

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS
Thursday, June 27, 2013
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-Mark Maki; Alternate-Raymond Gregory.

*Note, Raymond Gregory joined the meeting at 7:04 P.M.

Member Sandra Page was excused.

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

III. Approval of Agenda

Moved by Maki, and seconded by Alholm, to approve the agenda for June 27 as written.

Vote: All Ayes Motion Carried

IV. Approval of November 29, 2012 Minutes

Moved by Alholm, and seconded by Milton, to approve the minutes for November 29, 2012 as written.

Vote: All Ayes Motion Carried

V. Public Comment

None

VI. Unfinished Business

A. Election of Officers

Moved by Milton, seconded by Alholm, to nominate Wietek-Stephens as Chairperson. Nomination accepted.

Vote: All Ayes Motion Carried

Michelle Wietek-Stephens will remain ZBA Chairperson.

Moved by Wietek-Stephens, seconded by Milton, to nominate Karen Alholm as Vice Chairperson. Nomination accepted.

Vote: All Ayes Motion Carried

Karen Alholm will remain ZBA Vice Chairperson.

Moved by Wietek-Stephens, seconded by Alholm, to nominate Kendell Milton as Secretary. Nomination accepted.

Vote: All Ayes Motion Carried

Kendell Milton will remain ZBA Secretary.

VII. New Business

A. Variance Request #ZB13-01 Keough

Planning Director Comments

Woodward said this is a request for a dimensional variance from Section 6.1 to build a 1,040 square feet (26' x 40') one-story home at less than the required 30' front and side setbacks, with the intent to preserve as much of the required waterfront setback as possible (by minimizing the front setback that is adjacent to the easement). The proposed minimal front setback would result in the home being located between 23 and 37 feet from the actual access road. This nonconforming lot of 0.285 acres was created before the zoning ordinance and previously contained a 700 square foot year-round residence from 1955 to 1995 when it was destroyed by fire. Well and septic remain on the property. The property appears to be entirely within the 100-year floodplain and a scrub-shrub wetland area. Woodward said that Sheila Meiers from DEQ said it was likely that a State permit would be needed to build in the floodplain in the absence of an elevation survey showing the structure was not in the floodplain. The County may also enforce structural requirements relating to the floodplain.

Woodward said it is impossible for any structure to meet all setback requirements on this property; hence a variance is needed for any structure. Woodward stated the Zoning Ordinance standards for granting variances.

Public Hearing & Applicant Comments

Eric Keough noted his former success in redeveloping nonconforming legal parcels in the Township. The lot is attractive to him because it already has a well and septic system, and he provided documentation of this in the application. In the original plan he tried to maintain the entire 100 foot waterfront setback. He has an alternate plan that would center the home on the lot, meeting both side setbacks, but requiring a 65 foot waterfront setback (35 foot variance) to avoid the septic system.

He has built in the floodplain before and it requires a special engineered septic permit and flood insurance. He said there are no cattails on the lot, and there are cedar and birch trees. He will remove the existing dilapidated shed.

Board/Applicant Discussion

Wietek-Stephens asked if the access road is public or private. The applicant said it's a private road to which he has a legal easement. Wietek-Stephens asked who is in charge of the road. Keough said who knows – he took care of plowing last year for a neighbor.

Alholm asked who provided the measurements. They were done by a surveyor and the applicant. Gregory confirmed the relationship of the proposed structure to the front property line and the easement. The home is basically proposed to be on the front property line a distance from the access road.

Alholm asked about provisions for parking and whether there was room for parking between the house and the septic system. Keough said there are two driveways into

the property, and there is access and room for parking in the back yard without driving over the drain field. He said people have been using the easement for parking in front. Keough confirmed there is no standing water on the property.

Alholm asked if there are other nearby structures built on lots less than 20 acres. The answer was yes.

There were questions about the health department drawing of the well/septic and whether it matches with the location of the parcel. Maki asked for confirmation of the address of the property.

Maki questioned whether the health department will accept the existing septic system in a floodplain for a new house, saying an engineered system might be required and this could impact where the applicant could build.

Maki confirmed the setback calculations. Keough has calculated the setback allowing 5' separation between the foundation and the septic tank. Maki said Keough should have something showing the off-street parking on the lot.

Wietek-Stephens asked if Keough knows the location of the septic. Keough said the septic was dug up and marked, but the dimensions of the drain field are not known. Wietek-Stephens also asked about the potential for the current private road to become a County road. It was agreed there is no potential for it to become a County road.

Alholm asked about identification of the Snooks parcel and whether they had submitted input. Woodward said their verbally stated concerns had to do with the flooding of the parcel, and conditions for the well and septic. Keough was asked if he would be willing to address any health department requirements and this was affirmed by Keough.

Wietek-Stephens had two concerns, 1) whether a nonconforming parcel in a floodplain should ever be buildable, or whether this question should be left to the County; 2) does it make sense to locate a house 30 inches from the property line and take down a bunch of trees, or place it closer to the rear where there could be increased flooding concerns. She asked, "Is the Township better served by having this parcel built upon and occupied contributing to tax base or is it better served having this parcel not occupied?"

Milton said it used to be occupied, and if there was a house there now it would probably still be occupied. Wietek-Stephens said the whole point of the zoning ordinance is to try to reduce nonconformities over time and not try to recreate them.

Gregory asked to what extent the floodplain issue is before this Board. Woodward said her job is to identify the property as being in the floodplain and then the County enforces the applicable structural requirements. Woodward had talked with the County and DEQ regarding their requirements. Keough noted there are many structures located in the floodplain in Chocolay Township. Flood insurance may be

required with a mortgage. Maki said the applicant either has to build above the floodplain in accordance with an elevation certificate, or build according to requirements for the floodplain. Gregory asked about granting a variance conditional upon getting all other required permits. Woodward confirmed this has been done before.

Alholm asked if it is appropriate to use the easement for parking. Maki said no, the applicant is required to have two parking spaces on-site and show them on the plan.

Maki asked about Section 6.4 of the Zoning Ordinance that states that nonconforming lots of records that are contiguous and in the same ownership are required to be combined to reduce dimensional nonconformities. It was determined that this parcel is not in the same ownership with the adjacent parcel.

Maki would rather reduce the waterfront setback to allow for parking, porches, etc. Keough presented his alternate plan for consideration, with the house about 66 feet from the river's edge. The adjacent house is about 30 feet from the water's edge. Maki said it makes sense to preserve as much waterfront setback as possible, but makes more sense not to put the front of the house on the property line without provisions for parking or porches.

Wietek-Stephens is interested in knowing where the septic is so she can locate the house optimally. Keough said the 30' front setback would allow the home to stay clear of the septic system and be centered on the property. Maki said he would be surprised if the health department would accept an existing septic, and if it would meet requirements in the floodplain. Keough said he would have to do a septic evaluation as part of the County permit process.

Wietek-Stephens said she didn't know if she has all the information she needs to make a decision. She would like to see the home centered, but as far to the front as possible to allow a little space for parking. But it's hard to make this determination not knowing if the septic requires changes. Parking was discussed. Wietek-Stephens asked what would happen if the health department doesn't approve the septic. Keough said if the health department doesn't approve the use of the existing septic system, he will put in an engineered system, but he's confident that it's good.

Gregory and Alholm like the alternate plan better. Wietek-Stephens wants to know where the ultimate location of the septic will be so she can be assured there is minimal encroachment on the waterfront setback. If the septic can't be reused, it changes everything and opens up other possibilities. She would rather vary both the front and waterfront setbacks. A former case was discussed for consideration. A potential motion was discussed.

Board Decision

Wietek-Stephens moved, Gregory seconded, after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB13-01, the Zoning Board of Appeals finds that the request demonstrates the standards pertaining to the granting of nonuse variances, and hereby approves Variance request #ZB13-01 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would cause practical difficulty because strict compliance would unreasonably prevent the owner from using the property for a permitted purpose; and
2. Granting the variance would not be contrary to the public interest because the proposal preserves as much of the waterfront setback as possible; and
3. There are circumstances unique to the individual property on which the variance is granted, and these circumstances are inadequate depth in relation to the waterfront setback requirement; and
4. The variance request is not due to actions of the applicant, but is due to a lot of record that was created before the zoning ordinance which has subsequently never been in conformance with regulations.

Modifications and conditions of approval:

1. The variance is contingent on the Health Department approving the continued use of the existing septic system; and
2. The house is required to be built as far to the front (south) lot line as the septic will allow, meeting side setback requirements on both sides, and leaving no less than 66 feet of waterfront setback and 12 feet of front setback while retaining the structure dimensions as stated in the application; and
3. The variance is contingent upon acquisition of all applicable DEQ and County permits relating to construction in the floodplain.

Vote: All Ayes Motion Carried

B. Variance Request #ZB13-02 Moore

Planning Director Comments

Walter Moore, 148 Riverland Drive, requests a dimensional variance from Section 6.1 to build a 1,440 square feet (30' by 48') one-story detached storage building at less than the required 35' rear setback (20' proposed). This is a conforming 0.79 acre lot. All setbacks are currently conforming. There is an existing residence with an attached garage and detached shed. Previously a variance was granted for a detached garage to be placed at nearer than the required setback along the M-28 property line provided a wooded buffer was maintained. The proposed building size is permissible as it does not exceed the perimeter dimensions of the principal structure. Two resident comments were submitted to the Board at this time in favor of the request.

Maki asked for clarification regarding the designation of “front” lot line and “side” lot line in relation to this parcel. It was determined that the property line in question is best interpreted as a rear lot line rather than a side lot line because MDOT would probably not allow access off the property line adjacent to M-28 since reasonable access has already been provided off Riverland Drive. (See definition of Front Lot Line – “a line dividing a lot from any public highway except a limited or controlled access highway **to which the lot has no access.**”) The plat map also designates only Riverland Drive as a front. So the rear variance is needed in this case.

Public Hearing & Applicant Comments

Robert Hainstock, 153 Riverland Drive, lives across the street from the property in question. He is a big fan of Walter’s, but Walter has a different toy collection than he does, some with very big wheels. He spoke of the many vehicles, some under renovation, that are on the property, and that he would like these vehicles to be under cover.

Andrea Wrubel, 1388 M-28 E, was in full support of the proposal because she understands the desire to put things under cover.

Sylvia Hainstock, 153 Riverland Drive, was in support of the proposal.

Board/Applicant Discussion

Walter Moore presented a site plan and said he would really like to have a ten foot setback. He has made many improvements to the house and property. He believes the required 30 foot setback creates a wasted area. He would like to have a fenced area for his coming up child and dogs in the middle of the yard. He is asking for the 20 foot setback. He said that at a 20 foot setback, however, one corner would be within 9.5 feet of the side line, although his measurements could be off. He is not putting in heat. It’s simply a cold storage pole barn with translucent top, a man door, and one garage door. There will be no driveway to the building. The power line location was discussed. The building height is 10’ at eaves and 16’ at peak.

Maki pointed out that the neighbor could build a structure 10’ from this same property line because for them it’s a side yard.

Moore said one other important consideration for him was his neighbor’s dogs. He had to put up a temporary 6’ fence because they bark.

Gregory questioned the rationale for the variance since there is room for the building to be built at the required setback. Alholm also asked for clarification, and Moore said he doesn’t want the pole barn to look like it’s in his front yard.

Milton asked if the applicant found the corner markers. The answer was yes.

Wietek-Stephens acknowledged the applicant’s concerns but said she doesn’t think there is a basis for practical difficulty, since this size building could still be built and meet all required setbacks. Alholm said it can be done practically even if it may not be exactly where the applicant wants it.

Maki said what is unique is two things, 1) in theory the neighbor could build 10 feet from the same line and yet Moore has to build 35 feet from that line. He thinks this is unreasonable. He also appreciates that Moore is trying to place the building less prominently on the parcel. Maki said he would propose a motion to allow a 20 foot setback for those two reasons.

Alholm mentioned the prominence of the existing accessory buildings in front of the house. Wietek-Stephens said that if they let the applicant build ten feet from the rear property line just because the neighbor can, we end up with buildings too close together. Maki said if Moore was proposing 10 feet, he probably wouldn't go along, but it's 20 feet.

Moore asked what he would do with the 35 by 40 feet area since he can't drive over it because that would mean driving over his septic system. Wietek-Stephens said you don't have to drive on a property to use it. Moore saw it as a waste of land.

Maki said it's an odd lot because essentially it's on two road frontages unlike most lots. Maki said the designation of "front" on a plat is meant to specify where the driveway needs to be. They started doing that so people wouldn't have driveways on two roads. He thinks this means this is a rear lot line by definition and a variance is needed.

Gregory said he thought that building closer to Riverland Drive would make the property look more balanced.

Sylvia Hainstock said that part of Walter's request is for their benefit. The building will screen the sound of the other neighbor's dogs. Alholm said a fence would do it – but there is an existing fence. Maki said the dogs have nothing to do with it.

Moore said he can utilize the property in front better than he can utilize the rear. Milton clarified that the State won't allow any more access to M-28 than they have to, so access directly to M-28 probably would not be allowed

Board Decision

Maki moved, Milton seconded, to allow the applicant to build 20 feet from the rear property line instead of 35 feet because 1) it's a unique parcel because the lot line is considered a side lot line for the neighbor, and could be considered a side lot line under our ordinance, and 2) the applicant is trying to place the building less prominently in relation to the home.

Vote: 2 Ayes: Milton, Maki 2 Nays: Wietek-Stephens, Alholm

Gregory did not vote. He chose to abstain, however, Woodward said he must vote unless he had a conflict of interests. It was found he did not have a conflict of interest and therefore Gregory voted naye, saying he would be more in favor of a 30 foot minimum setback than 20 foot.

Motion Denied

Maki moved, Milton seconded, to allow the applicant to build 25 feet from the rear property line instead of 35 feet because 1) it's a unique parcel because the lot line is considered a side lot line for the neighbor, and could be considered a side lot line under our ordinance, and 2) the applicant is trying to place the building less prominently in relation to the home.

Vote: 3 Ayes: Milton, Maki, Gregory 2 nays: Wietek-Stephens, Alholm

Motion Carried

VIII. Public Comment

None

IX. Township Board Member/Planning Commission Member Comment

Maki thanked the Zoning Board. He reads their decisions and thinks they put a lot of thought into it. It's good to have a Planning Commissioner and two attorneys involved. It is appreciated. He knows it's a tough job because he worked with the zoning ordinance for years and years. He wanted the ZBA to know the Board adopted extensive changes to the sign standards. He thinks some are good and some are bad, including changes to the size of residential signs. Milton no comment.

X. Informational

Woodward said the Township Board has adopted regulations pertaining to Conditional Uses and Outside Lighting. The ZBA was provided with the updated zoning ordinance.

XI. Adjournment

Wietek-Stephens adjourned the meeting at 9:15 p.m.

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS
Thursday, November 21, 2013
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; Board Member-Mark Maki; Member-Sandra Page; Alternate-Geno Angeli; Alternate-Raymond Gregory.

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

III. Approval of Agenda

Alholm asked about the expired terms of members. Woodward said the Township would like to get the terms of all board and commission members changed to begin on January 1 and terminate on December 31 so that all can be approved at one Board meeting in December. Page and Angeli have both agreed to continue to serve and so their terms will be extended until they are re-appointed by the Board in December.

Woodward asked Maki if he wanted a change in the agenda related to the ZBA Rules of Procedure based on his fax inquiry. He said he would discuss the procedures during his presentation, but would not necessarily go through the document. He just wanted everyone to have a copy (which Woodward supplied per request).

Moved by Maki, and seconded by Alholm, to approve the agenda for November 21 as written.

Vote Ayes: 7 Nays: 0 Motion Carried

IV. Approval of June 27, 2013 Minutes

Maki asked for an update of events related to Variance ZB13-01, property owner Keough, to build a home at 400 Green Garden Road in a floodplain. Woodward said Keough was able to get permits from the Health Department to use the existing septic system, and obtained all necessary DEQ permits, so that development was permitted according to the altered site plan per the ZBA decision.

Moved by Wietek-Stephens, and seconded by Maki, to approve the minutes for June 27, 2013 as written.

Vote Ayes: 7 Nays: 0 Motion Carried

V. Public Comment

None

VI. Unfinished Business

None

VII. New Business

A. Election of Officers for 2014

Moved by Alholm, seconded by Milton, to nominate Wietek-Stephens as Chairperson. Nomination accepted.

Vote Ayes: 7 Nays: 0 Motion Carried
Michelle Wietek-Stephens will remain ZBA Chairperson.

Moved by Milton, seconded by Wietek-Stephens, to nominate Karen Alholm as Vice Chairperson. Nomination accepted.

Vote Ayes: 7 Nays: 0 Motion Carried
Karen Alholm will remain ZBA Vice Chairperson.

Moved by Maki, seconded by Alholm, to nominate Kendell Milton as Secretary. Nomination accepted.

Vote Ayes: 7 Nays: 0 Motion Carried
Kendell Milton will remain ZBA Secretary.

B. “Lessons Learned” by Mark Maki, who attended ZBA training on November 7

Maki attended the Zoning Board of Appeals training presented by MSU Extension in Chatham, MI. He brought an outline of important topics covered, a sample decision letter, and a variance checklist to share.

Maki discussed rules of procedure and duties within the context of the Michigan Zoning Enabling Act, P.A. 110 of 2006. Such duties include considering variances, reviewing appeals, and making map interpretations. He said map interpretations are less frequently needed with the adoption of new GIS technology. Appeals can be brought by aggrieved parties, but defining “aggrieved party” can be difficult.

He said one member shall be a Planning Commission member, and the meetings must be open to the public.

There was much discussion on “conflict of interest”. Maki said obviously a decision involving a direct relative would be a conflict, but what about cousins, for example? Alholm asked if the question was resolved? Maki said the presenters indicated that the policy should be made clear in the Ordinance and Rules of Procedure. Angeli asked about the Chocoy policy. Wietek-Stephens said our document describes procedures to follow in case of a conflict of interest, but does not define what constitutes a conflict of interest. Alholm said she thinks it’s defined in State law. Wietek-Stephens and Alholm said a conflict of interest mostly involves a financial benefit associated with a decision. Maki said that the alternates can serve instead of a regular member if there is a conflict of interest. He addressed the question of Member rights, and whether Members are allowed to speak to an issue after being excused because of a conflict of interest. Maki said the trainers indicated that if you are a Board member, you are serving as the government, and therefore one of the rights you give up is the right to participate if you have a conflict of interest. Milton clarified that Members wouldn’t be able to participate in a discussion regarding their own variance request. Wietek-Stephens said that

members are allowed to have someone represent them in a discussion regarding a case for which they have a conflict of interest. Angeli asked what happens if your best friend comes to ask for a variance and for personal reasons you don't want to participate? Alholm said she was in that situation previously, and her research led her to conclude that she couldn't get out of it. Maki asked if alternately a regular member could just say they couldn't attend the meeting and call an alternate instead? The concept of "duty" was discussed. Angeli said he is willing to follow a written policy on the matter. Wietek-Stephens said it helps to make decisions logically based on facts that are spelled out in the decision so that it's less personal. Gregory said he thinks members should be able to step aside in favor of an alternate if they are uncomfortable with making a decision. Maki wasn't sure he'd go that far, using the word "uncomfortable" – if a friendship is involved, people may think there's bias, but he'd like to discuss it more. Wietek-Stephens said she didn't think members should avoid making decisions because of discomfort, because there are many decisions that make people uncomfortable as people are negatively impacted and will sometimes be unhappy. Maki said he'd look for more guidance on the issue.

Maki reviewed Township requirements and practices for notification. He indicated that motions should include findings and reasons to protect in case of appeal to the Courts. He indicated that the Township Board can improperly in effect negate a ZBA decision by not defending it in Court and settling a case for financial reasons.

Maki suggested members keep the Variance Checklist with them to help in making decisions. Decision letters were discussed. He suggested letters be signed by the Zoning Administrator to facilitate timely issuing of permits after the decision (not delay until after minutes are approved).

Maki said the presenters suggested that alternates should attend meetings, observe practices, and familiarize themselves with issues in case they need to serve. This issue was discussed, including making a choice between alternates. Woodward said she sends the packets to all members, but expects that the alternates will not attend unless they are called. But then she is never sure which alternate she should call. Time of appointment was mentioned as a criteria. Woodward said she tried to alternate so both get experience. She thinks there is room in the budget to compensate some extra attendees at meetings. Wietek-Stephens suggested that if each alternate attends 2 meetings per year, in most years this would ensure that there is an alternate present at the majority of meetings and it wouldn't impact the budget too badly.

Maki moved to have both alternates attend the next two ZBA meetings. Wietek-Stephens said she would still prefer they alternate in attendance so it's not as much drain on their time. Maki amended the motion to say that one alternate shall attend each meeting next year (alternating attendance). Wietek-Stephens suggested adding a statement "provided there is enough money in the budget". Maki agreed to this amendment. Before offering support, Wietek-Stephens asked alternates if that time commitment would make them quit? Both said "No".

Restated, Maki moved, Wietek-Stephens seconded, that the alternates alternately attend every meeting next year, provided there are sufficient funds in the budget.

Vote Ayes: 7 Nays: 0 Motion Carried

VIII. Public Comment

None

IX. Township Board Member/Planning Commission Member Comment

Angeli asked for an update on the Wahlstrom property. Maki said the property was auctioned and purchased by Jim and Andrea Beckman, the owners of the adjacent motel, and plans are uncertain. All equipment was removed from the building by the Township in compensation for delinquent taxes. The property was sold at auction and proceeds will be distributed to all pertinent taxing jurisdictions, including the Township, although the proceeds will not cover all delinquent taxes and fees. No comments by Milton.

X. Informational

Woodward discussed the proposed 2014 meeting dates on the fourth Thursday of the month except when holidays interfere. A meeting will be scheduled every month, and will be cancelled if there is no case to be heard.

Wietek-Stephens requested that the Planning Director send an e-mail to notify members of the meeting cancellation after the submission deadline has passed. Woodward agreed.

Woodward also said she budgeted for on-demand webcast training for each member at a cost of \$90 per member. The training is through the Michigan Township Association. Wietek-Stephens said she loves the idea and will do it. Other members will let Woodward know if they are interested. Woodward will contact members after she gets more information on registration.

XI. Adjournment

Wietek-Stephens adjourned the meeting at 7:51 p.m.

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary