CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS
Thursday, April 24, 2014
7:00 PM

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:05 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
Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator; Suzanne Sundell, Administrative Assistant

III. Approval of Agenda

Moved by Maki, and seconded by Alholm, to approve the agenda for April 24 as written.
Vote Ayes: 5 Nays: 0 Motion Carried

IV. Approval of November 21, 2013 Minutes

Maki had a recommendation for Page 3 of 4, second paragraph, "…He indicated that the Township Board can in effect negate a ZBA decision by not defending it in Court and settling a case for financial reasons."

Maki explained that there was a negative implication that the Township Board could become a "Super Zoning Board" and could render the ZBA essentially useless. Appeals of ZBA decisions are not to the Township Board, but to the Circuit Court.

Maki asked whether they ever resolved the issue of alternates attendance – Woodward indicated that she had called Angeli and he could not attend. Wietek-Stephens said that it was decided previously they were going to alternate meetings.

Moved by Wietek-Stephens, seconded by Milton, to approve the November 21, 2013 minutes as corrected (addition in **bold**) on Page 3 of 4, 2nd paragraph, last sentence "He indicated that the Township Board can ***improperly*** in effect negate a ZBA decision …."

Vote Ayes: 5 Nays: 0 Motion Carried

V. Public Comment

Wietek-Stephens asked for public comment on something other than the Variance Request. Maki stated he had a comment on the Agenda – ZBA Rules for Public Hearings and Public Comment - #3, which states "Zoning Board of Appeals members are not required nor expected to respond to comments, opinions, and/or questions from the floor." Maki stated that the Township Board policy says, "Upon written request, a response will be given within 14 days". He said some questions require further investigation but he thinks it's frustrating for the public not to get an answer.

Wietek-Stephens moved, Alholm seconded, to add an item to New Business to discuss ZBA Rules for Public Hearings and Public Comment, Item #3.

Vote Ayes: 5 Nays: 0 Motion Carried

VI. Unfinished Business

None

VII. New Business

A. Variance Request #ZB14-01 Keough

Planning Director Comments

Woodward indicated the ZBA and applicant received additional information at the meeting regarding a previous zoning case involving land now in this parcel.

Woodward described two decisions to be made – an appeal of the Zoning Administrator's decision to deny the permit, and a variance request to build a single family residence on a non-conforming lot. The permit was denied because the existing 11-acre lot doesn't meet the minimum lot size of 20 acres that is required by all new parcels that were not lots of record or described in a deed or land contract prior to the effective date of the Zoning Ordinance.

Woodward said that the proposed setbacks of the house are conforming to the requirements of the AF district. The entire lot is in the AF district, and it appears to be entirely within the floodway according to current FEMA maps. Woodward showed a portion of an undated survey from a previous ZBA case relating to this parcel. The undated survey is similar to another survey dated 5/31/1988, except the undated survey has an extra contour line marking a 614' flood plain contour. Maki believes the revised survey was submitted after 5/31/1988 to clarify whether the entire lot was in the floodplain. Woodward showed a current FEMA floodplain map indicating a base flood elevation line of 615' through the property.

Woodward explained this was originally a 27-acre parcel owned by Dana Varvil which was indicated as "back acreage" without public access. The record card indicates that the 27 acres was composed of an 11 acre lot and 16 acre lot that were not contiguous. In 1999, the 27-acre parcel was split. Woodward was not able to determine the manner by which this was done. The 16 acres relates to this parcel. The portion north of the Chocolay River was zoned R-1 with a minimum lot size of 25,000 sq. ft; the portion south of the river was zoned RP, Resource Production, with a minimum lot size of 20 acres. When the lot was split to less than 20 acres, it became non-conforming. That was before Keough owned the property.

Keough purchased the 16-acre nonconforming parcel from the Varvils in June of 2008. At that time, it was zoned R-1 north of the river and AF south of the river (with the same minimum lot size requirements previously mentioned). Keough transferred the portion north of the river to an adjacent property owner (Jennifer Thum, then Township Planner). Keough is asking for a variance to build on the remaining 11 acres. Keough gained access to this parcel by purchasing the parcel to the south, creating an easement on it and deeding the easement to himself, then reselling that parcel.

Woodward indicated that no Zoning Compliance permit can be issued without resolving the floodplain issues with the DEQ. The ZBA can take the floodplain issues into consideration in relation to public interest when discussing the variance.

Woodward stated that per Section 6.1(B) of the Zoning Ordinance, minimum lot size requirements do not apply to any nonconforming parcel of land as shown in the deed or land contract executed prior to the date of the Ordinance. This parcel was created after the effective date of the Ordinance, so those provisions are not applicable. Section 6.4 says that nonconforming lots of record may be used for permitted uses even though the lot area is less than required if yard dimensions and other requirements are met. However, this lot does not meet the definition of "Lot of Record", which means "a

parcel of land, the dimensions of which are shown on a document or map on file with the Register of Deeds prior to the effective date of the Ordinance". The variance is necessary because of the property transfer that occurred after Keough purchased the property.

Woodward provided the ZBA with a confidential opinion from the Township Attorney as related from a phone conversation.

Woodward indicated the ZBA should first decide the appeal of the Zoning Administrator permit denial. The ZBA can grant the appeal fully, or partly, which would in effect negate the Zoning Administrator's decision; or grant the appeal with conditions; or deny the appeal. She asked the ZBA to provide stated reasons for the decision.

Next the ZBA should evaluate the variance request. The ZBA can grant the variance, grant the variance with conditions, or deny the variance. There are standards for granting variances that must be met.

Woodward stated that when evaluating the appeal, the ZBA can only assume the power of the Zoning Administrator – the Zoning Administrator can't change the ordinance, but can only administer the ordinance. Wietek-Stephens restated that the ZBA has to determine if the Zoning Administrator correctly interpreted the ordinance. Wietek-Stephens asked if Keough would still need a variance if, for some reason, they decided that the Zoning Administrator decision was not correct. Maki indicated that if the Board overturned the Zoning Administrator decision, they would essentially be saying that it is a buildable parcel, and a variance would not be needed. This was discussed further.

Public Comment

Jim Negri, 545 North Big Creek Road – Negri said Keough had purchased another parcel that butted up to the parcel in question, and could have combined the parcels to have a conforming 30 acre parcel but he chose not to. Instead he gave himself an easement to the parcel he knowingly bought without access and resold the other one. The lot in question is barely half the size that it's supposed to be for where it's zoned. What's the purpose of having a zoning ordinance if you are going to let everyone break it? Negri discussed a perceived inaccuracy in Keough's application materials involving Negri and access to an adjacent parcel. Negri discussed a case where Keough allegedly failed to comply with a previous ZBA decision. Wietek-Stephens and Maki talked with Negri regarding details of his comments.

Nita Martin – 475 North Big Creek Road – Martin lives across the street from the parcel in question. Martin lives on a floodplain. She has lived there for 18 years, and said that the water goes right through Keough's parcel. There were two residences on the small adjacent parcel – when one home burnt, the DEQ would not let them rebuild because of the floodplain. Martin's concern is that Keough will build a house and sell to someone who doesn't know about the flooding. Former owners experienced flooding. Wietek-Stephens asked Martin to indicate her location on the map and the location of the two houses that she referred to. One was improved by Keough – the homes were 100 year old logging camps.

Wendy Negri - 475 North Big Creek Road – W. Negri indicated that she is also opposed to the development because ignorance of the law is no excuse and the property is not big enough.

Eric Keough – Keough reminded the Board of a variance he obtained previously to build a home on a non-conforming lot on Green Garden Road which was entirely 5 feet below the floodplain. He had to raise the first floor of the home above the flood line. Keough referenced the stamped survey indicating that 1.1 acres is above the floodplain. He said he would be able to meet all the setbacks. He thinks that his other parcel that Martin referenced has a different flood contour line since it's only about 50 feet from the river.

Keough discussed the former variance that was granted on a larger parcel of which this parcel was a part with Woodward and Maki. The former owner, Varvil, had obtained a variance to build but was never able to build because the parcel had no access. At that time, portions of that parcel were in two different zoning districts.

Keough indicated he often offers to sell land to adjacent property owners when he purchases property. When he bought this parcel, the river divided it in half, creating unusable space north of the river. Keough sold the northern portion to Jennifer Thum who was the Township Planner. He said that is considered a boundary shift according to Ordinance 52 – the Land Division Ordinance. Keough said that Tina Fuller, previous Chocolay Township Assessor, had determined it to be lot split but he did not agree. Keough stated that if he did create an unbuildable parcel, Section 8 of Ordinance 52 says he should have been given written notice of the illegal nonconformity at the time. Then he could have rescinded the transaction so it wouldn't create that situation.

Maki asked about the adjacent parcel #116-003-10 that Keough purchased to give himself a 66' wide easement which he then resold.

Keough said that the property transfer did not result in additional residences because the property north of the river was unbuildable anyway, so the spirit of the Ordinance was preserved.

He said the ZBA could grant a variance on the condition that he receives a DEQ permit. The Board discussed the FEMA flood insurance rate map for the property. Woodward indicated the identified base flood elevation across this parcel of 615', meaning it would be flooded when the base flood (100-year flood) reaches the 615' elevation.

Woodward stated that there are different DEQ regulations for development in floodways and floodplains, and she was told that they 100 percent deny development in floodways. If you can meet certain conditions, you might be allowed to build in a floodplain.

Keough said he got a health department permit for a septic system and well. The septic was installed in November 2013. Page asked if the septic system was in the floodplain. Keough said it was hard to say – not according to the Health Department. Alholm asked what information they based their decision on in granting the permit – where did they get their information from? Keough responded that he wasn't sure – it was a standard application to build a septic. Alholm questioned the applicant regarding the details of the health department permit. Woodward stated that she had talked to the Health Department representative who had visited the site. Keough said that the Health Department dug a 6 or 7 foot hole and found the high water mark. Maki indicated that they usually do a PERC test - dig a hole, if it's wet it doesn't meet the PERC test. Maki said if it fails the PERC test, and you have to fill, then you would need DNR or DEQ permits for fill within a floodplain.

Keough showed the proposed new home plan including 3 bedrooms and 2 baths, and the location. There would be no garage.

Maki asked if Keough had a copy of the deed that he gave to Jennifer Thum. Maki said Randy Yelle was the Zoning Administrator at that time.

Keough stated that Ordinance 52 Chocolay Township Land Division Ordinance, Section 7E, "Standards for approval" says "All parcels created and remaining shall have existing adequate accessibility …" So Thum should not have been able to create a separate parcel ID for her portion which was not accessible. It shouldn't have gone through if it was a red flag. It also requires that "… when the assessing officer suspects such a violation or potential non-conformity, he shall refer the same to the county prosecuting attorney and give written notice to the person suspected of the violation or potential non-conformity." Keough states he was never informed about the potential non-conformity or he wouldn't have done anything. Wietek-Stephens questioned whether the Assessor may have thought it was an existing nonconformity, so it would just be more nonconforming. Keough stated it was a legal non-conforming – this made it an illegal non-conforming. Woodward stated that she thinks the referenced clause refers to a non-conformity related to a land division, but she interpreted this as a property transfer. Keough agreed but said that Fuller always called it a land division. Alholm stated that if this was a property transfer, then a written notice would not have been required.

Maki indicated that the deed should show whether it was a land division or if it was an add on. He said the other complication is that you cannot add platted land and unplatted land together – he thinks it should have been a land division issue because it involves combining platted and unplatted land. Wietek-Stephens clarified that Maki is talking about the land north of the river, but not the land involved in the variance request.

Maki said if Keough had not sold off the piece north of the river – if he had kept the 14.4 acres intact – and then created the easement, he could have gotten a permit. There was already a variance on that parcel.

Wietek-Stephens asked about the variance that was granted – does it transfer to a new owner since it was never acted on? Woodward said it runs with the land.

Page asked about getting a copy of the deed. Maki indicated there should be something on the deed saying that the land was being added to an adjoining parcel if it was a property transfer. Alholm said that Thum could own it, but could not join it to the platted property legally. Keough asked if that was technically a land division then since there were two separate parcel numbers. Maki said he would have thought so, and it would have been a violation because there was no access.

Alholm stated Mr. Keough was a willing seller, and made his 16 acres into 11 acres, whether it was proper or not.

Wietek-Stephens and Maki and others debated about whether this information was pertinent to the variance decision. Wietek-Stephens asked if they have to answer all those historical questions in order to make a decision on the variance. After further discussion, Wietek-Stephens asked if the point of all this discussion to say that when Keough purchased the property, and immediately sold the 5 acres, he should have been notified that it was buildable, and that he was making it not buildable. Maki said Varvil should have been able to inform Keough of the former ZBA decision making it a buildable lot even with the nonconformity.

Alholm asked questions related to the land division process and how it relates to sales of property. The Board debated the question of whether the lot was created through a land

division or a property transfer, and whether it would have met zoning ordinance standards, and whether this was pertinent to the variance decision.

Wietek-Stephens again acknowledged public comment. Negri said that when Keough purchased the property, he would not have known whether he could eventually get legal access. Keough bought it landlocked, knowing there was no access, and it seems like he already knew it wasn't buildable and was nonconforming.

Martin said it seems to me that Keough is buying and selling property all the time, and he (Keough) seems to do his homework when he comes here – he should know all this stuff.

Maki said the way the process is supposed to work is a property owner requests permission to divide land before they do it, not after, but people don't always do this or know what they should do. The question he has is did the township consider this a violation of the land division ordinance or not and did Keough receive notice that his actions were in violation of zoning ordinance requirements. Page said she thinks Keough should have known the rules, and that Keough had some responsibility when he was selling the property to be sure the variance wasn't going to be compromised – and Keough didn't do that.

Wietek-Stephens asked Keough if he knew there was a variance, and that the property was deemed buildable before he sold some of it? Keough said no, he assumed it was buildable.

Alholm questioned whether it is necessary to go back in history to determine what was done when we know the parcel was nonconforming when Keough purchased it. Then he divided it, and sold part of it, so there are now two nonconforming parcels, one of which Keough doesn't own anymore. We are concerned with the other parcel.

Wietek-Stephens said that if Keough bought the property assuming that it was buildable, or even knowing there was this variance that made it buildable, wouldn't he (Keough) have known that selling part of it made it non-buildable? He's in the business of buying, selling, and developing property, and is pretty aware of what buildable lots are.

Regarding the variance, per Maki's recollection, part of the issue was that it was in a floodplain, and part of Varvil's new evidence was the survey that showed that part of the land was not in the floodplain. Woodward said the other condition which existed at the time of the variance was the part north of the river was R-1 and the part south of the river was zoned RP. Now the entire parcel involved in the variance is zoned AF.

Maki made a motion to table this until they get a copy of the deed for parcel 109.128.21, and any and all information in the township files relative to whether or not this involved a land division.

Wietek-Stephens asked to amend the motion so the ZBA could resolve the appeal question tonight and table the variance. Maki accepted the revised motion, and also requested anything in the zoning files relevant to the division as it impacted zoning.

Alholm wondered what Mr. Keough's remedy would be if he did not receive notification like he should have. What remedy is available to him? The implications and the land division process/timeline/enforcement actions were discussed.

Wietek-Stephens seconded the first motion to table the variance portion until the next meeting.

Maki moved, Wietek-Stephens seconded to table the variance portion of this proceeding until a copy of the deed can be obtained, in what is referred to as parcel 109.128.21, and any and all information in the township files relative to whether or not this division was a land division.

Vote Ayes: 5 Nays: 0 Motion Carried

Maki moved, Page seconded, to deny the appeal, therefore upholding the Zoning Administrator's decision to deny the zoning compliance permit based on the following findings regarding zoning ordinance standards:

1. Because this nonconforming parcel of land was not shown as a lot in a deed or land contract executed and delivered prior to the effective date of this Ordinance, the provision of Section 6.1 (B) allowing such parcels in the AF district to be exempt from the minimum lot size regulations does not apply; and
2. Because this nonconforming parcel of land does not meet the definition of a lot of record, the provision of Section 6.4 allowing nonconforming lots of record to be used for permitted uses even though the lot area is less than that required for the District, etc does not apply.

Vote Ayes: 5 Nays: 0 Motion Carried

Wietek-Stephens – recap – the appeal to overturn Woodward's decision was denied and the variance still stands and will be addressed at the next meeting.

Wietek-Stephens moved, Maki seconded to move the date of the next meeting to May 15 to facilitate an answer to this question, as well as those of various board members and staff, unless we receive an application at the last moment that makes May 15 an unacceptable date.

Vote Ayes: 5 Nays: 0 Motion Carried

B. Request to Add Language to ZBA Rules for Public Hearings and Public Comment

Wietek-Stephens said the question is whether we should tack on additional language stating we would give additional information in a certain time period upon written request. Maki explained Township Board policy that says, "If a written request is made, the response will be sent in writing to the requestor within 14 days."

Alholm wondered who specifically the letter would be addressed to – the Chair of the ZBA or the Zoning Administrator? Maki said probably the Zoning Administrator.

Wietek-Stephens was concerned that someone who has an unreasonable "beef" with government in general could burden the Zoning Administrator with a series of questions that we would be required to respond to.

Alholm suggested that if there was a question, at that time the Board could decide whether to invite the individual to submit a written request to which the Zoning Administrator would respond.

Wietek-Stephens said the ZBA isn't really for the purpose of answering general questions – the ZBA is here to address things that are formally applied for – she doesn't believe the ZBA has a general educational role.

Maki objects to the part that ZBA is "not expected" to respond. When you are appointed to a body, and somebody asks a question, it is pretty rude to not answer the question at some point in time.

Wietek-Stephens said that the ZBA may not have the answers, and the ZBA is not required to provide answers on all the questions if they are not relevant to an issue that is being addressed.

Maki moved, Milton seconded, that the ZBA review specific language regarding rules for public hearings at the May 15 meeting, and Maki will provide language, in coordination with Woodward, to accomplish that.

Vote Ayes: 5 Nays: 0 Motion Carried

VIII. Public Comment

Nita Martin – Rules are rules, and she doesn't think the variance should be granted.

Wietek-Stephens said the ZBA has not granted any decision yet. They are considering historical impacts of past decisions and how they bear on the variance decision.

IX. Township Board Member/Planning Commission Member Comment

Maki said the Township is working on a Master Plan to be completed this year. When adopted, he hopes that the ZBA will get a copy, because it basically is part of the zoning ordinance and it will probably have recommendations to change the zoning ordinance. The Land Division Act was discussed.

Maki wondered about getting the Township Board minutes and the Planning Commission minutes to let ZBA members know what is going on – just add to email list. Woodward pointed out that all minutes are posted on the website. Maki suggested that the minutes just get emailed to everyone. At least then they have them, and they can choose whether to read them or not. Wietek-Stephens said that she is more likely to skim something in her email, than to go to the website to look it up.

No Planning Commission comment.

X. Informational

Woodward introduced Suzanne Sundell, and pointed out educational opportunities including MTA webcasts and Planning and Zoning Essentials workshop. Wietek-Stephens and Alholm are interested in taking the Zoning Essentials class. Maki will take both Planning and Zoning Essentials. Milton will check his schedule.

XI. Adjournment

Wietek-Stephens adjourned the meeting at 9:22 p.m.

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary

CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS
Tuesday, May 27, 2014
7:00 PM

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:04 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
Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator; Suzanne Sundell, Administrative Assistant

III. Approval of Agenda

Alholm suggested an addition to the agenda – this was prompted by the letter from the Zoning Administrator to Mr. Keough, in which Woodward recommended that Keough get a DEQ permit before filing a Zoning Variance request. Alholm wonders if the Board should look at protocol or policy in that regard – in the event the Zoning Administrator feels that there is something relevant such as this, can or should it be made a pre-condition for the Zoning Board of Appeals hearing?

Moved by Alholm, and seconded by Maki, to make an addition to New Business on protocol regarding pre-conditions to a variance request, and to approve the agenda for the May 27, 2014 meeting as amended.

Vote Ayes: 5 Nays: 0 Motion Carried

IV. Approval of April 24, 2014 Minutes

Wietek-Stephens asked for comments on minutes. Wietek-Stephens asked about a statement on Page 2 of 8, 3rd paragraph from bottom, "(Jennifer Thum, then Township Planner)". Wietek-Stephens wondered if Thum was actually the Township Planner at the time of the sale. Woodward indicated that Thum was the Township Planner, but not the Zoning Administrator. No correction.

Alholm stated on Page 5 of 8, 3rd paragraph from the bottom, "Alholm stated Mr. Keough was a willing seller, and made his **14** acres into 11 acres …" She believes she said 14 acres, but it should actually say **16** acres. Correction noted.

Maki questioned Page 2 of 8, 3rd paragraph from bottom, "… and it became accessible through that parcel." Maki is concerned with the language because it can mean certain things according to the Land Division Act, and technically, it wasn't accessible without an easement for access. Maki thinks this is confusing and would like to strike that portion from the minutes. Correction noted.

Maki questioned Page 3 of 8, 2nd paragraph – "Woodward provided the ZBA with a confidential opinion from the Township Attorney as related from a phone conversation

…" He thinks an attorney opinion should be provided in writing with a signature. The term "confidential" bothers him because it is a public forum. Wietek-Stephens asked if that Attorney opinion was shared with anyone else at the last meeting. Woodward stated it was only shared with the Board. It was not a part of the public packet based on attorney-client privilege. No correction.

Page 4 of 8, paragraph 3 – Wietek-Stephens had a question about the line, "Keough indicated that he often offers to sell land to adjacent property owners when he purchases property …" Her understanding during the discussion was that Keough stated this was the reason he acquired property adjacent to his projects, so that he could do this. Woodward indicated that Keough had said that that is often the first thing he does. Woodward confirmed this with Keough. No correction.

Page 5 of 8, paragraph 3 – "…Wietek-Stephens **clarified** that Maki is talking about the land north of the river …" (change **"affirmed"** to **"clarified"**).

Page 7 of 8, last paragraph – Wietek- Stephens changed the last line to "… she doesn't **believe** the ZBA **has a general** educational role." (change **"know if"** to **"believe"**, and **"is in an"** to **"has a general"**)

Moved by Wietek-Stephens, seconded by Milton, to accept the April 24, 2014 minutes as corrected.

Vote Ayes: 5 Nays: 0 Motion Carried

V. Public Comment

Wietek-Stephens asked for public comment. Jim Negri asked if the public comment still stood from the previous meeting. Wietek-Stephens indicated that the comments were recorded in the April minutes. There was no new public comment. Public comment was closed.

VI. Unfinished Business

A. Variance Request #ZB14-01 Keough

Woodward stated that she had received a new communication from the Health Department this evening, stating that at the time the permit was issued, flood plain determination was based on field inspections because GIS information was not available. DEQ assistance would be needed to determine floodplain boundaries and to determine whether the septic system is in a code compliant location. The GIS data does not show the building site as being in a wetland.

Woodward referred the Board to the extensive research contained in the staff memo and asked if there were questions.

Wietek-Stephens had a question on staff memo Item 17 – "Warranty deed between Horrocks and Affordable Neon Enterprises, parcel #109-130-00. Township records indicate the warranty deed is not valid. The transaction made it impossible to combine parcels #109-128-20 and #109-130-00 since they did not share common ownership." The timing of events was clarified per the staff memo.

Wietek-Stephens asked if you can transfer a part of a parcel without splitting it. Woodward indicated no, the parcels #109-128-20 and #109-130-00 were administratively combined because they were both under the same ownership, and according to our Zoning Ordinance, contiguous parcels under the same ownership are

considered combined for purposes of reducing nonconformities. They were shown as a combination first in staff memo Item 13, and then when ownership was no longer common they were administratively split back into the original parcels (staff memo item 17 and 18). Wietek-Stephens asked if these were separate parcels owned by Varvil – Woodward stated no, she didn't believe that Varvil ever owned the #109-130-00 parcel. Wietek-Stephens clarified that 109-130-00 is not the parcel north of the river. Woodward stated the parcel north of the river is 109-128-21.

Alholm had a question about the transfer of property from Keough to the Thum's, and whether it should have been processed as an exempt split (per the definitions in the Land Division Act) since the lots were less than 40 acres. Wietek-Stephens clarified that it was processed as an exempt split, whether that was the proper way to process or not.

Wietek-Stephens asked if the applicant had additional information or comment.

Eric Keough showed pictures of his septic field with a view of the adjacent property (parcel 116-003-10, 20 acres, owner Kublin) where there are plans to construct a pole barn. He said his septic field and the future pole barn location appear to be the same elevation. Keough said that he hoped Kublin was required to get the proper DEQ permits before obtaining a zoning permit. Maki asked if there was a house on the Kublin parcel. Keough said none was existing, but he knows that Kublin plans to construct a pole barn and residence.

Returning to the photos, Keough indicated there are wet areas on the back of his property. He showed a picture of the location where the land drops off behind the floodplain contour line that was indicated on the 1988 survey (per DNR), and said there is standing water in that location in the spring when the river is really high. This same area is dry in some of the other photos.

Keough suggested that if the ZBA does grant the variance, they could make it conditional on obtaining the DEQ permit, which would require an elevation certificate. The Marquette County Health Department granted Keough permits to put in a septic system on the property – they dug a test hole seven feet deep. Page asked if the septic was under water right now. Keough stated no, and showed the pictures. Keough reiterated that in 1988 the surveyor certified that there was 1.1 acres outside the floodplain. Keough indicated that the Kublin's construction will be about 200 feet away from his site, and that there are no noticeable elevation changes or standing water in between.

Keough compared his situation to surrounding properties. Parcel 116-004-20 is only 9.8 acres with residence that was built in 2009; the parcel was split in 2007 before the zoning change. It's approximately 20% smaller than his parcel.

Nearby developed parcels include parcel #116-001-00, which is 13.7 acres located across the street; parcel #116-028-00, which is 5 acres; parcel #116-002-00, which is 3.5 acres; parcel #109-030-00, which is 0.6 acre located adjacent to his parcel; and parcel #116-004-10, which is 5 acres. Keough also stated that Ms. Martin's property (Nita Martin) is a 5 acre parcel and a 10 acre parcel with two tax ID numbers (parcel #116-001-10 and #116-001-20). Keough said it is Township policy to limit non-conformity and combine contiguous parcels owned by the same person, so these should be combined into one tax ID number – he asked what's to stop Ms. Martin from giving herself an easement and building a house behind her on the 10 acres she owns. Keough

summarized by saying he found eight parcels adjacent to or within the same block as his 11.3 acre parcel. Basically the whole street is non-conforming.

Page asked if those parcels were all created prior to the changes in the zoning. Keough indicated yes, the Township made the whole neighborhood nonconforming. Keough stated he wouldn't ask to build on an 11.6 acre parcel if everyone else had 20 acres. Keough also stated that the area is almost 100% residential with the exception of one person who has horses. Keough stated that alternative uses for his property would be to clear cut all the trees since it's zoned forestry. He could also, under the Right to Farm Act, bring in livestock, chickens, and swine as long as he follows the Generally Accepted Agricultural Management Practices (GAAMP). He said that clearly, a home is the best use for the property; raising chickens or pigs on it would be silly, and clear cutting it wouldn't do any good as it doesn't have marketable timber on it.

Keough indicated that Chocolay Township Land Division Ordinance 52, Section 8, states that the assessor shall give written notice of the creation of a nonconforming parcel in violation of the Land Division Ordinance, and he said that he never received any notices. Keough asks that he receive the variance that he seeks as a remedy.

Woodward explained that the other parcels that Keough mentioned were previously in the RR-2 zoning district (5 acre minimum lot size) and were changed to AF (20 acre minimum lot size). Keough's parcel was previously in the RP district (20 acre minimum lot size) and was changed to AF (20 acre minimum lot size).

Alholm commented that the Land Division Ordinance, Section V, indicates that "An applicant (such as Mr. Keough) shall file all of the following with the Township Assessor or other official designated by the governing body for review and approval of a proposed land division before making any division by deed, land contract, mortgage, lease for more than one year, or for building development." She noted that then the Township has 25 days to respond. By this statement, Alholm assumes that Mr. Keough had the obligation to make the first step by filing with the Assessor for this division. Alholm asked for other's interpretation.

Keough stated that he always treated the transaction as a boundary change, but then Township Assessor Tina Fuller insisted that it was a land division. Woodward stated that Fuller processed it as an exempt split. Maki said the problem with the boundary adjustment is that if you look at the definition of a parcel in the Land Division Act, it means a continuous area or acreage of land, and land divisions always refer to unplatted land. Maki indicated this wasn't a boundary shift, because you can't shift the boundary on a platted lot without replatting it. If the Thums had owned land under a legal description of meets and bounds, and not a platted lot, then it would have been a boundary shift. Woodward said she thought Maki was saying that the part of the parcel that was transferred to the Thums wasn't combined with their other parcel because it was a platted lot. Maki also indicated that he did not think it should have been an exempt split – it was a split of the property.

Maki said the confounding issue is the zoning issue – when Randy Yelle reviewed this transaction as a zoning issue, he claimed that it created a problem in 2009. Maki said it wasn't actually Keough who made the division, it was the Varvils, when Candace Varvil gave Keough the deed to the part north of the river. Keough had a land contract, as Maki understands it, for the whole piece. In order to sell off the piece that Keough did not have title to, Candace Varvil (daughter of Dana Varvil who probably inherited the

property), transferred Keough the part north of the river. She is the one who actually made the division, although Keough subsequently transferred it to the Thums, so it was a mutual thing. But Candace Varvil held title to the property as one piece.

Alholm asked Keough if, when he purchased the property from Candace Varvil on June 17, he purchased the portions both north and south of the river simultaneously. Keough indicated it was a simultaneous closing with two separate deeds. Alholm stated that Keough had a warranty deed dated June 17 from Candace Varvil for the property north of the river that was conveyed to the Thums on the same day that he received it from Candace Varvil. Alholm was trying to affirm if Keough's warranty deed included the parcel north of the river and south of the river, and if later that day he conveyed the land north of the river to the Thums. Maki's understanding is that Keough had a land contract for the whole piece, and then Candace Varvil gave him title only to the north piece, and then he transferred that.

Wietek-Stephens had two questions on notification: (1) If notification was due, would it have been due to Candace Varvil? and (2) Doesn't staff memo Item 14, the correspondence from Randy Yelle sent in February of 2009, constitute notification? Maki said that if, according to her files, Fuller called it an "Exempt Split", she would not have sent notice to anyone. Alholm asked about the definition of "exempt". Maki stated there are only two options for an exempt split – it's being added to an adjoining acreage or it was 40 acres or more. Alholm was looking at the Township Land Division Ordinance, Section III.C, where it says that an exempt split is one that does not result in parcels less than 40 acres. Woodward said the State Land Division Act also defines an exempt split as not resulting in parcels less than 40 acres. Alholm stated the parcel north of the river and the parcel south of the river all together was 16 acres – less than 40 acres to begin with. Wietek-Stephens clarified that the point being made is it did not seem appropriate to do it as an exempt split, yet it was done as an exempt split. Maki stated that this is all part of the issue, but the real issue goes back to Randy Yelle's letter of 2009, where he identifies that the splitting of that property created a problem because it didn't comply with the zoning requirements. Alholm questioned the problem this transaction made – Milton stated the transaction made the parcel more non-conforming.

Maki asked if Woodward's review leads her to believe that the Keough parcel is in the floodplain, or is part of it above the floodplain? Woodward stated that the cross section on the FEMA floodplain map (which is the current regulatory map) shows that the 100 year flood elevation is 615'. A property at an elevation of 614' elevation would be flooded in a 100 year flood, according to the FEMA map. She said that before DEQ will issue a permit for properties shown in a floodplain, they require the applicant to obtain an elevation certificate showing the elevation of the building site. Woodward was told that DEQ never issues permits for development in a floodway – if it's in a floodplain then they may issue a permit as long as the development meets construction standards. Maki wondered if the DNR and FEMA have different definitions for floodplains? Maki indicated that the 1988 survey shows the flood contour line per DNR was 614'. Woodward said the current FEMA floodplain level is 615'. Woodward stated that the maps are not 100% accurate, which is why you have to get an elevation certificate.

Wietek-Stephens said this is a very complicated parcel, with a very complicated history, and she proposes that they go through the "Standards Applied by the ZBA to Make a Decision" one at a time to make the decision, and discuss only the portion of the parcel history that applies to that determination.

1. *STANDARD: Whether strict compliance with the requirements for area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted use or would render conformity with such requirements as unnecessarily burdensome.* Wietek-Stephens indicated that if they deny the variance, it prevents Keough from building a house on this parcel. She said Keough would still have the option, as he said, to raise swine, to log, or to sell property to adjacent property owners. The question is would this be unnecessarily burdensome to prevent him from building a house on this parcel. Page stated it would not be unnecessarily burdensome because Keough does have other options. Wietek-Stephens said she would also agree because the parcel was non-buildable as soon as Keough made the initial sale (to the Thums), and appeared to be non-buildable if he was not made aware of the variance granted to the Varvils. Page indicated that as far back as 2009, Mr. Yelle had said that it was a non-buildable parcel, and nothing has changed since then. Keough indicated it was non-buildable back in 2009 because there was no access. Wietek-Stephens said records show that Mr. Yelle also indicated it was non-buildable because of the lot size. Wietek-Stephens indicated that the original variance that was granted to the Varvils disappeared when Keough subsequently split the lot, and no other variance was ever granted. Wietek-Stephens said that one of the things she thought was key about that variance is that one of the reasons it was granted was that the part of the parcel north of the river was in a different zoning district that had a smaller minimum lot size requirement, and therefore it might have appeared unreasonable to hold that entire lot to the 20 acre minimum since part of it had a smaller minimum lot size requirement. This also became irrelevant when the portion north of the river was sold.

   Wietek-Stephens asked if anyone would argue for it being unnecessarily burdensome. Alholm stated she would only argue from the applicant's point of view, as it then becomes unbuildable. But Alholm clarified that it wasn't unnecessarily burdensome because of Keough's other options for use. Wietek-Stephens indicated his other options included adjusting the lot size with the various transactions he made with purchases of adjacent parcels. Alholm asked if Wietek-Stephens was referring to the 20 acres with which Keough granted himself an easement and which he then resold, rather than combining it, and she said yes.

   Wietek-Stephens indicated there was also an issue with the 0.56 acre parcel – she asked Keough if that was the one with the small house that he remodeled. Keough indicated that his corporation, Affordable Neon Enterprises, owns that parcel. Wietek-Stephens asked if Keough owned that parcel prior to selling it to that corporation. Keough said he never owned that parcel, though he did control it as the President of that corporation. Wietek-Stephens indicated that on May 13, 2009, the Horrocks and Keough signed a notarized note informing Fuller and Yelle that the land contract signed with Eric Keough for the 0.56 acre parcel #109-130-00 was dissolved or cancelled, and they were selling the lot to Affordable Neon Enterprises. Wietek-Stephens said it appeared that it was sold so that it could not be combined with the 11-acre parcel.

   Wietek-Stephens read from packet item VI.A.6 (from 2009 ZBA hard files for variance 09-02) regarding a letter signed by Frederick O Horrocks that says, "I, Fritz Horrocks, give Eric Keough full permission to develop my appx. 1 acre property on north big creek road, including applying for zoning permit, combining with the appx.

10-14 acre lot next door, and combining tax ID to create one large lot with deeded access. Eric Keough and Theresa Johnson are purchasing said property on land contract from me. Fritz Horrocks". She said that when Keough was notified that this combined parcel would be a non-conforming parcel under the new ordinance, it was sold to the corporation to prevent them from being combined. Keough indicated that was true, and also that this was a perfect example where he was given notice by the Zoning officials that it would create a non-conforming parcel. He said he never got that kind of notice on the parcel in question tonight. Mr. Keough indicated that to say that Mr. Yelle wrote him a letter in 2009 is hardly timely, considering that the transfer had been in June 2008. Keough stated that over a year is too long; it seems like it should be 45 days or so. Wietek-Stephens indicated that it was 8 months. Wietek-Stephens said her question is that Keough started moving on this 0.56 acre parcel, and she wondered why he didn't try to get a variance to combine that tiny parcel with the 11-acres. Keough stated that prior to doing any deal he always gets zoning permission so he can avoid snafus like this – he tries very, very hard; before he buys anything he has a zoning permit in his hand or he doesn't buy it. He said it wouldn't work. He only had a 12' easement on the 0.56 acre parcel, and he needed a 66' wide easement according to Mr. Yelle. Wietek-Stephens asked for any more comments on the issue of "unnecessarily burdensome". There were none.

2. *STANDARD: Whether granting the variance requested or a lesser variance where feasible would do substantial justice to the applicant as well as to the property owners in the area without altering the essential character of the neighborhood.* Wietek-Stephens asked if it would alter the essential character of the neighborhood if the variance was granted. She said her feelings are less strong on this – there are a number of smaller parcels in the area, however, they are older, and it is just this sort of thing the ordinance was amended to prevent; the neighbors have come out to say it would adversely affect them. Alholm also pointed out that the rationale behind this land use with the 20 acre minimum lot size requirement was that additional dwellings on smaller lots were to be allowed only while preserving conservation areas. Woodward clarified that this parcel was previously in the Resource Production district and was rezoned to the AF district, which is pretty equivalent, as both districts have a 20 acre minimum lot size. She said this parcel was never in the district with the 5 acre minimum lot size. Alholm stated there were parcels in that general area that were subject to a 5 acre minimum lot size at one time, and now they are subject to a 20 acre minimum lot size. Woodward affirmed. Alholm further discussed the rationale for the 20 acre minimum lot size and the encouragement of conservation subdivisions. Woodward stated that the rural cluster development subdivision is when someone has a big parcel of land and they take at least half of it and dedicate that by conservation easement by deed to be preserved, so that it can't be developed in the future. Then whatever you could have developed on the full size parcel, you are able to develop on half the size. Alholm pointed out the phrase from the staff memo, "Please keep in mind that the 20 acre minimum lot size adopted in 2008 was a result of a public process and is supported by the adopted 2005 Comprehensive Plan." Woodward stated that some parcels formerly in the Resource Production, Open Space, Rural Residential 2 and Rural Residential 1 were added to the AF district. Wietek-Stephens stated that it seems that the zoning ordinance is seeking to achieve the essential character of the neighborhood as being larger lot sizes, and that there was a tendency to develop smaller lots in the RR-2 portion of the

neighborhood, but this (parcel) was never part of the RR-2 portion of the neighborhood, and even in that area the zoning ordinance is now encouraging building on larger lot sizes. Wietek-Stephens asked if the Board feels that this would alter the essential character of the neighborhood by granting this variance – is it heading in the wrong direction for the essential character of the neighborhood, or is it improving the essential character of the neighborhood? Alholm doesn't think it is improving, but granting the variance would be in contradiction to what the Township is trying to do now through the Ordinance. Milton stated that it is consistent with the area and the lot sizes adjacent. Alholm stated that there is a reason they changed it to the 20 acres.

Wietek-Stephens asked if any of those smaller parcels were in the Resource Production district. Maki indicated that he thought the railroad grade was the division, so most of North Big Creek Road up to the railroad grade, essentially everything in Section 16, was RR-2, five acres. Then when you hit the railroad grade or the section line, that's where the RP 20 was, and now the entire road is AF district with a 20 acre minimum. Woodward directed the Board to packet item VI.A.22, which is the old zoning map. Maki indicated that it looked like the section line was the division – everything in Section 16 was RR-2. Wietek-Stephens indicated that all the other parcels on the road were in the RR-2 district previously, so this parcel is significantly different in its history. Wietek-Stephens asked Milton if that changed his opinion on whether it was consistent with the area. Milton answered that the lot size of Keough's parcel is consistent with the other lot sizes in the area. Wietek-Stephens said it is a close question, however that seems to be one of the main reasons that the ordinance was changed and rural residential 5 acre buildable parcels were done away with and a larger 20 acre standard was adopted. Wietek-Stephens asked for any other comments on Standard 2. There were none.

3. *STANDARD 3: Whether the plight of the landowner is due to unique circumstances of the property.* Wietek-Stephens stated that the question about the floodplain would suggest against the variance, although it may be able to be mitigated. Milton mentioned that formerly the parcel contained areas that were divided by a river, and he stated that Keough made a non-conforming lot more non-conforming. Wietek-Stephens asked if Milton was finding that there was a unique circumstance on the property that suggested granting or not granting the variance. Milton stated that would be a reason to grant the variance, but that is also in conflict with one of the other standards not yet discussed. Wietek-Stephens restated what Milton had said to gain a better understanding – the unique circumstance is that the river went through the parcel originally. Milton stated there were two completely different zoning districts that were bisected by the river, and the plat made it not accessible (because the platted and unplatted areas could not be combined). Wietek-Stephens wondered why that would bear on this parcel, since that portion of the parcel is no longer attached. She said there was a unique circumstance back in the day, which is part of why a variance was granted to the Varvils, but that unique circumstance was done away with by the applicant, so she doesn't see that as being a good reason to grant the variance. Milton stated the Township created the hardship by rezoning to the 20 acre minimum lot size, but also tried to mitigate those special circumstances by allowing non-conforming lots in the AF district. Wietek-Stephens said it sounds like we're moving on to the next standard.

4. *STANDARD 4: Whether the problem is self-created.* Alholm stated that her biggest problem is that Keough had the 11 acres, then he purchased an adjacent 20 acres, and rather than combine that with the 11 acres, he gave himself an easement to the 11 and sold the 20 acres. To her, that is creating or continuing the problem. It allowed him access where he didn't have it before, and then he simply resold the parcel. It troubles Alholm that he had the opportunity to combine the 20 acre parcel with the 11 acre parcel and be in compliance with the zoning ordinance. Milton stated that if there had been an attempt to make the parcel the same size as it was before the split, then it would look more favorable. Wietek-Stephens stated that since it was all in the 20 acre minimum buildable, the only option Keugh had was to combine to create a 31 acre parcel. If he would have tried to carve off some of the 20 acre parcel to plump up the 11 acre parcel, he would have created two non-conforming parcels. Wietek-Stephens said Keough could have combined it, and there were a couple of options available through the transactions undergone by Keough and his corporation, but Keough chose to keep it as a standalone parcel in an attempt to make it buildable.

   Wietek-Stephens then posed the question of whether the issue of notification bears on whether this was a self-created problem. She does not see that the Township had any opportunity to notify Keough that he was making a non-conforming lot more non-conforming, or bring up the old variance, or anything like that, when Keough got a warranty deed and then on the same day, sold it immediately. She does not see that the Township had an opportunity to notify. Keough stated the Township would have received the deed from the county within a week or so of the sale. Maki indicated that the Assessor may not have been assigning new parcel numbers until December or January, when they are making up the legal descriptions for the new assessment roll. The County actually does it based on the deeds, but the Assessor has to approve all the divisions and splits. Alholm stated that when she was looking through all the ordinances, the applicant has to file for approval of the split, and she doesn't think that happened. Maki stated that Varvil and Keough should have come to the Township and told them what they proposed to do. He feels that the burden is on them because they were splitting the property. Page stated that when the 20 acre parcel was bought, before the easement was created and then the parcel was sold, that would have been another opportunity when Keough would have been able to see if he was creating a non-buildable or nonconforming parcel. She stated there were opportunities along the way that were not taken. Milton agreed. Keough stated that he has been continually improving the parcel in three ways (water, sewer, easement) and it's just a matter of time till power is on it. He tried to make it less non-conforming with the legal easement.

   Wietek-Stephens said she'd like to make a motion for denial.

Moved by Wietek-Stephens that after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB14-01, 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 #ZB14-01 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would not cause practical difficulty because the owner had two opportunities to build on this site without need of a variance. The first opportunity existed when he purchased the approximate 16 acre parcel which had been granted a variance to build provided access could be secured.

However, this opportunity was eliminated when Mr. Keough created a new nonconformity by further reducing the size of the property, thus creating a new parcel that was not exempt from the minimum lot size requirements of the zoning ordinance and did not include the same circumstances for which the existing variance was granted. Secondly, Mr. Keough had the opportunity to combine this parcel with another adjacent parcel which was subject to his control, therefore eliminating the nonconformity relating to lot size and rendering parcel #109-128-20 as part of a buildable lot, but he chose to pursue the creation of two building sites, one newly nonconforming, as opposed to one conforming building site. Furthermore, he retains other options for land use, including agriculture, forestry, and sale to adjacent property owners, which is one of his stated uses of purchased properties.

2. Granting the variance would be contrary to the public interest because it would undermine the intent of the 2005 Comprehensive Plan and Zoning Ordinance for Chocolay Township that were adopted through a public process, this intent being to maintain a 20 acre minimum lot size for all new parcels, and to allow additional dwellings at a higher density ONLY if clustered on a part of the property with at least 50 percent of the property maintained as a permanently protected open space by means of a conservation easement. These circumstances do not apply in this case. There are many smaller parcels in the neighborhood, but they were all created from the Rural Residential 2, 5-acre buildable parcel zone that previously existed in the neighborhood, and the Ordinance was specifically amended to prevent the endless creation of smaller lots and building on smaller lots. In addition, there has been significant public comment from people in the neighborhood that say they will be adversely affected if a lot of this size is developed. In addition, this is unlike some other variances that have been granted because it's a new development, not a reuse of a property that was previously developed.

3. There are no circumstances unique to the individual property on which the variance is granted, because this lot is deemed unbuildable as a result of nonconformance with administrative standards pertaining to lot size and not due to a specific natural condition of the lot. If anything, because of floodplain issues which may or may not be able to be controlled, the characteristics of the lot would suggest against granting the variance.

4. The variance request is due to actions of the applicant because Mr. Keough altered the nonconforming lot of record through further reduction in size after the effective date of the Ordinance, creating a parcel that did not meet the definition of a lot of record, and the parcel therefore doesn't qualify for exemptions from minimum lot size provisions as detailed in Section 6.1 and Section 6.4 of the Chocolay Township Zoning Ordinance. In addition, Township ability to deal with creation of a more nonconforming lot was hindered by a lack of notification of the parties involved in splitting the parcel and the immediate sale of part of the lot to another party.

Alholm asked for further clarification on #1 that reads, "Mr. Keough had the opportunity to combine his parcel with another adjacent parcel" – she wondered which parcel Wietek-Stephens referenced – the half acre parcel or the 20 acre parcel he purchased, created an access easement, and then resold. Wietek-Stephens stated he clearly had the opportunity with the 20 acres, but asked for clarification from Woodward about the new nonconforming parcel. Wietek-Stephens reworded the motion as follows – From #1 strike the following language: *"~~therefore eliminating~~*

~~*the nonconformity relating to lot size and rendering parcel #109-128-20 as part of a buildable lot, but he chose to pursue the creation of two building sites, one newly nonconforming, as opposed to one conforming building site."*~~

Alholm asked if Weitek-Stephens intended, in terms of creating the problem himself, to refer to the fact that Keough could have combined the 20 acres he sold, creating a buildable lot? Wietek-Stephens made the following addition to the motion at the end of the text in #4, ***"In addition, Mr. Keough had the opportunity to combine the nonconforming parcel with the adjacent parcel that he purchased and granted himself an easement through."***

After discussion, Alholm seconded the motion for denial of Variance request #ZB14-01. The amended motion reads as follows:

Moved by Wietek-Stephens, seconded by Alholm, that after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB14-01, 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 #ZB14-01 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would not cause practical difficulty because the owner had two opportunities to build on this site without need of a variance. The first opportunity existed when he purchased the approximate 16 acre parcel which had been granted a variance to build provided access could be secured. However, this opportunity was eliminated when Mr. Keough created a new nonconformity by further reducing the size of the property, thus creating a new parcel that was not exempt from the minimum lot size requirements of the zoning ordinance and did not include the same circumstances for which the existing variance was granted. Secondly, Mr. Keough had the opportunity to combine this parcel with another adjacent parcel which was subject to his control. Furthermore, he retains other options for land use, including agriculture, forestry, and sale to adjacent property owners, which is one of his stated uses of purchased properties.
2. Granting the variance would be contrary to the public interest because it would undermine the intent of the 2005 Comprehensive Plan and Zoning Ordinance for Chocolay Township that were adopted through a public process, this intent being to maintain a 20 acre minimum lot size for all new parcels, and to allow additional dwellings at a higher density ONLY if clustered on a part of the property with at least 50 percent of the property maintained as a permanently protected open space by means of a conservation easement. These circumstances do not apply in this case. There are many smaller parcels in the neighborhood, but they were all created from the Rural Residential 2, 5-acre buildable parcel zone that previously existed in the neighborhood, and the Ordinance was specifically amended to prevent the endless creation of smaller lots and building on smaller lots. In addition, there has been significant public comment from people in the neighborhood that say they will be adversely affected if a lot of this size is developed. In addition, this is unlike some other variances that have been granted because it's a new development, not a reuse of a property that was previously developed.
3. There are no circumstances unique to the individual property on which the variance is granted, because this lot is deemed unbuildable as a result of nonconformance with administrative standards pertaining to lot size and not due to a specific natural

condition of the lot. If anything, because of floodplain issues which may or may not be able to be controlled, the characteristics of the lot would suggest against granting the variance.

4. The variance request is due to actions of the applicant because Mr. Keough altered the nonconforming lot of record through further reduction in size after the effective date of the Ordinance, creating a parcel that did not meet the definition of a lot of record, and the parcel therefore doesn't qualify for exemptions from minimum lot size provisions as detailed in Section 6.1 and Section 6.4 of the Chocolay Township Zoning Ordinance. In addition, Township ability to deal with creation of a more nonconforming lot was hindered by a lack of notification of the parties involved in splitting the parcel and the immediate sale of part of the lot to another party. In addition, Mr. Keough had the opportunity to combine the nonconforming parcel with the adjacent parcel that he purchased and granted himself an easement through.

Vote Ayes: 5 Nays: 0 Motion Carried

VII. New Business

A. Proposed changes to "ZBA Rules for Public Hearings and Public Comment"

Milton asked about the intent to have member terms expire at the same time, such as December 31. Woodward responded that as each term expires, it is being extended to December. The next terms to be thus extended will be those expiring in 2015.

Wietek-Stephens stated that this was an issue brought forth by Maki on changing the "ZBA Rules for Public Hearings and Public Comment" on the back of the agenda sheet. This would be specifically Item 6, "Zoning Board of Appeals members are not required nor expected to respond to comments, opinions, and/or questions from the floor." She asked Maki to share any proposed language or re-discuss the issue.

Maki indicated that the suggested revision doesn't change the current process, because it states that "members **may not be able** to respond to comments, opinions, and/or questions from the floor", but it adds the qualifier that "written requests seeking clarification can be submitted to the Zoning Administrator and will be responded to in writing within 14 days of receipt of the request". He said the Township Board has this as a policy of their Board meetings, that if someone comes and asks questions, and the Board is not able to respond, or may want to respond only after further thought, this provides a process that allows them to put something in writing and then get a response. In the past, a person could come to many meetings and never get an answer. The suggested language provides that at least within 14 days there would be some type of an answer. Alholm stated that Maki is asking that the questions be directed to the Zoning Administrator, and there may be instances where the Zoning Administrator will say "that is a ZBA decision". Maki felt that at least that would be an answer, and then they could come back to the ZBA. Maki just feels that it would at least get it to one person so they can seek clarification from somebody and get a written response.

Wietek-Stephens stated that she is uncomfortable with saying that if you write a request you will definitely always get an answer, because it can be abused and used to attack the Zoning Administrator and take up their time. Maki stated if they have that problem, they can change the policy. Page asked how often people ask for written responses. Maki doesn't know, but feels what takes a lot of time is if you don't answer someone's question, and then they start asking more questions, rather than resolving the question

with an answer. Wietek-Stephens recalled previous instances involving a series of requests in which Maki was involved that prompted her concern; Maki discussed his feelings regarding previous responses to those requests that prompted him to initiate this discussion.

Wietek-Stephens indicated that there may have been some issues that had not been addressed in the past, but she was still uncomfortable because some requests are unreasonable. Maki stated that the Township Board already has the policy, so if the ZBA is uncomfortable with it, they can direct their questions to the Board to get an answer. Wietek-Stephens that the Township Board is a more public body than the ZBA and deals with public issues, whereas the ZBA is more of a quasi-judicial branch. Milton said they are the elected officials. Wietek-Stephens suggestion is to take out the words "nor expected", which could be interpreted as rude and she would expect they would answer to the best of their ability – so the policy would read, *"Zoning Board of Appeals members are not required to respond to comments, opinions, and/or questions from the floor"*, and add, "*,but may choose to request that the public floor questioner submit the comment in writing and may request that the Zoning Administrator provide a written response within 14 days."* She feels this will give the ZBA some control in determining if it's a valid question and if it should receive an answer, or determining that no answer is currently available but asking the person to submit the question in writing. Alholm suggested a change that the questioner "may be invited to submit a written request". Milton was concerned about putting a time limit that might not be able to be met on the response. Wietek-Stephens indicated that she would be happy to polish this language up a bit and bring to next meeting. Maki said he thinks it's good language, and it can wait till the next meeting.

Wietek-Stephens moved, Alholm seconded, that she will provide revised language for review at next meeting.

Vote Ayes: 5 Nays: 0 Motion Carried

B. Pre-Conditions of Variance Requests

Alholm stated that it bothered her that Keough didn't follow Woodward's recommendation to seek the DEQ permit before applying for the variance. She wondered if the ZBA can require applicants to fulfill recommendations of the Zoning Administrator before they file for a zoning variance. Milton doesn't know how Keough was able to get his Health Department permits without a Zoning Compliance Permit. Maki agreed that where these other permits are part of the issue, (DEQ Permit, Health Department Permit, and possibly others) they should be required to get them before coming to the ZBA. Alholm stated it would give the ZBA more information. Wietek-Stephens indicated that she agrees that information could be applicable to their decision and is something that they should be able to consider when granting a variance. A previous case involving Keough was discussed. Milton indicated it would be helpful to the applicant also, because they may not want to proceed with a variance if they can't get the other permits. Wietek-Stephens wondered if they are allowed to require that. Milton stated it could be suggested in the application. Alholm reminded the ZBA that Woodward recommended it to Keough and he ignored it. Maki wondered if this requirement could be in the bylaws or the zoning ordinance. Milton stated that if someone is applying for a variance, there is an application; it could be addressed in an asterisk for other documentation. Woodward stated that might be a question for the Michigan Township Association or the Land Use Institute. Woodward will do further

research and will talk with the DEQ and Health Department to see how they would like to coordinate. This will be further discussed at the next meeting.

VIII. Public Comment

None

IX. Township Board Member/Planning Commission Member Comment

Maki said there should be a process, similar to the Land Division process, that if someone creates a parcel that doesn't comply with the ordinance they should be notified. Since the tasks are split between the Assessor and the Zoning Administrator, the zoning person may need to look at the deeds on a periodic basis. Alholm stated that when you get the deed it is already a done deal, and then you are looking at rescinding the deed, and who is going to do that – you need to know it ahead of time. Maki said you could go to Court to have it nullified. Alholm stated that was expensive. Maki said if you ignore it, it could lead to further expense later. But at least you could notify both the buyer and seller of the potential future problem. Page wondered if the title company gets involved to inform people that it is nonconforming. Maki doesn't think they do. Alholm stated that they indicate exceptions to the policy. The Board discussed the responsibility of applicants to know the rules.

X. Informational

Woodward indicated that they will be working on a Future Land Use and Zoning Plan for the Joint Meeting between the Township Board and the Planning Commission. The Master Plan is almost done.

Alholm mentioned the Planning and Zoning Essentials Seminar – she thought it was worthwhile. The instructor stressed that a variance is "permission to break the law".

XI. Adjournment

Respectfully Submitted By:

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Kendell Milton, Zoning Board of Appeals Secretary

CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS
Thursday, July 24, 2014
7:00 PM

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:05 P.M.

II. Roll Call

Members Present: Chairperson-Michelle Wietek-Stephens; Secretary-Kendell Milton; Member-Sandra Page; Alternate-Raymond Gregory; Alternate-Geno Angeli
Vice Chairperson Karen Alholm was excused; Member Mark Maki was excused.
Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator; Suzanne Sundell, Administrative Assistant

III. Approval of Agenda

Moved by Wietek-Stephens, and seconded by Gregory, to approve the agenda for July 24, 2014 as written.
Vote: All Ayes Motion Carried

IV. Approval of May 27, 2014 Minutes

Moved by Milton, and seconded by Wietek-Stephens, to approve the minutes for May 27, 2014 as written.
Vote: All Ayes Motion Carried

V. Public Comment

None

VI. New Business

A. Variance Request #ZB14-02 Verbridge, PID #52-20-117-062-70, 164 Sandy Lane

Planning Director Comments

Woodward explained that this is a request to build an accessory garage/outbuilding at an average building height which exceeds the maximum average height allowance in our ordinance of 16 feet 6 inches by approximately three feet. The applicant's calculations on the proposed average height of 19 feet 4 inches resulted in a peak height of 23'10", where the calculation by Woodward was a peak height of 24'10". The stated reason is to have a door opening large enough to store a motor home in the garage.

Woodward started with a review of the standards for granting variances, beginning with practical difficulty. Woodward indicated that the Board needs to decide if strict interpretation of the zoning ordinance provisions would unreasonably prevent the owner from using the property for a permitted use, keeping in mind that the property is already in residential use regardless of this accessory building. The Board also needs to

determine if complying with height requirements is unnecessarily burdensome in this case, and whether granting the variance requested or a lesser variance would do substantial justice to the applicant, as well as to the property owners in the area, without altering the essential character of the neighborhood.

Woodward reviewed various possible scenarios where the building could accommodate the 13'10" eave height necessary for a garage door height to accommodate the motor home storage while still meeting the zoning ordinance height restriction. Using this eave height, the peak height could not exceed 19'2" to meet the 16'6" average height maximum. For a roof with 6:12 pitch, the building could only be 18' wide to meet the height maximum. If the applicant did a 4:12 pitch, the building could be about 28' wide. The applicant is asking for a 40' wide building.

Woodward indicated that by granting a lesser variance, while accommodating the 13'10" eave, 2' soffit, 6:12 pitch and a typical 2-car garage width of 28', this would result in an average height of 17'10", with a peak height of 21'10". This would be a variance of 1'5" rather than 3'.

Woodward said the Board must also decide if the problem was self-created – did it exist at the time of adoption of the regulation or is it the result of government action? Woodward's findings indicate that the problem did not exist at the time of adoption of the regulation, and was not a result of a government action. The Board will also need to determine if granting this variance is contrary to the public interest. The applicant has stated this is a 5-acre wooded parcel with significant buffers, so there may not be an impact on the neighbors, but the Board decision must also be balanced with the public interest of maintaining the integrity of the Ordinance and applying it fairly to everyone. The Board must also determine if there are circumstances unique to the individual property that would not allow compliance. Woodward is not aware of any such unique circumstances on this property. The last standard that must be proved is the variance request is not due to the actions of the applicant. Woodward stated the request is due to the actions of the applicant.

Public Hearing and Applicant Comments

Steve Verbridge, 164 Sandy Lane – applicant/owner and his potential contractor, Jeremy Smith were introduced for comment.

Verbridge stated that he is in the R-1 district, and has 290' feet of frontage, and his understanding is that if he had an additional 10' of frontage, his request would have met the height requirement. He said he is about 425 feet from the neighbors to the east and west, and the neighbor across the street is also buffered by woods. He stated his intent for building a garage is to house his motorhome, along with various other cars and boats, so they are not sitting outside causing blight in the neighborhood. The proposed garage

would be close to the house, and trees would be cleared only for the garage and would not be cleared between the garage and the house. Verbridge indicated that he had brought additional pictures of the property. Angeli asked if Verbridge could point out his property and the garage location on the aerial photo. Verbridge said that the garage will not alter the look of the neighborhood, since the house and garage would essentially be hidden from view from the road.

Milton indicated that by his understanding, the average height of the roof is half the distance from the eave to the peak, and by his calculations, the average height is 18'10" with a 6:12 pitch, and that exceeds the zoning requirements by 2'4". Smith (contractor) indicated that he thought the proposed peak height was 23'. Woodward stated that by her calculations the proposed peak height was 24'10".

Woodward asked about Verbridge's statement about if he had 10 more feet of frontage he would qualify for the height proposed. Verbridge stated he thought it would put him in a different district or zone. Woodward stated that it would not make any difference – any accessory structure in the R-1 zone is subject to the same maximum height requirement.

Wietek-Stephens asked about the need for a 40' wide building, and if any other roof options had been considered. Verbridge stated they ran through several scenarios, and in order to put a 12' door in, and maintain a 6:12 pitch (which would make it aesthetically pleasing with the house), and with the motorhome being 28' long, if he loses width in the garage, he has no way to pull the motorhome in. He also has other cars and a boat that he would like to store in there in the winter. He personally feels it is more aesthetically pleasing to store them in a building than to leave them sitting outside. It also protects them from the elements.

Angeli asked if there had been any comment from the neighbors. Woodward indicated that she had not received any comments. Verbridge stated he had talked with his neighbors and that there had been no complaints. He feels that they would not even be able to see this from their homes. Verbridge does not plan to clear any more trees than necessary.

Gregory asked about a second floor on a building – Woodward indicated that if the garage is attached to the house, then you can add a second floor because the height limit is 30 feet. There is a separate standard for height of accessory structures.

Verbridge indicated that they had considered attaching the garage to the house, but there was not enough room on the side of the house to attach it. Woodward asked about the setbacks from the house to the side property line. Smith indicated it's close to 60 feet. Verbridge stated there is a drainage ditch on the east side that he doesn't want to get too

close to, and the other side is useable yard that he prefers not to fill with a structure. Smith indicated that the structure is proposed to be located on the side with the drainage ditch. Verbridge said the current driveway would access the garage without altering the driveway. Gregory asked about the location of the ditch – Verbridge pointed out placement on the east side of the property. Milton asked about easement of the ditch – Verbridge stated he thinks he owns the drainage ditch but would not want to impede the flow. Verbridge stated that he does not own the access road on the west side of the property. Gregory stated there may be issues with required setback from the access road. Verbridge said that he doesn't want the garage in the backyard (accessed by the dirt road) and would like to maintain a buffer of trees there as people use ATVs on the road like a recreational trail. Gregory asked about the status of the road – Verbridge stated he thought it was a proposed road when the subdivision was built.

Wietek-Stephens stated that in order to approve the variance, the applicant would need to meet all four of the requirements, including *"There are circumstances unique to the individual property on which the variance is granted"* and *"The variance request is not due to actions of the applicant"* and she sees no way that the Board can find those in favor of the applicant whether or not the other two requirements are debatable.

Milton suggested that the tree buffer is unique to the property. Wietek-Stephens commented that one of the reasons for the variance request was so the applicant could maintain a peak height that was aesthetically consistent with the house, and yet another argument for the variance is that nobody would see the garage because of the trees so it wouldn't bother anybody – so if nobody will see it and it won't bother anybody, maybe another peak height would be functional.

Verbridge stated that the peak height of the existing house is 24', and the garage grade is a little lower, so the peak of either one would be within inches of each other. Wietek-Stephens clarified that she had meant to say "pitch", not "peak height". Verbridge stated that even though the neighbors wouldn't see the house, it would be aesthetically pleasing to people that were coming to the house.

Gregory asked, assuming the trees were a unique aspect of the property, how would standard four be addressed (the variance request is not due to actions of the applicant). Wietek-Stephens pointed out that it does seem to be the result of actions of the applicant because there are alternatives for placement and design. Verbridge stated that the unique shape of the property makes different options prohibitive because the property is fairly narrow. He thinks it is better that the garage is not visible from the trail. Wietek-Stephens indicated that she had seen people do all sorts of things to be able to put the structures on their property, including setting them in the ground and doing drastic things with the roof pitch. She stated she wasn't suggesting they do that, but many people in the Township have adjusted their plans to conform with the Zoning Ordinance.

Milton stated that the proposed structure is 40' x 46', and that is a significant structure in itself, and he doesn't feel a 2'4" roof height increase is significant. Wietek-Stephens pointed out that the Board cannot grant the variance if a lesser variance would do. Gregory pointed out that the variance cannot be granted without meeting standard four, since the variance request IS due to the actions of the applicant.

Wietek-Stephens asked Milton to do the calculation for a 4:12 pitch. Milton stated it would be 28' wide. Wietek-Stephens stated that in order to meet the Ordinance, the size would have to decrease significantly. Gregory asked if 28' width was workable. Verbridge stated there would be a problem getting the motor home in and out because it is 28' long. Gregory asked why the length of the motor home impacts the width of the garage, and suggested having doors on both sides. Various design options were discussed, including a 5:12 pitch that would yield a 17'11" average height at the 40' width according to Milton.

Wietek-Stephens stated that the existing ordinance has a limit, and many people want to exceed it. Gregory stated that he thought Criteria 1-3 were in favor of the applicant, but that there was a problem with Criteria 4 – both he and Wietek-Stephens agreed the applicant has other options.

Motion for Denial

Wietek-Stephens moved, Page seconded, that after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB14-02, 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 #ZB14-02 with the following findings of fact:

1. Strict enforcement of the Zoning Ordinance would not cause practical difficulty because it is already being used for residential use and a functional garage can be constructed within the limitations of the Zoning Ordinance;
2. Granting the variance would be contrary to the public interest because the applicant has other options, so granting a variance would be unfair to others with similar desires;
3. Although the drainage ditch and the slight narrowness of the lot are possible unique circumstances, they are not so severe as to limit the applicant's options for construction on the property; and
4. The variance request is due to actions of the applicant.

Vote: 3 Ayes, 2 Nays Motion carried – Variance request denied on close vote

After vote, the applicant asked if he would be able to present to ZBA again if he comes up with other options – Milton stated that if they stay under the 16'6", there would not

be a need for a variance. The garage could be 30' average height if it was connected to the house by some means. Wietek-Stephens pointed out that the issue of what constitutes an attachment between buildings has been discussed in previous ZBA cases perhaps 10 to 12 years ago.

VII. Unfinished Business

A. Proposed changes to "ZBA Rules for Public Hearings and Public Comment" as approved 10/22/09.

Wietek-Stephens stated that Mark Maki had suggested some language, and she adjusted it slightly to give the Board more control over what could be directed to the staff from the floor of the ZBA. The two alternate members had not been in on the initial discussion. Gregory asked if this was in response to some issue – Wietek-Stephens indicated Maki's concern was that the original language is a bit abrupt, and it made it difficult to get a response sometimes, so he wanted to make a way to get an answer. Gregory asked if it could reasonably be expected that if an answer was not immediately available, an answer would be forthcoming. Wietek-Stephens said some things would require research before an answer is provided. She wanted to keep some control over what the ZBA directs to the Zoning Administrator because there have been instances in the past where someone gets a concern, feels an injustice, and can bring it to the level of harassment through constant requests. Gregory asked how the Zoning Administrator feels about the recommendation. Woodward responded that she has the same concerns as Wietek-Stephens that someone may put in so many requests and expect an answer within 14 days. She feels this language seems reasonable – the Board would filter the questions going to the Zoning Administrator.

Wietek-Stephens agreed that the original language is too abrupt. Gregory said he agrees, but he thinks it could even more accommodating. For example, when an answer is immediately available, the Board may provide the answer during the session. When it's not immediately available, the question may be referred to the Zoning Administrator who would be given 14 days to respond. But he agrees the Board should not be required to respond. Wietek-Stephens said she doesn't know if that statement is necessary, because they aren't required to answer but they do – she doesn't know if it needs to say that they do. Woodward clarified the context is public comment and public hearings.

Page asked what prompted this – have there been problems in the past? Wietek-Stephens responded that there have been several instances of long letters, vague grievances, rants, demands, and some very contentious Board meetings with name calling and such that they do not want to respond to. She does not want any burden on the Board or the Zoning Administrator to respond to every complaint that does not merit an answer. Gregory suggested specific language, which was accepted in concept.

Moved by Wietek-Stephens, seconded by Gregory, to modify the language of Item #6 of the "ZBA Rules for Public Hearings and Public Comment" as originally approved on October 22, 2009, to read "*Zoning Board of Appeals members are not required to respond to comments, opinions, and/or questions from the floor, which the Board may choose to address immediately, however, when an answer is not immediately available, may choose to invite the member of the public to submit the comment/questions in writing to the Zoning Administrator, who would then provide a written response after appropriate research, preferably within 14 days."*

Vote: All Ayes Motion Carried

B. Pre-Conditions for a Variance Request.

Woodward explained that this topic came out of a discussion during the previous variance case where Woodward had suggested that the applicant contact the DEQ about building in a flood plain before coming before the Zoning Board of Appeals for a variance. However, the applicant did not contact the DEQ. The Zoning Board of Appeals thus did not have information on whether the DEQ might permit the development. Alholm posed a question regarding pre-conditions for variance hearings. Woodward obtained an attorney opinion of whether the Board could require applicants to go through these procedures even though it is not required by our Zoning Ordinance.

Gregory agrees with the Township attorney's opinion. He appreciates requiring a sequence for permits in terms of efficiency. In some cases, it would make sense in terms of efficiency for the DEQ to issue a permit first before deciding on a variance. However, there is no such requirement, and therefore there is probably no authority to require that. Woodward noted that the Township attorney said a variance approval can certainly be granted upon the condition that the other permits are obtained, and otherwise the Township may be able to require the same types of information that the other permit agencies require, however, this might require a Zoning Ordinance amendment.

Wietek-Stephens stated this need does not often arise. Woodward stated that the information on other permits is not substantial to the decision, but the information can be related to public interest. Woodward does not think it would be in the best interest of the Township to add the enforcement of the flood plain ordinances and wetland ordinances into this Department. There is no way to cover all that, and there are already other agencies enforcing those regulations. Gregory stated that it would be redundant. He said it would be nice if the burden could be shifted to the DEQ and the Health Department.

Wietek-Stephens stated that in summary there will be no changes related to this topic – we can continue to request, but not require other information. Woodward will continue to work with the other agencies to get as much relevant information as possible.

VIII. Public Comment

None

IX. Township Board Member/Planning Commission Member Comment

None

X. Informational

Woodward informed the Board there will probably be a case for August. Angeli wanted clarification on the attendance of alternates. Woodward stated that the plan is to have one alternate attend every meeting even if not needed. They will alternate in attendance, and will be notified if they need to attend.

XI. Adjournment

Wietek-Stephens adjourned the meeting at 8:11 p.m.

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary

CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS
Thursday, August 28, 2014
7:00 PM

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:04 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 Member (Observer) – Geno Angeli
Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator; Suzanne Sundell, Administrative Assistant

III. Approval of Agenda

Moved by Milton, and seconded by Wietek-Stephens, to approve the agenda for August 28 as written.
Vote Ayes: 5 Nays: 0 Motion Carried

IV. Approval of July 24, 2014 Minutes

Moved by Milton, and seconded by Page, to approve the July 24, 2014 minutes as written.

Discussion – Maki wondered about the attorney's opinion that is referenced in **VII.B Pre-Conditions for a Variance Request**, and whether it was in the packet, or if it had been a handout. Woodward stated that it was a written opinion and discussed a few remembered details. Woodward will provide a copy to Maki.

Vote Ayes: 5 Nays: 0 Motion Carried

V. Public Comment

None

VI. Unfinished Business

None

VII. New Business

A. Variance Request #ZB-14-03, Balconi, PID #52-02-009-028-00, 2375 M-28 E

Planning Director Comments

Woodward stated that this is a request for a dimensional variance from Section 6.1(A) footnote 6 to build a garage that exceeds the perimeter dimensions of the house. The house is 28' x 28', and the proposed garage is 30' x 46'. The standard reads, "No detached building shall …exceed the exterior perimeter dimensions of the principal structures on the lot". The proposed garage would exceed the perimeter dimensions of the house by 40' (linear feet). The lot size is a little over 1 acre, with conforming setback requirements.

Woodward provided a Staff Review/Analysis based on the standards for variances. She also provided information about the size of structures on adjacent properties, more specifically the perimeter of the principal structure and largest accessory structures of the three properties adjacent to this property on both sides which were also in the same

zoning district. These properties are in the Waterfront Residential district, but the properties across the highway are in the AF district, and the perimeter requirement does not apply to properties in the AF district.

Maki asked for frontage width on this parcel – the applicant confirmed it is 100'. Maki then asked for explanation of why you can have a bigger building in the AF district than the waterfront residential district. Woodward stated she did not know why the standard was originally adopted.

Public Comment

Paul Balconi, 1575 Aspen Drive, Ishpeming, MI. He is also a part-time seasonal resident of Chocolay Township at his cabin at 2375 M-28 East. They have had this cabin for approximately 12 years, and have done substantial remodeling to the cabin. They need a garage because the cabin is very small (28' x 28'), without much room for storage – it has one small closet, no basement, no crawl space. The lot is 100 feet by approximately 800 to 900 feet deep. He was very surprised when the permit was denied, as he has seen many large garages along the lakeshore.

Balconi then passed around larger copies of VII.A.11 site plan. He prefaced discussion by saying that his plan is to retire to this property in Chocolay Township, while living elsewhere in the winter. A garage the same size as the principal structure would almost be too small for a garage. There is a storage shed associated with this property that is on the property line of the neighbor to the east, and she has requested that the shed be moved. The garage would take care of this problem. Also, when this becomes a permanent residence, they would like to have a two-car garage, and an extra stall for storage. The primary issue is that they are being "penalized" for having such a small cabin. The plans show that this is not a typical garage – it does not have a gabled end truss - it has a flat roof, which makes it low profile.

Balconi then passed out copies of the architectural drawing (VII.A.12). The drawing shows a low profile, three stall garage. Balconi stated he is looking for help to have a useful garage with a little bit of storage. He said that neither neighbor is opposed to the garage. He understands that he could build a two car garage plus a single car garage to meet zoning requirements, but he feels it would be aesthetically unappealing to have multiple structures on the property to accomplish the same end. He knows there are a lot of three car garages and pole barns in Chocolay Township, and they are very tall structures. This is not.

Balconi stated that he feels he is one of the rare ones – they have a small comfortable cabin, and they like it that way. He does not want to add on to the cabin just so they can have a bigger garage.

Balconi then introduced Matt Blondeau as the contractor for the proposed construction of the garage.

Maki asked Blondeau about required separation distance between buildings. Blondeau stated that they have to be at least 10 feet apart, and this would take up more of the property. Maki said he didn't think there is a separation distance requirement in the Chocolay Township Zoning Ordinance. Woodward confirmed there is not.

Balconi then pointed out that the width and length of the proposed garage are not that much bigger than the house. Maki asked if the site plan VII.A.11 is to scale. Balconi stated it was. Maki agreed with Balconi's statement.

Balconi wondered if the zoning requirements apply only to pole buildings, etc. Wietek-Stephens clarified that the rules apply to any accessory structure.

Balconi indicated that his house was located at a higher elevation, and that the roofline of the proposed garage would be at approximately ground level of the house.

Wietek-Stephens asked about the applicant's objection to attaching the garage to the house. Balconi indicated that the cabin is too close to the lakeshore at a grand-fathered location. To add a garage to the house would be obtrusive on the shoreline. The cabin is on the dune. To add a garage they would have to dig out the dune to be able to drive up to it, or put it on the hill, and then it would probably be subject to some other type of variance. Wietek-Stephens asked Woodward if this would entail an addition to a non-conforming structure in the waterfront setback. Woodward said she doesn't know the setback distance of the house from the lakeshore, but if the house is in the Dune Overlay Protection District, any earth changes would need a Conditional Use Permit.

Alholm asked where 100' setback would be – Balconi indicated the cabin is 28 feet from the dune. He said if this was a vacant lot, the cabin would have to be built behind the dune.

Balconi indicated that the garage will be storage only – no plumbing, no residential use, no living space.

Alholm asked if Woodward knew what the average size of a two car garage is. Woodward responded the minimum would probably be about 24 to 28 feet wide.

Wietek-Stephens then went through options, indicating that it would be difficult to attach the garage to the house, as it would infringe on the dune area. The applicant could build more than one structure without needing a variance, or could build a smaller structure, although to build a smaller structure that does not need a variance would not give them much storage.

Wietek-Stephens indicated that she did like that the design minimizes the visual impact. She questioned the fact that Balconi was stating the reason for three stalls was for additional storage for the house, but the fact that there are three doors makes it look like the extra stall is intended for another vehicle, and not storage of household items. Balconi stated that since it's a seasonal camp, the proposed garage would provide easy access for storage of a Jet Ski, kayak, or lawn equipment that is in the storage shed on the property line. Wietek-Stephens and Alholm reiterated that it doesn't appear the extra space is intended for household storage.

Maki indicated that the size of garages became an issue after people started to build very high 40 feet x 60 feet and larger garages. Then the Township had to develop restrictions.

Wietek-Stephens stated that she finds the plan to be fairly reasonable, but feels there other options that would not require a variance.

Alholm asked if the applicant had considered any other options. Balconi replied that he had not, since he was hopeful the variance would be granted after considering the circumstances.

Wietek-Stephens stated that after looking at the information provided by Woodward in her staff report regarding structures on adjacent properties, the proposed garage is not palatial by some standards, but is somewhat out of character and large for the

neighborhood. Maki stated that part of the reason for this is that the neighborhood is transitioning from seasonal to permanent residency. If you are seasonal, you probably don't need a garage.

Balconi suggested a comparison to Lakewood Lane, which used to be tar paper shacks on the beach. M-28 may be no comparison to Lakewood Lane, but the trend seems to be moving that way. He could put his cabin inside many of those garages.

Wietek-Stephens asked if Balconi would be satisfied with a lesser variance for a garage not quite this big, but a little bigger than the house. Balconi said he'd be happy with that. He indicated that when they drew up the plans, they were going for symmetry of design. If needed, he could make one of the doors smaller. Maki asked if a 10' garage door width is typical, and Blondeau indicated it was, especially if the garage is approached by a turn.

Maki questioned the rationale for having someone build two garages versus one garage, besides being in compliance. He thinks the proposed garage would be more objectionable if it was the same size but greater height. Balconi stated the garage was designed to be more proportional with the house – he feels it doesn't make any sense to build two garages and take up more of the footprint of the lot.

Wietek-Stephens indicated that she sees some public benefit to keeping the development on a property a little more concise and limiting the amount of area that is disturbed. She is also still hung up on the fact that Balconi could still build garages without needing a variance at all, and there are certain standards that have to be met in order to grant variances.

Balconi indicated that he could put an addition on the house and then build the proposed garage, but he doesn't want the home to be bigger – he likes it as it is. He's put a lot of time and money into the existing structure, and does not want to change it.

Milton feels that Balconi has a good solution to his problem, which will result in fewer items being stored outside. Alholm indicated that Balconi does have other options, but she feels that he is dealing with a small home that has no basement, which is very unusual. The thing that she can't get past is the standard that there must be something unique on the property in order to grant a variance, and the variance request cannot be due to actions of the applicant. Maki indicated that height and size variance requests for garages are always going to be that way, and will never meet those standards. With those standards, there would never be any variances granted. Maki feels there are a few things that are unique – garages are becoming bigger and he can see why the applicant wants a bigger garage for storage, and he has accommodated this by keeping it low to the ground. He could attach the proposed garage to the house but that isn't practical because of the dune.

Wietek-Stephens stated that her problem is that if the variance is granted so the applicant can build this somewhat large, nicely designed garage and avoid building multiple structures, there is nothing that prohibits him from later building other accessory buildings. This may not be Balconi's plan, but if the property is sold, there is nothing to stop the next owner.

Wietek-Stephens wondered if a lesser variance would allow Balconi to keep the low profile design. Balconi indicated he would still need the 10' doors – he questioned what Wietek-Stephens was looking for. Wietek-Stephens said that considering the small size

of the home, she would be willing to support something closer to the perimeter dimensions of the house, more in keeping with other neighborhood structures in that district, especially if it preserved the low-profile design. The applicant discussed the possibilities, considering the measurements of his truck.

Balconi asked if the decision was to be made by vote, or is up to one person. Maki indicated it was by vote. Balconi requested that before considering alternatives, a vote be taken on the existing proposed design.

Moved by Maki, and seconded by Milton, to approve Variance request #ZB14-03 as proposed.

Vote Ayes: 4 Nays: 1 Motion Carried

Woodward asked for clarification on the exact wording of the motion. Maki said his motion is based on the house being unusually small for typical properties; it has a dune making attaching of the garage problematic; the building is a low-profile design with a flat roof; it makes no sense to build multiple garages 24 feet by 28 feet when it can be condensed into the most suitable area. Milton said the building is in character with the area; the larger building is not a problem in the low density area.

VIII. Public Comment

None

IX. Township Board Member/Planning Commission Member Comment

Maki gave updates on the budget and Master Plan update processes in the Township.

Planning Commission Member had no comment.

Angeli asked about the proposed AT&T tower – Woodward indicated that the lease would be going before the Board, and the company is supposed to submit materials for site plan review by the end of the month.

X. Informational

Wietek-Stephens indicated she feels there is a need to fine tune the wording in the "ZBA Rules for Public Hearing and Public Comment", Item #6. She asked that it be added to the agenda for the next meeting.

XI. Adjournment

Wietek-Stephens adjourned the meeting at 8:03 p.m.

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary

CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS
Thursday, December 18, 2014
7:00 PM

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:20 P.M.

II. Roll Call

Members Present: Chairperson-Michelle Wietek-Stephens; Board Member-Mark Maki; Member-Sandra Page; Alternate Member – Geno Angeli; Alternate Member – Paul Charboneau

Members Absent: Vice Chairperson – Karen Alholm; Secretary – Kendell Milton

Staff Present: Kelly Drake Woodward, Planning Director/Zoning Administrator; Suzanne Sundell, Administrative Assistant

III. Approval of Agenda

Moved by Page, and seconded by Maki, to approve the agenda for December 18 as written.

Vote Ayes: 5 Nays: 0 Motion Carried

IV. Approval of August 18, 2014 Minutes

Moved by Maki, and seconded by Wietek-Stephens, to approve the August 18, 2014 minutes as written.

Vote Ayes: 4 Nays: 0 Abstained: 1 Motion Carried

V. Public Comment

John Conrad, 132 Little Lake Road, stated he was there with a setback variance request for a deck and ramp at 225 West Terrace Street.

VI. Unfinished Business

None

VII. New Business

A. **Introduction to new alternate member, Paul Charboneau**

B. Variance Request #ZB14-04, Conrad, PID #52-02-251-011-00, 225 W. Terrace Street

Planning Director Comments

Woodward stated that this is a request that relates to the building of a handicapped access to a business. The property was recommended for rezoning by the Planning Commission and County, and approved for rezoning by the Township Board. It has also been through the approval process for the two businesses, which involves a Conditional Use permit and Site Plan review. This is the last step for the applicant.

In going through the zoning standards, Woodward pointed out the one thing she thought may be of concern is that it will increase the existing front setback nonconformity, which is one of the standards in the regulation concerning nonconforming uses of structures. Woodward pointed out that this is just one of the considerations, and that she had provided a detailed analysis of the others.

Maki stated that the handicapped accessible requirement is actually a requirement of the building code. Woodward stated that she had called the County, and they stated that there would need to be handicapped access to the business.

Conrad stated that he had been to a salon in Munising that did not have handicapped accessibility. He felt that it would be very hard for an elderly person to be able to get to the business. His concern is primarily for safety and for the convenience of the business patrons. Woodward stated that Conrad was planning on the handicapped access before knowing of the County requirement.

Conrad stated that the only feasible way to get into the house was the front. If they had to go in through the back it would require reconstruction.

Maki asked Conrad about the problems on putting the ramp in the back. Conrad stated that the kitchen and bathroom are in the back part of the house by the parking area. They would have to redo the entire back wall, no matter what direction you came in from. Maki asked if it was still going to be a residence. Conrad stated no. Wietek-Stephens asked if the ramp would encroach on parking if it was put in the back or the side. Conrad stated yes. Wietek-Stephens clarified by stating that it would be a longer ramp in the back because of the height difference.

Maki indicated that Conrad had provided a schematic. Maki also asked about the existing 5' x 7' porch. Conrad stated that there is a 5' x 7' enclosed porch on the front, then 2 or 3 concrete steps, and a concrete pad – no sidewalk. Maki asked if all of that was being removed, and how much closer to the road would it be. Conrad stated the proposed structure would be 4 ½ feet from the property line which runs from the middle of the green space in the front of the house. Distance from the property line to the curb is 12 ½ feet. Conrad stated the deck would extend 8 feet from the existing enclosed porch. Woodward pointed out that Conrad was not planning to remove the existing enclosed porch. Maki asked if Conrad was just building over the 5' x 7' pad that was in front – Conrad stated that he was. Maki then asked about the width of the deck – Conrad stated it was 8' wide and 8' long. Maki then stated it was 3 feet closer to the road than the existing porch.

Woodward stated the existing house is setback 12 ½ feet from the property line, and if Conrad adds the 8 foot platform to the front of the house right next to the existing enclosed porch, then the setback for the proposed structure would be 4 ½ feet from the property line and about 17 ½ feet from the curb.

Wietek-Stephens asked if there was any consideration of removing the porch from the front. Conrad said it was not considered. Maki asked the handicapped access could be installed on the side of the existing enclosed porch – Conrad stated his concern would be whether there be enough room to turn an immediate left to go into the salon while sitting in a wheelchair. Maki agreed – also putting a door there would probably not meet code.

Angeli questioned if all that was needed was one handicapped parking space. Conrad stated yes.

Maki stated he had seen other ramps along US 41, but he didn't know if it was a requirement or not. Conrad stated that Healing Hands (along US 41) has one. Maki indicated that since that was a newer business, so it probably was a requirement that the business put one in.

Maki and Woodward discussed the definition of structure and the exceptions for front extensions.

Maki went over the options – patrons would not be able to come in from the side, coming in from the back defeats the purpose of the handicapped space. Wietek-Stephens also pointed out that even if the enclosed porch was taken off, a variance would still be required because it would extend out past the six feet exception for the definition of structure. Maki stated there are only a couple places in the Township where this would be an issue. Otherwise, the newly built businesses are setback enough.

Angeli asked about comments from neighbors. Woodward stated that the Township had not received any comments. Conrad stated that in talking with his neighbors, they are all in favor.

Maki asked why 8' x 8' had been chosen – Conrad indicated that coming up the ramp you need enough turning radius for a wheelchair. Conrad originally wanted 6 feet, but the contractor told him it needed to be 8 feet. Maki thought this was probably due to building code.

Angeli asked if automatic doors were required. Conrad stated not to his knowledge.

Maki asked about the easement for access to the parking lot. Conrad indicated that he is working with Walt and Sue Racine in order to use the driveway to the west of the house for parking in the back. The driveway to the east of the house will be abandoned and grass and new curb will be put in.

Maki asked about the handicapped parking in front – is it one or two spaces. Conrad indicated there is one. Maki questioned if the only vehicle parking there would be handicapped. Conrad indicated yes, there were no regular parking places there.

Maki indicated that there will be a lot less congestion than with the previous use.

Discussion on the former ice cream shop – the purchase agreement for this property provided that new owners are not able to sell ice cream for ten years.

Maki asked about the awning – would it be coming off or would it be used for a sign. Conrad stated that he needed to contact the sign company and see what can be done because of the design of it.

Maki asked about entry into the former ice cream shop – would it be through the breezeway, and the entry into the salon would be through the deck? Conrad indicated this was the case – he would like to make things as easy as possible for the customers. Maki asked what the other business was going to be – Conrad indicated it will be a computer repair shop called Iron Bay Computer. He will be moving from his location in Marquette.

Wietek-Stephens asked if Conrad was sure of the easement. Conrad indicated there will be no problem. It's just a matter of getting the paperwork done. Woodward indicated that even if there is no easement, the parking would still be in the rear, and Conrad would use the east driveway.

Wietek-Stephens questioned if the Master Plan addresses handicapped access – she knows there was discussion on encouraging ranch style dwellings. Woodward did not find anything that specifically addresses handicapped access, and the zoning ordinance does not address it either.

Maki asked about the Habitat homes and how close they are to the road. Woodward indicated that they are in an R-2 zoning district, where minimum setback is 25 feet. Maki said he did not think the houses were setback anywhere near 25 feet. Charboneau indicated that he had the same question – asked if the 25 feet was setback from the road or the property line. Woodward indicated it was from the property line.

Public Comment
None

Moved by Wietek-Stephens, and seconded by Maki, that after conducting a public hearing and review of STAFF REVIEW/ANALYSIS for Variance request #ZB14-04 for parcel #52-02-251-011-00 at 225 W. Terrace St, the Zoning Board of Appeals finds that the request satisfies all standards related to granting of an extension of a nonconforming structure, and also demonstrates the standards pertaining to the granting of nonuse variances, and hereby approves Variance request #ZB14-04 with the following findings of fact:

1. *Strict enforcement of the Zoning Ordinance would cause practical difficulty because it would prevent commercial reuse which is consistent with the Master Plan.*
2. *Granting the variance would not be contrary to the public interest because there are a number of commercial operations in the vicinity which either do, or will need to in the future, meet the same requirements. Granting the variance would accommodate persons of limited mobility, and would not negatively impact neighboring structures or the character of the neighborhood.*
3. *There are circumstances unique to this property, including it has always been nonconforming, the road is not on the property line, there is a height difference between the front and the back of the structure, and reasonable modifications to the structure would still require a variance from the front setback.*
4. *The variance request is not due to actions of the applicant, but is the result of the construction of the structure prior to zoning ordinance and the decision of previous owners.*

And with the following conditions:

1. *The landing area should be the necessary minimum size that meets the building permit requirements so that the setback encroachment area is minimized as much as possible.*
2. *It shall be a minimal structure, a wood deck and ramp, not enclosed, not covered, metal handrail acceptable.*

Vote Ayes: 5 Nays: 0 Motion Carried

C. Election of Officers for 2015

Moved by Maki, and seconded by Angeli to nominate Wietek-Stephens for another term as Chair.

Vote Ayes: 5 Nays: 0 Motion Carried

Moved by Maki, and seconded by Wietek-Stephens to nominate Alholm for another term as Vice-Chair.

Vote Ayes: 5 Nays: 0 Motion Carried

Moved by Maki, and seconded by Page to nominate Milton for another term as Secretary.

Vote Ayes: 5 Nays: 0 Motion Carried

VIII. Public Comment

None

IX. Township Board Member/Planning Commission Member Comment

Maki gave updates on Master Plan and it is nearing completion. He urged ZBA members to take a look at it. Some issues include multi-use zoning district.

Wietek-Stephens asked if mixed use would open it up for the big box stores. Woodward indicated there are different types of mixed-use districts planned, and it would be up to the Planning Commission which uses to allow in each.

No Planning Commission member comment.

Angeli wondered if there had ever been any talk about a bypass (such as 480).

Angeli wondered about development in Harvey – Maki indicated that we have limited sewer availabilities and no water capabilities.

Angeli asked about lighting the US 41 corridor.

Angeli asked about the cell tower.

X. Informational

None

XI. Adjournment

Wietek-Stephens adjourned the meeting at 8:20 p.m.

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary