

**MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS  
HELD ON THURSDAY, JANUARY 17, 2008 IN THE CLAY TOWNSHIP  
MEETING HALL, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP,  
MICHIGAN 48001 AT 7:30 P.M.**

1. **Anthony Antkowiak called the meeting to order at 7:30 p.m.**

2. **ROLL CALL:**

**PRESENT:** Joanne Shirkey, Trustee John Makuch, Anthony Antkowiak, and John Chamberlain

**ABSENT:** Marianne Diss (excused)

3. **APPROVAL/AMENDMENTS TO AGENDA:**

**Motion by Makuch, supported by Shirkey to approve Agenda as presented.**

**AYES: All                      NAYS: None                      ABSENT: Diss (excused)**

**MOTION CARRIED.**

4. **APPROVAL OF MINUTES OF NOVEMBER 15, 2007:**

Shirkey: Correction on page 8, paragraph 7, change:

“Shirkey: So, the only the...” to “Shirkey: So, the only thing...”

**Motion by Makuch, supported by Chamberlain, to approve the November 15, 2007 Minutes with the stated correction.**

**AYES: All                      NAYS: None                      ABSENT: Diss (excused)**

**MOTION CARRIED.**

5. **ZONING BOARD OF APPEALS PREFACE:**

Antkowiak: 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 No. 126. 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 change 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, you have the right to take it to the Circuit Court. You have thirty (30) 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.

Also, for each of the appeals, we will have a public hearing. I will open the public hearing, the Applicant will have an opportunity to present their case, and then we will open it to comments from the public. During that time, members of the Board may ask questions of clarification. Once we

have heard all of the public hearing, we will close the public hearing and move on to deliberation of the particular variance.

**6. OLD BUSINESS:**

**2007-015**

**ROBERT GECK**

**8784 FOLKERT ROAD**

Antkowiak: We have already had a public hearing on this matter. We postponed this business until today to get more information and to get a clarification from our Township Attorney, which we did in the form of a letter.

Makuch: His feeling is that of the Township Attorney that Judge Deegan ruled that the initial back 3,000 square feet cannot be used contrary to the storage of vehicles until said restriction is modified or removed by the Clay Township Zoning Board of Appeals. We heard the residents and he feels this is one of the most interesting scenarios he's ever faced with the Zoning Board of Appeals. If we don't do anything it can be an industrial use, so right now someone could go in their and put in a machine shop and be legal. The Applicant wants to use this property for storage and clean up the building. He maintained before and the Township Attorney reiterated that the entire property could be used for storage. He feels it would cause less impact on the surrounding area. He wants to make sure that there is way they can insure that the use is for what is proposed and feels it would be a betterment to the owner of the building and the surrounding neighborhood.

Shirkey: The statement from the Judge was that it couldn't be used for anything other than the storage of vehicles. She thinks that's the hold up in this case.

Antkowiak: Stated that it reads unless authorized in the future by the Zoning Board of Appeals, which is the wording that was put in there that is kind of an opening. He is still concerned about the fact that we need to deal with this as a variance, and we do need to come up with what would be a practical difficulty, what might be a unique reason for this to occur, and the other requirements and standards that we go by. In addition, his perspective is that if a variance is approved, he would want some type of condition on the variance such as the one that was imposed on this property in 1985 making the back building strictly for residential storage. His concern is that if we were just to give a variance for the non-conforming light industrial, he is certain that the Applicant is going to do what he is proposing. However, if we open this up it would now be completely light industrial and he wouldn't want that in that area. It's unfortunate that the mini-storage/warehouse is now in light industrial when our last Ordinance had it in a Special Land Use in C-3.

Chamberlain: Questioned how long ago the property was used as a machine shop?

Antkowiak: 2001.

Chamberlain: So, it's been a few years. And, it was only used as a machine shop in the front portion, not in the back.

Antkowiak: Basically, some of the history is that they had that front part for a machine shop and they wanted to build the back 60 x 50 building for residential storage of their tractors, vehicles, snowmobiles, things like that. So, the Zoning Board of Appeals, at that time, allowed that with the stipulation that it wasn't to be used as light industrial and just for that storage, which is what he's got

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now. He has a non-conforming light industrial zoning on that property with the restriction that the back part can't be used except for residential storage. We also have the problem that if we give a variance, the variance goes with the property not with the owner.

Makuch: We have the factors that we must consider, whether it's self-created and hardship. But, he feels that this is more unique because there's already been a Court ruling and the Court is giving us the right to change it. He feels that they would be taking it from a use that has more impact to a use that has less impact. He questioned whether the only reason this is before the ZBA is to grant a variance so the Applicant can use the back portion of the building, and if he'll still have to go to the Planning Commission?

Antkowiak: Correct, if we granted the variance.

Makuch: If we gave him the variance to use the rest of the building for storage, he still has to go to the Planning Commission. Questioned whether the ZBA could impose the stipulation on the variance?

Antkowiak: We can do that. But, the Planning Commission would have to look at his Site Plan and he would have to meet their requirements as far as setbacks, coverage, landscaping, etc. The fear he has is that we would expand the zoning all the way to the back and someone could open a light industrial facility that has more impact than it had in the past.

Shirkey: Not if we stipulated that it was just for mini-storage.

Chamberlain: Questioned how we could stipulate it just for mini-storage when it's zoned light industrial.

Shirkey: It's already for storage of just vehicles and they cannot expand the industrial to the back building.

Antkowiak: It already has a condition on it.

Chamberlain: So, we would need to impose a condition similar to that.

Makuch: So, we could allow him to use the front building for industrial but not the back. We could say he could use the back part for commercial mini-storage only.

Antkowiak: It's industrial mini-storage warehouse, that's the way our Ordinance is worded. It is still under light industrial. The only way I could see it is if we said he could use that and do what he is proposing and if ownership changes, it would revert to the 1985 ruling.

Shirkey: We can make that stipulation then if it is sold or changes hands that it reverts back to its original 1985 ruling.

Chamberlain: We could still allow manufacturing in the front part but nothing in the rear.

Makuch: But, Judge Deegan ruled that the facility may not be expanded or enlarged beyond those light industrial uses for which the property has been historically utilized. He feels if it was used for

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mini-storage, you can't come back in with light industrial because then it no longer has been historically used as light industrial because for the past five years it was used as a mini-storage.

Antkowiak: Except that mini-storage falls under light industrial.

Shirkey: That would be the only way that we could prevent a machine shop from being established in both buildings.

Antkowiak: Another consideration we have is that the majority of the people who spoke were in opposition.

Makuch: Stated though if ZBA does nothing, the property remains zoned light industrial. Stated that he recalled the residents' major concern was that they did not want outside storage, increase in traffic or noise, or deterioration of the building, and felt that it would be better than having a machine shop in the building.

**Motion by Makuch to approve the variance to allow the usage of the rear addition of the building for purposes of mini-storage only and that if the property is sold or transferred in the future, the status would revert back to that in 1985.**

Chamberlain: Questioned whether a variance can be granted just for mini-storage or do we have to grant a variance for light industrial with the stipulation that it only be used for mini-storage. And, then, if it's ever used for anything but mini-storage, it will revert back to the 1985 ruling?

Makuch: Suggested Chamberlain make a motion stating the above.

**Motion by Chamberlain, supported by Makuch to grant the variance for the property to light industrial use with the stipulation that it only be used for commercial mini-storage and if the property is ever used for anything other than mini-storage, the stipulation would be that the use would go back to the 1985 ruling.**

Antkowiak: Questioned whether we are now saying all of the property is going to be strictly for mini-storage or just that portion?

Chamberlain: The stipulation would be that the entire property would be mini-storage.

Makuch: Feels that this can be done because the Applicant is saying that is what he wants to do and if he changes his mind, then the Applicant will have to go back to Court or if he sells it, it reverts back to the 1985 ruling.

**Chamberlain amends the motion, supported by Makuch to state that the non-conforming light industrial use would apply to the entire piece of property and not just the back piece of the property and that no outside storage be allowed on the property.**

**AYES: All**

**NAYS: None**

**ABSENT: Diss (excused)**

**MOTION CARRIED.**

Applicant: Questioned whether this would not be completely approved until he receives the Planning Commission's approval?

Antkowiak: We have granted you the variance. You now have to go to the Planning Commission and they will tell you what you have to do in terms of setbacks, landscaping, and they may set some conditions on the pieces that abut residential property, such as erecting a wall, and that would all be up to the Planning Commission. Also, there are some stipulations in the Ordinance that you also have to follow. Also, according to our Zoning Ordinance, this takes effect 8 days from today's date.

**7. NEW BUSINESS:**

**2007-016 DAVID SADDLER VACANT PARCEL #74-14-541-0135-000 FRUIT ROAD**

Opened the public hearing on this appeal at 7:58 p.m.

Antkowiak: Requested the Applicant or his representative present their appeal.

**Greg Kunnath, Applicant Representative:**

He is the realtor representing the Saddler's on the lot split. Stated that they contacted Barb Schutt months ago and spoke with her regarding the split. He stated that she assured them that there wouldn't be a problem. There are several similar splits that have been done on Fruit Road. They have buyers already set up and reassured them that there wouldn't be a problem. They have already spent a couple thousand dollars on completing the surveys and everything else. They feel this would be bringing more money into the Township. It is a nice piece of property. He has done about five splits on Fruit Road when he worked for Future Builders and has appeared before the ZBA in the past.

Chamberlain: Questioned whether there was 200 feet of frontage on the property?

Kunnath: Yes.

Public Comments:

**Mike Dishinger, 3040 Fruit Road**

He lives on the eastern border of the property. He is very concerned about the variance for a couple of reasons. He bought his property because of the distance between the houses and was assured that the property to the west of him could never be split. He feels that was one of the biggest selling points. Also, when he lived in his prior home on Field Road, the vacant property to the south of him received a variance to turn their house in a direction not parallel to the road. When he attempted to sell the home on Field Road, it took over a year to sell and his property value extremely declined. Numerous buyers for the Field Road property stated the fact that they didn't like the adjacent home that was built on a diagonal because of setback reasons, which was an "L" shape and similar to this property. He is not sure exactly what the Applicant's plans or intentions are for the property. He knows that a survey has been completed. Stated that he bought the property because of its "country-like feeling" and it has a nice spread between houses. He feels that this will allow for any type of home to be built next to his and he's extremely concerned. He further stated that there has been talk

about putting a road through the property to access the main property that's back by a retention pond in the back. He doesn't have any facts on this and is just merely presenting it to the Board. He is extremely opposed to the requested variance.

**Mark Pezzora**

He owns the property with the retention pond that sits behind this vacant parcel. He has nothing to do with the lot split or gaining access through this property. His property has an access on Field Road and a 77 foot access on Fruit Road. He has no reason for using it as an access. He feels that splitting the parcel would be beneficial to the Township because it leads to more taxes for the Township if someone builds a home on each lot. He feels it is not that much of a variance compared to the surrounding properties. If the split is not granted, he feels it would deadlock the property in the future if he does something with the property behind the parcel since there would be a vacant spot and that would hurt the tax roll in the long run. Basically, he has nothing to do with the split. He questioned why he and a few other people in the area did not receive notices that this was going to be on the Zoning Board of Appeals agenda for today's meeting?

Shirkey: 500 ft. rule.

Pezzora: Stated this property is right at his fence line.

Antkowiak: Stated that he should have received notice and did not know why he did not.

Pezzora: Again stated that he did not feel this was that big of a variance to grant.

**Mike Dishinger, 3040 Fruit Road:**

Wanted the chance to speak again to comment on Mr. Kunnath's comments about all the splits that he had done on Fruit Road. He feels that a precedent is being set in the Township with these splits and doesn't know if that is the Board's intention.

**Greg Kunnath, Applicant Representative:**

In regard to Mr. Dishinger's comments regarding the setbacks and whether there's two houses or one house, it wouldn't matter because they still have the same setbacks. Even if we sold it as one parcel, the owner could still put the house to his side with the same setback and keep an open yard to the left. He believes that originally there were only supposed to be 10 splits allowed and they have already been approximately 14 allowed. The damage has already been created, so why can't this Applicant be granted the same thing others have already been granted.

**Tony Cusmano:**

He is attempting to purchase one of the lots. He doesn't know a whole lot about what is going on down here and the only thing he can tell the Board is why he is here. He ended up about 8 years ago finding himself purchasing a manufactured home and ending up in a park in New Haven paying 13% interest on the house and a mammoth lot rent. He just paid the house off and started finding out about different types of roofs that aren't accepted in some townships and are accepted in others. He has a 312 roof and did a lot of searching and found that the Building Department in Clay Township

stated that his house could be accommodated. This has been going on for 2 or 3 months. When he signed up to purchase the lot, he thought it was just one lot and then found out later that it has to be split. The owner has had to spend a ton of money to get all the utilities, etc. and to get it in front of the Zoning Board. He just wants to get out of paying lot rent. He is not going to give his house that depreciates back to the park for \$20,000.00. It's only five years old and he paid \$58,000.00 for it. If he can't bring the house to this lot, then he'll stay there and he'll rot. He would be glad to live here and feels it would be great.

**Liz Cross**

She a realtor at ReMax Advantage that is representing the buyer. She can appreciate the fact that people move out so that they can have the open space. However, the buyer bought a particular parcel of certain dimensions and to try to restrict other people from having an opportunity to move into the community because he wants to keep an open area then perhaps it should be that he should have to purchase additional property to maintain the country-like feeling. Things move forward, they don't stay what they have been, and it's for the benefit of the community and for additional tax base. She doesn't feel that it would be a legitimate reason for the Board to deny the request.

Antkowiak: Since Mr. Dishinger was the only person speaking in opposition, he was allowing him to speak one final time.

**Mike Dishinger, 3040 Fruit Road:**

Stated that he built his house and it is a standard structure, brick home and is assessed on the Township books for \$130,000.00, which means it's \$260,000.00. He hears the plan and it sounds very concerning with someone dragging a home with a flat roof from an existing park next to his home. He hopes the Board really, really considers what they're doing with this variance request.

**Dave Saddler**

He is the owner of the property and is requesting the variance. He purchased the property from his mother several years ago with dreams of splitting it with his son and both of them building homes there. Recently things have changed and he desires to sell the property. When he had the property before, he sold Mr. Dishinger an acre off of the three acres that he had. Mr. Dishinger then had his house moved from the corner of Nook and M-29 to that piece of property. He wants to split the other 2-1/2 acres that he has left so that two other people can purchase it and build their homes there. Since the Township changed the variance of the frontage 5% to the length, he is 84 ft. short. He would like to have a variance to have it split so that he can sell the two parcels.

Antkowiak: Before the Board can grant a variance, they need to look at five specific things. Many of the things that have been brought up to the Board have nothing to do with the variance. These are either economic or personal issues. We have listened to them and will take them into consideration. But, the Board will be looking at this variance as they have looked at all the variances that they have had before them with the five standards that they use to judge whether or not the variance should be granted.

Antkowiak: Closed the public hearing at 8:15 p.m.

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Antkowiak: It is now the time for the Board members to discuss this matter and, if need be, to ask questions.

Makuch: The concern that he has and that the Board should have is the lot split. What goes on any lots has to be approved by the Building Department. Secondly, he strongly feels there is an issue with realtors in this area. He is getting tired of people buying property and because a realtor tells you that it can be split, that does not mean that it can be split. You need to check with the Zoning Ordinance and the Building Department. He has seen this time and time again. He takes offense in Mr. Kunnath saying that Barb Schutt told him the property could be split. Ms. Schutt knows the rules around here and she knows what a 5-to-1 is. The bottom line is the whatever goes on the property, you will still have to make setbacks. If the lot wasn't split, you could still put a house 15 feet from the side lot line because that's what the minimum setback is. We still have to find practical difficulty. He doesn't feel the situation was created since they would still make the 100 foot road frontage. He can see some of the criteria but would like to hear from the other Board members.

Shirkey: The lot to the right is 100 feet wide, which is what the split proposes. And, the lot to the left is 117 feet wide. The next lot down is 100 feet wide. It is in keeping with the surrounding lot dimensions.

Chamberlain: Questioned whether the lots across the street have also been split?

Shirkey: They were probably original 50 foot lots and they have probably been combined into 100 foot lots. She doesn't think there are houses on the 50 foot lots. Also, on the 35 foot lot you can see where it's been combined with the little jig on it at the bottom of the map. Some of the others that may have been combined from the 50 foot lots probably don't show up on the map.

Antkowiak: Stated that there are a variety of lots on Fruit Road.

Makuch: He feels historically in the whole area you have a lot of lots that are very long and very narrow which he believes are called a French Long Lot. They are just long and you don't have tons of frontage. He feels we have to be careful since often times people would want to split them and leave a little 50 foot frontage and that is something we need to be concerned about. The reason the variance comes up in the first place is because of the State law that says you can't exceed a 5-to-1 ratio and questioned, so what do you do?

Shirkey: And, there's an 85 foot difference which prohibits it from being a 5-to-1 ratio. It's over the 5-to-1 ratio by 85 feet.

Antkowiak: Questioned the Board as to what they felt a practical difficulty might be?

Makuch: He feels that one could argue that many of the splits have been done in the past and so why are we stopping now.

Chamberlain: It appears that there are 5 or 6 other lots in the immediate strip that are all roughly 100 to 124 feet. Questioned whether the practical difficulty would be that you have one person with 200 feet surrounded by others that are only 100 feet or a little bit over 100 feet?

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Antkowiak: He feels the uniqueness is the fact that it is a 200 foot lot amongst all the other lots. He also does not see how this would be inferring any special privileges.

**Motion by Shirkey, supported by Makuch to approve the lot split of 2007-016 on the Vacant Parcel #74-14-541-0135-000 Fruit Road because of the practical difficulty being that splitting it would keep it in the 100 foot frontage and several parcels on either side of this property are 100 foot.**

**AYES: All**

**NAYS: None**

**ABSENT: Diss (excused)**

**MOTION CARRIED.**

Antkowiak: Stated that the Applicant should check back with Mr. Kras to find out what else may need to be done.

**8. ELECTION OF OFFICERS:**

**Elections of Officers of the Clay Township Zoning Board of Appeals was opened by Antkowiak at 8:28 p.m.**

**Motion by Makuch, supported by Shirkey to nominate Anthony Antkowiak as Chairperson of the Clay Township Zoning Board of Appeals for 2008.**

No other nominations being made.

Anthony Antkowiak accepts nomination.

**AYES: All**

**NAYS: None**

**ABSENT: Diss (excused)**

**Anthony Antkowiak elected as Chairman of the Clay Township Zoning Board of Appeals for 2008.**

**Motion by Makuch, supported by Antkowiak to nominate Joanne Shirkey as Vice-Chairperson of the Clay Township Zoning Board of Appeals for 2008.**

No other nominations being made.

Joanne Shirkey accepts nomination.

**AYES: All**

**NAYS: None**

**ABSENT: Diss (excused)**

**Joanne Shirkey elected as Vice-Chairperson of the Clay Township Zoning Board of Appeals for 2008.**

**Motion by Makuch, supported by Shirkey to nominate John Chamberlain as Secretary of the Clay Township Zoning Board of Appeals for 2008.**

No other nominations being made.

John Chamberlain accepts nomination.

**AYES: All**

**NAYS: None**

**ABSENT: Diss (excused)**

**John Chamberlain elected as Secretary of the Clay Township Zoning Board of Appeals for 2008.**

**Elections of Officers of the Clay Township Zoning Board of Appeals for 2008 was closed at 8:32 p.m.**

Antkowiak: The officers of the Clay Township Zoning Board of Appeals for 2008 are:

**Chairman – Anthony Antkowiak  
Vice-Chairperson – Joanne Shirkey  
Secretary – John Chamberlain**

**9. REPORT OF PLANNING COMMISSION REPRESENTATIVE:**

Antkowiak: Stated the Planning Commission is working to clean up the Ordinance. We have some difficulty with the enclosed boat house issue. It has come through as a Special Land Use, and we didn't want that. Somehow it didn't get into the Ordinance.

Shirkey: It started out as being a Special Land Use.

Antkowiak: What it then evolved into was a consensus between the Site Plan Committee and the Building Department.

Makuch: Feels that is how it should be.

Antkowiak: Somehow it didn't get through and we are looking at why this happened. It now reads that you have to have a Special Land Use and go through a public hearing.

Makuch: Feels that is ridiculous. He feels that the Planning Commission did a nice job cleaning up most of the errors in the previous Ordinance but that you're not going to catch them all. We are going to see things as they pop up. His preference as a Board member is that we need less bureaucracy. Let's give the Building Department a little bit of headway. If it's a touchy issue then make a subcommittee of Planning Commission members and then you've got more than one person saying yes.

Antkowiak: The Planning Commission is working to change this and it's in the process. We also have to update our Master Plan and as of our last meeting the Township Board is not agreeing to pay for same.

**10. OTHER MATTERS TO BE REVIEWED BY THE ZONING BOARD OF APPEALS:**

**A. Correspondence Received:**

**None.**

**B. Zoning Board of Appeals Member's Comments:**

Antkowiak: Mentioned that former Chairman Ron Nelson is not doing well at all and is deteriorating quite quickly.

Makuch: Thanked John Chamberlain and welcomed him to the Clay Township Zoning Board of Appeals. Stated that it is a pleasure to have a fresh face and new ideas.

Chamberlain: Thanked the other members and feels that it will be a great opportunity for him.

**11. PUBLIC COMMENTS:**

None.

**12. ADJOURNMENT:**

**Motion by Shirkey, supported by Makuch to adjourn the meeting at 8:40 p.m.**

**AYES: All**

**NAYS: None**

**ABSENT: Diss (excused)**

**MOTION CARRIED.**

Respectfully Submitted,

Christine Holcomb  
Recording Secretary