

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the February 15, 2022, Regular Meeting
APPROVED

The February 15, 2022, regular meeting of the Zoning Board of Appeals was held at Chikaming Township Hall and called to order at 1:00 p.m. by Chairman (hereinafter Chair) Larry Anderson. Roll call of members attending: Phil Bender, Liz Rettig, Larry Anderson, Bob Beemer. 4 present - Quorum. Noted that Attorney Hilmer and ZA Kelly Largent (hereinafter ZA) are also present along with many others attending in the audience.

Chair advises that the first order of business is to approve the January 18, 2022, minutes. Chair asks if the Board members have any corrections/additions. Anderson gives Secretary Rettig 2 minor correction on page 1.

ANDERSON MAKES A MOTION TO APPROVE THE MINUTES AS CORRECTED THROUGH A VOICE VOTE. VOTE: 4 AYES. MINUTES APPROVED AS CORRECTED.

PHIL BENDER RECUSES HIMSELF FROM CASE #2003

Case #2003- Applicant, Edita Maier, 15256 Lakeshore Road, Lakeside, Property Code #11-07-0019-0087-02-0 is requesting a variance from Chikaming Township Zoning Ordinance #144, as amended, Section 7.02(C)(5) which states in part, the maximum height of an accessory structure shall not exceed 18 feet. Applicant is proposing a garage height to be 21 feet 11 inches.

Chair asks ZA to walk us through the case. ZA advises that accessory buildings on 1 acre or less are limited to 18 feet. The applicant is asking for an increase of 3 feet 11 inches.

Chair reads e-mail letter from Sam Darrigrand (Manager of Lakeside Inn) asking the height ordinance be enforced and the variance not be allowed.

Chair asks if applicant wishes to speak. Applicant Edita Maier speaks stating she wants this variance to change their design from a flat roof to a peaked roof. The 3 reasons are: 1) Height at street level compared to height at property. Height at street level is significantly higher (about 11 feet). The driveway to the property descends down to the point that you would not even know that the house was there if you were driving by and is lower than adjacent properties surrounding and lower than the Lakeside Inn across the street; 2) The request is for a peaked roof for practical purposes in Michigan and because of maintenance issues, ice and snow; 3) Aesthetics is the other reason. I believe the height variance will not impact the view, sight lines, or aesthetics.

Chair asks for public comment. None.

Chair asks if Board has any questions for ZA or applicant.

Beemer asks ZA what the height of the ceilings are on the 1st floor and 2nd floor. ZA does not have that information and that information would not be submitted until building plans are submitted. ZA is only concerned with overall height.

Rettig asks: Why does 18 feet necessarily mean the roof must be flat – it could still have a peak at 18 feet. Chair asks for clarification from ZA. Our ordinance says 18 feet to the midpoint of the roof pitch. If they had a steeper roof pitch, they could have the midpoint at 18 feet and still comply without needing a variance. What it really comes down to is the design of desiring a 2nd floor over the entirety of the building instead of partial. ZA agrees. Beemer comments: For all we know, these are 9-foot ceilings. What is practical and what is appropriate for a garage that meets the zoning. Rettig continues, whether or not the property is low, does not matter. Our issue is from the ground up.

Chair moves forward with going 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. No. All 3 agree.
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. No. All 3 agree.
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. Unique circumstances do not exist. All 3 agree.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. No – not minimum. All 3 agree
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. No not in spirit with the ordinance. All 3 agree.

BEEMER MAKES A MOTION THAT WE DENY THE VARIANCE REQUEST BASED UPON FAILING TO MEET THE CRITERIA; RETTIG SECONDS. ROLL VOTE: RETTIG, ANDERSON, BEEMER - ALL 3 AYES. VARIANCE IS DENIED.

Phil Bender now joins the Board at the table.

APPEAL:

Chair: Our next case is an appeal and an interpretation for property at 12652 Bronwood Drive, Sawyer. Chair asks ZA: Did the applicant now change his address? ZA responds that they did not change their address, they zoning ordinance allows a party to declare a front lot line which does not necessarily cause them to change their address. Rettig: So front lot line could be different than the address? ZA: Yes.

Chair reads letters into record:

Ron Lindenberg e-mail who owns property at 12638 Hillside Drive, directly west adjacent and down below the Bronwood address in question. We think allowing the house on Bronwood to change its address to a Hillside address and then build 10 feet from their future neighbors the Carlsons is a terrible idea. Let the code stand. The property is too small for a big house that does not fit the code.

2nd letter from Lindberg: It seems to me that a much simpler solution to a variance that enables digging up the road to put a garage in the basement and enlarging the footprint of the house that would disturb their neighbors to the North, would be to allow a new house to go to a second floor. There is no one to the west of them to be obstructed. Recently the Terrels their neighbors to the south were given a variance

because they did not change the footprint of their new building. A 2- story house would be a fine addition to the community without getting too close to the neighbors or digging up the road (on a sand dune) to enter a garage.

E-mail from Tom and Karen Neal: I am concerned with the possible changing of the front vs. side lot lines. I understand by doing this (if granted) it gives more room for building up to a property line and less need for the amount of setbacks one needs to construct a new home. The concern is the encroachment it creates on one's neighbor. This area was created over 100 years ago and building then is not like building today. I fully understating creating a home that is more functional. However, I am not ok with creating large homes on a small space. I feel that the lot at 12652 Bronwood is large enough to create a new home that is appropriate to stay within the confines of what the Township will allow and respect the neighbors.

John and Pam Carlson of 12638 Bronwood: Thank the ZA for all her work and protecting homes and we support Kelly's determination of front and side lots. Have review Mr. Moore's comments and documents from Passaro, Kahne, Taylor, DeFrancesco and Thompson – these are paid planners and lawyers hired to convince the Board that Kelly is wrong. We believe ZA is correct and do not agree with Mr. Moore's interpretations. If homeowners were allowed to change their addresses to change lot designations to determine a front or side in order to build within 10 feet of another's lot line, we are opening the Township to chaos. Bronwood is the only access to our home and the Pesek's home. Hillside Drive, the road below, does not provide car access to either of our properties. We both have walking paths that allow access to Hillside Drive and for accessing the beach. Kelly's review and interpretation that the property north of the Pesek home and south of our home correctly designates a front. Therefore, the setback should be 30' or in this case 23.5' due to the unconventional configuration of the Pesek's lot. The Pesek home currently allows views into our bedroom. We have changed our bedroom configuration and put up window blinds since they purchased to home. To grant them a 10-foot variance further exacerbates the problem and would place their deck uncomfortably close to our bedroom and our guest bedroom. We have lived in our home for 40 years and with parents 10 years before. We've enjoyed and appreciated privacy and time-honored configuration of Woodlawn Beach established by the Holloway Family in the early 1900's. The history of Woodlawn Beach described the vision of the founder (George Holloway) and the Peseks cannot ignore the acts and intentions. The Pesek's knew the property limitation when they purchased their home in a foreclosure situation. We support the Peseks in building to township rules, but rights have to be protected. There is plenty of space, east and west on the Pesek property to build a beautiful house with a lake view. The architect did not take the property limitations into consideration. We ask that the Peseks respect the setbacks and privacy that was deliberately designed and has endured for decades. Hopes ZBA continues to support ZA.

Chair asks Kelly to explain her decision.

Kelly: For the appeal for the decision, they are appealing my interpretation of the zoning ordinance and my interpretation of what is their front, side and rear lot lines. My determination was that Hillside was a front, Bronwood was a front, and Woodlawn was a rear. Their South property line (abuts Tyrell) became a side based upon their declaration that Hillside was their declared front. They are appealing that decision. My decision was based upon reading the definitions in the zoning ordinance for corner lots, through lots, front, side and rear lot lines and making a determination based upon the information provided.

Chair: Before we hear from the application, I will read 17.04(B)(2)(a) page 210: "In hearing and deciding appeals under this sub-section, ZBA review shall be based upon the record of the administrative decision being appealed, and the ZBA shall not consider new information which had not been presented to the

administrative official, board or commission from whom the appeal is taken. The ZBA shall not substitute its judgment for that of the administrative official, board or commission being appealed, and the appeal shall be limited to determining, based upon the record, whether the administrative official, board or commission breached a duty or discretion in carrying out this Ordinance.”

That’s all we are to be looking at.

Chair: We will now hear from the applicant. Attorney George Lepeniotis introduces himself as speaking for the applicant. The presence of attorneys here does not show there is a challenge or being adversarial and we are before this Board for a very specific interpretation. This is a complicated lot and complicated interpretation. Your ordinance allows for non-conforming lots and under Section 8.05, nonconforming R1 lots that are subject to different interpretations than your normal lots including what is front and what setbacks are to be applied to these non-conforming lots. This particular lot is a non-conforming NCR1-B and under subsection D/a has a specific way of calculating front yard setbacks depending upon the shape of the lot and how many frontages you have. Under Kelly’s determination, this lot had multiple front yards both on Bronwood and Hillside. That determination when it came to the last Board meeting for a variance on height only, was a last-minute introduction and my client became concerned with the interpretation. We have requested additional information which Kelly has provided, and we have provided responses in the form of letters from Attorneys as well as my clients has hired Andy Moore of Williams & Works who will in a moment discuss this further. Before we get there, I want to be clear we are not asking for an address change, the ordinance specifically allows the applicant to connote a frontage, we are not asking to dig driveways. The simple question, what is frontage, what is side, and what is rear and what is the appropriate way of calculating those setbacks.

Mr. Lepeniotis turns floor over to Andrew Moore of Williams and Works.

Andrew Moore begins and walks Board through technical aspects. This is a confusing lot. The ordinance is written for typical lot patterns. The property is .33 acres zoned R-1, and NCR1-B designation. That section is in there specifically to regulate and recognize unusual parcels. What are the front, sides, and rear? Definition of front lot line: “The line separating said lot from the public or private road right-of-way. In the case of a corner lot or double front lot, the front lot line shall be that line that separates said lot from the right-of-way for the road which is designated as the front on the plat or which is designated as the front on the site plan review application or request for a building permit.” It then talks about flag lots, which do not apply here. The main question or interpretation here is “the line that separates the lot from the public or private right of way” – that is your front. This is not a platted lot. We believe Hillside should be the front. Our reading of this is that this is a through lot. When we apply the standard that says the “line that separate the lot from the public or private right of way” includes Hillside and Woodlawn. These are the only 2 that separate the lot from the right of way. The Bronwood side, while there is a spot where Bronwood dead ends into this lot line, to me that lot line does not separate the entire lot from the right of way. It separates a very small portion of the lot from the very end of a right of way. My concern is that any part of any lot line that has a sliver of a shared boundary with any right of way, the Township can designate that as a front for its entire length. Most of the lot line separates the Pesek lot from other properties, and based on that, we feel that it would be best interpreted as a side. So, you would have Hillside and Woodlawn be considered as fronts with front setbacks. Based on it being a through lot, the other 2 would then be sides based on the survey. The main issue is that we respectfully disagree and Bronwood should be a side not a front. One other thing is why NCR exists. The ordinance purpose is to help preserve the unusual by applying the setbacks as suggested – front yard on 3 sides and a side on 1 would be quite restrictive and the NCR helps by not taking away too much land taken up by front setbacks.

As a final note, when we talk about measuring a front setback. We thought about considering this a corner lot, but by reading the definition of a corner lot, that is a situation where you have a lot at the intersection of 2 streets. We don't have that situation because Bronwood and Hillside do not intersect.

Chair asks if there are any questions from the Board. None

Chair asks for Public Comment. None

Attorney Lepeniotis asks to speak again asking to address the letters. Chair stops Mr. Lepeniotis and advises that we are a little confused by the presentation in that we were taking this in steps – the first being the appeal of Kelly's decision and then an interpretation of lot lines. Are you speaking as to her interpretation at this point? We are going to be addressing the appeal of her decision and then we will get into the lot line.

Lepeniotis agrees to let the board decide on the appeal.

Board discussion ensues. Chair begins: Based on a reading of the administrative review 17.04(2)(a) and based on what we have heard from the applicant and what we have heard from the Zoning official, do we believe that she has breached the duty or discretion in carrying out her interpretation of the ordinance? She has looked at the definitions, explained the definitions, explained how she arrived at her decision. Beemer: I believe Kelly stands on firm ground with her decision. Rettig and Bender both agree. Rettig continues that just because Bronwood does not run the entire length, does not mean that it not a front yard setback. Chair agrees that Kelly is on solid ground with her interpretation. Beemer continues with what Kelly wrote in her memo of January 3, 2022, "I find the information provided by Mr. Moore does not sway my determine. Unfortunately, the definition states that it is a front lot line if it abuts a road right of way. It does not contemplate how much of a lot line." Rettig: Agreed, it does not state the length. Beemer: It is also the only automobile access to the lot. Hillside has only walking access; Woodlawn is undeveloped. Bronwood is the only roadway accessible by car.

CHAIR MAKES A MOTION: BASED UPON THE READING OF ORDINANCE 144, SECTION 17.04(B)(2)(a) AND A REVIEW OF ALL MATERIALS PRESENTED TO THE ZONING ADMINISTRATOR FOR REVIEW REGARDING THE PROPERTY KNOWN AS 12652 BRONWOOD DRIVE, WE FIND THAT THE ZONING ADMINISTRATOR DID NOT BREACH HER DUTY OR DISCRETION IN CARRYING OUT THIS ORDINANCE. BEEMER SECONDS. ROLL VOTE: RETTIG, ANDERSON, BEEMER, BENDER – ALL 4 YES.

INTERPRETATION OF LOT LINES:

Chair asks the ZA to walk us through what we will be hearing regarding lot lines.

ZA begins (and shows us on screen some different types of lot line variations). Initially on October 6, 2021, this is the lot diagram that was presented by the architect for the ZBA's review that was tabled for the building height and this interpretation request. This is the information that was initially submitted. Based upon the information, I did this review.

When I received the application, I took a look at the lot information with the existing house which shows Hillside Drive and Bronwood and no identification of Woodlawn Drive. I made the determination at the time that Bronwood was a rear – not knowing it was a road right of way. Upon further investigation I

made the determination that Bronwood was not a side. When I started digging more into this, I sent out for the actual Plat of Woodlawn Beach and discovered that the rear (what I am calling a rear) line actually abutted onto a road right of way and was not really a rear, it is a front. What is the impact of it being a rear vs. being a front based upon our non-conforming lots of record and using the property on either side to determine 30 feet or the lesser with the average of the properties on either side? Down in this corner (Kelly pinpoints a small squared out parcel in the Southwest corner along Woodlawn taken out of the Pecek lot next to Tyrell property) there is a small piece that belongs to the neighbor's property to the South. That gives the neighbor frontage on Woodlawn Road right of way. The neighbor property is a conforming lot (unplatted) having 1.44 acres. When it is an undeveloped lot, how do you assign a setback distance? So, you have to follow the zoning ordinance and the 30 foot becomes the front. In the NCR1-B (8.05) the required setback for a rear lot line is 30 feet, therefore, with this being a front or being a rear, Pecek's would still have a 30-foot setback. So, I left it as a determination as a rear because there are other things that come into play when putting this as a rear lot line – that would be the issue of a fence height and I gave Pecek's the benefit of the doubt. If we leave Woodlawn as a front and Hillside as a front, they have no rear yard and would only be able to build accessory buildings in the side yard and never be able to build a pool as pools are only allowed in the rear yard. These are some of the items I took into consideration in declaring Woodlawn as a rear as opposed to a front. When I came to the portion of looking at Bronwood, the zoning ordinance does not contemplate the length of the segment only that it abuts a road right of way. When I looked at making it a side based upon the application, I went to the definition of a side lot line, it says "any side lot line that abuts a street, becomes a side street lot line." Then what comes up for consideration is this is a side street lot line so if we declare Bronwood a side street, so this lot line being a side street lot line what it is? It is side lot line or a front lot line because Bronwood is a side street? When you go back to definitions, a front lot line is that which abuts a road right of way and it separates those two – so therefore, Bronwood being a side street is still a street no matter how much frontage is there, therefore, I left it as a front declaration. The one for the southern lot line (Woodlawn) which was a rear initially but based upon my analysis that Hillside is a front, this is switched to a side now. To further my investigation, the property to the south recently has had a new house constructed and I went to their submitted site plan. [Kelly points to the map] The map depicts Hillside Drive coming through. If Hillside comes through, what is Hillside? It is depicted as a gravel drive. Looking at Tyrell's legal description, there is an easement across Pecek's property for what they are calling a right of way for a road. Now there are more questions. The Plat says it is a road, survey says it is a gravel drive. So, I investigated Pecek's legal description, and I found no other descriptions on the deed when Pecek's bought in 2016 for easements, granted accesses, rights of way. So, I went back into the history at the Register of Deeds, I found a Deed showing a road right of way at Liber 430, Page 567. I found another deed, Book 74, Page 115 which shows a right of way in 1940, the Holloways had taken the Pecek property and the Tyrell property (then unplatted) and realized they had landlocked them. In Book 74, Page 115, the Holloways granted the right to use all of the roads, walks, and parks in Woodlawn Beach which shall be perpetual and run with the lands. So, Pecek's do have the use of all of the road right of ways in Woodlawn Beach to access their property. Some of the unintended consequences as you make an interpretation, are some of the other properties with regard to accessory buildings and fences. (Kelly points out on the map the road right of ways.) Kelly shows us a few of the other properties that have frontage on 2 and 3 roads, and unintended consequence of a corner lot. That's how I arrived at my determination for front, rear, and sides lot lines and the yards.

Chair now goes back to Attorney Lepeniotis who says that some of this is fairly new information. As we look at creating too many front yards, despite what the developer did, believes we should go back to the ordinance. The ordinance is clear as to how many front yards a property can have. A double lot must have 2 front and 2 sides. Rettig and Chair interject that this is not true as we have many lots which have other

configurations. Mr. Lepeniotis says the topography of the land also creates unique challenges. He now turns the floor back to Andrew Moore. The only conclusion we can come to is that this lot is a double frontage lot with Woodlawn and Hillside being the 2 fronts. The ordinance is unclear as to what to do with the other 2 sides. But, because you have rights of way by definition on the Woodlawn side and the Hillside side, the one along Bronwood should not be a front based on the small sliver of right of way and may create a sticky situation for the township. Whether it is an easement or right of way does not matter and there are varying degrees of correctness. What is the intent of NCR-1? This leads us to the conclusion that we have fronts on Hillside and Woodlawn and the others are sides.

Chair asks if there are any comments from the public in regard to this interpretation. None.

Board discussion. Chair begins by talking about through lots, which are front yards opposite one another and corner (and this is not a corner lot) and we have front yards adjacent to one another and we have cases where we have three front yards. I am looking at this and saying that if Bronwood is the access to this property, this becomes the front yards unless the applicant wants to vacate the right of way, which I don't think they can, then it would revert to a side yard. Beemer speaks stating that NCR-1 is not confusing to our Board, because we see these types of lots all the time, and the community is filled with NRC-1 and the purpose of NCR-1 is to prevent overbuilding on a small lot. A conforming lot has no issues - you meet the setbacks. If you have a small lot and big plans, NCR-1 says build within what is responsible and what is allowed and within neighborhood norms. That's why it is important now.

RETTIG MAKES A MOTION THAT WE AFFIRM THE ZA'S INTERPRETATION OF THE LOT LINES, FRONT BEING BRONWOOD, FRONT BEING HILLSIDE AND THE REAR LINE BEING ALONG WOODLAWN AND THE SIDE YARD BEING THE TYRELL SIDE. BENDER SECONDS. ROLL VOTE: RETTIG, ANDERSON, BEEMER, BENDER – ALL 4 YES.

Chair asks for any further public comment. None.

With no further business to come before the meeting, Chair declares the meeting adjourned at 2:04 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved: March 15, 2022