

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the April 18, 2017, Regular Meeting
APPROVED – 6/20/17

The April 18, 2017, regular meeting was called to order by Zoning Administrator Van Thornton (hereafter ZA or Van) at 1:00 p.m. Secretary Liz Rettig takes a roll call: Bob Beemer, Liz Rettig, Larry Anderson, Doug Dow, Kathy Sellers. ZA acknowledges a quorum. ZA states that the By-Laws state that after April 1, the Board shall elect a Chairperson and a Vice Chairperson. Also a Secretary needs to be appointed (voluntary position). ZA opens the floor for nominations.

Rettig makes a motion to elect Larry Anderson as Chairman; Seconded by Doug Dow. Voice vote – Beemer – yes; Rettig – yes; Anderson – yes; Dow – yes; (prior to Sellers vote, she advises she has never met Beemer or Dow, but does vote) Sellers – yes.

Anderson now takes the floor as Chairman and asks that Mr. Beemer and Mr. Dow introduce themselves. Mr. Beemer advises that he is an alternate and is filling in for Doreen Bartoni (regular member) who is absent. Mr. Dow is the representative from the Planning Commission and is a regular member.

Chairman Anderson asks for nominations. Chairman Anderson nominates Kathy Sellers as Vice Chairperson; Rettig seconds. Sellers advises that she would not accept the nomination at this time because of her time schedule. Rettig asks if this Chairperson nomination can be held until we have all regular members in attendance. Chairman Anderson concurs.

Rettig makes a motion that we table the election of Vice Chair until all regular members are in attendance. Dow seconds; all vote yes.

Rettig asks if she can continue to be secretary. All members of the board support.

Sellers advises that she would perhaps reconsider the Vice Chair in the event that Bartoni would not want the position when this is brought up at the next regular meeting.

Chairman Anderson advises that the next order of business was to approve minutes from the March 21, 2017. Dow brings to light a few minor word/spelling corrections. Secretary Rettig takes notes of these minor changes. **Anderson motions to approve the minutes with the corrections; Dow seconds. All in favor. Motion approved.**

Case 1126: Richard Racht representing property owner/applicant 9905 Townline, LLC, 9905 Townline Road, Union Pier, MI 49129 Property Code No.: 11-07-0125-0023-01-8.

Applicant is requesting to add a 1,231 sq. ft. addition to the rear of the building that will increase the lot coverage to 60%. Current lot coverage is 41%. Chikaming Township Zoning Ordinance Section 14.02 states maximum lot coverage shall not exceed 40%. Applicant is also requesting the side yard requirement be waived per Section 14.02(e).

Chairman Anderson opens the floor and Attorney Richard Racht speaks on behalf of applicant on this case. He advises the Board that the sole member Greg Michaels (sole member of the LLC) and the architect, Bill McCollum are also in attendance to answer questions.

Attorney Racht goes over the application and provides an architectural drawing showing the current lot coverage of this parcel and buildings that surround demonstrating that these neighbors have lot coverage which far exceeds 40%. Additionally, in 2012 the prior owner came for a similar variance for construction of an addition (Case #1030 approved in May, 2012, but never done. Property then got sold.) The new addition will include a small kitchen for prepared food/deli counter. Talks about a growing need for a full-service convenience store in Union Pier and the necessity to keep the local people and summer residents utilizing the store. Further shows how limited the space is and how important it is to utilize the space that is available. The practical difficulties being the current lot size in a commercial space location. The applicant completed many of the conditions which were part of the approval of Case #1030: installing a new storm drain and catch basin (lined up to do); installing a dumpster pads (done); replacing railroad ties in front of store to cement barrier (done); raise existing sanitary sewer manhole in parking area to above grade (part of storm drain and will be done; grading done).

Dow interjects that the first condition was an accessible rest room. Racht says it is completed and owner confirms and that the bakery next door is opening and has a public restroom as well, which will solve the issue and traffic from the beach.

Anderson: (to ZA) Van, any comments on parking and delivery access.

Mr. McCollum: We have added four (4) additional spaces in back and for delivery. But many times the delivery truck will have to deliver in the front because of space. And there are four (4) more spaces in front of Milda's which are not shown on the map presented.

