

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

Thursday, March 22, 2018

5:30 PM

I. Meeting Called to Order/Roll Call

Chairperson Michelle Wietek-Stephens called the meeting to order at 5:30 PM.

Members Present: Chairperson – Michelle Wietek Stephens; Vice Chairperson – Karen Alholm; Secretary - Kendell Milton; Board Member – Mark Maki; Member - Geno Angeli; Alternate – Paul Charboneau

Members Absent: None

Staff Present: Dale Throenle, Planning Director/Zoning Administrator; Lisa Perry, Administrative Assistant

II. Approval of Agenda

Moved by Alholm and seconded by Wietek-Stephens, to approve the agenda for March 22, 2018 as written.

Vote Ayes: 5 Nays: 0 Motion Carried

III. Approval of June 22, 2017 Minutes

Moved by Maki, and seconded by Alholm, to get a revised edition of the minutes to reflect the discussion and changes for review.

Vote Ayes: 5 Nays: 0 Motion Carried

IV. Public Comment

None

V. Public Hearings

None

VI. Presentations

None

VII. Unfinished Business

None

VIII. New Business

A. Appointment of Officers

Alholm moved, Angeli seconded to nominate Wietek-Stephens as Chair.

AYES: 5 NAYS: 0 MOTION CARRIED

Wietek-Stephens moved, Maki seconded to nominate Alholm as Vice-Chair.

AYES: 5 NAYS: 0 MOTION CARRIED

Maki moved, Wietek-Stephens seconded to nominate Milton as Secretary.

AYES: 5 NAYS: 0 MOTION CARRIED

B. Review of 2018 Calendar

The Zoning Board discussed conflicts of the schedule.

Alholm moved, Wietek-Stephens seconded to adopt the 2018 Meeting Calendar as proposed.

AYES: 5 NAYS: 0 MOTION CARRIED

IX. Public Comment

None

X. Commissioner's Comments

Mark Maki (Board representative) – asked if the ZBA could revisit some of the issues that were granted or were not granted as a learning tool.

The Township Board has had some amendments to some of the ordinances, specifically the fireworks and noise ordinances.

The Township Board has also set up a committee to look at some of the ordinances in the Township. The purpose being to see if any changes need to go before the Board, as some of the ordinances have been around for a while.

Suggested that the Planning Commission should consider looking at languages pertaining to height issues in the Township.

Road Millage has passed, the Board has not addressed it yet as a final plan, should be coming soon. Addressed questions pertaining to the road millage. Suggested they could contact the new Township manager, Jon Kangas with questions regarding the ranking/prioritizing system.

Addressed questions asked regarding fireworks.

Wietek-Stephens – who would do the research if we did go back and revisit sites? Asked if the fireworks ordinance passed and if passed as written?

Milton (Planning Commission representative) – asked questions pertaining to the road millage.

Alholm – asked questions pertaining to the road millage and site follow up.

Angeli – asked questions pertaining to the road millage. Also asked if there was anything in place for follow up within the Township, would also like to do follow up on sites that have been done.

XI. Director's Comments

Throenle explained there is a newsletter included in the packet, which is also on the Web. It gives the Board update, which includes what the staff have been doing for the month.

XII. Informational Items and Correspondence

A. Township Board Minutes 02.12.18

B. Township Newsletter – March, 2018

XIII. Adjournment

Alholm moved to adjourn, Wietek-Stephens seconded, meeting was adjourned at
6:08 PM

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary

CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS

Thursday, September 27, 2018

7:00 PM

I. Meeting Called to Order/Roll Call

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

Members Present: Chairperson – Michelle Wietek Stephens; Vice Chairperson – Karen Alholm; Secretary - Kendell Milton; Board Member – Mark Maki; Member - Geno Angeli; Alternate – Paul Charboneau

Members Absent: None

Staff Present: Dale Throenle, Planning Director/Zoning Administrator; Lisa Perry, Administrative Assistant

II. Approval of Agenda

Moved by Alholm and seconded by Wietek-Stephens, to approve the agenda for September 27, 2018 as written.

Vote Ayes: 5 Nays: 0 Motion Carried

III. Approval of Minutes

A. June 22, 2017 Zoning Board of Appeals meeting minutes.

Moved by Wietek Stephens, and seconded by Maki, to get a third revised edition of the minutes to reflect the discussion and changes for review.

Vote Ayes: 5 Nays: 0 Motion Carried

B. March 22, 2018 Zoning Board of Appeals meeting.

Moved by Maki, and seconded by Alholm, to approve them as written

Vote Ayes: 5 Nays: 0 Motion Carried

IV. Public Comment

Elizabeth Delene, 232 Kawbawgam Road – Lived at this property for 20 years. Has complaints regarding the casino lights and trash, dead birds in her yard, and vibrations within her home from the casino generators. Shared photos regarding the lights and dead birds. Wants to be a good neighbor and find a solution, has called the casino and nothing has been done. Yard was clear cut five feet beyond the easement by SEMCO, flowers were cut and bird nests were left on the ground. Lights are brighter now that the trees have been cut. Has spent \$1000 on replacement trees, put in extra insulation, new triple windows with blackout window coverings, and uses a sound machine to keep out noise. There is a fence, but lights shine above the fence.

Deborah Mulcahey, 633 Lakewood Lane – Asked about the status of the archeological review that is to be done before the start of construction. Is confused by the request for the variance, understands there is a request for the sign and portico but the literature of the request talks about increasing the height of the building inside. Are they talking about changing the height of the building itself or changing of the building? Referencing the height of the building, she sees it happen where the height is agreed upon but then the applicant brings in truckloads of sand to the building location which adds to the elevation. Have property elevations been provided to the Township to prevent this? Has concerns about the lights with Lake LeVasseur being nearby. Feels there needs to be something done to address the need, for the applicant, to have lights that do not impact the wildlife and public as a whole.

Wietek Stephens asked if the public present tonight was at the June 22, 2017 meeting where the variance for the height of the building and the sign. Wietek Stephens had made a comment at that meeting regarding the lack of issues brought forth when looking at the hotel.

Kurt Rife, 202 Wanda Street – Appreciates the invitation to the meeting and that the Zoning Department does go over the ordinances. His feelings on variances is, if there have been no recent changes to the ordinances, why build something that is in violation of the ordinance? Why have to ask for a variance? Not in favor of bingo or a casino.

Public comment closed at 7:27 pm.

Alholm interjected she would not be recusing herself from any discussion/decision tonight as there is no monetary impact with tonight's meeting for the Alger-Delta utility company (for which she is a member of their board). This project is already going through and the meeting tonight is for more aesthetic/cosmetic issues. Wietek Stephens thanked her for clarifying this.

VII. New Business

A. Variance Application ZV 18-57

Staff Introduction

The applicant is proposing to extend the height of the casino entrance to 32' 8" to accommodate an architectural design for the building and to add a sign on the front of the entrance.

The applicant is proposing to set the sign structure height to 45' to accommodate the entrance signage.

The primary focuses of the height extensions is to accommodate architectural design for the casino entrance. The purpose of the height extension for the entrance is to accommodate structural and architectural design inside the proposed casino. The purpose of the extended height of the signage structure is to design an entrance that will be easily identifiable for those entering the property, and the actual sign will be a portion of the structure.

There were three written comments from the public, but one of the comments did not directly relate to the project (comments are included in the packet materials). One call was received related to the project, which resulted in one of the written comments.

Board Discussion

Wietek Stephens asked if the sign would be lit. Casino representatives stated it would be. She also questioned why it wasn't designed to comply with the ordinance.

Maki suggested they let the representatives of the casino make their presentation but would first like to ask Throenle questions.

Maki asked Throenle why the notice for the meeting on the 27th, that was in the paper, stated that written comments were only being received until September 19th. Throenle stated the date was established so the written comments could be included in the distribution of the packets to the Boards/Commissions, which is standard for all Township packets.

Maki also asked about a 40' height that was mentioned in the previous variance, he felt the hotel variance previously granted was 33'. Peter Dupuis, project manager from Gundlach Champion didn't have the plans but felt the top of the hotel was around 33' and with the parapet it would be 40'.

Maki also asked if the lighting came up with Zoning when they did the site plan review. He asked if the Planning Commission put any conditions to buffer the lighting when they did the site plan review. Throenle stated they do but didn't have that paperwork with him. Throenle said the concept was for the new structure to have all downcast lighting, no lighting or signage on the water tower, the perimeter lights would also be downcast lights, and the buffers were set up as fences along the property line. Throenle said this was what taken into account when the site plan review was done. What is out there now will all be replaced with the downcast lighting. Dupuis commented that the fixtures were approved as low impact lighting and as far as the landscaping portion, KBIC agreed to extend the separation fence between the parking lot and residences, when the project was finished. Maki asked

about the construction schedule and Dupuis answered it runs through next year (2019). Alholm asked about the length of the buffer fence and was told the existing fence is around 10' in height

Maki asked for clarification of the residential property being used as commercial for the parking lot. Throenle stated it has been this way since 1997 as that is when the parking lot has was put in, which was long before he came to work for the Township. Wietek Stephens asked how this pertained to tonight's variance request. Throenle stated he didn't believe it did so. Wietek Stephens asked to move onto the applicant's presentation.

Sam Olbekson, design principal with Cuningham Architecture, referred to the design plans. He explained most of the project is on tribal land and they kept the designed height of the building as low as possible. However, there were design issues with the event center portion if the height of the building was kept to 30'. He explained they expanded the gaming facility location away from the adjacent neighbors.

He added there will also be a restaurant located where the existing casino is and that it will act as a buffer and will not have any outdoor lights. This allows the entrance of the gaming facility to be moved farther away from the residential units.

Olbekson confirmed that the lights being used have been looked at from a light pollution standpoint and will be pointed down. They will be self-illuminating and won't project light out.

Olbekson explained the area of the entrance is brightly lit to direct people where to go and for safety. The lighting also helps with the elder and handicap parking. The height of the porte cochere is designed to accommodate a fire truck.

Maki asked where the existing casino is and was told this would be the restaurant when the new facility was done. Maki also asked if Olbekson knew the reason why the casino was built so close to residential land when there was an excess of land available. Olbekson stated he did not know.

Maki asked if the site plan is the same as the one that was originally presented and was told it was. He questioned the location of the restaurant and was assured this was the same. Maki stated the existing building is 30'4" and asked if the new building would be the same. Maki also wanted to know how they got approval for that height as it is higher than what is allowed in the Township ordinance. Olbekson responded that the addition would be slightly over that due to the flashing that helps keeps water out when adding onto an existing building. Olbekson reminded him that section is on tribal trust land. Maki asked if the casino is all on trust land and the

answer was yes. Olbekson also explained the vestibule, the fire truck lanes and the support for the vestibule, which also holds the sign are not on trust land, as well as the restaurant and hotel.

Wietek Stephens asked if the restaurant needed a variance for the height and was told no as it was lower than the overall mass of the building. She also confirmed that the vestibule would be attached to the building for the reason being the application summary referred to a minimum height of 16-1/2' for a detached building. Throenle explained he did it this way as it would be considered detached if it was built by itself from a variance scenario. The original variance said 40' took into account everything being connected, until everything else is built it would be considered a detached building.

Wietek Stephens asked if it would need a variance if it were an addition to an existing building. Throenle stated if it exceeded the 30' height it would, which it does in this case as it goes to 32'8". She asked if it then would only need a 2'8" variance and not a 16' variance. Throenle said that would be correct.

Olbekson stated again the entrance lights would be pointing to the ground, as they were not intended to be a beacon or seen from the adjacent highway. Lights will be soft glowing. Angeli asked if there would be any spotlights on the roof area and Olbekson stated it would be soft glowing, backlit lights.

Maki asked the size of the sign, Olbekson replied it would be about 6' x 6', but it is still in the design stage. Maki asked why they would need 45' if the building is 30' and the sign is 6' -- that is 36'. Olbekson explained that the sign will be on one of the walls that is part of the porte cochere.

Wietek Stephens verified that the sign structure, other than the water tower, would be the tallest thing on the site at 45 and the parapets for the hotel would be at 40'.

Maki stated all of these items should be on the site plan review. When they are not, he said, this is where the variance issues happen.

Wietek Stephens had issues that the previous variance request for a large hotel was now being used to justify the request for something even taller. She asked if they had known a taller sign request was coming, would they have approved the hotel.

Throenle asked what the impact would be if the sign height was reduced from 45' to 40'. Olbekson stated the impact of the 40' would not serve its functional purpose and would stand out less than the adjacent building. Olbekson felt there would be

confusion of where to go and that is one of the primary considerations in planning an entrance like this. It needs a presence and to stand out.

Olbekson stated they are trying to establish a circulation pattern for traffic. This is not a motel, this is a hotel. The owner wants this to be classier than a motel, as it will have a new logo and be a beautiful building. He felt the Township would not want anything less than this elegant, beautiful structure. He felt the architects did their due diligence to design this to the proportions.

Wietek Stephens asked if the parking lot lights are the new ones, Olbekson stated they were not and technology has come a long way. She also asked if the new lights were going to be brighter or less obtrusive and Olbekson answered that they were less obtrusive.

Wietek Stephens also asked about the lighting below the sign of the entranceway and which way it was pointing. Olbekson answered that it would be LED lights, nothing flashing and the light will be directed down. Alholm questioned if the light from the sign would cause any more light pollution for the neighbors on Kawbawgam Road than what is there now. Olbekson stated no, it would be less harsh than the existing lighting.

Wietek Stephens asked about detached height versus attached height and why this was not called an addition to the existing building. Throenle stated that we could look at it as an addition. He looked at it if the hotel was not built or it was built by itself. She asked if the building is being built at 32'8". Throenle stated the building is being built at 30'4" but the section for the entrance is why they are asking for the additional 2'8". The building itself is on tribal land so it does not have to meet any height restrictions. Wietek Stephens felt it should be a condition, if approved, that they have to attach to the building it goes to.

Maki asked why it couldn't be the same height, 30', as the building. Throenle stated it was his understanding it had to do with the internal design of the casino itself. Olbekson stated the building, even though it is on trust land, is designed to a minimum. The project is designed to be economically responsible to a budget. They want fire trucks to have access to the porte cochere, want it to be lit so it is known where the entrance is, and none of it disregarded current zoning. Olbekson said this property cannot be seen from the highway and Olbekson felt this is respectful to the lighting concerns and branding and identity.

Wietek Stephens opened the meeting for Public Comment to discuss if the granting of this variance would be contrary to the public. She said it seems the casino is asking for a 2'8" height variance above the 30' allowed height for the rectangular

entrance and the sign structure is 45' and 30' is allowed. She asked for comment from the public on those two issues.

Public Comment

Elizabeth Delene, 232 Kawbawgam Road – Not against the casino but feels she sees people at their destination now but still has the issue of light shining in her back yard. How can you guarantee she will be better off with a hotel facing her and the portico with a sign on it?

Deborah Mulcahey, 633 Lakewood Lane – All for aesthetics, likes to know where she is going but feels the sign could be moved so it wouldn't affect the people around the casino or the wildlife. Maybe have a separate sign for the emblem, maybe at the entrance when they drive in. The 2' x" may not seem like much but they already had a variance. She also questioned signage for the restaurant.

Wietek Stephens asked about the entrance to the restaurant, in reference to the comment above. Olbekson commented there is no entrance or signage for the restaurant from the outside, only access is from the inside of the casino.

Maki questioned if there were to be any signs or lighting on the restaurant at all. Olbekson commented that the signs would be when entering the main entrance and the only lighting from the restaurant would be from the windows from the restaurant as seen from the parking lot.

Kurt Rife, 202 Wanda Street – Interjected from the audience regarding the signs and the mechanical that would be located on the top of the building.

Maki asked questions to clarify the heights above the roof of the canopy. Olbekson explained that the heights had to be where they are to provide direction to the people as they were driving towards the entrance.

Throenle explained that without the height variance requested, you would not be able to find the entrance from the back of the parking lot. The height allows for people to see over any vehicles or other objects that may be in line of view.

Board Decision

Moved by Wietek Stephens, and seconded by Angeli that after conducting a Public Hearing and review of the staff review and analysis for variance request ZV 18-57, for parcel 52-02-112-048-70 at 200 Zhooniyaa Miikana Trail in Marquette, MI, the Zoning Board of Appeals finds that this request demonstrates the standards

pertaining to the granting of non-use variances and hereby approves variance request ZV 18-57 with the following findings of facts and conditions at the end.

Strict enforcement of the Zoning Ordinance would cause practical difficulty because they are asking for minimal intrusion of height with regard to the porte cochere (entryway), it comes down to a 2'8" variance for what is felt to be valid architectural reasons. Granting the variance would not be contrary to the public interest because the most obtrusive part of this project appears to be the light source above the entryway that is lighting up the walking area and the parking area which is below the allowed heights and does not require a variance. The signage above the height restrictions, that requires the variance, has minimal lighting. There are circumstances unique to this property including the 30'4" building that is going to be built on trust land which is outside of our jurisdiction.

It is known that the variance request is due to the actions of the applicant. Approval of this variance request is contingent on meeting the following conditions:

- 1) The entryway variance is being granted for 32'8" without any additional fill above what is present (so not to add 10' of fill and then the building of 32'4" on top of that). No significant alteration to the height of the site.*
- 2) The sign structure is granted a variance for 40' rather than the 45' to bring it in line with the maximum height of the hotel architectural features.*
- 3) This variance is only permitting the structure to be built if the structure behind it, on trust land, is actually constructed.*
- 4) That the light impacts continue to be minimized as presented tonight.*

AYES: 4

NAYS: 1 (Maki)

MOTION CARRIED

VIII. Public Comment

Janice Simpson, 231 Kawbawgam – Commented on the noise from the generator when the power goes out. Asked if it will be moved with the renovation or remain in the same spot. Questioned where the construction trucks are going on Kawbawgam Road, they have torn the road up. Has a neighbor with a junk yard in their back yard, cars with no license plate. This is against the ordinance. Has stopped in the Township office to complain.

Deborah Mulcahey, 633 Lakewood Lane – Not sure where the architect lives, but assumes it's not in the immediate community. People have different perspectives of being a good neighbor. Commented on generators in her neighborhood, people have those rights but may be something to be discussed with Planning regarding buffering.

Why isn't the casino addressing the issues of noise and garbage? Could add vegetation for aesthetics and to help buffer noise. Questioned why there was no service road for the casino to use. Asked that the casino to be a good neighbor now, not wait for the new casino to be built.

Elizabeth Delene, 232 Kawbawgam Road – Presented a taped recording of the noise inside her house from the generators at the casino.

IX. Township Board Member/Planning Commission Member Comments

Mark Maki (Board representative) – Commented on the failure of the Township to address short term rentals. Also spoke of the Planning Commission appointment process not being followed by the Township Board and/or Supervisor, specifically the Board members not provided with materials to be reviewed beforehand.

Milton (Planning Commission representative) – No Comments

Wietek Stephens asked that the correspondence be moved from the back of the package to the area of the packet it pertains to. In the agenda format, under the New Business section for variance applications, would like a space for applicant and public comment within the decision making process.

Director's Comments

Throenle stated there will be a ZBA meeting next month.

Informational Items and Correspondence

- A. Township Newsletter – September, 2018
- B. Correspondence – Delene
- C. Correspondence – Stoll
- D. Correspondence – Pavalkyte/Waldo

X. Adjournment

Wietek-Stephens adjourned the meeting at 9:43 PM

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

Thursday, October 25, 2018

7:00 PM

I. Meeting Called to Order/Roll Call

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

Members Present: Chairperson – Michelle Wietek Stephens; Vice Chairperson – Karen Alholm; Secretary - Kendell Milton; Board Member – Mark Maki; Member - Geno Angeli; Alternate – Paul Charboneau

Members Absent: None

Staff Present: Dale Throenle, Planning Director/Zoning Administrator; Lisa Perry, Administrative Assistant

II. Approval of Agenda

Moved by Alholm and seconded by Wietek-Stephens, to approve the agenda for October 25, 2018 as changed with the additions below.

Wietek-Stephens would like to discuss accepting comments up until the meeting date, under Informational Items and Correspondence.

Vote Ayes: 5 Nays: 0 Motion Carried

III. Approval of Minutes

A. June 22, 2017 Zoning Board of Appeals meeting minutes.

Moved by Maki, and seconded by Wietek Stephens, to approve the minutes as changed with the revisions stated tonight.

Vote Ayes: 5 Nays: 0 Motion Carried

B. September 27, 2018 Zoning Board of Appeals meeting minutes

Moved by Maki, and seconded by Alholm, to approve the minutes as changed with the revisions stated tonight.

Vote Ayes: 5 Nays: 0 Motion Carried

IV. Public Comment

Jason Gauthier, 1242 Cooper Lake Road, Ishpeming, MI – Was here representing Carol and Charles Booth of 281 Lakewood Lane. The Booths have a variance application submitted for a modest addition to the northwest corner of their building. He was here to answer any questions in regards to that application.

Wietek-Stephens asked if he was the contractor/friend of the applicant, Gauthier stated he was the architect.

Maki stated he did not see a map anywhere in the packet that showed this. Wietek-Stephens pointed out the plans that were brought to the meeting were more helpful.

Public comment closed at 7:17 pm.

VII. New Business

A. Variance Application ZV 18-59

Staff Introduction

Background

Staff received a Zoning Compliance application for an addition and deck replacement at 281 Lakewood Lane. When reviewing the application, staff saw that the addition and deck were to be added to a structure that was within the 100' setback from the nearby bayou. Staff related this information to the applicant, with the instructions to submit a Zoning Variance Application with the intent of receiving a variance from the setback requirement from the Zoning Board of Appeals (ZBA) so that the planned construction could take place. The applicant filed the application (ZV 18-59) on September 24, and a ZBA hearing was set for October 25.

Staff determination for the setback variance requirement was based on three items:

- 1) On May 25, 2017 the owner of the property at 209 Lakewood Lane sought a variance from the ZBA (case ZB 17-01) for a similar project on that property.
- 2) In an email from the DEQ regarding that case, the DEQ designated a bayou in the Township as a "body of water". (see email attachments)
- 3) In Section 6.8 Waterfront Setback of the Zoning Ordinance, it states:

"All new structures on lots abutting any body of water, including but not limited to inland lakes, rivers, streams, creeks, impoundments, and Lake Superior, shall maintain a minimum setback of 100 feet as measured from the edge of a river or the edge of a lake's shoreline."

Staff Findings

Staff proceeded to develop the packet for the ZBA hearing, and in doing so, staff discovered the existing structure was built in its current location as a new structure in 1992. Staff pulled a copy of the original *Application for Zoning Compliance Permit* (92-9) from Township records to determine how the structure was permitted within the 100' setback in 1992.

When reviewing the application, staff discovered the following text in the Remarks section of the application:

"Located in DNR high risk erosion area.

Sec 403 exempt from 100' setback. No exempt from 30' area within water bayou edge. Copy given to applicant". (see attached Application for Zoning Compliance Permit 92-9)

In reviewing the 1977 Zoning Ordinance in effect at that time, the language in Section 403 WATERFRONT SETBACK of that ordinance states:

“All new structures on lots abutting any body of water, including but not limited to inland lakes, rivers, streams, creeks, impoundments, and Lake Superior, shall maintain a minimum setback of 100 feet as measured from the edge of a river or the edge of a lake's shoreline.”

This language is identical to the language adopted in Section 6.8 Waterfront Setback in the current Township Zoning Ordinance. (see attached ordinance extracts from 1977 and 2008)

Staff interpretation of the remarks is that the setback was not required; however, the requirement for the 30' buffer remained in place, and, as shown in the property pictures, this buffer still exists.

Board Discussion

Wietek-Stephens did not understand the comment about exempt from 100' setback. Throenle said it was based on the interpretation of the comments indicating that in 1992 that the bayou was not considered a body of water.

Wietek-Stephen's interpretation was that the variance in 1992 was granted for the plan that was presented at the time. Throenle and Maki stated it did not go before the Zoning Board, Maki stated he would give insight as he was the Zoning Administrator at that time.

Maki stated when looking at the language that existed in 1992 states that “*These provisions do not apply to any nonconforming parcel of land or use on a recorded plat, or described in a deed or land contract executed and delivered prior to the effective date of the Ordinance.*” This lot was a nonconforming lot as it was only 100' wide.

The history goes back even farther. In the 1970s when they were doing the Zoning Ordinance and trying to impose the 100' setback, that was one of the major issues with certain areas in the Township as many public comments were objecting the 100' setback, so the Township Board put in exemptions for the many parcels involved. Maki met with the Planning Commission in 1978 and explained they may not want to do this; they agreed, created amended language to bring before the Board. They brought it before the Board, there were the same objections in that Public Comment, but the Board refused to adopt the amended language. This is how the language exempting those setbacks existed for many years. There was exempting language in the Zoning Ordinance from 1977 to 2008 and the only thing applied was the 30' buffer and this is why it was permitted to be built within the 100' setback.

Wietek-Stephens thanked him for the explanation of how the house was built but the construction in 1992 was permitted to proceed according to the plans presented to the Zoning Administrator at that time which did not include the deck or addition we are looking at tonight. She did not feel they need to look at what Ordinance was in place for the work in 1992 for the existing work.

Throenle asked if they are adding to a property that was already exempted, why should they go through the process? Maki stated because they are no longer

exempted. Throenle stated this is the information he needs tonight before going into the actual presentation tonight pertaining to the 100' setback being removed from consideration.

Wietek-Stephens stated there were many properties before there even was a Zoning Ordinance. Does the permit hold up or does the Ordinance take precedence? Wietek-Stephen's interpretation is that the current Ordinance applies to the situation.

Alholm stated she did not know the law or legal decisions relative to a Planning Administrator stating it is exempt under current Ordinances if this continues to the subsequent owners or not. Wietek-Stephens stated it could not as the structures that were built under prior ordinances would not be able to be regulated, there would not be any nonconforming properties or issues.

With this being said Throenle asked for a motion for clarification to determine which way the ZBA interprets this from the standpoint of which takes precedence.

Wietek-Stephens motioned Alholm seconded that for clarification purposes it is moved that the current Zoning Ordinance is what applies to the construction project presented before us today.

AYES: 5

NAYS: 0

MOTION CARRIED

Throenle continued on with the application summary stating the proposed new addition and replacement deck would be two feet closer to the house which brings the non-compliance of the east corner of the house from 59' to 61'. (the additional measurements of the summary inadvertently says west end of the house, it should read the east end of the house).

Maki asked why there was not map provided that shows existing verses proposed in the packet, other than what was presented this evening.

Maki also asked when the original deck was built. Throenle stated he did know this answer; he would have to go through all the records. If it was added since 1992 it was not part of the original application and he knows it has not been done in the last seven years. Maki stated it was not part of the original application.

Throenle stated the only record he looked at for this hearing was the original building record. Maki stated he was asking because if it was built after the Ordinance was amended it would not be in compliance. Throenle agreed.

Gauthier, the applicant's representative, stated that the current owners inherited the property. They did not build it and they would not know any details.

Throenle stated he asked for the interpretation tonight, depends how the bayou was looked at. Was it considered a body of water when the deck was built? Maki stated it was. Throenle told the Zoning Board he had looked at the house two doors down and in 1990 their application was approved with the bayou called a marsh; it is the same bayou. Throenle had a hearing last year to get a declaration if it was a body of water or not.

Throenle explained that the current project that would replace the existing deck would push the non-conformance permit out as the non-conformance only exists on 1/3 of the house.

Maki asked about the diagram from the 1992 permit as it shows a bayou on each end, does this mean there is not a bayou on the west end? Throenle told him from the far end of the bayou closest to the lake, where the picture was taken, from that corner you are looking at Lake Superior. On the picture presented it is basically a wide path between the two bayous that goes out to the lake.

Throenle stated the edge of the property where the extension is proposed will be a straight shot to the lake. The deck will be to the edge and into the area the bayou, which led to the question for the non-conformance of the 59' to the water. Maki asked if the bayou on the west side exists, Throenle stated not at that particular property. According to the diagram it is extended too far but it was probably filled in at some point as it was the Chocoley River. Historically it was the original path of the Chocoley River but is not sure what happened in the 1980s and 1990s when these properties were built.

Wietek-Stephens stated they were told at a different meeting where the bayou was an issue it was filled in. The landowners filled it in which redirected the river. Throenle stated the bayous have no inlet or outlet and are standing bodies of water. Depending on rainfall, they go up or down in temperature, etc. There are fish in them but from the from the shoreline standpoint it fluctuates with the rain. He has no maps that represent the historical progression of the bayou.

Wietek-Stephens questioned the dotted line on the map presented. She asked if that was the 59' from the corner to the bayou. Throenle stated it was. She stated, according to the map they had from the architect, it looked as if none of the project would be outside the 100' setback. She stated from that map, it looked as if the project ran the whole length of the house, where even the farthest corner from the bayou (which is considered an official body of water per the DEQ) would not be outside the 100'. Throenle measured it and stated it was 105'.

Gauthier showed the Zoning Board where the proposed project would be, explained where the existing deck and hot tub are currently would be an enclosed addition with a deck added 40 feet from there. Alholm asked if it went to the end of the structure and Gauthier stated it did not. Maki asked why there was no sketch showing this in the packet. Throenle stated it was partially because he has nothing capable of scanning the size prints presented by the architect and asked if they could move forward as it is irrelevant at this point. Wietek-Stephens does not want to hash this out now but agreed with Maki that it would make it easier if they had something to review ahead of time as it is an important piece of information. She also was confused by what addition was being proposed as there was nothing in the packet that suggested what the applicant was attempting to do.

Wietek-Stephens noted for the minutes that Gauthier approached the Board table to show the Board where the proposed addition was happening on the blueprint.

Maki asked Gauthier several questions regarding the current and proposed deck/addition.

Wietek-Stephens felt they should not use the existing deck's encroachment into the 100' setback as justification for this being better as they do not know when the original deck was built and if it was built according to the regulations. She feels this should be looked at as a stand-alone issue. Throenle asked if she wanted him to go through the records and find when the original deck was added and she stated no. The current deck request should be looked at as a stand-alone issue in her opinion.

Maki asked if the northeast corner of the deck was the closest to the bayou and Throenle said it would be. Maki asked how close, Throenle stated from the angle standpoint the measurements he was using on the presentation screen are fairly accurate, it would be 60'. This would be 48'9" after including the 12' Maki reminded him he had to go out from the house. Throenle stated this measurement was from the edge of the house to the closest water, from the picture provided, but reminded the Board that the edge of the water changes with debris floating in the water.

Throenle also reminded the Board that there was a previous variance request, in 2017, which was under 50' and was approved. He could pull the record on that to see what the request was. They are both similar distances regarding both structures.

Wietek-Stephens stated the two properties to the west seem much closer to the bayou than the one being presented. Throenle stated from the pictures he has, the property to the immediate west, the deck is right on the edge of the bayou.

Alholm questioned Wietek-Stephens on the reason to consider this a stand-alone without any consideration for the deck. She questioned if they were to assume it was done without a permit. Wietek-Stephens answered they did not know it was done with a permit or done under the new Zoning Ordinance that required a 100' setback. If it was done under the new Zoning Ordinance, it was probably non-compliant. It is being said it looks older than the new Zoning Ordinance but that is only a guess. Alholm stated it does look like the wood was not finished or treated and could have weathered quickly.

Maki asked if the existing deck goes as far as the garage/mudroom. Gauthier stated he felt it did not go that far. Maki stated if they had a deck that was roughly 12' x 40' it would be half the size and would be about 58' verses the 49' from the bayou. Gauthier also stated they are proposing a deck that is 6' longer than what exists. Maki stated it would be going closer to the bayou.

Throenle stated the Township assessing record classifies the body of water as a marsh/part pond, which is unclear to what it really is.

Maki stated in the 25 years he was assessing the bayou was considered a body of water. Throenle wanted to stress with this body of water there is no inlet or outlet. There are only two ways for it to rise, one being a major flooding event on Lake Superior or an excessive rain amount that would raise the bayou eight to ten feet above the current bank. The bank is extremely high as shown in supplied pictures and to raise eight feet would be a tremendous amount of water. If they were

permitted to build in the setback it would not be a major impact from water, it would be different if it were along the river or on Lake Kawbawgam.

Wietek-Stephens pointed out the property was previously river and could be cut as a river again with the era of increased flooding. She pointed out the flooding this year in the Houghton area. Throenle stated even if it were cut as river, according to a FEMA discussion, they would look at the water line as being the current water line and it would only have to be one foot above the water line to be legal according to NFIP requirements. This house would automatically get a letter of map amendments stating it was out of the flood plain if it became a FEMA/river scenario. This property is high enough up and far enough from Lake Superior they would not be impacted by a lake effect. If it was cut as river again, the other two properties next door would be in more danger due to the proximity to the newly cut river.

Wietek-Stephens stated she did not have strong feeling regarding this. Strict enforcements of the Zoning Ordinance would not cause a practical difficulty. She felt with the surrounding properties and the substantial nature area, as long as they protect the buffer it would be OK. Throenle pointed out they would not be doing anything to the buffer, as it would be sustained and would actually be two feet further back.

Maki would like to maintain the 60' buffer, they would still be able to put the addition with a deck, but the deck would not extend as far to the east..

Milton felt they could extend the deck further and it would be a dock and exempt from the current zoning description of waterfront setback, with what is said the 50' is irrelevant if it is only a deck and could be a dock if long enough. He felt as far as the discussion of decks are concerned it is irrelevant especially with the neighboring house having their deck on the bayou. He also felt the bayou is a body of water that is only supported by ground water of Lake Superior.

Alholm stated it is listed as a 42' deck which is a big deck. Gauthier stated there is a feature of having the deck this big that is very important to the clients as it connects one side of the house to the other. A deck this big would allow them to connect their mudroom to the deck, changing this by even 5' would eliminate this and change the layout or use of the deck.

Wietek-Stephens felt the plans could still provide a walkway closer to the house and maintain the access and the flow. Gauthier questioned the difference between the 60' setback and a 55' setback. He felt there was no more liability of the bayou coming up, it's not a water hazard and the precedence has been set with the two homes on the west side. He could understand if it was an exorbitant amount of space that would be intruding on that but felt the additional 5' would comply.

Maki asked what the space was from the end of the deck to the water and Throenle stated it was roughly 60', and he reminded the Board it was approximate based on the aerial view and the contour of the bayou. The measurements were completed with two people and a tape measure and was as close to the water as they could get. Throenle reminded the Board, as Flood Plain Coordinator for the Township, he is

extremely concerned when people build on waterways in the Township and he does not see the water level risk from the deck to the bayou. It would be totally different if it were Lake Superior or the Chocolay River. The bayou has no water going in or out and is approximately a 6' to 8' rise, and if that happened it would not matter where the deck is as all the houses would be gone.

Maki was not thinking there will be a flood problem, he was thinking the setback is currently 60' and the ordinance has changed to 100' and they still want to go further into the setback. He does not know the situation of the other houses, they may be in violation of the ordinance.

Angeli asked the main concern was for flooding and Maki stated no it was not. Throenle stated there were two main reasons and they would be:

1. To prevent a scenario of being close to a flooding event.
2. In the 1970s there was a strong push for environmental protection. The 100' setback including the 30' buffer would protect the lake shore and river shore as well.

This is an arbitrary number that the Township came up with, as this is not a State of Michigan or County mandate. For example, they do not have a setback requirement in Marquette, and Throenle stated and this was the number the Township set up in 1977. The Township chose to be forward thinking regarding setbacks. As Maki pointed out there is language in the 1977 ordinance that allowed folks to build where they built.

Milton felt the bayou would be a bog someday. Angeli asked if there have been any comments from the neighbors and Throenle stated none that he is aware of. Throenle added there was a notification map in the packet that included twenty three sent out and one was returned in the mail.

Alholm addressed Maki's concerns that from the corner of the proposed deck is 60' from the bayou is 59' from the corner of the house. The maps are being used are approximately three to four years old, he could not get an aerial shot as we do not have the technology to do that.

Maki asked to get a measurement to the existing deck in its northeast corner and Throenle stated from the closest point to the water is roughly 60'. Maki asked if they could build the addition and the deck and still be 60' and Throenle stated that was correct. Maki asked if this would be 40' more to the east than what it sets currently and Throenle answered yes. Gauthier added that where the existing deck ends they would be going another 6'. Gauthier showed Maki on the plans where the deck would end.

Board Decision

Moved by Alholm, and seconded by Milton that after conducting a Public Hearing and review of the staff review and analysis for variance request ZV 18-59, for parcel 52-02-310-005-00 at 281 Lakewood Lane in Marquette, MI, the Zoning Board of

Appeals finds that the request demonstrates the standards pertaining to the granting of non-use variances and hereby approves variance request ZV 18-59 with the following findings of fact:

- A. Strict enforcement of the Zoning Ordinance would cause practical difficulty because the applicant purchased a structure that had been deemed in compliance.*
- B. The granting of the variance would not be contrary to the public interest because the 100' setback is from a bayou unlikely to have flooding issues, which is one of the purposes for the 100' setback.*
- C. There are circumstances unique to this property including prior permit issued asserting compliance under a prior ordinance section 403.*
- D. The variance request is not due to the actions of the applicant but as a result of construction occurring prior to the applicant's ownership which was similar to the type of variance the current applicant is seeking so will not create a hardship or additional problems.*

Optional language would be approval of this variance contingent upon the applicant/owner continuing to maintain the 30' buffer required from the bayou.

AYES: 5

NAYS: 0

MOTION CARRIED

VIII. Public Comment

Pamela Greenleaf, 409 Green Garden Road – Her home is very close to the Chocoy River, is 30' from the flood plain and has flooded three times this summer. Climate change is real. Had to be rescued from her home in the 2016 flash flood and has water go through her house three times this summer.

IX. Township Board Member/Planning Commission Member Comments

Alholm – Her term ends the end of 2018 and she will not be seeking reappointment. She has been on the Zoning Board of Appeals for over ten years.

Angeli – No Comment, but thanked Alholm for her service.

Mark Maki (Board representative) – May want to read the Board minutes to keep up to date. The Board is in the budget process now, no new surprises there. Have been some issues with casino sewer project regarding the location. Even though they are in the right of way, people have lost trees. Does not feel there was adequate notice, feels this was due to it being rushed. Discussed the changing of the Sewer Ordinance. Also discussed the road millage and what is being done.

Milton (Planning Commission representative) – No Comment

Wietek-Stephens – Thanked Alholm for her service.

Director's Comments

Throenle stated there will be no ZBA meeting in November, probably not in December either. Also thanked Alholm for her service as did the rest of the Zoning Board.

Informational Items and Correspondence

A. Township Board Minutes – 10.08.18 draft

B. Township Newsletter – October, 2018

Wietek-Stephens wanted to discuss the dates of acceptance for written comments. Throenle stated it is hard as these comments are published and put on the web when the Zoning Board gets their packets. They remain on the Web as a historical reference. There has to be a cutoff so the packet can be put together and delivered. If changed, there would have to be changes internally pertaining to the procedures of packet distribution. The current procedure has been in place for seven years.

Wietek-Stephens asked if it could be stated that everything received before a date is included in the packet and anything received after that date would be given to the Zoning Board at the meeting and included in the comments so it can be part of the public record. Throenle stated the problem is the packet is the official historical record and the comments are not in that. Wietek-Stephens was looking to get them as an addendum to the minutes as a way of getting them into the public historical record.

Throenle stated the date of receiving comments can be changed by changing the delivery date of the packet but would like to have a cutoff time to be assured the comments are received. For instance, emails are usually not checked after business hours the day of the meeting, and there could be something missed.

Wietek-Stephens stated it would be fine as long as the public can still give comments up to the meeting date and staff will make reasonable effort to get those comments to the Zoning Board.

Alholm asked if the website could be updated to state this and Throenle stated he would formulate language and put it there.

Adjournment

Wietek-Stephens adjourned the meeting at 8:40 PM

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary