**ADJOURN**

The meeting adjourned at 6:25 p.m.

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Elizabeth A. Hude, AICP, Community Development Director