I have been advised by the City Attorney that our only course of action available to us, after repeated warnings and extensions, is to pursue criminal charges and issue a complaint and warrant for your arrest.

So, reads the sober letter [2], dated July 19, from the City of East Lansing’s Planning Department, to Michael Zydeck of Plymouth, Michigan. What criminal act has Zydeck allegedly committed?

He arranged for a contractor to reconstruct a driveway at an East Lansing rental property he owns, extending it by four feet on one side. He did so after having received a variance from East Lansing’s Zoning Board of Appeals devised to give him the right to do just that. He did so after getting permission from the City’s Building Department staff to proceed. City staff told him,
repeatedly, that he was in the clear.

So why are they now threatening to have him arrested? The problem is that City staff messed up various stages of the process. And now, they say, even if it is their fault, Zydeck has a driveway that doesn’t quite meet the letter of the law. Correct it, says the City, or the City will be pursuing criminal charges.?

Zydeck’s attorney, Mark Grebner, is more than a little fed up with this scene.

“The City ought generally to be sensible and not threaten people,” he tells ELi. “But specifically, they shouldn’t threaten people who haven’t done anything wrong.”

Grebner contacted ELi with the story because he thought it would be good for property owners in East Lansing to know what it can be like dealing with the City.

“My client has nothing to hide,” he says, “while the City has a lot to be embarrassed about.” He says his client is not amused with the order to tear up a recently poured driveway, or face prosecution. Our plan is to fight the matter out in court, criminal charges notwithstanding.

The backstory:

Like a lot of parents whose children attend MSU and who can afford to do so, Michael and Kimberly Zydeck decided to buy a rental house for their daughter to live in with classmates. They bought the house at 444 Division Street, in the Bailey neighborhood, and thought the house was licensed for three unrelated adults. They were wrong — it was only licensed for two — and after they were informed of this, they paid the fine and they reduced the occupancy.

The driveway, which is at the back of the corner-lot house, caused problems for the residents and visitors, because it was only 14 feet wide. This didn’t allow for parking two cars abreast, as the Zydecks wished, without having a tire hang off on the grass — a code violation in East Lansing — or requiring the driver of the second car to climb out the passenger side. The Zydecks wanted space for more parking, including for when they were visiting their daughter.

The Zydecks proceeded to add some paving bricks to the side of the driveway to extend it. The City let them know this was illegal and that they’d have to get legal permission to extend the driveway, and do it according to the rules about paving.

Below: A photograph of the original driveway, showing in sketched lines what the Zydecks hoped to do, taken from the variance request.
The Zydecks then hired a contractor who went to the building department to get a permit to expand the driveway. The contractor was told they’d need a survey, so the Zydecks paid $400 for that and waited.

Finally, the new survey and plans to expand the approximately 14? x 34? driveway to 18? x 38? were submitted to the building department. Building department staff reviewed the application and signed off on the plan on June 30, 2017, indicating it was reviewed for code compliance and approved.
The contractor proceeded to tear out the old driveway and set the forms for pouring the concrete. But at that point, according to Grebner, a neighbor objected to the City that the driveway of the size planned was too big for the lot. By law, the neighbor was right. City staff’s approval of the permit had been wrong.

The City issued a stop-work order. A load of fresh cement was waved off, costing $1500 for nothing, according to Grebner.

To step back a moment, it’s worth understanding that this house is in a part of the Bailey neighborhood where tensions can run high between year-round, long-term residents and owners of student rentals. It’s not uncommon in neighborhoods like this for permanent residents to call in code violations on rentals. Homeowners do this in order to protect their quality of life and property values.

In this particular case, the driveway had already been torn out when the error was caught. Now, the Zydecks were left not only with the bill, but with no driveway. They were told they’d need to appeal to East Lansing’s Zoning Board of Appeals to do what they wanted. In September, their appeal was finally heard.

The ZBA hears the appeal and reaches a compromise:

At the Zoning Board of Appeals (ZBA) meeting in September 2017, Michael Zydeck told the story of having been given a permit by the City, ripping out the existing driveway, and then being told they could not proceed. This created some sympathy among ZBA members, based on a recording of the meeting.
Less sympathy came from four long-time residents in Bailey, including one on the ZBA ? Konrad Hittner, who is also one of the leaders of the Bailey Community Association.

The Bailey homeowners objecting to the plan pointed out that the Zydecks had violated the occupancy limit, and that over-occupancy is a real source of annoyance in the neighborhood. They thought widening the driveway would invite future over-occupancy, if not by the Zydecks, then by future residents.

They also didn?t want a situation where so much of the land was paved over. It is an old neighborhood, they noted, where driveways were supposed to be relatively narrow, where people who buy property should know they have to adapt.

But after much discussion [4], a majority of ZBA members and Michael Zydeck reached a compromise: he would be allowed to extend the driveway width-wise by four feet, to make it possible to park two cars side-by-side and still get out of both cars on the drivers? side. He could not lengthen the driveway or add new curb-cuts. The ZBA members also asked that he use permeable concrete, for environmental reasons. Zydeck said he could live with this.

The ZBA voted 5-2 in favor of the variance.

What came next:

Not long after the granting of the variance, the City provided the Zydecks with formal notice [5] of the partial variance approval, including the paragraph shown here:
The Zydecks’ contractor prepared to extend the driveway according to what the majority of the ZBA had said would be acceptable. Another load of concrete was called for. But as it turns out, the inspector for the City didn’t show up when he said he would, to approve the forms.

So, another load of wet concrete was waved off, costing another $1500 for nothing, according to Grebner.

Finally, the City’s inspector did show up, and he approved the site. The driveway was poured, troweled, and set. You might expect at this point, the story would be over.

But, according to Grebner, the neighbor most unhappy with the situation checked to see if all had been done according to the rules. She discovered that the variance had been approved for the driveway to cover at most 33.5% of the ‘rear yard’ of the lot, and that the paving area created by what the majority of the ZBA had indicated was acceptable — widening from 14 to 18 feet along 20 feet — came to a higher percentage than that. (Side note: speaking of the ‘rear yard’ on this lot is a little tricky, given that it’s a corner lot.)

I’ve gone back and listened to the tape of the September 2017 meeting. It is very clear from that recording that the ZBA majority meant to approve a widening of the driveway from 14 to 18 feet. They were clear they were not allowing a lengthening or any additional curb cuts, but that they were looking to permit the widening by four feet.

The calculation that that intent would result in a rear-lot coverage figure of 33.5% came at the meeting from Zoning and Planning Administrator David Haywood, who had had to hastily calculate the figure from somewhat confusing drawings. Once Haywood presented that figure, the ZBA assumed that was the correct number they needed to use to permit a widening of the driveway by 4 feet.

As it turns out, Haywood accidentally calculated the wrong percentage, and so the ZBA accidentally used the wrong percentage. But regardless of this being (again) City staff’s mistake, the Zydecks were now informed they were in violation of the variance, and they had to change the driveway again or face the consequence.

The matter was brought back to the ZBA in January 2018, and the board members discussed what they should do. By this point, the Zydecks had hired Grebner, who made clear at the January meeting that he was not interested in his client having to do anything more. The ZBA took no further formal action. Grebner said he’d talk to the City Attorney.

And now?

To make what could be an even longer story short: from that point the City started sending escalating ‘fix it or pay the consequences’ letters to the Zydecks, finally culminating in the July
letter, threatening arrest.

While that letter, signed by Haywood, indicates that City Attorney Tom Yeadon has advised staff that our only course of action available is to pursue criminal charges and issue a complaint for your arrest, this isn’t true.

The law neither limits the City to this move nor requires it. The City could opt to issue fines, for example. It could also decide it has made enough mistakes on this that it should just try to legalize the Zydecks’ driveway.

At this point, says Grebner, the situation is maddening. The first permit was granted in error. The variance wording had a wrong calculation. The inspector didn’t show when he was supposed to. The expenses related to all these staff mistakes have been borne by the property owner. What has his client done to deserve threats of arrest?

He tells ELi, “The expenditure of money, and physical alteration of the site, in reasonable reliance on the representation by an agent of the City amounts to detrimental reliance, which estops the City from denying that it had granted approval.”

In other words, enough is enough. He expects to win in court.

ELi asked City Manager George Lahanas on Tuesday morning by email, “Do you think it is a good idea for the City of East Lansing to put out a warrant for arrest for a guy who is engaged in a driveway construction dispute with the city?”

We have not received a reply.

Disclosure: Mark Grebner donated $20 to ELi in January 2018. The author is not paid for reporting or any other service to ELi.

Note: Shortly after this article was published, Grebner emailed to say he was not positive about which neighbor complained to the city about the driveway construction at various points, so we removed the name that had been previously provided by Grebner. The content otherwise remains the same.

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