

MINUTES

PARK TOWNSHIP ZONING BOARD OF APPEALS

Regular Meeting
January 23, 2012
6:30 P.M.

DRAFT COPY

Chair, John Foster, called the regular meeting of the Park Township Zoning Board of Appeals to order at 6:30 P.M.

Present: John Foster, John Barwis, Doug Dreyer, Sally Pollock

Absent: Joannie Bouman, Dennis Eade

Staff: Andy Bowman, Staff Planner

MOTION

A motion was made by Dreyer and supported by Barwis to approve the agenda.

VOTE: Ayes 4, Nays 0. Motion carried.

MOTION

A motion was made by Dreyer and supported by Barwis to approve the minutes of the November 28, 2011 regular meeting as presented.

VOTE: Ayes 4, Nays 0. Motion carried

AGENDA Item #1 – A variance request by Brian Cook for a lesser side yard setback than allowed for a proposed residential addition, per section 38-276 (2) of the Park Township Code of Ordinances. Said land and premises are located at 1548 Elmer Street, Holland, MI (Parcel #70-15-35-355-005, R-3)

Bowman explained the request is to expand an existing second story on a single family home to line up with the current main wall footprint of the existing first floor.

Brian Cook, 6480 Castle Ave., Holland – would like to build a second floor which would rise up from the first floor and would significantly improve the house.

Foster asked if the house was originally two stories.

Cook replied that it had a gable roof with a stairway to a walk-in attic.

Foster said one drawing shows the upper part is built back but another picture shows the second floor will actually line up with the first floor.

Cook confirmed the second drawing is more accurate and the addition will line up with the first floor.

Barwis said if he were a neighbor he would prefer the proposal over the present structure and the proposed structure certainly would be an improvement.

Foster said he visited the neighborhood and observed a mix of one and two story homes in the area.

Cook said his neighbors are in agreement with what he plans to do.

PUBLIC COMMENT

Foster opened the public comment period. There being no public comment, the public hearing was closed by Foster.

MOTION

Barwis moved and Dreyer supported to accept the variance proposal as requested by Mr. Cook. Barwis reviewed the variance standards found in Section 38.70 of the Park Township Zoning Ordinance.

- 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.

It would be unnecessarily burdensome to build according to current side yard setbacks because the required offset would detract from the value of the house if not the value of the adjacent houses.

- 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 are other two story homes in the neighborhood and it appears to be a desirable feature enjoyed by other homes in this district Further, there is no lesser offset for the second story that would be more consistent with this area.

- 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.

Staff has found this standard can be met because the setback of the first story most appropriately applies to the bulk of the entire house. The rule for setback applying to an upper story of an existing home is an unusual circumstance of this property.

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

It is not self-created because the home was built before the setback requirements were put in place.

Dreyer noted that in regard to the first standard this is a very small house on a very small lot and will be more compatible with the neighborhood.

Foster added the house and lot are in poor condition and improving both will not only make the house more saleable in the future but will be an asset to the neighborhood.

VOTE: Ayes 4, Nays 0. Motion carried.

AGENDA Item #2 – A variance request by Mark and Diane Rich appealing the decision of the zoning administrator to not allow them to keep chickens, per section 38-490 of the Park Township Code of Ordinances. Said land and premises are located at 16652 Ashley Lane, Holland, MI. (Parcel #70-15-15-356-012, R-3)

Bowman explained the Board of Appeals should consider this request as an appeal to the decision of the Zoning Administrator rather than a variance. The Zoning Administrator has made the ruling but the applicant would like to have the Zoning Board of Appeals overturn the decision and allow the use. The Board of Appeals will need to decide if it wants to uphold the Zoning Administrator's decision, or if not, there must be solid reasons for reversing it.

Foster asked about the standards that are applicable to this situation.

Bowman said that the four standards for variances do not apply here and the three standards to be considered are listed in Section 38-490 of the zoning code and on page three of the Staff Memo. Since these are the standards applied by code enforcement staff at Park Township, these are also the standards to be used in evaluating their decision.

Rich confirmed that they should not be asking for a variance even though it was worded that way in the request.

Bowman said it could be considered a use variance but recommended against it since there is a procedure spelled out for considering the request and this should not be replaced with standards for granting use variances. The ZBA should not be second guessing the process or undoing rules adopted for a discrete authorization like this. It can be appealed however, as is the case at hand.

Barwis clarified the process of how it works is written into the regulation. It appears the Board of Appeals must decide whether the Zoning Administrator made a mistake in making the decision.

