

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the January 19, 2016, Regular Meeting
APPROVED AS PRESENTED

The January 19, 2016, regular meeting was called to order by Chairman Lee Strohl at 1:05 p.m. with the following regular members present: Lee Strohl, Liz Rettig, and Carol Sizer. Also present were the newest alternate members of the Board: Phillip Bender and Larry Anderson.

Also in attendance were the following: Zoning and Building Administrator Theresa Priest (ZA), Chikaming Clerk Paula Dudiak. The following people's names taken from sign in sheet (put in official record) [*spelling may be incorrect*], Cliff Bloom, Donna Petkunas, Laura Jewell, Donald Snead, Richard & Wanda Avery, Rich Dilling, D.E.W., Sheribel Rothenberg, Colleen Ruddy, Mr. Young, Fritz & Martha Olson, Jim Milanowski, Peter Oleszczuk, Ann Kuppe, Catherine Doll, Jim Scheurman, Jo Webster, Jason Sutton, Alan Nimmer, Laru Chapman, Matthew Kopp, Brooke, Mary Beth Brown, Sally Taylor, Lauret Henry, Sharon Cousineau, Wendy Marcordes, Pat Veit, Hannah Theuehauf, Susan Pertl and Ade Adeway.

The first order of business was to approve minutes from the November 17, 2015, Zoning Board of Appeals meeting. There being no corrections, additions or changes, Sizer motioned to approve the minutes as presented; Strohl supports; Ayes from Sizer, Strohl & Rettig (these were the only members in attendance who attended the November meeting). Motion carried and minutes are approved. Bender and Anderson abstain.

CASE 1111 at 1:00 p.m. Midwest V, LLC (Peter Oleszczuk), applicant and authorized agent for property owners Jack & Rhonda Gibson, 12993 Red Arrow Hwy., Sawyer MI 49125 and for property owners Dennis & Isabella Weisenritter, 12295 Red Arrow Hwy., Sawyer MI 49125 Property Code Nos.: 11-07-0010-0019-16-4 (12993) and 11-07-0010-0019-18-1 (12995)

A variance is being requested from Section 18.08 (B) of the Chikaming Township Zoning Ordinance No. 87, as amended, which states that the parking requirement for retail sales stores shall be 1 parking space for every 200 square feet of building area, minus areas used for mechanical, heating and ventilation systems, incidental storage or other similar areas. If granted, the variance would allow a new Dollar General Retail store (that will have 7302 sq. ft. of public area) to be built that would have a reduction in parking spaces from the required 37 to a total of 32 parking spaces that does include the required handicap accessible parking. The reduction in parking is being requested to accommodate the required storm water retention/detention basins, and also the topography and size of the property.

Chairman Strohl asks if anyone is here to speak on this case. Engineer Jim Milanowski comes forward and presents two (2) large drawings showing the proposed site plan for the retail store showing location of proposed Dollar General. Engineer has been working with the Road Commission and the Drain Commission and describes the on-site storm retention system which is larger than normal and the fact that this has a very high water table which will take away the extra 5 spaces as required by the Ordinance (32 instead of 37). The Road Commission has given its approval; Drain Commission is still reviewing.

Mr. Anderson asks if underground vault storage had been considered instead of on-site retention. Mr. Milanowski said that this could be a possibility but it is very expensive and would not be feasible because of the high water table. Anderson further asks about where the trucks will back in. Mr. Milanowski shows how the trucks will back in on the map and says there is plenty of space.

Laura Jewel of Attila Real Estate speaks on behalf of the Weisenritters and says that this is a minimal request and not an encroachment issue. This is not a downtown property and not taking other business parking space.

Someone from the audience asks what the required spaces are for the square footage of the building under the Ordinance. ZA advises that 37 are required, this is a request for a reduction of 5. Rettig speaks to the fact that this is a variance request at this time only for a reduction of parking space.

Chairman Strohl further clarifies that this hearing is specifically requested for a reduction in parking spaces only and is the first step only of a long process. If the Zoning Board of Appeals approves this variance request, it does not mean that the store will be built; the applicant will have to appear in front of the Chikaming Township Planning Commission for a site plan approval only after all other regulatory permits have been approved and issued.

Open discussion among Board.

Strohl advises there was 1 letter received and 2 e-mails. Sizer asks what the correspondence entails. ZA summarizes that the letters basically say that the people say a Dollar General is not needed and the traffic. Nothing in the correspondence was specific to the 5 parking space reduction requested.

Chairman Strohl opens to the Board's deliberation. None.

Rettig motions that this is a minimal request, proposes no safety/health hazard because of the reduced parking spaces; the hardship and unique circumstances are the size of the retention pond and high water table. Sizer seconds. Vote taken – 5 yes. APPROVAL GIVEN.

