

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the December 21, 2021, Regular Meeting
APPROVED

The December 21, 2021, regular meeting of the Zoning Board of Appeals was held at Chikaming Township Hall and called to order at 1:00 p.m. by Chairman (hereinafter Chair) Larry Anderson. Roll call of members attending: Phil Bender, Liz Rettig, Larry Anderson, Paul Rook. 4 present - Quorum. Noted that Attorney Hilmer and ZA Kelly Largent (hereinafter ZA) are also present along with many others attending in the audience.

Chair advises that the first order of business is to approve the November 16, 2021, minutes. Chair asks if the Board members have any corrections/additions. Rook gives Secretary Rettig 2 minor correction.

Anderson makes a motion to approve minutes as corrected; Rook seconds. Vote: 4 AYES. Minutes approved as corrected.

Case #2001- Terri Marra, 8765 Porter Road, Lakeside, Property Code #11-07-7660-0016-00-1 is requesting to add a 7' x 28' enclosed front porch in the front yard of the guest house which will increase lot coverage from 20.35% to 22.34%. Chikaming Township Zoning Ordinance #144, Section 8.05(D)(1) allows 20% lot coverage in an NCRI-A zoning district.

Chair ask for comments from ZA who say she has received no changes from the applicant – no plans.

[NOTE FOR RECORD – TOM GOLD ARRIVES]

Chair asks applicant to speak. Applicant Terri Marra speaks as to 196 square foot addition:

1. Said she has never come before the ZBA and did know the procedures at last month's meeting
2. Did not make any architectural changes or get plans. Cannot make any changes to front cottage (which is a rental)
3. Understands she is over lot coverage by 2%
4. Met with experts regarding rainwater and impervious surfaces and feels that the following solutions to compensate are (and which she is willing to do) and would compensate for up to 3%:
 - a. a rain garden (15' x 5' X 6");
 - b. rain barrels – 2 - 50 gal. and 1 - 25 gal. – on both buildings;
 - c. downspouts into the rain garden and
 - d. planting of trees (7) and flowers in 2020 to take on excess water.
 - e. Turner Shores installed a storm sewer – not currently hooked up – but would be willing to
5. Has no sidewalks, no driveway, no cement patios

Chair asks Board for questions to applicant.

Rook asks applicant if she has given any consideration to going up and keeping current footprint. Applicant answers that she does not have expense account to do so and feels by going up would be more imposing on neighborhood and putting in a loft would not give her enough space.

Gold asks how much over the ask is – Rettig answers that it is currently .35% (being at 20.35%) over and applicant wants a total of 22.34%.

Chair asks for public comment. None.

No additional letters since last month (when they were read into record).

Chair goes to Board discussion. Chair starts by stating that he understands all of the work that applicant is willing to do to solve the problem, but we are constrained to look at the land. We already have a lot with two (2) dwelling units upon it and is already over the 20% in lot coverage. I don't see how we could ever grant the variance to increase the non-conformity. Rettig agrees. We have to look at the land – whether the neighbors are happy or unhappy is not the issue; there are no “land” hardships and by adding 2% more to lot that is already over the allowed coverage we are going against our own ordinance. Phil Bender concurs; Rook supports; Gold feels this is not a huge asks and applicant is willing to do a lot to fix the impervious circumstances with the rain gardens, etc.

Rettig reminds us that, let us remember our job – our zoning ordinance.

Chair moves forward with going through the criteria:

1. Unique circumstances or conditions exist which apply to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. No. Roll vote: Bender, Rettig, Anderson, Rook; Gold does not agree (4-1).
2. As a result of the unique circumstances or conditions, strict compliance with the provisions of this Ordinance would unreasonably prevent the use of the property for a permitted purpose or would be unnecessarily burdensome. Chair says there are no unique circumstances so No would be the answer. Roll vote: Bender, Rettig, Anderson, Rook; Gold does not agree (4-1).
3. The unique circumstances do not result from the actions of the applicants, including the knowing purchase of a property limited by existing non-conformities. The applicant purchased the property that has existing non-conformities and is aware of those non-conformities. So, knowing of the non-conformity, the answer is yes – the actions to change and make it more non-conforming would be the action of the applicant. All vote yes (5)
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. All Board members agree – yes, it is a minimum request.
5. The granting of the variance will be in harmony with the spirit and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, and welfare. Meet the Harmony and Intent of the Ordinance; No – Bender, Rettig, Anderson; Rook and Gold – yes. (3-2)

Chair: Based upon going through the criteria and the vote of the Board, the variance has failed.

