

ZONING BOARD OF APPEALS
Regular Meeting
March 28, 2023

The meeting was called to order by Chairman Russ Boersma at 5:30 p.m.

Present: Chairman Russ Boersma, Vice-Chairman Ross De Vries, Members Elliott Church and Robert De Vries . Also present were Community Development Director, Corey Broersma, Assistant Planner and Zoning Administrator, Kate White, and Recording Secretary, Laurie Slater.

Absent: Jack Vander Meulen

Public Comment: Juanita Bocanegra, 58th District Court Judge, was present at the meeting to introduce herself and answer any questions or concerns the Board or the public might have. She further stated that she is here to serve you. Everyone is welcome to come to the courthouse for a tour.

** It was moved by Ross De Vries and supported by Robert De Vries to approve of the minutes from the January 24, 2023, and February 28, 2023 meetings as printed. Motion carried with a unanimous roll call vote.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Thomas Gergich on behalf of Geenen Dekock Properties LLC for property located at 3134 Beeline Road, known more specifically as Parcel Number 70-16-16-100-090. Petitioner is requesting a variance of 5 stacking spaces from the required 10 stacking spaces for a new drive-through facility lane. The subject property is zoned C-2 Community Commercial and FP Floodplain.

Present to speak to this request was Thomas Gergich, Vice President of Real Estate & Development for Team Schostak Family Restaurants.

Mr. Gergich explained that since the pandemic there has been a shift from dining in to pick up and delivery. Applebee's would like to install a pick-up window. There would be no menu board or speaker for ordering in the lane for pick-up. It would be for call ahead or online orders. The pick-up window would be safer for staff. They would no longer have to walk out to the vehicles to give them their order in bad weather or in the dark.

It was noted that there is floodplain on the property. Staff noted that during the review process, Staff would request verification that the area of construction is not within FEMA-designated floodplain.

Mr. Gergich stated that this location has a high percentage of carry out orders. The customers are given a time to pick up their order. If they are early, they will be directed to a parking space to wait.

Mr. Broersma read the comments that Member Jack VanderMeulen submitted as he was not going to be present at tonight's meeting. Mr. VanderMeulen's opinion was that five stacking spaces for pick-up ordering is reasonable.

Mr. Church asked if the Zoning Ordinance had been reviewed and updated to include the definition of a pick-up window and reduced number of stacking spaces. Mr. Broersma responded that the Zoning Ordinances have not been updated at this time, however, the proposed stacking space reduction from 10 to 5 would be consistent with Staff's recommendation for the zoning ordinance update.

There was no one in the audience to speak to this request.

** It was moved by Robert De Vries and supported by Ross De Vries to close the hearing. Motion carried.

The Board went over the standards to review when considering a nonuse variance request.

- 1. That compliance with the Zoning Ordinance would result in practical difficulties due to exceptional, extraordinary, or unique characteristics or conditions of the land or lot of record, including but not limited to:***
 - a. Exceptional narrowness of the width or depth of a lot of record, or irregular shape.*
 - b. Exceptional natural or topographic features located on the lot of record, such as steep slopes, water, existing significant trees, or other unique or extreme physical conditions of the land.*
 - c. Extraordinary location of an existing building or structure that allows no other practical or feasible location for expansion because of exceptional land features.*
 - d. Other exceptional or extraordinary dimensional conditions or characteristics of land or lot of record.*

There are no unique or exceptional characteristics or conditions of the property. Pick-up windows are simply not in the Zoning Ordinance.

- 2. That the unusual circumstances do not apply to most other lots of record in the same manner to the same extent to other lots of record in the same zoning district.***

The operation of the Applebee's pick-up window is unique and differs from the operation of a traditional drive-through window. The applicant has indicated previously that pick-up times for orders are scheduled ahead of time and will be timed appropriately to limit the number of vehicles waiting at the drive-through window.

- 3. That the variance is necessary for the preservation and enjoyment of a substantial property right. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.***

Having a pick-up window would add safety. Employees would not be going in and out with packages.

4. *That the granting of the variance will not be of substantial detriment to adjacent and nearby land uses and properties.*

There would be no substantial detriment to adjacent and nearby land uses and properties.

5. *That the applicant shall not have created the problem for which the variance is being sought.*

The nature of the business has changed since the pandemic and the applicant's request addresses the changing nature of the business.

6. *That the granting of the variance will not be contrary to the public interest and that the spirit of this ordinance shall be observed, public safety secured, and substantial justice done for both the applicant and other property owners in the district.*

Pick-up windows are not in the current Zoning Ordinance, but staff will be looking at adding it, so it will be within the spirit of the ordinance.

