

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the December 20, 2016, Regular Meeting
APPROVED

The December 20, 2016, regular meeting was called to order by Vice Chairman Mario Zarantenello at 1:00 p.m. with the following regular members present: Liz Rettig, Mario Zarantenello, Carol Sizer, and Kathy Sellers; Alternate Larry Anderson also present. Lee Strohl was absent

Also in attendance were the following (on sign in sheet): Phil Bender (ZBA Alternate), Vern Kits, Leo Krusack. It is also noted by secretary Zoning Administrator Van Thornton was present.

The first order of business is to approve minutes from the November 15, 2016, Zoning Board of Appeals meeting. Sizer notes minor word corrections on Page 1 third to last paragraph (letter should be changed to letters) Sizer motions to accept minutes as corrected; Sellers seconds. All Ayes. Motion carried and minutes are approved as corrected.

Case 1124 at 1:00 p.m.: Brian Borchard, property owner, Property: 9890 Greenwood Avenue, Union Pier, MI 49129; Property Code No.: 11-07-4600-0060-00-1

Applicants propose to construct a new addition that will be 8-12/ feet from the existing garage which is a variance of approximately 1 ft 9-1/2 inches. The Chikaming Township Zoning Ordinance Section 15.03D requires 10 feet between structures.

Vice Chairman Zarantenello asks if anyone is here on behalf of applicant. Builder/General Contractor Vern Kits speaks on behalf of owner, Brian Borchard, and interjects that the new addition on the house is already built. Alternate Anderson asks, "then what is the variance?" Chairman says that the Ordinance requires 10 feet between structures and that is the variance request. Mr. Kits goes on to say that this process was started some months ago and the builder and the owners knew that the garage had to be removed (see building permit #P2016-0103). As the addition got built, the owners had second thoughts about removing the garage structure and Kits came to speak with the "then" zoning administrator Rich Kupich and also to Theresa Priest and based upon assurances from Rich and Theresa that if plans were drawn up to connect the house and structure with a breezeway, the garage could stay. Later when Chris Miller, the Building Inspector, looked at the plans and the structures, his concerns were connecting the two buildings because the house has footings and the garage was a slab. By then Rich and Theresa were both gone and there was no zoning administrator and the builder was at an impasse. Kits had 3 or 4 conversations with [Supervisor] Wayne [Warner] and he said he would speak to the Township attorney and nothing became of that. Mr. Kits went on to say that when he eventually spoke with our current Zoning Administrator, Van, who said that the hardship was self-created but he needed to apply for a variance. Mr. Kits feels that the hardship was created by Chikaming because he got much misinformation from many people in the zoning department who are no longer here and because he was told many times by the "then" in power to get plans for a breezeway and was promised that this would then be approved. Plans were drawn by Audie Brooks for the breezeway and paid \$1200 - \$1300 for the plans. Utilities were rerouted at the

homeowner's expense. The builder says that at this time, the request is only to keep what is there and not to build the breezeway – not to tear down the garage, just keep what is there. The garage siding will be removed and changed to match the house.

Chairman Zarantenello asks if the variance is limited to the distance between the houses or do the structures exceed lot coverage with the addition. Mr. Kits says it is a large corner lot and there are no other challenges, only the distance between the structures.

Larry Anderson says that the distance is 7-1/2 feet because he measured it. Zarantenello asks if he measured from foundation to foundation. Anderson says yes.

Sizer questions the builder about the breezeway. Mr. Kits reiterates that he would be happy to build a breezeway, but Mr. Miller had many concerns about connecting the foundations, but he says he would be more than happy to put the breezeway in if they can keep the garage. Sizer comes back to the original building permit saying that the original garage had to come down based upon the original building permits. Sellers interjects, "which you would have done, had you not spoken to the various people at the Township who told you about keeping the garage with a breezeway?" Mr. Kits says yes. Mr. Kits provides a copy of a drawing for the breezeway. Rettig asks ZA Thornton, "if the breezeway is built according to the plans, would it be in compliance with our zoning ordinance." ZA answers that tying the two (2) structures together is the challenge (frost-free structure vs. non-frost-free structure – 18" footing with 42" footing) and other issues are that the breezeway creates an impediment (according to the Fire Chief) and the breezeway creates a route for a fire to travel from structure to structure. ZA continues stating that the builder said he would treat the garage as if it were attached by putting drywall and fire resistant door. ZA's recommendation is not to tie the two together if there was a choice.

Anderson feels that the door and the wall would need to be fireproofed anyway. Anderson's concern is more about how to tie the foundations together. Anderson suggests a structural engineer to review the condition of the ground because of movement because of the frost.

Sellers: Why does a breezeway vs. a non-breezeway make this more compliant?

Thornton answers: Neither affects the compliance with the zoning ordinance because if the breezeway were 15 feet wide then this would allow us to call the garage and house attached, but this would be impractical.

Sellers: Not knowing what these "others" had to say, was it inferenced that you had to get a variance?

Kits: Rich and I had a conversation and his main concern was the 10 foot rule which he thought was ridiculous and was going to have that changed. He said that if you get plans drawn for a breezeway, this would be ok.

Sellers: Questions why architect's plans would make it ok if the plans are not drawn up in compliance with the ordinance.

Kits: Reiterates that the ZA says that if you draw plans, this will be ok. This is what I provided. As a contractor, I came to the Township to move forward. I was given this.

Sizer: Just by drawing plans, does not make it ok.

Kits: I talked to Chris about the breezeway and said he was already promised that it could be done. Chris was not happy, and Kits said he was already promised.

Sellers: Does a breezeway alone make this an attached garage?

ZA: No it does not based upon our ordinance.

Zarantenello: Our ordinance states that an attached garage shares a foundation with the primary structure.

ZA: The inspection record bears out what Mr. Kits says. Mr. Miller's record of inspection says that on June 7, 2016, he approved the footings. Brooks Architectural drawings are dated July 21. Footings inspection 1-1/2 months between the inspection and the drawing preparation. If Kits were trying to mislead us, the dates on the documents show that he came back and got some kind of approval and then he moved forward, whether or not it was legitimate.

Kits: I probably shouldn't have gotten approval. The drawings were made up shortly after Rich arrived. We framed in a door from the main house to the garage where the breezeway was going in and it is now drywalled over. AEP rerouted the electrical lines. All this was based upon conversations with the Zoning Administrator official. I even asked if I had to get a new building permit. I was told, No, the breezeway can be rolled into the existing permit. I proceeded with the anticipated connection. We just want to keep what's there. We don't have to build the breezeway.

Rettig: When the plans were drawn and you knew they had to be 15 foot wide, why weren't they drawn that way?

Kits: The breezeway was never intended it to be 15 feet. Rich said that that was not a necessity, said just connect the two.

Rettig: The drawing to me is neither here nor there. Brooks just picked a dimension.

Kits: Yes.

Zarantenello: The drawing was done to match the situation – to remediate the problem.

Anderson: The whole thing starts with an agreement. If the addition gets built, then the garage has to come down. If we decide to let the garage stay, then the breezeway has to be built to meet the code. It's either gone, or it has to be connected properly.

Kits: But, Chikaming did say that. We moved forward, we moved the kitchen window, we spent money on plans.

Sellers: It seems odd to me that the owners wanted to take down the garage.

Kits: They didn't like it. I tried to talk them into keeping the garage or moving the garage. After we put the addition on, the owners rethought the garage if it could be resided. I had many conversations with Theresa when she was the Zoning Administrator. I then spoke with Rich after Theresa was gone. I spent money on drawings and would never have done so if I wasn't told to move forward. I was given permission by the Township. The hardship was initially created by myself (keeping the garage), but then I was given other information by Chikaming officials that we could keep the garage and move forward, and now the hardship is Chikaming's, based on assurances.

Sizer: Could the garage be moved?

Kits: Yes, but I don't think that I should have to. I was told specifically that I would not have to, nor should have to. Argues that he was given approval - should have gotten something in writing. Would not have done all this work and would not have moved forward without some assurance from the Township.

Sizer: We could argue this all day. What are the options at this point to be in compliance?

- 1) Move the garage
- 2) Tear down the garage
- 3) Build a breezeway

Kits argues there's another option, leave the garage.

Zarantenello, says that building a breezeway by the plans is not an option.

Zarantenello closes public comment and wants to have the Board discuss.

Kits asks one more time, if the Board is looking for evidence at all, put together a time line.

Sizer, Zarantenello, and Rettig all agree that they truly believe Mr. Kits version.

Rettig: The Board's problem is the information or misinformation given to the builder does not give this board the ability to act.

Kits: If I was given information by an official, do I always have to get it in writing.

Rettig to Van: Can an open building permit be amended.

Van: Yes.

Zarantenello: I don't believe that Rich gave you permission to build a breezeway. I believe he said draw it up so he can decide whether it was permissible. I have to discount anything that Theresa may have said.

Kits: As a contractor, am I not supposed to trust what a zoning administrator said.

Zarantenello: A zoning administrator cannot override what the zoning board says.

Kits: We trusted

Zarantenello: The unfortunate part of this is that

Anderson: Was there a variance granted for the addition.

Van: No, because the building permit said the garage was to be removed.

Rettig: There was no need for a variance. After the fact, they now have decided they want the garage.

Discussion regarding setbacks and what the front of the house is, side yard and setbacks. Permit was ok.

Board discussion:

Carol, I made my point.

Rettig: Let's go over the four options. There's no room for a 15 foot breezeway. A non-conforming breezeway would require an additional variance.

Anderson: The options are remove the garage, or move the garage. This would require another permit, not a variance. Grant the variance to put in a smaller breezeway (amend the variance) or do what they've asked, allow the garage to stay.

Sellers: There's a huge elephant in the room – he got wrong information. Had architect plans, cost more to move garage, this Township (not this board) gave bad advice. It has already cost the customer money and this would not be the first time we made an exception. I feel we should uphold the customer – who got wronged.

Rettig: I am trying to get to the bottom. Knock out the breezeway. Let's get to the best solution. I say to give the 3 foot variance.

Sizer: If he hadn't gotten the initial building permit, I would agree.

Rettig: There were many steps in between the permit and today.

Anderson: I still uncomfortable with the architect providing plans that are non-conformant.

Rettig: Just because an architect drew it, it is still non-conformant.

Zarantenello: I will now weigh in. Wonders why they want to tear down this garage. Read through the whole file, felt that conversations did take place. What is the legal thing we have to do – uphold the zoning. Could not find excuse to keep the garage because the building permit “agreement” says that the garage must be torn down. One party wants to amend the agreement, is there way to keep the garage, and was given advice by Rich – attach garage to house – so the agreement gets amended. Attaching with a small breezeway is detrimental and health and safety issue. Now, more evidence and clean up zoning administrator mistakes. I believe we will harm applicant if we say tear down garage, drawing, moving utilities, extra steps in the garage, moving window. This does not constitute a practical difficulty, but the practical difficulty is the result of actions of prior representatives of Chikaming and strict compliance would unnecessarily burdensome on owner. The variance is for the space between the structures - not for a breezeway – that is off the table. When the building permit was issued, a variance should have been requested for the garage to stay.

Rettig: If we give the variance, we can ask the ZA to amend the current building permit to remove the requirement to take away garage.

Anderson: Should a requirement be made to inspect the garage to bring to code?

Zarantenello: We have a garage that’s too close to the house, we should have a condition to bring the garage closer to fire code. Reopens this like it’s a “new” structure.”

Sizer: If we grant variance, this allows us to put conditions.

Anderson: Bring this to a standard as if it were connected.

Zarantenello: Building permit to remodel garage to “attached” garage standard.

Van: To try and help clarify building issues, the garage with a solid door and ½ inch sheet rock would comply with the building code as if it were attached. Mr. Kits has agreed that the garage will meet those requirements. Suggest that garage will meet code “as if it were attached.” Accomplish best thing and not create any situation to endanger anyone. Meet the intent of the code.

Rettig: Building permit be absolutely amended for the paper trail.

Zarantenello: Surveyor drawing says 7’ 9”.

Rettig makes a motion that this Board APPROVE the request of Mr. Vern Kits on behalf of the homeowner for a variance of approximately 2 feet 3 inches in order to allow the existing garage at 9890 Greenwood Drive to remain because:

1. The circumstances of this matter are unique to this property and do not apply to other lands, structures, or buildings in the same zoning district.
2. Strict compliance with the provisions of the Zoning Ordinance would be unnecessarily burdensome on the owner.
3. The unique circumstances are not the result of actions of the applicant. The unique circumstances are the result of actions of prior representatives of Chikaming Township.
4. This variance request is a minimum variance which will allow the reasonable use of the garage.
5. The granting of this variance will be in harmony with the spirit and intent of the Zoning Ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, and welfare.

6. That the conditions that this Zoning Board has placed upon this garage is that it be brought up to minimum current standards as if it were an attached garage which is a solid door and ½ inch drywall for fire safety to meet the intent of the code.
7. The Applicant must amend his current building permit #P2016-0103 to remove the condition of the removal of the garage and request that the garage remain and the building permit include all the conditions of number 6.

Roll call vote: Sizer Yes; Sellers Yes, Rettig Yes, Anderson Yes Zarantenello Yes.
Motion carries unanimously.

Anderson motions for adjournment at 2:12 p.m. Sellers seconds. All ayes. Motion carried.

Rettig: Special meeting for January 6, 2017, is cancelled (Chudik). Court case settlement conference is scheduled for January 13.

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary
APPROVED: 3/14/17