

MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS HELD ON THURSDAY, MARCH 16, 2006 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.

2. APPROVAL/AMENDMENTS TO AGENDA

Nelson: Mr. Sheets 4A, Old Business. 5A, By-laws discussion.

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

AYES: All. NAYES: None. MOTION CARRIED.

3. APPROVAL OF MINUTES OF FEBRUARY 16, 2006

Antkowiak: P1, Regarding prior appeal for ice cream bar (2005-028)ZBA granted an extra 5' (granted 5'), 10' was requested for green belt. Next sentence deleted, add in place the following: Did not make removal of shed a condition for variance of appeal (2005-029).

Moved by Shirkey, supported by Antkowiak, 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.

4A. OLD BUSINESS

Appeal 2005-022, Kenneth Sheets, 6378 Marina Dr.

Nelson: Need a motion to withdraw appeal.

Motion by Shirkey, supported by Diss, to accept the withdrawal of appeal 2005-022.

AYES: All. NAYES: None. MOTION CARRIED.

Appellate is within rights to withdraw appeal and re-apply to Building dept. for permit.

Shirkey: According to Mike Kras, Mr. Sheets second level does not have a roof, but considered the second story a deck.

Antkowiak: If approved we would use Mike Kras' interpretation.

5. APPEALS

2006-003

Frank/Carrie Swartz

8176 Anchor Bay Dr.

Appellate is requesting to reconstruct (tear down) a boathouse/garage. It is considered a dangerous building and replace seawall.

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Continued: 2006-003

Request for variance from Ordinance #123, to tear down and reconstruct a boathouse/garage. A variance of the southern side yard setback to allow 2' where 3' is required, a height variance to allow the midspan of roof to exceed the required 15' and a variance to allow the boathouse portion of the structure to have side walls for security. The application was denied because Ordinance #123, Article III, section 3.01 (3, 7, c & d).

Shirkey: There are no plans available. Not enough information.

Makuch: 24' to peak. 18' to mid-point.

Antkowiak: Is information included in advertisement for side yard, height, side walls for security?

Motion by Shirkey, to postpone because there is not enough information, elevation, survey for sideyards and walls. Motion died for lack of support.

Antkowiak: Should we have a public hearing? Nelson: Yes.

Public Participation:

In favor: Earl Lines, 8128 Anchor Bay, questioned height above 15' and 30% coverage; Tony Bane, 6506 Marina, agreed except for height.

Opposed: No comment.

Close Public Participation.

Appellate: Under 30% coverage. Antkowiak: What is square footage?

Nelson: What is size of new structure? Appellate: New structure would be smaller.

Makuch: What is side yard setback? Appellate: Replacing what is there as is.

Antkowiak: What is practical difficulty? Uniqueness? Appellate: Owns both lots (each side of the road. Other garages exceed height.

Shirkey: We have no information, no elevation and height etc.

**Motion by Diss, supported by Shirkey, postpone because of lack of pertinent information.
AYES: Shirkey, Makuch, Diss. NAYES: Nelson, Antkowiak. MOTION CARRIED.**

Makuch: There are no pictures. He is going to Township Hall to follow through. It can be addressed as old business, but pictures and dimensions are needed.

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2006-004

Gary A. Rhodes

873 N. Channel Dr.

Appellate is requesting to construct an accessory building and relocate second accessory structure.

Request for variance from Ordinance #123, to allow construction of an accessory structure and relocation of second accessory structure that will exceed the total square footage of the main structure. The application was denied because Ordinance #123, Article III, section 3.01 (4).

Nelson: The property backs up to the Boys Club? Appellate: Yes.

Nelson: The accessory structure and relocation of second accessory structure exceeds total square footage. One is 12 x 20 and the other is 32 x 68.

Nelson: What is size of lot? Appellate: 100 x 780+.

Antkowiak: There are two acres? Appellate Yes.

Shirkey: One accessory building is not there? Appellate: Yes, he is bringing one from elsewhere. The addition to the existing house is completed.

Antkowiak: What is practical difficulty? Appellate: The size of the pole barn is not big enough, safety of equipment if stored outside, and theft.

Antkowiak: What is uniqueness? It is self created. Size is too big, 2177 square feet. 32' x 68' = 2176. Pole barn is 36 x 72. Appellate: There is no basement and no storage.

Antkowiak: No reasons for variance.

Makuch: He is storing personal possessions outside. 30 x 60 would be allowed. There is no commercial storage on Harsens Island.

Makuch: What is the intention of the front end loader? Appellate: Personal property.

Public Participation:

In favor: Tony Bane, 6506 Marina, how much is he over? 650'

Opposed: No comment.

Close Public Participation.

Shirkey: What is the eave height?

Nelson: Not addressing height.

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Continued: 2006-004

Nelson: Why are you keeping the other accessory buildings. Appellate: For storage. Decrepitate buildings are coming down.

Makuch: House and accessory building are 2832 square feet. 32' x 60' would not need variance.

Antkowiak: What is uniqueness?

Makuch: Uniqueness of surrounding area and no commercial storage on island.

Motion by Antkowiak, to deny because there is no practical difficulty, no uniqueness and the need for variance in question is self-created. Motion dies for lack of support.

Shirkey: If he took away 12' x 20' there would be no variance.

Nelson: Zoned RS1.

Motion by Makuch, supported by Diss, to deny request because there is no practical difficulty and required variance is self-created. Appellate's personal property is not ZBA's problem.

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

Nelson: There is a letter from Pierce, 891 N. Channel Dr.

2006-005 Blair Gilbert 510 Lynn Marie Lane

Appellate: The property is in the process of a lot split. Existing garage is to be demolished. Lot split would be below 65' minimum lot width.

Request a variance Ordinance #123 to split a lot. Original application was denied because Ordinance #123, Article XVIII, section 18.01, minimum lot width required is 65'. The parent parcel will have a frontage of 25' requiring a variance of 40'. (1) and Article II, section 2.02 accessory structure without a principal structure, variance is needed for parcel being split which has an accessory structure.

Antkowiak: One lot is 55' wide.

Shirkey: Which is lot 39?

Nelson: There is property access?

Antkowiak: What is time frame for removal of accessory structure? Appellate: Approximately three weeks. Parent parcel will have 25' frontage.

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Antkowiak: The uniqueness is present shape of lot to split.

Public Participation:

In favor: No comment.

Opposed: No comment.

Close Public Participation.

Nelson: Lot is on cul-de-sac.

Motion by Antkowiak, supported by Makuch, to approve as presented with practical difficulty being shape, location, condition of existing structure to be demolished in six months.

AYES: All. NAYES: None. MOTION CARRIED.

2006-006

Robert/Donna Kamphaus

4744 Middle Channel Dr.

Appellate is requesting to reconstruct a boathouse/garage with enclosed side walls. The boathouse is a dangerous building. Not adding but tearing down.

Request for variance from Ordinance #123, to allow reconstruction of a boathouse/garage which allows boat house portion of the structure to have enclosed side walls for security. The application was denied because Ordinance #123, Article III, section 3.01 (7,d).

Letters: John and Betsy Rose, 4758 Middle Channel; Robert Jansauskus, 4658 Middle Channel.

Public Participation:

In favor: Tony Bane, 6506 Marina, why does the appellate need to be here? Nelson: For enclosure of side walls; John Mantyk, 6502 Marina; John/Betsy Rose, 4758 Middle Channel; Robert Jansauskus, 4658 Middle Channel.

Opposed: No comment.

Close Public Participation.

Motion by Makuch, supported by Shirkey, to approve the tearing down and rebuilding of old boathouse for safety and security reasons.

Discussion: Antkowiak, what is practical difficulty or uniqueness? Makuch will make a comment at member comments.

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

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2006-007

Boris Lazovski

7217 Dyke Road

Appellate is requesting to extend a boat house (new) to be used for storage. He is keeping the existing boat house and adding one more.

Request a variance Ordinance #123 to construct a residential boat house having enclosed side walls for security and 8-1/2' setback from the main structure where 10' is required. Original application was denied because Ordinance #123, Article III, section 3.01 (3&7,d).

Nelson: Explain the addresses. Appellate: 7205 Dyke is the market and dentist office (dentist/residential, no storage, no garage) is 7213 Dyke. Does not include Gabriel's.

Makuch: Was this commercial property? Appellate: Yes.

Shirkey: Are you going to enclose the boat house? Appellate: Yes, enclosed side walls for security.

Makuch: This is an extension off the old boat house. He is adding two walls and a roof.

Appellate: All permits are OK.

Antkowiak: Per old Ordinance #89, it was zoned residential and commercial. The new Ordinance #123 renders this a non-conforming property.

Makuch: This is expansion of residential.

Antkowiak: The uniqueness is residential. B-1 is zoned office/commercial. B-2 per Ordinance #123 changed back to C-1.

Diss: Ordinance #123 created the appellate's difficulty.

Public Participation:

In favor: Earl Lines, 8128 Anchor Bay.

Opposed: Randy Hadden, 7222 Bay View

Close Public Participation.

Nelson: Where are they dredging? Appellate: All down the canal.

Nelson to Antkowiak: Has this appeal gone to the Planning Commission: Antkowiak: No. All permits are OK per appellate.

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Motion by Shirkey, supported by Diss, to approve the appeal because of uniqueness of the property, zoning changed between Ordinance #89 to Ordinance #123. Practical difficulty created by ordinance.

Discussion: Antkowiak, Ordinance #123 created B-2 back to C-1.

AYES: All. NAYES: None. MOTION CARRIED.

2006-008

Bernard Lewandowski

9089 Phelps

Appellate is requesting to construct a detached garage which needs to be 10' setback from the main structure, variance of 2'. This is a swale area. In the future he will add extension from the house to the garage.

Request a variance Ordinance #123 to construct a garage allowing an 8' setback from the main structure where 10' is required. Original application was denied because Ordinance #123, Article III, section 3.01 (3).

Makuch: Is this property Fred Fuller, DEQ? Appellate: Yes.

Appellate: Mr. Kras said no to fire wall, no problem if it is required.

Nelson: There was a mistake in the newspaper ad discovered after write up. Mike Kras' letter revised to correct reading of 4'6" setback from the house where 10' is required (requiring a variance of 5'6"). There is no need to advertise.

Public Participation:

In favor: No comment.

Opposed: No comment.

Close Public Participation.

Antkowiak: Appeal meets what the ordinance requires.

Motion by Makuch, supported by Antkowiak, to approve the appeal because of the swale, uniqueness and easements.

AYES: All. NAYES: None. MOTION CARRIED.

5A. By-Laws

Antkowiak: A draft of the by-laws are printed, review at home.

Nelson: By-laws will be an agenda item. Does the by-laws need to be approved by Clay Township Board?

Antkowiak: No.

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6. Member Comments

Diss: What is the difference between practical difficulty and hardship regarding reconstruction?

(building exactly “as is”).

Antkowiak: Practical difficulty is the problem the homeowner has trying to follow the letter of the ordinance. In addition there must also be some unique feature of the land which causes the practical difficulty. The need for the variance cannot be self-created.

Diss: Sides of boat houses should be denied. Antkowiak: Planning Commission is addressing problems.

Shirkey: Tearing down and not allowing to rebuild could possibly be a “taking.”

Makuch: ZBA needs more information from the Building Dept. Allowing four sides down of a boat house should not be allowed.

Antkowiak: The job of the ZBA is to protect the ordinance.

7. Public Comment

John Mantyk, 6502 Marina, concerned with the height of boat houses, should be suitable to the area, no tar paper, etc. Let the voters decide. Nelson: The elevation has been increased. Take ideas to Planning Commission.

Tony Bane, 6506 Marina, regarding right paperwork. Makuch: There was no proper paperwork submitted.

Nelson: ZBA members are not employees of the Township.

8. Adjournment

Moved by Makuch, supported by Shirkey, to adjourn at 9:25 p.m.

AYES: All. NAYES: None. MOTION CARRIED.

Respectfully submitted,

Dolores M. Nelson
Recording Secretary