

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the October 17, 2023, Regular Meeting
APPROVED

The October 17, 2023, regular meeting of the Zoning Board of Appeals was held at Chikaming Township Hall and called to order at 1:00 p.m. by Acting Chairman (hereinafter Chair) Thomas Gold. Roll call of members attending: Liz Rettig, Doug Dow, Thomas Gold, Bob Beemer, Phil Bender. 5 present - Quorum.

Noted that Attorney Hilmer and ZA Kelly Largent (hereinafter ZA) are also present along with others attending in the audience.

Chair advises that the next order of business is to approve the August 15, 2023, minutes. Chair asks for corrections/additions. None. **Beemer makes a motion to approve the minutes as presented, Dow seconds. VOICE VOTE: 5 AYES. MINUTES APPROVED.**

Chair reads the cases:

Case #2032 Applicant, Thomas McDonald, 9283 Park Drive, Lakeside, Property Code #11-07-4460-0057-00-1 is requesting to exceed existing building height by 4 feet. Section 8.05(D)(1) of Chikaming Township Zoning Ordinance #144, as amended, allows 20-foot maximum height in an NCRI-B district and Section 8.04(A)(4)(a)(ii) dimensional restrictions.

Chair requests ZA, (Kelly) to give us details on this case. Kelly begins by advising that this particular parcel had an approved variance in 2004 when construction of the house occurred, and the variance was for dimensional setbacks because it has 3 road setbacks. It was allowed for height as 1-1/2 story. Approved for encroachment into the setbacks. [Kelly shows lot layout – triangular parcel abutted by 3 roads], What they are asking for is an addition on the ½ story (2nd floor) and an addition onto the existing attic space which is their master bedroom instead of attic space. Rettig asks: Are they going outside of their current footprint? Kelly: No, they are not. But what they are doing is adding bulk and volume. Dow interjects, the peak of the roof will remain the same, just how we calculate the roofline has changed. Kelly continues, the highest ridgeline remains the same, but because of the addition tying into the highest ridgeline, it shifts our calculation for building height. Our building height definition says we will go from the highest peak to the highest eave associated with the peak when our eaves are uneven. Since we have uneven eaves, our midpoint is bumped up. Gold asks: Is this only on elevation that gets changed? Kelly affirms that only one (1) side of the house is having the addition, but that affects our building height based on our definitions. Beemer asks if they were approved for 1-1/2 story. Kelly: the original plans as submitted in 2004 as a 1-1/2 story with a finished attic space. Since then, what we used to call a ½ story is now identified as a 2nd story because the finished attic space has now become a master bedroom which means that would be the ½ story according to our current zoning definitions. Beemer: that's why you currently identify this currently as 2 stories. Kelly shows other views of the proposed addition showing us that the addition is pushing the height from the original 26 feet to 30 feet because of the calculations based on the definition.

Chair asks applicant to speak. The architect (Bill) confirms that we are only going up in height to the existing peak. When the dormer roof gets added the calculation goes to 30 feet. We are not changing the footprint of the building. The amount of space added is modest, about 70 square feet on the 2nd floor and on the attic about 140 square feet.

Public Comment: None

Letters:

John Christian (9274 Park Drive): Objects to the variance. Resides across the street before subject house was constructed and thought the subject property was not buildable. It did receive a variance. House has damaged the quiet enjoyment of my property. It would further permit the expansion of the property on a non-conforming use and an overly large structure on a very small lot. Request that appeal be denied.

Applicant says there should be another letter which was submitted. None of the Board members has received this letter.

Board Discussion

Dow begins by stating this is an impossible parcel surrounded by 3 streets. Not sure about the original variance or if it was a bulk variance, but the house is within setbacks. My initial take was no because the current height is 26 and they want 30, except the height is already 32 and this does not substantially change the peak of the roof – only the bulk. The total structure is not getting higher, it is how we calculate that has changed. How vitally important is that? This seems to be a minimal request. But adding non-conformity to non-conformity is a line we don't like to cross, but I am leaning toward flexibility. The peculiarity of the lot is just an odd parcel.

Beemer weighs in. Also undecided, but believes the neighbor has written an important letter to enforce the zoning rules. They have previously received a variance to build the nice home they have, and I am reluctant to give a variance to make it taller.

Bender has a problem with making a non-confirming lot more non-confirming.

Rettig says she too was going to say no until the viewing of the house. We are really not raising height, just bulk and we are obligated not to put variance on top of variance. Would have flexibility because of the challenges of the lot.

Gold: with respect to what the neighbor said and if he was under the impression that the lot was not buildable, it was an unreasonable expectation and colors his comments. His objection is a bit like sour grapes. I agree that we would be increasing an existing non-conformity if we approve, however, we are not here to rubber stamp, but to find flexibility based on the circumstances. What they have asked for is reasonable. The house is situated well within the setbacks. A variance 17 years later is a reasonable request.

Dow, if there's an exception to be made it is the shape of the parcel. It is triangular and surrounded by roads with a small building envelope. They cannot go out. Is adding a small variance to an existing variance a big problem or a small problem. Gold: They have honored the restrictions; they are not asking to add into setbacks. I think it is a thoughtful ask. Once it is done, I don't think anyone will even know it occurred. I don't think they are asking for something that will harm the neighborhood, interrupts the setbacks, or takes down trees. I would lean toward granting.

Dow, the total height of the house of the peak does not change. The calculation of the roof height changes and how important is that. If the peak were being raised 4 feet from the existing, I would object. The argument is that based on the parcel, there is no room to go anywhere else. Based on the request, it is a minimal request and does that help with getting us over adding a non-conformity to already existing non-conformity.

Beemer to be fair, we are adding bulk – we are not adding peak height.

Rettig: In the neighborhood there are no other houses that would be affected by this addition in that they would be unable to see the lake or would change the neighbor's views. The addon is toward the lake.

Dow: This property has 3 front yards.

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. Triangular lot; size and structure. All agree. 5 yes.
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. They cannot expand. Beemer/Bender 2 No as this does not prevent their use; Rettig/Gold Dow – yes. 3 yes; 2 no.
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. Dow/Gold/Rettig/Bender – yes; Beemer - No. (they are aware of the circumstances) 4 yes; 1 no.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. 5 Yes. All agree - minimal.
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 – Gold/Dow/Rettig 3; No - Beemer/Bender 3 yes; 2 no

DOW MAKES A MOTION, SUPPORTED BY GOLD, THAT WE APPROVE THE VARIANCE ON CASE #2032 AS SUBMITTED IN THE DRAWINGS.

ROLL VOTE: Rettig/Gold/Dow – Yes. Beemer/Bender – opposed. VARIANCE IS APPROVED WITH A 3/2 VOTE.

Case #2033 Ann Krsul (architect for Applicant) owners David and Rita Shea, 15575 Lakeshore Road, Union Pier, Property Code #11-07-4730-0017-01-4, is requesting a family room addition that will increase lot coverage to 22.5% and encroach into the rear yard setback. Section 8.05(D)(1) of Chikaming Township Zoning Ordinance #144, as amended, allows 20% lot coverage and requires a 30-foot rear yard setback in an NCR1B zoning district.

Kelly: The original plan was to keep the existing screened in porch so that the addition would not need a variance. However, after looking at the structure that was already there, it was discovered that it would not support the addition. The choice was to demolish the porch and add on in the existing footprint of the screened in porch for the 1st floor with the proper structural supports and the 2nd floor addition on top. They are not expanding any of the existing, but because they are demolishing the structure, they have to ask for the variance again for the lot coverage and the encroachment. In the past, Ann has worked on this house before (about 20 years ago) and because this is a corner lot, they have declared Streed as their front yard, so the 30-foot front yard setback is being maintained on Streed. It would make Lakeshore Road a side yard. Rettig asks if Streed is where they access the front door. Kelly continues: From a zoning perspective, if they have made a declaration for a front yard, this is then the 30-foot setback, and they have chosen to have their entry on Lakeshore, where they enter and exist. But that does not change the front yard if they have made a declaration on a corner lot. Gold: But we have no setback issue – only a coverage issue. Kelly: Our setback is at 17' but we have to grant the variance – even though they are not increasing any encroachment. Rettig: Basically, we have to regrant the variance as to the setback at 17'. Gold: If the structure is demolished, it must meet the ordinance. Dow: So, the new structure does not change the

footprint, does not change the lot coverage, does not change the setback as it exists. Gold – what about the steps. Kelly – the steps are allowed to encroach and are not included in lot coverage.

Applicant – Ann (architect) states that we are replacing something in kind. Trying to add onto the house without taking it down presents logistical issues. The original is on piers and cannot hold the 2nd floor – the intent was not to come to the Board. We want it to be well built – currently it is a glorified deck with a roof. Nothing changes on the lot from what it is now. In terms of the neighborhood and impact on neighbors – it is minimal.

Public Comment:

Spears (15605 Streed) I am one of the neighbors. I am heartily in favor of the construction. It makes sense to solidify the porch they have – making it safer.

Rettig asks – will it remain 1 story? Architect Ann says it will go to story and a half.

Letters: None

Board Discussion:

Dow: the fundamental proposition is to accept the existing condition based on the fact that the new structure will be more sound – the footprint is the same, the setbacks are the same, the coverage is the same. From my point of view – we are not making it more non-conforming – just equally non-conforming. And the 2nd story does not violate any height issues. Rettig: Replacement in kind. That’s the whole of this. Beemer: I think it’s very well designed. No issues with lot coverage, height.

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. All agree – this is a replacement of a currently existing variance. 5 yes.
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. Changing less than optimal construction – 5 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. 5 yes.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. 5 Yes. All agree - minimal.
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 –5 yes.

DOW MAKES A MOTION, SUPPORTED BY BENDER, THAT WE APPROVE THE REQUESTED VARIANCE ON CASE #2033 FOR THE SETBACK AND LOT COVERAGE AS DOCUMENTED. VOICE VOTE: 5 YES. VARIANCE IS APPROVED.

Case #2034 Applicants, Thomas and Karen Tarpley, 13240 Forest Avenue, Harbert, Property Code #11-07-7300-0054-00-8, are requesting an addition to the garage that will not meet front yard setback requirements and will exceed lot coverage. Section 8.05(D)(1) of Chikaming Township Zoning Ordinance #144, as amended, allows 20% lot coverage and requires a 30-foot rear yard setback in an R-1 zoning district.

Kelly directs us to the packet presented by the Applicant. This is to change the orientation of the garage. Currently they back out directly into a very narrow street. This would move the garage door to the side of the house to allow them to back into their own driveway to be able to see the pedestrians and the many cars that are parked on the street – the house across the street is a rental which complicates pulling out. Changing the parking/garage entry by 90 degrees.

Applicants: Karen speaks and requests the ordinance to keep the neighborhood safe. Over the last 17 years, the neighborhood has changed – many more visitors, joggers, bikers. This change is more about safety. We are requesting 8’ so we can back into our driveway and be able to approach the street frontwards. This has been a problem. We have put stones, but it is not enough. In the winter it is even worse, we literally slide from the garage into the street.

Public Comment:

Owens (neighbor) who talks about the house directly across from Tarpley. The property is listed as New Buffalo Rentals, LLC, and has 15 cars there on the weekends. The vacant lot next door to this has a split rail fence so that the cars can’t park there, so they park up and down the street. I am in full support of the variance.

Letters:

In the packet there is a letter with 15 neighbor’s signatures in full support of the variance.

Candice Conley (7261 Greenbush Court): [LETTER READ] Summary: Full support because of safety/traffic issues.

Francis Kelly (1836 Chase): [LETTER READ] Summary: Full support.

Board Discussion: Rettig says the main problem is safety. The 4 feet addition will not change any neighbor’s lives. Beemer: Our ordinance refers to on-site parking and this is a big step. Across the street is the opposite, this is a minimal request. Dow: I agree.

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. All agree. 5 yes.
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. Burdensome. 5 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. 5 yes.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. 5 Yes. All agree - minimal.
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 –5 yes. Great improvement to safety.

DOW MAKES A MOTION, SUPPORTED BY GOLD, THAT WE APPROVE THE REQUESTED VARIANCE ON CASE #2034 AS DOCUMENTED TO ALLOW FOR THE ENCROACHMENT IN THE FRONT YARD SETBACK AND A SLIGHT INCREASE IN THE LOT COVERAGE. VOICE VOTE: 5 YES. VARIANCE IS APPROVED.

Discussion among Board and Applicant regarding parking issue, who maintains the road (Berrien County) and more enforcement on parking issue to alleviate some of the congestion.

Case #2035 Applicant, Patrick Gilligan, 13587 Prairie Road, Harbert, Property Code #11-07-0010-0038-06-1, is requesting to build a garage 6'11" from the existing house. Section 7.02(C)(2)(a) of Chikaming Township Zoning Ordinance #144, as amended, requires 10' between structures in an R-1 zoning district.

Kelly shows us proposed area where garage will go and states that it will meet side yard setback. The encroachment is that it will be less than 10 feet from the existing structure. Kelly shows where very large tree exists which they are trying to save. Stump of another tree will be removed. Building code says fire rated assembly will be needed because of distance. Gold interjects that it is just an increase in the amount of dry wall (double layer of 5/8") which would be up the wall.

Dow: the purpose of the 10' required separation is for fire safety and access and movement of fire fighters, trucks.

Applicant: Mr. Gilligan speaks stating that he is a builder and initially he wanted a side setback variance as well, but after several meetings, made it a smaller ask and will provide fireproof assembly. Was looking for a practical way to attach to structure, but there is a grade difference on that side of the building, and it does not seem possible. Gold asks Mr. Gilligan why he is citing the garage in that location? Is it because of the tree? Applicant says that is partially true and to make better use of the yard to keep the back of the property open as it is shared with neighbors. Gold states that if he is trying to save the tree, the foundation will kill the roots and the tree will die because it is too close because of the 10' over dig. Applicant did not want to get too close to the side yard because the neighbor is already closer than 10 feet to the lot line. Gold feels that saving the tree far outweighs going into the setback or trying to connect it to the house. Applicant continues that there is at least a 4' difference in grade – elevation issues. Beemer wonders if the tree is the primary concern. Applicant says he is very concerned about saving the tree and conservation is important.

Gold: I would not want to force you into a situation where you damage the tree if there is another solution.

Applicant asks if this could be tabled in order to resite the building? Gold: Rather than being denied and then you cannot come back for a year.

Beemer: Let's continue the discussion so that he can get some insight from the Board. Dow makes a recommendation that he attach the garage to the house and deal with the grade in another way. Maybe stairs. Beemer: In the past we have talked about connecting – perhaps a breezeway. Gold: What is the sentiment on the board allowing him to go into the side yard setback to save the tree. Dow answers that the question is are we considering or accepting the tree like a part of the landscape – like a wetland. Gold: There may be some leeway on the Board. Dow: Attaching it makes the most sense and makes most of the variance request go away. Gold says we won't redesign and asks Applicant if he can be ready by next month. Applicant says he can be ready by November.

GOLD MOVES AND DOW SECONDS THAT THIS MATTER BE TABLED TO THE NOVEMBER MEETING. ALL VOTE YES. TABLED TO NOVEMBER MEETING. [IT IS NOTED THAT GOLD DID NOT READ THE LETTERS, BUT THESE CAN BE READ AT THE NEXT MEETING.]

Case #2036 Stephen Coorlis, representing the Applicant, Shargeel Dogar, 15155 Lakeside Avenue, Lakeside, Property Code #11-07-5620-0075-00-5, is asking for relief from the 30' front yard setback requirement. This property has 2 front yards. Section 8.05 of Chikaming Township Zoning Ordinance #144, as amended, requires a 30' front yard setback in an NCR1-A zoning district.

Kelly: The property, which was 2 separate parcels, has been combined earlier this year and is now 1 parcel. This went before the Planning Commission. New tax number will go into effect in 2024. The property has 9,241 square feet total. They are asking to encroach into the Red Arrow Highway setback and will meet the setback on Lakeside Avenue (basically a dirt road) and the side setbacks. We have done an average. The old existing house encroached – but it was removed, so it is no longer relevant. Looking at the neighbors, there is a house in the road right of way, encroaching into the front yard setback. The entryway to the house will be on Lakeside Avenue.

Applicant: Stephen speaks stating this has some challenges. Neighbors are over 30 feet setback. We are trying to be respectful of parking on Lakeside Avenue and trying to keep the greenspace rather than designing a more narrow building. Dow asks why are you sticking to the footprint of the old house? Stephen wants to be respectful of the land, trees. Gold asks about the average of the neighbors to get the setback. Kelly says that the default went to 30 feet for the front yard.

Public Comment: None

Board Discussion: Dow starts by stating there is not a lot of land, a through lot with 2 front yards. If strictly enforced, that would leave a 20-foot wide house. Strict enforcement will not work. We do not want to declare this lot as unbuildable. Even the back yard has a 30-foot setback. It is difficult to accept a 5' or 7' setback on Red Arrow. There are 2 lots and more land to reshape this, respecting a 30-foot setback, and come up with something greater than 7 feet to make this work. This is not a minimal variance. Red Arrow is a 4-lane highway. Beemer: In the spirit of minimal, let make it bigger than 7, but something less than 30. Rettig reminds us that the bike trail is being continued and will be coming through. Bender agrees. Beemer reminds us that if they try to move the variance to Lakeside Road, it is a private road and not a highway. Gold reminds the architect that if we were to rule on this, they could not come back for a year.

Architect will discuss with his client. He states he was not trying to ask for 2 setback variances, but it sounds like the Board would think this is more acceptable. We will try to find a better location for the house. Dow asks Kelly if the neighbor's setback on Red Arrow could be averaged? Gold interjects that a rectangular home would have worked better in this situation. There is no reason that you had to respect that previous middle lot line. Dow: We are trying to give some useful parameters for an agreement among the 5 of us to maintain the 30-foot setback on Lakeside and perhaps 15 feet on Red Arrow. It is big give, but much better than what has been presented. Remember, the whole community drives past Red Arrow Highway, the most public road in the area. We would like more footage on that roadway for safety and a buffer. Beemer, since you have combined the parcels, a rectangular house would be a better fit and still have green space. Dow: and once combined, they could never be split.

Stephen comments that the design was for efficiency to be more squarely oriented, he was trying to use some engineered trusses and wanting the greenspace all on one side rather than splitting it.

Gold asks if he wants to table this or have us rule? You don't have to have a full set of plans, just a footprint and it would have to be here within 15 days. Stephen asks that it be tabled.

DOW MOVES AND RETTIG SECONDS THAT THIS MATTER BE TABLED TO THE NOVEMBER MEETING. ALL VOTE YES. VARIANCE IS TABLED TO NOVEMBER MEETING.

Chair asks if there is any further business to come before the Board or comments from the public. None.

DOW MOTIONS FOR ADJOURNMENT AT 2:37 P.M.; BEEMER SECONDS. Voice vote: All ayes. Chair announces we are adjourned at 2:37 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved: November 21, 2023