

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the December 15, 2020, Regular Meeting
APPROVED

ELECTRONIC MEETING VIA ZOOM, PER GOVERNOR WHITMER'S ORDER

The December 15, 2020, regular meeting of the Zoning Board of Appeals (held electronically) was called to order at 1:00 p.m. by Chairman (hereinafter Chair) Larry Anderson. Roll call of members attending electronically: Larry Anderson, Doug Dow, Liz Rettig, Kathy Sellers.
4 present - Quorum. Noted that Attorney Hilmer is also present.

Chair advises that the first order of business is to approve the November 17, 2020, minutes. Chair asks if the Board members have any corrections. Dow advises that he has a few clerical/typographical changes (5 minor corrections – Page 3 and Page 7). Rettig notes the corrections. **Anderson moves that minutes be approved as corrected; Dow seconds; Roll vote: Dow, Sellers, Rettig, Anderson – 4 AYES. Minutes are approved as corrected.**

Case #1190- *Case # 1190: James and Pamela Linn, 9183 Shady Lane, Lakeside. Property Code # 11-07-4460-0009-01-4; Applicant is asking for an encroachment of 2'7" into the rear yard. Chikaming Township Zoning Ordinance #144, Section 8.05(D)(1) requires a 30' rear yard setback in an NCR-1B District."*

Chair asks for comments from the Zoning Administrator (ZA) Van Thornton. ZA answers that he has nothing specific, this is a dimensional variance and the architect, McCollum, is available for any questions.

Chair asks for comments from applicant. Pamela Linn speaks and advises that she had sent a letter and would like it read. Chair advises he will do so. Linn continues that they are going to build an addition and become a Michigan resident. The design shows they are doing a 1 car garage and want some additional storage and need a 2.7" variance. House has no basement and very little storage. The curve of the staircase makes the variance necessary and the variance is in the rear yard.

[NOTE: Tom Gold joins meeting – we now have 5 members present]

Chair reads letter from neighbor Jim and Heidi Michaels (9177 Shady Lane) who support the variance.

Sellers advises she has received a letter from applicants and reads e-mail letter stating that the request is *de minimus* in nature, no impact on neighbors and allows a small but crucial amount of storage, making the property their primary residence in the future. They are hoping to build a 1 car garage, no basement, and additional storage space in garage becomes important and they would be severely compromised if they had to put the stairway entirely in the garage as well. Lot coverage is not an issue.

Chair asks if Board has any questions for applicant.

Chair begins by asking the applicant if there is any possibility of shifting the staircase towards the home to get within the buildable lines. McCollum responds that he was brought in to assist, but the plans are

from the applicant's father and feels this is the design that works best. Continuing, the small front porch makes it look nicer and says that the stairs could be shoved in, but they were hoping not to.

Sellers feels that even if the variance is given, it is very tight and the request is minimal.

McCollum shows drawing (which all board members have) and is more of an architectural concern – which he knows is not a concern of the ZBA. Chair agrees and further states that the design is a self-created hardship and nothing to do with the lot.

Dow agrees, there is nothing about the land, which is a critical point. This is a medium sized, non-conforming lot. In the written response of the applicant to our criteria to which we have to attest, Question #3 asks if the unique circumstance results from the actions of the applicant? To which the applicant says “yes.”

Chair again asks, is there a way to move this in some way, because based upon the land and the criteria, the Board will not be able to approve.

Sellers asks if they were trying to line up the addition to the house.

The applicant is unclear about the self-creating wording as they were trying to keep the aesthetics of the house.

Chair feels that if the addition is shifted forward, the house would be within the set-back lines and you can still have the staircase. McCollum agrees, but it would reduce the size of the front porch (making the front porch smaller) not 6'6" as the plans show. The porch becomes a walkway (about 3' 11" wide).

ZA interjects that this is a non-conforming lot (size 12,825 sq. feet) and we must look at the height of the tower (limited to 20'). Architectural features may extend/encroach into the front yard 2 feet – which may help the design (gutters, soffits, cornices). The entire proposed addition could shift toward the street 2 feet and would lose 5" of the covered porch. The set back to the roof line of the coverage porch could be 28' rather than 30 and no variance need be granted.

Chair now ask the applicant if they wish to withdraw their application and making modifications and only need to go for a permit. McCollum asks if he can present the changed drawings to the owners and requests it be tabled (rather than deny) to see if they really need a variance or not.

Dow says we need revised drawings.

ANDERSON MOVES THAT THIS MATTER BE TABLED TO THE JANUARY 2021 MEETING TO ALLOW PETITIONER TO PRESENT REVISED DRAWINGS. DOW SECONDS.

Roll call vote: Gold – recuses; Dow – yes; Rettig – yes; Sellers – yes; Anderson – yes. THE MATTER IS TABLED TO JANUARY MEETING.

McCollum asks a question about height and cites #3 on Page 4 -5 – “architectural features such as cornices, eaves, chimneys” allow 2 more feet. Gold asks to weigh in stating that the tower goes to the

mid-point of the roof (almost a flat roof) and needs to be looked at. Chair continues by speaking to Mr. McCollum and advises him to review and speak to the ZA. Dow reads footnote B, 107, stating that the extension is lateral, not height. ZA says that some things are excluded but feels that Mr. McCollum needs to work on the height or amend his variance.

Chair moves to next case.

Case #1184- AMENDED APPLICATION: Annette and Reinhard Brinkmeier, 13480 Main Drive, Harbert. Property Code # 11-07-4670-0078-00-8; Applicant is asking to construct an accessory structure in the front yard with no setback from the property line. Chikaming Township Zoning Ordinance #144, Section 7.02(C) states an accessory structure shall not be placed in the front yard and Section 4.02 requires a front yard setback of 30 feet.

Applicants have three (3) points to clarify.

1. Does AEP have any restrictions on the easement? Applicant has received in writing from AEP that there are no restrictions as long as there is no cement foundation.

Chair addresses the applicant and asks about the consideration of attaching it to the front of the house rather than going all the way to the front lot line.

Dow tries to clarify by reminding the Board of an e-mail from November 17 from the Brinkmeiers. We tabled this matter in September at which time we said there were 3 issues:

1. Determine if the easement is a problem or not;
2. Combine all lots into 2 tax number so that lot coverage issue is resolved;
3. Applicant was going to attach the structure to eliminate the issue of an accessory structure in the front yard. So, we were down to 1 potential variance – front yard setback.

Dow now refers back to the e-mail – #1. They had received the answer from the utility company that the easement was not an issue. #2 in combining the lots into 1 tax number the position is that the Brinkmeiers say it will involve cost and expense. So, they are asking us to approve the variance contingent on their doing the combination as we requested. The problem I see is it leaves us approving something that has a lot coverage issue. #3, whether they would attach the structure or not – and their answer is we make it contingent that they attach it. The problem with that is, we are asked to approve something without final drawings. It appears that only 1 of the 3 issues is resolved – 2 are not.

The applicant responds that there is much cost involved – architect plans and combination of lots with the risk that the Board would not approve.

Dow continues by restating that you have resolved only 1 of 3 issues. You have not resolved the issue of providing sufficient property to solve the lot coverage issue and most important, you have not provided us with drawings for the attached structure. (Referring back to the minutes) Dow continues Section 17.04(C)(2) says a plan must be submitted with all variance requests as the Board cannot approve a variance not on paper. Chair comes in stating that the applicants have not committed to combining the lots and we have not seen any plan. Chair suggest that applicants present a dimensional

architectural drawing and a firm commitment to combine the lots. Previous application was on piers and the new drawing would have to show the structure attached. Applicant would still like to build carport closer than 5' and would still like to keep it unattached and asks the Board to consider. Dow points out that the issue is: the fewer variances, the more we can work with you. You came to us with 2 variances - encroaching in the front yard and putting an accessory structure in the front yard and then we determined that lot coverage would not be sufficient to support additional structures. We worked with you to try to get it down to 1 variance. You will still need a setback encroachment in the front, get rid of the detached structure, add all your parcels together so there's no longer a lot coverage issue and we are down to 1 variance. This is what we were trying to convey.

ZA asks if it would be possible for applicant to present a plan view from overhead and show the house and how the structure would attach in reference to the entire site, stating height, exterior materials – that would allow the Board to review for compliance or a minimal variance and eliminate applicant spending money for an architect to draw it up. Anderson asks if that type of drawing would be allowed for a building permit? ZA answers no. Site plan would be adequate for zoning compliance, but the remainder would have to be a full set of drawings for review.

Chair ask Attorney Hilmer – full architectural drawing vs. a plan view. Hilmer responds that we have to stick with what the ordinance requires. Must be in compliance. Dow cites 17.04 stating that it does not have to be an architectural drawing but it has to be a drawing to scale. Gold interjects that it has to show elevation and this is a minimal amount of work for a competent architect. Applicant says that attaching it to the house makes it difficult (angled roof and walls).

Chair summarizes that we need a firm commitment that applicant is going to combine the lots, the utility issue has gone away, but the other requirement of not having an accessory structure in the front yard and instead having an encroachment in the front yard with structure being attached is what we want to see. We need a drawing. Gold asks if in the “firm commitment” can't we make it a condition that no permit shall be issued until the lots are combined and Van can police this. Dow agrees, but the drawings are critical. Gold continues, to get the expense of the lot combination off the table, once they know they have the approval, then they can combine the lots and Van won't issue a permit until the lots are combined.

Chair feels this should be tabled until applicant has drawings, review, and add conditions at that point.

Rettig gives the fees for combination - \$100 to township and \$105 to county.

Sellers asks about the carport and using permeable gravel, does that count in lot coverage. Rettig answers, it does, because of the roof which makes it a structure.

ZA gives the definition of structure as a building with a roof and then becomes part of lot coverage.

Chair asks if applicant can be ready with plans by January if the matter is tabled. Applicant advises that if they do not have to have architectural plans, only scale plans, they can be ready.

Dow clarifies one more time quoting Section 17.04(C)(2): “Plot plan: (7 copies minimum size 11 inches by 14 inches) shall be required with all variance requests. The plan which shall accompany all variance

requests shall be based on a mortgage survey or land survey prepared by a licensed land surveyor. The plan shall be to scale and shall include all property lines and dimensions, setbacks and all existing and proposed structures.

- (a) The Zoning Board of Appeals has the authority to require a land survey prepared by a licensed land surveyor when the ZBA determines it to be necessary to insure accuracy of the plan.”

Applicant asks if drawings similar to those presented with their original applicant are acceptable. All Board members agree.

GOLD MOVES THAT WE TABLE THE CASE UNTIL THE JANUARY 2021 MEETING. ANDERSON SECONDS.

ROLL CALL VOTE: DOW – Yes; SELLER – Yes; GOLD – Yes; RETTIG – Yes; ANDERSON – Yes. TABLED UNTIL JANUARY.

Chair moves to next matter.

Case #1189 amended application: Property owner Joe and Brigid Gilmore, 9616 Franklin, Union Pier. Property Code # 11-07-4730-0029-01-2; Applicant is asking to add, alter and renovate the existing house into a 2-story dwelling with a roof height of 26’5”. The proposed addition and deck will have a rear yard setback of 20’; the deck will have a 10’ front yard setback; proposed lot coverage will be 26.2%. This property is zoned R-1-W and is an NCR1-A lot. Chikaming Township Zoning Ordinance #144, Section 8.05 states the setback from the side yard property line must be 10’, the rear yard setback must be 30’, maximum building height is 20’ (11/2 stories) and maximum lot coverage is 20%.

Chair advises we had lots of previous discussion and now we have new plans.

Chair asks ZA to walk us through the amended application.

ZA advises that the site plan is dramatically improved. Architect has moved the structure and has presented plans showing the old structure and the location of the new. The only issue is we don’t have an elevation for the side that faces Franklin Road. The Architect interjects that the elevation is shown on the drawing.

Gold asks about the front door being off the deck. Dow clarifies that the front of the house is now out of the road and has a 0-foot setback and asks if there is anything hanging off the front of the house (eaves/soffits). The Architect answers that everything is flush with the road. The design is not complete but this gives us height, scale, and elevation and fascia board will be on the lot line – everything tucked under the eave.

Sellers asks about the location of front door changing the address. Rettig answers there is no other road and there will be no change of address. The door side will now be the lake side.

Anderson asks ZA about off street parking requiring 2 parking spots. Gold reminds us that we covered this in the last meeting. Anderson just wants to make sure we don't have to cover this in our variance. Owner interjects that they currently have 2 parking spots (as did the previous owner) at the end of the private road next to 9610 Franklin and nothing has changed. It's a dead-end private road. There is no homeowner's association. There are 6 parking spots between 9610 and 9616 and have been there for over 50 years.

Dow asks that we recognize and acknowledge the traditional parking spaces are removed from the house, giving a record of discussion.

Sellers asks some more questions about rebuilding and how it affects parking spaces. Dow explains that the primary challenge was to get the house out of the road and the Township's interest in public safety and as a Township we should not encourage rebuilding on a bad foundation. Although we are not happy about a 0-foot setback, the Architect has come back with the minimal possible variance requests to build on this lot.

Sellers asks about "what makes a lot not a buildable lot?" ZA tries to answer about his process in reviewing a site plan, proposed structure, setbacks, and being in compliance with requirements and proper drainage. If they cannot meet the requirements, then a variance request is made to build.

Gold further elaborates and a short discussion on "taking" ensues.

Chair asks for public comment. Helen Burke (next door neighbor) says she is in support.

Chair goes over criteria:

- 1 Are there unique circumstances or conditions that exist? Yes – uniqueness of the land.
- 2 As result of the unique circumstances, strict compliance with the provisions of this ordinance would unreasonably prevent the use of the property for a permitted purpose, or be unnecessarily burdensome? Yes – uniqueness of the land.
- 3 The unique circumstances do not result from the actions of the applicant? Yes – uniqueness of land exists and lot of record.
- 4 The variance request is a minimum variance that will make possible the reasonable use of the land, building or structure? Yes.
5. Will the granting of the variance be in harmony with the spirit and intent of the Ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, and welfare? Yes – in harmony.

MOTION MADE BY DOW TO APPROVE THE 2 VARIANCE REQUESTS TO ALLOW A 0 FOOT FRONT YARD SETBACK ALONG THE ROAD AND TO ALLOW A 20 FOOT REAR YARD SETBACK AND ACCEPT THE NEW PLANS AS SUBMITTED WITH NO EAVE OR PROJECTION IN THE ROAD AND WE RECOGNIZE THAT OFF STREET PARKING IS OTHERWISE PROVIDED. GOLD SECONDS. ROLL VOTE: DOW – YES; GOLD – YES; SELLERS – YES; RETTIG – YES; ANDERSON – YES.

Chair allows for public comment (3 minutes) and advises the Board not to respond.

Kristy Putnam asks to speak. Advising she is the Resident Agent for Peacock Place, LLC. Asks ZBA to advise ZA and Planning Commission regarding procedures to formally transition to the new name of current use. Season Resort Home is now called Resort Detached Unit. Completing the process which began 2 years ago with a fee waiver from the Township Supervisor resulting from the new ordinances. Putnam continues stating that the new ordinances grandfathered their formerly permitted use and gave it a new name. Planning Commission hearing on January 8 is unnecessary, which will occur before the transfer of property to a new buyer (closing January 20). Asks for a Resolution by having meeting minutes reflect statement of ZA and confirm local ordinances do not govern the rental term of commercial lodging. Section 8.04(3)(d) is quoted. Peacock Places operates a commercial lodging establishing offering temporary commercial rentals and a permitted use. Any idea that commercial lodging is limited to short term rentals only, was put to rest. ZA confirmed in an e-mail that there is no local ordinance governing temporary commercial lodging. Commercial Lodging Rental terms are governed by state law. Commercial lodging held out to the public, must take all guests who present as transient without question. Only private rental property may choose tenants and limit the length of stay. public lodging establishments must evict guest according to state housing law if their chosen length of stay becomes unreasonably long and they choose not to leave. ZA confirmed that the rental ordinance applies only to what the ordinances define as rental property which is homes rented on a private residential basis. The rental ordinance does not apply to hotels. Speaker is stopped by Chair as 3 minutes are up.

Chair address ZA. ZA is asking for a clarification of term included in the definition of a Detached Unit Resort (Page 237). “A facility consisting of a number of detached dwelling units, as well as accessory uses such as an office or recreational facilities, where the dwelling units are offered for temporary accommodations and are not available for permanent residency, other than the owner’s and/or operator’s primary residence, or separate ownership from the overall facility.” ZA has advised the owner that definition of temporary accommodations is 30 days or less by 1 tenant or renter and long term is 31 days or more for 1 occupant or renter – in reference to dwelling units only – our rental ordinance does not address commercial properties. The Peacock Resort has given several presentations by Ms. Putnum in 2018 and 2019 and I stated, “that per the facts listed earlier, the property will still be in compliance even after the new zoning ordinance takes effect and that he will write her a letter to define nightly and weekly rentals and seasonal rentals.” I am asking the Board to give me a definition of temporary and a definition of permanent.

Chair feels that this clarification is directly related to the person who made the public comment and the request for interpretation. The request must be properly noticed before the Board can take this up for discussion. It would be inappropriate to discuss this today. Gold disagrees. ZA requests that Attorney Hilmer weigh in. Attorney Hilmer feels that it should be set for public hearing and look at the Zoning Enabling Act which requires notice of public hearing. Hilmer feels that the Board has not been informed enough to make an interpretation and it is a disservice to the Township. Gold feels that we should discuss permanent vs. temporary. ZA thanks Mr. Gold but feels we should heed the advice of the Township Attorney. Chair feels we should table this issue and take this up at our January hearing so we are all informed.

MOTION MADE BY ANDERSON REGARDING THE DISCUSSION FOR THE DEFINITIONS WHICH ZA WAS ASKING FOR REGARDING RESORT DETACHED UNIT (SECTION 20.01)

BE TABLED UNTIL THE JANUARY 2021 MEETING PENDING THE RECEIPT OF MORE INFORMATION FROM THE ZA AND THE TOWNSHIP ATTORNEY. RETTIG SECONDS.

DOW ASKS ABOUT A PUBLIC HEARING. 2 POTENTIAL ITEMS – FORMAL REQUEST OF APPEAL REQUIRES A PUBLIC HEARING. THE INTERPRETATION IS A SECOND ISSUE. IS THERE A FORMAL REQUEST TO APPEAL BY PUTNUM? ZA ASKS IF THERE IS TIME TO SET THIS FOR A FORMAL HEARING? KIM LIVENGOOD RESPONDS THAT THERE IS ENOUGH TIME.

ANDERSON AMENDS HIS MOTION TO NOTICE A PUBLIC HEARING FOR THE JANUARY MEETING. RETTIG SECONDS.

ROLL VOTE: DOW - YES; GOLD - YES; SELLERS - YES; RETTIG - YES; ANDERSON – YES.

Chair asks for any further comments from the public. None.

With no further business to come before the meeting, the Chair declares meeting is adjourned at 2:21 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved January 19, 2021