

**MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS**

Park Township Hall
52 152nd Street
Holland, MI 49418

Regular Meeting
October 26, 2015
6:30 P.M.

DRAFT-APPROVED COPY

CALL TO ORDER:

Chair 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, Sally Pollock, Mike Toscano

Absent: Dave Fleece, John Foster

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

APPROVAL OF AGENDA:

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

Voice Vote: Ayes 4, Nays 0. Motion carried.

APPROVAL OF MINUTES:

Dreyer noted one correction on page 16. The vote was ayes 4 and nays 1 instead of 0.

Motion by Eade, supported by Toscano, to approve the minutes of the September 28, 2015 Regular Meeting as corrected.

Voice Vote: Ayes 4, Nays 0. Motion carried.

BUSINESS ITEMS:

- 1. A request by James Cook on behalf of Dean Achterhof** for an addition to the house that results in front yard setbacks of 19 feet and 17.8 feet instead of the required 40 feet per section 38-276(1) of the Park Township Code of Ordinances. Said land and premises are located at 1368 Waukazoo Dr., Holland, MI 49424. (Parcel #70-15-35-202-002, R-3)

Bowman introduced the item. This lot is non-conforming due to size, 8500 square feet instead of the required 15,000 square feet. The lot is situated on the southwest corner of Waukazoo Dr. and Hemlock Ave. The lot description states it is the “northeasterly 85 feet of lot 36 Waukazoo.” The plat was dedicated in 1905. There is no indication of when this lot was split from lot 36 other than most likely was before the 1970’s.

The assessing records reflect the house was built in 1946. The existing house is non-conforming in that it does not meet the front yard requirements for either side facing the road. There is no record of any previous variances. As there are not any homes on the same side of the street in the same block within 100 feet, front yard averaging is not allowed. There was a permit issued in 1990 to add a garage, shop, and bathroom. In 2004 the roofing was replaced.

Staff referred to a diagram in the staff memo showing the building envelope. The garage, shop and bathroom were added to the south side of the house. A site plan from the 1977 survey shows the proposed addition which would follow the existing northerly wall and match a 4’ x 12’ extension on the front of the house.

James Cook described the reason for the request on behalf of the Achterofs. They want to have more usable living space, thus the need for the front yard setback variance.

Dreyer asked Cook if he plans to expand the dining room and entry which is why the addition is to the front of the house. Cook said currently the dining room is part of the kitchen. He would like to move the entry closer to the driveway and put the dining room at the front end of the living room which would provide expansion room for the kitchen space.

Dreyer asked about space the back of the house for the expansion. Cook said he looked at the rear of the house as an option but it’s on a slab. The floors would have to be ripped up as well as the slab in order to install plumbing. From a budgetary standpoint it wasn’t cost effective.

PUBLIC HEARING:

Dreyer opened the Public Hearing at 6:38 P.M. There was no comment.

Dreyer closed the Public Hearing at 6:38 P.M.

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

Toscano 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 existing lot was platted long ago making it difficult to make improvements. The use of front yard averaging is not available in this instance. The slab construction makes it difficult to move the plumbing.

- 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.***

This will allow a small expansion to the living area, without encroaching further into the setbacks. No lesser variance is available. This will also enhance the neighborhood.

- 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 small lot with two roadway frontage requirements.

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

The owner was not involved in creating this platted lot nor in the original location of the house.

Roll Call Vote:

Toscano, aye; Pollock, aye; Dreyer, aye; Eade, aye.

Ayes 4, Nays 0. Motion carried.

Bowman added that it should be noted the problem of the slab to the rear of the house presents a hardship.

Pollock also noted the Planning Commission is to amend this ordinance so there was justice in not having to wait for the pending change.

2. A request by William Sikkel on behalf of Matthew and Michelle Alepra to build a 2½ story home on the footprint of the existing 1½ story home that does not meet front and side yard setbacks required per section 38-246(1)(2) of the Park Township Code of Ordinances. Said land and premises are located at 122 Michigan Ave., Holland, MI 49424. (Parcel #70-15-2-8-135-017, R-2)

Bowman presented the background information on this item. The property in question is lot 30 of the Idlewood Beach Subdivision, platted around 1925. This lot is unchanged from the original plat, and is non-conforming in area and width.

The current house is estimated to have been built around 1965. The house is non-conforming due to setbacks, and is just short of meeting the minimum square footage requirement for a 1½ story home. There is also a requirement that a single family residence have a minimum of 120 square feet of storage area. The application implies that it may be deficient in this requirement as well though no measurement is given. There is no record of building permits. The current owner purchased the home in September 2014.

In October of 2014 the applicants applied for a variance to raise the house from 1½ stories to 2 stories, and expand the footprint by adding an attached garage and small projection to the north closer to the property line. The variance request was denied as the findings were that it did not meet the four standards to grant the variance.

