

MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS HELD ON THURSDAY, MAY 17, 2001 AT 7:30 P.M. IN THE CLAY TOWNSHIP BOARD ROOM, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP, MI 48001.

Chairperson Ron Nelson called the meeting to order at 7:30 p.m.

1. Roll Call

Present: Joanne Shirkey, Cindy Kirkpatrick, Chuck Michel, Marianne Diss, Ron Nelson.

Absent: None.

2. APPROVAL/AMENDMENTS TO AGENDA: No changes.

3. APPROVAL OF MINUTES OF APRIL 19. APRIL 26. MAY 3. 2001:

Moved by Michel, supported by Shirkey, **MOTION CARRIED**, to approve the April 19, 2001 ZBA Minutes as submitted, the April 26, 2001 ZBA Minutes with a change to the last sentence of the last page from the word "read" to "rear", and the May 3, 2001 ZBA Minutes with a change at the bottom of page 2 to read " homes built after 1988" to "homes existing before 1988". AYES: All. NAYS: None. ABSENT: None.

4. ZONING BOARD OF APPEALS PREFACE

Chairman: The ZBA addresses mainly hardship based on lot size, location and/or shape or contour and location of existing buildings. We are guided by Section 1304 of Ordinance #89. There are five members on the ZBA, five of whom are present tonight. Three (3) members must vote the same way for a motion to be granted for a variance. Three (3) members constitute a quorum. You may speak when so directed. Everyone will have a chance to speak. If a particular point gets belabored, the chairman has the right to limit debate. If you should not like the board's decision, whether you are the appellate or the public, you have the right to take it to the Circuit Court. You have twenty-one (21) days to file with the Circuit Court. When the appeal you're involved with has finished, you are welcome to leave or stay, whatever you wish.

5. APPEALS

NEW BUSINESS:

**2001-031                      SAM & SUZANNE SMITH                      6407 DYKE ROAD**

Appellate: Building Department letter stated asking for rear set back on water side, only requesting variance for front yard road side yard where garage is to be built.

Chairman Nelson: Can only address what has been advertised.

Appellate: Want to knock the garage down and extend the addition over the side of the house, 45' from the water.

Chairman Nelson: Build a garage encroaching on the front yard set back.

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Appellate: 25' variance, house is 22' from the property line, other houses going down towards the Colony Tower averaged 4' and 20' setback.

Chairman Nelson: Intended garage would be 3' from the front lot line.

Appellate: Measurement would be 2', from the front of the garage to the roadside have 50' utility access.

Chairman Nelson: Don't address easement, can't build into the easement.

Marianne Diss: Not going to put addition on the waterside?

Appellate: Pre Existing addition on the waterside, tear garage down to open view of the water up, add 17' x 20' to the addition, completed size a 32' x 20' across the back of the house, will stay 45' from water side, not encroaching.

Chairman Nelson read letter into the record from Frank Balose, 6405 Dyke Road: Against the variance request, expressed problem with current driveway, excessive cars parked, van w/no plates, junk & building supplies stored.

Chairman Nelson: On Dyke Road in which there is an excess of easement has not allowed a front garage like this.

Building Adm. Michael Kras: Not requesting variance for the rear addition because will be 45' off the canal.

Open the public hearing for 6407 Dyke Road wants to build an addition towards Dyke Road will be 2' or 3' off the front road lot line or 25' as required.

In favor: None.

Opposed: None.

Close the public portion.

Chairman Nelson: Opposed have been denying in the past, parking on roadway property.

Chuck Michel: What is the hardship, there isn't any.

Appellate: Have more than enough room between the garage door and the property would not encroach on my neighbor's land.

Chairman Nelson: 2'-3' from the northern part of the garage to the front highway lot line, the 55' to the edge of the road is not yours to build on.

Appellate: If allowed to build the garage there would not be an obstacle for my neighbors to back out onto the highway, if highway went through and took 15' out would still have room.

Chairman Nelson: Still would be only 3' off the front lot line; other houses set more towards the water.

Don't see where the Ordinance has made the hardship.

**MOTION BY MICHEL, SUPPORTED BY DISS, TO DENY THE GARAGE VARIANCE OF 22' FOR AN ADDITION GOING TOWARDS THE ROAD AND THERE IS NO ZBA ACTION REQUIRED FOR THE ADDITION ON THE REAR SIDE FOR 6407 DYKE ROAD. AYES: DISS, SHIRKEY, MICHEL, NELSON. NAYS: KIRKPATRICK. ABSENT: NONE.**

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Chuck Michel: Requesting Mr. Kras to talk to the petitioner about the truck on the property without plates, either it should be moved or plates put on it, he is in violation.

**2001-023      DALLAN SMITH                      9240 MAPLE STREET**

Appellate: Requesting for 3' variance, 40' required, 2-1/2' on the west side for a deck, lot is 50' x 100'.

Chairman Nelson: Do you know how far the neighbors to the right or north are from the rear lot line?

Some of the houses to the south are real close to the rear, north are further off, rotate differently.

Open the public hearing regarding property at 9240 Maple Street wants to build a house, lot size 50' x 100', house would be 3' too close to the rear lot line and with deck 3-1/2' too close to the one side lot line.

Anyone in favor of the request: None.

Opposed to the request: None.

Close the public portion.

Moved Diss, supported by Shirkey, **MOTION CARRIED**, to approve the request as presented for Dallan Smith, 9240 Maple Street, the hardship the lot size. AYES: All. NAYS: None. ABSENT: None.

**2001-026      JERRY MACHALA                      7367 AQUA ISLE**

Appellate: Requesting variance to build a 12' x 14' sunroom, encroaching into the 55' rear yard.

Chairman Nelson: Recessed boat well and the house is 61' off the canal line, with addition will be 49', need a 6' variance. Appellate: Neighbors on both sides of the house and no problem with the addition.

Letter read into the record: Live 5 doors away from this residence and do not object to their request. Dennis Christians, 7389 Aqua Isle.

Open the public hearing for 7367 Aqua Isle to build a 12' x 14' enclosed sunroom, 49' off the canal, asking for a 6' variance.

Anyone in favor of the request: Frank and Mary Stone, 7389 Aqua Isle.

Opposed to the request: None.

Close the public portion.

Chairman Nelson: 6' variance is a lot in that area, 55' setback followed as a rule.

Michel and Kirkpatrick: Their thought was others along the road are out towards the canal.

Motion by Shirkey, supported by Kirkpatrick, **MOTION CARRIED**, to approve the variance of the southern rear waterside yard that will encroach on the average setback for construction of a 12' x 14' patio sunroom. AYES: Michel, Kirkpatrick, Shirkey. NAYS: Diss, Nelson.

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**2001-027**

**FRANK & MARY STONE**

**7389 AQUA ISLE**

Appellate: Like to build a sunroom and need to extend the existing house line 7', already a 7' covered porch, extend it out to 14' x 26'.

Chairman Nelson: Filling in the corner, house is 55' with the addition will be 48' off the canal, would rather see it 12' wide, and would only require a 5' variance.

Read a letter into the record: Do not object to the variance requested by Mr and Mrs. F. Stone. Dennis Christiansen.

Open the public hearing regarding a sunroom addition for 7389 Aqua Isle that will be 48' off the waterside lot line.

In favor: Jerry Machala, 7367 Aqua Isle.

Opposed: None.

Close the public portion.

Marianne Diss: Don't know why the sunroom measurement can't be 12' x 25' would bring it back to 50'.

1' closer to the water with each one.

Builder: Can't put a door wall in a 5' area, need at least 6' to build that wall, glass all the way around., would throw it all the way off.

Cindy Kirkpatrick: Like to see the footage off the seawall at 49'.

Owner Mr. Stone: Difficulty with that is the way the porch is constructed and the problems there would be.

Motion by Shirkey, supported by Michel, **MOTION CARRIED**, to grant request to Frank and Mary Stone, 7389 Aqua Isle for a variance of 4'6" of the eastern side yard and a variance of the southern rear waterside yard that will encroach on the average setback. AYES: Shirkey, Michel, Kirkpatrick. NAYS: Diss, Nelson.

**APPEAL NO. 2001-028**  
**DRIVE**

**DANIEL G. KVOCVKA**

**8794 ANCHOR BAY**

Appellate: Want to build a garage next to the front of the house, need a variance on the side lot line, 3-1/2' from the front property.

Chairman Nelson: Nonconforming house, garage would be 15' off the street lot line, the houses to the left or the south sit further off the road, those going to the north sit uneven, asked Mike Kras if he estimated that.

Marianne Diss: With shed, he exceeds the square footage.

Chairman Nelson: It is an attached garage.

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Open the public portion for property 8794 Anchor Bay Drive where applicant wants to build attached garage to existing dwelling that would be 15' off the front lot line. In favor of the request. None. Opposed: None. Close the public portion.

Chairman Nelson: No objection providing the garage was *not* protruding out further than the garage to the north.

Applicant: Stated garage structure will be inside where the neighbor's garage ends, letters presented to Chairman from neighbor: Rebecca Boronni, 8778 Anchor Bay Drive and David/ Alexis, 8787 Anchor Bay Drive in support of the garage structure for 8794 Anchor Bay Drive.

Chairman Nelson: Measurement applicant used was from the edge of the road; legally have to measure from the easement edge. For the record, he has stated the structure will not be projecting beyond the adjacent neighbors.

Motion by Diss, supported by Michel, **MOTION CARRIED**, to grant Daniel G. Kvocvka, 8794 Anchor Bay Drive a variance of 10' where 25' is required of the southern front yard setback for an attached garage to the existing dwelling and for the record the dwelling will not be protruding out as far as the neighbor to the north and hardship is lot size. AYES: All. NAYS: None.

**APPEAL NO. 2001-029**

**ERIC MUELLER**

**1240 STEWART ROAD**

Appellate: Building a garage and need an 11' variance on the front set back.

Chairman Nelson: Move structure back will be in wetlands; instead of being 25' off the road lot line, he would be 13' off the lot line, most of the property is wetland; questioned the remodeling the house, what are your plans? Anytime you are going to expand the house to the garage eventually?

Appellate: Carpeting it, getting it ready to live in; not planning on expanding right now, when funds become available would like to attach it to the house.

Chairman Nelson: Questioned the material of the front porch.

Appellate: Cement underneath, old porch with wood porch over it; brings the square footage of the house up.

Open the public hearing for Eric Mueller, 1240 Stewart Road building a garage.

In favor of the request: None.

Opposed: None.

Close the public hearing.

Marianne Diss: House is 960 sq. feet, garage is going to be 160 sq. ft. larger than the house.

Chairman Nelson: All we can address is the setback because that was what was advertised, no problem with it.

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Motion by Michel, supported by Shirkey, **MOTION CARRIED**, to grant the 11' variance for a garage to be constructed at 1240 Stewart Road for Eric Mueller, where 25' is required of the southern front yard setback due hardship of wetland area. AYES: All. NAYS: None. ABSENT: None.

**APPEAL NO. 2001-030      MARK BOMMARITO      1618 MILL STREET**

Appellate: Desire to build a 10' x 44' country porch on the front of my home, 350' of frontage to the road, apparently home is nonconforming because it is 6' too close to the back lot line; home was the original barn of the old property and when lot lines were put on they were too close.

Open the public hearing regarding 1618 Mill Street wants to put a front covered porch on to an existing house, northside of the house is too close to the rear lot line, addition will be on the other side but because of the technicality, the law requires him to appear before the ZBA. In favor of the request: None. Opposed: None. Close the public portion.

Motion by Diss, supported by Michel, **MOTION CARRIED**, to accept the ~~motion~~ *appeal* as presented for Mark Bommarito, 1618 Mill Street for a front covered porch to be built to an existing house. AYES: All. NAYS: None. ABSENT: None.

**APPEAL NO. 2001-031      JAMES & LINDA MARSHALL      9501 HEMENGER**

Appellate: Variance to be *coverage over* 30% over what is allowed.

Chairman Nelson: Questioned revised survey received from Mike Kras.

Mike Kras: 1<sup>st</sup> survey showed something like 8' and 7'. 6" nonconforming building to start with, revised showed it will be 5' 1/2" and 10'; 52' at the rear is the average setback going down the block, problem is the building putting on is 33.8.2% over the lot coverage, applicant originally thought could use the 17' and 11' easement at the rear.

Chairman Nelson: Free property there, seawall is in the Federal Waterway.

Chuck Michel: Questioned the 52' average setback.

Chairman Nelson: Going downstream those homes are sitting closer to the water.

Mike Kras: Farther to the right, there are two that are 30' off the seawall.

Letter read into the record: Residents do not approve the variance for 9501 Hemenger:

Signed by:    9489 Hemenger Ct.  
                  9475 Hemenger Ct.  
                  9485 Hemenger Ct.  
                  9457 Hemenger Ct.  
                  9503 Frank Street

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Open the public hearing regarding lot coverage at 9501 Hemenger Ct. where the house will be larger than 30% ~~over~~ the density of the lot.

In favor of the request: None.

Opposed to the request: Arreal Toussaint, 9489 Hemenger Ct.; Ed Beyer, 9503 Frank Street, Mr. Tioey, 9591 Hemenger Ct.

Applicant: Questioned the square footage included the garage and all accessory buildings; could eliminate the garage and come back later build a garage.

Chairman Nelson: Would still be over the lot coverage.

Applicant: Gave the measurements of the setbacks, tried to fit the area for what we needed with three children.

Close the public hearing.

Marianne Diss: House is still the same size.

Michael Kras: Were allowed to take the Federal Waterway where the seawall is they would be under 30%.

Chairman Nelson: At one time that seawall was approved to be where it is; all those neighbors benefit from some extra property, 11-17' further seawall goes out, they all benefit from that.

Motion by Kirkpatrick, supported by Shirkey, **MOTION CARRIED**, to approve the request as granted for 9501 Hemenger Ct. no ZBA action is required when "free" Federal land to seawall is considered. AYES: Kirkpatrick, Shirkey, Diss, Nelson. NAYS: Michel. ABSENT: None.

**APPEAL NO. 2001-032**

**ROBERT HOLMES**

**6490 MARINA DRIVE**

Appellate: Requesting a 7' variance on the front yard setback and a 15' x 34' addition in the rear of the home on the canal side.

Chairman Nelson: Proposed garage would make you 17.4" off the front line making it 35' off the curb, 9' of free land because the seawall was put in 9' from the lot line; roadside you are closer than your neighbors.

Michael Kras: Should that have been measured from bulkhead on the last variance?

Open the public hearing for the property at 6490 Marina Drive for two items: 25' from the front lot line to the front of the house going to be 17'4", average setback various greatly in that area and the rear yard bulkhead would be 44', at property line would be 35'.

In Favor: None.

Opposed: Bob Ridderikhoff, 6485 Marina Drive: Don't like the idea of the lot extending that close to the road, neighbor will not be able to see the traffic when backing out.

Chairman Nelson: Still counts as average setbacks.

Judy Schmitt, 6475 Marina Drive: Too close to the road, concerned about the parking situation.

Gentleman confused about the lot line, Mike Kras explained the garage would be 17' from the front lot line.

Chairman Nelson: Right of way is 66', road is 33' wide, 18' from the curb up.

Close the public portion.

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Moved by Diss, supported by Michel, **MOTION CARRIED**, to grant the request for 6490 Marina Drive for Robert Holmes for a 7'8" variance of the southern front yard setback due to the lot width being a hardship, the rear addition setback will not require any ZBA action and to clear up any potential parking problems, the entrance to the garage would be from the East side. AYES: All. NAYS: None. ABSENT: None.

**APPEAL NO. 2001-033**

**MICHAEL W. THOMAS 8518 ANCHOR BAY DRIVE**

Appellate: Request to build a deck on top of an existing deck, neighbors to the East and West don't have a problem; not obstructing any view of the neighbors.

Open the public hearing for Michael W. Thomas, 8518 Anchor Bay Drive regarding putting a second floor deck.

In favor: Arnold Oparka, 8510 Anchor Bay Drive.

Opposed: None.

Close the public hearing.

Motion by Michel, supported by Kirkpatrick to grant the request to Michael Thomas, 8510 Anchor Bay Drive to build a second floor deck with spaces between boards, not a roof and not enclosed.

Discussion: Appellate questioned what type of board would be used on the second floor deck, spaces between, not enhancing the nonconformity of the house. AYES: All. NAYS: None.

ABSENT: None.

**MOTION CARRIED.**

**APPEAL NO. 2001-034**

**ROBERT/DEBBIE CARNAHAN 8310 MARSH ROAD**

Appellate: Want to split the parcel of the property off to the original way it was.

Open the public hearing regarding the lot split for Robert/Debbie Carnahan, 8310 Marsh Road.

In favor: None.

Opposed: None.

Close the public portion.

Motion by Diss, supported by Shirkey, **MOTION CARRIED**, to grant the variance of the lot split for 8310 Marsh Road the 445.13' variance from the maximum depth of 832.35 feet, depth to width ratio of 5 feet in one foot in width. AYES: All. NAYS: None. ABSENT: None.

**REQUEST FOR INTERPRETATION OF ZONING ORDINANCE, SECTION 810 AND RELATED PROVISIONS FOR: PAUL AND MARY RENER - 7780 ANCHOR BAY DRIVE.**

Chairman Nelson: ZBA made a decision a month ago on the setback for 7780 Anchor Bay Drive, appellate is requesting an interpretation; went to the blackboard and drew a sketch, recessed seawall, his opinion is this is the bulkhead where we would measure from not from the recessed boatwell; open obscured view opinion: average setback is not the homes on the lake, average setback where Rener's home is based on those homes along that canal.

Cindy Kirkpatrick: In agreement with Ron Nelson where the measurement should start.

Chairman Nelson: Addressing two things, not technically a public hearing, will let Mr. and Mrs. Rener's representative give some input.

Attorney Gary, representing the Reners: Lengthy explanation explaining why the average setback is 28', referred to Section 810 of the Ordinance.

Chairman Nelson: Agree with where the bulkhead is at, the houses on the gravel road facing the lake should not enter into the average setback for those houses coming further back to the East, face different to begin with, sideyards going in the opposite direction.

Attorney Gary: Ordinance says "adjacent parcels", if this was a public road your interpretation would be correct, it is only a driveway; referred to a property owner Pike's legal description and his boatwell.

Lengthy discussion regarding the average setbacks.

Chairman Nelson: Referred to Section 810.

Attorney Gary: Again explained "adjacent lot" in the Section and how this relates to his client's property.

Chairman Nelson: Gravel driveway even though is deeded more than owned makes a separation.

Attorney Gary: Referred to the deed reading that states: " .....undivided one-half interest of the south 80' of the west 22' of Lot 1 ..... ", of Mr. Pike's survey.

Chuck Michel: 18' is the sideyard setback and has no relation to the rest, explained setback on the drawing; your referring to sideyard setbacks which has no bearing on the lots below it.

Attorney Gary: It does your ordinance says "adjacent lot", this lot is adjacent to this one on the waterside.

Lengthy discussion continued between Attorney and ZBA Board regarding what measurement using in the average setback.

Chairman Nelson: Two things you need from us re: interpretation: where is the bulkhead, which in my opinion is the farthest part towards the canal and want to know what numbers you use for average setbacks?

Attorney Gary: If you use the outer piece then it would meet my client's needs of 40' requirement.

Chuck Michel: Explained how he did the measurement back in October.

Mike Kras: Clarified what has occurred regarding the addition approved, one side of the addition would be 38' from the set-back and not the approved 40' 1/2", house is not parallel to the house or the road, couldn't issue the permit under those rules; problem is can't say the average setback is

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40'1/2", if you continue on in Section 810 it states "unobstructed yard" where no buildings are to be placed in that unobstructed yard.

Attorney Gary: Can do that 10' addition, 52' back from that bulkhead point, still would be 40' back on that extended line.

Chairman Nelson: Recessed part of the well to the corner of the house measurement is 47'3".

Measurement discussed on the drawing.

Chairman Nelson: Got to keep in mind your seawall bulkhead is inside from your rear lot line, which technically does not exist.

Some discrepancy with the measurement between Kras and Mr. Rener.

Chairman Nelson: Opinion: take it from the farthest bulkhead out to start our measuring, recess well which continues on as opposed to a t-slip well here.

Kras: 40-1/2' in the minutes for a variance request, didn't have the same measurement going across; if you do that will put this building out in here.

Attorney Gary: If you measure straight across from this point and be back at least 40' from this line.

Mike Kras: Another thing have to look at is the unobstructed view which is part of Section 810.

Chairman Nelson: Clarified what an average setback is and how determined and how the unobstructed view comes into play; opinion is take the gravel drive going east and use those averages.

Cindy Kirkpatrick: Disagree with the unobstructed view rule.

Kras: Stated the problems he is running into.

Motion by Kirkpatrick, supported by Shirkey, the measurement for 7780 Anchor Bay Drive will be from the outer most point (bulkhead) of the canal.

Discussion: Chuck Michel: Were making an interpretation where the bulkhead is?

VOTE ON THE MOTION: AYES: Shirkey, Kirkpatrick, Nelson. NAYS: Michel, Diss.

**MOTION CARRIED.**

Attorney Gary: How do you establish those average setbacks?

Motion by Kirkpatrick, supported by Shirkey, the average setback will be from Mary and Paul Rener's house (7780 Anchor Bay Drive) going east to the next cross street (~~Farnsworth~~ *Ainsworth* Road) and measured from the outer most point of the seawall.

AYES: All. NAYS: None. ABSENT: None.

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6. Member Comments:

Chairman Nelson: Special ZBA Meeting next week May 24, 2001. Chuck Michel asked to be excused for that meeting.

7. Public Comments: None.

8. Adjournment

Moved by Kirkpatrick, supported by Shirkey, **MOTION CARRIED**, to adjourn the meeting at 9:55 p.m. AYES: All. NAYS: None. ABSENT: None.

Valerie J. Kulba  
Recording Secretary