

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the November 16, 2021, Regular Meeting
APPROVED

The November 16, 2021, 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, Paul Rook, Tom Gold. 5 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 October 19, 2021, minutes. Chair asks if the Board members have any corrections/additions. Chair gives Secretary Rettig 1 minor correction and Dow has 2 minor corrections.

Dow makes a motion to approve minutes as corrected; Rook seconds. Vote: 5 AYES. Minutes approved as corrected.

Case #2001- Terri Marra, 8765 Porter Road, Lakeside, Property Code #11-07-7660-0016-00-1 is requesting to add a 7' x 28' enclosed front porch in the front yard of the guest house which will increase lot coverage from 20.35% to 22.34%. Chikaming Township Zoning Ordinance #144, Section 8.05(D)(1) allows 20% lot coverage in an NCRI-A zoning district.

Chair ask for comments from ZA who say: 2 dwelling units on the property and we are discussing the rear unit. Between the 2 structures is where the proposed porch is to be located (the width of the house and 7 feet toward the front house). There are no issues with setbacks or distance between houses.

Chair asks applicant to speak. Applicant speaks and states a permit for the deck was obtained and the deck has been started including the footings for the deck.

Chair asks for public comment. None.

Chair reads letters into record:
Reineke - in favor of variance;
Lovgren – in favor of variance;
Gilman – in favor of variance;
Homan/Czerwicz – in favor of variance;
Alcorn – in favor of variance;
Hill – in favor of variance;
Laier – in favor of variance.

Chair goes to Board discussion. Dow begins by stating that the 7' x 28' is 196 additional square feet and brings us to 22.34% lot coverage and thinks this is a stretch. Chair agrees and is glad that the deck (which is permeable) received a permit and does not go toward lot cover and sees no reason to increase lot coverage. Gold adds that we must look at the zoning ordinance. Rook understands lot coverage but feels the addition is not offensive. Rettig reminds us that, let us remember our job – what is unique that necessitates the variance? Dow reminds us of a case from a few months ago that went 2 rounds because the applicant was asking for 1% more lot coverage, and we made them go back to redo their plans. We are always being asked to add 3%, 4% - this one is already over the lot coverage. I'm glad the neighbors support this, but I don't think it is relevant in this case.

Gold asks the applicant if there is anything that she can give up on any of the other structures. Applicant answers: The cottage in the back is a little over 800 square feet and she lives in the back cottage, and this request is to get more space. The front cottage is a rental. The back cottage has been in dire need of clean up. The porch that's there is already taking up the space and the imposition is minute. Gold gets applicant back on track – is there anything from the front cottage that can be removed? (directing question more to ZA) ZA responds that she has not looked into that possibility, but really, there's nothing that could be removed. Applicant continues that the front cottage has a front porch but cannot be removed. Applicant continues that she has added gardening and all neighbors are in favor, there is no sidewalk, no pool.

Dow again reiterates: This is a non-conforming lot and to increase the lot coverage only makes it more non-conforming and there is no compelling reason in the land to give this variance. Chair agrees, there is nothing in the land that would compel us to grant this variance. Let's walk through the criteria....

Gold interrupts (speaking to the applicant), before we continue, we would like to give you the opportunity to meet with an architect to figure out some other way to take something off of the front cottage so that lot coverage won't be increased. Applicant asks: most properties around me have more sidewalks, cement and this should compensate for my wanting the porch.

Rettig interjects (speaking to applicant) that she has 2 houses on 1 piece of property that is covering 20.35% of the lot and you are allowed only 20% - you are asking for MORE lot coverage - over the allowed 20%. Do you understand that we are constrained by our ordinance?

Applicant continues that she had read other variances where a small percentage was given. Rettig (answering applicant) says that we have turned down other variances because there was nothing unique to the land. Chair interjects that there is nothing unique and in the other cases, there were issues with the land, like a ravine, or other feature, which have allowed us to grant the variance.

Applicant then talks about making the deck smaller, but the board members correct her by saying that it is not the deck that is at issue, it is the roof overhead which constitutes lot coverage.

Applicant continues that her hardship is that she needs space – and is not asking for a swimming pool or hot tub. Rettig clarifies to applicant that the pool would be the same type of lot coverage issues whether she would be asking for a pool or covered porch.

Gold offers: Get an architect and add a dormer and go up to get more space.

Chair now addressing the applicant to Gold's point: Do you want to withdraw/table this request to give yourself time to consult with an architect. If we were to rule today, you cannot come back with a variance request for 1 year. Applicant chooses to table this matter to consult with an architect. Chair asks if applicant can be ready by December 21. Rettig says: (talking to ZA and applicant) applicant must have architectural plans to you and we must have them within 15 days of December 21 hearing.

Dow mentions the second case on the agenda #1197 (12652 Bronwood Drive) (which was tabled) and that he attempted to visit the site and found the driveway blocked (chord drawn across). I don't know why it was blocked off, but someone needs to advise the applicant that we need to view the property and it should not be blocked.

ZA mentions that we also have an action to take on that case. They did not get their items to us in time, they have requested that we table that case to the December 21 meeting.

Chair: Because they are bringing new architectural drawings, it is my opinion this will need to be renoticed. Kelly says the only thing they are working on right now is the setback on the Bronwood side and will not need to be renoticed because it has already been documented. Your action is to review what they are submitting based on what you requested. Dow reminds us that we set 5 criteria that they need to provide: 1) grade calculations; 2) show grade from all 4 sides and all 4 elevations; 3) determine roof height calculations and number of stories with what is allowed with NCR1; 4) deck needs to be revised to setback requirements; 5) coverage needs to be at 20%. If they have not made the modifications, it should be DOA.

Discussion about how many times can it be tabled?

Rettig brings everyone back - We missed the motion to table on the case #2001. Let's do that and then we can deal with #1197.

DOW MAKES A MOTION THAT WE TABLE CASE #2001 TO THE NEXT MEETING OF THE ZBA ON DECEMBER 21, 2021; RETTIG SECONDS. ROLL VOTE: ALL 5 AYES. VARIANCE IS TABLED.

DOW MAKES A MOTION THAT WE TABLE CASE #1197 TO THE NEXT MEETING OF THE ZBA ON DECEMBER 21, 2021, TO PROVIDE THE APPLICANTS FURTHER TIME TO MEET THE CRITERIA SET BY THE ZBA ON OCTOBER, 2021; GOLD SECONDS.

Rook asks for discussion: How do we not have to give notice? Rettig answers that they didn't bring their plans in the 15 days, so we are giving them an opportunity to do so. ZA agrees.

CHAIR CALLS FOR VOTE ON TBLING #2001: DOW – YES; RETTIG – YES; ANDERSON – YES; ROOK – NO; GOLD; YES. 4 – 1. MATTER IS TABLED.

Public Comments:

Jill Underhill comments that she feels this Board is sliding away from our duties. It feels like you are not standing up for your own Ordinance. You are more interested in helping the applicant get what they want.

No further comments. Public Comment is closed.

BOARD DISCUSSION ITEMS:

- A. Overhangs counting as lot coverage.

Chair. There are many times that there are extensive overhangs, I feel we should be setting a procedure process that says that lot coverage is determined by the foundation and other impervious surfaces (like roof) and we should look at allowance of overhang – 2 foot is allowed into an encroachment on non-conforming and 3 foot is allowed on conforming lots – if there is a 5 or 6 foot eave, then it becomes part of lot coverage. Gold: an example is cantilevers. 1 inch beyond the allowed should count toward lot coverage. Excessive cantilevers should count toward lot coverage. Dow reads the zoning definition of lot coverage and as the ZBA we have the right to make an interpretation. Kelly interjects that someone has to make the request for an interpretation, and I am making that request and it will be publicly noticed for next meeting (lot coverage at it relates to overhangs). Chair addresses Attorney Hilmer – are we are on right track? Hilmer responds (referring back to the definition in the Ordinance): What is meant by determining occupied? Does the roof extending over something occupy the ground? You have a definition and if the definition is creating the problem, then the ordinance should be amended to make a clearer definition and the planning commission can make a zoning ordinance recommendation.

B. Recusing oneself because of Conflict of Interest.

Chair thanks Kim Livengood for including information from the zoning handbook on reasons to recuse oneself. Chair gives an example of when he recused himself on a previous hearing when he answered many questions to a person who lives in Bethany Beach where Chair lives. Rettig asks in what capacity was Chair answering questions/was he on a Board in Bethany. Chair says he is on a committee in Bethany that reviews whether or not a variance is needed and then gives a recommendation whether they should or should not ask for a variance but did answer many questions to the applicant. Rettig feels that it was good that Chair recused himself because of the perception of a conflict of interest. Dow agrees that Larry was correct and if someone in his own homeowner association came to the ZBA, Dow would recuse. If counsel is provided, you should not sit in judgment in a case. Rettig further states that when we talk about things at the ZBA, she has to recuse herself at the Township Board level because of discussion and making a decision. And the opposite occurs if something happens at the Township Board, she could not vote for or against at the ZBA.

C. Quorum for the December 21 meeting.

Dow says he is not available for December. Kim advises that she will get 1 alternate. Rettig asks: As to the interpretation question, does the regular board have to hear this or can the alternates vote at the December meeting? All agree that it can be discussed in December.

D. Tabling.

How many times can something be tabled? Hilmer: It is within the discretion of the Board, but at some point, it becomes impractical to do so. Discussion: perhaps 2 or 3 times and they should be ready. Dow: our responsibility is to make a decision on the information presented. Gold: If something is tabled with conditions, it must be up to the ZA to make certain that the conditions are met before it comes back to the ZBA and wastes our time looking at the same problems. How many bites at the apple can the applicant take without making any efforts? Should we only allow tabling under certain conditions – and don't come back with the same information. If efforts are being made, then tabling should be allowed. If no efforts, then we make a decision. Chair interjects, if after 2 or 3 attempts at tabling, let them start over, pay the fees again. Kelly: think about a Court and a Judge allowing a continuance – he may allow continuances until he sees fit not to grant any more continuances. Gold: If there are extenuating circumstances (like medical), then definitely allow tabling. But if no efforts are being made, then we should not allow them to return. Dow: Kelly needs to ride herd on **if the conditions are met** and allowing them to come to the Board. Sometimes it's easier to say no then to put it off for 3 months and then say no. Kelly: by offering them the opportunity to revamp and redesign their plans, it is a good option rather than not allowing them to come back for 1 year.

Kim Livengood poses a question: When a case is tabled and 5 regular members are on the Board, and if it comes up at the next month with perhaps 2 alternates, is it fair for the alternates to hear and vote on the case that was tabled? Kelly interjects: (asking Hilmer) Are we allowing the applicant due process by switching board members? Attorney Hilmer: I see no issues. Dow: The regular Board and all alternatives have the same responsibilities.

With no further business to come before the meeting, Chair declares the meeting adjourned at 2:09 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved DECEMBER 21, 2021