

**MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS**

Park Township Hall
52 152nd Street
Holland, MI 49418

Regular Meeting
July 24, 2017
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, Sally Pollock, Kathy Grimm

Absent: John Foster (excused), Jim Gerard (excused)

Staff: Ed de Vries, Community Development Director

APPROVAL OF AGENDA:

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

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

APPROVAL OF MINUTES:

Motion by Fleece, supported by Pollock, to approve the minutes of the May 22, 2017 Regular Meeting as presented.

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

BUSINESS ITEMS:

Item #1 – A request by Phillip and Jill Perkins to construct an elevated walkway that will leave a side yard of 6 feet where 10 feet is required per Section 38-246(2) of the Park Township Code of Ordinances. Said land and premises are located at 2427 Lakefront Drive, Holland, MI 49424. (Parcel #70-15-16-398-022, R-2)

As background, de Vries said the current owners purchased the property in January of 2012. In August of 2013 the existing home was demolished and the current home was constructed. The permit was issued in August of 2013, and final occupancy allowed in June of 2014. When this recent building permit was submitted it was denied because of the side yard setback.

A variance was applied for and approved on February 2014 for an addition to a detached garage. The variance was for a side yard setback, and to allow a larger than allowed structure. The homeowner wishes to add a deck to the lakefront (northwest) side of the home. They wish to extend an existing landing on the north side of the house a little over 10 feet to utilize an existing doorway to access the deck. Currently there is a landing and stairs from this existing door.

There is an existing screened in patio (deck) on the southwest side of the home, which is accessed from the living area as shown from the building permit plans shown in the memo.

The proposed deck would be adjacent to the dining room as shown in red on the second diagram included in the Staff Memo.

There are no setback issues from the waterfront side. This property is in a DEQ High Risk Erosion area, however, no permit is needed for a deck in which the supporting posts are “hand dug.” de Vries referred to the drawings submitted with the application for the Board of Appeals review.

Dreyer asked if the new ordinance for extending an existing structure applies to the setback as it relates to the landing.

deVries said it doesn't meet that requirement because it will extend 10' along the house. It's just not a landing but a walkway that goes from one point to another. The existing steps and landing were allowed under the ordinance. It's not a nonconforming situation.

Fleece said the relationship of the landing to the steps is not clear to him.

Dreyer explained the landing will go along the side of the house past the front to make the corner of the proposed deck. As he understood the diagram, the steps will be moved toward the street.

De Vries said the lower diagram shows what is to be added. From the side door a 4' wide deck will be added with steps going down to the grade level. It extends 4' into the setback which presents the problem.

Rick Uldricks of Uldricks Construction addressed the application. He proposes the 4 x 4' platform as an effort to keep the entry point as minimal as possible. There is a proposed 12' x 12' deck to be added to the home. This is a unique piece of property because of the slope in the land, thus the platform will be raised.

Fleece asked how the dimensions of the present landing compare to the proposed landing.

Uldricks said the dimensions were the same as it extends toward the north with more risers to be added for the downhill drop.

PUBLIC HEARING

Chair Dreyer opened the Public Hearing at 6:41 P.M.

There was no comment.

Chair Dreyer closed the Public Hearing at 6:42 P.M.

Dreyer noted for the record two letters were submitted to the Township and both did not support the application.

Board Discussion:

Pollock says it seems to be of minimal impact to extend the walkway for the landing. It won't extend further to the north, just needs to go around the corner to get to the deck.

Fleece said it's being elongated which does not violate any setback.

Dreyer agreed but reminded the Board of Appeals that they have to meet the standards.

Fleece said it's not self-created and wondered if there is an alternative.

Dreyer disagreed and said it is self-created because the applicants want a deck.

Eade asked if special considerations require consideration of the extended deck.

Pollock noted the slope is part of the problem so could it be a special consideration.

Dreyer referred to the fourth standard which the Board of Appeals has to meet. He explained the Township has to follow the standards.

de Vries pointed out the fourth standard addresses whether the condition of the property and the ordinance created the hardship. The desire to have the entry at a certain point can be understood as self-created. He said there are a couple of options which wouldn't require a variance.

Dreyer referred to the accessibility issue. Could the Board of Appeals interpret it as extending the existing setback in order to allow entry access. Does it qualify for consideration of the standards in Sec. 38-483 (e) for steps and small landings, although there is no definition of small landings.

de Vries said the Zoning Board of Appeals is allowed to interpret, but it is still the 4' setback issue that we are dealing with.

Fleece said he could not support the request.

Pollock moved, supported by Eade, to deny the variance request. It does not meet the fourth standard and is self-created.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried to deny the request.

Item #2 - A request by Karen Locke for a use variance to allow a second floor residential use in a commercial building per Section 38-634 of the Park Township Code of Ordinances. The property is located at 1200 Ottawa Beach Road, Holland, MI 49424. (Parcel #70-15-26-276-017, C-1)

de Vries introduced the item. The property is currently listed for sale. The owners feel they would have a better chance of selling the property if a residential use were allowed on the second floor. The property has most recently been used to house Westshore Board Sports. Prior to that in years past there was September Woods coffee shop, a salon, and an antique store. The real estate listing states the building was built in 1970, which predates our current ordinances. It is believed the first use involved a store on the lower level, with living quarters on the upper level.

Currently Park Township does not allow for mixed residential and commercial uses in the C-1 zoning district; in fact there is no allowance for residential use of any kind. There is an allowance for multi-family use in the C-2 district.

A building permit issued 1/29/2002 for the main floor remodel also reflected plans for the 2nd floor of the building. The plan, shown in the Staff Memo, reflects the 2nd floor consisted of an office, facial/massage room, changing room, bathroom, a nail room, and a kitchen/reception area. This would indicate that the non-conforming residential use of the building had been converted to a conforming commercial use of the entire building.

The current owner indicated that the residential use existed a short time ago and should be allowed to continue.

As the request is a use request, all the standards listed in Section 38-70(2) must be met to grant the variance. In addition, a use variance requires a 2/3 majority vote of the members. This will require four (4) votes to authorize the request.

Joel Genzink, Realtor with ReMax Lakeshore, spoke for the applicant. He said he was the listing broker for the sale of the property. He stated the Township did not notify the owner that the residential use was not allowed. He suggested the Township should consider grandfather privileges because the Township failed to notice the applicant the use was changed to commercial. He said he relied on online documentation that stated the Township was allowing the residential use to continue. The owners have used the second floor as residential for the last 7 years and marketed it as residential. He claimed the Township did not update the necessary information on this property.

PUBLIC HEARING

Chair Dreyer opened the Public Hearing at 7:07 P.M.

There was no comment.

Chair Dreyer closed the Public Hearing at 7:07 P.M.

Pollock could see no objection to a residential/commercial combination in a commercial area.

Dreyer noted the Township states this property is residential on the tax bill.

de Vries said the Township assessor brought his attention to this situation. In the assessor's records this property is considered commercial. The issue on the mixed use arose when the building permit was pulled for use on first floor. The second floor plan was requested to document what the use was for that building. If the conversion back to residential was done several years ago it was done improperly. No permits show any change.

Fleece asked if the permit was executed.

de Vries said the permit was issued for work on the first floor. He added that the Township documented the upstairs use of the building which became part of the use. If the upstairs was converted for commercial use in that commercial building it would not have needed approval. At the time the owner's office was upstairs as was a nail salon.

Grimm asked when the change occurred.

De Vries said the assessor said it was zoned all commercial, however, no one in the Township office knows when any change occurred.

Grimm asked if there is a separate entrance to the upstairs.

The applicant said there is.

Genzink said he was not questioning the commercial use, but asked why the Township has changed the use from residential to commercial.

Fleece asked about the reliability of the online reference cited by Genzink.

De Vries said he would have to ask the assessor. He checked on it himself and noted the property is listed commercial through the assessing program.

Dreyer said once the property was used commercial any consideration for grandfathering is over. This is now a variance request.

Fleece asked if we can return to this request at a later date to allow time for confirmation on the accuracy of consumer access information as opposed to what the Township shows internally.

de Vries said we can look at the online error, but it still does not change the status of the building. It appears that building was commercial and we have written documentation it was converted to commercial use. That would eliminate the grandfathered residential use. It is difficult to say how this has come about.

Grimm asked if the burden of proof is on the Township in this case.

de Vries said the burden of proof is generally on the property owner to show non-violation of the ordinance. This is why they have to meet the standards.

Fleece observed that the standards cannot be met.

Genzink asked why it can't be considered a grandfathered use.

Dreyer replied the Township has no proof it was residential at one time and says it should be considered commercial. And, the Zoning Board of Appeals has standards it has to meet. In his opinion, the request does not satisfy the standards. Our issue is how do we grant the applicant permission to break the law when we don't have an argument to support it

Grimm asked if the tax values show whether this property is commercial or multi-use.

Eade suggested tabling the request to further explore if there is an issue; if there is not an issue we should propose to deny the request.

Pollock noted in the C-1 commercial use district the ordinance states there is no residential use allowed.

Dreyer recommended postponement to acquire more information. He asked the applicant to pursue this course and work with the Township to try to obtain clarification on the unanswered questions about the property.

The item was tabled until the next meeting.

Item #3 - A request by Holly Little and Linda Anderson to enclose and add a roof structure to an existing non-conforming deck that does not meet the rear yard requirements of Section 38-276 (3) of the Park Township Code of Ordinances. The expansion may be authorized under standards found in Section 38-483 (e). The property is located at 2224 N. Bristol St., Holland, MI 49424. (Parcel #70-15-21-477-006, R-3)

de Vries explained the unique background of this application. The home was constructed in 2006. The current owners purchased the home in June of 2016. The construction was allowed even though the plans indicated a raised deck that left a rear yard of 40 feet instead of the required 50 feet. There is no record of other building permits or variances. In June of this year a permit application was filed to enclose the existing deck.

The deck is considered non-conforming even though the ordinance at the time it was built would not have allowed it without a variance. As such Section 38-483(e) is applicable. This will be an authorization as opposed to the typical variance.

As the request is for an authorization, the standards listed in Section 38-483(e) should be considered. The first standard (1) is really part of the ordinance and need not be applied.

Kevin Roelofs, of KR Construction, spoke to the application.

He explained his intent is to enclose the deck with walls to the roof which will screen the deck area. He is not going beyond the current deck's dimension. He noted that every backyard is very narrow in that area.

Dreyer said if there are no changes in the encroachment area beyond the current deck the request should not be a problem.

PUBLIC HEARING

Chair Dreyer opened the Public Hearing at 7:32 P.M.

There was no comment.

Chair Dreyer closed the Public Hearing at 7:32 P.M.

Dreyer noted there were two letters submitted to the Township. One was in support and the other was a maybe, provided the rules were followed.

Fleece moved, supported by Eade, to support the request.

Fleece reviewed the standards:

(2) The proportion of the main wall which has been altered by the projection; and,

The applicants state they wish to add a roof, and then screen in the existing 10' x 21' deck. There is nothing altered, it's an upward expansion on the existing footprint.

(3) The overall effect of the proposed projection on adjoining properties and the surrounding neighborhood.

It is an upward projection, not lateral, so there is no impact on neighboring properties.

The application states this is not exceeding the existing deck, and will not obstruct any views of neighboring properties.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

Election of Officers:

Dreyer suggested a postponement of the vote for election of officers until the next meeting.

We can continue the current slate of officers until a vote can occur.

Eade moved, supported by Fleece, to postpone the vote for election of officers until the following month.

Voice Vote:

Ayes 5, Nays 0.

ANNOUNCEMENTS:

The next regular meeting is August 28, 2017. De Vries has two applications.

PUBLIC COMMENT

Dreyer opened Public Comment at 7:40 PM

There was no comment.

Dreyer closed Public Comment at 7:40 P.M.

ADJOURNMENT

Eade moved, supported by Pollock, to adjourn the meeting at 7:41 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall
Recording Secretary
July 26, 2017

Approved: