

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the March 14, 2017, Special Meeting
APPROVED

The March 14, 2017, Special Meeting was called to order by Chairman Lee Strohl at 1:15 p.m. with the following regular members present: Lee Strohl, Liz Rettig, Carol Sizer, Kathy Sellers; alternate member Phil Bender also present. No other members were present.

Also in attendance were the following: Zoning and Building Administrator Van Thornton (hereafter ZA), Kim Livengood (ZA Assistant) and the following in the general audience: Attorney Charles Hilmer, Attorney Charles Ammeson, Attorney Scott Dienes, Mr. Sidrys, Janet Schrader, Jill Underwood, and others (some appearing on the attached sign in sheet).

This Special Meeting was called under Notice of Public Hearing, **Case #1123** 15780 Lakeshore Road, Union Pier, MI 49129, Property Code No. 11-07-0125-0040-01-0. The Applicants propose to place swimming pool equipment within the side-yard setback. Chikaming Township Zoning Ordinance Section 15.03(C) requires any building or structure shall be located no closer than 10 feet from any side or rear lot line.

Chairman Strohl goes over the rules of decorum for this meeting including all questions shall be directed to the chair and there shall be no cross-talking to make this a well-disciplined meeting.

First order of business is to present the minutes of December 20, 2016, Regular meeting for approval. Sizer notes minor word corrections on Pages 1, Page 2, and Page 3. The secretary (Rettig) makes note of the changes. Sizer motions to accept the minutes as corrected; Sellers seconds; 3 AYES. Strohl and Bender abstain (as they were not present at that meeting). Motion carried and minutes are approved as corrected.

The minutes of February 7, 2017, Special meeting were then presented for approval. Sizer moves to accept the minutes as presented; Bender seconds; 4 AYES. Sellers abstains (as she was not present at that meeting). Motion carried and minutes are approved.

Chairman Strohl opens the discussion on Case #1123 and asks who is here on behalf of applicant? **Attorney Charles Ammeson** (representing Applicant Chudik) presents each of the Board members with a binder and goes through the highlights. *[The binder and its contents shall become a part of the record of this meeting.]* The presentation defines the purposes of a variance, classes of a variance, practical difficulties, placement of pool, discussions with previous Zoning Administrators, placement of pool equipment, uniqueness of this lake front lot, burdens of building upon the lot which were governmentally imposed, obtaining permission for placement from previous Zoning Administrator for the pool equipment, pictures of other neighbors and others in the township who have appliances in the side yard. Ammeson advises we are here under a practical difficulty and an unnecessary hardship and burden and feels that there is no need for a variance and will also request an interpretation as part of this variance hearing. The cost of relocating the pool equipment would exceed \$75,000 and would be prohibitive. Requests that as part of the record, the applicant has asked for a variance as the Judge ordered. Ammeson goes on to talk about there being no noise level, sight or smell of the

pool equipment and the equipment cannot be heard by the neighbor. Ammeson goes on to describe the uniqueness of the lot, size, that it has a pool whose direction had to change, and that permits were obtained, and property is burdened by a retaining wall and additional setbacks. Talks more about financial considerations that must be considered. Reiterates that again they are asking for an interpretation as part of this variance. Feels that they meet all the criteria for a variance. Speaks of the rules under which the Zoning Board shall make decisions. Quotes from a decision of a Court order whereby the Zoning Board has already made a decision (the former ZA did not overstep her bounds) that the Judge believed her decision to be well-intentioned and on the ZBA's part. Asks that Board to review the Township files in their entirety, documents requested under FOIA, all permits, etc. Asks that the Board grant the variance. Presents the Board with a proposed motion to approve the variance. *[Copy attached as part of this record.]* Goes on to further quote from the Court's record and order, shows us a diagram of the lot, highlighted some comments from previous minutes (June 3, 2016), and pictures of the Chudik structure around the pool equipment and being "not attached" to the home, and points out many other pictures of properties with sheds and appliances in side yards all over the Township. Sizer questions whether these pictures are "in the side yard **setbacks** – in the 10 feet?" Ammeson advises that Dr. Chudik did make the measurements and they are in the setbacks. Ammeson gives further information about a letter from a former ZA Kubsch that he had no problem with the pool equipment in the side yard and appurtenances including devises are considered incidental machinery not structures. Goes over that this variance meets all the requirements. Goes over distance requirements for the Chudik pool equipment. Reiterates that this is special pool equipment that needs special placement and needs special utilities and that it just can't be placed anywhere. Ammeson ends his presentation.

Strohl asks if there are any questions before the video presentation. There are none.

Following Mr. Ammeson's presentation, a video of Dr. Chudik is presented. *[Flash drive of video presentation is part of this record.]* Dr. Chudik goes over that he believes the best solution is to allow the pool equipment to stay in its present location, and other things including the prohibitive relocation costs, facts of his case, and the record including letters which sought and granted permission by a previous ZA, significant costs for placement of the equipment and structures around the equipment, Court orders, and neighbors who have not submitted evidence of suffering based on sight, sound or smell. Further Dr. Chudik talks about settlement offers, tree plantings and other past occurrences, and precedence of equipment in others' side yards, documentation of the support of previous ZAs (December 29, 2014 letter), letter to Judge Donahue showing costs for the equipment, pictures, June 22, 2016, letter of the new ZA, minutes of June 3, 2016, May 21, 2015 decision record, costs for installation, neighbors have not demonstrated harm, settlement conferences on January 13, 2017, where and he said that Judge Donahue offered Sidrys \$45,000 for their troubles and the Township offered \$40,000 and requested Chudik to pay \$5,000 (refused to pay) for a variance; planting trees. Lengthy talks with the first ZA regarding this being the only location. The Judge ordered that a variance be sought. Says that he has done everything like he was supposed to and has abided by all zoning ordinances. Requests that the pool equipment and its screening be allowed to remain in its current location as this is the only solution and there is no other acceptable location. Relocation, now that it is installed, is prohibitive. Cites minutes of May 21, 2015, where a ZBA member says this would be a minimum request with practical difficulties. Cites a June 3, 2016, meeting where

it was stated that most of the appliance variances have come before the ZBA. Cites that Judge Donahue said he expects a variance to be granted. Submits that the original ruling (allowing the equipment and structure to remain) was just and proper and should be applied. If it is decided that the equipment may not remain, we (Chudik) will have no choice but to appeal that decision and continue this process. At that point we will have to assert a claim for costs and fees. This pool equipment is not causing harm to anyone. Significant costs have been expended. He put a temporary structure around the pool equipment (which hides it from sight, sound and smell). Pleads with ZBA to do the right thing and see that this pool equipment meets the standards of a variance, there was a hardship, was given permission, at significant cost and therefore the variance should be granted.

Sizer questions: What are we actually doing here? Variance or Interpretation?

Ammeson: We have applied for a variance, but we are asking for an interpretation as well, but we are asking for a variance.

Strohl: Doesn't understand what we would be interpreting.

Ammeson: That these appliances are not structures and do not violate the setback. The enclosure is a temporary enclosure, is not attached and these things don't need a variance as they do not violate the ordinance – Step 1. Step 2, however, if it is determined they are, then a variance is appropriate.

Sellers: Asks about the settlement meeting which took place and heard that Judge Donahue would expect us (the ZBA) to grant this variance. Where are the notes for this? Is there any documentation of the hearing?

Ammeson: Submitted a DVD to the Board in the past. The Judge made a comment at a hearing about the variance and can have that transcribed.

Sizer: The January settlement hearing?

Ammeson: No a previous hearing before our last presentation for interpretation and I presented the DVD.

Sellers: Did the Judge recant his order, did he say he didn't get all of the facts?

Ammeson: This is before the Judge made the order.

Sellers: Have you seen the Judge since before he made this order?

Sizer: We haven't seen anything on this settlement meeting referenced in the video.

Ammeson: I was there. You should ask Mr. Hilmer or Mr. Bunte about it.

Sellers: When was that meeting?

Sizer: January 2017 according to the video.

Sellers: What happened at that meeting?

Ammeson: An offer was made to Dr. Chudik to pay money in return for a variance. Dr. Chudik was offended. The offer was communicated through the Judge to Dr. Chudik that the Township requested Dr. Chudik to pay part of the money.

Sizer: We seem to be missing pieces. So, it was alright with the Sidrys – the financial settlement - but not the Chudiks?

Ammeson: No, the township did not want to pay the amount that Sidrys demanded. The Township would paid 90% but they wanted Chudiks to pay the rest.

Sellers: In answer to the question, the Sidrys said, were ok with receiving \$45,000?

Ammeson: That's what we were told.

Strohl opens the floor again and Attorney Dienes comes forward. **Scott Dienes (representing Sidrys)** speaks to the matter and feels that many facts were misrepresented. Dienes has given the Board a letter which summarizes their position. Dienes goes on to say that our previous ZA made an interpretation about the pool equipment and whether or not the equipment was subject to the side-yard setback requirement. At a previous hearing, he (Dienes) said that it was a structure. The ZBA disagreed and ruled it was not a structure and not subject to the side yard setback. It was appealed to Judge Donahue. Dienes goes on to say, that Judge Donahue commented that if he ruled in Dienes' favor, does anyone honestly believe that Chudik won't go before the ZBA, ask for a variance, and these people are going to grant it. These comments were said in a derogatory manner against the ZBA. He was asking me if I thought for a minute you (ZBA) would listen to the Court having listened to all the evidence about your previous ZA and all the communication that was improper and all the back room stuff. Do you really think these people are going to do what is right? This is variance #3 on this property. Dienes gives a history of the property and neighboring property that used to be one parcel then it was split and the side yard setbacks were specifically set to make exactly 10 feet on both sides so that side yard setbacks would be honored – the Township made us do that making certain there would be sufficient setbacks. Dienes presents a survey when the property was sold pointing out the retaining wall and the concerns of maintaining the retaining wall for protecting the land. Part of the agreement regarding the wall was that no one could build within 10 feet – before the property was purchased by Chudik and my client - burdening the property. Chudik knew exactly where the pool could be built. Dienes presents another survey (commissioned by him) showing the area in the back yard where the pool could be built. When the ZBA approved variance #1, the ZBA required that the 10 feet around the retaining wall be honored. No pool existed before Chudik bought the property, just the retaining wall. He points out the amount of space that was available for the pool and no pool existed when he purchased – only the retaining wall. Our zoning ordinance requires that any unique circumstance is not at the hand of the applicant. The hash tag area was the blank area that could be used. Chudik designed the pool, the house, designed everything on the property, and crammed a bunch of stuff on the west side of the property, which is his fault, not the previous ZA – he did it - at his hands. When Variance #1 came in with the site plan, the site plan does not include any reference to any pool equipment. Dr. Chudik references that the placement of the pool equipment was approved. That is incorrect. There is nothing in the Township's records about the pool equipment until the question of interpretation came up which was ultimately appealed to the Circuit Court. He did not ask for permission for a side yard variance. When it appeared, that is when my client started asking questions. When Theresa Priest said, "no variance is necessary," we appealed that to you (ZBA) and ZBA said "we agree with Theresa" and we then appealed that to the Circuit Court and Judge Donahue agreed with us. The ZBA is being asked to make another mistake today. The side that enforces the zoning ordinance or the side that grants a variance after the fact. The pool equipment happens to be directly beneath my client's master bedroom window. Is it a coincidence after two (2) variance hearings – where my clients objected, that the pool equipment now is slid in under my client's bedroom window. Let's look at the zoning ordinance. Section 23.04 governs today. In addition to the case law cited by Mr. Ammeson, you have provisions which must be honored. Two (2) common provisions cannot be met, the uniqueness of the property and a minimum variance. This property is not unique. The variance requested is not minimal. There is no evidence that the equipment can't be moved around the corner or something could be done to mitigate the circumstances. Instead of a 5 foot encroachment, it could be 2 or 1. If we look at

23.04(D) 1 -5, there is no test which requires the neighbors to suffer. This is not a legal requirement and not in the zoning. The issue is that there are requirements that are uniformly applied throughout the township. One more point, there was no pool permit ever granted by Theresa Priest for the pool equipment. She told them to go ahead and do it, the ZBA affirmed that decision, and it got done. There is no variance for that – it just happened. It was said that the structure is not attached to the home, it is up against the house, it has siding, it matches the house, it's plumbed, and it has electricity. It was said it sits on the ground – this is inaccurate. There's a concrete pad. It has been suggested that it is not a structure, and if it's not a structure it does not violate the side yard setback. The ZBA has the Court opinion in your hands, let's look at page 3. Dr. Chudik was not a party, but he was allowed to file a brief. All of the arguments you are hearing today were argued in person, in writing by the Court. All arguments were presented to the Court. Page 3 of the Court order says, "This Court cannot find that the structure at issue is a temporary structure, or is otherwise exempt from the side yard setback requirement." There is no reason why this is exempt from the side-yard setback requirement. That's the Court telling you that. I don't doubt that Dr. Chudik will take action. I doubt that it will cost \$75,000. If it does, it is because of the improvements made by Dr. Chudik. He should have been stopped. This is your opportunity to correct the course of this case. You are once again being asked for an interpretation. It's because they don't want it to be a structure. Why is this structure exempt from the Zoning Ordinance? Mr. Kubsch's letter states that the structure must be removed, but not the pool equipment (his opinion). We (Dienes) filed a motion in front of Judge Donahue and the Township was sanctioned for that decision of \$2,500. There is no reason for the pool equipment to be located where it is. Chudik chose to violate the rules. The Court didn't find any reason.

Paul Sidrys speaks about this being an unnecessary case and gives a background about wanting to place his own appliances within the side yards setbacks and was told no so they moved theirs to the other side. There is plenty of space on the other space or on the lake side. All of this is self-created and all this could have been avoided if he moved out of the setback.

Louis Price lives down the road and speaks and feels that it is wrong to put pool equipment or other equipment where it bothers the neighbors and inconveniences the neighbors. I would hope you don't grant the variance.

Attorney Ammeson asks to respond. Section 23.04 talks about unique circumstances and lake front lots are unique. Strict compliance is difficult. There is really no other place to put the pool equipment. Dr. Chudik did ask permission. All those practical difficulties were not created by Dr. Chudik. You can't hear, you can't see, and you can't smell the equipment. The encroachment is minimum. It is in harmony with the neighborhood. We wouldn't be here if Theresa Priest didn't say go ahead and build it.

Sizer: (Speaking to Dienes/Sidrys) In what way do you feel that you have been harmed?

Dienes: The reason I speak of harm is because it is not relevant. The Township has been harmed. I don't recall saying that the Sidrys' have been harmed, except for the harm to the community – that 10 foot setback is there for a reason. Harmed? They have had to spend a ton of money chasing after this. Any Judge will say about the self-imposed hardship, if the pool

wasn't there and if you move the pool equipment, the hardship goes away. There's too much stuff in the backyard including the concrete road that goes to the beach. How we have been harmed is not the issue. The issues should be the zoning rules and the violation of the Zoning Ordinance.

Strohl ask ZA Thornton to comment and he says he will after all public comments are done.

Strohl: (to Ammeson) Please explain unique. It's either unique or it isn't. Unique is one off. Explain to me why you feel it is unique.

Ammeson: The simple answer is what does the statute mean. Unique is different than normal. Our names are unique. Being unique is not the norm. Normal lots are 100 feet wide on the road. The normal lot does not have two (2) front yards and are not lakefront. Normally people come for variances because the ZA tells you to come. Section 23.04 says unique circumstances can make it unique. You just have to have conditions that don't apply to other land. Section 23.04(D) 1 and 2 defines it.

Sellers: Mr. Ammeson, the retaining wall (Ammeson looks at map), does this really make him build the pool lengthwise? Ammeson says that originally pool was to be lengthwise and it was repositioned because of the determination that was made and the retaining wall.

Sellers: Is pool equipment always sited in the request? (to the ZA)

ZA Thornton: Generally you see it on the site plan.

Sellers: Does it have to be? Was it a mistake or oversight, was it there and not written in the request?

ZA Thornton: I have not seen the original site plan but I have information that the pool equipment was not shown on the original site plan. In my experience it is normal for the equipment to be shown on the site plan.

Ammeson: The site plan was presented to everyone, if it is so customary, why didn't anyone along the way say, "where's the pool equipment?" You can't have a pool without equipment. It went to a lot of people to look at, why wasn't this questioned before?

Seller: One more question to Ammeson, was Donahue being sarcastic.

Ammeson: No, he was not. He was very sincere. Please take a look at the DVD you will see he was sincere.

Rettig: We have the DVD and it was part of the original record.

Sellers: Did the Judge say they needed a variance and did the Judge say they (Chudik) chose not to do it the right way

Sizer: As I understand it, the Court ruling dealt with 2 things: 1) Theresa Priest overstepped her responsibilities and she didn't have the right to ok it and it needed to come here for a variance request and 2) there wasn't sufficient evidence presented to the Court to rule that the pool equipment was an "appliance."

Ammeson: That's exactly the point. He ruled (Donahue) didn't have enough evidence, that's why we are making the record today.

Sizer: To your point (Kathy), the whole question of what would happen if they had requested a variance was not part of the court case. What they are saying is, it should have gone to the Zoning Board of Appeals.

Ammeson: I think the issue arose when this Board made the decision to support Ms. Priest.

Sizer: We were ruled wrong.

Ammeson: You (ZBA) just can't support Ms. Priest, the Judge said you can't just say that – you don't have the authority. The record is not enough. The record the Judge had was their (Sidrys) record. My clients were not a party to the appeal. The Judge ruled we (Chudik) do not have the right to be there. I filed a brief. Your points are right. The Judge did determine that Theresa did not have the authority.

Sellers: But Dr. Chudik took her opinion.

Ammeson: He went to her and they looked at it and said this is the best place.

Sellers: But he did that, thinking he was getting proper information from the township.

Ammeson: When the township says “go ahead” and making suggestions, then you are in a very unique circumstance.

Sellers: At what point did Mr. Kubsch make his comment.

Ammeson: In June of last year after the hearing on the interpretation. Look at the time line.

Rettig: The only thing I am questioning (in your timeline) are the letters sent by the Township for the removal of the equipment from the side yard setback. Sent 4/5/16. Ammeson acknowledges receipt of the letter. Rettig goes on to ask about action taken. Ammeson says no action by the township and Rettig asks if action was taken by Chudik. Ammeson says that an interpretation was requested. Rettig asks about other letters. Ammeson goes on to say that Mr. Kubsch wrote a letter (6/22/16) about the equipment. Rettig asks about any other letters. Mr. Ammeson looks to Mr. Hilmer who answers that there was another letter in August 2016 for the removal of the pool equipment. Rettig asks if there was more. Hilmer goes on to say that there was another letter in January 2017 which asks for the removal of the pool equipment, or apply for a variance, or submit plans for the relocation of equipment. I am trying to get what the Township has done to implement the Judge's order.

Ammeson: The letter said that one option was to apply for a variance – which we have done. We have tried to schedule a date. This variance is arising out of the direction of the Judge. We came for the variance.

Dienes: There were many letters which were going back and forth. After Theresa Priest decision, which was affirmed by the ZBA, then the Court reversed it. Then a lot of time went by and we complained about that. There was an order from Theresa Priest to Chudik to remove it. Some time went by, then Kubsch was hired. Then some time went by and nothing happened. We complained again. That's when Kubsch sent the letter to remove the structure and leave the equipment. Our response to that was to go back to Judge Donahue and complain. The case was already closed. We filed a motion to reopen the case to order the Township to take action. The Court said, remove it or get a hearing date. That's when the Township got punished for not doing anything (Sanctioned). My brief (if this variance is granted) will be “is this a structure.” Reads definition from ordinance. Judge Donahue ruled this is a structure. Move the structure.

Ammeson responds that these things are everywhere. There will be a storm. We have not been to Court yet. The ZA said, “appliances are not a structure.”

Dienes: And he was sanctioned for that.

Van Thornton: To the chair and Board, I would first find out if there are more public comments, and if there are none, I suggest we close the floor to public comments.

All Board members agree.

Strohl announces that public comments are closed.

Van Thornton speaks that he has joined in the middle of this situation. This is a request for a variance. That is what the application says. I am not an attorney nor can give legal advice. Both of the attorneys have cited the most important section of the Zoning Ordinance – 23.04. This is where it gives you (the Board) all of the standards and conditions which MUST be met. And it says that all shall be met in order to grant a variance. If you decide to grant the variance, put in your motion, state all 5 items which have been met. One of the arguments, everyone else got to do it. There is an item in Section 23.04 (g) which says: “A non conforming use of neighboring lands, structures or buildings in the same zoning district or a permitted or non-conforming use of lands, structures or buildings in other zoning districts shall not be considered grounds for the issuance of a variance.” This means that you may have other non-conforming issues in other places, just because it was done that way previously, does not mean you should grant this. You must go back to 23.04. These are the 5 items you must use to make a determination. Finally, I need to address the word structure. Our definition which we rely upon, anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground among other things structures include buildings, mobile homes, walls, fences, decks, bill board, poster panels, swimming pools, tennis courts, antennas, satellite earth receiving stations, and television dish antennas. The swimming pool equipment sits on the ground; the swimming pool is connected to the house via an electric connection, and connected to the swimming pool via the plumbing pipes. The swimming pool is a structure. It is my interpretation that the equipment based on our current zoning ordinance is a structure. That equipment, contrary to what we have heard, is not mobile. That equipment cannot be easily moved, it is permanently installed, but that equipment can be moved if need be. My position is that the Board needs to closely review the sections 23.04 (D) the 5 items and if you find, as a board, the variance request meets all of those items, then you shall grant the variance. If you find that it does not meet all of them, then you are instructed by our ordinance not to grant the variance. This is not the last venue for either of these parties. Our ordinance does give instructions to those parties that are aggrieved, so there are other alternatives. You are not the last stop on this train and you should make your decision based on the ordinance, not based on something that may or may not happen.

Strohl: We will now have board discussion, unless our attorney has something to say.

Mr. Hilmer: Nothing.

The Board begins its deliberation. Section 23.04 D 1 – 5 are read aloud for the board’s review. The Board goes through each item 1 through 5 in detail to see if any or all meet the criteria to grant the variance. 1) Unique circumstances.

Sellers: This comes in after several variances, several Court orders. Do we grant the variance in retrospect. I have an issue with someone spending money in good conscience based on the Township’s authority to put pool equipment, but if this is a structure.... Rettig reminds everyone

that Theresa Priest did not have the authority and we were told so by the Judge. Sizer sides with Sellers. Had this been addressed on the front end, this is now a unique circumstance. Strohl/Rettig – we cannot look at other things that have occurred around it, we have to look at this as an independent variance and the other things are not in our purview. Can it meet these criteria? Sellers: but these things are already in place. Let's move on to the others. It must meet all 5. Sizer: to move it now would be burdensome. Bender: Unique to what? It's either unique or it isn't. This particular property is not unique. Sizer: Practical difficulty is 2 front yards. Bender: The other thing that bothers me, best place to put the pool equipment – based on what? Practicality? Or based on the ordinance? Sizer: we are coming in after the fact – for instance after the driveway. If we were starting fresh, none of this would be correct. Rettig: Look at these pictures, it is the best place? But it is under the ordinance. Sellers: even if we had started with a clean slate, there were other things – underground, retaining walls, there may not have been another place. Sizer questions the ZA if he has been to the site. ZA responds yes. Sizer: are there other better places? ZA says this is impossible to answer, except are there other places this could have been without interfering with windows and vents – Absolutely. It's a large lot. Strohl: So there are plenty of places it could have been put. Sizer: Even today? ZA: Yes. Sellers: But laying this out, they didn't have the whole scope because they were advised wrong. Rettig: Is it currently a structure? Sizer: But the mistake was made. Rettig: We did not make the mistake. Sellers/Sizer: Previous ZAs made the mistake.

3) Unique circumstances do not result from the actions of the applicant. Sizer/Sellers: I don't think it's the actions of the applicant. Rettig: would we have granted a variance for this pool equipment to be 4 feet within the setback. Strohl: The answer would be there are many other places where it could be put. Sizer: But that's not where we are. By virtue of the mistakes, we are partially responsible equipment is in a place where it shouldn't be. Strohl: However, that is superseded by a Judge's order. Sizer: The Judge doesn't say we have to give the variance only said that they have to come for a variance. Twice we have granted 2 other minimal requests based on other mistakes. I still say there are extenuating circumstances. 4) Minimum variance. Rettig: I don't think that 4 feet is minimum. 5) Harmony intent of neighborhood/injurious to the neighborhood. Strohl: The neighbor is already saying it is injurious to him. Sizer: Any letters from neighbors.

Strohl says we have three (3) letters to enter into the record.

Letter from Kessling (15762 Lakeshore) - objects.

Letter from Williams (15796) - objects.

Letter from Anderson (518 Woodlawn) – not a direct neighbor, alternate ZBA member - objects

Discussion as to whether this letter shall have any weight – not within 300 feet. Attorney Hilmer is asked for his opinion and he advises that if anyone is in the Township, they are allowed to comment.

Attorney Dienes letter to the Board – also be entered into the record.

Deliberation continues among the Board. Sellers continues and ask which of the 5 criteria deals with structure. Sizer - #1. We can't get around the fact that it is a structure. Rettig: 4' 2" almost half of the distance of the setback. Rettig reminds the Board that letters were written to move, remove, or get a variance. I feel that it does not meet all 5 of the criteria to grant. Sellers: I feel it does not meet #3. Board in general: Because it's a structure and permanently connected, we can't get around that. The only way to keep the equipment/structure is by variance. So we

have to say, does it meet the criteria to meet the variance. Does it meet all 5? The Court has made it clear. The Court didn't tell us how to rule, just consider the variance. It was the applicant who wanted to put the equipment there. We have to look at this, like nothing is there. Reality is, it is there. The Judge sent it back to us. We are not allowed to look at the mistakes? It's difficult to look at this as a new variance coming in. There are only 2 possibilities: 1) The criteria to grant are met or 2) The criteria cannot be met.

Van interjects: The only way the variance can be granted you must say that all 5 criteria are met. If any of the 5 are not met, you may not grant it. You do not need to make a statement as to which are met. You have to identify the number which is not met.

Is number 1 met?	No. Not unique
Is number 2 met?	No. Does not prevent use of property.
Is number 3 met?	No. Does result from the actions of the applicant - he chose the spot
Is number 4 met?	No. Is ½ the distance minimum?
Is number 5 met?	Neither here nor there.

It hasn't met all 5 criteria, so the variance can't be granted.

Rettig makes a motion that this variance be denied because conditions number 1 – 4 under Section 23.04 (D) have not been met; Seconded by Bender.

Further discussion.

Roll call vote: Strohl:	Aye
Carol:	Aye
Rettig:	Aye
Phil:	Aye
Sellers:	Aye

MOTION PASSES VARIANCE DENIED.

Rettig motions for adjournment at 3:47 p.m. Bender seconds. All ayes. Motion carried.

Respectfully submitted,

Elizabeth A. Rettig
Recording Secretary
APPROVED: 3/21/17