

**KALAMAZOO TOWNSHIP
ZONING BOARD of APPEALS MEETING
AGENDA
WEDNESDAY, May 20, 2020 7:00 PM**

The Kalamazoo Township Zoning Board of Appeals will hold a meeting on **WEDNESDAY, May 20, 2020** via ZOOM commencing at 7:00 P.M.

manager@ktwp.org is inviting you to a scheduled Zoom meeting.

Topic: ZBA Meeting

Time: May 20, 2020 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/92743446904?pwd=dngYVWlIVDhZTEp4cVdFVnk9yVDIGQT09>

Meeting ID: 927 4344 6904

Password: 032120

The agenda for the *meeting* will include the following items:

- #1 Call to order.
- #2 Roll call.
- #3 Approval of agenda for May 20, 2020
- #4 Approval of minutes of meeting held February 19, 2020
- #5 Public Hearings
 - 5a. 579 Nazareth, Matthew Clysdale, owner – accessory solar structure 3rd structure variance
- #6 Old Business.
 - 6a. None
- #7 New Business.
 - 7a. None
- #8 Other matters to be reviewed by the ZBA.
 - 8a. Comments from the public on matters not already addressed.
 - 8b. Correspondence received
 - Planning & Zoning News
 - 8c. Zoning Board of Appeals members' comments.
 - 8d. Report of the Planning Commission member.
- #9 Adjournment

Public Hearings. The following rules of procedure shall apply to public hearings held by the ZBA:

1. Chairperson opens the public hearing and announces the subject.
2. Chairperson summarizes procedures/rules to be followed during the hearing.
3. Applicant presents request.
4. Township zoning administrator/planning consultant presents a summary or analysis of the request.
5. Persons wishing to comment on the request are recognized.
6. Chairperson closes public hearing.
7. ZBA deliberates and decides and action is taken.

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**Charter Township of Kalamazoo
Minutes of the Zoning Board of Appeals
Held on February 19, 2020**

A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was held on Wednesday, February 19, 2020.

Call to Order.

The Chairman called the meeting to order at 7:03 p.m.

Present Were:

Jim Short, Chairman
Steve Leuty
Robert Mihelich
Fred Nagler
Maryanne Sydlick, Alternate

Absent was:

Shawn Blue

Also present were: Township Planner Patrick Hudson, Township Manager Dexter Mitchell Township Attorney Roxanne Seeber, Applicant William Urfer and Township Attorney Jake Eccleston. Three members from the public attended the meeting.

Roll Call.

Chairman Short called the roll, noting that Board Member Blue was absent, but that Alternate Board member, Maryanne Sydlick, was present.

Mihelich moved, supported by Nagler, to excuse Board Member Blue. The motion passed unanimously.

Approval of the Agenda.

The ZBA members received a copy of the agenda in their member packets.

Nagler moved, supported by Leuty, to approve the agenda as presented. The motion passed unanimously.

Approval of the Minutes of the January 15, 2020 Regular ZBA Meeting.

1 The next item on the agenda was approval of the minutes of the January 15, 2020 regular Zoning
2 Board of Appeals meeting. The draft meeting minutes were provided to all ZBA members in their
3 agenda packet. Leuty provided a correction on Page 5 Line 12, that the word "justice" had been
4 left out. There were no other additions or revisions made to the minutes.

5
6 Mihelich moved, supported by Short, to approve the minutes of the January 15, 2020 regular ZBA
7 meeting as presented. The motion passed unanimously. The minutes were signed by Mihelich
8 and provided to Hudson for transmission to the Township staff.

9
10 **Public Hearings.**

11
12 **3812 E. Michigan Avenue – William Urfer – Setback Variance**

13
14 The next item on the agenda was the public hearing for consideration of the request of William
15 Urfer for a variance from the requirements of Section 25.02 of the Township Zoning Ordinance
16 to allow for an up to 18-foot variance from the required 30 foot side yard setback and up to a
17 45-foot variance from the required 50-foot front yard setback to allow for the continued
18 construction of a storage structure on property addressed as 3812 E. Michigan Avenue,
19 Kalamazoo, MI. The subject property is approximately .3 acres in size and is located in the "I-2"
20 General Industrial District Zoning Classification. Standards for variance consideration are
21 contained in Section 26.05 of the Township Zoning Ordinance.

