

**CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS**  
**Minutes of the December 20, 2022, Regular Meeting**  
**APPROVED**

The December 22, 2022, 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: Doug Dow, Liz Rettig, Larry Anderson, Bob Beemer, Tom Gold. 5 present - Quorum.

Noted that Attorney Hilmer and ZA Kelly Largent (hereinafter ZA) are also present along with many others attending in the audience.

Chair Anderson advises that the first order of business is to approve the November 15, 2022, minutes.

**DOW MOVES TO APPROVE MINUTES AS PRESENTED, ANDERSON SECONDS. VOICE VOTE: 5 AYES. MINUTES APPROVED.**

***Case #2020 Applicant, Stuart Flack, 9102 Leo Lane, Lakeside, Property Code #11-07-2800-0005-00-1, is requesting to place an accessory building in the front yard on a non-conforming lot meeting the required setbacks for a principal building. Section 7.02(C)(1) of the Chikaming Township Zoning Ordinance #144, as amended, states accessory structures shall not be located in the front yard.***

Chair asks Kelly (ZA) to give details on this case. Kelly shows drawings of parcel being an unusually shaped lot which was combined with the house structure being on Leo Lane and the proposed accessory building on Roosevelt. It meets all of the dimensional requirements (front, side, back) as far as setbacks. However, our ordinance says that the Roosevelt portion is a road front and by definition the front yard runs until you hit a structure, which is the shed. Our zoning ordinance says you cannot place an accessory structure in a front yard. Even though it is not their front yard on Leo, it is a front yard.

Chair: On the site plan it calls it out as an ADU. Depending on how we rule, the applicant would need to go to the Planning Commission for approval.

Dow asks for dimensions of the existing house. Kelly answers that we do not have this. Dow continues that it would be fair to conclude that the existing structure is non-conforming. Kelly directs us to the summary which states that the applicant is already at 21.2% lot coverage, and they want to go to 26.8%. They are also doing a variance for lot coverage as well as placement.

Chair: One more question on ADU. What is the size of an ADU? Kelly answer that the maximum size of an ADU must be 800 square feet. No minimum.

Chair reads letters into record: (summarizing – complete letters in applicant’s file)

Fred/Erica Carli – in support of variance request.

Michael Sheehan – in support. Many of our lots in our area are irregular.

Gloria/Tom Whalen & Margaret/Greg Madden – object and oppose; question ADU vs. accessory; front yard setbacks not in harmony with other homes; very dense area; addition far exceeds 20% lot coverage; calculations submitted are wrong; drainage is an issue; questions if there would be a driveway on Roosevelt.

James Duggan – in support of variance.

Dow questions the calculation discrepancy. Kelly advises that small structure is being removed and therefore the calculations as submitted are correct. (540 square foot as proposed)

Chair asks applicant to speak. Applicant advises that it is only going to be for their family to use, no renting. There will not be a driveway. The drainage question has been handled. The Whalen property was built quite high and at our expense, we put a new drain in between our property and Carli's property. We are working with Architect Jack Merchi.

Chair asks for Public Comment. None.

Board discussion begins. Gold is trying to understand the front yard analysis – Kelly is saying that because there is no structure, the whole lot on Roosevelt is a front yard. We should be using the neighborhood average. Rettig/Dow – the greater issue is it's a non-conforming lot and the lot coverage. To add more percentage to make it more non-conforming is impossible. Beemer: We are already over the 20%, so we are creating more non-conformity. NCR1 are the guidelines.

Chair goes 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. Non-conforming lot. Yes. All agree
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. No. Permitted purpose is NCR-1 home. All agree.
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 land is limited. All agree.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. Not a minimal variance; not reasonable – coverage too high – all agree.
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. Not in harmony – too dense. All agree.

