

**MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS**

Park Township Hall
52 152nd Street
Holland, MI 49418

Regular Meeting
January 25, 2016
6:30 P.M.

DRAFT-APPROVED COPY

CALL TO ORDER:

Chair Dreyer called to order the regular meeting of the Park Township Zoning Board of Appeals at 6:30 P.M., held in the Township Hall at the Park Township Office.

ATTENDANCE:

Present: Doug Dreyer, Dennis Eade, Dave Fleece, John Foster, Mike Toscano

Staff: Ed de Vries, Zoning Administrator, Andy Bowman, Staff Planner

APPROVAL OF AGENDA:

Motion by Foster, supported by Toscano, to approve the agenda as presented.

Voice Vote: Ayes 5, Nays 0. Motion carried.

APPROVAL OF MINUTES:

Motion by Eade, supported by Fleece, to approve the minutes of the December 28, 2015 Regular Meeting as presented.

Voice Vote: Ayes 5, Nays 0. Motion carried.

BUSINESS ITEMS:

- 1. A request by Lakeshore Habitat for Humanity** to allow a residence on each lot (of two lots) that does not meet the required front yard setback per Section 38-497 for structures adjacent to major streets. Said land and premises are located at 3294 and 3304 Butternut Dr., Holland, MI 49424. (Parcel #70-15-12-480-012 & #70-15-12-480-011, R-3)

Bowman introduced the agenda item which applies to two properties under construction in Park Township. Lakeshore Habitat for Humanity is in the process of building two homes on adjacent lots on two Butternut Drive addresses. The building permit for 3304 Butternut Dr. was issued on 8/24/2015 after review by Zoning and Building personnel. Construction was started shortly after. The permit for 3294 Butternut Dr. was issued on 11/05/2015, again with construction started soon after. After receiving a complaint, an inspection on 12/15/2015 showed that both homes were built too close to the front lot line, and a stop work order was posted.

The submitted site plans for each permit application were included with the Staff Memo of January 18, 2016. Both reflect the 100' x 200' lot, which does not include road right-of-way. The first site plan for 3304 Butternut Dr. indicates a planned front yard setback of 52 feet. The second plan for 3294 Butternut Dr. did not give a measurement, but indicated "align with adjacent homes." At the time, staff estimated this would result in approximately a 50 foot front yard.

Upon inspection staff located the corner stakes for 3304 Butternut Dr. Using a measuring tape the front yard was estimated to be approximately 18 feet. The front yard for 3294 Butternut Dr. was estimated to be approximately 20 to 22 feet. At the time the error was discovered the home at 3304 Butternut Dr. was enclosed, and most of the interior drywall had been installed. The home at 3294 Butternut Dr. had the exterior walls framed. Both septic systems had already been put in place.

Butternut Dr. is listed as a primary road which must meet increased setbacks of either 83 feet from the centerline, or 40 feet from the right-of-way, whichever is greater. In this location the right-of-way is 100 feet wide as opposed to the normal 66 feet. Therefore, assuming the centerline of Butternut Dr. is 50 ft. from the edge of the right-of-way, adding 40 feet to that would equate to 90 feet which is the greater measure. Therefore, the setback must be at least 40 feet from the right of way (as other homes along the same side of the street currently have been built).

The site plans submitted with the application do not adequately depict the relationship of the lot to the street. The photo in the Staff Memo of January 18, 2016 was created by staff to depict approximate setbacks of existing homes in the same area, the current required setback, and the location of the homes in relation to the required setback. While the homes on the north side of Butternut Dr. appear to meet the ordinance requirements, a number of the homes on the south side do not.

Dreyer asked the applicant to speak to the variance request before the Zoning Board of Appeals.

Jack Zandstra, Regional Executive Director for Lakeshore Habitat for Humanity, distributed updated information regarding a canvassing effort on the part of Habitat entitled Butternut Avenue Neighbor Support. He said Habitat does not desire this situation to be adversarial and appreciated the communication he has had with the Township Zoning Administrator.

He introduced Randy Schippers, legal counsel for Lakeshore Habitat for Humanity, two members of the Lakeshore Habitat for Humanity board, Brett Schlender and Gale Dale Gort, and the construction director, Matt Zomerlei.

As background, Zandstra noted Habitat for Humanity has been in Holland since 1990 and has built 146 homes in the area to date. They are proud to build quality homes at reasonable cost for economical home ownership and maintenance. The owners pay a zero interest mortgage on the homes. He said this is the first time something like this has occurred. It was not intentional on Habitat's part.

Lakeshore Habitat for Humanity is requesting a front yard variance as a result of the error in building the homes too close to the street. He reviewed the four criteria required by the Township zoning ordinance and explained his rationale for the variance request.

#1 – *Strict compliance with the front setback would be unnecessarily burdensome:*

He said they thought they had properly placed the foundations for the two homes, but they were in error. In his opinion, this was due to the road right-of-way being much wider than the typical road right-of-way, and due to the distance the homes across the street are from the road. The Park Township Building Administrator issued the permit based on the submitted drawings and did not require a survey. The Township inspected the foundation and did not question their location. The inspector visited the sites on nine occasions and did not indicate any setback problem. Complying with the requirements of the setback problem now would cost an estimated \$52,000 in materials and labor, hundreds of hours in volunteer labor, and 12 weeks of lost time.

#2 – *Granting the variance would do substantial justice to Lakeshore Habitat for Humanity and other property owners in the area:*

Lakeshore Habitat for Humanity: While they erred in placing these homes in the wrong location, it was his opinion the Township officials would check for such errors, but did not discover the error until they were very far along in the construction of the homes. He added, in the future, they will have a surveyor stake the building envelope before work is begun. Typically, Habitat has not done surveys to keep home owner costs low.

Others in the area: No neighbors objected to the placement of the homes before the issue was brought to Habitat's attention. We canvassed the neighbors and received letters of support from many. To his knowledge no one has objected to the granting of this variance. The setbacks they request are about the same as those of the four neighbors across the street. These setbacks appear to be about 15' for 3315 and 3305 Butternut, 25' for 1016 Butternut, and 32' for 1012 Butternut. All have expressed support for the variance.

To reduce the variance requested, the applicants propose reducing the intrusion into the setback at 3304 Butternut by changing the front porch to meet zoning and building codes and are willing to work with the Township Building Administrator to determine what can be done.

#3 – *Plight due to unique circumstances of the property:*

The two lots are unusual in that the road right-of-way is much wider than typical road rights-of-way. He observed that the houses across the street are apparently within the setback. Unfortunately, the Habitat houses were already well under construction before the problem was discovered.

#4 – *The practical difficulties are not self-created.*

Zandstra said the fact that the right-of-way is wider than is typical and the houses across the street being about the same distance from the street led Habitat to err in placing the foundations.

Zandstra acknowledged their oversight, but pointed out the shared responsibility of Park Township. No Township official recognized the problem or brought it to their attention. The Building Administrator who issued the permit did not note the potential error in the site plan, nor did the inspectors for the foundation, structure, plumbing or electrical plan. In his opinion, the practical difficulties are worse because construction was so far along when the error was discovered.

He asked the Zoning Board of Appeals to consider the request for a variance. The error was not intentional and has never occurred in the 25 years that Habitat for Humanity has been building homes.

Attorney Randy Schippers spoke to the request. This is an unusual situation in that the construction is so far along. A building permit was granted, a site plan was submitted, and inspections were conducted. He also asked why Park Township did not question why the setback was 52' on the site plan and not the required 40' and stated the plan did not indicate where the 52' was measured from.

Bowman clarified that the submitted plan was not drawn on a certified property survey. The site plan submitted indicated a setback of 52' from the lot line, which does not include the Butternut right-of-way. This approved plan was for a 52' front yard setback which more than met the requirement.

Schippers cited a similar situation in Grand Haven Township situation when two homes were built too close the right-of-way. There was a mistake regarding the right-of-way. The Township asked the property owner to remove the two houses. Ottawa County Circuit Court issued that order, but in a ruling the Court of Appeals overturned it stating equity would not allow removal of the homes because they were too far along in construction. He stated this would be grounds to approve this variance.

He cited another similar case in Macatawa Park where the construction was too far along and equity determined there was good faith, it was not an attempt at fraud, there was no harm to the public, and the house was allowed to stand.

Dreyer noted there were nine letters submitted to the Township, all supportive of the variance request.

Public Hearing:

Dreyer opened the Public Hearing at 6:51 P.M.

Lane Tharp is a neighbor at 3380 Butternut Drive and said he was opposed to the placement of the houses where they are now. He pointed out the curbing and gutters for that intersection have already been in place. He said 12 years ago the Township and County sent letters about increasing the right-of-way on Butternut by 18". If that road is expanded at a future date it will be at the front porch of these homes. The attorney spoke to the houses that have setbacks at this time. All those homes were built before current ordinances in the 1940s through the 1960s.

Brett Schlender, board member for Lakeshore Habitat of Humanity, and resident of Park Township, supported the variance request. He also reminded the Board of Appeals that the estimated \$52,000 construction cost in moving the houses will be a burden. To keep the project on track and affordable for the prospective homeowners it is important to move forward with the variance request and complete the project.

Dennis Eade asked if Habitat for Humanity has insurance coverage for this kind of situation. Schlender deferred to the Executive Director to speak to this question. Zandstra said they have liability and flood insurance in addition to insurance for volunteers. He is not aware of coverage for this kind of situation.

Randy Schippers requested to add one correction for the record. He said the lots in that neighborhood were platted in the 1920s through the 1940s with a 50' foot center line for the right-of-way.

Dreyer closed the Public Hearing at 6:57 P.M.

Board Discussion:

Toscano proposed, and Eade supported, a motion to approve the variance.

Toscano said the road right-of-way is there for a reason and asked if the Township should contact the Ottawa County Road Commission about the right-of-way. He also considered discussing the situation with township legal counsel. If the road had a normal right-of-way he felt the homes would be in compliance.

Bowman said the Road Commission has designated Butternut Drive as a primary county road unless it would be taken over by the State. The Road Commission defers to the Township judgment and ordinances on regulating setbacks.

Dreyer mentioned the future owners will have to deal with the risk of any change in the road right-of-way.

Dreyer observed the Township should have checked on the setback issue and that it could be a specific responsibility of the Building Code enforcement officer.

Bowman said it is important for the board to keep in mind the township approval was based on the submitted site plan. Whether or not the applicant mistakenly used the wrong line as

the front lot line is not something the township should be responsible for. Whatever the Township does regarding inspections after the site plan is approved, will likely be checked with the original site plan. Nowhere on the plan does it indicate measurement from the edge of the paved surface.

Toscano observed this is a lesson about procedure and perhaps the Township attorney should review this situation in order to avoid future incidents of this nature. Should the county or state turn this street into a major trunk road it would seriously impact the houses. He asked if past case law as cited by Schippers applied in this case.

Bowman said there are four standards required by the township zoning ordinance to review this request at this point in time. The Zoning Board of Appeals should not engage in appropriating new standards based on cases cited by the applicant's attorney.

Dreyer said it is a hardship and a burden. He expressed his opinion that the Township should be responsible to monitor all steps involved in the building process.

Foster asked Zandstra how many homes Lakeshore Habitat for Humanity has built in Park Township. Zandstra said Habitat built three homes in 2009 on 146th St.

Foster volunteered he has had experience working on homes for Habitat for Humanity. He asked if there is a site manager in charge of the crew. Zandstra said there are typically two supervisors.

Foster asked if these supervisors are well versed in township zoning rules. Zandstra said Matt Zomerlei is the section director who would know of the general zoning ordinances. Foster advised that whoever is in charge with ensuring building plans are appropriate should make it a rule to check Township zoning and ordinance rules.

Bowman clarified that it is not unusual for zoning ordinances to have additional setbacks related to frontage on certain arterial roads. Many ordinances have additional setbacks for primary roads.

Toscano asked how the inspector missed this situation. de Vries said the site plan that was submitted was for a 100' x 200' lot, which matched the County GIS map. They depicted a 50' front yard for the building. The stakes for the corners of the lot were in plain sight so the workers should have noted them. The building inspector looks for proper soil and depth; he is not tasked with looking at setbacks. In this case, it didn't look out of place. Part of it may be because the very front of the first home is a porch 8 feet deep, supported by a couple of piers. The foundation would have been further back. Most builders, when lots are staked, also stake the building location, and Habitat said they didn't do that because of additional cost. We could ensure that Park Township requires this in the future. We may have to require an as-built survey on the foundation prior to beginning of construction. That doesn't help this in this situation and is not germane to the four standards. When the stop work order was issued, the statement made at that time by the site worker was: "we measure from the edge of the road." He noted that 52' from the edge of the road won't meet the setback requirement. In this case, this would have been in violation.

Foster asked about the possibility of removing the porches and redesigning the entry way so that part of the house isn't in the setback area. We could look at that as a lesser relaxation. Zandstra said they could move the pillars back on the one house. There is no porch on the other house.

Bowman concurred that Foster's suggestion could be a lesser variance.

Toscano reviewed the four standards relative to the motion to approve:

a. That strict compliance with the zoning ordinance regulating the minimum area, yard setbacks, frontage, height, bulk, or density, or other regulation would render conformity with those restrictions of the zoning ordinance unnecessarily burdensome.

The unnecessary burden is in the extra wide right-of-way, and the amount of time it took to discover the error.

b. That granting the requested variance would do substantial justice to the applicant as well as to other property owners in the zoning district. If a lesser relaxation than that applied for would give substantial relief to the property owner and be more consistent with justice to other property owners in the district, the board of appeals may grant a lesser variance provided the other standards are met.

Justice to the applicant is the ability to complete the homes that have been started. Justice to the neighbors in that this is similar to the south side of Butternut Dr., and that the applicant has agreed to reduce the front porch at 3204 Butternut by 6 feet, and the home at 3294 Butternut by 2 feet.

c. That the plight of the property owner/applicant is due to the unique circumstances of the property (e.g., an odd shape or a natural feature like a stream or a wetland) and not due to general conditions of the zoning district.

The property is unique in having a 100 foot road right-of-way with only a two lane paved roadway at this time.

d. That the practical difficulties alleged are not self-created.

The issue was not self-created as the structures had substantial work done when the violation was observed. There did not appear to be willful intent to violate the setback.

Board comments:

Bowman advised the zoning ordinance standards be reviewed for findings of fact, and not anticipating court decisions or the citing particular case law. The previously cited "equity" statement has been made in that the homes have been substantially constructed. Other findings of fact should be limited to the degree of completion and the costs incurred.

Dreyer asked how many feet could be saved by removing the porch and entry way on the houses. This could be added as a lesser variance as part of the motion.

The section supervisor said 6' on 3304 Butternut and 2' on 3294 Butternut could be removed for the front yard setback.

Bowman added that additional wording regarding 100' from the road should be included.

Dreyer advised that more detail on the site plan would be helpful for any future project. He asked Toscano to share this with the Township Board. Surveys should be required by the Township and right-of-ways should be carefully considered.

Toscano asked the Zoning Administrator to summarize this issue and he would take it to the Township Board.

Bowman said part of the problem is that the front lot line at the right-of-way was not based on a survey. Rights-of-way lines are extremely important and would have been included on a survey.

Foster noted in the future rules and ordinances should be carefully considered for all construction projects. When ordinances are in place, pleading ignorance is not satisfactory.

Following review and discussion of the four standards, the motion included a condition that the variance be lessened by the removal of 6 feet of the porch on 3304 Butternut and 2 feet of the entryway on 3294 Butternut to satisfy part of each respective front yard setback requirement.

Roll Call Vote:

Foster, aye; Toscano, aye; Eade, aye; Dreyer, aye; Fleece, aye.

Ayes 5, Nays 0. Motion carried.

PUBLIC COMMENT:

Chair Dreyer opened Public Comment at 7:34 P.M.

There was no comment.

Dreyer closed Public Comment at 7:35.

ANNOUNCEMENTS:

The next regular meeting date is February 22, 2016.

Dreyer said he would be unable to attend the February meeting. Vice Chair John Foster will chair the meeting in Dreyer's absence.

Toscano asked for a summary of variances approved in 2015 by the Zoning Board of Appeals.

ADJOURNMENT

Toscano moved, supported by Fleece, to adjourn the meeting at 7:43 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall
Recording Secretary
January 27, 2016

Approved: February 22, 2016