22
23 Hudson prepared a staff report which was provided to the Board members in their agenda
24 packets and summarized it. Hudson said that the existing building is set back 17 feet from the
25 right-of-way, 12 feet from the west side, 35 feet from the east side, and 22 feet from the rear lot
26 line. Existing lot coverage is 39%. Proposed lot coverage will be 43%. The main building has three
27 service bay doors. Article 4, Parking, requires two parking spaces per service bay plus one for
28 each employee at peak hour. Aerial photographs show four parking spaces in the road right-of-
29 way and there is only room for one parking space in front of each service bay door. Assuming at
30 least 3 employees the site will require at least 9 parking spaces where there are only 7.

31
32 Hudson said that all the surrounding properties are zoned I-2 General Industrial. The property
33 fronts on a partially-abandoned section of Michigan Avenue. He explained that when Sprinkle
34 Road was expanded East Michigan was re-routed to the north. Subsequently the portion of the
35 road to the east of this lot was abandoned by the road commission, however, because of land-
36 lock issues further east, the road could not be abandoned in front of 3812 E. Michigan and the
37 properties to the west. The property to the east is occupied by a lawn mower repair shop which
38 occupies two buildings on either side of the former right-of-way. The properties further east are
39 vacant. The property to the west is a nonconforming residence. The property across Michigan
40 Avenue to the north is a gravel mine. The property to the south is the CONRAIL main line, and
41 further south is a truck terminal.

42
43 In his application, the applicant requested a variance of 35 feet from the required front yard
44 setback, and 21.2 feet from the required side yard setback. The applicant provided a site plan.

1 Hudson stated that the building was erected without permits, after the applicant was told that
2 he could not build.

3
4 Short opened the public hearing and invited any interested party to give public comment in
5 support of or in opposition to the applicant's request for a variance. The applicant Urfer spoke
6 on behalf of the request. Urfer stated that he had been in Kalamazoo 50 years. In 2016 had
7 spoken with the Township about putting up the storage building and was told that he didn't need
8 a permit. However, zoning requirements changed soon after, and Urfer was not aware until he
9 had already built the accessory building. The concrete pad the accessory building is built on was
10 already present on the property and had held trucks in the past. The County Road Commission
11 wrote a letter giving Urfer the authority to use the abandoned area for parking spots as long as
12 did not interfere with overhead lines. When Urfer contacted Consumers to get power to the
13 accessory structure, he was told he would need a building permit. Hudson had told Urfer that he
14 would need to apply for a variance for the building and so Urfer stopped work on the building.
15 Urfer had a site plan drawn up.

16
17 In response to an inquiry from Short, Urfer stated that he had owned the property for 5 or 6
18 years.

19
20 Nagler noted that it was difficult to use easements with the road commission.

21
22 Short noted that this was a difficult case because of the right of way.

23
24 Nagler asked what the building to the west was used for. Hudson stated that it was a
25 nonconforming residence.

26
27 Urfer stated that the road commission does not repair or plow the road in front of the business.

28
29 Short had concerns about parking, which Nagler agreed with. Nagler felt that the parking area
30 would be quite crowded with the curbs not allowing much room for ingress and egress. Urfer
31 indicated that he has only one employee.

32
33 Leuty recognized that aerial photos showed the painted parking spaces that have since been
34 black-topped over. Leuty also noted that east and south of the building are drainage and septic
35 utilities. Leuty noted that there is no overlap between the accessory structure and these utilities.

36
37 Sydlick asked the applicant what he was going to use the structure for. Urfer replied he would
38 use it for storage. Short followed up by asking about hazardous waste or any harmful material.
39 Urfer indicated that none would be used in the building.

40
41 Nagler noted that an old smaller shed had been taken down on the property.

42
43 Urfer stated that when he purchased the property, he had put new wells in.

1 Mihelich asked if the original building had been built without a permit. Hudson stated that the
2 building under consideration was the one constructed without a permit. The original building
3 was not.

4
5 Leuty asked whether Urfer had approached KABA yet. Urfer stated that he knew he would have
6 to, but that he was waiting for zoning approval.

7
8 Audience member Christopher Mihelich spoke in support of the application, indicating that it was
9 great to see someone from the community reinvesting their money into it.

10
11 Hearing no additional public comments, Short closed the public hearing and the Board members
12 entered into deliberations.

13
14 Nagler voiced his concern about Urfer proceeding without a permit and noted that the site was
15 challenging to build on.

16
17 Leuty appreciated the presentation and good intent. Leuty noted that the applicant should begin
18 process with KABA and that the location of the building is quite challenging. He noted that the
19 site was unique because of the partial abandonment of the road; as well as the permitted
20 encroachment into the right-of-way.

