

MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS HELD ON THURSDAY, MAY 15, 2003 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

Absent: Marianne Diss, Excused, Chuck Michel

Also present: Tim Wiggle, Zoning, Planning, Code Enforcement Officer.

2. APPROVAL/AMENDMENTS TO AGENDA

Amendment: Add the approval of the Minutes of April 17, 2003

Moved by Kirkpatrick, supported by Shirkey to approve the agenda as amended.

AYES: All NAYES: None Absent: Diss, Michel. MOTION CARRIED

3. APPROVAL OF MINUTES OF APRIL 17, 2003

Moved by Kirkpatrick, supported by Shirkey to approve the minutes of April 17, 2003 as presented.

AYES: Kirkpatrick, Shirkey, Nelson NAYES: None ABSENT: Diss, Michel MOTION CARRIED

APPROVAL OF MINUTES OF April 24, 2003

Moved by Shirkey, supported by Kirkpatrick to approve the minutes of April 24, 2003 with a change of the date on page 3 from March 19, 2003 to April 24, 2003.

AYES: Shirkey, Nelson, Kirkpatrick NAYES: None ABSENT: Diss, Michel

4. ZONING BOARD OF APEALS 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 27.04 of Ordinance #123. There are five members on the ZBA, three 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

2003-0012

William Farr

5340 Harcus Ct.

Represented by William Erdman: Request to split an existing lot containing four (4) residences into three (3) lots.

Request for variance for Ordinance #123, to do a lot split with one residence on each of two (2) new lots and two (2) residence on the third lot. Original application was denied because Ordinance #123, Article XVIII, section 18.03, par. 5.

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Mr. Erdman: Appellate is requesting the following variances: **Parcel "A"**, Nineteen (19) feet from the required rear yard of forty (40) feet, **Parcel "B"**, 4.7 feet from the required front yard of 25 feet and a 2.76 square foot variance from the required lots size of 7800 sq. feet, **Parcel "C"**, variance of 5.30 feet from the required of 25 feet and a variance due to two (2) homes on one proposed parcel.

Nelson: Far better than previous.

Informed that there are several people at door to Office, Chairman requested a few minutes for Mr. Wiggle to investigate.

Public Participation:
In favor: No comment
Opposed: No comment
Closed Public portion

Kirkpatrick: I think he did the best he could.

Nelson: Rather see it the way proposed than the way it is.

Shirkey: There would be two that are okay.

Nelson: There will be nonconformity but we would be improving nonconformity.
Can't change a setback, that's the way they are.

**Motion by Shirkey, supported by Kirkpatrick, to approve the appeal as presented.
AYES: All NAYES: None ABSENT: Diss, Michel MOTION CARRIED**

2003-0013

Mitchell Baldwin

7267 Cardinal

Appellate requesting a 20' X 22' addition to the rear of a single-family dwelling. Requesting variances to rear yard, west side yard, east side yard.

Request a variance to Ordinance #123 to construct an addition of 20' X 22' to the rear of a single-family dwelling. Variances are requested for rear yard setback of 61.4' where 55' is required, 4.2' West side yard where a min. of 5' is required, a 3' East side yard setback where 15' is required. Ordinance #123, section 18.03, par. 5. This includes a 2' overhang on both the east and west sides.

Nelson: Do you have your documentation for the average setbacks?

Appellate: Average setback from the footing to the seawall will be 62' 5" and with the overhang it will be 60' 5". Existing average setback is 59' 2".

Nelson: How many houses?

Appellate: Five each way. One has a patio, if you measure to the patio it is 63" to the footing it is 73' 1 1/2".

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Wiggle: If it is not an enclosed patio it goes back to the footing. That will change the average setback to 61.66'.

Nelson: The new ordinance includes the overhang in the setback, normally you do not include the overhang, the new is being corrected. Now there is a 3' setback on the east side and 4.3' on the west side, which includes the overhang, if you take the overhang out it would be 6' 3" and 5". Supposed to have a total of 15'.

Public Participation:
In favor: None
Opposed: None

**Motion by Kirkpatrick, supported by Shirkey, to approve the request as presented.
AYES: All NAYES: None ABSENT: Diss, Michel MOTION CARRIED**

2003-0014 James Hibbert 7267 St. John Drive

Mr. Greg Devries representing Mr. Hibbert: Requesting to tear down existing garage and build a new one with an additional 3' added to the west side.

Request a variance to Ordinance #123 for (1) a front yard (road side) setback of 10.7' where the required setback is 25' in a R1 district and (2) to build in the front yard (road side) which Ordinance #123 currently does not allow; this has been recommended to be changed by the Planning Commission.

Nelson: He is on the curve of the road, and the lot is pie shaped, which is a hardship.

Public Participation:
In favor: None
Opposed: None
Closed public portion

Kirkpatrick: I don't see a problem, there will be a change in the wording in the Ordinance and would rather see a new garage than a old dilapidated one

**Motion by Kirkpatrick, supported by Shirkey, to grant the request as presented.
AYES: All NAYES: None ABSENT: Diss, Michel MOTION CARRIED**

2003-0015 Ken & Robin Gorinski 7203 Bluebill

Mr. Gorinski is requesting a variance in order to demolish his current non-conforming garage and build a new one in the same space.

Letter in opposition: E. C. Tiffin 7217 Bluebill Isle.

Request for a variance of 9.3' in the rear (water side) setback where the required setback is 55' in a R2 district, (2) to be in the unobstructed yard space and (3) to have a height of 19' where the maximum allowed for an accessory building is 15'.

Appellate: Pictures to show the garage is shifting.

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Shirkey: Tearing down old one?

Appellate: Like to and tear out old concrete and put in foundation.

Nelson: New garage with a second story?

Appellate: Yes, we would like to have some storage up there.

Public Participation:

In favor:	Velma Williams	9468 Pearl Beach Blvd.
	Kevin Williams	9468 Pearl Beach Blvd
	Michael Patrick	7201 Bluebill
	Linda Patrick	7201 Bluebill

Opposed: None

Closed public portion

Nelson: When a building is close to water you will have shifting

Shirkey: It has no footing or foundation

Nelson: We're here for rear side back and obstructed yard space and the height. I don't see a need for the height. In your packet you have his dissertation.

Kirkpatrick: I'm opposed to second stories.

Nelson: You are going to keep the existing footprint?

Appellate: It is actually a smaller garage.

Wiggle: This isn't really a second story, he's building in the gable.

Motion by Shirkey, supported by Kirkpatrick, to approve except for the height variance.

AYES: All NAYES: None ABSENT: Diss, Michel MOTION CARRIED

2003-0016 Kevin Williams 9468 Pearl Beach Blvd

Appellate requesting a lot split

Request for a variance to Ordinance #123, Article II, section 2.03 and Article III, section 3.01, par. 10 and Article XVIII, Section 18.03, par. 5. Parcel "A" a variance on the south side of 4.60 feet from the 5 foot minimum and variance on the north side of 5.90 feet from the 10 foot minimum to meet the total 15 foot side yard requirement. Parcel "B" has an accessory structure with no primary building.

Nelson: Do you own the property?

Appellate: My parents' do, going to make it a gift to me.

Shirkey: There is a building on it now?

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Appellate: A garage

Nelson: How soon do you plan on building?

Appellate: Hopefully this summer.

Kirkpatrick: You have to build within a year or you will have to come back for an extension..

Nelson: You would be required to post a bond.

Public Participation:

In favor: None

Opposed: Brad Vivier 9466 Pearl Beach Blvd

Thomas Graham 9403 Pearl Beach Blvd

Closed public participation

Nelson: Existing house and garage, we can't do anything about them. Lot will be conforming.

Motion by Kirkpatrick, supported by Shirkey, to grant request with a \$5,000 Letter of Credit, progress to be started within a year, Letter of credit not to be returned until a C of O is given for the home. AYES: All NAYES: None ABSENT: Diss, Michael MOTION CARRIED.

2003-0017

Jim & Kim Plutter

8837 Colony Drive

Request for variances to build a house, garage and boathouse.

Request for a variance of Ordinance #123, section 3.01, par. 5; section 3.01 par. 7d; section 18.02, par. 4; section 18.03, par. 5. Variance for (1) to encroach into the average setback of the adjacent homes in the rear yard (south, waterside yard), (2) a lot coverage of 30.77 percent, the allowed is 30%, (3) a east side yard setback of 4 where the minimum allowed is 5', 9' west side yard setback where 11' is required to give a total of 15', (4) a height of 23" where 15' allowed for an accessory building, (5) a second story in an accessory building, (6) a totally enclosed boathouse where 8' open walls above grade are required, (7) a front (roadside) setback of 1' for the Boathouse and 11.30' for the garage where the ordinance requires a minimum of 15', (8) no setback on the canal rear yard; this includes a 7.29' deck on the second floor where the required setback is 3', (9) a 2' east side yard setback where a minimum of 3' is required.

Appellate: We are moving the house back 2.5' so we don't need a variance for the distance from the seawall.

Nelson: But lot coverage is still 30.77%. The lot is an adequate lot and it is new construction.

Kirkpatrick: I can't see the lot size being a hardship.

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Letters: Opposed: Paul C. Bridgman 7985 Colony Dr
 Frederick R. Curd Jr. 8731 Colony Dr
 Raymond & Darci Sankuer 7361 Flamingo
 Joseph C. Zdunski 7307 Flamingo
 Clement Heyza 7353 Flamingo
 Dennis & Karen Robinson 7365 Flamingo
 Ed McKenna 7324 Riverside Dr

Nelson: Tim, why do we take lot coverage for the two lots?

Wiggle: When it joined like that everything on those lots are inclusive. You take the total of the two and the total of the buildings for your percentage.

Nelson: For the boathouse we have the height.

Appellate: We will be the same size as neighboring boathouses.

Nelson: What will be the height from the floor of this second story over the garage?

Appellate: Eight foot.

Nelson: Roadside back?

Appellate: There is a one foot setback that everyone thinks is off the road, there is 11 feet from the curb and on the garage it is 20' back.

Nelson: Boathouse will take up the full depth or length but the garage won't. Last, side yard setbacks.

Public Participation:

In favor: Don East 7777 Colony Dr
 Joanne East 7777 Colony Dr
 Don Vanryckeghem 8018 Anchor Bay Dr
 Robin Vanryckeghem 8018 Anchor Bay Dr

Opposed: Gerald Tilly 7533 Colony Dr
 Paul Bridgman 7985 Colony Dr
 Ruth Harms 7355 Flamingo
 Raymond Sankuer 7361 Flamingo
 Dennis Robinson 7365 Flamingo
 Margaret McAllister 8575 Colony Dr
 Ed McKenna 7324 Riverside Dr

Closed public participation

Nelson: I'm not happy with changes. What you have now is not any closer to the stipulations we were talking about last time.

Appellate: Boathouse is same as neighbors.

Nelson: To clarify, the 1-foot is off the lot line not the road.

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Kirkpatrick: I don't think it's the boathouse as much as the accessory building.

Nelson: The boathouse possible could be okay but the height variance over the garage is the problem.

Kirkpatrick: I don't care for the size of the storage area.

Motion by Kirkpatrick to deny as presented and bring it back separately. Motion dies for lack of support.

Chairman reserves option of supporting.

Motion by Shirkey, supported by Kirkpatrick to deny as presented except the 1 foot side yard variance @ fireplace granted, 9' side yard.

AYES: All NAYES: None ABSENT: Diss, Michael MOTION CARRIED

6. INTERPRETATION FOR NON-CONFORMING USES FROM MIKE KRAS

A commercially zoned property that has a continued residential use and principle residential structure. Can that principle residential structure be altered or enlarged and still continue as residential con-conforming use?

Kirkpatrick: Read Zoning ordinance #123, Sec. 3.24, Par. 2 & 3.

Shirkey: Is it non-conforming because it's residential in a commercial?

Nelson: Yes. Residential is the highest use.

Kirkpatrick: From what I'm reading it can as long as it is only 20%.

Shirkey: I agree as long as it doesn't go over the 20%.

Nelson: I agree. If it was a commercial business in a residential zoned area, you can't expand it but a resident in a commercially zoned area, no problem.

Wiggle: They can fix or expand as long as they don't exceed the 20%?

Kirkpatrick: That is our interpretation.

7. INTERPRETATION OF ORDINANCE #123

1. Section 2.02 – definitions under setbacks, is this intended to include the overhangs?

Kirkpatrick: This has been a problem. I don't know if it is something we can decide or if it has to go to the Planning Commission.

Wiggle: If it includes the overhang it reduces the building by 4 feet. The planner feels it includes the overhangs. If you read the definition of an appendature it is accessory to, and overhang is not an accessory, it is part of the house.

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Nelson: To me you don't measure to the overhang, you measure to the block or the footprint. Is that the consensus?

Kirkpatrick: Yes

Shirkey: Yes

2. Nonconforming structures.

Kirkpatrick: We just discussed that.

3. Section 32.06, Permitted signs in Commercial and Industrial Districts.

Wiggle: Do we use all buildings to calculate the size of the signs?

Kirkpatrick: Is this one the Planning Commission is changing? Then we don't have to give you an interpretation.

Wiggle: They're changing the number, not the verbiage. We need an interpretation of how to calculate the size of a sign.

Nelson: You're wondering what should be counted along the front side?

Wiggle: Yes, do we include all the buildings facing the road?

Nelson: Yes.

Wiggle: What if there are two or more buildings?

Nelson: I guess we need specifics, not generalities.

8. MEMBER COMMENTS

Kirkpatrick: I would like a copy of the letter you received from Mr. McNamee

Shirkey: So would I.

Nelson: Read letter. Send one to Marianne Diss and Chuck Michel.

9. PUBLIC COMMENTS

Gerald Tilly: 7533 Colony Dr. Re: Gorskey & Plutter

Paul Bridgman: 7985 Colony Dr. Re: Colony Drive variances.

Woman from audience: What's to stop someone from going ahead after you deny them?

Nelson: If you see something call the building department or on the weekend the police.

How does the building department know they were turned down?

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Kirkpatrick: Everything is on record.

Kirkpatrick: I prefer to completely deny or completely approve so it's clear.

Nelson: Planning Commission is zoning board in Clay Township, we are the board of appeal and then it would go to Circuit court.

Dennis Robinson: 7365 Flamingo Re Colony Drive and 1 ft setback. If someone starts to build without a permit who stops them?

Nelson: The building department.

Question concerning 60' lots.

Nelson: They are buildable. Talk with the assessor.

Bill Erdman: I would like to commend this board; it's not an easy job.

Ed McKenna: My letter wasn't read, gave copy to board. Does new seawall change the setback?

Nelson: Check the survey.

10. ADJOURNMENT

**Motion by Shirkey, supported by Nelson, to adjourn at 9:59 p.m. AYES: All NAYES: None
ABSENT: Diss, Michel MOTION CARRIED**