

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

**Thursday, February 23, 2012
7:00 P.M.**

I. Meeting Called to Order

Mrs. Wietek-Stephens called the meeting to order at 7:00pm

II. Roll Call

Present: Chairperson- Michelle Wietek-Stephens; Vice Chairperson- Karen Alholm; Secretary- Kendell Milton; Members- Geno Angeli; Alternate- Sandra Page
Absent: Lee Snooks

III. Approval of Agenda

Moved by Michelle Wietek-Stephens, and seconded by Karen Alholm, to approve the agenda as written for the February 23, 2012 meeting.

*Vote: All Ayes
Motion Carried*

IV. Approval of September 29, 2011 Minutes

Moved by Kendell Milton, and seconded by Michelle Wietek-Stephens, to approve the minutes as written for the September 29, 2011 meeting.

*Vote: All Ayes
Motion Carried*

V. Public Comment

Written statement submitted by Melody Beres, 6263 US 41 S, opposing the variance request.

VI. Public Hearing

A. 2012-01

Mr. Eric Keough and Ms. Theresa Johnson agents, for Inger Eward, 6279 US 41S, Marquette MI, parcel #52-02-117-029-00, are requesting a dimensional variance from the Chocolay Township Zoning Board of Appeals (12-01) to construct a detached garage with a total square footage of 380. The applicants are seeking a variance from Section 6.1: Height and Placement Regulations, side setback for the Agricultural/Forestry District. The proposed detached garage would be

24 ft from the east property line, whereas the minimum side setback is 30 ft.

VII. New Business

A. Dimensional Variance Request 2012-01

The attached staff memorandum submitted by Jennifer Thum

Applicant Eric Keough, 112 Vista Hills Drive, Stated the intent was to repair the home to meet building codes to include:

- Repairing brick foundation
- New floor
- New drywall
- New siding
- Build new garage

They would set a date to have the project completed in less than six (6) months. There is a verbal agreement to purchase the property and the applicants are acting as agents for the current owner. The purchase would depend if the variance would be approved and a garage could be built

ZBA Member had some concern with the fact the applicants had no legal interest in the property and if the variance was granted would the sale go through and would the house be repaired to a level in which it could be occupied.

Mr. Keough would have the home inspected and estimated it would take a month to gut the house and have it repaired.

Assessor Tina Fuller spoke about the condition of the house and if it could be repaired. ZBA members had additional concerns about the location of the existing well and septic and if the driveway would be running over the lines. They asked about the home meeting current fire codes. The question was asked by Mr. Milton if it was known if the septic needed to be replaced or just pumped.

The applicants do intend on constructing a garage but do not have a land contract. The commission would like to see a firm agreement for purchase and would need more information about the septic and well locations. They also need information about the fire code regulations before any variance approval.

It was also requested to have the Planning Commission consider rolling this lot and the non-conforming lots in between into the "R1 District" to make them conforming lots.

Moved by Michelle Wietek-Stephen, and seconded by Kendall Milton, to postpone the decision for the variance request until the April 26 meeting. The applicants will need to provide the following information:

- Land contract/ purchase agreement
- PC consider it for “R1 District”
- Building must meet fire codes
- Work on the house needs to be completed before garage is constructed
- Show on maps the location of the current well and septic.

*Vote- All Ayes
Motion Carried*

VIII. Unfinished Business

NONE

IX. Public Comment

NONE

X. Township Board Comment/Planning Commissioners Members Comment

NONE

XI. Informational- Zoning Administrator Comments

NONE

XII. Adjournment

Moved by Michelle Wietek-Stephens, and seconded by Kendell Milton, to adjourn the meeting.

*Vote: All Ayes
Motion Carried*

Respectfully Submitted By:

Kendall Milton
Zoning Board of Appeals Secretary

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

**Thursday, April 26, 2012
7:00 P.M.**

I. Meeting Called to Order

Mrs. Wietek-Stephens called the meeting to order at 7:00pm

II. Roll Call

Present: Chairperson- Michelle Wietek-Stephens; Vice Chairperson- Karen Alholm; Secretary- Kendell Milton; Members- John Trudeau; Alternate- Geno Angeli; Alternate- Sandra Page

Absent: Lee Snooks (in-person, verbal resignation April 20, 2012)

III. Approval of Agenda

Moved by John Trudeau, and seconded by Karen Alholm, to approve the agenda as written for the April 26, 2012 meeting.

Vote: All Ayes

Motion Carried

IV. Approval of February 23, 2012 Minutes

Moved by Kendell Milton, and seconded by Sandra Page, to approve the minutes as corrected for the February 23, 2012 meeting.

Vote: All Ayes

Motion Carried

V. Public Hearing

NONE

Following this item, the ZBA Chair opened the meeting for Public Comment, which would customarily have taken place before the Public Hearing, but was not included on the agenda.

Resident of 6287 US-41 S (next door) commented that he has no objection to the Keough variance. He sees this as a neighborhood improvement.

Mr. Besola, resident of 6262 US-41 S (across the highway) said he supports anything Eric (Keough) is doing because he is making a big difference. He also suggested we revisit the regulations on smaller lots that make it difficult and slow down projects to fix up old houses.

VI. New Business

NONE

VII. Unfinished Business

A. Dimensional Variance Request 2012-01

Consideration

The Zoning Administrator summarized the new materials which addressed Board questions from the previous meeting. There was a question about the legal interest in the property since the applicant name and name on the land contract did not match (Eric J. Keough & Theresa L. Johnson vs MM Vending of Marquette, Inc., signed by President, Eric Keough). This was determined not to be of further concern.

The next question was whether the Planning Commission would consider the property for rezoning to the R-1 District, in which case a variance would not be needed. However, Kendell Milton, Planning Commission representative, reported that the Planning Commission did not support the rezoning because they felt it would qualify as spot zoning.

The applicant has obtained a zoning compliance permit and building permit for the work on the residence, and has already effected extensive improvements to the interior and exterior of the home, greatly improving its appearance in readiness for future occupancy. The applicant submitted many photos documenting the improvements, and staff visited the home and verified the improvements on April 18, 2012.

Based on records from the Marquette County Health Department, and staff inspection of the property on April 26, 2012, it was determined that the location of the proposed garage would most likely not create an issue with the current septic tank and absorption field.

Alholm stated that in some cases, strict compliance would prevent owners from using the property as permitted for a residential purpose with the expected accessory structures. She noted that the setbacks are a problem caused by government regulations. There were no pertinent objections, and she noted it's a great improvement.

Decision

Karen Alholm moved, and Michelle Wietek-Stephens seconded, that after conducting a public hearing and review of the STAFF FILE REVIEW/ANALYSIS for Variance request #12-01, the Zoning Board of Appeals **finds** that the request **is consistent with** the standards applicable to granting non-use variances found in the Chocolay Township Zoning Ordinance, and hereby **approves** variance request #12-01 with the following findings of fact and conditions:

Findings of Fact

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty for the following reasons:
 - a. Strict compliance with setbacks would unreasonably prevent the owner from using the property for a permitted purpose.
 - b. The difficulty in meeting side setback requirements while seeking to construct a customary accessory structure within a residential district is a result of government action that increased the minimum side setback standards above those that existed when the house was built.
 - c. The construction of the garage is not contrary with the intent of the zoning ordinance to allow customary accessory structures in residential districts.
 - d. The construction of the garage will not cause a substantially adverse effect upon adjacent properties, and will not essentially alter the character of the surrounding area.
 - e. The variance is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zoning district.
2. Granting the variance is not contrary to the public interest.
3. There are circumstances unique to the individual property on which the variance is granted.
4. The variance request is not due to actions of the applicant.

Conditions of Approval

1. The applicant Mr. Eric Keough and Mrs. Theresa Johnson, along with Ms. Inger Emard, shall remove the existing shed that overlaps the west property line within one month of the completion of the garage.
2. All applicable permits shall be obtained before the construction of the garage and the demolition of the shed.

Vote: All Ayes

Motion Carried

VIII. Public Comment

NONE

IX. Township Board Comment/Planning Commissioners Members Comment

Trudeau and Wietek-Stephens requested a pdf version of the most updated zoning ordinance. Alholm requested a copy of the corrected February 23, 2012 minutes.

X. Informational- Zoning Administrator Comments

General introduction and greeting at the first meeting with the new Zoning Administrator.

XI. Adjournment

Moved by Michelle Wietek-Stephen, and seconded by Kendell Milton, to adjourn the meeting.

Vote: All Ayes

Motion Carried

Respectfully Submitted By:

Kendall Milton
Zoning Board of Appeals Secretary

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

**Thursday, May 24, 2012
7:00 PM**

I. Meeting Called to Order

Mrs. Wietek-Stephens called the meeting to order at 7:01 P.M.

II. Roll Call

Present: Chairperson – Michelle Wietek-Stephens; Vice Chairperson-Karen Alholm;
Secretary-Kendell Milton; Members-John Trudeau;

III. Approval of Agenda

Moved by Wietek-Stephens, and seconded by John Trudeau, to approve the agenda as written for the May 24, 2012 Meeting.

Vote: All Ayes

Motion Carried

IV. Approval of April 26, 2012 Minutes

Karen Alholm referred to Page 2, VII A, under “Decision” of April 26, 2012 Minutes, that she made motion and not Sandra Page.

Moved by Karen Alholm, and seconded by Kendell Milton to approve the April 26th, 2012 Minutes as corrected.

Vote: All Ayes

Motion Carried

V. Public Comment

None.

VI. Public Hearing

ZB12-02 Paulette Perttunen, 106 Ewing Pines Drive, Marquette MI, parcel #52-02-520-023-00, requests a variance from Article II and Section 3.1 to split lots 23/24 (104/106 Ewing Pines Drive) and merge lots 24/25 (102/104 Ewing Pines Drive) of the Ewing Pines Subdivision, allowing the existing detached garage on lot 24 to be merged with vacant lot 25 where a home will be built in the next 5 years. This is request for variance to allow an accessory structure to be located on a lot without being incidental and subordinate to a principal use on that same lot as defined in the Chocolay Township Zoning Ordinance.

ZB 12-02 – Kelly Drake Woodward stated she received correspondence from Mr. and Mrs. Lamonte Blashall who live at 103 Ewing Pines Drive. They have no objection to request.

Applicant Paula Perttunen of 106 Ewing Pines Drive, Marquette, was present and spoke regarding variance request. She wants to sell the house on lot 23 for economic reasons to keep things moving along in the development of the subdivision, bringing more tax base to the Township. Timothy Prisk, partner in Ewing Pines Subdivision development, was present and spoke regarding the variance request. He said he currently uses the detached garage for a woodshop, and stores lawn mowers and other tools to manage the subdivision, but he does have a separate office in town. He can address the outdoor storage of equipment and trailers by moving things to his office. The plan is for Tim to build his house on lot 25, thereby retaining the existing detached garage.

VII. New Business

The Board discussed variance request #ZB12-02. It was clarified that the home on lot 23 already has an attached garage, and that lot 23 is currently merged with lot 24 which contains the detached garage. Board concerns include the size of the existing permitted detached garage, use of the garage, outdoor storage of contractor equipment leading to a commercial appearance/activity in a residential area, parking of a commercial trailer in a residential area.

The point was made that financial reasons are not a justification for granting variances. If the split/merger is approved, the detached garage could not be used as a home occupation because there would then be no home on the lot.

The point was made that the Ordinance provisions are not very clear on permitting accessory structures that are not incidental to a principal use, but in the past these requests have been handled through the variance process. When these structures were permitted before the residence, there was usually a condition that no outdoor storage be allowed. In some cases, the residence was never constructed, leaving just the accessory structure on the lot.

Trudeau moved, Milton seconded that, after conducting public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB12-02, the Zoning Board of Appeals finds that the request demonstrates the standards found in Section 3.1 and Article II “Definitions” Section of the Township Zoning Ordinance, and hereby approves Variance request #ZB12-02 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty;
2. Granting the variance would not be contrary to the public interest;

3. There are circumstances unique to the individual property on which the variance is granted;
4. The Variance request is not due to actions of the applicant.

Suggested Conditions of Approval:

1. There shall not be any outdoor storage of materials prior to the construction of the home.
2. The applicant shall provide the Zoning Administrator with a copy of a Deed merging Lot 24 and Lot 25.

Vote: AYES: Trudeau/Milton
NAYS: Alholm/Wietek-Stephens

Board discussed tie vote results and proper procedure.

Mr. Prisk stated in a Marquette Zoning Board case one Member was missing. There was a deadlock vote, and the applicant was given a choice of rehearing the case when all five members were present.

Wietek-Stephens stated that in a previous instance on the Chocolay Township Board of Appeals, where tie vote was possible, they gave the applicant the choice of hearing the case at that meeting or the next meeting (choice was made before Board voted).

The Board agreed to refer to Township Attorney for interpretation of tie vote. The Variance Request #12-02 was temporarily concluded.

VIII. Unfinished Business

None.

IX. Public Comment

Mr. Prisk asked if the lot split/merger would be allowed if he started construction on a home for Lot 25. Ms. Woodward stated that Tina Fuller, Township Assessor, would approve the split/merger in that case since the accessory structure would then be incidental to a principal structure.

X. ZBA Member Comment

Alholm noted that "Planning Commissioners Member Comment" section not indicated on Agenda. Milton states no other comments.

XI. Zoning Administrator Comment

Woodward spoke regarding how to handle this matter in the future. She suggested that the Planning Commission could address text amendments clarifying the permitting of

accessory structures. It is possible to permit accessory structures differently per district, such as being permitted by right without being incidental to principal uses, or permitted with conditions, or permitted through the conditional use process. Ms. Woodward stated that in the past, Mr. Maki recommended this be handled as Conditional Use in certain districts. This is something to discuss and clarify when moving forward.

Alholm stated that would not resolve problems regarding accessory buildings being built before the principal building, and occasions when principal building was never built. Milton stated that this has a lot to do with the character of different districts. There should be more latitude in larger areas like in the Agriculture/Forestry district.

Woodward stated that in the past, seasonal residents have built accessory structures without a principal structure to store recreational equipment like campers. Milton stated that at least the recreational equipment was not stored outside, which is a major concern.

Woodward stated she was not making a recommendation one way or another, but suggesting that this issue could be handled more clearly through a zoning ordinance revision which would go through a public process.

XII. Adjournment

Moved by Michelle Wietek-Stephens to adjourn at 7:40 p.m.

Respectfully Submitted By:

Kendell Milton
Zoning Board of Appeals Secretary

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

**Thursday, June 28, 2012
7:00 PM**

I. Meeting Called to Order

Vice-Chair Karen Alholm called the meeting to order at 7:02 P.M.

II. Roll Call

Members Present: Vice Chairperson-Karen Alholm; Secretary-Kendell Milton;
Member-John Trudeau; Member-Sandra Page; Alternate-Geno Angeli

Members Absent: Chairperson-Michelle Wietek-Stephens

Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator

III. Approval of Agenda

Moved by Trudeau, and seconded by Page, to approve the agenda as written for the June 28, 2012 meeting.

Vote: All Ayes

Motion Carried

IV. Approval of May 24, 2012 Minutes

Moved by Trudeau, and seconded by Angeli, to approve the May 24th, 2012 minutes as written.

Vote: All Ayes

Motion Carried

V. Public Comment

None

VI. Public Hearing

Application #ZB12-03

Sue and Pete Kitson, 6287 US-41 South, Marquette MI, parcel #52-02-117-028-00, request a dimensional variance to divide their existing nonconforming 10 acre parcel to provide separate parcels for the two homes that have historically been located on the property, with access to remain the same for both homes from the existing driveway. This is a variance from Section 6.1 Height and Placement Regulations, minimum lot size requirement for the AF District, which is 20 acres.

Mr. Kitson said that he has read the master plan and all the ordinances, and there are no provisions dealing directly with properties that have two existing homes. The

second home on the property (not the principal residence) was moved to its current location in the 1960's with or without the Township's approval. He feels this request would support affordable housing. He said that since there are two homes on the property in violation of the Zoning Ordinance, it is almost impossible to get a mortgage on the property. It has to be an in-house mortgage at a high interest rate because the lenders can't sell the mortgage to the secondary market. A VA mortgage is not possible on a property with two homes. The appraisers won't value the second home. Therefore these homes cannot contribute to affordable housing in Chocolay Township.

The applicant stated he doesn't want to sell the property at this time. He wants to make the split so that it is a more reasonable property for someone to eventually sell, buy, or live in for affordable housing. Both homes are in good shape, but financially the applicant would be in better shape if he tore down the second home because currently he can only count 78 percent of the property toward the homestead credit because of the existence of the second home. The second home is located off the highway close to Marquette, and it is Kitson's opinion that it would be a nice, secure home for someone with children. The proposed split is configured to keep the existing barn with the principal residence and the adjacent 40 acres attached to the back corner of the lot near the principal residence. Those parcels (40 acres and 8 acres) if joined would then meet the minimum lot size requirement of the Ordinance. If Kitson split the 10 acre property equally into 5 acres each, the homes would not meet the setback requirements due to the existing placement. He said that the proposed split would not impact existing traffic patterns.

The applicant wanted to address this issue before, however the previous zoning requirements wouldn't allow the split because the properties wouldn't meet minimum lot width requirements. An alley was originally supposed to be located behind the small parcels fronting US-41, but this didn't happen. He thinks the Township created the problem when it allowed the second home to be moved and then created Ordinance provisions that didn't allow the split.

Alholm clarified that financial reasons aren't a valid reason to grant a variance. The public hearing was closed on variance request #ZB12-03.

Application #ZB12-04

Marcie Jones, 727 Cherry Creek Road, Marquette MI, parcel #52-02-119-014-00, requests a dimensional variance to replace an existing sun porch with an enclosed addition that is equal in depth, but longer in width than the current structure. This is a variance from Section 14.2 Regulations Pertaining to Lawful Nonconforming Structure, which states that "no lawful nonconforming structure shall be extended, expanded, or enlarged without first securing the approval of the Zoning Board of Appeals". The entire residence is nonconforming with Section 6.8 Waterfront Setback.

Ms. Jones and her contractor, Lars Larson were present. Jones stated that she wants to extend her porch. Larson (198 Eagles Nest Road in Marquette) brought some

elevation drawings for reference, including existing and proposed side views. There is no basement on the proposed addition. The existing structure is a 10' x 10' sunroom. The whole home is contained within the waterfront setback area. Jones proposes to tear down the sunroom and replace it with a 10' x 30' structure that doesn't encroach any nearer on the waterfront setback. The existing sunroom is 53 feet from the river. There is 19 feet of elevation between existing grade and the river bed. There is 43' between the crest of slope and the river. Larson proposes to dig down 42" and put in a full foundation. The septic tank is on the other side of the home. There is 10' of flat grade between the edge of the proposed structure and the edge of the slope. The proposed addition would be a total of 289 square feet of roof area, which means it would create an additional 189 square feet of surface drainage than existing. Larson indicated this is not a great potential for erosion. The slope is vegetated. No trees would be removed. There is an existing rain garden along the drip edge. He has proposed a crushed rock bed along the drip line (basically replace the existing rain garden). His opinion is that the difficulty was created by the Ordinance after the home was built and the applicant purchased the home.

The public hearing was closed on variance request #ZB12-04.

VII. Unfinished Business

Reconvene variance request #ZB12-02 to resolve tie vote

Paulette Perttunen, 106 Ewing Pines Drive, Marquette MI, parcel #52-02-520-023-00, requests a variance from Article II and Section 3.1 to split lots 23/24 (104/106 Ewing Pines Drive) and merge lots 24/25 (102/104 Ewing Pines Drive) of the Ewing Pines Subdivision, allowing the detached garage built on lot 24 to be merged with vacant lot 25 where a home will be built in the next 5 years. This is a variance to allow an accessory structure to be located on a lot without being incidental and subordinate to a principal use on that same lot as defined in the Chocolate Township Zoning Ordinance.

Alholm noted that after the May meeting she was informed that her ZBA term had expired on May 9, which was before the May 24 meeting where she participated in a vote on this matter. Also, Michelle Wietek-Stephens participated in the previous vote on this matter, but is absent for this meeting. This variance request is reconvened for a decision following the completion of the duly noticed public hearing on May 24.

Moved by Trudeau, and seconded by Page, to reopen public comment on this matter so the applicant could restate her case for those not in attendance at the last meeting.

Vote: All Ayes

Motion Carried

Paulette Perttunen wants to split the detached garage on parcel 24 from parcel 23 which has a home with an attached garage, and merge it with parcel 25 which is currently vacant, but planned for the construction of a home when funds become available. She wants to sell her home on lot 23 and keep the detached garage on lot 24.

Pertunnen said she had considered comments from the last meeting and made sure that equipment was stored either in the garage or behind it to help with aesthetics. Public comment was then closed on variance request #ZB12-02.

The Zoning Administrator, Woodward, presented a summary from the staff review/analysis. This application involves an existing detached garage located in a residential subdivision. There are no existing nonconformities. A historical analysis of the Zoning Orders book detailed 20 similar cases involving the construction of an accessory structure before a home in the past. Of these 20 cases, three were denied and one was tabled and later approved. Most were approved with the condition of no outdoor storage allowed. Of the 17 that were approved, 10 homes were built and seven were never built (on one property, nothing was built at all). Of the 10 homes that were built, seven were built right away and the rest were delayed 7-8 years. One such request was denied because of a finding of no practical difficulty.

Woodward noted that she had included the standards for granting variances on the agenda for reference. She noted that it could be argued that the Zoning Ordinance creates a practical difficulty because it lacks a specific provision addressing (allowing or prohibiting) the construction of an accessory structure prior to the construction of a principal structure. Even the definition of Accessory Building is not definite in stating that accessory structures *must be* incidental and subordinate to the principal use (says *customarily* incidental and subordinate). Regarding public interest, the neighbor sent written comment that he had no objection to the proposed variance. This situation is unique from past requests in that this garage is located in a planned residential subdivision. Woodward asked Board members to support their decision with specific reasons or findings of fact in meeting the variance standards.

Alholm asked for a clarification on the granting of variances based on financial reasons. Woodward said that you don't have to discount financial reasons (can go to public interest), but financial reasons are not a statutory basis to grant a variance.

Trudeau restated his concerns regarding the outdoor storage of equipment around the garage. Specifically, if he was a resident in the neighborhood, he would not want the storage of junk under the canopies without screening. He noted the wing walls look unfinished because it appears they are only partially finished with siding. Alholm noted that the 2008 garage permit said the structure was to be used for personal

storage and garage only, but the outdoor storage indicates it's being used to store contractor equipment. She is also concerned that 5 years is too long a time period before the home will be built on the vacant property. Milton pointed out that there will be no difference in the appearance or character of the existing neighborhood whether the garage is paired with the existing home or the vacant lot. Page was concerned with the commercial appearance of the existing garage and the outdoor storage of large vehicles. She believes that it would take a very specific buyer to purchase the vacant lot for development with this type of garage already on it. Trudeau reminded the Board that Perttunen's partner, Tim, had purchased another business and said he could move the equipment that is stored outdoors to the other business. He also said that the use of the building for commercial purposes is an enforcement matter, and this issue can be taken care of with appropriate conditions on the variance. Woodward clarified that the existing garage is a conforming structure, and if it is combined with the vacant lot, the new home built on that lot must have a larger perimeter measurement than the existing detached garage.

Trudeau moved, Milton seconded, that after conducting a public hearing and review of STAFF ANALYSIS for Variance request #ZB12-02, the Zoning Board of Appeals finds that the request demonstrates the standards found in Section 3.1 and Article II "Definitions" Section of the Township Zoning Ordinance, and hereby approves Variance request #ZB12-02 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty; and
2. Granting the variance would not be contrary to the public interest;
3. There are circumstances unique to the individual property on which the variance is granted, which are that the applicant owns all the lots in question and should have customary property rights to divide/combine the properties as she wishes; and
4. The variance request is due to actions of the applicant.

Conditions of Approval:

1. There shall be no outdoor storage of materials prior to the construction of the home.
2. All areas under roof must have permanent or screened walls if they are to be used for storage, and the garage shall be finished.
3. The applicant shall provide the Zoning Administrator with a copy of a Deed merging Lot 24 and Lot 25.
4. A home shall be developed on lot #25 within five years.

Vote: AYES: Trudeau, Milton, Page, Angeli

NAYS: Alholm

Motion Carried

VIII. New Business

Application #ZB12-03, Kitson, parcel #52-02-117-028-00

Woodward gave highlights from the staff report as outlined in the following paragraphs. This is a variance from Section Section 6.1 Height and Placement Regulations, minimum lot size requirement for the AF District. This property is approximately 10 acres and as such is a nonconforming lot in the AF district. It is an irregular shape with 225 feet of frontage. Both residences comply with all current setback requirements on the existing lot; and would also comply with all current setback requirements per the proposed split. There would be no other nonconformities other than minimum lot size. A previous property owner moved the second home to its current location in the early sixties. Subsequent land owners conducted further splits and mergers which resulted in both houses being located on one parcel which was purchased by the applicant in about 1988. Prior to the 2008 zoning ordinance revision, the property was zoned RR-2 with a minimum lot size of 5 acres and a minimum lot width of 300 feet. The split could not be done because the minimum lot width requirement could not be met. After the 2008 ordinance revision, the property was zoned AF with a minimum lot size of 20 acres and no minimum lot width. The split could not be done because the minimum lot size requirement could not be met. However, adjacent parcels along the highway were split into even smaller parcels than those proposed because they were classified before 2008 as R-1 with a minimum lot size of 25,000 square feet and minimum lot width of 125 feet. Now they are also nonconforming because they were rezoned to the AF district.

The future land use map in the 2005 Comprehensive Plan shows the parcel in the Agriculture-Forestry land use but surrounded on two sides by single-family residential land use. The plan indicates the agriculture-forestry land use was determined by combining all lands that in early 2005 were zoned RP, OS, and RR-2 into one land use category without looking at the nature of specific properties. The RP and OS zoning districts in 2005 had a minimum lot size of 20 acres and no minimum lot width. However, the RR-2 district had a minimum lot size of only 5 acres and a minimum lot width of 300 feet. These standards for the RR-2 district had been in place since the original ordinance was adopted in 1977, therefore this designation in the future land use map resulted in rendering years of development as potentially nonconforming when it was implemented as a zoning change. The 2005 Comprehensive Plan indicated that this parcel was already in the *urban and built up* existing land use category and therefore not likely to match the descriptions of the Agriculture Forestry land use category in portions along the highway corridor. However, the visual effect of this proposed split is similar in character to a conservation development as discussed in the master plan for the Agriculture-Forestry land use area, with the homes located close to the highway and surrounded by open space (2.5 acre minimum lot size or smaller as required by the Health Department).

In Chapter 8 of the Comprehensive Plan, there is a housing/residential goal that says, “Encourage the upgrading and improvement of residential dwelling units showing signs of deterioration.” There is no incentive for the applicant to maintain and upgrade the second home when it is undervalued based on zoning restrictions. Goal 17 of the same section says, “encourage the preservation and retention of older homes to maintain community character and history”. Again, the applicant would not have a reason to preserve and retain this older home while it is undervalued.

The Township has not received any letter(s) in support of or in opposition to this variance request at this time.

Strict compliance with the minimum lot size requirement would prevent the second single family home from being valued and fully utilized for a permitted purpose. Conformity with the minimum lot size requirement is not possible as the entire existing parcel is already nonconforming. Maintaining the lot as it is makes the parcel also nonconforming with *Section 3.1* that says, “In all districts, no more than one (1) principal use or main building shall be placed on a lot”. The proposed split would resolve that nonconformity, and does not create a parcel that is smaller than those adjoining this parcel (the smallest proposed parcel is about 2 acres, while the adjacent parcels are only 1.16 acres, 0.57 acres, 0.73 acres, and 0.33 acres). Both homes would be able to meet the zoning requirement that “any lot of record may be used for permitted uses even though the lot area and/or dimensions are less than those required for the District in which the lot is located, provided that yard dimensions and other requirements of the District, not involving lot area and width are met”. Both homes would have sufficient land area to satisfy health department requirements. The split would have no changed impact on highway access. There are no other residential properties with two grandfathered homes on one parcel. This parcel is not in violation of any previous zoning ordinance as it was grandfathered in. The difficulties on this parcel were created by government regulation and former property owners.

Trudeau asked for clarification of the shared driveway/easement proposed. He said both deeds would need to reference the proposed access easement. He pointed out that an adjacent parcel was recently granted a dimensional variance to permit a garage to be developed on a small, nonconforming lot.

Alholm moved, Milton seconded, that after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB12-03, the Zoning Board of Appeals finds that the request demonstrates the standards pertaining to the granting of nonuse variances, and hereby approves Variance request #ZB12-03 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty because the property was not large enough for the district in which it was subsequently placed; and
2. Granting the variance would not be contrary to the public interest because it is in the public interest to maintain well kept affordable housing and make it more practical to sell in the future; and
3. There are circumstances unique to the individual property on which the variance is granted, and these circumstances are existing two homes on one parcel; and
4. The variance request is not due to actions of the applicant, but was created by the Zoning Ordinance.

Conditions of Approval:

1. The applicant shall present deeds showing the access easement for both properties.
2. There shall be a statement in the deeds that says that both parties shall share equally in maintaining the existing driveway.

Vote: All Ayes

Motion Carried

Application #ZB12-04, Jones, parcel #52-02-119-014-00

Woodward gave highlights from the staff report as presented in the following paragraphs. The entire home is nonconforming with the required waterfront setback provision. This home was built in 1969, well before the adoption of the 1977 zoning ordinance which contained the *Waterfront Setback* provision. The standards regarding nonconforming structures (Section 14.2) were discussed, including conditions for allowing enlargement of these structures.

All fees, notifications, and publication requirements of the Ordinance have been met. The Township has not received any letter(s) in support of or in opposition to this variance request at this time.

There is no case in which an addition to any portion of this home could be in conformity with the ordinance because the entire structure is nearer than 100 feet to the creek. Without a variance, the applicant will be denied the customary ability to add to her grandfathered home. This is a situation which is unnecessarily burdensome. The addition planned by the applicant will not increase the existing nonconformity (setback distance from the river).

It is in the public interest that a waterfront development setback is maintained to minimize the chance of negative impacts on environmental quality, scenic value, or water quality. The potential for negative impact varies based on the use, and there is

little potential for negative impact with this single-family home. The proposed addition will be built on an existing level upland area, so is unlikely to change existing drainage or erosion patterns unless the configuration of the proposed roof directs runoff toward the steep slope. Staff suggests runoff should be controlled through a gutter directing water to a bioretention area which would filter the runoff and add to scenic quality. This addition would not have a negative impact on any other conforming structure or any adjoining properties. This home is unique in that the entire home is located in the prescribed waterfront setback area. This home was built before the implementation of a waterfront setback requirement, and thus the difficulties for this structure and this applicant were created by government regulation.

Trudeau mentioned that he is familiar with this secluded residence, and he feels that this addition would not be visible and would not cause problems with adjacent property owners. He is comfortable with the runoff control methods discussed.

Milton moved, Trudeau seconded, that after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB12-04, the Zoning Board of Appeals finds that the request demonstrates the standards pertaining to the granting of nonuse variances, and hereby approves Variance request #ZB12-04 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty because the entire home is nonconforming; and
2. Granting the variance to increase the footprint would not be contrary to the public interest; and
3. There are circumstances unique to the individual property on which the variance is granted, which is the home was built before the waterfront setback requirement was implemented; and
4. The variance request is not due to actions of the applicant, but was created by government action.

Conditions of Approval:

1. The applicant shall submit a site plan and elevation drawing detailing the foundation and roof configuration of the structure and the methods for controlling water runoff.
2. Runoff shall be directed to an approved rock detention area with vegetation located along the drip line (like a dry well) to absorb and disperse the runoff.
3. No open porch, deck, patio, or other hard surface shall be constructed between the new addition and the creek.

Vote: All Ayes

Motion Carried

IX. Public Comment

None

X. Township Board Member/Planning Commission Member Comment

None

XI. Informational

Angeli announced the dates for the International Food Fest at the Lower Harbor and encouraged all to attend.

XII. Adjournment

Moved by Alholm to adjourn at 8:35 p.m.

Respectfully Submitted By:

Kendell Milton
Zoning Board of Appeals Secretary

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

**Thursday, July 26, 2012
7:00 PM**

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:02 P.M.

II. Roll Call

Members Present: Chairperson-Michelle Wietek-Stephens; Vice Chairperson-Karen Alholm; Secretary-Kendell Milton; Member-Sandra Page; Alternate-Geno Angeli

Members Absent: Member-John Trudeau

Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator

III. Approval of Agenda

Moved by Alholm, and seconded by Page, to approve the agenda as written for the July 26, 2012 meeting.

Vote: All Ayes Motion Carried

IV. Approval of June 28, 2012 Minutes

Alholm said that the minutes were very well done. Moved by Alholm, and seconded by Milton, to approve the June 28th, 2012 minutes as written.

Vote: All Ayes Motion Carried

V. Public Comment

None

VI. Public Hearing

Application #ZB12-05

Robert and Joni Taylor, 204 Jean Street, Marquette MI, request a dimensional variance to construct a residence on lot 57 of the Ewing Park Subdivision, parcel #52-02-455-057-00, with a 20 foot front setback due to practical difficulties involving a 50 foot rear drainage easement and an odd shaped parcel. This is a variance from Section 6.1 Height and Placement Regulations, front setback requirement for the R-1 district, which is 30 feet.

William Kiple of 213 Judy Street (directly across the street from lot 57, on lot 43) had prepared a statement with reasons of opposition for the variance request. He asked to

submit the letter, but agreed to read it for all present. He stated that he is adamantly opposed to the variance request for the following reasons:

- 1) Zoning regulations were developed after careful planning, presumably to prevent building that is out of character for the neighborhood. Those regulations are relied upon by people like us who purchase property in Chocolay Township. Absent the Zoning Ordinance, we may have elected to purchase elsewhere. One of the appealing aspects of Chocolay Township is the fact that it is a zoned community. If zoning regulations are disregarded, the value of our community is diminished.
- 2) The requested variance will result in placement of a structure that is out of character for the neighborhood. No such other variance exists in the neighborhood. In fact most homes are setback much further than the required 30 feet.
- 3) The property owner has built in the neighborhood before, and was aware of the regulations. This is not new information. The property owner has owned the subject lot for many years, and did not recently purchase the lot unaware that it may not be suitable to build upon.
- 4) The requested variance is not a minor deviation from the setback requirements. The request to cut the setback requirements by one-third is nearly equivalent to basically disregarding the setback requirements entirely. The requested 20 foot setback is scarcely the length of a pickup truck.

Mr. Kiple stated that before he came to the meeting, he didn't understand there is a 13 foot public easement from the curb, and had envisioned the house being 20 feet from the curb. This makes it approximately a 33 to 38 foot setback from the curb with the variance. This is more acceptable. He just wants to maintain the integrity of the neighborhood. He would ask if the applicant would stake out the corners of the house on the lot for approval of the neighbors.

Brian Miller, 217 Judy Street, agrees with Mr. Kiple. He thinks 20 feet is too close, but if the right-of-way makes it over 30 feet from the curb then it is probably ok. He would like to see the property staked so he could get an appreciation for the aesthetics of it.

Robert Taylor, 204 Jean Street, applicant, said he has never constructed a building in the subdivision. He purchased the second spec home built in the subdivision, and bought 3 additional lots in that subdivision 20 years ago. His younger brother built on the lot behind lot 57, which was the biggest lot in the subdivision. He was aware of the encroachment of the drainage easement when he purchased the property, and he can use the drainage easement for green space. But to change the drainage easement, the drain commissioner said the whole subdivision would have to be replatted and the drainage recalculated. There is no guarantee that would work. The

Zoning Ordinance does allow for special cases. They plan to build a mid-size house. The subdivision covenants contain a provision for a minimum home size of 1,200 square feet with no maximum. This home is 1,500 square feet, so it is in character with the neighborhood. He tried to get a footprint which was aesthetically pleasing with extra jogs and that fits the lot. After getting a surveyor involved, and reducing the size of the house already, they are about 6 foot over on one corner. The 20 foot setback is from the right-of-way, not from the curb, so the home would be placed about 33-34 feet from the curb. They want to keep the house as far back as possible, so this makes it really about 25 feet setback. Without totally redoing the plan, he doesn't see how else they can make it work.

The public hearing was closed on variance request #ZB12-05.

VII. Unfinished Business

None

VIII. New Business

Application #ZB12-05, Taylor, parcel #52-02-455-057-00

Woodward gave highlights from the staff report as outlined in the following paragraphs. The lot size is 0.46 acres or 20,038 square feet. The lot width is almost 158 feet. The proposed side setbacks are 10 feet on the north and over 80 feet on the south. The proposed rear setback is 50 feet, which is the entire width of the drainage easement. The 50 ft drainage easement runs the entire rear width of this parcel and effectively restricts 9,217 sq ft (46%) of the parcel, leaving about 10,820 square feet buildable (does not include what needs to be subtracted for the required setbacks).

A parcel comparison of all developed parcels containing the drainage easement follows. These parcels include homes that are one story, split entry, 2 story, and even tri-level. Homes range in size from 1,200 square feet to over 1,900 square feet. Lot sizes range between 1/3 acre to 1.7 acres. The estimated percentage of each of these parcels contained within the drainage easement is between 20 and 65 percent. The approximate buildable area (does not include the subtraction of the required setbacks) ranges from an estimated 9,900 square feet to almost 45,000 square feet. This parcel is one of the smallest, and has one of the largest percent of total area contained within the easement. It is also the only triangularly-shaped parcel, which renders conformity more difficult with a conventionally-shaped square or rectangular home.

Woodward noted that the applicant could be asked to alter the home design to a two story home, thereby accommodating a smaller footprint. However, she noted that the Township should consider that the mean population age is increasing due to the aging of the babyboomer generation, and many of these citizens will require homes that accommodate wheelchairs and other devices to assist limited mobility. So it is not

only in the interest of the applicant to grant a personal choice, but in the interest of potential future owners of this home that the design accommodates people with disabilities. In the Chocoday Township Master Plan, Housing Goal #1 says “encourage a variety of residential dwelling types in a wide range of prices which are consistent with the needs of a changing population and compatible with the character of existing residences in the vicinity”. Also, two story homes may be more expensive to build. The Chocoday Township Master Plan, Housing Goal #1 Policy 13, says “explore alternative measures to reduce housing costs and make home ownership more affordable, . . . provided the exercise of these measures still preserves the character of the area in which the housing is to be built”. This is not an excessively large home for the neighborhood.

The unique circumstances of this property have been previously noted. The drainage easement is not due to the action of the applicant. All fees, notifications, and publication requirements of the Ordinance were met. The Township had not received any letter(s) in support of or in opposition to this variance request at this time.

Wietek-Stephens asked about the purpose of the 13 foot public easement. It was clarified that the 66’ wide right-of-way is reserved for the placement of the road and underground utilities. The front setback is measured from the platted right-of-way line. Wietek-Stephens had concerns that the road could be expanded or moved later and create a different situation.

Alholm asked Woodward about the arguments against issuing this variance request. Woodward said the most subjective elements of the decision involve public interest arguments as illustrated during the public hearing. Angeli stated his biggest concern was the neighbors and whether it’s acceptable to them.

Alholm said she had a question of Mr. Kiple. In his memo he noted that this variance would be “out of character” with the neighborhood. Mr. Kiple reiterated that when he first got the letter, he envisioned the home built 20 feet from the curb, leaving no front yard. Most of the existing homes are 40-60 feet from the curb. That is why he wants to have the property staked so they can see that there is no problem with it being out of character.

Milton clarified that if the road is in the middle of the 66 foot right-of-way (which it may not be), you would count 11 feet from the center line of the road for the one lane of roadway, then 22 feet for the remainder of the right-of-way, then 20 feet for the proposed setback. In that case, the home would be about 38 to 42 feet from the curb. He noted you wouldn’t want to measure the correct setback distance from the road, but from the found markers. The applicant clarified that only a small portion of the

garage would encroach on the 30 foot front setback requirement. Most of the home would be behind that setback.

Wietek-Stephens asked if they considered a 2-story home. The applicant doesn't think a 2-story home would fit aesthetically because it's a low lot and needs a lot of fill. Wietek-Stephens questioned the design. She thinks the difficulty may be created by the applicant because they do have other options for building without encroaching on the setback. Milton thinks there has been every reasonable attempt to fit a desirable home on an encumbered lot and to accommodate the easement. He does not think this is an unreasonable request.

Wietek-Stephens pointed out that they may not grant variances for more than is needed. She wondered if the variance could be reduced from 10 feet to 6 feet reduction of the front setback requirement. The applicant would like the flexibility, but will put the home as far back on the lot as possible. Page said maybe the applicant should test the site and put in stakes so that we all know how much variance is necessary. The applicant asked to take a 30 minute recess so interested parties could visit the site and he could stake out the proposed home location for all interested parties to view. The applicant didn't want to waste the 30 most buildable days of the year to postpone the decision to August.

Wietek-Stephens motioned, Angeli seconded, to take a 30 minute recess for all interested parties to visit the site and observe the actual conditions.

Vote: All Ayes Motion Carried

Meeting was temporarily recessed at 7:41 p.m.

Meeting was reconvened at 7:58 p.m.

Alholm asked for clarification of the changes that were made to the house plan to accommodate the lot. Wietek-Stephens again stated they don't usually grant variances for more than is necessary, and asked if a 7 foot variance would be sufficient. Milton noted that to build the home exactly right would require a surveyor, so the applicant probably needs some flexibility. The applicant said he will use a surveyor to put the home back as far as possible.

Public comment was re-opened at 8:01 p.m. Mr. Kiple said he is a little more comfortable since it's almost twice the setback he had expected. He asked that the variance be kept to the minimum needed. Brian Miller said he is fine with the variance request. Public comment was then closed.

Milton moved, Alholm seconded, after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB12-05, the Zoning Board of Appeals finds that the request demonstrates the standards pertaining to the granting of nonuse variances, and hereby approves Variance request #ZB12-05 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty because every reasonable attempt to fit the lot was presented; and
2. Granting the variance would not be contrary to the public interest because it would increase the tax base; and
3. There are circumstances unique to the individual property on which the variance is granted, which are the large drainage easement; and
4. The variance request is not due to actions of the applicant, but is due to government action.

Conditions of Approval:

The back corner of the home is to be built on the boundary of the drainage easement.

Vote: All Ayes Motion Carried

IX. Public Comment

Citizens thanked the Board for being so accommodating.

X. Township Board Member/Planning Commission Member Comment

None

XI. Informational

A ZBA meeting is expected for August 23. It was noted that we need to change the date of the November meeting if one is needed because it falls on Thanksgiving. Wietek-Stephens noted that she expects to be on maternity leave in January through March of 2013, so an alternate will need to sit in her place, and Alholm will need to Chair the meetings.

XII. Adjournment

Wietek-Stephens adjourned the meeting at 8:09 p.m.

Respectfully Submitted By:

Kendell Milton
Zoning Board of Appeals Secretary

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

**Thursday, September 27, 2012
7:00 PM**

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:00 P.M.

II. Roll Call

Members Present: Chairperson-Michelle Wietek-Stephens; Vice Chairperson-Karen Alholm; Secretary-Kendell Milton; Member-John Trudeau; Member-Sandra Page; Alternate-Geno Angeli (observer only)

Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator

III. Approval of Agenda

Moved by Wietek-Stephens, and seconded by Milton, to approve the agenda as written for the September 27, 2012 meeting.

Vote: All Ayes Motion Carried

IV. Approval of July 26, 2012 Minutes

Moved by Alholm, and seconded by Wietek-Stephens, to approve the July 26th, 2012 minutes as written.

Vote: All Ayes Motion Carried

V. Public Comment

Mr. Raymond Gregory, newly appointed alternate, had not yet arrived, so introduction was postponed until after New Business - Variance Request #ZB12-07.

Woodward then noted she had forgotten to ask for a change to the agenda to reverse the order of the items considered because Mr. Clark, representing Mr. DeMarinis, has another commitment later in the evening.

Moved by Wietek-Stephens, and seconded by Trudeau, to reopen the approval of the agenda for the September 27, 2012 meeting.

Vote: All Ayes Motion Carried

Moved by Wietek-Stephens, and seconded by Trudeau, to approve the agenda as amended, switching the order of new business, for the September 27, 2012 meeting.

Vote: All Ayes Motion Carried

VI. Public Hearing

A. Application #ZB12-07

James DeMarinis, 104 Timberlane, Marquette MI, parcel #52-02-109-082-10, requests a dimensional variance from Section 6.8 Waterfront Setback provisions to allow enclosure of an existing deck with the same depth and width as previous, and to allow an addition of an open deck no closer to the waterfront than existing improvements. The home was built in 1954, and the entire residence is nonconforming to the required 100' waterfront setback.

Attorney Tom Clark, 102 West Washington, Suite 112, Marquette, spoke for his client, Mr. DeMarinis. The home was built in 1954 before Timberlane became a subdivision. It was built by the Wursters who owned Timbercrest Nursery. They are the parties who constructed the 6" x 6" timber retaining walls. The entire structure is located well within the waterfront setback area. The original structure was 30' x 30'. The terraces to the river were added in the early 1980's. It is a large lot consisting of two parcels. The yard and house take up less than half the total area. There is a greenbelt by the Lakenen's and Timberlane. They ask for approval for enclosure of the existing deck, which was built of 6" x 6" beams. Mr. DeMarinis also added an open treated wood deck to the side of the existing deck.

Trudeau noted that from the date of the Ordinance on, people are required to get building permits. He noted they have denied decks previously in the waterfront setback area. He asked about the date of construction for the open deck. Woodward noted that previous Zoning Administrators had not always required permits for decks, and there has not been consistent handling of these permits. Trudeau noted a deck they had denied on the Choclay River for Mr. Keough previously.

Woodward said that a case might have come before the ZBA if the deck was to be an enlargement to a nonconforming structure. But she noted that the definition of "structure" in the ordinance exempts open, uncovered porches not to exceed four feet above grade, and therefore she had determined that the new treated wood deck did not count as a "new structure" that must maintain a minimum setback of 100 feet from the river. But if the ZBA considered the new treated wood deck to be an enlargement of a nonconforming structure, then it would require a variance under provision 14.2.A of the Ordinance that states that "No lawful nonconforming structure shall be extended, expanded, or enlarged without first securing the approval of the Zoning

Board of Appeals.” Further discussion was tabled until new business, and the public hearing was opened for Application #ZB12-06.

B. Application #ZB12-06

Glen J. Kassel (Kassel’s Korner, Inc.), 6400 US-41 South, Marquette MI, parcel #52-02-121-053-00, requests a dimensional variance from Section 6.8 Waterfront Setback provisions to build a 32’ by 56’ building with canopy for ice making and storage at less than the required 100’ waterfront setback (approximately 60’ setback from Big Creek).

Mr. Kassel said the Iceman business is part of the Kassel’s Korner business, and his son is in charge of the ice business. They make the ice at Kassel’s and his son delivers it all around the area. Mr. Kassel handed out photos of the store that show the area where they currently make ice. They are out of space and unable to keep up with demand with current facilities. When they can’t make enough ice, they have to purchase the ice elsewhere, then they don’t make money on it. They have plenty of water to make the ice, but need a better facility.

He said that two-thirds of the new building will be storage for 24 pallets of ice. His son wants to work here in Marquette County. They have an artesian well on the property. The current outdoor storage will go into the current building when they move the ice machines out. Mr. Kassel is concerned about his employees loading ice up a ramp. He wants a cleaner, safer operation with a dock for loading the ice directly on the truck. They have been selling ice year round for 7 years now. The planned building site is on high ground, and water doesn’t reach the height of that area. He noted that the DNR will still have to give approval, and that his contractor, Phil Cleary, is present for questions. They do not plan to store the trucks in the new building.

Wietek-Stephens stated that in the future, she would like the applicant presentations to take place along with the “New Business” item, because it is difficult to remember everything when you have to return to the item later. Trudeau said that the public hearing was conducted according to the usual Township procedure. Wietek-Stephens clarified that public comment could take place during the public hearing on the item, but she doesn’t want the applicant presentations to take place during the public hearing. Trudeau said that during public comment, people can reserve time to speak to agenda items. He said that public comment can be on any topic, but the public hearing relates to the agenda items, and he’s just noting a need to follow consistent protocol.

Eric Keough, 112 Vista Hills Trails, owns some property in Chocolay Township and said he wanted to offer support for Kassel’s project. Small businesses are essential to

the economy, and he hopes the Board will support this local business that employs 16 people.

VII. Unfinished Business

None

VIII. New Business

A. Variance Request #ZB12-07 DeMarinis

Wietek-Stephens asked for clarification that if the deck is determined to be an addition to a nonconforming structure, then a variance is needed. Woodward affirmed. She then asked if the ZBA is being asked to permit something that is already built (enclosure of the other deck). Woodward affirmed that the applicant is asking for a variance after construction. The addition was discovered during field inspections for re-assessments, and a violation notice was sent by former Zoning Administrator Jennifer Thum. She told the applicant they needed to go through the variance procedure.

Alholm asked for clarification of what was enclosed. The original deck was built of timbers with sand and concrete pavers on top. The Zoning Administrator told the applicant he would need to get a variance because it was an expansion of a nonconforming structure.

Trudeau noted the importance of the waterfront setback provision. Clark noted every part of the house is built within the waterfront setback because it was built before the Ordinance, including the enclosed deck. He noted that the existing terraced retaining wall system prevents erosion or runoff from impacting the river. He noted that any improvement to the property would require a variance from the waterfront setback provision, because the only thing not within the 100' setback is the drainfield.

Page asked if this case relates to the Jones case where they previously granted a variance for expansion and enclosure of an existing deck for a sun porch on a home that was built before the waterfront setback. This was affirmed. Page asked about the penalty for building before obtaining a variance or a permit. Woodward said that currently there is no penalty imposed, other than it is a violation of the Ordinance. Woodward said that the choices are to approve the variance, or deny it and require removal. Clark noted that even if the variance was granted, the applicant would still have to get the building permit, and the structure would be inspected, but that the building permit could not be obtained without the variance and approved Zoning Compliance Permit. Woodward noted that she considers the enclosure an expansion of a nonconforming structure because it adds square footage to the living space. Wietek-Stephens noted it impacts aesthetics along the waterfront.

Trudeau cautioned against approval of structures that were illegally constructed and do not meet Ordinance requirements. He asked if the assessor card showed an existing deck before it was enclosed. This was affirmed. Woodward clarified that there are two separate issues. 1) The original deck that was enclosed in 2001. 2) The newly constructed deck, less than 4 feet above grade, that was built in 2002 alongside the original deck and does not extend any closer to the river. Wietek-Stephens clarified that issue #1 involves an expansion of a nonconforming structure, whereas issue #2 involves a new open deck. The question is whether this new deck constitutes an extension, expansion, or enlargement of a nonconforming structure, because the zoning ordinance does not define what constitutes an extension, expansion, or enlargement. Alholm asked if this lack of definition was to be addressed? Woodward noted it would require a text amendment by the Planning Commission, and approval by the Township Board. Alholm asked if the ZBA can make a request of the Planning Commission. Woodward affirmed, but also noted that the ZBA could handle the issue by making an interpretation which would set precedent, but would not change the Ordinance language.

The Board addressed issue #1 first. Trudeau asked if the original deck was removed before enclosure. It was not. The original 6" x 12" timbers still remain. The sand and concrete pavers were removed. The enclosure is a rear round living space.

Wietek-Stephens asked if the Board would have approved this enclosure had the applicant done a timely and correct application process prior to construction. Milton said he thinks they would have approved the expansion because it wouldn't impact the river and there was no fill or grading. Wietek-Stephens noted it appears to be the closest structure to the river in that immediate area, and that it does have an aesthetic impact. She also noted the issue of a non-standard foundation for the structure.

Trudeau asked about recourse for structures built 11 years ago without a permit. He said he would not have originally approved it because of the waterfront setback provision. Woodward noted the Jones case, which was an expansion and enclosure of an existing deck, was approved just a couple months earlier by this Board. Trudeau noted there are many decks that were constructed without permits, but this was the first case he knew of where someone enclosed one of those decks without a permit.

Clark asked the Board to consider the role of the extensive retaining walls that prevent erosion. Wietek-Stephens said that erosion and runoff are usually considered in matters of the waterfront setback, but it's not an issue in this case. What is an issue is that permits are required to ensure proper construction of structures, and what differs is that in the Jones case, the permit was applied for before construction so the construction could be properly planned. Alholm noted that the structure will have to be made to meet code when the building permit is obtained. Clark noted that if the

Board wants to condition the variance approval upon obtaining the building permit, it would give extra assurance to the Board. He is trying to avoid having to tear the enclosure off and then return again to request a variance. Wietek-Stephens asked if the enlargement would likely be approved if the applicant is required to remove the improvements and then comes back to ask for approval? She thinks they would discuss the runoff/drainage/erosion issue, and the aesthetics issue. She asked if the Board would have any other issues for discussion in that case? There were none. She then asked if they would deny the variance request due to runoff or erosion issues. This was determined not to be an issue. She then asked about aesthetics and the increased encroachment of the structure on the waterfront area. Milton noted there was no new encroachment, but Wietek-Stephens noted the increased height of the enclosure. Milton asked if there are a lot of canoes, or if this part of the river was navigable. This was affirmed.

Addressing only the enclosure of the existing deck, Alholm moved, and Milton seconded, that after conducting a public hearing and review of staff review/analysis for Variance request #ZB12-07, the Zoning Board of Appeals finds the request demonstrates the standards pertaining to the granting of nonuse variances, and hereby approves Variance request #ZB12-07 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty because it would require extensive demolition of a potentially sound structure; and
2. Granting the variance would not be contrary to the public interest because the structure does not cause an environmental erosion problem; and
3. There are circumstances unique to the individual property on which the variance is granted, and these circumstances are that the entire structure was built before the Ordinance in the waterfront setback area.

Suggested Conditions of Approval:

1. The granting of the variance is conditioned upon obtaining a building permit, and is otherwise null.

Vote: All Ayes Motion Carried

Wietek-Stephens directed return to the issue of the new deck, and asked Staff for analysis of whether the deck constitutes an extension, expansion, or enlargement. Woodward noted that it does enlarge the footprint of the structure. Milton asked if the Planning Commission needed to address the definition issue before this decision. Wietek-Stephens noted that would be helpful for future cases, but wouldn't help tonight. Wietek-Stephens noted it does enlarge the outdoor living space which is of value but this is not clearly defined. Page suggested delay of this issue until a definition is obtained. Woodward noted that if the ZBA makes an interpretation, the language of the Ordinance stays the same, but it sets precedent for future issues. If

they want the language amended, then it must go before the Planning Commission. Wietek-Stephens feels that they have considered decks to be an enlargement in the past, and noted the Keough case. Milton noted in that case there were issues of fill. Wietek-Stephens noted that the fill was to bring the structure under the definition of deck. It was clarified that the Keough deck was a new structure that created a new encroachment on the waterfront setback. There were many other issues involved. Woodward noted that if they consider this new deck in the DeMarinis case to be an enlargement, it does not increase the existing nonconformity because it does not encroach further on the waterfront setback than the original deck.

Moved by Wietek-Stephens, seconded by Alholm, to consider this deck an enlargement of a nonconforming structure.

Vote: All Ayes Motion Carried

Since this motion carried, a variance is necessary. Moving through the standards regarding nonconforming structures, Wietek-Stephens noted the deck does not further encroach, and it does not create new erosion issues. After asking for disagreement, there was none. She said it does occupy green space in the vicinity of the river. She brought up aesthetic issues – there were no comments. She asked about whether the deck was contrary to the public health, safety, and welfare or the spirit of the Ordinance or Master Plan and received no comment. She noted no deleterious effect on a conforming structure, and no increase in nonconformity due to encroachment on the waterfront setback. In discussion it was noted that if you deem the deck is a structure, then it may add to the nonconformity by increasing the size of the nonconforming structure.

Addressing the construction of the new deck, Alholm moved, and Milton seconded, that after conducting a public hearing and review of staff review/analysis for Variance request #ZB12-07, the Zoning Board of Appeals finds the request demonstrates the standards pertaining to the granting of nonuse variances, and hereby approves Variance request #ZB12-07 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty because it would require extensive demolition of a potentially sound structure; and
2. Granting the variance would not be contrary to the public interest because the structure does not cause an environmental erosion problem; and
3. There are circumstances unique to the individual property on which the variance is granted, and these circumstances are that the entire structure was built before the Ordinance in the waterfront setback area.

Suggested Conditions of Approval:

1. The granting of the variance is conditioned upon obtaining a building permit, and is otherwise null.

Vote: All Ayes Motion Carried

A one minute break was called. Following the break, Mr. Gregory introduced himself and summarized his experience.

B. Variance Request #ZB12-06 Kassel

Wietek-Stephens asked if Mr. Kassel had considered an addition to the current building. He said they had, but found two difficulties. 1) They still need access to the drainfield for maintenance. 2) There would be added expense with bringing the back of the present building up to code with an attachment. Alholm clarified that the apartment residents have egress on the rear of the building. The building is proposed to be 14' tall to allow for entrance of the trucks. Alholm asked about emergency vehicle access if there was a fire in an apartment, and Mr. Kassel said the proposed building would be 25' from the existing structure. Milton said 15' is required for emergency vehicles.

Trudeau said it is important to maintain the intent of the waterfront setback provision. He knows they have permitted some continuation of existing structures, but doesn't think there is anything that would allow the setback variance for a new building. He doesn't think practical difficulty applies. He said the ZBA can't change the Ordinance or rule for convenience of the owner. He is concerned about precedent.

Milton mentioned this is a navigable waterway and this structure could make an impact by detracting from the shoreline. Wietek-Stephens mentioned water quality and habitat issues, which increase with a commercial use. She was concerned that the slope would require some fill (applicant says minimal).

Trudeau said there is not enough information to determine slope or fill issues, and that the application should include a site plan with elevations before the decision can be made. He said there is a goal in the Master Plan that supports the waterfront setback, and a variance would be inconsistent with this goal and detract from the river view.

Wietek-Stephens was concerned that it is possible to overcome this without such a significant variance by attaching the structure. She said the drainfield access could be placed on the site of the proposed building. She thought the Board would be more likely to grant an enlargement to an existing structure than a 40 foot variance.

The applicant said he doesn't feel the Township is being unfair, and proposed redesign. His son felt the obstacles are overwhelming and costs would be doubled. They mentioned the clear vision area has forced them to expand to the rear, plus they have to maintain distance from the residential use. Wietek-Stephens said it is an argument in favor of the variance that the property has more restrictions than the typical commercial site. There was a question of whether a breezeway between the current and proposed building would be considered an attachment of the structures and also eliminate the roof issues. Milton said that an architect has to be involved in the case of attachment of structures to deal with the upper story windows.

Trudeau said that the building codes would also pose further restrictions, and the Planning Commission would also have to address a commercial addition and would need a site plan. The Board discussed accessing the drainfield by driving in the grass area, and emergency vehicles access all around the building. They questioned whether you can have a driveway within the 100' waterfront setback. These are issues the Planning Commission would address. Trudeau noted engineered plans are needed before you can make those decisions.

Trudeau moved, and Alholm seconded, that after conducting a public hearing and review of staff review/analysis for Variance request #ZB12-06, the Zoning Board of Appeals does not find that the request demonstrates the standards pertaining to the granting of nonuse variances, and hereby does not approve Variance request #ZB12-06 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would not cause practical difficulty; and
2. Granting the variance would be contrary to the public interest because it is in the public interest to maintain the intent of the waterfront setback because it sets a precedent; and
3. There are not circumstances unique to the individual property on which the variance is granted; and
4. The variance request is due to actions of the applicant.

Vote: 4 Ayes, 1 Nay Motion Carried. Variance request is denied.

IX. Public Comment

None.

X. Township Board Member/Planning Commission Member Comment

Trudeau mentioned that if there is no meeting next month, this is his last meeting serving on this Board. He acknowledges that service on this Board is very difficult because you know the people, and it's difficult without a legal background. Milton mentioned the possibility of the Planning Commission addressing the definition of extension, expansion, enlargement. Trudeau wanted more clarity on when it is

appropriate to encroach on the waterfront setback. Alholm said there should be a penalty for not having obtained a permit. Woodward noted the Board had discussed a penalty for not having obtained a deck permit (\$30 vs \$15), but did not address an after-the-fact permit fee for other structures. The Manager had asked her to research this issue as applied consistently for all development, such as a doubling of the cost. Several members did not feel a \$30 penalty fee would provide a significant deterrent.

XI. Informational

Woodward noted that she appreciates the methodical way that Wietek-Stephens leads the group through rational discussions and keeps everything on track and moving forward. She noted that John will be missed and that he's been a very valuable member of the group even though he feels it is painful at times. She said the Planning Commission is getting close to the end of discussion on the sign and home occupation amendments, and can move forward with the junk/blight discussion as well as some other beneficial amendments that could help the ZBA in their decisions.

XII. Adjournment

Wietek-Stephens adjourned the meeting at 8:50 p.m.

Respectfully Submitted By:

Kendell Milton
Zoning Board of Appeals Secretary

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS
Thursday, November 29, 2012
7:00 PM**

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:03 P.M.

II. Roll Call

Members Present: Chairperson-Michelle Wietek-Stephens; Vice Chairperson-Karen Alholm; Secretary-Kendell Milton; Member-Sandra Page; Alternate-Raymond Gregory.
Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator

III. Approval of Agenda

Wietek-Stephens suggested an addition to discuss the agenda format after item IX-Public Comment. Alholm suggested moving the approval of previous minutes to the same time to allow members a chance to review them.

Moved by Wietek-Stephens, and seconded by Milton, to approve the agenda for November 29 as corrected to add a discussion of the ZBA format and move approval of the minutes to follow agenda item IX.

Vote: All Ayes Motion Carried

IV. Public Comment

None

V. Public Hearing

A. Application #ZB12-08

Nicholas and Jennifer Cammarata, 669 Lakewood Lane, Marquette MI, parcel #52-02-110-041-50, request to allow a proposed 1-story addition to the front porch and 1 1/2 story addition with walk-out basement to the center rear of the home. This nonconforming home was built with a 5' side setback in 1967 before the zoning ordinance, and the additions will not increase the nonconformity.

Applicant Jennifer Cammarata of 669 Lakewood Lane said she thinks the application is self-explanatory and she has no added comments unless there are questions.

VI. Unfinished Business

None

VII. New Business

A. Application #ZB12-08

Staff Woodward provided comments. This is a straight-forward request to allow the expansion of a lawful nonconforming structure that was built in 1967 in accord with Section 14.2 Regulations Pertaining to Lawful Nonconforming Structure, which states that “no lawful nonconforming structure shall be extended, expanded, or enlarged without first securing the approval of the Zoning Board of Appeals”.

John Larson, architect, is present for questions. The existing home is on a nonconforming lot (100 feet wide lot where 125 feet is required), and it meets all setbacks except one side which is five feet setback where 10 feet is now required. However, the proposed addition meets all required setbacks. Per Woodward’s research, there are many previous cases where expansions of homes with nonconforming side setbacks have been permitted. Many of these additions were also nonconforming.

Board members were asked to consider their decision in light of standards regarding the extension, expansion, or enlargement of nonconforming structures per Section 14.2 of the zoning ordinance. The proposed addition does not need a variance. ZBA approval is required to proceed with an expansion of a nonconforming structure. Staff found no evidence the proposed addition would be contrary to public health, safety or welfare, or to any plan or ordinance. No negative impact is anticipated on adjacent properties, as all are setback nearer to the lake while this home is closer to the road, and the property is surrounded by a buffer of large trees. Gail Ruffus of 665 Lakewood Lane (home located behind this structure on the lake) called the office to express her approval for the addition. Staff found the request would not increase an existing nonconformity or create a new one.

Gregory asked for clarification on setbacks in relation to the addition. Wietek-Stephens noted it is nice to see a proposed addition that is considerate of required setbacks. Milton asked for clarification on the impact of the nonconforming lot size. No impact is noted when required setbacks are met per Section 6.4 of the Zoning Ordinance.

Weitek-Stephens moved, and Alholm seconded, that after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for request #ZB12-08, the Zoning Board of Appeals finds the request demonstrates the standards pertaining to approval of the expansion of a nonconforming structure, and hereby approves request #ZB12-08 with the following findings of fact:

1. The proposed expansion is not contrary to public health, safety, or welfare; or to the spirit of the Chocolay Township Zoning Ordinance or Comprehensive Plan, or any other adopted plans or ordinances; and

2. Would not displace, inhibit, or have any type of deleterious effect upon a permitted or conforming structure, either on the subject premises or upon any nearby premises;
3. Will not increase any existing nonconformity; and
4. Will not result in any new nonconformity.

Vote: All Ayes Motion Carried

VIII. Public Comment

None

IX. Approval of September 27, 2012 Minutes

Moved by Wietek-Stephens, and seconded by Alholm, to approve the September 27, 2012, minutes as corrected.

Vote: All Ayes Motion Carried. Gregory abstain.

X. Future ZBA Agenda Format

Woodward suggested that each item of business include the potential for four sub-items, including 1) Planning Director comments, 2) Public Hearing & Applicant comments, 3) Board/Applicant discussion, 4) Board decision. These items of business would be repeated for each case in order of application date (unless time conflicts must be negotiated and order modified).

Moved by Wietek-Stephens, and seconded by Milton, to remove the open public hearing as a stand-alone item and include it in the appropriate agenda item so the Board can move through one entire case from start to finish before considering another.

Vote: All Ayes Motion Carried.

XI. Township Board Member/Planning Commission Member Comment

None

XII. Informational

It is unlikely a December meeting will be necessary. We need to determine when new officers are elected. Is a special meeting warranted? Wietek-Stephens would probably be available for a February meeting following maternity leave. The status and content of the pending Home Occupation and Sign amendments were discussed.

XIII. Adjournment

Wietek-Stephens adjourned the meeting at 7:43 p.m.

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary