

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the October 15, 2019, Regular Meeting
APPROVED

The October 15, 2019, regular meeting of the Zoning Board of Appeals was called to order at 1:00 p.m. by Chairman (hereinafter Chair) Larry Anderson. Roll call of members present: Liz Rettig, Kathy Sellers, Tom Gold and Larry Anderson. Absent: Doug Dow. Quorum. Also, present: Van Thornton (ZA), Charles Hilmer (Township Attorney) and members in the audience (sign-up sheet attached of those persons who signed in).

Chair advises that the first order of business is to approve the August 20, 2019, minutes. Sellers points out three (3) minor corrections on Pages 1 and 3 (grammatic). **Chair calls for a vote; Voice vote: Four (4) members – ALL AYE. Minutes are approved as corrected.**

CASE 1174: Eric Erickson property owner – 7185 Greenbush Road, Harbert, MI 49115. Property Code No.: 11-07-7300-0019-00-8. Applicant is asking to build a 10' x 16' swimming pool that will have a 7' setback from the house. Chikaming Township Zoning Ordinance Section 15.03B(D) states: "A detached accessory building or structure shall be located no closer than 10' to another accessory building or structure."

Chair advises there are three (3) letters:

1. Ann Kuppe of 7175 Greenbush – objects to the variance stating that the noise from the A/C is already too close to her house from last remodel (noted: is within setback) and there will be more noise as mechanicals are located on the wall of the garage.
2. Conley of 7261 Greenbush – lives across the street – has no objection.
3. Berta Shapiro – vacant lot on Greenbush (3 lots away) – objects stating noise level.

Chair asks for comments from ZA. ZA recommends that if the variance is granted, please include a requirement that any mechanicals not be allowed in the required setback.

Chair advises that he requested the Fire Department to review the location of the pool because of the 7' between structures; Fire Department has approved.

Chair asks applicant to speak - Jerry Kantor of KantorBuilt Construction on behalf of applicant. The current mechanicals (2 A/C units and a generator) are all in the setback (18.25' from lot line). Applicant is proposing to build a new 6' fence around all of the mechanicals including the new pump; the new pool pump is the quietest on the market (45 decibels). The variance they are requesting is for the distance between the new pool (to be installed) and the house. Chair asks if there is any potential to put the pool pump elsewhere. Mr. Kantor says no, because power is there, piping is there. Mr. Kantor advises that the running of the pump is only during daylight hours and it will not run during winter at all because the pool will be winterized. Discussion regarding moving the pool or angling it differently or rotating – and it was noted that it would still not make the 10' needed. It was determined that the only location available (because of the massive landscaping and trying to keep the pool parallel to the house) is as shown on the drawing. Chair questions distance from rear yard line and confirmation is given by ZA that an accessory structure only needs 10 feet from rear yard line. This is considered an accessory

structure but would not have the same potential for fire as a building structure would. The purpose of the 10' is for fire trucks to gain access – and is not at issue.

Chair asks for public comment – None.

Chair closes the public comment portion.

Chair begins to go through the criteria:

- 1 Are there unique circumstances or conditions that exist? Yes – the size of the lot, the angle of the pool to the house, and available space to locate the pool.
- 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 – too burdensome because of having to move the landscaping and space available and to angle the pool differently.
- 3 The unique circumstances do not result from the actions of the applicant? Yes.
- 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.

Van is recommending that the Board be specific (because of the negative comments) as to meeting the criteria. Chair notes that most of the negative comments are centered around the noise level and the applicant is taking measures to minimize the noise level by erecting a new 6' fence and has chosen a quiet pump in consideration of the neighbors' concerns. Further, the mechanicals are 18' from the lot line and well within the allowed area.

Rettig makes a motion based on all five (5) criteria having been met, to grant the variance allowing the location of the pool to be 7' from the house as shown on sketch presented, noting that the Fire Department Chief has approved the pool location; further, the applicant shall address the noise level concerns by erecting a 6' fence around the mechanicals and choosing a quiet pool pump; further, the mechanicals and new pool pump must be located along the house to comply with the 10' side yard setback; Gold seconds. ROLL CALL VOTE: Rettig – YES, Anderson – YES, Sellers – YES; Gold -YES. Variance Passes 4 – 0. VARIANCE REQUEST GRANTED.

Next on the agenda is an interpretation question. Chair asks ZA to present his question regarding an interpretation of Section 2.09 – Verification of method to determine average grade per the Zoning Ordinance. ZA advises Board the someone has questioned the Zoning Ordinance in the way that average grade is determined. ZA is trying to determine what the average grade is (under Section 2.09 – Definitions) because this then tells us what the roof line will be calculated from. The average grade is defined as the **“The midpoint between the lowest and the highest grade elevations in an area within 5 feet of the foundation line of a building, or in the area between the foundation line and the lot line, where the foundation is less than 5 feet from the lot line.”** ZA presents a drawing with several elevations giving an example and explains how

he arrived at his calculations. ZA advises that there is nothing in the ordinance about multiple roofs. ZA continues: In my calculation, you take the highest roof, the average plain, you measure to whatever dimension on that roof it directs us to. Mr. Gold has come to other calculations. Gold presents the calculations used by New Buffalo Township Zoning Ordinance and also presents the International Building Code Handbook (IBC 2012) and advises that the Michigan Building Code follows the IBC regarding inconsistent slopes. Gold feels that each wall should be proportionately averaged and take into account the perimeter (foundation line). Chair rereads the current Chikaming zoning definition which is the only definition we can work from and the definition is clear cut. A lively discussion ensues among the Board. Mr. Gold tries to give an example of plans which he has and the Chair advises that if this is a “personal” case to Mr. Gold, we cannot see any of the plans. ZA continues that take Point A (lowest) and Point B (highest) add them, divide – this is the midpoint. Mr. Gold continues that the calculations done by ZA and the calculations done by Mr. Gold changes the roof height on his project by 8 feet. Gold feels that there are many houses with a slope with this same issue and a potential problem in calculation the average grade. Chair again brings the conversation around to what we are being asked today – an interpretation of our current ordinance. We are not being asked to create a new ordinance or interpret someone else’s ordinance.

Rettig asks ZA about the intent of ordinance. ZA answers that the intent is to create a very simple method to calculate average grade when someone who may not have training in architectural engineering is trying to establish grade average. Rettig continues, so we are trying to calculate the grade to make certain that the building height does not exceed our ordinance.

Chair continue that it is very appropriate for the ZBA to make interpretations and answer questions of the ZA based on the information we have been provided. It is also appropriate for any applicant to come in with a very specific circumstance that is related solely to one (1) unique lot and ask for a variance (because of the unique circumstances) to a specific lot. Mr. Gold interjects that this is not a unique circumstance – this is a typical sloping lot. Sellers addresses the ZA and wants to know how the New Buffalo Township Ordinance (which was presented by Gold as being “standard”) compares to our interpretation. ZA answers that it does not matter because we are interpreting our ordinance. Rettig asks the question – but how close is the NB Twp. Ordinance to ours? ZA answers that it is more convoluted, would involve more calculations and measurements. Our method is intended to be simple.

Gold feels that things are missing in our definition. Our method is missing “length” in determining calculation.

Chair brings us back to point. We are being asked to find the average based on what is presented to us and rereads the definition. Continuing, if the Township chooses to change its ordinance to change the way it is written, then that’s different. We can only interpret the ordinance as it stands today. We as a Board should look at this simplistically as it is written. Gold continues to try to explain how he arrived at his calculations and feels that the ZA’s calculations are mathematically wrong. Further discussion. Chair continues and advises Mr. Gold that we do not want to hear any more about his specific case and he needs to file for a variance.

ZA interjects that all sides of this argument have been heard. ZA asks the question – what does the definition of the ordinance tell us to do? If the average person reading this should use POINT A (highest) and POINT B (lowest) – then average, or would a person reading this somehow make an effort to use multiple readings of the entire perimeter – I do not believe it tells us to do that. If you tell me it does, I will act accordingly. We should indeed have a vote.

Chair moves that we interpret the ZA's question: The Grade Average as being the midpoint between the lowest and highest grade elevation in an area within 5 feet of the foundation line of a building, or in the area between the foundation line and the lot line, where the foundation is less than 5 feet from the lot line – we are going to interpret that as taking the simple average between the one (1) highest point and the one (1) lowest point - taking the midpoint of that is the average grade for the establishment of the overall building height. The definition we are reference is in Section 2.09. Rettig seconds.

Discussion: Gold asks the Board to consider the impact that countermands the intent of the Ordinance. Gold talks about conforming lots vs. non-conforming lots, slopes, and the figuring of average grade as being critical. There is a tremendous impact on people building on a sloping lot. Rettig asks if ZA looked at any past lots that have had this problem. ZA says that he has gone back to several past cases and has always interpreted the same – highest point; lowest point – take the average. Chair continues that if there are still issues to ANY applicant based upon our interpretation would be to appeal the decision and/or apply for a variance for practical difficulty. ZA concurs.

Chair calls for voice vote on agreement with the Motion: Rettig – Yes; Anderson – Yes; Sellers – Yes; Gold – No.

Chair asks if there is any other business to come before the Board. None.

Chair declares meeting is adjourned at 2:15 p.m. Meeting adjourned.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved November 19, 2019