

ZONING BOARD OF APPEALS

Regular Meeting
September 26, 2023

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

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

Absent: Jack Vander Meulen

There were no public comments.

** It was moved by Robert De Vries and supported by Steve Haberkorn to approve the minutes from the August 22, 2023, meeting with one correction on page 4. Motion carried.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open to consider a petition for a Nonuse Variance submitted by William A. Sikkel on behalf of Great Lakes Partners, Inc. for property located at 4467 96th Avenue, known more specifically as Parcel number 70-16-01-200-006. Petitioner is requesting a variance of 3.3 acres from the minimum lot area of 5 acres required within the AG Agricultural zoning district, resulting in a lot area of 1.7 acres. The variance is being requested for a land division to create a new lot of record containing an existing single-family dwelling. The subject property is zoned AG Agriculture.

Present for this request was Bill Sikkel on behalf of John Janssen of Great Lakes Partners, Inc. and Ron Webb, Realtor.

Mr. Sikkel explained to the Board that the property is approximately 80 acres of farmland with a small farmhouse occupying approximately 2 acres of it. The house was built in 1951 and it is now vacant. Mr. Janssen would like to split the house off from the approximately 80 acres and sell it off as affordable housing for someone. They do not have a buyer for the house currently. The ordinance requires the split to be at least 5 acres in size for the AG Agricultural Zoning District. Mr. Janssen would like to keep the 3.3 acres of tillable land and make the split 1.7 acres instead. There is a county drainage ditch to the west of the farmhouse. If 5 acres were to be split off, a portion of the acreage would be on the west side of the ditch taking up tillable land in the middle of the 75 acres left as farmland. The applicant would like to preserve everything tillable to the west of the drainage ditch as farmland. Preservation of the farmland is the intent of the ordinance.

Mr. Janssen plans to continue farming the land. The Master Plan for the property is Agricultural Preservation for at least 20 years from the date the Master Plan was adopted.

It was suggested by the Board that the future owners of the house could rent out the 3 acres on the west side of the drainage ditch. Mr. Sikkel stated that the property would probably end up not being farmed but used for something else or sit there unused.

The Board asked Community Development Director, Corey Broersma, why five acres is required in the AG Zoning District. Mr. Broersma responded that that gives the property enough room for farming activities. There would be enough room for a pasture if they had horses. They could have chickens, sheep, goats - a family farm, if compliant with the State's Generally Accepted Agricultural and Management Practices (GAAMPs).

Prior to 2018, a single Low Density Residential style land division was allowed, provided the resulting density of the land's original boundary did not exceed 1 dwelling per 5 acres. The current ordinance states no lot of record smaller than 5 acres for AG Zoning Districts.

The property proposed to be split off consists of a house, barn and detached garage. The proposed split would add further nonconformities to the parcel should the split be approved. The minimum required setbacks would not be met on the rear and side yards for the barn and detached garage. They would need a 60-foot setback on the side yards and 100-foot setback on the rear yard.

Mr. Sikkel stated that the applicant would be willing to come back with a revised proposed parcel plan for the land division that establishes conforming setbacks for the existing buildings. It is not their intent to create-nonconforming structures. They do not want whoever purchases the property to have issues with this.

The Board asked how the applicant would get to the tilled land on the west side of the drainage ditch. The applicant noted there is an entrance at the north end of the property and a 16-foot-wide pathway over the ditch behind the existing house.

There was discussion among the Board Members about seeing a new plan that would meet the setbacks. It was the consensus that they would like to table this item and have the applicant present a new plan to meet the setbacks.

There was no one present in the audience to speak to this request. Staff had no communication from neighbors regarding this request.

**** It was moved by Church and supported by Haberkorn to close the hearing. Motion carried.**

**** It was moved by Boersma and supported by Robert De Vries to table this item until a new plan is submitted with setbacks being met. Motion carried with a unanimous vote.**

Hearing declared open to consider a petition to Extend a Nonconforming Use submitted by Mark Westerbeke of EMA Properties, LLC for property located at 11024 Chicago Drive, known more specifically as Parcel Number 70-16-23-100-031. Petitioner is seeking permission to extend the life of a nonconforming building that does not currently comply with the required minimum rear yard and side yard building setback. The subject property is zoned C-2 Community Commercial.

Present for this request was Mark Westerbeke of EMA Properties, LLC and Randy Schipper, Attorney, representing the applicant.

Mr. Westerbeke explained to the Board that he has been working to fix the lean-to on the property. He would like to put new siding on the lean-to. He has put a new roof on the existing building and the lean-to. For the lean-to to support that new seamless roof and the new siding, improvements to the structure had to be made. The handyman that Mr. Westerbeke hired did not pull a permit to upgrade the supports and beams. Mr. Westerbeke stated that he has hired several different people to work on the building over the years and each one has pulled the necessary permits. Mr. Westerbeke said he is not a builder and was not aware that a permit had not been pulled or that a permit was needed. The other contractors just took care of it. Mr. Westerbeke presented the Board with a list of permits pulled previously for work he has had done on the building.

In the long-term, Mr. Westerbeke would like to tear down the existing building and build a new building. It is just not practical at this time to do that because of interest rates and rental rates, so he would like to make improvements to what he has for now. It could be up to 10 years before the new building would be built. Mr. Westerbeke is not sure of the timeframe for finishing the siding. Contractors are busy, and there are delays with getting the materials needed.

When Mr. Westerbeke does build the new building, he intends on putting in some landscaping. At the present time, there are plastic chains and buckets separating the vehicles sales area on the lot from the rest of the lot and building.

The existing building is nonconforming in that it does not meet the side and rear yard setbacks for the C-2 Community Commercial Zoning District. Mr. Westerbeke owns the property to the east, so he is willing to adjust the property line to meet the side yard setback. The land to the south (rear) is owned by Consumers Energy. He has not approached them regarding purchasing enough property to make the rear yard compliant.

There was discussion among the Board about efforts to decrease the nonconformity of the property. They asked if the lean-to was torn down, would they be compliant? Mr. Broersma answered that the building would still be nonconforming.

Mr. Westerbeke replied that if the lean-to were to be torn down, he was not sure about how the new seamless roof would look like being tore off at that point. If allowed to make improvements to the lean-to, it would be used for cold storage. Graphix Gurus may use it for storage in the future.

Mr. Church asked if Consumers Energy had been asked to sell them the property to bring the property into compliance with the rear yard setback. Mr. Schipper stated that approximately a year ago, a property owner a few parcels to the east from this one had a similar situation. They asked to purchase some land from Consumers (this same parcel of Consumers property) and they refused to sell any of the land. Consumers authorized a license for the land's use, but they wouldn't sell. Mr. Schipper believes that the answer would be the same if Mr. Westerbeke were to ask Consumers to sell to him.

Mr. Church stated that that is just speculation as Mr. Schipper does not know for certain that they would refuse a sale. Mr. Schipper responded that Consumers does not need the money, they will not give up control of the property or give an easement, so he believes it is not speculation. Mr. Church repeated it is speculation.

Mr. Schipper stated the building was built in the 1960's before the ordinance for setbacks was established. At that time, it was given a zero setback on the rear yard. Mr. Westerbeke has owned the building since 2016.

There was discussion of the violation Mr. Westerbeke was given because the new posts and beams in the lean-to were installed without a permit.

There was further discussion of what Mr. Westerbeke may need to do should the extension of the nonconforming use not be approved by the ZBA. Mr. Broersma answered that he and the applicant had discussed this. The applicant would need to pull a demolition permit to tear out all the work that had been installed without a permit.

The floor area of lean-to would be a little smaller than it is now if the extension of the nonconforming use was approved by the ZBA. The walls for the siding to be attached to are on the inside of the existing lean-to. There would be no insulation in the lean-to.

Adam Thompson of Graphix Gurus was in the audience to speak to this request. Mr. Thompson stated that Mr. Westerbeke has been good to them, helping them to grow. Graphix Gurus is up to five employees now. Mr. Westerbeke is always improving the property. The lean-to would help Mr. Thompson by giving him more storage. The current lean-to is potentially not safe as is. Mr. Westerbeke is attempting to clean it up.

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

The Board went over the standards to review when considering an extension of a nonconforming use:

1. ***Whether the extension, enlargement, alteration, remodeling or modernization will substantially extend the probable duration of the nonconforming structure, building or use.***

The new footings, posts, and associated beams will prolong the life of the structure. It will shore up the building and make it useable.

2. ***Whether the extension, enlargement, alteration, remodeling or modernization of the nonconforming structure, building or use will interfere with the use of adjoining lands or other properties in the surrounding neighborhood for the uses for which they have been zoned pursuant to the provisions of this ordinance.***

The remodeling of the nonconforming structure will not interfere with the use of adjoining lands or other properties in the surrounding neighborhood for the uses for which they have been zoned pursuant to the provisions of this ordinance. The applicant is willing to move the lot line, so the property is more compliant with the east property line. The lean-to will look better with new siding.

3. *The effect of the nonconforming structure, building or use and such extension, enlargement, alteration, remodeling, or modernization thereof on adjoining lands in the surrounding neighborhood.*

There is no effect of the nonconforming structure on adjoining lands in the surrounding neighborhood. Mr. Westerbeke owns the property to the east and Consumers Energy owns the southern property. The applicant is willing to move the lot line, so the property is more compliant with the east property line. The lean-to will look better with new siding and windows.

** It was moved by Boersma and supported by Ross De Vries to approve the request as presented with the condition that the proposed lot line adjustment be recorded, the building permits are secured, and the inspections performed and approved by July 31, 2024. Motion carried with a unanimous vote.

Hearing declared open to consider a petition to Extend a Nonconforming Use submitted by Alex Ortlieb on behalf of Zeke Alejos of Alejos Property Management, LLC for property located at 244 James Street, known more specifically as Parcel Number 70-16-19-228-007. Petitioner is seeking permission to extend the life of a nonconforming sign. The subject property is zoned C-2 Community Commercial.

Present for this request was Alex Ortlieb and Chris Ebrom of Fast Signs of Grand Rapids on behalf of Zeke Alejos.

Mr. Ortlieb explained that Mr. Alejos would like to change out the reader board on the current nonconforming pylon sign. The sign is nonconforming in that it is a pylon sign and does not conform to the minimum 10-foot setback from public right-of-way/property lines. Putting the sign in compliance with the ordinance would place it in the parking lot. Mr. Ortlieb stated that changing the panel does not extend the life of the sign itself. The sign is 20 years old and still in excellent condition. They would just be modernizing the sign from a removable letter board to an electronic message board. The sign would not be changing structurally. The sign is not any more nonconforming in terms of setback than the ground sign at the attorney's business a couple of doors down (270 James St).

The Board had concerns with the sign being a distraction to drivers as it would have changing text messages. They were also concerned about the brightness of the sign.

Mr. Ortlieb explained that the text would be changing once every two minutes. By ordinance

they are allowed to change it every 8 seconds. Also, the brightness of the lighting is easily adjusted. They can take measurements and adjust it to meet the ordinance. It is easily adjustable to the time of day, time of year - whatever you need it to be.

There was discussion of requiring the applicant to switch from a pylon sign to a ground sign.

Mr. Ortlieb replied that the existing sign is in good shape. The pylon sign pole is deep in the ground with concrete poured around it. A ground sign would be closer to the parking area. They would just be switching panel for panel. This would not extend the life of the sign. It would make it look nicer.

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

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

The Board went over the standards to review when considering an extension of a nonconforming use:

1. ***Whether the extension, enlargement, alteration, remodeling or modernization will substantially extend the probable duration of the nonconforming structure, building or use.***

There was a difference of opinion. Some members commented that the Electronic Changeable Message would not extend the life of the nonconforming sign because there was no structural change proposed. Others wanted the applicant to bring the sign into compliance as far as it being a ground sign instead of a pylon sign.

2. ***Whether the extension, enlargement, alteration, remodeling or modernization of the nonconforming structure, building or use will interfere with the use of adjoining lands or other properties in the surrounding neighborhood for the uses for which they have been zoned pursuant to the provisions of this ordinance.***

The Board had concerns about the sign distracting the passing vehicles with the timing of changes and the brightness of the sign. Mr. Ortlieb answered their questions sufficiently with those two issues being adjustable. The neighbor has a similar sign with an ECM. This modernization of the sign would not affect the neighbors.

3. ***The effect of the nonconforming structure, building or use and such extension, enlargement, alteration, remodeling, or modernization thereof on adjoining lands in the surrounding neighborhood.***

The addition of an ECM to a nonconforming pylon sign may be more visually obtrusive to vehicle traffic and neighboring properties. Note, as of the date of this report, no letters of concern have been received.

The neighborhood consists of daytime-use businesses. The sign would not be flashing in the windows of apartment buildings. Mr. Church would like the changing of the text to

be longer than the 8 seconds allowed by ordinance. The sign is closer to the road right-of-way, and he wants it to be as nonobtrusive as possible.

Mr. Broersma reminded the Board that timing was not made an issue for the recent petition involving 270 James Street. The Board discussed further and since it's a larger and taller pylon sign rather than a ground sign in the road right of way, the text changes only once per minute would be appropriate. That is 52 seconds longer than the ordinances allows.

** It was moved by Ross Devries and supported by Haberkorn to approve the petition as written to allow the ECM with the stipulation that the ECM sign display cannot change more than once every 60 seconds. The reason for the stipulation is that the sign is in a nonconforming position with setbacks, and it is a nonconforming pylon sign instead of a monument sign. The applicant must secure all the appropriate permits to make the changes. Motion carried with 4 "Yes" votes and 1 "No" vote.

The meeting adjourned at 7:11 pm.

Respectfully submitted,

Laurie Slater
Recording Secretary