

**MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS  
HELD ON THURSDAY, JULY 16, 2009, 2009 IN THE CLAY TOWNSHIP  
MEETING HALL, 4710 PTE. TREMBLE ROAD, CLAY TOWNSHIP,  
MICHIGAN 48001 AT 7:30 P.M.**

**1. CALL TO ORDER:**

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

**2. ROLL CALL:**

PRESENT: John Chamberlain; John Makuch; BrianTreppa; Chairman Anthony Antkowiak

ABSENT & EXCUSED: Marianne Diss

A quorum was established.

Also present: Michael Kras, Clay Township Building Inspector and Zoning Administrator

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

None.

**4. APPROVAL OF MINUTES OF JUNE 18, 2009:**

**Motion by Chamberlain, supported by Makuch to approve the Minutes of June 18, 2009 as presented.**

**AYES: All    NAYS: None    ABSENT & EXCUSED: Diss**

**MOTION CARRIED.**

**5. ZONING BOARD OF APPEALS PREFACE**

Chairman Antkowiak read the Zoning Board of Appeals Preface: 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 Appellant 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 Appellant 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 HEARINGS:**

**2009-004 – WENDY GEISE / JACCO CONSTRUCTION – 7235 LAZY LANE**

**The Applicant is requesting a variance of 2 feet 6 inches of the side yard setback where the north side yard is less than five feet and where a minimum of 5 feet side yard is required to allow the construction of an addition that will attach a single family dwelling to an existing detached garage. This hearing is authorized by Township Ordinance No. 126 and Section 27.04.**

Chairman Antkowiak invited the Applicant or her representative to address the ZBA.

Jeff Syrocki, Jacco Construction, 2159 North Channel Drive, on behalf of the Applicant: Stated that Ms. Giese is looking to building a new residence and is in need of some variances in order to build the project. This property is located on a street where everything is tight. They are trying to use the existing foundations that are there and connect the garage to the house, therefore, they are limited to the space altogether.

Chairman Antkowiak: Questioned Mr. Syrocki as to whether he had filled out the application.

Syrocki: Stated that he had filled out the application.

Chairman Antkowiak: Questioned Mr. Syrocki as to the statement on the application that conditions and circumstances unique to the property were not created by the owner and requested that he elaborate on same.

Syrocki: Stated that they are trying to use existing footings and foundations and incorporate them into the new project that were existing and were not created by the current homeowner.

Chairman Antkowiak opened the public hearing at 7:34 p.m. and requested the public that wished to speak in opposition or in favor of the requested variance to come forward to speak.

No one came forward to speak in favor or in opposition to the requested variance.

Chairman Antkowiak closed the public hearing at 7:35 p.m.

The ZBA then began its deliberation on the requested variance.

Chairman Antkowiak suggested reviewing the five standards in regards to the requested variance.

1. The strict enforcement of the provisions of the Ordinance would cause a practical difficulty and deprive the owner of rights enjoyed by all other property owners owning property within the same zoning district.

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Chamberlain: Stated that he felt that the existing buildings had been there for a long time and look as though they are in fairly poor shape. It would obviously be much better to have a new construction.

Chairman Antkowiak: Stated that one of the things we look at is the location of the buildings in terms of whether that can add to or be a part of the practical difficulty. These existing buildings are unlikely to be moved

Chamberlain: Stated that if the ZBA enforced the Ordinance as is, the garage would have to be torn down and moved 2-1/2 feet.

Makuch: Stated that if the porch was removed there would be 12-1/2 feet on one side and 2-1/2 feet on the other for a total of 15 feet and questioned Mr. Kras as to whether the Ordinance stated that there had to be 15 feet?

Kras: Stated that there had to be 15 feet, but one side had to be at least 5 feet. He further stated that the block buildings had been there for quite awhile and are quite a distance from the neighbor. There is a code that would require that the block building on one side would have to be non-combustible materials 5 feet in under the 2006 Ordinance. Therefore, the roof would have to be fire-proof on the 2-1/2 foot side. Also, if there was a window on that side it would have to be blocked in, too.

Syrocki: Stated that he spoke with the neighbor regarding same.

Kras: Stated that there also is an existing septic field in the front of this property. He further stated if the garage were to be moved, it would probably fall under the more than 50% rule and they would have to put in a new septic field, which would be much higher at this point in time than going with the existing septic field.

Makuch: Stated his impression was to just connect the two buildings, but he now understands that the buildings would be torn down and a new residence built.

Syrocki: Stated that was correct. They want to incorporate the existing footings and tear down both buildings. They will try to utilize some of the existing block on the main house to incorporate into the new foundation.

Kras: Stated that because the property is in the flood plain, it will need to be raised out of the flood plain and that is almost five block high. There are eight block on there, so he knows that he will use almost half of whatever is there.

Chamberlain: Questioned whether practical difficulty has been found when not using an existing foundation and septic field has created a financial burden?

Makuch: Stated that he didn't feel that financial issues could be considered as a practical difficulty. However, it is his opinion that one could argue that by tearing down the garage and

moving it in an extra 2-1/2 feet to comply with the Ordinance will now create another issue with the septic field. Although the lot is 73 feet wide, it's not very deep and it's his opinion that the builder and owner are trying to comply with everything possible. He further stated there is no issue with the fireproofing materials. He further stated that to him, the reason for the side yard setbacks is in case of issues where you need access. In this instance, there is 42 feet on one side and there is room there. They are using an existing foundation and even if the one foundation had to be moved in, you are now compounding problems and could possibly argue that as a practical difficulty.

Kras: Stated the practical difficulty is the size of the lot because they are losing one-third of it to the water.

2. There are conditions and circumstances unique to the property which are not similarly applicable to other properties in the same zoning district.

Chamberlain: Stated that the lot size and the way the canal cuts in with the lot addresses this issue.

3. The conditions and circumstances unique to the property were not created by the owner or his predecessor in title within the time following the effective date of the provisions alleged to adversely affect such property.

Chairman Antkowiak: Stated that the conditions and circumstances on this property obviously were not created by the owner and were existing when she bought the home.

4. The requested variance will not confer special privileges that are denied other properties similarly situated and in the same zoning district.

Chamberlain: Stated that the houses in the area were pretty close-to-the-border houses. He doesn't know how many variances exist on that street, but it seemed to be the norm and not the exception.

5. The requested variance will not be contrary to the spirit and intent of the Zoning Ordinance.

Chairman Antkowiak: Stated that the Zoning Ordinance asks for the setback, he feels that there are a lot of unique pieces of property in Clay Township and feels there could be an argument for changing the requirements for this property as well other properties in Clay Township. It is his opinion that is it not contrary to intent of the Zoning Ordinance.

**Motion by Makuch, supported by Treppa to approve the requested variance regarding Appeal No. 2009-004 – Wendy Geise / Jacco Construction - 7235 Lazy Lane based on the following reasons: there exists a practical difficulty due to the lack of depth on the lot; and moving the one foundation will create a compound issue with septic location; and that these issues were not, in fact, self-created.**

**R/C VOTE: AYES: Treppa; Makuch; Chamberlain; Chairman Antkowiak**

**NAYS: None      ABSENT & EXCUSED: Diss**

**MOTION CARRIED.**

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

Antkowiak: Stated that they are working on the Master Plan and had their first visioning session on July 11<sup>th</sup> with residents of Harsens Island. There are plans for more sessions in the future so that they can then try to incorporate suggestions from the community in the Master Plan.

**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 he believes that there will be a request for the ZBA to do an interpretation in the near future on a fence issue.

Kras: Stated that the people who want the interpretation did not apply for it as they were told to do.

**9. PUBLIC COMMENTS:**

Karla Orlando, 7357 Flamingo: Stated she was there regarding the fence and wasn't informed of the proper appeal filing. She questioned whether she needed to file a letter of grievance or an application because she had been told several different things.

Chairman Antkowiak: Stated that they were not on the agenda. In order to be placed on the ZBA's agenda, they would need to make an application through the Building Department.

Ray Sankuer, 7361 Flamingo: Questioned how to fill out the application if you have a grievance against something that was already done.

Chairman Antkowiak: Stated that Mr. Kras or persons in the Building Administrator's office could help them fill it out.

Makuch: Stated that the ZBA was not going to experience what was experienced at the Township Board meeting on this issue. He further stated that neither the Chairman nor he will put up with cross talk between audience members or continual interruptions. The ZBA will act in a professional manner and handle their case as justly and fairly and possible.

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Chairman Antkowiak: Advised Ms. Orlando and Mr. Sankuer that the time limit is important because the request has to be published. The ZBA is bound by specific regulations that must be followed.

**10. ADJOURNMENT:**

**Motion by Makuch, supported by Chamberlain to adjourn the meeting at 7:55 p.m.**

**AYES: All   NAYS: None   ABSENT & EXCUSED: Diss**

**MOTION CARRIED.**

Respectfully submitted,

Christine Holcomb  
Recording Secretary