



ZONING BOARD OF APPEALS

Regular Meeting
December 28, 2009

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, Joannie Bouman, Doug Dreyer, Nicki Arendshorst, Lu Reyes, and Eric Davis, Zoning Administrator

Absent: None

Dreyer asked about the public hearing for Item #1. It was clarified that the public hearing was closed last month.

MOTION

A motion was made by Arendshorst and supported by Reyes to approve the agenda as presented.

VOTE

Motion carried: 5-0

MOTION

A motion was made by Arendshorst and supported by Reyes to approve the minutes for the November 23, 2009 regular meeting as presented.

VOTE

Motion carried: 5-0

Davis introduced item #1.

Item #1 Leslee Elkins is requesting a variance from sections 3.10 and 9.04 of the Park Township Zoning Ordinance to build a deck. Said land and premises are located at 2210 Bristol St. (Parcel # 70-15-21-476-014 R-3)
Tabled 11-23-09

MOTION

A motion was made by Arendshorst and supported by Dreyer to remove the item from the table.

VOTE

Motion carried: 5-0

Brian Meiste, builder, spoke for the appeal. He stated that he wanted to address the “self-created” issue. He stated that he knew the site would be difficult due to the narrow depth of the lot and the desire for a ranch house. The applicant would like to have the deck within forty feet of the rear lot line.

Arendshorst asked why this couldn't be designed to fit the lot.

Meiste stated that they tried extremely hard to find a design that would fit.

Foster asked if they could design a ramp and use the lower level instead of a deck.

Meiste stated that they would like to have it off the kitchen area.

Foster asked if the lower level will have a kitchen area.

Meiste stated that there will be a kitchen area in the lower level.

Dan Elkins, owner, stated that they looked at a lot of designs. He stated that there are neighbors that have decks beyond their setback lines.

Arendshorst asked Davis if 120 feet of depth is considered a shallow lot.

Davis stated that it is quite shallow. Most lots have more than that.

Arendshorst asked if they should have asked for the variance before building the house.

Meiste stated that they assumed they could get a variance or they figured they would find a way to fit it within the envelope by building up the grade, changing the design, etc.

Foster asked Davis if he knew of any specific variances in the neighborhood.

Davis stated that he didn't know of any. He stated that decks often get built later and often without a permit.

Arendshorst stated that she had heard Meiste say that there was a way to put this deck on without a variance.

Meiste stated that they could, but it would block the lower windows.

Dreyer asked if the deck was on the original plan.

Meiste stated that it was.

Dreyer asked if they were told that they would not be able to build the deck.

Meiste stated that they were told that they would not be able to build the deck.

Dreyer stated that it seemed that they knew they couldn't build this design and yet proceeded anyway.

There was a discussion on lots, setbacks, decks, self-creation, handicapped accessibility, etc.

Davis stated that precedence doesn't come into play, each lot and case stands on its own. The fourth standard asks if the practical difficulty that's alleged is self-created. He stated that the Zoning Board of Appeals (ZBA) should look at this as if it were an empty lot. If the narrow depth of the lot is a practical difficulty then grant the variance, otherwise don't.

The public hearing was reopened at 6:55 p.m.

No one spoke.

The public hearing was closed at 6:55 p.m.

Bouman asked if the property was listed when they bought it.

It was determined that it was purchased from the developer.

Elkins stated that since the last meeting they have talked with the neighbor and the neighbor does not like the idea moving the deck to the south.

Foster stated that he still would like to see a different solution. Foster asked if there was a way to build a ramp.

Davis stated that it would be difficult because of the required slope. He reminded the ZBA that they are not to look at the particular user, but the use itself.

MOTION

A motion was made by Dreyer and supported by Foster to approve the variance as requested.

Dreyer went over the four standards (found at the end of these minutes) for a practical difficulty for a dimensional variance:

1. Strict compliance would be unnecessarily burdensome because the lot is shallow in depth.
2. It would do justice to the owner and to the neighbors because they would be able to use their home on the upper level. Their neighbors have decks.
3. The property is unique because it has an unusual jog in the lot line.
4. This is not self-created because the lot was platted with a shallow depth.

Arendshorst stated that she does not feel that the standards have been. She stated that she felt that the applicant proceeded with building his house even after knowing he wasn't able to build a deck.

VOTE

Motion carried: 4-1 (Arendshorst)

Davis introduced item #2.

Item #2 Bob & Julie Koch are requesting a variance from section 38-246 of the Park Township Zoning Ordinance to build a new house. Said land and premises are located at 48 Michigan Ave. (Parcel # 70-15-28-135-001 R-2)

Chuck Posthumus, architect, spoke for the appeal. He stated that the applicant is asking to demolish their small cottage and build a new one so they can live there year-round. They are asking for two front setback variances. They would like be ten feet (10') from the north property line and twenty feet (20') from the east property line. The house would be less than 1,700 square feet. The septic and well are in the front yard to the south. This is a critical dune and high risk erosion area. There is a sloped area in the southeast corner that cannot be disturbed per the Michigan Department of Environmental Quality (MDEQ). The house can't be moved to the west because of the sight-line and the high risk erosion line. Strict compliance would not allow for a garage. The property to the north of Lake St. was given a variance for their south side yard.

The ZBA members asked a few questions for clarification.

The public hearing was opened at 7:21 p.m.

No one spoke.

The public hearing was closed at 7:21 p.m.

MOTION

A motion was made by Arendshorst and supported by Dreyer to approve the variance as requested.

Arendshorst went over the four standards (found at the end of these minutes) for a practical difficulty for a dimensional variance:

1. Strict compliance would be unnecessarily burdensome because of the two streets, the critical dune and the septic and well placement.
2. Other owners in the area have received similar variances. Other neighbors have garages.
3. The property is unique because it is small and narrow and has two streets bordering it. There is also the critical dune, the slope and the western sight-line.
4. This is not self-created.

VOTE

Motion carried: 5-0

Davis introduced item #3.

Item #3 Dale Windemuller on behalf of Bill & Lydia Riggert is requesting a variance from section 38-276 of the Park Township Zoning Ordinance to add to a house. Said land and premises are located at 2006 Driftwood Dr. (Parcel # 70-15-27-304-002 R-3)

Dale Windemuller, builder, spoke for the appeal. He stated that the applicants had a fire at their house. He stated that it was possible that the house would be torn down and re-built on the old foundation. He stated that the existing garage is so small it doesn't meet the current code, so they would like a front setback of 35.5' so they could have a larger garage.

Foster asked some clarification questions.

Arendshorst stated that this would make the garage more conforming.

Windemuller stated that the appearance would be updated as well.

The public hearing was opened at 7:35 p.m.

Cindy Bruns, 1996 Driftwood Dr., stated that there has always been a garage on this house. She questioned how they put a laundry room into the garage if it was not to code.

Davis stated that the code doesn't say a garage has to be a certain depth. It is just a general practice.

Lydia Riggert, owner, stated that they were just completing the laundry room addition when they had the fire. She clarified that she is hoping that the insurance will demolish the house down to the foundation and build a completely new house.

Reyes asked if the decision had been made to demolish and rebuild the house.

Windemuller stated that they didn't have the final "numbers" from the insurance company.

Arendshorst clarified that a new house could be built in compliance.

Dreyer reminded them that the existing foundation would be used.

The public hearing was closed at 7:42 p.m.

MOTION

A motion was made by Bouman and supported by Arendshorst to approve the variance as requested.

Bouman went over the four standards (found at the end of these minutes) for a practical difficulty for a dimensional variance:

1. Strict compliance would be unnecessarily burdensome if the insurance company requires them to use the same foundation.

2. Other neighbors have full-sized garages that are up to normal standards. This would improve the outside appearance of the house.
3. Having the fire and needing to use the old foundation is a unique circumstance.
4. This is not self-created.

VOTE

Motion carried: 5-0

Davis clarified that the applicant might have to have another meeting if this turns out to be something other than an “addition” because of how the public hearing notice was worded.

ANNOUNCEMENTS

MOTION

A motion was made by Arendshorst and supported by Foster to adjourn at 7:47 p.m.

VOTE

Motion carried: 5-0

Meeting adjourned.

Sandy Brodie
Recording Secretary

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.
- 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 of the zoning district.
- d. Whether the problem is self-created.

The following briefly states the standards used for finding an unnecessary hardship for a use variance:

- a. That the property cannot be used for any of the uses permitted in the district in which it is located. This means none of the uses (by right or special use permit) allow a reasonable economic return on the use of the property.
- b. That the plight of the property owner is due to unique circumstances peculiar to the property (i.e. odd shape or a natural feature like a stream or wetland) and is not due to general neighborhood conditions.
- c. That the proposed use would not alter the essential character of the area.
- d. That the problem was not self-created.