

**Village of Lansing
Board of Zoning Appeals
August 16, 2011**

1 The meeting of the Village of Lansing Board of Zoning Appeals was convened at 7:30 P.M. by
2 Chairperson Mary Sirois. Present at the meeting were Board members David Newman, Pat
3 Gillespie, Dolores Adler and John Wisor; Code Enforcement Officer Marty Moseley; Village
4 Attorney David Dubow.

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6 Chairperson Mary Sirois appointed Dolores Adler as an acting member of the BZA to fill in for
7 Donald Eckrich.

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9 **Appeal No. 2011-02**

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11 Mary read Appeal No. 2011-02, Thomas and Shirley Shields, constructed an addition of
12 approximately 139 square feet that encroaches on the rear yard set back area. An area variance is
13 required because a portion of the proposed addition is approximately 37.5 feet from the rear yard
14 property line where Section 145-40 E(6) of the Village of Lansing Code requires a minimum of
15 40 feet to the rear yard property line. The property is located at 20 Highgate Circle in the
16 Medium Density Residential District, Tax Parcel No. 47.1-5-17.

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18 Marty has received the proof of mailing. Marty stated that there is a small correction to the legal
19 ad. The proposed addition is approximately 38.5 feet from the rear yard property line not 37.5
20 feet.

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22 Brian Buttner, Architect for the project, was present representing Thomas and Shirley Shields.
23 His office is at 5 Main Street in the Village of Freeville. Brian explained that what happened is
24 that the architect received the original survey that was done in 1983 and recertified in 1993 when
25 the two story addition was done. They took that information as being accurate and complete.
26 They completed their design based on that data. At the conclusion of the project they were
27 required by Marty to have a survey done to record the addition. The smaller addition is a dining
28 room addition. A laser guided survey was done which is more accurate than old survey methods.
29 They found a slightly different configuration than was found in the 1983/1993 survey. The house
30 is actually angled a little more than anticipated. The addition is 38.8 feet off the line. Brian
31 requested that the BZA allow this to continue because it does not impair other neighbors. There
32 is also a fence in back with trees. When the new survey was completed the Shields' parcel
33 actually grew by 435 sq. feet. Basically it is an encroachment of 14 3/8 inches.

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35 Mary opened the public hearing. Mr. Sharkness is a neighbor who supports the Shields' appeal.
36 He feels that it in no way changes the character of the neighborhood. He feels it should be
37 approved.

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39 Dolores Adler asked Marty about the open deck. Marty stated that anything under 30" is
40 considered landscaping.

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42 Mary stated that she went and looked at the addition and it was beautifully done.

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44 David Dubow stated that this does not require a SEQR Environmental Review because it is a
45 setback matter and thereby is classified as a SEQR Type II action.

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47 Mary closed the public hearing. Moved by Newman, seconded by Gillespie.

48 AYES: Mary Sirois, Pat Gillespie, David Newman, John Wisor, Dolores Adler

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50 Patrick Gillespie took the Board through the findings and the Board came up with the following:

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53 **Appeal No. 2011-02**

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55 Newman moved the following resolution, seconded by Gillespie:

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57 VILLAGE OF LANSING BOARD OF ZONING APPEALS RESOLUTION ADOPTED ON AUGUST 16, 2011
58 FOR APPEAL NO. 2011-2

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60 **WHEREAS:**

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A. This matter involves consideration of the following proposed action: Appeal No. 2011-02, Thomas and Shirley Shields, constructed an addition of approximately 139 square feet that encroaches on the rear yard set back area. An area variance is required because a portion of the proposed addition is approximately 37.5 feet from the rear yard property line where Section 145-40 E(6) of the Village of Lansing Code requires a minimum of 40 feet to the rear yard property line. The property is located at 20 Highgate Circle in the Medium Density Residential District, Tax Parcel No. 47.1-5-17; and

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B. On August 16, 2011, the Village of Lansing Board of Zoning Appeals held a public hearing regarding such action, and thereafter thoroughly reviewed and analyzed (i) the materials and information presented by and on behalf of the applicant(s) in support of this appeal, (ii) all other information and materials rightfully before the Board, and (iii) all issues raised during the public hearing and/or otherwise raised in the course of the Board's deliberations; and

