

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the March 19, 2019, Regular Meeting
APPROVED

The March 19, 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, Bob Beemer. Quorum. Also, present: Zoning Administrator Assistant, Kim Livengood, Attorney Charles Hilmer, Zoning Administrator (ZA) Van Thornton, and some members in the audience (sign-up sheet attached of those persons who signed in).

Chair advises that the first order of business is to approve the December 19, 2018, minutes. Dow points out some minor typographical errors and Anderson points out some minor typographical errors; Secretary Rettig makes corrections; **Chair calls for a voice vote to approve minutes as corrected; All five (5) members - AYE. Minutes are approved as corrected.**

CASE 1161: Scott Ponegalek property owner – 8585 Mayfair, Union Pier, MI 49129. Property Code No.: 11-07-7600-0014-00-5. *Request to create a buildable lot on a private road which will only serve 1 dwelling. Chikaming Township Zoning Ordinance Section 15.08(b) states in part, “A privately owned and maintained road which provides access to more than 2 dwellings shall be constructed in conformity with the 8 standards listed in Section 15.08 (b) 1 through 8.”*

Chair asks ZA for information. ZA: This started as a land division request. First requirement is frontage on a road. The applicant discovered that he could not comply with Ordinance 1508(b) where he would have to create more than 2 parcels because of difficulties with the terrain and topography. The property will not allow him to comply. All he is asking for is that he be allowed to build a private road that service only one (1) parcel rather than more than 2. If awarded the variance, the applicant and ZA will continue to process the land division in compliance with what the Township’s legal counsel has advised. One (1) new parcel will be created which has a minimum of 100 feet of frontage on a private road (as required by the ordinance).

Chair: Please expand on the reasons why he cannot have more than one (1) parcel.

ZA: There are very large ravines that cut across on a diagonal through the parcel. To try to continue the private road farther would be excessive costs that are not necessary because he does not want to create more than one (1) parcel.

Beemer: To meet the guidelines, the ordinance says more than two (2) parcels? This means three at a minimum?

ZA: Correct. Physically it could be accomplished; to divide it into four (4) parcels. The problem is the terrain. He would have to fill it in, build a bridge – wasted effort – he does not want more than one (1) parcel.

Dow: What’s the logic behind “more than 2 parcels for a private road” – is that derived from the costs and maintenance?

ZA: I do not have an answer for that. We are seeking to clarify that in our new ordinance.

Chair: The applicant currently has a house on Mayfair, so we are talking about extending the road (Canterbury) alongside his current house on Mayfair for one single large parcel?

ZA: Yes. The ZBA (with the approval of counsel) could put a stipulation in this variance stating that this parcel could not be divided at a later date.

Beemer: What's the length of the parcel?

ZA: 500 feet plus or minus.

Gold: Why can't this road be a platted road?

ZA: Because it must serve more than 2 parcels and the applicant does not want that.

Gold: But this would be in compliance with the ordinance - and these are only lines on a map.

ZA: That would not be most practical, because we must create at least 3 new parcels making the applicant go through lot line adjustment, combinations, much legal work.

Dow: All of that is asking the applicant to bend over backwards. He is trying to do the most minimally invasive split - maintain the biggest parcel of property as possible, and frankly, why does the road have to have more than 2 parcels. No one knows. This is the most logical, this is straight forward.

Applicant speaks: If you all went and looked, Mayfair goes in front of my current house. Canterbury actually goes up the side and I want to continue Canterbury. I only want one parcel to build one (1) house. There's a big ravine and I would make the new driveway go around the ravine. Past where I want the house, there's another big ravine behind that. There's more land behind that, but I don't know how you would get there.

Chair: So, the applicant would own the private road? Would the private road serve the neighboring parcel?

Applicant: The neighbor owns a large piece of vacant land abutting his house (just like mine) and they use Canterbury for access.

Discussion among board regarding who can access the private road, whether or not an easement would have to be granted to anyone else, concluded that no easements would have to be granted.

READ LETTERS:

Judy Snider – not opposed; was not aware there was enough room; concerned about sewer/water supply; drainage.

Riley McQuade – western neighbor; strongly opposed.

Betsy Bohac – former ZA; talks about when the lots were platted; talks about lot splits in platted subdivisions; talks about requirements and procedures; opposed. (*Comments from the ZA – Respectfully, I do not think this person reviewed the application, because this is NOT a request for the split of a platted lot. This is about land being added to an existing platted lot and the remainder portion of the land is not platted and does not fall under the ordinance regarding platted lots.*)

PUBLIC COMMENT:

John Winter – East neighbor; concerns about drainage; not looking forward to house in the backyard; drain tiles don't work; large ravine in our backyard; same layout as applicant with house in plat and vacant land not in the plat.

No further comments from the public.

ZA makes an additional comment regarding the drainage and the neighbor's concerns: Drainage is addressed by the building and zoning department and new construction would go under those guidelines. Further suggests calling the Berrien County Drain Commission perhaps to clean the drains.

Applicant: I have a further comment on the drain. The entire subdivision has had drain problems in the past. I have two (2) ravines where I intend to build and any water that I have would be going into the ravines and not into the subdivision.

BOARD DISCUSSION:

Chair goes to Board discussion. Discussion about length of private road (100 feet) which may include 2 separate directions of road frontage (like a cul-ti-sac); we have to look at this current land with the current conditions based upon our current ordinance; applicant has more than enough land to divide and the only barrier is the language that says a private road "must" service 2 or more properties; if applicant is forced to make 3 or 4 parcels, this becomes more invasive to the neighbors; the course being proposed is the minimal way for the owner to get maximum use of his property with the minimal disruption of neighborhood and minimal disruption of the ordinance; unique circumstances of ravines on property; no precedence is being set as each case is taken individually and the board's job is to deal with "exceptions" and use our best judgment and what's best for the harmony of the community; questions to the ZA as to how he will verify that house is in compliance (lay out of road, survey, building of the private road to meet our ordinance). Process of land division includes no other approval from any higher board.

Chair: Let's go over our criteria:

1. Are there unique circumstances or conditions that exist? Yes – ravines/terrain.
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.

Bob: Do we want to make any reference to who may use the private road (parcel to the West)?

Rettig: I don't believe that's in our jurisdiction. I think we need to concentrate on putting a restriction on making this one buildable parcel only.

ZA: My suggestion is that if this variance is granted, make it contingent upon only one (1) parcel being served by this road.

Further discussion among board about questions regarding setbacks, road frontage concluding that these will all be addressed by the Building Department when the building application comes in; The board is dealing currently with addressing only the variance request regarding the private road and allowing one (1) parcel; Suggestion to applicant to talk with neighbors about access to the private road; placement of house discussion; location of ravine and the only possibility of where house can be built; location of road; setbacks – conclusion that Board can only address the variance request presented to them and that building is in the future or may never occur.

Dow makes a motion to approve the variance request for a private road restricted to serve only one (1) parcel; further that we have gone through all five conditions to meet a variance and this request having met all; Rettig seconds. ROLL CALL VOTE. Dow: Yes; Rettig: Yes; Anderson: Yes; Gold; Beemer: Yes. VARIANCE IS GRANTED. 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 1:42 p.m. Meeting adjourned.**

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary

Date Approved: April 16, 2019