

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS

Minutes of the July 17, 2007 Meeting

Chairman Carl Anderson called the meeting to order at 4:00 p.m. with members Lee Strohl, Jeanne Dudeck, Kathy Sellers and Mike Livengood present.

Also present were Zoning Administrator Betsy Bohac, her assistant Kim Livengood and Recording Secretary Marisue Hojnacki.

Livengood moved, supported by Strohl, to approve the minutes of the June 19, 2007 meeting as presented. Motion carried.

CASE 912 - Property Code #11-07-7300-0002-00-8, 7270 Greenbush, Harbert, MI 49115.

(4:00 p.m.) George Lucas, agent for Margaret Wedlake, was in attendance to request a variance from Section 14.02 of Chikaming Township Zoning Ordinance No. 87, as amended, which requires 20,000 square feet of lot area and a 100 foot of road frontage in an R-1 Single Family Residential District. If granted, the variance would allow 2 lots (Nos. 2 & 3) under one property code number to be split and reconfigured. Lot No. 2 would have 20,000 sq. ft. of lot area with 98.45 ft. of road frontage and Lot No. 3 would have 19,206.7 sq. ft. of lot area with 113.98 feet of road frontage. The property is served by municipal water and sewer. Lucas said that originally the lots were separate and then combined in the past. They want to revert back, but had to reconfigure the lot lines to make the lots more conforming. Anderson asked what the practical difficulty was, formerly called the "hardship". Lucas said that the only difficulty was a financial one. Anderson replied that the State tells the ZBA that they can't look at aesthetics or economic impact. Dudeck added that their key words are "public health, safety and welfare". Lucas said that there are no public health, safety and welfare issues as one lot is just 1.5 feet and the other 700 to 800 feet short of the requirements. Strohl asked for a more specific reason why they were combined and Lucas said that in 1958 when they were purchased they were combined so that they would get just one tax bill. Sellers asked if at one time these were both lots of record and was told they were. She then said that they were joined before 1982 so they cannot say they created their own hardship. Anderson added that they have no hardship, but economics. He then said that there were letters in the file from Clayton and Rita Wiker, Frances M. Conley and Candice L. Conley, all objecting to the variance. Anderson stated that there was no practical difficulty and they have been joined all these years. They would be creating lots that would not meet the Zoning Ordinance if they approved this. Dudeck said that they were lots of record when platted in 1958 and that many of the lots in the Spring Brooks Farm subdivision do not meet the square footage requirement. She felt they could stretch the practical difficulty to having excess property as it would be a minor variance because the parcels were very close to meeting the requirements. Strohl asked if there was one tap or two and was told one. Sellers thought that because they were lots of record they had to be approved. Bohac explained Section 4.02D that says nonconforming lots of record in same ownership are considered one lot. Buildable status has been granted to a single nonconforming lot of record because otherwise it would be a taking of land.

Dudeck moved to approve Case 912 to allow the split as proposed on the survey from Danch, Harner & Associates, Inc. dated May 17, 2007 with the Finding of Facts that it is a minor variance, there are no safety issues and municipal water and sewer are available. The practical difficulty is that they are lots of record that perhaps at this time present excess property to the property owner. Sellers seconded the motion. Strohl pointed out that the property was currently for sale so he was not clear why excess property would be an impact. There would just be more money if they approve, less if they don't. Anderson asked what was for sale and Lucas said the house and property separately. In a roll call vote, Livengood, Dudeck and Sellers voted yes and Strohl and Anderson voted no. Motion carried. (4:26 p.m.)

CASE 913 - Property Code # 11-07-0017-0009-05-1 and 11-07-0017-0010-02-4 and 11-07-0017-0010-03-2, 14378 Stevens Court, Lakeside, 49116. (4:26 p.m.) Larry Frankle, attorney for potential buyer, Joseph Farago, was in attendance to request a variance from Section 4.02, of Chikaming Township Zoning Ordinance No. 87, as amended, which requires a 100 feet of road frontage in an R-1 Single Family Residential District; Section 15.08A which states: Every building erected or moved and any principal use of land shall be located on a lot which has frontage on a public or private road right-of-way; and Paragraph B which states: A privately-owned and maintained road or way of passage for motor vehicles which provides access to more than 2 dwellings shall be constructed to Private Road Standards; and Section 14.02D which 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. If granted, the variance would allow three nonconforming lots under the same ownership to be designated as follows: Parcel #1 (11-07-0017-0009-05-1) to be declared buildable with .71 acres of lot area and 177.54 ft. of frontage on a 20 ft. easement known as Stevens Lane, and; Parcel #2 (11-07-0017-0010-02-4) a 1.05 acre parcel with an existing dwelling on it and 53.57 ft of frontage on a 20 ft. easement known as Stevens Lane to be a conforming lot; Parcel #3 (11-07-0017-0010-03-2) to allow this parcel to remain as is, with 1.47 acres of lot area and no road frontage. Frankle said that these three parcels were combined in 1974 and turned in a copy of the history of the parcels. They have been on sale for a while and his client wants to buy them, but would like to split at least one lot off. There is no road to these parcels, just a private 20 foot easement that comes off of Lakeshore Road. Parcel one would be split off and two and three would be together. Frankle felt that they could improve the easement with gravel to make it more passable, but he said that Mr. Stevens thinks they can't and that it only serves one parcel. They would like to improve it to the standards. He said that the one reason they applied for the variance was that another property owner received approval that uses the easement for access. Dudeck stated that it was not material as the other parcel had frontage on Lakeshore. Frankle said that the practical difficulty was that it seems like a lot of land to lay empty.

Darren Malek, attorney for the Turner Shores Homeowner's Association, said that they were against the variance for the following reasons: 1) It was a bad development plan and the township is being asked to assist in allowing it. 2) As there is no plan for how the property is to be developed, it is the first of many issues such as water and sewer. 3) The practical difficulty of excess land is dubious. In the previous case the applicant almost met all the requirements. 4) The development of the two track does not seem in harmony with the rest of the development in the area. 5) The adjacent property owners in the Turner Subdivision are concerned it would compromise their rights. The beach and the roads are paid for and taken care of by the

Homeowners Association. Granting this could be suggestive that they have rights to use the roads and beach. Dudeck said that she did not see anything in the application that they would be using Turner Shores' facilities. 6) The variance would result in undue hardship on the association with policing, fencing, protecting and expanding the safety issues. If they grant it, they ask that they have an affirmative statement that they have no rights to Turner Shores and erect a fence around the property. Anderson said that was a civil situation, not the ZBA's. Doreen Bartoni read a letter from her and Renee Hansen. They live at 14388 Lakeshore Road and were opposed to the variance. She said they respected a previous variance request for an additional home with the understanding that no further requests would be made as there was no further frontage left on Lakeshore and pointed out that the real estate listing had the address on Lakeshore. Anderson stated they had received 14 letters two noncommittal and 12 against. Noncommittal letters were received from Michael G. Maravich and John Ahern & Mary Anderson. Opposition letters came from Hugh Stevens, Claire Friedland, Susan Dilly, Philip J. Malone & Mary Therese Malone, Anne & Burt Fishman, William K. Stevens, William J. Stevens, Cristy & Dave Laier, Rebecca S. Peapples, Robert L. Conrad, Martha Street Stevens-Gingrich, and Jim & Terry Jeffries. William Stevens of 14370 Lakeshore Road, southeast of the property, was also opposed. He said that his father assembled two of the parcels from Grace Lang in the 1960s and added the third from his grandmother, Elizabeth Stevens, He treated it as one parcel with the only access to the land locked property being a 100 foot track off Lakeshore. The house was built in the 1960s. When his father deeded it to his brother it was as one piece. Stevens added that the two track has been there since 1923 when his grandfather brought in limestone. He said it barely permits access for emergency vehicles as it is a single car width. Burton Fishman of 14373 Stevens Lane and James Greifendorf, representing his mother, also spoke in opposition to granting such a major variance.

Anderson asked for a clarification and Frankle said that they are asking for three parcels to be two, neither have access to a public or private approved road, and the front house has less than 100 feet of frontage. Dudeck said this was a classic case of something they cannot approve due to public health, safety and welfare. She said that the road should be repaired and there is no where to pull off when another vehicle is coming. She moved to deny the request as it is a public health, safety and welfare issue right now without adding to it. Anderson seconded the motion. All members voted aye. Motion carried. (5:15 p.m.)

There was a five minute recess.

CASE 914 - Property Code # 11-07-7200-0002-03-6, 15694 Lakeshore Road, Union Pier, 49129. (5:20 p.m.) Larry Frankle, attorney for property owner, Edward Benford, was in attendance to request a variance from Section 14.02 of Chikaming Township Zoning Ordinance No. 87, as amended, which requires a 100 feet of road frontage and a 10 foot side yard setback in an R-1 Single Family Residential District. If granted, the variance would allow demolition of the existing dwelling and reconstruction of a new house on the same footprint along with the additions that were granted by the Zoning Board of Appeals on Sept. 19, 2006, Case # 882 which allowed a 3 ft. side yard setback on the South property line. This lot has 54.52 ft. of road frontage. Frankle said it is a narrow lot, but the parcel is large. He said that his client bought it with the intent to remodel in 2006. He hired contractors and was told that to lift the house up and replace the foundation would be difficult and dangerous. It would be safer and cleaner to start

from scratch. Frankle said the Zoning Ordinance states that if it is destroyed he can rebuild it on the same footprint, but if he takes it down he cannot. He said that they have already spent money on two architects. Anderson felt that if he was going to take the house down, then he should come back with a house that was more conforming using creative architecture. Strohl asked if the current house was unlivable and Frankle said it was livable. They have already removed a shed and bump out, but it is much more dangerous to pick up the building for a new foundation. Bedford stated that improvements to the house were done piecemeal over the years and they don't know what is under there. He felt that he was just asking to get from point A to point B, just a different way. Frankle said it was the same house that was approved. Dudeck wanted to know the reason they couldn't design a house that was more than 2.5 feet from the south side. She felt that five feet would be acceptable. Bedford felt that losing width on a narrow lot was unreasonable. Dudeck stated that if he could compromise and come up with five feet on the south side they would allow it. Frankle suggested tabling it for them to come back with a new drawing. Bedford asked if he could still build it if denied and Bohac said that nothing has been submitted that says the foundation is not good.

Anderson moved, supported by Dudeck to table Case 914 until their regular meeting in August. All members voted aye. Motion carried. (5:47 p.m.)

CASE 915 - Request for Zoning Ordinance Interpretation. (5:47 p.m.) Jeffrey Holmstrom and Catherine Kaufman of the Law Firm of Troff, Petzke & Ammeson were in attendance to request an interpretation regarding the term driveway, as defined in Section 2.06 of the Chikaming Township Zoning Ordinance and its relationship to the requirements of Section 2.14 (Lot frontage) and Section 15.08 of the Zoning Ordinance (Public Road Access; Private Road Standards; Private Road Construction Permits). Additionally, they are requesting that the Zoning Board of Appeals make an interpretation that a driveway, as defined in Section 2.06 of the Zoning Ordinance, is not a public or private road and does not have to be constructed to public or private road standards, as contained in Section 15.08 of the Zoning Ordinance. Holmstrom said that they are asking an interpretation of 2.06 and 15.08 as applied to their particular case. He sketched a driveway serving two lots with both lots having frontage on a private road. He said that 15.08 states that a public or private road must meet these standards if it serves more than two lots. Therefore, they feel what they have is a driveway, not a private road. They do not want to create two driveways to preserve the natural features. Anderson stated that the safety aspect is paramount. Bohac asked that the addresses be posted on the access to that driveway for public safety vehicles. Dudeck stated that they interpret that the Zoning Ordinance does not require lots to each have their own driveway as long as that driveway only serves up to two lots providing that each lot has the required frontage on a public or private roadway. She added that this interpretation does not commit that the Planning Commission or the Township Board will approve their plan. Anderson seconded the motion. All members voted aye. Motion carried.

Livengood moved, supported by Sellers to adjourn at 6:00 p.m. Motion carried.

Marisue Hojnacki
Recording Secretary