

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the May 17, 2022, Regular Meeting
APPROVED

The May 17, 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, Tom Gold, Paul Rook. 5 present - Quorum. Bob Beemer (Alternate ZA Member) is in the audience and will be joining the Board for Case #2007 at which time Chair Larry Anderson will recuse himself for that case and Tom Gold will assume the role of Chairman. 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 approve the March 25, 2022, minutes. Chair asks if the Board members have any corrections/additions. Paul Rook presented 3 typographic changes and Dow presented 1; Secretary Rettig notes the changes.

ANDERSON ASKS FOR A VOICE VOTE TO APPROVE THE MINUTES AS CORRECTED. VOTE: 5 AYES. MINUTES APPROVED.

Case #2006 Applicant, Terry Stocklosa, 15972 Red Arrow Highway, Union Pier, Property Code #11-07-4570-0084-01-0 is requesting a variance from Chikaming Township Zoning Ordinance #144, as amended, Section 9.01(B)(6)(B) which states in part “parking must be located in the rear or side yard only” and Section 7(14)(C)(2) which states “dumpsters shall comply with the setback requirements for the district which they are located.”

Chair Anderson asks ZA to walk us through the case.

As to the parking variance, ZA advises that the matter has already come before the Planning Commission and their recommendation was to reduce the amount of parking needed as it was impossible to hold the owner to the 33 required by the Ordinance. Kelly goes on to advise that with the 2 parking spots in front of the building on Red Arrow Highway, plus the 1 spot near the South lot line including all other spots, the applicant would have a total of 13 spots for all employees and patrons. The business will be a bar/restaurant.

As to the dumpster variance, ZA advises that according to the Ordinance the dumpster would need a setback of 10 feet in the rear. The applicant has requested the placement of the dumpster near the fence to make certain that all parking space could be utilized and additionally the truck coming to empty the dumpster needs the turning radius.

Chair asks the applicant to speak. Rob Andrews of Wightman gives a presentation regarding the drawing (which Kelly has on the monitor) showing the property has a driveway access from North to South along Red Arrow and showing that the Road Commission has already had another access directly from Red Arrow Highway on the South side of the building for parking. Rob points out the linear walkway and there will be plantings as a buffer between the walking portion and where the driveway section will be and shows the location of the 2 parking spaces.

Chair asks for public comment.

Jill Underhill – Feels that parking will be difficult.

Public comment is closed.

Chair moves to Board discussion. Board discusses the location of the dumpster near the fence would be good for parking and being enclosed and away from the building is optimal; Kelly pointed out that a wide turn is necessary, and Board agrees.

Chair moves forward with going through the criteria (addressing both issues):

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. Small size of lot and impact of linear path; site plan approved by Planning Commission. 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/permitted purpose
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. Yes. All agree; road configuration has changed but not by applicant
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 GRANT THE TWO (2) VARIANCES TO ALLOW THE 2 PARKING SPOTS IN THE FRONT AND FURTHER TO ALLOW THE PLACEMENT OF THE DUMSTER AT THE PROPERTY LINE WITH ZERO REAR SETBACK. GOLD SECONDS.

ROLL VOTE: DOW, RETTIG, ANDERSON, ROOK, 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 asks Kelly to give her comments.

Kelly begins by reminding us of this property being one previously used as an example in the past having front yards on all sides. Based upon our definition of front lot line, this lot has no side or rear lot lines. 30-foot setbacks all around. The shed currently is over the lot line into the road right of way. Applicant is proposing moving the shed onto the property line and not in the road right of way. The porch addition would be 3' 6" from the property line – being in an R1 zoning, the minimum setback is 30 feet. Chair interrupts Kelly to state that the zoning seems to be R1-W, but it really does not touch the lake. Kelly continues that even with being in the R1W, it still has the same 30-foot setback. The way the R1W districts are laid out, the district can have property that may not touch water. Chair asks about lot coverage. Kelly advises that lot coverage is not an issue – just setbacks are the issues.

Gold asks Kelly if Streed is a path? Kelly advises that Streed is a platted road right of way, even if it is not developed. Rettig continues that Alma is platted but not developed. Streed accesses some properties along the other side of the applicant's property.

Chair asks applicant to speak. Gregory Kill, architect, speaking for applicant begins stating that the property is “an island” with road all around. The existing shed built by previous owners and too short to fit kayak and paddleboard and proposing shed to have a slightly larger footprint on the property. The hardship are the constraints of the 30-foot setbacks on all sides.

Gold asks if there is a minimum of 10 feet between shed and the house. Kil answers yes.

Rettig asks about the proposed porch possibly being moved to the other side of the existing screened in porch where there is much more room. Kill answers that the owners want the new porch to be off of the bedroom for privacy and southwest exposure. Kill continues that the kitchen is on the other side. Chair asks if the architect would consider putting a deck instead of something with a roof? Kill replies that the desire is a screened porch. Doug interjects that it is a non-conforming structure on a non-conforming lot.

Chair reads letters into minutes: (summarizing)

Thomas Richardson – no objection to the variance

Margaret Spears – in favor of variance

Dave and Rita Shea – no objection to variance

William Hiscott and Paul Zurowski – no objection to variance

Chair asks for public comment. None.

Chair goes to Board discussion. Rook asks if this is a non-conformity to get his definitions correct. Gold and Dow both answer stating that this is a non-conforming lot – does not have 20,000 square feet. Rettig adds that additionally it is surrounded by 3 streets – 4 if you count the back setback and this is the unique circumstance. Dow: technically you have no side yards or rear yards – only front yards – making the envelope small. Gold also adds that there are 2 streets, even though undeveloped and not causing hardship to neighbors. Chair adds that the porch that close to the property line is a big ask and totally in the setback. If put on the other side as Rettig suggested, it would not be in the setback as much. Board discussion about a 48 square foot shed to 160 square foot shed is a dramatic increase – but they are getting it onto the property. Dow says we really don’t have an issue with lot coverage. Discussion about getting the shed off the lot line, but that gets it closer to the house. Suggestion to turn it and slide it closer toward Lakeshore but maintaining 10 feet off lot line and 10 feet from house. The shed would still be located in a front yard even in an R1W – but must maintain 30-foot setback and be 10 feet from house. Gold asks applicant if by moving shed, are there any large trees endangered. Applicant does not believe any trees are endangered. Kill asks if the issue is getting it off the lot line for maintenance? Chair answers that is part of the issue. Rettig interjects that there is a fence along the lot line as well and maintenance would be difficult if the shed was too close to the fence.

Chair directs a question to the applicant stating that he hears what our Board discussion is and how do they respond. Kill answers that applicant would be open and flexible to adjust its location and shift to meet the setbacks. As to the porch, the desire is to keep the porch in the location requested. Rettig reminds the architect that we have already said this is a big ask and not within setbacks.

Chair offers the applicant to table and allow architect to come back with revised drawing and site plan to more closely conform to what the Board has discussed. Gold interjects that if this is turned down by our Board today, they cannot come back for 1 year. Kil advises that he wishes to table and will come back with a site plan with an adjustment to the shed and porch. Dow wants to be very clear – the shed location must be off the lot line and if you want to keep the porch where it is located – will be very difficult for the board to approve. Chair asks if architect will be ready to resubmit in time? Kelly interjects that a new site plan must be submitted within 2 weeks in order to put it on the June schedule. Mr. Kill says he has enough time.

ANDERSON MAKES A MOTION TO TABLE CASE #2008 UNTIL THE JUNE 21 MEETING WITH NEW PLANS TO BE SUBMITTED TO THE ZONING ADMINISTRATOR WITH 2 WEEKS. DOW SECONDS. VOICE VOTE TAKEN. 5 AYES. CASE IS TABLE TO THE JUNE 21 MEETING.

******[ANDERSON RECUSES FOR CASE #2007; BEEMER COMES TO THE BOARD TABLE; GOLD ASSUMES ROLE AS CHAIRMAN]******

Case #2007 Applicant, Scott McLain, 21 First Street, Sawyer, Property Code #11-07-0770-0213-00-7; is requesting to increase lot coverage to 39.8% front and side yard encroachment and exceed building height in an NCR1-A zoning district. Section 8.05(D)(1) of the Chikaming Township Zoning Ordinance #144, as amended, allows 20% lot coverage and a maximum building height of 18 feet, side yard setback of 10 feet, and 30-foot front yard setback.

Chair asks Kelly to give her comments.

Kelly puts the architect plans on the screen for everyone's viewing and compares the current existing structure to the proposed. The front yard setback of 30 feet or the average of the neighbors is in the Ordinance. Because of the average, their required setback is 28 feet. The proposed setback of the new addition is 24 feet 6 5/8 inches. They are required to keep a 10-foot setback (any additions must conform) – they are asking for 8 feet 3 inches to be their setback. Dow feels we should talk about existing and what they are asking: Front: should be 30, the average is 28, and their ask is 24 feet 6 5/8 inches; East side: the new construction is actually set back farther than the existing (proposed 8 feet 3 inches), but still not at 10' as required; the West side required is 10 feet, their proposal is 8 feet 6 inches, the existing is 7 feet 3 inches. The only new construction on the West side is the landing and stairs. Beemer asks: how is it improved on the East side? Kelly answers, they are actually decreasing the encroachment on the east side with the new construction, however, because it is new construction and it is a deck and decks can encroach front and rear setbacks, but not side yard setbacks – they must maintain 10 feet on the side. Doug continues asking about building height. Kelly answers: they are allowed 18 feet in the NCR1A for a maximum height, and they are asking for 23 feet 8 inches, tying the roof line into the existing. The next thing is the rear setback which is a 30-foot setback, and their distance is 25 feet 1 inch to the rear line. Beemer states: the only setback they are meeting currently is the rear setback and they are requesting 5 feet into that rear setback. Kelly goes on to the lot coverage: 39.8% was noticed, but my calculations removing the overhangs, which brings me to 36.2% coverage. Their current existing lot coverage is 30.9% (with driveway and existing footprint) is already over the 20% lot coverage. Gold interjects that if the driveway got changed to gravel, the lot coverage would come down. Kelly says the driveway is 30' x 12' making it 360 square feet. The sidewalks are not calculated in because they will be removed. If we take away 360 feet for the driveway, we gain about 5% lot coverage (36.2% we drop to 30.9%). Rettig reminds us that we cannot increase a non-conforming lot. Beemer observes the fire lane on the East side and believes it is a platted roadway (Oak Grove) and is platted 25' wide. This home is very tight on this property. Our rules say 30' off the roadway, but this house is already on the roadway. The house exists where it is. Dow has another question for Kelly. Which approach makes the most sense. What our ordinance says and what the existing house is. Under Section 8.04(A)(2)(B) "a non-conforming structure may be enlarged, expanded or altered, so long as the nonconforming characteristic of the structure is not enlarged upon, extended or increased in its degree of nonconformance." Does it make sense to take the approach that the existing house is the envelope that they need to work and any reduction from that would be favorably viewed? We have a non-conforming structure on a non-conforming lot. We already have something that does not meet any of the requirements in the book. If we start by saying the existing dimensions are the envelope within which the applicant needs to work, and any reduction would be helpful to the case. Gold says: architecturally, the new house is a benefit to the neighborhood.

Rettig stops the current Board discussion and reminds everyone that we need to do letters, public comment and hear from the applicant – then return to Board discussion.

Applicant is asked to speak and begins by saying he has letter from the neighbors. Rettig asks Kim Livengood (in the audience) and Kelly if any letters were received on this case, which would have to be sent to the office in order to be part of this case for us to read. Kelly tells applicant he may read them as part of his presentation; but must give copies for the record. Applicant continues: This is our primary home; we have relocated, Bethany is a unique area. We shared our plans with our neighbors and asked for comments. Steve (to the West) says the concern is the change in footprint, the deck looks negligible, likes the porches; the neighbor to the South (Benson) in support of the request and the updating will be a big enhancement. We have had to pare down our dream plans by the constraints of the lot. We are certainly willing to consider what the Board thinks. The architect really tried to work within the parameters. The concrete slabs (20 x 20) will be removed and the sidewalks and takes away from lot coverage.

Chair asks for public comment. None.

Board discussion. Rook comments that with the concrete driveway staying, it will never meet the lot coverage. If we switch the driveway (putting in a gravel driveway) for the screened porch we are near the same lot coverage. Beemer: my problem with that, we are not keeping it within the 30-foot rear setback; I'm ok with lot coverage.

Gold says we have 3 setbacks. Dow corrects: We actually have 4 setback issues. Kelly agrees: the new landing (not allowed to encroach on the side) on the West is a new encroachment, the deck on the East, the front, and the porch in the rear (5-foot encroachment). Gold continues that the applicant has worked very hard but removing the driveway should help with the screened in porch. Beemer: All that is true, but my sticking point is the rear yard setback – the porch could be adjusted. A 5-foot encroachment is a large ask. Rettig: if they extend it more lengthwise in the back rather than going into the rear setback could work. Beemer: we are not here to help redesign. Gold interjects that perhaps they could pull the roof back. Kelly: If they pulled their roof back to the setback line, the deck could encroach ½ the distance into the setback (up to 15 feet) or about another 10 feet. Awnings and canopies are permitted and may project into the yard up to 10 feet. Beemer: I am not comfortable with redesigning this. Dow: I'm back to take the existing dimensions – that is the envelope within which they need to work. More discussion about roof. Bottom line, they want 1 foot increase in building height. A non-conforming structure cannot be increased to increase the non-conformity. We are reducing the side setbacks; they have to keep the height. We must keep the existing envelope and work from there. Gold discusses giving credit for removing the driveway vs. adding a new porch. Rettig reminds everyone, even if we give credit and manipulate the sides, front and back it comes down to lot coverage. They are already over what is allowed. They are currently at 30.9% (existing coverage). Beemer: we cannot violate setbacks. By going an extra foot taller for the architectural compromise, I can go with that – that would be a minimum variance but going beyond the rear yard setback – I am not comfortable with that. Gold reiterates that by improving the side yard, they have decreased the non-conformity and gives them some offset either in the front or rear. Dow's point is we are dealing with an envelope. If we are all ok with height, we still have the side, front, and rear encroachments. We have to remember the envelope and working within (the existing structure and existing setbacks). This is not a trading game. There is room to expand in back without going into the setback.

Kelly chimes in trying to get clarity: they would not have to remove the driveway if the proposed screened in porch was a deck. Any structure that has a roof is considered a porch (screened in or not). If they made the back a deck, they would be allowed to encroach an additional 10 feet in back – that is what the zoning would allow. Gold says: that is going the opposite of what we are talking about – we would allow the screened porch

to the setback line in the back if they remove the concrete driveway and they could make a deck for the remaining as they wanted in order to meet lot coverage.

Dow reminds the Board and the applicant: There are a set of constraints under which they need to work. We have given them some ideas. Our choice is to go through the criteria and make a decision or let them redesign and work under the constraints. Gold: If they agree today to remove the driveway, and remove the roof over the section of the screened porch that is encroaching, can we vote today? Dow: we still have front porch and side issues.

Gold to the applicant: So, you have heard our discussion, what do you decide? Applicant is unclear on the front. Rettig says your proposal says you want 24 feet 6 inches – you are allowed 28 feet. Applicant: we are ok with removing the driveway, but we really want the screened in porch. Rettig reminds the applicant that they are already over lot coverage. Kelly: Because the existing structure is 10% over, you are saying there's very little room to work with. Rettig: increasing anything increases non-conformity – which we cannot do. If they stay within the current non-conformity of 30.9% and don't increase the setbacks, they have room to work with that number. Stay within the envelope.

Gold to the applicant. You have heard our discussion – do you wish to go back to your architect? Applicant: how do I put an entrance on First street? Dow: You have to cutback the front porch. It is the house you bought. Gold: how much of an architectural projection/cantilever can they have? Kelly: If they put a deck, they could have a 2-foot architectural cover.

To applicant: I need a decision. You will need new drawings within 2 weeks to have in the June meeting or a July deadline if you need more time. Applicant: Yes, we need until July.

DOW MAKES A MOTION TO TABLE CASE #2008 TO JULY 19, 2022, MEETING AND THE APPLICANTS SHALL WORK WITHIN THE ENVELOPE OF THEIR EXISTING STRUCTURE AND SETBACKS WITH REVISIONS AND HAVE DRAWINGS TO KELLY BY JULY 1, 2022; BEEMER SECONDS. 5 AYES.

Gold asks if there is any further business to come before the meeting, Chair declares the meeting adjourned at 2:54 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved: June 21, 2022