

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the September 20, 2022, Regular Meeting
APPROVED

The September 20, 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, Bob Beemer, Tom Gold. 5 present - Quorum. Bob Beemer (Alternate Member) is substituting for Paul Rook.

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 review and approve the August 16, 2022, minutes. Dow has presented one (1) minor typographical correction; Secretary Rettig notes the change.

DOW MOVES TO APPROVE MINUTES AS CORRECTED; ANDERSON SECONDS. VOICE VOTE: 5 AYES. MINUTES APPROVED AS CORRECTED.

Case #2013 Applicants, Julie and Douglas Morris, 12502 Midway Drive, Sawyer, Property Code #11-07-8700-0016-00-0 are requesting a variance to encroach into the front yard setback. Chikaming Township Zoning Ordinance #144, as amended, Section 4.02 requires a 30' front yard setback.

[Chair makes an announcement to the public that a thunderstorm is headed our way and advises public to shut car windows. Chair further advises anyone who has not signed in to please do so.]

Chair reads letters into record: (summarizing – complete letter in applicant’s file)

Airhart – in support of variance request

Ksnake – in support of variance request

Peacock – in support of variance request

Chair asks Kelly to give details on this case. Kelly advises that a front yard variance is needed due to the dune that is behind them. Before coming to this Board to request the variance, Kelly advised the applicant to go to EGLE because they are in a critical dune area and to obtain that permit first prior to coming to our meeting for a variance. They received approval from EGLE. Proposal is to demolish existing house and rebuild in the same footprint and this would be an encroachment into the front yard setback. The front yard setback (because of the average of the neighbors on both sides) is 21.6 feet (nonconforming lot). Their proposal is a front yard setback of 10’ 3.5” to 18’ 7”. The current existing condition is 9’ 0.75” to 20’ 3.625”.

Dow asks – this is essentially the same footprint, but the dimensions increase slightly on one side and decrease slightly on the other. Kelly agrees and clarifies.

Chair asks if applicant wishes to speak. Applicant gives statement that basically they wish to put a house of the same size in the same spot.

Chair asks for public comment. None.

Board discussion begins. Anderson states that this is a minimal request, and the architect has used helicoil to cantilever parts of house and would ask architect if he were here if helicoil can be used to cantilever more of the house so the variance would not be necessary. Gold answers that every square foot that you

cantilever becomes more expensive, but feels that the applicant has asked for a modest variance, they have utilized the same footprint and knows that they could never get back to the required setback. Anderson wonders if it could be improved upon. Dow asks to what end? The site and dune have many constraints. Dow continues that it would be nice to improve, but given the site, this is a clear condition of unique circumstances. Rettig reminds us that the difference of what they are asking and what currently exists is so minimal. Beemer likes that it is on the current footprint, new construction, and they are not trying to rebuild anything more than what they had. Anderson (addressing Kelly) asks if the EGLE permit is for the new plan. Kelly says yes. Anderson asks if the overall height complies. Kelly says she calculated the average, and it complies.

Chair goes through the 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 – non-conforming lot/critical dune/existing footprint.
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.
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 – yes. Using existing footprint.
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 – existing footprint.
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 as demonstrated by letters of support.

DOW MAKES A MOTION THAT WE APPROVE VARIANCE #2015 BASED UPON THE DRAWING AND PLANS SUBMITTED. GOLD SECONDS. ROLL VOTE – DOW, RETTIG, ANDERSON, BEEMER, GOLD. 5 AYES. VARIANCE IS GRANTED.

Case #2016 Bill McCollum representing property owner David Rochester, 15880 B Lakeshore Road (Edgewater Villa) Union Pier, Property Code #11-07-0125-0003-02-5 is asking to expand a non-conforming structure and exceed building height 18” in an NCR1-A zoning district. Section 8.04(A)(4)(A) of the Chikaming Township Zoning Ordinance #144, as amended, allows 20% lot coverage and maximum building height of 18 feet and rear yard setback of 30 feet.

Chair reads letter from 7 neighbors (Gallo, Poynton, Fanning, Karaitis, Blackburn, Rokivic, Crowl) – all in support of variance request. (Summarizing - complete letter in applicant’s file)

Chair asks for input from the ZA on this case. Kelly states that applicant is asking for the new construction to encroach into their rear yard setback. The requirement is 30’ and they are asking for 14’ 6” which the existing building has, and they are asking to go up, so it is still encroaching. The 3rd variance is the increase in bulk – expansion of the building – total volume. They want to add volume from a 1 story to a 2 story – but staying in the same footprint. No increase of ground coverage. Discussion among board/ZA regarding bulk. The variance is for height – they want to go to 19’ 6” and this is an increase in bulk as well.

Chair asks applicant to speak. Daughter of owner speaks stating they are looking to increase space for family and keep with existing character of neighborhood, much like the other houses who have put a 2

story on. Architect McCollum now speaks and says he has done several houses in that neighborhood and keep the additions to the rear of the building like the other houses in Edgewater Villa. The height allows for better bearing on the outside walls and not columns on the inside. Board looks at architect drawings and discusses interior heights – concluding that inside ceiling will be 8’. If we allow height, then we are increasing bulk/volume.

Comments from the public. None.

Board discussion. Anderson says that this property is not constrained to force us to go above 18’. Beemer adds that the lot is 5,670 square feet – a very small lot under NCR-1. This is a tiny lot surrounded by many cottages and feels that 18’ is adequate. They are already over on the lot coverage and front yard/backyard setbacks – this house is already bursting at the seams. Gold: The point is that we need to look at all circumstances and doesn’t feel this is a large ask. They could go to a flat roof and meet the code, but this would not be in character with the neighborhood. Anderson asks: But what is unique about the land that makes this height variance necessary? Gold – the size of the lot a small lot and this would push him to do a flat roof. Dow agrees with Anderson that the topography is not a compelling issue, but the small lot does present constraints – cannot build in any of the 4 directions. The least invasive is to go up. Is 18” egregious? Rettig wants to keep with the neighborhood and not force them to have a flat roof. Beemer states that you can have an 18’ roof and make it work – not 19’ 6”. Anderson agrees. Further discussion about room height. We should not have to design for the applicant, and it is up to the architect to design to meet the code. Do the constraints of the lot size give us wiggle room? Why does the ordinance say 18””? Gold says as the lots get smaller, we should be more flexible. Beemer, Anderson and Rettig say we should be less flexible because of the size of the lot – tiny lots impose more restrictions to fit into the environment.

McCollom interjects that the rear yard setback is for the 2nd floor. All agree that the setback is not being increased by going up, but we have to address this as a variance because of new construction (bulk). The current issue we are debating is height. Rettig asks if we are addressing each individually or the variances as a whole. Dow suggests that the bulk and setback be addressed as one and height separately.

Chair goes through criteria (As to bulk and rear yard setback):

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 – non-conforming lot/existing footprint. 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.
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 – yes. Not asking to increase non-conformity.
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 VARIANCE #2016 AS TO THE ENCROACHMENT INTO THE REAR YARD AND TO ALLOW THE BULK INCREASE; ANDERSON SECONDS. ROLL VOTE – DOW, RETTIG, ANDERSON, BEEMER, GOLD - 5 AYES. VARIANCE IS GRANTED.

Chair goes through criteria (As to height):

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. Anderson/Rettig/Beemer – no; Dow/Gold – yes. 3/2
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. Anderson/Beemer – no; Dow/Gold/Rettig – yes 2/3
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. Anderson/Beemer/Rettig – no; Dow/Gold – yes 3/2
4. The variance requested is the minimum variance which will make possible the reasonable use of the land, building, or structure. Anderson/Beemer – no; Dow/Gold/Rettig – yes 2/3
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. Anderson/Beemer – no; Dow/Gold/Rettig – yes 2/3

The criteria fail on #1 and #3. So what is next? We have to make another decision. Discussion about architect staying within the 18' vs. flat roof. Anderson reminds us that our training says we can choose to weigh the criteria – which we have done.

DOW MAKES A MOTION THAT WE APPROVE THE REQUEST OF AN ADDITIONAL 18" INCREASE IN HEIGHT AS DOCUMENTED IN THE DRAWINGS SUBMITTED; GOLD SECONDS. FURTHER DISCUSSION. ROLL CALL VOTE:

DOW -	YES
RETTIG -	NO
ANDERSON -	NO
BEEEMER -	NO
GOLD -	YES

MOTION FAILS. THE VARIANCE REQUEST FOR AN ADDITIONAL 18" IN HEIGHT IS NOT APPROVED AND BUILDING MUST STAY AT ORDINANCE REQUIREMENT OF 18'.

Case #2016 Applicant Benjamin Parker, 9192 Murphy Grove, Lakeside, Property Code #11-07-5090-0004-01-0 is requesting a variance from Chikaming Township Zoning Ordinance #144, as amended. Applicant is requesting to place an 18.5 x 16.5 accessory structure in the front yard with a 10' front yard setback (Grove Court). Section 7.02(C)(1) states in part" detached accessory structures shall not be located in the front yard" and Section 4.02 requires a 30' front yard setback.

Chair advises we have heard this case before, and it was tabled for applicant to look for better placement of accessory structure.

Chair reads letters from neighbors (Summarizing – complete letter in applicant's file)

Murchie – in support of the variance – feels Murphy Road will never be a through street.

Rodriguez – no object to request.

Sheehan – in support of variance

Schmitt – in support of variance

Parker (applicant) – resubmitting original request with no changes; vacating the road is not viable because it is costly and would take years and the legal fees are onerous; no other location for the accessory structure

will work; historic nature of Murphy Grove Court is not a through street, but grown over and unlikely it will ever change.

Chair asks for input from ZA. Kelly advises that no changes to plans as originally submitted – 2 variances: accessory building in a front yard and 10 feet (instead of 30') for front yard setback.

Chair asks to hear from applicant. Parkers speaks and advises his letter to the ZBA speaks for itself.

Chair asks for public comment. None.

Board discussion. Dow asks for legal opinion from Attorney Hilmer. 1) the statement of Mr. Parker that vacating a road has never been done before, is that true? Hilmer advises that he is aware of 2 occasions that roads have been vacated, but it is onerous. Dow – 2nd question: is there any liability on the part of Chikaming or homeowner by granting the variance. Hilmer advises that there would be no liability on the part of Chikaming Township and as far as opening the road is concerned, an argument could be made that the dedication of the plat (that the road can be used by the lot owners only) has not been accepted because the road has never been opened or used, therefore it could be considered that the offer to open no longer exists due to the fact that it has not been accepted, the time has elapsed and the offer is now stale. If that road ever got opened, the Township would have no liability.

Kelly: We still have to consider the platted road a road (not a side yard) even though it may never be opened, and the placing of the accessory building in a front yard.

Beemer ask if a platted roadway in a private neighborhood which is undeveloped ceases to exist? Hilmer responds that he did not say that. But the offer of the dedication after a period of time can be considered withdrawn after a lapse of time. A vacation proceeding would then give that roadway land to the adjoining owners and the owners then own to the center of the road. It would be difficult to open this road.

Dow: The reason I asked this, later could someone buy the road?

All come to terms with the right of grant has lapsed. When is a road not a road? Formally, because of the road, the accessory structure would be in the front yard, but in practicality it is a side yard. This is unique.

Chair goes through the criteria:

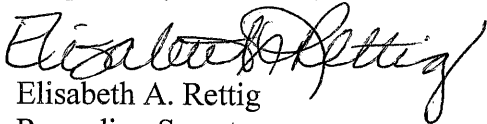
1. Unique circumstances or conditions exist which apply to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. Yes – road that is not opened; dedication has lapsed. All agree.
2. As a result of the unique circumstances 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. All Board members agree - yes. A 30' setback where it is not necessary.
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 – yes. The road.
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 as demonstrated by letters of support.

DOW MAKES A MOTION THAT WE APPROVE THE TWO (2) VARIANCES REQUESTED IN CASE #2010 TO ALLOW AN ACCESSORY STRUCTURE IN THE "FRONT" YARD AND THAT WE ACCEPT THE PROPOSED 10' SETBACK IN THE "FRONT" YARD. GOLD SECONDS. ROLL VOTE – DOW, RETTIG, ANDERSON, BEEMER, GOLD. 5 AYES. VARIANCES ARE GRANTED.

Chair asks for any further public comments. None.

Chair asks if there is any further business to come before the meeting, Anderson announces we are adjourned at 2:13 p.m.

Respectfully submitted,



Elisabeth A. Rettig
Recording Secretary

Date Approved October 18, 2022