

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the July 18, 2017, Regular Meeting
APPROVED

The July 18, 2017, regular meeting of the Zoning Board of Appeals was called to order by Chairman, Larry Anderson at 1:00 p.m. Roll call of members present: Liz Rettig, Larry Anderson, Doug Dow, Kathy Sellers, Doreen Bartoni. Quorum. Also present: Zoning Administrator, Van Thornton, and many members in the audience (sign-up sheet attached of those persons who signed in).

Chairman Anderson advises that the first order of business is to approve minutes from the June 20, 2017, meeting. Anderson asks if there are any questions, comments, revisions. None heard; **Dow motions to approve minutes as presented; second by Sellers; Voice vote: All in favor. Minutes approved.**

ZA Van Thornton asks to address the Board. Van presents suggested language for motion (either to approve or deny – copy attached). If a motion is approved it must meet all 5 criteria; if a motion is denied at least one of the standards must be identified and why it does not meet that standard. Records are very important if anything comes up years down the road and the written record is all we have to work with. I will have a comment on the 2nd request (Case 1133), when appropriate.

Case 1132: Carlos Moran/applicant 15907 Lake Avenue, Union Pier, MI 49129 Property Code No.: 11-07-5620-0011-00-0.

Applicant is requesting to declare this lot buildable and allow a building height of 24 feet. This lot is an existing NCR1-C with 15,300 lot area. Chikaming Township Zoning Ordinance Section 14.02 requires 20,000 square feet of lot area and Section 4.06 D.1 allows maximum building height of 22 ft.

Kathy Sellers recuses herself because she has received Notice of this and is a neighbor within 300 feet. Applicant is asked if he has any comments, he does not. Chairman asks if there are any other public comments, there are none. Public portion is closed; goes to Board discussion.

Board discussion: Dow asks ZA, to clarify, this is a variance request on height alone. ZA Thornton answers: Yes. Chairman Anderson goes through the finding of facts.

1. Unique circumstances or conditions that exist – all agree that this is not unique.

Chairman advises that we do not need to go any further because it does not meet this first criteria.

**Rettig makes a motion that this variance should be denied because this is not a unique circumstance; Dow seconds. Voice vote: All vote yes (4); Sellers recused.
DENIAL OF VARIANCE #1132.**

Case 1133: Jim and Diane Krecek/applicant Vacant lot on Linden Avenue, Sawyer, MI 49125
Property Code No.: 11-07-3370-0228-00-5

Applicant is requesting an interpretation and/or variance to declare this lot buildable. It has 150 feet of road frontage on Linden Avenue and 92 feet of road frontage on Hillview Court and the lot is approximately 14,000 sq. ft. This lot is zoned NCR1-B. Chikaming Township Zoning Ordinance Section 14.02 requires 20,000 sq. ft. of lot area.

ZA Thornton asks to comment and advises that multiple telephone calls have come in and has requested that the Township engineering firm review the property and has recommended that if the variance is approved that a Michigan Registered Design Professional prepare a grading and drainage plan, specifically addressing potential runoff to adjacent parcels and the adjacent streets, to be reviewed and approved by the Building and Zoning Department as part of any building permit application. Thornton comments he personally believes this lot that can be utilized with a structure and it is not uncommon to request a site drainage plan when we have unique topographical situations and if the Board does decide to approve this, I would ask that you require this drain plan as part of the approval of the building permit process.

Dow: Can you identify the unique topographical features?

ZA: This site and many other sites that are presented for building permit applications, once we review them, moving the drainage water is the issue because of the impervious surface of a structure, roof, perhaps a driveway. Water has to go somewhere. The site does not have good, natural elevations that will move the water where we want it to go. As a result it could cause problems to the neighbor or the road. So, therefore, we hire a professional to review the site plan and elevations and based upon the structure, they design what the site will look like when all the final grading is done and how to accommodate the water.

Chairman Anderson reads 2 letters:

John Giesecki – in favor of approval

Anonymous – not in favor because board should stick to ½ acre rule; there are 2 utility poles, fire hydrant, water issues and flooding, private road cannot support traffic.

Chairman opens the floor to applicant. Attorney Ben Schwartz speaks on behalf of applicant that they are purchasing contingent upon variance approval. Lot is under 20,000 sq. ft. and falls under Section 4.06 of the Zoning Ordinance; has plenty of frontage on Linden, but not on Hillview. He speaks as to intent of the ordinance and that variances be standardized with the presumption being if you could meet the height, set-back, and 20% lot coverage requirements of the district with a lot of about 14,000 square feet, the variance should be granted. When the Township adopted its chart it added clarity to many of these requests. Schwartz presents an aerial photograph and a plat of the subdivision. This is also a corner lot, which puts an additional requirement of three (3) 30-foot setbacks. Schwartz also presents a title history showing this lot is not self-created and the developer in 1959 platted these lots and since that time the 2 lots (228 and 229) have been deeded together. Schwartz provides a survey and site plan of proposed house to show feasibility of meeting Ordinance chart. Request is render this as a buildable lot and to show we can meet the setbacks. So why did I ask for an interpretation? We need confirmation of our interpretation of the setbacks - both roads have front yards with 30 foot setbacks and do we need to meet 100 feet of frontage on Hillview as well (because we already have over 100 feet on Linden). In

rendering this a buildable lot and granting this variance, the Board needs to determine whether or not we need a variance of the 20,000 sq. ft. requirement and that we have a variance from the 100 feet of frontage on Hillview and that our interpretation of the setback requirements is correct. Last, going over the criteria, you've asked if this is unique. A corner lot is the uniqueness and was platted small by today's standards. Would strict compliance unreasonably prevent the use of the property? Yes. Is the unique circumstance the result of the application? Absolutely not. They were platted this way in 1959. How will the granting of the variance be in harmony? Everyone else has developed on Linden much the same way as these lots. It is adequately sized by your chart (Section 4.06) and we have no objections to working with Mr. Van Thornton on a drainage plan. It looks like the lot is low and this could be detrimental to my client, but certainly they want to prevent displacing water to neighboring lots. Everyone else has successfully built on that street and they certainly would be glad to consult with Van and Rob Andrews on site plan review if that's what Van recommends.

Chairman: Is there any other public comment?

Rosemary Mlinarich speaks - corner of Spruce and Hillview. When there is a rainstorm, she speaks about flooding and has in fact had flooding in her house. The drainage is severe. Talks about the removal of trees causing more flooding. Owns 232, 231, 230 on Hillview.

G. Peter Palzkill speaks. Owns 12245 Linden and adjoining lot (not sure which lot number). There is a severe drainage issue. Talks about the culvert which drains underneath Linden – cast iron. It's there to help with the drainage. Water drains East to West to Lake. Talks about a previous prospective purchaser who bought other lots, but who didn't purchase the "subject" lot because it was too wet and couldn't build. Worried about building on the lot would stop the water even more.

Gary Waasman – 12223 Linden. Very concerned about drainage. Low lot and worried if the water starts lapping up on road and tearing up road. Wants to be on record against because of the drainage problems.

Pat McTavish – 12190 Linden. The road does flood and the water drains down the road when it rains. The neighbor's house floods because the water table is high.

Jim Krecek (applicant) speaks about the main reason he's looking at that property to purchase is because his parents are close by and has a strong affinity for the area. Promises that if this variance is granted, will comply with all the rules and regulations to make this lot buildable and keep everything maintained as much as possible. Wants to be a good neighbor.

No more public comments heard, Chairman closes the public portion of the meeting and goes to Board discussion.

Rettig asks a question to ZA Thornton: Is there municipal water/sewer. ZA answer: Yes. Second comment, feels that since this is a lot of record and has been a lot of record and predates the zoning ordinance, it does not need a variance as to buildability.

Attorney Schwartz responds that he has had many conversations with the former supervisor Jeanne Dudeck and Attorney Hilmer (Township Attorney) whether or not (under 4.06) if you meet the chart, do you need a variance. The implication is that you did not. On the other hand, on Page 4.3 b 4.06, a

variance may be approved if it meets. Therefore, strong implication that you still need a variance. The guideline is the chart.

Board discussion regarding whether or not we need to go through the criteria because we are working with 4.06. Is the variance needed or is it a formality? Because there's a variance from the 20,000 square foot requirement a variance is needed. More discussion about water and is that a detriment to the neighborhood and requiring working with Michigan Registered Design Professional; what is probability that a drainage plan would improve the water situation. Van interjects that the drainage plan would assure that we do not enlarge any existing problems and the Michigan Drainage law says that you may not increase the existing flow of water from you property to neighboring properties. The review by the engineer would assure that any construction or grading would not increase drainage to neighbors and may be able to correct a situation that already exists. Because we know there's something going on, normally people put a contingency in a purchase agreement for a review by a civil engineer and if we can't properly drain it, we won't buy it. Most anything can be overcome with money, but it may not be practical. The lot should be reviewed and the engineer may put criteria on which the prospective homeowner may not be able to do and consequently may not purchase.

Doreen asks about the road and bills because it sounds like there has already been repairs because of the water, does the professional review include roads? Van answers: Yes. Generally roads provide drainage, but from the statements we have heard, the roads don't move water. The engineer will certainly take this into consideration.

Kathy: After all is said and done, and the neighbors are getting water, would they have any recourse. No one has an answer. Kathy goes on to question if the house could face the road that has the 100+ foot frontage by orienting the house the other direction.

Ben Schwartz interjects the lot has 2 front yards and 1 does not have 100 feet; that his client wants to render lot buildable and they need a variance anyway because of the lot with the 92 feet being the front of the house. The only interpretation requested is that our setbacks are appropriate. They can't orient the house to the South facing Linden. Facing Linden, we can't meet the 30 feet in the back and there are also 2 other 30-foot setbacks.

More discussion about other houses which have Linden addresses and tax bill has not assigned an address or a street to this property.

Van comments that the zoning ordinance is ambiguous on corner lots. It addresses frontage and the required yard setbacks, but does not state frontage needed on both streets – this is not in the chart. There are many variances on 60-foot lots and then the addresses are assigned. They generally look for driveways and then assign. The Ordinance does not require 100 feet on both streets. It does, however, require the setbacks.

Anderson makes a motion that APPROVAL be granted per the terms of 4.06 and that they be followed strictly. In addition a contingency be put in place that a Michigan Registered Design Professional prepare a grading and drainage plan, specifically addressing potential runoff to adjacent parcels and the adjacent streets, to be reviewed and approved by the Building and Zoning Department as part of any building permit application and that the Design Professional

should look at the condition of the roads and make certain that when the construction is complete that the roads be in the same condition as they were at the start up. Dow seconds. Voice vote: All vote in favor. VARIANCE #1133 IS APPROVED.

Case 1134: Ellen Liebman Trust c/o Steve Koch owner/applicant 14918 Lakeshore Drive, Lakeside, MI 49116 Property Code No.: 11-07-0019-0012-02-3

Applicant is requesting to construct a 150 sq. ft. viewing deck that will be attached to the existing beach stairs. This lot has 2 front yards, Lake Michigan and Lakeshore Drive. Chikaming Township Zoning Ordinance Section 15.03 states, an accessory structure shall not be located in the front yard.

Stephanie Hemminger of Hemminger Construction Company explains the observation deck and that many exist up and down the beach. Chairman Anderson asks the location of the deck. Applicant explains that the deck will be on the 13 tread of the currently existing staircase and that there are 2 trees which will not be taken down.

Rettig asks about any issues with setbacks. Hemminger answers there are none.

Bartoni asks if this will only be a deck or will there be a gazebo? Hemminger answers that this is strictly a deck with a guard rail similar to the neighbors to the North and South and smaller than others that are out there.

Rettig: I have a difficult time with the word structure because I don't equate deck to a structure – no roof – only a railing. There is no issue with view?

Anderson: How high off the beach? The vertical rise on top of the bluff?

Hemminger explains that the deck will cantilever out over the bluff attached to the stairway with 2 posts and the posts will not be that exposed. There is already a landing as part of the current stairs.

Dow: There may be potential concern that the deck may be at the top edge of the bluff blocking someone's view.

Hemminger: This is not an issue. If I were standing on the deck, the bluff is over the top and not blocking views. If you are sitting inside the house, someone on the deck can't be seen blocking the view.

Chairman asks if there is any other public comment. None heard. Public portion is closed and goes to Board discussion. Board discusses the findings of facts and Chairman Anderson goes through criteria:

1. Unique circumstances – Through lot – 2 front yards
2. Unreasonably prevent the use of the property for permitted purpose – same as #1 through lot
3. Action of application – no
4. Minimum variance – yes
5. Harmony with spirit intent – Yes in harmony

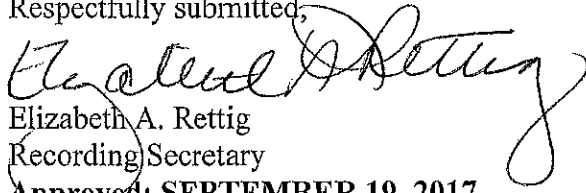
Dow makes a motion that this variance be approved under the plan as presented as it meets all five (5) of the criteria of the finds of facts; Doreen seconds. Voice vote: All vote yes.
APPROVAL OF VARIANCE #1134.

Chairman Anderson advises that the last thing on our list is to pick a Vice Chair in case Chairman Larry Anderson is unable to attend.

Rettig makes a motion that Doreen Bartoni becomes Vice Chair. Anderson seconds. All vote in favor.

Rettig motions to adjourn at 2:05 p.m. By consensus all agree. Chairman announces we are adjourned.

Respectfully submitted,



Elizabeth A. Rettig
Recording Secretary

Approved: SEPTEMBER 19, 2017