

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

The June 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).

***Note: Bob Beemer will hear Case #1164 only; Gold recuses.***

Chair advises that the first order of business is to approve the May 21, 2019, minutes. Dow finds one (1) correction on Page 8. (Capitalization of Park Board). **Anderson calls for a voice vote to approve minutes as corrected; Voice vote: All five (5) members - AYE. Minutes are approved. (Anderson, Gold, Sellers, Rettig, Dow)**

**CASE 1167: Jim Petry property owner – 15578 Red Arrow Highway, Union Pier, MI 49129. Property Code No.: 11-07-0030-0026-02-5. Applicant is asking to construct a 24' x 24' garage in the front yard, which will meet all required setbacks. Chikaming Township Zoning Ordinance Section 15.03(B) states in part, “An accessory building or structure shall not be located in any portion of a front yard.”**

Chair advises that there is 1 letter. Robin Miner (lives North of Property at 15566 Red Arrow) approves of granting the variance.

Chair asks for public comment – None.

Chair asks if applicant is present. Applicant presents his case stating this Property has only 1 neighbor to the North, there is a strong drainage path, lot is very wet, and the location of the garage request is due to the strong drainage path.

ZA – verifies he has visited the property site and the wetness behind the house makes that area unbuildable and the water flow on the Property is a problem.

Chair goes to Board discussion. Questions asked of the applicant regarding the current attached garage which is being used as a utility room and storage area and workshop. Sellers identifies an area where garage could go. ZA goes on to confirm that when the applicant made an addition to the house, the wetness of the lot was an issue.

The Board members all concur that this is a large lot and question if the front yard is the only location available for the garage and affirm that the lot is wet and remediation may be possible. Trees are not a consideration of the Board. Gold and Chair suggest to the applicant that if he were to attach the anticipated garage by a breezeway meeting the zoning requirements (roof/foundation), there would be no need for a variance. The applicant's builder (John Rudolph) along with application ask a few questions relating to the breezeway idea. The Applicant was advised that if the Board denies the variance, applicant may not return for another similar variance for one (1) year.

**DISPOSITION: APPLICANT WITHDRAWS HIS REQUEST FOR A VARIANCE CITING HE WILL EXPLORE ATTACHING THE GARAGE TO THE HOUSE BY A**

**BREEZEWAY WHICH MAY BE IN THE FRONT YARD WHICH WAS SUGGESTED RATHER THAN RISKING DENIAL OF HIS VARIANCE REQUEST BY THE BOARD.**

**CASE 1168: THIS CASE HAS BEEN RESCHEDULED TO JULY 16, 2019**

**CASE 1169: Patricia Cox property owner – 14928 Lakeshore Road, Lakeside, MI 49116. Property Code No.: 11-07-0010-0015-01-4. *Applicant is asking to erect an 8-foot fence on the side yards of the property and a 6-foot fence in the Lake Michigan front yard. This property has 2 front yards, Lake Michigan and Lakeshore Road. Chikaming Township Zoning Ordinance Section 15.02(A) states, “In any required front yard, no fence or wall shall be permitted to exceed a height of 4 feet,” and Section 15.02(B) states in part, “Fences which are within the required side or rear yard shall not exceed 6 feet in height.”***

Chair asks if applicant is present; Erik Dayrell, on behalf of applicant advises that the deer have decimated the property, garden and plants, presents pictures (showing mockup 10' section of new deer fence) showing that it is nearly invisible except for the posts, fencing material (deer mesh) and talks about the 3" – 5" cedar posts with bark on to make it look natural spaced 10' – 15' apart to which deer fencing material will be attached to the posts giving much information to the Board. No fencing on the roadside (Lakeshore) at this time. This request is basically for an additional 2 feet above what is currently allowed.

Chair advises that there are no letters. Chair asks for public comment – Jill Underhill asks about the material and is curious how well the material works.

Chair asks ZA for input. ZA advises that this is a 2-part application and should be looked at separately. Discussions and questions with ZA and Board and applicant regarding fencing material, cable (black coated), and how this “deer” fencing material fits into the definition of what materials constitute a fence; it is discovered that there is no definition in our Ordinance specific to fencing or material. Dow interjects (as a data point) that the new zoning ordinance has definitely moved toward allowing 8' fence on all side and back yards, but the ordinance has not yet been adopted.

Sellers begins to make a motion, then, Chair goes through the criteria for the granting of a variance (part A and part B):

1. Are there unique circumstances or conditions that exist that apply to the land, structure, or buildings which are not applicable to other lands, structures, or buildings in the zoning district? No.
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? No.

Chair stops this course of discussion because if the variance cannot pass these criteria, we need not go further. The answer must be “yes” to all 5 of the criteria. The Applicant was advised that if the Board denies the variance, applicant may not return for another similar variance for one (1) year.

**DISPOSITION: ERIK DAYRELL ON BEHALF OF APPLICANT WITHDRAWS THE REQUEST FOR A VARIANCE CITING THEY WILL WAIT ON THE NEW ORDINANCE (the new contemplated Ordinance allows for 8' fencing without the need for a variance) ADOPTION AND MAY COME BACK FOR A FRONT YARD VARIANCE IF NEEDED.**

**CASE 1170: Tiffany Danielle, Landscape Architect, representing property owners Anthony and Laura Davis – 14666 Meadow Lane Lakeside, MI 49116. Property Code No.: 11-07-0019-0005-00-1. *Applicant is asking to replace upper and lower decks and the stairway to the beach. The new stairs will encroach into the 30-foot front yard setback and will not meet the 10-foot side-yard setback required in Section 14.02 of the Chikaming Township Zoning Ordinance. In addition, Section 15.03 does not allow accessory structures in the front yard.***

Chair asks applicant to speak. Additionally, Attorney Bennett Schwartz is here representing the applicant as legal counsel. Key points: This is a 3-part variance. Unique in that it is a through lot. The existing decks are in degraded condition. #1: Want to replace upper and lower decks, and stairs (will be in the front yard – the lake side); #2: Stairs are currently on a 6' walkway easement (3 feet on adjoining property) with new stairs to be only on the applicant's property but within the 10' side yard setback; Part #3 of variance is that a modest portion of the stairs do fall within the front yard setback. Design solution is to upgrade materials being in greater harmony with environment (pictures shown to the Board). Gives information on materials (permeable) which will be used for decking. Lower deck will not impede the existing seawall. Gold questions why stairs must be in the side yard setback. Applicant answer about height of riser (rise to run ratio), lay of land, and saving a large 26' oak tree, and visual appearance from the lake side. Will remove the 2 accesses to the lake, making only 1 access. Attorney Schwartz adds that this property is not in a high risk or regulated area. ZA is questioned about lot coverage and adds that there is an adjacent lot and could add additional land to this property (if needed). Schwartz continues that what is being removed is about equal to what is being built so lot coverage should not be at issue. Further discussions about decking (all structures) being counted as lot coverage. Questions about high water mark and is there any beach. Applicant states that the size of the beach is not what it has been in the past, but there is beach. The stairs are "break away" stairs. Gold again questions why the stairs must be in the side yard setback and is this a question of aesthetics.

Letter from Bayer Family (neighbors to the South who share the existing stairs in the easement) who are in favor of the variance request. Rettig questions if the stairs are in the easement and if the easement will be removed. Schwartz affirms that the stairs and encroachment of stairs onto neighboring property will be removed and easement released and the new stairs will improve the location (not being on the neighbor's property).

Dow questions the removal of maples vs. oak tree and offers a suggestion to "flip" the stair as presented on the drawing allowing the stairs to meet all setback requirements. Dow continues: We are obligated as a board to give a minimal variance to achieve the objective. Applicant answers that they were attempting to minimize, but the visual was also taken into consideration. Dow responds that there has been nothing presented as far as uniqueness to allow the stairs to be in the setback. Gold concurs that there are over 100' available and doesn't understand what would prohibit the stairs being built "not" in the setback.

Chair asks ZA for comments: None.

Chair asks for public comment. Max Sims (14660 Meadow) supports the variance.

Chair goes to Board discussion. Discussion about where the new stairs will encroach the setback. Consensus is that there are other ways to accomplish the same goal (staying out of the setbacks).

**Part 1: Accessory Structure in front yard (2 decks in the front yard).**

Chair 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.

***Gold: I move that we approved the request for the construction of two (2) decks and stairs in the front yard setback; Dow seconds the motion. ROLL CALL VOTE (to approve). Dow: Yes; Rettig: Yes; Anderson: Yes; Gold: Yes; Sellers: Yes. Motion carries. 5 – 0.***

**Part 2: Placement of stairs within the 10-foot side yard setback.**

Chair goes through the criteria:

1. Are there unique circumstances or conditions that exist? No.  
Since this is not a unique circumstance (placement of the stairs within the setback) and there is plenty of room for these stairs in other locations – all concur that no unique circumstance exists.

***Dow: I move that we deny the request for the new stairs to impinge on the 10' side yard setback in that it does not meet the criteria for a unique circumstance; Sellers seconds the motion. ROLL CALL VOTE (to deny variance). Dow: Yes; Rettig: Yes; Anderson: Yes; Gold: Yes; Sellers: Yes. Motion to deny carries. 5 – 0.***

**Part 3: Deviation of 30' minimum front yard setback - Placement of stairs within the 30-foot front yard setback.**

Chair goes through the criteria:

1. Are there unique circumstances or conditions that exist? No.  
Since this is not a unique circumstance (placement of the stairs within the setback) and there is plenty of room for these stairs in other locations – all concur that no unique circumstance exists.

***Dow: I move that we deny the request for the new stairs to impinge on the 30' front yard setback in that it does not meet the criteria for unique circumstances; Anderson seconds the motion. ROLL CALL VOTE (to deny variance). Dow: Yes; Rettig: Yes; Anderson: Yes; Gold: Yes; Sellers: Yes. Motion to deny carries. 5 – 0.***

**Chair announces that Gold recuses from Case #1164; Beemer steps in.**

**CASE 1164: Tom Gold (Builder) representing property owner Horton Family Trust – 15236 Lakeshore Road, Union Pier, MI 49129. Property Code No.: 11-07-0019-0088-01-1. Applicant is asking to demolish the existing structure and rebuild with a 20 ft. front yard setback from Lakeshore Road and use the existing side yard setback which is less than 10 feet. Chikaming Township Zoning Ordinance Section 14.02 requires a 30-foot front yard setback and a 10-foot side yard setback.”**

Dow quickly summarizes the case from the May meeting: We have a house built on the edge of a ravine with foundation cracking and starting to slip down the ravine; something needs to be done with a proposal from the last meeting that the house be torn down and rebuilt but attempt not to encroach on the side yard setback and move the house closer to Lakeshore Road impinging upon the front yard setback. (Previous notes show that attempts will be made to bring it to 25’ from road instead of requested 20’.)

Builder Tom Gold speaks on behalf of applicant and brings the Board members a new drawing and a new picture showing that he has complied with both of the side yard setbacks and by moving the house away from the bluff including the front porch, the front setback would only be 20’ (from Lakeshore Road). Since our last meeting the bluff has given way and the deck has collapsed. Gold has been in touch with the drain commission and they have confirmed that a corrugated drain has broken and the water is continuously running especially with the heavy rains we’ve had causing more erosion. This drain is located on the neighboring parcel and we don’t have the ability to go onto that land. Looking for 20’ setback because the house had to be moved.

Chair asks ZA for any comments and if there are any DEQ issues: There are none.

Sellers: reiterates that this is a new structure and all setbacks are being met except front.

Gold affirms and the unique circumstance is the bluff has collapsed and erosion is under the deck.

Beemer asks how far away will the back part of the new house be from the ravine? Gold answers 34’ to 22’ at different locations along the back.

Dow comments that we need to focus on: What if nothing is done?

Chair asks if there is any public comment. Sam Darrigrand of Lakeside Inn speaks to his previous concerns about safety and erosion and wants to know height of building. Gold answers: 1 ½ story. More questions to Gold about what the front porch will look like: It is covered with columns but open in front. The soil content is clay and very unstable. More discussion about who owns the neighboring property. Hilmer interjects that the property has had the same ownership for many years and may originally have been part of the Lakeside Inn; the property is not on the tax rolls because it was apportioned many years ago and spread among the many adjoining owners so that the property with the stairs and access to beach would not go to tax sale.

Dow continues and cites Section 4.04 #7 from the Ordinance “If a non-conforming structure becomes physically unsafe or unlawful due to lack of repairs and maintenance... it shall not thereafter be restored, repaired or rebuilt except in conformity with the zoning district.” So, if we do nothing, it will fall into the ravine and must be rebuilt in the setbacks, which looks pretty impossible, so while I really don’t like cutting into the front yard setback, there isn’t much else

anyone could do. The uniqueness is the eroding bluff and the problem is dealing with only 1 setback issue. Gold interjects that the new footprint is only 1,600 square feet (same as before).

Chair goes through the criteria:

1. Are there unique circumstances or conditions that exist? Yes – eroding bluff
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 – eroding bluff.
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 makes a motion that we approve the variance to allow the front yard setback to be reduced to 20' from Lakeshore Road with the rationale being that it meets all 5 of the criteria; Seconded by Seller.*

**ROLL CALL VOTE (to approve). Dow: Yes; Rettig: Yes; Anderson: Yes; Sellers: Yes; Beemer: Yes. Motion carries. 5 – 0.**

**Chair announces that Gold steps back to the Board table to continue the regular meeting; Beemer steps out of the Board quorum but is asked to stay for commentary on the remaining agenda items.**

Chairman bring the next agenda item:

1. ZA requests an interpretation of Article 9, Section 9.02(10).

ZA addresses the Board regarding the permitted use in a commercial district. The Zoning Ordinance reads “a veterinary office, clinic, or similar use.” A potential purchaser in a commercial zoning district would like to utilize the property as a dog grooming facility. Is that a permitted use?

Questions posed and discussion centers around: overnight stays by animals at the facility, noise, barking, some vet offices do perform grooming and day care, impact on public, dogs being located inside facility, dogs being walked outside, boarding (being permitted only in AG zone), any decision in a zoning district applies to the whole zoning district, should restrictions be placed (# of dogs, outside kennel runs, limited days of stay), Attorney Hilmer weighs in that we are not charged with imposing any restrictions (because that would be the task of the Planning Commission and ultimately the Board of Trustees) and our only job is to determine if a dog grooming facility is a similar use to a veterinary office. Consensus of Board – YES – it is a similar use.

**Dow makes the motion that the ZBA has agreed that a dog grooming business is a similar use to the veterinary office or clinic currently allowed in a Commercial District; Anderson seconds. ROLL CALL VOTE. Dow: Yes; Rettig: Yes; Anderson: Yes; Sellers: Yes; Gold: Yes. Motion carries. 5 – 0.**



2. ZA continues: “Does the provided boundary line adjustment require a variance.” The neighbor to the South (A) is giving several feet of property along the entire lot line to the neighbor to the North (B) in exchange for the B neighbor giving a triangular parcel on Meadow Lane to the A neighbor so that the A will have road frontage of 25.03 feet where before A had no road frontage at all or access to Meadow Lane except by an easement.

The concern is that we are creating 2 new parcels (new legal descriptions) in an R-1 district. A property (getting the road frontage) was non-conforming before (because it had no frontage) and now it would be “less” non-conforming. Land Division Act says we cannot create non-conforming lot. Conforming lot requires 100 feet on road. Easement will be eliminated. Donor parcel will still maintain enough road frontage to be conforming. Are there issues down the line? Does it require a variance? All board members are in consensus that giving Parcel A road frontage is superior to having no road frontage. **Attorney Hilmer weighs in: The contribution of the land making it “less” non-conforming will not require a variance – just a lot line adjustment.**

3. ZA continues: The map presented of a parcel on 15458 Meadow Lane which is a through lot. The parcel has 5 sides (trapezoid): Road frontage being the front yard; lake frontage as being the other front yard and 3 more sides (are they side yards?). Must there be a defined “rear” yard having to meet a 50’ back yard setback because there is no sewer? Anderson points out that the road is a front yard and the 2 shoot offs to the left and right of the road are both side yards; and further if the lake front is another front yard then the 2 shoot offs to the left and right of the lake front yard are both side yards as well. Applicant may still have to come to the Board for a variance request on the pool located in the front yard. **Therefore, it is the consensus of the Board that this parcel has 2 front yards and 3 side yards because of its irregular shape and there is no rear yard – much like a triangular lot.**

Discussion about July meeting date (normal meeting date would be July 16 – 3<sup>rd</sup> Tuesday). Van will be gone this day; the July meeting has not yet been noticed. **IT WAS DECIDED BY CONSENSUS VOTE THAT THE JULY MEETING WILL BE HELD JULY 18, 2019 (THURSDAY) AT 1:00 P.M.**

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 3:28 p.m. Meeting adjourned.**

Respectfully submitted,

Elizabeth A. Rettig  
Recording Secretary

Date Approved: July 18, 2019