

ZONING BOARD OF APPEALS

Regular Meeting July 24, 2018

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

Absent: None

Chairman Haberkorn welcomed and introduced Jack Vander Meulen as a new member on the Zoning Board of Appeals.

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 reduced number of parking spaces submitted by Cloverville 2005, LLC – Jason DeWitt for property located at 12465 James Street, known more specifically as parcel number 70-16-16-377-007. Petitioner is requesting a variance to allow 56 parking spaces in lieu of the required 77 parking spaces. The subject property is zoned Community Commercial (C-2).

Present for this request was Jason DeWitt.

Mr. DeWitt stated that the property has been fully functioning as a retail property since he purchased it in 2013. Parking and square footage of the buildings are now as they were then. He has made improvements to the property as funds have allowed. The current tenants have been there fifteen years or more in the current configuration. Mr. DeWitt spoke with the tenants and there have been no complaints about parking issues from anyone.

Mr. DeWitt has checked with the neighboring properties to see if he could lease some space for extra parking or purchase some adjoining property. So far that has not panned out.

Mr. DeWitt has turned down potential businesses because of the possibility of it creating parking issues for the other tenants (hair salon, church). Mr. DeWitt visits the property regularly and historically since 2013, 50% of the parking spots are vacant when he's there. No one is searching for a parking space or parking across James Street to come to one of the businesses on this parcel.

No matter who occupies the space, they would have the same problem with meeting the number of parking spaces allowed. The property is landlocked.

Mr. Bob Middleton of Jersey Mike's was also present to speak to this request.

Mr. Middleton explained to the Board that he has been searching for a location for Jersey Mike's in Holland for two years. He has looked at the parking and studied the location. He wants his store to be successful. His lease would be for five years. He further explained that he owns 18 Jersey Mike's Subs in Michigan. 75% of the business is before 4:00 p.m. and 90% of his clientele is grab and go with 10% staying to eat their lunch there. The type of food Jersey Mike's sells is speed driven. People are in a hurry – they only get one hour for lunch.

Jersey Mike's also gives back to the community. In Grand Rapids they give to Helen DeVos Children's Hospital.

The Board asked how many seats would be available. Mr. Middleton replied that they put in the maximum number that the space would allow – 32, but if that is a factor in getting the variance, he is willing to remove some of the seating because he does not need all of it.

When Mr. DeWitt was asked what they do with the snow in the winter, he replied that it gets plowed into the area between the parking lot and the highway. No parking spaces are lost to snow.

The Board had further questions about customers and employees getting out onto James Street going east with it being so close to the light on the corner of James and US-31. Mr. DeWitt explained that there is a curb cut further to the west and there is a connecting driveway to the gas station to get out on Van Ommen.

The Board asked staff why this is an issue now. The property has been this way for several years. Mr. Broersma explained that Jersey Mike's had to come in for a building permit and upon review the parking issue has to be addressed. The minimum parking threshold has been in existence for a number of years; pulling a building permit triggered the need for a variance for the parking.

Mr. Middleton intends to split what was the mattress store 60 / 40. The Red Wing store wants to expand into the newly created space. The resulting vacant space will be 1,200 square feet.

There was further discussion about what would be allowed in the vacant space and how that would impact the parking issue. Mr. DeWitt stated that he would not allow another restaurant type business in the building. As the landlord he has to look out for all the tenants.

The Board had concerns about illegal parking of customers. Mr. DeWitt stated there is no room for illegal parking. The number of employees on site would range from two to four at peak business hours – which would be lunch time. They would be parking on site unless it becomes an issue, then he would seek permission for them to park across the street at the Walmart complex or the skating rink area on Van Ommen.

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

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

Due to the dates of the application for a building permit and the subsequent Planning Commission meetings on this topic, the Board reviewed the standards for considering a nonuse variance request from the prior zoning ordinance (pre May 17, 2018).

1. 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 there is no space to add parking. The landlord would not be able to rent out the empty store space.

2. 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 request would do substantial justice to the applicant in that this is not a reoccurring problem in the neighborhood. A lesser relaxation will not work as there is no place to add parking.

3. 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 existing parcel is landlocked, with no opportunity to expand so as to add more parking

4. Are the practical difficulties alleged self-created? The applicant and proposed tenant did not develop the property; they are working to utilize it based on its existing limitations.

** It was moved by Mr. Church and supported by Mr. Vander Meulen to grant the request for parking of 56 spaces in lieu of the required 77 spaces with the following conditions:

1. Variance is in effect only for so long as the uses are what they are now
2. If there is the appearance of a parking problem, the employees will park elsewhere. The landlord or store owner will acquire rights to park off site or the variance terminates.
3. There is to be no illegal parking on the site. This is to be monitored by the store. Can not block the driveway of emergency vehicles.
4. The only type of restaurant that can be in the center is a quick serve restaurant.

Motion carried unanimously.

Hearing declared open to consider a petition to allow an additional or larger accessory building submitted by Karl Kotecki for property located at 89 S. Division Avenue, known more specifically as parcel number 70-16-30-151-010. Petitioner is requesting an additional attached accessory structure of 616 square feet in area with an 18-foot roof height. The subject property is zoned Low-Density Residential (R-1).

Present for this request was Karl Kotecki.

Mr. Kotecki explained that he would like to build an attached garage onto the existing house and garage. He would be using the addition for the storage of a pickup truck and a hobby shop. His truck does not currently fit in the garage as the height of the garage door is an issue. The addition would have an 8' door. The siding and roofing would match the existing structure. Mr. Kotecki would be allowed a garage space of 1050 square feet (counting both the existing and the proposed). He is asking for 1176 square feet; a variance of 126 square feet. Mr. Kotecki has 5' off set in the back of the garage for a service door to get in the garage from the back of the house.

The Board commented that there is a house a couple of doors to the north that looks similar to what Mr. Kotecki is proposing.

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

** It was moved by Mr. Boersma and supported by Mr. Swartz 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 an 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 features of the land.
- d. Other exceptional or extraordinary dimensional conditions or characteristics of land or lot of record.

The Board indicated that the relatively small requested variance amount (126 square feet) is a unique matter that addresses this Standard.

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

The Board indicated that this matter is unusual given the relatively small amount requested for variance.

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 owner would get enjoyment out of his hobby.

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

The proposed garage would not appear to be detrimental to adjacent/nearby land uses and properties. Even if the applicant were to take a couple of feet off the back, it would still look the same from the road. No difference, no injustice, no public safety issue.

5. That the applicant shall not have created the problem for which the variance is being sought. This variance is solely based on the applicant's proposal to install additional garage space; he did not build the existing home or garage.

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.

The spirit of the Zoning Ordinance is not being violated.

** It was moved by Mr. Swartz and supported by Mr. Church to approved the request as presented with the stipulation that the siding and roofing of the addition is to match the existing house and garage. Motion carried with one opposition from Boersma.

Hearing declared open to consider a petition for setbacks for an accessory building submitted by Erin K. DeYoung Trust - Dave DeYoung for property located at 592 Lawn Avenue known more specifically as 70-16-30-306-016. Petitioner is requesting a front yard setback of 0 feet and a side yard setback of 5 feet. The subject property is zoned Low-Density Residential (R-1).

Present for this request was Bill Sikkel on behalf of Erin and Dave DeYoung.

Mr. Sikkel explained that the Ottawa County Road Right-of-Way is now Holland Charter Township property and that Lawn Avenue will never be any further developed than it already is. The shed needs to be moved off the Township property. The concern with meeting the required setbacks is the topography of the lot. The property slopes from the NW corner to the SE corner. If the building is moved to meet the setbacks it would be approximately 8 feet in the air on one side.

Mr. Sikkel had three drawings (labeled 1, 2, and 3) to present to the Board and audience with different scenarios of the placement of the shed. Drawing 1 was of where the shed currently sits. Drawing 2 was where the shed could be placed to meet the proposed setbacks, which is what was submitted with the application. Drawing 3 indicated the shed would maintain its orientation on the property, but the corner currently on Township property would be shifted to the south and east until it was on the lot line.

Mr. Sikkel then went over the standards:

The practical difficulty is the topography of the lot.

The unusual circumstance is the topography of the lot.

It is the right of the property owner to be allowed to have an accessory building and they have made improvements – it is further away – property separation.

The situation is not self-created; it is the topography of the lot. The shed will be moved to a location approved by the Township.

The proposed location is a better location, not as close to the lot line as it was previously.

It is physically possible to place the shed in a location where it would meet the standards, but it is practically difficult.

The reason Mr. DeYoung does not want to put the shed on the east side of the property is in case he has to reconfigure the driveway because he does not have an easement agreement with the neighbor whose property his driveway currently crosses.

Mr. Vander Meulen suggested that the shed could be built like a bi-level house with it partially in ground.

Mr. Sikkel replied that the shed has no foundation at this time and it has a wood frame.

In the audience was Esther Walters of 600 Lawn Avenue who had submitted a letter in opposition of the 0-foot front yard setback and the 5-foot side yard setback. Her concerns were with the fire code.

Mr. Broersma stated that staff had also received a note from Robin and Jon Rodgers of 610 North Shore Drive in opposition of the request.

There was discussion of previous variances that Mr. DeYoung had applied for and how long this request has been unresolved.

There was further discussion about the landscaping around the shed and the concrete parking bumpers.

Karen Van Ess of 584 Lawn Avenue was in the audience to speak to this request. Her property is to the east of Mr. DeYoung.

Mrs. Van Ess stated that back in 2006 Jon Mersman told her Dave DeYoung did not need a permit to build an accessory building. He went beyond the 200 square feet and everything became a confused mess. There is no exact record of when things happened. The Ottawa County Road Commission has since quit claimed the right-of-way to Holland Charter Township. The Township is sitting on the property, which creates a problem for her if she wants to sell her house. There is no possibility of a road going through. Its full of weeds and Japanese Knot Weed. It is her opinion that the shed can stay right there, quit claim the Holland Charter Township property to the three property owners and there would be no problem.

The Board asked Mr. Sikkel where Mr. DeYoung would park his vehicle because he has been parking it by the shed. Mr. Sikkel replied that he would probably park it in the road right-of-way. The Board informed him that that is not allowed.

** It was moved by Mr. Swartz and supported by Mr. Boersma 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 an 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 features of the land.
- d. Other exceptional or extraordinary dimensional conditions or characteristics of land or lot of record.

There are options for compliant accessory building location.

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

There are no unusual circumstances that support this request.

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.

No difference on enjoyment or property rights.

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

If Lawn Avenue is developed it would be of substantial detriment. We don't know the future. Other property owners object. We don't want to set a precedence by allowing a zero-lot line.

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

The applicant created this problem by installing an accessory building, installing an oversized accessory building without a permit or approvals from the Township and Road Commission.

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.

Board agrees with staff that the proposed variance would only serve the applicant's interest and convenience, but not serve the spirit of the Zoning Ordinance. It could also impact public safety in the future given the applicant's proposal to relocate the accessory building immediately adjacent to the Township property (Lawn Avenue public right-of-way).

** It was moved by Mr. Vander Meulen and supported by Mr. Church to deny the request. Mr. DeYoung has other options for placement of the shed on the property. Motion carried to deny -

unanimous.

The minutes of the Special Meeting of June 28 and the ZBA Minutes of May 8, 2018 were approved as printed.

Other Business: Election of a Vice Chairman. A nomination was made by Mr. Church for Jack Vander Meulen to be Vice Chairman. Mr. Vander Meulen stated that he would like to learn how the Board works first. A nomination for Russ Boersma was made by Mr. Haberkorn. Mr. Boersma was elected Vice Chairman unanimously.

Meeting adjourned at 7:33 p.m.

Respectfully submitted,

Laurie Slater
Recording Secretary