

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the August 16th, 2011 Regular Meeting
APPROVED

The August 16th, 2011 meeting was called to order at 1:00 p.m. by Chairman Lee Strohl with members Jeanne Dudeck, Kathy Sellers, Carol Sizer and Mario Zarantenello present. Zoning Administrator Betsy Bohac and Recording Secretary Theresa Priest were also present.

Sizer moved, Sellers supported to approve the minutes, as proposed, for July 19th, 2011 meeting. Motion carried.

Case No. 1011 Property Code No 11-07-0017-0010-02-4 14378 Stevens Lane, Lakeside, Michigan

William J. Stevens, 14370 Stevens Lane, P.O. Box 22, Lakeside, Michigan, who requested the interpretation, was in attendance to hear the Chikaming Township Board of Appeals interpretation of Chikaming Township Zoning Ordinance Article 15, Section 15.08D as it relates to the above mentioned property and to present his interpretation of the Ordinance. Also in attendance were Hugh and Susan Stevens, Peggy Stevens, Walt Clements and Attorney Sally Taylor, agent for owners of the subject property. No correspondence was received.

Section 15.08D reads as follows:

“No building permit shall be issued for the construction of a dwelling or other principle building on a lot to which access is provided solely by private road, unless all of the following conditions have been met:

1. a permit for the construction of the private road has been issued by the Zoning Administrator.
2. the design and construction of the private road complies with all applicable provisions of this section.
3. the private road has either been completed to the satisfaction of the Zoning Administrator, or a financial guarantee in the equal amount to the cost of construction and in a form acceptable to the Zoning Administrator has been provided, to ensure the completion of the private road in conformity with the approved permit and plans within one (1) year from the date of issuance of the building permit.

The provisions of this Paragraph D shall not be applicable to any lot to which access is provided by a private road which meets the following conditions:

1. the private road was established by means of a legal instrument recorded in the office of the Berrien County Register of Deeds, on or before the effective date of this Ordinance.
2. the private road was improved, on the effective date of this Ordinance, to a physical condition which provides adequate, safe access to the lot by conventional motor vehicles and emergency vehicles.”

Mr. Stevens began his presentation by stating that the fundamental question of Article 15, Section 15.08D is that it makes no mention or exception of adding to an existing dwelling, removing an existing dwelling or rebuilding a dwelling that is on a private road. As stated in the applicant's application, he is requesting this interpretation because he has been informed that the properties in question have been sold and that entirely new construction is being planned. Mr. Stevens had been advised by Zoning Administrator Betsy Bohac in a prior meeting that a building permit could be issued for the subject property if the two (2) properties were combined.

Chikaming Township Zoning Ordinance No. 87, as amended, Article 4, Section 4.02D states "If a nonconforming lot of record abuts one or more nonconforming lots of record in the same ownership, such lots shall be combined and considered as one lot for the purposes of this Ordinance. No portion of the combined lot shall be used or sold in a manner which diminishes compliance with lot area or frontage requirements of this Ordinance, nor shall any division of the combined lot be made which creates a lot with area or frontage less than the requirements states in this Ordinance."

Both lots of record that are in question have been purchased by the same person, so the properties would have to be combined. This would create a conforming, buildable lot of record in an R-1 Single Family Residential District that would meet the 20,000 square foot lot size requirement as well as the required 100' of road frontage on Stevens Lane.

He then gave a brief summation of how Steven's Lane came to be. In 1923, the road was created leading back to the original home on Lake Michigan by dropping crushed limestone by the wagonload beginning from Lakeshore Road. This has served as the private road access to the homes on Stevens Lane since that time.

Mr. Stevens also expressed his concern for the character of Stevens Lane. The subject property is heavily wooded providing much charm, character and livability to the surrounding property owners. He has much concern that if a building permit is issued for a new home and they are allowed 30% lot coverage, a large home could be built and most of those trees would be removed. Mr. Stevens was informed by the Board members that tree removal is not regulated by the Zoning Ordinance.

Mr. Stevens also referred to conditions set by the Board of Appeals (ZBA Case No. 814, January 18th, 2005) that pertained to a land division of a parcel on Stevens Lane. He stated that when this land division was made, the ZBA made a requirement that both parcels must have frontage on Lakeshore Road because Stevens Lane did not meet the standards for "Private Road" status in Chikaming Township. The Board of Appeals as well as Zoning Administrator Bohac informed Mr. Stevens that that was a different situation entirely. That was a land division that would create a new lot of record, not an existing lot of record (as the subject properties are) and that the requirement of 45 feet of frontage on Lakeshore Road was to create an easement for water and sanitary sewer connections. It had nothing to do with Stevens Lane not being adequate as a private road.

In rebuttal, Zoning Administrator Bohac stated:

1. The parcels on Stevens Lane are zoned R-1 Single Family Residential. They require a minimum of 20,000 sq ft of lot area and 100 feet of road frontage. One parcel has an existing home on it with 1.07 acres and 53.57 feet of road frontage on Stevens Lane. The other vacant parcel is .71 acres with 177.54 ft. of frontage on Stevens Lane. In a meeting with Mr. Stevens, I stated I would issue a building permit for a new home if the existing home were demolished and the lots were combined. I would then consider the 177.54 ft of frontage on Stevens Lane as the required road frontage.
2. She then gave a history of the Zoning Board of Appeals previous actions on property located on Stevens Lane:

Case No. 814 heard on January 18, 2005 was a request for William K Stevens presented by Attorney Farina. The variance request for Property Code No. 11-07-0017-0009-03-4, 14364 Lakeshore Road was to allow a division of the parcel that would have 45 ft of road frontage on Lakeshore Road for water & sewer taps from Lakeshore, but be accessed by Stevens Lane. The variance was granted for the reduced road frontage in order to create a new lot for the construction of a new home.

Case No 913 heard on July 19, 2007 was a request by Joseph Farago presented by Attorney Frankle. The variance request was to grant 3 parcels buildable status. The variance was denied because one parcel had no road frontage, one had reduced road frontage and one had enough road frontage but Stevens Lane, an easement, was already serving more than two dwellings.

Bohac explained the 2 lots in question are zoned single family, the current use is conforming, and if there were a request to tear down and rebuild a new single family home meeting all setbacks, building height and lot coverage, it would be allowed.

She read a definition of “adequate” from Webster’s Dictionary: “enough or good enough for what is required or needed; sufficient; suitable; barely satisfactory; acceptable but not remarkable.” She stated she drove down Stevens Lane this morning and found it to be adequate and suitable. She stated there are many private roads, easements and accesses in the Township that are similar to or not as good as Stevens Lane, such as: Red Rowan in Lakeside; Ravine Road and all the roads in Birchwood in Harbert, all the roads in Orchard Beach Subdivision, Katz, Newton, Minkus, Shrago and Gurow in Lakeside; all the roads in Prairie Club; Easy Lane and Evergreen Lane in Harbert. If she considered them all inadequate or unsafe, there would be no building permits issued.

Zoning Administrator Bohac referred back to the question at hand. Is Stevens Lane considered to be “adequate” or “suitable” as to the standards set forth in the Zoning Ordinance? As pointed out by Mr. Stevens, Stevens Lane has provided adequate and suitable access for homeowners, contractors, etc... to drive on since 1923 with very little maintenance required.

Member Zarantenello asked Mr. Stevens if he understood that if the Board found in his favor and declared Stevens Lane to be “inadequate” as a private road that any homeowner on Stevens Lane would not be able to rebuild if their home was destroyed more than 50%. Mr. Stevens did not respond.

In closing, Ms. Bohac reiterated that the history of Chikaming Township clearly shows that if all requirements are met for a lot of record a building permit is issued.

Sally Taylor, agent for property owners, gave her summation of the provisions in Section 15.08D that deem Stevens Lane as adequate to give authority for a building permit to be issued:

1. the private road was established by means of a legal instrument recorded in the office of the Berrien County Register of Deeds, on or before the effective date of the Ordinance.
2. the private road was improved, on the effective date of this Ordinance, to a physical condition which provided adequate, safe access to all lots on Stevens Lane by conventional motor vehicles and emergency service vehicles.

Ms. Taylor added:

1. Chikaming Township has a strong history and practice in decisions that are made regarding nonconforming lots.
2. The existing home on the subject property has been serviced by Stevens Lane for many years.
3. The first designated easement for Stevens Lane was created in 1954 and the easement has been passed along with the deeds ever since.
4. In 1974, it was noted in the deeds that ALL properties on Stevens Lane have a right to use the easement.

Ms. Taylor also wanted to make it clear that no decisions regarding the existing home have been made at this time. The new owners simply wanted to be clear on the available options and requirements in regards to the property.

In closing, she stated that she feels the Chikaming Township Board of Appeals are always very consistent and spot-on in their decisions.

Mr. Stevens spoke again and stated that although Stevens Lane has provided for vehicular traffic for many years, does it really meet the Zoning Standards for “adequate”?

Member Zarantenello said that based on the final two (2) conditions of Section 15.08D, the standards have been met.

He also then asked Mr. Stevens if he felt that Stevens Lane was not adequate as a private road why residents that share the easement have made no attempts to improve it. Mr. Stevens had no reply.

Member Dudeck then joined the discussion by stating that if the road is adequate for the existing homes it is also adequate for any new dwelling that may be built. She then asked Mr. Stevens if he was really just opposed to the thought of a possible new dwelling on the property and trees coming down. He did admit that it is a big concern.

Mr. Walt Clements, an adjoining property owner, shared his surprise that the 2 lots of record could be combined. He had been told by the previous owner that it could not be combined for development. Member Zarantenello made it clear that it could not be developed into a subdivision, but it could be developed as an R-1 Single Family Residence if all requirements are met.

With no further comments, Member Dudeck moved to uphold the interpretation of Chikaming Township Zoning Ordinance No. 87, as amended, Article 15, Section 15.08D, based on the finding of fact that testimonies heard today were consistent with previous ZBA rulings; the subject properties have been lots of record beginning in July of 1917 through December of 1992, with the Stevens Lane easement passed along from deed to deed; the subject properties currently only have one existing dwelling and will only ever have one dwelling, whether it be the same one or a new one; and that it has been demonstrated that Stevens Lane has been an adequate access road for years. Member Sizer supported the motion.

In a roll call vote:

Strohl-aye, Dudeck-aye, Sellers-aye, Zarantenello-aye, Sizer-aye.

Motion carried.

With no further business on the agenda, Chairman Strohl moved to adjourn at 2:40 p.m.

Motion carried.

Theresa Priest
Zoning Board of Appeals
Recording Secretary