

**MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS**

Park Township Hall
52 152nd Street
Holland, MI 49424

Regular Meeting
October 12, 2020
6:30 P.M.

CALL TO ORDER:

Chair Dreyer called to order the regular meeting of the Park Township Zoning Board of Appeals at 6:35 P.M., held in the Township Hall.

ATTENDANCE:

Present: Doug Dreyer, Dennis Eade, John Foster, Jim Gerard, Kathy Grimm (Alternate)

Absent: David Fleece (with notice)

Staff: Greg Ransford, Planner, Dan Martin, Legal Counsel, Howard Fink, Manager

APPROVAL OF AGENDA:

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

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

APPROVAL OF MINUTES:

Eade noted one typo in the last paragraph on page 7: "Gerard *said* instead of *sad*...".

Eade moved, supported by Foster, to approve the minutes of September 14, 2020 Regular Meeting as corrected.

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

BUSINESS ITEMS:

Item #1 - A request by Karin Kapteyn, to allow construction of a deck with a rear yard of approximately 20 feet where no less than 25 feet is permitted per Section 38-306(3) of the Park township Zoning Ordinance. Said land and premises are located at 142 Bower Street, Holland,
October 12, 2020

MI 49424. (Parcel 70-15-27-177-016, Zoned R-4 Medium Density One and Two Family Residence District)

The background information for this item is as follows: The property is described as lot 2 of the Wind Stream subdivision No. 1. The property is 0.23 acres or about 10,019 square feet. There is an existing residence on the property approximately 1,014 square feet in size excluding the attached garage. The residence was built in 1995 with the existing 10'x10' rear deck. The rear wall of the residence is located 30 feet from the rear property line with the deck extending toward said property line. The deck is about 20 feet from the rear property line. The applicant is proposing to demolish the existing deck and replace it with a 10'x16-17' deck. Since the existing and proposed decks are greater than 30" above grade they are considered within setback computations. The proposed stairs are NOT included within the setback computations as steps are exempt from building setback requirements per Section 38-483(e)(1)c of the Zoning Ordinance.

Ransford noted that the applicant came before the Zoning Board of Appeals in September 2020 to consider a rear yard setback of 17.5 square feet as the deck was proposed to be expanded toward the rear property line. That request was denied as it did not meet the standards for a dimensional variance. However, the applicant has revised plans for the deck expansion and now proposes to reconstruct the deck utilizing the existing 20' rear yard setback but to extend the deck to the east and west.

Building setback exemptions are provided for under Section 38-483(e)(2) of the Zoning Ordinance which notes additions or enlargements along or within existing setbacks shall only be allowed if approved by the Zoning Board of Appeals. The variance is necessary due to the size and the nonconforming wall that goes into the setback. There are three standards to be met.

Applicant Kateyn spoke to her request. She explained the change in the location of the deck. It will now be extended to the east to avoid interfering with the setback.

PUBLIC HEARING

Dreyer opened the Public Hearing at 6:40 P.M.

There was no comment.

Dreyer closed the Public Hearing at 6:40 P.M.

Dreyer reported there was no correspondence for this request.

Foster moved, supported by Eade, to support the variance as requested.

Foster reviewed the three standards for Building Setback Exception (Sec. 38-483(e)(2):

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

ZBA – October 12, 2020

The addition as configured is along the main wall. It will not encroach into the backyard any further with just an expansion to the east and west.

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

The deck as proposed will not be a problem for neighbors or affect sight lines or airflow. Given the change in configuration from east to west the deck will not present a problem.

c. The addition shall not be less than 5' from the side and rear lot lines and shall not be less than 10' from the front lot line.

It will be greater than the required 5' so the standard is met.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried

Item #2 – A request by John and Karen Daniel, to allow a business to operate within the C-1 Zoning District without a paved parking area or driveway, 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 east of the intersection of Ottawa Beach Road and Waukazoo Drive, Holland, MI 49424 (Parcels 70-15-25-160-029 and 70-14-25-160-049, Zoned C-1 Neighborhood Business District.

Ransford said he will provide background on all three requests then the Board of Appeals can discuss each separately.

Martin said the Public Hearing can be on all of the requests.

As background, the subject properties are 0.8228 acres (western parcel) and 0.6585 acres (eastern parcel) which together are under 1.5 acres or approximately 64,525 square feet in area. The properties are currently vacant of permanent structures but have been used as a farm market since late April 2020.

At the request of Karen Daniel in April 2020 to establish a farm stand on the properties, the Township issued a three month peddler's license for Visser Farms to sell food from the subject properties. In the summer of 2020 Staff received a complaint that there were actually three vendors selling food from the property which was a violation of the peddler's license. The matter was considered by the Planning Commission which suspended ordinance violation proceedings and extended and peddler's license to allow three vendors on the property.

Ransford noted the applicant wants long term use and wishes to extend the use of the property to a larger scale farm market, beyond the peddler's license for three vendors. However, Staff's analysis of the current Zoning Ordinance indicates a farm market is not a permitted use in the
ZBA – October 12, 2020

C-1 Neighborhood Business District but it may be a use that could be authorized through a Special Use Permit.

When the Township Planner reviewed a preliminary site plan for a Special Use Permit it was noted there are three provisions of the Zoning Ordinance the applicant is not proposing to meet with the farm market use. In order for the Township to authorize a Special Use Permit for a farm market on the subject properties the applicant needs to first obtain variances.

Therefore, the Zoning Board of Appeals is tasked with analyzing the three variance requests and determining if there is a practical difficulty or an unnecessary hardship associated with each request.

The first variance request is to allow the farm market to operate within the C-1 Zoning District without a paved parking area or driveway. It should be noted that when the unpaved parcel to the west began to be utilized for overflow parking for the Itty Bitty Bar and other businesses in the plaza the Township notified the property owner the parking area needed to be paved. The property owner began work on a site plan submission to expand the parking area but it was never formally submitted. The property owner has attempted to expand the parking area, including the paved area, against the Township's requirements, on more than one occasion over the past two years.

The second request is in regard to the public water requirement according to the zoning ordinance.

The third request is in regard to the fact there is no permanent enclosed structure which is required by the ordinance.

Ransford pointed out that all three are reviewed by the same standards.

Dreyer asked if the Township has the ability to consider a temporary two year operation permit then assess it as a trial business.

Martin said the Township does not have a temporary use ordinance. The Planning Commission cannot place a time frame on the special use. Looking at the four requirements necessary to grant the variance, the Zoning Board of Appeals could consider a time situation as a condition. The standard could be met on a short term basis, but not long term. The financial burden isn't what the Court looks at, but a condition could be imposed. The applicant doesn't want to construct a permanent structure, and the utilities would be a burden. It is possible a two year "sunset" term could be considered as a condition in the standards.

Applicant Daniel spoke to his request. He said he had to devise a site plan as part of the application for the special use. He circulated pictures showing the lay of the land from an aerial view and how he has set up the market. He has three vendors: Visser Farms in Zeeland, Great Bread Company and a meat market. The market is open Tuesday, Thursday and Saturday. He noted there is not a lot of money in operating a farm market but is happy to serve the community.

ZBA – October 12, 2020

He said he was told he was violating codes including the public water requirement. He has to tie in to the main water line on Ottawa Beach Road. It was his opinion that he doesn't believe water should be a requirement to run a farm market. He understands there are no farm market ordinances so he questions the requirement for public water, the building, and parking.

With regard to the enclosed building requirement, he was told a structure is required to operate. He called it a "circus tent." He sees no purpose in erecting a large building.

Customers have been using the area to park since they started operation on April 25. He said \$45K has been quoted to install a parking area, with the in and out approach. Also, \$15K will be required to tear up what is already there. He plans to use the property until 12/31/21. He is one year into the market – maybe in another year he could consider these requirements – but at present it's a financial hardship for him.

Over a period of one week he asked people to sign a marketing letter that asked: Do they like the market? Do they want to return? Over 300 signatures of Park Township voters signed the letter.

He said the total cost of \$60K would be for parking which is a financial hardship. He also asked people if they could support him in his variance request. Over 100 signatures supported his request for a variance. He read a support letter from one resident regarding the Waukazoo market.

He asked the Zoning Board of Appeals to consider the hardship for him for a temporary use.

Dreyer noted there were 165 signatures in support.

PUBLIC HEARING

Dreyer opened the Public Hearing at 7:03 P.M.

Derek Watts lives 150' from the market. He supported the market. He took a drive-by survey around the Township and noted a lot of activity is done on grass. Parking on the grass makes sense. He supports approval of the variance. The parking ordinance relates to 10 spots or more. With only 9 parking spots is there a reason to discuss the ordinance? People spend about 10 minutes at this market so is a paved parking area that important?

Martin noted Posillico cited the ordinance Sec. 38-605 in the Staff Memo regarding parking. Martin cited from the ordinance: "the number 10 establishes a parking lot."

Karen Daniel said she was in the Township a few years ago when the previous owner of the property she and her husband now own wanted to rezone the farm market area into commercial use. She is now the owner of this property. When she and her husband purchased it a farmers' market wasn't discussed. After she contacted Visser Farms, she talked with Howard Fink and Emma Posillico regarding the feasibility of a farmers' market. She asked the Zoning Board of Appeals to work with them. They want to be a good steward of the property and be a good partner with the Township office.

ZBA – October 12, 2020

Garrett Daniel just moved back to Holland from Colorado and supported the idea of his family operating the farmers' market, and with COVID he thought it was a good idea to work with the community. Word of mouth and the letters of support have proved the need.

Dreyer closed the Public Hearing at 7:15 P.M.

Foster asked Daniel for clarification. When he went into this venture was he aware he would have to go to the Township to request variances.

Daniel said he wasn't aware of variances until he submitted the special use permit, the peddler's permit, which was necessary. He had to resubmit his application because of three vendors. He was then told he would need a special use permit. Ransford walked him through the process, he submitted a site plan for special use in July, and then it was reported the special use wouldn't be reviewed because he was in violation of three ordinances. On July 20 he was informed he had to appear before the Zoning Board of Appeals.

Foster asked if the area was considered commercial near the Fairgrounds.

Fink said the ordinance doesn't clarify whether it is commercial.

Martin said the Fairgrounds property is likely considered nonconforming use since that property was established long before the zoning ordinances were adopted. The issue is when Daniels came to the Township for permission for the market the Zoning staff and Township Manager explained there was no ordinance for a farmers' market and he would have to apply for a peddler's license. Then a complaint came to the attention of the Township regarding multiple vendors at the market. Under the zoning ordinance in the C-1 zoning district, you can have a special use similar to other uses permitted in the C-1 district. The problem is all commercial uses of the Township have buildings, water and parking. There is no ordinance for an open air farmers' market.

The Board of Appeals should look at the standards. This is a temporary process which could tie in to the standards. Finances don't rise to the level of hardship according to the Court. To invest money and to take it back out might be a burden. Look at substantial justice and consider allowing the variance because it is short term. The Township is working on an amendment to address uses such as an open air farmers' market. At the end of 2022 there may be in place an ordinance that addresses this. He advised to focus on the four standards as they apply to this property.

Foster said he had a problem with the temporary use variance. He asked about setting a precedent.

Dreyer said precedent is not relevant in this case since this is the first farmers' market we have had to deal with.

Martin said the Planning Commission cannot put a special use time on it. The Court says you cannot put a "sunset" on a special use. As a condition of the variance we could do that. Daniel is willing to have an agreement as of 12/31/2022 he would obtain a permit, pave the parking area according to the ordinance requirements, or sell the property.

ZBA – October 12, 2020

Dreyer asked if the Board of Appeals could apply a condition in writing and use the variance along with a timeline.

Martin said the Board of Appeals could add the condition on the variance request. Daniel is willing to sign an agreement as of 12/31/2022 that one of three things will happen and the variance will expire at that time.

Dreyer asked Daniel if he is comfortable with that.

Daniel said the parking lot is a financial burden. At the date of 12/31/2022 one of three things will occur: it will be sold as a commercial property, it will have ceased because he creates a building, or they will keep the market going and he will put in a parking lot. He doesn't want to provide water. In 2023 if the market continues, what value would to provide water.

Dreyer noted that the variance goes with the land not with the use of the land.

Martin said the variance applies to the property not the owner. It is not the uniqueness of the use. We don't have an ordinance regarding a farmers' market. This is the problem. To get a use variance you would have to have higher standards including one that said that the property can't be used as zoned. We are looking at a non-use venue. The problem is the Zoning Board of Appeals considers standards regarding practical difficulties and hardship associated with the property. The Planning Commission and the Township Board make the rules. The logic comes from the ordinance itself. Commercial use requires water according to the Township. When you try to tie the four standards regarding the property for each of the variances the temporary feature is important. What is unique with this property is that its commercial use wouldn't require a building or water.

Dreyer said we can't approve the use of the property depending on what Daniel decides to do with it. Can we make it work for two years?

Martin said that once 2023 begins the applicant would have to comply with the variances in the ordinance that are in effect at that time.

Fink added there is no guarantee there will be a new ordinance.

Dreyer said the Zoning Board of Appeals could address the situation two years from now.

Martin explained to Daniel if the Township would grant the variances now, any commercial business on that property wouldn't have to have public water, paved parking or a building. The Township wants to help him where he wants to be and what he wants to do with the property. To meet the standards, it has to be tied to a temporary aspect that in the event 12/31/2022 comes around, these variances must be in compliance with the current ordinance for him to operate the farmers' market at that time and in the future.

Fink asked if the applicant has to go to the Planning Commission to obtain approval for the special use.

Martin said yes. The Planning Commission cannot grant a special use if it doesn't have support of the ordinance.

ZBA – October 12, 2020

Dreyer said the hardship is, with regard to the parking lot, is making Daniel pay \$45K for a parking lot. Give us an end date to make this work.

Martin said the same thing applies to water and the building.

Daniel asked the Zoning Board of Appeals for assurance that Ransford has direction to remove the condition.

Martin said if the Zoning Board of Appeals grants Daniel the variance and he has met the ordinance requirements, it gives him a waiver for the two years. Daniel will have to agree to the condition.

Dreyer said the motion should state that the condition should run through 2022.

Ransford said the applicant's site plan differs from what was sent to the Planning Commission. Is this an issue?

Martin said if the only issue is if there is no paved parking, water or building – that isn't important for this purpose.

Grimm asked Daniel for the market's operating time.

Daniel said the hours were Tuesday, Thursday and Saturday from 9-2 P.M. Through the summer the hours were 9-3 P.M. With a special use permit they plan to use the property for Christmas tree sales.

Grimm asked Daniel what would happen if there is too much snow. Daniel said he would figure something out. Who knows regarding winter – a winter fest?

Gerard moved, supported by Eade, to approve the parking lot ordinance to expire 12/31/2022.

Gerard reviewed the Non-Use Variance Standards Sec. 38-70(1):

- 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;***

From a cost standpoint it is burdensome. There is precedent for doing this with timelines placed on ordinances.

- 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;***

It would do substantial justice to the applicant. Regarding lesser relaxation, the applicant is working with a nearby business regarding parking arrangements so there is no need for lesser relaxation. Other property owners have operated without water or gravel-surfaced parking.

- 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; and***

This is a unique circumstance given the nature of the farmers' market business.

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

There is no ordinance regarding farmers' markets in the C-1 zoning district. It is not self-created.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried

Item #3 - A request by John and Karen Daniel, to allow a business to operate that is not conducted wholly within a completely enclosed building, where uses are required to be conducted wholly within a completely enclosed building per Section 38-424(a) of the Park township Zoning Ordinance. Said land and premises are located east of the intersection of Ottawa Beach Road and Waukazoo Drive, Holland, MI 49424 (Parcels 70-15-25-160-029 and 70-15-25-160-049, Zoned C-1 Neighborhood Business District).

Ransford explained that the second variance request is to allow the farm market to operate from outdoor tents, not conducted wholly within a completely enclosed building where uses are required to be conducted wholly within a completely enclosed building per Section 38-424(a) of the Park Township Zoning Ordinance. Currently, the vendors on the property utilize about 5-8 tents that are removed at the end of each market day. The applicant proposes one configuration of the market from April through October, and a varying configuration from November through December. In both site plans there are no permanent structure proposed for either site configuration.

Gerard moved, supported by Eade, to approve the variance not requiring an improved building with the condition of the timeline of 12/31/2022.

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.***

Because this is an outdoor market, to require an indoor building it defeats the purpose and would be burdensome.

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.

There is no concern with the market. There is neighborhood support and there have been no complaints. There is cooperation with parking from other businesses.

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.

This is an outdoor market. There is no specific Township ordinance, and it is unique

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

There is no Township ordinance for this type of market so it is not self-created.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried

Item #4 – A request by John and Karen Daniel, to allow a business to operate within the C-1 Zoning District without public water where all uses within the C-1 Zoning District shall be serviced with public water per Section 38-424(b) of the Park Township Zoning Ordinance. Said land and premises are located east of the intersection of Ottawa Beach Road and Waukazoo Drive, Holland, MI 49434 (Parcels 7ii0-15-160-029 and 70-15-25-160-049, Zoned C-1 Neighborhood Business District).

The third variance is to allow the farm market to operate without public water where all uses within the C-1 Zoning District shall be serviced with public water per Section 38-424(b) of the Park Township Zoning Ordinance. There are no permanent structures proposed for the property, food and beverages will be offered out of trucks, and a vendor porta john is proposed along the southern property line.

Eade moved, supported by Gerard, to approve the variance predicated on the timeline of 12/31/2022.

Eade reviewed the standards for Non-Use (Dimensional) Variance:

- 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 application is for an outdoor market and does not have the need to provide public water. It is a temporary special use because of the burden to 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.**

Providing public water would do justice to the applicant, but in the case of the outdoor market the water provision waiver would do substantial justice to the applicant.

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

The outdoor market without a public utility connection is a special use because it is unique. The variance is limited to the timeline of 12/31/2022 which does justice to the applicant.

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

The required water lines for this use do not apply. Public water is available.

Roll Call Vote:

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

Ayes 5, Nays 0. Motion carried

PUBLIC COMMENT

Dreyer opened Public Comment at 8:05 P.M.

Jeff King said he had sent Manager Fink a letter regarding the Zoom meeting and public comment.

Dreyer closed Public Comment at 8:06 P.M.

ANNOUNCEMENTS

The next scheduled meeting date is November 9, 2020.

ADJOURNMENT

Gerard moved, supported by Foster, to adjourn the meeting at 8:07 P.M.

Voice vote:

Ayes 5, Nays 0. Motion carried.

Respectfully submitted,

Judith Hemwall
Recording Secretary
October 14, 2020

Approved:

February 1, 2021