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C. On August 16, 2011, in accordance with Article 8 of the New York State Environmental Conservation Law - the State Environmental Quality Review Act ("SEQR), and 6 NYCRR Section 617.5, the Village of Lansing Board of Zoning Appeals determined that the proposed action is a Type II action, and thus may be processed without further regard to SEQR; and

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D. On August 16, 2011, in accordance with Section 712-b of the Village Law of the State of New York and Village of Lansing Code Section 145-74 A(1), the Village of Lansing Board of Zoning Appeals, in the course of its deliberations, took into consideration the benefit to the applicant if the area variance is granted as weighed

88 against the detriment to the health, safety and welfare of the neighborhood or
89 community by such grant;

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91 NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

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93 1. The Village of Lansing Board of Zoning Appeals hereby makes the following
94 findings with respect to the specific criteria for such area variance as set forth in Section 712-b of
95 the Village Law of the State of New York and Village of Lansing Code Section 145-74 A(1):

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97 *Whether an undesirable change will be produced in the character of the neighborhood or*
98 *detriment to nearby properties will be created by granting the area variance.*

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100 Finding:

101 Since there is an existing six foot fence and large trees that visually screen
102 the neighbors, and one former neighbor (being the only individual who was at
103 the meeting and spoke as part of the public hearing) advocated that there is no
104 visual impairment, there would be no undesirable change produced by the
105 newly constructed addition.

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107 *Whether the benefit sought by the applicant can be achieved by some method*
108 *feasible for the applicant to pursue other than an area variance.*

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110 Finding:

111 No. The applicants constructed the addition, with regard to the setback
112 requirements, based on an existing survey that, unbeknownst to them, had
113 what appears to be inaccurate survey information.

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115 *Whether the requested area variance is substantial.*

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117 Finding:

118 The requested area variance is approximately 2.5 feet into the required 40
119 foot rear setback, which would not be substantial, particularly in light of the
120 prior survey map inaccuracies and the applicants' reliance upon that survey.

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122 *Whether the proposed area variance will have an adverse effect or impact on the physical or*
123 *environmental conditions in the neighborhood or district.*

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125 Finding:

126 Based on the size of the newly constructed addition, the overall lot size
127 and the current screening in the back yard, there would be little or no physical
128 or environmental impact to the contiguous neighbors and the neighborhood as
129 a whole.

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131 *Whether the alleged difficulty was self-created.*

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133 Finding:

134 Since the applicants constructed the addition, with regard to the setback
135 requirements, based on an existing survey that unbeknownst to them appears
136 to have inaccuracies, the alleged difficulty was not self-created.
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- 138 2. It is hereby determined by the Village of Lansing Board of Zoning Appeals that the
139 following variance is **GRANTED AND APPROVED** (with conditions, if any, as
140 indicated), it being further determined that such variance is the minimum necessary
141 and adequate to grant relief and at the same time preserve and protect the character of
142 the neighborhood and the health, safety and welfare of the community:
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144 **Description of Variance:**

145 The recent addition, being an extension of the current structure (as indicated on
146 document#1 of 2011-02 submitted with the variance application) resulting in the chimney, on the
147 newly constructed addition, being approximately 37.5 feet from the rear yard lot line of the
148 parcel.
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150 **Conditions of Variance:** None
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152 The vote on the foregoing motion was as follows:
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154 AYES: Mary Sirois, Pat Gillespie, David Newman, John Wisor, Dolores Adler
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156 NAYS: None
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158 The motion was declared to be carried. Appeal is granted.
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160 Mr. Sharkness asked if this will be attached to the deed. Dubow stated that it will not be.
161 Generally, the seller would inform the new owner of the fact that a variance was issued. Also,
162 sometimes people come in to see the Code & Zoning Officer to inquire whether this is in
163 compliance. The Village records would then show that it does comply.
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165 Dolores asked if we are likely to see more of this with this new laser surveying. Mary stated that
166 it wouldn't surprise her. Dubow feels that these days residents will be more proactive than
167 reactive if they feel they are close to property boundaries.
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169 **Adjournment:**

170 There being no other business, Wisor moved to adjourn the meeting at 7:51 P.M. Seconded by
171 Newman. Ayes by Gillespie, Adler, Newman, Sirois and Wisor.