**DOW MAKES A MOTION THAT WE DENY VARIANCE #2020 BASED ON NOT MEETING THE APPROVAL CRITERIA; DENSITY, AND TOO MUCH LOT COVERAGE IN ACCORDANCE WITH ORDINANCE 8.02(D)(1). ANDERSON SECONDS. Roll vote: Dow – yes; Rettig- yes; Anderson – yes; Beemer – yes; Gold – yes. 5 – 0. VARIANCE DENIED.**

*Case #2021 Applicant, Joe and Kelly Yario, 9702 Greenwood Avenue, Union Pier, Property Code #11-07-3100-0021-00-9, are requesting a variance to encroach into the rear yard setback, Section 4.02 of Chikaming Township Zoning Ordinance #144, as amended, requires a 30' rear yard setback. This property is an irregular shaped lot and has 2 front yards. The applicant is also requesting a variance to put up a 6-foot fence along a portion of Greenwood Avenue and Red Arrow Highway, Section 11.02(a)(2) of Chikaming Township Zoning Ordinance #144, as amended, allows a 4-foot maximum height fence in a front yard.*

Chair goes to ZA for input. Kelly puts drawing on screen for viewing. The lot is unique. Most of Lot 5 is Red Arrow Highway. This property previously had 3 cottages – now demolished and have cleaned up lot. They are proposing a 15' set back for the rear yard (opposite Greenwood) and a 15' setback for the

left side (rear yard). It is corner lot. Conforming lot over 20,000 square feet – they have 2 front & 2 rear yards.

Chair (addressing Kelly): Doesn't the applicant get to choose their front yard and the opposite is the rear yard and the other 2 are side yards (the opposite of Red Arrow would be side). Kelly continues: Are you looking at the intersection greater than or less than 135 degrees – which is used to determine if it is a corner lot. The angle on Red Arrow is less than 135 which would make it a corner lot. All agree that it is a corner lot, and the resident would pick the street as their address. Kelly advises that they are choosing Greenwood as their address. The setbacks they are requesting are 15'. They also are requesting a 6' fence. If Red Arrow is a front lot line, all along Red Arrow is a front yard by definition. There is an updated drawing where the garage is at the 15' setback – not off set as the original drawing shows. Kelly shows on the map where the applicants want the 6' fence and a portion 5'. 6' along Red Arrow and all around. Red Arrow is still a front yard because it is a road.

Chair reads letters:

Doerge – In support of fence variance because of Red Arrow Highway and animals

Gyls – In support of fence variance.

Chair asks applicant to speak.

Rettig interjects that there are 2 more letters:

Ruiz – In support of variances on fence and setbacks

Carli – In support of variance.

Public Comment:

Peter Stoncius – In support; lot before was a disaster; great improvement

Board Discussion:

Chair: Let's talk about setbacks first. This is a very large parcel of ground and so no reason why the house cannot be placed to comply with the setbacks. Gold: Agrees and does not understand why it would need to be so close to the fence. Rettig: It is up to us to assist the homeowners to meet the guidelines. All agree that there's plenty of land to meet the setbacks. There's nothing in the land to force the house to be pushed back so close to the lot line.

Let's talk about the fence. The fence is a huge safety issue. All agree there is no problem with a 6' fence in the rear yard or the side yard up to the front line of the house – going down to 4' along Greenwood and Red Arrow is a safety issue and people need the line of sight. The rule is that it must be 4' on a roadside. The house is at least 100 feet from the closest section of the road and the fence if it is wrought iron or lattice is not a buffer. Kelly interjects that they want a chain link fence. Chair continues – it's all about safety. Dow asks about opaqueness. Kelly – can only be 50% opaque in a front yard; 4' height. The fence could be 6' up to the front edge of the house. Dow reads about clear corner vision from ordinance. Kelly: Their wish is to do the perimeter. Chair: We must look at what is presented to us.

Chair goes through the criteria: (setbacks and fence)

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. All agree

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. No. All agree
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. No. They have a choice as to where they are placing the house.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. No not minimal. All agree
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. No. Safety and clear vision. All agree.

**DOW MAKES A MOTION THAT WE DENY THE VARIANCE REQUEST #2021 FOR ENCROACHMENT OF THE SETBACKS AND TO INCREASE THE FENCE HEIGHT TO 6' – BOTH REQUESTS BE DENIED. RETTIG SECONDS.** Roll vote: Dow – yes; Rettig- yes; Anderson – yes; Beemer – yes; Gold – yes. 5 – 0 **VARIANCES DENIED.**

**REQUEST FOR INTERPRETATION** *Applicant, John Axelberg, 13238 Ravine Road, Harbert, Property #11-07-0009-02-5, is requesting an interpretation to determine the front, rear, and side yards.*

Chair asks Kelly to comment. Kelly begins by stating that the platted road (Ravine) ends at the property lot line.

Dow (speaking to Attorney Hilmer) asks: Does an easement require the same setbacks as a platted road? Hilmer: Yes, it does require the same setbacks.

Kelly continues, the easement bisects their property – it is a 20' wide ingress/egress easement and serves all the lots beyond this property and also serves the houses to the left and right of the easement on this parcel. The only road frontage is where the easement begins. My definitions don't allow me to say where the front side, rear and lot lines are based on the easement going through the property.

Dow: Even though it is an easement, it is functioning as a platted road giving ingress and egress to others and requires the setbacks as a road, so let's treat it like a road.

Gold: There are 2 residences? Kelly: yes 1 owner with 2 residences, the easement bisects the lot.

Dow: While it is not a platted road, I would propose an interpretation that the easement is functioning like a road to determine front, back and side yards. Anderson agrees; Rettig agrees. Gold feels we are creating a problem. Kelly interjects that it is a recorded 20-foot easement. Gold continues, but the set back is 30' because of the road? On both sides. Kelly: correct. Anderson interjects: We are asked to make an interpretation. Should an ingress and egress easement be treated as a road? Others who come in then will have some guidance. Dow: So, let's look at the consequences. The main house for purposes of setbacks, we have a house with 2 front yards. This is one where the land could be cause to argue for a variance. The issue is that we are being asked for interpretation – as a limited question. Gold: why are we even talking about this. Kelly: Because there is nothing in the ordinance. Dow: I think the main point is for purposes of setbacks, an easement must be treated like a road. The difference here is that we have a 20' easement instead of a 60' road. Access easements are different than utility easements. Chair asks Attorney Hilmer if we need to hear from the applicant on an interpretation. Hilmer: No.

**RETTIG MAKES A MOTION, THAT OUR INTERPRETATION IS THAT FOR PURPOSES OF SETBACKS, AN INGRESS AND EGRESS EASEMENT MUST BE TREATED LIKE A ROADWAY AND MUST COMPLY WITH THE REQUIREMENTS FOR ROADWAY SETBACKS. DOW SECONDS. Roll Vote: Dow, Rettig, Anderson, Beemer, Gold. All ayes. 5-0**

Dow discloses before next case (#2022) begins that Attorney Ammeson is his own personal attorney, has known him for years, has known Mr. and Mrs. Spears (applicants) and are friends, but not related to the parties and has no personal interest in this case in the event the Board wishes him to recuse. Board members agree that that Dow does not have to recuse as there is no conflict of interest.

**REQUEST FOR INTERPRETATION and CASE #2022 Attorney Charles Ammeson representing the owners of 15605 and 15613 Streed Avenue, Union Pier, Property Codes #11-07-4730-0022-08-5, 11-07-4730-0022-01-8 and 11-07-4730-0022-10-0; Applicant is asking for an interpretation for a home renovation on parcel 3 which will comply with the requirements of the Chikaming Township Zoning Ordinance and variance Case #2022 to demolish the existing house on parcel 2 leaving the accessory structure also requesting a variance for lot coverage. Chikaming Township Zoning Ordinance 144, Section 7.02(A)(1) does not allow an accessory structure on a lot without a principal building and Section 8.05 allows 20% lot coverage.**

Chair asks ZA for input. Kelly: Let's tackle the end game first. Kelly shows on the survey map that the owners of Parcel 1 and the owners of Parcel 3 have gone together to purchase Parcel 2 between them which has an existing house and a detached accessory building. They are proposing a boundary line adjustment dividing Parcel 2 in half giving 5,000 square feet each to Parcel 1 and Parcel 3. Proposal is to demolish house on Parcel 2 leaving the garage on the lot until the boundary line adjustment is completed. This is to allow an orphaned accessory structure to exist without a primary structure. That is the variance. The interpretation is for an equivalency. Right now, Parcel 3 has a large driveway which is the same amount of square footage as they want for an addition onto the house on Parcel 3. They are currently over their percentages for lot coverage. They are asking for an exchange in equivalency. But when you add in the additional 5,000 square feet, they are getting from the boundary line adjustment, that reduces their lot coverage because they are picking up open land. The total percentage of lot coverage on Parcel 3 is 37.8% and after the adjustment will be 23.7%. They want to trade impervious surfaces. Beemer interjects that the beauty of the plan is that they eliminate 3,795 square feet of a house and the resulting parcel becomes less dense and less non-conforming. Kelly continues – the garage on parcel 3 remains. Ammeson interjects that the garage will not have a driveway. Kelly says the plans shows the pervious surface for the garage on Parcel 3. The timing is that it must be in before the end of the year for tax roll purposes.

