

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the October 18, 2022, Regular Meeting
APPROVED

The October 18, 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, Tom Gold. 4 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 September 30, 2022, minutes. Gold has presented one (1) minor typographical correction on Page 3 (room/should be roof); Secretary Rettig notes the change.

DOW MOVES TO APPROVE MINUTES AS CORRECTED, ANDERSON SECONDS. VOICE VOTE: 4 AYES. MINUTES APPROVED AS CORRECTED.

Case #2017 Applicants, Jill and Garnet Patterson, 13415 Main Drive, Harbert, Property Code #11-07-4670-0119-00-6, are requesting a variance from Section 8.05(D)(1) of Chikaming Township Zoning Ordinance #144, as amended, which allows maximum structure height of 18', 10' side yard setback, 30' rear yard setback and 20% maximum lot coverage.

Chair reads letters into record: (summarizing – complete letter in applicant’s file)

Giamati – in support of variance request, reasonable and fits into neighborhood

Phillipps-Zabel – in support of variance request, major improvement, great fit for neighborhood

Vallas – in support of variance request, new home will enhance community

Hoffman - in support of variance request, marginal increase, no heat currently

Chair asks Kelly to give details on this case. Kelly shows drawings of existing and proposed. Their current lot area is 5,008 sq. ft. in R-1 District, and is an NCR1-A and falls under Ordinance Table 8.05 for height, lot coverage and setbacks. They are requesting a variance to the side setbacks (South side), reducing the existing, but still not meeting the zoning for setback. They are requesting the setback be 5 feet 9-3/4 inches, the existing is 3 feet 10-3/4 inches – slight improvement. They are asking for a rear yard setback; required is 30 feet; the existing is 15 feet 6-1/2 inches and the new would be at 16 feet 1-1/8 inches – slight improvement. The maximum lot coverage is 20% allowed. They are currently at 44.05%; the new would be 37.39% - improvement of 5% - providing more open space. The building height they are limited to 18' 1-1/2 stories; current is at 22'; proposed is at 24 feet 4 inches – which is an increase in the building height.

Gold addressing Kelly asks about roof line calculations stating that Kelly is using the dormer at 22' rather than roof line. Gold reads from ordinance. Kelly explains that the drawings are deceptive and would need to take a visual inspection and the highest point would possibly be the ridge line – if the shed dormer is really tied into the ridge line or not. If shed dormer is tied into the ridge line – that’s the highest point. Highest ridge line to the eave is the definition – this would be your shed dormer. But it is ambiguous because – which eave?

Anderson reminds us that the new house does not have any dormer. Gold interjects that he is trying to understand the calculations for the future.

Chair asks if applicant wishes to speak. Applicant gives statement that they have owned for 23 years, and this has been a summer home with no heat. They are transitioning to full time and need heat. Remodeling is basically too costly vs. building a new home. They wish to put a house in the same spot, with it being more functional, aesthetically pleasing to community. The foundation is in disrepair. Prefer to rebuild for quality and safety.

Scott Rappe (architect) speaks stating that at first they were going to renovate current home and upgrade the garage, but it was cost prohibitive. Currently 5 non-conformities. New house will not be larger. Out of the 5 variance requests, we have eliminated 2 – we have brought the front yard and North side yard into compliance. We have reduced the rear yard by 5%; we have reduced the South yard non-compliance and reduced the lot coverage.

Gold asks Rappe why he went to a shed dormer and 2 more feet could be eliminated from the height.

Chair asks for public comment. None.

Board discussion begins. Anderson reads from Article 8.1 (non-conformities) which states that “non-conformities are not compatible with the current or intended use of the land ... therefore it is the intent of this ordinance to continue the non-conformity under certain conditions but to discourage their expansion, enlargement or extension...and specify circumstances and conditions under which non-conformities shall be allowed to continue.” Anderson also reads from 8.04(A)(2)(f), “Any non-conforming structure that is voluntarily demolished or razed shall not be re-built unless in full compliance with the terms of this Ordinance.” Anderson comments regarding the Ordinance and our training. In looking at the land, why should the non-conformities continue – side yard and rear yard.

Rettig, Gold, Dow have discussion about these 2 readings. Dow agrees that the land does not have ravine so there’s nothing in the land to drive us to grant the variance; but let’s look at what could be built in total conformance with this lot. You have 5,000 square feet to work with and the front has a slope. I think they are looking at renovation or build clean. Building new would be the most cost effective and takes safety into consideration, and fuel efficiency. They are eliminating a few non-conformities and reducing others – so the trade off is accepting a rebuild and discussing height. Gold says that the language says that it is discouraged for expansion. Dow says that he would rather go on record with a demolition with circumstances, rather than allowing a partial building left behind. Anderson still says he is uncomfortable with the rear yard variance. Rettig interjects stating that the building is already currently there, and the new structure will be less non-conforming. Anderson is thinking about the fire chief on the side yard and accessing. Rettig: Let’s look at what is already there – which is in non-compliance. Dow looks at the criteria – the remodeling would be “unnecessarily burdensome.” Anderson reiterates that it is a big ask. Rettig reminds us that this is a lesser non-conforming lot. Gold – if they remodel the house, they end up with the same non-conformities. Part of our job is to be reasonable. Anderson says he only has problems with the side yard.

DOW MAKES A MOTION THAT WE APPROVE VARIANCE #2017 BASED UPON THE DRAWING AND PLANS SUBMITTED WHICH INCLUDES A SIDE YARD, REAR YARD, COVERAGE AND HEIGHT. GOLD 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. Roll: Dow – yes, the lot itself and size of building are the unique circumstances. Rettig- yes; Anderson – no; Gold – yes. 3 -1
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. Roll: Dow – yes; Rettig- yes; Anderson – no; Gold – yes. 3 -1
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. Roll: Dow – yes; Rettig- yes; Anderson – yes; Gold – yes. 4 – 0
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. Roll: Dow – yes; Rettig- yes; Anderson – no; Gold – yes. 3 - 1
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. Roll: Dow – yes; Rettig- yes; Anderson – yes; Gold – yes. 4 – 0 as demonstrated by letters of support.

VARIANCE IS GRANTED.

[ANDERSON RECUSES FROM NEXT CASE, GOLD STEPS IN AS CHAIR]

Case #2018 Ryan and Emily Voelkert, 308 Hillside Avenue, Bethany Beach, Sawyer; Property Code #11-07-0770-0035-00-1 are asking for a variance from Section 8.05(D)(1) of the Chikaming Township Zoning Ordinance #144, as amended, which allows 20% lot coverage and 10’ side yard setbacks in an NCR1-A zoning district.

No letters.

Chair asks for input from the ZA on this case. Kelly wishes to clarify that in the actual notice, which was published and sent out, there was a lot coverage percentage stated in the Notice for a variance. There was a land purchase in process, and we were uncertain if that land purchase would be done before this hearing. The land purchase was completed, so there is no lot coverage issue. Applicant is in compliance with the 20%. Therefore, we have a screened porch they are proposing on an existing deck. The new build will run along the same line as the existing house. The deck is already at the line. Roof over structure/covered porch and is under roof so it must comply with setback requirements.

Rettig addressing Kelly says that if the applicant were to jut the line in by 18” there would be no variance request needed. Kelly agrees. The encroachment is 11 inches on the North; 18 inches on the South.

Dow asks if the proposed addition were to be built to the setback lines, no variance would be needed. Kelly agrees. They are asking to build over the deck footprint. The deck was not at issue for setbacks because it had no roof. Now they want to enclose that deck. Gold inserts that if the wall could be brought in, they would be in compliance. Dow and Gold feel there are no extenuating/geographic circumstances.

Chair asks applicant to speak. Ryan speaks stating they are trying to put a pitch on the roof instead of the flat roof all the way to the back and enclose the area and keep the walls in line with the existing structure. Gold asks applicant why he can’t be in compliance? Applicant says – so I would have to bring the wall in on both sides? Gold says yes.

Comments from the public. None.

Board discussion. All agree that discussion has already occurred and there are no circumstances of the land which would compel this variance. By bringing the walls in there would be full compliance.

DOW MAKES A MOTION THAT WE DENY THE VARIANCE REQUEST FOR CASE #2016 AS THERE ARE NO EXTENUATING CIRCUMSTANCES THAT WOULD JUSTIFY THE GRANTING OF THE VARIANCE; RETTIG SECONDS.

Chair goes through 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. No. All Board members 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. No. All Board members 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. No unique circumstances. All Board members agree – no.
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 – no.
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 – no.

ROLL VOTE – DOW, RETTIG, GOLD ALL VOTE YES TO DENY VARIANCE- 3 AYES. VARIANCE IS DENIED.

Chair asks for any further public comments. None.

Rettig motions to adjourn at 1:49 p.m.; Dow seconds. Chair announces we are adjourned at 1:49 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved November 15, 2022