

**MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS**

Park Township Hall
52 152nd Street
Holland, MI 49418

Regular Meeting
February 22, 2016
6:30 P.M.

DRAFT COPY

CALL TO ORDER:

Acting Chair John Foster 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: Dennis Eade, Dave Fleece, John Foster, Dan Hendon, Sally Pollock

Absent: Doug Dreyer, Mike Toscano

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

APPROVAL OF AGENDA:

Motion by Fleece, supported by Eade, to approve the agenda as presented.

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

APPROVAL OF MINUTES:

Hendon noted on page three the spelling of Mr. Gort's first name is Dale not Gale.

Motion by Eade, supported by Fleece, to approve the minutes of the January 25, 2016 Regular Meeting as corrected.

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

Hendon asked about the section of the minutes from January 25, 2016 that connote Township culpability with regard to the setback error of the Habitat for Humanity houses.

Foster suggested this discussion be held at the end of the meeting.

BUSINESS ITEMS:

- 1. A request by Jason and Tiffany Ziembra** to allow a deck that does not meet the required 50' rear yard setback per Section 38-276(3) of the Park Township Zoning Ordinance. Said land and premises are located at 2222 North Bristol Street, Holland, MI 49424. (Parcel #70-15-21-477-005, R-3)

Bowman introduced the agenda item. As background, on December 18, 2015 a building permit application was filed by Baumann Building on behalf of Jason Ziembra for a new single family home, including a rear deck. The site plan reflected the building (house) would be at or nearly at all of the required yard setbacks, with the rear being at the 50 foot requirement. A 12' x 12' deck was depicted at the rear of the home. The home is a single story with a walkout basement at the rear. The deck is attached at the main floor level, which places it more than 30 inches in height. As proposed, this left a rear yard of 38 feet instead of the required 50 feet. The builder was advised the deck could not be permitted. They had not anticipated a problem with the deck as other homes adjacent and nearby also had elevated decks in the required rear yard area. It was determined that rear yard averaging did not apply. After the builder consulted with the homeowner, the house plan was revised to reflect a landing and stairs going to the ground. Stairs are permitted in the required yard areas. The building permit as amended was issued January 5, 2016. On February 1 the owners applied for the variance request to allow the deck as was originally depicted on the building site plan.

Bowman reviewed the definitions from the Park Township Zoning Ordinance which are applicable to this application request: Building, Building Setback, Yard, Rear Yard, and Rear Yard Averaging. He reminded the Board of Appeals that the setback is measured to the building or structure. A structure such as a deck over 30" *above grade* must meet the setback requirements.

The applicant lists seven properties that are purported to have decks within the required setback areas. Staff is aware that for a time, a previous zoning/building inspector interpreted the height as being from the grade at the front of the house. On October 22, 2007 the Zoning Board of Appeals issued an interpretation of this ordinance stating that the measurement should be taken from the grade (ground) at the location of the deck, and it has been interpreted as such since.

de Vries reviewed the seven surrounding properties the applicant says have decks within the required setback areas. One house was granted a rear yard variance because of the shallow lot. All of the houses, with the exception of the house that was granted a variance, were built with the decks as part of the original building plan during the time the height was measured differently. The Zoning Administrator at that time interpreted the height as being from the grade at the front of the house. If the deck was not more than 30" from the grade at the front of house he allowed the setback. This interpretation was changed by the Zoning Board of Appeals that said the measurement must be from the deck site for a rear yard deck.

Eade asked how high the deck would be. The applicant said it would be closer to 10'.

Jason Ziemba shared copies of a letter of support signed by five neighbors. He noted another neighbor has since agreed to the plan for the deck. He is asking for an additional 8' on what was previously approved and is trying to match what is already constructed. The deck will be a 12'x12' structure. It was his opinion the issue was in the interpretation of the rule. He altered his plans to accommodate the requirements of the Township.

Bowman asked if the neighbors understand the variance request and the reinterpretation of the ordinance. Ziemba said they do.

Pollock asked for the size of the landing. Ziemba responded the landing measured 4'x6'.

Fleece asked where the stairs go. Ziemba said they go directly into the backyard on the south side of the deck. He pointed out that the plan would help the desirability of the lot, the look of the house, its resale value, and the functionality of the deck. He would like the space outside the kitchen to be functional and able to be accessed easily by the family. It is unique with a large drop-off at the back of the house.

Bowman asked how many of the homes have a similar walkout. Ziemba said three of the homes have daylight at the rear and the house to the north has a walkout.

Foster asked if most of the houses have rear drop-offs. de Vries said the subdivision is built on a dune and the applicant is on the hill.

Bowman said the position of the house, as related to the topography, is unusual which could relate to Standard C of the required review standards for variances.

Foster asked if the property with a drop-off makes it unique. Bowman said it would be applicable to the necessity of having an upper level deck as a solution for this house.

Foster asked if the stairs will be accessible from the kitchen. Ziemba confirmed that is the case and the approved landing is part of that construction.

Foster asked about the height requirement. de Vries said stairs are allowed within the setback.

Foster asked the applicant about the unbuilt lots in the development. Ziemba said there are two remaining lots. All the lots to the south are developed.

Hendon asked about rear yard averaging. de Vries said the structure has to comply with the setbacks. He elaborated that a rear yard is measured to the rear wall of the main building or structure. To establish rear yard averaging the measurements are to the building excluding the structure. This would be the reason rear yard averaging does not allow a relaxation of the deck requirement in this case.

Pollock stated she did not think there is anything wrong with the deck being approved if the landing has been approved.

Foster asked how far along the construction is at this point. Ziemba said 70% of the framing is completed.

Hendon noted the house to the north has a big retaining wall.

Mrs. Ziemba said the uniqueness of the lot is because of the topography. They thought they would have to build a large retaining wall. The height would have been a safety issue because of a special needs child next door.

Public Hearing:

Chair Foster opened the Public Hearing at 7:05 P.M.

There was no comment.

Foster closed the Public Hearing at 7:05 P.M.

Board Discussion:

Fleece asked about the variance on the lot to the south. de Vries explained a lot had been altered after the subdivision was platted which left it very shallow. The Zoning Board of Appeals granted a variance for the whole house. It wasn't for a deck but a rear yard variance.

Pollock moved, and Eade supported, to approve the variance request.

Pollock said the resale value is not a valid reason to grant a variance. However, the neighbors support this variance request and it is not going to set a precedent, in her opinion, since this is such an unusual lot and area.

Eade asked if there are other decks in the development that are less than 40'. Hendon observed that there are two.

Eade concurred this would not set a precedent.

Foster said since the ordinance was changed, this is the first request. If the two remaining lots are developed there is the potential to have this problem again.

de Vries said it's an interpretation, not so much an ordinance change.

Bowman commented that the hardship finding in the standards can relate to the effect on the family and the practical difficulties involved. There may also be a part played by the inability to use averaging in this case.

Foster advised we have to look at the merit of each situation.

Foster said he could support the fourth standard because it has not been self-created. The applicants did not create the burden of this particular lot.

Pollock reviewed the four standards:

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 burden caused by the ordinance deprives the homeowner of being able to use a deck attached to the home directly from the main floor in a similar manner as surrounding homes. The ordinance also deprives the applicant of the ability to use rear yard averaging to match the existing homes in the area.

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.

The justice to the neighbors is that the home would fit in with similar homes adjacent to the property. Justice to the applicant would allow the use from the main living level of the home. The size of the deck is such that a lesser variance would not be needed.

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 unique circumstance is the slope of the property from front to back, which would create the need for a retaining wall to the north, which could pose a fall hazard to children. Further, the home's main floor connection to the deck is not possible from the lower level.

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

The applicant did not create the lot slope, nor the change in how the deck height is measured.

Board Comments:

Hendon said he wasn't comfortable with the rationale for the last standard. The re-interpretation occurred nine years ago.

de Vries said the applicant didn't cause the situation. It was the change in interpretation.

Roll Call Vote:

Pollock, aye; Hendon, aye; Eade, aye; Foster, aye; Fleece, aye.

Ayes 5, Nays 0. Motion carried.

ANNOUNCEMENTS:

Hendon asked about the statement during the previous Zoning Board of Appeals meeting regarding possible Township culpability regarding any future situation similar to that which occurred with the Habitat for Humanity setback confusion. de Vries said the entire Zoning Board of Appeals didn't support the comment which was offered by a member of the Township Board.

Foster said he suggested to Habitat for Humanity that in any future construction within Park Township the builder should be familiar with the policies and ordinances to avoid such an error in the future.

de Vries explained that the corners of the property were staked. He also noted that the Habitat for Humanity attorney cited cases that didn't apply to this particular situation. de Vries conducted a survey of the surrounding areas on procedures to verify placement of a building. One suggestion was that the Township should require an as-built survey of the footing or foundation prior to allowing continuation of construction.

de Vries said the Township process is that building plans get stamped as approved as submitted. The original plan submitted by Habitat for Humanity that was approved by the Township showed a 53' setback.

Hendon suggested all plans show all roads adjacent to the property.

The next regular meeting date is March 28, 2016.

PUBLIC COMMENT:

Foster opened Public Comment at 7:45 P.M.

There was no comment.

Foster closed Public Comment at 7:45 P.M.

ADJOURNMENT:

Eade moved, supported by Pollock, to adjourn the meeting at 7:50 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall

Recording Secretary
February 24, 2016

Approved:

DRAFT