

CHIKAMING TOWNSHIP ZONING BOARD OF APPEALS
Minutes of the September 19, 2017, Regular Meeting
APPROVED – 10/17/17

The September 19, 2017, regular meeting of the Zoning Board of Appeals was called to order by Vice Chairperson (hereinafter Chair), Doreen Bartoni at 1:00 p.m. Roll call of members present: Liz Rettig, Bob Beemer, 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 Bartoni advises that the first order of business is to approve minutes from the July 18, 2017, meeting. Sellers advises of some typographical corrections; Rettig makes notes. **Bartoni motions to approve minutes as corrected; seconded by Dow; Voice vote: All in favor. Minutes approved as corrected.**

CASE 1135: Michael O'Reilly/applicant 9125 Gottlieb Grove, Lakeside, MI 49116 Property Code No.: 11-07-0019-0046-05-0.

Applicant is requesting to keep an existing fence that is approximately 9 feet tall. Chikaming Township Zoning Ordinance Section 15.02(B) states in part, fences in a rear or side yard shall not exceed 6 feet in height, measured from the surface of the ground.

The Zoning Administrator is asked if he has any comments. He advises that he has none except what has been given to us in writing.

Chair Bartoni asks if a representative is present. Mr. Michael O'Reilly speaks about the fence and that it is needed for privacy and safety.

Chair Bartoni asks if there are any comments from the public. There are none.

Chair Bartoni reads letters into the record:

- R. Strauss - 14997 Lakeshore – fence should remain. Height makes no difference visually.
- J. Dougan – No need for a fence 9 feet high. All neighbors follow ordinance rules.
- J. Curry – Advises that this family is not part of the association and pays no dues.

Chair closes public comment.

Chair reads the five (5) criteria which must be met in order to approve variance.

Board Discussion: Did applicant get a permit? How did this become a problem? ZA Thornton advises that he was on another permit and happened to see the fence and as such wrote up the violation under the zoning ordinance and does not believe a permit was ever obtained. Questions how long fence has been there. Rettig goes through the criteria. 1. Unique. No. 2. As a result of the unique circumstances, strict compliance would unreasonably prevent the use of the property. No. 3. Result from actions of application. Yes. 4. Variance is minimum. No. 5. Harmonious with Zoning Ordinance. No. Does not meet 5 of the criteria.

Rettig makes the motion that it does not meet 1 – 5 of the criteria to grant a variance. Sellers seconds. Roll call vote: Bartoni. Support motion; Beemer: Support motion. Dow: Support; Rettig: Support; Seller: Support. Chair Bartoni advise that this VARIANCE IS DENIED. Discussion with ZA as to time frame and appeal period of applicant. ZA: Appeal period is 30 days after minutes are approved. Bartoni: So, pending appeal, we will allow the applicant three (3) months (DEADLINE WOULD BE DECEMBER 19, 2017) to bring the fence to the accepted height of six (6) feet. ZA recommends that a fence permit be obtained and an inspection will follow. Rettig amends her motion to include that a fence permit be obtained (permit to be obtained by December 19, 2017) and that an inspection follow. Sellers again seconds. All are in consensus of the amended motion.

CASE 1136 – Applicants David and Elizabeth Sellke, 205 Forrest Avenue, Sawyer, MI 49125, Property Tax No.: 11-07-0820-0167-00-5

Applicant is requesting to increase the lot coverage to 21.5% with an addition to the rear of the house which will meet all required setbacks. Chikaming Township Zoning Ordinance Section 4.06(d) allows 20% lot coverage in an NCR1-B Zoning District.

Bob Beemer recuses himself because he has received Notice of this and is a neighbor within 300 feet.

Chair Bartoni asks if the ZA has any comments. ZA corrects that the applicant is requesting to increase the lot coverage to 21.5%. ZA clarifies that the applicant requests that the building size be increased by 7.4%, however, the lot coverage is only being increased to a total of 21.5% and currently is under 20% now. The increase is 1-1/2% more than allowed.

