

**MINUTES  
PARK TOWNSHIP  
ZONING BOARD OF APPEALS**  
Park Township Hall  
52 152<sup>nd</sup> Street  
Holland, MI 49418

Regular Meeting  
June 27, 2016  
6:30 P.M.

**DRAFT-APPROVED 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, Dave Fleece, John Foster, Sally Pollock, Mike Toscano

Absent: Dennis Eade

Staff: Ed de Vries, Zoning Administrator

**APPROVAL OF AGENDA:**

Chair Dreyer suggested an amendment to the agenda by having the election of officers following Public Comment and before Announcements.

Motion by Toscano, supported by Foster, to approve the amendment of the agenda to allow for the election of officers following Public Comment and Announcements.

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

**APPROVAL OF MINUTES:**

Motion by Foster, supported by Fleece, to approve the minutes of the April 25, 2016 Regular Meeting as presented.

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

Prior to discussion of the variance request items, de Vries noted that the Park Township Board recently passed amendments to the Park Township Zoning Ordinance that in the future would have a bearing on at least three of the applications for this meeting. The effective date of the changes is slated for July 1, 2016. The changes would not change the

necessity for a hearing at the Zoning Board of Appeals in most cases, but provide a different set of standards by which to evaluate these types of requests. A copy of the amended ordinances is included, and there should be a discussion on how it may affect these requests. In discussion with the Township Attorney, the Zoning Board of Appeals must operate under the old ordinance until July 1, 2016 when the new ordinances take effect. The Zoning Board of Appeals can consider the standards of the new ordinance, and if the order was not signed by the chair at this meeting, the official approval would be postponed until next month when the minutes are approved. The public hearing, however, can be held during this meeting.

de Vries added that the Zoning Board of Appeals may choose to postpone action, or offer the applicants the opportunity to postpone their requests until the July meeting when the new ordinances will be applicable. The extra fee would not be assessed.

Toscano said if there is a solid rationale for approving a request during this meeting he suggested offering that as an option.

#### **BUSINESS ITEMS:**

- 1. A request by Champion Windows** on behalf of Scott Bosma to allow the addition of a 3 season room to a non-conforming residence that will be approximately 78 feet from the centerline of Lakeshore Drive where 83 feet is required per Section 38-497 of the Park Township Zoning Ordinance. Property is located at 4351 Lakeshore Drive, Holland, MI 49424. (Parcel #70-15-04-348-010, R-2)

de Vries introduced the item. As background, the applicant filed a building permit application for a 3 season room to be added to the residence, building it on an existing deck. During the permit review process it was determined that the addition would *not* meet the setback required from Lakeshore Dr., which is listed as a primary arterial road in the current land use and circulation plan. Section 38-497 requires a “setback of 83 feet as measured from the centerline of the road right-of-way, or 40 feet as measured from the end of the road right-of-way, whichever is greater.”

The property is part of the platted Markirk Subdivision platted around 1945. This parcel is part of a larger lot in that plat. No information is available on when the split occurred, other than it was prior to 1975. The house was built in 1990, and was allowed to be 40 feet from the Lakeshore Drive right-of-way, even though the Zoning Ordinance at the time called for a setback of 100 feet from the centerline of Lakeshore Dr. No record of a previous variance was located. A 15' x 22' deck was added in 1994. As the home was permitted to be built even though it was not in compliance, and without a record of a variance, staff is treating this as a non-conforming home.

Zoning Board of Appeals Considerations: The request is to add a 15' x 11' 3 season room on the existing deck. The addition will still remain approximately 7 feet further from the road than the existing east wall of the house.

In the past the Zoning Board of Appeals normally allowed expansions along or within an existing non-conforming setback even though they may not have met the requirements of the standards.

de Vries explained the building setback requirement that is in the new ordinance. In his opinion, if the applicant prefers to return in a month it could be approved under the new ordinance. Again, the Zoning Board of Appeals has to vote tonight based on the current ordinance.

Dreyer asked the representative for the applicant if he had received a copy of the new ordinance.

Mike Nelson spoke for the applicant and said he had not read the new ordinance.

Dreyer explained under the new ordinance which is effective July 1 the request would be approved but the Board of Appeals can rule tonight only under the old ordinance regarding the setback. Currently, he does not meet the current setback requirement.

Toscano asked about the projection dimensions and how they apply to this variance request.

de Vries clarified there are two new standards in the new ordinance affecting this request – listed as #2 and #3. #1 addresses an addition like a bay window which does not contain living space is involved in a projection.

Pollock asked if a variance would be required under the new ordinance in this case.

de Vries said if the applicant is not building to an existing wall does that mean the existing wall is now the setback, and a Zoning Board of Appeals approval is not necessary. If so, it would be satisfied by a decision by the Zoning Administrator. He will have to discuss this with the Township Attorney since the application was filed under the old ordinance.

Toscano asked if the applicant would receive a refund if this were the case. De Vries said he would check into it.

**PUBLIC HEARING:**

Dreyer opened the Public Hearing at 6:48 P.M.

There was no comment. Dreyer noted there was no correspondence on this application.

Dreyer closed the Public Hearing at 6:48 P.M.

Nelson agreed to return next month for the variance request and asked that it be tabled.

Dreyer concurred and recommended consideration of this proposal for the July meeting.

2. **A request by Ed TerVoort** to allow construction of a 1,207 square foot accessory building with a 10 foot side yard where 25 feet is required per Section 38-49(b)(2)e of the Park Township Zoning Ordinance. Property is located at 172 Blackberry Court, Holland, MI 49424. (Parcel #70-15-26-176-032, R-3)

This application is within the Blackberry Estates PUD project. The project contains 17 single family condominium buildings on 6.5 acres, and 3 metes and bounds parcels on the remaining 3.5 acres. The 3 individual parcels each had a building envelope indicated on the site plan for the development. The applicant submitted a building permit for the 1,207 square foot accessory building which would be 10 feet from the south side lot line, which was within the building envelope on the site plan. However, the Conditions of Approval for the PUD paragraph I) state in part, "All accessory buildings to be included as part of the Project shall be subject to all restrictions and requirements contained in the Zoning Ordinance Section 4.11 (now Section 38-491) for residential zoning districts."

Section 38-491 lists a table of setbacks which increase as the size of the building increases. Buildings up to 1,050 square feet require a 10 foot side yard. From 1,050 up to the maximum 2,500 square feet a 25 foot side yard is required.

de Vries noted the drain field area as well as the location of the septic tank location which may also affect this request. There are also some elevation changes involved.

The new ordinance is has standards which are not as stringent, allowing five considerations for this setback and dimensional variance.

Ed TerVoort spoke to the application request. He explained the problem presented by the addition of the accessory building. He asks for the side yard to be moved over to accommodate the request. Some extra square footage was taken from the adjoining lot to accommodate the side yard requirement. If the elevation is raised water flow would be a problem toward the house.

Dreyer asked about the possibility of going 15'. He looked at the lot and thought that would work. If the Zoning Board of Appeals approves 15' side yard it would work.

Toscano said there is another option – build the accessory building smaller.

TerVoort said he can wait until next month if the Zoning Board of Appeals is more comfortable with considering approval closer to the lot line.

Dreyer said the new five standards are much less restrictive.

Toscano said this is a PUD which has to meet the ordinances including setbacks.

de Vries said the PUD requires an accessory building has a prescribed envelope. It doesn't preclude the applicant from asking for a variance.

De Vries observed with the old standards the pond and drain field present a hardship which could be a lesser variance consideration.

Foster asked if it was possible to fill that area so the building is not so far down and subject to flooding.

TerVoort replied there still remains the problem with the location of the septic system. It would mean more water would flow toward it. If they raised the septic system it would flow toward the house.

## **PUBLIC HEARING**

Dreyer opened the Public Hearing at 7:06 P.M.

There was no comment. Dreyer also noted there was no correspondence on the application.

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

Dreyer asked TerVoort what he wanted to do regarding his request.

TerVoort said he could wait until next month for a ruling under the new ordinance. He asked to table the request until July.

- 3. A request by Tim Perkins and Janine Chicoine** to allow a detached garage that will have a front yard of 14.5 feet instead of the required 40 feet, and will be separated from the residence by a distance of 4 feet instead of the required 10 feet per Section 38-276(1) and 38-491(b)(2)c of the Park Township Zoning Ordinance. Property is located at 341 Big Bay Drive, Holland, MI 49424. (Parcel #70-15-27-334-004, R-3)

As background, the applicants purchased this home in January 2015. The lot is a Lake Macatawa waterfront lot of about 60' wide and 385' deep. The lot is nonconforming due to width which should be at least 90 feet for the R-3 Low Density One Family Residence District. There was a previous variance request filed in March 2015 for three additions on the lot including: 1) an attached garage stall in the front (street side) with a master bedroom above it, 2) a porch on the south side, and 3) a kitchen on the west (water side) of the lot. That request was postponed to the April 2015 meeting at which time it had been amended to eliminate the need for one area of variance. The Zoning Board of Appeals did grant a variance for the side yard on the south side for a porch and kitchen addition. A building permit application for the porch addition was submitted 6/16/2015, but was cancelled 4/5/2016. Another building permit application for the garage and porch was filed 9/30/2015, but also cancelled on 4/5/2016. The reason given for the cancellation was difficulties in gaining MDEQ permits as the home was determined to be in the floodplain. MDEQ considered the expansion to be "substantial" which resulted in a requirement that the home be raised 18 inches. As such the plans have been modified to build the kitchen addition on the east side of the home, and add a detached garage on the west side.

Zoning Board of Appeals Considerations: To the south of this lot is an unimproved right-of-way which leads to the lake. Normally this would require a front yard setback for that side as well. Last year the Zoning Board of Appeals did grant a variance for a porch to be as close as two and one-half feet from this right-of-way, even though during the hearing it was acknowledged a lesser variance would work. The front yard average of buildings within 100 feet is an estimate from the GIS maps which do have some margin of error. If averaging is to be used, consideration should be given to requiring a survey of adjacent properties. Using the same GIS maps and averaging buildings within 300 feet resulted in an estimated front yard of 14.25 feet. One of the amendments adopted increased the distance of yard averaging to 300 feet from the current 100 feet, again effective July 1. The application addresses the typical dimensional variance standards, however there is a different set of considerations for lots abutting Lake Michigan or Lake Macatawa. The request to allow the building to have a 4 foot separation from the house will have to meet the standards for a dimensional variance however.

de Vries added for a separation of less than 10 feet, the structure will be required to have a fire rated walls. Averaging would result in a 19' setback using the adjacent properties. The new ordinance will increase the distance on either side from 100' to 300'. If this would be of benefit is unknown. A survey could be done for the adjacent homes.

Tim Perkins, applicant, spoke to the variance request. He noted the porch is not included in the new plan. The kitchen has been moved in about one foot on the east/lake side in order to comply. The garage was downsized to 24'x24'. As far as the neighboring homes are concerned, the planned addition will be comparable to what is there.

Dreyer asked if 300' would make a difference.

Perkins said the survey shows 14.5' and there is a patch of grass down the property to the street.

Foster asked if he has talked with neighbors.

Perkins said he had and the neighbors on both sides of him are in agreement with what he wants to do.

## **PUBLIC HEARING**

Dreyer opened the Public Hearing at 7:15 P.M.

Attorney Randy Schipper spoke to a letter he sent to the Township on behalf of his client, Robert Johnson, a neighbor of the applicant, who owns houses across the street at 336 and 340 Big Bay Drive. He addressed the variances that are requested for the front yard reduction and variance for distance between two buildings. As stated by the ZBA a few months ago, the ZBA doesn't usually grant variances for garages in resort areas that expand the non-conformity. In his opinion, if variances and special use exceptions are granted, they should be done in a way that protects the neighborhood as much as possible. He pointed out that his client is concerned about the protection of the right-of-way of Birch Street, which is under the protection of the Ottawa County Road Commission and Park

Township. Schipper provided photos to the Zoning Board of Appeals showing cars and other private property belonging to the applicant which disturb the public use of the right-of-way. There is evidence of side loading off Birch Street. He questions placing personal property in the right-of-way when there is room behind the property. He said there is no evidence if the garage will be side loading, which would impact Birch Street, or front loading. He noted all the houses on Big Bay have front loading garages. Also MDEQ permit that says they can fill to the garage says no excavated material can be disposed of in the flood plain. One area south of the garage is in the flood plain. If the applicant plans for a front loading garage the right-of-way would not have to be impacted.

Dreyer closed the Public Hearing at 7:23 P.M.

Dreyer asked which direction the garage will face.

Perkins replied it will be off Big Bay Drive in the front. The access is through his property. In the photo his cars are parked legally on his property. The telephone pole is on his property in the photo. The garage will alleviate the personal property problem that is shown in the photo since he will have storage space.

Dreyer said the Zoning Board of Appeals cannot make judgement on use of public access.

Perkins noted the concrete and blacktop part of the photo are on his property. He said these are old photos and most of the personal belongings have been moved.

Foster asked what will be stored in the garage.

Perkins said the cars and trailer will be moved into the garage in addition to the trash can. The table and chairs, also shown in the photo, have since been relocated.

Foster asked Perkins for a time frame for the proposed project.

Perkins estimated it would take about a month.

Toscano asked what is reasonable for conditions on this request.

de Vries responded that conditions in the public interest are considered reasonable.

Fleece asked if the garage will be a single story.

Perkins said it will be one level.

#### Board Discussion:

Toscano asked about requirements for a building closer than 10'.

de Vries said buildings closer than 10' have to comply with the building code that has to have fire rated construction.

Toscano suggested since there is an encroachment issue on the part of public safety then a condition on the applicant in this regard would be recommended.

de Vries said there are three or four other properties in that subdivision that have driveways going over the right-of-ways. The concern is State law that says roads that end on an inland lake have to be kept open and accessible.

Toscano advised a condition that the public right-of-way would have to be kept clear during construction.

Dreyer supported this condition.

Pollock noted all of these lots are unique. Unfortunately the building to the north is on the lot line. It is only fair to make allowances for other properties.

Foster moved, and Pollock supported, to approve the variance request for the detached garage with the condition that construction materials not be in the right-of-way during the building process per State law, and access to the garage be front loading.

de Vries advised two motions will be needed as there are two considerations in this variance – the 4' separation from the house and the placement of the building.

Foster reviewed the four standards for the first consideration (four foot separation):

- 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 applicant has a burden because of the flood plain. He is willing to meet the standards for fire wall requirements. The narrow lot is not conforming and limits the location of the garage.

- 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.*

A lesser relaxation is not possible. There is the burden of the requirement to raise the house with an attached garage. The lesser variance is the applicant changed the design of the garage from 28x32 to 24x24, and eliminated the side porch. There are a number of properties with narrow lots in the community. Also, the proposed garage will not affect the flow of air or view of the lake.

- 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.*

There are unique circumstances regarding the narrow size of the lot, and the public right-of-way on the south side of the property. The flood plain requirement is also a burden.

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

The lot size and ordinance requirements were not self-created.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

Toscano moved, and Pollock supported, to approve the placement of the unattached garage according to the approved plan.

Toscano reviewed the four standards for the second consideration (location of accessory building on a lakefront lot):

- a. *The location of buildings on the lot or adjoining properties.*

The right-of-way limits the location of the house and garage placement. The applicant has made the garage footprint smaller from 28'x32' to 24'x24'.

- b. *The effect of the proposed accessory building on adjoining properties in relation to view, light and air circulation, noise, etc.*

The applicant is placing the building on Big Bay, not imposing on the lake view, will be a single story, and will have front loading access.

- c. *The character of the proposed accessory building and the effect on the surrounding neighborhood.*

The proposed building will match neighboring properties who have front loading garages.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

- 4. A request by Jennifer and Todd Boss** to allow a 672 square foot accessory building with a rear yard of 10 feet where 25 feet is required per Section 38-491(b)(2)e of the Park Township Zoning Ordinance. Property is located at 97 N. 168<sup>th</sup> Avenue, Holland, MI 49424. (Parcel #70-15-22-302-021, R-3)

De Vries said the applicants have submitted a request to allow a 672 square foot accessory building to be 10 feet from the rear lot line instead of the required 25 feet. As noted by the attached drawing, the lot has 50 feet of frontage on Melvin St., however the access to, and address used is by way of a 25 foot easement to 168<sup>th</sup> Ave. Upon looking at the original building permit for the home, the front yard was to the north, rear to the south, and sides east and west. The house is oriented toward the driveway to 168<sup>th</sup>. The proposed building is shown in the Staff Memo. A location that would conform to the ordinance is in red.

Zoning Board of Appeals Considerations: The current ordinance would result in a dimensional variance requiring all the standards found in Section 38-70 of the Park Township Zoning Ordinance be met. The newly enacted Section 38-491(2)(h) could also be applied.

De Vries asked the applicant if he understood the proposed new five standards instead of the four standards that are effective until July 1. He has a choice if he wants to ask for a postponement until July.

Boss confirmed he received a copy of the new standards effective on July 1.

Todd Boss shared additional information regarding the dimensions of different setbacks for the proposed building. He had two different scenarios for each proposed setback. The reason he is requesting the 10' is to preserve as many trees as possible. He also indicated on the plan trees that would need to be removed in each scenario.

Dreyer asked the applicant if he wished to move forward with his variance request.

Boss said time wasn't critical. He was willing to postpone consideration until the July meeting date.

## **PUBLIC HEARING**

Dreyer opened the Public Hearing at 7:53 P.M.

There was no comment.

Dreyer closed the Public Hearing at 7:53 P.M.

Board discussion:

Dreyer said the alternative plan makes a difference in the variance request.

Toscano said the applicant is preserving the trees on the property which does justice to the neighbors.

Foster also supported saving the trees. He asked him if he has talked to the neighbors.

Boss said he has talked to the neighbor next door with whom he shares a driveway. His wife talked with the neighbor to the south and that neighbor supports his plan.

It was agreed to move forward on this request at this time.

Fleece moved, and Foster supported, to approve the variance request with the 10' setback to the south with the condition the building be in the most advantageous location to save the greatest number of trees.

Fleece 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.*

There would be a burden to have to remove the hardwood trees which are a valuable asset to the community. There are utility lines, and location of the septic system that provide restrictions to the applicant's decision as to placement of the building on the property.

- 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.*

It does substantial justice to the neighbors to retain the trees which also limit the exposure of the building by the neighbors.

- 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 layout and character of the property provide unique circumstances. The shape of the lot, location of power lines and septic system. There is also unique access to the property.

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

The house is at the south end of the property and sharing an easement for access are not self-created. The applicant's intent to save all the trees which were planted before he purchased the property is also not self-created.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

**ANNOUNCEMENTS:**

De Vries said there will be one or two agenda items for the July 25 meeting.

Toscano shared the news from the Township Board about the lawsuit regarding the Alepra property in Idlewood. The Court favored the Township decision thanks to the due diligence of the Zoning Board of Appeals and Planning Commission. It was appealed and the Court dismissed the appeal. Thanks to adherence to the standards and the leadership of the Township Zoning Board of Appeals and Planning Commission the Township's ruling was upheld. It has not been returned for reconsideration.

Foster said he will be absent for the July meeting.

Pollock said she will be available as alternate.

The next regular meeting date is July 25, 2016.

**PUBLIC COMMENT**

Dreyer opened Public Comment at 8:10 P.M.

There was no comment.

Dreyer closed Public Comment at 8:10 P.M.

**ELECTION OF OFFICERS**

Dreyer requested nominations for the new slate of officers.

Toscano moved, and Foster supported, to nominate Dave Fleece as secretary.

Roll Call vote:

Ayes 5, Nays 0. Motion carried.

Foster moved, and Pollock supported, to nominate Doug Dreyer as chair.

Ayes 5, Nays 0. Motion carried.

Pollock moved, and Dreyer supported, to nominate John Foster as Vice Chair.

Ayes 5, Nays 0. Motion carried.

De Vries will e-mail a copy of the new ordinances to the Zoning Board of Appeals.

**ADJOURNMENT**

Pollock moved, and Fleece supported,, to adjourn the meeting at 8:15 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall  
Recording Secretary  
June 29, 2016

Approved: July 25, 2016