

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the November 21, 2017, Regular Meeting
APPROVED 4/17/18

The November 17, 2017, 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, Doreen Bartoni. Quorum. Also present: Zoning Administrator, Van Thornton (ZA), and many 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 minutes from the October 17, 2017, meeting. Chairman asks if there are any questions, comments, corrections. None heard. Chair asks if all are in favor of approving minutes - **Voice vote: All in favor. Minutes approved.**

CASE 1141: Ellen Liebman Trust c/o Steve Koch, Applicant – 14918 Lakeshore Road, Lakeside, MI 49116 Property Code No.: 11-07-0019-0012-02-3

Applicant is applying for two (2) variances – #1 to construct a new 1000 sq. ft. 2-story accessory structure in the front yard which will meet all required setback and #2 add a 396 square foot addition to the existing house which will have a 5-foot side yard setback. This lot has 2 front yards (Lake Michigan and Lakeshore Drive). Chikaming Township Zoning Ordinance Section 15.03 states, an accessory structure shall not be located in the front yard, and Section 14.02 requires a 10-foot side yard setback.

The Zoning Administrator is asked if he has any comments. ZA advises that he has given his comments and recommends the board read. Dow clarifies that this request has 2 parts. ZA advises that the requests can be approved/disapproved separately.

Chairman asks if applicant is present. General contractor (Representative of C & S Hemminger Construction of Buchanan, Michigan, introduces herself) but has no comments. No letters from neighbors. No comments from the public.

Board Discussion: Chairman Anderson says portion #1 of variances meets our criteria; Dow, Rettig, Bartoni agree. Sellers wants clarity on whether or not it will have a kitchen. General contractor advises that this will not have a kitchen; no stove top, only a microwave and small refrigerator. ZA is questioned on this; ZA says ordinance says states that accessory structure shall have no cooking facility (no stove); sink, microwave and refrigerator are permissible. Rettig questions if ZA will make inspection of this. ZA states he will do all required inspections and plan review. Chair asks about running electric. ZA sees no issues with electric; our ordinance does not allow for separate service, it must come from the principal house. Chair has a question for applicant regarding 396 square foot addition and does not understand why it must be so close to the property lot line (within 5 feet). General: Architect has designed this for a window for view of Lake and makes reference to a stucco fence belonging to the neighbor. Bartoni submits that there is a lot of land for this addition and it need not be so close to the lot line. General: These are the Architect's plans. Bartoni feels it will not meet our criteria and the only desire is a Lake view. All agree that it is not a necessity.

Chairman says we will take the two (2) requests in order. First the 1000 square foot accessory structure: Five (5) criteria. 1. Unique Circumstances. All concur Yes – 2 front yards. 2. As a result of the unique circumstances, strict compliance would unreasonably prevent the use of the property. All concur Yes. 3. Unique circumstances do not result from actions of application. All concur Yes. 4. Variance is minimum request. All concur Yes. 5. Harmonious with Zoning Ordinance. All concur Yes. Part #1 (PROJECT 1) of variance meets all criteria.

Dow makes the motion that Project 1 of the variance request (1000 sq. ft. Accessory Structure) be APPROVED as it meets 1 – 5 of the criteria to grant a variance. Sellers seconds. Roll call vote: Bartoni. Yes; Anderson: Yes. Dow: Yes; Rettig: Yes; Sellers: Yes. VARIANCE IS GRANTED (PROJECT 1 AS TO THE 1000 ACCESSORY STRUCTURE).

Project 2: Chairman reviews the five (5) criteria. 1. Unique Circumstances. No. All concur. Rettig feels we don't have to go any further.

Rettig makes the motion that Project 2 of the variance request (addition of 396 sq. ft. addition) be DENIED as it does not meet criteria #1 (uniqueness) under our ordinance. Bartoni seconds. All vote to deny. VARIANCE IS DENIED (PROJECT 2 AS TO THE 396 SQ. FT. ADDITION WITH A 5 FT. SIDE YARD SETBACK).

