

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the September 15, 2020, Regular Meeting
APPROVED

ELECTRONIC MEETING VIA ZOOM, PER GOVERNOR WHITMER'S ORDER

The September 15, 2020, regular meeting of the Zoning Board of Appeals (held electronically) was called to order at 1:12 p.m. by Chairman (hereinafter Chair) Larry Anderson. Roll call of members attending electronically: Larry Anderson, Doug Dow, Liz Rettig, Tom Gold and Kathy Sellers.
5 present - Quorum.

Chair advises that the first order of business is to approve the August 18, 2020, minutes. Chair asks if any of the Board members have any corrections. Dow advises Secretary Rettig of two (2) typographical (Page 1 – “deceasing” changed to “decreasing”; and on Page 2 Section 402 corrected to 4.02); Rettig makes correction noted. **Chair asks that minutes be approved as corrected; Roll vote: Dow, Gold, Rettig, Anderson, Sellers – all AYES. Minutes are approved as corrected.**

Case #1182- Ken and Ruth Klint property owner, two (2) vacant lots at corner of Forrest and Cedar, Shorewood Hills, Sawyer, MI 49125. Property Code #11-07-0820-0148-00-1. Applicant is asking for a rear yard setback of 17 feet. This is a corner lot and applicant meets the two required 30' front yard setbacks and a side yard setback of 10' as required. Chikaming Township Zoning Ordinance #144, Section 8.05(D)(1) states the setback from the rear yard property line must be 30 feet.

Chair advises that before we open the case, the Zoning Administrator (ZA) Van Thornton has advised that some issues have surfaced including an improper/unlawful conveyance of land that is part of the parcel involved in this case.

Chair reads into record the Variance Application Comment Sheet from ZA dated September 14, 2020 [Summarizing that square footage calculations and the zoning ordinance were violated when ownership transferred.] COPY ATTACHED – becomes part of official record.

Chair reads into record a letter from Attorney Charles Hilmer giving comments on correcting square footage and advising that Lot 2 conveyance was in violation and further comments on consolidation of lots and that no Township approval was given and consideration of applicant of splitting the lot differently and a dimensional variance should have been requested. COPY ATTACHED – becomes part of official record.

Chair acknowledges the following correspondence:

- E-mail from Nancy Rode – questioning conveyance is in violation of the conveyance and resulting non-conforming lots
- E-mail from Clyde and Nancy Rode - 17' variance not necessary
- E-mail from James Wessendorf – 17' variance not in best interests of community
- Letter from Kenneth Smith – opposed to variance
- E-mail from Robert and Linda Miller – Klints need to adjust their house plans to meet ordinance requirements

- E-mail from Shorewood Hills HOA – does not meet Chikaming township variance criteria; Board concluded there are other design options to accomplish and maintain setbacks – do not support variance

Chair asks for comments from ZA who feels variance should be tabled for 2 months and allow applicant to resubmit because of Township Attorney's comments and other opposition by neighbors and to allow applicants to prepare different paperwork.

Chair asks for comments from applicant.

Gold makes a motion that the Klints be offered the option to table this for 2 months to respond to the legal issues. No second.

Applicant (Ken Klint) speaks advising that their legal representative Sally Taylor is available to speak and present their case.

Chair advises applicant that counsel may speak, but advises applicant that if variance request is rejected (even though a proper variance has not been applied for to combine lots or subdivide), applicant cannot come back for one (1) year on this matter and re-application would need to be done. Chair continues explaining that both the ZA and Gold with his motion are suggesting that applicant step back for 2 months to apply for variance to combine 2 lots to reduce the compliance of the Shirley Klint Trust lots or reconsider your situation and apply for taking 2,500 square feet from the Shirley Klint Trust and leaving that land as a compliant lot and adding the 2,500 square feet to the current 7,500 on the corner lot giving you a 10,000 square foot lot. Those are the options on the table.

ZA advises that the Klints have submitted an application to join the lots together, but I advised them rather than spend money on that, to wait and see if they could get a variance and then spend the money to join the lots. Now that Mr. Hilmer has given a few more options, it would be fair for the applicant to consider their position and resubmit.

Gold asks if we should hear from Attorney Sally Taylor. Chair feels it may be premature.

