

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the July 20, 2021, Regular Meeting
APPROVED

The July 20, 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: Bob Beemer, Liz Rettig, Larry Anderson, Paul Rook, Tom Gold. 5 present - Quorum. Noted that Attorney Hilmer is also present along with many others attending in the audience. ZA Kelly Largent (Kelly) attending via telephone and is on speaker phone for the entire meeting.

Chair advises that the first order of business is to approve the June 15, 2021, minutes. Chair asks if the Board members have any corrections/additions. None.

Beemer makes a motion to approve the minutes as presented, Gold seconds. Chair takes a roll call vote. Roll vote: Beemer, Rettig, Anderson, Rook, Gold – 5 AYES. Minutes are approved.

Chair advises that Zoning Administrator (ZA) Kelly Largent (along with Township Attorney Hilmer and working with the Planning Commission) has brought up a potential problem (lack of clarity) in the unique circumstances we use as criteria for determination of passing or failing a case. The issue may be that we are required to vote on each criteria separately and vote individually. Gold questions that if one of the criteria is not met, would it be a fail? Anderson advises that with the new ordinance, a majority of the criteria not being met would be a fail. We will vote on each criteria separately until we have further information.

Case #1195- Bob Fournier, 15961 Lakeshore, Union Pier, Property Code #11-07-7321-0014-00-0 and 11-07-7321-0015-00-0; Applicant is requesting a variance to construct a 12' x 28' single story storage shed which will have a rear yard setback of 8 feet, side yard setback of 7 feet and exceeds lot coverage by 3%. Chikaming Township Zoning Ordinance #144, Section 7.02 requires a 10-foot side and rear yard setback and Section 8.05(D)(1) allows 20% lot coverage in an NCR1-A District.

Chair advises we have three (3) variances request:

1. Side yard setback
2. Rear yard setback
3. Lot coverage.

Chair asks applicant to speak or give their comments. Mr. Fournier speaks advising that they are now making this property their permanent home and need more storage space. Applicant asks about the 20% lot coverage – those mean both lots? ZA answers that lot coverage is calculated on the 2 lots together and it is 20% of the total.

Gold asks the applicant why a variance is needed on the back if the shed was moved forward a bit. Applicant says that moving it forward would not be the most desirable location aesthetically. Rettig interjects that the same would apply to the side yard, why ask for a variance if shifting the building would result in not needing a variance for rear and side yards. Applicant states that he was worried about eaves. The Board answers that the eaves don't count. Gold suggests bringing the shed over 2 feet and forward 1 foot eliminating 1 variance and making the side yard variance less. Board reminds applicant that the 10 foot must be maintained between buildings for fire safety. ZA is asked if lot coverage could be

recalculated if applicant would shrink the building slightly. The Board reviews the measurement sheet from the company building the sheds for a smaller building available to the applicant. Kelly recalculates on a 10' x 28' building.

Chair advises there are no letters.

Chair (waiting for ZA to finish calculations) goes on to Public Comment. There appears to be no public comment. Chair closes public comment.

Rook asks if applicant would be willing to go to a smaller building. Applicant states he does not want to reduce the size of the building. Rook continues asking applicant if moving the structure would be objectionable. Applicant says he is willing to move the structure.

Gold begins the Board discussion stating that he has an issue with a self-imposed hardship as there are many other alternatives available. The Board would be willing to work with the applicant if there were only a 1-foot variance needed on the side yard, but the lot coverage is still at issue and the neighborhood is very crowded. Gold affirms from the applicant that the old shed currently on the property would be removed. Beemer reminds us that the want of a larger shed and this not being a minimal request does not meet the guidelines.

Kelly advises that if the shed size were reduced, the lot coverage would be between 21 – 22%, still making the need for a variance for lot coverage. Gold suggests a 10' x 30' shed because applicant is 4 feet from the back lot line. We have eliminated setbacks and the lot coverage is reduced. Applicant states he is agreeable to the building size.

Chair asks applicant to amend his application. Applicant verbally amends his application stating that he is requesting a 10' x 30' shed which will only require a lot coverage variance and no side or rear setback variance and will set the shed 10 feet from the rear lot line. The Board concurs that we are now at less than 3% additional lot coverage.

Chair goes over criteria: (Page 194, Article 17, Zoning Ordinance)

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. Yes – non-conforming small lot. All Board members agree.

Before going further, the applicant says he has never heard the term “non-conforming” before this. Chair gives a give overview as defined in the Zoning Ordinance citing page 107.

Continuing with the criteria:

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. All Board members agree - yes.
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. All Board members agree – yes.
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.

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. All Board members agree – yes.

ROOK MAKES A MOTION TO APPROVE THE VARIANCE REQUEST BASED UPON THE AMENDED APPLICATION WHEREBY THE APPLICANT WILL NOW CONSTRUCT A 10' x 30' SHED AND ALLOWING FOR A VARIANCE OF UP TO 3% ON LOT COVERAGE. ANDERSON SECONDS. ROLL VOTE: BEEMER, RETTIG, ANDERSON, ROOK, GOLD – ALL YES ON THE APPROVAL OF THE VARIANCE.

Applicant now asks about the building permit and is directed to talk with Kim Livengood of the Building and Zoning Department to finalize.

Case #1196- Anthony and Jacquie Sartoris, 15755 Lakeshore, Union Pier, Property Code #11-07-4600-0036-00-2; Applicant is requesting a variance to add a 22' x 23' 2-story addition, pool, whirlpool and the addition of eaves to the accessory building which will increase lot coverage to 26.91%. Chikaming Township Zoning Ordinance #144, Section 8.05(D)(1) allows 1-1/2 stories and maximum lot coverage of 20% in an NCRI-B District.

Chair asks ZA to comment. ZA advises that the height of the structure would be 2 story and as to lot coverage the new “hard surfaces” (whirlpool/pool) and overhangs include impervious surfaces. The applicant found there was water damage and now must put up eaves. The have revised the eaves some, but there are still impervious surfaces.

Chair asks if Board has any questions for ZA. Gold begins by asking if the eaves on the guest house added to the lot coverage. The approximate overage is 1.24%.

Chair asks for applicant to speak. Attorney Mark Miller introduces himself as representing the applicant, introduces John Allegretti (architect) and Mr. Sartoris. Mr. Miller (Miller) advises that he has been working with Van Thornton (former ZA) as part of their purchase of the property since February. The eaves and overhang were not originally calculated as hard surfaces and at that time the original lot coverage was 22%. Many changes were made in the plans to reduce the structures and hard surfaces. The pool and whirlpool are needed because of Mrs. Sartoris' medical treatment. Mr. Sartoris continues stating he did his due diligence and with the many changes were near 23% lot coverage. ZA worked with applicant and architect on flow through eaves to further reduce lot coverage to its minimal request. Applicant is also working with Merritt Engineering on drainage/storm water/catch basins, which will not affect lot coverage, but will help with water drainage. The pool would be small (5' x 12'), and the whirlpool is 6'. No setbacks are requested. Allegretti now speaks to the non-conforming lot size and the necessity of a 2-car garage. Originally, we were working with the old code and now we are working with the new Ordinance. The lot has 13,906 square feet. The owners wish to utilize the space above the garage, and we are using 2/3rds of the space. Allegretti presents a detailed breakdown sheet of the various calculations for the additions to the Board. Allegretti agrees that the house is 2-story but is open to suggestions from the Board.

Chair proceeds to letters. Chair reads e-mail letter from Suzanne Koenigsberg (living at 9843 Nolan, directly behind). In summary: Feels that the lot coverage requested is not minimal; property is not unique; garage is not a necessity; pool and hot tub are not necessities; request is for 6.91% an increase of over

34% of what is allowed; the property is already at maximum lot coverage; the garage could have been sited to the rear of the home; a 2-story structure is not allowed, her view will be impaired.

Before Chair reads letter, Rettig questions Mr. Stanley Wilk (who is in the audience) to find out if he is within 300 feet of the subject property. Mr. Wilk advises he did receive notice of the hearing. Mr. Wilk's letter in summary agrees with Mrs. Koenigsberg and is opposed to granting the variance request.

Chair asks if there is any public comment. Frank Butera (former owner of the property) and lives across the street comments that this will not be a rental property, but a family compound. Continuing that he has knowledge that Mrs. Sartori does need medical attention and in need of the therapeutic whirlpool and pool.

Mrs. Susan Koenigsberg comments that this is a gross misuse of the variance process.

Public Comment is closed.

Board discussion now ensues. Gold begins with the fact that there already is an existing non-conforming structure on an existing non-conforming lot. Coverage is one issue, but the idea of 2nd floor is what I want to discuss. The existing structure is already a 2-story structure in a 1-1/2 story zoning. They are expanding a non-conforming use which is prohibited in the code (8.04(4)(a) says you cannot increase a non-conforming use and 5.B further states that improvements cannot exceed 50% of the assessed value of the structure during any 12 consecutive months.) I viewed the assessor's tax information, and the property is assessed at \$274,000 for land and buildings. In looking at the plans, nothing will be left of the old house. Everything is new, windows, walls, roof, siding – a great expansion of a non-conforming structure. The house, if starting from a clean slate, could easily comply with the 1-1/2 story allowed. The expansion of a non-conforming structure is the biggest issue. Personally, I don't think eaves should be included and by added the roofs, it is creating a nightmare. Even by taking the eaves off, you are still at 25.6% over. Beemer weighs in that this an undersized lot with a large guest house and are already at the coverage limitation - and has no one considered making the guest house into a garage. Gold continues reminding that the new build is over the 50% assessed – the new house is closer to a million-dollar build. Chair asks ZA to comment on the 2-story addition vs. 1-1/2. ZA comments that the addition exceeds 1-1/2 story height. The usable floor area cannot exceed 2/3. When start looking at ceiling height – everything 7-1/2 feet or higher needs to be counted – they have 8' high ceilings and that why I had to count it as 2-story. Gold now addresses Allegretti and asks him to explain the 2nd story floor plan. The basic structure and beam have not been changed. We are utilizing existing floor space – turning non-usable space into usable. Gold continues stating that the house should have been designed as 1-1/2 story. The applicant now comments that their family is large, and they need the space, and all of this was discussed with the former ZA. Applicant continues... the top floor is not being changed except for raising head room and now Mr. Miller attempts to speak. Chair stops the conversation by reminding everyone that we are in Board discussion and if further input is needed, the Board will ask a question. Gold now continues stating that he feels they are expanding a non-conforming structure and they could have submitted a different plan, perhaps still needing a variance. Gold, Beemer and Rettig all feel that the eaves are not a major issue. Anderson interjects that perhaps a 4% variance for lot coverage is not unreasonable, but expanding an existing non-conformity is an issue. The design needs to comply with our Ordinance of 1-1/2 story. Miller and Gold discuss the sliding scale lot coverage for non-conforming lots. Gold again states that since this is all a new design, why wasn't 1-1/2 stories adhered to. Beemer comments on non-conforming lots that have limitations on size of homes on undersized lots. These rules were made for the undersized lots and so that we would not have oversized homes. Miller asks the Board what specifically is the objection, the

size of the house or the height? Board concurs that lot coverage and height. Rook asks Miller and applicant how the lot coverage went from 22% to 26% if discussions were had with Van Thornton? Discussions back and forth regarding lot coverage percentages and eaves having some portion of the percentage. The request now seems to be twice as much as originally discussed with Mr. Thornton. Rettig and Gold both talk to the applicant and state that the percentage of coverage is still too much, and the plan needs to be cut down so that there is no expansion of a non-conforming lot.

Chair suggests we could vote on this and if rejected, applicant cannot come back for one year, or that the matter be tabled, and applicant can come back with reduced lot coverage and reduced height to 1-1/2 story.

Miller advises that the applicant wishes to table his request at this time. Chair asks how long will be needed before returning to the Board? Mr. Allegretti feels that the next hearing would be 3rd Tuesday in August (17th) and sufficient time.

GOLD MAKES A MOTION THAT THIS CASE BE TABLED TO AUGUST 17, 2021, AT THE REQUEST OF THE APPLICANT. [Chair asks Kim Livengood if this matter will need renoticing? Kim advises it does not.] **BEEMER SECONDS. Chair asks for a roll call vote: Beemer, Rettig, Anderson, Rook, Gold. ALL AYES – 5.**

Chair advises that we need to discuss the Rules of Procedure. Gold has only 1 comment on the revised draft given to the Board to review. Page 6, Section 4, J, 2. (Public Comment) - Public comments will be limited to 3 minutes [adding per speaker]. All agree on the wording. Chair takes a roll call vote to approve the Chikaming Township Zoning Board of Appeals, Rules of Procedure, with addition as noted. **5 AYES.**

Chair asks if there is any additional public comment. With no further business to come before the meeting, the Chair declares the meeting adjourned at 2:28 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved August 17, 2021