

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

The November 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: 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 review and approve the October 18, 2022, minutes. Dow presented one (1) minor typographical correction on Page 2 (reading/should be readings); Secretary Rettig notes the change.

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

Case #2019 Duane Kleczewski (Architect) representing property owner/Applicant, Joshua Kotin, 14497 Lakeshore Road, Lakeside, Property Code #11-07-5350-0004-00-6, is asking to encroach into the front yard setback, Section 4.02 of the Chikaming Township Zoning Ordinance #144, as amended, requires a 30-foot front yard setback.

Chair asks Kelly (ZA) to give details on this case. Kelly shows drawings of existing house which is within the 30-foot setback along with the proposed addition. This is a corner lot; the applicant uses a Lakeshore Road address. Oak Lane is a platted, undeveloped road. They are proposing to do an addition; most of the addition meets the setback. Kelly shows that a very small dark area (on map) is the only encroachment in the setback. Rettig asks for dimensions of the area in question. 3' on one end going to a triangle at 0'. (It should be noted that the area in question is between the existing house and the proposed addition.)

Chair reads letters into record: (summarizing – complete letters in applicant's file)
Richard and Vicki DuFour – in support of variance request, reasonable and fits into neighborhood and applicants do not access their property through Oak Lane.

Chair asks about a second letter in the file (dated June 4, 2020). Rettig explains that this letter is pertinent to this file but is more for history. Chair summarizes letter from Zoning Department stating that pool and shed are too close to the road, but the house is closer, and by adding the pool and shed, it does not increase the nonconformity, but both additions were approved by the Zoning Department.

Beemer asks if the pool and shed were approved in 2020? Kelly says: Yes.

Rettig interjects that our first job is to determine and look back into other variances that affect this property. Rettig continues, wondering when did this come before the ZBA for approval? After research, it was found that there was no variance request for the pool or shed. The approval came from the Zoning Department. But further looking into it, the building permit for the pool and shed were never completed. There was no final inspection on the pool or the shed. The Assessing Department also has never put the pool or the shed on the rolls because the permit was never completed through the Building Department. There are a few things that need to be finished by the owner with the Building Department and then the Assessor will have to put the added value on the tax roll, 2020, 2021, and 2022. Gold adds, so if we

approve, we can add that the owner must clean up the paperwork. Beemer asks, “Was the pool approved without a variance?” Kelly affirms. Anderson then asks about the fence on Oak Lane. The fence appears to be too high on Oak Lane and was that part of the original permit. Was this also never inspected? Kelly assumes it was applied for together with the pool; Anderson then wonders if the fence has ever been inspected and no variance was granted to build a 6’ fence. Kelly advises she will look at the permit as to what height fence was applied for.

Chair asks if applicant wishes to speak. Architect gives statement that the addition is in the only possible available space and the small triangular piece which requires the variance is only slightly in the setback but most of the current house is already in the setback.

Chair asks for public comment.

William Cannon who lives across the street on Oak Lane. During the time the pool was being built, he could not access Oak Lane because of the construction vehicles; they damaged the road and his property; wonders how they will access the property when they begin construction. Oak Lane is a one-lane private gravel road; connects to Lakeshore, but there’s a berm so it does not have access to Lakeshore.

Chair asks Architect how the construction vehicles will access. Answering, the Architect advises that all access to the construction will be by Lakeshore, the shortest point and not on Oak Lane.

Board discussion begins. Anderson starts by this is a variance that does not seem hard to approve; Gold agrees. But looking at the permitting issues, the fence issues, damage to road, and the neighbor’s access, feels that all the permitting and inspections need to be cleared up as part of the approval process. Gold wants it to be a condition of approval. Anderson, so are you saying no construction can begin until the permitting is completed? All concur. Anderson wonders if the fence was permitted at 4’ and built at 6’, will we hold up construction?

Beemer addressing Architect stating that the drawings were well done with the footage and comments.

Dow agrees with the group that not approving the small triangular piece is impractical.

DOW MAKES A MOTION THAT WE APPROVE VARIANCE #2019 AS REQUESTED AS DOCUMENTED IN THE DRAWING SUBMITTED, SUBJECT TO THE RESOLUTION OF THE COMPLETION OF THE BUILDING PERMIT AND INSPECTION ON THE POOL AND DETERMINATION THAT A PROPER FENCE PERMIT WAS ISSUED FOR THE APPROVAL OF A 6’ FENCE. ANDERSON SECONDS.

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. Yes, preexisting house already in the setbacks. 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 because of practicality. 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. House predates the owner. 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 this is a minimal variance.

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: Dow – yes; Rettig- yes; Anderson – yes; Beemer – yes; Gold – yes. 5 – 0

VARIANCE IS GRANTED.

ANDERSON ASKS ARCHITECT IF HE IS CLEAR THAT THE BUILDING PERMIT REGARDING THE POOL AND FENCE MUST BE CLEARED UP FIRST. THE ARCHITECT AFFIRMS THAT HE UNDERSTANDS. Rettig reminds the Architect to please advise the homeowner that they will be getting corrected tax bills for the added value for the years 2020, 2021, and 2022. Anderson continues that the access to Oak Lane of the neighbor must also be addressed making sure that the construction vehicles do not obstruct the neighbor's access or damage the road.

REQUEST FOR INTERPRETATION Applicant, Sharon Lindstrom, 16032 Goodwin #9, Union Pier is requesting an interpretation of Section 6.15(B)(4)(a)(i) which refers to density and if it applies throughout Chikaming Township including the Union Pier Overlay District.

Anderson reads the letters: (summarizing – complete letters in applicant's file)

Tom Essig – Strongly believes that the limitation of bedrooms per acreage should apply to all developers. Ordinance was established for benefit of all residents.

Sharon Folliard – Union Green Development is too dense for the site. Development should adhere to the same density limits that apply to other new developments.

Suzanne Schulz (Progressive) –

Relevance: If the ZBA would agree with Lindstrom's desired outcome, such an interpretation would not apply to Union Green project. Also wishes to ensure that Lindstrom's request does not become an appeal of an administrative decision. If ZBA were to produce an interpretation different than ZA's, then the interpretation/appeal should not be retroactive and affect Union Green.

Master Plan as Foundation of Intent: Focuses on Master Plan including creation of mixed-use centers and associated compact development encouraging growth in the existing community centers, high-density residential zoning near downtown areas and community centers, create new zoning for mixed use, designated land for high-density residential use in locations close to town centers.

Density Restrictions Not Applicable: Regulated Use Table of Section 5.01H.3.(b) the Union Pier Overlay District (UPOD) allows dwelling units above commercial uses and multiple family dwellings as permitted by right uses. Conflict between overlay and chart, overlay shall govern. UPOD is treated differently. No mention of density. Form based standards intentionally control building massing and scale, windows, entries, and other development standards while typically removing use and density restrictions.

Conclusion: The spirit and intent of the UPOD is to draw development away from agricultural areas. The density restrictions contained in Section 6.15(B) do not determine development density in the UPOD.

Smaus – Speak for many. Opposed to the density. No one is exempt.

Chair now goes to ZA Kelly. ZA advises that Ms. Lindstrom wants the ZBA to look at the density standards and Section 6.15(B)(4)(a)(i) and determine whether or not they apply to all zoning districts including the overlay districts.

Chair asks for applicant's input. Paula Riggins begins stating that 200 people are in opposition to the density, not the development. The UPOD being silent on density does not mean unlimited density. Should be zoned for 27 bedrooms. Attorney Clayton Prickett continues on behalf of applicant stating that Section 6.15(B)(4)(a)(i) applies in addition to the applicable standards and requirements. Article 6 is intended for

uniformity and has no exemption for the overlay district on density. An example of an exception is the setback requirement. In the overlay district, they were careful to exempt that – but did no such thing for density. Table of Uses does not conflict, it is silence on density. So, if there is nothing on there, Section 6.15 would control. The proposed amendment by the Planning Commission to add a section entitled Residential Density to Section 5.01, Page 3 E(i) so we think the Ordinance all along intended for the density restrictions to apply in the Overlay District.

Kathy Selke – Not opposed to development. Pier 9 which has 2 acres has only 19 units, why is that different than something 4 feet away with only 1 acre which has unlimited density. Realize it is a different use. Amendments were known at the Planning Commission meeting.

Sara Moring Hilt – works with Progressive (regarding long letter above). Does come down to the Overlay District does not address density and you cannot create rules that are not in the Ordinance. There is a conflict between the overlay and the tables. One of the tables states that Multi family is a special use, however, in the overlay district it states that it is a permitted use by right and if a conflict exists, the overlay district overrules. The overlay district does not mention density.

Attorney Prickett replies (addressing Sara’s comment). Silence does not mean they can put as many rooms as they can manage, a more appropriate fall back would be the Zoning Ordinance 6.15 which would apply to every district.

Board Discussion

Anderson asks a question of Attorney Hilmer. Given the statements about timing of the appeal, before we get into discussion, do we even have standing to be ruling on this?

Hilmer: The question of interpretation would apply to any similar property and would direct density going forward from this point, but would have no retroactive effect.

Dow interjects – speaking to Mr. Hilmer. An interpretation today does not impact the Union Green Development, correct? Because Zoning in Michigan is prospective not retrospective. So, any interpretation we make today is going forward.

Mr. Hilmer: Yes.

Rettig states: This is not an appeal.

Dow clarifies by stating that there are 2 paths. An interpretation which has an impact going forward. The only retrospective power we have is, we can be the body for an appeal of an administrative decision of the Planning Commission or of a member of Township staff which appeal has the 30-day limit.

Anderson: This is an interpretation which does not affect Union Green in any way, shape, or form. An interpretation would be on a “go forward basis” only.

Dow: There is a proposed change to the Zoning Ordinance based on community feedback. The intent of the new Ordinance 2 years ago and is spelled out in the Township Master Plan, is to concentrate more density in the town centers. Therefore, the original Ordinance and the new Ordinance was silent on all town centers on the amount of density. We were counselled by the professional planners that the way you handle density in those situations is you allow the dimensional restrictions on the space to control the density. Setbacks, building height, green space, open space – all those things indirectly govern density.

In Union Pier we have 2 developments, Pier 9 Bungalows with 19 units on 2 acres and Beachside which has 10 units on 1.3 acres (4 units with 4 bedrooms and the other 6 have 3 bedrooms), total of 34. The point is there is density in the area. Intent was modified because of public opposition, and we further are proposing to tighten it back down with a proposed amendment.

Beemer: Can you share the amendment?

Dow: It is the same calculation of the 27-bedroom maximum per acre that is applied to other multi-family situations.

Anderson: So, on a go-forward basis, presuming the amendment is approved by Planning Commission....?

Dow: There's a public meeting scheduled for the Planning Commission for the December 7 meeting. Based on that, the PC can refer it to the Township Board to approve, pull back, or deny. It will specifically remove the silence on a go-forward basis as to density in multi-family; Township centers are zoned multi family.

Beemer: From the 54 you are recommending taking it to 27 bedrooms.

Kelly corrects, there is flex space – the maximum I believe is 51 bedrooms.

Beemer: So, from that number, you are taking it to 27 bedrooms per acre.

Dow: Yes, which is less than the existing Beachside Development in Union Pier. There was an intention, the intention was to increase density, based on public opinion and objection, we concluded we overachieved, we put pieces in place to ratchet it back down, in the meantime Union Pier was approved and we cannot undo that. And the appeal time is over.

Gold: (addressing applicant) What are you asking for if you cannot ask for an administrative appeal?

Riggins/Applicant: We thought we had standing. We were not aware of this 30-day past May 14.

