

**MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS**

Park Township Hall
52 152nd Street
Holland, MI 49424

Regular Meeting
April 20, 2020
6:15 P.M.

APPROVED COPY

CALL TO ORDER:

Vice Chair Fleece called to order the regular meeting of the Park Township Zoning Board of Appeals at 6:15 P.M., held via Zoom remote conferencing.

ATTENDANCE:

Present: Doug Dreyer, Dennis Eade, Dave Fleece, John Foster, Jim Gerard, Sally Pollock (Alternate)

Staff: Emma Posillico, Zoning Administrator, Dan Martin, Legal Counsel

Chair Dreyer will not vote at this meeting since he was not present at the January 27, 2020 meeting when this item was on the agenda.

APPROVAL OF AGENDA:

Foster moved, supported by Pollock, to approve the agenda as submitted.

Voice Vote:

Ayes 5, Nays 0. Motion carried.

APPROVAL OF MINUTES:

Foster moved, supported by Pollock, to approve the minutes of January 27, 2020 Regular Meeting as submitted.

Voice Vote:

Ayes 5, Nays 0. Motion carried.

BUSINESS ITEMS:

Item #1 - A request by Eldean Shipyard to finish three separate parking areas utilizing sand, crushed concrete, and/or gravel where concrete, asphalt, or environmentally-friendly porous paving is required per Section 38-605(3) of the Park Township Zoning Ordinance. Said land and premises are located at 2301 South Shore Drive, Macatawa, MI 49434 (Parcel 70-15-33-465-001, Zoned C-2 Resort Service District); 2223 South Shore Drive, Macatawa, MI 494934 (Parcel 70-15-33-480-023, Zoned C-2 Resort Service District); and 2200 South Shore Drive, Macatawa, MI 49434 (Parcel 70-15-33-480-019, Zoned C-2 Resort Service District).

Posillico introduced the item and provided the background for the request. In January 2020 the applicant requested to cover the lots with sand or gravel instead of asphalt which is required per Township Ordinance 38-605(3), and the Zoning Board of Appeals asked the applicant to contact the Township Engineer for another opinion and assessment of what should be done. There were originally 3 parcels as part of the request, but in email correspondence with Staff since the January meeting, the applicant may have reduced the number of parcels. The ZBA should confirm with the applicant.

Posillico clarified that at the January 2020 meeting, the ZBA requested supplemental information from the County Road Commission regarding plans for South Shore Drive, and data from the Township Engineer regarding any potential impacts on stormwater management efforts. The applicant has chosen not to work with the Township Engineer, but has supplied additional data from the Army Corps of Engineers regarding lake levels. This information has been shared with the Zoning Board of Appeals.

Fleece asked for clarification of which lot remains for consideration, based on the applicant's emails with Staff after the January 2020 meeting.

Eldean said it is the one to the west at 2301 South Shore Drive, which is technically comprised of two parcels.

Foster asked if only one parking lot is left on the table. Eldean confirmed that it is only one parking lot (2301 South Shore Drive), but also the parking located on the residential parcel owned by Patricia & Herb Eldean (2200 South Shore Drive).

Posillico asked Eldean to clarify if the shipyard parcel has been removed. Eldean confirmed that the shipyard parcel (2223 South Shore Drive) has been removed from the request. The request currently on the table is for the parcel to the south (2200 South Shore Drive), and the two parcels to the west (2301 South Shore Drive).

Eldean said he was told by the Ottawa County Road Commission that two of the lots are considered driveways. Eldean stated that he contacted the Township Engineer for a cost estimate for a stormwater study, and was quoted \$4-5,000, which he did not want to pursue. He will ask the Water Resources Commission for a permit to modify the storm drain and they will also look at how the runoff will be affected. As a commercial property, Eldean will have to add a storm water permit, a certified storm water operator, an analysis, and, in addition to an increased requirement, an outlet. Eldean Shipyard is working on the storm water problem. In his opinion, as a result of these efforts, the Township Engineer approval seems redundant. Eldean mentioned he considered utilizing his engineer, Holland Engineering, which would

be an additional \$5,000 and that brings the cost to a total of \$10,000. He confirmed he did not wish to spend that, and he does not have engineering information yet.

Eldean noted the lake water seems to be going down at present so maybe he doesn't have to do this now. He isn't paying for engineering assessment on the main lot (the Shipyard). He has put a wall around the main (Shipyard) lot so this is a solution to save costs on the other lots. He said if he raises the parking lot with gravel, Ottawa County will look at it and Water Resources will look at the discharge. He thinks he is covered for the time being. He has observed that the seawall metal has been eroded. That is a section that is suffering damage and will require repair. Any water coming in will be pumped out. In his opinion, the Township is covered and he is covered with these proposals.

Fleece asked since we have taken the major lot (Shipyard) out of the request, which is currently asphalt, are all of the lots currently covered with asphalt?

Eldean said that was correct. So the intent is to go over the top of all the lots with gravel. Most likely they will have to take off the existing asphalt prior to placing the gravel.

Fleece said the argument from the beginning is that placing stone and gravel over the top of the lots won't solve the problem with runoff onto the road and neighboring properties.

Eldean said he can install floodgates into the wall that is eroding. He can put in a "sea bump" to hold the water in the wall. A border, such as concrete blocks, will be installed to prevent the proposed gravel from washing out/being spread onto neighboring roadways. He will look at that with the Water Resources Commission and engineering.

Gerard asked Eldean if lake levels do not recede, is he is considering retaining the proposed gravel level and then covering with asphalt.

Eldean said yes.

It was asked how Eldean will decide to cover the proposed asphalt with gravel, if his request for gravel is approved.

Eldean said when the water level threatens to come up he will make that decision.

Eldean said that depends since it an unknown. He doesn't know when the peak will be.

Fleece said a smart move would be to put down the asphalt (raise the parking lots) now.

PUBLIC COMMENT

Fleece opened Public Comment at 6:35 P.M.

There was no comment.

Fleece closed Public Comment at 6:35 P.M.

Foster noted that on the south side lot (2200 South Shore Drive) there is a public drain there that is failing or sinking. Is Eldean working with Water Resources on this problem?

Eldean said it is continuing to sink, but there is no plan yet from them. The Road Commission said they won't do anything. The Township isn't doing anything. Eldean said if he has to do it himself he will raise the drain.

Eldean observed the Township Park boat ramp has a gravel lot at the boat launch, so gravel must not be offensive to the Township as a covering.

Posillico clarified that area is part of the Township Parks and Recreation Plan and the Township Engineer (project designer) is aware that if they wish to retain that area as gravel, they will have to seek a variance from the Zoning Board of Appeals.

Gerard noted that Township Manager Howard Fink recently issued a letter that stated that the Township Board agreed that the Boat Launch area will be paved.

Gerard moved, supported by Eade, to approve the variance for the two lots west (2301 South Shore Drive) and one on the south (2200 South Shore Drive), with the caveat that when the water level decreases those lots will be paved.

- 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.***

With regard to the lake water levels and potential expense it creates an unnecessary burden on the applicant.

- 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 fact the large lot (Shipyard) has been removed is helpful, and that the Water Resources Commission will be involved is helpful to the applicant and neighbors.

- c. That the plight of the property owner/applicant is due to the unique circumstances of the property (e.g. an odd shape or a natural feature like a stream or wetland) and not due to general conditions of the zoning district.***

Due to the unique circumstances of the lake levels this standard is met.

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

It is not self-created due to the lake levels.

Dan Martin, Legal Counsel, suggested the motion language use the term condition, not caveat. The Township wants an objective standard on the water level when it comes down. The Township can suggest a certain level for the lake, and/or determine what the appropriate level would be to remove the gravel covering after the water recedes.

Dreyer suggested a temporary approval for gravel lot covering with an extension to be requested later for approval at no cost to the applicant. The condition could be for two years.

Martin added that this condition would go with the land if ownership of the properties changes.

Posillico asked if a condition should be added that notes that the design should include provisions to reduce gravel spreading on adjacent roadways.

Martin concurred this should be a condition, but included as part of the design. He also added there should be a condition for approval by all necessary authorities – Federal, Ottawa County Water Resources Commissioner, and the Township.

There should also be a condition to take the precaution that water doesn't spill out onto other properties.

Reworded motion with recommended conditions:

Gerard moved, supported by Eade, to approve the variance for the two lots west (2301 South Shore Drive) and the one on the south (2200 South Shore Drive), with the following conditions: 1) when the water level decreases those lots will be paved; 2) temporary approval with an extension to be requested later for approval at no cost to the applicant; 3) the maximum time frame will be for two years (through December 31, 2022); 4) this approval goes with the land, should ownership of the property change; 5) if the design should change the concrete blocks shall remain unless the Water Resources Commission says they should not; 6) approval by all authorities – Federal, Ottawa County Water Resources Commissioner, and the Township; and, 7) the owner should take the precaution that water doesn't spill out onto other properties.

Roll Call Vote:

Fleece, aye; Foster, aye; Gerard, aye; Eade, aye. Pollock was absent from vote.

Martin said the motion has passed for the record. Pollock's vote can be added at the end of the meeting when we call her back to the open meeting.

Ayes , Nays 0. Motion passed.

ADJOURNMENT

Eade moved, supported by Foster, to adjourn the meeting at 6:50 P.M.

Voice Vote:

Ayes 4, Nays 0. Motion passed.

Respectfully submitted,

Judith Hemwall
Recording Secretary
April 21, 2020

Approved: July 6, 2020

**MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS**

Park Township Hall
52 152nd Street
Holland, MI 49424

Regular Meeting
April 20, 2020
6:50 P.M.

APPROVED COPY

CALL TO ORDER:

Chair Dreyer called to order the regular meeting of the Park Township Zoning Board of Appeals at 6:50 P.M., held via Zoom remote conferencing.

ATTENDANCE:

Present: Doug Dreyer, Dennis Eade, Dave Fleece, John Foster, Jim Gerard

Staff: Emma Posillico, Zoning Administrator

APPROVAL OF AGENDA:

Fleece moved, supported by Gerard, to approve the agenda as submitted.

Voice Vote:

Ayes 4, Nays 0. Motion carried.

Item #1 – A request by Scott and Kimberly Finses to allow an addition to a residence with a side yard of 5 inches where no less than 7 feet is required per Section 38-306(2) of the Park Township Zoning Ordinance. Said land and premises are located at 2247 First Avenue, Holland, MI 49424. (Parcel 70-15-33-281-015, Zoned R-4 Medium Density One and Two Family Residence District)

Posillico spoke to the variance request. The property is described as the east 35 feet of lot 18 and the west half of lot 19 of Bosma's Addition to West Michigan Park, located in the historic Ottawa Beach neighborhood. The property is 60' wide by 75' deep, 4,500 square feet. There is an existing residence on the property approximately 850 square feet in size, as well as a shed and a detached garage. The residence was built in 1900 with a renovation in 2000. The renovation required a variance for a rear yard setback of 21' to allow for an addition with a basement. The variance was approved with a condition the addition to the residence be limited to one story.

When the applicant purchased the property it had only one bedroom. They want to add a bedroom and an addition to the kitchen. This will extend the existing side yard setback.

Finses addressed his request. He has spoken to the neighbor on the east lot line who has no problem with his proposal. The other property is on the market. The owner next to this property said she has no issue with the plan.

Fleece asked for clarification that the applicant wants to enlarge the existing kitchen.

Dreyer confirmed it is a 2 ½ foot extension request.

Finses said that was correct.

PUBLIC HEARING

Dreyer opened the Public Hearing at 7:00 P.M.

Joel Welch, a resident in this neighborhood, said this lot was platted in 1888 before the development was renamed West Michigan Park Association. The lots in the Bosma addition are different from the development that is now called the West Michigan Park Association. Most of these lots are non-conforming. It will be a year-round home. He supports the request.

Dreyer closed the Public Hearing at 7:02 P.M.

Fleece moved, supported by Foster, to approve the variance request

Foster reviewed the Building Setback Exception Standards Review (side yard setback) (Section 38-483 (e2):

a. *The proportion of the main wall which has been altered by the addition,*

Fleece said the applicant is trying to add to an existing residence and they have maintained the same line for the footprint wall of the structure.

b. *The overall effect of the proposed addition on adjoining properties and the character of the surrounding neighborhood; and,*

It will have minimal impact on the adjoining properties. The neighborhood is nonconforming. There will be no negative effects on the neighborhood.

c. *The addition shall not be less than five feet from the side and rear lot lines and shall not be less than ten feet from the front lot line.*

It has a private side yard. The extension will maintain the side yard building line by extending the existing wall. It will not increase any non-conformities. The existing building won't go beyond any of the lines.

There has been no correspondence in opposition to this request from the neighbors.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

#2 – Eric Bruins to allow construction of a 3,500 square foot accessory building with a height of 29 feet, 6 inches, where a maximum size of 2,500 square feet and a maximum height of 24 feet is permitted per Section 38-491(2)e of the Park Township Zoning Ordinance. Said land and premises are located at approximately 15860 Greenly Street, Holland, MI 49424. (Parcel 70-15-11-300-029, Zoned R-1 Rural Estates Residence District)

Posillico introduced this request. The property is located on the south side of Greenly Street, east of 160th Street. It is approximately 5.07 acres in overall area and is currently vacant land. The applicant intends to construct a residence and a storage barn on the property this spring.

Two letters have been received by the Township – both in opposition to the proposal.

Bruins addressed his request. The storage in the barn will be for personal items, as well as a workshop for his metalworking and woodworking hobbies. The property is wooded with no buildings. He purchased the property last May.

Dreyer said two neighbors are concerned about the lighting.

Bruins said he will install downlighting. It will be aesthetically pleasing with both the barn and the house having the same design.

The neighbors have expressed concern about being able to see the oversized building due to the existing trees on the property line. Bruins said he gets along with his neighbors.

Foster asked what is the reason for the height request above the ordinance requirement.

Bruins said he wants the barn to look similar to the roofline on the house so it is more aesthetic.

Foster asked if the barn will be lower than the house due to the grade of the property.

Bruins said there is a hill 4' taller than where the barn would be located. He wants the roof pitch of the barn to be the same as the house.

Foster asked if this will be one motion.

Posillico said they could vote on two motions, as both the size and height of the building were noted within the public hearing notice. Dreyer agreed it could be separate.

Gerard noted there is only other barn in the area that exceeds the accessory building size limitations, because it was built in 1980 prior to the Ordinance requirements. If we allow this request, does it set a precedent?

Dreyer said the ZBA rarely approves variances for accessory buildings that exceed 2% of the lot size in rural areas. We base approval on the size of the lot and how close the proposed building is to the property lines. He asked Posillico about the history of what the ZBA has done.

Posillico said she looked at the surrounding structures in the neighborhood. Most are under the current 2,500 foot maximum.

Foster understands the space will be utilized well. We have encountered height issues before, so he thought this may set precedent for approving height requests.

Bruins would like to build the structure at 3,500 square feet, 50'x70', since he wants a 14' door for a boat which requires a higher ceiling.

PUBLIC HEARING

Dreyer opened the Public Hearing at 7:21 P.M.

Bob Patrick, a neighbor on Greenly Street, sent one letter. He had concerns about standards 1, 4, and 5. He said the proposed buildings will be visible from his property. The height of the house and barn will be taller than any other structure along Greenly. He is also concerned about lighting. The lights will be visible from his backyard. He hopes the dark sky lighting will be part of the plan.

Doug Papay, a neighbor on 160th Ave., sent one letter. His property is to the west of this proposed building. The nonconforming accessory building in the area was built before the ordinance. He is opposed to a building greater than 2,500 square feet. Regarding the lighting, his home looks into the wooded area which has a building site on it now. As you increase the size of an accessory building lights are required. He hopes to preserve the serenity of the woodland with controlled lighting. He had a question regarding the code. There is a restriction on what the Zoning Board of Appeals can authorize as he understands it. Would two variances be appropriate in this situation? This site is part of a woodland which he would like to see preserved as much as possible.

Dreyer closed the Public Hearing at 7:27 P.M.

Dreyer asked if there should be two separate variances.

Posillico said they weren't noticed as separate variances. It was noticed that both the area and height would be exceeded. If considered separately the variance request would have to be re-noticed.

Dreyer said we should move forward as one item.

Fleece asked if Bruins can make the building work by redesigning to the conforming height.

Bruins said he could lower the roof line to 24' and still maintain a 3,500 square foot building.

Foster moved, supported by Eade, to approve the building for 3,500 square feet, but to stay with the 24' height as required by the ordinance. Conditions include: the applicant will install the appropriate lighting in deference to the neighbors' request, add a green tree buffer line along the property line, and obtain a building permit for the house structure before a building permit for the accessory structure.

Foster reviewed the standards:

1. ***The area and/or height of the accessory building in relation to the size of the lot on which it is to be placed;***

While the size of the building is larger than what the zoning ordinance allows, given the size of the lot, it won't overwhelm the proposed residence.

2. ***The area and/or height of the accessory building in relation to the principal building on the lot on which the accessory building is to be placed;***

The barn won't be larger than the house. Relating to the permits for both structures, even if the variance is approved, a building permit for the accessory structure will not be granted until a building permit for the house structure is granted, or a bond is submitted ensuring the principal structure will be built in an agreed upon time frame. The applicant agreed to this condition.

3. ***The location of the accessory building in relation to other buildings on adjoining lots and in relation to the principal building on the lot;***

The barn won't be next to the house and it will be constructed compatible with the house. The structure will be far enough on the property so installation of appropriate downlighting can minimize light pollution. There are no air flow problems, and the building won't hurt property values.

4. ***Whether or not the accessory building will affect light and air circulation of any adjoining property; and,***

It won't affect light and air circulation. The buildings will be far enough away from other structures. There are woods around the property.

5. ***Whether the accessory building will adversely affect the view of any adjoining property.***

The owner has agreed to plant trees along the property boundary and near the barn to improve the view of neighbors. The approval is conditioned upon providing the landscaping.

Roll Call Vote:

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

Ayes 5, Nays 1. Motion carried.

Item #3 – A request by Willis and Ella Weymon to allow an addition to a residence with a front yard of approximately 22 feet where no less than 40 feet are required per Section 38-246(1) of the Park Township Zoning Ordinance. Said land and premises are located at 2344 Sunset Bluff Drive, Holland, MI 49424. (Parcel 70-15-28-261-009, Zoned R-2 Lakeshore Residence District).

Posillico provided the background for this item. The property is described as Lot 9 of the Sunset Bluff Planned Unit Development. The property is approximately 17,121 square feet in area, located on the south side of Sunset Bluff Drive, to the west of South Lakeshore Drive, and is bound by private single-family residences to the south, east and west. There is a single-family home on the property including a two-stall garage that faces east. The applicant proposes adding a 240 square foot single-stall garage to the north side of the existing garage so the homeowners have a third stall between the existing garage and the circular driveway. The applicant notes they plan to “age in place” and having a third stall garage will allow vehicles and items to be stored from harsh weather conditions.

The Township received two letters in opposition to the request. It was noted the Sunset Bluff Homeowners Association has a bylaw regarding not building beyond the existing footprint. Posillico said the Township doesn't enforce homeowner's association bylaws. The Township does not have a copy of bylaws for this development since Sunset Bluff is older.

Dreyer asked the applicants about the bylaws.

Weymon addressed this. They intended to seek approval from the Township prior to approaching the homeowner's association. If the variance is approved, then they will approach the association. Weymon noted that the original plans for the house included a three car garage, but at the time they didn't need the extra space. This garage will not block sunlight.

PUBLIC HEARING

Dreyer opened the Public Hearing at 7:45 P.M.

Dreyer noted there are two letters in opposition to this request.

Tara Leonard, daughter of the applicants, explained the reason for her parents' request. She and her two children now live with her parents and need the extra space for her car.

Bruce Foreman, neighbor, questioned if there is space on the east side to reorient the garage so it is not close to the street.

Dreyer closed the Public Hearing at 7:50 P.M.

Foster didn't see the property, but based on photos he wondered where the garage would be located. It takes advantage of their circular drive even though it encroaches on the front yard. So long as there is a way to get in and out it's okay with him.

Gerard asked if their request is approved will there be enough room to provide landscaping.

Ms. Weymon replied they will be able to install some landscaping on the west side, and minimal landscaping between the proposed garage and the circular driveway.

Foster moved, supported by Gerard, to approve the variance request.

Foster reviewed the standards for the Building Setback Exception Standards:

a. The proportion of the main wall which has been altered by the addition;

This is just an extension from the current garage and won't overwhelm the existing structure.

b. The overall effect of the proposed addition on adjoining properties and the surrounding neighborhood;

The owners will have to request their homeowner's association approval. It will extend into the front yard but won't affect the home.

c. The addition shall not be less than five feet from the side and rear lot lines and shall not be less than 10 feet from the front line.

The proposed addition would be approximately 22 feet from the front property line so this standard is met.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

Item #4 – A request by Terry Sullivan, on behalf of Jed Rodino, to allow an addition to a residence with a rear yard of 42 feet where no less than 50 feet is permitted per Section 38-276(3) of the Park Township Zoning Ordinance. Said land and premises are located at 2980 Pine Edge Court, Holland, MI 49424. (Parcel 70-15-13-213-017, Zoned R-3 Low Density One Family Residence District)

Posillico spoke to this request. The property is described as lot 43 of Timberline Acres No. 2. The property is 0.44 acres, or approximately 29,236 square feet. There is an existing residence on the property approximately 2,640 square feet in size, excluding the attached garage and basement. The existing residence was built in 2000 with a rear deck. The rear wall of the residence is located 54 feet from the northern property line with a 14x20' deck extending towards said property line. The deck is 40 feet from the rear property line.

Posillico pointed out that the deck was not included in the original rear yard setback computation. She thinks this was a mistake. She noted the Staff Attorney has advised that if a

non-conforming deck is being replaced exactly to the existing footprint it may be approved administratively by Staff.

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However, the applicant proposes to increase the footprint of the non-conforming area to the west in addition to providing an enclosed space. Therefore, Staff believes that a variance is required for the rear yard setback of the proposed sunroom.

Terry Sullivan spoke on behalf of the applicant. They are proposing to widen the area and not encroaching on the area of setback.

Gerard asked if the sunroom is on the deck.

Sullivan said part of it will go on the existing deck and the other part will be a small extension to the west.

Foster observed this is an odd-shaped lot so we have to take this under consideration.

PUBLIC HEARING

Dreyer opened the Public Hearing at 8:00 P.M.

Dreyer noted there was no correspondence regarding this request.

There was no comment.

Dreyer closed the Public Hearing at 8:01 P.M.

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

Fleece reviewed the Building Setback Exception Standards (Section 38-483):

a. The proportion of the main wall which has been altered by the addition;

The applicant is not extending further than the existing structure. It won't be overwhelming in appearance.

b. The overall effect of the proposed addition on adjoining properties and the character of the surrounding neighborhood; and,

There are mature trees in the yard with minimal impact on adjoining properties and the characteristics of the surrounding neighborhood.

c. The addition shall not be less than five feet from the side and rear lot lines and shall not be less than 10 feet from the front lot line.

It meets the standard.

Roll Call Vote:

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

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Ayes 5, Nays 0. Motion carried.

Item #5 – A request by Randall Schipper, on behalf of Paul Elzinga and Josh and Jenine Elzinga to allow the extension of a private access easement to permit a land division, where frontage on a public or private roadway is required per Section 38-499(a) of the Park Township Zoning Ordinance. Said land and premises are located at 340 N. 168th Avenue, Holland, MI 49424. (Parcel 70-15-21-200-003, Zoned R-3 Low Density One Family Residence District)

Posillico presented the background for this request. The 9.99 acre property is located off North 168th Avenue to the northwest of Fellowship Christian Church between West Lakewood Boulevard and James Street. The property does not currently have frontage on a public or private roadway, but rather a private access easement that was established in 1966 providing access from North 168th Avenue through the church property to the subject property and the parcel to the south. There is an existing residence on the property, approximately 1,645 square feet in size, as well as a 656 square foot detached storage building.

In late 2019 and early 2020, Staff began receiving inquiries from realtors about the potential for creating a new parcel from the subject property utilizing the existing access easement in lieu of frontage on a public or private roadway. Staff informed those inquiring that easements cannot be utilized in lieu of frontage on a public or private roadway when creating a new parcel.

In February 2020, the applicant submitted an application for Land Division to the Township intending to create a 7.20 acre parcel and a 2.84 acre parcel from the subject property. The applicant proposes to grant access to the 2.84 acre parcel by extending the existing access easement 100 feet to the west, thus extending the length of the easement to continue granting access to the existing residence and garage while also providing access to the proposed 7.20 acre parcel for future development. The existing driveway is not proposed to be altered but the access easement would need to be extended to the west to provide legal access to both resulting parcels.

Staff met with the applicant in March, and emphasized that a new parcel couldn't be created without frontage on a public or private roadway. A Special Use permit for a private roadway was recommended. However, the applicant explained that they had been directed by previous Zoning Administrators to request a variance to permit a division of property without a private roadway.

Posillico explained that her recommendation is to apply for a Special Use from the Planning Commission for a private roadway. However, given the recommendation of previous Zoning Administrators, she prefers that the ZBA formulate their own responses to the standards required for variance approval.

Randy Schipper, Attorney for the applicant, clarified some background information. In 1966 Paul Elzinga acquired the property and split into three pieces. He sold one to the Fellowship Church, and also created two residential properties. This was done before the Zoning Ordinance existed. Both residential parcels are served by a private drive through the Fellowship Church property. There had been no formal easement before. The current property owners recently formalized an easement that referenced the driveway that has been in existence since

the 1960s. If approved, one additional parcel would be created, which would be sold as a proposed home site with access to the existing private drive. The existing drive would not be
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physically extended. We don't have 85' of frontage for a public or private roadway, as required by the Township.

Schipper further noted that being required to provide frontage on the private road would be burdensome to the applicant. It appears this driveway was built 50 years ago. It was built to serve two homes, has for five decades, and has ample clearance for emergency vehicles. It cannot be confirmed that the existing gravel base is the right depth to meet the current standards for a private roadway. We would have to tear it up. This would be over \$100,000 to do – that was the cost five years ago based on his personal experience.

Schipper stated that the Zoning Ordinance has no standards for a private road through a church parking lot. If a private roadway was required to be constructed, we don't know if the intersection of this drive with N. 168th Ave. would meet Road Commission standards. Creating a private roadway would require permission of the church. To relocate the road would be expensive just to add one home site. The applicant just wants to create one parcel. The expense would be burdensome.

Schipper continued that the easement on church property benefits only two parcels. Only the two homes can use the driveway. Regarding the reference within the Staff report to Camp Kiwanis, it doesn't use this driveway.

In case the Township required a cul- de-sac, it would be unusable.

The church is in agreement with creating this parcel. About 15 years ago, the church and Elzinga and Dirkse (current owners of the parcels that utilize the private driveway) looked at a PUD but decided the land is not appropriate for a subdivision.

This property is unique – it includes church property, which creates obstacles.

This private drive has served well for decades, back to the 1960s. The applicant didn't create the nonconformity. The 1989 ordinance dictated the problem of this situation. It existed before this. This makes it unique.

Paul Elzinga said he has talked with the Dirkses (the owners of the property to the south of the subject property) and said that requiring a private roadway would be a hardship for them. They are older and not doing well physically so couldn't attend this meeting. However, approving the variance request as submitted is acceptable to them.

Dreyer asked if Schipper had proof from Fellowship Church that creating another residential property with access to the private driveway was acceptable to the Church.

Schipper said yes.

Dreyer asked if they will use it only as a private driveway.

The answer was yes.

PUBLIC HEARING

Dreyer opened the Public Hearing at 8:20 P.M.

Posillico said there was no correspondence regarding this request.

Paul Dobb spoke. He shares 470 ft. of north border of this property. He is in support. His concern is his house is 25' from the property line. They would like to have tree space and no clearing and would like to see what the parcel would look like.

Paul Elzinga said the plans for that land are to sell it as one piece. There will be discussion to accommodate Dobbs' concern. The north side would be over 835'. There would be no problem.

Dreyer said that if additional lots were proposed for the land, it would require Planning Commission approval for a private roadway.

Josh Elzinga said the property won't be split. Financially, to put a road in would be prohibitive.

Dreyer closed the Public Hearing at 8:25 P.M.

Fleece asked what is considered the front, rear, and side of the property.

Posillico said it would be based on the easement. The rear yard is to the north, the side is to the east and west, and the front is to the south.

Gerard moved, supported by Eade, to grant the variance with two conditions: 1) The Township is to receive an affidavit from Mr. Schipper that is not setting a precedent, and 2) The Township is to receive an affidavit from Josh and Jenine Elzinga that states that the resulting properties will not be divided further in the future.

Gerard reviewed the Non-Use Variance 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 applicant says that strict compliance with the requirement to have 85 feet of frontage on a public or private road would require a Special Use approval and could require replacing the private driveway. He says the Church is satisfied with the current drive configuration. The cost to rebuild the private drive would be a large burden.

- b. That granting the request 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.

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Gerard said it would be substantial justice to the applicant and it would not affect other property owners

There is no documentation from the Church that it is satisfied with the current drive configuration. While granting the variance may do substantial justice to the applicant it may set precedent or future land use divisions in the Township which may not do justice to other property owners.

- c. 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; and,***

The unique circumstance are that the property has been used for five decades before the zoning requirement.

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

The applicant states the problem is not self-created, that the parcel and private drive predate the Zoning Ordinance, and the applicant did not do anything to create the nonconformity.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried.

Dreyer asked that Posillico and Schipper work together on the recommended documents.

Other Business

- a. Reschedule August 3 and November 2 meetings (due to elections)

Posillico said the May meeting will be cancelled due to lack of business. The June meeting will be June 1. The date for August will be August 10, September meeting will have to be the 14th because of Labor Day, and the November meeting will be November 9.

Dreyer moved, supported by Foster, to approve these meeting dates.

Ayes, 5, Nays 0. Motion carried.

ANNOUNCEMENTS

There were no announcements.

PUBLIC COMMENT

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Dreyer opened Public Comment at 8:37 P.M.

There was no Public Comment.

Dreyer closed Public Comment at 8:37 P.M.

Dreyer asked if Sally Pollock could be reached via telephone for her vote on the first agenda item during the 6:15 meeting (regarding the Eldean parking areas).

Posillico reached Pollock, who said she voted in the affirmative on the first agenda item for Eldean during the first meeting. Pollock clarified that she also sent an email to the ZBA confirming her vote. Dreyer agreed that there had been a unanimous vote to approve Eldean's variance request with the conditions noted.

ADJOURNMENT

Fleece moved, supported by Foster, to adjourn the meeting 8:45 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall
Recording Secretary
April 22, 2020

Approved: July 6, 2020