

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the August 20, 2019, Regular Meeting
APPROVED

The August 20, 2019, regular meeting of the Zoning Board of Appeals was called to order at 1:00 p.m. by Vice Chairman (hereinafter Chair) Doug Dow. Roll call of members present: Doug Dow, Liz Rettig, Kathy Sellers, Alternate Phil Bender. Absent: Tom Gold and Larry Anderson. Quorum. Also, present: Van Thornton (ZA), Charles Hilmer (Township Attorney) and members in the audience (sign-up sheet attached of those persons who signed in).

Chair advises that the first order of business is to approve the July 18, 2019, minutes. Sellers points out four (4) minor corrections on Pages 2, 3, and 4. (misspellings). **Sellers makes a motion to approve minutes as corrected; Dow seconds; Voice vote: Four (4) members - AYE. Minutes are approved as corrected.**

CASE 1173: Kathy Ryan-Peters property owner – 9663 Berrien Street, Union Pier, MI 49129. Property Code No.: 11-07-4730-0012-00-4. *Applicant is asking to reduce the rear yard setback to approximately 10 (10') feet to accommodate a handicap accessible ramp as required by Michigan Building Code. This property has 2 front yards, Berrien Street and Howard Street. Chikaming Township Zoning Ordinance Section 14.02 requires a 30-foot rear yard setback.*

Chair asks for comments from ZA. ZA Presents the Board with some written comments regarding the definition from Chikaming Zoning Ordinance Section 2.27 of front yard setbacks, rear yard setbacks and some definitions from other townships. ZA continues that applicant has presented 3 different versions of a site plan and indicates the date stamp on each as being significant to establish a timeline of how work has progressed on this project. ZA continues further stating that every corner lot must have the minimum setback from the street and gives us more information from the proposed new ordinance and the definition of a front lot line. The Building Department treats the corner lot where it has an established address as the “front lot line” and the rear line to that front line is treated as the rear lot line. However, our Ordinance does not give a definition for a rear lot line. The ZBA must determine which yard is the rear yard IF there is a rear yard and then deal with the variance. A side yard requires a 10-foot setback, while rear yards require a 30-foot setback. After that determination, it will then give guidance as to setback – if one is needed.

Chair asks applicant to speak. On behalf of Applicant, Jesse Hibler who has prepared the drawings and speaks to the Board contending the most recent drawing of 8/1/19 describes the site as having 2 front yards and 2 side yards. If a rear setback is used, the existing building is already beyond the setback. The proposed ramp is for handicap access and must be there for ADA compliance purposes and the latest drawing is within the 10-foot side yard setback. We have placed the ramp in the rear of the building so that the view of this very large ramp is not seen from the road. The ADA entrance is also in the rear of the building.

Sellers questions applicant and ZA if applicant has obtained a building permit and according to which of the plans submitted is the building permit issued. Applicant responds: 10/1/2018 drawing. The architect then modified the plan to stay within the 10-foot setback. Sellers asks

about the shed and its distance from the side yard. Applicant responds: 10' 1" from the side yard setback according to the 8/1/19 drawing.

Chair advises that there is one (1) e-mail letter from Lea Sherman of Pier Point HOA (neighbor at 9659 Berrien Street) who has no objection and is in support of granting the variance.

Chair asks for public comment – None.

Chair closes the public comment portion.

Chair goes to Board discussion. Seller asks applicant if the porches, etc., were designed based upon the building permit. Applicant answers yes and then after finding out about the problem, redesigned the plans, and has stopped work. Dow interjects that it may be important for the Board to know that the applicant has been to the Planning Commission (PC) when she first started this project and the PC and the Township Board approved a Special Land Use (SLU) permit extending its nonconforming use. Let's first figure out where is the rear yard or are we willing to accept this parcel as having 2 side yards. If we do, the revised plans (8/1/2019) would be in conformance. If we determine there is a rear yard (setback of 30'), the issue is that the structure as it exists is a non-conforming structure (side and back) infringing upon the 30' setback. Rettig interjects that not every parcel has a rear yard – it could very well have 2 side yards – especially unique parcels having 2 front yards. Dow feels that this is reasonable and goes back to the issuance of the building permit based on a set of plans which shows an infringement into what was thought to be a side yard, the infringement was pointed out, and now a proposed revised plan has been submitted which would make it no more non-conforming given that it would have 2 front yards and 2 side yards and meets the side yard setback. ZA interjects that in the ZO there is nothing that says a lot MUST have a rear yard.

Chair begins to go through the criteria; but as further Board discussion progresses in going through the criteria, the Board determines that the property does in fact have 2 side yards. Dow comments that the variance that we have been asked to rule on is a rear yard setback. If we are determining that there is no rear yard, no variance is required, correct? (question directed to ZA). ZA responds: Under the amended plan (8/1/19), the applicant has indicated a 10' 4" setback from the Northerly property line and no variance is needed because they are outside of the side yard setback. Dow memorializes the Board's determination:

The Board interprets that this lot has 2 front yards and 2 side yards requiring 2 10-foot setbacks for those side yards, the existing structure on the East side already impinges on that but it is an existing non-conforming structure, therefore we will go to the other side yard and determine we need to maintain a 10-foot setback there. In the revised plans of 8/1/19, it does maintain the setback – therefore no variance is needed. A unique property with a unique situation. We don't want the applicant to have further issues on this matter.

Dow: I move that the ZBA has made an interpretation on this particular lot (being 9663 Berrien Street – tax #11-07-4730-0012-00-4) and has determined there are 2 front yards, there are 2 side yards and there is no rear yard. Furthermore, the drawing submitted by the Applicant on 8/1/19 is now conforming with this interpretation and therefore the variance is no longer needed. Sellers seconds. ROLL CALL VOTE (to approve). Bender: Yes; Dow: Yes; Rettig: Yes; Sellers: Yes. Motion carries. 4 – 0.

[KATHY SELLERS LEAVES FROM THE BOARD TABLE RECUSING HERSELF FROM NEXT CASE]

Tabled from July 2019 meeting.

CASE 1172: Chikaming Township Park Board regarding public parking lot adjacent to Cherry Beach, Harbert, Michigan. Property Tax Code #11-07-0017-0003-02-8. Applicant is asking to erect an 8-foot gate in front of the port-a-john that will not be removed when the season is over. *Chikaming Township Zoning Ordinance Section 15.02B states in part “fences on all lots of record in all residential zoning districts shall not exceed 6 feet in height.”*

Chair notes for the record that the issue that made us table this in July was the drawing provided to us didn't provide sufficient details and we asked for a dimension plan showing trees, location of proposed gate and existing fence and we asked that it be reviewed and approved for emergency access by the Fire Department and the Dangerous Building Inspector. What we have received from the applicant is an amended drawing that does show the parking lot, the location of the port-a-johns, the existing fence, the emergency vehicle parking, and the major trees.

Chair asks for comments from ZA. None.

Chair asks applicant to speak. Deborah Hall Kayler, Chair of Park Board, speaks and reiterates their request for a variance.

Chair notes that this has been “oked” by Chief of Police and by Fire Chief as indicated on the drawing. Chair asks applicant if approval was received from Dangerous Building Inspector. ZA interjects that Mr. Kern (Dangerous Building Officer) works under the Building Department's supervision and will guarantee that there will be no objection from Mr. Kern.

Chair advises that all steps requested have been met.

Chair further states that no letters have been received.

Chair asks for Public Comment. None.

Chair closes Public Comment and goes to Board discussion.

Chair says the long and short of this is that requests were made and they were complied with. The 8-foot height will match the 8-foot fence for which a variance has already been granted and it will serve the purpose of appropriately screening the port-a-johns being more aesthetically pleasing – first screened from the neighbors and then screened from the parking lot.

Chair goes through criteria:

- 1 Are there unique circumstances or conditions that exist? Yes – public park.
- 2 As a result of the unique circumstances, strict compliance with the provisions of this ordinance would unreasonably prevent the use of the property for a permitted purpose, or be unnecessarily burdensome? Yes.
- 3 The unique circumstances do not result from the actions of the applicant? Yes.

- 4 The variance request is a minimum variance that will make possible the reasonable use of the land, building or structure? Yes.
- 5 Will the granting of the variance be in harmony with the spirit and intent of the Ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, and welfare? Yes.

Rettig makes a motion based on all five (5) criteria having been met, to grant the variance to erect the gate in front of the fence; Bender seconds. VOICE VOTE: Bender, Rettig, Dow – AYE; Variance Passes 3 – 0. VARIANCE REQUEST GRANTED.

Chair asks if there are any other comments from the public on any other matters. None.

Chair asks if there is any other business for the board. With no further business to come before the board, **Chair declares meeting is adjourned at 1:38 p.m. Meeting adjourned.**

Respectfully submitted,

Elisabeth A. Rettig
Recording Secretary

Date Approved: October 15, 2019