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**Charter Township of Kalamazoo
Minutes of a Zoning Board of Appeals Meeting
Held on June 21, 2017**

A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was conducted on June 21, 2017 commencing at 7:00 p.m. at the Township Hall.

Present were:

Chairman James Short
Steve Leuty
Fred Nagler
Ann Simmons
Bob VanderKlok

Absent were:

None

Also present were Township Zoning Administrator Patrick Hudson; Township Attorney Catherine Kaufman and 6 additional interested persons.

Call to Order

The chairman called the meeting to order at 7:00 p.m.

Roll call and Recognition of Visitors

The chairman noted that all ZBA members were in attendance.

Approval of Meeting Agenda

As there were no changes, the agenda was unanimously adopted as presented.

Approval of the meeting minutes for May 17, 2017

The next item on the agenda was the approval of the minutes of the May 17, 2017 Zoning Board of Appeals meeting. Simmons noted that her first name had been misspelled in the minutes. VanderKlok moved, supported by Nagler to approve the minutes of the May 17, 2017 Zoning Board of Appeals meeting with the noted revisions. The motion passed unanimously.

Old Business

Variance Request - Edward McClean, 4601 Winding Way.

The next item on the agenda was the continuation from the May 2017 ZBA meeting of a variance request of Edward McClean, 4601 Winding Way for a 15-foot variance from the required 25-foot front yard setback in order to allow the applicant to retain an existing, roofed porch that was added to the façade of an existing house. Hudson distributed a survey of the property prepared by Fleis &

1 Vandenbrink dated 6/16/17, which was submitted too late to make it into the ZBA packets. Hudson
2 presented his staff memo dated 6/19/17, noting that this issue is complicated, as Winding Way has been
3 established in the Old Ravine Road right of way. Old Ravine Road is a road established under the
4 Highway by User method and it is assumed to have a 66 foot wide right of way. Hudson said that the
5 original lot description was taken from the center line of the right of way at the time the lot was
6 created; now the current center line of the road is twenty one feet (21') further north. Hudson called
7 the ZBA's attention to the different setbacks from the house to the edge of the right of way (as
8 appeared on the submitted survey), depending on if the setback was measured perpendicular (47 foot
9 setback) or straight on (37 foot setback). Hudson said that it appeared from the survey that the current
10 center line of the road is 10 feet to 15 feet from the original center line.

11
12 Attorney Kaufman said that the survey depicts the center line as it exists today; the survey shows that
13 the house (including the addition) are located 47 feet to 49 feet (at the closest point) to the center line
14 of the road. Hudson confirmed that the road is paved and maintained by the County Road Commission
15 and that the pavement is located within the 66 foot right of way. Hudson also confirmed that the
16 addition has not projected into the right of way and is approximately four feet from the original right of
17 way and a greater distance from the existing right of way.

18
19 Nagler was concerned that since there is no definite location of the right of way, the ZBA does not know
20 the extent of a variance that the applicant needs. Nagler also said that the actual extent of the right of
21 way might never be known with certainty. Chairman Short said that in the past, Duane and Nancy
22 DeHaan used the stepping off method to identify property lines and the extent of the right of way. This
23 method is referenced in many of the quit claim deeds conveying property in the area. Chairman Short
24 also recognized a second letter in support of Mr. McClean's variance request from Lisette Mira-Amaya,
25 which is dated June 18, 2017. Chairman Short also acknowledged a letter in support of the variance
26 request from Duane and Nancy DeHaan, 4629 Winding Way.

27
28 Leuty commented that the addition was added without a building permit. Nagler agreed, noting that
29 the roof and railing on the addition defined the extent of the required setback, thereby triggering a need
30 for a variance; without the roof or railing on the addition, a lesser setback would be required.
31 VanderKlok said that, based on his review of the survey submitted by the applicant, the corner of the
32 building is 37 feet from the original center line and within 1 to 2 feet of the existing pavement.
33 VanderKlok said that if the setback measurement is taken straight out from the house, it is
34 approximately 45 feet to the original centerline. Nagler said that it appears from review of the survey
35 that the corner of the house is about 25 feet from the edge of the road. The ZBA discussed the location
36 of the road in relation to the house and the addition.

37
38 Chairman Short declared the public hearing open at 7:15 p.m.

39
40 Evelyn Knibbe, 4545 Winding Way, is a neighbor of the applicant. Ms. Knibbe said that she bought her
41 parcel from Dekema and gave a small parcel to her daughter. She said they built a basement home on
42 the small parcel. Mr. McLean has now added onto that home. Ms. Knibbe said that the added porch
43 improves the appearance of the house. She said a survey was done on Ravine Road in 1977. She said
44 that this road has always been a problem and is very winding. There have always been problems with
45 legal descriptions of properties on this road. She asked the ZBA to approve the variance so that the
46 applicant could keep the porch addition.

47

1 Lisette Mira-Amaya, 4710 Winding Way, said she had submitted a letter in support of the applicant. She
2 said that the applicant's house looks better with the addition and it does not seem like it will cause
3 traffic safety problems. She asked the ZBA to approve the variance.

4
5 Chairman Short closed the public hearing at 7:20 p.m.

6
7 Attorney Kaufman discussed the possible scope of a variance, should the ZBA determine to grant a
8 setback variance. She noted that any variance could be approved based on the information submitted
9 by the applicant (including the survey), the staff report, public comment and ZBA deliberation. She
10 directed the ZBA to consider the standards for granting a variance on page 26-22 of the Zoning
11 Ordinance and to make appropriate findings for or against the grant of a variance.

12
13 Leuty asked for clarification of the required setbacks. Hudson said that anything with a roof requires a
14 25 foot setback. Hudson also said that his interpretation was that anything including a railing would
15 also require a 25 foot setback.

16
17 Leuty commented that if the applicant had pulled a building permit, the setback issue could have been
18 resolved up front. Nagler clarified that the reason for the required variance was Hudson's
19 interpretation that the measurement for the setback was from the nearest point on the structure.
20 Hudson confirmed that it was his interpretation of how to measure the setback that triggered the
21 variance request.

22
23 Attorney Kaufman outlined the standards in Article 26 for grant of a variance as included in the Zoning
24 Ordinance: whether strict compliance with ordinance requirements would unreasonably prevent the
25 owner from using the property for a permitted purpose or render ordinance conformity unnecessarily
26 burdensome; whether the variance would do substantial justice to the applicant as well as to other
27 property owners; would a lesser variance give substantial relief to the applicant and/or be consistent
28 with the justice to other property owners; that the problem and need for the variance is not self-created
29 by the applicant. The ZBA discussed the standards and made the following findings: 1) the existing
30 house is the original structure and was in violation of the setback to begin with; strict adherence to the
31 zoning ordinance requirements would be unnecessarily burdensome because the owner could not
32 improve or add onto the house; 2) the variance would give the applicant substantial justice as well as
33 the neighbors, as the neighbors supported the variance request by written correspondence and by
34 comments made at the public hearing; 3) a lesser variance would not work, as a specific setback
35 variance number cannot be quantified and the actual extent of the right of way is not known with
36 certainty; 4) this is not a self-created hardship because this road was established as a highway by user
37 road, the extent and scope of the right of way is not known with certainty, the road appears to have
38 moved over time and the applicant did not create the situation of the unknown right of way or the
39 possible relocation of the paving within the right of way that has taken place over time.

40
41 There being no further ZBA discussion, Nagler moved to approve a front yard setback variance for 4601
42 Winding Way, if such setback variance is necessary, to allow for the existing porch addition to remain in
43 place, based on a finding that the standards for grant of a variance have been satisfied because the
44 extent of the existing right of way is unknown for certain and also based on the survey submitted by the
45 applicant (prepared by Fleis & Vandenbrink, 4601 Winding way, dated 6/15/17), with the following
46 conditions:

- 1 1. The determination of the extent of the right of way on Winding Way is based on the survey
2 submitted by the applicant in conjunction with this request and shall not be used as a basis for
3 determining the extent of the Winding Way right of way for any other property or parcel;
4 2. The ZBA's findings are based on the survey prepared by Fleis & Vandenbrink dated 6/16/17 and
5 submitted by the applicant and the survey's location of the house and the addition to the
6 Winding Way right of way as it existed on 6/16/17 and its relation to the house and addition on
7 the applicant's property;
8 3. No additions or improvements will be allowed to be added to this house which would be located
9 any closer to the right of way and/or road than the addition serving as the basis of this variance
10 request;
11 4. The applicant shall obtain an after the fact building permit from the Township (KABA) as soon as
12 possible.
13

14 There motion was seconded by VanderKlok. There being no further discussion, the motion passed
15 unanimously.

16
17 The ZBA had discussion on the building permit process.
18

19 **Correspondence**

20
21 No additional correspondence was received.
22

23 **ZBA member comments**

24
25 None
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27 **Report of PC Member**

28
29 Hudson gave the report from the Planning Commission's most recent meeting, including three gravel pit
30 reviews, approval of a site plan for an expansion for a gas station on Ravine Road, discussion of short
31 term rentals and review of zoning compliance for Pizza Hut and the Hookah Lounge.

32 **Adjournment**

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34 Nagler moved, supported by Simmons to adjourn the meeting at 8:00 p.m. The motion passed
35 unanimously.
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Ann Simmons, Secretary
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SYNOPSIS OF ACTIONS

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The Kalamazoo Township Zoning Board of Appeals undertook the following actions at the June 21, 2017.

- Approved a variance to permit the applicant to retain a front porch and overhang at 4601 Winding Way.