

MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS HELD ON THURSDAY, JUNE 21, 2001 AT 7:30 P.M. IN THE CLAY TOWNSHIP BOARD ROOM, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP, MI 48001

Chairman Nelson called meeting to order at 7:30 p.m.

1. Roll call

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

2. APPROVAL/AMENDMENTS TO AGENDA

Moved by Kirkpatrick, supported by Michel to approve the agenda as presented.

AYES: All. NAYES: None. MOTION CARRIED.

3. APPROVAL OF MINUTES OF SPECIAL MEETING. MAY 24. 2001

Corrections to minutes: P.2, Appeal 2000 Moved by Diss, supported by Kirkpatrick, MOTION CARRIED, to grant ZBA extension....

Moved by Kirkpatrick, supported by Shirkey, to approve the minutes as corrected.

AYES: All. NAYES: None. MOTION CARRIED.

APPROVAL OF MINUTES OF MAY 17.2001

Corrections to minutes: P.5, Appeal 2001-028, No objection providing the garage was not protruding.... P.6, Appeal 2001-030, Motion by Diss, supported by Michel, MOTION CARRIED, to accept the appeal as presented....P.6, Appeal 2001-031, Coverage variance to be over 30%...., house will be larger than 30% of the density of the lot. P. 10, Interpretation, Farnsworth Rd should be Bayview Rd.

Moved by Diss, supported by Michel, to approve the minutes as corrected.

AYES: All. NAYES: None. MOTION CARRIED.

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, all 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

2001-044

George and Rebecca Barron
Val Saph, Attorney, Representing

1825 S. Channel Dr.

Request for variance from Ordinance #89, to Class A designation. The application was denied because Ordinance #89, property is zoned Class B.

Nelson: Difference between Class A and B is: Class A non-conforming designation allows residence to be repaired and fixed up; Class B non-conforming designation does not allow repairs.

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Mr. Saph (attorney representing appellate): Presented several exhibits, pictures to board, several letters presented. The appellate wants to be able to rebuild in case of fire (to be able to replace home).

Mr. McNamee (attorney representing Clay Township): hi letter of 6/17/01 not to exceed current restrictions. Could be designated Class A but restrict to current foot print.

Letters: Approve: Ellen Bindek, 1985 S. Channel; Sally O' Neil, 1975 S. Channel; Patrick Smith, 1965 S. Channel; Virginia Memtt, 1815 S. Channel; Mike Joye, 1696 S. Channel; Mary Ann Smith, 1520 S. Channel. Opposed: David and Lynn Lozon, 1910 S. Channel Dr.

Public Participation:

In favor: Bill Smith, 1800 S. Channel, has no objection to Class A but fear of what rebuilding might be.

Opposed: None.

Close Public Participation.

Michel to Mr. McNamee: What is hardship? Mr. McNamee. (Ordinance #89) 813B describes hardship. Four criteria must be met, 1) Continuance thereof would not be contrary to the public health, safety, or welfare, or the spirit and intent of this ordinance; 2) That the use, building, or structure does not and is not likely to significantly depress the value of nearby properties; 3) That the use, building or structure was lawful at the time of its inception; 4) That no useful purpose would be served by strict application of the provisions or requirements of this ordinance with which the use, building, or structure does not conform. He does not believe the property should be designated to Class A for the purpose of rebuilding. Restrictions should be very clear by ZBA. ZBA should obtain foot print and height measurements.

Michel: Intent of ordinance should be followed.

Nelson: Should remain residential use.

Kirkpatrick: Appellate could be rebuild if designated Class B. Appellate should have the freedom to be able to fix up.

Michel: If request granted would be against ordinance.

Diss: All setbacks should be considered.

Mr. McNamee: Property is non-conforming now. It could not be fixed up in case of fire, if less that 50% damage it could be repaired.

Diss: Do we grant variance for hardship, size of lot?

Michel: No hardship.

Diss: There are three separate parcels of property.

Nelson: Appeal request meets criteria for hardship.

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Continued #2001-044

Diss: If parcels were split, they would all be non-conforming.

Nelson to McNamee: If motion passes or not, include 813-B stating four criteria.

Motion by Kirkpatrick, supported by Shirkey to change to Class A non-conforming from Class B non-conforming, property is kept well, will not depreciate, structure was lawful at the time of original building, purpose for conforming residential, has to meet ordinance restrictions for height, cannot exceed 3/28/01 survey for existing foot print, and no higher than 25 ft

AYES: Shirkey, Kirkpatrick, Nelson. NAYES: Michel, Diss. MOTION CARRIED.

2001-36 John and Mary Ann Adams 8375 Anchor Bay Dr.

Appellate requesting to construct an addition to present foot print.

Request for variance from Ordinance #89, to construction addition to current foot print increasing lot coverage to 31.90% where 30% is allowed. The application was denied because Ordinance #89, section 303 (A) allows up to 30% lot coverage and addition would increase lot coverage to 31.90%.

Nelson: Lot is 40 ft. wide? There will be no living quarters above boat well? Appellate: Yes to 40 ft. wide and no to living quarters above boat well.

Diss: Is changes on road side? There will be no changes on the water side. Appellate: Yes, changes on road side.

Public Participation:

In favor: None.

Opposed: None.

Close Public Participation.

Motion by Diss supported by Shirkey to grant variance as requested due to lot width of 40 ft

AYES: All. NAYES: None. MOTION CARRIED.

2001-37 John Dayton 1275 N. Channel Dr.

Appellate requesting privacy fence. A four ft. fence was there and stops 30 ft from water. A six foot stockade fence has been installed and appellate wants to retain the six foot fence.

Request a variance Ordinance #89 to be allowed to retain a six foot privacy fence. Original application was denied because of Ordinance #89, section 810 and 1400.

Letter: Opposed: Robert and Celesta Nominees, 2460 Cottage Lane.

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Continued: 2001-037

Public Participation:

In favor: None.

Opposed: Edward Hotchkiss, (representing mother) 120 Petoskey.

Close Public Participation.

Kirkpatrick: How long has current fence been put up? Appellate: Approximately two years.

Nelson: Usually a stockade fence is not put on water front property. Stockade fence is used to separate commercial from residential.

Kirkpatrick: How old are your children? Appellate: 2 and 3 years and a new born.

Shirkey: Could you have a four foot fence? Nelson: ZBA is addressing stockade fence.

Kirkpatrick: Realizes the concern of children in the area.

Nelson: Fence does not require a stockade fence.

Diss: ZBA has rejected fences. It serves no purpose.

Appellate: I am begging to protect my children and I could change the material.

Nelson: You could change the material but see Clay Township Building Dept.

Appellate: Mr. Kras (Clay Township Zoning Administrator) says to see ZBA.

Nelson: Part of the fence is cyclone. Appellate could take down stockade fence and replace with different material.

Motion by Michel, supported by Kirkpatrick to remove stockade fence and install four foot cyclone fence.

AYES: All. NAYES: None. MOTION CARRIED.

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Roy Fournier

9565 N. River Rd.

Appellate requesting to construct a three foot tall fence (black vinyl, wire mesh), on gravel road side.

Request a variance Ordinance #89 to construct three foot tall fence. Original application was denied because of Ordinance #89, section 810 and 1400.

Public Participation: In

favor: None. Opposed:

None. Close Public

Participation.

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Continued: 2001-038

Michel: Is fence on water side? Appellate: No.

Diss: We have denied fences for this hardship. Are we setting a precedence? Nelson: No.

Nelson: Fence is more favored to highway side.

Michel: Has the same problem with Diss with fence being located on water side.

Nelson: The lot is rather unique and located on the corner.

Shirkey: The lot is a unique shape.

Diss: What is the hardship?

Kirkpatrick: There are feelings more than "just a dog."

Motion by Kirkpatrick, supported by Shirkey to grant a three foot fence as presented for the dog.

AYES: Shirkey, Kirkpatrick, Nelson. NAYES: Diss, Michel. MOTION CARRIED.

2001-39 Albert Scalzo 7229 Flamingo

Appellate requesting to construct a 14' x 35' enclosed porch.

Request a variance Ordinance #89 to construct 14* x 35' enclosed porch requiring a variance of 8*6" on southern water side. Original application was denied because of Ordinance #89, section 303 (C), 810 and 1400.

Public Participation: In
favor: None. Opposed:
None. Close Public
Participation.

Kirkpatrick: House is constructed on an angle, will this effect variance? Appellate: Structure should be square on lot.

Nelson: Variance is approximately 8-9 feet from average setback. Michel: There are additions upstream but not very far. Appeal is too big. Nelson: House is now located 65 ft. off lot line.

Michel: Could you get by with 12 ft.? Appellate: 13 ft.? Dining room has a bayed window and will use patio for foundation.

Shirkey: Could it be 12 ft.?

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7, Public Comment

Edward Hotchkiss, 120 Petoskey, I made a verbal request to be put on the agenda for tonight and was denied because of date (Monday, 6/18/01) regarding stockade fences (Ordinance #89). Can I get a copy of the meeting minutes? Nelson: Yes, obtain a copy of the minutes from Clay Township Building Dept.

Nelson: ZBA only addresses Ordinance #89, but does no enforcement for homeowners associations, deed restrictions, etc. These do not relate to ZBA. Homeowners should file a court suit.

8. Adjournment

**Moved by Michel, supported by Kirkpatrick to
adjourn at 9:25 p.m. AYES: All. NAYES: None.
MOTION CARRIED.**

Respectfully submitted,

Dlores M. Nelson
Recording Secretary