

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the January 18, 2022, Regular Meeting
APPROVED

The January 18, 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, Paul Rook. 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 December 21, 2021, minutes. Chair asks if the Board members have any corrections/additions. Anderson gives Secretary Rettig 2 minor correction.

ANDERSON MAKES A MOTION TO APPROVE MINUTES AS CORRECTED; ROOK SECONDS. VOTE: 4 AYES. MINUTES APPROVED AS CORRECTED.

Case #2002- Applicant, Frank Vincent, 102 Oak Grove, Sawyer, Property Code #11-07-0770-0211-00-4 is requesting a variance from Chikaming Township Zoning Ordinance #144, as amended, Section 804(a)(2)(b), Section 804(a)(4)(a), Section 804(a)(5)(b), and Section 804(D)(1) for the expansion of the second floor (dormer addition) and exceeding the maximum allowed cost within a 12-month period for additional improvements.

Chair clarifies with ZA as to how many variances are requested. ZA advises there are only 2 variances requested but it covers multiple sections of the Ordinance. The first variance is about the front yard setback and the 2nd is expansion cost. The addition requested expands volume in a setback area. I checked with the assessor, the house is assessed at 28,800 and the land is at 72,100 = \$100,900 and applying 50% value you would be at 50,450. Rettig interjects that assessed value is a half value. Kelly continues: their project costs would be \$97,000 for renovation and would need a variance per the ordinance.

Chair asks if applicant or representative wishes to speak. Applicant's architect, Ashley Osborne speaks. We have a non-conforming house and we worked hard not to enlarge the footprint at all. We are basically trying to put a dormer on an existing bedroom. Their current stairs are also not to code built in the 1970's. They are trying to upgrade the house to make it more safe. We are not changing the footprint at all or impeding the setbacks and staying under the height requirement. As we all know, Bethany is a leasehold, and we have less control over the values. We are not increasing on any non-conformance.

Chair asks for public comment. None; No letters.

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

Rettig asks ZA what she means by "volume" into setback. Kelly answers that the ordinance talks about "bulk" and we have to look at any new addition as having 3 dimensions. The new dormer would add an increase as to how much of the building is being changed – site lines – increase of the dormer changes the site line. The dormer takes up more space - the bulk.

Chair looks at the table in the ordinance book and comments that 8.04(a)(2)(b) says, "so long as the non-conforming structure is not enlarged upon." As I read this ordinance, I feel that the non-conformity is in lot coverage and setbacks. Kelly agrees that the new structure would be within the setback and applicant is not increasing the footprint, but the bulk is being increased.

Rettig and Chair disagree. They are not increasing the setback at all or the non-conformity.

Kelly continues that the word "bulk" is not defined and left to our interpretation.

Chair continues that according to the chart, they would be allowed to build to 18 feet high – and they are under that; they would be allowed 1-1/2 stories – and that's where they are. Chair and Rettig both agree that there is no further expansion of the non-conformity; Bender also agrees.

As to the 50% of the assessed valuation, Chair believes the ordinance needs to be looked at. Rettig says let's look at these numbers with some common sense. Just because the assessor has put a number on the value of the house, does not mean that it is a true reflection of the value of the house. Bethany does not change hands much and many times those sales do not get reported to the assessor, because this is a leasehold. Additionally, the value of the land is not included in the tax bill which the taxpayer receives. Bethany invoices the taxpayer separately for the value of the land. Logically if the house is assessed at \$28,800 and if we multiply by 2, you are telling me that the house is worth \$57,600 – this makes no sense. Common sense must prevail. Just because the information is wrong, we do not have to base our decision on wrong information. Chair wonders why the ordinance even addresses only spending 50% of the value. Rettig continues thinking that perhaps the intent was so the houses do not get overbuilt for the area? We seem to be penalizing people for bringing structures up to code. Bender questions the 12 consecutive months. Does that mean they can start the project in January, skip February, and start again in March? Chair believes 1 project per 12-month period is what the ordinance means.

Kelly interjects that if someone comes in with a project and the cost value for that project is less than what you want to do, you can go ahead; now the next project you want to do in the same time period, you have to be mindful of your dollars – because now it cannot exceed the project value – on a non-conforming lot only. On a conforming lot, this would never be an issue.

Rettig reiterates that we should not penalize people for upgrading safety features. Chair feels we need to have a discussion with the Planning Commission in the future on this particular ordinance, but today, let's look at our ordinance as it exists.

Rettig, let go back to volume. I don't think this should enter into our discussion as no other variance rules have been broken (setbacks aren't changing, footprint isn't changing). Chair and Bender agree. The only non-conformity is the lot coverage - and nothing is changing.

Chair says we have been asked to rule on 2 variances and we will go through them one by one.

Let's look at the setback issue first:

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. Yes. Rettig feels that the non-conforming lot is the uniqueness. Roll vote: Bender, Rettig, Anderson, Rook (4-0).
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. Yes. Roll vote: Bender, Rettig, Anderson, Rook; (4-0).
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. The applicant purchased the property and is aware of those non-conformities. So, knowing of the non-conformity, the answer is yes. All vote yes (4-0)
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. All Board members agree – yes, it is a minimum request.
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. Yes – Bender, Rettig, Anderson; Rook – yes. (4-0)

RETTIG MAKES A MOTION THAT WE APPROVED THE VARIANCE BASED UPON OUR CRITERIA AND THE VOTE, TO ALLOW FOR THE FURTHER EXPANSION OF THE DORMER; BENDER SECONDS. ROLL VOTE: RETTIG, ANDERSON, ROOK, BENDER - ALL 4 AYES. VARIANCE IS APPROVED.

Let's look at the next variance - 50% of the assessed valuation:

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. Yes. Rettig feels that because Bethany does not assess the land with the structure (as all other parcels do) this is the uniqueness. Bender interjects – and the common sense of the current value of the house not being correct. Roll vote: Bender, Rettig, Anderson, Rook (4-0).
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. Chair says there are no unique circumstances. Yes. Roll vote: Bender, Rettig, Anderson, Rook; (4-0).
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. The applicant has no control as to how Bethany chooses to assess the property. So, knowing of the non-conformity, the answer is yes. All vote yes (4-0)
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. All Board members agree – yes, it is a minimum request.
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. Rettig comments that they are making it more safe. Yes – Bender, Rettig, Anderson; Rook – yes. (4-0)

ROOK MAKES A MOTION THAT WE APPROVED THE VARIANCE BASED UPON OUR CRITERIA AND THE VOTE AS TO THE ASSESSED VALUATION; RETTIG SECONDS. ROLL VOTE: RETTIG, ANDERSON, ROOK, BENDER - ALL 4 AYES. VARIANCE IS APPROVED.

The Architect questions that if she has others in the Bethany area and based upon the assessment being an issue, will that mean she will have to come for a variance each time? Chair answers that until the Ordinance is changed, yes. We are making recommendations to the Planning Commission. Rettig says that perhaps not every parcel has the assessment issue.

Chair asks for any further Public Comment.

With no further business to come before the meeting, Chair declares the meeting adjourned at 1:27 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved FEBRUARY 15, 2022