

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the May 21, 2019, Regular Meeting
APPROVED

The May 21, 2019, 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: Doug Dow, Liz Rettig, Larry Anderson, Tom Gold, Robert Beemer. Quorum. Also, present: Charles Hilmer, Township Attorney and members in the audience (sign-up sheet attached of those persons who signed in).

Note: Kathy Sellers arrives for Case #1164 (Sellers hears 2 cases only; Gold hears 4; and Beemer hears 4; all others hear 5 cases)

Chair advises that the first order of business is to approve the April 16, 2019, minutes. **Anderson makes a motion to approve minutes; Dow seconds; Voice vote: All five (5) members - AYE. Minutes are approved. (Anderson, Gold, Beemer, Rettig, Dow)**

CASE 1162: Karen Ruschke property owner – 9895 Nolan Avenue, Union Pier, MI 49129. Property Code No.: 11-07-4570-0009-02-6. Applicant is asking to demolish the 2 existing non-conforming structures and replace with 1 single family dwelling that will meet all requirements of an NCRI-B lot. Chikaming Township Zoning Ordinance Section 4.02(c) states in part, “The Zoning Board of Appeals may, in accordance with the provisions of Article 23, grant a variance to allow construction of a dwelling on a vacant nonconforming lot of record which does not meet requirements of this Ordinance for minimum lot area, minimum lot frontage or both.”

Chair advises that there are no letters. Chair asks for public comment – None. Chair asks if applicant is present; Applicant present and states he will be happy to answer any questions.

Board discussion: New structure will meet all setbacks after removal of old structures; back and forth questions with applicant.

Chair: Let's go over our criteria:

1. Are there unique circumstances or conditions that exist? Yes – non-conforming 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 – non-conforming 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.

Dow makes a motion to approve the variance; Anderson seconds. No further discussion. Chairman calls for a vote on the motion. **ROLL CALL VOTE. Dow: Yes; Rettig: Yes; Anderson: Yes; Gold: Yes; Beemer: Yes. Motion carries. 5 – 0.**

CASE 1163: Jeff Anderson property owner – 14588 Meadow Lane Lakeside, MI 49116. Property Code No.: 11-07-4900-0006-00-5. *Applicant is asking to demolish the existing accessory structure and rebuild in the front yard. The new accessory structure located in the front yard will have a side yard setback of 6.23 feet. Chikaming Township Zoning Ordinance Section 14.02 requires a 10-foot side yard setback and Section 15.03 (B) does not allow accessor structures in the front yard.*

Chair advises that there are five (5) letters.

- 1) Caro Parsons 8763 Meadows – concerned about safety and set back issues; disapproves of variance and concurs with Attorney Ammeson’s letter.
- 2) Jim Parson 8763 Meadows – concerned about density, set-back rules, disapproves of variance and concurs with Attorney Ammeson’s letter.
- 3) Robert McDermott 14762 Meadows – disapproves of variance and set-backs should be adhered to.
- 4) Harrold Russell 14200 Lakeshore – not a neighbor; feels applicant should stay within code requirements; rethink plans to conform.
- 5) Martin Hughes 14636 Meadows – not in favor.
- 6) Letter from Attorney Ammeson (lengthy; not read; all members have received a copy) – Ammeson addresses board in public comment summarizing his letter.

Chair asks if applicant is present. Applicant proceeds to speak: Gives background of property; talks about flooding on Meadow Lane; wants to make a rain garden, keep 2 mature trees, shift house from location of present house, wants to work with existing landscape and bluff; table land available is about 21,500 square feet for house location.

Chair asks for public comment.

Max Sims (14660 Meadow) has always felt that setbacks are greatly important and encourages us to vote “No” on setback variance (anything less than 10 feet).

Attorney Charles Ammeson speaks about the letter he sent and received by the board members. Letter summarized that variance on both counts should be denied.

Gold asks applicant about his new structure and the breezeway shown on the drawing and if it will be continuous concrete. Applicant answers yes, the accessory structure and main house will be tied with concrete. Gold notes that if the structures are connected by a breezeway, it is one structure and not an accessory building. Ammeson asks how the ordinance reads on breezeways. Further comments from the applicant stating that the roof will also be continuous to both structures. Applicant is willing to adjust his drawings further to accommodate the side yard setback. Chair comments that this is a “through” lot and as such accessory structures in the front yard have typically been given variances. Gold and Chair both reiterate that if a breezeway is used, this will not be an accessory structure and the drawing showing the new structure does in fact meet the front yard set back with the only problem being the side yard setback. Dow reads

from the zoning ordinance Section 15.03(B): “All garages and other accessory buildings and structures attached to the principal dwelling shall be considered a part of the dwelling in determining yard requirements.”

The applicant has now presented the Board with another drawing which seems more respectful of the side yard setback now asking for a nominal variance. Chair comments that the sugar maple tree applicant was hoping to save will probably be impacted in all instances. Gold comments that if the garage is shifted a bit more, no variance would be needed at all or perhaps reduce the size of the garage a bit to meet the variance. The builder questions the Board about connecting the garage (accessory structure) to the house and by doing so eliminates the variance for accessory structure in the front yard. The Board concurred that if the two are connected with common roof, common foundation, then the front yard issue goes away.

Chair asks the applicant if he wishes to withdraw his application if the accessory structure is no longer at issue and the side yard is adhered to. Gold interjects that we should memorialize our discussions rather than have the applicant withdraw.

Attorney Ammeson again speaks regarding the notice as it was noticed as an accessory structure in the front yard. Applicant should not be able to give the board a “different drawing” but there should be no issues if the accessory structure is in fact attached. If the side yard setback complies, this matter should not have to come back to the Board.

Chair goes through the 5 criteria:

1. Are there unique circumstances or conditions that exist? No.

Rettig makes a point of order – If this matter is denied, the applicant may not come to the Board on the same matter for 1 year. Tabling or withdrawing would give the applicant another option.

Dow – I think the agreement we are all reaching is that the side yard setback of 10’ feet must be maintained, therefore, we are asking for a redesign; secondly, we believe that as the result of reading 15.03(B) that attached structures are considered part of the main structure. So, long as the garage is attached to the house (common roof, common foundation), the front yard issue goes away. If this is the case, a variance is not needed. Chair: I still think we need to decide on the variance request and continues with the criteria.

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: I don’t believe we need to go any further. It does not meet the criteria; this means a denial.

Dow: I move that we deny the request for a side yard setback variance in Case #1163; Gold asks to amend stating that it is our determination that the request for a variance for an accessory structure in the front yard does not apply because the garage is attached to the main structure by a breezeway (pursuant to Section 15.03(B)). Anderson seconds the motion. ROLL CALL VOTE (to deny). Dow: Yes; Rettig: Yes; Anderson: Yes; Gold: Yes; Beemer: Yes. Motion carries. 5 – 0.

Chair announces that Gold recuses from Case #1164; Sellers 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.”

No letters.

Builder Tom Gold speaks on behalf of applicant. Gold advises that there is a report from a structural engineer recommending the removal of the structure (in Board packet). The existing home has settled 3 – 4 inches because of the slope and the extreme erosion on the back side and the side yard. This is an old house built long ago and we are attempting to move the new structure farther from the bluff line for safety sake. This is a small lot and not a lot of room to work with. The existing home has a screened-in porch which is 25’ from the lot line, so we are only looking for 5 additional feet to get us farther away from the erosion, and rebuilding on the existing side-yard footprint. Sellers is concerned about the erosion. Gold advises that the erosion is on the neighboring parcel and there seems to be a county drain problem causing further erosion. Gold continues that the applicant wants to maintain the existing sideline of the house but move the house closer to Lakeshore Road. Beemer asks why no retaining wall is being built to shore up the house. Gold continues that the erosion is on the neighboring parcel. The retaining wall may not solve the erosion problem. Currently the side yard setback of the house is 4.71’ at the back and 8.02’ at the road. Beemer does not feel that further encroaching is a good idea. Sellers asks if the house is removed, then how can it be rebuilt on the existing footprint (will they be removing foundation)? If leaving the foundation, then it can be rebuilt. Gold: I am only here because of the front yard. Rettig interjects that if you remove the whole house, you must meet current zoning or apply for a variance. Gold reiterates the instability of the erosion. Dow says that the erosion is directly below the deck. Chair to Gold: What does the structural engineer says about the current foundation? Gold: It shifted (on the Lake side). The new foundation would be a retaining wall. The erosion is not on this property. Sellers: We are not here to determine if the owner is making a mistake; we are here to decide on the variance. The variances depend on whether the foundation is removed.

Chair asks if there is any public comment. Sam Darrigrand of Lakeside Inn speaks to his concerns about any changes to the property at all. Does not own the adjoining land (where the erosion is) and does not know who does. Believes the drain is owned by the Road Commission. The water flow has been increased because of much new construction. The stairs that are on the adjoining piece are used by Lakeside Inn (on the south side).

Chair asks Attorney Hilmer if he is familiar with the adjoining property. Attorney Hilmer states that many people have the right to use the eroding parcel and the easements exists for the use of the property to go to the beach.

Gold then questions how do we repair any of these issues on someone else's property? Gold shows a video showing the erosion. Gold continues that he is trying to get in compliance with the new ordinance of moving houses away from the bluff. Further, I can withdraw my variance and the ZA has advised that he will allow me to rebuild in the current footprint. Sellers questions if the house is moved, how far would it be from the bluff? Gold answers about 12 feet. Beemer asks about the encroachment being the screened porch?

Chair asks if the neighbor parcels can be used to determine setback. Gold answers that they are much farther away from the road and cannot be used to determine an average setback.

Rettig asks Dow to read Section 4.03 Nonconforming Structures by Reason of Dimensional Inadequacies. Dow does so and summarizes that the ZA in counseling the applicant may have told him that #2 applies: "A nonconforming structure may be enlarged, expanded or altered, so long as the nonconforming characteristic of the structure is not enlarged upon, extended or increased in its degree of nonconformance" and #3 is simply saying, if it moves, it must comply with the existing zoning requirements.

Gold says that the structure cannot stay. For the general safety, I wanted to move the structure away from the bluff. The old block foundation cannot be used, things are moving. In order to stabilize, I am asking for something. Chair: Are you asking to amend your variance. Rettig asks for clarity on the new house measurements. Gold clarifies by giving measurements of 42.25' by 50.76' (approximately 2,000 square feet). Chair: I would think that you could make it smaller – perhaps 30' x 50'. We still need to hear from the public and then go through our criteria, perhaps you would entertain amending your variance request? Dow: does the existing house encroach on the front yard setback? Gold: yes. Dow: So, you are asking to increase the front yard setback from 5' to 10' – all the way across? Gold: I would modify to 5'. Dow: if you built on the existing footprint, you would not have an issue. Van has already told you that you could build on the existing footprint. Gold answers that he would need the extra footage for the whole front of the house (instead of only partial as it is now) and it is needed if we move the house closer to the road. Gold explains the drawing which the Board members have.

Dow: Let's go over the problems. The dune is falling away. This is our unique circumstance. What is the minimal variance that would get us to a reasonable solution? Gold: I would be willing to amend my variance. Beemer: No one has addressed the drain issue. This will continue to cause problems. Let's not ignore this. Gold: I would amend my variance to 25' feet rather than 30' from Lakeshore Road. Sellers: Would you leave the existing wall on the South side. Gold: Yes.

Much discussion among Board and applicant looking at the problems and forcing the Board to make a judgment call and discussions about how to make this conform.

Rettig makes a motion that this case gets laid on the table until the June meeting to get more information from the Zoning Administrator and a revised drawing from the applicant based upon his amendment; Seconded by Dow.

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

Chair announces that Gold steps back in for Case #1165; Beemer steps out but is asked to stay for Case #1166 (when Sellers must recuse).

CASE 1165: Alister Gibson property owner – 0 Montaign Place, Sawyer, MI 49125 (vacant). Property Code No.: 11-07-0010-0005-04-0. *The property has road frontage on 3 streets (Montaign Place, Huntington and August Way). Applicant is asking for relief from the 30-ft front yard setback requirement. Chikaming Township Zoning Ordinance Section 14.02 requires a 30-foot front yard setback.*

Chair asks if applicant is present. Applicant talks about property being subject to roads on three (3) sides and one (1) flat section where a house can be built with a large gully immediately behind the flat section. Has concerns that the slope will erode and does not want to get too close. Front of the house to face Huntington. The property also extends across the road. Chair asks applicant to show ravine on map. August Way is a private road. The house envelope would extend into the setbacks approximately 5' in the front; and on the West side of the house 13' on the South tapering down to 2' to the North. Sellers questions if this is the only envelope available. Applicant feels that with the ravine and the house design, these are the numbers needed to build. Chair asks if the house were shifted minimally, no variance would be needed. The Builder (Josh Wilson) now speaks stating that they have attempted many shifts of the house to accommodate the setbacks. Because August Way is private, there would be little traffic and feels this is a minimal request. Rettig asks about fire and safety and if firetruck can make turn. Builder affirms that it could. Neighbors have talked about bringing in crushed gravel on the private road to make road about 12' feet wide.

Chair asks for public comment. None.
No letters.

Discussion among Board regarding location of road; only envelope that can be used; type of house.

Attorney Hilmer is asked to comment. The 66' road was created meeting the road requirement, turn around, and utility easement because of a partition suit to divide up the property and the road also benefits about 6 others parcels; there are also separate easements for utilities; 3 odd shaped lots were created called Chikaming Heights. This property owns to the center of the road. No one owns the easement; parcels are only benefited or burdened by an easement.

Builder: This road will never be improved; will remain a dirt road.

Sellers asks how large is the house? Applicant: about 3,000 sq. ft.

Builder: Land is almost unbuildable. We have already taken one (1) bay off of the garage to shrink it.

Gold: Because of the ravine and erosion, we as a Board will be facing this more and more. Are we going to help by moving structures away from ravines? Deal with reality? Or keep in strict compliance.

Chair: Feels that it somewhat of a minimum request, but don't feel that it is out of line to ask to shift house back slightly to have a lesser encroachment.

Builder: We would be disturbing even more trees. The more trees we take out, the more unstable the ground is. We are trying to keep erosion under control.

Dow: How many trees have been removed?

Builder: 30 have already been removed.

Dow: How large of a drop in back?

Builder: 6' – 16' over 100 feet of linear distance. There's also a sunken patio that needs to be put in back. No one is ever going to put in this road. Why does my client have to suffer?

Dow: Our township attorney just shared with us that this is a private road. The township has nothing to do with the road. Mr. Hilmer, could the owners all decide to improve?

Hilmer: Yes, they could all decide to improve or the remote possibility to seek turning it over to the Road Commission.

Gold: There are laws and we all need to comply. Just because it is inconvenient, doesn't mean we don't need to comply. Your strongest argument is attempting to stabilize. The road is on the plat and we can't ignore the lines on the Plat. What is our reason for granting the variance? The variance is minimal.

Sellers: They could always build a different house.

Rettig: 13 feet into a setback just seems to be excessive.

Applicant: We thought this was already a compromise and didn't want to push the house farther into the gully.

Builder: We would have to remove 15 more trees for five (5) feet. This would make the foundation walls larger.

Gold: This Board is looking for a compromise on your side.

Builder says that Tate Anderson had sent a letter in favor of the variance. Chair advises that no letters were received.

Chair: We could go through our process and reject you, then you cannot come back for another variance for one (1) year.

Builder continues his plight that this is a private road and should not be subject to strict compliance and the neighbors have talked about closing the road.

Gold interjects that this is not a driveway servicing only one (1) person; this is platted and services others and as such has to be held to the strict rules.

Chair: We have a few options. We could go through our criteria possibly giving a denial; we could table this for another month to allow you time to bring us a revision.

Builder: We are losing precious time. If you are willing to give us five (5) feet?

Rettig: We have 3 options: deny, approve or revise.

Applicant: So, could we revise our plan today?

Dow: Are you saying you would accept a 25' setback on both front yards instead of 30'?

Applicant: We can certainly move the existing footprint to the East by 8 feet (allowing a 25' setback instead of 30').

Dow makes a motion to grant a variance of allowing a 25' setback on the two (2) front yards facing Huntington Drive and August Way. Rettig seconds.

Chair now goes through the criteria:

1. Are there unique circumstances or conditions that exist? Yes – 3 front yards.
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

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 feet is minimal)
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.

ROLL CALL VOTE (to grant). Dow: Yes; Rettig: Yes; Anderson: Yes; Sellers: Yes; Gold: Yes. Motion carries. 5 – 0.

Sellers now recuses for Case #1166; Beemer returns to Board.

CASE 1166: Chikaming Township Park Board property owner – public parking lot adjacent to Cherry Beach (vacant). Property Code No.: 11-07-0017-0003-02-8. *Applicant is asking to erect a fence around the port-a-johns that will be removed when the season is over (fence to remain). Chikaming Township Zoning Ordinance Section 15.03B(E) states “An accessory structure may not be permitted on a lot that does not have a dwelling.”*

Chair asks for applicant to speak. Jill Underhill and Kathy Sellers representing the Park Board stating that the port-a-john will move a few feet closer to the lake than what was seen by the Board members. Chair reviews drawing: Applicant is asking for a fence 6’ high on 3 sides, 6’ deep, and 11’ on back side. Gold interjects that most port-a-johns are 7’ - 7’1/2 feet high or so. Applicant now states that they wish to amend their variance for fencing to be 8’ high and not to have to remove it over the winter (it is noted that the new ordinance when passed allows 8’ high fencing). Gold addresses the stability of the structure stating it must be anchored into the ground otherwise the fencing turns into a sail. Rettig asks about footings. Sellers: Yes, cement footings, 4’ x 4’ posts. No roof.

Chair asks for public comment: Jill Underhill, also on the park board, speaks stating that they wish to amend their request making the fence 8’ high. The whole purpose of this structure was to hide the ugliness of the port-a-johns – which they have had many requests to do. The structure would be a vast improvement.

Gold interjects that perhaps you could make it functional as a community bulletin board.

Chair now asks the applicant are they asking to amend their request? Sellers advises that yes, they are amending to make the structure 8’ high.

Chair: Are there any other public comments?

Dow goes over the matters at hand. This is now a request for an 8’ fence (not a structure where it has to meet side-yard setbacks), the port-a-john is seasonal, but the applicant is asking the fence to stay.

Gold makes a motion to allow the Park Board to erect a fence to hide the toilet facilities and it shall be allowed to be 8' tall, attached to the ground, and shall be allowed to remain in place over the winter.

Chair goes through the criteria:

1. Are there unique circumstances or conditions that exist? Yes – public park.
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.
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.

Beemer seconds. ROLL CALL VOTE (to grant). Dow: Yes; Rettig: Yes; Anderson: Yes; Gold: Yes; Beemer: Yes. Motion carries. 5 – 0.

Chairman 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 2:15 p.m. Meeting adjourned.**

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary

Date Approved: June 18, 2019