

**CHOCOLAY TOWNSHIP ZONING BOARD OF APPEALS
MEETING MINUTES
THURSDAY, OCTOBER 22, 2009**

DRAFT

I. MEETING CALLED TO ORDER

The meeting was called to order by Michelle Wietek-Stephens, Chairperson at 7:30 PM.

II. ROLL CALL

Present: Michelle Wietek-Stephens, Wayne Dees, Karen Alholm, John Trudeau,
Kendell Milton

Absent:

Staff: Randy Yelle, Zoning Administrator, Laurie Vashaw-Eagle, Recording Secretary

III. APPROVAL OF AGENDA

Michelle Wietek-Stephens, motioned, John Trudeau, seconded to approve the October 22, 2009, agenda after changing the order of the agenda as follows: IV (Approval of the Agenda) to be moved to III- (Approval of the Minutes) and III to be switched to IV; switch VI – (Public Comment) to V – and V - (Open Public Hearing) to VI. (These minutes will follow the adjusted agenda order).

Ayes 5. Nays 0. Motion approved.

IV. APPROVAL OF THE FEBRUARY 26, 2009 MEETING MINUTES

Karen Alholm, motioned, John Trudeau, seconded to approve the February 26, 2009, minutes after a correction on page 4 (typo) of the Zoning Board of Appeals meeting minutes.

Ayes 5. Nays 0. Motion approved

V. PUBLIC COMMENT

No public comment provided.

VI. OPEN PUBLIC HEARING

Chair of Zoning Administrator Comments:

a) Variance Request #09-02 Board Review and Action

Randy Yelle, Zoning Administrator, reported that a public hearing on variance #09-02 request to construct a “deck/patio/porch” (here on referred to as a porch), this lot is a legal non-conforming lot of record, (Section 6.4) with an existing non-conforming structure. Therefore, per Article XIV of the Chocolay Township Zoning Ordinance, Section 14.2 (C) “No lawful nonconforming structure shall be expanded, extended, or enlarged without first securing the approval of the Zoning Board of Appeals”.

Parcel #52-02-109-130-00, Section 9-T47N-R24W, (.56 acres), is zoned (AF) Agricultural/Forestry, (20 acre minimum lot size), (Section 4.7) lying well short of the

required 100 foot minimum setback from the water's edge. (62' 6") (Section 6.8) (Chocolay River) said parcel has a 20 foot access easement through the property of Jim and Wendy Negri. (Zoning Ordinance required easement is 66 foot) (Section 6.7).

July of 2009, Mr. Keough requested a zoning compliance approval to re-side, re-roof and install new windows. (2009-48) This in itself would not be a problem as there was no request to expand, extend or enlarge said existing structure. The existing structure had an existing porch of two or three steps and about three (3) foot wide. July 9, 2009, Mr. Keough was informed by letter that the existing porch was removed and enlarged from about three (3) or four (4) feet to ten foot three inches (10' 3") by thirty foot six inches (30' 6") therefore requiring Zoning Board of Appeals approval.

July 21, 2009, Mr. Yelle replied to Mr. Keough's question regarding his porch as being exempted from the zoning ordinance.

September 17, 2009, performed a joint onsite visit. At this meeting, Mr. Keough Was informed of his right to appeal the zoning administrator's determination, or request a variance allowing the expansion of the existing porch. Mr. Keough chose to request approval from the Chocolay Township Zoning Board of Appeals to keep this expanded porch. Therefore, if granted, Mr. Keough would be allowed to keep the expanded porch and satisfying the violation.

Requestor's Presentation:

Mr. Keough provided additional photographs of the "porch" in question to the Zoning Board of Appeals members. Mr. Keough explained that he purchased the cabin in the Summer of 2009 and began work on the structure, i.e., replacing the roof, windows, etc. He had every intention of purchasing the adjacent 10 acres, but found out that if he did, purchase that 10 acres and combined it with the current .56 parcel the revised zoning Ordinance changes would make this a nonconforming non-buildable parcel. Once learning this Mr. Keough didn't purchase the adjacent 10 acres. Mr. Keough stated he believed he didn't need to obtain a permit to build what he states is a patio.

After speaking with Mr. Yelle, he was informed that his patio is considered a "deck", which requires a permit. Mr. Keough stated that his understanding of the zoning Ordinance was that he was constructing a patio, which doesn't require a permit. He referred to page 7 of the zoning ordinance that states patio/porch needs to be less than 6 inches off the ground, which the structure is according to Mr. Keough. Mr. Keough also stated there are no definitions for "deck" or "patio" in the zoning ordinance and referred to page 14 that only states a definition for "structure" that includes patios. Mr. Keough stated that Mr. Yelle suggested that he could apply for a variance request, but he feels he's in compliance of the zoning ordinance.

