

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the October 20, 2020, Regular Meeting
APPROVED

ELECTRONIC MEETING VIA ZOOM, PER GOVERNOR WHITMER'S ORDER

The October 20, 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, Tom Gold. Kathy Sellers - absent.
4 present - Quorum.

Chair advises that the first order of business is to approve the September 15, 2020, minutes. Chair asks if the Board members have any corrections. Dow advises that he has a few clerical changes (Page 2 and Page 4). Rettig notes the corrections. **Dow moves that minutes be approved as corrected; Anderson seconds; Roll vote: Rettig, Dow, Gold, Anderson – 4 AYES. Minutes are approved as corrected.**

Case #1186- Attorney Mark Miller representing Thad Davis and Lisa Friedman, owners of 674 Beach Road/Longwood, Sawyer, MI 49125. Property Code #11-07-0840-0116-00-6. *Applicant is asking to demolish the existing home which extends into the roadway 3.50 feet and replace it with a new home that will have a front yard setback of 5.87 feet. Chikaming Township Zoning Ordinance #144, Section 4.02 requires a 30-foot front yard setback.*

Chair asks for comments from the Zoning Administrator (ZA) Van Thornton. ZA advised that several items came by e-mail specifically the letter from Shorewood Hills. Chair advises he has a letter from Cindy Ellis (Shorewood HOA) giving approval. ZA continues that he has received a letter from Shorewood Hills Homeowners Association dated October 15, 2020, which goes much more into depth. ZA reads a letter which memorializes an agreement between the owners (Davis/Friedman) and the Shorewood Hills HOA. *[Summary: Owners shall comply with all HOA rules, federal state and local ordinances to cause all construction to be consistent with the Soil Erosion Sedimentation Control Plan; Owners shall restore any damage to any surrounding property; Owners indemnify and hold harmless HOA from damages; HOA will support variance – full copy of signed letter agreement and exhibits to become part of this file.]*

ZA continues showing a picture of Plat advising that the address of this parcel should be Longwood as Beach Road is not used and the parcel in question has the required road frontage. Longwood Road exists. Attorney Hilmer concurs that a platted road runs in front of the lot and provides sufficient frontage to meet the requirements of the Zoning Ordinance – even though the road may not be fully opened.

Chair reads into record a letter from Cindy Ellis in support.

Chair asks for comments from applicant. Attorney Mark Miller speaks to Board and confirms that the variance needed is a front yard variance because the front yard will only have 6 feet of frontage from Beach Road. Miller reminds us that the current house extends into Beach Road about 10-12 feet. New plans will change the negative setback and pull the house fully onto the property. There are adequate

side-yard setbacks, 187 feet of frontage on Beach Road and house will be 154 feet from the lake. The application also points out the following:

- DNR acknowledgment that property is not on a critical dune and in a buildable spot
- Unique lot (topography)
- Without variance lot would be unbuildable
- Current home on lot is not what owners want
- New home will reduce the current front yard setback
- Minimum variance – taking contour of land into consideration
- 240 feet between home and Lake Michigan (correcting earlier footage)
- Won't impinge trust property
- Stable bluff
- Low density area
- Enhance property values
- Meets intent of ordinances.

Thad Davis speaks advising that architects Kearns and Kendall are available to answer questions. Owner advises that they are trying to take a very "light touch" by pulling back from existing footprint to stay inside their lot and trying to build in flat spot on lot.

Chair asks for comments from public.

Cindy Ellis (Shorewood HOA) thanks owners for working out agreement with the HOA to protect the dune and work with EGLE to put in a beautiful home which would be a great addition to the community. The 1975 map may have a mapping error as to the critical dune classification.

No other public comment.

Chair goes to Board questions and discussion. Rettig, Gold and Dow – none. Chair has a question for architects and ZA: As to the 5.86 variance – plan and picture shows bridge and wonders if this structure would normally be allowed in front yard. Discussion about bridge. ZA recommends that we include this in the variance if this is less than 30 feet from the lot line.

Larry Kearns (architect) speaks to the bridge that it is for the purpose of a light touch and to minimally impact the drainage patterns with the intent being to respect the existing grades. The bridge does attach to the house, making it part of the structure and not an accessory structure.

All members look at site plan and ZA feels it does not meet the 30-foot setback and recommends that the applicant amend their application to include the bridge to encroach into the front-yard setback. Attorney Miller intercedes and requests that the application be amended to include the bridge.

Chair acknowledges that the site is quite challenging for building purposes being the practical difficulty. Dow compliments owners, architects, builders, and HOA for bringing a complete package to the Board. Dow echoes the Chair's comments and reminds the Board of a training session we had where one of the key elements was "it's all about the land." The land and topography is unique with this being a minimal variance request to deal with all of the issues. Gold and Rettig concur.