Chair is not certain on the interpretation. Kelly: The interpretation is that the Board is willing to accept the exchange of the hard surface driveway for an equivalent size addition on Parcel 3. Gold believes the issue is intensity and reads from the Ordinance. The structure addition increases the intensity. Dow feels that by removing the house in the middle on parcel 2, you are decreasing the intensity of the 3 parcels, going to 2 resulting parcels. By only having 2 structures, you are less intense. Discussion among the board regarding eliminating intensity.

Dow summarizes: We really must take this as a step 1 then step 2. First the interpretation and failing the interpretation, then we look at a series of variances. The interpretation can solve the problem of the addition and the driveway, but not the orphan garage. Chair: The garage can be a condition of the interpretation. Beemer does not feel that we should trade a driveway for home addition. Chair adds that whatever our interpretation is, it is only for this parcel.



Chair asks applicant to speak. Attorney Ammeson gives a short explanation. Basically, the removal of the house on Parcel 2 reduces the impervious surfaces by 30% and eliminates 7 out of 11 non-conformities. Comments on how well Kelly has worked with this applicant to assist in this case. Section 8.04 of the Ordinance addresses intensity. We are reducing the intensity. Expansion of the house on Parcel 3 does not increase the non-conformity because we are removing the driveway plus the elimination of the house on Parcel 2 is actually decreasing the non-conformity. Regarding the garage, a similar case in another township gave the applicant 1 year to remove. Our hope is that the minute the house is down, the deed to effectuate the lot split will be recorded. We won't even need 90 days. Applicant adds that the anticipated changes to the house are the result of aging and necessity and family. We feel that opening up the space between the houses allows for more green space.

Chair asks for public comment.

Stoncius – comments on how beautifully landscaped the lots currently are. Approves of the split and plans as well as many neighbors also approve.

Chair goes to Board discussion. Dow interjects that if we make the interpretation, we may not need to do the variances. If we do the interpretation taking into account the equivalency argument, the orphan garage situation, we may not need to do a variance. Dow seeks comment from Attorney Hilmer. Hilmer says that will be fine. Gold wonders if we are creating a precedence – trading house for driveway. I am happy to give them credit for the removal of the house and reducing intensity. Rettig and Dow both comment that this is a very unique situation and the resulting properties after the lot line adjustment makes both properties becoming less non-conforming.

**DOW MAKES A MOTION AS TO THE INTERPRETATION: THAT WE ACCEPT THE PROPOSED LOT DIVISION AND WE WILL ACCEPT THE RESULTING ORPHANED ACCESSORY STRUCTURE FOR A PERIOD OF 120 DAYS AND WE WILL ACCEPT THE REMOVAL OF THE HOUSE AND DRIVEWAY ON PARCEL 2 AND THE REMOVAL OF THE DRIVEWAY ON PARCEL 3 AND WE WILL ACCEPT THE ADDITION TO THE HOUSE ON PARCEL 3 WITH THE RESULTING PARCEL 1 AND RESULTING PARCEL 3 BEING LESS NON-CONFORMING BASED ON LOT COVERAGE. RETTIG SECONDS.**

**ROLL: DOW, RETTIG, ANDERSON, BEEMER, GOLD – ALL YES.**

Chair asks if there is any further public comment. None.

Last item on the agenda – approval of ZBA meeting dates for the up-and-coming year. No meeting in January 2023, and all ZBA meetings will be the 3<sup>rd</sup> Tuesday of each month.

**DOW MOVES THAT WE ACCEPT THE PROPOSED MEETING DATES WHICH FALL ON THE 3<sup>RD</sup> TUESDAY OF EACH MONTH AND MEETINGS WILL BE SET FOR 1:00 P.M. EASTERN STANDARD TIME/DAYLIGHT SAVINGS AS THE CASE MAY BE, BEEMER SECONDS. VOICE VOTE. ALL AYES.**

Chair announces we are adjourned at 2:37 p.m.

Respectfully submitted,

Elisabeth A. Rettig  
Recording Secretary

Date Approved February 21, 2023