Karen Alholm asked Mr. Keough if he is before the Zoning Board of Appeals to request a variance for the structure?

Mr. Keough stated that he is here to request approval of a variance from the Zoning Board of Appeals and hopes that it gets approved.

Public Input “Support”

No public support stated.

Public Input “Opposed”

Jim Negri, 545 North Big Creek Road, stated that he had to grant Mr. Keough an easement to cross over his driveway to access the .56 acres of property Mr. Keough purchased. He stated that Mr. Keough has been a source of frustration since that time. Mr. Negri also stated that he noticed in early July that Mr. Keough began hauling in building materials and never seen a permit or heard that he had a permit to build anything.

Scott Thum, 240 Timberlane, stated that he is here to speak toward an incident he had last summer involving Mr. Keough when he looked in his backyard to see orange flags outlining a possible future development. Mr. Thum spoke with Mr. Keough who stated he was going to purchase the property behind Mr. Thum’s house for development. Mr. Thum did not want a development in his backyard and figured the best way to avoid this was to purchase the property adjacent to his backyard. Mr. Thum stated that he then discovered that Mr. Keough had not purchase the land that he said would be used to build a development on the adjacent property. Mr. Thum stated that Mr. Keough is a real estate agent and developer and sometime abuses the duality to do things that are not right and does what he wants without regards to ethics. Mr. Thum stated that he feels this was a pressure sale, and he stated that he wouldn’t want someone like Mr. Keough living in his neighborhood.

Wendy Negri, 545 North Big Creek Road, stated that she believes Mr. Keough was not fixing the property up for his own personal use, but to make it more appealing to sell for a profit. Mrs. Negri stated that Mr. Keough has cut down vegetation and left it laying on their property that he has easement through, has left broken glass on their property and garbage on their property, and has invited people to cross over their property to obtain wood from his parcel. Ms. Negri stated that the adjacent 10 acres that Mr. Keough looked at purchasing is landlocked and he is advertising another small piece of property for sale adjacent to the 10 acres stating that a license can be obtained to use this property on his website. Ms. Negri stated that Mr. Keough doesn’t even own the 10 acres.

Anita Martin, 475 North Big Creek Road, stated that she lives across the street from the 10 acres that is landlocked and she also owns the road frontage. Ms. Martin stated that North Big Creek Road is a dead end road and a very quiet area. Since Mr. Keough purchased land in the area there has been increased traffic posing safety concerns for her and her dog.

Mr. Keough reiterated that he didn’t purchase the 10 acres due to the changes in the zoning ordinance making the purchase of the 10 acres a nonconforming, non-buildable parcel.

Wayne Dees asked Mr. Keough why he is advertising anything to do with the 10 acres if he doesn't own it.

Mr. Keough stated that his name is on the tax roll for the 10 acres because of an agreement he has with Mrs. Varvil. Mr. Keough is not aware that the Varvil's have sent a letter to the Township asking to remove his name from the property/tax roll.

Wayne Dees stated that he has seen the structure and it looks nice. The structure is flush to the building in the front and doesn't appear to be attached, but Mr. Dees stated he wasn't sure about the back. Mr. Dees also asked Mr. Keough how much fill was brought in to even out the land.

Mr. Keough stated 2-3 dump trucks loads of fill/top soil was brought in.

Mr. Dees asked how much gravel was brought in for the driveway and how close is the river? Mr. Dees' is concerned that Mr. Keough may have violated the waterfront setback.

Mr. Keough stated that the waterfront area is exactly how it was when he purchased it. He referred to Section 6.8 of the Zoning Ordinance pertaining to the definition of natural grade.

Mr. Dees asked if Mr. Keough obtained a fill permit since the property is located in a flood plain.

Mr. Keough stated he did not obtain a fill permit, but he did obtain a soil erosion permit.

Michelle Wietek Stephens stated that she is a little confused by the variance request. Ms. Wietek-Stephens stated that Mr. Keough had the opportunity to appeal Mr. Yelle's decision, but didn't do so and he is now asking the Zoning Board of Appeals to grant a request for a variance. Ms. Wietek-Stephens stated that Mr. Keough could have argued "deck" vs. "patio", but instead is requesting a variance.

Karen Alholm asked Mr. Keough, why he believes this variance should be granted as the request for a variance is unclear?

Mr. Keough explained that he felt a variance request would be the easiest, less expensive, and least drawn out way to go. He also stated that he feels the structure enhances the building and the property value. He also stated that the placement of the structure is the most practical place for this structure on this piece of property. He stated that for the reasons he has stated to the Zoning Board of Appeals that they will consider approving his variance request.

VII. CLOSE PUBLIC HEARING

a) Variance 09-02 Board Review and Action:

Michelle Wietek-Stephens, Motioned, Wayne Dees, Seconded that after conducting the required public hearing, reviewing enclosed documentation, staff, requesters and public input, and finding that the existing porch of about 3 foot by 4 foot was adequate in allowing ingress/egress and reasonable use of the existing nonconforming structure, therefore finding no reason for enlargement other than convenience and/or cosmetic reasons, bringing fill into a flood plain without a permit, and noting that said structure does not meeting the zoning ordinance required setbacks regarding waterfront property, the Zoning Board of Appeals denies variance request number #09-02.

Aye 5. Nays 0. Motion carried.

Wayne Dees stated that the fill being brought into his property which is located in a flood plain and the absence of the fill permit is the main reason they can't approve the variance request.

VIII. UNFINISHED BUSINESS

A. RULES OF PROCEDURE DRAFT #6

Draft #6 of the Rules of Procedure revisions was reviewed. There were no additional revisions provided.

Wayne Dees, Motioned, Karen Alholm, Seconded, to approve Draft #6 of the Rules of procedure as written on October 22, 2009.

Ayes 5. Nays 0. Motion approved.

B. FORM/S

1. ZONING BOARD OF APPEALS, VARIANCE APPLICATION AND INFORMATION FORM

Wayne Dees explained that the informational sheet will be attached to the Variance Application but is not part of the application form. John Trudeau requested that the Variance Application also be numbered as ZBA-100 (2009).

Karen Alholm, Motioned, Michelle Wietek-Stephens, Seconded, to approve the revised Variance Application as presented.

Ayes 5. Nays 0. Motion approved.

2. INFORMATION FORM

Wayne Dees explained that the "Rules and Guidelines for Public Comment Sessions and for Public Hearings" and the "Standards Applied by the ZBA to make a decision" included in the meeting packet will be copied on to the back of the Zoning Board of Appeals meeting agenda as a resource.

There was unanimous agreement by the Zoning Board of Appeals members present.

Ayes 5. Nays 0.

3. ORDER OF AGENDA REVISIONS

Revisions to the order of the agenda were discussed. The Zoning Board of Appeals Board members agreed to revise the agenda order as follows: I) Meeting Called to Order, II) Roll Call, III) Approval of Agenda, IV) Approval of Minutes, V) Public Comment, VI) Open Public Hearing, VII) Unfinished Business, VIII) New Business, IX) Public Comment, X) Township Board Members Comment/Planning Commissioner Members Comment, XI) Informational, XII) Adjournment.
Ayes 5. Nays 0.

VIII. NEW BUSINESS

A. APPOINTMENT OF 2010 OFFICERS

1. Election of Chair

Karen Alholm, Motioned, John Trudeau, Seconded, to elect Michelle Wietek-Stephens as Chair for the Zoning Board of Appeals for 2010.
Ayes 5. Nays 0. Motion approved.

2. Election of Vice Chair

Michelle Wietek-Stephens, Motioned, Wayne Dees, Seconded, to elect Karen Alholm as Vice Chair for the Zoning Board of Appeals for 2010.
Ayes 5. Nays 0. Motion approved.

3. Election of Secretary

John Trudeau, Motioned, Karen Alholm, Seconded, to elect Kendell Milton as Secretary for the Zoning Board of Appeals for 2010.
Ayes 5. Nays 0. Motion approved.

B. MEETING DATES AND STARTING TIME FOR 2010

1. 2010 Meeting Dates

The ZBA Board members reviewed the meeting dates for 2010. Wayne Dees stated he felt that there should be a meeting scheduled every month in 2010 and does appreciate the budget constraints. John Trudeau stated that the meeting dates should include a meeting in August and November. All members agreed that there will be scheduled meetings as follows: January – no meeting, February 25, March – no meeting, April 22nd, May 27th, June 24th, July 22nd, August 26th, September 23rd, October 28th, November 18th, and December 16, 2010.

2. Starting Time

The Starting Time will be changed in 2010 from 7:30 pm to 7:00 PM.
Ayes 5. Nays 0.

IX. PUBLIC COMMENT

No public comment provided.

X. TOWNSHIP BOARD MEMBERS' COMMENT (John Trudeau)

John Trudeau expressed his concerns about the increase of nonconforming parcels in the Township since the revision of the zoning ordinance.

Mr. Yelle explained this has been researched and actually there are less nonconforming parcels in the Township with the changes to the zoning ordinance.

PLANNING COMMISSIONER MEMBERS' COMMENTS (Kendell Milton)

Kendell Milton had no comments.

XI. INFORMATIONAL

1. Terms of Office
2. Notice of Retirement
3. Add Copy
4. Resident Copy
5. 300 Foot Mailing Map

XII. ADJOURNMENT

As there was no further business to discuss, Michelle Wietek-Stephens, Motioned, Karen Alholm, Seconded, to adjourn the meeting. The meeting adjourned at 9:30 P.M.

Michelle Wietek-Stephens, Chairperson

Recording Secretary