



Park Township

Ottawa County, Michigan

PARK TOWNSHIP ZONING BOARD OF APPEALS MINUTES

Draft until approved at next meeting

March 24, 2008

DRAFT COPY

Chairman David Clark called the regular meeting of the Park Township Zoning Board of Appeals to order at 6:00 p.m.

Present: Jim Hertel, Doug Dreyer, Skip Keeter, David Clark, Nicki Arendshorst, Dan Martin, attorney and Eric Davis, Zoning Inspector

Absent: None

Approval of Agenda

A motion to approve the agenda for the March 24, 2008 meeting of the Park Township Zoning Board of Appeals was presented by Keeter and supported by Arendshorst.

VOTE

Passes 5-0

Approval of Minutes

A motion to approve the minutes from the January meeting of the Park Township Zoning Board of Appeals was presented by Hertel and supported by Arendshorst.

VOTE

Passes 5-0

Mark and Kimberly Smith are requesting seven dimensional variances from the Park Township Zoning Ordinance for the development of a walk-up restaurant at 2244 Third Ave (70-15-33-279-002).

Clark stated how the meeting is to proceed regarding comments and procedure. He asked Martin if he is correct in the assumption that the property has been conditionally rezoned.

Martin stated that while the Township Board passed a Zoning Ordinance amendment that conditionally rezoned the property, the Zoning Ordinance amendment had not yet taken effect. Martin explained the laws regarding how the new ordinance will take effect and the time frame involved. Martin stated that any decisions tonight should be based on the zoning map amendment ordinance taking effect, and any variance approvals should be conditioned on the Zoning Ordinance amendment taking effect.

Hertel asked if it is only academic to look at these variances. What effect will these decisions have on the plan?

Martin explained this meeting is to consider the dimensional variances that are needed to build the hot dog stand on the property as conditionally rezoned by the Township Board. Martin clarified that the decision regarding the variances was to be made by the ZBA based upon the standards for granting variances contained in the Zoning Ordinance. Martin stated that the fact that the Township Board approved the Zoning Ordinance amendment did not mean that the ZBA was required to grant any of the variances as requested.

Keeter emphasized the Zoning Board of Appeals (ZBA) is doing a normal dimensional variance.

Clark stated the ZBA is not here to redesign the property or the proposed building.

Clark indicated that the ZBA would hold a separate public hearing for each of the requested dimensional variances and consider each individually, as if they were separate items.

Item #1

A setback of 30 feet along Ottawa Beach Road where 75 feet is required by section 16.05(a).

Clark asked if the applicant would like to speak on behalf of this variance.

Randall Schipper (attorney for Mark and Kimberly Smith) asked if he could present all of the arguments for all seven variances together because they are all interconnected.

Clark stated that would be ok to present his arguments in such a manner, however the ZBA will vote on each variance separately.

Schipper described the dimensions of the property and purpose for the requested dimensional variances. He stated the parcel can not be developed for any purpose without dimensional variances being granted. He stated that nothing could be built on the property in strict compliance with the Zoning Ordinance requirements. Schipper stated that no other non-residential structure in the area of the proposed development complies with the requirements of the commercial zone district. He explained how the variances are necessary and all work together. He indicated that while they could try to push the building more to the west and the south, that

would result in having the building closer to the existing residential uses, with parking in the front, which would provide no benefit to anyone. Schipper stated that these variances would help keep the attractiveness of the development and keep the parking behind the building, as approved by the Township Board. Schipper stated that strict compliance with the zoning ordinance requirements would be unnecessarily burdensome. He gave examples of each zoning ordinance provision and how each of the requested variances meets the standards necessary to grant each of them. Schipper stated that granting the variance requests would do substantial justice to the applicant. He stated that Holiday Haven is the only other near-by property that is located within the same zoning district, and the requested variances would not cause any injustice to that other property located within the same zoning district. Schipper noted that all of the other existing homes in the general area are not located within the same zoning district as the property. Schipper stated that the practical difficulties are due to the unique circumstances of the property, being three small platted lots with frontage on Ottawa Beach Road, the most-used public street within the Township, and Third Avenue, a very small and narrow public street. Schipper stated that because these small lots were platted way before the adoption of the Zoning Ordinance requirements, the practical difficulties were not self-created by the applicants. Schipper noted that it is not the vision of the applicants to erect a hut in the middle of a parking lot. He noted that the applicants believe that the requested variances will allow them to save trees, keep focus on the restaurant, contain an attractive seating area and offer a nice landscape from the road. Schipper concluded that these plans contain the best use of the site with the least amount of variances.

Clark opened the public hearing.

Carol Washburn-2253 1st Ave., asked if the ZBA is independent from the Board of Trustees.

Clark stated the ZBA is appointed by the Township Board, is paid for meeting attendance by the Township, and one member of the ZBA is a Township Board member, but the ZBA is not directed by them. Clark stated that the ZBA is objective and will make its decisions based on their own individual opinions.

Washburn asked if the ZBA has to accept the variances given the Township Board's decision to approve the conditional rezoning.

Dreyer stated the ZBA is not required to approve the variances and is not discussing the project as a whole but just the individual dimensional variances that have been requested based on the standards in the Zoning Ordinance.

Washburn asked if the applicants just remodeled the home would they need a variance if they would not go outside the perimeter of the existing footprint.

Davis stated there is a provision in the Zoning Ordinance under non-conforming structures that prohibits prolonging or extending the life of a non-conforming structure. If there are flaws in the foundation or other major repairs needed as part of the remodeling, this provision would apply and a variance could be needed even as part of a remodeling project for the existing structure.

Washburn stated that if the house were facing Ottawa Beach Rd., it would not need a variance.

Davis described the setback variances that would likely be necessary if this occurred.

Washburn stated a home 25 feet by 60 feet could be built on the property without any variances.

Davis stated that may be true, depending on which yard was the front yard, which yard was the rear yard.

Washburn asked if structures constructed before a certain date are not affected by the ordinances.

Martin explained the concept of non-conforming structures and uses as it pertains to other properties in the area.

Washburn asked the date that these ordinances were adopted and stated the General Store and Ottawa Beach Inn must have been built prior to that date so they are not held to the standards of these ordinances.

Martin explained the current version of the Zoning Ordinance was originally adopted in February of 1974, but has been amended many times since then. Martin described how the creation of nonconforming situations may vary due to amendments of the Zoning Ordinance. Martin explained that the ZBA has the authority under state law and the Zoning Ordinance to grant variances where they find there are practical difficulties based on the standards contained in the Zoning Ordinance.

Clark stated the focus right now is the front yard set back. He stated the ZBA will not be comparing other structures, but will only be considering the individual merits of this structure based on the standards.

Joel Welch-679 Bosma, stated he is concerned about safety and asked for a traffic analysis from Ottawa County.

Keeter reminded the Chairperson and the audience that the ZBA is considering only the dimensional variances requested and not other issues that are general concerns about the development and rezoning.

Clark stated the Planning Commission is the place for many of these arguments to be raised. Clark stated that the ZBA is considering dimensional variances to essentially give the applicants a permissible building envelope.

George Washburn-2253 1st Ave., asked if the ZBA will hold a public discussion before each vote on each individual variance request.

Clark stated they will take each one separately and have a public hearing on each one.

Robert Sperling-428 S. Lakeshore Dr., stated he lives in Holiday Haven trailer park and he was just informed of this variance request on Wednesday. He indicated that he saw learned about the issue from the newspaper. He asked the ZBA to not generalize about how the persons who have trailers at Holiday Haven feel based on any statements by leaders of its association. He stated a 30 foot setback is too close to Ottawa Beach Road.

Craig Hill-692 Winter Sun, asked how tall the building would be, for fear that it might get in the way of the view of their neighbors.

Clark explained that the applicant did not request a height variance and everything the ZBA is voting on tonight is horizontal.

Hill stated a snowdrift could come off the building and cause traffic issues on Ottawa Beach Road.

Sally Pollock-2285 Ottawa Beach, asked the ZBA to keep in mind the request is for only 40 % of the required setback in the ordinance on Ottawa Beach Rd.

Clark closed the public hearing and opened for board discussion.

Schipper asked if the applicant could have an opportunity for a rebuttal to dispute any of the arguments.

Clark approved Schipper's request.

Schipper countered many of the arguments raised by the persons who spoke in opposition to the request.

Dreyer asked if the ZBA is required to look at each issue separately and hold separate public hearings for each one.

Clark stated it would be better to do so.

Martin explained that it is not a legal requirement to hold separate public hearings with separate discussion and separate votes, but the ZBA must consider each variance request on its own individual merits. Martin stated the chair's approach is to maintain each variance as a separate issue in order to consider, pass or deny each request based on its own merits.

Clark questioned why the eave line is considered the point at which the set back is measured.

Schipper stated this point was taken because the eave will be on the post, which is a supporting structure.

Clark reviewed the standards for granting a dimensional variance: (found at the end of these minutes)

1. §20.06(a)(1). *Whether strict compliance with the Zoning Ordinance requirement regulating the minimum yard setback from Ottawa Beach Road would render conformity with such restriction unnecessarily burdensome.*

Keeter indicated that he felt strict compliance with the setback requirement from Ottawa Beach Road would be unnecessarily burdensome.

Dryer stated that given the small size of the property and the necessary size of the structure, strict compliance from the Ottawa Beach Road setback would be unnecessarily burdensome.

Hertel stated he did not think that strict compliance would be unnecessarily burdensome.

Arendshorst stated that strict compliance with the Ottawa Beach Road setback would be unnecessarily burdensome given the small size of the property.

Dreyer stated that it was difficult for him to separate all of the variance requests, because they are all inter-related. If you deny the variance from the Ottawa Beach Road setback, that would impact the parking area available, the side yard setback issues, etc. Dreyer indicated that there must be variances to fit the building on such a confined lot.

Clark stated that he agreed that strict compliance with the Ottawa Beach Road setback requirement would be unnecessarily burdensome given the small size of the property.

2. §20.06(a)(2). Whether granting the requested variance from the Ottawa Beach Road setback would do substantial justice to the applicant as well as to other property owners in the zoning district, or whether 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.

Keeter stated the applicant has submitted a good site plan that utilizes the small parcel in the best possible way without getting in the way of the neighborhood in which it is located. The site plan keeps the amenities close to the street, with the parking being provided in the back. The requested variance from the Ottawa Beach Road setback does justice, and no lesser relaxation would do more justice to other property owners in the commercial zoning district. This fulfills the requirement of substantial justice.

Arendshorst stated that there are fewer parking spaces than required. She indicated that all of the requests are very inter-related. She had a problem with the number of parking spaces being provided, but she wanted to separate that concern from what she would like to see done with the property as a Planning Commission member and what is the variance request at this time, the Ottawa Beach Road setback. Still, the setback is related to the amount of parking space that will be available for the property. She stated that in order to have the whole operation work, it needs to have the building placed where it is requested to go, with parking available in the rear, and the further away from Ottawa Beach Road the building is located, the less amount of parking space would be available.

Hertel stated he saw this issue as a matter of cars versus pedestrians visiting the business. He stated that he anticipates a lot of vehicular traffic, and would be concerned with traffic safety.

Keeter clarified that he felt the variance from the Ottawa Beach Road setback requirement would do substantial justice because it would allow more parking space to be available behind the structure than if the building met the 75 foot setback.

Dreyer and Clark both expressed agreement with Keeter.

3. §20.06(a)(3). Whether the plight of the applicant is due to unique circumstances of the property and not to general neighborhood conditions in the area.

Keeter stated that this situation is unique because of the small size of the property, which is comprised of three small lots.

Clark noted that it was kind of both, due to unique circumstances of the property, but also due to general neighborhood

conditions because there are a lot of small lots in the area. However, not many of the small lots in the area are corner lots on Ottawa Beach Road zoned for commercial purposes.

4. §20.06(a)(4). *Whether the problem is self-created.*

Clark stated that the problem is not self-created because the applicant did not plat the parcel over 100 years ago.

A motion was made by Keeter and supported by Dreyer to grant a setback of 30 feet from Ottawa Beach Road rather than the 75 feet required per section 16.05(a) based on the applicant meeting the four (4) standards in Section 20.06(a) as discussed above, and contingent on the Zoning Ordinance amendment rezoning the property becoming effective.

Note

4-1 motion passed (Hertel)

Item #2

A setback of 24 feet along 3rd Ave. where 50 feet is required by section 16.05(b)(2).

Clark asked if this should also be considered a front yard set back, because it is a corner lot.

Martin stated this is related to 16.05 regarding commercial development and is correct as stated.

Clark clarified that this is viewed as a side yard and that the rear is opposing Ottawa Beach Road.

Clark opened the public hearing.

Skip Nagelvoort-2323 Pavillion-stated he believes it is unusual to blame the property for the problems of the proposed building and overambitious development.

C. Washburn stated that granting the variance is not doing justice to the other people in the zoning district because it is bringing a commercial use that the other residences do not want in their neighborhood.

Hill spoke regarding the issue of parking in the back of the structure and gave a scenario as if the parking lot was full, where will additional cars park, how will they get out of the parking lot.

Clark noted that would be more of a Planning Commission issue regarding traffic flow and the volume of parking. He noted that the Planning Commission will not likely look at the request as a typical restaurant.

Jan Walters-679 Bosma Ave.-stated this is an open area seating restaurant with children playing. The buffer is needed on Third Ave. because it is too narrow for two (2) way traffic to begin with.

Clark closed the public hearing and opened for board discussion.

Clark reviewed the standards for granting a dimensional variance: (found at the end of these minutes)

1. §20.06(a)(1). *Whether strict compliance with the Zoning Ordinance requirement regulating the setback from Third Avenue would render conformity with such restriction unnecessarily burdensome.*

Clark noted that a lot of the discussion may be similar to the prior variance request, but the ZBA should consider each item individually.

Keeter stated that strict compliance with the Third Avenue setback would be unnecessarily burdensome. He stated that they have submitted a good site plan but complying with the setback requirements in this case renders conformity with the ordinance unnecessarily burdensome because of the small and narrow parcel size, being only 75 feet wide and 150 feet deep.

Dreyer and Arendshorst agreed with Keeter.

2. §20.06(a)(2). *Whether granting the requested variance from the Third Avenue setback would do substantial justice to the applicant as well as to other property owners in the zoning district, or whether 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.*

Clark stated that he agree with Keeter that the site plan was well prepared, utilizing the small lot most efficiently, and that therefore granting the variance from Third Avenue would do substantial justice to the applicant as well as other property owner is the commercial zoning district, and that a lesser relaxation would not be more consistent with justice to other property owners in the commercial zoning district.

All other members of the ZBA acknowledged agreement with Clark.

3. §20.06(a)(3). *Whether the plight of the applicant is due to unique circumstances of the property and not to general neighborhood conditions in the area.*

Dreyer stated that this situation is unique because of the small size of the property, 150 feet by 75 feet, which is comprised of three small lots that are 50 feet by 75 feet each. He noted that while there may be other small platted lots in the area, few, if any are corner lots on Ottawa Beach Road that are zoned for commercial purposes.

All other members of the ZBA acknowledged agreement with Dreyer.

4. §20.06(a)(4). *Whether the problem is self-created*

Clark stated that the problem is not self-created because the applicant did not plat the parcel over 100 years ago.

A motion was made by Dreyer and supported by Keeter to grant a variance from Section 16.05(b)(2) to approve a setback of 24 feet along Third Avenue as presented based on the applicant meeting the four (4) standards contained in Section 20.06(a) as discussed above, and contingent on the Zoning Ordinance amendment rezoning the property becoming effective.

Vote

5-0 motion passed.

Item #3

A lot area of 11,250 square feet and a lot width of 75 feet where 21,780 square feet of area and 125 feet of width are required by section 16.05(e).

Clark opened the public hearing.

Mike DeVries-2226 Ottawa Beach Rd.-raised concerns that the lot area is only ½ of what it should be according to zoning regulations. He commented that it appears we are trying to build a post office on a postage stamp. He is opposed to placing a development on a lot that is not close to meeting the specifications.

Clark asked if the improvements set by the Planning Commission or the ZBA go back to the Board of Trustees.

Martin stated they do not.

DeVries feels that these plans are disrespectful to the Zoning Ordinance.

Clark explained how small lots were originally formed in the Township

G. Washburn stated he is in agreement with Mr. DeVries.

C. Washburn asked the ZBA to distinguish between the duties of the ZBA and Planning Commission. She stated she feels the Township needs to secure the public's safety.

Clark clarified the duties of each body, the Planning Commission and the ZBA.

Keeter commented that safety is a Planning Commission issue and the ZBA is only looking at dimensional issues.

C. Washburn stated the ZBA has a mandate to think of safety issues and the spirit of the ordinance is not being upheld.

Martin stated that the ZBA does consider safety issues and the spirit and intent of the Zoning Ordinance. Martin stated that sometimes, in order to maintain the spirit of the Zoning Ordinance the ZBA must give variances to allow properties to be used within the zoning regulations, and that the Zoning Ordinance and state law specifically allows the ZBA to grant variances. Martin explained that if the Township does not allow the property to be used at all because it is considered too small, the Township would be liable for a regulatory taking of the property and would have to pay just compensation.

Davis stated the property is zoned commercial, therefore the commercial use should be considered permissible, and that the ZBA must look at this as though the property is already zoned C2. The safety issue as it relates to a commercial use versus a residential use is essentially irrelevant to the ZBA's consideration because the Township Board has already determined that the commercial use of the property, subject to conditions, would be appropriate.

Welch stated his concerns that the Township is setting precedent with approving this many variances for one development.

Clark stated the ZBA does not work based on precedent but according to each individual parcel.

Schipper stated the lot size is .26 acres and is not an unbearable size. Residents are required to have a 1/3 acre lot on R3 zoned parcels. Zoning ordinance 4.03 (b) would allow homes on a lot of 6500 square feet, less than half of the size of this parcel without ZBA approval. He stated residents have gained approval on lots smaller than 4500 square feet, which is 1/3 the size required.

S. Pollock asked if the property has been zoned as a C-2 parcel and the ZBA does not grant the requested variances, does the Township have to purchase the property.

Martin stated that the lot area and width is something the applicant cannot change. Martin explained that the Township must allow the property to be used as zoned, or the Township could be liable for a regulatory taking and would then have to pay just compensation to the property owner. Martin stated that with respect to the minimum lot size and area requirements, his recommendation would be that the ZBA grant the variance because the standards for granting a variance would clearly be met, but with respect to all of the other requests related to setbacks and parking, there may not be a taking issue as long as the property can be used as zoned.

Clark closed public hearing and opened the meeting for board comments.

Clark reviewed the standards for granting a dimensional variance: (found at the end of these minutes)

1. §20.06(a)(1). *Whether strict compliance with the Zoning Ordinance requirement regulating minimum lot size and minimum lot width would render conformity with such restriction unnecessarily burdensome.*

Dreyer stated that strict compliance with the zoning ordinance requirements for minimum lot size and minimum lot width would render conformity with the restrictions of the zoning ordinance unnecessarily burdensome due to the small size of the parcel. Compliance with the minimum lot size and width requirement is not only unnecessarily burdensome, it is essentially impossible.

2. §20.06(a)(2). *Whether granting the requested variance from the minimum lot size and lot width requirements would do substantial justice to the applicant as well as to other property owners in the zoning district, or whether 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.*

Dreyer stated that granting the variance from the minimum lot size and width requirement would do substantial justice to the applicants because it would allow them to use the property as zoned, and a lesser relaxation is not possible.

3. §20.06(a)(3). *Whether the plight of the applicant is due to unique circumstances of the property and not to general neighborhood conditions in the area.*

Dreyer stated that the circumstances are unique to the property because it is a very small C-2 zoned lot. He noted that while there may be other small platted lots in the area that do not meet the minimum lot size and width requirements of their residential zoning district, few, if any are corner lots on Ottawa Beach Road that are zoned for commercial purposes.

4. §20.06(a)(4). *Whether the problem is self-created*

Dreyer stated the practical difficulties are not self-created because the applicants did not create the small property.

Motion made by Keeter and supported by Arendshorst to grant the variance from Section 16.05(e) pertaining to the minimum required lot size and width based on the applicant meeting the four (4) standards contained in Section 20.06(a) as discussed above, and contingent on the Zoning Ordinance amendment rezoning the property becoming effective.

Note

5-0 motion passed

Item #4

-

To provide 11 parking spaces where a minimum of 22 is required by section 17.01.

Clark stated that one parking stall is required for every two (2) seats.

Smith stated he discussed the number of parking spaces available with township staff and established the zoning ordinance parking provision that fits this development would pertain to an out door café. The estimated number of 44 seats was divided by the number of parking spots and decided 22 were needed.

Clark opened the public hearing.

Welch stated he is concerned about noise and how that is related to the amount of parking places.

Clark closed public hearing.

Clark reviewed the standards for granting a dimensional variance: (found at the end of these minutes)

1. §20.06(a)(1). *Whether strict compliance with the Zoning Ordinance requirement regulating minimum number of parking spaces would render conformity with such restriction unnecessarily burdensome.*

Clark stated that strict compliance with the minimum required parking would be unnecessarily burdensome because it would not be physically possible for 22 parking spaces to be located on the property with a building. To meet parking requirements, they would need to severely limit the number of seats available on-site.

Hertel stated he would like to see more spaces, perhaps 16-17 spaces.

2. §20.06(a)(2). *Whether granting the requested variance from the minimum parking space requirements would do substantial justice to the applicant as well as to other property owners in the zoning district, or whether 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.*

Clark stated that granting the variance would do substantial justice to the applicant and the property owners in the commercial zoning district because the restaurant's focus is on walk-up customers, not those coming via automobiles.

Arendshorst raised concerns about the possibility of a traffic back-up during peak meal times.

Dreyer stated he felt that the variance would do substantial justice to all involved because the restaurant will serve predominantly walk-up customers. Dreyer indicated that he believed that they would have mostly pedestrian and bicycle traffic, not vehicular traffic, as customers.

Keeter stated that taking away seating areas in order to provide additional parking will not provide more justice to other property owners in the commercial zoning district, but would be nonsensical.

Hertel feels the ZBA should ask for a lesser relaxation of 15-16 spaces.

3. §20.06(a)(3). *Whether the plight of the applicant is due to unique circumstances of the property and not to general neighborhood conditions in the area.*

Keeter stated that the plight is due to the unique circumstances of the property, being so small, because the property is not large enough for 22 spaces and a building.

4. §20.06(a)(4). *Whether the problem is self-created*

Clark stated that the practical difficulties are not self-created because the applicants did not plat the small parcel themselves.

A motion was made by Dreyer and supported by Keeter to grant the variance from Section 17.01 to allow 11 parking spaces instead of the required 22 spaces based on the applicant meeting the four (4) standards contained in Section 20.06(a) as discussed above, and contingent on the Zoning Ordinance amendment rezoning the property becoming effective.

VOTE:

4-1 motion passed (Hertel)

Item #5

To place parking spaces eight (8) feet from the street right of way where ten (10) feet is required by section 17.05(h).

Keeter reminded the ZBA the street right of way in question is Third Avenue.

Clark opened the public hearing.

There was no public comment.

Clark closed public hearing and opened for board discussion.

Clark asked what a bio-swale is.

Dreyer explained what a bio-swale is.

Clark stated the plan could change the bio-swale.

Dreyer asked what the repercussions would be to move the bio-swale back two feet.

Schipper stated that would affect the parking area.

Clark reviewed the standards for granting a dimensional variance: (found at the end of these minutes)

1. §20.06(a)(1). *Whether strict compliance with Section 17.05(h) of the Zoning Ordinance regulating location of parking spaces would render conformity with such restriction unnecessarily burdensome.*

Clark stated that strict compliance with Section 17.05(h) of the Zoning Ordinance would be unnecessarily burdensome because the additional two feet is needed for ingress and egress to/from the parking spaces. Further, changing the distance here would likely result in a zero lot line elsewhere.

2. §20.06(a)(2). *Whether granting the requested variance from Section 17.05(h) of the Zoning Ordinance regulating the location of parking spaces would do substantial justice to the applicant as well as to other property owners in the zoning district, or whether 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.*

Clark stated that granting the requested variance would do substantial justice to the applicant because to offer a lesser relaxation would create another problem on the other side of the property.

Keeter noted that the applicants accommodated the drainage concerns by utilizing a bio-swale. Substantial justice would be done by granting the variance.

3. §20.06(a)(3). *Whether the plight of the applicant is due to unique circumstances of the property and not to general neighborhood conditions in the area.*

Dreyer stated that the plight of the applicant is due to the circumstances of the property because of the narrow width and small size of the property.

4. §20.06(a)(4). *Whether the problem is self-created*

Clark stated that the difficulties are not self created because the applicant did not create the small, narrow lot, and is trying to use the property as zoned while having less of an impact on the neighboring residential property.

A motion was made by Hertel and supported by Dreyer to grant the variance placing the parking spaces 8 feet from Third Avenue based on the applicant meeting the four (4) standards contained in Section 20.06(a) as discussed above, and contingent on the Zoning Ordinance amendment rezoning the property becoming effective.

VOTE

5-0 motion passed

Item #6

To not provide the 15 foot green space along each public street that is required by section 16.05 (d).

Clark stated he is in favor of green space but this development is on a very small lot.

Clark opened the public hearing.

Schipper stated the variance includes both Third Avenue and Ottawa Beach Road. He stated the applicant has included a garden on Ottawa Beach Road to provide effective green space and attractive landscaping. Third Avenue is on a right of way that is essentially a private road any landscaping would cut into the amount of parking stalls provided.

Jan Walters stated with children at the Pronto Pup stand, a buffer is needed on a one way road that will support two-way traffic.

Welch stated that Third Avenue is a public street and not a private drive.

Clark stated there are many streets throughout the county that have not been reverted in ownership back to the previous private land owners. When people park on them and no person creates a fuss the cars just sit there. He believes that if there is a problem the Sheriff will be involved quickly.

Welch stated that this area is not a top priority for the Sheriff's department.

Schipper stated the applicant never stated it is not a public street. It is effectively a private street in that it only serves two parcels.

Sperling stated he disagreed with the Township attorney because he felt that the County would buy the property. He stated that the ZBA is supposed to look at the variances. He feels to disregard the zoning rules is not comprehensible.

Hill stated that an adaptation to a green space is not a metal guard rail. Not exactly his idea of green space and a buffer zone.

Clark asked if some green, buffer space would be placed on Ottawa Beach Road.

Keeter stated they could leave the bike path where it is and forfeit safety but chose to give to up for the safety of moving the bike path back. They have accommodated the public at the expense of green space.

Dreyer asked the applicant if they can provide 6-8 feet of a buffer off the frontage along Third Ave.

Smith asked why the reason for the buffer.

Dreyer stated because it is a street. A buffer between the seating area and the road would be preferred.

Smith stated that it may be possible to change this feature in the plans.

Sperling stated this is the wrong format for telling the applicant what would be approved.

Clark stated this is common practice.

Martin stated this falls within the second standard the ZBA will be considering when discussing this variance, that is, whether a lesser variance may do more justice.

Clark closed the public hearing.

Clark reviewed the standards for granting a dimensional variance: (found at the end of these minutes)

1. §20.06(a)(1). *Whether strict compliance with Section 16.05(d) of the Zoning Ordinance regulating green space along a public street would render conformity with such restriction unnecessarily burdensome.*

Keeter stated strict compliance with the zoning ordinance requirement would render conformity unnecessarily burdensome because it restricts the applicant from conducting business on that side of the lot. He noted that the applicant had moved the bike path, which takes away some green space, and by giving up the property to allow the bike path to be relocated, they are giving up a significant portion of the 15 foot of required green space. Third Avenue has the bio-swales on it and plantings.

Clark stated that the required 15 feet of green space would be unnecessarily burdensome given the small and narrow size of the lot.

Dreyer stated that he felt strict compliance would be unnecessarily burdensome, because it would restrict their ability to do business given the small, narrow property, but indicated that he'd like to see a little more of a buffer along Third Avenue than what was being proposed. He thought an eight foot buffer along Third Avenue may be more appropriate.

2. §20.06(a)(2). *Whether granting the requested variance from Section 16.05(d) of the Zoning Ordinance regulating green space along a public street would do substantial justice to the applicant as well as to other property owners in the zoning district, or whether 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.*

Dreyer stated that granting a lesser relaxation would do substantial justice to the applicant and other property owners in the commercial zoning district. The green space along Third Avenue could be reduced from the required 15 feet to 8 feet, rather than eliminated as requested. The variance from the required 15 foot green space along Ottawa Beach Road should stay as presented due to the changes and relocation in the bike path.

3. §20.06(a)(3). *Whether the plight of the applicant is due to unique circumstances of the property and not to general neighborhood conditions in the area.*

Dreyer stated that there are unique circumstances because of the small and narrow size of the property, along with the relocation of the bike path.

4. §20.06(a)(4). *Whether the problem is self-created*

Dreyer stated that the alleged difficulties are not self-created, as the applicant did not create the small lot, and has agreed to relocate the bike path.

Motion by Dreyer and supported by Hertel to grant a lesser variance from Section 16.05(d) than requested in order to allow an eight (8) foot green space instead of fifteen (15) feet along Third Avenue, and no green space requirement instead of fifteen (15) feet along Ottawa Beach Road, based on the applicant meeting the four (4) standards contained in Section 20.06(a) as discussed above, and contingent on the Zoning Ordinance amendment

VOTE

5-0 motion passed.

Item #7

-

To not provide the ten (10) feet wide greenbelt between the parking area and residentially zoned property that is required by section 17.05(a).

Clark opened the public hearing.

G. Washburn spoke on behalf of the owners of the pink cottage. He stated to eliminate the green space would place harm on their property because the property overlooks a parking lot on one side of the lot and the dumpsters will be placed too close to their deck. He suggested having only employee parking since the majority of their business would be from pedestrian traffic.

Clark stated there would be a problem with many commissions based on the fact that it is a business and some amount of parking is necessary.

Sperling stated he does not see how the ZBA can just disregard the standard.

Hill stated he owned the pink cottage and the gentleman who purchased it will probably retire there.

Clark asked if the owner of the property being discussed was present.

G. Washburn stated the owners had a prior commitment.

Welch stated if the township allows paving all the way back to the property line it will be difficult to sell the adjacent property.

Dreyer stated there is a six (6) foot tall fence that abuts the residential property to the west and north.

Welch stated that running pavement to that fence will result in the adjacent property needing to be rezoned C2.

Walters stated the neighbors need a buffer.

G. Washburn stated greenbelt is needed to provide a buffer for noise.

Schipper defended the applicant's variance request for the elimination of the green belt.

Welch countered Schipper's arguments stating the neighbors have complained about the C2 zoning and the chain link fence barrier.

Hill asked if the ZBA members owned that property would they want that space removed.

Clark closed the public hearing and opened board discussion.

Keeter stated that he felt the residents would likely rather have a solid six (6) foot fence than a ten (10) foot strip of grass looking at the parking lot of the Pronto Pup stand.

Arendshorst stated the Planning Commission can determine what type of vegetation is planted in the green belt area.

Schipper offered that the applicants will be placing chains into the drive while not in operation hours.

Clark reviewed the standards for granting a dimensional variance: (found at the end of these minutes)

1. §20.06(a)(1). *Whether strict compliance with Section 17.05(a) of the Zoning Ordinance regulating greenbelt buffer space between a parking area and residentially zoned property would render conformity with such restriction unnecessarily burdensome.*

Keeter stated that strict compliance of the zoning ordinance would render conformity with the restrictions unnecessarily burdensome because it would dramatically reduce the parking area available.

2. §20.06(a)(2). *Whether granting the requested variance from Section 17.05(a) of the Zoning Ordinance regulating greenbelt buffer space between a parking area and residentially zoned property would do substantial justice to the applicant as well as to other property owners in the zoning district, or whether 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.*

Clark stated that a lesser relaxation, rather than total elimination of the greenbelt requirement, would do substantial justice to the applicant and would be more consistent with justice to other property owners in the commercial zoning district. Clark suggested reducing the amount of green belt space necessary to one and one half (1 ½) feet on the side of the property opposite Ottawa Beach Road, and two (2) feet on the side of the property opposite Third Avenue.

3. §20.06(a)(3). *Whether the plight of the applicant is due to unique circumstances of the property and not to general neighborhood conditions in the area.*

Clark stated that the plight of the applicant is due to circumstances that are unique to the property, in particular a very small, narrow property zoned for commercial purposes.

4. §20.06(a)(4). *Whether the problem is self-created.*

Clark stated that this issue is not self created because the applicants did not create the small, narrow lot.

A motion was offered by Clark and supported by Keeter to grant a variance from Section 17.05(a) of the Zoning Ordinance and allow a green belt of a foot and a half (1 ½ feet) on the westerly property line (the rear of the parcel) and of two (2) feet on the southerly property line where it abuts the residential property based on the applicant meeting the four (4) standards contained in Section 20.06(a) as discussed above, and contingent on the Zoning Ordinance amendment

VOTE

5-0 motion passed

Announcements:

There were no announcements

Adjourn:

A motion to adjourn was made by Hertel and supported by Arendshorst.

VOTE

5-0 motion passed

Meeting adjourned.

Daniele Dykens

Recording Secretary

March 24, 2008

The following briefly states the standards used for finding a practical difficulty for a dimensional variance:

- a. Whether strict compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would render conformity with such restrictions unnecessarily burdensome.PRIVATE
- b. Whether granting a variance would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property and be more consistent with justice to other property owners.
- c. Whether the plight of the owner/applicant is due to unique circumstances of the property and not to general conditions in the area.
- d. Whether the problem is self-created.