Applicant is asked if he has any comments, Mr. Sellke details the building plans and that they will still meet all building setbacks and they are only adding onto the rear. Chairman asks if there are any other public comments, there are none.

Chair Bartoni reads the letters received:

- Ansorge (209 Forrest) – no objection to increase and support application
- Shorewood Hills Homeowners – support application
- Kelliher (206 Forrest) – support application
- Levy (6530 Lake) – support application
- Sweitzer (203 Forrest) – support application
- Borden (207 Forrest) – support application
- DCOSA – support application

Public portion is closed; goes to Board discussion.

Board discussion: Dow reminds us that surrounding homes are larger and the newly proposed structure would certainly be in harmony with the neighborhood and would be in support of variance. Sellers asks about the tree. Owner says that he adjusted the plan to keep the large tree. Sellers asks about porch dimensions and reduction of size porch, is it enclosed? Owner clarifies that he was trying to keep the house rectangular. Dow reminds us that owner is meeting all setbacks and that it is in harmony with the neighborhood. Dow also reminds us that these lots are preexisting lots and that the neighboring houses

have been built within the last 5 – 6 years – larger houses on the same size lot and questions if variances were granted on the neighboring homes but feels that the unique circumstances are the undersized lots. ZA says he could research but assumes that all building permits were obtained in a normal fashion and interjects that the special unique circumstance is that it is a small lot and a lot of record. (NCR1-B) Rettig interjects that the lots were platted in 1927 and certainly not the actions of the applicant. ZA advises that NCR lots have different rules (size). The new zoning ordinance is anticipated to continue in that line. Beemer talks about the planning commission's passing of the standards for the smaller lots.

Dow motions that the variance request be granted (meeting the 5 criteria) and the new structure be allowed a 21.5% lot coverage and the owner maintain the setbacks as shown in the drawings. Rettig seconds. Roll call vote: Beemer: recuse; Sellers: approve; Bartoni: approve; Dow: approve. VARIANCE IS GRANTED.

CASE 1137: David Born representative for owner/application Jonah Siegellak and Gina Adduci Vacant Lot 25 National Parkway (Hidden Creek Subdivision) Union Pier, MI 49129 Property Code No.: 11-07-3130-0025-00-5.

Applicant is seeking relief from the 25-foot setback requirement from any wetland. Chikaming Township Zoning Ordinance Section 15.14C.2 requires a 25-foot setback from the boundary or edge of any regulated wetland area.

Chair Bartoni as ZA Thornton if he has any comments. ZA advises that this a unique application and this parcel does have wetlands. ZA advises that he has communicated with Ben of MDEQ who was familiar with the parcel who says that an owner who makes application to the MDEQ for a permit to fill part of the wetlands, historically that permit would be granted as long as it was a necessity to accommodate a structure – not for fill for accessory buildings or a larger lawn. ZA further explains the wetlands diagram. The 25-foot setback from wetlands makes this parcel almost impossible to build on. Recommendation of ZA is that if Board feels that this is a valid variance request, to put contingencies on it and anything ultimately will rest with the MDEQ no matter what the Township approves. MDEQ may override or counter and their rules will take precedence (final say) over ours if construction is permitted and if this parcel can be built upon.

Dow addresses ZA regarding minutes from 2005 which puts the setback of this development at 20-foot setback from wetlands. ZA advises that the 20-foot is the controlling setback requirement as a special land use. ZA advises that even a 20-foot setback based upon the sketch of the house provided would be almost impossible.

Rettig questions the setbacks shown on the sketch – some of the setbacks shown are 7 feet, 1 foot, 10 feet and are these the parts that the MDEQ would allow them to fill. ZA answers that the fill is only for the structure. Sellers wonders why they are coming to the ZBA first instead of MDEQ. ZA says that it was his recommendation because it is less expensive and time frames – but it still must go to the MDEQ. ZA continues that the time will be saved in as much as saying to the MDEQ that we do have approval from Chikaming to build within these limitations and will you (MDEQ) now allow us to continue. Owner cannot build without MDEQ approval. Beemer: 2005 the development was approved. Marske made a motion that a 20-foot setback be allowed. Is it possible that a lot was created that could not meet the setbacks? Here we are 17 years later, the lot can't meet the setbacks. ZA explains that many times

he is asked by a potential purchaser, is the lot buildable? His quick answer is yes – if setbacks are met. Is it practical? Probably not. Is it cost effective? Probably not. To say that they created an unbuildable lot is a misnomer. The wetlands were there when the development was made and a 5 foot allowance was already negotiated in 2005.

Sellers: I believe this has already come to us and it was denied. Rettig remembers that one of the requirements a few years ago was that the house had to be turned, but the parties never built. Bartoni has a similar question, were there other variances granted regarding the wetlands. ZA: Not to my knowledge. Another owner who talked to ZA said that he had to jump through a lot of hoops with the MDEQ. ZA continues that not all parcels would need a variance if they can meet the setback requirements. Sellers asks how many square feet is the anticipated house. Born answers not to exceed 2,400 square feet including an attached garage. Our dilemma is we had no starting point. We had to have the wetland delineation redone as MDEQ would not honor one that wasn't current. Born talks about a ditch which renders the lot inaccessible unless MDEQ gives a permit to build and to put a culvert.

Chairman: Is there any other comment from the applicant? Born continues that the lot is basically unbuildable without a variance from the wetland variance. The house must be designed around the wetland problems. The house footprint will most likely be smaller than what is drawn.

Chair: Any further comments from the public. None heard; public portion closed. Chair allows the Board to continue questioning.

Sellers asks ZA Thornton: If they can fill in part of this to build help me with the setbacks. ZA: It would be from the structure to the wetland. They still need to maintain our setbacks. If wetlands are 20 feet deep from the road, in theory, you must go another 10 feet to start our current setback. However, in this subdivision they must stay 20 feet from the wetland, so their front yard would be a minimum of 40 (which is 30 plus 10 of the 20). The MDEQ would only allow a minimal amount of fill for the structure. Sellers: would the applicant have to come back for another variance. ZA: they may have to come back. Right now, they are only asking for the wetland variance. So if MDEQ says here's where we will allow you to build and it encroaches into the setback set by the ordinance, they would have to come back for a variance. I would suspect that the builder and owner would request from the MDEQ something that everyone can live with.

Dow questions ZA on his recommendations and clarity:

1. Valid permit from MDEQ be obtained.
2. All setbacks must be observed (to the best of applicant's ability).

ZA asks that the last part be removed and yes, the applicant may have to come back for a variance if setbacks cannot be met.

Chair Baronti is concerned that the Township made these setback rules for wetlands and concerned about creating precedence. Dow answers that the ZBA has a word in this, but it may not be the last word. MDEQ is the controlling authority. We could say no today and we could be overruled; we could say yes today and we could be overruled. If we put contingencies, we may have to do another round.

Beemer: Can MDEQ overrule our township zoning? ZA: No. Our Township zoning is still the controlling factor. Further, precedence does not exist. Under Section 23.04G, a non-conforming use of neighboring lands in the same zoning district or in other zoning districts shall not be considered grounds for the issuance of a variance. Sellers addresses Born: based on what you have heard about maintaining setbacks, and MDEQ gives a permit to fill in some of the wetlands, do you have enough room (meeting the setbacks), to build a house that these people want? Born: Yes. We do not wish to encroach on the setbacks.

Rettig: They are asking us to stray from our 20-foot wetland requirements because he can't make it work with the wetland requirement. Born: Correct from a design perspective, it can't meet wetland setback and don't want to invest a lot of time and money. Dow: Everyone is agreeing on the regular setback. The variance that's being requested is a variance from the wetland setback. We could give you some wiggle room on the wetland, but not on the yard setback.

Rettig: They are saying, they can't meet the 20-foot wetland setback that was set in 2005.

Bartoni: So, on the sketch they are looking for 10 feet, 7 feet on the left side, 1 foot on the Northwest, and 17 feet. The 1 foot does not seem minimal. We need to talk about what's reasonable.

All discuss – is 15 feet reasonable? All agree that at least 15 feet would be reasonable, pending DEQ approval. Will that work for the builder? Born: It makes sense, but still renders the lot unbuildable. The radius of the 15 foot arc setback from all wetland, will not work. I could not build. The house would be too small.

Rettig: what number are you looking for? Born: 10 feet – I can make that work otherwise we would build a house with a weird shape and crazy irregular offsets.

Sellers: If we go back to 2005.....

Dow: My feeling is that the wetland has changed and this is a new wetland

Beemer: If the wetland has become bigger since 2005, perhaps because of the other houses, roads that have been put in.

ZA: For your consideration, I am doing soil check/wetland check during plan review. I will be requiring wetland assessments, so this may come up in the future. I only bring this to your attention, because of the frequency that it may come up. What your considerations are on this parcel, would not necessarily be the same as the next parcel. Each one is a stand alone.

Dow: So anything we do in this case, would not have precedence in wetland cases. If we look at the criteria (unique circumstances that exist) – check – a unique piece or property. As a result of the unique circumstances, strict compliance would unreasonably prevent the use of the land – check. The unique circumstances do not result from the action of the applicant – check. The variance that is requested is minimal – that's what we are discussing. Can we live with 10 feet if the applicant can live with 10 feet as a modified restriction for a wetland setback on this parcel.

Sellers: Do the applicants own this? Born. Yes. Sellers: Did they know all this when they bought?

Born: I do not believe so, that's why we are here. Rettig: How long ago did they buy? Born:

approximately 2 – 3 years. Sellers: What's the purpose of the 20 feet? Do wetlands grow? ZA: We can't make a blanket statement. The new delineation may be different from the previous. Water alone is not an indicator of wetland. The reason in my mind is during construction it gives you a buffer so that you don't push debris or dirt into the wetland.

Rettig: Will the instability of the wetlands affect the house? ZA: A soil test will be required to make sure that the soil is stable enough before they get their building permit. Rettig: So even if we say 10 feet and they do a soil test and determine it is unstable and it can't be done, does that put "nix" on it? ZA: There are many things that can be done, if you can afford the price – there could be driven piles – but it will be cost prohibitive. There will be a requirement of a soil test. The test is either prior to the building permit or after the footings.

Beemer: Protecting wetlands is one of our goals and part of our zoning. Sellers: I believe the wetlands are bigger than in 2005 when they set it at 20 feet.

Doug: We all seem to believe that the 10 feet is a reasonable compromise that says wetlands are important and allows the owner to put a structure on the property. It is not quite what they asked for, but it is a reasonable basis to try to proceed and that there are several other hoops that have to be completed, not the least of which is MDEQ.

Doug: I would propose that we grant a variance for modifying the wetland setback on this piece of property to 10 feet. We make this variance contingent on the following conditions:

- 1. A valid permit from MDEQ must be obtained;**
- 2. All yard setbacks for the zoning district must be observed;**
- 3. The proposal submitted to the MDEQ must make maximum use of the upland areas**
- 4. If the first three contingencies are met, the structure may be built within parameters set by MDEQ and it must meet a 10 foot setback from the wetlands.**

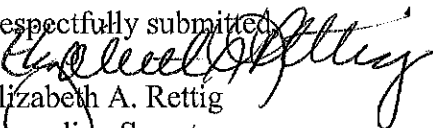
Sellers seconds. Roll call vote: Beemer: Yes; Rettig: Yes; Doug: Yes; Bartoni: Yes; Sellers: Yes. VARIANCE IS GRANTED WITH ABOVE CONTINGENCIES.

Chair Bartoni asks if there are any more questions to the Board. None.

Van asks to speak. A copy of the Chikaming Township Board of Appeals Rules of Procedure have been passed out to the Board members. I ask that you read them and if you have any questions or comments, please see me or our Attorney (Mr. Hilmer).

Dow motions to adjourn at 2:25 p.m. Sellers seconds. By consensus all agree. Chairman announces we are adjourned.

Respectfully submitted,


Elizabeth A. Rettig
Recording Secretary

Date Approved: October 17, 2017