RETTIG MAKES A MOTION: BASED UPON OUR CRITERIA AND THE VOTE, THE VARIANCE FAILS TO MEET THE CRITERIA AND IS DENIED; ANDERSON SECONDS. ROLL VOTE: BENDER; RETTIG, ANDERSON, ROOK, GOLD - ALL 5 AYES. VARIANCE IS DENIED.

INTERPRETATION.

Kelly Largent (ZA) is requesting and interpretation of lot coverage and impervious surface as it relates to overhangs.

Chair reads from our ordinance book (Page 244):

Impervious Surface: A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, including but not limited to asphalt, concrete, and all building roofs. Pervious pavements structures that permit water to run between the slats, and gravel surfaces shall not be considered impervious surface.

Turning to Page 247 – definition of **Lot Coverage**: The part or percent of a lot that is occupied by impervious surface as defined in this Ordinance. Pervious pavement and gravel surfaces shall not be considered impervious surface.

On Page 252 – **Occupied**: Used in any way at the time in question.

Chair: So turning to the case we just went through, we were focusing only on the footprint, per the statements in our ordinance, we need to look at eaves, hard surface pavement (even though we know there were none on the last case), but looking at future, if anyone comes in with a plan, we have to look at the size of the house, the size of the roof, the driveway (impervious), the patio, the garden shed – all included in lot coverage per the terms of the ordinance. Usually, we look only at the building footprint – not looking at other impervious surfaces. I would recommend to the Planning Commission to look at this issue and our recommendation that goes along with it. Stick with the 20% in a non-conforming lot – allowing a maximum of a 2' roof overhang (1st 2' is a given); in a compliant lot – go to 3' and these numbers are already in our ordinance. The next thing I'm suggesting is that the Planning Commission look at the impervious rule – 10,000 sq. ft. lot with a 2,000 sq. ft. house in addition with some standard, come up with some % of impervious surface in addition.

Rettig directs a question to ZA – don't you already figure in driveways, etc., and cut down house lot coverage?

ZA answers yes – all impervious surfaces are figured in – this is done before it comes to the Board. The question right now is regarding overhangs – 4 feet vs. 2 feet. How are we going to calculate and are we excluding the first 2 feet?

Gold struggles with the word “occupied.” Lot coverage is the footprint – if the overhang is 10/20 feet in the air, I do not understand how this occupies the ground. Driveways, sidewalks, yes. Not overhangs. Contact with the ground equals occupy. Let's look at decks – they don't count against lot coverage, but there are some impervious surfaces on a deck.

Chair – this is why we need to have a discussion with the Planning Commission.

ZA: You do not have the legislative power, but you do have the authority to interpret.

Gold: We could make a recommendation to the Planning Commission

Chair: How does the public know? We need to codify the answer.

More discussion about lot coverage and how Kelly arrives at the % of lot coverage, and she advises when an applicant comes to her with plans, etc., all surfaces (house/garage/sheds) and all impervious surfaces (driveways/sidewalks) are figured in to make sure all numbers on the plans for calculations are good and UNDER lot coverage.

Gold – back to Kelly's question – you are concerned with overhangs and what is considered for lot coverage – mostly non-conforming lots are the issue.

Kelly continues with more examples and some jurisdictions that don't include driveways, sidewalks.

Gold: Is it the density like structures that you are worried about? Or impervious surfaces in general?

Rettig: What about if someone wants to concrete their whole yard? Is this allowed?

Kelly: Building code will not allow someone's water to “run off” to neighboring land.

Rettig: So, cantilevers are in question as well. A 10' cantilever will make the rainwater run off to the neighbor's land.

Kelly: Our zoning ordinance moves onto setback description – horizontal distance between any lot line and any part of a structure on a lot – this would be the overhang- historically, this township has measure setbacks from the foundation wall.

Chair: Also, you can encroach an eave 2’ into a setback.

Kelly: Not in a front or rear setback – this is not allowed.

More discussion about eave definition and location of eaves and what size eave is allowed, is it 3 dimensional, or a plane, setback is taken to the foundation, eaves occupy ground or space. Foundations/piers, cantilevers that are habitable space that count or do not count as lot coverage, overhangs.

Kelly: If house is over % allowed, and they want a driveway, I make them put gravel or pavers in or I make them cut back on the size of the house. All plans that come to me for approval have a lot coverage calculation.

Chair: we need a meeting with the Planning Commission Ordinance Work Group with the following questions and come to some understandings:

1. What do you mean by occupied?
2. Physical contact with ground – plane to the sky?
3. Do overhangs occupy ground? Rain comes at an angle
4. Are setbacks measured from foundation?
5. What about cantilevers? If more than 2’ – does that equal encroachment? Count toward lot coverage
6. What about piers?
7. Can heated space area (cantilever) go into setback?
8. Besides the house area – do driveways, sidewalks count toward impervious surfaces? 20% lot coverage (non-compliant) 40% lot coverage (compliant)
9. Should there be a sliding scale – should a 19,999 be the same as 30,000 (same %) why in 5,000 sq. ft. increments?
10. Density of structures more important than impervious surfaces (sidewalks) – what counts and what doesn’t count. (Example – Swiss cheese soffits to get around % of coverage)
11. Better definition of imperious surfaces – small concrete pad (a/c) does not count – big concrete pad does (10’ x 14’) (Less than 12” above grade – does it count?)
12. What is purpose of lot coverage – to control structure? Or is it about water displacement?

No interpretation was reached as to lot coverage as it relates to overhangs. Many questions arose and what the Planning Commission’s intentions are. Need further guidance from the Planning Commission. Kelly to set up separate meeting with the Work Group and some ZBA members.

Chair advises we have one (1) more agenda item.

Case #1197 was tabled at the November meeting because the applicant had not yet met the criteria set at the October meeting and requested until December to do so.

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FOR REFERENCE:

Case #1197- Make Room Architecture and Design LLC, 12652 Bronwood Drive, Sawyer, Property Code #11-07-0003-0018-00-9; Applicant is requesting to build a new single-family dwelling which will exceed building height and lot coverage and will also encroach into the front and rear yard setbacks. Chikaming Township Zoning Ordinance #144, Section 8.05(D)(1) allows 20% lot coverage and 1.5 stores or 20 feet in height and requires a 30-foot front and rear setback in an NCRI-B District.

**MOTION MADE AT OCTOBER MEETING AND CRITERIA SET:
DOW MOVES THAT WE CONTINUE CASE #1197 TO THE NOVEMBER 16, 2021, ZBA MEETING.
FURTHER REVISED MATERIALS FOR THIS PROPOSED VARIANCE WILL BE DUE TO THE
TOWNSHIP BY NOVEMBER 1, 2021, AND THESE REVISIONS SHOULD INCLUDE:**

- 1. GRADE CALCULATIONS**
- 2. SHOW GRADE FROM ALL 4 SIDES AND ALL 4 ELEVATIONS**
- 3. DETERMINE ROOF HEIGHT CALCULATIONS AND NUMBER OF STORIES WITH
WHAT IS ALLOWED WITH NCR 1**
- 4. DECK NEEDS TO BE REVISED TO SETBACK REQUIREMENTS.**

ZA interjects that this is a patio with a roof over it which is not a deck with a roof over it which would make it a porch. The table does not allow the roof to extend into the setbacks. So, this is the issue. Gold interjects that we have a gray area. Dow continues that this still needs to be addressed.

- 5. COVERAGE NEEDS TO BE AT 20%.**

**RETTIG SECONDS MOTION; VOTE TAKEN – 5 AYES. THIS MATTER IS CONTINUED TO
NOVEMBER 16, 2021, MEETING.**

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Chair advises that the applicant is not here at the December meeting to present. They have not requested an extension or provided any other correspondence. They have advised Kelly that they intend to file an appeal regarding their setbacks of 30' front yard (Bronwood) is a really a side yard but have not yet done so.

Rettig makes a motion to bring case #1197 back to the table; further because the applicant has failed to bring the information to this meeting as required per the criteria we set at the October meeting, we are declaring Case #1197 closed and they need to reapply. At the recommendation of our attorney, written notice be given to the applicant. Rook seconds. Roll Vote: Bender, Rettig, Anderson, Rook, Gold – ALL AYES.

Public Comments:

Jill Underhill comments that she feels this Board had a great discussion with many unusual items for the Board to discuss.

No further comments. Public Comment is closed.

With no further business to come before the meeting, Chair declares the meeting adjourned at 2:23 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved **JANUARY18, 2022**