

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the June 21, 2022, Regular Meeting
APPROVED

The June 21, 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: Doug Dow, Liz Rettig, Larry Anderson, Bob Beemer, Tom Gold. 5 present - Quorum. Bob Beemer (Alternate ZA Member) is substituting for Paul Rook

Noted that Attorney Hilmer and ZA Kelly Largent (hereinafter ZA) are also present along with many others attending in the audience.

Chair Anderson advises that the first order of business is to review and approve the May 17, 2022, minutes. Dow has presented three (3) minor typographical corrects on page 2 and Page 6 to Secretary Rettig; changes noted.

ANDERSON ASKS FOR A MOTION TO APPROVE THE MINUTES AS CORRECTED; DOW MOVES; BEEMER SECONDS. VOTE: 5 AYES. MINUTES APPROVED AS CORRECTED.

Case #2009 Applicants, David and Dale Clarke, 13657 Pine Drive, Harbert, Property Code #11-07-0009-0044-01-8 are requesting a variance from Chikaming Township Zoning Ordinance #144, as amended, Section 7.02(D) which states “non-building accessory structures shall be located in the rear yard.”

Chair Anderson asks ZA to walk us through the case.

ZA advises that this a through lot and has no rear yard – has 2 front yards and 2 side yards; the property is composed of multiple platted lots and is one (1) combined lot. 2 streets (Pine Drive and Big Oak Lane) abut this property. Our zoning ordinance only allows pools in a rear yard and this property has no rear yard.

Chair asks the applicant to speak. Mr. McAndrew (Architect) on behalf of owners. There is no rear yard on this property and requests that the pool be allowed to be placed in the side yard. We have complied with all other regulations: lot area/coverage/permeable/putting house between the structures and allowing enough distance between structures.

Chair asks for public comment. None. Public comment is closed.

No letters.

Chair moves to Board discussion. Board discusses that this is a through lot and the applicant has done all they can to place the pool. Question to the applicant: where are you going to locate the pool equipment? Architect advises it will be placed in the existing garage on the South wall (towards the pool) to reduce noise to the neighbor and will have sufficient ventilation. Beemer asks about fencing. Architect says that all fencing will be erected to be in compliance with the Ordinance. Unsure if existing fence currently complies; but fencing will comply when pool is installed. Gold asks if architect is familiar with all new lighting requirements (night sky/no light pollution to neighbor)? Architect says yes, and will be in compliance.

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. Through lot having 2 front yards; no rear yard. All 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. Yes. All agree; same as #1.
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. Yes. All agree; legally platted lots
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. Yes. All 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. Yes. All agree.

DOW MAKES A MOTION TO APPROVE THE VARIANCE REQUESTED TO ALLOW THE POOL TO BE IN THE SIDE YARD AS SPECIFIED IN THE DRAWING SUBMITTED. ANDERSON SECONDS.

ROLL VOTE: DOW, RETTIG, ANDERSON, BEEMER, GOLD - ALL 5 AYES. VARIANCE IS APPROVED.

Case #2008 Applicant, Gregory Kil, representing David Bartkus, 15570 Lakeshore Road, Union Pier, Property Code #11-07-4730-0031-00-9 is requesting a variance from Chikaming Township Zoning Ordinance #144, as amended, Section 4.02. Applicant is asking to add a 17' 5" porch addition which will have a 3' 6" setback and remove the existing shed and replace it with a new 10' x 16' shed with no setback and located in the front yard.

Chair advises that this case is being reheard by the Board based on advising the applicant to come back with new plans based on the Board discussion regarding the screened in porch and placement of the shed.

Chair asks Kelly to give her comments. Kelly advises that there is no longer a screened in porch requested but this is now a patio and applicant has submitted an updated site plan which substitutes pavers instead of the screened in porch and the applicant has moved the new proposed shed location as the Board had suggested and applicant has restaked the location – 10 feet from existing structure and 3 feet from setback line.

Chair asks applicant to speak. Gregory Kil, architect, speaking for applicant stating that the property has no rear or side yard. The shed location has been moved taking into consideration the trees. The existing fence will remain but is not on the property line.

Anderson asks if the fence belongs to the applicant because it does not appear to be on the applicant's property. Kil responds that it is not on the applicant's property. Anderson continues... so it is not something you are responsible for... Dow interjects that the origins of the fence may be "lost in the mists of time"...Gold asks whose property is it on? Is it in the road right of way? Rettig adds from personal knowledge that the fence has been around at least 30 – 40 years. Gold continued: so no one is maintaining this fence? Anderson asks Kil for the calculations for lot coverage. Kil advises that we meet the lot coverage. Kelly agrees and states as long as the patio is pervious it will not count toward lot coverage. Dow summarizes – the proposed patio is pervious and is not a structure and does not have setback requirements. Kelly – yes, it is at grade and not above grade. Kil states that it does comply with the

ordinance requirements for a patio. Gold asks if they have any intention of a pergola? Kil states this will not have a pergola.

