

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the October 16, 2018, Regular Meeting
APPROVED

The October 16, 2018, regular meeting of the Zoning Board of Appeals was called to order by Acting Chairman (hereinafter Chair) Doug Dow at 1:00 p.m. Roll call of members present: Doug Dow, Kathy Sellers, Liz Rettig, Phil Bender. Quorum. Also present: Zoning Administrator, Van Thornton (ZA or Van), Attorney Charles Hilmer and some members in the audience (sign-up sheet attached of those persons who signed in). *Note: Tom Gold joined the meeting at 1:25 p.m. (during first case #1155).*

Chair advises that first order of business is to approve September 18, 2018, minutes. Dow reads six (6) minor grammatical changes; Secretary Rettig makes corrections; **Dow makes a motion to approve minutes as corrected; Sellers seconds; discussion; call for vote: All in favor. Minutes are approved as corrected.**

CASE 1155: Attorney Sally Taylor representing property owners Kristine Johnson and Brian Beatty – 15552 Victor Road, Union Pier, MI 49129. Property Code No.: 11-07-4730-0024-02-9. Applicant is asking to keep existing stairs which encroach 5' 5" into the side yard setback. Chikaming Township Zoning Ordinance Section 14.02 requires a side yard setback of 10'.

Chair addresses ZA and asks if he has any comments as to this case. ZA advises that he has none.

Chair asks if applicant wants to make a statement. Sally Taylor representing applicant speaks: Property established with 3 cottages in the 1930's and maintained as 3 cottages; lowest location in neighborhood causing receiving of water; ground conditions result in standing water; necessitated drainage system and points out placement of drainage system (weeping tile system) on diagram; location of drain system necessitated removal of steps on front side of house (Cottage C on diagram) and moved to side of house; it was through an error that homeowners did not realize they were creating an encroachment in the setback.

Chair interjects: So, we are in a forgiveness as opposed to permission situation.

Taylor: Yes, unfortunately that is the situation.

Rettig: How long have these new stairs been in place?

Applicant: There was a deck, but deck was taken down; stairs have been there since August of 2017; we didn't think we needed a permit.

Taylor: We are looking to make a correction of what was an error. We are seeking the variance because the circumstances are unique; heavily flooded area; standing water even after new drain system was in place; wants to clarify the application language "that this stairway does not (added word) impede access and provides a much safer and superior access to the cottage."

Chair advises that there were no written comments received.

Chair opens the floor to public comment.

Dorothy Aguirre (15570 Victor): agrees that there is standing water and also on their property; been in the area since 1943; feels that the issue is the steps (design and placement); their bedroom right next to landing/step area; steps are added to an extension platform; the extension takes it out of compliance; steps could be placed on the front of the deck or the other side of the deck; we have a 6 foot fence;

height of deck is 5 feet off the ground with direct and clear vision into our bedroom; not opposed to deck, just the platform; we have built the fence for privacy, but the platform/steps violate our privacy; the steps have never been on this side of the deck.

Samuel Aguirre: owned the property for 40 years; privacy is the issue.

Taylor responds: the deck has always been in that location and does not create the intrusion; the neighbor's fence may also encroach, but not here for that reason; the new landing is actually a step down from the existing deck.

Sellers: But the landing and stairway are new and brought the stairway into the 10' setback.

Taylor: That's the variance we are looking for. I don't think we are going against the ordinance as the steps are not creating a greater distraction than what was already there (the deck) and additionally we didn't have a choice of where we locate it due to the unique circumstances; we cannot place the steps over the drain system.

Sellers: These steps could not be placed on the other side?

Taylor: No.

Rettig: Couldn't they be placed in the front?

Taylor: No, they don't want to interfere with the sloping for the tile system.

Rettig: Asks for a rough idea of the space between the drain tile and the west side of the cottage.

Owner answers: About 4-1/2 feet.

Rettig: The stairway was in the front historically and sees no reason it cannot be there again.

Taylor: Oldenburg did the work on the drain system; invoiced in 2015 and completed in 2016.

Sellers: What did they do between 2016 and 2017 for stairs before the new stairs were built?

Owner: They were in front. We moved the stairs and put more substantial framing on the deck and I lowered the platform to make a lower profile and less of a direct view in the neighbor's house; we did build the deck out further to insure we did not go over the drain.

Taylor: The stairs were built on both sides of the landing for access to the back as well.

Sellers: I still don't understand why you waited to build these new steps. They (the steps) were previously in the front -- you didn't think they were dangerous to your new system when you put them on the front before the new landing was built.

Taylor clarifies that it was not a secure set of stairs on the front and owners had to put new foundations in.

Rettig: If we look at Cottage A, those stairs are built into the deck and looks to be in much the same proximity to the drain system as Cottage C.

Taylor: The drawings are not to scale.

Dow: More to the point this stairway is built into the deck (referring to Cottage A).

Owners: There were previously arborvitae (15 feet high) and we had to take them down because they were dying; there were on the lot line and that was the privacy; the neighbors decided to put up the fence; the privacy issue is a result of no trees.

ZA: I double checked our records and I do not show any record of a building permit being issued for the deck. Had a building permit been applied for, our department in its plan review process would have caught this issue of setbacks.

Seller: Would they have needed a permit to replace the deck?

ZA: Yes. The codes have changed, foundation requirements have changed; we would have found they were encroaching.

Taylor: In that situation, we would still be before you today for a variance because we cannot put the stairs in front because they would interfere with the drainage system. The only option is as shown on the sketch -- to the side.

ZA: In response to Attorney Taylor's comment, there are many decks that have the stairs inset into them.

Rettig: Much like Cottage A.

ZA: Yes, making the draining tile not an issue.

Sellers: If you inset them, then there's not an issue. If you do it as they did, then it is an issue. Had they built them into the existing deck, would they have needed pilings?

ZA: Depends on how they did the construction.

GOLD JOINS MEETING

CHAIR ATTEMPTS TO CLOSE THE PUBLIC COMMENT.

Mrs. Aguirre makes an additional comment that they were there during all of the construction process. Interruption of a taxpayer (Patricia Glavin) with a question - she thinks she may be in the wrong meeting and is directed to the Assessor's office by Chairman.

Mr. Aguirre interjects again that the neighbors are looking in their bedroom.

Sellers: Asks about when the trees were there, was there privacy? What is the height of fence?

Aguirre answers – 6 feet and put there by a previous owner.

CHAIR AGAIN ATTEMPTS TO CLOSE THE PUBLIC COMMENT.

Taylor interjects that if ZBA wants to condition the variance on the planting of 10' arborvitae, they would certainly agree.

Gold asks about drainage system and possibility of helical pilings to be put in front of Cottage C.

Taylor asks if she may answer (because of public comment closed). Chair advises she may answer.

Taylor answers that this is what was recommended by Oldenburg and they designed it for a natural flow of water; the owners felt that the water issue undermined the existing deck; they did it themselves and budget was a consideration and they didn't have the materials and resources available.

Chair closes public comment and moves to Board deliberation.

Discussion points: Is ignorance bliss; previous history that steps were in the middle; privacy issue; will people be on the platform; what is the purpose of the extended deck; there would be less deck if stairs were built into deck; location of front door; landing is a foot lower than deck; reason that it had to be in the setback.

Chair goes through the zoning standards:

1. What are the unique circumstances or conditions that exist which apply to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district?

Debate as to what exactly are the unique circumstances. Water vs. deck in side-yard setback. If we are talking about the side-yard – there was no building permit and other alternatives could have been sought. If we are talking about the water, then there is a unique circumstance. Did the fact that this is a wet property create the burden on them to move outside of the ordinance. Could they have worked around the wet area with proper anchoring.

Finally, all agree water/flooding is the unique circumstance – Yes there are unique circumstances.

2. As result of unique circumstances, would strict compliance with the provisions of this ordinance unreasonably prevent the use of the property for a permitted purpose, or be unnecessarily burdensome? No. There are other alternatives

3. Did the unique circumstances result from the actions of the applicant? No.
4. Is the variance request a minimum variance that will make possible the reasonable use of the land, building or structure? No – not a minimal request.
5. Will the granting of the variance be in harmony with the spirit and intent of the Ordinance and not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, and welfare? No – not in harmony and will be detrimental.

Motion made by Tom Gold to deny the variance as it does not meet the criteria; Second Phil Bender. Rettig asks for discussion. If we deny this variance, how do we go about the removal of the stairs? Van: If the variance request is denied, it would be up to the applicant to remove the non-conforming structure and apply for a building permit for reconfiguration of steps. Do we need to make this part of our motion? Van: I do believe you should make the removal of the structure part of your motion so that it is in the record. Gold is asked to amend; Gold restates his motion that the variance be denied and that the encroaching non-conforming structure be removed; Bender gives a second; ROLL VOTE: ALL AYES. VARIANCE DENIED. 5 – 0.

CASE 1156: Benjamin Shapiro – 14136 Crackerjack Lane, Lakeside. Property Code No.: 11-07-0017-0005-03-9. *Applicant is asking to place an accessory structure on the road side front yard (Crackerjack Lane). Chikaming Township Zoning Ordinance Section 15.03(B) states “an accessory structure shall not be located in any portion of the front yard.”*

Chair addresses ZA and asks if he has any comments. ZA advises that this a request for one (1) additional accessory structure on the property. There is already an accessory structure that will be rebuilt on the same footprint (as permitted by our ordinance). Rettig interjects that it has been removed, but slab is still there. ZA continues that the total footage of the accessory structures is under 1200 square feet.

Chair asks if applicant is here. Architect SMNG-A, LTD., speaks that he has worked diligently to keep this structure for storage only small - 630 square feet.

Chair advises that there was no correspondence.

Chair asks for any public comments. None heard, closes public comment and moves to board deliberation.

Gold addresses ZA, why does a removed structure (Section 4.04) with a slab only, allow the rebuilding of a structure.

ZA answers that this is an ambiguous portion of variance; it has been interpreted that if a non-conforming structure is demolished by owner, it may be rebuilt on same footprint (according to current code); it has been a standing practice.

Gold continues asking if things are trying to be in conformity, is this clarified in new ordinance.

ZA believes it has been addressed in the new ordinance and should be, so there is no ambiguity.

Chair believes we are getting away from the case at hand. This is a 2 front yard problem, total of 2 front structures remains under the allowed square footage. Other than the front yard issue, the only non-

conformance is whether or not this is in conformance with current building code. So, the question becomes, do we operate under accepted practice and focus on the request for a second structure.

Sellers asks if a permit has been pulled yet.

ZA: No demolition permit needed. I believe there is a permit for the new structure.

Gold: Just to get clarity, this is constantly coming up and I am hopeful of this being addressed under the new ordinances.

So, as we move forward with this, let's keep with the accepted practices.

Rettig: Since it is under the allowable square footage, there is no problem.

Dow: The only issue then is allowing a structure in the front yard (as this is a through lot).

Sellers questions applicant: Are these strictly for garage purposes.

Applicant: Yes.

Chair goes through the zoning standards:

1. Are there unique circumstances or conditions that exist? Yes – 2 front yards.
2. As result of unique circumstances, would strict compliance prevent the use of the property for a permitted purpose, or be unnecessarily burdensome? Yes.
3. Did the unique circumstances result from the actions of the applicant? No.
4. Is the variance request 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, in harmony and will not be injurious.

Rettig makes a motion to approve the variance to allow the second structure in the front yard; Gold seconds. ROLL CALL VOTE. ALL AYES. VARIANCE IS APPROVED. 5 – 0.

CASE 1157: Chad Voelkert – 306 Hillside, Sawyer, Michigan. Property Code No.: 11-07-0770-0036-00-8. *Applicant is asking to relocate the front door which will have a new landing and awning to the East edge of the house. This new construction will encroach into the front yard setback 4 feet. Chikaming Township Zoning Ordinance Section 4.06(D)(1) requires A 30-foot front yard setback in an NCRI-A zoning district.*

Chair asks ZA for comments. ZA: This is a request very similar to a previous request. The owner wants to remove a door to make the best use of the structure. His request is for an eyebrow over a landing and a four-foot landing. Our new zoning ordinance would allow decks to encroach 50% in a front yard. I, however, have made the comment, that 50% may be too much and under consideration. The important part is that under our new zoning ordinance, this would not require a variance and would be permitted by right.

Gold questions – 50%; ZA: Yes, I have recommended otherwise. ZA is questioned about the current location of the house and whether or not it is currently 30 feet from the front setback. Survey shows it is.

Chair asks for comments from applicant.

Applicant, Chad Voelkert speaks advising that the existing awning and landing are within the 30 feet. The new steps would be wood and the current steps are also wood. The new landing will be slightly smaller than current.

Gold: Is this a cantilevered canopy. Applicant: Yes.

Chair advises that there is 1 e-mail from John Rabb who is in favor of granting the variance.

Chair asks for public comment: None.

Chair closes public comment and goes to Board discussion. Discussion of how far is the current landing/steps into the setback (4'3") and applicant wants (4') and will be in a different spot.

Chair goes through the zoning standards:

1. Are there unique circumstances or conditions that exist? Yes – existing structure is non-conforming and new request does not make it more non-conforming.
2. As a result of unique circumstances, would strict compliance prevent the use of the property for a permitted purpose, or be unnecessarily burdensome? Yes.
3. Did the unique circumstances result from the actions of the applicant? No.
4. Is the variance request 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, in harmony and will not be injurious.

Sellers makes a motion to approve the variance as requested; Gold seconds. ROLL CALL VOTE. ALL AYES. VARIANCE IS APPROVED. 5 – 0.

Chair asks for any public comments. Jill Underhill asks if there is another public hearing on the Zoning Ordinance. Chair advises that there is a Planning Commission meeting on Thursday evening.

Chair advises that ZA had sent a set of four (4) issues by e-mail to all members. We will now discuss them and give comments and guidance.

1. Meadow Lane proposed land swap. Does the ZBA concur with my opinion that due to the unique circumstances a variance should be requested by the owner(s)? If the zoning administrator approves the request, he/she is in effect approving a variance. The swap will be beneficial to both parties and will help one parcel become a lesser non-conforming parcel; however, it is my belief that that benefit does not grant the right for the ZA to approve creation of a different sized non-conforming parcel.

ZA: One of the parcels has no frontage on Meadow Lane at all and gains access through an easement (already a non-conforming lot and will still be a non-conforming lot). Neighbors want to make land swap giving 1 parcel 20-foot frontage on Meadow Lane (the one with none) and still leave well over 100' (as required) for the other parcel. As far as land division goes, this is truly a lot line adjustment, however, by approving it, I am approving what is a non-conforming parcel. Our land division act says I may not create anything that is not officially accepted under the ordinance. I believe I should require a

variance and other attorneys have said a variance is required. Also, the authority should not be to the ZA.

BOARD CONCURS THAT A VARIANCE SHOULD BE REQUIRED.

2. A fence has been erected on a vacant parcel in an R-1 zoning district. Our definition of a structure includes "...walls, fences, decks...". Article 15.03 prohibits an accessory structure on any parcel that does not have a principal structure. Is a fence an accessory structure?

ZA: No fence permit has ever been acquired (actually a compliance permit is needed for a fence). This however is a vacant parcel and our ordinance says a structure includes walls, fences, decks. 15.03 prohibits an accessory structure on a vacant parcel except agricultural. My feeling is that the fence is an accessory structure and are in violation and may not erect this fence. No reasoning for erecting; parties are doing as they please; no building permit has been obtained. Are fences structures? I want to be consistent.

BOARD: IS A FENCE AN ACCESSORY STRUCTURE? YES. ARE THEY IN COMPLIANCE: NO.

3. Edgewater Villas consist of multiple small non-conforming structures. The proximity of the houses to one another often prohibits expansion in any direction other than UP! In the past approximately six (6) of these structures have been permitted to expand in such a manner as to create additional living area while maintaining existing setbacks. Article 4.03 (2) permits enlargement of a non-conforming structure as long as the non-conformity is not increased. The proposed Zoning Ordinance prohibits increasing the cubic content of a non-conforming structure. Does the ZBA approve of the past policy of permitting "upward" expansions which have not been interpreted as increasing the non-conformity?

ZA: Edgewater Villas are tiny cottage which are all non-conforming. In the past we have allowed building upon the current footprint as long as they don't cantilever out or increase the footprint; we have allowed them to build upward. Our new zoning says: You may not increase the cubic content which takes away the opportunity to expand. Does upward hurt the safety? No. They can only go up ½ story; new standards have to be met, new smoke alarms, windows. Mr. McCollum brought this to me for clarification.

BOARD AGREES THAT THE UPWARD EXPANSION IS NOT INCREASING NON-CONFORMITY.

4. A structure in an R-1 district has erected a "fence" of arbor vitae within the required 30-foot front setback. I have issued an enforcement as a result of a neighbor complaint. The owner is asking for permission to have these trees. 15.02 (A) tells us that "In any required front yard no fence or wall shall be permitted to exceed a height of 4 feet". These trees do not create any hazard for clear vision to or from the roadway. We have no definition of a "fence" or a "wall" to guide me. Are these trees a fence or a wall?

ZA: I refer to the picture of the arborvitae. This is a neighbor's dispute. I sent the one neighbor a notice advising that they had erected a fence in the front yard (the trees). We have no definition of a fence. Greenery will become a fence in our new ordinance – used as a wall. Height? The trees are not an issue but over 4 feet high. So, under the new ordinance your greenery is only going to be able to be 4' high in certain instances (hedgerow). Under today's ordinance, are the arborvitae a fence? Discussion about enforcement of cutting greenery down because it is considered too tall (if it is considered a fence). Take down trees if too tall?

BOARD AGREES THAT THE ARBORVITAE ARE NOT A FENCE AT THIS TIME.

Chairman thanks everyone for attending and everyone's comments; asks if there is any other comment or business for the board. With no further business to come before the board, **Chair and board give a consensus adjournment at 2:28. Meeting adjourned.**

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary

Date Approved: November 20, 2018