21
22 Mihelich noted that the accessory structure will not have any effect on the traffic flow.

23
24 Short stated that it is nice to see good business people. Short also noted the uniqueness of the
25 property.

26
27 Sydlick stated she had no issue with granting the variance.

28
29 Attorney Seeber recommended that the Board review the standards of approval for granting a
30 request for a variance which are contained in Section 26.05 and read the same to the Board.
31 Section 26.05 B(4) titled "Variances" states,

32
33 "The ZBA shall have authority in specific cases to authorize one or more
34 dimensional or "non-use" variances from the strict letter and terms of this
35 Ordinance by varying or modifying any of its rules or provisions so that the spirit
36 of this Ordinance is observed, public safety secured, and substantial justice done.
37 A dimensional or non-use variance allows a deviation from the dimensional (i.e.,
38 height, bulk, setback) requirements of the Ordinance. A use variance authorizes
39 the establishment of a use of land that is otherwise prohibited in a zoning district.
40 The ZBA is not authorized to grant use variances by this Ordinance.

41
42 Such authority shall be exercised in accordance with the following standards.

43

1 a. The ZBA may grant a requested "non-use" variance only upon a finding that
2 practical difficulties exist and that the need for the variance is due to unique
3 circumstances peculiar to the property and not generally applicable in the
4 area or to other properties in the same zoning district. In determining
5 whether practical difficulties exist, the ZBA shall consider the following
6 factors:

7
8 (1) Strict compliance with restrictions governing area, setback,
9 frontage, height, bulk, density or other non-use matters, will
10 unreasonably prevent the owner from using the property for a
11 permitted purpose or will render ordinance conformity
12 unnecessarily burdensome.

13
14 (2) The variance will do substantial justice to the applicant, as well as
15 to other property owners.

16
17 (3) A lesser variance than requested will not give substantial relief to
18 the applicant and/or be consistent with justice to other property
19 owners.

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21 (4) The problem and resulting need for the variance has not been self-
22 created by the applicant and/or the applicant's predecessors. (For
23 example, a variance needed for a proposed lot split would, by
24 definition, be self-created, so such a variance typically would not be
25 granted.)"

26
27 The Board agreed that while there were two variances requested they would consider both
28 request at the same time. The Board discussed the standards of review and agreed that most
29 had been met. Seeber filled in the "Notice of Decision" form as the members considered each
30 standard.

31
32 Nagler moved, supported by Mihelich, to approve the request of William Urfer for the requested
33 variances conditioned upon:

34
35 The applicant must obtain an after-the-fact building permit; and

36
37 The applicant must re-stripe the parking lot. If the applicant ever adds more
38 employees, he must add two parking spaces on the east side and stripe them to
39 allow the 26 foot opening for ingress and egress of fire apparatus.

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41 The motion passed unanimously. Short and Attorney Seeber filled out the notice of decision form.
42 The applicant was present to receive personal service of the notice of decision form.

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44 **Old Business.**

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None.

New Business.

None.

Other matters to be reviewed by the ZBA.

None.

Citizen Comments.

None.

Correspondence received.

Hudson noted that a copy of the Planning and Zoning News was distributed to the ZBA members in their packets. Hudson also noted that two members of the Planning Commission or ZBA can sign up for a master citizen planner program, to be paid by the township's insurance company.

Board Member Comments.

None.

Report of the Planning Commission Member.

Nagler summarized the recent Planning Commission meeting.

Adjournment.

There being no additional business, Nagler moved, supported by Leuty, to adjourn the ZBA meeting. The motion passed unanimously and the meeting was adjourned at 7:56 p.m.

Respectfully Submitted,

Robert Mihelich, Secretary of the Zoning Board of Appeals

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Synopsis of Actions
ZBA meeting February 19, 2020

Regarding the request for variances from William Urfer:

Approved the request of William Urfer for an 18-foot variance from the required 30-foot side yard setback requirement; and a 40-foot variance from the 45-foot front yard setback in order to permit the continued construction of an accessory building at 3812 E. Michigan Avenue.



The members voted as follows:

Leuty	Y	N
Cook	y	N
Short	Y	N
Nagler	Y	N
Mihelich (Alternate)	Y	N

Date: _____
James Short, Chairman

On February 19, 2020 at _____ p.m. the undersigned hand-delivered a copy of this decision to the applicant and retained a copy in the Township's files.

Roxanne C. Seeber

**ZONING BOARD OF APPEALS
CHARTER TOWNSHIP OF KALAMAZOO
NOTICE OF PUBLIC HEARING
AND ZONING BOARD OF APPEALS MEETING**

TO: THE RESIDENTS AND PROPERTY OWNERS OF THE CHARTER TOWNSHIP OF KALAMAZOO, KALAMAZOO COUNTY, MICHIGAN, AND ANY OTHER INTERESTED PERSONS:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Charter Township of Kalamazoo will conduct a public hearing concerning the following matter(s) on Wednesday, May 20, 2020 commencing at 7:00 p.m. at the Township Hall, 1720 Riverview Drive.

PLEASE TAKE FURTHER NOTICE that the item(s) to be considered include, in brief, the following:

1. Consideration of the request of Matthew Clysdale, 579 Nazareth Road, Kalamazoo Michigan for a variance from the maximum 2-accessory structures per parcel limitation contained in Section 2.03.C.4 of the Township Zoning Ordinance in order to permit the installation of a ground-mounted solar array, while retaining two existing accessory structures. The parcel is located in the R-2 Residence District. Standards for variance consideration are contained in Section 26.05 of the Township Zoning Ordinance.
2. Such other matters as may properly come before the Zoning Board of Appeals.

PLEASE TAKE FURTHER NOTICE that the application for the above and the Township Zoning Ordinance can be reviewed at the Township offices during regular business hours of regular business days and will also be available at the time and place of the hearing. The Township Zoning Ordinance can also be accessed from the Township's website: www.ktwp.org. Written comments will be taken from any interested persons concerning the foregoing, at the office of the Township Clerk, at the address set forth above, at any time during regular business hours up to 4:00 o'clock p.m. on the date of said hearing, and will further be received by the Zoning Board of Appeals at the time of the hearing.

Kalamazoo Charter Township will provide necessary reasonable auxiliary aids and services upon five (5) days' notice to the Kalamazoo Charter Township Clerk or Deputy Clerk at the address or telephone number listed below.

JAMES SHORT
ZONING BOARD OF APPEALS
KALAMAZOO CHARTER TOWNSHIP
1720 RIVERVIEW DRIVE, KALAMAZOO MI 49004
269-381-8080
www.ktwp.org

APPLICATION FOR VARIANCE, INTERPRETATION OR APPEAL FORM

Matthew Clysdale
(applicant --person filing the appeal)

579 Nazareth Rd
(address)

Kalamazoo, MI 49048
(city, state, zip code)
(269) 929 - 6663
*Business phone N/A
(telephone, home and business)

OFFICE USE ONLY

Case number _____
Date Rec'd _____
Fee Rec'd _____
Receipt # _____
Hearing date _____

Action: _____
Date: _____
Expiration Date: _____

Applicant's standing (interest) in the appeal
(check one):

- Property owner (attach inspection report sheets)**
- Adjacent property owner
- Other affected individual. Explain: _____
- Other. Explain: _____

PROPERTY OWNER'S (OF LAND SUBJECT TO APPEAL) NAME AND ADDRESS
(if not the applicant)

N/A

Phone (269) 929 - 6663

ADDRESS OF LAND SUBJECT TO APPEAL (if known) 579 Nazareth Rd, Kalamazoo, MI 49048

(If new construction, an address will not be known yet. An address is obtained after a zoning permit is issued.)

PARCEL SUBJECT TO APPEAL SIZE .96 Acres
PROPERTY DESCRIPTION FOR LAND SUBJECT TO APPEAL 401 Residential

PARCEL DATA PROCESS (tax) NUMBER(S) FOR LAND SUBJECT TO APPEAL
06 - 13 - 260 - 021

ZONING DISTRICT OF PROPERTY SUBJECT TO APPEAL (see zoning ordinance)

R-2

ACTION REQUESTED: (check one)

- To interpret a particular section of the ordinance, as it is felt the Zoning Administrator/Planning Commission is not using the proper interpretation:
The Section is: _____

- To interpret the zoning map, as it is felt the Zoning Administrator/Planning Commission is not reading the map properly. Describe the portion of the zoning map in question (attach detail maps if applicable): _____

- To grant a variance to certain requirements of the zoning ordinance, (parking, setbacks, lot size, height, floor area, sign regulations, location of accessory buildings, maximum amount of lot coverage, etc.). Specify the section and specific regulations a variance is being sought from: **Article 2 Section 2.03.C.4. Seeking a variance to allow a third accessory structure on the property being a ground mounted solar array.**

- To overturn an action of the zoning administrator. The zoning administrator erred (did not issue a permit, issued a permit, enforcement): _____

RULING SOUGHT:

What is the sought ruling by the Kalamazoo Township Zoning Board of Appeals? **To be granted a zoning variance allowing a third accessory structure (ground mounted solar) on my property.**

(attach sheets if necessary)

(attached)

STATEMENT OF JUSTIFICATION FOR REQUESTED ACTION

State specifically the reason for this demand for appeal request: **Without the approval of this appeal request I will be unable to install renewable solar energy at my home, inhibiting my ability to offset my carbon footprint. With the declaration of a climate emergency by the Charter Township of Kalamazoo I am trying to do my part in limiting my personal carbon footprint for the greater good of the community and world.**

(attach sheets if necessary)

(attached)

ATTACH THREE COPIES OF A SITE PLAN PLUS ONE ELECTRONIC COPY, as specified in Section 26.05 (C) 2.

(attached)

Attach a copy of the initial application concerning this issue and the zoning administrator's (or planning commission's) written ruling on this issue.

(attached)

VARIANCE QUESTIONS:

If you are seeking a variance, on attached sheets, provide answers to the following questions. Please number the answers the same as they are numbered here. Please be specific, and explain your answers. (If the answer to any of the questions numbered 1-5 is "no," a variance may not be granted, Sec. 26.05 (B) 4.a. (1 through 4
(attached)

1. Does strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or does the ordinance render conformity unnecessarily burdensome?
2. Would a variance do substantial justice to the applicant, as well as adjacent property owners?
3. Would a lesser variance not give substantial relief to the applicant and/or be consistent with justice to other property owners?
4. Is the problem and resulting need for the variance not self-created by the applicant and/or the applicant's predecessors?

VARIANCE, MAP INTERPRETATION INFORMATION:

If you are seeking a variance, or a map interpretation, the following must be provided:

1. Attach or list all deed restrictions for the property in question.
(attached)
2. Attach a list of names and address of all other persons, firms, or corporations having a legal or equitable interest in the property in question.
(attached)
3. This area is (check one): unplatted platted will be platted.
If platted, name of plat: _____
4. What is the present use of the property? Single family residential home

AFFIDAVIT: I agree the statements made above are true, and if found not to be true, any Zoning Board of Appeals ruling that may be issued may be void. Further I agree, any Zoning Board of Appeals ruling and subsequent permit that may be issued is with the understanding all applicable sections of the Kalamazoo Township Zoning Ordinance will be complied with. Also, I agree to notify the zoning administrator for the Kalamazoo Township for inspection before the start of construction and when locations of proposed uses are marked on the ground. Further, I agree to give permission for officials of Kalamazoo Township, Kalamazoo Area Building Authority, Kalamazoo County and the State of Michigan to enter the property subject to this permit application for purposes of inspection. Also I understand any zoning action by the Zoning Board of Appeals conveys only land use rights, and does not include any representation or conveyance of rights in any other statute, building code, deed restriction or other property rights.

Signed: _____
Date: 03/23/2020

When completed send two copies to:

Planner / Zoning Administrator
Kalamazoo Township
1720 Riverview Drive
Kalamazoo, MI 49004-1099

STATEMENT OF JUSTIFICATION

Applicant uses approximately 11 MWh of electricity annually at his home at 579 Nazareth Rd and wants to build a 8.7 kW (AC) solar project to reduce the purchase of electricity from Consumers Energy. Applicant already has 2 accessory structures on the property. A ground mounted solar project would not enclose any additional space on the property.

VARIANCE QUESTIONS:

1. Does strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or does the ordinance render conformity unnecessarily burdensome?

Yes. There are presently 2 “accessory structures” on my property. The ground mount solar is not an enclosed space, but is apparently considered an “accessory structure” for zoning purposes. It would be unreasonably burdensome to force me to tear down one of the existing accessory structures so that I can install a ground mounted solar project even though it would not enclose any additional space on my property.

2. Would a variance do substantial justice to the applicant, as well as adjacent property owners?

Yes.

3. Would a lesser variance not give substantial relief to the applicant and/or be consistent with justice to other property owners?

Yes.

4. Is the problem and resulting need for the variance not self-created by the applicant and/or the applicant’s predecessors?

Yes.
