

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the June 15, 2021, Regular Meeting
APPROVED 7/20/21

ELECTRONIC MEETING VIA ZOOM, PER GOVERNOR WHITMER'S ORDER

The June 15, 2021, regular meeting of the Zoning Board of Appeals (held electronically) was called to order at 1:01 p.m. by Chairman (hereinafter Chair) Larry Anderson. Roll call of members attending electronically: Larry Anderson (from Sawyer), Doug Dow (from Harbert) Liz Rettig (from Chikaming Township, Harbert), Bob Beemer (from St. Joseph), Tom Gold (from Lakeside). 5 present - Quorum. Noted that Attorney Hilmer is also present along with many others attending via zoom.

Chair advises that the first order of business is to approve the May 18, 2021, minutes. Chair asks if the Board members have any corrections. Chair advises in case #1193 (Zeiger) the minutes state, "The Zeigers would now like to exercise their right to pull the 2 acres out of the conservancy." Chair states that the 2 acres were never in the conservancy. That language should be "The Zeigers held 2 acres out of the conservancy, and want approval to now use the 2 acres, which was in compliance with the then ordinance and is now a variance from the required 10 acres under the new zoning ordinance."

No one else has any further comments on the minutes. **Dow makes a motion to approve the minutes as corrected; Anderson seconds. Chair takes a roll call vote. Roll vote: Rettig, Gold, Dow, Beemer, Anderson – 5 AYES. Minutes are approved as corrected.**

Case #1194- Lisa Sanders, 15931 Lakeshore, Union Pier, Property Code #11-07-7570-0001-00-5; Applicant is requesting a variance to allow a pool and a 5' fence in the front yard. Chikaming Township Zoning Ordinance #144, Section 7.02(D) does not allow accessory structures in the front yard and Section 11.02(A)(2) states fences shall be non-obscuring and 48" in height in an R-1 Residential District.

Chair asks new Zoning Administrator (ZA) Kelly Largent to speak on this case. Kelly gives a breakdown of the three (3) variances requested:

Fence: fence height, location, and opacity are at issue. The fence location in the front yard is limited to a height of 48" and applicant is requesting 5' (ZO Section 11.02 covers this) and opacity must be at 50%. Applicant is requesting a board-on-board privacy fence with 100% opaque.

Pool: A pool is considered an accessory structure (Section 7.2(D)) which deals with non-building accessory structures and requires pool to be in rear yard. Applicant has 2 front yards. House is built all the way to the East side with no rear yard at all. Applicant is seeking a variance to those requirements.

Lot Coverage: This has many questions because this lot was created under a condominium – 1.1 acres in the total development in 2001 which was developed into site condominiums. This lot owned by the applicant has 5,757 square feet. ZA references notes of the Planning Commission in October 2001 which state that any alterations or additions would need a variance. No particular notes in the Planning Commission minutes that the new lots in this development were classified as non-conforming after developed because of their size. Question to ZBA – are we going to consider the lots as non-conforming? I used the footprint for the house and overhangs and pool in my calculations for lot coverage and assessing records sketch and photos along with application submitted and came up with 40% lot coverage including

pool. If we apply the standard for a non-conforming lot with a maximum of 20%, we have doubled coverage. As a notation, when the lot was created under the development, that lot was already over the coverage allowed for that lot size.

Gold questions ZA why overhangs are part of lot coverage. ZA responds that when the new ordinance was created, it changed the definition – lot coverage is anything that has an impervious surface (roof structure). Gold disagrees with the definition. Anderson who also feels that overhangs should not be part of lot coverage asks Dow (who is part of the ordinance review board) to look at this definition. Dow make a note to do so (impervious surface definition and if overhangs are part of this definition). All agree that in this case, it is not relevant.

Chair asks applicant Lisa Sanders to speak. Applicant states she has no back yard, wants to make her lot beautiful and bring value to Union Pier. The pool is not a large pool (20 x 14) to be done by Caesar's Pools.

Chair asks Board if they have any questions for application. Gold asks applicant questions about the fence – why 5' opaque? Applicant feels she would be ok with 4' fence but asked for 5' for safety and privacy. Gold asks: will the pool have a walkable cover. Applicant states it will be locked. Chair asks the question again – will the cover be able to be walked upon? Applicant says: yes, a hard cover.

Chair goes to public comment.

Conrad Muehrcke from Union Pier comments that the owner bought this property knowing that the property is too small for a pool and a 5' obscuring fence is not allowed. Zoning does not allow accessory structures in the front yard and zoning does not allow fences over 48" and there's no reason that this property should be allowed three (3) variances. The property went through a lawsuit and was condemned as an eye sore. The fence and pool would create an eye sore again and the 5' fence would destroy the character of the community and be a safety issue for emergency responders. There are no other 5' fence on Lakeshore. This would set a precedent.

Chair has a question for Attorney Hilmer regarding ZA's comment about the lot. Chair feels the survey given by Abonmarche should be used which calculates the lot size at about 5,700 square feet and apply the NCR-1 regulations. Hilmer: Agrees.

Gold – doesn't that change the lot calculations of the ZA? Anderson says it does not. Rettig disagrees, stating that with 2,062 square feet of house already – this is already at 36% lot coverage. Kelly says that she used 5,721 for lot coverage and even if 5,757 is used, it would not be too much different. Beemer interjects that he also believes the house is already over lot coverage. Dow tries to recap – it does not matter if we use 5,721 or 5,757, the biggest point made and Mr. Hilmer agreed, we are in an NCR-1A designation, which is a non-conforming lot, therefore the maximum lot coverage allowed is 20% and the house is already over the 20%. Does everyone agree? All answer yes. Dow continues, let's tackle the fence and pool – lot coverage may not matter. Anderson replies that lot coverage is first. ZA says, lot coverage only applies if the pool is allowed. Beemer says, you can put the requests in any order you want – this variance should be denied for what it is – this cannot be granted (Pool in front yard, fence that's too tall for front yard, lot coverage that's grossly over for NCR-1 – it's pretty simple). Rettig and Dow agree and request going through the criteria.

Gold comes back with: Why are we ignoring Kelly's assertion that this is R-1? Anderson responds that the development may have been R1 in the beginning, but the applicant now only owns 1 lot which is an

NCR-1 (and has its own tax number) and asks for Attorney Hilmer's opinion. Hilmer answers with: The site plan when developed was an R-1 parcel – the whole parcel had 1.46 acres that was non-conforming with too many dwellings. The easy way to make it conforming was to allow it to be a site condominium with substantially smaller unit sizes than were required by the ordinance at the time. To make the parcel compliant with 1.46 acres, despite the fact that it was zoned R-1, it should have only had 1 house on it at the time. It was one of those situations in Union Pier where there was more than 1 cottage and the way to deal with it in order to sell them off and for the Township to deal with it, was to allow them to have a site condominium. The idea was not to say that now that it is a site condominium all these parcels are conforming lot size – they are not. To make them conforming each unit would have had to be 20,000 square feet. All of those lots are undersized and fall under NCR-1.

[LOSE DOUG – POWER FAILURE]

Gold again asks Kelly how she came to her calculations. Kelly did research so the Board could determine if the lots in this Condominium fall into NCR-1 as non-conforming lots because the minutes at the time did not address this issue. Anderson wants the Board to recognize that units in the site condominium were all surveyed out and each are non-conforming.

[DOUG RETURNS]

Chair goes over criteria: (Page 194, Article 17, Zoning Ordinance)

As to POOL:

- 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. No – not unique. ROLL VOTE ON POINT 1: 4 No. 1 – Gold does not vote.

BEEMER MAKES A MOTION TO DENY THE VARIANCE REQUEST FOR THE POOL AS IT FAILS TO MEET THE CRITERIA. RETTIG SECONDS. ROLL VOTE: RETTIG, BEEMER, GOLD, DOW, ANDERSON – ALL YES ON THE MOTION TO DENY.

As to FENCE AND OPACITY:

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. No – not unique.

DOW MAKES A MOTION TO DENY THE VARIANCE REQUEST FOR THE INCREASE IN FENCE HEIGHT AND OPACITY REQUEST AS THE ORDINANCE IS DESIGNED AS A PUBLIC SAFETY FEATURE IN THE FRONT YARD AND IT FAILS TO MEET THE CRITERIA. ANDERSON SECONDS. ROLL VOTE: RETTIG, BEEMER, GOLD, DOW, ANDERSON – ALL YES ON THE MOTION TO DENY.

Chair continues: The denial on the pool and fence removes the request to look at lot coverage. Chair informs applicant that her variance requests have been denied.

Ms. Sanders asks if there is an appeal process? Would a 4' fence be acceptable? Chair answers that a 4' fence 50% opaque does not require a variance but does require a fence permit. Applicant wants to clarify that the fence was never to be on Lakeshore – only the side of the house. Chair continues that 6' is allowed on the side of the house up to the front face of the house.

Chair advises that the next item on the agenda is the update of our Rules of Procedure.

Page 1 and throughout the Rules of Procedure – All places where “*Ordinance No. 87*” or “*Ordinance No. 87, Article 23, as amended*,” is mentioned, it should now reflect “*Ordinance No. 87*” or “*Ordinance No. 144, Article 18, Section 18.04*” to update because of our new Ordinance.

Chair goes on to discuss Section III, A – Meetings: Currently the meeting times are set to start at 1:00 p.m. There have been requests to start the meeting later in the day for the convenience of applicants or perhaps go to an evening meeting. Since we won’t be doing this as zoom forever, Gold feels that end of the day or early evening would help many of the applicants wishing to attend. Rettig advises that effective with the July meeting, zoom is not required, and meeting must be in person. Mr. Hilmer gives background as to why 1:00 was chosen stating that the Board used to meet at 4:00 p.m. and many of the meetings went late with 3 or 4 cases, it rolled over dinner time, taking the meeting to 7 or 8:00 and people did not want another evening meeting. Anderson asks about 3:00? Kim (ZA assistant) says the first this could come into play is August. Dow says if we are making this for the convenience of the applicants, the difference between 3 and 1 is insignificant. Kim interjects – what about 9:00 a.m. Many of the Board members do not like 9:00 a.m. After much discussion – the consensus is that meetings will remain at 1:00.

Dow raises another area that needs review: Section V, adding a new paragraph I:

Variance Case Review Process:

1. Chair read the description from the Public Notice
2. Chair requests comments from the ZA
3. Chair asks for comments from the applicant
4. Chair review written comments received
5. Chair asks for comments from the public
6. Chair closes public comments
7. ZBA deliberates case
8. Chair goes through 5 criteria
9. Chair requests motion to approved or deny request
10. Chair conducts roll call
11. Chair announces results of vote.

This is to be added to make sure we are treating each case equally and fairly.

The group feels that it would certainly assist future chairs and members and wants to see it spelled out at next month’s meeting for review and vote. Doug to provide Kim with wording for board review.

Gold asks if we can put a time limit on public comment. Anderson says that we already have a limit on public comment of 3 minutes. Doug says although we announce the time limit, it is not in our “rules.” Perhaps we need another Section J which addresses time limits on public comments as well as applicant comments. We have learned from past cases that if there are many applicants, the meeting can go long with much repeat.

Discussion among Board. Discussion on if we are breaking the rules of the open meetings act. Attorney Hilmer educates the Board that public comment can have time limits, but applicants should not be subject to the same time criteria. If we say a “reasonable” time for applicant, this does not work because reasonable is different for all. It should be up to the Chairman’s discretion and the Chair should stop the

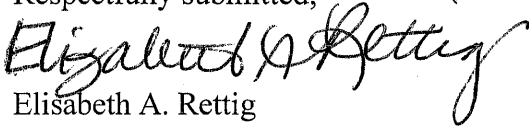
applicant if they are repeating themselves. Anderson wonders if we can amend the rules to state the number of people who are allowed to speak if there are multiple applicants with a time limit. It would be up to the Board Chairman to limit the applicants so as not to repeat what someone else has said – only allowing “new input” and stopping repeaters.

Final conclusion as to who may speak: Applicant or representative, representative such as contractor/architect, and attorney may speak – allowing 3 speakers per application. Kim will put together language for next month’s meeting.

Gold brings up another point in the review of the Zoning Ordinance about limiting square footage on the 3 accessory structures allowed under the ZO and requests sending a recommendation to the Planning Commission about the current standards (example 1 acre lot can have 17,000 square feet of structures). Dow is going to send around the proposed changes and summary memo (to Gold’s point) which are changes relative to accessory structures with a sliding scale relative to the size of the structure and size of the parcel and distance from property line. All the new houses seem to have 3 accessory structures right from the start – pool, tennis court, guest house. Further discussion on classification between “non-building” accessory structure vs. accessory structure which are actual buildings.

With no further business to come before the meeting, the Chair declares the meeting adjourned at 2:14 p.m. SEE EVERYONE IN PERSON AT NEXT MONTH’S MEETING.

Respectfully submitted,



Elisabeth A. Rettig
Recording Secretary

Date Approved JULY 20, 2021