Foster asked the applicant to speak in reference to his application.

Rich asked if he should have gone to the Zoning Administrator first. Code Enforcement at the Township offices had advised him to go to the ZBA.

Bowman explained this is basically a special accessory use in a residential zone and the keeping of non-household animals would have to be made by the Zoning Administrator first. Bowman pointed out that Jerry Felix, Township Manager, said in a staff memo the request is not permitted based on Township standards listed in Section 38-490.

Foster asked Rich if he had approached the Township before he considered raising chickens.

Rich said he had not.

Bowman again explained this is an accessory use request about keeping animals in a residential zone and the Zoning Administrator rules on such requests based on the three standards in the ordinance. He was not clear why the applicant was advised to ask for a variance since a decision would have to be made first by the Zoning Administrator. Felix is the designated Zoning Administrator and based on his memo dated January 20, 2012 he has denied the request by Rich.

Barwis read the ruling by Felix and asked Rich if he was aware of this ruling regarding his request.

Rich said he was not aware of the ruling. He had met with Ed deVries several times over the past month and came to the ZBA for a variance.

Foster asked Rich how long he has had the animals.

Rich said he has had three hens since Easter 2011.

Bowman asked Rich what he was told by the Township.

Rich said he received two letters from Ed deVries. He read from a letter saying “you may appeal the decision with the Zoning Board of Appeals by filing an application.” The letter told him to remove the animals.

Dreyer reiterated that Rich is appealing the decision, not asking for a variance.

Bowman said there seems to have been some confusion in the wording of the request.

Barwis said he can relate to Rich’s wish to raise chickens but the residential area is not zoned for agricultural use.

Rich asked what he can do at this point.

Bowman said there is a process for changing zoning rules. He can request the Planning Commission and the Township Board to consider changing the ordinance. Special language has to be prepared for such a change and a public hearing must take place. It can be a lengthy process.

Barwis encouraged Rich to contact the Planning Commission about changing the regulation. He asked Foster if the Board of Appeals could send a note to the Planning Commission and ask them to revisit this issue.

Rich asked who he should contact for a delay until he goes through the appropriate channels.

Dreyer said to contact Code Enforcement.

Dreyer further recommended Rich contact Felix about the process for the Planning Commission to look at the ordinance. He also suggested to Rich that he attend the next Planning Commission meeting and speak to this issue during the public comment part of the meeting. He said the ZBA will not rule since it is a non-issue at this point. Perhaps he can get reimbursed for the \$175 application fee since he didn’t understand the process.

MOTION

Dreyer moved, and Pollock supported, that the Zoning Board of Appeals should not act on this request to overturn the Zoning Administrators decision because there were no errors found in applying the rules and there was an apparent miscommunication or misunderstanding. Further, the Zoning Board of Appeals recommends refunding Mr. Rich the application fee if the facts show there was a miscommunication about the process.

He advised Rich to pursue his request to the Planning Commission for a change in the ordinance.

Bowman suggested Rich address his “quality of life” issue involving the raising of farm animals by approaching the Planning Commission for a change in the ordinance. The Township must consider the quality of life for everyone with its ordinances and doesn’t want to inadvertently promote nuisances or public health issues in the process.

VOTE: Ayes 4, Nays 0. Motion carried.

PUBLIC COMMENT

Len Putnam, said the letter he received stated that Rich’s request was a variance issue. He thought approval would be given tonight.

Bowman said the Township may use the same procedure for application for an appeal as for a variance and this started the process leading to notices.

Dreyer suggested a form may have been mailed and the wording may not have been changed to apply to this particular request, contributing to the confusion in verbiage.

ANNOUNCEMENTS

Dreyer said he had requested in a previous meeting that the staff follow up with applicants who appear before the ZBA. He had asked about a form letter sent to applicants that outlines the proper procedures. It is still obvious applicants do not know what to do. There should be no mystery in the process when they appear before us for a ruling. There should be consistency in the language so the onus is not placed on Board members to make interpretations.

Bowman said we would have to consult with Dan Martin about the language. When there is a specified authorization process, the Board of Appeals should not have to apply the same procedures as used for the granting of a variance.

ADJOURNMENT

MOTION

Pollock moved and Dreyer supported to adjourn the meeting at 7:25 PM.

VOTE: Ayes 4, Nays 0. Motion carried.

Respectfully submitted,
Judith R. Hemwall
Recording Secretary
January 26, 2012