Dow interjects summarizing that there are five (5) issues on the table:

1. Was there a proper transfer of property – and what is the best way to resolve?
2. Attorney Hilmer has given several options
3. What is the size of the lot – 6 varying square footages – all different – all come out to less than 15,000 except for applicant whose calculations are more than 15,000. This should be tabled to allow clarification on the land issue. We need to see a survey to determine the resulting parcel size
4. If resulting lot is 15,000 feet or greater, we are in an NCR-C non-conforming lot for which the allowed lot coverage is 25%; if less than 15,000 square feet then the allowed lot coverage is only 20% and then we have a new issue with the construction
5. Requested rear yard variance

All of these points lead me to believe the best action is to table as suggested by ZA and by motion of Mr. Gold. I would amend the motion to require a survey of the proposed resulting lot to determine precise square footage.

Chair continues: I was not going to get into applied for variance of 17' because it is meaningless until we know what is happening with the lots. Reminds applicant of the letters all in opposition to the variance so as to understand where the neighbors and HOA stand. Chair gives the option to allow attorney Taylor to speak, but if that occurs, the Board would have to rule on the combination of lots and a rejection would mean not coming back for 1 year.

Klints ask their attorney if 2 months are necessary. ZA reminds us that unless we set a firm date for tabling, it must be re-noticed. Consensus of many is that 2 months is necessary for survey, paperwork.

Chair asks applicant to request tabling. Taylor feels that renotification is not necessary. Dow interjects that the lot coverage issue needs to be addressed. ZA advises that the Klints have submitted an application to combine but the document regarding footage was submitted by a landscaper, not a surveyor. Taylor advises that this will get clarified and advises clients to request 2 months.

GOLD MAKES A MOTION TO TABLE THE APPLICATION FOR TWO (2) MONTHS TO ALLOW THE KLINTS TO PREPARE THEIR APPLICATION MORE CLEARLY.

DOW AMENDS TO SPECIALLY RESOLVE ANY AND ALL ISSUES RELATED TO IMPROPER LAND CONVEYANCE AND TO PROVIDE A DOCUMENTED SURVEY OF THE PROPOSED NEW PROPERTY BY A LICENSED SURVEYOR THAT GIVES THE RESULTING SQUARE FOOTAGE OF THE PROPERTY.

RETTIG SECONDS.

ROLL VOTE: ANDERSON – AYE; GOLD – AYE; DOW – AYE; SELLERS – AYE; RETTIG – AYE.

TABLED UNTIL NOVEMBER MEETING

Case #1184- Annette and Reinhard Brinkmeier, 13480 Main Drive, Harbert, MI 49115. Property Code #11-07-4670-0078-00-8. Applicant is asking to construct an accessory structure in the front yard with no setback from the property line. Chikaming Township Zoning Ordinance #144, Section 4.02 requires a front yard setback of 30 feet

Chair reads into record the Variance Application Comment Sheet from ZA dated September 15, 2020, *[Summarizing ZA made recommendation with designer that new structure which is combustible be moved a minimum of 10' from other structure to avoid fire the result of which places the structure on property line. After a more depth review of the Michigan Residential Code, distance of 5' between structures is permitted on non-fire rated construction. Applicant should be permitted to amend his requested if desired to relocate the proposed structure at a distance of 5' from property line and existing structure. Private road is adjacent to the property, and no fire rated construction issues with this location.]* COPY ATTACHED – becomes part of official record.

Chair acknowledges the following correspondence:

- Letter from Dean Valas – in support

Chair asks for comments from applicant.

Sellers advises that she has 2 more letters:

- E-mail from Brent Sedlacek – roof overhang would impact water flow and would be in the road; proposes that structure be moved closer to the primary house a something less than 10' but keeping the roof entirely on applicant's property
- Daina Gjemre – in favor

Chair again asks for comments from applicant. Applicant wishes to advise that they presented their plans to the Harbert Woods Association and they received positive feedback. Says there are 3 more support letters that should have been received (Womberg and Chipman) in support. Applicant states that architect and ZA have been in communication and if 5' is now required instead of 10', applicant wants to amend the plan of Claudia Parish to put it closer to house – 5' only and asks ZA what is now required. ZA answers that the zoning requires 10' from structure and 30' from road, but building code issues dictate 5' from combustible structure.

Applicant requests amendment to 5'.

Gold asks for clarity from ZA – Will you issue the building permit if applicant amends application to 5'. The 10' is both in the building permitting and zoning code? ZA answers that the 10' is in the building code, but may be reduced to 5', but their application must be amended to meet zoning requirement. There has been no building permit issued yet.

Discussion: Sellers ask if this is a non-conforming lot. Applicant answers that they own 2 parcels. Sellers directs this to ZA. ZA cannot answer without a survey as to footage. Much discussion among applicant, board members, and ZA regarding configuration of lots vs. tax code numbers and combining. Sellers is worried about making a non-conforming lot more non-conforming. ZA clarifies that there are 2 tax numbers and the house straddles a parcel that is non-conforming and thus any addition would be make lot coverage over allowable and increases non-conformity. Further discussion on how lots were combined to make the 2 tax parcel numbers. Suggestions to recombine/reconfigure lots to eliminate lot coverage issues. Chair clarifies there are 3 variances needed: lot coverage, build in front yard setback (relief from 30' setback), and build 5 feet from house. More discussions about why this structure is not being attached to the house. Applicant did not realize this was an option and would like to consider. Attachment to house would eliminate the 5' separation issue (accessory structure in front yard) but still at issue lot coverage and set back from road. Lots could be combined in such a way so that house could be a conforming lot and eliminate lot coverage issue. Combine 47, 48, 46 as one parcel 45 and 44 as one parcel. Would be a better idea to combine all. Discussions about location of front entrance and possibly moving structure. Any structure on existing parcel will cause too much lot coverage. Variance could be conditioned on combining all lots to 1 parcel and making only 1 variance issue – 10' from street. Chair asks about utility easement and if building on easement is allowed? ZA says survey does indicate a utility easement. Chair feels that we cannot approve a building over a utility easement. ZA says easement would have to be read and researched to identify location and determine if structures are allowed.

Chair now addresses the applicants to offer that this matter be tabled to get more information as to easement and terms. Gold asks the bigger question: Easement or no easement, will we be able to approve this variance and make the applicant come back. Dow summarizes stating that the biggest issue is that the house is non-conforming built on a non-conforming lot of only 10,000 square feet. Applicants have plenty of land to eliminate the non-conforming problem by joining both parcels (no longer a lot coverage issue). Continuing, this would take us to remaining issue: accessory structure in front yard would go away if they attach carport to house and the only issue is allowing a building in the front yard setback. Upon resolution of easement and ability to build over easement, 10' setback instead of 30' setback is left as the variance. Seller asks – is there no where else to put carport? Dow: Garage elsewhere would be burdensome because of the lay of the land – making this the practical difficulty.

Gold: The problem is: If they cannot build on the easement, we are back to square one – asking for an accessory building in the front yard. Do they have the right to come back to make request and put applicant through the hoops if we can't approve?

DOW MAKES A MOTION TO TABLE THIS APPLICATION FOR TWO (2) MONTHS AND RECOMMENDS THE APPLICANTS RESOLVE THE FOLLOWING ISSUES BEFORE COMING BACK TO BE HEARD:

- 1. DETERMINE THE TERMS OF THE EXISTING UTILITY EASEMENT AND IF IT CAN BE BUILT UPON**
- 2. COMBINE ALL LOTS INTO ONE TAX NUMBER**
- 3. DETERMINE WHETHER THEY WISH TO ATTACH THE STRUCTURE TO THE EXISTING HOUSE THEREBY ELIMINATING THE NEED TO APPROVE A SEPARATE ACCESSORY STRUCTURE.**

Gold asks one more question: Is there no foundation? Applicant: Gravel underneath with posts – carport with open sides.

RETTIG SECONDS.

CHAIR ASKS FOR ROLL VOTE: DOW: YES; GOLD: YES; SELLERS: YES; RETTIG: YES; ANDERSON: YES. TABLED UNTIL NOVEMBER.

