

**MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS
HELD ON THURSDAY, MAY 21, 2009 IN THE CLAY TOWNSHIP
MEETING HALL, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP,
MICHIGAN 48001 AT 7:00 P.M.**

CALL TO ORDER:

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

2. ROLL CALL:

PRESENT: Brian Treppa; John Chamberlain; Marianne Diss; John Makuch; Chairman Anthony Antkowiak

A quorum was established.

3. APPROVAL / AMENDMENTS TO AGENDA:

Chairman Antkowiak requested amending the Agenda to add 7(b) – Chairperson’s Report.

Motion by Makuch, supported by Chamberlain to amend the Agenda as requested.

AYES: All NAYS: None

MOTION CARRIED

4. APPROVAL OF MINUTES OF JANUARY 15, 2009:

Motion by Diss, supported by Makuch, to approve the Minutes of January 15, 2009 as presented.

AYES: All NAYS: None

MOTION CARRIED.

5. ZONING BOARD OF APPEALS PREFACE:

Chairman Antkowiak: Chairman Antkowiak: The Clay Township Zoning Board of Appeals or the ZBA primarily addresses practical difficulty based on lot size, location, shape or contour and/or location of existing buildings. We are guided by Section 27.05 of Ordinance No. 126. There are five members on the ZBA. All of which are here tonight. At least three members must vote affirmatively for a motion to grant a variance. Three members constitute a quorum. Each appeal before the ZBA will have a public hearing at which the Appellate will have the opportunity to present his or her case and if there’s any public comment, it would be provided at that time. Also, during this time, the members of the ZBA may ask questions of clarification. If a particular point gets belabored, the Chairperson has the right to limit comments. When a public hearing is closed, the Board will move on to the deliberation of the particular variance that was requested. If you should disagree with the Board’s decision, the

Appellate has the right to take it to Circuit Court within thirty (30) days of the decision. When your appeal hearing is concluded, you are welcome to leave or stay, as you wish.

6. SCHEDULED PUBLIC HEARING:

Chairman Antkowiak: Explained the process and procedures of the public hearing and the five standards the variance must meet.

2009-001, Charles R. Kistner, Vacant South Channel (#74-14-847-0546-000)

Applicant is requesting a variance to allow a 12 ft. x 20 ft. accessory structure, connect to electricity and post an address on a vacant lot without a principal building where a principal building is required. This hearing is authorized by Township Code, Section 42-918.

Chairman Antkowiak opened the public hearing at 7:36 p.m.

Chairman Antkowiak welcomed the Applicant to make his presentation.

Charles Kistner: He has been the owner of the property for the last 22 years. He has received DEQ approval for a seawall, boat well, and boat lifts. He would like to be able to place a shed for storage on the property and run electricity to the boat lifts and storage shed. He also has been advised that he needs an address in order to get the electricity, but he cannot have an address without a house, and he cannot have a house because DEQ advises that he cannot install a septic field on the property. He is between a rock and a hard spot.

Chairman Antkowiak then invited the public to come forward and speak in favor or in opposition to the requested variance.

Public in opposition to requested variance:

Brian Collins, 6065 Green Drive, Harsens Island, MI: His property is immediately adjacent to the Kistner property. He is strongly opposed to the requested variance. He then read from the Ordinance regarding accessory buildings. He further stated that a permit for a main building was denied by the DEQ because it was found to be 100% wetlands. He provided a letter with copies of the subject property with a Wetland Identification Report attached. He further stated that the tax records from 1987 indicate that the owner knew the property was wetlands when he purchased same and was successful in reducing the taxes on this property because it was considered a swamp. He consulted with several of the neighbors who all agree that not only would this type of building be contrary to the Township Ordinance but would also set a precedence that would be detrimental to the community. A garage-type building would not be in the best interests of the tax paying citizens. The Ordinance is in place to keep odd or substandard buildings from cluttering the residential landscape. These structures can turn into storage places for boats and trailers and become eye sores to the community. On a personal note, he believes it would reduce his property value to have a garage-type building next to his residence. He further stated that the Kistner property has always been covered with a great deal of water. Attachment "C" that he provided shows the true facts about the water level during the

ZONING BOARD OF APPEALS MINUTES – MAY 21, 2009

Page 3

year. He is also afraid that any filling or partial filling of that property for a building or driveway would raise the water level on his adjoining property and possibly undermine the foundation of his garage. He doesn't see a reason to vary the Ordinance to give Mr. Kistner another storage area. He also requested that the variance not be granted in order to protect the wetlands.

Norman Rhodes, 3206 S. Channel Drive, Harsens Island, MI: He is opposed to a variance of this nature. He feels the issue has been addressed many times before. In years past, people would build garages and live in them until the principal residence was established. This became a major problem in the Township which resulted in the development of the Ordinance. The property is in a strictly residential area. The Ordinances are in place to secure the residential areas as residential. He understands that the requested variance concerns Zoning Ordinance No. 126, Article III, Section 42-65, paragraph 11, and Section 42-38 for R-1 district. He believes that this situation also concerns paragraphs 2 and 5. In looking at the property there is no delineation between the front and back yard areas. Also, the variance states that an accessory building shall not be erected in any required front yard or required side yard. He questioned that without the delineation of a front and back yard how this would apply? He also stated that the Ordinance requires that an accessory building cannot exceed more than 25% of the required rear yard, for which again there is no delineation. He believes that there is no unique condition on the property that has been presented to show that there is any type of a hardship to allow the variance. There are no conditions or circumstances that have been set forth to allow the variance and no special privileges that have been granted for other parties to establish an accessory building on a residential lot without a main residence and is contrary to the spirit of the Ordinance as written. He requested that the variance not be allowed for this piece of property.

Public in support of requested variance:

Tom Kistner, son of property owner, Charles Kistner: Stated that they have received approval from DEQ to go back one foot down from the seawall and 20 feet back on the property. He has this area staked out. He feels that if they are not allowed to have electricity run on this property it will cause him to have to run a generator to charge the boat batteries which the neighbor would complain about. Having electricity would also allow them to put lights on the dock to prevent people from running into the dock, and would allow them to be able to lift the boats in and out of the water. He further stated that he feels a lot of the statements Mr. Collins made were untrue. They are just looking for electricity and a place to store some of their things. No one would be living in the shed. The property will stay in the family for years to come. They just want electricity for the lifts and the shed.

Chairman Antkowiak requested clarification of the DEQ's approval that he mentioned.

Tom Kistner: From the top of the dock slanted down 20 feet. Some of the pictures provided indicate the orange stakes of the area of how far back the fill can go.

Chairman Antkowiak questioned Mr. Kistner as to whether they are currently allowed by the DEQ to fill in that area?

ZONING BOARD OF APPEALS MINUTES – MAY 21, 2009

Page 4

Tom Kistner: Stated that was correct.

Chairman Antkowiak: Questioned whether this was the area that they intended to place the storage shed?

Tom Kistner: Stated that was correct.

David Kistner, son of property owner, Charles Kistner: Stated that everything that his father has done on the property has been within the law and been permitted. There is nothing that his father has done without approval. They enjoy the island and fishing and just want to be able to spend a lot of time together while they can. His father has a home on the island and no one would be looking to live in the shed. They just want to be able to enjoy the lot, go fishing, and be able to get their boats in and out of the water before the freighters go by.

Chairman Antkowiak stated that the ZBA received three letters regarding the requested variance. The letter that was received from Brian Collins will not be read as he appeared and spoke at this public hearing. He then requested John Chamberlain read one of the letters received.

Chamberlain read a letter dated May 11, 2009 addressed to the Clay Township Zoning Board of Appeals from Douglas Stapleton, 7262 South Channel, Harsens Island, MI in opposition to the requested variance.

Chairman Antkowiak read a letter dated May 17, 2009 from Arlene and Dick Earl, 6075 Green Drive, Harsens Island, MI in favor of the requested variance.

Chairman Antkowiak closed the public hearing at 7:54 p.m.

The ZBA then began its deliberation on the requested variance.

Makuch: Questioned the Applicant as to what practical difficulty this lot has created?

Charles Kistner: Stated the practical difficulty would be no electricity or place to store anything.

Makuch: Questioned where Mr. Kistner believes the ZBA had approved an accessory structure on a lot with no house in the past?

Charles Kistner: Stated that he must have checked the wrong box on the application.

Chamberlain: Questioned the type and design of the structure that would be built?

Charles Kistner: Stated it would be whatever the ZBA or DEQ wanted. He does not have a set design.

ZONING BOARD OF APPEALS MINUTES – MAY 21, 2009

Page 5

Makuch: Stated that he believes a 12 x 20 ft. accessory structure is not a shed but a two-car garage. He further questioned Mr. Kistner that if he could only come back 20 feet from the seawall, where would he fit a 12 x 20 foot structure?

Charles Kistner: Stated the area is high and dry as you can see from the pictures. It is not 100% wetlands.

Diss: Stated that she has a problem with the size of the shed. Also, she does not like to approve any structure without seeing the building plans. She feels that when someone is asking for a structure, the ZBA should be able to see what the intent is. In her 15 years on the ZBA, they have never approved a structure on a lot that did not have a residence.

Makuch: Stated that the Applicant has owned this property for 20 years so when he put in the seawall and the dock he feels that the Applicant created his own practical difficulty and now he wants electricity. However, he stated that he understands the desire to get electricity to the hoists.

Antkowiak: Questioned the Applicant as to where the shed would be located?

Charles Kistner: Stated it would be right next to the dock. He questioned whether there was any other type of shed he could put there just for storage purposes?

Makuch: Stated that there was not.

A discussion then occurred regarding the procedure for obtaining an address.

Motion by Chamberlain, supported by Diss that Appeal No. 2009-001 be denied for the reasons that there is not a practical difficulty, that the proposed structure would alter the essential neighborhood character, there is currently not a deprivation to the owner of the rights by others in the same district, and that the conditions and circumstances are not unique to the property.

AYES: All NAYS: None

MOTION CARRIED.

7. (a) REPORT OF PLANNING COMMISSION REPRESENTATIVE:

Antkowiak: Stated the Planning Commission is dealing with the Master Plan, a sand removal operation off of Fruit Street, and someone looking to put in a marine/car garage near the Colony.

(b) CHAIRPERSON'S REPORT:

Chairman Antkowiak: Stated that the meeting that was held in December to adopt the Minutes of the previous meeting was held because of a precedence that had been set in the past. He has been advised that it was unnecessary to have a meeting for that purpose and it will not be done

in the future. Also, there has been discussion as to whether or not the Township or anyone can waive fees, and they cannot. This is an issue the Township Board will need to address.

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

(a) Correspondence Received:

None.

(b) Zoning Board of Appeals Members:

Makuch: Stated that in regarding to waiving fees, the Township Board is going to have an attorney look at the issue. The Township Board is trying to look ahead as to what difficulties the Township will be facing.

Treppa: Questioned the status of the temporary garages?

Makuch: Stated he did not have a status on the issue at this time. There are several other issues facing the Township at the present time that have taken precedence over the temporary garage issue. The Township Board has to make the decision on enforcement of the issue.

9. PUBLIC COMMENTS:

Harold Bain, 5850 Green Drive, Harsens Island:

Stated that the Applicant could put power on his property if it is a recreational piece of property and it's non-buildable. Edison will let you put 100 amp service with an outside service, but it has to be through the Township Building Department. Edison calls it a temporary service. The Applicant would have to pay for the pole and pay for the service.

10. ADJOURNMENT:

Motion by Makuch, supported by Treppa to adjourn the meeting at 8:20 p.m.

AYES: All NAYS: None

MOTION CARRIED.

Respectfully Submitted,

Christine Holcomb
Recording Secretary