

**MINUTES OF THE CLAY TOWNSHIP ZONING BOARD OF APPEALS MEETING
HELD ON THURSDAY AUGUST 20, 2009 IN THE CLAY TOWNSHIP
MEETING HALL, 4710 POINTE 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: Brian Treppa, Marianne Diss, John Makuch, John Chamberlain, and Chairperson Anthony Antkowiak

ABSENT & EXCUSED: None

Also present: Attorney John McNamee, Building Administrator Mike Kras

A quorum was established

3. APPROVAL/AMENDMENTS TO AGENDA:

Antkowiak: Would like to have an amendment to the agenda to make item number 6 number 7, and make number 7 number six.

Motion by Chamberlain, supported by Makuch, to amend the agenda changing number 6 to number 7 and number 7 to number 6.

AYES: All

NAYES: None

MOTION CARRIED

4. APPROVAL OF MINUTES OF JULY 16, 2009:

Motion by Chamberlain, supported by Diss, to approve the Minutes of July 16, 2009

AYES: All

NAYES: None

MOTION CARRIED

5. ZONING BOARD OF APPEALS PREFACE

Antkowiak: This meeting is different, the Zoning Board of Appeals preface will not be read, it has to do with variances and we are not talking about variances tonight. Will read from Ordinance so everyone understands what we are here for. Start at section 27.04 Jurisdiction, this what we have to do (Antkowiak read from Ordinance). Will now move to 27.05, section 2, which deals with interpretations of the Ordinance (read from Ordinance). Also have to deal with the decision, (read requirements from Ordinance). Finally, 27.07 is the review by the Circuit Court (read procedure from Ordinance).

We are here to interpret a portion of the Ordinance that two applicants have asked us to do. When I open the Public Hearing I will allow the applicant to make their case, after that I will ask Mr. Kras to come forward to make his case. When that is done we will open the Public Hearing. What we want to have from the public is relevant information such as, "I am in favor of this because". Opposed the same. Chairperson Antkowiak read the rules of the Public Hearing. If public comments become repetitive I will ask you to stop and give us information that is different, saying the same thing over and over does not give us any more information. We are attempting to find fact and fact is what we need to make our decision.

Opened the Public Hearing at 7:10 p.m.

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6. SCHEDULED PUBLIC HEARINGS

2009-005 – CHRIS & CARLA ORLANDO/RAYMOND & DARCI SANKUER

The applicant is requesting an interpretation of Zoning Ordinance regarding fence at 7359 Flamingo

Chairperson Antkowiak invited the applicant to address the ZBA

Karla Orlando, 7357 Flamingo: Orlando read letter that was presented to ZBA and included in their packets. Have over 100 signatures requesting that the fence be taken down because it does not follow the Ordinance.

M. Kras, Zoning Administrator: Commented on some of the examples cited in letter. Gave ZBA approximately three pages of information regarding the fence, as they did, except also used the Assessor's information. Regarding the fence that Mrs. Shumaker had up was approximately \$2,300.00 in value; the value of the fence that was put up was \$900.00. This doesn't include installment. In reviewing the information, in the General Conditions, which I did because I've had numerous complaints about this fence being damaged by neighbors. Talked to homeowner, the existing fence was 3' high and went all the way to the water. It is a grandfathered fenced, the assessing files indicate the fence was built in 1986, the first house on the road; then the Orlando house and then the Sankuer house. Mrs. Shumaker purchased the house with the fence up. Been numerous trouble there back to 1994. Has replaced parts of the fence on numerous occasions and in 1998 the then Inspector, David Sterling, allowed the replacement of the fence as being grandfathered. In reviewing that through the Ordinance, the fence was built in 1986 when fences were allowed, and the previous Inspector allowed it to be replaced and I used the same thing in the Ordinance and allowed the replacement of the fence. She went from wooden fence to a chainlink fence because she wouldn't have been allowed to put the wood back because it would have exceeded the cost under our Ordinance. Fence being non-conforming, it doesn't increase the non-conformity; a fence is a fence whether it is 4' tall or 3' tall.

PUBLIC COMMENTS:

John Richards, 7337 Flamingo: This has caused rift in neighborhood. My interpretation, when moved there was a beautiful street with no fences. Known Janet long time, had a fence there, a wooden fence, not attractive, was grandfathered, was there before things changed. When came down in my interpretation, if grandfathered can keep, when comes down the right is gone. The fence is gone. I live down the canal and there are only three fences down the canal. Came home and there was a chainlink fence 8 or 9 lots from mine. Looks like a dog pound. Don't think this right. Think fence should come down, it has divided the street.

Antkowiak: We are here to decide whether or not the interpretation by Mr. Kras of our Ordinance is a correct interpretation. Trying to give you information as to what we can do.

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Dave DeLong, 9607 Maynard: Grew up on Audubon, I see nothing wrong with what the Township did. People are in a war over the fence. Clay did the right thing.

Charles Dewey, 7232 Flamingo: Support Mr. Kras. Have an interest in this because was constantly being called on to repair fence. Not accusing anyone. Was a bold decision. Ongoing battle in the neighborhood, the cops have been out there, countless hours because of the harassment. Fence is just a replacement fence, like a steel seawall to replace a wooden seawall. Should be there, these neighbors need it. Have no problem with it; I have chainlink on both sides of my property and some down the road. I bought because have dog, property had fence.

Karen DeSandre, 7296 Flamingo: In favor of fence, was grandfathered in and this was a replacement. Would like to see peace in the neighborhood.

David Houthoofd, 7349 Flamingo: The people in favor of the fence don't have to look at. I question how this fence got put up to begin with. If a variance involved we would have been notified. The time for input is before fence is up not after. This not personal, just once you start fences, you know what happened across the street, it is a never-ending battle. Don't think fair, error in judgment.

Elizabeth Kordas, 7204 Flamingo: Just move onto Flamingo, was told could not put fence all the way to water, could not put up a covered boatwell, a shed, or anything that would destroy the beauty of the view. Do have chainlink on one side, been there quite awhile, doesn't bother me. On the other side of lot had a wooden fence, parts fallen down, have to wonder if this would be the case if this fence fell down. Have a dog, but would not put up a chainlink fence. Love the beauty of the water. You buy on the water knowing those things. Do not want to see chainlink fences up and down canal.

Chairperson Antkowiak: So far heard from people who like the fence and don't like the fence, do we have any other kind of information?

Raymond Sankuer, 7361 Flamingo: It wasn't all the neighbors that received a letter, Orlando's received a letter, and I received a letter. Said had 10 days to respond, we responded with our concerns about the fence, we never heard anything on the letters we sent. Should go to somebody within so many feet. If it wasn't a concern if this was right or wrong, apparently it was wrong for that letter to be sent out in the first place.

Chairperson Antkowiak: Can you share the letter with us?

Sankuer: It is in your packet.

M. Kras: After doing some review seeing all the complaints I did send them a courtesy letter, but the fact is I already made my decision before I sent the letter, hoping there wouldn't be any problems when the fence was put in. However the Police were there for several hours. Mr. Kras then quoted from a paper included in the packet regarding a Supreme Court decision on fences.

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Bill Wilbur, 8451 colony Drive: Live in a boating community. Should have discussed this 10 or 12 years ago. Directly across from where I live a chainlink was put up about 12 years ago, at that time neighbors had no problem with fence, it never became an issue. I look at the fence every day and I see no offence in the chainlink fence and apparently the two neighbors adjacent to it have no problems either. Was involved with an issue in Chesterfield Township that dealt with the grandfather clause and it was very powerful in court. It did stand up.

Karen Lester, 7338 Flamingo: I am friends with both sides. Every neighbor I have talked with said, no one would have been upset if the existing fence had been replaced with something like it of the same heights. The beauty is why we got our house on Flamingo; this chainlink is an eyesore. No one has been mentioned as far as the dogs, you can use invisible fencing. Have had incidents where found boat in water, children yelling for help, had to run across yards and help save animals and children. Old fence could have scaled, not this one, it is a safety issue.

Sally Ragon, 7285 Flamingo: Electric fences do not always work. Neighbor has dogs and electric fence, been charged by dogs when walking.

Linda Richards, 7337 Flamingo: Live across the street from man on Colony who wanted to build boathouse, need a variance because wanted two story boathouse, see this in same manner. No objection to replacing fence, concerned why we weren't involved, why no variance before put up.

Erin Langdon, 7340 Flamingo: Friends with Janet. Concern if had electric fence, if crossed believe a good chance her animals would not make it across the neighbors yard alive. I am concerned for Janet's comfort in life without a fence.

Tim Waidleich, 7346 Flamingo: Support Janet on fence, had a hard time with neighbors, meant to keep animals in and unruly people out. Electric fence can hurt animals, can cause heart attack, if animals get out can't get back in. No deeds restrictions on Flamingo, if concerned about safety issues should put ladders for kids to get out of the water. Need to look at the Ordinance. There is selective enforcement. The three-foot not only applies to hedges or fences but to other items in the viewing area.

Susan Hunwick, 7344 Flamingo: Gentleman that just spoke had to remove a fence because put up illegally and in the front. Now hedges, not three feet, never were. I can't see anything on the water anymore. Should be some kind of ruling and enforced.

Antkowiak: Unless we have more information relative to the interpretation Mr. Kras made relative to the fence, we don't need to hear any other things that don't help us in that respect.

Orlando: Want to respond to Mr. Kras' reasoning.

Antkowiak: You don't have to do that.

Orlando: Have police reports for my address and Mr. Sankuer's address

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John Makuch: Have pulled them

Antkowiak: Not particularly interested in Police reports, we are here to deal with interpretations. Any other pertinent information?

Janet Shumaker, 7359 Flamingo: Bought house almost 20 years ago, looked for house for fence, have dogs. Was told fence grandfathered in, stays as long as you choose to keep it, you must keep fence up. Has been difficult to keep up split rail fence. Parts have been knocked over. Replaced the entire side of Ray Sankuer's split rail fence in 1999. Offered to re-wire fence when said I didn't take care of it, wouldn't let me on property. On Orlando side it was constant battle. Went to Mr. Kras, told him trying to keep up fence. Have spent \$2,300.00 on a fence this Township approved. This dividing our street, don't think the whole story is getting out. Neighbors said if split rail wasn't removed would sue. Put up cyclone because safer. This has gone on for years. Being harassed out of my house. Presented picture of tree blocking view on neighbors yard.

Antkowiak: Need to start deliberating, unless anything else.

Ray Sankuer: Listened to all of this, a lot of lies. Have a short letter sent to Mr. Kras.

Antkowiak: It in the packet, don't need to read it out loud.

Ray Sankuer: Suggested put up same split rail fence.

Antkowiak: Heard a lot of suggestions and ideas, we understand. Difficult part is to deliberate. Unless something totally new I am going to close public hearing. Seeing no response I now close the Public Hearing
8:30 p.m.

Antkowiak: The rest of the time is our time, if you respond or clap or give us a hard time we will have the officer escort you out. Our job is to try to figure out what the answer is. I now look to my fellow board members.

Chamberlain: Can we read this section of the Ordinance that pertains? That may help.

Chairperson Antkowiak reminded the audience if wanted to stay must be quiet, otherwise please leave. Mr. Chamberlain requested we look at part of Ordinance that applies; it is 3.23, non-conformities. We have a non-conforming structure only and in that case we deal with sub-section 2 and sub-section 4. Read information. Then subsection 4, c & d, which is General Conditions, which he also, read. Also have to deal with unobstructed yard space on page 37. Read.

I have a question, the height of the fence previous to the new one was how tall?

Kras: Three feet, about 40 inches to the wire and tops of the posts.

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Diss: Should a shed, a non-conforming shed on Flamingo be replaced on the same footprint, do we need a variance?

Kras: Would go through and see when shed was built and if the shed was legal would allow it to be replaced in the same area. If not legal, no.

Diss: Can remember instances where the sheds had to have variances.

Makuch: We had a lot of public comments and the public was right in a lot of respects, such as should someone want to put in a new fence today then they would have to have a variance and everyone would have to be informed. Have a number of issues here, first is the grandfather clause; are we increasing the non-conformity or not, if David Sterling allowed replacement of this fence in the past has a precedent been set. We are here not to hear a variance hearing but to review this data and decide whether our interpretation agrees with Mr. Kras' action. Like to ask Mr. Kras and Mr. McNamee a question. Do safety concerns have an appropriate place? First to Mr. Kras, do you feel there were safety issue that affected the decision to allow this chainlink fence?

Kras: Absolutely because of numerous complaints from both neighbors and applicants statement she was being harassed.

Makuch: Know there have been a number of police reports. Mr. McNamee, in your opinion, do feel that safety concerns would fit within Mr. Kras' jurisdiction the way our ordinance is written?

McNamee: The responsibility to answer that falls on the ZBA. This issue is a disagreement as to what the Township should have done. When the Township attempts to pass zoning laws trying to put together some kind of general structure to make some kind of order out of how things are handled particularly with respect to property rights. One of the problems is people disagree how it should be done. You volunteer your time, you have no bone in this battle, and you try to come to a resolution, same as Mr. Kras tries to do as a Zoning Administrator. As we sit here I would indicate to you that Mr. Kras is charged with the responsibility of administering this at the first level and parties that feel they are aggrieved are entitled to bring this appeal before you and I as the Township Attorney act as your counsel. I just received the packet, have very little contact with Mrs. Shumaker and spoke with Mrs. Orlando when she called my office and told her she had to appeal to the ZBA. The next level if someone disagrees with your decision is to appeal to the Circuit Court. In the State of Michigan case law says the court will defer to your interpretation of your municipalities ordinances. They do give deference to what you decide, the court is not supposed to supplant your judgment, only if you exceed or if something's done that is not permitted. As I look at this language I may have an opinion but it would just be an opinion. If you wanted me to research on any legal issues that are similar that have been decided in the courts I can do that. Right now I think the issue is in your opinion do you feel that that issue of safety that's been raised fits within the language that's employed in sub-paragraph c? Reads paragraph. That suggests that it may be permitted if it has been deemed to be a safety issue, but it is qualified by cost. My opinion is of no consequence at this point because that's not my job; my job is to give you legal counsel. Do you feel it falls within the parameters of the interpretation that you as a collective body would decide.

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If you want further time to gather further information you do not have to reach a decision tonight you can reach it at a subsequent meeting. In a lot of cases you will not find real facts that might be real close to this specific case.

Antkowiak: The section relative to the nonconformity, it seems to me that number 2 that says a nonconforming structure may continue provided it remains otherwise lawful, nonconforming structures shall not be enlarged or altered in any way, which increases its nonconformity. Seems to be in direct opposition to this other piece that allows this to happen. And how do we determine which of those would be appropriate one to use?

McNamee: Think you have to try to look at those together and what would be the intent of the ordinance. And if you have a structure that you now want to make it something else that would probably not be allowed. Gave examples of conforming to State requirements that would change a nonconforming structure. There are no definite answers.

Antkowiak: What is your pleasure Board, we can agree with Mr. Kras, look at a different interpretation or postpone to another time.

Makuch: Know it is very emotional issue and there is two sides. Think there are a lot of further implications as to the credibility of our Zoning Ordinance, the credibility of the building official, and the decision that was made. I have some concerns with possibly contradicting a precedent that was already set. Are we increasing the nonconformity, the safety issues? I personally would like to direct Mr. McNamee to research some similar cases. I am not personally comfortable making a decision right now, want some more answers, want to make sure what we say is right. As a Township Board member, if people on the bird isles want fences, do your petitions, go to the Planning Commission. Have to put emotion aside and look at the facts.

Chamberlain: I agree, can do research myself and dig in this myself and have this come back at next meeting.

Motion, by Chamberlain, supported by Diss, to postpone the decision to the next meeting in order to get more information

AYES: All

NAYES: None

MOTION CARRIED

Antkowiak: Recess for 3 minutes

Reconvened at 9:00 p.m.

7. OLD BUSINESS

Correction of Approved Minutes from June 18, 2009

Antkowiak: In the minutes of June 18, 2009 the motion that was made by John and supported by the other John, that the square footage of the new building not exceed the existing square footage of the present building. If you look at the order, it would be the same square footage of the

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existing footprint. We need to correct this motion of June 18th to reflect that in the official minutes.

Makuch: I know what my intent was, the existing footings in the footprint. And frankly if you are asking me if I said footings or footprints, I can't tell you.

Chamberlain: I wrote footprints

Makuch: And we signed it. When I made the motion, because it was so close to the property line, you have this existing footings and those footings delineate a footprint. So if you have to make a change to those footings then no you can't have it, you have to leave it exactly the same. You're going to build whatever you have on what you have.

Chamberlain: And the way that I wrote it is that the same square footage

Antkowiak: From my perspective, I understood the footprint to mean nothing other than whets there.

Makuch: I would agree

Kras: Just want the minutes to be correct.

Antkowiak: He's going to come back to us?

Kras: If he has to I'll send him back. His footings aren't deep enough there and I told him then you can't build on it. He said he would add two blocks and add grade. I told him the neighbor's are not going to let you do that.

Makuch: My opinion would be that if he has to alter those footing to hold house then no.

Antkowiak: Mr. McNamee, can we amend these minutes to reflect what we are saying here?

McNamee: You can amend and say this is what we meant and you have to put the person affected on notice. You can't make a new decision but you can clarify.

Motion by Makuch, supported by Chamberlain, to clarify my motion regarding the variance for 8536 Anchor Bay Drive, the original motion that was approved was to allow the variance as long as the other zoning ordinances are complied with, all fire and building codes compliant and the same square footage of existing footprint or less. My motion was to not exceed the existing footprint and to use the original footings. Should those footings have to be altered in way shape or form then the variance will not be allowed, should not be allowed.

Antkowiak: Basically what we are saying is what we were talking about, on the same footprint and the footprint constitutes the footing.

Makuch: The footings constitute the footprint and if the footings have to be altered the deals off. That was my intent all along.

Chamberlain: That was my intent when I seconded it.

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AYES: All

NAYES: None

MOTION CARRIED

8. REPORT OF PLANNING COMMISSION REPRESENTATIVE

Antkowiak: Will be having a visioning session on the 23rd of September here on the mainland relative to the Masterplan.

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

a. Correspondence Received

Memo from Mike Kras regarding 7236 Bayview Shores

Antkowiak: It was in your packet, did everyone read it?

Makuch: Who enforces taking that fence down?

Kras: Will have to go to Mr. McNamee he originally made the agreement with them.

Treppa: Doesn't that fall into surrounding the pool?

Kras: The pool can be separated.

Diss: The owners said they were afraid for their children. Board said yes not knowing they had already signed a purchase agreement.

Makuch: Think there was some sort of agreement, were going to revoke based on false information and then there was some agreement they were allowed to keep fence along the canal for five years.

Chamberlain: Think we should stand by the agreement. What are the next steps?

Antkowiak: Mr. McNamee is writing a letter.

Diss: They could ask for a variance for themselves.

b. Zoning Board of Appeals Members

Makuch: Township Board gets MTA information; they have a lot of helpful seminars. If you see something bring it to us.

10. PUBLIC COMMENTS

None

11. ADJOURNMENT

Motion by Makuch, supported by Chamberlain, to adjourn the meeting at 9:15 p.m.

AYES: All

NAYES: None

MOTION CARRIED

Respectfully submitted,

Dorothy DeBoyer
Deputy Clerk