

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the November 15th, 2011 Regular Meeting
APPROVED

The November 15th, 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 and Sellers supported to approve the minutes, as proposed, for the October 18th, 2011 meeting. Motion carried.

Case No. 1018 Property Code No 11-07-0009-0018-02-4 13616 Cottonwood Lane, Harbert MI 49115

Patrick Sheahan, property owner, was in attendance to present his request for a variance from Section 14.02 of Chikaming Township Zoning Ordinance No. 87, as amended, which requires a 30 ft. rear yard setback in an R-1 Single Family Residential District. If granted, the variance would allow construction of a 16 ft. x 51 ft. one story addition that would be attached to the existing garage and residence and would have a rear yard setback of 10 ft. No one was present at the hearing and no correspondence was received for or against the variance.

Mr. Sheahan began his presentation by explaining that what they are trying to accomplish is to connect the garage to the home to add 2 (two) additional bedrooms only. They will be removing the current covered walkway for the new addition, as well as leave the current exterior stairway on the garage for safety purposes. The rear wall of the new addition will be even with the back of the existing garage. The area behind the property line is heavily wooded and undeveloped for approximately 400 to 500 feet. The manner in which the home was built on the property in the 1950's with the main entrance facing east instead of south, makes it appear as if the rear yard is actually the side yard.

With no questions from the Board, Member Zarantenello moved to approve the variance, as requested, on the finding of fact that the practical difficulty is the location and layout of the existing home, the request is minimal and poses no public safety issues. Member Dudeck supported the motion with all members voting aye.

Motion carried.

Case No. 1019: PROPERTY CODE NO 11-07-5620-0030-00-4 15196 Shrago, Lakeside Mi 49116

Howard Kahne, attorney from the law firm of Passaro & Kahne Law Office, was in attendance (in place of Attorney Sally Taylor who was unable to attend the hearing) as well as property owner Rafal Kowal, to present their request for a variance from Section 4.06D of Chikaming Township Zoning Ordinance No. 87, as amended, which allows a maximum lot coverage of 20% on a NCR1-A lot; Section 15.03 A which allows a maximum total square footage of 400 sq. ft. for accessory structures in an R-1 District; and Section 15.03 which requires a 10 ft. side and rear yard setback for an accessory structure. If granted, the variance would allow the existing 127 sq. ft. gazebo (erected without a building permit) to remain in its present location. The base is 2 ft. from the side property line and 3 ft. 8 in from the rear property line, per the site plan provided. It would increase lot coverage from 2008 sq. ft. (27%) to 2135 sq. ft. (28%) and exceed the allowable accessory structure footprint by 122 sq. ft.

There were 2 people present in regards to this case: John Empfield (who also wrote a letter), is Kowal's neighbor to the North and approves of the variance request, and Pamela Gumns (who also wrote a letter and presented pictures taken from her back yard) lives directly behind the Kowal's property and is against the request. 3 letters of correspondence were received, 2 (two) were read by Chairman Strohl; from John Empfield and Kathleen & Larry Baldwin, both agreeing with the variance request and 1 (one) was read by Pamela Gumns, who wrote the letter and is against the variance request.

Mr. Kahne began his presentation by presenting the Board with a survey (dated 10/26/11) from Abonmarche that had previously not been seen by Members of the Board. The survey shows that the eaves of the gazebo are actually encumbering 0.4' on the northeasterly side yard and located 0.6' on the southeasterly rear yard, while the corners of the structure are 2.0' off the rear property line and 1.2' off the side property line. The variance request application originally stated that the rear yard setback was 3.8 ft and the side yard setback was 2 ft.

Kahne explained that the property was platted in 1934, as Lot 30 Supervisors Plat of Orchard Beach. The property has 84' of frontage on Shrago and a depth of 90', which is the same size as it was when platted. This property was given NCR1-A status when Zoning Ordinance No. 87 was amended by Ordinance No. 125, effective October 30th, 2006.

Kahne stated that the issue is the open air gazebo, covered deck and covered walkway that was built without obtaining a building permit. He continued by stating that the intention of the property owner was never to violate the Ordinance. Prior to beginning construction, Mr. Kowal had spoken to his neighbors about the gazebo and thought since he lived on a private road that was all he needed to do. Kowal had purchased the home in a foreclosure sale in 2010. There had been a prior variance (Case # 622, heard on 2/20/01) granted for the property which allowed several additions to be made to the home. He stated that due to the foreclosure status he did not have time for due diligence before the closing to look into the Zoning Regulations. Once a price for the property was agreed upon, he honestly was not thinking about what could or could not be done the property. When Kowal was asked by Member Zarantenello if an inspection had been done prior to the closing, Kowal stated yes. Zarantenello asked if there had been a 10 day inspection period, Kowal stated that he honestly could not answer.

Kahne then continued his presentation by saying that they feel the practical difficulty lies in the small lot size and that an open air gazebo is a reasonable accessory structure and could actually fall into the exceptions of Section No. 15.03 D of the Zoning Ordinance: non-permanent structures of 120 sq. ft or less can be located 5 ft. from any side or rear lot line. (Amended by Ordinance No. 114, effective 6/1/2004). Mr. Kowal has no intention of enclosing or screening the gazebo so it could be considered temporary. He built the gazebo around the hot tub and covered the deck in order to limit the noise and lights from his neighbors.

Member Dudeck then asked Zoning Administrator Bohac if the covered rear deck was included in Case #622 to which Bohac replied no, just an open raised deck. The deck has been expanded and covered since the variance was approved in 2001. Kahne then stated that Kowal only covered the deck he did not expand it. Empfield and Gumns both agreed that the expansion had been done by the previous owner and Kowal had just covered it. Member Sizer then asked if Fire Chief Mike Davidson had been out to look at the property as she feels there are safety issues involved. Member Dudeck stated that he had not been to the property.

Dudeck then went on to say that she understands that Kowal did not intentionally violate the Ordinance by not obtaining a building permit and she understands the desire for amenities on the home, but in this case the variance is not reasonable because small lots need small coverage which was the purpose of the Ordinance Amendment No. 125 and why she cannot support it. Chairman Strohl stated that although the Board is focusing on important issues, the most important one is that it was done illegally.

Dudeck then moved that Case # 1019 be denied on the finding of fact that it is an existing illegal structure, there are safety issues, the structure is out of character with existing homes in the area and the lot coverage was excessive for accessory use. Sizer asked if it would be possible for Kowal to move the structure and re-apply for a variance and it was agreed that he could. ZA Bohac then reiterated that everything that was built without obtaining a permit would have to be completely removed within 30 days as it is a violation and then he could reapply. Items to be removed include the open air gazebo, hot tub, covered walkway and the roof over the deck and the deck encroachment. Once everything was removed, Kowal could then reapply for a variance. Zarantenello then asked to suspend the motion as he had no objections to the covered deck. Sizer then asked if the motion could be tabled to give Kowal more options to which Zarantenello stated there were no further options and that everything must come down piece by piece. Dudeck then asked ZA Bohac what her feelings were on the covered deck. Bohac stated that she had no objections to letting Kowal leave the roof over the deck with the conditions that it can not be screened or enclosed to create more living space. To do that he would again need to apply for a variance. The motion to deny was then unsuspending by Dudeck who added to her original motion that the roof over the deck can remain with the condition that it cannot be screened or enclosed for additional living space without applying for a variance and Kowal has 30 days to completely remove the gazebo, hot tub, covered walkway and the deck encroachment. Member Sellers supported the motion with roll call vote as follows:

Sizer-aye, Sellers-aye, Strohl-aye, Dudeck-aye and Zarantenello-aye.
Motion carried.

Kahne then asked the board if there was any flexibility to the 30 day time limit as the weather could turn bad at any point. Dudeck told him no, if a weather hardship occurred they could come speak with ZA Bohac and perhaps a short extension would be possible.

CASE NO. 1014 PROPERTY CODE NO. 11-07-0009-0004-53-8 13660 S. Easy Lane Harbert MI 49115. THIS CASE WAS TABLED AT THE OCTOBER 18, 2011 MEETING FOR ADDITIONAL INFORMATION.

Gregory Zrazik and his Realtor, Gary Ramberg, were in attendance to present their request for a variance from Chikaming Township Zoning Ordinance No. 87, as amended, which does not allow an accessory structure to be located in any portion of a front yard in an R-1 Single Family Residential District and Section 14.02 which requires a 30 ft. front yard setback. If granted, the variance would allow construction of an 18 ft. x 22 ft. 1 ½ story unattached garage to be located off the S. Easy Lane side of the property with the southwest corner of the garage having a front yard setback of 23 ft. 8 inches. The northeast corner of the garage will meet the 30 ft. front yard setback. The property has three front yards; one on Harbert Rd., one on S. Easy Lane and one on Timer Lane. The property is also encumbered by regulated wetlands. No one was present at the hearing and no further correspondence was received since the October 18th, 2011 hearing.

This case was tabled at the October 18th, 2011 hearing because of a lack of information. The Board requested that the property owner, Gregory Zrazik, have an official survey of the property done in order to show exactly where the proposed garage would be located in relation to the boundaries of the easement known as S. Easy Lane. There was some confusion on this between property owners of S. Easy Lane and Mr. Zrazik at the previous ZBA hearing.

After review of the survey by Abonmarche, dated 11/8/11, it shows that the easement known as S. Easy Lane has actually shifted 4.2' west of the westerly easement line at the widest point. This would put the setbacks of the garage at 29.8' on the northeastern corner and 23.6' on the southeastern

corner from the true boundaries of S. Easy Lane. The setback from where S. Easy Lane has shifted west would be 19.4'. No other details of the variance request have changed.

Ramberg stated that as the property is currently for sale, he does have potential year-round residents interested in purchasing the property if the garage can be built.

Sizer asked if the fact that the easement has shifted substantially would result in improvements being made to S. Easy Lane to which Dudeck replied she would be following up with Fire Chief Mike Davidson and the head of the association (if there is one) to address the safety issues and possible improvements should be made as the road can use improvement.

With no further comments, Dudeck moved to approve the variance as requested, on the finding of fact that the home has 3 (three) front yards, is encumbered by regulated wetlands, the request is minor and reasonable and poses no public safety issues. Sizer supported the motion with all members voting aye.

Motion carried.

With no further business, Dudeck motioned to adjourn at 2:10 p.m. with all members voting aye.
Motion carried.

Respectively submitted,

Theresa Priest
Recording Secretary