

**MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS**

Park Township Hall
52 152nd Street
Holland, MI 49424

Regular Meeting
April 16, 2019
6:30 P.M.

DRAFT COPY

CALL TO ORDER:

Chair Doug 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, Sally Pollock

Absent: Jim Gerard

Staff: Emma Posillico, Planner, Dan Martin, Legal Counsel, Howard Fink, Township Manager

APPROVAL OF AGENDA:

Fleece moved, supported by Eade, to approve the agenda as submitted.

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

APPROVAL OF MINUTES:

Foster moved, supported by Fleece, to approve the minutes of March 25, 2019 Regular Meeting as submitted.

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

BUSINESS ITEMS:

Item #1 - A request for an interpretation of the Zoning Ordinance, submitted by William A. Sikkel on behalf of Geerlings Development Company, in regards to the lands currently within the S-2 Yachts Planned Unit Development (PUD) (parcel numbers 70-15-34-352-022 and 70-15-34-353-017), as well as the adjacent lands located on the south side of Lakeway Drive. The

applicant has requested an interpretation of Section 38-365(a) of the Park Township Zoning Ordinance, in regard to PUDs.

Posillico provided background for this item. The applicant's request is a result of the discussion with the Planning Commission at its February 13, 2019 meeting. The Planning Commission determined that the PUD Ordinance amended on May 22, 2017 was intended to require that properties within a PUD be contiguous. If the applicant chose to appeal the Planning Commission's review and interpretation of the PUD requirement he could submit a request to the Zoning Board of Appeals.

The subject property is located at the intersection of Lakeway Drive and Jenison Avenue. Originally approved in 1996, the current S-2 Yachts PUD is roughly one (1) acre, and is comprised of two (2) noncontiguous parcels. Approximately 0.79 acres of the S-2 Yachts PUD is composed of parcel number 70-15-34-352-022, on the north side of Lakeway Drive. The remaining 0.26 acres of the PUD is composed of parcel number 70-15-34-353-017, on the south side of Lakeway Drive. Geerlings Development Company desires to add approximately 1.5 acres to the PUD area on the south side of Lakeway Drive, which would result in a total project size of 2.5 acres, with 0.79 acres on the north side of Lakeway Drive and 1.71 acres on the south side of Lakeway Drive.

The ZBA is tasked with addressing the interpretation requests of Mr. Sikkel.

1. Do the provisions of Section 38-365(a) apply to a request to amend an existing PUD or only to new PUD requests?
2. Since the existing project was approved as non-contiguous, can additional land be added to the existing project to bring the total area to more than two (2) acres?

Eade noted one of his sons works for a company that is owned by the applicant, **Geerlings Development Company**. He questioned if he should he recuse himself from the discussion of this agenda item?

The Commissioners agreed there was no problem with Eade participating in the discussion.

Martin said it is not a conflict of interest for Eade since he is not a direct employee of the applicant's company and does not have a personal financial interest.

In the interest of full disclosure, Dreyer said he received a telephone call from the applicant prior to the meeting. He informed the applicant he could not discuss the request and terminated the conversation.

Dreyer asked Martin to explain the meaning of what the considerations should be for the Zoning Board of Appeals with regard to this request.

Martin said a couple of years ago the Township amended the PUD ordinance for qualifying conditions. Originally it required less than two acres for a PUD in certain zoning districts, and also did not specifically require the property to be contiguous. After the Villas PUD community added property that was not contiguous to the property, across the street to the north on Wisteria, the question arose about an amendment **to the PUD ordinance to require a minimum of contiguous property**. The PUD ordinance was amended to require the two acres to be

contiguous properties. By virtue of amending the PUD ordinance, it ~~creates~~ **makes the existing S-2 Yachts PUD** a nonconforming PUD.

Martin continued by explaining the application is in two parts: the first part is an interpretation of the application of the section that requires two contiguous acres and how that is applied. Adding additional property would become more than two acres that would not be contiguous and require a major amendment **to the S-2 Yachts PUD** (the south side of the street would be 1.7 acres and to the north it would be $\frac{3}{4}$ of an acre). The second part is in regard to expansion of a nonconforming situation or a lesser nonconforming situation. **In the current S-2 Yachts PUD** ~~Now, there is~~ **are** less than two acres that are noncontiguous. By adding more property, the overall size would be less than two acres. By adding the property **on the south side of Lakeway**, it gets ~~it~~ **the S-2 Yachts PUD** closer to two contiguous acres, **which** is probably the applicant's rationale. The Zoning Board of Appeals has discretion in consideration of this request, but ~~you~~ **they** don't have to approve it.