Chair goes over criteria:

- 1 Are there unique circumstances or conditions that exist? Yes – uniqueness of the land.
- 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
- 3 The unique circumstances do not result from the actions of the applicant? Yes – uniqueness of land
- 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 AS SUBMITTED TO ALLOW THE FRONT YARD SETBACK TO BE 5.87 FEET FROM THE PROPERTY LINE AND THE BOARD ACCEPTS THE APPLICANT’S AMENDED REQUEST TO INCLUDE THE PROPOSED BRIDGE TO THE HOUSE THAT WILL ENROACH INTO THE SETBACK BUT BE FARTHER BACK THAN THE 5.87 FEET. GOLD SECONDS.

ROLL VOTE: GOLD – AYE; DOW – AYE; RETTIG – AYE; ANDERSON - AYE. 4-0 VARIANCE APPROVED.

Case #1187- *The Prairie Club, 13430 Prairie Road, Harbert, MI 49115. Property Code #11-07-0009-0007-00-6. Applicant is asking to replace the existing pavilion (1,651 sq. ft.) which is located in the front yard and replace it with a 1,400 sq. ft. pavilion, which will be locate 94 feet off Prairie Road. Chikaming Township Zoning Ordinance #144, Section 7.02(C)(1) states “detached accessory structures shall not be located in a front yard in an R-1 district.*

Chair asks ZA to explain this case. ZA begins by stating that his initial determination was that this is a corner lot - PC Main and Prairie Road both requiring a 30-foot front yard setback. Also, in our ordinance, accessory buildings may not be placed in the front yard – the front yard being defined as from the plane of the house to the road. The pavilion is indeed in the front yard. One question arises – does the Prairie Club have any type of special use plan or a PUD? In conferring with our legal counsel, the Prairie Club existed prior to the zoning ordinances of the Township. The parcel is one (1) single parcel and we treat this as a legal non-conforming use in the applicable zoning district.

Dow questions: As a single 54-acre parcel, how do we evaluation a house within that?

ZA reminds us that we can look at adjacent properties and dimension the distance between the houses and that is considered the property line and then treat it as such for setbacks.

Chair advises there are no letters.

Chair asks for comments from applicant.

Charlie Johnson speaks on behalf of the Prairie Club and is representing the membership and the owners. The architect is Eric Puryear. The project (which has been in design for a couple of years) has been approved and funded by the site holders of Prairie Club and the membership. The new structure is replacing a decaying structure. It has been planned to fit the architecture of the Prairie Club. The continued use for the facility (which it has done for decades) is for outdoor use. No other use. The structure is similar to the other structures (library, mail house, red barn, and utility garage). Eric continues speaking about the project. The site is unusual and the development (early 1920's) predated the zoning ordinance. (Board looks at the site plan and Eric explains the structures and their uses.) The 54-acre plot has 94 cabins including some shared use structures. The current pavilion is a gathering spot - an open area with picnic tables. The new pavilion would provide cover remaining an open area without moving or changing the position of the structure. Although interpreted as a corner lot, this would be considered a front yard. We have positioned the new structure 94 feet from Prairie Road over the existing concrete pads. Another goal is the preservation of the existing trees. We are a heavy conservation club. We made the pavilion smaller and positioned it farther from the road with no additional parking - basically a cover over the existing function.

Gold interjects and does not understand why we are involved - struggling why there are setback jurisdictions on a 54-acre parcel. Hilmer answers that we are involved because of the zoning ordinance. The issue is not the set-back, but an accessory structure in front of the farmhouse. ZA clarifies that it is technically the front yard. Rettig inquires as to its current zoning. Dow answers R-1 W. Dow asks the applicant if the current structure is only 2 concrete pads with no visual impact and the proposal is for a pavilion structure (visual impact). Gold asks the use of the farmhouse - answer is that it is a facility with multiple rooms which are rented and the North portion is the caretaker's residence.

Anderson asks for public comment. Gary Wood speaks in support of variance as a member of Prairie Club and a former resident on Horseshoe Drive. Prairie Club is a unique institution and a large contributor to our Township and our nation (largely responsible for establishing Indiana Dunes and Highway I-94 not being too close to the lake).

No further comments from public.

Discussion: Chair starts by reminding us that this institution (the Prairie Club) predates any zoning rules or PUD's for the Township. This pavilion seems to be far from the property lines and will have very little effect on the neighbors and is an improvement. Gold does not feel that this should have come before the Board. Dow is conflicted. If we say it is "all about the land," there is nothing to make this unique. However, since we are being instructed to treat this as one continuous parcel (correcting the acreage to 58.49 acres), I am wondering if we have to call it an accessory structure at all. Is it an accessory to the farmhouse? Red barn? The proposed pavilion is well within the setback. What becomes an accessory structure of what? ZA interjects that he has spoken with the applicant advising that any decision he makes can be appealed, however, it takes 2 hearings. A variance hearing is only one (1) hearing. The ordinance is clear, accessory structures shall not be in the front yard and as such must be heard. If approved, the decision goes with the land in perpetuity.

Gold questions - what are the unique circumstances? What is this accessory to?