Van: If we took the gross square footage, you may need as many as 19 spaces. I would guess that we are looking at 11 – 12 currently, however, in Union Pier we are limited by what exists. From my understanding with speaking with Mr. Michaels, he has already increased the parking area by 2 additional spaces. Is there any way we could strictly comply with the ordinance, absolutely not.

Anderson: So parking is not listed as part of the variance request.

Van: The site plan is indicative of what exists – I believe it shows 10 overall.

Michaels: None of the buildings in that town square have enough parking. We are actually creating four (4) new spaces in back for employees. I don't think that a variance is necessary for the parking as this is an "already permitted" situation.

Rettig: You are also getting perhaps 50% foot traffic during the summer?

Michaels: Yes, during the summer.

Sellers: The total lot coverage, does it include the parking spaces? I am looking for less lot coverage for the building

Michaels: No.

McCollum: As you can see we averaged the lot coverage from the existing neighbors – what we are requesting will be 61% and does include the parking spaces. We are not going into the rear setbacks. We are asking to maintain the current building line on the side.

Anderson: (to Van) Did we have any letters?

Van: No we did not. May I make a correction, please? The actual number of spaces needed would be 10 or less based upon our ordinance and removing the storage and mechanical areas. They are in compliance, as they are providing 10 spaces.

Anderson: Any further comments? We will now close public comment and the Board can discuss.

Rettig (to Beemer and Dow) Is this consistent with the trend you have been hearing on the Planning Commission with regard to lot coverage in a commercial environment?

Beemer: Yes.

Sellers: Is this 40% lot coverage due to the dimensions of the lot – so is this appropriate? So if someone would build new – are they limited to 40%?

Anderson: They are not in compliance now and neither are the neighboring parcels.

Sellers: So we typically average the neighbors. I would like to look at the 5 requirements.

Anderson: So if we look at the findings of facts from 2012, identify the hardship – 10 foot side yard setback and maximum lot coverage of 40% in a commercial district. They don't already comply. So that is the hardship.

Sellers: How does that work in this instance?

Anderson: This is a commercial district.

Sellers: Is there more leeway in commercial? I am all for this, but...

Anderson: I would look at this from an approved situation of 2012.

Rettig: The only credence I would give this, more so than others, is the adjoining buildings in this commercial district.

Sellers: How does this fit?

Rettig: In harmony with the neighborhood.

Beemer: The Planning Commission has had discussions about creating Town Centers and Union Pier is clearly a Town Center as well as Sawyer, where greater density exists. As far as finding a reason, the Planning Commission is discussing higher density for better use. Stores should certainly be a different set of requirements.

Sellers: #5 in harmony with the zoning ordinance should....

Racht: There is no way that we could meet the current zoning ordinance. The current situation affects all of the store fronts in Union Pier. I am not certain when the stores were built, before or after the current zoning ordinance. The hardship was not created by the applicant.

Anderson: Let's go through the list. #1, Unique circumstances which exist which apply to the land structure or building involved and which are not applicable to others in the same zoning district. I would read into this that the buildings on either side are in non-compliance.

Sellers: We are expanding on the non-conformance.

Rettig: Except this is in a commercial district with other neighboring buildings that meet the same criteria.

Sellers: Can we defend this?

Dow: It is in harmony with the other neighbors.

Racht: 40% of the 12,000 square feet is a 4,800 square foot building. We are not even approaching something like that. The neighbors are at 60% of their lot coverage.

Anderson: And that is item #4, a minimum variance.

Rettig: I don't think this is an unreasonable request.

Dow: This is the Town Center – which they are looking at higher density – utilizing the space. It is not the maximum request, and it is meeting the 30 foot setback in back.

Rettig: They have not maximized the request at all.

Dow makes a motion that this request be granted. Beemer seconds.

Anderson: May I add onto your motion? I would move that it be approved with the conditions as in case #1030 of May 15, 2012, to apply to this as well to mimic the conditions imposed earlier. Beemer reseconds.

Roll call vote: Beemer, yes; Rettig, yes; Anderson, yes; Dow, yes; Sellers, yes.

APPROVAL OF VARIANCE #1126.