General Contractor asks: If the Architect redraws the plans and stays within the setback, do I have to come back? Chairman and Dow both answer that if the 10-foot setback is maintained, there is no need to come back to the ZBA. ZA concurs.

CASE 1142 – Applicant Matthew Bayer, 14684 Meadow Lane, Lakeside, MI 49116, Property Tax No.: 11-07-0019-0005-01-9

Applicant is asking to place a pool in the front yard (Lake front) this is a through lot which has 2 front yards, one on Meadow Lane and one on Lake Michigan. Chikaming Township Zoning Ordinance Section 15.03(B) states in part, “an accessory structure shall not be located in any portion of a front yard.”

The Zoning Administrator is asked if he has any comments. ZA advises that he has given his comments. Chair: Reading those: The drawing submitted by the applicant indicates a pool and a “proposed pavilion” and a “proposed hot tub.” This application itself deals only with a pool. This should be clarified at the start of the hearing in order to allow the applicant to verbally amend the application if needed. The ZA sees no reason to include the hot tub in the process since it is a portable item. An overhead view of the property with the approximate location of the pool and the pavilion is provided by the ZA. Rettig asks why the pavilion was not included on the application. ZA comments that he did not know at the time of review. Only the pool was noted on the application. ZA further comments that the applicant can be allowed to amend his application at the hearing.

Chair Anderson asks if someone is representing the owner. Michael Parret, President of Pools (General Contractor) speaks regarding the application and says that the client was on the fence about including the pavilion but now has asked that it be included in the application. Secondly, hot tub is built in with same construction as pool. The pavilion would be open – not enclosed – 10 foot off of property line.

Our question is about the intermediate transverse line and the setbacks (identified on map provided as the dotted line). ZA advises that this is not used for setback. The setbacks as you have indicated are acceptable. Attorney Hilmer is questioned to determine if application may verbally amend his application to include pavilion and hot tub. Attorney Hilmer advises he may since it was on the material submitted. Bartoni asks how far the hot tub is from the house. Parret advises – 10 feet. Rettig: Does the pavilion have footers and a roof. Is this considered a structure? ZA: Yes. Bartoni: Please talk more about what the pavilion will look like. Parret shows a picture of what it will look like – open with a fireplace (6 feet wide) at the back wall. Structure is 16 x 32. 5 foot open; 6 foot of fireplace and 5 foot open. Rettig wants to know why it is so close to the bluff line. Parret advises that there will be a retaining wall. ZA asks if there is an existing retaining wall. Parret advises that the old one will be taken out and replaced with a new (old one is falling down the bluff).

Chairman asks if there are any letter. ZA: none. ZA comments that if this is approved, please require a survey to verify setbacks at least for the property line.

Dow asks about new zoning ordinance (2 front yard problem). ZA: The new ordinance will make the front yard (roadside) the water front side will be treated like the back yard and will have some limitations for accessory structures and a sight line restriction – all this is proposed.

Bartoni asks about the bluff line. Rettig: Is the bluff line addressed in the new ordinances. ZA: It is not. We have to rely on engineering. Dow: So, the dotted line is the transverse line? Parret: One side is above the bluff and the other side is below the bluff. Parrett: This is a vanishing edge pool.

Board discussion: Chairman goes through the five (5) criteria. 1. Unique Circumstances. Yes – all concur – 2 front yards. 2. As a result of the unique circumstances, strict compliance would unreasonably prevent the use of the property. Yes – all concur. 3. Unique circumstances do no result from actions of application. Yes – all concur. 4. Variance is a minimum. Yes – all concur. 5. Harmonious with Zoning Ordinance. Yes – all concur. Meets all criteria.

Dow motions that the variance be approved to allow the pool on the lakeside of the house as well as the proposed pavilion and the proposed hot tub as shown in the drawing (as it meet the 5 criteria under the ordinance) and that the plans be accompanied with a survey to show the setback as well as engineering plans for the retaining wall. Rettig seconds. All in favor – 5 yes. VARIANCE IS GRANTED.

CASE 1143: Garry and Elizabeth Hattam /applicant 15850 Center Avenue, Union Pier, MI 49129 Property Code No.: 11-07-4570-0035-00-1.

Applicant is asking to install an inground pool that will have an 8-foot setback from the deck. Chikaming Township Zoning Ordinance Section 15.03(D) states “A detached accessory structure or building shall be located no closer than 10 feet to another accessory structure or building.”

Chair asks if ZA Thornton has any comments. ZA has submitted to the Board his concern that the dimensions on the submittal are for the pool only. The pool itself is generally surrounded by a concrete deck at grade level. It seems logical that the existing wood deck would connect to the pool with

concrete. The definition of a structure provides examples. It is important to note that driveways and sidewalks (similar construction) are not included. The Board should decide if the concrete deck is a structure. The area of the pool and surrounding deck are included in the lot coverage calculations. Property line needs to be surveyed.

Chair Anderson asks if there is anyone to speak on the application. Owner Garry Hattam speaks that the property is a corner lot with two (2) 30-foot setbacks. We have restored the existing house. Pool came as an afterthought. Deck could have been cutback, but deck was already constructed and is very close to the 10 foot setback requirement – pinching the corner only. At one point pool is only 8 feet from deck and 10 feet from other – not into the sideyard setback. Chair: So, to ZA's comments, around the pool will there be a concrete deck all the way to a wood deck? Owner: A 4 foot walkway would be sufficient. Sellers: If you move the pool, would you be going into the setback? Owner: Yes - sideyard. Discussion about rectangle/square pool – will have auto cover. Chair: If you had concrete all the way to the deck, we could view as one structure – deck and pool. ZA: This is almost a catch 22. If we consider the concrete to be a structure, then their drawing would create a 4-foot additional encroachment into the setback. If it is a structure and continues onto the deck, then we are not maintaining the 10-feet between structures. My sense as I drive around, a sidewalk and a driveway have not been considered a structure. We would allow them to build the concrete into the 10-foot setback. If it is not a structure, we have no concerns. Chair: So, if built toward the lot line and we call it a structure, then it is in the sideyard setback. If we do consider it a structure on the other side, you couldn't build on the other side. ZA: we need to treat all concrete equally. If you determine concrete on grade (sidewalk/driveway) not to be a structure, then we have no concerns because we are putting only concrete in the setback. Chair: That takes away our opportunity between the deck and the pool as a structure. Bartoni asks about moving the pool to meet the setback. Owner: Taking the pool closer to Greenwood, we would still be closer to being 10 foot between. Dow: Let's go back to the concrete, which setback is more important, property line or structure to structure; 10 feet vs. 8 feet, is there a safety issue? ZA: Zoning codes require a 5 foot fire separation distance between structures and thus the 10 feet. Fire separation has no bearing here. Dow: If we need to make a trade off, I would be more inclined to take the 8 foot between structures. Bartoni: Any particular requirement because of the pool. ZA: Only fences/pool cover. Rettig: Owner already said there is a pool cover. If you move the pool, this may all be a non-issue. Owner: This is more of a privacy issue – not getting the pool too close to Greenwood. The front yard is Greenwood and it would be awkward. Bartoni: I think the pool will be visible no matter what. Owner: We are putting in new fencing around entire property. Chair: Where is the pool equipment? Owner: up against our house, generator, A/C compressor and bushes to conceal – none in the setback.

Chair: No letter from neighbors. No further comments from the public.

Chairman goes through the five (5) criteria. 1. Unique Circumstances Exist. Yes – 2 corner lots. All agree. 2. As a result of the unique circumstances, strict compliance would unreasonably prevent the use of the property. 4 say Yes; Chair does not agree with #2. 3. Unique circumstances do no result from actions of application – Chair thinks it is the result of the actions of the applicant and we would have to say no and application would have to move pool or deck.

Dow and Sellers interject that we have discussed which is more important, property line or distance between structures. We have a tradeoff of how best to use the lot. The proposal conforms to all property sideline setbacks and conforms to not putting pool in either front yard and the tradeoff is 8 foot

from a deck and we were asked the question what's the purpose of the 10 feet between structures (being fire safety) and fire break is not terrible relevant in this situation. Sellers again asks if pool could be moved forward, then no variance is needed. I thought he was going into the setback. ZA interjects, I don't think they are going to achieve the setback even if we move the pool closer to Greenwood and the front setback. The 10-foot distance between the structures won't occur, your rear corner is still closer than 10 feet. Owner: The front cannot be past the front of the house. Rettig: That brings us to the next problem, so it can't go any farther forward. Dow: What are the unique circumstances? Bartoni: The unique circumstance resulting from the actions of the applicant is the deck. Owner: Yes, this came in as an afterthought. Rettig: I have seen so many pools with decks right next to the pool. Why can't the deck and pool be connected? ZA: Because they are independent structures. You are still facing the same questions. The pool is a structure. Chair: I have a hard time getting past #3 criteria. Bartoni: If we talk about the pool coming toward Greenwood, what about going West. Dow: The unique circumstance is 2 corner lots. Deck or no deck is the function of the property, there is no other place to put the pool. ZA: I agree that submitted plans did not include the pool. It is an afterthought. Sellers: It's 3 feet from the deck, but way more than that from the house. Why do we have to think of the deck as the house. Sellers: Building to building is the intent. Dow: So there's no safety issue; what's reasonable in this case. It's such a minimal variance. Rettig: I think that the 2 feet as an inside problem rather than a setback problem.

Let's go back and vote on #3. 3. Unique circumstances do no result from actions of application; Chair and Seller: Nay and Dow, Bartoni, Rettig: Yes. 4. Variance is a minimum. Yes. 5. Harmonious with Zoning Ordinance. Yes. Variance meets all criteria.

Doug: I move that we grant the variance as proposed (10 foot to 8 foot between structures – pool and deck) with a remarking of the survey line adjacent to the pool to be part of this variance. Rettig seconds. 4 yes. 1 against (Sellers) VARIANCE IS GRANTED.

Chair Anderson advises we have on last matter to come before the Board.

This relates back to **CASE #1123 – STEVEN AND MICHELE CHUDIK, 15780 Lakeshore Drive, Union Pier, Michigan, which matter went before the Trail Court and Judge John M. Donahue under Case #17-000086-AA.**

Chair Anderson makes the following comment as part of the record: It is important to understand that Judge Donahue's order, which we will respect and abide by, only relates to Dr. Chudik's property and that the ruling addresses problems created by flawed guidance given by the Zoning Administrator in place at that time. The Judge's ruling should not create any precedent that may be referenced in other similar variance requests. In addition, the Judge's ruling does not change Chikaming Township's current or future zoning ordinances.

At the guidance of our Attorney, Charles Hilmer,

CHAIRMAN ANDERSON MOVES THAT THE ZBA APPROVE THE VARIANCE REQUEST OF STEVEN AND MICHELE CHUDIK, 15780 LAKESHORE DRIVE, UNION PIER, MICHIGAN, IN CASE NO. 1123, FOR A VARIANCE TO ALLOW THE PLACEMENT OF SWIMMING POOL EQUIPMENT IN THE TEN (10') FOOT SIDE YARD SETBACK AS SET FORTH IN THEIR APPLICATION PURSUANT TO THE ORDER OF THE BERRIEN COUMNTY TRIAL COURT DATED NOVEMBER 6, 2017, ENTERED BY JUDGE JOHN M.

DONAHUE IN CHUDIK, ET. AL., V. CHARTER TOWNSHIP OF CHIKAMING, BERRIEN COUNTY TRIAL COURT CASE NO. 2017-0086-AA. SECONDED BY SELLERS; ALL VOTE IN FAVOR. VARIANCE GRANTED.

Chair Anderson asks if there is anything more to come before the Board. Nothing.

Chairman Anderson considers the meeting closed and adjourns at 3:15 p.m.

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary

Date Approved: April 17, 2018