

**MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS HELD ON THURSDAY, DECEMBER 29, 2005 (POSTPONED FROM DECEMBER 15, 2005 DUE TO INCLEMENT WEATHER) 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, John Makuch, Marianne Diss, Anthony Antkowiak.

Excused: Tim Wiggle, Clay Township Zoning, Planning, Code Enforcement Officer.

2. APPROVAL/AMENDMENTS TO AGENDA

(6) Suggested by Antkowiak to hold the election of ZBA Officers for 2006. Only a nomination slate was discussed and accepted.

**Moved by Antkowiak, supported by Diss, to approve the agenda as amended.**

**AYES: All. NAYES: None. MOTION CARRIED.**

3. APPROVAL OF MINUTES OF NOVEMBER 17, 2005

Corrections: P.2 Antkowiak: Practical difficulty, he has trouble crossing the road. P.2 Antkowiak: .... showing good faith by willingly removing the barn across the road. P.2 Antkowiak: Motion:

....original footprint and with the attached garage .... P.3 Antkowiak: Practical difficulty is with no place else to place structure. Septic tank is installed. Practical difficulty is location of lot in relation to other properties. P.3 Antkowiak: Delete what is undue practicality? Diss, practical difficulty.

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

**AYES: All. NAYES: None. MOTION CARRIED.**

4. ZONING BOARD OF APPEALS PREFACE

Chairman: The ZBA addresses mainly practical difficulty 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, 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 REHEARING

2005-030

Kenneth Sheets

6378 Marina Drive

Timothy Tomlinson, attorney

Mr. Tomlinson, attorney: The request should be granted because lot coverage should not include the upper deck, and practical difficulty. Unroofed decks should not be included in the percentage of lot coverage (32.56%). According to Ordinance 123, Section 27.05 (3) practical difficulty would be setback requirements of deck flush with the home. Deck is not impeding into back yard and uniqueness of the

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property. Appellate will pay any additional fees if necessary.

Sheets: The ordinance has changed. The neighbor obstructs his view.

Makuch: That is an invalid statement and not an issue, 45 degree angle.

Nelson: The lower deck only is not included in lot coverage. If second floor constitutes a roof then it is included in percentage of lot coverage.

Makuch: There is a need to discuss deck on second floor; does that constitute part of the house? There is no unnecessary hardship. What is the uniqueness to the property? All the lots are the same size. The conditions and circumstances unique to the property are created by the owner. Ordinance is 30% coverage.

Antkowiak: Did you go to the Building Dept. before deck was built? Appellate: No.

Antkowiak: Discussed roof vs deck.

Diss: Appellate is not gaining any living area. He cannot enclose the deck.

Makuch: The second floor deck constitutes a roof. Mr. Wiggle is saying that because it is over the patio it constitutes a roof which is part of the house which will increase the square footage.

Mr. Tomlinson: It is a deck and not a true roof. What is intent of ordinance?

Diss: The deck is there, considered part of lot coverage, it is not because of being on second floor.

Shirkey: There is a deck on two floors.

Makuch: Is it a patio, wolmanized wood? Mr. Sheets: Yes.

Diss: It could be covered with lattice work and not be considered a roof (not solid).

Antkowiak: Discussed decks above decks vs roof.

Antkowiak to Nelson: There is an interpretation issue. More information is needed and input from Mr. Wiggle and/or Mr. Kras.

Makuch: What are cases in the past? Is there a precedence set? Diss: No interpretation is needed.

Antkowiak: It is up to ZBA to interpret. Nelson: Yes.

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Mr. Tomlinson: It's an interpretation issue. If the interpretation is that "no" it doesn't constitute lot coverage, don't need to consider second part of the law. Discussion.

John Mc Namee (Clay Township Attorney): An interpretation is needed. ZBA is administrator for correct interpretation. ZBA can modify, agree or disagree. You could adjourn or table the appeal until Mr. Wiggle can be present at the next scheduled meeting.

Makuch: Can we continue fact finding? Mr. Mc Namee: Yes.

Diss: If there is a ¼" separation between the boards, is that considered a roof?

Nelson: Don't know.

Nelson: The house in that area is "U" shape. Is he filling in the "U" shape? Diss: Yes..

Mr. Mc Namee: Not aware of previous cases. Definition of balcony on page 8 and definition of roof on page 28.

Diss: Not altering the foot prints.

Antkowiak: Look at definition of deck as constructed on piers or foundation above grade.

Diss: Ordinance #123, page 28, definition of roof, a permanently attached, non-retractable, outside covering, a balcony should not be considered a roof for surfaces below.

Antkowiak: Do you want to call this a deck or a balcony?

Shirkey: Is the patio on the bottom, but a deck on top?

Makuch: It is a structure that can be accessed from what ever room on the second floor.

Mr. Tomlinson: It constitutes a deck or balcony on the second floor.

Makuch: Ordinance #123, page 13, structure constructed on piers or a foundation.

Antkowiak: Yes it is.

Diss: Discussion of deck vs balcony.

Antkowiak: The appeal should be postponed until Mr. Wiggle is available.

Makuch: Agreed.

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Shirkey: Is Mr. Wiggle calling this a roof or deck? Nelson: Yes. Once it is called a roof, it becomes part of the structure of the house.

Diss: It should just be called a balcony.

Public Participation:

In favor: Martha Hibbert, 6421 Dyke, Is the deck extended from roof of the house? Nelson: No.

Opposed: Leonard Kasperowicz, 6603 Pte. Tremble, Concerning amount of money Mr. Sheets and Clay Township has invested in this appeal.

Close Public Participation.

**Motion by Diss, appellate to be allowed to construct a balcony over existing deck, practical difficulty being he has no where else to create one. Motion died for lack of support.**

Nelson: First level is considered a deck, second floor is considered a balcony.

Mr. Mc Namee: ZBA needs to deal with interpretation before dealing with variance. Is Mr. Wiggle considering this a roof or deck?

Shirkey: Ordinance #123, page 28, a balcony is not considered a roof.

Nelson: What is page of ordinance? Shirkey: Page 28.

Antkowiak: What is Mr. Wiggles thought process and why? Postpone until Mr. Wiggle is present.

**Motion by, Antkowiak, support by Makuch, to postpone until next meeting when Mr. Wiggle is present.**

**AYES: Shirkey, Makuch, Nelson, Antkowiak. NAYES: Diss. MOTION CARRIED.**

No signature of appellate is required because of postponement.

Nelson to Mr. Mc Namee: Is a signature required? Mr. Mc Namee: No signature is required; there is no action taken.

2005-027

John Shamo

2916 S. Channel Dr.

Mr. Shamo nor representative present.

Nelson: Has this appeal gone to the Planning Commission? Antkowiak: It is in the process of a lot split.

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There is no canal now, basically land-locked.

Makuch: Appellate is going for variance of 5:1 ratio? Antkowiak: Yes.

Diss: Is this approximately 7:1?

Antkowiak: 5:1 would be 230 ft., 50' wide.

Diss: Request exceeds more than 5:1 by 230 ft. Makuch: 9.6:1.

**Request for variance from Ordinance #123, appellate is in process of lot split. The application was denied because Ordinance #123, Article XVIII, section 1801 (1).**

Letter in favor: Richard Bisoski, 2880 S. Channel.

Nelson: Is Planning commission in favor? Antkowiak: No action has been taken. Lots would be very long and narrow and cannot be developed.

Nelson: Has a class action suit been applied for?

Public Participation:

In favor: Bernie Wise, 2804 S. Channel, 90% wetlands. Susan Masters, 2900 S. Channel, property backs up to Boys Club, protect other ends of property.

Opposed: No comment.

Close Public Participation.

**Motion by Makuch, supported by Shirkey, to approve as requested, personally visited the property, division would not effect the surrounding area, land locked and even though it exceeds 5:1 ratio. Diss added uniqueness of property.**

**AYES: All. NAYES: None. MOTION CARRIED.**

Diss: When does the time start? Mr. Mc Namee: Time starts eight days from his signature.

2005-028

Leonard Dunford

5628 Pointe Tremble

Erick Heidener, representative

Appellate is requesting to reduce greenbelt and requesting all trees for greenbelt. Needs a setback variance along the north and east property lines where it abuts the R-1 residential zoning district, to 20' on the north and 10' along the east property line. The ordinance requires a 50' greenbelt where C-3 commercial property abuts residential property.

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**Request a variance Ordinance #123 to reduce the greenbelt. Original application was denied because Ordinance #123, Appendix A and B of Zoning Ordinance, Greenbelt Schedule (F) requirements.**

Antkowiak: Is this C-3 or C-2? Mr. Heidener: C-3. In lieu of solid structure, appellate would like to use trees, etc. instead.

Makuch: If the appeal is granted, does this have to go back to Planning Commission? Mr. Heidener: Yes, appeal is about 99% approved.

Antkowiak: Have you addressed other issues from Mr. Meagher? Mr. Heidener: Yes.

Letter opposed: Jack Dickson, 5637 Pte. Tremble.

Public Participation:

In favor: Leonard Kasperowicz, 6603 Dyke, wants privacy fence.

Opposed: No comment.

Close Public Participation.

**Motion by Makuch, supported by Shirkey, to approve request for variance with the correction to 20' north and 5' east; after personally visiting and reviewing proposed site plans and landscape plans; practical difficulty is restriction of access to business and size of lot – restricts setbacks. AYES: All. NAYES: None. MOTION CARRIED.**

Antkowiak: How are you going to provided adequate screening? Mr. Heidener: Shrubs, etc., vacant lot next door.

2005-029

Jerrold Campbell

9632 Lakepointe

Appellate is requesting a variance from 25% coverage required rear yard to 30% coverage to construct a 26' x 24' detached accessory structure for storage of trucks etc.

**Request a variance Ordinance #123 to construct a detached accessory structure. Original application was denied because Ordinance #123, Article III, section 3.01 (4).**

Antkowiak: Request has been advertised as 24' x 24'. What is the practical difficulty? Appellate: Lot is 48' wide. Lots in area are 50'. There is no other placement for the garage.

Shirkey: How wide is lot? Appellate: 48'. Appellate is getting rid of wood shed.

Antkowiak: How much is 2' difference going to make?

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Makuch: Variance is for 24' x 24' with total lot coverage of everything being less than 30%. Is the fence on the lot line? Appellate does not know.

Makuch: Size of accessory structures discussed.

Diss: When was the house built? Appellate: Bought house in June 2005, approximately two or three years.

Antkowiak: Practical difficulty is storage for vehicles, etc. What is the uniqueness? Detached accessory structure of 24' x 23' would not be over 30% coverage. Are there any other garages in area? Makuch: Yes. Diss: Extremely narrow lot.

Letters in favor: Kevin Balduck, 4843 Taft Rd; Gregory Balduck, 4843 Taft Rd; Thomas Sullivan, 9634 Lakepointe; Craig Ray, 9630 Lakepointe.

Antkowiak: Where is the wood shed shown on the drawing? Appellate: Has changed the location.

Nelson: Are you getting rid of wood shed? Appellate: Yes.

Antkowiak: Addressing the rear yard setback only, 24' x 24' = 30% coverage.

Diss: Most lots in the area are 50'. Appellate has small lot.

Antkowiak: When did you go to Clay Township Building Dept.? Appellate was denied a 30' x 24' detached accessory structure; when he bought lot it was considered 48'.

Public Participation:

In favor: No comment.

Opposed: No comment.

Close Public Participation.

Nelson: Is 24' x 24' structure 30% of rear yard? Makuch: Approximately 31.03%

Nelson: According to survey the fence is on the lot line. 30% is an over kill (24' x 24').

Antkowiak: What is an over kill? 25% is allowed. Did not want 30% coverage of rear yard.

Makuch: Rear yard is 1857 sq. ft.

Shirkey: 20' x 24' detached accessory structure would be approximately 25% on a 50' lot.

Nelson: What is practical difficulty? Diss: Lot size.

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Shirkey: 22' x 24' is in range.

Nelson: Are other garages in area larger? Makuch: No.

Neil Hire, step-father: Measured lot size as 50.2.

Nelson: According to survey fence is on property line.

Diss: This is a mortgage survey.

**Motion by Shirkey, supported by Diss, to grant request for 22' x 24' detached accessory building allowing 27% lot coverage on a 48' lot, practical difficulty being smaller lot than those in the area and size of lot.**

**AYES: All. NAYES: None. MOTION CARRIED.**

Diss: What is the lot coverage? Makuch: 27%.

Neil Hire: Why not 24' x 24' for a two car garage; neighbors don't care.

Makuch: 24' x 24'. Just about 30% coverage.

Shirkey: Too much coverage.

2005-031

Thomas Hibbert

6421 Dyke Rd.

Appellate is requesting to place an accessory structure one foot from main structure. They have remodeled home and request to construct a free standing plastic detached accessory structure. Can't have 10' between detached accessory building and main building.

**Request a variance Ordinance #123 to construct a detached accessory structure requiring a variance of 9' between main structure and accessory building. Original application was denied because Ordinance #123, Article III, section 3.01 (3).**

Antkowiak: Planning Commission is in the process of discussing location of sheds.

Antkowiak: Practical difficulty is unobstructed view, small lot, 50' x 110', with limited open area.

Letter in favor: Nick Gabriel, no address.

Nelson: 7' x 10' would be standard size.

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Shirkey: Standard size 10' x 12' or 8' x 10'. Discussed location of detached accessory structure.

Nelson: What is practical difficulty? Makuch: Water front property. Diss: Lot size.

Antkowiak: There is no other place to locate shed. Shed would be approximately 6' in height. What are you storing in shed? Appellate: Empty gas cans, tools, rakes etc.

Antkowiak: Is the furnace in the garage? Appellate: Yes.

Diss: You have a one car garage.

Public Participation:

In favor: No comment.

Opposed: No comment.

Close Public Participation.

**Motion by Diss, supported by Shirkey, to grant as requested with practical difficulty being to keep unobstructed view and very small lot size, and existing one car garage and limited storage space.**

**AYES: All. NAYES: None. MOTION CARRIED.**

6. Election of Officers 2006

Makuch: Accept the slate of nominated officers :

Nelson, chairman, Ayes: All.

Antkowiak, vice chairman, Ayes: All.

Diss, secretary, Ayes: All.

7. Member Comments

Mc Namee: Need to set date for signatures on new forms and revise form for different way of mailing dates.

Diss: #7 & 8 should be reversed, repetitious.

Mc Namee: ZBA has the right to modify. A deck is braced from the side of the building and ground.

Nelson: ZBA won Keene case on Anchor Bay Dr.

Antkowiak: Attended seminar. ZBA should have by-laws; we have none. Discussion.

Nelson: By-laws are not necessary.

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Continued: Member comments

Nelson: ZBA preface covers for by-laws. Discussion of by-laws, determined chairman should contact Mr. Mc Namee to draw a set of by-laws for ZBA.

Antkowiak: Are ZBA dates predetermined? Nelson: Dates are set by Township, 3<sup>rd</sup> Thursday.

Diss: Limit the number of appeals in one night. Is there a possibility of holding a second meeting?

Nelson: Clerk's Office sets dates and Building Dept. does the processing; appellates have a right if meeting deadline.

8. Public Comment

None.

9. Adjournment

**Moved by Makuch, supported by Shirkey, to adjourn at 9:45 p.m.**

**AYES: All. NAYES: None. MOTION CARRIED.**

Respectfully submitted,

Dolores M. Nelson  
Recording Secretary