CASE 1112 at 1:15 p.m. Susan Pertl, property owner, 15730 Lakeshore Road, Union Pier MI 49129 Property Code No.: 11-07-0125-0036-02-1

A variance is being requested from Section 14.02 of the Chikaming Township Zoning Ordinance No. 87, as amended, which states that lots with a designation of R-1 Single Family shall have a minimum side yard setback of 10 feet. If granted, the variance would allow construction of a new single family residence that will meet all requirements of the Chikaming Township Zoning Ordinance with the exception of the attached screen porch which will encumber the side yard setback by approximately 3 feet maximum. The variance is being requested as a recent survey of the property is in conflict with the recorded legal description. If the recorded legal description is the correct one, the variance would not be needed as the screen porch would be within the required setbacks.

Chairman Strohl asks if anyone is here to speak on this case. Mr. Adeway (Architect) shows us plans and advises that the plans have changed a bit. He has us focus on the “recorded 78” and measured “79.” The issue is that the recorded distance is different than what is shown on the survey (on Lakeshore Road). The angle is making the requirement for a 3 feet (maximum) variance into the setback; the owner on that side is Chikaming Township and no one will be building on that side. The surveyor (Whitman) actually measured 80 feet. Rettig asks if anyone will be pursuing to find out if the recorded vs. measure will be pursued. Mr. Brooks says it will be most likely at a later time. ZA advises the background on the property. After 3 years of looking at floor plans and moving forward with the construction of the new house and demolition of the existing cottage, the contractor poured a substandard basement and Ms. Pertl is in litigation. The existing cottage and new house could not meet the lot size coverage. So, this was an existing lot with a building permit. Brooks Architecture (who took over for the dismissed contractor) ordered a survey and this is when the discrepancy arose.

Chairman Strohl advises that there is no correspondence. No one in the audience speaks. Chairman Strohl opens the floor to deliberation by the Board. None.

Sizer makes a motion this is a minimal request, proposes no safety/health hazard; the hardship is the confusion over the recorded and measured lot line and this is a unique circumstance. Anderson seconds. Vote taken – 5 yes. APPROVAL GIVEN.

**CASE 1113 at 1:30 p.m. Sally Taylor of Passaro, Kahne & Taylor Law Offices, PLLC, representing property owner, The Donna Petkunas Trust, 15849 Center Avenue & 15827 Center Avenue, Union Pier MI 49129
Property Code Nos.: 11-07-4570-0034-01-2 (15849) and 11-07-4570-0016-01-4 (15827)**

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 100 feet of frontage on a public or private road and 20,000 sq. ft. of lot area and Section 4.02 D which states "If a nonconforming lot of record abuts one or more nonconforming lots of record in the same ownership, such lots shall be combined and considered as one lot for the purposes of this Ordinance. No portion of the combined lot shall be used or sold in a manner which diminishes compliance with lot area or frontage requirements of this Ordinance, nor shall any division of the combined lot be made which creates a lot with area or frontage less than the requirements stated in this Ordinance". If granted, the variance would allow a nonconforming lot of record (15827 Center Avenue) abutting another nonconforming lot of record (15849 Center Avenue) under the same ownership to be sold. Both lots of record have been treated as separate lots for the purposes of utilities and taxes since they were created.

Chairman Strohl asks when the lots were created. Attorney Sally Taylor replies 1907. Chairman Strohl asks if anyone is here to speak on this case. Attorney Sally Taylor representing owner, The Donna Petkunas Trust, speaks advising that this is unique circumstance that these lots have been lots of record and this is a rare circumstance that takes exception to the rule. 2 lots that are adjacent to one another, each with 14,000 square feet and each already has a structure upon it and purchased at 2 different times. Prior to this purchase by Petkunas, each lot had been held under separate ownership. The North Lot 16 purchased in 1972 already had 2 cottages upon it. This non-conforming use is not at issue and there is no request to change this. When Lot 34 (Southern lot) was purchased in 1974 by the family, it was vacant. In 1988 a building permit was requested and granted. The records do not show if anyone asked for or received a "buildable" status for this lot when the building permit was granted. In 1988 the standards may not have required a buildable status be put in the record as the 2006 ordinance now does. Currently, because the property is developed, the request is to be recognized as a buildable lot in the event something should happen to the house or either of the properties were to get sold. Sizer noted that the Northerly lot currently has a "for sale" sign. Sizer asks if either lot has been declared buildable. ZA advises that no record dating back that far show any request for buildable status. Rettig noted that in 1988 building permits were issued and perhaps no request for "buildable" status was made even though the reality is that a building was erected. Taylor further advises that the properties have been treated as separate properties for water, sewer, taxes. One of the properties is a primary homestead, while the other is not. Sizer asks if both are being requested as building. Taylor advises yes. ZA interjects that if any changes in ownership occurred and the property was torn down, it would have to meet the current zoning. Bender interjects that the building permit issued in 1988 would have had to meet the zoning requirements in 1988. All agree. Anderson wants clarity as to declaring a lot a "buildable lot" and ZA answers that if the lot is declared "buildable" then they would have to meet current zoning (lot coverage, setbacks, etc.) without the need for coming before the zoning board of appeals. Strohl asks if the only question on the table is giving these lots "buildable status." ZA advises, yes.

Strohl advises that there is no correspondence. No deliberation by the Board.

Rettig makes a motion both of these lots be granted "buildable status" based upon the history of the lots, that the hardship is that there was never anything put in the record and the uniqueness is the same. Bender seconds. Vote taken – 5 yes. APPROVAL GIVEN.

CASE 1114 at 1:45 p.m. 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 makes a point of order – Have all parties (including Attorney Kopp) been given the new papers just handed out. ZA advises that the Board and Mr. Kopp have the papers. Sizer interjects that no one on the Board has had time to read or review. Strohl says that before we deliberate and spend a great deal of time, the Board was presented with pertinent information regarding this Lot 6 dating back to a case in 1996 as well as all of the correspondence which the ZA has received. Strohl feels that a 30 day (minimum) continuance is in order in order to allow opportunity for all to review. The Board is open to allowing the applicant as much time as necessary to prepare. All of this new information will become part of the record. Rettig would like to call it tabling instead of continuance. Mr. Kopp would prefer to be allowed to speak today and if the Board wants to table a decision if not ready. Strohl feels that others have not had the opportunity to see the information. Attorney Cliff Bloom (for applicant) who also just got the information, would ask to speak today and hold the decision open (tabled); Many have come today on this snowy day and many of the neighbors have asked for a continuance and is ready to proceed today. Sizer agrees that it may be a good idea to allow the applicant to speak today and the Board may or may not be able to make a decision today. Sizer asks if there is any requirement that speaks to how soon information must be presented to the Board or if something could be brought in on the 11th hour. ZA says that today the Township attorney (Hilmer) advised her that a case from 1996 would be pertinent to this hearing and to present the papers to the Board. Rettig interjects that she recalls from another hearing when correspondence was presented during the meeting. Sizer and Rettig would be inclined to hear the applicants today. Kopp advises that he is ready to speak toward this “new” information because it is a public case. Strohl asks how the people within 300 feet would have time to read this “new” information. ZA advises that this “packet of new information” would not be sent out to the people within 300 feet – just the notice. Mr. Bloom again feels that the record could be kept open as to a decision for analysis, but would like to be heard. Ms. Kuppe, a representative of Caseys advises that Caseys did not receive proper notice. ZA addresses that Notices be sent to the addresses on the Assessment Roll and reads further the requirements she is guided by to give notice and most specifically not held responsible for failed mail delivery. ZA says she did receive the Casey Notice back (Hermitage address – forwarding order expired) and sent it to the Naples address (from the tax records). She further states that other Chikaming mail was returned (Police Department – Alarm Registration) also had the Hermitage address – also not the correct address. Attorney Sheribel Rothenberg asks who submitted the “new” information which the ZA gave to the Board. ZA responds that upon the advice of the Township Attorney, she gave the packet to the Board. Ms. Kuppe feels that there was confusion with the Notices, every effort should be made to give proper Notice. Rettig states for the record that obviously the Casey’s knew about the hearing and as such had every opportunity to hire someone to be present at this hearing on their behalf. Ms. Kuppe asks if the Assessment Roll is different from the Tax Roll. Sizer states that Caseys did know about the hearing as they sent a representative. Ms. Kuppe still feels that Notice was not proper. ZA advises that it was also published in the paper and all requirements under her guidelines have been fulfilled. Sizer clarifies for the record that we are allowed to proceed with this hearing and the township has met the requirements for notification. Sheribel Rothenberg has serious concerns about the system of how the Notices are sent. ZA advises that her guidelines are the Michigan Zoning Enabling Act and any

concerns would need to be taken up with the State on the “manner” of service. Strohl advises that we have no authority to change the rules of the State and we the Township must follow the rules as provided to us.

Sizer wants to know if this Board wants to conduct a hearing. Strohl asks each member. Anderson wants to hear from the applicant on the same day that the people who are protesting as well as the opportunity to read and understand the paperwork and get fair and open notice as to the tabling to a new hearing date; Strohl agrees; Rettig wants to move forward with the hearing and possible not make the decision today; Bender wants to table; Sizer wants to hold hearing. ZA wants us to understand that some of the case law used in the 1996 may be rescinded or appealed and may no longer be pertinent. 3 for table; 2 to hold hearing. Attorney Bloom objects again and asks that the decision be tabled. Strohl still feels that any discussion today would be in a vacuum as we need to read the “new information.” Tabled for 1 month. Anderson would like to hear from the Township Attorney in written form to see how this “old” case is applicable to this case. ZA asks if this meeting is being tabled specifically for review of the “new” information. Strohl advises yes.

Rettig puts it on record that no e-mails should be allowed to be sent to specific Board members to influence them. All information should be in our packet of papers that we receive as part of the hearing. All e-mails, correspondence, information shall go through the Zoning Administrator and shall be in a timely manner. Taylor asks when we receive packets. ZA advises 10 days before the hearing. Mr. Bloom asks when is the next meeting – ZA replies – 3rd Tuesday of the month – February 16, 2016.

Sheribel Rothenberg asks if the packet presented to the Board is available. ZA advises that by FOIA the packet is available. Clerk Dudiak gives information to Ms. Rothenberg. ZA advises that it could be ready today if need be.

Rettig motions for adjournment at 2:30 p.m. Bender seconds. All ayes. Motion carried.

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary