

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

Regular Meeting  
November 28, 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, Dennis Eade, Dave Fleece, John Foster, Sally Pollock

Absent: Dan Hendon (alternate)

Staff: Ed de Vries, Zoning Administrator

**APPROVAL OF AGENDA:**

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

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

**APPROVAL OF MINUTES:**

Dreyer noted a correction on page 7. The figure "32.3' " should replace 13'.

Motion by Foster, supported by Pollock, to approve the minutes of the October 24, 2016 Regular Meeting as amended.

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

**BUSINESS ITEMS:**

**Item #1 A request by John & Barbara Francis** to construct a single family residence with a setback of 36 feet from Washington St. where 40 feet is required, on a double frontage lot per section 38-306(1) and 38-496 of the Park Township Code of Ordinances. Said land and premises are located at the northwest corner of Washington St. and N. 160<sup>th</sup> Ave., Holland, MI 49424. (Parcel #70-15-22-481-015, R-4)

As background, this property was granted a variance to allow for a 36 feet setback from Washington St. on September 28, 2015. No action was taken since that time to utilize the approved variance. Section 38-70(3) of the PTZO addresses the time limitation on variances.

“Any person who is granted a variance under this chapter must, within one year of the date on which the Zoning Board of Appeals takes action to grant the variance, take affirmative action to exercise the rights granted according to the variance. For purposes of this section, the term "affirmative action" means either commencing the use for which the variance has been granted, or obtaining all necessary permits in compliance with Section 38-33 for the construction of a building or structure authorized by the variance. Failure to take affirmative action in exercising the rights granted according to a variance within one year of the date on which the Zoning Board of Appeals takes action to grant the variance will result in the automatic cancellation of the variance granted. If the permit granted pursuant to Section 38-33 expires, or, if such permit is renewed, if the renewed permit expires, then the variance pursuant to which the permit was issued shall be automatically cancelled.”

After the variance was granted last year, the applicants exercised a contingent offer to buy the property. No building permit has been applied for, so the variance expired September 28, 2016.

From the staff memo for the September 2015 meeting: “This lot is a 66'x 142' 9,372 square foot corner lot. A lot of this size may be used for a single family residence provided there is public water and sewer, which is available in the street. Because it is a corner lot, both sides having frontage on the road must meet the front yard setback requirement. This lot was platted as lot 23 of the Lake Park Subdivision in 1927. At one time it had been joined with lot 24 to the north, but a split was approved in June 2008 reverting back to the original platted lot. There is no record of a structure having been built on the lot and it is currently vacant. There is no record of a past variance on the lot.” (Prior to September 2015)

de Vries said the application provided an engineer's drawing which shows the allowable building envelope as being 19'x 77'. Section 38-507(7) of the Park Township Zoning Ordinance requires a minimum width of 20' across any front, side, or rear elevation for a single family home. The R-4 district requires a total of 20' of side yard, with a minimum of 7' on one side, and a 25' rear yard. The applicants are proposing to build a house 22' wide, and are asking for a 36 foot setback from the south line along Washington Street.”

For reference, last year the Zoning Board of Appeals approved a variance of 4 feet from Washington Street, allowing a front yard of 36 feet. It was mistakenly characterized as a non-conforming lot in that it did not have 85 feet of frontage, but the lot does have the required frontage on Washington Street. It is not required on both street sides. The net result is a shallow wide lot. The depth of the lot with the required setbacks would not permit a residence to be built without a variance either from the required setback, or the required minimum width of the house.

As this is a dimensional variance request, the application must satisfy all four standards found in section 38-70 of the Park Township Zoning Ordinance.

The applicants, Barbara and John Francis, spoke to their request. They had an original design for the house but because of the limitations of the lot they had to design a smaller house. They would like to move one foot further from the north property line. Mrs. Francis said they could move the house one foot north but it would be close to the house to the north. Mr. Francis said the home to the north abuts to the property line. They shared the drawing with the Zoning Board of Appeals.

Foster asked if the trees would be preserved on the lot and if the applicant had applied for a building permit.

Francis said no trees will be removed. He had not applied for a permit since he was waiting for the Board of Appeals ruling on the variance request.

## **PUBLIC HEARING**

Dreyer opened the public hearing at 6:41 P.M.

No one spoke to the request.

Dreyer closed the public hearing at 6:41 P.M.

## **Zoning Board of Appeals Considerations:**

Fleece asked what was permitted for the variance from last year.

De Vries said it was the same variance.

Dreyer supported allowing the one foot to keep the applicant from having to move closer to the neighboring house.

De Vries confirmed from the aerial photo the house to the north is very close to this lot.

Fleece asked if this would indicate a side yard of 7 feet. This was confirmed.

Foster asked for the reason of the black plastic along the ground.

Francis said it is on the neighbor's property so he is not sure; it might be a temporary fence.

Chair Dreyer asked for a motion if the Board supported the request.

Fleece moved, supported by Eade, to approve the variance request.

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.***

Fleece noted it is a narrow lot on a corner. The additional foot to the north from 7' to 8' would help to create a buffer. It's burdensome because of the restrictions the buildable lot area would not meet the ordinance.

*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.*

Fleece said offering 8' side yard instead of 7' would provide relief to both property owners. It's only a 22' wide home on a small lot and will increase the values of the neighboring properties. A lesser relaxation would not provide 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.*

This is a corner lot with front yard setback requirements on two sides results in a shallow building envelope.

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

This was not created by the owner. The building envelope is limited by the lot.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

**Item #2 - A request by Ed TerVoort on behalf of John Apotheker Trust** for an addition to the residence with a rear yard of 35 feet where 50 feet is required per section 38-244(3) of the Park Township Code of Ordinances. Said land and premises are located at 2432 Central Ave., Holland, MI 49424. (Parcel #70-15- 28-181-005, R-2)

The background information lists the lot description as lot 4 of the Cote-La-Mer Plat 1. This 11 lot subdivision plat was recorded in 1970, and is located at the south edge of Idlewood Beach Subdivision. The 75' x 160' lot is non-conforming due to size, 12,000 square feet where one acre (43,560 sq. feet) is required. The current owner purchased the home in January of 2014. The house was built in 1995.

The original building permit site plan for the house incorrectly shows the lot as being 75' x 170', with the home set back 40 feet from the front. (The site plan submitted for this variance is the same site plan used for that building permit application.) GIS reflects a front yard of approximately 55 feet. While GIS is not entirely accurate, it is also doubtful it is off by 15 feet. In

1996 a permit for a 20' x 20' deck was issued. The deck is in the rear of the house. An entry and front deck was added in 2004, and the rear deck replaced. The roof was re-shingled in 2010.

de Vries referred to the GIS map on the Staff Memo which shows the +/- 55 foot front yard, and +/- 25 foot rear yard to the deck. The photo shows side yards of 13' and 7' where the house plan reflected 10' on each side. A 3' deviation on GIS is not unheard of. The request is to add 12 feet to the rear unheated porch, bringing it in line with the deck, and to insulate the space. The applicant is applying for a 15 foot variance from the 50 foot rear yard requirement, leaving a rear yard of 35 feet. It would appear that this may actually result in a rear yard of +/- 25 feet however.

de Vries noted additional information is needed to substantiate the standards for this variance. In addition, if the Zoning Board of Appeals is inclined to grant this, or a relaxed variance, there should be a condition attached to require an accurate survey of the property.

As a dimensional variance request the Zoning Board of Appeals must find that the standards listed in Section 38-70 have all been met.

Ed TerVoort spoke to the application as builder for the owner.

Dreyer asked if the present deck will remain.

TerVoort said they will build east of the deck. The addition will not extend beyond the existing deck.

Dreyer noted, according to the new ordinance, Sec. 38-483(e), the plan is acceptable and questioned the need for a variance.

de Vries said the Zoning Board of Appeals has authority to say the conditions of the new ordinance would apply.

Dreyer said it was his interpretation of the new ordinance if the builder does not encroach to the rear more than what is already present then the interpretation is accurate to accept this request.

Foster asked if there will be problems with any overhang.

TerVoort said there would not be.

Dreyer said the applicant is not encroaching any further than the existing structure.

de Vries said the ordinance (Sec. 38-483(e), if it applies, has three conditions that could be used to justify approval rather than the four standards found in Section 38-70.

Fleece asked how the building plan is not within the confines of the outer part of the house.

Dreyer summarized the dimension requirements in the ordinance: if the applicant does not build any addition further back from the wall and there are no roof overhangs then this should be acceptable to meet the setback.

de Vries asked TerVoort if the existing deck is 30" above grade.

TerVoort confirmed it was.

## **PUBLIC HEARING**

Dreyer opened the public hearing at 7:00 P.M.

John Apotheker, the owner stated that he spoke to neighbors, and said none have objections to this request.

Dreyer closed the public hearing at 7:01 P.M.

Zoning Board of Appeals considerations:

Fleece asked, regarding the right and left elevations, if the steps are already there.

TerVoort confirmed they were.

Dreyer reminded the Board to interpret this according to ordinance Sec. 38-483(e) and use the three conditions.

Fleece moved, supported by Foster, to approve the variance request for the setback exception based on the three conditions required by Sec. 38-483(e):

**(1) The following are the projection dimensions:**

- i. Bay windows, chimneys, awnings and architectural design embellishments of dwellings that do not house or enclose habitable floor area nor project more than three (3) feet into the required setback.*
- ii. Roof overhangs that do not project more than two (2) feet into the required setback.*
- iii. Steps and small entrance landings or porches, including porticos corresponding to the area of the porch, provided that such porches and porticos do not project more than four (4) feet in to the required setback.*

de Vries noted the conditions of paragraph 1 of the ordinance do not apply. The applicant needs to meet the rest of the conditions based on the submitted plan.

TerVoort agreed. The roof overhang shall not go over 2' in the required setback.

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

Dreyer confirmed the main wall is not to be altered but added to.

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

de Vries suggested that the Board of Appeals can consider the neighbors' agreement given the wording in the ordinance. ZBA members concurred.

De Vries also requested that the Board of Appeals make a condition to the authorization that a survey of the property is done and supply a copy to Park Township. Members concurred.

Roll Call Vote:

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

Ayes 5, Nays. Motion carried.

**Item #3 - A request by Gordon Julius on behalf of Cheryl Bell** to construct a single-family dwelling with a main roof pitch less than one foot of rise for each four feet of horizontal run required by section 38-507(11) of the Park Township Code of Ordinances. Said land and premises are located at 697 Coolidge Ave., Holland, MI 49423. (Parcel #70-15-34- 453-054, R-3)

Background information notes this vacant lot was purchased by the current owner in May of 2014. There is no record of any previous variance requests. The .78 acre lot meets the zoning requirements of the R-3 zoning district. Approximately the rear 2/3 of the lot is listed as Forested Wetland, and a County Drain in the form of a creek lies at the rear lot line. The applicant submitted a building permit application for the proposed residence on September 26, 2016. On September 27 the permit was held due to not meeting the front yard setback and for the roof not meeting the requirement of section 38-507(11) which states: "The pitch of the *main roof* of the dwelling shall not be less than one foot of rise for each four feet of horizontal run." This is commonly referred to as a 3/12 pitch. The proposal is for a roof slope of ¼ inch rise over one foot, or .25/12 pitch.

The applicants did move the house rearward to meet the front yard averaging requirement. They did submit a separate permit for the foundation as they wished to get the work started before winter weather. The fact that the foundation is under construction should not be a factor in the decision of the Zoning Board of Appeals as the owner is aware of the possibility the variance might not be granted.

De Vries gave some history of the ordinance. The roof pitch requirement was part of a group of amendments to the Zoning Ordinance in April of 1982. The then labeled Section 4.29 was titled "Mobile Homes." The purpose of the section was to allow the "location of mobile homes outside of mobile home parks under stringent restrictions." In 1986 this ordinance was amended with some minor language changes, and retitled "Single Family Dwellings."

The roof pitch is a dimensional variance request, therefore, you must find that the standards in Section 38-70 have been met.

Gordon Julius, architect, representing Cheryl Bell, owner of property, spoke on behalf of the applicant. He shared photos of the area regarding the pitch of the homes in that community. There were some 40 homes that had varying pitch to the roofs. These homes range in value from multi-million to \$150,000. He said it was reasonable to assume the pitch of this home should be acceptable.

This is a unique home with a flat roof that may house a solar panel or other equipment in the future.

## **PUBLIC HEARING**

Dreyer opened the public hearing at 7:18 P.M.

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Dreyer closed the public hearing at 7:18 P.M.

Zoning Board of Appeals Considerations:

Eade asked if this pitch requirement is no longer relevant.

de Vries referred to another requirement that the character of the house must fit into the general character of the neighborhood. Consideration of the single family home is important. It would appear this ordinance was designed for a mobile home/manufactured home.

Dreyer said manufactured homes haven't had flat roofs for 15 years.

de Vries reviewed the conditions of the ordinance for manufactured homes. He noted that paragraph 15 in the ordinance emphasizes the home must be compatible with other homes in the neighborhood. He advised the ordinance could be revisited if the ZBA felt the ordinance is no longer applicable.

Pollock noted the architect probably can't wait for the change in the ordinance.

Dreyer said if we think this ordinance is meant for something else and is outdated then it is a hardship for the applicant.

Foster and Fleece asked, in light of the history of the ordinance, how this situation is relevant to the ordinance.

de Vries said one of the conditions is that the need is due to "unique circumstances of the property." In this case you do not have a hardship – the owner can construct around this. If the house can be built without a variance then you don't grant it. If you can find in favor of the four standards you can grant it.

Eade asked if the current ordinance applied to this request.

Dreyer suggested this ordinance should be changed, otherwise how can we meet the standards in this case. There are so many things wrong with this request. This ordinance

creates a hardship. Technology has moved past this ordinance. It's not self-created since the applicant is the unfortunate victim of an outdated ordinance.

de Vries found that most of the examples of the homes in the photos Julius provided don't constitute flat roof structures. There are a few so the question is: were they built prior to the 1980s? He knows of four built after 80s.

In visiting this community, Foster had a difficult time in finding any homes that had flat roofs. He asked the applicant if she had talked with her neighbors.

Julius said they have met with the neighbors in the cul-de-sac and there are no problems.

Dreyer wondered if we need the advice of the Staff Planner and/or Legal counsel. He is having a difficult time justifying a decision given the ordinance they have to base a decision on.

Pollock agreed that the current ordinance was meant for manufactures homes. This situation can't be addressed by the current ordinance unless it's changed.

Dreyer concurred that the Board of Appeals can't rule in favor based on the present four standards.

Foster asked about the status of ordinance revisions.

de Vries said the PUD ordinance has priority and there are other ordinances are on the list. In the best of scenarios, the Planning Commission won't be dealing with this ordinance revision for 4-5 months.

Julius asked if there can be a lesser interpretation.

Dreyer asked the architect how much slope is necessary to get it done.

Julius said, structurally, many design factors would have to be changed. Going to a conventional truss would increase costs. Julius said he had applied for a building permit and the foundation needs to be completed. There are many financial issues with any changes. He asked if the Zoning Administrator could make a decision, rather than rely on the Board of Appeals.

de Vries said he could not do that – it would violate the law.

Pollock asked if Legal Counsel can advise on the implications.

Dreyer asked de Vries if the Zoning Board of Appeals had the ability to interpret.

de Vries said he didn't think it was advisable to this degree.

Dreyer advised the applicant to table the decision for 30 days until the Township Legal Counsel and Staff Planner are consulted.

Foster said for the Board of Appeals to grant this request now would be a breach of the ordinance.

Eade moved, supported by Pollock, to table a decision on this request for 30 days. The Zoning Administrator and Board of Appeals chair will meet with the Legal Counsel and Staff Planner for advice regarding the appropriate remediation for this issue.

Voice Vote:

Ayes 5, Nays 0. Motion carried.

Foster suggested de Vries ask the Planning Commission to consider a revision of this ordinance as soon as possible.

de Vries said he will send copies of the application and the Staff Memo to the Planning Commission.

### **ANNOUNCEMENTS:**

De Vries advised that the next regular meeting is December 26, 2016 which is the day after Christmas. The Board of Appeals discussed an optional date and agreed to meet on December 27 if an application is submitted to the Township.

De Vries noted the sign ordinance is also to be amended as soon as possible.

### **ADJOURNMENT**

Eade moved, supported by Fleece, to adjourn the meeting at 7:56 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall  
Recording Secretary  
November 30, 2016

Approved: December 27, 2016