Case #1185- Soar Harbert, LLC, Reinhard Brinkmeier, 13630 Red Arrow Highway, Harbert, MI 49115. Property Code #11-07-0010-0038-29-1. *Applicant is asking to attach a 514 square foot dwelling unit to an existing commercial building. Chikaming Township Zoning Ordinance #144, Section 4.02 requires 940 square feet for a single-family dwelling.*

Chair reads into record the Variance Application Comment Sheet from ZA dated September 15, 2020, [Summarizing ZA: Current ordinance allows for a single-family dwelling unit on a parcel in a C-H (Commercial Harbert) District. However, as differentiated from our previous ordinance which allowed a single-family dwelling unit to be attached to a commercial structure under a special land use permit Table 3.01 of the current zoning ordinance permits both single family dwelling units and commercial uses in a C-H district and Section 5.01(h)(2)(b)(i) does permit a single-family dwelling on upper floors of mixed-use structures. Two unique conflicts exists: 1) A dwelling unit is defined as “any building, or part thereof” and 2) a single-family dwelling unit is defined as “a room, or rooms, within one

independent structure” Recommendations will be made to the Planning Commission to alleviate these conflicts. This then becomes a 2-part variance: 1) request to lower the required size of a single-family dwelling from 940 to 514 square feet and 2) request to allow a single-family dwelling to be attached to an existing commercial use structure. COPY ATTACHED – becomes part of official record.

Chair asks for additional comments from ZA. None.

Chair asks for comments from applicant. We need additional storage space to sustain our business (Stockholm Objects) and the dwelling is not meant to be a permanent residency for anyone, but a temporary housing for workers during the main season.

Chair: Could it be for rental purposes. Applicant: It could, but that is not our main purpose.

Gold (speaking for Jill Underhill) asks if there is a public comment time. Since neither of the first 2 cases were opened (only tabled) they had no public comment.

Chair asks about lot coverage – asking if coverage starts at road right of way. ZA advises that 16,800 square feet exists and taking away paved (right of way), we get 11,640 sq. ft. and at 70% coverage, they would be allowed 8,148 square feet of coverage. Lot coverage is not at issue.

So the 2 issues are: 1) attaching a unit to an existing structure and
2) building at 60% of required size.

Gold asks some questions to ZA – is this allowed or not allowed under the new ordinance. ZA answers that if not connected or on 2nd floor it would be allowed with no variance. Dow interjects that the current ordinance does allow residential in a commercial zone (mixed use zone) but was not anticipated was “attached” single family unit on same level. Size is still at issue. Applicant says that building is historic building and does not want to put on a 2nd story. By adding to back, it makes it invisible from the road. Dow: an issue that the new zoning ordinance has tried to address seasonal housing and this is being addressed head on and the size although smaller is not substantially smaller.

Chair asks if there are any special requirements if this becomes a rental unit. ZA – this would be addressed by our rental ordinance.

Chair opens floor to public comment:

Jill Underhill wonders what purpose of a dwelling and gives appearance of short-term vacation rental. Applicant answers that this summer has been extremely challenging because of CO-VID crisis and inability to find workers. This idea was born from that problem and we need storage. Jill continues if it would be closed for rest of year. Applicant says they are open 10 months and this is mostly storage instead of renting off site storage. There is a property next door that is vacation rental and we don't want to compete.

No further comments from public.

Gold applauds the applicant. Chair asks if applicant would be willing to increase the structure to meet additional square feet to meet the current zoning. Applicant is concerned about being forced to add more square footage and to invest more especially in our current economic climate.

GOLD MOTIONS THAT WE APPROVE THE VARIANCE AS REQUESTED. DOW AMENDS “TO ATTACH A 514 SQUARE FOOT DWELLING UNIT TO AN EXISTING COMMERCIAL BUILDING IN THE C-H COMMERCIAL MIXED-USE ZONE.” SELLER SECONDS AS AMENDED.

Chair goes over criteria:

- 1 Are there unique circumstances or conditions that exist? Yes – mixed commercial zone.
- 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 – because applicant would have to build a much larger structure than what is needed for temporary staffing
- 3 The unique circumstances do not result from the actions of the applicant? Yes. Recognizing conflicts from old ordinance to new
- 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. Recognizing historical nature of structure.

Roll call vote to approve: Seller – YES; Gold – YES; Dow – YES; Rettig – YES; Anderson – YES; 5-AYES. VARIANCE REQUEST GRANTED.

Chair declares meeting is adjourned at 2:45 p.m. after hearing no other business before the Board.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved October 20, 2020