

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the December 19, 2018, Regular Meeting
APPROVED

The December 19, 2018, regular meeting of the Zoning Board of Appeals was called to order by Chairman (hereinafter Chair) Larry Anderson at 1:05 p.m. Roll call of members present: Doug Dow, Kathy Sellers, Liz Rettig, Larry Anderson. Quorum. Also present: Zoning Administrator Assistant, Kim Livengood, Attorney Charles Hilmer, Zoning Administrator (ZA) Van Thornton, Building/Zoning Official, Ted Hanson (Ted), and some members in the audience (sign-up sheet attached of those persons who signed in).

Chair takes roll to determine quorum of 4.

Chair advises that the next order of business is to approve the November 20, 2018, minutes. Dow points out one typographic change; Secretary Rettig makes correction; **Dow makes a motion to approve minutes as corrected; Anderson seconds; discussion; call for vote: All in favor (4 members). Minutes are approved as corrected.**

CASE 1160: Kristy Putnam for property owners Peacock Place, LLC – 13436 Red Arrow Highway, Harbert, MI 49115. Property Code No.: 11-07-0010-0042-04-2. Applicant has six (6) requests.

- A. To allow a structure (Unit B) which has 685 sq. ft. of living space area to be a dwelling. Chikaming Township Zoning Ordinance Section 14.03 requires 840 sq. ft. of living space.*
- B. To allow the existing side yard setback of Unit B to remain 9+ feet. Chikaming Township Zoning Ordinance Section 14.02 requires 10 feet.*
- C. To be permitted to keep 12+ parking spaces gravel, which are graded for drainage, to keep the existing railroad ties as markers and to allow the existing spaces to remain 8' x 18'. Chikaming Township Zoning Ordinance Section 18.06(1) requires 12 or more parking spaces to be hard-surfaced or asphalt, Section 18.06(5) requires parking spaces to be clearly identified and marked and Section 18.08 requires parking spaced to be 9' x 23'.*
- D. Permit the existing driveway a deeded easement, to be a private road. Chikaming Township Zoning Ordinance Section 15.08(B) has 8 standards for approval.*
- E. Requesting an interpretation of the current "Dwelling, Detached Units, Multiple Family" referred to in Section 9.02(11) and Section 15.05.*
- F. Requesting the back part of the lot to be declared buildable which is currently zoned R-1.*

The Chair advises that each of the 6 will be taken individually, hearing from the applicant, then the ZA, then public, then closed discussion of Board and vote on that particular issue, then reopen the meeting to the next request.

Sellers wonders if some of the issues relate to one another, making a decision difficult; Chair advises we will try to go through them one by one and look back if we need to.

- A. To allow a structure (Unit B) which has 685 sq. ft. of living space area to be a dwelling. Chikaming Township Zoning Ordinance Section 14.03 requires 840 sq. ft. of living space.*

Applicant speaks about the footage; talks about a front porch and 200 square foot that are for storage and whether they are included in the measurements.

Ted addresses the board advising that he has made an inspection of the unit and it is a single-family resident dwelling designated as an efficiency apartment. No violations found; everything meets the building codes.

Chair asks Ted about the square footage; Ted responds that living space is conditioned space, so the front porch on the outside does not qualify as living space. Chair clarifies that we are then back to the original measurement of 685 sq. ft. of living space and questions the loft space. Ted responds that the loft is considered storage space and meets the requirement for storage. ZA Van interjects that the footprint of the conditioned space is 685 sq. ft. so we are short on the required square footage, but we have adequate required storage space (the zoning ordinance only requires 100). ZA Van continues, the other issue is whether we may have two (2) dwelling units on one (1) parcel and the ordinance is clear that it is not permitted unless a prior Special Land Use Permit exists, which I believe only allows for a dwelling in a commercial district. Chair clarifies, a single residential unit in a commercial district is the existing special land use? Van – correct. So, as a result, this Board must approach this as a most likely a non-conforming use (whether legal or illegal). Chair addresses Mr. Hilmer – If this is a variance to a special land use permit that exists, does this come to the ZBA or the Planning Commission? Hilmer advises that there is no authority under the special land use permit for the Planning Commission to approve a second dwelling unit on this property. There would have to be a variance. Chair: So, the variance is for second dwelling unit on the property AND the square footage both.

Applicant questions why this is not considered a seasonal resort home which is a permitted use? Chair: because we are operating under a special land use permit which allows a single family residential on a commercial property. ZA interjects that under the definition of seasonal resort home it specifically says it is multiple dwellings (using residences) which are on a single lot, and the primary use of the residences is short term rental occupancy on a nightly or weekly basis. So, if it is indeed going to be referred to as a seasonal resort home, then by definition it may not be a permanently occupied dwelling. Chair questions how this goes back to the current special land use permit “single family residential home on a commercial piece of property?” ZA responds: This is a dual zoned parcel (commercial in front/residential in back) and the special land use permit only addresses use of the dwelling that is located in the commercial zoning (front). Chair: Is the other located in the back portion, the R-1 district? ZA: Regardless of where it is located, the special land use permit only allows one (1) dwelling in the commercial and if the second dwelling is in the commercial portion, then it is in violation of the special land use permit.

Applicant goes on to state that she believes it is a permitted use because it is a seasonal resort home, there is no permanent residence on the property – there are 2 houses being rented primarily for short term use and this matches the permitted use.

Dow: If this is all permitted use, why are we here? You have not received any citation, we have confirmation that you were inspected and you have been approved as a rental, so what are you asking for?

Applicant: David Bunte asked me to come here...

Dow: I don't believe so, I believe you asked to come here and we are trying to understand why.

Applicant: Because under the future ordinance, this will become a non-confirming use.

Dow: This is not today.

Rettig: This does not change the fact that it exists and then the new ordinance comes into play.

Ted: This is a legal non-confirming use.

ZA: If the applicant is attesting that both dwellings will be used as single-family residences...

Rettig: Let's define the "both dwellings" – the A & B?

ZA: Yes. If A & B are seasonal resort homes, it is indeed a permitted use as long as both dwellings are rented only short term – if that is what she is attesting to and if that is the way she will rent them out, it is indeed a permitted use. Prior to this conversation, applicant has indicated that one (1) of these is a dwelling for her own personal use.

Chair: So, you are looking for a variance to have a 685 sq. ft. dwelling instead of an 840 sq. ft. dwelling and the issue is: Is this a permitted use on this property and we would be tasked with approving the 685 sq. ft. dwelling variance for practical difficult. Van: and it is a permitted use as long as it is only rented for nightly or weekly.

Application: This is an interpretation – the definition is primarily rented.

Chair: Is that interpretation in your application under "E?"

Sellers wants to know the applicant's legal mailing address. Applicant: 3810 Madison Street, Kalamazoo, Michigan. Sellers: This is where you get your mail and where you vote? Applicant: Yes. This property is owned by an LLC. I am not an owner. I am a manager. Seller: Do you live on the premises? Applicant: No, my primary residence is also the office of the business in Kalamazoo.

Chair asks attorney Hilmer for any additional comments on item A. He has none.

Chair: Having heard from the applicant and the ZA, are there any public comments?

Jill Underhill: I live next door to the property. This is not being primarily used as short-term rentals. There are people that live there in the summer and then during the winter for extended periods of time – as many as 7 – 10 cars regularly off season.

Sellers to applicant: Do you have leases? Applicant: Yes. We do winter rentals – up to 5 months. The summer rental income for the short term (A) is more than 2 years of winter rental income, which is the definition of primary use for short term rental. Dow: The other definition for primary use is the length of time for which it is leased. Your summer season is how long? Applicant: 8 weeks. Dow: And your winter season? Applicant: 5 months. Dow: So that would be more than 8 weeks. The primary use in terms of time would not be short term. About ¼ short term. Applicant: This is the first year for winter rentals.

Chair goes to closed session. (only questions from board to applicant or others).

Sellers: is there anything as a Board that we can do to make sure she can keep her business – rent it in the off season and summer season – what would she need from us?

Van: I think where some of this conflict comes from 2 dwellings on 1 parcel. If you have a rental unit that is a single dwelling on a parcel, it is not a seasonal resort home. As a result, it is not limited by the definition that requires short-term rental occupancy. So, if you have single family home on a single lot, you may rent that by the week or by the month.

Sellers: This is not what she has – what if she split her lot, then could she do it?

Van: We have addressed that early on and provided information to the application. A lot split cannot be done because it will create non-conforming lots and will not have frontage on an approved road. So, a lot split is not possible. Sellers: That little road that goes along the side, is that frontage? Van: It must be a private road that meets the private road standards that could give frontage. Sellers: So that's a driveway? Chair: Correct – that an easement. Sellers: So, if she turned the house, moved it, that wouldn't work either? Chair: No. Sellers: If she put a hot plate and refrigerator in the little house, does that make it a residence? Van: Generally, with our zoning ordinance if we didn't have a stove and we had a food prep area, it has been approved as an accessory structure. But, at that point, she can no longer go on as a seasonal resort, it becomes a principal dwelling with an accessory building. Sellers: Is that ok? Applicant: No. That makes it one (1) family instead of two (2). Rettig: I don't think there's a solution. I think it has to meet the criteria of seasonal. Sellers: I understand letting something sit for 10 months doesn't make sense. Dow: The point is from what we are being asked, is it a short-term seasonal rental or not. Given the data, it is not a short-term rental. So, why are we here if this is a short-term rental – except it is not. So that takes us back to we have a non-conforming second structure on a property. Chair: How it's used is not our business. Dow: It's simply too small of a dwelling that doesn't meet the zoning standard. Should we approve a dwelling that's 200 square foot short – that's the question on the table. Is that correct Van? Van: Yes, we are addressing the size of the structure and what is required by the ordinance – we are not addressing the use of the structure. Use is not germane to the decision. We should look at size. We have a 685 sq. ft. living space. Does the 100 in the loft add to that or not? Van: The footprint should be 840 sq. ft.; the loft meets the requirement for storage. The question is whether or not you want to permit this structure to stay there. You are not making a decision as to its use.

Rettig: The question at hand is, does this structure meet on square footage? 155 square feet short. Ted: It is a well-kept, unique, efficiency apartment.

Chair asks if we are ready to go through the zoning standards to determine if we will allow the structure which has 685 square feet of living space to be a dwelling?

1. Are there unique circumstances or conditions that exist? Yes.
2. As result of the 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.
3. The unique circumstances do not result from the actions of the applicant? Yes.
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? No – does not meet spirit of ordinance. The special land use permit in place that allows the use of A for rental, there is no similar approval for the B structure.

Dow makes a motion to deny the variance because it does not pass all 5 of criteria; Rettig seconds. **ROLL CALL VOTE.** Dow: Yes deny; Rettig: Yes deny; Anderson: Yes deny; Sellers: No. **VARIANCE IS DENIED. 3 – 1.**

Chair moves to item B:

B. To allow the existing side yard setback of Unit B to remain 9+ feet. Chikaming Township Zoning Ordinance Section 14.02 requires 10 feet.

Rettig questions why are we here? If this is an existing structure, what is the problem under the current ordinance? Applicant: This can be withdrawn because the ordinances say that it can go on existing as non-conforming. **B IS WITHDRAWN BY APPLICANT.**

Chair moves to Item C:

C. To be permitted to keep 12+ parking spaces gravel, which are graded for drainage, to keep the existing railroad ties as markers and to allow the existing spaces to remain 8' x 18'. Chikaming Township Zoning Ordinance Section 18.06(1) requires 12 or more parking spaces to be hard-surfaced or asphalt, Section 18.06(5) requires parking spaces to be clearly identified and marked and Section 18.08 requires parking spaced to be 9' x 23'.

Chair starts with applicant. Applicant advises that she has submitted a drawing of the parking.

Chair asks ZA for comments. ZA: As long as the applicant can comply with the requirements of the ordinance. Chair asks for definition. ZA: If there are more than 12, it must be hard surfaced. There is an exception under 18.06(1) to seek a special land use permit from the planning commission. Further definitions as to gravel vs. hard surface and handicap parking.

Chair asks for comments from the public. Jill Underhill speaks advising there have been more than 10 cars and sometimes 20 cars sometimes. Applicant: I am trying to get this all in order to determine rules before selling property and apply for rental registration. Dow interjects that if there are more than 20 cars, there will need to be paving. Further questions how many bedrooms total in the two (2) structures? Applicant: 5 total. Dow wonders how there are 20 cars and further goes on to ask why 12 parking spaces would not be sufficient for this property? Applicant: Explains further that she believes here are 2 cars per bedroom allowed plus the multiple cleaning people who come that comprise the many cars. Anderson interjects that the cleaning people, however, are not spending the night. ZA: Would like to note that in section 18.08(B) under use, residential single and 2-family dwellings 2 spaces per dwelling unit are required and not 2 per bedroom. So, the number goes to four (4) for spaces allowed. If we are calling this a dwelling unit, then under the ordinance it must go by the rules for a dwelling unit. If you want to isolate this as a dwelling unit and an office unit (if this is permitted by zoning and building codes) and then we go by the appropriate parking for the dwelling unit and the commercial area. At this point, we have two (2) dwelling units. Applicant states: Right. Dow enters conversation stating that we have also heard that Ted has advised that the two (2) units meet the standard of the rental ordinance, and that would be how many spaces? Ted answers: 4. Applicant then questions: So, 12 are allowed without a variance? Dow answers: Yes. **Applicant: I withdraw on this.**

Chairman advises that he neglected to read the correspondence earlier and does so now.

Letter #1 from Jill Underhill and John Searles (neighbor). Summary: Opposed to the applicant's request because property is already overbuilt with multiple buildings; property is rented as a party house with 10+ cars, loud parties, multiple garbage cans with six or more receptacles, if more units are allowed it will essentially be a trailer part and not keeping with the area; not enough land for multiple units and no room for parking; over-sized sign near highway appears to be outside of the height and size limitations allowed; if this variance is allowed, township should require applicant to erect an 8' fence near the property line.

Letter #2 from Larry Shulman (neighbor). Summary: Opposed to the applicant's request. Easement does not meet requirements of private road and does not want private road; private road is unsafe for traffic; objects to building of additional structures; increased in density, drain on services does not support the additions; the 20,000 square foot of area required for buildings should be adhered to as new building would exploit the purpose of the zoning and would directly impinge on my property; when we added an additional building on our property, we were required to satisfy the 840 square foot requirement and applicant should also comply; the need for these variances is self-created; there is no hardship.

Chair moves onto next item:

D. Permit the existing driveway a deeded easement, to be a private road. Chikaming Township Zoning Ordinance Section 15.08(B) has 8 standards for approval.

Chair hears from applicant: This was a suggestion of the planning commission by two (2) members. The easement is only 25 feet wide and services the R-1 lot (someone else owns) behind my parcel. The conversation was the improvement of this easement making this a private road would make the parcel behind no longer landlocked. A driveway can have two (2) houses and the 2nd house that is being contemplated to be built on the back of the lot (which currently does not have road frontage) would be the question – could the road frontage be waived. Applicant owns the easement.

Sellers questions if applicant wants to leave it the way it is or improve it? That would not be us we have no jurisdiction. Dow clarifies that there are two (2) questions: 1) Do we take a 25-foot easement and grant a variance for it to be considered a private road; Applicant: and then it's up to us to comply with the County. Dow notes from the survey that there are two (2) existing easements shown on the survey dated May 2, 2013, 1) a 25' wide easement running through the entire parcel for ingress and egress and utilities and has a 2-track drive shown **[NOTE: IT IS LATER DETERMINED THAT RUSSELL SHERMAK OWNS BEHIND AND IS SERVICED BY THIS EASEMENT – see below]**; and 2) a 25' wide easement parallel to the west and adjacent to the first easement running from Red Arrow Highway approximately halfway into the parcel shown for ingress egress and utilities and it is unknown who this services.

ZA speaks to the Private Road issues: A private road standard in our ordinance requires 66-ft frontage; requires a 20' driving surface with shoulders. A 25' easement would not provide that. The reason these things are required by the County is for ingress and egress of emergency vehicles and there must be a cul-de-sac or t-type turn around. I bring to the board's attention that I consulted with

legal counsel on another matter where a proposed land division is identifying an existing lane as a private road and drawn in on their plans as 66' width, but it is not, it is 20' feet wide and cannot be expanded, so we have agreed it must remain a private easement. The Township cannot approve a private road that does not comply and I would recommend to the board that they not allow a variance on this issue. Dow: as a point of law, I don't believe we can anyway. ZA: Correct, it does not meet the standards and would not meet the 5 criteria. Dow: If I understand how the standard works for private roads, we (as a body) don't have the ability to change that. Chair: I don't believe we do because of the Road Commission standards of width and turning radius. ZA: I would suggest that you may indeed be allowed to grant a variance for a smaller private road if you found justification. That's the whole purpose of a variance. However, we have a safety issue. Dow: So, we can consider this, so let's go through the criteria.

Chair says we have not yet heard from the public. Russell Shermak (owner to the rear at 13442 Red Arrow who owns parcel 11-07-0010-0042-05-1) states that he uses the easement and does not want it changed at all.

Applicant advises the Board to withdraw the request to make the easement a private road.

Chair moves onto next issue:

E. Requesting an interpretation of the current "Dwelling, Detached Units, Multiple Family" referred to in Section 9.02(11) and Section 15.05.

Chair asks to hear from applicant. Discussion back and forth about missing portion from original application. Chair now reads from original application and advises that the private road portion was withdrawn; applicant has some confusion about her lot and its split zoning with some inferences to the Planning Commission advising her that her back portion of the lot was landlocked and thus the need for the private road; after much discussion back and forth between the members, applicant, and ZA, it was established that the parcel owned is in fact one (1) parcel having one (1) tax number and has some split zoning front being commercial and rear being residential. With this being all one (1) parcel it does not have any ability for expansion; applicant still has some confusion about waiving the road frontage. Further clarification to the applicant that everyone is taking about hypotheticals – no site plan has been provided for expansion, no information for building plans, utility plans. There is no road upon which there could be frontage. The easement does not constitute a private road and we cannot consider and applicant has withdrawn the private road request.

Chair again asks exactly what interpretation the applicant is asking for. Applicant says that under special use permit – multi family is in one (1) building, but here is no definition for multi-family in two (2) buildings. ZA: So, you are saying there is no definition and we need legal counsel as this may be an amendment to the ordinance. The board can interpret the current ordinance, but if there is an issue with a definition, it sounds like a change and we cannot add a definition. We have dwelling defined, but if the others are not in the definition, then we cannot interpret. Applicant advises that the problem came up when talking to the assessor about multiple family unit. ZA: All previous discussion states that these were two (2) single family dwellings and that's what your special land use is for. Chair ask Attorney Hilmer who says that the term "dwelling, detached units, multiple family" does not exist in the zoning ordinance and there's nothing to interpret on a term that doesn't exist. Definition for multi-family is 3

or more units in one (1) building. This is a single parcel with two (2) dwellings and the ordinance does not allow this (unless under a special land use). Multiple family was not conceived of. She is asking for a new definition. Effectively, this is beyond the scope of authority of the Board.

Board cannot answer this as this is beyond the scope of the authority of the Board.

Chair moves onto the last request:

F. Requesting the back part of the lot to be declared buildable which is currently zoned R-1.

Applicant speaks stating that she wants two (2) principal dwellings. ZA answers that an accessory structure is allowed in certain districts and in commercial/industrial you are allowed certain structures, however, in a residential district, one (1) structure is allowed on a parcel. There is one (1) parcel there by special land use permit and there is apparently more than one (1) dwelling so we certainly cannot grant a variance to build another dwelling. This is not a hardship by definition. Secondly, it is not buildable because if they were to attempt to split the lot, the split would not be approved. If the individual wants to apply for a split, it would be reviewed, refused, and then the individual could apply to the Board of Trustees – this is what the ordinance says. The ZA would refuse the split. We go back to the fact that we have one (1) parcel only and we may not have more than one (1) dwelling unit upon it. Dow: one other piece to this is that any additional structure would have to start with blue prints, building plans, site plans. First, we can't rule on this, and if we could, we would need a lot more. ZA: With a site plan, one may be able to build other structures, but without those details, no one can make that determination.

Sellers refers back to applicant's original verbiage about marketing this parcel and the ability to build upon the back portion of the property. Chair interjects that the property back portion is R-1, it is unbuildable because it would require a land division – which cannot be done because it creates a non-conforming lot or it would require rezoning the back portion to commercial, which under the special use abilities accessory structures would be allowed. ZA: There is a chance this could be rezoned commercial and under the new zoning that a single-family residence in that commercial district will become a permitted use and there may be some opportunities. Under our current zoning ordinance, it is not permitted.

Dow: To do nothing is actually advantageous to the application because of the pending changes. Chair: My suggestion to the application to protect yourself, withdraw this. If we vote on this, you cannot come back for one (1) year. If you withdraw, you can come back to us with different plans.

ZA clarifies that if the special land use permit was not in place, if that residential dwelling was used as a residential dwelling and another structure or part of that structure was used for commercial purposes in our current zoning (mixed use) that is a permitted use. Chair: but that other use can't be residential, short-term, medium term, or any sort of residential occupancy. Rettig: This parcel already has an umbrella over it that has a special land use.

Chair: Back to the application, what would you like to do?

Applicant: **Withdraw**

Chair for clarity please read through items A – E and our determinations:

Rettig reads:

- A. To allow a structure (Unit B) which has 685 sq. ft. of living space area to be a dwelling. Chikaming Township Zoning Ordinance Section 14.03 requires 840 sq. ft. of living space. **DENIED***
- B. To allow the existing side yard setback of Unit B to remain 9+ feet. Chikaming Township Zoning Ordinance Section 14.02 requires 10 feet. **WITHDRAWN BY APPLICANT***
- C. To be permitted to keep 12+ parking spaces gravel, which are graded for drainage, to keep the existing railroad ties as markers and to allow the existing spaces to remain 8' x 18'. Chikaming Township Zoning Ordinance Section 18.06(1) requires 12 or more parking spaces to be hard-surfaced or asphalt, Section 18.06(5) requires parking spaces to be clearly identified and marked and Section 18.08 requires parking spaced to be 9' x 23'. **WITHDRAWN BY APPLICANT***
- D. Permit the existing driveway a deeded easement, to be a private road. Chikaming Township Zoning Ordinance Section 15.08(B) has 8 standards for approval. **WITHDRAWN BY APPLICANT***
- E. Requesting an interpretation of the current "Dwelling, Detached Units, Multiple Family" referred to in Section 9.02(11) and Section 15.05. **BEYOND THE SCOPE OF THE AUTHORITY OF THE BOARD AS NO DEFINITION EXISTS IN OUR ZONING ORDINANCE.***
- F. Requesting the back part of the lot to be declared buildable which is currently zoned R-1. **WITHDRAWN BY APPLICANT***

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 2:30 p.m. Meeting adjourned.**

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary

Date Approved: **MARCH 19, 2019**