

MINUTES
PARK TOWNSHIP
ZONING BOARD OF APPEALS

Regular Meeting
October 3, 2011
6:30 PM

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, Joannie Bouman, Doug Dreyer, Dennis Eade

Alternate Sally Pollock was present as a member of the audience.

Others: Andy Bowman, Staff Planner

Foster introduced new member of the Zoning Board of Appeals, Dennis Eade.

MOTION

A motion was made by Eade and supported by Dreyer to approve the agenda as presented.

VOTE: Ayes: 5, Nays: 0. Motion Carried.

MOTION

A motion was made by Dreyer and supported by Bouman to approve the minutes for the August 22, 2011 regular meeting as written.

VOTE: Ayes: 5, Nays: 0. Motion Carried.

AGENDA Item #1 A variance request by Edward and Sharon Wheatley for a lesser rear yard setback than allowed for a proposed residential addition, per section 38-306 of the Park Township Code of Ordinances. Said land and premises are located at 2334 Crescent Walk, Holland, MI. (Parcel #70-15-33-393-006, R-4)

Bowman introduced the item. The applicant is proposing a screened-in porch on a nonconforming lot in Macatawa Park. It is a small corner lot where the corner

is part of a looped roadway. The home takes up most of the parcel and other dwellings on either side are similarly built close to the non-street sides of the lot. None of the yard requirements are met and the applicant claims the homes were built before zoning. The proposed addition would be built on the remaining part of the lot along Crescent Walk. He agrees an expansion of this type of could be done as a expansion of a nonconforming structure if it met the existing rules but this property cannot meet the those rules.

Chris Talsma, applicant – 2334 Crescent Walk, said he just bought the property. The former owners, Edward and Sharon Wheatley, submitted the application originally.

Foster asked if the addition was Talsma's idea.

Talsma confirmed that was case.

Foster said it appears to be a good sized porch area and asked why the applicant planned to build such a large addition.

Talsma explained it's a modest sized home so the porch would add much-needed area to the home living space.

Barwis asked how many of the neighboring homes have nonconforming porches.

Talsma guessed most are nonconforming in the area, whether it is the homes or the porches.

Barwis asked if he had discussed the plan with neighbors.

Talsma said he had not, although the previous owners had agreed with the plan.

PUBLIC HEARING

There was no public comment. Foster closed the public hearing.

MOTION

Barwis moved and Eade supported to grant the variance based on the following grounds:

- 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 since the house was built before the ordinance so the ordinance creates an undue burden not shared by the owner.

- 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 homes in the area that are nonconforming and enjoy those benefits. It would be an injustice to the current owner for him to not enjoy the same benefit.

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

The circumstances are unique: the shape of the property is irregular, the plat is over 100 years old, and the house was built before the restrictions were in place.

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

It was platted 100 years ago so it clearly is not a self-created problem.

VOTE: Ayes: 5, Nays: 0. Motion Carried.

AGENDA Item #2 A variance request by Katherine Reck for a lesser rear yard setback than allowed for a proposed addition to a deck, per section 38-276 of the Park Township Code of Ordinances. Said land and premises are located at 916 Meadow Drive, Holland, MI. (Parcel #70-15-24-401-012, R-3)

Bowman introduced item. As background, Sec. 38-276 (3) of the zoning ordinance requires a rear yard of at least 50' in the R-3 zone. The current home appears to have been built with a rear yard of 44.5' and a 14' deck was added to make the total existing rear yard 30.5'. Bowman confirms the home and existing deck were built by the original owner and approved by the Township even though substandard.

Bowman stated Township officials have indicated there was no previously granted variance for the substandard rear yard, the variance should now be reviewed and applied to both the home, existing deck and proposed deck expansion.

Barwis asked if there is any information about past variances.

Bowman stated the Township office staff has not found any other variances for this site.

Katherine Reck – 916 Meadow Drive, had no additional information about the history of the variance.

Doug Gritter – Pine Creek Construction-explained the plan is to add 6' to the existing porch and are asking for a 6' variance. The home was built 23 years ago. Reck also wants to add a screened porch.

Foster found the existing porch would be extended and all of it screened.

Gritter said he has talked with neighbors so there is no problem. The property isn't close to any property and is very private.

Foster said two letters were received and there was no problem stated in either of them.

Dreyer asked Bowman whether this request is a nonconforming issue or a 6' variance issue.

Bowman explained it should be viewed as a variance after- the-fact rather than a nonconforming issue. Nonconforming uses had to be legal at the time they were built.

Bowman asked if Reck had checked into acquiring additional property from the neighboring church.

Reck had not, indicating that it would cause an odd shaped discontinuity in an otherwise straight property line.

Dreyer asked if Reck could go wider with the plan.

Gritter explained that would entail greater cost.

Barwis asked how adding 6' would make the property more conforming with other homes in the area.

Reck said it's an area with large homes so it would make hers more conforming.

Bouman asked why this problem was not noticed when the home was built originally and the property was inspected.

Bowman said there is no information about that, but they may not have counted the deck against the setback. However, the house is also within the 50' setback.

Gritter said when Reck purchased the home nothing was said about the home being out of compliance.

Dreyer asked who built the home.

Reck said it was Ted Bosgraaf.

Barwis noted the house was placed closer to the back lot line than the other houses along the property line.

Bouman asked if Reck had ordered a survey of the property when she purchased it.

Reck said she did not.

PUBLIC HEARING

There was no public comment. Foster closed the public hearing.

MOTION

Dreyer moved and Bouman supported to approve the variance no closer than 24' from the back property line.

