

ZONING BOARD OF APPEALS
Regular Meeting
January 24, 2023

The meeting was called to order by Vice-Chairman Ross De Vries at 5:30 p.m.

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

Absent: Chairman Russ Boersma and Jack Vander Meulen

Public Comment: None

** It was moved by Robert De Vries and supported by Church to approve the minutes of December 20, 2022. Motion carried with a unanimous roll call vote.

Vice Chairman Ross De Vries explained the Public Hearing process to the audience.

He further explained to the applicant that a unanimous vote would be necessary for a variance to pass as there are only three Zoning Board members present at tonight's meeting, making a quorum. Did they want to continue with the hearing or wait until next month at which time there may be more members present? The applicant chose to continue with the request.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Mitchell Nol for property located at 12675 Greenly Street, known more specifically as Parcel Number 70-16-09-100-017. Petitioner is requesting variances consisting of: 1) the substitution of existing evergreen trees for canopy trees and the elimination of 84 shrubs from the required northern Type C buffer; 2) the substitution of existing evergreen trees for canopy trees and the elimination of 77 shrubs from the required eastern Type C buffer; and 3) the elimination of 2 canopy trees and 19 shrubs from the required southern Front Yard Landscape. The subject property is zoned C-2 Community Commercial.

Present for this request was Matthew Cole, Project Manager with Roosien & Associates.

Mr. Cole explained to the Board that Harvest Health Foods owns a four-and-a-half-acre parcel of which they are developing an acre and a half. This is phase 1 of 2-3 phases for this property. They are asking to only landscape the US-31 frontage, the Greenly Street frontage located west of their proposed driveway, and the parking lot at this time for the following reasons. For the area to the east of the main entrance, the trees and shrubs would have no irrigation. This will be a field of tall meadow grass until further development on the parcel and the grass could choke out the landscaping. When the remainder of the parcel does get developed, this landscaping would likely get torn out for construction access to the site.

For the north and east property lines, there are existing evergreens that they would like to be able to count as the required canopy trees in the Type C landscape buffer. Harvest Health Foods is a green, organic operation. Cutting down mature evergreen trees to put in canopy trees does not make sense.

Mr. Cole noted that a previous suggestion from Staff was to pull the buffer in closer to the proposed Harvest Health Food Store; however, Cole mentioned that this would make the buildable footprint smaller.

The Board asked Mr. Cole to show on the site plan exactly where they are asking for relief.

Mr. Cole pointed out the area to the east of the main entrance and stated that it would be 125' of meadow grass from Harvest Health Foods parking lot to the property line. They would put the required trees in the parking lot islands. However, they are not developing the front parking until the other stores are built. There is sufficient parking to the west of the building. Mr. Cole brought and displayed a concept plan of where the two future buildings could be built – to the east and in the northwest corner of the parcel.

There was discussion with Community Development Director, Corey Broersma, about using the mature Blue Spruce trees as part of the buffer. Mr. Broersma explained that excavating that close to the tree line could damage the trees. Staff would not have any objections to counting the evergreens as canopy trees with the condition that they be replaced with the proper required buffer as they die off or need to be removed for the development of the remainder of the parcel.

Mr. Cole went through each of the six standards and gave reasons for how this development meets those standards. The uniqueness of the property is that it is larger than what is needed for the development of Health Harvest Foods. They are using only one third of the parcel. If they were to pull the buffer in around their business, it would take away from the buildable space. It doesn't make sense to cut down trees to plant trees. They are asking the mature trees remain and put the proper landscaping in as the parcel is further developed or the evergreen trees need to come down. The evergreens do a better job of screening than the canopy trees and shrubs would do. It would be a waste of resources to cut the trees down at this time.

The Board had questions about how sure they were that there would be further development on this parcel and how long until that might happen.

Mr. Cole replied that commercial property is extremely valuable. They have developed the parcel for future development by upsizing the storm sewer and the water main coming onto the property. The timeline for future development will depend on the economy.

There was further discussion among the Board on the speculation of the future development on the parcel, the timing of other construction and when the landscaping should be brought into compliance.

There was no communication from surrounding businesses or residents for this request. Staff could see no red flags on the intent of future development of this property, however, added that the buffer and property still has to be maintained free of long grass/weeds.

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

It was moved by Robert DeVries 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 existing evergreen trees. They are a significant natural feature of this parcel.

- 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.*

Having fully grown evergreen trees on the property lot lines is not typical of other properties.

- 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.*

The variance is not necessary for the preservation and enjoyment of a substantial property right.

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

Granting this variance would not be of substantial detriment to adjacent and nearby land uses and properties. There was no communication with Staff in regards to this request and no one was present in the audience to speak to this request.

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

The applicant did not create the problem. The trees were there. It does not make sense to cut down strong, healthy trees to replace them with smaller trees and shrubs.

- 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 the variance for the Evergreen Trees would not be contrary to the public interest, provided there is an understanding that as the Evergreen Trees are removed, they will need to be replaced with the proper number of Canopy Trees.

Granting the variance for the Front Yard Landscape and Buffer Shrubs would be contrary to the spirit of the ordinance and the expectations for neighboring property owners.

There was discussion among the Board members of several options of how to formulate a motion.

Northern Property Line - Motion: It was moved by Church and supported by Robert De Vries to approve the request of a Nonuse Variance for the substitution of 24 existing evergreen trees for 12 canopy trees and the deferral of 84 shrubs from the required northern Type C buffer until the next building permit is issued or 7 years has passed (whichever comes first), with the condition that if the evergreen trees fail to meet the ordinance, then canopy trees shall be installed. Motion carried with a unanimous roll call vote.

Eastern Property Line – Motion: It was moved by Church and supported by Robert De Vries to approve the request of a Nonuse Variance for the substitution of 20 existing evergreen trees for 11

canopy trees and the deferral of 77 shrubs from the required northern Type C buffer until the next building permit is issued or 7 years has passed (whichever comes first), with the condition that if the evergreen trees fail to meet the ordinance, then canopy trees shall be installed. Motion carried with a unanimous roll call vote.

Southern Property Line – Motion: It was moved by Ross De Vries and supported by Church to deny the request of a Nonuse Variance for the elimination of 2 canopy trees and 19 shrubs from the required southern Front Yard Landscape due to the significant amount of traffic on Greenly. Motion carried with a unanimous roll call vote.

Next on the agenda was the Election of Officers.

Motion: It was moved by Ross De Vries and supported by Church that Russ Boersma remains Chairman, Ross De Vries remains Vice-Chairman and that Robert De Vries is Secretary of Zoning Board of Appeals for the calendar year 2023. Motion carried.

The meeting adjourned at 6:50 p.m.

Respectfully submitted,

Laurie Slater
Recording Secretary