

ZONING BOARD OF APPEALS

Regular Meeting April 24, 2018

Present: Chairman Steve Haberkorn, Vice Chairman Vern Johnson, Members Elliott Church, Russ Boersma and Bob Swartz. Also present was Community Development Director John D. Said, Assistant Community Development Director Corey Broersma, and Recording Secretary Laurie Slater.

Absent: None

The meeting was called to order by Chairman Haberkorn at 5:30 p.m., and he explained the Public Hearing process to the audience.

Hearing declared open to consider a petition for a nonuse variance submitted by William Sikkel on behalf of Neal King for property located at 904 Butternut Drive, known more specifically as parcel numbers 70-16-18-125-011 and -010. The petitioner is requesting a variance of 33 feet from the minimum 66-foot wide private access and utility easement; resulting in an access and utility easement of 33 feet in width. The petitioner is seeking the variance in order to complete a land division and establish lots with legal frontage. The subject property is zoned Single-family and Two-family Residential (R-2).

Present for this hearing was William Sikkel and Neal King was also present in the audience.

Mr. Sikkel explained that Mr. King owns two parcels. The front parcel is addressed as 904 Butternut and is 1.9 acres in size with a house on it. The rear parcel is 1.5 acres in size and is vacant and land locked with no access. Mr. King would like to have a 33-foot easement to the back parcel on the south side of the existing house. The easement would run straight back. There is a structure in the path of the easement that would be taken down. Given the location of the existing house, there is no way that they can meet the 66-foot easement requirement. The house is 35 feet from the south lot line and to the north, the property is too steep due to a creek running along the south property line. Mr. Sikkel stated that they would be willing to put in a buffer along the north property line.

Mr. King's intent is to split the back parcel into two parcels and put a single-family dwelling on each parcel. The parcels would be legal parcels meeting the size requirements. Each parcel

would be $\frac{3}{4}$ of an acre in size. Significantly larger than other lots in the neighborhood. There are two existing stubs for the sewer along the north side of the lot. There are no water lines running to the back parcel.

Mr. Sikkel further explained that if they were to tear down the existing house, they could create ten or more lots. It is in the best of every one's interest to maintain the existing structure.

There were several neighbors present to speak to this request.

Rodney Tatlock of 941 Shadybrook Drive stated that he would lose his privacy if the back parcels are developed.

Ms. Germeny Thomas of 951 Shadybrook Drive stated that the entire backside of her house is windows. She has a full upper and lower deck. She would lose her privacy also. She further stated that there is a lot of wildlife on the parcel. She purchased that property because of the privacy and the wildlife.

Zack of 971 Shadybrook Drive asked for clarification on whether it would be duplexes and if it would be split into two or three lots. He was concerned about property values. He too likes the privacy and the wildlife that now exists with the undeveloped property.

Mr. Sikkel reiterated that it would be single family homes, with the parcel split into two lots if they get the variance for the easement.

Ms. Thomas stated that her property is so low in the back they cannot even put up a fence due to the slope into the creek. The drop in the grade makes it impossible.

Mr. Sikkel explained that because of the slope of the property to the south due to the creek, they would not run the side yard up against the property line. The proposed house would not be pushed to the corner of the property. There would be a large buffer zone due to the slope to the north.

Mr. Broersma, Assistant Community Development Director, stated that Ottawa County Drain Commission has an easement over the creek and that their easement would have to be adhered to as well.

The Board asked Staff what the purpose of the 66-foot easement was. The easement was given the same dimensions as the street right-of-way requirements.

It was the consensus of the Board that 33 feet is enough room for emergency vehicles to access the properties.

Mr. Johnson stated that this is a good use of land. There are several land locked parcels in the Township and as land gets scarcer, there will be more requests for easements to access the parcels.

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

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

Would strict compliance with the minimum area, yard setbacks, frontage, height, bulk, density, or other regulations of the Zoning Ordinance be unnecessarily burdensome? – Yes, it would render the property unusable in its current state. **Would granting the requested variance do substantial justice to the applicant as well as to other property owners in the zoning district, or would a lesser relaxation than that applied for provide substantial relief to the property owner and be more consistent with justice to other property owners in the district?**– Yes, granting this request would do substantial justice to the applicant as well as to others as similar requests have been granted to others within the Township.