Case 1127: Damon Lawson property owner/applicant 12569 Tower Hill Road, Sawyer, MI 49125 Property Code No.: 11-07-5230-0012-02-4.

Applicant is requesting a variance of five (5) feet in order to build a new house in the front yard setback to preserve a tree which has a wheel grown into it. This property has 2 front yards, Michigan Street and Tower Hill Road. Chikaming Township Ordinance Section 14.02 requires a 30-foot front yard setback in an R-1 Single-family Residential District.

Anderson asks applicant to identify himself.

Mr. Lawson gives us a drawing of the parcel and speaks about the wheel tree.

Beemer asks what the dimensions are of the property.

Sellers asks about the house on the property.

Rettig asks applicant to identify where the former house was and Mr. Lawson advises that the structure is gone and points out where it was.

Dow asks dimensions of property and Lawson answers with 200 feet x 200 feet.

Rettig asks if this is one parcel and if intention is to keep it as one parcel.

Lawson: Yes, and goes on to identify that because there are 2 roads the setbacks become 30 feet on each road.

Rettig asks which road applicant wants as his front yard.

Lawson: Tower Hill will face the road and the address will be Tower Hill. The whole property is trees and there really isn't space to build the house – a 2,000 square foot house. The only area that is wide open is the corner of Michigan and Tower Hill. The wheel tree is restricting fitting the house and leaving enough space between the tree and proposed house and 10 feet from power lines.

Rettig: The wheel tree is your only obstacle to put a house in this area?

Anderson: I am also questioning the same thing – why does this footprint need to be right here (pointing to corner of Michigan/Tower Hill). If we are worried about the tree, why aren't we moving the house to another part of the property?

Lawson: Because we are putting a pool and a deck.

Anderson: This is a concern of mine – there is no plat of survey and an architectural overlay so we have a better idea. This is not adequate.

Rettig: This tree could be hit by lightning tomorrow and this tree could be dead and gone. If your only reason for the placement of this house is the tree, I am not inclined to vote for this.

Sellers: With an address on Tower Hill, he only wants 5 feet in the setback.

Anderson: I still don't understand why the house can't be moved back?

Lawson: We are trying to maintain as much greenspace in back for the patio and pool and kids. And we want to put a garage on the back side of the house. We are trying to get as much space to get a width of 38 feet on the house and 10 feet from the power lines.

Sellers: So, you would be 25 feet from Michigan Street.

Rettig: Do you own to the middle of the street or are you 25 feet from the right of way. Private Roads own to the middle of the street. So there is space in the back?

Lawson: No there are too many trees.

Dow: It does not appear to be densely wooded. If you have to cut down a tree, you have to. This is not a virgin forest. You have a lot of room – nearly an acre of property. To meet a 30-foot setback like everyone else (unless there is something unusual), that would be pretty easy to accomplish. Everyone who lives on a corner has 2 front yards. This does not appear to be a hardship.

Anderson: He has 170 feet x 170 feet to work with.

Sellers: I was looking at the hardship of 2 front yards.

Dow: There is a 20,000 square foot requirement under our ordinance – you have twice that. It makes it really hard to say we are willing to give a variance because of this one tree.

Lawson: It really is about the greenspace and this tree.

Rettig: There are many other ways.

Anderson: Any other public comment.

Van: To the chair – there were no letters.

Resident who lives on that street speaks (no name given): I really don't see the hardship at all. I looked at the survey stakes in place and the stakes look to be 25 feet from the center of the road (Michigan).

Sellers: I am still confused if this survey goes to the center or not.

Lawson: The survey stakes are 25 feet from the center of the road and Michigan is a private road.

Sellers: That makes a difference.

Anderson: We will close the public portion. Discussion. Could we have one (1) copy of the survey (to Lawson).

Anderson: As we go through findings of facts, I don't believe we have a unique circumstance and there is plenty of space on the property. If we don't meet 1 of the 5 criteria, we have to deny.

Rettig makes a motion that we cannot meet the finding of fact that this a unique circumstances and we must deny based on the fact that we cannot meet the criteria. Dow seconds. All vote in favor. VARIANCE IS DENIED.

Case 1128: Gareth Morris property owner/applicant 15256 Lakeside Road, Lakeside, Michigan 49116 Property Code No.: 11-07-0019-0080-03-7.

Applicant is requesting to build a 20 x 20 (400 square feet) accessory structure in the front yard, meeting all required setbacks. Chikaming Township Zoning Ordinance Section 15.03 (B) states an accessory structure shall not be located in any portion of a front yard.

Gareth Morris comes forward and speaks about his variance request stating that he meets all setback requirements except that it needs to be in the front yard. Speaks about his house which sets quite far back. Further goes on to say that neither neighbor objects.

Anderson: Do you have a plat of survey which is more accurate?

Morris: No, just the aerial view. I would add there is an air conditioner which would have to be relocated. Also, the proposed garage would be in line with the homes on either side, so visually it is not out of line.

Anderson: Any other public comments.

Van: There were letters.

Anderson: Yes, I will read.

Sellers: Is this all of his property as shown on this map?

Morris: I purchased another acre behind my property.

Sellers: Could this gentlemen put it behind his house?

Anderson: We are unclear, please show us on the map your property.

Morris identifies his property and the neighbor, Mr. Peterson's.

Dow: You also own behind this diagonal property as well.

Anderson: Do you know the square footage of your property?

Morris: I believe it is 1.23 acres (without the additional land behind).

Anderson: Are there any further comments.

Mary Brown says that she is a neighbor (15362) and has written a letter but would like to comment. She is worried about setting a precedent. Asks about the ordinance for a garage.

Anderson: A garage cannot be in the front yard.

Morris: The garage will match my house, I will make it attractive.

Brown: I'm certain it will be gorgeous – just like your house. I am not specifically against the garage, just setting a precedent.

Anderson: I will now close public comment and read the letters.

Letter #1: Mary Brown (summation) Opposed to the building of an accessory structure in the front yard. It will set a terrible precedent. Please stick to the enforcement of our ordinances and deny this request. There is no hardship.

Letter #2 Randy Holgate/John Peterson (summation) Neighbors (15224) have no objection to building the garage in the front yard.

Letter #3 Arthur Smith (summation) Neighbor (15344) No objection to building in front yard.

Letter #4 Andrea Hanis (summation) Neighbor (15288) Has no objection to building the garage provided the project goes as it is staked out.

Anderson: Calls for discussion.

Rettig: So we must start with the ordinance and we are tasked with 5 reasons allowed where we can break the ordinance. If we go through them one by one: Unique circumstance: No; Prevent use of property/unnecessarily burdensome: No; Was this self-inflicted: Yes; Minimum: Yes; Public Health/Safety: Not at issue. I feel there is tons of rooms on many other parts of the property to put this garage and doesn't meet 3 of the 5 criteria.

Anderson: It must just "not" meet one in order to deny.

Sellers makes a motion that because it does not meet three (3) of the finds of fact that this variance be denied. Rettig seconds. All are in favor. VARIANCE IS DENIED.

Anderson announces that the next matter is the appealing of the decision made by the Zoning Administrator. Van hands out three (3) items which will give a background and timeline of this matter. Mr. Racht announces that he is the attorney on behalf of Dennis and Isabelle Weisenritter.

Van: This is an appeal of a decision that I made and my interpretation of the ordinance. "Section 21.09 (A). Any person aggrieved by the decision of the Planning Commission The appeal shall state the aggrieved parties' grounds for appeal and shall be filed with the Zoning Administrator within 15 days of the decision of the Planning Commission." My decision to deny the appeal [relating back to a decision made by the Planning Commission at its meeting held on

December 7, 2016, regarding Dennis and Isabelle Weisenritter] was because I, as Zoning Administrator, did not receive written notification within the 15 day time line. I did seek legal counsel from our Township Attorney and he supported that decision. The next two (2) items are an e-mail I sent to Ms. Jewell who was the individual who requested an appeal and which appeal was to the Township Board, by the way, where I indicated the reasons which were: 1) It was not filed within 15 days of the decision of the Planning Commission and 2) It was filed with the Township Clerk. The third item is a copy of a letter (dated January 18, 2017) sent to Ms. Jewell and is a reiteration of my reasons. I provide this to you for your background and the reasons I made this decision. Now you can listen to Mr. Racht's argument and make your decision.

Rettig: Before we do that, what date was the Planning Commission's meeting?

Van: December 7, 2016, was the Planning Commission's hearing date where they denied the site plan approval.

Rettig: So, 15 days gets us to December 22, 2016, deadline and our timeline.

Anderson: Does the Township attorney have any comments at this time?

Attorney Hilmer: I have no comment.

Attorney Racht speaks and appears for Attorney Randy Hyrns. This is an appeal of an interpretation. This all comes down to the Zoning Ordinance. This is an appeal of the Planning Commission site plan. Goes on to say that the Zoning Ordinance is vague. The ZA's interpretation is different than ours. If we look at Section 21.09, any person, these are the important words, has the right to appeal the decision of the Planning Commission. What is the decision. Is it the decision that is made at the time of the hearing or is it the decision that is made when the Planning Commission approves the minutes? It is our position that the decision becomes final when the Planning Commission approves at the next meeting. So the initial hearing took place on December 7, 2016. The very next Planning Commission meeting on January 4, 2017, is where the minutes were approved. Minutes are provided to the board for typos, errors, omissions – things of that nature. Just like today, the planning commission members are free to bring up error or omission. Then someone makes a motion to approve, seconds, and then the minutes become final. Until that next meeting (in this instance on January 4, 2017) there's nothing to appeal – there is no record. If you look at 21.09 C., it says "the Township Board shall review the record before the Planning Commission and shall determine whether it supports the original decision." Without those minutes, there is no record. There's nothing to appeal. Just like the Zoning Board. Anything that you decide on, your ordinance says 21 days from the written certification or 30 days from when the minutes are approved is the time line to when an appeal can be made to the circuit court. Now 21.09 A. says "the appeal shall be filed with the Zoning Administrator within 15 days of the decision of the Planning Commission." Decision. Maybe that's vague, but I would argue that it means 15 days from the decision – 15 days from when the record is taken into consideration. 21.09 C. says "the record before the Planning Commission." Until the minutes are approved, there is no record.

Mr. Racht now presents information from other townships. He now refers to Mr. Hyrns's Memorandum and the Michigan Zoning Enabling Act 125.3606 and the zoning board of appeals. What it boils down to, our argument is that the appeal process does not kick in until those minutes are approved – January 4, 2017 – that is when the appeal process begins. An ordinance that is open to interpretation is the problem. But reading 21.09 A and C makes it clear. Another issue is "any person aggrieved" can appeal. I don't have to be present at a Planning Commission meeting to be an aggrieved party. I certainly lose my right to make a public comment, but if the

Planning Commission makes a decision and I feel like there's been an error made, I have the right to appeal and I am not going to know about that or what to appeal until those minutes are approved. Let's say that we filed an appeal within 15 days with the Zoning Administration, what do we appeal? Nothing has been formalized. Unless we took incredible notes from the Planning Commission – we don't know. If you look at the minutes that were provided and approved on January 7, 2017, those minutes were in great detail and provides us ammunition to appeal the decision. We are asking the Zoning Board make a finding that 21.09 A. has to be read in conjunction with 21.09 C. and read together and 15 days is from the date of when the minutes were approved and not 15 days from the decision (December). Mr. Hyrns in his Memorandum states that we were in contact with the township through Ms. Jewell and contacted the Clerk and stated that we didn't agree with the Planning Commission's vote, I won't call it a decision, it was a vote that night and we were looking to appeal it. Ms. Jewell provided an affidavit that she talked to the Clerk and the Clerk indicated that everything is fine and we could file after Christmas. That's one argument but the stronger argument is that the ordinance is ambiguous and the ordinance needs to be changed or updated and one of the issues that needs to be resolved in the Chikaming Township ordinance.

Sellers: I see under 21.09 C "The Township Board shall review the record before the Planning Commission and shall determine whether it support the original decision" to say that there was no decision before the notes were approved...when you are on a board and you make a motion and everyone says aye and everyone makes a decision... if that decision were not binding...

Rettig makes the point that the ZBA makes its decisions and signs a decision order and then the minutes are later. That's why the law says you have a time frame from the decision order or the minutes, whichever comes first. Does the planning commission put their decision orders in writing? They put it in their minutes. But if we hold this gentleman to task let's look at the Zoning Enabling Act, "any decision of the Zoning Board of Appeal" – to me that's out. The decision was not a decision of the Zoning Board of Appeals. Your memorandum is bad on that point.

Dow interjects: For a practical matter, let's go back to case #1126, your earlier case and as I recall, our decision (if I can use that word) was that we granted a variance to your client. How are you going to advise your client as to how to move forward based on that decision?

Racht: Well, until we get the order from the Zoning Board of Appeals, nothing is final.

The Board questions: So you are going to make your client wait to move forward?

Racht: As a practical matter, we were successful in getting a variance.

Rettig: So will your client come tomorrow to get his building permit? Probably.

Anderson: The point I want to make, I don't think decisions are reversed on a review of the minutes. A review of the minutes are clarifications, spelling errors, typos. We are not going back through the minutes...

Sellers: They are not reviewed for decisions. They are reviewed, as you commented, for clerical errors.

Racht: I said more for additions or omissions. If you look at the minutes that were approved on the January 4th date, you've got the standards, A & B, C and they are numbered and those are the things and until we get those in writing, we don't know what to appeal.

Rettig: For the sake of argument, did the aggrieved person file an appeal in writing to Mr. Thornton within 15 days of the approved minutes?

Racht: We did. We filed our appeal of Mr. Thornton's decision that he denied the appeal based upon the fact that it was not within 15 days from the decision.

Thornton: I agree with Mr. Racht that was an appeal of my decision. It referred to this hearing right now and it was not in my mind an appeal of the decision of the Planning Commission.

Racht: But our appeal of the decision stays any further action until this decision is final.

Rettig: I am back to your thing, Doug, the decision is made the day of the decision.

Sellers: We all vote on it.

Doug: You can't have it both ways. You will have to choose which way you want to take it. Did we approve your client's request for a variance in case #1126?

Racht: But if he were denied....

Doug: That was not the question. Did we approve your client's request for a variance in case #1126?

Racht: You voted to approve it. Correct.

Anderson: My expectation would be that your client could come into Van tomorrow or this afternoon and move ahead based on our decision and any reading of the minutes would only be for minor spelling errors, clarifications, etc.

Racht: That logic is ... as far as the variance is concerned, the statute says 21 days from...

Rettig: It wasn't a variance....

Racht: Again it is a question why the statute is there. The reason why... to talk about ... and as Ms. Sellers mentioned "C, talking about shall review the record before the Planning Commission" is the record that is part...

Sellers: The record ascertaining the original decision.

Racht: That part of the record is the minutes.

Sellers: The record ascertaining the original decision.

Racht: The record includes the application, the documents, and the minutes. The Court speaks through its written order.

Anderson: Thank you. Any other further comments?

Van: To the chair and members of the Zoning Board of Appeals, Mr. Racht mentioned that any aggrieved party and we certainly have not limited this to only individuals who were part of the decision. We heard Ms. Jewell and we acted based upon her request. Mr. Racht talked about the rights of people, landowners rights and the methods which they can seek for redress, and 125.3607 of the Zoning Enabling Act states that any party aggrieved by any order, determination, or decision of any officer, agency or commission (ZBA) has a way through the Court system to seek what they feel is a more affirmative decision on their part or on their behalf. Thirdly, I don't think 21.09 A. says.... by the way after you read this jump down and read C. to make sure that what we said here is what it is supposed to be. 21.09 A says within 15 days of the decision of the Planning Commission. That is our ordinance, that is our statute, that is the law that we follow.

Anderson: Any further public comment? Hearing none, we will go into discussion. Any discussion. Would someone like to make a motion?

Dow moves that we support the Zoning Administrator's original ruling. Sellers seconds. Voice vote: Beemer: Agree; Rettig: Yes; Anderson; Agree; Dow: Agree; Sellers: Agree. Motion passes.

Anderson: Before we move to adjournment, I would like to say Thank You to previous ZBA members, Carol Sizer, Mario Zarantenello, Lee Strohl and welcome Bob Beemer as our alternate

and Doug Dow as our Planning Commission representative and Doreen Bartoni as our other new member.

Thank you all. We are adjourned.
2:35 p.m.

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary
Approved: June 20, 2017