It is not contrary to the public interest in that the customers can stay in their vehicles and Applebee's staff will not have to take the orders out to the cars in the bad weather and in the dark.

** It was moved by Robert De Vries and supported by Ross De Vries to approve the request as written. Mr. Church asked for a revised motion with the stipulation that there are no onsite ordering speakers or menu boards. Mr. De Vries withdrew the motion.

** It was moved by Robert De Vries and supported by Church to approve the request with the stipulation that there are no onsite ordering speakers or menu boards. Motion carried with a unanimous roll call vote.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Paul DeKruyter for property located at 679 Garden Ridge Drive, known more specifically as Parcel Number 70-16-35-212-011. Petitioner is requesting variances consisting of: 1) 1 attached accessory building in addition to the maximum 1 attached accessory building permitted; and 2) a variance of 1,201 square feet from the maximum 1,150 square feet of attached accessory building area; resulting in an area of 2,251 square feet. The variance is being requested for a new residential building addition. The subject property is within The Ridge PUD and subject to R-1 Low Density Residential zoning requirements.

Present for this request was Paul and Kristine DeKruyter.

Mr. DeKruyter stated that he was in front of the Zoning Board of Appeals last year for an oversized detached accessory building. As Staff noted, one of the variance requests associated

with the oversized detached accessory building was never approved nor denied. Mr. DeKruyter noted he would like to withdraw the previous variance request for a detached accessory building with a height greater than 16 feet.

** It was moved by Ross De Vries and supported by Robert De Vries to accept the applicant's withdrawal of the previous variance request. Motion carried.

Mr. DeKruyter explained that he has spent a year revamping the plans. He is trying to do better and come up with something that the neighbors support. He stated that he would like to add on to his current house on the south side. The property slopes down as you move south on the property so the addition would be nestled into the hill as low as possible out of the view of the neighbors. Mr. DeKruyter explained that he lives on the end of a cal-de-sac and his driveway is 500 feet long. The only thing that would be visible from the road would be the roof top of the addition. There is more tree coverage for the neighbors on Macatawa Lane and they are in support of the addition.

There is currently a tractor and a trailer sitting in the yard. The addition would allow these to be put away out of sight.

The upper level would consist of a rec room with a basketball, pickle ball, and indoor hockey court. The lower level would have a woodworking area, an area to store materials and supplies, a workout room, and a grow room. Because there would be overhead doors on the lower level it is classified as a garage and makes the need for a variance. Each room serves a purpose. The grow room is for plants started from seed. They would put the starter plants on the trailer so they could move it out into the sun when it is nice outside. In the workout room, they would like to have a tractor tire to flip and a medicine ball. Having the garage door open would allow a breeze to come in while working out.

Mr. DeKruyter emphasized that if there were no overhead doors, there would be no need for a variance.

He questioned what makes a garage a garage? He is allowed 1,050 square feet of garage. He currently has 1,007 square feet of garage space. The grow room would have 688 square feet of space for a tractor and trailer with plants on. This could be classified as a garage. The workout room would be 566 square feet with a rubber floor and mirrors on the walls. This is living space not garage space.

He further discussed the spirit of the ordinance, which was to keep the size of the garage down so it does not dwarf the house. This is a good-sized house. This addition would not dwarf the house. The actual garage is at the opposite end of the house. He is asking for a variance of 1,201 square feet for a second garage.

Mr. DeKruyter further commented that overhead doors are different than they used to be. Restaurants install them to bring things inside easier. Overhead doors are practical.

The neighbors are in strong support of the addition. They are in favor of the location. The

Garden Ridge people will not see the addition at all. He worked hard to meet the ordinance.

Mr. Ross De Vries asked the applicant if he would agree to having no detached accessory buildings. The applicant agreed to no detached accessory buildings if this variance were approved.

Mr. Church commented that no one has come forward objecting to this variance request.

The Board asked Staff to clarify Mr. DeKruyter's statement that if not for the overhead doors, he would not need a variance. Mr. Broersma confirmed that is correct.

Mr. Broersma read the comments that Member Jack VanderMeulen submitted as he was not going to be present at tonight's meeting. In his opinion, overhead doors do not make an area a garage. A driveway to it does. He further stated that it is hard to control how the space is used in the future.

Mr. Church asked Staff if there are any other parcels of this size in this area. Mr. Broersma replied that the parcels in this neighborhood are the more traditional sizes of one quarter to one half-acre in size.