Dow: But you crafted this as an interpretation?

Riggins: We were told to go to the ZBA.

Dow: The powers of the ZBA would only be prospective – on a go forward basis. Since the decision has been made and it is 30 days past that, we cannot undo that.

Riggins: So, we have no standing for anything?

Dow: You have standing for an interpretation. Whatever we would offer is go-forward and I am suggesting that we have already put the pieces in place to solve the problem.

Riggins: But not for Union Green Development ...

Dow: We cannot impact the Union Green Development.

Anderson/Gold/Rettig: We don't have standing or authority. We all agree what our authority is.

Anderson: (speaking to Hilmer) Do we affirm the density

Dow interjects: During the Union Pier hearings, our ZA made the decision that in the UP Overlay, density was silent, therefore density was controlled by volume. That decision was reviewed by the Township Board and by legal advice and was confirmed to be correct. Anderson agrees. Dow continues, Therefore, what would be gain in stating in an interpretation that it was wrong? That's what they are asking for.

Gold: This is already being worked on, correct?

Dow: Where all sides agree, there was a problem, the Planning Commission is trying to fix the problem through the zoning process. The applicant has asked us to fix the problem with the interpretation, but the interpretation would say the decision we made before was incorrect. If we give an interpretation that silence does not govern density, we are messing up the process. The way we fix the process, is we say, we are going to replace silence with a specific code with guidelines. Gold: We could make a recommendation to the Planning Commission that we are on board with what you are working on.

Dow: I suggest we do not offer an interpretation and let the process play out.

Chair looks toward counsel Hilmer for comments.

Hilmer: It is in the interest of the Township to uphold the interpretation of the ZA that is based on what was in the Ordinance and uphold the interpretation of the Planning Commission also. The ZBA could acknowledge that the Planning Commission is working on more specific regulations on density and that is being addressed. Nothing is to be gained by interpreting that the ZA or PC were in error.

**RETTIG MAKES A MOTION THAT THE ZONING BOARD OF APPEALS UPHOLDS THE INTERPRETATION OF THE ZONING ADMINISTRATOR AND FURTHER UPHOLDS THE INTERPRETATION OF THE PLANNING COMMISSION WHEN THE ORIGINAL DECISION ON UNION GREEN WAS RENDERED. THE ZBA RECOGNIZES THAT THE ISSUES REGARDING DENSITY ARE BEING UPDATED BY AN AMENDMENT THAT IS CURRENTLY PROPOSED TO THE ZONING ORDINANCE. GOLD SECONDS.
ROLL: DOW, RETTIG, ANDERSON, BEEMER, GOLD – ALL YES.**

Chair asks for any further public comments.

Zelke: Appreciates our efforts. During the Planning Commission's last meeting, there was a comment that density was an oversight in the overlay. I believe there was time to make a change.

Attorney Prickett asks, if the Zoning amendment does not pass, where does that leave the overlay district?

Chair answers, I would presume it leaves it silent again. That is not ours to say.

Dow: There is a public hearing scheduled for December 7. A decision should be made after that hearing, then County review, then the Township Board. About 90 days if there are no speed bumps.

Beemer asks Kelly if there are any other projects in the works prior to this hearing?

Kelly: No. Only 1 site condominium.

Ms. Riggins asks 1 more question: The Union Green Development asked for the commercial to be removed, does that development currently have commercial on the 1st level. Kelly answers: Yes. Dow: That was the existing ordinance. This body denied a variance on their request to remove commercial. In the spirit of full disclosure, in another proposed amendment, we removed the commercial requirements on the side street – going forward. Do we really want to create more density on side street – going forward. Kelly adds that the Union Green does have commercial on the side street as this was the Ordinance at the time and the ZBA said those design standards were upheld because they were in place.

Dow motions to adjourn at 2:08 p.m., Anderson seconds. Voice vote – all yes. Chair announces we are adjourned at 2:08 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved December 20, 2022