

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

Regular Meeting
September 28, 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, Dave Fleece, John Foster, Mike Toscano

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

APPROVAL OF AGENDA:

Motion by Foster, supported by Fleece, to approve the agenda.

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

APPROVAL OF MINUTES:

Motion by Toscano, supported by Eade, to approve the minutes of the August 24, 2015 Regular Meeting as presented.

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

BUSINESS ITEMS:

1. (postponed from August 24, 2015) **A request by Jeff Hennip** on behalf of Van Andel Properties, LLC to reconstruct a non-conforming multi-family structure that does not meet front yard setback per section 38-336(1), and requesting an interpretation of height for a multi-family structure in a C-2 zone per section 38-335, and to authorize a lesser rear yard setback per 38-495(2) of the Park Township Code of Ordinances. Said land and premises are located at 670 Bay Road, Macatawa, MI 49434. (Parcel #70-15-33-380-024, C-2)

Bowman provided the background for this item. There is no record of when the existing 3 story structure was built, but it most likely predates the Township current ordinance. The existing structure is non-conforming due to having 3 full floors though it does comply with the 35 foot height, and does not meet the front yard requirements from the private road and the rear yard abutting a body of water. Assessing records indicate there were four units in the building, the application states there are now 3. The only permits on file are for attaching a 26 x 48 garage in 1990, and new siding in 2000. No previous applications for variances were located.

The application requests permission to remove the existing structure, and erect a similar 3 story/3 unit structure on the same footprint. Indications are that the applicant considered remodeling the existing building, however, problems with the foundation resulted in the request to rebuild.

The application originally was in error in presuming that no variance was needed for the height. The proposal is for a 35 foot tall structure, however, it has 3 floors where the ordinance states 2½ stories are the maximum. The applicant has now submitted a revised application requesting an interpretation of the height requirement. In addition, the Zoning Board of Appeals is being asked to authorize a lesser rear yard setback abutting Lake Macatawa under the newly enacted revised ordinance of 38-495.

In addition, questions were raised on the following two ordinances as to whether or not they may be applicable.

Section 38-482 Restoration of unsafe buildings. “Subject to the provisions of Article VIII of this chapter, pertaining to nonconforming uses, buildings or structures, nothing in this article shall prevent the strengthening or restoring to a safe condition of any part of any building or structure that is unsafe.”

In the staff memo for last month a reference was made to Article VIII Sec. 38-633: **Restoration and repair.** “All repairs and maintenance work required to keep a nonconforming building or structure in sound condition may be made *but it shall not be structurally altered to permit the use of such building or structure beyond its natural life.* In the event fire, wind, act of God or public enemy damages any nonconforming building or structure, it may be rebuilt and restored to its former condition” The Zoning Board of Appeals would need to find that this would not permit the use of the building beyond its natural life in order to permit the reconstruction under this section.

The property is zoned C-2 Resort Service District. Beside other listed commercial uses C-2 does allow a multi-family structure using the requirements of the R-5 Low Density Multiple Family Residence District.

Greg Raad, Nederveld Associates, Inc., representing Van Andel Properties, explained the rationale for the variance requests on this building. He clarified the building is not unsafe, nor are there issues with the foundation. The issue is the building is settling. In reviewing the design process and the remodel of the building, they had to look at the gradual settling of the building and examine what steps were needed to strengthen the foundation. The final

decision was to tear it down and rebuild. He stated the building would last for a number of years without any work to correct the issue, but they felt it prudent to start over.

Raad noted on a map where the platted Bay Road runs through the property. There is a new private Bay Road which is closer to the building. On the front yard variance, the existing building is 4' from the new easement, and that distance will not change. Regarding the height, Raad said he understood in the C-2 zoning they can have a maximum of 35'. Therefore, he is not asking for a variance on the height but an interpretation of 2 ½ stories vs. 3 stories. With regard to the waterfront side the existing structure distance will be the same; those standards will be met. The applicant asks only for permission for the building envelope.

Bowman clarified the grammatical issue surrounding a height determination. Due to the use of the term "or" when referring to a limitation, and absent a qualifying phrase like "whichever is greater/lesser", then both 35' and 2 ½ stories limits the height and neither can be exceeded.

Bowman also noted that Raad mentioned the waterfront issue as a variance, however, it is a consideration in the new ordinance, not a variance.

Dreyer asked for clarification on which district regulations apply considering resort services commercial zoning refers to R-5 residential zoning.

Toscano asked what the intended use of this property will be, C-2 resort use or residential. Raad said the use is residential.

Toscano said if residential then R-5 applies. The height should be limited by both 2-1/2 stories and 35'.

Bowman clarified that the C-2 zone refers to the R-5 zoning requirement; the R-5 is the correct interpretation.

Foster asked for the height of the current building. Raad said it falls within 35' but he is not certain of the exact measurement.

Foster asked is the building is currently occupied. Raad said there is office space and residential space that is currently used.

Fleece asked if the new footprint will be exact to the current footprint.

Raad said it will be approximately what it is now to accommodate the easements. There is room to the north they can work with in defining the footprint.

Dreyer ask if the Board should decide on these considerations separately.

Bowman clarified they should be considered separately especially where the standards are different.

Fleece asked if the water elevation on the map is accurate. Raad said it is approximate since it was rendered over a year ago. He added that they will comply with the setback requirements.

Dreyer opened the Public Hearing at 6:55 P.M.

Public Hearing:

Nicki Arendshorst stated she was speaking on behalf of the Macatawa Park Cottages Association residents. She stated they have no problem with the proposal, but asked that the contractors communicate with them regarding the construction timelines. The gatehouse security would like to be notified when construction activity is scheduled.

Finding no additional comments, Dreyer closed the Public Hearing at 6:56 P.M.

Toscano moved, and Foster supported, to approve the applicant's request for the front yard setback of 4' from the easement as requested, stating it would be impossible to comply with the front yard requirement.

Foster asked Raad if he will need any permits from the DEQ.

Raad said the only permit he was aware of would be for the Water Resources Commissioner for soil erosion.

Toscano 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.**

Due to the shallow lot with the lake on one side, a steep dune on the other, and the placement of the private road it is impossible to comply with the front yard requirement.

- 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.**

The justice to the owner is the ability to use the lot for a building site. A lesser relaxation is not possible. There is no injustice to other property owners.

- 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 shape of the lot with the restrictions of being on the water and with a steep dune make the lot unique.

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

The difficulties of the dune and lake, as well as a lot platted before current zoning is not self-created.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

Foster asked if the decks noted on the drawing will be on the waterfront. Raad replied that the decks are at grade level. Raad said the setback is 22.2' and any new structural change will comply with the current zoning ordinances.

Dreyer reminded the Board that a motion regarding the rear yard setback must comply with 38-495(2) and the six standards noted in the Staff Memo on page 6.

Eade moved, and Fleece supported, to approve the request for the current setback of 22.2' from the water.

Eade reviewed the six standards:

a. The location of buildings on adjoining properties;

There are no adjoining buildings on the same side of the street.

b. The effect of construction on the lot in question on the view from adjoining properties;

Other than during construction, no permanent effect.

c. The potential effect of erosion and flooding from high water on the lot in question;

None. They will need a soil erosion permit.

d. The effect, if any, of the proposed building and any related improvements on existing sea wall or other flood control or erosion devices located on adjoining properties;

No greater effect than the current building.

e. *The relative proximity of the proposed building to adjoining properties specifically including proximity to occupied dwellings;*

Same distance as the existing building.

f. *The effect of the proposed building on adjoining properties and the surrounding neighborhood;*

The new building may improve the adjoining properties.

Foster asked when construction would begin on the project. Raad said they are still at the design stage so he has no idea of the timeline for construction.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

Dreyer noted the Board does not have to consider any standards with regard to the height interpretation issue. Bowman concurred and explained it is how the Board of Appeals wishes to apply the statement about height. It is a matter of “or” or “and” in the statement referring to 35’ and 2 ½ stories. Raad said he isn’t asking for an interpretation if it would have to apply to the entire Township.

Dreyer said the Zoning Board of Appeals needs to interpret it in this instance because the property is in the C-2 zoning. The Planning Commission had authorized 35’ and 3 stories for the adjacent PUD. Toscano urged caution because the decision will reflect on the Township. The intended use is residential, R-5, 35’ and 2 ½ stories. It is not a PUD. He cannot support just 35’.

Dreyer said it is up to the Board of Appeals to make this interpretation for this request.

Foster found there is flexibility with the building envelope just approved. Raad said the plan is to not go beyond 35’.

Fleece said, from his perspective as an architect, he interprets 2 ½ stories as the more stringent of the two considerations.

Raad agreed with Fleece’s statement. It could be 3 stories but it would not be higher than 35’.

Toscano moved, and Foster supported, that the height regulation of 35’ and 2 ½ stories will comply with Sec. 38-334 for R-5 which is low density multi-family residential as requested. This is the intended use for the building envelope.

Foster asked Raad how many units are planned. Raad said three are currently planned.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

- 2. A request by Gary Hoort** to allow an accessory building with a rear and side yard setback of 15 feet where 50 and 25 feet are required per section 38-491(b)(2)(e) of the Park Township Code of Ordinances. Said land and premises are located at 1805 Perry Street, Holland, MI 49424. (Parcel #70-15-22-400-028, R-4)

Bowman described the application. The applicant has filed the request to place a 42'x52', 2184 square foot accessory building 15 feet from both the rear and side lot lines. The lot, which is just over 2 ½ acres excluding the Perry Street right-of-way, may have accessory buildings up to 2257 square feet, so the size of the building is permissible for the lot. There is no record of any other accessory buildings. The applicant built the current home in 1992. As part of the application submission he has included the site plan from 1992, which shows a future 32'x40' in this same location, 15 feet from both the side and rear lot lines. The only other permit on the property is for re-roofing in 2010.

The table in Section 38-491(b)(2)(e) states that an accessory building over 1,400 square feet has the following dimensional requirements: maximum height of 24 feet, minimum front yard 100 feet, minimum side yard of 25 feet, and minimum rear yard of 50 feet.

The 1992 survey does depict some elevations, an approximately ¼ acre pond, and identifies a little over ½ of the lot as being designated a wetland area. There are springs noted in a few spots on the site. The location of the septic system is shown in the Staff Memo of September 23, 2015.

Gary Hoort spoke to his application request and said there is only 35' between his outbuilding and his garage. He can get to it off his driveway and that is the reason for building the accessory building 15 feet from the rear property line. There is no room left toward the house.

Foster asked why Hoort plans to make the accessory building such a large size. Hoort said he needs it to store his fifth wheel trailer.

Foster noted on his visit to the property that the owner is limited by the contours of the site and the pond.

Dreyer noted that for a large lot, there was not a lot of buildable area.

Public Hearing:

Dreyer opened the Public Hearing at 7:25 P.M.

There was no comment.

Dreyer closed the Public Hearing at 7:26 P.M.

Dreyer noted the Township received one letter from a neighbor.

Foster noted on his recent visit to the property that there are a lot of trees on the site so the view of the building would not appear to be an issue for the neighbors. He could possibly plant more trees as a buffer.

Eade also visited the property. He observed how close the structure would be to the home to the east, amounting to about 20'. He doesn't see any justification for relaxing the ordinance.

Toscano asked Hoort where his vehicles are currently stored. Hoort said he parks them at the proposed building site.

Toscano asked him about other options. Hoort said he could build to the west but he would have to remove trees. It would be 30-40' of trees.

Toscano asked if he could make the building smaller and explained he is looking at a lesser variance. There is concern about the loss of space at the northeast corner. The number of vehicles owned is not a hardship.

Dreyer said during his site visit he observed the applicant couldn't utilize the garage doors since there is a contour line uphill. The option would be using a lot of fill.

Foster moved to approve the side and rear setback variance requests.

Dreyer suggested, if the motion passed, to add a condition that the applicant erect some fencing or screening to protect the neighbors' view. Foster agreed.

Dreyer supported the motion.

Foster 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 burden is caused by the pond, wetland area, and location of the septic system which limits the available building area.

- 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.***

The requirement for planting a buffer would do justice to the neighbor.

- 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 wetland makes the lot unique.

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

This was not self-created.

Toscano recalled that a similar request was denied last year. He said this situation is not self-created because of the limitations of the property but he cannot support it.

Eade said he also could not support the request. He found that a smaller building would be possible, and it doesn't do justice to the property owners on the north and east. He felt the property may not support a larger building for more stuff, and a new neighbor might not approve of it.

Roll Call Vote:

Toscano, nay; Foster, aye; Fleece, nay; Dreyer, aye; Eade, nay.

Ayes, 2; Nays 3. Motion to approve denied.

Bowman recommended a new motion to deny the application and a review of the standards for denial of the application.

Toscano reviewed standard a:

- 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.**

Toscano found that conformity with restrictions of the zoning ordinance, in this case, is not unnecessarily burdensome to the applicant. Fleece felt he would support a lesser rear yard.

Toscano moved, and Eade supported, to deny the application.

Roll Call Vote:

Toscano, aye; Foster, nay; Fleece, aye; Dreyer, nay; Eade, aye.

Ayes 3; Nays 2. Motion to deny approved.

- 3. A request by James Cook** on behalf of Tiffany Raczynski to authorize construction of a single family residence on a lot of record that does not meet area and width

requirements per section 38-483(b) of the Park Township Code of Ordinances. Said land and premises are located at 2301 Auburn Avenue, Holland, MI 49424. (Parcel #70-15-33-274-021, R-4)

Bowman provided background information on this item. As indicated, this is a request for the Zoning Board of Appeals to authorize the construction of a single family residence on a lot of record. The lot in question is a 50'x106', 5,300 square foot lot, described as lot 65 of Nieuwsma's Supervisor's re-subdivision of West Michigan Park. This plat dates back to 1942. Prior to this it was formerly identified as lot 51 of West Michigan Park from the early 1900's. At some point this lot was joined together with lot 66. On October 13, 2010 the then owner recorded a split creating these two separate lots. The current owner purchased the lot in July of 2013. There was no indication that this lot had a residence on it previously, and an existing accessory building had been removed.

Dreyer explained this is not a variance request. There are five standards to review as outlined on page 8 of the Staff Memo of September 23, 2015.

Jim Cook addressed the application on behalf of the owner. He is seeking permission to build a single family home on this property. He is averaging along the front of the house. He shared an illustration of the proposed building plan which included a survey.

Dreyer asked how he configures two parking spots out of 17' x 30' outside the garage. Cook said he has space on the east side of the driveway for two additional cars. Ottawa County issued a permit for the driveway allowing him 24' up to the right-of-way and he can widen to 30' from that point.

Foster asked if the parking space across the street is on the applicant's property. Cook said he thought it is County park land. De Vries said that property is not the applicant's property.

Dreyer advised Cook that he will have to prove the correct amount of parking spaces to the County.

Cook asked why the neighbors are allowed to park on the County right-of-way. De Vries explained that is nonconforming use. Those homes were built before the ordinance was established.

De Vries said the Zoning Board of Appeals would have to determine if it was acceptable that the two off-street parking spaces are partially on the County right-of-way.

Toscano questioned the assumption that is agreeable to the County. If the County found use for that right-of-way the Township's allowing the property owner that right-of-way could be in jeopardy.

Dreyer said he is concerned about #5 of the standards. He cannot rationalize permission to park on the County right-of-way.

Bowman noted this is not a request for a parking variance. It is the use of a lot. The applicant would have to meet the rules.

Toscano asked for the total square footage of the lot in question.

Cook replied it is 5300 square feet.

Foster said two letters were submitted to the Township that referred to the height of the house. He asked Cook if he is staying within the height requirement. Cook said he was.

Bowman reminded the Board the issue on the table is the use of the lot.

Public Hearing:

Dreyer opened the public hearing at 7:57 P.M.

Steve Engers spoke to the front yard averaging. The applicant used the house to the east and the house to the west. The code requirement is 100' adjacent to the lot. If that is true, there should be three houses involved in the averaging. The other issue is in regard to the five standards. The house meets the side and rear setbacks. Compared to the other houses it will be one of the larger houses in the neighborhood.

Dan Boos expressed concern the property could be made into a commercial rental property in the future. He also had a concern regarding a camera that was mounted in the parking lot across the street taking time lapse photos of his backyard.

Joel Welch referenced 2246 First Avenue around the corner from this property. They brought in fill to increase the elevation of the property. In his opinion, the Engers worked with the Township to make their home fit in to the neighborhood. He noted this platting was known when it was purchased. He asked for protection of the properties in the neighborhood.

Dreyer closed the public hearing at 8:04 P.M.

Board Discussion:

Dreyer reminded the Board of Appeals the decision is to determine if this is a buildable lot. The five standards on pages 7 and 8 of the Staff Memo need to be met.

Toscano said the applicant is asking for a variance of 1200 sq. feet. In R-3 zoning, the minimum lot size is 6500 square feet. This lot is 5300 square feet so the lot is 1200 square feet short. Bowman reminded Toscano this is not a variance request and since it is a lot of record it is given special status.

Toscano asked if this is a buildable lot based on the five criteria.

Toscano moved to approve, and Foster supported, to approve the request to recognize it is a buildable lot.

Toscano reviewed the five standards:

1. *The size, character and nature of the residential building and accessory buildings to be erected and constructed on the lot.*

The house will meet all other requirements of the zoning district concerning setbacks and size.

2. *The effect of the proposed use on adjoining properties and the surrounding neighborhood.*

The single family use would not negatively affect the neighborhood.

3. *The effect of the proposed use on light and air circulation of adjoining properties.*

Would not affect light and air circulation as it meets other size and setback requirements.

4. *The effect of any increased density of the intended use on the surrounding neighborhood.*

The single family home will not affect the surrounding neighborhood.

5. *Available parking for the intended use.*

There is available parking without using any of the road right of way.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

4. A request by Richard & Roseann Henley to allow an addition to a residence that does not meet front and rear yard setback requirements per section 38-276(1), and 38-276(3) of the Park Township Code of Ordinances. Said land and premises are located at 282 Dyken Avenue, Holland, MI 49424. (Parcel #70-15-26-330-039, R-3).

Bowman reviewed the background information. The applicants would like to add a single story master bedroom on the south side of the existing 1 ½ story home (see site plan below). The house currently has a non-conforming front and rear yard. They plan to extend the home following the existing front and rear yard of the home. The home is situated on a lot that is 150' wide by 100' deep. Though the lot meets the required 15,000 square foot area requirements, the depth of the lot leaves 10' of depth for a building envelope (see following staff map of setback areas). The house currently has a front yard of 39.5 feet where 40 feet is required, and a rear yard of 28.7 feet where 50 feet is required. There is no

record of a past variance on the property. The house was built in 1979, and a deck was added in 1988. The deck would not have required a variance as it was less than 30 inches off the ground. The applicant purchased the home in October 2012. There are not two structures within 100 feet to use for front or rear yard averaging.

Henley explained his request. He has retired and wants to update the house. This includes adding dormers upstairs and was told a variance would be necessary to add the dormers. He also decided to go with a side addition because his wife has trouble with stairs as a result of a knee injury when they moved to this house this year. To stay within the required setbacks this will interfere with egress into the house. He noted the house is the smallest in the neighborhood. He wants to make it a three bedroom house. The south side is the only area to build since they have no basement. The dormers would also make a bath usable which is too small now. They are limited with what they can do and just want to make the house livable.

Toscano asked if the west side would meet the side yard setback, and if the addition would be in line with no encroachment to the west. Henley said that is correct.

Foster asked if they have plans to purchase the property adjacent to them. Henley said not at this time.

Public Hearing:

Dreyer opened the public hearing at 8:20 P.M.

John Maring lives next door to the applicants and supports the project.

Dreyer closed the public hearing at 8:21 P.M.

Board Discussion:

Fleece moved to approve, and Foster supported, to grant the setback variance.

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.***

The shallow lot leaves no other option.

- 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.***

The justice to the applicant and other property owners is by bringing the home up to area standards.

- 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 shallow lot is unique to the neighborhood, there is only one other like it.

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

Applicant did not create the lot.

Toscano noted there is no record of a previous variance request, yet the home doesn't meet setback requirements. This is definitely not self-created.

Bowman said it is a limited situation with more than one property with a shallow lot in that area.

Toscano noted this is one of the older neighborhoods and the applicants want to upgrade the property which does justice to the neighbors.

Roll Call Vote:

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

Ayes 5; Nays 0. Motion carried.

- 5. A request by John and Barbara Francis** to construct a single family residence that does not meet the front yard requirements on a double frontage lot per section 38-496 of the Park Township Code of Ordinances. Said land and premises are located at the northwest corner of Washington Street and N. 160th Avenue, Holland, MI 49424. (Parcel #70-15-22-481-015, R-4)

Bowman provided information for the item. Applicants have an offer to purchase this lot contingent on obtaining a variance to build a single family residence. This lot is a non-conforming 66'x 142' 9,372 square foot corner lot. It is non-conforming due to the width of less than 85 feet. 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, it must meet the front yard setback requirements on both roads. 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 on the lot and it is currently vacant. No record of a past variance on the lot.

The required setback the above illustrates the remaining building envelope as being 19'x 89' if allowing for two side yards on the corner lot, which has been past practice. The R-4 district requires a total of 20' of side yard, with a minimum of 7' on one side. Section 38-507(7) and

requires a minimum width of 20' across any front, side, or rear elevation for a single family home. The applicants are proposing to build a house approximately 20' wide, and are asking for a 36 – 38 foot setback from the south line along Washington St.

Barbara Francis spoke to the application. She explained that the variance request is 1' where there is no room from the Washington Street side. She would prefer a 4' variance to allow room for building on the lot.

Public Hearing:

Dreyer opened the public hearing at 8:30 P.M.

Diane Ver Hey lives on Washington Street and it is her opinion this proposed building plan will stand out from the other homes in the neighborhood which are more uniform along Washington.

Joanie Boumann is the real estate agent for the applicants. She said her clients need a place for their son to live who is not currently with them. It is her opinion this home will add to the value of the neighborhood.

Nathan Taylor lives adjacent to this property. The ordinances are in place for a reason. The homes should be in line and in compliance and uniform. This house will be fairly close to his home and the placement will reduce the quality of the neighborhood. He questioned guaranteeing this home will stay in this family in the future as far as its care. He also expressed concern about the possibility of several trees that will have to be removed. A house this size will look as if it is cramped on that corner of the neighborhood.

Rob DeFouw lives on Washington Street and he supported Nathan Taylor's comments. He said there are very few homes that have two stories on that street. This home will not look as if it belongs to the neighborhood. His home is to the west and this house would be next to his property.

Jerry Swink lives across the street from this lot. His concern is threefold: 1) the consistency of the appearance of the neighborhood. It will look like a double stack mobile home. He has not seen any pictures of the home; 2) the privacy of a two story home will impact the neighbors; and, 3) the other concern is the removal of trees. He asked for denial of the variance request.

John Riopell lives on 160th. He supports the neighbors' concerns and doesn't want a precedent set. There is another small lot west of his home where Habitat for Humanity wanted to build a home but it is too small.

Rob DeFouw added this home will affect the property value of the homes.

Dreyer closed the public hearing at 8:42 P.M.

Dreyer said no letters have been submitted to the Township regarding this request.

Toscano asked if this is zoned R-4. Bowman confirmed it is.

Foster noted that the Board members have pictures showing what the house will look like. It is a narrow two story home because of the lot size. In respect to the neighbors, he finds that it will

be an attractive home and will enhance the community. He does have a concern regarding tree removal. Francis said the four big trees close to the road will stay. She doesn't see a reason why any trees would have to be removed from the lot.

Toscano asked where the owner will park cars if there is no garage. Francis said she wasn't sure.

Foster moved, and Toscano supported, to support the variance request of 4', for a 36' front yard on Washington Street as requested by the applicant.

Toscano confirmed it is R-4 and the applicant needs to have 8500 square feet for the lot. This lot is over 9300 square feet. It is only non-conforming because of the width which creates an unnecessary burden.

Foster 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 burden is caused by the corner lot and setback requirements.

- 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.**

Justice to the applicant is in allowing the use of the lot for what it is zoned for, there is no room for a lesser variance. It will not detract from 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.**

The narrow lot with the corner setback requirement makes this unique.

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

This is not self-created.

Roll Call Vote:

Toscano, aye; Foster, aye; Fleece, aye; Dreyer, aye; Eade, nay.

Ayes 4, Nays ~~0~~1. Motion carried.

ANNOUNCEMENTS:

De Vries noted there is one application currently submitted for next month.

He commented on the last application request regarding a lot which was unbuildable without a variance. The Zoning Board of Appeals heard two like this on the agenda where two lots of record were joined together and later allowed to split which caused the problem. Many jurisdictions have ordinances that say if two lots are joined it negates the lot of record and creates a new lot. He suggested the Planning Commission should look at this for a possible change.

Eade said he would bring it up at the Planning Commission. de Vries will speak to it.

Toscano asked about the height question in the first agenda item. He reread 38.454 for C-2. It says “No building or structure shall exceed 35’ in height.” 38.335 for R-5 it says “No building or structure shall exceed 35’ in height or 2 ½ stories.” He asked why C-2 wouldn’t have the same language.

Bowman said it is one of the problems when you have non form-based zones. We have an ordinance set up district by district and just because you are in that district the building has to be built in a certain way. To allow another use specified by a different zone, you are ignoring the structure and basing it on use.

De Vries said he was confident the developer will be creative and come up with a solution.

The next meeting is October 26. Foster said he will be unable to attend. Pollock agreed to attend as alternate.

PUBLIC COMMENT:

Dreyer opened public comment at 9:01 P.M.

Pollock spoke to the application request for the house on Auburn (agenda item #3). She observed that it is going to be a tall house on a street where most of them are smaller and older. She found that the proposed home will overwhelm the neighborhood.

Dreyer closed public comment at 9:03 P.M.

ADJOURNMENT:

Toscano moved, supported by Fleece, to adjourn the meeting at 9:04 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall
Recording Secretary
September 30, 2015

Approved: October 26, 2015