The discussion continued among Board members. It is a unique residential lot in this area with approximately 40% of it on the other side of the Tulip Inter-County Drain. People use garages for other than parking cars all the time. They are used for storage. They turn it into a room to hangout in.

Mrs. DeKruyter asked if she could speak. She stated that the neighborhood is neat and tidy, and they do not store things outside. Most parcels of this size are zoned agricultural. Residential lots are one third to one-half acre in size and have HOA's with rules to follow. The HOA rules note they can't store stuff outside; they don't want to see our stuff either.

Mr. DeKruyter stated that granting this variance would not set a precedent. There are not many lots of this size, zoned residential within the Township. He noted that detached accessory buildings are scaled with the parcel size and suggested that when the ordinance is being reviewed, that the size of the parcel be considered when determining how much garage space is allowed.

Mr. Broersma read the emails of support from Lindsey Warren of 714 Garden Ridge Drive, Shaun and Kim Tubergen of 699 Garden Ridge Drive, and Kevin and Lynn Lanting of 719 Garden Ridge Drive. There was also signed support from neighbors of Macatawa Lane: Robert Hieftje, Jim Hill, Ken Brondyke and Gholam Ghazanfariz.

** It was moved by Ross De Vries and supported by Church to close the hearing. Motion carried.

The Board went over the standards to review when considering a nonuse variance request.

1. That compliance with the Zoning Ordinance would result in practical difficulties due to exceptional, extraordinary, or unique characteristics or conditions of the land or lot of record, including but not limited to:

- a. *Exceptional narrowness of the width or depth of a lot of record, or irregular shape.*
- b. *Exceptional natural or topographic features located on the lot of record, such as steep slopes, water, existing significant trees, or other unique or extreme physical conditions of the land.*
- c. *Extraordinary location of an existing building or structure that allows no other practical or feasible location for expansion because of exceptional land features.*
- d. *Other exceptional or extraordinary dimensional conditions or characteristics of land or lot of record.*

The land is an odd shape with the Inter-County Drain running through it. There are dramatic elevation changes on the property. It is in a floodplain.

2. That the unusual circumstances do not apply to most other lots of record in the same manner to the same extent to other lots of record in the same zoning district.

The unusual circumstances do not apply to most other lots.

3. That the variance is necessary for the preservation and enjoyment of a substantial property right. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

It is not necessary for the preservation and enjoyment of a substantial property right. Last time they appeared before the Board, they were asking for a detached accessory building that the neighbors objected to. However, the applicant has made several changes to limit those neighbors' concerns.

4. That the granting of the variance will not be of substantial detriment to adjacent and nearby land uses and properties.

Granting this variance not will be of substantial detriment to adjacent and nearby land uses and properties. It will not be seen from the road or the neighboring properties. There is not one here to object. It is set in the ground lower than the previous request. Attention was given to limit the visual impact of the addition for neighboring properties.

5. That the applicant shall not have created the problem for which the variance is being sought.

Yes, the applicant did create the problem for which the variance is being sought.

6. That the granting of the variance will not be contrary to the public interest and that the spirit of this ordinance shall be observed, public safety secured, and substantial justice done for both the applicant and other property owners in the district.

Granting this variance will not be contrary to the public interest. Several neighbors have submitted emails in support of the variance. It is only characterized as an accessory building because of the overhead doors.

** It was moved by Church and supported by Ross De Vries to approve both requests subject to the following stipulations: (1) there are to be no detached accessory buildings permitted on the property, and (2) tractors, yard equipment, and other personal property are to be stored inside. Motion carried with a unanimous roll call vote.

** It was moved by Ross De Vries and supported by Robert De Vries **to removed from the table a petition for a Nonuse Variance submitted by** Millie Luth for property located at 0 (vac) Brookview Drive, known more specifically as Parcel Number 70-16-11-400-042. Motion carried.

Chairman Russ Boersma gave a recap of the discussion in regards to this application from the February meeting for the members that were not there.

Petitioner is requesting a variance of 27 feet from the required 35-foot front yard setback, resulting in a front yard setback of 8 feet. Variance is being requested for a single-family dwelling. The subject property is zoned R-1 Low Density Residential. This request was tabled at the February Zoning Board of Appeals meeting.

Staff had been asked to reach out to the Water Resource Commission for some direction on the issue with flooding in this area. Mr. Broersma received an email from the Water Resource Commission stating that it is a private drainage issue with little solutions that they can offer

Mr. Broersma read the comments that Member Jack VanderMeulen submitted as he was not going to be present at tonight's meeting. His comment was that as with all permitting, there is an administrative review and at that time, the applicant will have to show that there is adequate drainage.

Staff noted that with a 33 foot easement and a 35 foot setback she would have a buildable area of 15 feet by 45 feet to build a house in. This would give her a house of 675 square feet, which does not comply with minimum square footage requirements for a single-family dwelling, per the ordinance. To build on this lot, she would need a variance for either a front yard setback or for the square footage.

This lot was legally created years ago, but it is not compliant today. She is seeking to put the proposed house in line with the house she placed on the other lot years ago. It is in the easement. The ordinance was different at that time.

The water problem has been recognized and hopefully it will be handled appropriately in the future. Some of the water coming on her lot is coming from other properties.

Although the hearing had been closed at the previous meeting, the Board Members that were absent asked to hear the comments of the neighbors that were present tonight.

Jeffrey Vrugink of 10475 Riley Street was present to speak. He stated that since 1998, the water issues have been persistent. There is a large standing body of water every Spring. Granting this request would place the house closer to the road than the other houses. It would be an odd ball. It should be built back further. In his opinion, this is not a buildable lot. The owner should have kept it one property and put one house in the middle. It does not make sense for the neighborhood for this lot to be built on.

Noah Vereeke of 10485 Riley Street was also present. He stated that the existing house at 10498 Brookview Drive was built on a hill. The property slants and the water runs off it on to the lots next door. The person who created the problem is the same person asking for a variance. The smaller building footprint is less of a problem. The ordinance is supposed to protect people, if you grant this variance that is not protecting us.

Lance Kornoelje of 10465 Brookview Drive was also present. His property is directly to the north. The lot was purchased entirely as one piece of property. Drainage from the lot she developed when she split the property created the water problem. Obviously, there are strong feelings from the people here and the letter received. It was bought as a single lot. All rules that applied to the first lot when the house was placed, should not necessarily be applied to the second lot.

Board Members asked if there are utilities in the easement. There is a green utility box near the property line between the house at 10498 Brookview Drive and the subject lot.

The applicant, Millie Luth, was present to speak also. She replied that the easement is for ingress and egress. She stated that there is nothing in the easement, she checked with Miss Dig. It was set aside for utilities.

Ms. Luth stated that when she purchased the lot 20 years ago it was a legal buildable lot. It is frustrating now that it is not a buildable lot without obtaining a variance. In her opinion this should be grandfathered into the old ordinance.

She understands there is certainly a water problem. However, that water problem should not hold her back from building a house on this lot. The problem will be there whether she builds or not. The water problem needs to be addressed by the Commission Mr. Broersma spoke to.

There was further discussion among the Board Members about the buildable area without the variance and she would need a variance for square feet or a setback. The water issue is a private matter as far as the Water Resource Commission is concerned. Everyone who lives around this lot objects. Something they value would change if we grant the variance. Rules do change. It is not just the water issue the neighbors object to it is also the proximity of the house to the road.

Mr. Broersma asked the applicant if she had a special survey done on the property. She replied that she had not.

The Board asked Mr. Broersma about using the easement for drainage. Mr. Broersma explained that there is a sanitary sewer manhole to the east, within Brookview Drive. It might

be possible to install a stormwater pipe as they trench water and sewer services to the subject lot. Water Resource would need to determine whether they have rights to the easement.

** It was moved by Ross De Vries and supported by Robert De Vries to deny the request as presented based on all the findings brought to the Board. Motion carried with a unanimous roll call vote.

Other Business

Staff asked for input from the Board Members on the following topics:

Section 9.6 – Dwelling, Accessory

If a mechanical storage room (which serves both the principal and accessory dwelling) is located within the accessory dwelling unit area, should the mechanical storage area be included in the total square footage of the accessory dwelling unit?

It was the consensus of the Board that they would like to deal with each situation on an individual basis and they should come before the Board.

Section 13.10 – Nonconforming Signs

Should the addition of an electronic changeable message (ECM) screen to a nonconforming sign with a similar static changeable message board be reviewed by the Zoning Board of Appeals for the extension of a nonconforming sign?

It was the consensus of the Board that any modernization to a nonconforming sign should come before the Board. For example, a non-illuminated sign changed to an illuminated sign should come before the Board or comply with Ordinance. Mr. Church made the comment that if a change to a nonconforming sign becomes more visually obtrusive to passersby, then he would consider that an extension of a nonconforming sign should be reviewed by the Board.

The meeting adjourned at 8:00 pm

Respectfully submitted,

Laurie Slater
Recording Secretary