

DRAFT

HEARING BEFORE THE ONEKAMA TOWNSHIP

ZONING BOARD OF APPEALS

WEDNESDAY, FEBRUARY 28, 2018, 2 P.M.

ONEKAMA TOWNSHIP HALL

The hearing was called to order at 2:05 p.m. by Chairman Tom Gerhardt.

The Pledge of Allegiance was said.

Roll Call: Gerhardt, Vice Chairman Dennis Beebe, ZBA Alternate Alice Hendricks, serving in the absence of Secretary Jim Trout, Acting Zoning Administrator Larry Thompson, Recording Secretary Mary Lou Millard. Absent: Secretary Jim Trout. Also present: Appellants Larrie and Denise Funk. Joann Hilliard, Alternate for the ZBA, was introduced as a member of the audience.

MINUTES: Motion by Beebe, second by Gerhardt to approve the minutes of the Tuesday, Jan. 16, 2018 Organizational Meeting. Motion carried.

PURPOSE OF HEARING: Gerhardt explained the purpose of the hearing is to receive input on a variance request from Larrie and Denise Funk of 4606 Portage Point Drive, Onkama, MI 49675, Case No. 2018-1, Parcel No. 51-11-520-022-00, at 9780 Emerald Ridge Trail, Lot # 22, Section 23. The appeal, if granted, would permit the property owners to construct a new home within the front setback area, which is less than required in Article 42, Resort Residential, Section 4204 C. Regulations: Minimum Setbacks.

PRESENTATION BY THE ACTING ZONING ADMINISTRATOR: Staff Report and Findings of Fact.

Thompson said letters were received from Jim Trout, Larry Hentrup, William Fairgreve, Lee and Joyce LaFleur, Jim and Pat Pomaranski. (Excerpts will be included in the "comments" section).

Thompson's staff report is listed below, detailing the timeline and references to various sections of the Onkama Township Zoning ordinance, sections site maps and other information.

1. Land Use Permit Application Accepted.
2. Application submitted Dec. 20, 2016.
3. Application approved Dec. 21, 2016.
4. Approved application states required setback 25 feet shows actual 35 ft.
5. Construction was not completed in 2016 so applicant renewed permit in December, 2017.
6. Permit renewal approved December, 2017 until December, 2018.
7. Forms were in; concrete poured around Dec. 11, 2017.
8. Only received one complaint, from Jim Trout, on Dec. 12, 2017.
9. Letters sent to Larrie and Denise Funk.
10. Jan. 13, 2018, Demand for Appeal submitted.

11. Reviewed site and zoning requirements.

A. Article 94 Site plan, Sections: 9402 Site Plan Review, 9404 Required Data for a Basic Site Plan, 9409 Review for Completeness, Standards for Site Plan Review, 9411 Approval and Compliance, 9412 Conditions of Site Plan Approval, and 9415, Zoning Permits.

B. Article 42-Resort Residential-RR-3; Section 4202 C. 1 Regulations: Front-twenty-five (25) ft. (Doesn't say where from).

C. Article 5-Definitions: Building Envelope

D. Article 4 A.- Lot Lines.

E. Article 5-Setback.

F. Article 96, Section A and B- Board of Appeals.

G. Site maps and other information

12. Onkama Township Zoning Map Ag-1 and Ag-2 divides the Sun Set Division which means setbacks would be different: 25 feet in on; 50 feet in the other.

Thompson sent letters to the Funks regarding a possible front setback issue in which the Funks state the setback is 31 ½ inches from the edge of the road, which is not agreed upon by the township and others. He denied the Land Use Permit. The Funks filed an appeal for a variance.

Concrete was poured Dec. 11, 2017; a complaint was issued Dec. 12, 2017.

When asked why a survey was not submitted, Thompson said even though it was staked in September, 2016, there is no survey, but the permit was issued.

PRESENTATION BY PETITIONER OR AGENT: Mrs. Funk said they did everything they were asked or instructed to do. They were blind-sided when they received the letters from the acting zoning administrator.

PUBLIC COMMENT IN SUPPORT: None.

PUBLIC COMMENT (letters) IN OPPOSITION:

---Larry Hentrup: As long as this setback does not impede or block the view in any way to Portage Lake or Lake Michigan from my lots I am good with the permit. If it does obstruct the view in any way I vote no.

---William Fairgrieve: Based on a survey, changes to our building design and location led to additional home construction costs in order to conform to the standards. In our view, it would be inappropriate for the Township to grant a variance related to these setback requirements. Compliance with the rules may result in some costs for the owners of Lot 22, just as other Emerald Ridge residents incurred. This should not be considered sufficient grounds for exemption from minimal setback provisions.

---Lee and Joyce LaFleur: A licensed builder and surveyor was used by us to set our home in the correct location on our lots to avoid any legal issues. We built by the rules and incurred additional cost, because it was the right thing to do to be within property use restrictions. It appears the property owners were negligent in obtaining sound advice for their construction. The problem was not caused by something the Township or Condominium Association did or did not do. Ignorance of rules is never an acceptable excuse. We feel it is an unfair burden to place on our neighborhood, the need to correct (by allowing a variance) a mistake which should never have happened and can readily be corrected.

---Jim and Pat Pomaranski: The owners request a setback variance of 9 feet plus, claiming the setback will then be 31.5 feet from the edge of the roadway. Only a copy of a survey by a registered land surveyor, validating these dimensions, would be acceptable. The Emerald Ridge Sunset Point Group never approved the building envelope and does not have the lawful authority to do so. For several of us who have built homes in Sunset Point we had to modify our home designs to ensure strict compliance with the Onekama Township Zoning Ordinance.

---Jim Trout: Trout notes that he is not a sitting member of the ZBA in this case and makes comment solely as a citizen and resident of Onekama Township. I strongly urge the ZBA to deny the application for the variance. In this case, the property owners proceeded with foundation work including excavating and placing concrete without consideration to the Ordinance requirements for a minimum front setback of 25 feet from the road right-of-way. The parcel owners proceeded with construction without the parcel boundaries being surveyed and marked by a licensed surveyor as required. The reason for the variance is entirely due to the actions of the applicants. Options certainly exist for construction of a domicile on the parcel that will meet the Ordinance requirements in every way. That the applicants ignored lawful setback requirements and did not survey to establish setbacks or property lines prior to construction, with foundation placement significantly in violation of setback standards, is not a legal or justifiable reason to grant a variance.

Mark Laguire, original developer and on the Condominium Association committee, said the site plan submitted to him would have been o.k., but they didn't use it. The committee reviewed the plan and the feedback given to the Funks was correct. A drawing was submitted but it says "do not use for construction". The drawing varies. It shows the house located 16 feet away, but the drawing shows it 21 feet nearer the road. The Covenant book said the road "right of way". It wasn't built according to the original plan. They should have done a survey showing the house on the lot. The drawing was submitted properly from the builder, but we told him to get us an official document. When you submit plans to the committee, with a site plan that says don't use for construction, then we need a final site plan.

Pomaranski: Everyone in the subdivision made changes to be compliant and it was costly. The real point is the 15.9 feet.

LaGuire: If they had used the site plan submitted to me, it would have been O.K. But they didn't do it.

ZBA report: All members except one drove out and viewed the site.

HEARING ADJOURNED: 3:40 P.M.

SPECIAL MEETING OPENED: 3:40 P.M.

Hendricks: When they started digging, did the owners go out and measure?

Funks: Yes, we did, it was 31.8 feet from the road pavement.

CONFORMANCE TO STANDARDS:

The following statements are based on the standards imposed on the ZBA when reviewing an appeal for variance in accordance with Section 9603 of the Ordinance.

1. Do special conditions exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or building in the same district? Answer: No.
2. Will literal interpretation of Sections 4204 (C) of the ordinance as related to a front yard setback deprive the owner of rights commonly enjoyed by other properties in the same district? Answer: No.
3. Are the special circumstances and conditions the result of actions by the applicant and considered self-created? Answer: Yes.
4. Will granting the variance alter the essential character of the area? Answer: Yes.
5. Does conforming to the zoning requirements create a practical hardship? Answer: No.

Motion by Beebe, second by Hendricks to deny the variance due to comments and Conformance to Standards. Motion carried.

ADJOURNED: 3:55 P.M.

Submitted by Mary Lou Millard

Recording Secretary

Tom Gerhardt, Chairman

Dennis Beebe, Vice Chairman

(Secretary Jim Trout: Absent)

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2. Will literal interpretation of Sections 4204(C) of the ordinance as related to a front yard setback deprive the owner of rights commonly enjoyed by other properties in the same district?
3. Are the special circumstances and conditions the result of actions by the applicant and considered self-created?
4. Will granting the variance alter the essential character of the area?
5. Does conforming to the zoning requirements create a practical HARDSHIP? Answer:

MOTION

ADJOURN:

Submitted by

Mary Lou Millard

Recording Secretary

Tom Gerhardt, Chairman

Jim Trout, Secretary (Absent)