

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the October 19, 2021, Regular Meeting
APPROVED

The October 19, 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 Acting Chairman (hereinafter Chair) Tom Gold. Roll call of members attending: Doug Dow, Liz Rettig, Tom Gold, Paul Rook, Phil Bender. 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 September 21, 2021, minutes. Chair asks if the Board members have any corrections/additions. Dow gives Secretary Rettig 5 minor corrections/ typographic changes; corrections to make.

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

Case #2000- Ronald Robbins, 16033 Beech Lane, Three Oaks, Property Code #11-07-0029-0011-10-5; Applicant is requesting to place an in-ground swimming pool in the side yard. Chikaming Township Zoning Ordinance #144, Section 7.02(D) states non-building accessory structures (tennis courts, swimming pools, antennas) shall be located in the rear yard.

Chair ask for comments from ZA who says: The Board should have the lot diagram that shows the ravine. This is pretty straight forward.

Chair asks applicant to speak. Applicant speaks stating that his home is 500 feet from Elm Valley on a gravel road. To try to put the pool in the back is impossible as this is a ravine. We are asking to put the pool on the left side of the house in the side yard. We have one letter and other neighbors have given their approval.

Chair reads letter from neighbors Jim/Lisa Butler into record – who are in favor of variance and understand the Robbins’ backyard is a ravine. Very small subdivision with only 2 neighbors who would see the pool.

Chair asks for public comment. None.

Chair goes to Board discussion. Dow states that this is pretty straight forward. It is all about the land. There is no other place for the pool. The applicant has staked out where the pool will be placed, and no setbacks are affected. I feel we should approve this variance. Rook agrees and wishes them good luck with the many trees. Bender inserts that this the only logical place. Rettig agrees and asks if there will be a fence. Applicant says there will be a fence which will follow the ravine slope. Chair asks about the deck and if it is part of the principal structure. ZA interjects that this is an enclosed deck and considered an accessory structure. Architect for the applicant confirms that this enclosed deck is an accessory structure.

Chair: Let’s go through our 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 –the land/ravines prohibit pool in another location. All Board members 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. All Board members agree - Yes. 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. All Board members agree – this is a topographical issue - all vote yes.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. All Board members agree – yes.
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. All Board members agree – yes.

DOW MAKES A MOTION THAT WE APPROVE THE ZONING VARIANCE AS REQUESTED; ROOK SECONDS. ROLL VOTE: ALL 5 AYES. VARIANCE IS APPROVED.

Case #1199- Dwight and Mary Ann Bodine, 105 Spring Park, Bethany Beach, Sawyer, Property Code #11-07-0770-0156-00-3; Applicant is requesting to add an 8' x 6' covered front porch and a 7' x 22' addition and replace the existing 8' x 10' shed with a 10' x 14' shed increasing lot coverage to 23%. Chikaming Township Zoning Ordinance #144, Section 8.05(D)(1) allows 20% lot coverage in an NCRI-A District.

Chair asks ZA for comments. ZA says the 10' x 14' shed does not show in the plans. The new shed and addition will take the lot coverage to 25.23%. The side yard setback for the new accessory building would remain where the current setback is – 3.8' and rear yard at 6.4'. With the addition, I calculated the proposed distance between houses is 9.6' instead of required 10'. The 23% lot coverage is without the new shed. The side yard setbacks are not increased, but because the accessory structure is being replaced and considered “new”/altering, we have to consider this as a setback variance for both side and rear yard.

Chair asks applicant to speak. We are in need of alterations to our house as the result of my wife’s knee surgery and elderly parents with wheelchairs. First floor bedroom and bathroom are needed, and the front porch will need to be relocated because of the bedroom addition. The buildings alterations committee of our community and neighbors have all given their support. The new shed is for additional storage.

Chair asks if there are any questions for applicant. Chair asks the applicant about complying with the side yard setback since they are putting up a new structure. Applicant replies that the space is tight and would be too close to the house if side yard setbacks were adhered to. Applicant continues that if they have to give in on the enlarged shed request in order to get the variance on the house, they would be willing to do so. The lot is only 6500 square feet, and we realize we can’t have a garage because of the size.

Chair reads letters into record:

Stan Erickson/Bethany Building Committee - letter dated 9/7/21 – no objection to applicant applying for variance and getting proper permits;

Gene Ramler – in favor of variance;

Brian/Lisa Ferry – in favor of variance;

Joel/Patty Clousing – in favor of variance;

Tug Pierson – in favor of variance.

Chair asks for public comment. None.

Board discussion: Rook feels it is well thought out plan with neighbors in favor and there are medical issues. Dow asks ZA about existing lot coverage. Kelly answers it is currently 21.9% (including current shed). Dow continues, expansion of lot coverage is coming from new shed, new front porch, and house addition. Rettig asks, if we did not increase the shed, what percentage are we looking at? ZA answers it would then be 23%. Chair asks some questions about existing deck. Dow talks about the fundamental issues – how much more

nonconformance are we adding. We need to focus on setbacks and distance between building. Allowing for the addition on the house and front porch, is a medical argument and necessary and would make this a minimal request without changing the shed. We understand the need for storage but increasing the size of the shed would be further increasing the non-conformance. The front porch is necessary and would move the front door entry to add the bedroom and bathroom. Applicant has 4 off street parking spaces. The compromise would be not touching the shed and then we would at 23% lot coverage, and we live with the setbacks as they exist – and are not changing them. By not touching the shed, the only variance request would be lot coverage increasing by about 1%. By maintaining the old shed, this eliminates the variance requests as to setbacks – because the shed/structure is existing. He could repair and maintain the current shed or make the walls taller, but it cannot be rebuilt without a variance.

Chair: Let's go through our 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 –the size of the lot is small and non-conforming. All Board members 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. All Board members agree - Yes. 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. All Board members agree – We are weighing this less and there are extenuating circumstances – medical condition - all vote yes.
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. All Board members agree the house addition and front porch are a minimal request – yes.
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. All Board members agree – yes.

RETTIG MAKES A MOTION THAT WE APPROVE THE ZONING VARIANCE ALLOWING THE ADDITION TO THE HOUSE AND FRONT PORCH WITH A MINIMAL LOT COVERAGE INCREASE; THE SHED MUST BE MAINTAINED IN ITS CURRENT LOCATION/SIZE; BENDER SECONDS. ROLL VOTE: ALL 5 AYES. VARIANCE IS APPROVED.

Case #1197- Make Room Architecture and Design LLC, 12652 Bronwood Drive, Sawyer, Property Code #11-07-0003-0018-00-9; Applicant is requesting to build a new single-family dwelling which will exceed building height and lot coverage and will also encroach into the front and rear yard setbacks. Chikaming Township Zoning Ordinance #144, Section 8.05(D)(1) allows 20% lot coverage and 1.5 stories or 20 feet in height and requires a 30-foot front and rear setback in an NCRI-B District.

Chair asks ZA for comments. ZA begins: 1 additional letter (Lester) not in your packet, who is in favor of the variance – and I will get it for the Board. Applicant is proposing to build a new residence to replace existing. We have gone through several plans. New plans were received 10/6 and I reviewed them 10/7. They are seeking a variance for roof height (30') – ordinance requires 20'; the number of stories could be a variance, but my plans do not show grade, so it is difficult to determine if the basement is a full story or not and you may want to ask for more details from the architect – what is below ground/what is above ground. When we noticed this for publication, we only noticed this for lot coverage, height, and front yard setback on Bronwood. The applicant has submitted a request to declare Hillside their front yard, which would make Bronwood a side yard with setbacks of 26.5 feet from Hillside and 26.5 feet from Bronwood, the rear setback would be 30 feet with municipal sewer (or 50 feet if they are on private), and the side yard (farthest from Bronwood) would be

a side yard (10 feet setback); this allows them to shift the house closer to the property line and farther from Carlsons (the NE side of the applicant's property). The house from the fireplace to the front setback on Bronwood is only 18' 11/16" so that is still within the front yard setback of 26.5 feet.

Rook questions the 18'.

ZA: The new plans showing this are dated 10/6.

Chair questions the declaration to make Hillside the front yard.

ZA states that this only works for zoning, it does not change the address. When you construct new, the property owner has the ability to choose the front. When you look at front yard, it is from Hillside to the structure. The Bronwood side still maintains the 26.5 feet set back by definition, but the yard changes to a street side yard definition (from lot line). So we have a front yard setback on Hillside and Bronwood and you would have a side yard setback and a rear yard setback. The neighbor's average is 26.5 feet on both Hillside and Bronwood; the lot line farthest from Hillside would be considered rear (30 feet). They are 70 feet from the property line, so they are good. Their side yard would be 10 feet.

Chair wonders how Bronwood is considered a road? It is basically a shared drive.

ZA answers that it was platted that way.

Chair summarizes that this leaves us with a variance on Bronwood. We are ok on Hillside and ok on the other sides. They will be moving the house and by pushing the house back 10 feet, how close are we to 26.5 feet?

ZA: By shifting the house, we are at about 22' away from the lot line and they need to be at 26.5 on the Northeast side (Bronwood side) measured from the fireplace. They have cantilevered the roof over their patio – it counts for lot coverage, but it is not counted for setback.

Gold states that he thought 2' was allowed for eaves, not 10 feet.

ZA: That's up for consideration. The patio is not considered. You need to determine if you are going to consider the roofline as part of the structure. The roof comes into play for lot coverage. The roofline over the patio – not considered part of the porch. You need to consider if the roofline is part of the structure.

Gold: This gets back to Bronwood – side yard.

ZA: The encroachment would be the equivalent of a front setback.

Gold: You're allowed to encroach with a pervious surface deck?

ZA: They are using pavers – and are pervious.

Gold: So, this is a suspended patio?

ZA: You also have a wall height restriction, and it is less than that – 5.67' and you can't be higher than 6' for the encroachment for a retaining wall with patio pavers on top.

Dow: The final request is 2 variances – the number of stories/maximum height is one and encroachment. The land is so unusual, what is the average grade?

ZA: The average grade is taken from the high point of the grade at the foundation to the lowest point of grade within 6 feet.

Gold addresses the issue: Average grade is taken 6 feet from the foundation (highest plus lowest); average for all 4 sides. It is impossible based on these drawing because the grade is not shown. They need to pull this off the table to give us more information. Until we have better grade information, we can't discuss height either. We can talk about setbacks, but not grade.

Dow: What is the finished grade going to be? The new construction on Hillside, did they come to us for a height variance – it looks to be 3 stories. Does it meet the average grade?

Gold: It could be 1 story in the front, 3 in the back – based on grade. Some of my issues, are they in compliance with this patio and roof.

ZA: The other property (addressing the new construction on Hillside) is on 1.1 acres and on a conforming lot and with that they get 30' and 2-1/2 stories.

Dow: We still don't have enough information to make a determination on grade/height for this application.

Rook asks about patio and what is the material that is 2' 10" from property line.

Chair asks the architect to speak and answer some questions. Architect says there will be a concrete wall/retaining wall using pavers/earthen patio. There is currently a retaining wall, and we will have to do something there.

Chair asks about deck – this however appears to be a wall.

ZA: If you go to table 4.1 (page 15) in Ordinance, it talks about walls. Fences and walls are permitted in front, rear and side yards.

Rook: Earthen patio with walls around? Will the foundation walls project over the ground level?

Architect: Yes. The grade in that area is 4' lower than the retaining wall.

Kelly: the other thing you need to address is the calculations for lot coverage. There seems to be a discrepancy.

Dow: before you start - by declaring Hillside as front, why is Bronwood a front?

ZA: If you look at the definition of front lot line, it is anything that is adjacent to a public or private road. Bronwood ends at the subdivision, it is still a private road. Their lot line abuts that, and that makes it a front lot line. When you look at yard definitions, once they make their declaration of Hillside as their front line, it reorients for the street side yard. It only works for yards.

Architect asks to present. Make Room Architecture (Velvet Canada). This is a non-conforming lot, and we took Hillside as the front because of the lake. As to your question on average grade, based on the survey, and the current building, and the proposed new building, currently the highest grade for the building that is there is 684 and the lowest grade 6 feet from the building is 672. Average is 678. I did the worst case and best case.

Gold: it does not work that way; you must do each side separately and then average.

Architect: I've done the worst-case scenario. Average grade of new building is 675. Setting the height of the bottom floor for the basement is based on the grade that is there. We are not changing any elevations. We set the basement floor so we can pull into a garage. We don't want to pull down into a garage with our winters. With 8 feet for the basement, 2 feet for structure, this puts the finished floor for the new proposed building at 685.

Gold: Garage access is off of Bronwood?

ZA: What comes off of Bronwood currently, they are keeping what they have and putting a new access point into the garage in the basement level. Back too far, you will go over the retaining wall.

Architect: The clients would like a garage and a basement. The main living area is the next floor and then a lofted area. In the basement we have egress windows off towards Hillside, but most of the basement is covered. The only part exposed is on Hillside and where we have the garage entrance and the door. As to the lot coverage, the 2,675 square feet is 20.49%

Gold: So, you are .49% over – which does not include the roof or patio?

Architect: The roof is included; the patio is not included and everything else is pervious. The way the house is designed, the roof covers over most everything we are using, the only portion exposed is the patio (on the Bronwood side). The height is taking the worst-case scenario and taking it to the average of the midpoint of the roof. The reason we are setting the garage where it is, is because of the current elevation of the drive. 8' plus 2' for the 685 for the first floor (only 9 feet) then we did 1.6' for the structure (the most minimal) for the second floor; then by definition we can't go less than 7.6" and kept our slope on the roof at 212. We tried to minimize the height in the interior and with a regular lot 30' is standard. Rettig questions: Shouldn't you be at 20' and you are proposing 30'?

Architect: yes.

Gold questions why grade is not shown on all elevations?

Architect continue that grade would be at 675.5 where basement is.

Gold: I do not want average grade; I have to know all the grades for each elevation.

Architect: the answer is on the survey.

Gold: But I do not know what it is to the midpoint of the roof from each elevation.

Architect: Points out on survey the elevation numbers for various locations.

Gold: But calculations need to be made on the average grade on each face of the building. I think there's something missing. You are asking for a 10' variance.

Architect: Because we are asking to use the topography of the land.

Dow: We don't know if 30' is the correct number and if it is calculated the way it should be. What would eliminate the issue, for each side, 4 different elevations, the topography on that side and its relationship to the roof.

Architect: In my experience we have always taken the worst and the best and not done all 4.

Dow: Our ordinance clearly states it needs to be done on all 4 sides with an average. 30 feet may not be necessary.

Architect: I can figure that right now.

Gold: I want to caution you, if the variance fails, you cannot come back for 1 year. Do you wish to continue?

Architect: We would like to ask for a continuance to get you the information you would like.

Gold: In fairness, many people are here, and they may wish to comment.

Rettig: They can comment, but they may want to comment again, when this comes back.

Public Comments begin:

Scott Dienes: (Attorney) Hired by neighbors; if they come back with new information, we are required to have 15 days' notice on new plans.

Dow: I think this suggestion has great merit, let's get the same facts so we can focus on the new information.

Gold: You can address some of the concerns in the new drafting. I know that 1 of the major concerns was damage to the neighbor's property on Bronwood and you can clarify that on your construction documents, retaining walls.

Dienes continues: The issue of whether or not the patio is a porch and measures at the same setbacks as the house. Under your ordinance, any deck under a roof is a porch and must satisfy the setback and their plan to move it further toward my client's property must be addressed.

Laura Backer: We live on Hillside, below the property, and our concern is the dunes and run off/drainage including more damage and erosion. When does Hillside become a private drive?

Rettig: There will be no entry on Hillside – this is only a declaration.

Jill Underhill: This is being built on a critical dune?

Gold: There is a permit in place from EGLE. (to the architect), Did EGLE address storm water run off because of the large flat roof? This is a major issue.

ZA interject: The roof slopes away from Hillside; the high point of the roof is on Hillside and slopes down from there towards the back/driveway ravine. The roof will dump the water on the driveway.

Gold: You will have gutters, so it won't flow toward Hillside?

Underhill continues: Good time to remind all we have a good neighbor policy.

Bob Beemer: 13,000 square foot property. This is not unique. I would ask that the design of the house fit the size of the property/character and neighborhood. The new large house previously mentioned is on 3 times the size of this property (1.1 acre). This is only 13,000 square feet. Keep with the setbacks and height requirement, you can still have a beautiful home.

Gold: (to the Architect) Bear in mind that you are asking for something we may not have the power to grant. There has to be some unique circumstance other than your design. Please work with Kelly.

Rettig: We need to set a date for the applicant to come back.

Architect: I will need 2 weeks.

Rettig (to ZA) will we need to republish? Or just have plans available 15 days before hearing?

ZA: We will not need to publish.

Dow: Next meeting is 11/16/21 and we need materials by 11/1/21.

DOW MOVES THAT WE CONTINUE CASE #1197 TO THE NOVEMBER 16, 2021, ZBA MEETING. FURTHER REVISED MATERIALS FOR THIS PROPOSED VARIANCE WILL BE DUE TO THE TOWNSHIP BY NOVEMBER 1, 2021, AND THESE REVISIONS SHOULD INCLUDE:

- 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 NCR 1**
- 4. DECK NEEDS TO BE REVISED TO SETBACK REQUIREMENTS.**

ZA interjects that this is a patio with a roof over it which is not a deck with a roof over it which would make it a porch. The table does not allow the roof to extend into the setbacks. So, this is the issue. Gold interjects that we have a gray area. Dow continues that this still needs to be addressed.

5. COVERAGE NEEDS TO BE AT 20%.

Rook interjects that he would like to see the drawings show the foundation wall. Dow/Gold state it does show.

The neighbor advises that it is his foundation wall is holding up the applicant's driveway, retaining wall.

(Addressing the architect) Are you planning on putting up a retaining wall around the earthen patio?

Architect: Yes, on the applicant's property

Gold: So, shoring will have to be done.

Dow: The net of this is, it is a very small lot and the envelope is being pushed. The question is, how far will we allow it to be pushed?

RETTIG SECONDS MOTION; VOTE TAKEN – 5 AYES. THIS MATTER IS CONTINUED TO NOVEMBER 16, 2021, MEETING.

With no further business to come before the meeting, Rettig motions for adjournment, Dow seconds. Chair declares the meeting adjourned at 2:52 p.m.

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved November 16, 2021