The owners are now requesting a variance to raise the house on the existing footprint with no expansion outward. Even though they propose to remain in the existing footprint, the Park Township Zoning Ordinance requires that any addition, including upward must meet the current requirements of the zoning ordinance. Although there are current efforts being made by the Park Township Planning Commission to create new zoning regulations which could have some effect on this request, these provisions are still being studied and are not currently applicable or available for this proposed expansion.

As noted in the diagram in the Staff Memo, the 40 foot setback from Michigan Ave., and the 10 foot setback from the side, leave virtually no building envelope. In addition, there are restrictions from the MDEQ as the property is classified as being in both the Critical Dune and High Risk Erosion Area. The approximate area of the dune is shaded in red on the Staff Memo diagram on page 5.

William Sikkel presented the request on behalf of the applicants. He noted Amy Hagood, architect for the project, and Greg Windemuller, builder for the project, are available for questions related to the project. Sikkel then explained the new application is submitted for review and has been designed to be more in alignment with Township ordinances. The new design is a vertical expansion, not horizontal, taking into consideration the comments from the past request.

Sikkel elaborated further on the request. The lot is unusual, surrounded to the east and south by Michigan Avenue. Because of the dune setback and side yard setback to the north, essentially it's a negative building envelope so any project requires a variance. Built in 1955, at 1084 square feet, the house is substandard by today's standards. Also, the home is not insulated. The larger concern is lack of storage and need for a garage. The total storage is less than 60 square feet. The proposed garage is now part of the existing footprint and there is no planned expansion of bedrooms or living space.

Hagood described the proposed design. With the addition of the garage space within the footprint the bedrooms will be placed upstairs. The bedrooms will have additional needed height and closets. They have MDEQ approval regarding requirements for the dune and septic approval has been obtained. Technically, the existing foundation does not meet building code requirements, so a frost wall will be constructed to provide additional support.

Sikkel mentioned correspondence from neighbors regarding the septic system. This has been applied for and is in place and is not within purview with the variance request.

He reviewed his applicant's rationale for this request meeting the four standards:

1 – Strict conformance with the ordinance is unnecessarily burdensome because of the nature of the lot and the resulting negative building envelope making it impossible to comply.

2 – Many of the adjacent properties in the subdivision have garages and adequate storage and have been granted variances to second story additions, including the home across the street. This would provide substantial justice to the applicants.

3 – This is a unique property and there is no available additional building space beyond the footprint. This is not a typical lot for this district.

4 – None of the features of this property were created by the property owner.

PUBLIC HEARING:

Dreyer noted the Township has received eight letters which have been read by the members of the Planning Commission. He asked speakers to not read letters if they have submitted them.

Dreyer opened the public hearing at 6:55 P.M.

Lynn Hendrix, 155 Michigan Avenue, pointed out that the applicants should have been aware of the restrictions of this property and the ordinance requirements. She pointed out the need to protect the area. She had no advance warning or notice from the neighbors. The neighbors in the community talk with each other but there has been no communication with the applicants. She altered the building plan for her home to be compatible with her neighbors' concerns. In her opinion, strict compliance would not be burdensome to the applicants. The foundation won't support what the new building proposes and this property is right at the edge of the dune. This proposal will not do justice to the neighbors and construction will impact road access. The practical difficulties are self-created.

Robert Mulitz, 118 Michigan Drive, stated his concern is the rising water level of Lake Michigan which has been a major problem in the past. He shared copies of pictures of this property and the adjoining properties which incurred serious damage during storms in 1972 and 1986. He also shared copies of a chart of water levels for approximately 100 years. In 1964 the three cottages, of which this property is one, were built along the shoreline when the water level was low. However, in 1972 the water level increased with a storm that cut away 40' of the dune. Those cottages had 100' of frontage originally. Wooden walls were constructed after this storm. In 1986 another storm cut away 30' of the dune. In 1998 steel walls were constructed to replace the wood walls. Now the water level is rising again which is of serious concern. The water's edge is now 50' from the dune.

Toscano asked if Mulitz lives on the dune. Mulitz said he did and he feels that the construction of this home will negatively impact his property.

Jim Baar, 146 Lakeview Avenue on the southeast corner of Idlewood Beach, stated his concern is access to the beach. There are three public accesses – the vast majority of the residents use the south access. His concern is what the impact will be regarding the use of the beach area for the residents if this home is built.

John Kooyers lives east of the access at 2421 Ruth Avenue. He noted there is a 2½ story house and a 3½ story house in the nearby community. These property owners received variances to build these multi-story homes so it is his opinion these applicants should be treated just as fairly with their request.

Attorney Randy Schipper represents two homeowners in the Idelwood community, Lynn Hendrix and the Mulitzes. He reviewed the legal basis why this variance shouldn't be granted. He agreed the setback would be unnecessarily burdensome but that is the only justifiable basis of the four standards. Instead of adding a garage, storage space could be planned. The personal reason for adding a garage is not relevant to variance. He said there is a history of turning down variance requests for garages in this neighborhood and cited a recent denial. He shared copies of a real estate summary sheet describing this home as a "cozy cottage." It's a very small lot, the smallest in the neighborhood, and it has a negative building envelope. If the applicants wanted a larger home they should have bought one. He stated there is nothing wrong with the existing home, and the expansion will block the winter sun from the home to the north.

Dreyer noted that the requests Schipper referred to was with regard to expansion of the footprint.

Dreyer closed public comment at 7:20 P.M.

Board Discussion:

Pollock asked if the applicants planned to live in the cottage year-round. Sikkel said the Alepras would like to spend time in the winter, but lack of storage and insulation doesn't allow that. Mrs. Alepra said their goal is to use the property year-round.

Toscano asked if this project is an expansion. De Vries said it is not a footprint expansion – the new construction is vertical only. Bowman said the reason the variance is needed is because any expansion, even on the second floor, must meet the setback requirements.

Toscano asked if this is new construction and if the entire house will be torn down. He also asked for further explanation of the concrete pad to be constructed and if the 35' height requirement would remain. Sikkel said the house is not going to be torn down and reconstructed. The exterior walls will remain and the house will be lifted to accommodate the addition of the garage.

Toscano also asked about the oak tree on the north side of the property. Greg Windemuller, builder for the project, explained additional details about the construction. The 35' would be met. In regard to the oak tree on the north side, it is shared on the property line with the neighbor. The tree will be protected although five to six limbs will have to be cut. He has discussed the situation with an arborist in order to save the tree.

Pollock asked builder for the time frame of the construction. Windemuller said construction should be six to eight months.

Pollock also asked about moving heavy equipment on the narrow lanes of this community. Windemuller said he will talk with the neighbors in order to accommodate them as much as possible. There are some areas where equipment can be dropped off and put on trailers to move to the site. He has done work in that neighborhood over the years so he is familiar with the area.

Toscano asked if conditions can be placed on the variance. Bowman said they can if they meet concerns that have been brought up and if they are pertinent to the standards.

Pollock noted that views are so important so it is necessary to remind everyone that one does not own their view. This has been an important consideration on Lake Macatawa.

Toscano supported the importance of consideration of neighbors.

Pollock asked about the critical dune erosion and something has changed about the permission granted in August? Sikkel replied that a permit has been approved by the MDEQ.

Toscano asked if any details of the plan have been changed since the MDEQ approval was given. Amy Hagood said the only change is an architectural change on the plan. Otherwise the plan has not changed.

Pollock moved, and Eade supported, to approve the variance as requested for this property.

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 size, shape and corner location of the lot results in no building envelope, to do anything would require a variance.

- 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.***

Nothing less could meet the current requirements for a home. This request represents a lesser relaxation of an earlier variance request in that the building footprint is not being expanded.

- 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 lot is irregular in shape, the crest of the dune, and Michigan Avenue right-of-way which wraps around the property are unique and not like others in this neighborhood.

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

The applicant did not create the small lot, or dune restrictions.

Toscano noted the applicants have brought a lesser relaxation with the new application request.

Pollock said it was admirable the applicant is willing to place the garage under the house.

Toscano said we want to work with the neighbors – residents want to live in this community. With this in mind, he would like to add a condition to the motion that construction equipment and materials do not block full public access. There would be a penalty if this occurred.

He confirmed with de Vries that the Township could impose a penalty if this occurred.

Hagood wanted a definition of “blocking.” Dreyer said the builder knows that he can’t block public access. This is public right-of-way.

Bowman asked to add the staff recommendation for findings related to standard c.

Dreyer asked Pollock and Eade if they supported Toscano’s condition to the motion. They replied in the affirmative.

Roll Call Vote:

Toscano, aye; Pollock, aye; Dreyer, aye; Eade, aye.

Ayes 4, Nays 0. Motion carried.

ANNOUNCEMENTS:

Toscano shared with the Zoning Board of Appeals that the Township Board sent the Master Plan back to the Planning Commission. With regard to issues dealing with density and variances, historically where rules weren’t defined, we have had a need for a defined plan to make recommendations. The Township Board is asking for clarity.

Dennis Eade said a special meeting of the Planning Commission has been scheduled for November 10 to address the Master Plan issue.

De Vries said there may be one application so far for the November 23 meeting.

PUBLIC COMMENT:

Dreyer opened public comment at 7:43 P.M.

Kerry Bos asked about the construction at occurring at 1375 Waukazoo Drive. The construction lasts until 10:30 at night. She has called the police and talked with the Township office. She was not notified when this was going to happen and it's behind her home. The contractor is not respecting the legal time of day; she has complained and hasn't been heard. She has been told the legal time allowed is from 7:00 A.M. until 10:00 P.M. She asked about the time frame because it's gone on for a long time.

deVries asked if she has reported it. Bos said she has reported it and said an officer told her the legal stop time was 11:00 P.M.

De Vries said there is a stop work order on that property so there should be no construction going on. Bos said there was construction activity today.

Dreyer closed public comment at 7:47 P.M.

ADJOURNMENT:

Toscano moved, and Pollock supported, to adjourn the meeting at 7:47 P.M.

Voice vote:

Ayes 4, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall
Recording Secretary
October 28, 2015

Approved: December 28, 2015