

**CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS**  
Minutes of the September 20th, 2011 Regular Meeting  
**APPROVED**

The duly noticed September 20th, 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.

Zarantenello moved, Sellers supported to approve the minutes, as proposed, for the August 16<sup>th</sup>, 2011 meeting. Motion carried.

**Case No. 1012 Property Code No 11-07-7350-0003-00-4 14317 Lakeshore Rd. Lakeside, Michigan**

A variance is requested from Section 15.02 of Chikaming Township Zoning Ordinance No. 87, as amended, which states: "In any front yard, no fence or wall shall be permitted to exceed a height of 4 feet." If granted, the variance would allow construction of a 6 foot fence in the front yard along Red Arrow Highway. This property is a through lot having two (2) front yards, one on Lakeshore Rd. and one on Red Arrow Hwy. Susan Schwartz, property owner, was unable to attend the hearing. No correspondence or comments for or against the variance were presented.

Chairman Strohl did add to the record that an email had been received from Susan Schwartz stating that we had an incorrect address listed for her. The correct address should read 1501 N. State Parkway, #7B. Chicago Illinois, 60610. Corrections have been made to the file.

In discussion, it was agreed by the Board that this was a reasonable request. Member Zarantenello stated that he had driven around the area and there are other homes that also have 6 foot fences in a front or rear yard. When asked about the location of the fence, ZA Bohac stated that it would be installed more than 50' from the center line of Red Arrow Highway, which is the public road right of way.

Dudeck then moved to approve the variance as presented on the finding of fact that the property has two (2) front yards, one (1) on Lakeshore Rd. and one (1) on Red Arrow Hwy.

The dwelling uses Lakeshore Road as their front yard. The property is located on a major thoroughfare, with much traffic and noise from Red Arrow Highway. The fence would pose no public safety or health issues. Zarantenello supported the motion with all members voting aye.

Motion carried.

**CASE 1013: PROPERTY CODE NO 11-07-0017-0010-02-415800 Lakeshore Rd, Union Pier, Michigan**

Lowell Smith of Dunes Development, agent for property owner Mike Beninato, was in attendance to present their request for a variance from Section 15.02A of Chikaming Township Zoning Ordinance No. 87, as amended, which states: "In any front yard, no fence or wall shall be permitted to exceed a height of 4 feet:" and Section 15.02B which states: "fences on all lots of record in all residential zoning districts and platted subdivisions which are within a required side or rear yard shall not exceed 6 feet in height, measured from the surface of the ground, and shall not extend toward the front of the lot nearer than the front of the house or the minimum front yard, which ever is greater."

If granted, the variance would allow construction of a 6 foot fence along the Center Avenue property line extending from Lakeshore Road to the meander line of Lake Michigan. This property is adjacent to the Center Avenue, more commonly known as Miller Street Beach access.

One letter of correspondence against the variance was received from Mr. Richard Dunn of Union Pier, Michigan. In attendance at the hearing to speak against the variance request were Fran Wersells, Regina Albrecht, Lorrie Gibson and Walter and Eva Korber.

Mrs. Wersells also presented the Board with a list of approx. 40 signatures from nearby homeowners and beach goers who oppose a new 6 foot fence, but do not oppose the minimal 4 foot fence. She stated that the concerns with a 6' fence are:

1. Block the view of the magnificent lakefront as they approach the township beach access.
2. The proposed fence will go down even further onto the bluff or the meandering line of Lake Michigan as they know it, further defacing their very limited beach area.
3. They feel that a 6 foot fence will do nothing to discourage trespassing on the property in question or provide the homeowner with more privacy.
4. Many local beachgoers are aging and can no longer go down to the shore. They must stop at the viewing benches and a 6 foot fence would impair their enjoyment of the lakefront.

Mr. Joe Margol, representing the Berrien County Road Commission, was also in attendance to state the concern of the BCRC. Currently, the existing chain link fence is on the county right of way and should be removed. Zarantenello said he had noticed this in his inspection of the property and had already made the determination that it would have to be removed if the variance passed.

Lowell Smith stated that this whole issue began because the existing 6' fence has been there many years and is in a state of great disrepair. The property owner had considered just repairing the existing fence, but it was not reasonable due to the condition.

He explained that the new fence will actually be stopping short of the place the existing fence extends to. He also stated that had the property owners known that so many people would oppose a new fence, he would have had them attend the hearing as well.

He feels that the property owners would have willingness to compromise if that was necessary. The intention is not to make everyone mad, but provide better aesthetics to the property and privacy from the public right of way and the amount of foot traffic that uses this road end beach access.

Chairman Strohl then took the floor to make clear that the Zoning Board of Appeals is driven by regulation not emotion. Decisions are made by the finding of facts and practical difficulty, and anyone opposing a decision made by the ZBA has other options to appeal any decision

Member Sellers suggested tabling the issue so the property owner would be able to attend. Other members stated that another meeting would not change their decision as the discussion led to a compromise with the public input on maintaining the Lake Michigan view being addressed by limiting the length of the six (6) foot fence.

Zarantenello then made a motion to approve the variance, with the following conditions set forth by the ZBA, on the finding of facts that the current fence is in disrepair and on the county right of way, the request is reasonable and poses no public safety or health issues. Conditions for the variance are as follows:

1. No part of the 6 foot fence shall be installed in the public right of way or established easements of Lakeshore Road and Center Avenue.
2. All existing fences, wood, wire, mesh or pieces thereof, must be removed completely.
3. Any 6 foot sections of the fence must stop east of the public viewing bench and the "Found Iron" mark on the survey dated 06/03/94 that was done by John G. Kamer.
4. No fence regardless of height may be installed in the public right of way.

Sizer supported the motion with roll call vote as follows: Dudeck aye, Zarantenello aye, Sizer aye, Strohl aye, Sellers no.  
Motion carried.

**CASE NO 999-REHEARING PROPERTY CODE NO. 11-07-0019-0059-02-0 9182 PIER ST. LAKESIDE, MI PROPERTY OWNERS PABLO DENES AND LUCIA ROTHMAN**

This case was previously heard and decided on February 15<sup>th</sup>, 2011. An appeal from the decision was filed by Attorney Stephen W. Smith, Troff, Petzke & Ammeson, on behalf of Charles and Patricia Herbst, adjoining property owners. On August 8<sup>th</sup>, 2011, Judge John E. Dewane ordered that the case be remanded back to Chikaming Township Zoning Board of Appeals for further hearing on the application for non-use variances.

Chairman Strohl read two (2) letters to be entered into the record. The August 23<sup>rd</sup>, 2011 letter from Attorney Sally Taylor which stated that her clients, Pablo Denes and his wife, Lucia Rothman, withdraw their variance application and request filed in January 2011, and heard February 15<sup>th</sup>, 2011 under Case No. 999. The August 25<sup>th</sup>, 2011 email to Attorney Stephen Smith, representing Herbst, from Attorney Hilmer which stated the Township will notice out that Case No. 999 has been remanded to the Board of Appeals. The notice was published, posted at the Township Office and put on the Townships website. Being the property owner had withdrawn the application, the Township did not mail notices to property owners within 300 feet, but the rehearing was noticed in the Harbor Country News on September 1<sup>st</sup>, 2011.

No public comments or correspondence were received regarding this rehearing.

Dudeck moved, Sellers supported to acknowledge the receipt of the above information, consider the matter closed and the Decision Order No. 999 to be rescinded. All members voted aye.

Motion carried.

With no further business, Sellers moved and Zarantenello supported to adjourn at 2:10 p.m.  
Motion carried.

Theresa Priest  
Zoning Board of Appeals  
Recording Secretary