- 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 burdensome for the owner because of the size and length of the lot and there is no other place to expand.

- 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 variance should apply to the request of the 6' in addition to the existing 24'. The builder did not provide the room on this property that was granted to other properties on the street.

- 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.

It is unique because the rear part of the lot was platted illegally when it was built in 1989.

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

This was not self-created; the house was allowed to be built in the wrong place.

VOTE: Ayes: 5, Nays: 0. Motion Carried.

AGENDA Item #3 A variance request by Kirk Briggs for a larger accessory building than allowed, per section 38-491 of the Park Township Code of Ordinances. Said land and premises are located at 1950 South Shore Drive, Holland, MI. (Parcel #70-15-34-377-003, R-3)

Bowman introduced the item. There are two requests from this applicant:
1) request for a variance request for a larger accessory building than allowed
2) request for an interpretation on the meaning of the term fence.

The variance request is to add a 10'x12' extension on the back of an existing accessory building to allow parking for a 38' travel trailer. Section 38-491 requires that no more than one detached accessory building can be built with no more than 200 sq. feet or 2% of the lot area, whichever is greater. The applicant states the lot size is 56,412 sq. feet and 2% of that is 1,128 sq. feet. The current building is said to be 1,020 sq. feet and the lot size is 56,412 sq. feet. In addition there is an apparent nonconforming accessory dwelling with an associated detached accessory building of 77 sq. feet. The accessory dwelling and building area are possibly nonconforming structures.

Bowman outlined the issues. The applicant submitted several sketch drawings, which, due to their quality, presented problems for analysis by staff. Staff confirmed the proposed accessory building addition had already been built and the Township had ordered it to be removed since it was not permitted. Part of this structure, a remnant wall, was not removed. The wall is the subject of the applicant's request for definition of a fence vs. a wall.

Kirk Briggs - 1950 S. Shore Dr., provided a history of the property going back to 1952. When he bought the property it had three accessory buildings, two of which were removed.

Because of the quality of the trailer he doesn't want it to be subject to the weather. The Township called him about the addition and said it wasn't permitted. At the time he had personal issues and didn't deal with it. He shared photographs with the ZBA and said all setbacks would be in compliance.

Foster suggested other options for the storage of his trailer.

Briggs said commercial storage was too costly.

Bowman explained the variance practical difficulties and hardships cannot be solely financial and should not be used to justify granting a variance.

Barwis said he understood what Briggs is trying to do but it's not related to the law. The Board of Appeals is charged with assuring the variance fits all four criteria.

Dreyer noted there appeared to be enough space on the property for Briggs to devise another plan for his trailer based on the square footage illustrated by the survey he shared with the ZBA. With a more accurate determination of square footage the applicant may have additional room to add to the building.

PUBLIC HEARING

There was no public comment. Foster closed the public hearing.

MOTION

Bouman moved and Dreyer supported to deny the applicant's request based on failure to meet the 4 required standards.

VOTE: Ayes: 5, Nays: 0. Motion Carried.

Foster recommended Briggs take his revised plans to the Township Board if he would like to pursue the issue.

AGENDA Item #4 A request for an interpretation of the definition of a fence regarding a structure that is in excess of 72 inches tall, per section 38-498 of the Park Township Code of Ordinances. Said land and premises are located at 1950 South Shore Drive, Holland, MI. (Parcel #70-15-34-377-003, R-3)

Bowman explained the applicant's request is for an interpretation of what the Township defines as a fence. The Township considers the remnant structure on Briggs' property to be a part of an illegally constructed building addition and has ordered it to be removed.

Briggs said there is no hidden intent in his request. In his opinion, there is a wall on the west side which is part of a structure.

Barwis looked at the applicant's drawing and concluded there are two walls.

Bowman explained the Zoning Board of Appeals is the last place before appeal to the circuit court for the interpretation or intent of an ordinance. In this case, there was no definition given and the dispute is whether this is or is not a fence. The Township says this is a fence; the applicant claims it's a wall.

Barwis asked what relevance does this have with regard to a Board of Appeals decision. Briggs doesn't agree it's a fence. He has applied for a construction permit for a 12' wall.

Bowman asked Briggs if this is in fact a remnant of a building.

Briggs said it was.

Bowman stated the structure was built as part of the previously mentioned illegally built accessory building but the structure is now free standing. Briggs defines it as a wall but the Township defines it as a fence.

MOTION

Dreyer moved and Eade supported that the structure in question which extends south on Mr. Briggs property is not a fence but a wall based on its height of over 6' and that it has no structural purpose or resemblance to a fence as intended by the Park Township Zoning Ordinance.

Barwis summarized his analysis of the situation and advised Briggs to remove the wall structure and apply for a construction permit and re-build the structure according to Township code.

Foster added that he visited the property and looked at the structure. He agreed that it doesn't look like a fence.

VOTE: Ayes: 5, Nays: 0. Motion Carried.

ANNOUNCEMENTS

Foster said there is a training session scheduled for Zoning Boards of Appeal at the Ottawa County Fillmore Complex.

Bowman said the Township is also planning a training session for the Planning Commission and the Zoning Board of Appeals. It is separate from that being

offered at the Fillmore Complex. It will probably be the latter part of October. A notice will be sent out announcing further details.

Foster noted a second Zoning Board of Appeals meeting is tentatively scheduled for October 24. He requested notification if this date is cancelled.

ADJOURNMENT

Dreyer moved and Eade supported to adjourn the meeting at 7:55 PM.

Respectfully submitted,
Judith R. Hemwall
Recording Secretary
October 6, 2011