

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the March 15, 2022, Regular Meeting
APPROVED

The March 15, 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: Phil Bender, Liz Rettig, Larry Anderson, Tom Gold, Paul Rook. 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 advises that the first order of business is to approve the February 15, 2022, minutes. Chair asks if the Board members have any corrections/additions. None.

ANDERSON ASKS FOR A VOICE VOTE TO APPROVE THE MINUTES AS PRESENTED. VOTE: 5 AYES. MINUTES APPROVED.

Case #2004 Applicant, Becka Shipp, 15935 Wintergreen, Union Pier, Property Code #11-07-4570-0062-03-2 is requesting a variance from Chikaming Township Zoning Ordinance #144, as amended, Section 5.01(H)(1)(d) which requires a front yard setback of 15 feet or less. (See table in Section 4.02 C-U)

Chair asks ZA to walk us through the case. ZA advises that CU Union Pier Zoning Mixed Use District is does not have the normal minimum requirements for setback, it has a maximum – which is 15 feet for any building in that zoning district. The applicant is asking for 21-foot setback (a 6-foot variance).

Chair asks if there are any other considerations (height, bulk, side yard, rear yard setbacks, lot coverage). ZA advises that all other things are in compliance.

Chair asks if applicant wishes to speak. Applicant Becka Shipp speaks stating she is aware this is a commercial district, however, there are only single-family properties around her, and she is more concerned with the neighborhood.

Chair asks if Board has any questions for ZA or applicant.

Gold asks if the applicant knew of this restriction or checked the zoning when she purchased. Applicant says she did not and has owned it since 2014 and there was no plan to rebuild the house until recently because of growing family. Gold asks how much closer to the road this new house is than what currently exists. Applicant says approximately 5 feet closer. Gold says you are decreasing the distance from the road from where it previously was. Chair reminds us that this variance is because the ordinance says the maximum distance for front setback must be **less** than 15 feet. Gold says that she was 31 feet before and now wants to be at 21 feet from the road. If she wanted to remodel in the spot where the house is, she could do this. They have not yet demolished. The applicant is trying to stay with what the neighbors have and not be so close to the roadway. Chair once again tries to clarify by asking if this is perhaps a discrepancy in the ordinance. Kelly answers by advising that perhaps when the ordinance was redone, the Planning Commission forgot to think about setbacks for a residential structure. This is the first time we are finding this type of discrepancy. Kelly explains that some streets have different setbacks than others and in the new zoning table, it splits out the different setbacks in the table for the different roads. Gold inquires as to how this will be remedied. Kelly advises that if the variance is granted, she would bring

this discrepancy to the Planning Commission with other amendments for consideration and clarification. Addressing Kelly, Rettig says the only reason this is coming forward is because this is a total teardown and if this were a remodel, there would be no need for a variance. Kelly agrees and continues that new construction has to conform to the new zoning ordinance. Gold asks what language would you suggest to the Planning Commission? Kelly states that there would be a different setback for residential than for commercial. Kelly advises that under the new ordinance, the house could be right on the property line. Applicant interjects that her neighbors are about 31 feet and 21 feet from the lot line and is trying to be uniform with the neighbors.

Chair asks for public comment.

Stoncius - This discussion points out how confusing the Zoning Ordinance overlay is.

Gold (Board member) makes a comment that we are not the Planning Commission and do not write the Ordinance.

Public comment is closed.

Chair moves to Board discussion and starts by stating that he realizes the constraints the applicant is working through but is not comfortable granting the variance before the Planning Commission changes the amendments, and if changed, then the applicant won't need to apply for a variance. Rettig wonders if this could be a year down the road. Kelly says that working on an amendment is not first on the agenda of the Planning Commission and the last amendment took 18 months. There is no time frame for the amendment.

Gold: This is why we are here. There's an anomaly in the Ordinance and clearly an oversight to require someone to put a house closer to the road than her neighbors and seems to be a drafting error. For commercial purposes, this makes sense. But this is residential, she is trying to put the house in line with the neighbors and not be too close to the road. This is a minimal ask and beneficial to the neighborhood.

Rook agrees that applicant is trying to be in harmony with the neighbors. I think it is misnomer and I don't think it's fair for her to wait for the ordinance to change.

GOLD MAKES A MOTION TO GRANT THE VARIANCE TO ALLOW THE HOME TO BE CONSTRUCTED AS DRAWN WITH A 21-FOOT SETBACK FROM THE ROAD. BENDER SECONDS.

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. Yes. Ordinance has a discrepancy/drafting error. 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. Yes. 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. Unique circumstances do not exist. Yes. All agree
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. Yes. 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. Yes. All agree.

ROLL VOTE: GOLD, RETTIG, ANDERSON, ROOK, BENDER - ALL 5 AYES. VARIANCE IS APPROVED.

***Case #2005 & INTERPRETATION** Applicant, Union Green Development, 16024 Red Arrow Highway, Union Pier, Property Code #11-07-0125-0026-03-3 is requesting an interpretation of Chikaming Township Zoning Ordinance #144, as amended, from Section 5.01(H)(3)(3) for required ground floor commercial use in the Union Pier Corridor District of the Union Pier Overlay and if needed a variance to allow 76% residential use on the first floor along Red Arrow Highway and 100% residential use on the first floor along Goodwin Road.*

Rettig wants clarification, this is an interpretation and a variance. Kelly answers that first is the interpretation and if it does not go in their favor to allow them to proceed with the development, then the variance request.

Chair reads letters into record: (summarizing)

- #1 **Dianne Moriarty** – feels that Union Green Development is in violation of the current amended zoning; too dense.
- #2 **Grace Kuklinski Rappe** – feels the Development should not be approved. Feels that the Planning Commission should not have disregarded the Ordinance and the development does not comply with the requirements of the overlay district (first floor must be commercial for the entire width; 4 building not allowed; accessory building not allowed to reside in front yard; 70% of the building must be along the easement line; front façade is required to have transparency with 60% being window space).
- #3 **Jill Underhill/John Searles** – feels variance should be denied; building is not in compliance with overlay; Planning Commission did not follow the Ordinance including 100% commercial use and should have sent it back to the developer to redesign.
- #4 **Pier 9 members: Fran Kepler, Deb Harris, Bob/Tracey Martin, Alan/Rose Placek, Vic/Michelle Arellano, Luke/Amie Casson, Matt/Lonna Hancock, Michael/Sandi Moleski, Jim/Barb Dobek, Dan/Roseann Messina, Paula Riggins, Sharon Lindstrom, Andy/Kristin Barger, Jim/Ruba DuFour, Erik/Dana Mikaitis, Dave/Meg Heinz, Joseph/Rachel Tota, Jim/Melissa Erhardt, Patrick/Noreen Morris, Steve/Kathy Selcke, Jim/Jane Harper, Todd/Laurie Gillman** - Development does not blend in; increased traffic congestion, overcrowded beach usage, too dense, limited parking, ingress and egress onto Goodwin; first floor front is not commercial as required by ordinance; not opposed to new development and economic growth is necessary, but this project is not in harmony with the neighborhood character and impacts the neighborhood; a redesign should be done.
- #5 **Mary Kay Minaghan** – does not adhere to the spirit of the Zoning Ordinance; does not meet the Master Plan; new development increases safety concerns along Red Arrow Highway; this development makes up a sizable part of commercial area available in Union Pier and must have more commercial space; proposed residential units are not affordable; will most likely become rentals; 3 stories is 50 to 66% taller than other dwellings in the area; density too high; if approved, please place a deed restriction prohibiting short term rental, require 20% of the units be available to persons earning 80% of Area Median Income.