Is the plight of the property owner/applicant due to the unique circumstances of the property (e.g. an odd shape or a natural feature, such a wetland or stream) and not to general neighborhood conditions in the area? - The unique circumstances of the property are that it is land locked, and the topography to the north of the creek creating a steep grade. **Are the practical difficulties alleged self-created?** - No ** It was moved by Mr. Johnson and supported by Mr. Swartz to grant the request as presented. Motion carried.

Hearing declared open to consider a petition to extend a nonconforming use submitted by Landon and Jessica Eberly for property located at 4632 112th Avenue, known more specifically as parcel number 70-16-02-100-013. Petitioner is requesting to extend the nonconforming use by constructing an addition to the residential dwelling. The dwelling is nonconforming because it fails to meet the required 60-foot front yard setback from a public right-of-way. The subject property is zoned A, Agriculture.

Present for this request was Landon and Jessica Eberly.

Mrs. Eberly explained that they are in the process of purchasing her grandparents' house. It is a small house of approximately 1,400 square feet. They would like to add two bedrooms and enlarge one and expand the bathroom. The addition would be on the north side. It would be setback 6 feet from the front to preserve the original roof lines.

Mr. Broersma explained to the Board that the property is nonconforming in that it is 44.5 feet from the road right-of-way instead of the 60 feet required by ordinance. This property is zoned Agricultural. If it were residential, the required setback would only be 35 feet. It is also nonconforming in that it is only three acres in size. Agricultural zoned property by ordinance is to be at least five acres in size.

The Board looked at other houses on the street to see how close to the road they were. The Eberly's house has been on this property since 1960.

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

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

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

Whether the extension, enlargement, alteration, remodeling or modernization will substantially extend the probable duration of the nonconforming structure, building or use. – The house has been there since 1960. They are modifying it. This is not a request for a setback variance, which would stay with the property forever. It is a request to extend the nonconforming use. The surrounding area is very rural. It's been okay for years. It is not adding to the nonconformity that already exists.

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. - It is farm land. There is nothing there.

Whether the extension, enlargement, alteration, remodeling or modernization will substantially extend the probable duration of the nonconforming structure, building or use. – No adverse effect. ** It was moved by Mr. Boersma and supported by Mr. Church to grant the request as presented. Motion carried.

Hearing declared open to consider a petition for a nonuse variance submitted by Ellen Kaines on behalf of Trisect Enterprises, LLC for property located at 13219 Quincy Street, known more specifically as parcel numbers 70-16-05-300-016. The petitioner is requesting a variance of 18 feet from the minimum 50-foot rear yard setback; resulting in a rear yard of 32 feet. The petitioner is seeking the variance in order to complete a land division and establish a legal rear yard for an existing building. The subject property is zoned General Industrial (I-2).

Present for this request was Tom Postma.

Mr. Postma explained to the Board that this parcel was brought before the Board back in January of 2008 to get a front yard setback variance and size of lot variance approved so that the parcel could be split into two lots each with one building on it. (See January 22, 2008 minutes.) Although the variance was granted, the actual splitting of the property was never followed up on.

They are back to get the rear yard setback variance from ZBA, which was not addressed at the meeting in 2008, and apply for the lot split through the Assessor's office.

** It was moved by Mr. Johnson and supported by Mr. Boersma to close the hearing. Motion carried.

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

Would strict compliance with the minimum area, yard setbacks, frontage, height, bulk, density, or other regulations of the Zoning Ordinance be unnecessarily burdensome? – Strict compliance would be unnecessarily burdensome in that they would have to move the building to comply. It has been this way a long time.

Would granting the requested variance do substantial justice to the applicant as well as to other property owners in the zoning district, or would a lesser relaxation than that applied for provide substantial relief to the property owner and be more consistent with justice to other property owners in the district? – Granting this variance would give justice to the applicant. The building is existing. There is no one here to speak to this request.

Is the plight of the property owner/applicant due to the unique circumstances of the property (e.g. an odd shape or a natural feature, such a wetland or stream) and not to general neighborhood conditions in the area? – They had already been granted a front yard variance and a lot size variance in 2008 so that the split could take place, but did not complete the process with the assessor's office and the Township Board.

Are the practical difficulties alleged self-created? - No, Hallacey Drive being put in and the previous variance request of 2008 not being followed up on created the situation.

** It was moved by Mr. Church and supported by Mr. Swartz to grant the request as presented. Motion carried.

There were no public comments.

The minutes of March 27, 2018 were approved as printed.

The meeting adjourned at 6:33 p.m.

Respectfully submitted,

Laurie Slater
Recording Secretary