

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the November 17, 2020, Regular Meeting
APPROVED

ELECTRONIC MEETING VIA ZOOM, PER GOVERNOR WHITMER'S ORDER

The November 17, 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, Phil Bender.
4 present - Quorum.

Chair advises that the first order of business is to approve the October 20, 2020, minutes. Chair asks if the Board members have any corrections. Dow advises that he has a few clerical/typographical changes (5 minor corrections). Rettig notes the corrections. **Dow moves that minutes be approved as corrected; Anderson seconds; Roll vote: Bender, Dow, Rettig, Anderson – 4 AYES. Minutes are approved as corrected.**

Tom Gold joins meeting – we now have 5 members present.

Case #1188- Sarah Schrup, owner of 13765 Suns End, Harbert, MI 49115. Property Code #11-07-0700-0002-01-3. *Applicant is asking to place an inground swimming pool in the side yard meeting all required setbacks. Chikaming Township Zoning Ordinance #144, Section 7.02(D) states “non-building accessory structures shall be located in the rear yard.”*

Chair asks for comments from the Zoning Administrator (ZA) Van Thornton. ZA speaks as to the variance request and advises that pool equipment appears to be in the rear yard setback based on site plan. Pool is not in the setback. Concern is the location of the pool and Board should address the pool equipment – which is not allowed in the setbacks.

Chair advises there are no letters.

Chair asks for comments from applicant. Sarah Schrup speaks and advises that she was unaware that the pool equipment could not be in the setback and the plans will be amended to remove the equipment from the setback. Her main concerns were harmony and uniformity and the special circumstances. The pool is designed to minimize surrounding homes, buffered by trees, more than 100 feet from the road, more than 15 feet from the front face of the house, pools are not unique to the area, lot coverage is below 30%. Water table is very high and plan had to be redesigned several times and at first pool was eliminated from plans. No room to put pool on backside of house. Pristine Pools (contractor) has a better technique.

Chair asks for comments from public. None.

Chair goes to Board questions and discussion. Gold and Dow feel that it is in keeping with harmony in neighborhood, long way from the road, large lot, land and water table will not allow pool in any other location (unique circumstances), the request is reasonable and minimal.

Gold asks about trees on the plan for buffering; applicant answers that the trees will be Aspen trees.

Chair concurs with Gold and Dow and thanks applicant for including water reports. Rettig and Bender agree with the tenor of the group - provided the pool equipment moves out of the setback.

Rich Ham (public) interjects that he and his wife (neighbors) approve of the variance.

Chair goes over criteria:

- 1 Are there unique circumstances or conditions that exist? Yes – uniqueness of the land, high water table and no room in back yard.
- 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, high water table, and no room.
- 3 The unique circumstances do not result from the actions of the applicant? Yes – uniqueness of land exists.
- 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.

DOW MAKES A MOTION TO APPROVE THE VARIANCE REQUEST TO ALLOW THE SWIMMING POOL IN THE SIDE YARD WITH THE PRIVISO THAT THE POOL EQUIPMENT AS SHOWN ON THE SITE DRAWING AS BEING IN THE REAR SETBACK SHALL BE MOVED OUT OF THE SETBACK. ANDERSON SECONDS.

ROLL VOTE: BENDER – AYE; GOLD – AYE; DOW – AYE; RETTIG – AYE; ANDERSON - AYE. 5-0

VARIANCE APPROVED.

Case #1189- Joe and Brigid Gilmore, owners of 9616 Franklin, Union Pier, MI 49129. 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’ (1-1/2 stories) and maximum lot cover is 20%.*

Chair asks ZA to comment on this case. ZA begins by stating that this is a unique request with several challenges. There is an encroachment into the roadway. The calculation of 26% lot coverage is higher than it should be because the wooden deck has been included. If the surface of the deck is pervious, this does not get included. Actual calculation is closer to 1,192 square feet which reduces the coverage and is under the 20% allowed. Other concerns are after speaking to the architect of record - is the intention to totally demolish the existing structure and rebuilt on exactly the same footprint with a 2-story structure? Section 4(A)(2)(B)(D)(F) has items that are at issue:

Section (B) a non-conforming structure may be enlarged, expanded or altered so long as the non-conforming characteristic of the structure is not enlarged upon, extended, or increased in its degree of non-conformance

Section (D) under no circumstances shall a non-conforming structure be rebuilt if the structure is determined to be located on more than 1 lot or parcel

Section (F) any non-conforming structure that is voluntarily demolished or razed shall not be rebuilt unless in full compliance with the terms of the ordinance.

These 3 points should be of major concern for the Board.

Chair asks to hear from applicant. Applicant asks if all were able to view the site. Chair advises that one of the requirements of the Board is to view the property. Applicant continues that their hope had been to maintain the structure (including the Northern most wall which is in the road) and the other wall which is in violation. After purchasing, it was noted there was significant wood rot. The applicant thanks ZA regarding the deck not being part of the square footage. The hope was to extend South and towards the lake.

Chair now questions if they are leaving the foundation. Applicant answers yes, however, because of the deterioration of the Northern most wall and foundation, the frame wall of the building and foundation will have to be totally renovated with a fire-proof wall on the wall encroaching the property line.

Chair asks ZA if this changes the review regarding leaving the foundation in place with expansion. ZA answers if the existing foundation has the capability to support a 2-story structure. Applicant interjects that the current structure is 1-1/2. ZA questions what demolished/razed means to the application (leaving 1 or 2 walls in place). Gold asks about 75% demolished if it must be built in accordance with the ordinance. ZA answers – only if by act of god, not voluntary demolition. ZA quotes the ordinance - (8.04(a)(2)(f)) any non-conforming structure that is voluntarily demolished or razed shall not be rebuilt unless in full compliance with the ordinance. The term “demolished” is then left to the Board. Applicant continues stating that when they purchased the property, they had no intention of demolishing, only renovating and expanding. Upon further inspection, water damage wood rot was discovered and much needs to be fixed. Although we want to keep as much as possible, significant changes will need to be made to the house.

Chair advises there are many letters. A form letter was circulated stating the following have no objection: John & Diane Burke, Helen Burke, Mary Tonne, William Hiscott, Janice Smith, Paul Mooney (Whispering Pines), Steve & Beth Zanis, Richard McDaniel. A power point presentation was made by Tom Richardson on Streed Court (representing himself and William Hiscott and Bill Zurowski and Alan Nimmer). Copy of Power Point presentation is part of official record. (In opposition of variance because of significant increase of lot coverage, no unique circumstances identified, what is the need for a 2nd story, expansion, hardship is self-imposed, not a minimal request, increasing footprint, safety is in jeopardy, ordinance will be in violation, already over crowded, lot is extremely small, larger home will contribute to more noise, water problems which will only be increased, too close in proximity to Nimmer property, ineffective landscaping, structure is too large, challenges the ordinance.)

Applicant responds that the footprint will be 955 square feet (without deck) and asks if Tom's concern is the footprint or the 2nd story? Tom answers yes to both – house doubles in size and triples in square footage.

Dow asks where in proximity Tom Richardson is to applicant and asks about the square footage on his residence and asks if he is in conformity to ordinance. Tom answers, no, not to current ordinance.

Chair asks for any other comments from public. Helen Burke (adjacent neighbor) responds advising that her property does not conform to setback and disagrees that this is going to be a massive structure and in fact smaller than other properties on the street. Voices her support of the variance.

Tom Richardson again speaks stating that Mr. Zurowski and Mr. Hiscott withdrew their support of the variance and notes that 3 of the affirmative letters are from family letters.

Mr. Burke (adjoining property) interject that he has no opposition. Feels that Mr. Nimmer and Mr. Richardson's property should not be affected by these changes.

Chair asks ZA about parking requirements as there don't seem to be enough. ZA answers that a single-family dwelling requires 2 parking spots. The owners answer that the property has never had parking available and further asks the ZA if renovation is made, does that mean 2 parking spots need to be made available?

Chair asks ZA if this area is an HOA. ZA answers no. Helen Burke interjects that there is no home owner's association and there is parking all along the private street.

Gold points out that there are 20 feet in front of the house and should be sufficient. Mr. Burke advises that there have always been 3 spots available and will continue to be available. Chair and Dow feel that the way the house is situated covers property all the way to the bluff with no room for a driveway. Parking is a valid point.

No further comments from public.

Discussion among Board: Chair starts by saying that in looking at the lot and topography of the bluff and lot line setbacks (currently being violated) one can see where the constraints are. Deck is not too much of a problem but 2 lots lines are being violated. Increasing to the allowable rear footprint would be ok, but there is nothing in the land that tells me this should be a 2-story house, but a 1-1/2 (20' maximum height) is acceptable. ZA interjects that 18 feet to center of roof. Gold speaks to architect asking about dimension to midpoint of roof – Architect answers 18 feet to midpoint – Gold says that this is not a variance as it is a 1-1/2 story. Chair concludes that if measurement is 18 feet to midpoint, then no variance for height is necessary. Architect confirms. Chair summarizes that lot coverage is off the table and height is off the table, leaving only front yard variance for the deck, rear yard variance for the deck and addition. Gold feels that before we get into that, let's define "demolished." Is leaving foundation sufficient? Voluntary vs. involuntary. Dow says he's struggling with foundation remaining as a footprint because that part of the house is already encroaching the roadway. The ordinance reads if property is non-confirming you can repair it, however, if you tear it down, you have to bring it into conformance. If this person were to start over, what would it look like – you would still need variances

to build on this property. Dow addresses this to Gold, being a builder. Gold acknowledges this is an impossible lot based on setbacks. You could put up a large dog house. Continuing, Gold says if we are letting them tear it down, why don't we let them push the house out of the roadway and away from the east lot line – unless the foundation is worth salvaging. Architect says that foundation is not worth saving. Dow feels the interest of the township is to get it out of the road and the challenge is that 1/3 to 1/4 of the lot is sloping down the hill. Further Board discussion about other homes on non-conforming lots that have had to be taken down to foundation and moving the foundation, redesign the house and moving the house a bit. Gold asks if the house could be moved using the front wall ON the property line and moving the East wall on the setback line, could this be achievable. The Architect answers yes. Further discussion about the setbacks leaving only 9' to build a house. What is in the best interest of the Township and enforcement with rules, public safety, and harmony. The challenges are immense. Are we better off dealing with the existing footprint or encourage the applicant to look at an alternate plan, moving the house back from the road and away from the side yard setbacks. If started from scratch, the water issues could be looked at with a benefit to the neighborhood. Can we give the applicant some direction today. Gold feels we could approve the footprint of the house moving the house instead of being out in the road. What is less non-conforming? Bottom line, there is a house in the road. Chair talks to applicant and architect, if redesigning could work. Applicant agrees that they would be willing to redesign the house moving away from the road and side yard and architects adds that they will not shorten the rear yard and could shrink the house a little (3 feet). Rettig and Bender agree.

Chair feels we should go over the criteria. Rettig feels we must see the redesign before any voting or criteria are gone over. Dow also feels that we need to see the redesign. Gold feels that we can approve based on the requirements we have discussed and applicant should not have to come back. Dow feels that winging a motion without seeing a plan is irresponsible.

Van interjects that Section 17.04(c)(2) says that a plan must be submitted with all variance requests and thinks The Board will have a challenge approving something not on paper. More discussion about 1-1/2 story dimensions. Building height 18' is 1-1/2 story. Gold address Architect about this being a full 2-story (answering plate is at 6') making this a 1-1/2 story house.

Chair feels that tabling for one (1) month is in order with architect bringing a new plan to the next meeting working with the constraints as discussed. Architect agrees. Rettig and Bender and Dow agree. Chair asks architect if December will allow enough time to get plans ready. Architect affirms it is.

MOTION MADE BY RETTIG THAT THIS CASE IS TABLED TO THE DECEMBER 2020 BOARD MEETING TO ALLOW THE ARCHITECT TIME TO RECONFIGURE TO MEET THE GUIDELINES AS WE HAVE SET. ANDERSON SECONDS. ROLL VOTE: BENDER – YES; RETTIG – YES; GOLD – NO; DOW – YES; ANDERSON – YES.

