

MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS HELD ON THURSDAY, JULY 15, 2004 AT 7:30 P.M. IN THE CLAY TOWNSHIP BOARD ROOM, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP, MI 48001

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

1. Roll call

Present: Joanne Shirkey, Ron Nelson, Cindy Kirkpatrick, Marianne Diss

Excused: Chuck Michel

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

2. APPROVAL/AMENDMENTS TO AGENDA

Moved by Kirkpatrick, supported by Diss to approve agenda.

AYES: All. NAYES: None. MOTION CARRIED. Excused: Michel

3. APPROVAL OF MINUTES OF JUNE 17, 2004

Amend minutes as follows: Strike out Kirkpatrick in middle of Page 3.

Moved by Diss, supported by Shirkey to approve minutes as amended.

AYES: All. NAYES: None. MOTION CARRIED. Excused: Michel

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 27.04 of Ordinance #123. There are five members of the ZBA, four 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

(OLD)2003-23

Jim/Kim Plutter

8837 Colony

Applicant is requesting to build a combination garage/boathouse.

Request for 1st variance from Ordinance #23 to have a totally enclosed boathouse and 2nd variance of 13.07 ft. to have a front setback of 1.93 ft for the boathouse and 3.67 ft. to have a front setback of 11.33 ft. for the garage. The application was denied because of Ordinance #123, section 3.01(7d) and Section 18.03 (5)

Nelson: Anyone who wishes to speak on behalf of this appeal?

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE TWO (2)**

Carol Rosati: I am Carol Rosati, attorney that's handling this case for the Clay Township Zoning Board of Appeals. I would like to give you a little background so you may know why we are here. If you may recall in September 2003, the Plutters appeared before you requesting three (3) specific variances and they were denied at that time. In October the Plutters filed suit in Circuit Court as permitted by law. The complaint contained several counts and one was in regards to their appeals but they also mentioned certain constitutional violations as a result of the denial. After the lawsuit, we filed the Certified Record on Appeal and the Appellate Brief on both sides and the matter was scheduled for oral argument. Subsequently the court issued a written opinion. The court determined it did not believe it had sufficient reason articulated as to why you had made the decision you had made and remanded back down to you for further proceedings and for you to specifically state why you were granting or denying the variances. Again I would ask you to look at your zoning ordinance. There are certain standards that are set forth in that zoning ordinance and in addressing this matter tonight you need to for the court to go through those standards and articulate your reasons as to why you believe the variances should or should not be granted. I would also like to point out that when this was originally before you there was a request for three (3) variances. It has subsequently been determined that no variance is in fact required for the height and that it is back before you on a request for two (2) variances – the one to enclose the boathouse and the second from the road setback. Do you have any questions about the procedures? Okay, depending on what happens, this will then go back up to Circuit Court. Feel free to ask me any questions at any time.

Douglas Buck: Good evening, my name is Douglas Buck and I am the attorney for Mr. & Mrs. Plutter and I am not going to take up a lot your time this evening and I appreciate the opportunity to speak. I just want to summarize what the two variances are now that they are seeking and continue to seek in the Circuit Court – what they relate to. The first relates to specifically enclosing a boathouse they are contemplating to build on a lot across the street from 8837 Colony Dr. The ordinance calls for a boathouse to not be enclosed to a distance of 8 ft. The second variance sought is a setback from the road of the boathouse of 11 ft. 8.7 inches.

Nelson: I just want to clarify that the setback is from the road lot line, not the road itself.

Douglas Buck: Correct. There may be some confusion as to what exactly the number was, but the exact number is 11 ft. 8.7 inches. Now I will speak to that one first. It is contemplated in the ordinance that canal lots that sometimes the setback of 15 ft. is just not possible so in the ordinance specifically Section 3.12 (2) it calls for a potential supplementary setback and that's determined by looking at the lots within 330 ft. of the lot in question to see what those setbacks are and then taking an average of that number. We did so and I'll lay out what we found. Of those lots within 330 ft. specifically we found the following: at 8841 Colony – 10 ft., 8857 Colony – 15 ft., 8868 Colony – 20 ft. 8 in., 8995 Colony 10 ft. 10 in., 8835 Colony – 14 ft. 9 in., 8735 Colony – 10ft. 3 in., 8731 Colony – 10 ft., 8665 Colony – 15 ft., 8659 Colony – 13 ft. 1 in.. I want you to notice that there are actually three lots in this area that are less than 11 ft. and we are seeking a setback of 11 ft. 8.7 inches. Additionally the average of these lots is 13 ft. 1 in. which is certainly more than the 11 ft. 8.7 in., but is only 1 ft 2.3 in. less. Clearly we feel that this is well within the range of what is characteristic of the neighborhood. We're looking for a setback that falls, really if

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE THREE (3)**

you take these together, falls somewhere in the middle, some being more, some being less, but all similarly situated. Additionally to the second variance sought, the enclosed boathouse, we will indicate that a lot of the newer boathouses in this area are enclosed. Specifically, there are newer enclosed boathouses at: 7987 Colony, 7991 Colony, 8182 Colony, 8449 Colony, 8451 Colony, and 8551 Colony. When my client was here back in September, board member Michel, I believe, indicated on the record that he had seen in the past that a lot of these variances seeking enclosed boathouses were being approved and I guess was curious as to why this one wasn't. My clients would contend that an enclosed boathouse in this area would not only be more esthetically appealing to cover up the boat, the cables, the cradle and those items that go along with that, but also will be safer in limiting the access from the public to the boat, house, and surrounding area. So those are the two issues apparently in front of the board today. My client's position is that these requests are reasonable based on the character of the neighborhood. He is not asking for things that are not done in similarly situated homes right on his same street, even adjacent to his property.

Nelson: I address this to Carol. In essence what we have to take in is the hardship plus, and I can't remember the terminology.

Carol Rosati: The practical difficulty.

Nelson: Yes, the practical difficulty and of course that is why the judge has sent it back to us.

Carol Rosati: You've got your standards set forth and those standards really are the standards to determine whether or not a practical difficulty has been shown. You will note that they are written in a way that is fairly discretionary and so in reviewing those standards you can exercise your discretion to determine whether or not there is sufficient evidence supported to meet those standards for granting the variance.

Nelson: Thank you. Any questions before we open it to the public? Okay, regarding the boathouse or the proposed boathouse at 8837 Colony Dr. to where they want to erect a boathouse that will be closer to the road than what the ordinance allows or permits and also the fact that they want to close in the boat well which has an attached garage. Anyone in the audience that is in favor of the request for the boathouse at 8837 Colony Dr.? Anybody in favor?

Members of the audience: We can't hear you

Nelson: It must be me then. Anyway who is in favor of the boathouse at 8837 Colony Dr.? I will ask one more time, who is in favor? Ok, we have umpteen people. Anyone in the audience opposed to the request? (had trouble with the PA system) Ok, let's start over again. Anyone in the audience in favor of the request for a boathouse that's a little bit closer to the road than the ordinance allows and that the boathouse is separated from the garage and has full walls. Who in the audience is in favor of the request for Plutters? Ok, let's just get a feeling for the addresses. There are many people.

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE FOUR (4)**

Public Participation:

In Favor: William Wilbur – 8451 Colony Drive – I have no problem with it.
George Parker – 8501 Colony Drive – I am in favor of it and I think it will be an asset to the community. I will fit in with the other boathouses.
Daniel Ketz – 7983 Colony Drive – I am in favor of it. I think the variance should be granted as requested. I own two pieces of property on the North Channel which is similar to the one that the gentleman is requesting the variance for. I don't know the gentleman but I did see the notice in the paper and that is why I am here. Currently the township zoning is causing an undue financial hardship upon that parcel of land and limits the owner to use that property in a way that which is was set forth to be used. Variances that are being requested have been clearly granted to many other like owners on Colony Drive and elsewhere within the township since the township first implemented its zoning laws many years ago. The parcel of property is unique and unambiguously different from the vast majority of properties located elsewhere in the township and for which the current zoning was designed to primarily to control. Also that's why the ZBA exist to take a look at those factors. Now, currently the zoning does not allow the owner to use the property in a manner for which it was expressly plotted to develop the purpose for which these properties were created was to provide the sole and express purpose of building boathouses with guest quarters and/or garages. Not allowing the owner to use the property in this manner which is consistent with the reasons that exist greatly diminishes the property desirability and value of that property. Furthermore, such restrictions also diminish the desirability and market value of other like property within the unique community that we live in, including my home. For too long and on too many occasions during similar hearings like this for boathouses on Colony Drive on the North Channel, a few ZBA personnel have allowed themselves to be unduly influenced by personal feelings of just a few troublemakers within our community, which has resulted in inconsistent rulings, repeated appeals, and unnecessary court costs for the township and the residents who are trying to make their property better. In 1984, I, myself came before the ZBA for variances to build a boathouse. If you go back over your records, you will see that it was primarily one individual who was opposed to it and that individual gave reasons for that opposition. Later in confidence, and this is like a couple of years later, told me that those were not the real reasons why they opposed it. The real reason was that it shaded his garden.

Nelson: Sir, let's keep it more toward the Plutter case.

Mr. Ketz: Ok, my last point is that Colony Drive is a very unique piece of property. It is extremely desirable and it is like one of the township's crown jewels residential areas. People seek out that community, that unique community, to live in and those people who live on or want to buy on the North Channel pay a premium on the presumption that they will be able to use the property for which it was developed and platted, to build boathouses, garages, etc. and when they come there and buy then they go to build, they have this situation to deal with. So I think it has been demonstrated that there are many

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE FIVE (5)**

reasons for which you can grant a variance because of the hardships and in fact when you don't you financially take away from the value of the property. Because it encourages people not to buy here and then they have this extra cost to come before the ZBA several times and then going to court. That concludes my statement.

Hugh Vestal – 8961 Colony Drive – I am approximately 6 lots from the proposed boathouse. I find that the request that the Plutters have is consistent with current property utilization. I think that the zoning ordinances that were recently adopted ignored the existence of Colony Drive and that has created a hardship for Mr. Plutter. I think that Mr. Plutter should be granted his variance.

Anonymous Comment – did not state name: When the Colony was established back in the Twenties, the original homes on the Colony all had boathouse with apartments and so on. That was the idea of the whole thing is the first place. Since then many more structures have gone up with boathouses, with apartments above, with enclosed boathouses. I would think that common sense should come into play at some point. Somebody should not subjected with attorney fees, going to circuit court, going all over just to conform to what we already have on the street. There are so many homes on that street, it is a unique situation where we have the lots on the back, it is not like Marina Drive, I understand that. I understand everybody would love to have a boathouse, but it is a different situation when you have a separate lot in the back. The new buildings have enhanced the tax base for our township, which I would think would be part of your responsibility. I mean they are tearing down old buildings and putting up new nice buildings. How can that hurt?

Mr. Whittlesey – 8735 Colony Drive – I'm one door removed from Mr. Plutter and I am very happy to have him as a neighbor. He is building a beautiful home. I am very much in favor of the boathouse.

Opposed: Karla Orlando – 7357 Flamingo – I live on Flamingo Drive which is parallel to Colony Drive. So my front yard actually faces Colony Drive where we have the view of the North Channel. I bought my house for the view. I have a view and my neighbors do have a boathouse across the canal and if they were to build a two story boathouse, I would not have a view and I would not have purchased my piece of property. So that is my opposition. I agree that they should be able to build a boathouse, but I believe that it should be in accordance with the township rules. I wanted to put up a fence but I can't because the township has an ordinance against that on my street.

Mr. Bane – 6506 Marina – Are we changing the ordinance for the township, for all boathouses? We can build boathouses throughout? Or is this for an individual on Colony Drive? If we abide by the ordinance, then it should not be built. Otherwise, I have a boat and I would like a boathouse, but we can't put up boathouses on Marina Drive, and you are going to let them do it on Colony?

Paul Bridgeman – 7985 Colony Drive – No we are talking about hardship.

Nelson: Hardship and practical difficulty:

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE SIX (6)**

Mr. Bridgeman: Well hardship is a big part of it, practical difficulty is because they want something they don't have and they shouldn't have. So we should talk about both of them. On the hardship part of it is, there isn't one person that lives on Colony Drive that has a hardship, they don't know what hardship is. Now they don't get everything they want, but they don't want to obey the law. If you don't like the law then change it and you did change it, but they don't like the new law either. They didn't like the old law. And I'm that gentleman in 1984 that Dan Ketz was talking about and you were on the board and you voted against him getting it, but things have changed a little bit since that day. Now Colony Drive is a wonderful street and people do keep their property up quite well. But we do have the elite section and then we have the place where the ordinary people live and then we have the people who are not living on the North Channel so they are not really acceptable. What I am going by is this here, we have one set of what to do, we can all read it and know about it and we can put people in on a vote if they want to change it, nothing prevents it. But they want to do it on hardship. There is a big crowd of Colony people here, but I am not one of the elite, so I do not sit with them. Most of those buildings that you are talking about that have been built in the last ten years, where they have violated every zoning law we have. And you people up there voted to let them have it. It was usually three to two. And they didn't observe the laws, they got a hardship. Now there's another gentleman, Hughie.

Nelson: Pardon me, Mr. Bridgeman, why don't you keep it to the Plutters, instead of going off onto a tangent. You are opposed correct. Let's keep it to the Plutters, instead of going on about other people on Colony Drive.

Mr. Bridgeman: Now we went through this and I understand it went to court and it has come back. Now I am not an attorney and I am 90 years old and I can do a lot of work. I want to stick to the reason we have those ten boathouses that have been put up in the last ten years is because they were a hardship and there wasn't such a thing as a hardship and you should be ashamed of yourselves for voting for them.

John Mantyk – 6502 Marina Dr. – I have been a resident of this area since 1971, so I guess I am probably a local by now. As far as this, I am just overwhelmed. We have an individual who buys a piece of property, comes in and all of sudden we have to have variances to build a big house that are outside our ordinances, comes down the road and now he wants more variances. Why didn't you buy property that would fit your needs? Maybe you should have gone. There is no hardship on this. You did not inherit this from your father who had it for fifty years. This is not a hardship issue. Colony Drive, yes it is a special, unique area. So is Marina Drive. They've had boathouses for years. Up and down the river had boathouses for years. Dyke Road, they've had boathouses for years. They have to abide. They can put a covered hoist in, people survive, they can live with that. That is the ordinance. Instead of spending on attorneys, maybe if you get involved, get into the community, get on the Zoning Board and change the ordinance. I would love to have a boathouse. I am sure there are a lot of people here who would love to have a boathouse. I have a sixty-four year old boat that sits outside. I would truly love a

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE SEVEN (7)**

boathouse. If the Colony residents are that upset that they are being deprived because of this and they need to have a variance, they should go before the tax tribunal and have your tax rates lowered. If you can't fully utilize your properties, the state will compensate you. That is the way it is. As far as the three adjoining properties, the other boathouses, who measured that? I don't see a professional survey.

Ruth Harms – 7355 Flamingo – I just want to say that if the law says that the enclosed boat well is against the ordinance, then it shouldn't be. Like the gentleman said he would like a boathouse, I would love a covered boathouse. But my neighbors certainly aren't going to like it and they are not going to allow me to do it. It is against the law.

Annette Heyza – 7353 Flamingo – I am opposed to this because, I was born and raised here and people move up here because they love the area and it is a unique area to live in. This whole Clay Township is with the water. Then these people move up here and they don't want to follow the rules and the regulations. They want to make their own. They want to build a boathouse, well build it, but stay within the rules and why they need a two-story boathouse, I don't understand that unless they are going to put a lift in it and store their boat on the second story – I don't know why they need a two story. Why they can't build a one-story and stay within the zoning, that's what we have rules for.

Nelson: This boathouse height wise, design wise it meets the ordinance.

Wiggle: Not a two-story – only a one story.

Kirkpatrick: There is no living above it.

Ruth Harms: They should just obey the rules like the rest of us have – don't change the area by overbuilding.

Jerry Mantyk – 7276 Aqua Isle – (Most of the portion of his comment is inaudible as he did not step up to the microphone.) He refers to living in the area for quite awhile. He talked about setback issues and was curious if those setbacks go for grandfathered in boathouses. He didn't understand why people would buy pieces of property and not know what they could build.

Close Public Participation.

Nelson: There are some letters to be read in:

Marguerite and Des McAlister – 8835 Colony Drive – In Favor

Gary Glessner – 8115 Colony Drive – In Favor

Bernard & Donna McQuade – 8119 Colony Drive – In Favor

Clement Heyza – No Address – Opposed

Kirkpatrick: I received a letter that was at my chair tonight that was addressed to me from Paul Bridgeman regarding a letter he received from Citizens Protecting Property Rights for Clay Township Citizens and a copy of letter that Mr. Bridgeman submitted to Tom Eder, Chief of Clay Township Police

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE EIGHT (8)**

Department.

Nelson: Any discussion members?

Kirkpatrick: I would just like to clarify something Ron. The one gentleman spoke in regards to the Zoning Board of Appeals. We do not make the zoning laws. We do not make the zoning ordinance, that is done by the Planning Commission. If the people on Colony feel that they are being unfairly treated, or whatever, they should be taking their proposed action to the Planning Board of Commissioners, not the ZBA Board. This board just addresses zoning variances. The Planning Commission is the one that makes the ordinance. The Zoning Board does not. If at the time this ordinance was brought forward in front of the Board, I denied it on four different occasions. Okay, I voted against this whole zoning book. I seen trouble spots. I seen a lot of trouble spots. However, it is not the Zoning Board that deems these rules and regulations that are in this book, that is the Planning Commission. So if they have a problem and they think that Colony should be treated in a different way or area, they should be presenting their case to the Planning Commission, not to the ZBA Board.

Nelson: Any other discussion regarding the appeal?

Moved by Kirkpatrick to deny request.

Kirkpatrick: I feel that the undue difficulties and the practical difficulties that were put forth are not there. This is a new lot, new location. I do not feel the variance for the road frontage off the front would be in dire safety of people, that road is now owned by and maintained by the County, not us. Therefore, that road may be widened in the future. We cannot determine if it will or will not. If we go past that average 13 ft one inch, we're creating a new precedence, setting a new precedence. It becomes a safety level at that point in time. I think that he could build his boathouse and remain back far enough without the variance out the front. The enclosure of the boathouse is against the regulations. I do not feel that it is undue duress against him or practical difficulty on him because simply the fact is the boathouse is still allowed, it just does not need to be enclosed. Did I word that properly?

Carol Rosati: Do you feel that you went through the various standards of the ordinance?

Kirkpatrick: Yes.

Shirkey: I will support that.

Nelson: It is moved and supported. Okay. I don't know. I have no problem with it. They are going along with what other boathouses have been along the Colony and I don't think that we have presented practical difficulty. I mean there is practical difficulty on his part. So, I don't know. I am opposed to your motion, but that is another story.

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE NINE (9)**

Diss: May I make a comment? We have had so many requests through the years for enclosed boathouses on many, many canals and they have been rejected each time. Now, how can we in good conscience tell these people you cannot have an enclosed boathouse because, what. How can we justify? You can if you live on Colony, but if you live on Flamingo, you can't. We can't.

Nelson: There is a motion on the floor. Motion was made by Cindy and supported by Joanne.

Shirkey: I would also like to make a comment regarding the setback. We are enhancing a setback that is already existing in an average and we would be making it closer to the road.

Nelson: Only by a small amount though.

Shirkey: If we keep perpetuating that average closer and closer

Nelson: It is a moving average, I don't deny that.

Shirkey: In regards to these average setbacks. Tim have you measured these? Are these accurate?

Wiggle: Yes, to the best of my knowledge they are accurate for that average of 13.1. At the time it was Trevor and Mr. Plutter could correct me if I am wrong, but Trevor Adams was working with me on the variance and he did these and we verified that that would be the average.

Shirkey: Another question I had for you. These, I don't know there is ten, twelve of them I guess, are some real old, some brand new?

Wiggle: There is a mix and again we went out and Carol Rosati was with Mr. McNamee and myself when we looked at these and I looked at them and verified for her that there are some newer structures, some are old existing structures up and down the Colony. There have been a number of newer structures built, I would say probably in the last ten years and I think Mr. Gordon and some of the other people on Colony would be more aware of the time frame because I have only been here a couple of years, but it mix of old and new. So it is not one or the other.

Nelson: End of discussion. Call to question. The motion is to deny the request as presented. We will have to come up with some practical difficulty reasons.

Kirkpatrick: I covered them when I made the motion.

Nelson: Okay. All those in favor of the motion to deny the request say Aye. **(Motion by Kirkpatrick, supported by Shirkey to deny the request as presented.) AYES: Diss, Shirkey, Kirkpatrick. NAYS: Nelson. MOTION DOES CARRY. REQUEST DENIED. Excused: Michel**

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE TEN (10)**

Applicant is requesting a 4' fence.

Request a variance from Ordinance #123 to have a 4' fence in the unobstructed yard. The application was denied because of Ordinance #123 Section 2.02

Nelson: Tim, does that fence of Gecks, does that meet the safety requirements?

Wiggle: Mr. Chairman, I do know that just as a point of clarity, I had talked with Mr. Kras regarding the fence around the pool, but this fence was put up without a permit and it definitely goes against the ordinance for the waterside yard.

Nelson: Then it is more than just a fence around the pool.

Wiggle: Right, they have extended that fence from around the pool and added a section of fence around the rear canal yard. Point of clarity is that the violation is that there is a fence in the waterside yard, which is not allowed.

Nelson: I know with railings and fences like that, the slats have to be a certain distance apart. Does this fence meet that requirement?

Wiggle: Yes

Nelson: Of course keep in mind and I think I speak for 99% of the people here that they all raised kids on the water.

Public Participation:

In favor: Homeowner at 7770 Phillips
Pam Peterson at 7764 Phillips
Chris Gafa at 7238 Bayview Shores

Opposed: William Neff at 7774 Phillips

Close Public Participation.

Diss: We have denied this very same fence right down from the Harsens Island Ferry. We had another one on Harsens Island that we had to have the gentleman remove. We have these requests constantly because of children and animals. We have had them where they wanted to go down to the water and this one is actually across the water's edge.

Kirkpatrick: I thought that we had approved some in the past.

Nelson: Yes, we did on Bluebill.

Kirkpatrick: Yes, we did and we did tell the guy on Harsens Island that could put his up and keep it on a

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE ELEVEN (11)**

temporary basis.

Kirkpatrick: Do you have the house up for sale?

Gecks: It was, yes.

Motion by Kirkpatrick, supported by Shirkey to grant request and mandate it that fence has to be removed in five years.

Practical Difficulty: Ordinance #123

AYES: Nelson, Shirkey, Kirkpatrick. NAYS: Diss. MOTION CARRIED. Excused: Michel

(NEW)2004-21

Richard/Colleen Kidney

7272 South Channel Dr.

Applicant is requesting to build a new single family structure.

Request for variance from Ordinance #123, (1) of 7' for north and south walls to be 15 ft., (2) of 17.5' to have a rear yard setback of 22.5', (3) of .2' to have a combination side yard of 14.8', (4) of 460 square feet to have a new single family structure with total square footage of 540. This application was denied because of Ordinance #123 Article III section 3.16 (4), Article XVIII section 18.03 (5) & (6).

Nelson: Tim, as far as BOCA Code, is there a minimum square footage?

Wiggle: No

Shirkey: DNR permits all in tact?

Wiggle: Mr. Kidney has obtained his variance for his septic, actually they are above the required elevation numbers so that isn't a case as far as Floodplain Occupation. They have all the other matters dealt with at this point.

Shirkey: Potable water? Water will be trucked in.

Public Participation:

In Favor: No comment.

Opposed: No comment.

Close Public Participation.

Motion by Diss, supported by Shirkey to approve the variances as requested, this being a unique seasonal property with wetlands and lot size.

Practical Difficulty: Lot Size

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE TWELVE (12)**

AYES: All. NAYS: None. MOTION CARRIED. Excused: Michel

(NEW)2004-22

Henry Giacona

3862 Middle Channel

Applicant requesting to build a new single family residential structure

Request for variance from Ordinance #123 (1) of .37' to have a side yard setback of 9.63' and (2) to be within the 45 degree unobstructed yard space. Application was denied because of Ordinance #123 Article XVIII section 18.03 (5) and Article II section 2.02.

Public Participation:

In favor: Robert Brosowski at 3856 Middle Channel

Opposed: No comment

Close Public Participation.

Diss: This is going to be a totally new structure, right? That is correct.

Diss: The average setback in that area is 120 ft? Yes.

Motion by Shirkey, supported by Kirkpatrick to grant variances as presented according to Option A.

Practical Difficulty: Lot Size

AYES: All. NAYS: None. MOTION CARRIED. Excused: Michel

(NEW)2004-23

Dean/Janice Oakey

1276 North Channel Dr.

Applicant is requesting to build a detached garage.

Request for variance from Ordinance #123 of 15' in order to have a front yard setback of 10 ft. The application was denied because of Ordinance #123 Article III section 3.01 (2) and Article XVIII Section 18.03 (5).

Nelson: The shed is going to go and be replaced by the garage.

Nelson: I know there are garages near the road up and down North Channel drive.

Shirkey: I think there is only one that is closer to the road and that is down, way down.

Kirkpatrick: There are a lot more closer to the road if you go down farther.

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE THIRTEEN (13)**

Nelson: How deep is that lot? Approximately 250'

Public Participation:

In favor: No comment

Opposed: No comment

Close Public Participation.

Nelson: My problem is that he's got room to have the 25 ft. setback as opposed to the 10 ft.

Shirkey: But you don't want your trees growing into the septic field.

Kirkpatrick: That's what Tim was saying too, the septic field

Motion by Diss, supported by Shirkey to grant request as amended with a 15 ft. setback from the front property line.

Practical Difficulty: Septic Field

AYES: All. NAYS: None. MOTION CARRIED. Excused: Michel

**6. INTERPRETATION FOR MICHAEL J. KRAS DATED JULY 2, 2004 – SECTION 3.09 (2A)
(NON-RESIDENTIAL FENCES)**

Wiggle: According to Ordinance #123 it only address fences regarding zoned residential property and commercial property. Not residential use on commercial property.

Nelson: If there are a bunch of homes built on commercial zoned property, but the home have been there, they would request a residential type fence not a commercial fence.

Shirkey: You would want to be blocked from commercial property

Kirkpatrick: Actually the commercial property should have a fence between commercial property and residential property. We are supposed to be looking at the ordinance not the situation that they are asking the interpretation for.

Shirkey: I think the ordinance is written okay.

Nelson to Wiggle: Interpretation: The way the ordinance is written for fences it is based on the zoning of the property not the use.

INTERPETATION FOR MICHAEL J. KRAS DATED JULY 7, 2004 - #070704 – SECTION 3.09

Nelson: Stick to same parameters.

**CLAY TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF JULY 15, 2004
PAGE FOURTEEN (14)**

Diss: If commercial zoned property can take fence to water, then residential property next to it can take fence to water.

Kirkpatrick: Running into same issue with the ordinance. The reason why commercial property can go to water is for security reasons.

Nelson to Wiggle: Interpretation: The ordinance is written for residential property to follow residential guidelines and commercial property to follow commercial guidelines.

7. PUBLIC COMMENT

Bill and Mary Lorraine – 7303 Dyke Rd. – Questions regarding Munchies (Brisbay) Restaurant and the vacant lot next to restaurant being used for parking of vehicles.

8. MEMBER COMMENT

Shirkey: We should be saying and finding practical difficulty not hardship.

Discussion followed regarding changing of ordinance and application to state practical difficulty.

Discussion amongst members regarding the issue if potential buyers of property have to be made aware of any encumbrances set upon the property by the township.

9. ADJOURNMENT

Motion by Shirkey, supported by Kirkpatrick to adjourn at 10:05 p.m.

AYES: All. NAYS: None, MOTION CARRIED. Excused: Michel

Respectfully Submitted,

Patricia K. Watson
Recording Secretary