Dow asks, “What are the future implications (since we are treating this as one parcel)?” What if the Prairie Club decides to remove another structure and put in a hotel/motel – what are the implications? Hilmer says that if the use is changed, the parties need to come back for a variance. This parcel is unique in Chikaming, possibly even Berrien County. Multiple houses, not platted, private roads, the zoning ordinance was not drafted to address this. Further discussion about uses of the structures. Chair feels we need to make accommodations because of the uniqueness of this peculiar parcel. Gold feels that the land is the unique circumstance – “if it is all about the land.” Dow – unique parcel with unique use which predates all Township regulations and by bringing this as a variance, the Township has some say in the new structure. Rettig agrees that the entire Prairie Club parcel is unique to the Township and that is the basis for moving ahead.

Chair goes over criteria:

- 1 Are there unique circumstances or conditions that exist? Yes – uniqueness of the land – 59 acres, undivided, multiple structures and predates our ordinance with its special use.
- 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 and use
- 3 The unique circumstances do not result from the actions of the applicant? Yes – uniqueness of land
- 4 The variance request is a minimum variance that will make possible the reasonable use of the land, building or structure? Yes – considering distance from roads and size of structure.
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 and staying consistent with the use it has had for decades.

DOW MAKES A MOTION TO APPROVE THE VARIANCE REQUEST TO ALLOW A NEW PAVILION TO BE BUILT UPON THE SITE OF THE EXISTING CONCRETE PAD STRUCTURE IN THE FRONT YARD OF THE MAIN FARMHOUSE BUILDING AND THE BOARD RECOGNIZES THE UNIQUENESS OF THE PROPERTY INVOLVED AND ITS CONTINUED MULTI-FAMILY USE OF THE LAND AND STRUCTURES WHICH PREDATE ANY TOWNSHIP REGULATIONS. GOLD SECONDS. ROLL CALL VOTE: RETTIG: AYE; GOLD: AYE; DOW: AYE; ANDERSON: YES. APPROVED 4-0

Chair brings the last order of business as a Zoning Ordinance Interpretation requested by ZA.

ZA begins by talking about the Zoning Ordinance addressing an accessory building to be erected, without the presence of a principal structure, on a vacant parcel in an AG district. Our current ordinance refers to accessory farm buildings allowed to be in the front yard. But looking at the definition of “farm” it says it must really be a farm – raising livestock, crops – farming. We have an instance where someone has purchased a large parcel – AG zoned – and prior to the building of their principal structure, they want to put an accessory structure (pole barn) in the front yard. They are not going to be doing “farming.” They will have horses for their personal use - a stable. The challenge I have is the definition of an accessory structure and farm. They are not in commercial production of farm products. They are in an AG zone, but not farming. In the past, we allowed agricultural buildings to be placed in the front yard if you were in an AG district or even on a vacant parcel in an AG district. Since we now have this

new definition of a farm and we now call it an accessory farm building, I believe the intent of the framers of the Zoning Ordinance was to associate the exemption for front yard location of accessory structures to be allowed only for farming purposes, not just because they wanted their pole barn in the front yard. I am asking for guidance.

Anderson questions ZA - “commercial” farm? What if the person living there is not in the “farming” business but has horses and they want a horse barn in the front yard? It is still AG related. Rettig interjects that the ability to raise agricultural related products and animals is unique to an AG district – cannot be done on every parcel. Further discussion that horses are an AG use. Gold believes that ZA is questioning the wording “commercial.” Commercial narrows down the use. Many people are buying large parcels and we have to look at the use. Gold continues with an example of a farmer with an orchard selling a few bushels of apples as being a commercial use. Rettig feels that the “commercial” terms is our hang up. Gold says that it definitely limits the use. Anderson asks ZA to definite the setbacks. ZA does so, stating that the issue is still the accessory structure in the front yard. ZA continues regarding the definition “commercial production” and that perhaps that has a different meaning. Strictly speaking, being on AG property does not allow the accessory structure in the front yard and complicated by “commercial” being the limiting thing. Dow feels the emerging sense from the group is that the proposed structure to house horses is somewhat agricultural. ZA advises that the definition in the new Zoning Ordinance was pulled from the Michigan Right to Farm Act. Its purpose is to help preserve working farms in the face of suburban sprawl. Perhaps we want to take a looser view of “commercial production of farm products.” Anderson: Maybe we need to stay with our ordinance and allowing the homeowner to apply for a variance. Gold’s talks about the current trend? Large farming or minimal weekend farming? We all turn to Attorney Hilmer who says the definition of a farm describes “customarily used for commercial farm products.” It does not say it “must” be used in that manner or be an “operating farm”, just that it has to be “of the type that are normally used (horses, apples, hay) on a farm.”

After continued thoughts and discussion, the Board’s interpretation of an accessory structure in the front yard is as follows:

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.

Roll call vote on approval of this language (with final review at our next meeting).

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

With no further business to come before the meeting, the Chair declares meeting is adjourned at 2:38 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved: **November 17, 2020**