

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the May 17, 2016, Regular Meeting
APPROVED

The May 17, 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, Mario Zaranenello (arrives late), Carol Sizer, and Kathy Sellers.

Also in attendance were the following: Zoning and Building Administrator Theresa Priest (ZA), Attorney Sally Taylor (representing applicant for Case #1116), and the following in the general audience (See List attached): Hershhal and Janet Miller, Karen and Dave Bere', Lynn and Bob Stine, Judy Modica, Chuck Posthumus (Architect), Ronald Peterson, Debbie Peterson, Clyde Rode, Bob Beemer, Steve Ellis, Bob Benaigo, Cary McLeen and Jim, Debbie Flood, Larry Anderson.

The first order of business was to appoint officer for the up-and-coming year.

Rettig makes motion to reappoint Dr. Lee Strohl as Chairman, seconded by Sizer; vote taken with the following Ayes: Rettig, Sizer, Sellers (Strohl abstains; Zaranenello not present). Motion passes.

Sellers makes motion to reappoint Mario Zaranenello Vice Chairman; Strohl seconds; vote taken with the following Ayes: Rettig, Sizer, Sellers, Strohl. Motion passes.

Sizer makes motion to reappoint Liz Rettig as Recording Secretary; Sellers seconds; vote taken with the following Ayes: Sizer, Sellers, Strohl. (Rettig abstains; Zaranenello not present) Motion passes.

[Zaranenello arrives]

Next order of business is to approve minutes from the March 15, 2016, Zoning Board of Appeals meeting. Sizer motions to accept minutes as presented; Strohl seconds. All Ayes. Motion carried and minutes are approved – Sellers abstains as she was absent from the March meeting.

Case 1116 at 1:10 p.m.: Sally Taylor of Passaro, Kahne & Taylor, P.L.L.C. applicant, representing property owner Barbara Bere' et. al., 524 Lakeshore Drive, Sawyer, MI 49125 Property Code No.: Part of 11-07-0830-0005-01-1

A variance is being requested from Sections 14.02 and 15.03 E of the Chikaming Township Zoning Ordinance No. 87, as amended. Section 14.02 states that in an R-1 Single Family Residential District, the side yard setback must be no less than 10 (ten) feet. Section 15.03 E states that no accessory building or structure shall be permitted on a lot on which there is not an existing principle building.

If granted, the variance would allow an adjustment/splitting of 2 conforming contiguous parcels into 4 (four) new parcels that would place the existing single family residence at 8.4 feet from the side lot line for proposed Lot 5. The request would also allow the existing detached garage (which would be located on proposed Lot 6 with a 7.4 foot side yard setback after the adjustment/split) to remain on Lot 6 without a principle residence for a period not to exceed one year. All other requirements of Section 14.02 will be met.

Chairman Strohl opens the floor and Attorney Sally Taylor speaks on behalf of applicant on this case and goes over the application. She gives a point of clarification that the only request before the board is a side-yard variance. The lot has more than 20,000 square feet and all other lots as the result of the split have more than 20,000 square feet. The variance is to allow the house to remain as it exists and to allow the split of Lots 5 and 6 with the 8.4 side yard of the house. The entire land in question is governed by DEQ. There are many topography considerations and have forced the house to be located where it is today. The hardship is the location of the house. In addition to the hardship of the property, the applicants own all 4 lots (to be split). Any variance to be granted is conditioned upon the garage (located on Lot 6) to come down within one (1) year. Lot 6 would also agree that they cannot build within 12 feet of the lot line. This would allow at least 20 feet between a structure on Lot 5 and a structure of Lot 6. This is the only variance requested.

Chuck Posthumus (Architect) speaks showing a drawing and blow-up of the area in question illustrating what is going to the MDEQ for a new garage on the South side of Lot 5 and talks about existing driveway and issues and construction of new house on Lot 6 and tear down of existing garage.

Zarantenello asks about location of current house on Lot 5 from road. Chuck Posthumus answers – 60 feet. Further, have the applicants considered changing the configuration of the lots for a bump out along the house so that a variance would not be necessary. Taylor advises that they have considered a 48 square feet bump out, but DEQ and Chikaming have not favored deviating from the “normal straight” lot lines and DEQ is more accepting of leaving lots at 100 feet along the road. Taylor feels that the 20 feet between the houses addresses the safety issues. Zarantenello: Would this condition be a deed restriction and recorded for no and for the future. Taylor: Yes. The current owner is willing to place this deed restriction to burden the land and record same. Taylor gives us all a copy of the original plat.

Sizer asks how these originally got platted as two (2) code numbers in the configuration.

Ron Peterson gives a history of ownership and lot lay out. Lot 5 and the west 55 feet of Lot 6 are one tax number with 155 feet along the road and the East 45 feet of Lot 6 along with Lots 7 and 8 are a second tax number with 245 feet along the road.

Rettig: Has the split occurred? Taylor: Split application is in the township’s hands with the condition that the garage will come down upon the approval. Rettig: Is this a hand-in-hand deal or will the lots split no matter what? Taylor: Parts will split no matter what, but this is not a concern of the zoning board, but not at issue. Taylor reiterates that this is a minimal variance of 1.60 feet and all other portions of the zoning ordinance will be met, area will not be exceeded. The circumstances did not result from the applicants’ actions. Topography does not allow for any other configuration.

Rettig: What is the timing on taking this to the DEQ? Taylor: Following this application. Posthumus: We are very close to submitting, but wanted to be before the Board before submitting the application.

Strohl enters letter from Hershhal and Janet Miller requesting a denial of the variance. Concerns are egress as to Lot 8 and Lot 5. Wants all variances of past and future to be equally applied.

Ronald Peterson asks about his letter that he had sent to the Supervisor. ZA goes into Supervisor's e-mail.

Sizer asks if Millers are present and what their specific concerns are. Mr. Miller wants confirmation of when the 1 year starts and ends and ingress and egress. Sizer reminds Mr. Miller that the ingress and egress are not at issue. Millers feel that this could lead to more variances.

Rettig tries to explain that the only issue on our agenda is the hardship variance of the side yard setback and nothing else – 8.4 feet vs. 10 feet. Sizer says that we can address the 1 year ruling in our decision.

Clyde Rode (representing the Shorewood Board) states that the only issue that their Board considered was the side yard setback and put this in a letter form. The Shorewood Board supports this variance request. Chairman Strohl advises that we do have the letter in support, and reads it into the record. Rode advises that Shorewood has in the past approved reasonable variances.

ZA brings Mr. Peterson e-mail. All other correspondence relates to Case 1117.

Strohl reads Mr. Peterson's letter into the record.

Ron Peterson speaks and shows pictures. Talks about the footpath to Lot 8, and driveway over Lot 7. Density is an issue. Little or no parking available and driveway access is an issue. Power equipment access is also an issue and demolition. Sizer again reiterates that our only issue at hand is the side yard setback and nothing else. Sizer thinks that he needs to be discussing this with the Shorewood Board and this Board cannot look at anything but the variance request. Rettig advises Mr. Peterson that the 4 100 foot lots will be conforming lots and. The 2 issues which make us look at this matter is the 8.40 side yard and the garage on its own are for this Board. Mrs. Peterson asks why they are asking for the 8.40 variance if they could have changed the configuration (bump out). Sizer again says: Had they done this, there would be no reason to come to this board at all. Strohl explains as follows: We are bound by the statutes of the state of Michigan and statutes of Chikaming. The issues which Mr. Peterson asks about are not in our jurisdiction. Sizer remind Mr. Peterson that all of the issues Mr. Peterson asks about will have to be addressed by the MDEQ and they will have final say so.

Mrs. Peterson states her concern that she thought the variance grant would be a tumbling effect and then that would grant the 4 lot split. She then states that she now realizes that the splits are not connected to the variance request, but could happen on their own because it is allowed. She does not feel that there's a hardship because the house could have been built 1.40 feet over originally.

ZA says that the request is that the lots are going back to original configuration (1920) of how they were platted 100 feet with 20,000 square foot of area.

Taylor readdresses a few points. The property was original platted at 100 feet along the road in the 1920's and applicants are restoring to the original configuration of the plat. The DEQ regulations prefer to keep the lines on their original configuration and that is the reason for the hardship rather than a boundary line adjustment – more satisfactory to DEQ.

The Board members begin to discuss. Sizer feels that this request is minimum and that the density is more than generous and not tight. Rettig's concern is when would the garage be removed and that the 20 feet between the structures is more comforting. Zarantenello is not convinced that a variance is warranted or needed especially since a bump out can be done and only approximately 144 square feet would come from Lot 6 proposed over to Lot 5. No hardship would be created to make them "non conforming." It is our job to remedy problems if they exist and not our job to create a variance and problems and hardships for a non-existing problem. If this house and lot (100 feet) already existed and they needed to remodel because of a fire, then the hardship would already exist and we could grant a variance. But one of our points in approving a variance is "Is this self-created?" Right now there is no hardship; the house sits on 155 feet. By splitting the lot, they are creating their hardship. Topography is not a hardship. Sizer says that topography has been considered before. Zarantenello feels that the lot split creates a hardship. There is another legal remedy available by changing the lot lines.

Strohl again asks Taylor. Taylor says that they will need Township approval for the lot splits. The existing house makes the variance necessary. The hardship is the location of the existing house if the lot splits are granted. Rettig: They are creating the need for a variance by splitting the lot, so it is self-created (not a non-conformity). Zarantenello: Their action of creating the 4 splits creates their own hardship. The house on its own does not create the hardship. If we grant 1.6, where's the cut off for granting a variance.

Rettig: In order for this to have no variance request whatsoever and to meet our zoning, they need to create the bump out. Zarantenello: Because there is another legal remedy in place without the need for a variance, they should pursue this. The variance should be the LAST thing. All other things would be in place (square footage, road frontage).

Rettig asks ZA regarding procedure: If this gets denied and they reconfigure the lot to make a boundary line adjustment, do they go to the planning commission? ZA feels that it would not have to go before planning if all lot requirements are met and meets are requirements for the splitting of lots. Zarantenello says he will not approve any variance with any structure remaining on a lot without the primary residence.

ZA: If this case is denied, lot split cannot be approved without reconfiguring lots.

Taylor: A lot line adjustment needs the approval of the zoning administrator or the like and the ZA will set when the garage will come down.

Additional comments from the audience that nothing is meant to go against the family.

Strohl asks for a summary. What is necessary a bump out? Sizer adds that the other point was that this is a self-created hardship if the split is granted and the variance.

Rettig says that this is a circle: The variance is needed if the split is granted and if the split is granted a variance is required. Zarantenello again states that variances should be hard to get – this is self-inflicted and there are other remedies and variances will run with the land and we have to be very careful.

Zarantenello makes the motion that Case #1116 be denied because it is a self-inflicted hardship and that another legal remedy exists within our zoning to rectify the setback issue. Sizer seconds. All ayes. Motion to deny passes unanimously. APPLICATION FOR VARIANCE IS DENIED.

Chairman Strohl advises that Case 1117 has been withdrawn.

Rettig motions for adjournment at 2:18 p.m. Zarantenello seconds. All ayes. Motion carried.

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary