

Lake Township

Zoning Board of Appeals

Meeting on January 10, 2013, 4:00PM

Approved Minutes for Chasney-Yates

Variance Lot Split Appeal

Board: Louis Bushey (Chair), Mary Johnson, Rich Erlich, Louis Colletta, Jeanne Henry, Nell Jacniacki (recording secretary).

Call to Order

Pledge of Allegiance

Approved Minutes of September 19, 2012

Reading of Notice of Hearing and Petition for Variance

Chairman Bushey asked members of the board if they were able to visit the property at 3739 Port Austin Road. They unanimously affirmed that they had visited the property under consideration.

Chairman Bushey ordered that all correspondence from concerned residents regarding the variance be read and cautioned the residents present, that those residents with property within 300 feet of the property in question would speak first and then others could voice their opinions. Correspondence from Tom and Myra Pierce, Mary and Barton Brown and Louann and James Smith was read by the recording secretary.

Public Comment

Tom Pierce spoke first. He stated that rules were rules and that others were willing to abide by the current restrictions. He too had an additional lot adjacent to his that did not meet minimum standards and was therefore not buildable. He said the Board should rule against granting a variance to split the lots, since neither lot was conforming (had 65 feet of frontage or was 12,000 square feet in size). He further stated that beyond the

question of setbacks, the lots also had to have a method of ingress/egress and that the house on the property currently shares a driveway with a neighbor. He also mentioned that the lake levels are down 20" on average and had concerns over water quality.

James Smith was also against the lot split. He considered that granting the variance will open up a Pandora's Box of future complications. Additionally, he stated the Board should keep to the current ordinance due to drinking water and sewage issues and he did not think that placing a manufactured home on the property would enhance the overall property values the same as a stick built house. He stated he saw no complication with someone who wanted to add an adjacent lot only in the case of a split was he in opposition.

Mr. Smith added that while the 50 foot lot was acceptable at an earlier time, times change and so does what is acceptable. He used the example of dumping motor oil. At one time people frequently dumped motor until they became aware of the damage it caused.

Tom Herron objected to being misrepresented in the correspondence. He stated he has never been sued or in court. Modular homes, he added, are not manufactured homes and as such are comparable to stick built. He claimed the township had no jurisdiction over water and septic. That "water and septic" was an issue for the Huron County Board of Health not any Lake Township Boards. He has already built numerous houses on 50 foot lots without any issues, especially in an area of sandy ground with excellent drainage, as in Lake Township.

Herron thought the ordinance combining non-conforming adjacent lots in common ownership was illegal and that Bob Smith, the previous Lake Township Supervisor, shared his opinion. When Supervisor Smith died, he made his case to Yvonne Bushey, the Interim Supervisor. While "Val said no."; Supervisor Bushey, on the advice of Attorney Ferris finally agreed to give permission to build. Mr. Herron staked out the property, but Tory Geilhart, the Building Inspector, refused to grant a building permit. As regards the well, distances on the property, he felt, would be according to code and the two sisters, if necessary, could share the existing well currently on the adjacent lot used by Ms. Chasney-Yates' sister.

Ronn Nadis and Sarah Gidley, Attorneys for Ms Marcia Chasney-Yates presented their case. Mr. Nadis argued in the alternative. First, the lots were already separate entities and therefore did not require a variance. Second, should a variance be judged necessary, the ordinance presented both a practical difficulty for his client preventing her from building on the property which qualified as the deprivation of a substantial property right.

For his first argument, Mr. Nadis claimed the lots were two separate non-conforming lots and that Ms. Chasney-Yates' lot could be built upon, since it met all setback requirements. He stated the subdivision, created in 1940, was originally platted for 50 foot lots. Both lots were purchased prior to 1974. In 1992, an amendment of the ordinance required 100 foot frontage for future lots and did not change the status of the lots in question. In 1998, the parents of Ms Chasney-Yates each conveyed their interest in the respective lots into individual trusts. Ms Chasney-Yates' lot belonged to the John Chasney Trust while the adjacent lot owned by her sister belonged to the Geraldine Chasney Trust. The 2000 ordinance change requiring commonly owned non-conforming adjacent lots to be considered undivided parcels could not apply to the lots in question, since they had already been out of common ownership since 1998. The quit claim deed was valid at the time it was made and did not require recordation. Therefore a variance would not be necessary because they were two non-conforming lots allowing Ms. Chasney-Yates to build on the lot.

In the alternative he argued, should a variance be necessary, the ordinance created a practical difficulty for his client by not allowing her to build on the property thus creating a second issue by the deprivation of a substantial property right of belonging to his client.

However, since the lots were lots, no variance should be necessary. He did take some time to refute the argument that granting the variance would contribute to further cramming of housing in the area. Census figures, he stated, showed approximately 800 year-round residents for Lake Township with a total of 1400 homes many of which were seldom visited. Nor would granting the variance create a Pandora's Box since there were only about a half dozen lots in similar circumstance and that by granting the variance the board would preserve the substantial property rights possessed by other owners in Lake Township.

However, he reasserted his first claim that the ordinance did not apply and that the lots were separate non-conforming lots and that the ordinance was probably not legal since the ordinance destroyed property rights.

Brian Garner, Attorney for Lake Township, considered that the two lots were indeed combined. While purchased at different times (1968/1973). Zoning was established in 1965; the 1970 Zoning Ordinance called for a minimum lot standard of 65 foot frontage or an overall size of 12,000 square feet, and in 1975, 100' frontage was required. By 1992, Chapter 5 section 5.06, the frontage was already set to the current 100 feet and the provision of common ownership already applied to the two non-nonforming lots owned by John and Geraldine Chasney. The lots were used in common at the time of the 1992 Ordinances. Since common ownership was a determinate for the 1992 ordinance, the attempt on the part of the Chasney's to separate the lots by conveying

them into the two respective trusts in 1998 failed because the properties had been used and taxed together. Since the two lots are considered combined, a variance is necessary.

While a variance can be granted to remedy practical difficulties and to prevent a substantial deprivation of property rights, there are limitations on the ability to get a variance. In the case of practical difficulties, the difficulties cannot be manufactured. In this case, the fact that the properties were used and taxed in common, coupled with a failed attempt to separate out the respective property interests into two trusts, the variance need not be granted. The Chasney's, by combining the two lots, enjoyed the use of the properties and did not make any efforts to keep the lots separate prior to the 1992 change in the ordinance or by petitioning the Circuit Court thereafter. Ms Chasney –Yates in this case fails to show that she meets the standards to get a variance and in addition has a self-created problem. Mr. Garner cited the Krieg case in which two non-conforming lots under common ownership were denied a variance because neither lot would be conforming.

Ronn Nadis took exception to Garner's presentation stating that he expected him to act more in an advisory capacity to the board instead of an adversarial one against his client. Mr. Nadis countered Garner's argument by stating that the lots remained separate due to the quit claim conveyances made in 1998. Prior to the 2000 law with the inclusion of the word contiguous, the lots had been grandfathered in and therefore while there was common ownership, the lots were conforming from the time of the original platting and since the Chasney's were not dividing or otherwise making the lots less conforming they had the legal right to convey keeping the lots separate, thus preventing the 2000 ordinance change from combining the two lots into one parcel. Mr. Nadis also cited the Krieg case stating that the facts differed; they had two contiguous lots and wanted to separate them after knocking down houses on both lots in order to sell the vacant lots. In this case there is no combined parcel only two separate lots and an heir (Chasney-Yates) wants to build. The Chasney's never intended to split a parcel merely to convey two lots. As to the tax bill, lots in common ownership are frequently taxed together, mainly to simplify billing.

Herron testified he had 28 lots with one tax bill.

Walter Kloc stated that people with 50 foot lots should be able to build on them. He owns a 50 foot lot and was told that if his house burned down he would not be allowed to rebuild his house on the property. Mr. Kloc thought this was harsh and part of a variable enforcement problem within the township. Instead of limiting building, the board should let Ms. Chasney-Yates build. This would provide additional taxes for the township. Furthermore, she already had a separate address for her lot so why prohibit her when the Board makes other exceptions. He mentioned a "Lady Judge" who was

able to build on a pie slice (50 feet by 39 feet) saying she really didn't need or want a big lot. She was given further latitude by not needing to maintain a downstairs living space, instead she had a garage for a downstairs and she didn't need a variance. Her house was Okayed at a meeting of the Planning Commission. He speculated whether she still had any riparian rights, since the lake levels dropped. This was not the only form of variable enforcement he's seen.

Marcia Chasney-Yates stated that lots of unfortunate things have happened since she decided to build, not the least being her inability to build. Her neighbors, the Pierces and the Smiths both have extra lots, but they want the extra room. Mr. Pierce asked a realtor if he could build on his extra lot and was told no.

For herself she can't sell her lot and she can't build on it. Ms. Chasney looked at tax mapping and presented the Board with her own map of Lake Township showing all the subdivisions showing plats. She said she can't understand how someone can transfer a 35.6 foot lot as long as it has a separate property ID. She knows of several non-conforming lots 60 and 50 feet with two property IDs. Why can they be conveyed and not hers? Her parents always considered the property to consist of the two lots. Her parents bought them separately at different times. On more than one occasion, her mother mentioned to her that she would have the extra lot to build on. The house on her sister's lot has a driveway that is shared but the driveway was moved to accommodate her neighbor in her father's time. Her mother died in 2009 and her father hesitated to undertake anything after her mother's death. She said whenever she wanted him to make certain changes he would just say "I'll think about it."

Chairman Bushey closed the public comment section of the meeting. The Board was now to consider whether a variance was necessary and if so whether it should be granted.

Jeanne Henry opened the discussion by stating that this decision would be difficult. She knew of at least one case in the last ten years that paralleled the facts of this case. In the Green decision a variance had not been granted. She also commented that not granting the variance caused additional problems within that family.

Jeff Smith, Huron County Zoning Director, was asked his opinion about the lots. He stated that in his opinion the Land Division Act of 1967 trumps everything and platted lots stay lots. He will combine lots for the purpose of building but that such a combining does not destroy the original platted lots. Lots are also combined for the purpose of taxation. Neither treatment in his opinion changed the original platted lots.

Louis Colletta asked Mr. Smith was it not true that the township could create an ordinance stricter than a state law addressing the same issue. Therefore, Lake Township could have an ordinance that was stricter than the 1967 law. Mr. Smith said

that barring a decision to amend a platted subdivision by the circuit court, the lots remain lots. While combining lots for purposes of taxation or zoning was legal, the use was not the same. However neither would affect the lots, since they would remain as originally platted. Mr. Colletta said his house was built on three lots now combined. Would he [Colletta] be able to ~~raise~~-raze his house and just go ahead and sell his property as three lots? Mr. Smith said yes since lots stay lots.

Mary Johnson asked his opinion of the 1992 Zoning Ordinance. Mr. Smith stated that in his opinion the statute overrules a zoning ordinance.

Mr. Nadis added that the township's interpretation of contiguous and combined differed from the statute. He also urged the Board to look at Section 5.06 in light of 5.24 and 7.02 of the 1992 Zoning Ordinance. The sections would, in the case of two non-conforming lots, grandfather the lots and allow for a modified lot of record that can be used for a dwelling.

Brian Garner stated the Land Division Act provided minimum standards and local governmental entities can enlarge on these minimum standards. Any enlargement would have to pass a reasonableness standard, the reasonableness of a township ordinance to combine lots to make them conform.

Ron Nadis added that since nothing is being divided, the lots are two lots, not a new combined entity. They are grandfathered. Quit claim deeds were executed and delivered in 1998 and the lots never fell under the 2000 Zoning Ordinance change since they were already conveyed to two separate trusts.

Brain Garner told the Board that the members should discuss the facts of the case and come to a decision on whether or not the provision on common ownership applies.

Chairman Bushey considered the lots separate and viable.

Rich Ehrlich agreed stating he also considered them two separate lots.

Jeanne Henry questioned why the board in the past has not allowed such variances and felt that uniformity of decisions was important. Variable enforcement of the ordinance made no sense.

Mary Johnson we should follow the wording of the ordinance.

Louis Colletta disagreed, since the lots were in common ownership and contiguous.

Jeff Smith said the board should consider the lots grandfathered rather than in conflict with the ordinance.

Brian Garner considered that Section 5.06 of the 1992 Zoning Ordinance applied in this case due to the lots falling under the lot or lots in common ownership provision.

Jeanne Henry considered the point may be moot if the trusts are valid.

Chairman Bushey wondered if the Board decides a variance to split is not necessary, is there anything prior to 1998 in the statutes that would prevent these being two valid non-conforming lots and is there anything in the 1992 law that the lots should be put together.

Ronn Nadis again stated that prior to 2000 there is nothing that would mandate combining the lots. He again stressed that sections 5.06, 5.24 and 7.02 be read as they apply to each other. The properties were grandfathered as two separate lots and conveyed prior to the 2000 change in the ordinance. Therefore they remained separate.

Mary Johnson felt that the lots fell under the common ownership provision of the 1992 Zoning Ordinance.

Jeanne Henry agreed that if they were in common ownership the lots could not be split.

Chairman Bushey called for the Board to make a Finding of Fact as regarding whether the lots were separate, non-conforming and valid or combined and conforming.

Members voted whether Section 5.06 of the 1992 Zoning Ordinance was controlling and the lots were in common ownership in 1992 causing the 1998 attempt to convey the Chasney's interest into two separate trusts invalid, thus making a lot split variance necessary.

Rich Ehrlich, Lou Colletta, Mary Johnson and Jeanne Henry agreed that the lots were in common ownership and that a variance would be needed to split them.

Chairman Louis Bushey disagreed considering them two separate lots making a variance unnecessary.

Louis Colletta: Motion to abide by the 1992 ordinance and with the facts.

Mary Johnson: Seconded Motion.

Aye: Rich Ehrlich, Louis Colletta, Jeanne Henry, Mary Johnson

Nay: Chairman Louis Bushey:

Motion Carried 4-1

Brian Garner: For a variance to be granted, the petitioner must meet special conditions. In this case, the petitioner must show either "practical difficulties or unnecessary

hardships” or “preservation of a substantial property right.” Members must again make finding of facts on record, make a motion and give reason for the vote.

Discussion:

Mary Johnson: The lots do not meet the minimum requirements of the zoning ordinance. There are no practical difficulties. The lots were combined by the 1992 zoning ordinance.

Chairman Bushey: The lots are grandfathered in and a variance is not necessary.

Louis Colletta: Motion of Denial.

Jeanne Henry: **Aye.** A variance should be denied for the sake of consistency. The board has denied similar variance petitions. The 1992 law applied before the failed deed separation attempt in 1998. Practical difficulties are no greater than those suffered by other residents whose variances have been denied.

Louis Colletta: **Aye.** The variance should be denied because the lots were combined in 1992. The Ordinance should be enforced as intended.

Rich Ehrlich: **Nay.** A variance should be granted because of practical difficulties.

Chairman Louis Bushey: **Nay.** A variance is not necessary because the lots are grandfathered and separate.

Mary Johnson: **Aye.** Section 5.06 is controlling; the lots were in common ownership and combined.

Chairman Bushey addressed Ms. Chasney-Yates and told her that when a variance is denied, the Petitioner can appeal the decision in Circuit Court within 30 days of the denial. He thanked everyone for their cooperation and opinions and asked for a motion to adjourn.

Motion to adjourn: Louis Colletta

Motion Seconded: Mary Johnson

Submitted by Nell Jacniacki, Recording Secretary