



City of Plymouth

Zoning Board of Appeals Meeting Minutes

Thursday, February 6, 2020 - 7:00 P.M.
City Hall Commission Chambers

City of Plymouth
201 S. Main
Plymouth, Michigan 48170

www.plymouthmi.gov
Phone 734-453-1234
Fax 734-455-1892

1. CALL TO ORDER

Chair Giummo called the meeting to order at 7:00 PM.
The Board said the Pledge of Allegiance.

PRESENT: Jim Burrows, Mike Devine, Ed Krol, Joe Elliott, Kara Giummo
ABSENT: None.

Also present was Assistant Community Development Director Greta Bolhuis and City Commission Liaison Tony Sebastian.

2. CITIZEN COMMENTS

None.

3. APPROVAL OF THE MEETING MINUTES

A motion was made by Comm. Krol and seconded by Comm. Elliott for approval of the January 7, 2020 meeting minutes.

MOTION APPROVED 5-0

4. APPROVAL OF THE AGENDA

A motion was made by Comm. Elliott and seconded by Comm. Krol for approval of the agenda as presented.

MOTION APPROVED 5-0

5. OLD BUSINESS

None.

6. NEW BUSINESS

A) Z20-01: 1482 Sheridan, Non-Use Variance, Lot split creating two non-conforming parcels, Zoned R-1

Chair Giummo read the administrative review from the city. She asked the applicant to clarify the width of the parcel.

Edward Zelmanski, applicant, presented his case. He explained the history of the property: the two lots were established as part of Elm Heights subdivision in 1915 and were separately owned, and then they came into common ownership in 1929. He explained the property has always been discrete subdivision lots and that the Wilsons purchased the property in 1986. He explained the north side of Sheridan Street has all 50 foot lots with single family homes on them. Mr. Zelmanski stated the highest and best use for the parcel would be to recognize that they are two discrete platted lots, one which is 50-foot-wide and the other that is 51 feet wide. He explained that the parcel to the east of this parcel is 48 feet wide which was granted a variance to tear down the house and rebuild, continuing the allowance of 50-foot-wide parcels. He explained there would be no negative effect on the neighborhood and that it would eliminate an inconsistency in parcel size. Mr. Zelmanski explained that they are asking the Board to undo the lots having been combined into one parcel. He explained

they do not know how this condition came to be, even after checking city records, assessor's records, building records, and Wayne County records. He explained they meet the variance review criteria. Mr. Zelmanski explained the unique circumstance is that the house that was built across the boundary lines of the lots. He stated that to deny the use of the property as two lots when everybody else on Sheridan Street has that same ability, seemed like an unfair application of the ordinance.

Citizen Comments

None.

Board Discussion

Comm. Burrows reviewed the timeline presented. He clarified that the two lots were in single ownership and an addition was constructed over the lot line in 1959, which signified to him that it was accepted as one parcel. He explained that when the zoning ordinance was re-adopted in 2003 the language stated that if lots in single ownership don't meet the requirements, they are considered one. He stated the City Commission is the one who adopts the zoning ordinances. He did not see a practical difficulty, as presented.

Comm. Devine commended the applicant on the completeness of the application. He explained that the ordinance is clear that at the time that this ordinance was adopted, the lots were viewed as one parcel. He explained that the historical data that shows the lots as separate parcels was not pertinent. He believed that "highest and best use" was a subjective term and that residential use is the highest and best use that is allowed. He did not see a practical difficulty why the parcel should be split into two nonconforming parcels.

Chair Giummo clarified that there is a residence on the property currently and there is nothing preventing its demolition and a new residence being built in its place. She did not see a practical difficulty.

Comm. Krol agreed with the Commissioners. He referred to the criteria outlined in the Zoning Toolkit published by the Michigan chapter of the American Planning Association. He read from the Toolkit that a practical difficulty is due to uniquely identify characteristics of the property and not related to general conditions in the area and that similar conditions in the surrounding neighborhood are not enough justification for a variance.

Mr. Wilson asked why his neighbor could build a house on a 48-foot lot.

Ms. Bolhuis explained that a variance was not granted to allow the neighbor to rebuild. She explained they could build because the existing parcel was 48 feet and it was not a newly created parcel.

Chair Giummo clarified that a variance request to build on the neighbor's 48-foot-wide parcel did not come before the ZBA.

Mr. Zelmanski asked if it was the Commission's position that they do not have the authority to grant the variance.

Chair Giummo responded no, that they have guidelines that they need to follow and that if a request does not meet those guidelines, they cannot grant the variance. She read the four ordinance criteria and explained that if all those statements are not true, there is not a variance to grant.

Mr. Zelmanski stated that he believed all those statements to be true. He stated the Board should not deprive the owners of the right to utilize the two discrete lots when it could not be proven when the lots came into common ownership. He explained it appears arbitrary not to allow the split, when the whole street is 50-foot width parcels, including a 48-foot parcel next door. He believed it was an exercise in arbitrary and capricious decision making by the board if they refused to acknowledge that.

Comm. Devine explained that it was not the ZBA's purview to question or review the ownership history. He believed the burden was on the applicant to prove that the property is not owned by the same entity. He explained the Board cannot philosophically debate the nature of ownership. Comm. Devine explained the Board is very thorough in their decision-making process and in their judgment and evaluation of cases. He explained that the ordinance criteria allow the Board to grant variances based on what they see as conditions that meet all the requirements.

Mr. Wilson explained their tax bill is for lot 53 and lot 54 and that they did not create this situation.

Mr. Zelmanski stated they included the deeds in the application and the deeds all clearly spell out that lot 53 and lot 54 are separate.

Comm. Devine explained that if they were separate parcels, then there would be no need for a variance.

Comm. Elliott explained that if there are two separate deeds and two separate tax bills, as determined by the city administration and city attorney, then he agreed with Comm. Devine, no variance is required.

Comm. Burrows believed that the two-story addition onto lot 54 signified that the owners at that time expected to use their property as one. He explained that the property is not unique. He stated the City Commission would have to change the ordinance for the property to be split. He did not find the request fit the criteria for a variance.

Mr. Zelmanski explained the parcel has two discrete lots which creates a double frontage, which the ordinance says should not be allowed.

Comm. Elliott clarified that that was not the correct definition of "double frontage".

Ms. Bolhuis clarified that double frontage referred to corner lots.

Mr. Zelmanski clarified that corner lots are a subsection of double frontages.

Ms. Bolhuis further clarified that double frontage lots have two street frontages and are a corner lot.

Comm. Krol explained he lives on a double lot and pays a single tax bill but clarified that this was a single parcel.

Mr. Zelmanski asked to clarify Comm. Devine's statement that a variance was not required.

Comm. Devine stated that if the condition was such that there were two parcels owned separately, then a variance is not needed.

Mr. Zelmanski asked if that should be taken to the City Commission for review.

Comm. Devine confirmed and explained that Mr. Zelmanski's question is more of a legal definition and that's not the ZBA's purview – the Board looks at the ordinance.

Mr. Zelmanski asked that any decision rendered by the Board except Comm. Devine's recommendation that the Board would believe that no variance is required here but that would require action by the City Commission, would be included that in the motion.

Comm. Devine explained he is not recommending anything but rather is clarifying that the argument about ownership and the fact that if it is currently owned individually then that would negate the need for a variance. He explained it was a statement of fact.

Mr. Zelmanski asked if that was a finding of fact.

Comm. Devine clarified that he was not finding that it is owned separately. He explained that if the applicant wanted to pursue the question of ownership, which was the central argument presented, and they come to find that it is, by legal definition, separately owned then that negates the need for a lot split.

Mr. Zelmanski asked the Commission to agree on that.

Comm. Devine stated it was a fact he was pointing out.

Comm. Burrows asked if there would still be a problem because the property would be less than 60 feet and has a structure on both lots.

Comm. Devine explained that if the applicant finds the lots are separately owned then a variance is not necessary for the split. He explained that the issue of a nonconforming structure would be an issue.

Comm. Burrows did not want that fact to be stated in their motion. He explained the Commission's review procedures and requirements, and that making a recommendation was not part of their job.

Comm. Devine explained the clarifying question the applicant could pursue is did the property meet the criteria established in Section 78-351 at the time it was adopted or were they separate parcels? Section 78-351 states: "If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements for lot width and area as established by this chapter, the lands involved shall be considered to be an undivided parcel for the purpose of this chapter. No portion of said parcel or lot shall be used or sold which does not meet lot width and area requirements established by this chapter, nor shall any division of

the parcel or lot be made which leaves remaining any parcel or lot with width or area below the requirements stated in this chapter.”

A motion was made by Comm. Devine, seconded by Comm. Burrows, to deny Z20-01, 1482 Sheridan. The variance is for a lot split to create two non-conforming parcels. The finding of fact is that it does not meet the required criteria for granting a variance, because the owner can use the property for a permitted purpose, it would not do substantial justice to the surrounding neighborhood, and there are no unique circumstances of the property.

MOTION APPROVED 5-0, VARIANCE DENIED.

7. COMMISSIONER COMMENTS

None.

8. REPORTS AND CORRESPONDENCE

A) Sharing lessons learned memo and MAP ZBA training recap

Ms. Bolhuis presented the lessons learned memo is to formalize a process that is already occurring, for progress on Redevelopment Ready Communities certification.

Ms. Bolhuis presented the MAP ZBA training summary memo.

Comm. Devine asked about the takeaway that stated a variance shall be tied to the property not a structure.

Ms. Bolhuis explained that conditions can be added to a specific part of the structure but that it still ran with the property.

Comm. Burrows explained that the conditions or layout of the existing structure could be used as a basis for conditions.

Comm. Elliott explained that the Board should limit the variance as much as possible and base it on the property, while understand that the structure is there.

Comm. Krol presented the City Commission Strategic Plan and went through a few of the items that will be accomplished in 2020.

Karen Sisolak, 939 Penniman, Planning Commission Chair, provided additional clarification on form-based codes and other zoning related projects the Planning Commission will be working on in 2020.

9. ADJOURNMENT

Hearing no further business, a motion was made by Comm. Krol, supported by Comm. Burrows to adjourn the meeting at 8:04 PM.

MOTION APPROVED 5-0