

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the June 19, 2018, Regular Meeting
APPROVED – 7-17-18

The June 19, 2018, regular meeting of the Zoning Board of Appeals was called to order by Chairman (hereinafter Chair) Larry Anderson at 1:00 p.m. Roll call of members present: Liz Rettig, Larry Anderson, Doug Dow, Kathy Sellers; Alternate Member, Phil Bender. Quorum. Also present: Zoning Administrator, Van Thornton (ZA), Attorney Charles Hilmer and some members in the audience (sign-up sheet attached of those persons who signed in).

Chairman Anderson advises that the first order of business is to approve the minutes from the May 15, 2018, meeting. Chairman asks if there are any questions, comments, corrections. Hearing none, Dow motions for approval of minutes as presented; seconded by Seller - **All in favor. Minutes approved.**

CASE 1146: Robin Carlson, Camp Carlson Trust applicant/owners – 315 Orchard Boulevard, Sawyer, MI. Tax #11-07-0820-0062-00-9. *Applicant is asking to construct a 20' x 15' three-season room on the rear of the property. The new structure will have a rear yard setback of 23 feet. Chikaming Township Zoning Ordinance Section 14.02 requires a 30' rear yard setback.*

Chair reads five (5) letters: Shorewood Hills Homeowners Association – support of variance; Steven Jessogne (neighbor) – support of variance; Paul Rook (neighbor) – support of variance; Johnson/Barnes (neighbor in back) – support of variance; Gustafson (neighbor) – support of variance.

Chair asks the Zoning Administrator if he has any comments. ZA advises that this is a variance with 2 issues: 1) rear yard setback and 2) lot coverage (request of 2600'; now at 2300'; allowed 1500'; asking for an additional 300').

Chair asks if the applicant is present. No one present. Chair asks if there are any other public comments. None heard, public comment portion is closed.

Chair now proceeds to board discussion: Rettig comments that it appears that the A/C, water, and electric would have to be moved; Sellers comments that there is no doorway and it would make more sense to place the three-season room where the deck is currently located. Anderson concurs. Discussion regarding corner lot and dimensions that must be conformed to and it is a non-conforming lot; setback issues and lot coverage issues; should not make a non-conforming lot MORE non-conforming; this change would be self-created; feel there are many other options.

Chairman Anderson proceeds to go through the criteria under which a variance can be granted.

1. Unique circumstances or conditions exist. YES. Corner lot and non-conforming.
2. As a result of the unique circumstances, strict compliance would unreasonable prevent the use of the property for permitted purpose. NO.
3. The unique circumstances do not result from the actions of the application. YES.
4. The variance request is the minimum variance. NO.
5. The granting of the variance will be in harmony with the spirit and intent of the ordinance and not injurious to the neighborhood. NO – expanding on non-conformity.

Rettig makes the motion that this variance be DENIED because it does not meet all the criteria for a variance under the zoning ordinance and it is further expanding on a non-conforming lot; Sellers seconds. Anderson asks that the motion be amended to include that the granting would expand on lot coverage. Rettig amends her motion to add lot coverage expansion being over the allowed coverage; Sellers re-seconds; Anderson asks if there is further discussion. None. Roll call vote: Rettig: Yes; Anderson: Yes. Sellers: Yes; Dow: No; Bender: Yes. VARIANCE IS DENIED. 4 – 1 VOTE.

CASE 1147: Monica Musialowski (architect), agent representing owner, Jeannine Cleary, Applicant – 7502 Linwood Drive, Harbert, MI 49115. Property Code No.: 11-07-0009-0034-00-3. *Applicant is requesting relief from the 25-foot setback from a stream so that the new construction of an accessory building will not be placed in the front yard. Chikaming Township Zoning Ordinance Section 15.14(C) requires a “25-foot setback from the ordinary high-water mark of an inland lake, river, stream, creek or other water course.”*

Chair asks if the applicant is present. Architect Musialowski speaks and goes over that the new space which is an expansion of the currently existing structure for a hobby shed/garage 1 story, pitched roof; there is currently an existing shed in disrepair; the new structure would not be in the “regular” setbacks and meets all other zoning criteria, not over lot coverage. The water setback is the only issue.

Sellers asks if they are taking down the shed and the garage. Response from agent is that shed is only being removed, not garage. Sellers questions if the existing garage is already in the 25-foot stream setback. Response is yes. New structure would make it closer to the stream.

The Zoning Administrator is asked by the Chair if he has any comments. ZA advises that he has conferred with Prism Technology (hired by applicant) and there is no wetland on the property. In addition, Prism advised ZA from historical data that that stream has never risen to the space where the new garage is to be located. The lot line setbacks are not at issue. The only encroachment is the stream/shoreline setback (25’).

Anderson asks if there is any public comment. Hearing none, public portion is closed. No letters from neighbors or association.

Board Discussion. Discussion among board regarding abundance of land including reconfiguring placement of new shed/garage; discussion that detached garage cannot go farther than front line of house and if moved, it would only be a few feet and still in the 25’ stream setback. Summary: Existing building already encroaching in stream setback, new structure greatly enhances, not many more options for placement of new garage; regular setbacks are being met; unique lot configuration and circumstance because of stream. Would the Township have any liability if this variance is granted and the stream were to flood? Question posed to Attorney Hilmer as a legal point. Mr. Hilmer states that in his opinion, Township would not have liability if flooding occurs if variance granted.

Chairman Anderson proceeds to go through the criteria under which a variance can be granted.

1. Unique circumstances or conditions exist. YES.
2. As a result of the unique circumstances, strict compliance would unreasonable prevent the use of the property for permitted purpose. YES.

3. The unique circumstances do not result from the actions of the application. YES.
4. The variance request is the minimum variance. YES.
5. The granting of the variance will be in harmony with the spirit and intent of the ordinance and not injurious to the neighborhood. YES.

Dow motions that this case be approved to allow encroachment of the 25-foot setback from the stream; seconded by Bender. Roll call vote: all in favor. VARIANCE IS APPROVED.

CASE 1148: Brett Mackie and Robert Walters, owners – 15177 Shrago, Lakeside, MI 49116. Property Code No.: 11-07-5620-0033-00-3. *Applicant is asking to demolish both the existing shed and concrete patio and replace it with a 16' x 18' screened porch and 6' x 8' shed, which will both encroach into the 30' yard setback. Chikaming Township Zoning Ordinance Section 4.06(D)1 requires a "30-foot rear yard setback."*

Chair asks the Zoning Administrator if he has any comments. ZA advises that the applicant has done a large amount of due diligence and calculations in trying to make best qualified and best use of available space.

Question from board regarding lot coverage; current 32%; new 27%; ordinance allows 20%; Dow summarizes that the new addition is less lot coverage than previous. Anderson comments this is a variance for encroachment of rear-yard setback.

Chair asks if the applicant is present. Applicant speaks about not being non-conforming, old shed removed, concrete too large, keeping living space away from neighbors, and area for kids, and new shed less visible.

Board discussion includes: Sellers addresses drawing and sees new deck in addition to screen porch. Does new deck go into lot coverage? ZA: In most recent cases we have not included pervious decks in lot coverage. In application, is deck included in lot coverage? Answer is no. Sellers asks about setbacks on deck. ZA: Deck is considered a structure and cannot go into setback without a request is for a dimensional variance. Additionally, this is a lot coverage variance, but as previously explained, it is for less coverage than currently exists. Non-conforming lot becomes less non-conforming. Discussion also about front of house (30 x 9 wood deck) and drawing not showing any dimensions. Does this go into front yard setback? Applicant advises that their hope was to cover existing concrete (front) with decking material. It is pointed out that on the survey sketch, the front concrete is even with the house, yet on the site plan the wood deck projects out. Does it project into the front yard setback? No dimensions shown. It would seem that the new front deck projects into the front yard setback. Dow summarizes variance as 2 parts: 1) rear yard setback line needs a variance from the 30-foot requirement (screen porch and new shed – both of which will be in the 30-foot rear setback); and 2) lot coverage is still greater than the 20% allowed, but less than the existing 32%. Now there is a third part of this variance not included in the original application which is that the front new deck comes about 3 feet further off the edge of the house. We, however, do not have any dimensions and don't know if the front yard setback is also at issue. Sellers also notes that the application does not include the new deck also going into the rear setback. ZA: Addresses the fact that the site plan is also part of the application. If the applicant misses something in their narration, the ZBA could refer to their site plan or the applicant could be asked if they wish to verbally amend their application to clarify any points. Dow now

summarizes with the reasonable suggestion of the ZA as follows: 1) There are three items which encroach into the rear yard setback – the new screen porch, the new shed, and the new deck – we can rely on the site plan to show and amend the application; 2) Lot coverage volume variance – we can rely on the applicant's calculations and figures. Still non-conforming, but better than existing. The last issue is troubling 3) We do not have the facts (dimensions). Although not fond of the idea, we should consider postponing until we have correct dimensions on the front. If we agree to postponement, we should request better verbiage on the application. Seller also questions whether the stairs are also considered when looking at setbacks. ZA answers that stairs are not permitted in setbacks. We need that front dimension. Sellers reminds us all that this is a corner lot and is severely restricted.

Dow motions that this case be postponed to the July or next meeting of the Board or until applicant can meet the questions of the Board

- 1. Dimensions of front yard addition into setback including house, new deck, and stairs;**
- 2. Application be amended to reflect the three (3) different variances needed – shed, screen porch, and deck.**
- 3. Re-calculate lot coverage combining all parts of site plan.**

Seconded by Rettig. Call for any further discussion – all are in agreement with postponement. Roll call vote: All in favor. Case postponed until next meeting (July) presuming application can have all of this information.

Chair asks board to look at the Rules of Procedure that have been distributed to everyone. Anderson says that he feels the verbiage for “table” needs to be changed to “postpone” (Section IV. Decisions, B.,2.); Rettig states that under Section II Duties, Paragraph A, Duties is misspelled.

Dow motions that we approved the Rules of Procedure for the Chikaming Township Board of Appeals with the 2 stated corrections; Anderson seconds. Voice vote: All in favor. Motion carried and Rules of Procedure are approved.

Chair asks if there is anything else on the agenda or further comments from the public. Jason Ashcraft (contractor for Case #1146 - Carlson) apologizes for being late with car trouble. Chair advises that the request was denied. Secretary is asked to read back the motion of denial with reasons and reads the criteria and finds of facts. Further explains that all 5 of the criteria must be met for a variance to be approved under the ordinance. Dow further gives clarity that this is a non-conforming lot and the requested changes make it more non-conforming. Anderson explains that the board's discussion gave some other possible locations for the screened in porch, possible where deck currently is and make it smaller. We cannot increase an already non-conforming lot. Making sure that setbacks are adhered to.

With no further business to come before the board, **Chairman Anderson asks for an adjournment at 1:57 by voice vote: All ayes. Meeting adjourned.**

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary

Date Approved: July 17, 2018