

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the September 18, 2018, Regular Meeting
APPROVED

The September 18, 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: Tom Gold, Kathy Sellers, Robert Beemer, 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).

CASE 1142 AMENDMENT: Michael Paré representing property owner Matthew Bayer – 14584 Meadow Lane, Lakeside, MI 49116. Property Code No.: 11-07-0019-0005-01-9. *Applicant is asking to place a pool in the front yard 22’ feet from the house, increase the size of pavilion from 16’ x 30’ to 20’ x 30’ and move the spa between the pool and pavilion. The original application was approved (November 21, 2017) to allow the pool (in a different location) on the lakeside of the house, a smaller pavilion and the hot tub. 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 “an accessory structure or building shall not be located in any portion of the front yard.”*

Chair addresses ZA and asks if he has any comments. ZA advises that he has given his written comments to the Board previously. No further comments to add.

Chair asks if applicant wants to make a statement. He advises that he has none.

Chair asks Board if they have any questions to the applicant. Gold asks the builder why the change occurred from the original. Builder advises that the lay-out of the pool (infinity) was wrong originally and the new lay-out is better; a few minor changes to the pavilion and new location of the spa works better in the design. Gold comments that the builder did a great job with the cleaned-up design.

Letters: None.

Public comment:

Matt Sims neighbor – no objection

Chair asks if there are other public comments. Hearing none, public portion of meeting is closed and matter goes to Board discussion.

Board discussion:

Sellers wants to know from the builder how they will be getting their equipment and supplies to the house. Builder comments – from the North side and no intrusion on beach or neighbors.

Chair goes through the zoning standards:

1. Are there and what are the unique circumstances or conditions that exist? Yes – 2 front yards.
2. As result of unique circumstances, would strict compliance be unnecessarily burdensome? Yes, because of the 2 front yards.
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 not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, and welfare? Yes, in harmony.

Van addresses Chair: I have requested that that area along side the pavilion be surveyed to mark the property line. Design shows a 10' area and this is permitted, but when we are that close, I feel it is wise to have the area marked. Dow comments that any motion should also clarify that no mechanical equipment will be in the 10' setback.

Motion made by Tom Gold to approve the amended variance with two (2) contingencies – that the survey be done to mark the side yard line and that no mechanical equipment be in the 10' setback; seconded by Beemer. ROLL VOICE: ALL AYES. AMENDED VARIANCE APPROVED 5 – 0.

Builder questions the Chair regarding the setbacks and mechanicals. Chair clarifies to the builder that with the past history in the township, diligence be taken as to allowing no mechanicals in the 10' setbacks. Advises builder to work closely with the ZA.

Chair realizes that he skipped the approval of the minutes from the August 21, 2018, meeting. Chairman points out one (1) change on page four [removal of the word any from last line of first paragraph]. Sellers motions for approval of minutes as amended; seconded by Beemer - **All in favor. Minutes (as amended) approved.**

CASE 1154: Doug Nelson, contractor for property owner Anthony Olson – 15640 Lakeshore Road, Union Pier, MI 49129. Property Code No.: 11-07-7200-0008-01-8. *Applicant is asking to construct an accessory structure on the lakefront side of the property. In addition, the applicant is requesting an increase in the allowable size of an accessory structure from 1500 sq. ft. to 3,091 sq. ft. This property has 2 front yards, Lake Michigan and Lakeshore Road. Chikaming Township Zoning Ordinance Section 15.03(B) states “An accessory structure or building shall not be located in any portion of the front yard” and Section 15.03(A) states “An accessory structure shall not exceed 1500 sq. ft. in an R-1 District.”*

Chair addresses ZA and asks if he has any comments. ZA advises that the Board has been receiving updates including new calculations and a surveyor recalculating the lot size. Using Beacon may not be accurate calculations.

Chair clarifies 49,600 is the correct current lot size. ZA affirms.

Applicant is asked to address and gives a short history of purchasing the property earlier in 2018; family is large including extended family and bought property to be on the lake. Wife runs a non-profit for women trafficked in Chicago and are utilizing the property as a retreat. Used Prism to find out if property was big enough to house a 2nd structure for housing beach equipment. Main purpose of structure is for family to get out of heat and family with medical conditions and to have bathrooms. One particular aspect of the property is the bluff and there is quite a bit of space from water's edge to the bluff. Off the beach and on top of the bluff there's an area where we can build and tuck it in. We have been diligent about where to put

the structure where it won't be seen or obstruct view for the neighbors; have been working on plans with the builder for 6 months.

Chair advises that there were 10 pieces of correspondence; in spirit of time, I will summarize all but one (and all will be placed in full into the public record):

- 1) Johanna Rahal – opposes because it is not in the best interest of preserving the natural dune;
- 2) Claudia Schwartz – opposes because it establishes a precedence of houses on the beach;
- 3) Edward Benford – opposes the project because it sets precedence; structure is not an accessory shed; utilities and construction would impact dune;
- 4) Lisa Moragne-Kayser – opposes the construction; increases allowable size from 1500 square feet to 3,191 square feet; 2nd e-mail with more detail;
- 5) Alexis Fox – will be attending meeting; providing photos; greatly opposed because of size of structure not allowable;
- 6) Kenneth Johnson – opposed to variance; unsightly; flood zone; questioning if it is a critical dune; (Note: Chair clarifies that it is not in the flood zone nor a critical dune.)
- 7) Molly Price – opposes as it sets a precedence of structures on our beautiful shore line;
- 8) Mary Fox – opposes; already has a shed and stairs; if owner wants to replace shed it should not exceed 1500 square feet;
- 9) John Kayser -strongly opposes; please uphold the zoning ordinance;
- 10) Attorney John M. Wojcik on behalf of Marianne Fuentes – does not meet the 5 criteria; opposed.

Sellers requests that the letter from the Attorney be read.

Chair proceeds: (summarizing) The zoning request fails to meet the zoning ordinance; no unique circumstances – does not differentiate from other nearby properties on the shores of Lake Michigan; strict compliance – already has a sizeable residence to allow owner to enjoy; result from actions of application – no unique circumstances as Lake Michigan is not unique to this property; request is minimum – this is not minimum; will cause damage to dune and cause erosion; accessor structure cannot be larger than 1500 and request is twice the size allowable.

Chair asks for any public comments.

Attorney John M. Wojcik speaks. First issue is procedural. Applicant is Anthony Olson when the actual owner is 15610 Lakeshore, LLC. From a legal standpoint, this petition may not be properly in front of the Board because it has not been brought by legal titleholder. Secondly, variance requests in order to be granted must have unique circumstances. 2 front yards is not unique; Michigan case law specifically Janssen vs. Holland Charter Township (252 Mich App 197)(651 NW2nd 464) unique circumstances do not mean that the circumstances must exclusively apply to a single land owner but rather the hardship is unique and not share by all others; the alleged hardship or unique circumstances is not unique to this property; many houses have the same situation; this property can be used without granting the variance; nothing is being taken away or impeding the rights of the owners; the Prism opinion (page 2) shows the elevation in January of 2018, the lake was 19 inches from its all time high level so there is a significant change of erosion and further down in the letter, the last major wave cut occurred in 1986 having the record high lake level – only 19 inches different than in January of 2018; last page of Prism letter says that “lake level rises significantly and the toe is dislodged or displaced so that the lake bluff toe is cut or eroded away, a slumping process could begin a new cycle from the bottom of the bluff and proceed to hasten the process of erosion not

presently occurring until a new stable angle of repose is achieved.” This is what we are seeing in New Buffalo and up and down the lake with these high lake levels. Attorney presents picture of unobstructed view of lake. There is no necessity to put the structure so close to the lake even if the application was properly in front of the Board. There are no unique circumstances; there is no hardship in order to secure a variance. They want to build this structure for their family structure and to accommodate their personal needs.

Alexis Fox (other adjacent property to the North). Asks for clarity on the variance – 1500 square foot structure and ability to build. Opposes because they would be obstructing view and they already have a structure (shed). Asks about Ordinance 15.14 applying – wetlands having different setback regulations. Establishing natural buffers including Lake Michigan.... Dunes.

Chair asks ZA to comment. ZA refers to the Prism report which does not mention this to be wetlands and the presence of water does not define a wetland but also was grows there; Prism has not defined it is a wetland and I do not believe it is and have no indication that it is.

Fox continues referring to the township critical dunes and high erosion map identifying wetland areas and the shoreline. Van interjects, I believe you are referencing the 25’ setback requirement; Fox concedes that it is more than 25 feet; continuing Fox wants to know what the plan for drainage and septic (which requires 250-foot setback) and the highwater mark defines the setback and the highwater mark changes every day. Fox added the dune is classified as a potentially critical dune and has submitted an application to the Michigan Department of Environmental Qualify for the dune to be reevaluated.

John Kayser (15650 Lakeshore – next to Fuentes – 2nd house to the South of applicant). To Fox: there could be a request for wetland delineation done. Expounding on letter – strongly object to variance; believe it is incumbent of Board to uphold zoning ordinance; Lake Michigan cannot be taken for granted. Structure is going to be on the lower dune (beach grass area) and very volatile area; what applicant wants is not a utility shed, it is a house; ordinance limits the size of accessory structure and this protects the shoreline and limit unregulated development; no hardship has been proven; would be obstructive to the environment; shoreline needs protection from shortsighted development; shoreline is a public right of way for all to enjoy; township and zoning board have been entrusted to protect; please serve the public interest; uphold the ordinance and deny the request.

Louis Price (15672 Lakeshore) – here since 1970; dune has disappeared 2 or 3 times since 1970; a seawall would have to be constructed and this would affect neighbors; feel construction is in a strange place; they already have a garage, pool, shed, hot tub and have used up the available space of their yard; construction would create a problem and block views; unnecessary structure.

Mary Fox (next door to property) here since 1979 and have watched the beaches come and go; animal life will be blocked from normal movement; speaking for people across street and will be blocked by 2 story; why does a storage area need glass; even owner’s view will be blocked from the infinity pool and 3 terrace steps; peculiar to build there; neighbors will be obstructed; if permitted to build, how will they get the equipment and materials down? Will they come across everyone’s property? How do you get bar and bathroom plumbing to go up the dune?

Jill Underhill – (Harbert) this request is so far outside the existing ordinance; seems like this is a want not a necessity.

Janet Schrader – (Lakeside) will impede the migration for monarch butterflies.

No other further public comment, Chair asks applicant or contractor if they would like to address the group. Builder/Contractor Doug Nelson speaks. Building will not be seen from the dune in obstructing applicant's view; new surveys from Wightman should have been received by the Board; even though about 9,000 sq. ft. have been lost since 2009, a survey from 2007 shows water was farther away than currently; as to other buildings on the beach, old precedence does not mean it can be considered; (submits pictures of other houses with structures on the beach); the proposed building even with the current lake level is 6 feet higher at base of the footing than where the lake level is (would need 6 feet of lake to rise); also, 28 feet from the bottom of the fore dune; will not tear up dune; only going up to the dune; going 28 feet out with concrete leaving 128 feet from the building to the water's edge; submits more photographs of neighbors on North and South and shows where the building would be placed (shows beach/stairs/neighbors to North and South and foredune); below the foredune; no septic field will be requested; an ejection pit which will tie into current sewer system; any dune grass removed will be replanted; as to 2nd part of variance, no impervious surface will be put down; wood deck will be put down; asking for 1488 square feet for the storage/utility building and client is willing to get rid of 6' x 16' shed underneath the stairway and no additional structure.

Sellers questions builder: If you eliminate storage shed, does it rest on the patio? Builder: No. Sellers continues: looking at proximity to Fuentes, it looks quite close. Sellers: I am all about preserving the dune and know all about when water rises and parents have been here since 1940's and I have been here most of my life and have seen this shoreline come and go; have seen a pump house go; my point is that the structure will be taken away by water and will cause erosion; applicant's house is beautiful, but feels that this is an "over the top request"; and a want not a necessity.

Barb Price – 15672 Lakeshore – want to comment on photographs of the other structure down on the dune and was grandfathered.

Mary Fox – I still want to know how they intend to get the materials and machinery to the site?

Nelson responds: We will have a backhoe and a cart with large rubber wheels and we will use county access; Chikaming has a key (Sellers interjects that permission must be received for the key); and I will drive along the waterline of the beach.

Gold – point of clarification – all of the property owners own to the ordinary high water mark so that you would have to be in the water.

Discussion on riparian rights, ordinary high water mark, construction equipment vs. pedestrian traffic, process to get gate permit.

Janet Schrader – the National Weather Bureau in 2015 issued a warning for 30' surges; we actually did have 28' surges and wants to make certain this is taken into consideration.

Fox – neighbor built a fence and it was washed away 2 years ago.

Chair asks if there are any further public comments; none.

Chair goes to board discussion.

Bob asks the ZA about the 2010 variance that was granted for this property. ZA replies that what is in the computer system is a request for a pool, hot tub, shelter and these all fell within the 1500 square foot total. Gold wants clarity on the 1500 square foot total, which has already been received, we are looking at potentially 4700 square feet of accessory structure. ZA advises that in March of 2017 for a parcel between 1 – 2 acres a total of 1500 square feet total is allowed. Gold continues, so all of this being requested is in excess. ZA advises that to help clarify that there is a difference between impervious surfaces and pervious; their impervious surfaces will remain under what is allowed for lot coverage; for structures they will have approximately 4,771 in accessory structures. Gold continues, this is the 2nd request for structures. Kathy asks, it is not 1500 square feet per structure, but 1500 square feet total. ZA: Yes, March 21, 2017, defines the total permitted accessory structure as 1500 square feet. Beemer: to take one step further, you are not including the deck and stairways in the accessory structures? ZA: The wood decks are included, stairs not included in the 4771 square foot estimated coverage. Gold: gives the applicant some input regarding putting in a more modest request, tram, closer to house, rather than a palace on the beach, have you done other design exercises? Builder answers that he looked up and down beach to get ideas and has gone over 30/40 different designs structures over 9 months being careful to consider about the water, dunes, neighbors. Gold continues talking to the realtor about the height and way over what is allowed. Possibly a green roof? Builder answers that he will look at that. Sellers advises that it is not up to this board to give alternative suggestions and we need to consider the variance. Bender interjects that the letters are most compelling and the size is way beyond the Zoning Ordinance. Seller again questions the cumulative size. ZA refers Board to table 15.03 A and that 1500 is a cumulative calculation. All members agree that it is way past the amount allowed, erosion is an issue. Applicant advises that he just bought in May (2018) and all of these other structures were already on the property when he purchased and he did not realize that the pool, shed, hot tub, decks were already part of the 1500 square feet maximum allowed and thought the 1488 square foot requested were under the allowable.

Chair goes through the zoning standards:

1. Are there and what are the unique circumstances or conditions that exist? Yes – 2 front yards.
2. As result of unique circumstances, would strict compliance would unreasonable prevent the use of the property be unnecessarily burdensome? No.
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 – No; and not be injurious to the neighborhood, or otherwise detrimental to the public health, safety, and welfare? No, not in harmony and will be injurious.

Sellers makes a motion to deny the variance as it does not meet the criteria of the review standards giving the answers as stated above; Bender seconds. Voice vote. ROLL CALL VOTE. ALL AYES. VARIANCE IS DENIED. 5 – 0.

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, **Seller moves for an adjournment at 2:28. Beemer seconds; All ayes. Meeting adjourned.**

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary

Date Approved: October 16, 2018