

CITY OF LUDINGTON
BOARD OF ZONING APPEALS
Minutes –September 16, 2008

A regular meeting of the Ludington Board of Zoning Appeals was held on September 16, 2008 at the Ludington Municipal Building, 400 S Harrison St., Ludington, MI, and was called to order by Brian Purtee, Vice-Chairperson at 5:30 p.m.

PRESENT: Tom Tyron, Brian Purtee, Joe Moloney, Roger Starr and Bonnie Vaught.

ABSENT: Kirk Josvai, Bill Loforte, excused

ALSO PRESENT: Recording Secretary Carol Ann Foote

ROLL CALL:

The roll call gave the above results.

AGENDA APPROVAL:

A motion was made by Joe Moloney to approve the agenda seconded by Bonnie Vaught. Motion carried unanimously.

MINUTES:

A motion was made by Bonnie Vaught to approve the minutes of November 27, 2007, as written, seconded by Joe Moloney. Motion carried unanimously.

PUBLIC HEARING:

Consideration of a request by Donald Folkman for a six foot front yard setback variance in order to enclose the existing front porch at the following described property:

QUEVILLON'S ADDITION LOT 3 BLOCK 1, also known as 606 Lakeview St.

Donald Folkman, 606 Lakeview St., addressed the Board. He said that his house and porch was built 102 years ago before that had all of these variances. The house itself is right on the line and the porch is over six feet. It would be better enclosed because in the wintertime removing snow is a lot harder. He said his wife has rheumatoid arthritis and he has a herniated disc, osteoarthritis in his back, and spurs. It is just getting a lot harder. Also, the wind comes across Oriole Field and it would help on the heating bill. It would also look better than the existing porch. It is mostly for our health.

Joe Moloney asked Mr. Folkman if he had read the Ordinance before he applied. Mr. Folkman said that he had not. He did not even know the porch was over the line until the building inspector came and measured. Joe read the definition of open porch covered. Carol Foote explained that when Mr. Folkman came into the office, she did explain to him why the variance was needed.

Bonnie Vaught wanted to know if he had considered the amount of space would be needed if they were to ramp the front. Mr. Folkman explained that it would not be ramped. He said the floor would be lower so there would be fewer steps. Bonnie Vaught asked if the floor would be lower. Mr. Folkman said that it would actually be a little smaller. Brian Purtee asked if the entire porch would be removed. Mr. Folkman said that just the base would be removed, the roof would stay. Bonnie asked if the sides would be replaced or how much would be removed before beginning the new structure. Mr. Folkman said just the floor and the steps. He said the porch was two feet in from both sides of the house. Brian Purtee asked if it would be within the existing footprint. Mr. Folkman said that it would. Joe Moloney asked Mr. Folkman to explain the drawings that were submitted. He said that it looked like he was putting in 42" footings. He asked if part of the footings would be under ground. Mr. Folkman said that the footings would be under ground. The porch would not be any higher. Joe asked where the stairs would be. Mr. Folkman said that it would be off the service door.

Joe asked if this would be used as a porch or a room. Mr. Folkman said that they would use it in the summer, but in the winter there would be no heat. Joe asked if there was a reason that they could not build off of the back of the house. Mr. Folkman said that they would have to change all of the electric. The way the back of the house's roof slopes, it would be real hard. That is not the main object. The object is to enclose the front to get out of the winter elements. The vehicles are also in front. Bonnie asked Mr. Folkman to point out where he parked the vehicles. She asked Mr. Folkman if they have a back entrance. Mr. Folkman said that they did. It was within the dog pen so they could let the dogs out. The pen has been there for years.

Close public hearing.

Carol Ann Foote reported that there were thirty-two notices sent out with three responses in favor of the project.

Practical Difficulty:

Tom Tyron said that there was a practical difficulty because the home was built before there were any ordinances and the location itself makes it a practical difficulty to comply with the ordinance. Brian Purtee said that this home was built at the beginning of the century and it was not until some decades later that zoning was introduced. Bonnie Vaught said that she drove through the neighborhood quite a bit and there were only three homes facing Lakeview, and this is the only one that is this close to the roadway. Driving north on Lakeview from Tinkham, it appears that enclosing the porch would not be a problem for vision for driving because the house is that far back from the next east/west street. Going into the next block, there are a couple of houses that are very close to the road and they have what would look like a front porch that has been enclosed. Brian Purtee stated that his home is also non-conforming. He said that his first thought, going into the variance procedure, is usually no, it should not be granted. The practical difficulty that he sees is that they did not put their house or the porch where it is. He stated that he sees some valid reasons for a variance. He said that the variance would stay with the property. The fact that the house is non-conforming is not your fault. It is grandfathered. Joe Moloney said that he did not think there was a practical difficulty. There is nothing unique about the property. The houses in that area were all built before zoning. We are staying within the same footprint, but it is being changed from non-closed to an enclosed structure. So that would result in a significant change as far as setbacks. Roger Starr wanted to be clear that the porch itself was conforming but the house was one foot over the line. Bonnie said that right now it was a covered open porch. Joe Moloney stated that was one of the exceptions in the ordinance and once it is enclosed, it is no longer an exception. Tom Tyron said that he maintains that there is something unique about the property. The house sits in a situation that makes it unique to comply. That meets the criteria as far as I am concerned. Brian Purtee talked about a previous variance that was granted for a doctor on Lake Michigan that wanted to build a garage. Because of the way his house sat on the property it was judged to be a practical difficulty and he was granted a variance because he did not put the house where it was. Brian said that he had two thoughts. The first one was that the footprint of the house would not change and the fact of being able to use the property like other people uses theirs, such as enclosing the front porch. They did not put the house there. It was there before the ordinance was enacted. It does make it non-conforming. Joe Moloney said that he went back to the zoning board handbook and tried to narrow down what a practical difficulty was. The handbook stated that it was special and unique conditions exist which are peculiar to the land,

structure or building involved which are generally not peculiar to other land, structure or buildings in the same district. Brian Purtee used the example of a railroad right of way running through the back yard or perhaps a sinkhole. Joe said that he knows they should not make a judgment based on the impact of future zoning but I do remember working on the text of this ordinance. I am concerned that Ludington has a unique condition with a lot of structures being non-conforming; we will have a problem with encroachment on setbacks if we start granting these variances consistently. That is really not staying with the Master Plan and the vision of the City. Brian Purtee said that it came within the definition of a practical difficulty. The definition that Joe Moloney read was only part of it, there is more. It is like a property that is only fifty feet wide instead of sixty feet and the owners wanted a deck the same size as their neighbor but could not build it because of the width of the lot. That is a practical difficulty. Joe Moloney said one of the reasons they have setbacks is for access in case of fire. Brian Purtee said that of course you have to have access for equipment. Joe said that this home is already pretty close to the road, now it would be even closer. Tom Tyron disagreed. He said the footprint was not going to change a bit. Joe said you were changing an unenclosed porch to an enclosed porch. That is defined as a structure. Tom Tyron said that is the reason there is a Board. Bonnie Vaught said that the owners here could not use their property in the same way the neighboring properties can because of the position of the structure. That is what is unique.

Tom Tyron, Bonnie Vaught, Brian Purtee agreed that there was a practical difficulty. Joe Moloney and Roger Starr did not think there was a practical difficulty.

Would the variance be detrimental to the adjacent owners or the neighborhood?

Roger Starr said that apparently the neighbors did not care. There was no response from the neighbors. Bonnie Vaught said that the few responses were in favor. Joe Moloney commented that they could not make their decision based on the neighbors.

It was unanimous that the variance would not be detrimental to the adjacent owners or neighborhood.

Is the variance in the intent of the ordinance?

Tom Tyron said the intent of the ordinance was that they could build a porch and they meet all the criteria except for the dimensions. It would be allowable if it was back. So the argument is the location. Brian Purtee said that if it was the intent of the Zoning Ordinance to see that everyone can use their property in a manner that would not adversely affect anyone else and to use the property in the same fashion, get the same use out of it, then this variance is in keeping with the intent of the ordinance. Roger Starr said that if the primary purpose of the setback rule is for emergency vehicles, again the footprint is not changing, so it does not defeat that process either. Tom Tyron said that it was a unique street. Joe Moloney said that we are not supposed to add on to a non-conforming structure. Changing this to an enclosed porch would that be adding onto a non-conforming structure? An open porch is an exception. Brian Purtee said that it definitely adds to the nonconforming status. He said that he thinks that is just a technicality in this case. Tom Tyron said that if it burned down, it could be rebuilt on the same footprint. Brian Purtee asked Carol Foote to explain the non-conforming rule if the structure burnt down. He said that he

thought in this case, they were asking to use their property as others do. They are not asking to add an enclosed porch; they are asking to change an existing structure. Joe Moloney asked if they were discounting the guidelines that say they cannot add to a non-conforming structure because it was a technicality in this case. Brian said that the guidelines were very real and very important. He said that the guidelines are what brought them to the Board.

Brian Purtee, Bonnie Vaught, and Tom Tyron did think that it was in the intent of the ordinance. Joe Moloney did not think it was not in the intent of the ordinance. Roger Starr abstained.

Does the alleged hardship or practical difficulty involve more than personal inconvenience and financial hardship?

Joe Moloney said no. One of the main reasons was health. Brian Purtee said that they also talked about being close to Lake Michigan and adding value to their house. Joe Moloney said that was financial. Brian said that it came back to using the property like other can use theirs. Two days after it is done, nobody will notice it. It does not change anything. Joe Moloney said that what he heard, they were doing this for three reasons: health, tax benefits, and heating cost. Tom Tyron asked why they would do it if it wasn't for these reasons. Brian Purtee said that he was saying that the practical difficulty is where the house was located before zoning came in the effect. Roger Starr said that any house that sat right on the line would have a practical difficulty for putting on an enclosed porch. This porch was now conforming. With the variance, it would be non-conforming. He is concerned about the precedence they would set. Brian Purtee said that he had not thought about it in that sense. He said that in this case, he does not look at it that way. Bonnie Vaught said that the request that they were looking at right now would not effect what they are talking about. We have been pretty consistent about not setting precedence. Roger Starr said that this house was build before any regulations went into place, so he thinks that should have a bearing.

Brian Purtee, Tom Tyron, Bonnie Vaught and Roger Starr agreed that the hardship or practical difficulty involved more than personal inconvenience and financial hardship.

Joe Moloney did not agree.

Tom Tyron made a motion to grant the 6ft. front yard setback variance, seconded by Bonnie Vaught.

Tom Tyron, Bonnie Vaught, Roger Starr, yes Brian Purtee, Joe Moloney, no.

OLD BUSINESS:

Joe Moloney pointed out to the Board that FloraCraft told them that they added storage in order to move the buns to the inside. They spoke about being good neighbors, etc. The buns are still there. He said that they should pay attention to conditions when variances are granted.

NEW BUSINESS:

Board of Zoning Appeals
Meeting Minutes
09/16/08

COMMENT AND COMMUNICATIONS:

ADJOURNMENT:

The meeting adjourned at 6:40 p.m.

Respectfully submitted,
Carol Ann Foote, Recording Secretary