Foster asked about the amendment to the PUD.

Martin clarified that the Zoning Board of Appeals must decide if the applicant is eligible to apply for the amendment ~~for a~~ **to an existing** PUD. If ~~you~~ **the ZBA** decides ~~they~~ **the applicant** cannot **amend the PUD**, they could appeal the Board of Appeals' decision to the Ottawa County Circuit Court. If ~~you~~ **the ZBA** allows it, the applicant would have to submit an application to the Planning Commission for a major amendment to the PUD. **The Planning Commission would then make** ~~with~~ a recommendation to the Township Board, which would make the **final** decision.

Sikkel stated the case for his client. They aren't seeking plan approval. If they get approval **of this request for interpretation**, they will be back to the Planning Commission for formal approval of a proposed plan that is compliant and workable. In February, they asked for guidance **from the Planning Commission** regarding the meaning of "contiguous" in the ordinance. The two properties across the street from each other are not contiguous and ~~they~~ **the applicant** understands it. Therefore, this is a new request tonight.

First part of the request: whether or not, ~~in the~~ **for an** existing PUD ordinance, **does adding land require compliance** ~~to add land does it have to comply~~ with minimum acre requirements **of the PUD ordinance**. His client wants to make ~~it~~ **the PUD** less nonconforming.

His client understands and agrees with Township staff **that** when ~~you seek to add land it means~~ **land is added to a PUD it is** a major amendment. **Mr. Sikkel stated that the applicant isn't** ~~They aren't~~ adding land which requires the **major amendment** approval process, but do they have to comply with the two acre requirement. He asked for interpretation of Sec. 38-355, Subsection A because he interprets the language as referring to a new project: "In order to be eligible for a PUD.." and "The area proposed for a PUD shall consist of two contiguous acres." Does this refer to an existing PUD, a new project, or an amendment?

Second part of the request: this is already an approved, **non-contiguous** project, as they were told in February by the Planning Commission. They want to add more land **to make a total PUD area greater** ~~more~~ than two acres in size. They wish to add a little more land and to make ~~it~~ **the S-2 Yachts PUD** less nonconforming. That is the request.

Eade asked, with the additional property on the south side, would the **total PUD** size be at two acres?

Sikkel said the existing project is a little more than an acre with a total of 1.05 acres. Adding the additional 1.5 acres, if approved, would make ~~it~~ **the total PUD** 2.5 acres.

Sikkel asked if they can they add land to meet the two acre requirement.

Foster asked Martin if this is still considered an active PUD.

Martin explained when the Township approves PUD development it is done with administrative approval if it goes through the rezoning process. The property remains zoned residential with administrative PUD approval. They continue to use the property according to the terms of the PUD. He confirmed it is currently a PUD. As Posillico stated in the Staff Memo, when you add property to a PUD that is a major amendment. The ordinance requires that major amendments are treated in the same manner as a new application. If this were a new application for a PUD the issue of two noncontiguous acres would be a disqualifier. Again, when adding new property, it requires a major amendment so the applicant now has to submit a new application. Staff determined the applicant did not qualify as a result of looking at Sec. 38-355A in the ordinance.

Martin emphasized that adding property meets the **total** size requirement but it's still not contiguous.

Fleece asked how this was allowed to happen.

Sikkel said **that** in 1996 **when** it was first approved, it met the **zoning ordinance** requirements then. The two acre requirement has changed **since the initial approval of the PUD** ~~all of that~~.

Fleece asked why is it important for **the lands on the south side of Lakeway Drive** ~~it~~ to be a PUD, knowing it is under two acres.

Sikkel said they want to tie in both sides of the project. That's the problem. They can't ask for a new PUD because they won't be eligible with the noncontiguous acreage.

Dreyer asked if it would not qualify for a PUD, how many lots are **possible on the lands on the south side of Lakeway Drive** ~~there~~.

Sikkel said they already have 15 lots of record. Ultimately, if they get past this hurdle, they will work on a final plan. Currently, the applicant cannot request a major amendment because it doesn't meet the two acre size requirement. ~~#~~ **The existing S-2 Yachts PUD** is nonconforming now.

Fink commented that **it is possible to amend a nonconforming PUD**; the applicant could request a minor amendment on the PUD. It's a discretionary item in the zoning of the Township.

PUBLIC HEARING

Dreyer noted the Township has received six letters in opposition to the request. None have been received supporting the request.

Chair Dreyer opened the Public Hearing at 7:00 P.M.

Karen Padnos said when the original PUD was approved it was required to have parking because it was a commercial use. Regarding the benefit to the community - what is the advantage to the neighborhood or the Township? She asked the Zoning Board of Appeals to not consider this amendment since noncontiguous should mean what it says.

Lori Gramer supported the statement by Mrs. Padnos.

Michael Van Lente has lived in the community for 33 years. It was his opinion that this kind of development will change the character of the neighborhood.

Jeff Pett is a resident in the neighborhood. In his opinion the PUD should not cross the road. It would be in the Township's interest to have a contained piece of property. No one is opposed to development, just this type of development.

Chair Dreyer closed the Public Hearing at 7:06 P.M.

Dreyer asked the **Board Members** ~~Commissioners~~ whether this should be considered a major or minor change in the PUD. This is in regard to the 1.5 additional acres that are noncontiguous. **Chair Dreyer emphasized that** the Township attorney says it is a major amendment.

Martin read from Sec. 38-375, Subsection 3: "Adding additional land to an approved PUD may not need a minor change but will always require an amendment to the approved PUD."

Dreyer wanted on record whether the Zoning Board of Appeals agrees or disagrees **that adding land to a PUD is a major amendment**. He requested a motion regarding staff's interpretation of this issue.

Eade moved, supported by Foster, that the Zoning Board of Appeals agrees with the staff's interpretation that this is a major amendment issue.

Voice Vote:

Ayes 5, Nays 0. Motion carried.

Dreyer said the staff's interpretation is that this cannot be a PUD because it will not be two contiguous acres. Is this possible to be amended as a PUD?

Martin read from Sec. 38-375, Subsection 3: "If it is not a minor change, then resubmission to the Planning Commission for a formal amendment is required, and shall be conducted in the same manner as the original application. To be eligible for the original application it requires two contiguous acres touching and share a portion of the same boundary."

Martin stated that the Board ~~You~~ could agree it can be amended because it's less nonconforming or it's a possible PUD because it's 2 acres **total** and the road is not relevant.

Fleece said the Board of Appeals would go against the ordinance as stated **if they allowed the existing PUD to be amended** since **the lands are** ~~it's~~ not contiguous.

Dreyer said it should be looked at as a new PUD in his opinion.

Pollock and Fleece agreed. It is a major amendment requirement.

Foster agreed it can't be added to the existing PUD.

Eade said it would open up a precedent for the future.

Pollock said it should follow the new ordinance.

Foster moved, supported by Pollock, to uphold the staff's interpretation of the ordinance.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

Item #2 - A request for a dimensional variance submitted by Bruce DeBoer for permission to construct a new home with a front yard of 54.4 feet, where 80 feet is required; and, a rear yard of 10 feet where 50 feet is required per Sections 38-276 and 38-483(b) of the Park Township Zoning Ordinance. Said land and premises are located at 1990 Ottawa Beach Road, Holland, MI 49424. (Parcel #70-15-27-376-001), Zoned R-3 Low Density One Family Residence District.

The property is described as part of Lots 32, 33, and 34 of Chippewa Resort. It is approximately 13,240 square feet in overall area and is located at the intersection of Ottawa Beach Road and Spruce Street, and is bound by private single-family residences to the southeast and southwest. There is a home and shed existing on the property which are planned to be demolished, except for a portion of the existing home's foundation wall. The applicant is proposing to incorporate that portion of the foundation wall into the new structure.

Posillico explained the R3 district requires a minimum lot area and width of 15,000 square feet and 90 feet respectively. The property, approximately 13,240 square feet, does not comply with the minimum lot area; however, the property is permitted to be used for a single family structure provided it is at least 6,500 square feet in overall area and complies with the required setbacks.

A table regarding setbacks was shared with the Zoning Board of Appeals. This is a corner lot and staff considered the western property line as the side yard and the southern property line as the rear yard. This interpretation aligns with past considerations of required yards on corner lots. Posillico explained the lot configuration and the non-compliance with required front and rear yard setbacks.

Jeff Brinks of Venture Engineering addressed the request on behalf of the applicant. This is an example of a property that was developed many years ago and this parcel was part of a subdivision created in 1914. The current configuration of the parcel dates to **at least** 1975. In this case, to comply with the ordinance standard, it becomes burdensome. There is no room left to comply with setback requirements. The request is reasonable and will provide justice to the neighborhood. The ~~improvement~~ **proposed residence** will improve the property.

He shared an illustration of the community **that compared the required setbacks of the zoning district with the existing structures**. The applicants want to comply with the standards as best they can given the restrictions of the property. A variance would allow compatibility with the surrounding area. As a final benefit, they will limit access to Ottawa Beach Road and relocate the drive to Spruce Street.

PUBLIC HEARING

Dreyer opened the Public Hearing at 7:29 P.M.

He noted two letters were sent to the Township in support of this request.

Chris Nussbaum lives near the property in question. He supports the proposal and has no problem with the plans for home. He has lived there 22 years.

Dan Holding lives directly across this property on Ottawa Beach Road. He supports the plan for the home and it will fit in the neighborhood.

Bruce DeBoer owns the property in question. He wants to make improvements and understood it was a nonconforming lot with two front yards. He has tried to do what he can with the plan for the home given the setback requirements. He appreciated the Township considering his request.

Dreyer said he visited the property and asked if ~~he~~ **DeBoer** will save the trees **on the property**.

DeBoer said he was saving all the trees, however, he **already** removed some **unsightly ugly** trees. He has put in 150 **cubic** yards of top soil and has seeded for grass.

Foster asked if there is water and sewer.

DeBoer said there is city sewer and has talked with Holland Township and Park Township about connecting for city water.

Dreyer closed the Public Hearing at 7:34 P.M.

Dreyer supported what the applicant has planned for the home understanding the restrictions of the shape of the lot.

Fleece asked why the south side of the property is considered the rear and not the side.

Posillico explained that was the way it was configured on the triangle lot. The new plan switches the driveways. The front door faces Ottawa Beach Road. The new driveway will be on Spruce Street.

Eade moved, supported by Foster, to support the dimensional variance request.

Eade reviewed the 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 location of the parcel at the corner of a major street creates challenging circumstances in meeting the required setbacks. And, due to **front and rear yard** averaging requirements, compliance can't be met for standards.

- 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.***

Granting the variance will allow the applicant to construct a home in compliance with the surrounding community. Foster added that the lesser relaxation allows for substantial relief for the applicant.

- 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 and has challenges with its triangular lot **configuration**.

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

The corner triangular lot is unique and standard **front and rear yard** averaging can't be utilized. The lot was platted a long time ago. It's a buildable lot but standard rear yard setbacks can't be applied.

ANNOUNCEMENTS

Dreyer asked about staying with the fourth Monday for meetings.

Posillico explained her conflict with another client so the fourth Monday is difficult for her to schedule with the Zoning Board of Appeals. She would continue to write the Staff Memos but perhaps Ransford could attend in her place.

It was suggested to schedule the second Monday but Martin said the Planning Commission has meetings the second Wednesday. It would be difficult to have two meetings the same week.

Fink would appreciate Emma's attendance on the fourth Monday but understood her conflict. If she could work it out with Ransford to maintain continuity **with staff attendance**, the fourth Monday would work. He has appreciated her work for the Zoning Board of Appeals.

The next meeting is May 20, 2019 because of Memorial Day. Posillico said there is one request to date.

Fleece moved, supported by Eade, to schedule the fourth Monday for Zoning Board of Appeals meetings.

Voice Vote:

Ayes 5, Nays 0. Motion carried.

PUBLIC COMMENT

Dreyer opened Public Comment at 7:52 P.M.

There was no comment.

Dreyer closed Public Comment at 7:53 P.M.

ADJOURNMENT

Foster moved, supported by Fleece, to adjourn the meeting at 7:54 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall
Recording Secretary
April 17, 2019

Approved: