

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the February 16, 2016, Regular Meeting
APPROVED AS AMENDED

The February 16, 2016, regular meeting was called to order by Chairman Lee Strohl at 1:00 p.m. with the following regular members present: Lee Strohl, Liz Rettig, and Carol Sizer. Also present were the alternate members of the Board: Phillip Bender and Larry Anderson.

Also in attendance were the following: Zoning and Building Administrator Theresa Priest (ZA). The following people's names (taken from sign in sheet put in official record) [*spelling may be incorrect*] were also in attendance: Cliff Bloom, Sheribel Rothenberg, Sally Taylor, Matt Kopp, David Yun, Ann W. Kuppe, Martha & Fritz Olson, Kathleen Casey, Rich Sullivan, Township Trustee.

The first order of business was to approve minutes from the January 19, 2016, Zoning Board of Appeals meeting. There being no corrections, additions or changes, Sizer motioned to approve the minutes as presented; Anderson supports; All Ayes. Motion carried and minutes are approved.

CASE 1114 (Case being reopened from being tabled at January 16, 2016, meeting) Matthew Kopp, applicant and partner of Jude & Reed LLC, property owners, vacant lot of record, Huntington Drive, Sawyer MI 49125 Property Code No.: 11-07-4970-0006-00-6

Variances are being requested from Section 14.02 of the Chikaming Township Zoning Ordinance No. 87, as amended, which states that all lots with a designation of R-1 Single Family Residential shall have a minimum of 100 feet of frontage on a public or private road and 20,000 square feet of lot area to be declared buildable. Section 14.02 also states that the minimum required setbacks are as follows: 30 foot front yard, 10 foot side yard and 30 foot rear yard if connected to sanitary sewer or a 50 foot rear yard if an onsite septic system is required. If granted, the variance would allow a vacant lot of record with 9,676 sq. ft. of lot area and 118 feet of frontage on a private road that is named Huntington Drive to be declared buildable and allow a 30 foot rear yard setback with an onsite septic system instead of the required 50 feet. Berrien County Environmental Health has evaluated and approved this vacant lot of record for a water well and onsite septic system.

Chairman Strohl opens the floor and asks if applicant is here to speak on this case.

Chairman Strohl makes a statement that all comments shall be directed to the chair. There shall be no cross talking among people from audience. Chairman shall direct to correct party.

Matt Kopp, member/manager of Jude and Reed, [and] the applicant, speaks. He feels that the applicant has met all of the standards of the zoning ordinance to grant the variance and is seeking only to build a small cottage. The plans meet lot frontage of 100 feet, meet front yard setbacks (30+) and side yard setback (10+). Lot 6 is a conconforming lot of record. Building height to be no more than 18 feet and 1 ½ stories and lot cover shall be no more than 20%. The unique circumstances are the size and shape of lot. Without a variance, we will be unreasonable denied use of the lot. Request is minimum and use will be reasonable. Request for variance is for dimensional use only. Small cottage will be in harmony with the spirit and intent of neighboring parcels and will not change character. Neighborhood will not be injured. Cottage will be proportionately small with large setbacks. Berrien County Health Department has evaluated and approved well water and septic system. Fire Chief Mike Davidson has inspected and approved with 2 requests: remove a couple of trees and maintain gravel. The unique situation and hardship is that the separate lot was not created by our actions and merger does not apply. The 1996 previous request is not the same as this request. Mr. Kopp cites other parcels/precedent. The Township continues to use this parcel as its own tax number. Township has made no affirmative action to enforce merger following the 1996 case. This was a foreclosure and as such “wipes the

slate clean.” Township has had a right to purchase the property at foreclosure. Without the variance, this lot would be virtually unusable. Lot is a lot of record in a platted subdivision. ZBA has authority to grant. Petitioner has acted in good faith that this lot is a “buildable” lot. Requests that ZBA grants so that this does not become a “taking.”

Strohl: Mr. Kopp has made repeated references to Section 4.06 D of the Ordinance. Would like to make this section as part of our record rather than reading each time it is referred to.

Strohl asks if any questions from Board.

Chairman Strohl opens floor for comments.

Attorney Sally Taylor has submitted her comments in writing and will rely on those and will not restate and would like her letter/memorandum of February 11, 2016, to become part of the record. Requests that the variance be denied. Responding to applicant’s request says that applicant is citing unpublished cases and cases from another jurisdiction. Johnson and Cryderman cases are the ones that would apply in this instance. Ms. Taylor goes over the current ordinance and the 1981 Zoning Ordinance as well as the 1964 ordinance and states that the changes referenced by Mr. Kopp have not changed (with regard to the merger provision). Feels that the 1996 ZBA denial is on point. Ms. Taylor talks about the history of the property and what was available to any buyer as well as the zoning ordinance including the fact that this parcel is currently unbuildable. Goes over Sections 4.02 A and B and says that the applicant’s own actions caused the hardship. Taylor says that Sections 4.02 A, B, and C must first be met before Section 4.06 can be used.

Strohl asks: Is there anything in writing that says the property is unbuildable.

ZA: Nothing in writing.

Taylor goes on to discuss encumbrances regarding a foreclosure.

Sizer: Asks Taylor about encumbrances as they apply to 1996 case.

Taylor responds that the 1996 case was an assessment by that Zoning Board.

Sizer: Each time we vote, the Board makes an exception to the Zoning Ordinances.

Taylor reiterates her position that the lot was illegally created.

Strohl asks if the Sweets (previous owners) did many of their own splits without Township approval. Taylor responds yes. That Lots 6 and 7 were never recognized by the Township as legal split.

Fritz/Martha Olson says that they had asked the Township many times if the lot was buildable and were told many times it was not.

Cliff Bloom (Attorney for applicant) speaks regarding merger. Says that the Court looks at each case individually. We are dealing specifically with a platted lot and are significantly different when merger comes into question. Reminds us that the key are the 5 standards and if they are met or not.

Matt Kopp: Reminds us that the Zoning Board has a choice on granting a variance. Discusses the value paid for the lot and purchased the property for the back taxes owed and had no control over this amount. He did his due diligence. Many variances have been granted for parcels under 10,000 square feet.

ZA: Article 4 was amended October 30, 2006.

Taylor: Section 4.02 is a springing application and hurdles must be met under 4.02. 4.06 was added as a springing zoning standard. Still feels that applicant has not met standards of Section 4.02.

Kathleen Casey: Own lots 14, 15, 16, 17. Were told at time they bought that Lot 6 was not buildable 10 years ago by previous owner (Mr. Heaver opinion). Has no documentation showing whether it was unbuildable or not. Felt it was her protection for no one to build there.

Rich Sullivan (Trustee) feels that if there was no bidding war for the purchase, perhaps because of the trouble involved getting a building permit.

Bloom: Talks about interplay between Section 4.02 and Section 4.06. Supposition, ambiguity must go to the taxpayer. Board can grant a variance if standards can be met.

Taylor disagrees, feels there's a springing link.

Kopp: There are probably many reasons that others didn't bid at the foreclosure. There are access issues, variance is required.

Sizer: Township never followed through to force merger in 1996 and wants clarification.

ZA: Township has not been proactive on forcing merger. Casey's have 4; Olsons have 3.

Sizer: The fact that the Township did or did not force the merger is a non issue. Goes back to the history. Was this a non-conforming lot in 1964.

ZA: Created in 1957 by the platting and was a non-conforming lot in 1964. This is the hardship.

Anderson: Wasn't this addressed by the Sweets when they sold? They seemed to be aware that they needed to sell multiple lots to comply with the ordinance?

Rettig states that these 2 lots, however, were lost to foreclosure.

Sizer: Immaterial whether or not Sweet's knew or did not know. These were lost to foreclosure.

Sullivan: Questions grandfathered? Any new person buying must comply with new zoning.

ZA: States that at her last training, "Grandfather," per se, does not exist.

Matt: Talks about what encumbrances run with the land. Property has been assessed as a "buildable" lot.

Strohl still struggling with whether 4.06 and 4.02 are intertwined.

Casey: Reminds us that ordinances are in effect to maintain integrity of the land.

Olson: Inserts that he spoke to Betsy Bohac (previous ZA) and was told property was unbuildable.

Strohl opens discussion to Board.

Sizer: To open discussion, inclined to grant request does not change the essential character of neighborhood, is not a safety or health issue, is harmonious and consistent with what is there, to not grant would deny any practical use of the land that's there, consistent with rulings we routinely grant and for the overall good of the township (usable property/taxable property).

Rettig weighs in that she was having a struggle because it is a platted lot of record since 1957 and does not meet current zoning ordinances. We have made exceptions to the rules. Everyone in that subdivision does own more than 1 lot and this lot is unique because it got left by itself because of tax sale. This would be a taking if we deny. Everyone else in the subdivision had the right to buy this. We have granted variances on lesser land. Yes, the Sweets may have made some bad decisions on the selling of these lots and may not have followed the rules. In this case, it was "lost" and the unique circumstance is that we have to deal with this lot as 1) no value or 2) make it a buildable lot. The Township would have to declare this unbuildable or make it buildable. By declaring this unbuildable, it could be a taking.

Strohl weighs in sharing the same difficulties. Because it was a lot of record prior to the zoning ordinance went into effect, we would be remiss if we didn't declare this as buildable and would have to determine "why" is it not buildable. Feels it should be declared buildable and variance granted.

Bender says zoning ordinance says lot must be 20,000 square feet. (ZA says this comes into effect in 1964 prior to this lot being platted.) Size of lot should mean something.

Anderson comes back to, this was a stand alone lot in 1957. In 1964 the Ordinance comes into effect making it a non-conforming lot of record. What is the controlling standard at the time of purchase? Further states that he is uncomfortable with going against the 1996 ruling and approving the application because of the history of the lot.

Sizer says we must look at this "today." If the decision in 1996 was wrong, that shouldn't stop us from reversing or fixing because of new circumstances.

Strohl: We are not bound by a prior board's decision.

ZA: Section 4.02 C is the Board's guidance.

Sizer says we would have to say no to almost all applications because the lots are mostly undersized throughout Union Pier.

Rettig: Deciding fact is that it was a lot of record. Once the tax sale occurred, this was the deciding factor. This petitioner was told unbuildable and you have to go to the zoning board for a variance.

Strohl: Square footage is a valid concern and understands Bender's struggle being bound to follow rules and regulations of the zoning.

ZA: Petitioner will need a 30 foot rear yard setback and location of septic and well and County has approved.

Kopp: Health Department has approved septic and well locations. Next step, requesting building permit and Health Department will finalize.

Carol Sizer makes a motion that this variance be granted because this is a unique circumstance because this is an isolated lot, physical limitations, no other lot to which it can be connected to, does not increase non-conformity, consistent with the use of neighborhood, no health or safety issues, minimum request, and it was a lot of record prior to the existence of our zoning. Seconded by Strohl.

Roll Call Vote:	Bender	No
	Anderson	No
	Strohl	Yes
	Rettig	Yes
	Sizer	Yes

APPLICATION FOR VARIANCE IS APPROVED.

Rettig motions for adjournment at 2:42 p.m. Bender seconds. All ayes. Motion carried.

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary