

Mt. Pleasant Zoning Board of Appeals
Minutes of Regular Meeting
June 22, 2011

Chairman White called the meeting to order at 7:02 p.m.

I. Roll Call: Kench called roll.

Members Present: Brockman, Ellertson, Olivieri, Palm, White (Chair)
Members Absent: Kulick (Vice-Chair), Rowley
Staff: Kench, Murphy

II. Approval of Agenda:

Motion by Brockman, support by Palm to approve the agenda. Motion approved unanimously.

III. Approval of Minutes:

Motion by Brockman, support by Ellertson to approve the minutes from the May 25, 2011 regular meeting as written. Motion approved unanimously.

IV. Communications:

Kench reported that there were no communications to share at this time.

V. Public Comments:

Chairman White opened the floor for public comments.
Charles Campbell, 211 N. Lansing wished to address the Board regarding Case 03-2011.
Chairman White asked that he wait until the Public Hearing to speak on the case.

There being no one else who wished to address the Board, the Public Comments session was closed.

VI. Public Hearings:

Chairman White explained board proceedings, noting that a quorum was present.

Kench introduced the first case:

- A. Case ZBA-03-2011 – 218 N. Lansing.** Kench reminded the Board that this property appeared on the March agenda under Case ZBA-01-2011, at which time the request was for a reduction in the rear yard setback to allow a deck that was constructed without prior approval to remain on the property. The application was submitted by Four Seasons Windows, who had applied for a building permit to allow a small addition to the home and to replace/repair the existing deck. Following a site visit, it was determined that the project could meet the required setbacks and was approved. Upon inspection, it was found that the deck had been expanded, which had not been approved under the permit and which extended into the

required setback. The contractor was instructed that the project would either need to be approved through the ZBA for a reduction in the setback or a portion of the deck would need to be removed.

The board found the conditions for granting a variance were not met, ruling that the problem was self-created, and subsequently denied the variance request. Following the denial, the homeowners acknowledged that although they were aware there were issues with the setback, they had not authorized the contractor to file a variance request on their behalf and have therefore filed a new request. Kench indicated that the applicant believes they have a prior non-conforming use and the degree of non-conformity is being decreased as allowed by Section 154.007(5).

Kench stated that the Board is being asked to first determine if there was an existing non-conformity with the concrete slab/sidewalk and if so, if the new deck represents a reduction in the manner or degree of non-conformity.

Gordon Bloem, local attorney representing the applicants, addressed the Board. Mr. Bloem expressed to the ZBA that he is involved in a lot of municipal work and is aware of how serious the permitting process is taken by governmental issues for just this reason. He commented that there were a series of non-intentional missteps leading up to this request. Mr. Bloem further commented that he is hopeful that the Board can narrow in on the Zoning Issues and the issue of non-conforming uses to see clear to allow his clients to keep the deck. Mr. Bloem provided some history on what he referred to as the cement slab, as known by his clients, which was on the site when the owners purchased the property in 1991, which butts up to the house. They recently measured the slab and came up with 18' 6" long by 18' 10" wide. He commented that it appeared that the previous owners had been using it as a fenced in dog run, however the applicants have more recently used the area as a patio. Mr. Bloem commented that staff has went on record as stating that a patio would need to meet the same requirements as a deck; therefore, he contended that since the "patio" should have been required to meet the setbacks, it puts it in the category of a lawful non-conforming use. Mr. Bloem further commented that the deck sits on top of the slab, and is a bit wider at the rear than the slab. Mr. Bloem commented that a crucial fact is the slab extends 1 ½ foot beyond the new deck in the rear yard, therefore reducing the non-conforming setback.

Mr. Bloem referred to the ordinance language 154.007(B)(3), which states: *Nonconformance of Yards. A conforming use which does not meet the area, yard or height standards of this chapter may be altered or enlarged provided there is no increase in the specific nonconformity. Landscape and parking standards must be met.* He further referred to section 154.007(B)(5), which states: *Change of Use. A non-conforming use may be changed to a new non-conforming use if the Zoning Board of Appeals finds that the new use would markedly decrease the degree of nonconformance and would enhance the desirability of adjacent conforming uses. Where no structural alterations requiring a building permit are involved, a similar non-conforming use may be converted to a similar non-conforming use of a basic character and intensity.*

Mr. Bloem stated that the deck decreases the setback problem and enhances the desirability of the adjacent uses. He also presented a petition signed by those in the neighborhood who feel the deck is a good addition. A copy of the deed was also submitted for the official record. Mr. Bloem concluded his presentation stating that he feels the Board will find this to be a legal non-conforming use that should be allowed to continue.

Chairman White opened the Public Hearing.

Charles Campbell, 211 N. Lansing, stated that the cement slab has been there since the late 1940's. He stated that he is in favor of allowing the deck to remain on site; that it is an improvement to the neighborhood. He further commented that there are a lot of student rentals around that barely meet code.

There being no one else who wished to speak, the Public Hearing was closed.

Kench reported the only correspondence received was from the Department of Fire Safety, who stated they had no objections or concerns with the project.

Board Discussion.

Commissioner Olivieri asked if the minutes from the previous meeting were available to review. Mr. Bloem provided an electronic copy for Commissioner Olivieri.

Chairman White reminded the Board that the first time the case came before the Board was for a setback variance. The Board is now being asked to make a finding on whether the concrete slab is a legal non-conforming use, and if so, is the addition of the deck a decrease in the non-conformity.

Commissioner Brockman asked if the concrete slab was mentioned at the time the original permit was issued. Kench stated that when the permit application and site plan were first submitted, it appeared that there may be some setback issues. As a result, he met on site with the contractor and verified the setbacks could be met with the proposed addition. The cement slab was not mentioned at that time and was actually covered with snow.

Commissioner Brockman posed a question to the owners/applicants as to whether they had any photos of them using the slab as a patio. Deborah Pridgeon, one of the owners, commented that they have several photo albums, each containing 200 photos, but she was unable to locate any of that particular area.

Chairman White asked if the contractor could describe the slab.

Neil Satterlee, Four Seasons Windows, contractor for the applicant, addressed the Board, also commenting that the cement slab was covered in snow at the time the work on the addition commenced. Mr. Satterlee stated that the original permit included the raised portion of the deck. Once that was completed the homeowners stated they would like to have another lower portion of deck. Mr. Satterlee stated it never occurred to them to modify the permit.

They first learned of the cement when they punctured holes for the footings. He stated he could not testify to the size as the cement was covered in snow at the time.

Mr. Bloem followed up on Mr. Satterlee's comments, that there is a portion of the slab that resembles a sidewalk. Mr. Bloem referred to the photos by staff and noted that the portion of the slab that runs off the side street toward the alley has the appearance of a walk and also where the two piers run off Chippewa, with the one side continuing to the new deck.

Commissioner Olivieri asked Kench if a patio started at a home, would it be required to meet the same setbacks as a deck. Kench stated that in the time he has been with the city, a permit has never been issued for a cement patio. The section of the ordinance on Accessory Structures refers to patios and terraces as allowed accessory structures; which would be subject to setback requirements; however, he further commented that there is no clear indication of what this slab was actually used for. It may have been part of the driveway, a parking pad or even part of an accessory building at one time. He further explained that a driveway or parking pad is only regulated at the right-of-way. If that is what it was, then it was conforming.

Chairman Olivieri questioned whether the cement is non-conforming. Chairman White stated that is what the Board needs to determine.

Commissioner Palm questioned when the construction was completed – if it was after the case was denied in March.

Mr. Satterlee responded to Commissioner Palm's question, stating that when it was brought to their attention that there was a setback issue with the extended deck, the deck was 2/3 complete. Rather than leaving it in its current state, they decided to go ahead and finish it. Per Mr. Satterlee, the deck was complete before the hearing on March 23rd at which time the variance was denied, and they have not been back to the site since.

Commissioner Ellertson commented that *assuming* for the sake of argument that the concrete slab is an existing non-conforming use, then they are being asked to determine that putting a deck on top of the concrete slab is a reduction in the non-conformity. He further commented that even if it was an existing non-conforming use, he can't make that jump.

Commissioner Olivieri questioned if they are asking for the determination based on the concrete projecting 1 ½ feet further into the rear setback?

Commissioner Brockman asked staff how this would have been handled if the applicant had discussed the dimensions prior to construction and at what point was the decision made to extend the deck.

Kench stated that if the extended deck had been proposed prior to construction, they would still have needed to get a variance from the ZBA. Based on Mr. Satterlee's comments, the deck was extended at the request of the home owners following the replacement/repair of the

existing deck. The original permit was never modified to show this, nor was zoning approval obtained.

Chairman White commented on the lack of evidence on what the slab was actually designed for to measure the deck against.

Commissioner Ellertson again asked if the question on the table was whether putting a deck on the existing slab is a reduction in the nonconformity. He commented that he can't see how putting something on top is a reduction – it's still there (the concrete) so how can it be less?

Mr. Bloem responded to Commissioner Ellertson's comments, indicating that they would be willing to remove the section of cement that exceeds beyond the new deck and further reminded the Board that this is not a variance request. He again referred to section 154.007(B)(3) of the ordinance. Mr. Bloem further commented that in regards to the nature of the slab, there is the testimony of the owners on its use and size and the testimony of the neighbor claiming it has been there since the 1940's. Mr. Bloem commented that the previous minutes from the March hearing state that a patio would need to meet the same standards as a deck. Mr. Bloem stated that in regards to the permit issue, perhaps a ticket could be issued to the contractor; however, reminded the Board that the issue before them is to determine if the deck reduces or does not increase the degree of nonconformity.

Commissioner Ellertson asked Mr. Bloem to explain how placing a structure on top of the slab reduces the non-conformity. Mr. Bloem stated that by getting rid of the cement that extends beyond the deck it actually increases the rear set back thus reducing the nonconformity

Chairman White reminded the Board that we are not dealing with a variance issue.

Kench reviewed the photos of the site, and noted that the Board should first determine if they have a legal non-conforming use. If the Board determines there is, then they need to determine if it is less with the deck. Kench further reminded the Board that a significant portion of the deck was built over new ground, and the slab is only under a portion of the deck.

Motion by Ellertson, support by Brockman to determine that the installation of the deck over the existing concrete slab represents a decrease in the degree of non-conforming use, based on the applicant's presentation.

Roll Call vote: All nays. Motion denied unanimously.

- B. ZBA-04-2011 – 510 W Pickard.** Kench explained that this was a request for a side yard variance to allow the construction of storage units within three feet of the property line, where 30' is required by Ordinance. Kench reported that a similar request was filed and granted in 1982 to allow the construction of storage units three feet from the property line, with several expansions to the building over the years. Kench reported the property is zoned

I-1 Industrial and the proposed use is appropriate for the zoning. Kench commented that we have had several requests over the past few years for setback reductions in the Industrial zones.

Kench reported that along with the request to build the mini-storage building, the owner is also proposing a 40' x 200' building which meets the 30 foot setback.

Kench indicated that at the time the staff report was written, there were several unanswered questions in regards to the environmental cleanup project along the east property line; the distance/dimensions between buildings, dimensions of the slurry wall shown on the site plan, etc. (See report language below)

The project is adjacent to an environmental clean-up project in conjunction with systems approved by the State of Michigan along the applicant's east property line abutting the Chippewa River to protect the river from contaminants. At the time of the review, there was no evidence to suggest that the State is aware of the proposed project or if the project will have any impact on the clean-up and/or monitoring work taking place. This information was requested from Central Michigan Surveying and Development Company, but was not available at the time of this report.

- *The Board should request information from the applicant prior to making a ruling in this case.*

The Department of Fire Safety is calling for an increase in the access road to 24 feet and a turn-around at the dead-end portion of the access road in accordance with the 2006 International Fire Code; adopted by the City (A copy of Lt. Rick Beltinck's memo is attached). Given the constraints at the north end of the proposed project, and the requirements called for under the fire code, revisions will be needed to the site plan to meet these requirements.

The site near the proposed location for the new storage buildings is being used for parking heavy equipment and stockpiling of landscaping supplies, i.e., mulch, stone, sand, etc. The Board should determine, with the applicant, where the materials/equipment will be relocated should the request for a variance be approved.

The distance between the proposed building and the existing mini storage building was not shown on the site plan submitted for review. This information was requested from Central Michigan Surveying and Development Company, but was not available at the time of this report. In addition, a request was also made to provide a dimension to the slurry wall, shown on the site plan at the north end of the proposed 20'-0" by 200'-0" building.

The Board should review section 154.164 D for conditions which must be necessary for granting a variance.

He stated he has since received answers to these questions to his satisfaction but suggested the applicant may wish to address some of the issues for the Board.

Tim Bebee, Central Michigan Surveying and Development, addressed the Board as the applicant and owner's representative. Mr. Bebee reported the dimension between the buildings was 30'. He commented that they will be required to go through Site Plan Review with the Planning Commission, at which time these issues would be worked out; however, stated that staff has instructed him that they first need to get the variance.

Mr. Bebee stated this is an extension of an existing setback granted in 1982; however, because this is a separate building, they were required to come before the Board again. Mr. Bebee commented that the original building served as a screening wall to the junkyard that was there at one time. He commented on the slurry walls, explaining that although they are shown on the site map, you will not see them on the site because they are buried. They are there to act as a barrier to prevent underground water from traveling to the river – and reiterated that although you won't see them, they are there. In regards to the Environmental Cleanup for Total Petroleum, they are willing to look into getting a letter from TPI or the State if needed for Site Plan Approval. He again commented that these are site plan issues that will be dealt with at the Planning Commission level.

Commissioner Ellertson asked about the comments/concerns submitted by the Department of Fire Safety.

Mr. Bebee responded that he is confident that the concerns will be alleviated by sitting down with the Fire Department and discussing the site plan. Dry Hydrants will be installed where needed, and will be designed to pull water from the river in the event of a fire. He also commented that in the area they are asking for 24', there is actually a large gravel parking lot along the drive. He again commented that these issues are usually addressed with the Planning Commission; however Jeff Gray will not allow that prior to ZBA approval. He commented that turn-around points are not an issue – they currently turn gravel trains around without any problems.

Chairman White asked about the proposed storage bins – if they are going to be used for storing materials. Mr. Bebee commented that they would, with reduced quantities being stored on site.

Chairman White opened the Public Hearing.

There being no one who wished to speak, the Public Hearing was closed.

Kench stated the only correspondence received was from the Fire Department, and commented that their conditions will need to be met during the site plan review process. He further commented that it should be recognized that this is a somewhat unique site and he believes the applicant has addressed the questions in the staff report.

Board Discussion:

Chairman White commented that there is a uniqueness to this site with the environmental cleanup project adjacent to it. He commented that it appears to him that the new construction is in line with the structures already in place and that the details can be worked out at the Planning Commission level.

Motion by Brockman, support by Palm to approve the variance to allow the construction of the building within three feet of the property line, based on the new building being in line with the existing building, and based on the limitation of future development on the adjoining parcel, which is part of an environmental clean-up project.

Motion approved unanimously.

Other/New Business:

None.

VII. Adjournment

Motion by Olivieri, support by Ellertson to adjourn. Motion approved.

Meeting adjourned 8:20 p.m.

bam