

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the July 18, 2019, Regular Meeting
APPROVED

The July 18, 2019, regular meeting of the Zoning Board of Appeals was called to order at 1:00 p.m. by Chairman (hereinafter Chair) Larry Anderson. Roll call of members present: Doug Dow, Liz Rettig, Larry Anderson, Tom Gold, Kathy Sellers. 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 June 18, 2019, minutes. Dow finds three (3) minor corrections on Pages 1, 3, and 5. (misspellings). **Dow makes a motion to approve minutes as corrected; Anderson seconds; Voice vote: All five (5) members - AYE. Minutes are approved as corrected.**

CASE 1168: Howard Labow property owner – 14871 Lakeshore Road, Lakeside, MI 49116. Property Code No.: 11-07-0019-0057-00-1. Applicant is asking for relief from the rear yard setback to allow a new deck to be 15 feet from the rear property line. Chikaming Township Zoning Ordinance Section 14.02 requires a 30-foot rear yard setback.

Chair advises that there are no letters.

Chair reads ZA comments into record: (SEE ATTACHED). No further comments at meeting from ZA.

Chair asks if applicant is present. William McCollum, Architect, speaks on behalf of applicant. McCollum advises that this is an unusual parcel, house is set far back, very close to lot line and already encroaching in one of the side yard setbacks. (Presents areal picture). Applicant wishes to add a bedroom, but does not want to change the interior of the existing house. A lower level is being added; there must be 2 ways to exist with the new addition. The hardship is the 2 ways to gain access/exit is needed. Existing decks (as shown on drawings) are already encroaching. This is a 3-part request:

- Variance #1 - Addition of deck to reduce the rear yard setback from 30' to 15'
- Variance #2 – Reduce West side lot line from 10' to 3' 6" for stair landing only;
- Variance #3 – Reduce East side lot line from 10' to 5' to match up with the existing deck.

No variance required for new bedroom. Much discussion among Board regarding floor plan. It was determined that even if Variance #1 (in full) is not granted, the extension of the decks (#2 and #3) are still needed for stair access. More discussion about removing and rebuilding the existing deck on the exact footprint (because this is a non-conforming lot).

Chair asks for public comment – None.

Chair goes to Board Discussion. Sellers asks about a fire truck being able to access and it was determined that even now, a fire truck could not access. Dow reminds us of ZO 4.03 #2, and what we have today is a non-conforming lot with a non-conforming structure; anything we grant

would increase the non-conformity. Discussions regarding lot coverage. ZA interjects that decking not computed in lot coverage (only roofed structures). McCollum advises that only decking (no roofing) to be added. The members agree that the 2 extensions of the decking were minimal AND DOES NOT INCREASE THE NON-CONFORMITY, but the adding of the large deck (Variance #1) was not minimal. Rettig reminds us that under the new zoning ordinance there is allowability for encroachments into rear yard setbacks for decks and stairs for lots that have unusually short backyards. ZA advises that when passed, the new ordinance would allow a deck or stairs to utilize ½ the distance of the rear yard. Chair advises the applicant that he could “withdraw” the deck variance (#1) request (going 15’ into the rear setback) and advises that if we deny, applicant must wait a year before returning for a similar variance. McCollum asks about a smaller sized deck and building the stairs and walkway for egress/ingress. The rear yard setback is currently 36’ 1” as it exists. The Board encourages the applicant to keep the new stairs within the 6’ 1” allowed and staying out of the 30’ setback and suggests that by the time this is all built, the new Zoning Ordinance will probably be in effect allowing him to have the 15’ deck and would probably not need a variance.

APPLICANT WITHDRAWS HIS REQUEST FOR THE DECK VARIANCE AND AMENDS HIS VARIANCE TO REQUEST ONLY THE EXTENSIONS OF THE 2 EXISTING DECKS.

Chair advises that the two (2) minimal variances for extensions of the existing decks (SHOWN IN DRAWING A-2) will be done together and goes through the criteria:

1. Are there unique circumstances or conditions that exist? Yes – non-conforming lot; decks are already in existence.
2. As 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 – non-conforming lot/burdensome because of addition of bedroom and need for egress/ingress (decks must be extended).
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.

Dow: I move that we approved both the variance requests for the extension of the two (2) decks on the East and West sides to perpetuate the existing non-conformance 5’ on the East setback and 3’ 6” on the North/West setback to allow short extensions of the decks meeting our five (5) criteria; Anderson seconds the motion. ROLL CALL VOTE (to approve). Dow: Yes; Rettig: Yes; Anderson: Yes; Gold: Yes; Sellers: Yes. Motion carries. 5 – 0.

CASE 1171: Thomas S. Souleles Dynasty Trust property owner – 14548 Meadow Lane, Lakeside, MI 49116. Property Code No.: 11-07-4900-0008-00-8. Applicant is asking to place an inground pool in the Lake Michigan front yard, which will meet all required setbacks. This property has 2 front yards, Lake Michigan and Meadow Lane. Chikaming Township Zoning Ordinance Section 15.03(B) states, “An accessory building or structure shall not be located in any portion of a front yard.”

Chair advises that there are no letters.

Chair reads ZA comments into record: (SEE ATTACHED). No further comments at meeting from ZA.

Chair asks if applicant is present; John Heinert, Architect speaks on behalf of applicant. Questions to applicant: Dow: On Page 2 of the drawing, the North side of the property shows that there are stairs which encroach into the 10' setback. The Architect asks if those are not allowable and is advised they are not. The Architect will remedy and remove those stairs from the setback.

ZA is asked if lot coverage is an issue; coverage is not an issue.

Gold asks if pools on the lake side are addressed and remedied in the new ordinance. Dow answers Gold's question with great accuracy giving verbatim definitions and numbers from the new anticipated ordinance.

Chair asks if ZA has any further comments. ZA reminds applicant that no pool equipment/appliances/air-conditioning, etc., shall be in the side yard setbacks.

Chair asks for public comment – none.

Chair goes to Board discussion and goes through the criteria:

1. Are there unique circumstances or conditions that exist? Yes – Through lot.
2. As 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 – Through lot.
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: I move that we approve the variance request to allow the placement of the inground pool in the Lake Michigan front yard as it meets our five (5) criteria; Dow seconds the motion. ROLL CALL VOTE (to approve). Dow: Yes; Rettig: Yes; Anderson: Yes; Gold: Yes; Sellers: Yes. Motion carries. 5 – 0.

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

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.”

Deborah Hall Kayler, Chair of Park Board, speaks as to why the gate is necessary allowing for privacy; hide/screen off the port-a-john. The gate will swing open for cleaning purposes and servicing and the company who does this will be the only ones who will open the gates. The gate will not connect to the existing fence and the public will not be opening these gates. Discussion about the pretty side/good side out of the new fence (8') which was just constructed. ZA comments that in our Zoning Ordinance, it does not address a good side/bad side of the fence. Further discussions about location of the screen wall and that it will allow for handicap access. Plans presented are not to scale; discussions about definition of screen wall, fence. Pictures are presented. It is noted from pictures that the posts for the new gate are already in place. Dow asks what the unique circumstances are? Gold interjects that perhaps the Park Board didn't think it through the first time around and doesn't feel that a privacy wall is going to upset the neighborhood.

E-mail letter read by Chair (internal e-mail from Park Board) setting for specifications for gate – 4' x 6' each side with 2' x 4' treated inside with angle bracket.

Dow asks the ZA if this still needs a variance. ZA answers that the issue we have is a 6' fence which is permitted in a rear yard, but this is not a rear yard, so a variance is required (variance for fence and variance for height of 6'). No definition of fence is in the Ordinance. (Article 15)

Public Comment: Brian Kern (Dangerous Building Enforcement Officer for Chikaming) is concerned that any fence or gate added should make certain that the port-o-johns are still accessible, ground is level, and are they allowing for emergency vehicles to get around the tree and parking. (Firetrucks and ambulances)

Kayler continues that safety is also important to the Park Board and shows pictures of marked area for emergency vehicle space.

Dow feels we need a drawing that is correctly dimensioned that shows the site, the fence, where the emergency vehicle area is, and the anticipated new gate.

Public Comment continues... Anne Hickman (long time resident) states that the new location of the port-o-potty is in a better location than previously and the fence is a definite improvement. A wooden structure to block it would certainly help the aesthetics and for privacy.

Jill Underhill, of the Park Board asks the ZA if he feels there's a problem with the added gate. ZA comments that he has no opinion and that this is strictly a ZBA decision, but should the Board make the decision to approve, it be contingent upon Fire Chief Davidson's verification that it does not affect emergency vehicles.

Gold feels that we need to make a decision now before the summer is gone and **makes a motion that the gate is a landscaping appurtenance that does not fall under our control and the building department will work with the emergency responders for access, and a proper site plan is presented.**

Dow says that we don't have a proper site plan, nor did we have one when the fence was first approved. We are here 2 months later revisiting this issue because it wasn't planned out and now there are contingent issues and we don't know how they will be dealt with.

Gold continues that we don't have jurisdiction.... And Dow responds that we do have jurisdiction under Section 15.02 (it is a wall or fence which cannot be more than 4' high).

Chair feels that we need to send this back to the Park Board (table this) and ask for a site plan that shows the trees, the location of the emergency vehicle parking, the fence, the gate – all aspects.

Gold reminds us that he has a motion on the floor. Chair advises that the motion was not seconded and dies for lack of support.

Chair makes a motion to table to our next meeting (August) and suggests that a properly dimensioned site plan be presented showing the trees, location of the gate, fence, reviewed by dangerous buildings and fire department for emergency access; Dow seconds. VOICE VOTE: Rettig, Anderson and Dow – AYE; Gold – NAY. Passes 3 – 1.

Chair asks if there is any other business for the board. With no further business to come before the board, **Chair and board give a consensus adjournment at 2:20 p.m. Meeting adjourned.**

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary

Date Approved: August 20, 2019