Chair asks for comments from the public.

Mary Paukstys hands out to the Board a letter which she sent via e-mail last night. Rettig questions where the letter was sent. Kelly and Kim are questioned when this letter was received. Kelly states that she received a letter from Stoncius but not from Paukstys. Paukstys continues with the contents of her letter and produces a map display and gives information about Luna Gowdy Streed Subdivision and the access to the beaches by three (3) paths being Franklin Street, Streed Court, and Alma Avenue which is the ingress and egress. Mary points to the map and Streed Avenue as being the way of access to the beach. Alma is to be 50 feet wide according to the Plat. The applicant has usurped the property inside the fence, and whether the fence has been there for 5 or 25 years, he has taken over 10 feet of property by 160 feet long that does not belong to him. He has also taken over the property on Streed Court – not only is the fence into the road, but there are 4 arborvitaes planted 4 feet in the easement. Chair stops speaker – 3 minutes up.

Pete Stoncius begins by talking about Streed Court which is supposed to be 50 feet wide. He points to the map of Mary Paukstys and that the map does not show the railroad ties – being the retaining wall – on public land, the fence being on public land, a trellis which has to be walked through to get to the beach, plants with thorns – all of which are in the public road. Dow and other board members all interject that this is a private road and not a concern of the Township. Stoncius asks if it ok for him to tear out those things in the road. Anderson answers by saying it is not for us to say and the HOA would have those answers. Stoncius says there is no HOA. Anderson continues that the roadway has nothing to do with this owner. Beemer asks who owns the roadway? Rettig interjects and Kelly agrees that this is a platted subdivision, and the roads are owned and can be used by the lot owners in the subdivision. Beemer continues and Rettig agrees that proper court procedures must be followed for any matters concerning the private roadway.

John Staib wants to know if the applicant is asking for a variance for the shed. Anderson answers yes and adds that the applicant is decreasing his non-conformity.

Gold interjects (trying to respond to the HOA question) that he was in a similar situation on Marquette Road with the Riviera HOA and the HOA had to be reestablished and proper procedure had to be established. Gold reiterates that the fence is not on the applicant's property. Taking down the fence will have to go through proper channels – the court will have to decide.

Public Comment closes.

Chair goes to Board discussion. Rettig and Anderson both agree that the unique circumstances are 4 front yards, and the shed has been moved off of the lot line and the ZA confirms there is no issue with lot coverage and the request for one (1) variance (the screened in porch) has gone away and what we are looking at (getting shed off the property line) is reasonable.

Chair asks Attorney Hilmer about reading into the record the 2 letters (Mary Paukstys and Stoncius). The Board agrees that both Paukstys and Stoncius have had their time to speak. Hilmer responds by saying “make the letters part of the record.” Stoncius begins speaking out of turn and states he wants his letter read. Chair brings meeting to order; Pete Stoncius continues to speak not heeding Chair; Chair asks Mr. Stoncius to leave the room several times. Stoncius does not, but now is silent.

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. 4 front yards. All 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. Yes. All agree; same as #1.
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. Yes. All agree.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. Yes. All 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. Yes. All agree.

BEEMER MAKES A MOTION TO GRANT THE VARIANCE REQUEST OF CASE #2008 AS AMENDED BY THE NEW DRAWINGS SUBMITTED TO THE ZONING ADMINISTRATOR; ANDERSON SECONDS. ROLL CALL VOTE TAKEN. DOW, RETTIG, ANDERSON, BEEMER, GOLD. 5 AYES. VARIANCE IS GRANTED AS AMENDED.

Chair asks for public comment.

Pete Stoncius speaks about a variance he applied for in October 2012, for building a garage which would have been 3-1/2 feet from his property line. The Board at that time advised him that if he was going to build a new garage it had to be 10 feet from the property line per the ordinance. Stoncius references the decision of the above Case #2008 stating that the ordinance is not being upheld and precedent is being set. The Chair makes the following comments: Every property is unique, and no precedent exists from one property to the next. We do not base our decisions on what happened in a previous case. Every situation is unique, and decisions are based case by case. Whatever happened in 2012 – that board did what they did. We have to look at this case as having its own unique circumstances and apply the ordinance to this particular case.

Paukstys asks if notification were sent to neighbors? Gold asks if she is more than 300 feet from the property. Dow interjects that notification is given to people within 300 feet only. Paukstys feels that the beach easement affects over 95 people. Rettig speaks stating that our issue is not the easement, but the variance request. Gold interjects that the easement/road issue may be an HOA matter – take the matter to court through proper procedure. Kelly displays the map showing neighbors who were notified. Both Stoncius and Paukstys are not within 300 feet.

Chair asks if there is any further business to come before the meeting, Dow motions for adjournment; Beemer seconds. Meeting adjourned at 1:39 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved July 19, 2022