- #6 **Gwen and Doug Mac Gregor** – Too many units for the development; smaller number of units and 2 story instead of 3; consider a park; parking across Red Arrow is a disservice to customers.
- #7 **Rich Sullivan** – feels that the 2 years of work on the new Ordinance was ignored by the Planning Commission and PC kicked the can to the ZBA; project does not meet zoning ordinance requirements; request should be denied and force this back to Planning Commission for developer to start over to meeting ordinance guidelines.
- #8 **Conrad Muehrcke** – not read; letter reflects much information about density which according to Kelly does not apply because the ordinance has been linked. Not applicable because of misinformation.
- #9 **Suzanne Koenigsberg** – opposed; this project should not have been allowed to progress to this point; Planning Commission did not base their discussion with developer on the Ordinance; no leeway should be given by Planning Commission; developers must be in compliance with the Ordinance.
- #10 **Jackie Jensen** – strongly opposed; zoning laws limit this to 9 units not 18; the current parking spots across the street are being used by Union Pier Social employees; 3 story units should not be allowed; Township is failing to protect the natural characteristics of the area; let’s remember the Township’s mission statement.
- #11 **Greg Lorch** – Opposed to the variance request; 2 stories is critical to “village” feel; retain the commercial zoning requirement for 100% of the ground floor; does not agree with developer that the “area is commercially blighted”; many commercial developments including Seeds Brewery, Black Currant Bakery, Union Pier Market, Stones Throw Interiors, Union Pier Social, Red Arrow Ride, Timothy’s Mario’s Pizza, Milda’s Red Arrow Roadhouse, McCollum Architects; if developer claims that commercial won’t work, Township should consider a park.
- #12 **Fran Wersells** – opposed to variance; not read because has much information about timelines and density.
- #13 **Joan Lieb/Edward Walbridge** – Parking spaces across Red Arrow Highway not good; density of development too high; we should be preserving interests of residence of the Township not the developer, while developer does address housing, they should be encouraged to do so with lower density housing.

Chair asks Kelly to give her comments.

Kelly: First the applicant is asking for an interpretation as it relates to the ground floor commercial use in the overlay district and clarify intent in the development standards paragraph of the Ordinance and the subsection. There is a little bit of inconsistency in the design standards and the intent for the Village Corridor and intended uses.

Kelly turns this over to Susan Schulz (speaking for the developer – Union Green). Acknowledges all the public comments but feels there have been inconsistencies as to permitted use in the Ordinance and intent. Was there an error in the Development Standards table regarding the required ground floor uses? Asking Board to interpret there was an error and the provision does not apply. Use provisions are listed, but not listed in the Use Table. Susan continues stating that there has been a trend to develop residential, and many former commercial sites are now residential including Pier 9. Underutilization of commercial.

Susan continues: Master Plan and Zoning Ordinances talks about multi-family residential. Regulated Use Table allows multi-family in addition to those located above commercial in the corridor district. In the Union Pier Site Standards under development provisions, it excludes the Union Pier Corridor from specific requirements pertaining to commercial store fronts. Building height, floor to ceiling height, entrances

don't apply to the zoning district where the property is located. The Master Plan Page 44 talks about this location being a community center. New overlay talks about diversified environment; larger lots; and diverse range of uses. When we look at Use Table, it describes what is allowed. Dwelling units allowed above commercial ground floor in both UPV and UPC zone districts; multi-family allowed in UPC zone district. If intended in the ordinance language that ½ of the retail was required along the ground floor on this parcel, it should be in the table. That's not the case in the UPC. It says you can build multi-family dwellings in the UPC zone district. No qualifiers about being in the back 50% of the frontage; nothing distinguishes upper and lower - this is the Use Table. So, when we get into the Standards Table, the language talks about 1st floor encouraged to be used for commercial uses especially in the core area of the Union Pier Village District. It is not repeated that it is in the corridor, only in the Village District, does not mention the corridor. When we get into the Development Standard provisions, it is bifurcated between the village and the corridor. Floor to ceiling height, entrance expectations that 1st floor unit shall have a principal pedestrian entrance located on the front lot line, accessible from the sidewalk, expecting that door swings will occur at the sidewalk – all of those apply to store front conditions and retail, and none apply to the corridor district. That where it is puzzling and the request for interpretation.

Kelly now speaks and agrees there are discrepancies.

Chair asks for Board questions.

Gold asks for a rendering of the project. Susan shows the Red Arrow view on screen. Gold is concerned with the architecture and uniform setback from Red Arrow. Susan says there is no parking in front of Red Arrow side.

Gold tells Susan that he is not following her objections and says it seems clear that under the Union Pier Use table it states clearly that residential may be allowed in the rear 50% but the front 50% must be for commercial – how do you get around “must”? Susan answers that it is the design standards table, so the question for the interpretation is that on the Use Table it says that multi-family development is a permitted use and there is no distinction about commercial being required on the ground floor.

Chair goes to public comment.

Stan Wilk – Zoning and the Planning Commission need to talk about these discrepancies; no decisions until resolved

Dan Coffey – the problem is with the process; new application should be made under the 11/4 ordinance; this is a self-imposed ordinance, and you cannot give the variance.

Chris Toczycki – parking situation is not clear; the former property had on-site parking; use of parking across Red Arrow for residents and families is a bad idea.

Basia Klincewicz – the project is contrary to our mission statement; majority of people do not want the project

Jim Harper (of Pier 9) – the variance exasperates the ordinance; too dense; height misrepresentations; and misrepresentation of Pier 9 – not a comparison to this development; 19 - 20 units on 1 acre with 1 entrance; Beachside is 10 units on 1 acre with 3 entrances; too big/too dense for area

Pijus Stoncius – Section 17.04(B)(3) says the ZBA shall make reasonable decisions. Developer is asking for a 76.1% variance on Red Arrow and 100% variance on Goodwin side; not reasonable. Usually 1% – 4% variances are usually allowed. Opposed to variance. Be consistent.

Nora Gylys – what does developer mean by live/work? In their advertisement they are stating that first floor can be built to commercial specs. They are not even pretending this will be commercial. We need

commercial. We don't need more residential with 180 more people. They need to address parking; becoming a community of investors.

Susan Koenigsberg – Follow the ordinance; planning commission committed a dereliction of their duties.

Babe Paukstys – development has 3 stories, and the bedrooms are on the 3rd floor; 12 people per unit; average buyer of 58+ climbing 3 flights of stairs with no elevator; this seems like an investment with no reasonably priced houses and the parking is horrible across Red Arrow.

Terry Borys – Grace Rappe quit and was against and Trustee Sullivan is against; this is an eyesore.

Public Comment closed; now into Board discussion on interpretation.

Chair: We are looking at the table of Regulated Uses and the Site Standards Development Standards where it talks about Union Pier Corridor and states “Commercial first floor shall extend for the entire width of the front of the building as viewed from the adjoining public street.” (Page 31 of Zoning Ordinance) This seems pretty clear, and I see no other way to interpret.

Gold interjects that the case Susan is making is that the Table of Regulated Uses carries enough weight to override the Standards. I think the Standards are controlling. If there is confusion, it is on the Regulated Use table. I wanted to see what the elevation looks like on Red Arrow because this is what everyone is seeing from the road, by having it as a monolithic wall it completely changes the character of Union Pier. Had they buried the wall to make it more village-like, it would be more reasonable. What regulates are the Site Standards.

CHAIR MAKES A MOTION ON THE INTERPRETATION: BASED ON SECTION 5.02(H)(3)(e) WHICH STATES THAT THE FRONT 50% OF THE 1ST FLOOR MUST BE COMMERCIAL AND THAT THE COMMERCIAL USE SHALL EXTEND THE ENTIRE WIDTH OF THE BUILDING, WE AFFIRM THE ORDINANCE AND DISAPPROVE OF THE REQUESTED INTERPRETATION.

Gold interjects that we should amend the motion to include that this be returned to the Planning Commission to comply with the Ordinance. Chair feels that this can be done separately and not part of the motion.

BENDER SECONDS. ROLL VOTE: GOLD, RETTIG, ANDERSON, ROOK, BENDER APPROVE THE MOTION DENYING THE APPLICANT’S INTERPRETATION AND GOING WITH THE ORDINANCE STANDARDS.

Chair now moves onto the variance request:

The applicant is requesting a variance to the requirement of 100% commercial first floor uses as viewed from the adjoining public street with proposed of 23.9% on Red Arrow Highway and 0% on Goodwin Avenue.

Chair asks Kelly to give her comments. Kelly shows us a picture of the development. The one building on Red Arrow Highway is the one we have already looked at and reviewed. The buildings on Goodwin – those are all residential. The building on the corner which is on Red Arrow is excluded, it is only the other 2 buildings which have no commercial aspect on Goodwin. The one marked live/work on the plan has 100% frontage on Red Arrow and is commercial (the corner). So, we are talking about the 2 end units on Goodwin. So, reading the standards, the 2 buildings on Goodwin would have to have commercial according to the zoning. I have spoken with the Supervisor to get a better understanding along with 2

planning commission members to get them to understand that the 2 buildings on Goodwin would also have to have commercial on the 1st floor according to the zoning ordinance - and was that their intent in the design standard? If you start putting commercial on those side streets, you are increasing your traffic on the side street. The Supervisor indicated that he did not think there was going to be commercial on the side street. In looking at New Buffalo Township, they only have 1 side street in the corridor and that is already commercial, and that design standard has no impact on New Buffalo Township.

Applicant speaks. Susan speaks as to the variance request. The Planning Commission approved the site plan twice (July and February) and modifications have been made. The Planning Commission handled parking and other issues pointed out in the comments. This variance is specific to the use on the ground floor of these buildings. We have parking on Goodwin also approved by the Planning Commission. The front building is 134 feet long and the percentage of about ¾ of the building is the variance we are seeking not to be commercial. These 4 townhouses have common green area, landscaping, a pool, and 2 access points off of Goodwin to allow for traffic and a grassy area which can be used for emergency vehicles. This property has been vacant for 15 years and has been decaying along with other properties which have struggled on Red Arrow Highway. Goodwin is a low volume street and not commercially attractive. The use table allows multi-family by right. The ability to develop commercial units has its struggles. Residential makes projects viable; commercial is more difficult. We planned for what we thought would work 24% of the front building and not on Goodwin. It does not make sense to put commercial on Goodwin and we planned to be in harmony with the neighborhood. Talks about traffic generation studies. Talks about residential being more feasible for area. Trend of development has been conversion to multi-family use. There is no requirement for an entrance on Red Arrow side in the corridor in the Ordinance. (More non-clarity in the zoning ordinance standards)

Chair goes to public comment.

Susan Koenigsberg – site plan was given in February and should never have happened; Planning Commission made an error. There is no language that says we can disregard the zoning – it is the law.

Babe Paukstys – the pictures are proof of the irregularities and didn't discuss at the last meeting; some are pictures of old Dairy Queen in New Buffalo City and have nothing to do with Union Pier

Dan Coffey – You have a complex application starting with old zoning and not being redone after the new zoning. You have to start from zero.

Stan Wilk – I agree with Mr. Coffey

Jill Underhill – the only reason we are here is because the Planning Commission didn't do their job, and this has to go back to them.

Pijus Stoncius- the presentation is flawed and not up to date; the issue is the zoning ordinance and the only thing to consider

Monica Toczki – we have to consider the future and be open to commercial space

Fran Wersells – None of the Planning Commission, or Boards live in Union Pier and are not familiar

Nora Gylys – if developer purchased this as a commercial parcel, why are they trying to turn this into residential

Nick Martinski – Goodwin is a residential street, but across the street is a restaurant which is commercial

Brad (Developer) – We did a lot of research on the roof line, and it is only a 2 story on Goodwin. The 3 story on Red Arrow has a low pitch 35 feet at the midpoint where 40 is allowed. We compared with Pier 9 and what is next door, we are consistent with that. There has been no commercial use for 15 years and it is not likely to change. When I purchased it did comply and then the ordinance was changed.

Jim Harper – the comparison is a misrepresentation to Pier 9

Basia Klinecicz – we must consider the mission statement and habitat of Union Pier; must green our planet; we don't need 18 more families.

Public Comment closes; Board discussion ensues.

Chair refers us back to words the applicant used many times – asking for a “change of use”. Chair reads a section of the ordinance 17.04(B)(4) Variances:

“The ZBA shall have authority in specific cases to authorize one or more dimensional or “non-use” variances from the strict letter and terms of this Ordinance by varying or modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. A dimensional or non-use variance allows a deviation from the dimensional (i.e., height, bulk, setback) requirements of the Ordinance. A use variance authorizes the establishment of a use of land that is otherwise prohibited in a zoning district. The ZBA is not authorized to grant use variances by this Ordinance. Such authority shall be exercised in accordance with the following standards.” Then it goes on to define non-use variance.

Chair states that the ZBA does not have the authority to grant non-use variances. We do not have the authority to change the use. The applicant has said they are constrained, and they don’t want certain sections to be commercial use, they want it to be residential use.

Gold interjects that what is clear is that someone kicked the can to us and shouldn’t have.

Rook feels there is confusion in the regulated use – it does not talk about prohibit, it says that multi-family uses are permitted, and first floors are encouraged to be used for commercial; then in the standard it says first floor shall be commercial for the entire front. Rettig and Anderson both interject that we have already interpreted that the site standards prevail, “first floor must be commercial.”

Anderson (and all agree) says this must go back to the Planning Commission. We have a variance on the table, which we are not allowed to hear because it changes the use as required under the ordinance.

ANDERSON MAKES A MOTION BASED UPON SECTION 17.04(B)(4) OF THE ZONING ORDINANCE WHICH STATES THAT THE ZBA IS NOT AUTHORIZED TO GRANT CHANGE OF USE VARIANCES, WE DENY THIS VARIANCE BECAUSE WE DO NOT HAVE THE STANDING TO RULE ON THIS. (ANDERSON ASKS ATTORNEY HILMER IF HE HAS ANY COMMENTS ON THE LANGUAGE. HE ANSWERS HE DOES NOT.) ROOK SECONDS. ROLL VOTE: GOLD, RETTIG, ANDERSON, ROOK, BENDER – ALL 5 YES.

Chair asks for any further public comment.

Stoncius. Good example of local government at work.

Susan (for Developer): A use variance is applied for uses not allowed in the zoning district. Residential is allowed in the zone district. The request was for a dimensional variance to go from 100% to 76% and 100% to 0%. The use is allowed in the zoning district.

Public Comment closed.

Chair: We will now have a Board discussion about recommendations to the Planning Commission.

1. Planning Commission needs to clarify what is meant by Pages 28 – 31 (Regulated Use Table Classifications vs. the Standards Table). We interpreted that the Standards Table prevails.

2. Residential structures in a commercial district – the “maximum allowed” on road frontage is 15 feet. Not feasible for residential. Needs clarification.
3. Density component is not linked.
4. The door entrance on commercial first floor (Page 31) – says it is not necessary.

Letter of recommendation to the Planning Commission suggested because a number of anomalies exist.

With no further business to come before the meeting, Chair declares the meeting adjourned at 3:25 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved May 17, 2022