Applicant asks if everything must be resubmitted. Chair asks ZA to answer. ZA answers that a new site plan and the actual wording of the variance request would have to be resubmitted because the dimensions are being changed. Anderson would like to see the wording to also include the wording being changed to the 1-1/2 story.

Case #1182 - amended- Kenneth and Right Klint owners of vacant land at the corner of Forest and Cedar, Sawyer, MI 49125. Property Code #11-07-0820-0148-00-1 and 11-07-0820-

0149-00-7. Applicant is asking to combine 2 lots which will have 100' of road frontage and 15,025 square feet of lot area. Chikaming Township Zoning Ordinance #144, Section 4.02 requires 20,000 square feet of lot area.

Chair reminds us that this is a case we heard 2 months ago when the applicants were looking for a 17' rear yard variance and a lot coverage variance to build bigger than the lot would allow. Those 2 things are no longer in front of us, just the combination of the 2 lots.

Chair addresses ZA who comments that the previous variances have been eliminated and only permission to combine these 2 non-conforming lots into 1 non-conforming lot, which still does not meet the ordinance.

Chair asks applicant to speak. Mr. and Mrs. Klint speak stating that their architect (Osborne) and attorney (Taylor) are both at this meeting available to speak. Sally Taylor speaks and advises that the request has been streamlined seeking the ability to build on lots 1 and 2 combined and be in compliance with Section 8.05. Lot 1 is a corner parcel (7,470 square feet) and would have to comply with 3 30' yard setbacks. By allowing the combination with Lot 2, it better satisfies the zoning ordinance and the neighborhood as well. We are not limited with a 20' wide house as would be with Lot 1 alone. The other question from the previous hearing was: why did Lot 2 have its own tax code? Taylor does not know, but it has always had its own number (in the same dimensions as when the subdivision was platted). With the 2 platted lots combined, it would allow an area of 15,025 square feet, well exceeding the 100' frontage requirements and more in line with the neighbors. Many others in the neighborhood have 2 platted lots and this would be more in line with safety requirements.

Chair asks for comments from the public (which leads into Board discussion). John Smith not opposed, but asks for clarification on ownership (thought all owned by Mrs. Klint). Taylor confirms that Mrs. Klint's house is on Lots 3 and 4. Subsequently she acquired Lot 2 and placed all 3 into her trust. Lot 1 was later acquired and put into a separate name. Mr. Smith wants confirmation that house is on a double lot and would it comply with ordinance. Chair interjects that although the questions are interesting, Lot 1 was never in the same ownership. Chair reads the ordinance aloud "no lot shall be used or sold in a manner which diminishes compliance with lot area or frontage requirements of this ordinance." Taylor interjects that yes, a variance is being sought. Dow feels there should be 2 variances. The variances on the table is the combination of Lots 1 and 2, but in order to do that, we have to take Lot 2 away from a parcel that is comprised of Lots 2, 3 and 4 and carve it away and reducing the current 22,500 square feet into something less than 20,000 (15,000). We are taking a compliant lot into a non-compliant lot (Klint's). Chair reads Attorney Hilmer's letter into the record which gives a solution to the problem of taking 2,500 square feet from the Mrs. Klint's property (Lot 3) leaving her with 20,000 square feet. Taylor says that her request makes 2 double lots much more in line with the neighborhood. Gold reminds us that the corner lot (even at 10,000 feet as suggested) would still need a variance. Architect Osborne comes into conversation stating that the new design with Lots 1 and 2 together would need no variances. More discussions about which is the better solution. Anderson feels we should not decrease Lots 2, 3, and 4 below 20,000 square feet. Gold feels that the corner lot is still constrained. Dow comes into conversation reminding us that 2 months ago we gave the parties some criteria to meet and believes the parties have in good faith met the criteria. The applicants have come back with a simplified request – no setback variances requested. In getting this combination, a new problem arises for Lots 3 and 4 and Attorney Taylor addresses this in her request. Dow continues that if we redraw the line, we get 2 non-

conforming lots (NCR1-C the largest size) and keeping in the spirit of the neighborhood with 15,000 being the standard in the neighborhood. If we get deeper into this, the resulting lot is still small. Gold concurs, looking at the last case before us where the lot was 6,400 square feet. The 15,000 is a good-sized lot. Rettig interjects that by removing Lot 3, we are not hurting the setbacks on Mrs. Klint's house.

Chair asks Attorney Hilmer if owner of Lots 3 and 4 should have been a part of the application. Hilmer feels that they probably should have, but we should not postpone acting.

Taylor says that she is not authorized to speak for Mrs. Klint, but the property was sold for consideration with the anticipation that lots 1 and 2 were to be a separate building site.

DOW MAKES A MOTION THAT THE VARIANCE BE GRANTED AS AMENDED TO COMBINE LOTS 1 AND 2 IN BLOCK 13, BETHANY HILLS NO. 1, TO CREATE A PARCEL WITH 15,025 SQUARE FEET OF AREA. SUBSEQUENTLY, WE RECOGNIZE LOTS 3 AND 4 OF THE SAME AREA NOW A RESULTING IN A PARCEL OF LESS THAN 20,000 SQUARE FEET WITH THE RESULT BEING WE HAVE CREATED 2 NCR1-C NEW LOTS OF RECORD. GOLD SECONDS.

Chair feels we should address the land better. Dow restates his motion:

DOW MAKES A MOTION THAT BY GRANTING A VARIANCE OF THIS REDIVISION OF LAND FROM WHAT WAS THREE (3) PARCELS INTO TWO (2) PARCELS, WE ARE CREATING A SITUATION WHERE WE HAVE TWO (2) MORE SIZEABLE AREAS OF LAND UPON WHICH TO BUILD THAT WILL REQUIRE FEWER VARIANCES AND IN THIS CASE NO FURTHER VARIANCES IN TERMS OF SETBACK VARIANCES.

A bit more discussion about the conveyances already occurring. Gold asks for a restatement of the variance.

DOW MAKES A MOTION THAT WE APPROVE THE AMENDED VARIANCE REQUEST OF CASE #1182 TO COMBINE LOTS 1 AND 2, IN BLOCK 13, BETHANY HILLS NO. 1, TO YIELD A RESULTING NONCONFORMING NCR1-C LOT OF 15,025 SQUARE FEET. I FURTHER MOVE THAT WE RECOGNIZE THE PRIOR COMBINATION RESULTS IN LOTS 3 AND 4 ALSO BECOMING A NEW NON-CONFORMING PARCEL WITH SQUARE FOOTAGE LESS THAN 20,000 SQUARE FEET. THE INTEREST OF THE TOWNSHIP IS TO CREATE MORE BUILDABLE LOTS IN THIS AREA WITH RESULTING LOT SIZES OF 15,000 SQUARE FEET OR MORE AS THE STANDARD FOR THIS AREA. GOLD SECONDS.

**ROLL VOTE: BENDER: Yes; RETTIG – Yes; DOW - Yes; GOLD – Yes; ANDERSON - NAY
VARIANCE APPROVED. 4-0**

Chair reminds us that we had an interpretation from October's meeting that needs to be finalized.
(Accessory structure in the front yard)

Rettig reads the interpretation:

The construction of an accessory structure in the front yard for purposes of agricultural activities is allowed and consistent with the requirements of the Chikaming Township Zoning Ordinance as these activities are agriculturally related and commonly part of commercial farming activities.

So what we are saying is that someone can be engaging in agriculturally activities and not be on a commercial farm, and they can have a building in their front yard because it is consistent with agriculturally related activities.

Roll call vote on approval of this language.

Dow: yes; Gold: yes; Rettig: yes; Bender: yes; Anderson: yes.

Any further comments from the public. A zoom participant (Tyler Augst) thanks the Board for allowing him to attend.

With no further business to come before the meeting, the Chair declares meeting is adjourned at 2:57 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved December 15, 2020