

## ZONING BOARD OF APPEALS

Regular Meeting  
November 28, 2017

Present: Chairman Steve Haberkorn, Members Vern Johnson, Bob Swartz, Russ Boersma, and Alternate Member Ross De Vries. Also present was Community Development Director John D. Said, Assistant Community Development Director Corey Broersma, and Recording Secretary Laurie Slater.

Absent: Elliott Church

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

Hearing declared open to consider a petition for a nonuse variance submitted by Jennifer Foley for property located at 506 Orchard Hill Road, known more specifically as parcel number 70-16-30-176-029. Petitioner is requesting a variance of 40 feet from the minimum 70 feet required for lot frontage on a street; resulting in a lot frontage of 30 feet. The subject property is zoned Single-family Residential (R-1).

Present for this request was Peter Rhoades, Attorney representing the Foleys.

Mr. Rhoades explained to the Board that Orchard Hill dead ends at the Foley property and that they own the property on both sides of the road. They will be requesting to fully vacate the remainder of Orchard Hill Road (right-of-way). The vacated land would be assigned to the Foley parcel, making their property in the shape of a "T", and their road frontage would become the portion of the vacated road that would front on Pinecrest Drive creating 30-feet of lot frontage for this parcel.

An easement granting property owners of 468 Pinecrest (70-16-30-176-007 – current owner Joshua B Novak) and 498 Orchard Hill Road (70-16-30-176-009 – current owners Matthew & Sharon Fisher) access would need to be established. Also, appropriate access for emergency vehicles would be required.

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 four standards to review when considering a nonuse variance request.

1. Would strict compliance with the minimum area, yard setbacks, frontage, height, bulk, density, or other regulations of the Zoning Ordinance be unnecessarily

burdensome? – It would be impossible to build here without the variance or obtaining more land.

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 have no impact on the surrounding property owners. Given that the applicant owns each lot separated by the public right-of-way and the inland lot is non-conforming in terms of lot area for the R-1 zoning district, granting the variance would provide justice to the applicant provided proper easements are established.

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 property is unique in that it is split by the road.

4. Are the practical difficulties alleged self-created? - The right-of-way division of the lots is not a condition created by the applicant. While the vacation of the existing Orchard Hill right-of-way, and therefore the resulting variance, is self-created, it unifies the subject property into a single parcel.

\*\* It was moved by Mr. Boersma and supported by Mr. Johnson to approve the request as presented with the following conditions: 1) With the vacating of the right-of-way appropriate access and utility easements must be agreed upon and recorded. 2) There must be a turnaround for emergency vehicles.

Motion carried.

Hearing declared open to consider a petition to extend a nonconforming use submitted by AMERCO Real Estate Company on behalf of the Russell & Lillian Veldheer Trust for property located at 463 East Lakewood, known more specifically as parcel number 70-16-21-100-026, -040, and -042. Petitioner is requesting an extension of the nonconforming use for two (2) existing buildings in order to convert them to self-storage facilities. The existing buildings are nonconforming because they fail to comply with the required building setbacks. The subject property is zoned C-2, General Commercial.

There was no one present to speak to this request. Mr. Broersma informed the Board that the applicant requested their petition be tabled.

\*\* It was moved by Mr. Johnson and supported by Mr. Swartz to table this request.  
Motion carried.

With time left before the advertised start time of the next hearing, the Board took care of some business.

The meeting dates for 2018 were discussed.

\*\* It was moved by Mr. Boersma and supported by Mr. DeVries to approve the meeting dates for 2018 as presented. Motion carried.

The minutes of October 24, 2017 were approved as printed.

Mr. Said confirmed that the draft of the Zoning Ordinance had been e-mailed to the Zoning Board of Appeals Members and that discussion of the ordinances pertaining to the ZBA would be discussed at the end of the meeting.

Hearing declared open to consider a petition to extend a nonconforming use submitted by John Petroelje for property located at 10297 Mason Street, known more specifically as parcel number 70-16-36-100-013. Petitioner is requesting an extension of the nonconforming use for an existing farm building in order to construct a 30-foot by 53-foot addition. The existing building is nonconforming because it fails to comply with the required building setbacks. The subject property is zoned A, Agriculture.

Present for this request was John Petroelje owner.

Mr. Petroelje explained to the Board that he would like to put a piece of barn back on that he took down three months ago for safety reasons. The proposed addition would be the same width as the existing barn. He would use the addition to store his tractor and other farm equipment that is now sitting out. The existing barn is 130 years old and very sturdy. The size of the parcel is five acres.

The existing barn is nonconforming in that it does not meet the side yard setback. The proposed addition would not impact the nonconforming setback. The adjacent property owner is his brother. The other surrounding properties are two churches and Vista Springs (Hospice), so it would not be visible to any other residential properties.

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

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

The Board went over the three 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 existing barn was built in such a way 130 years ago that it will probably last longer than the new addition. The petitioner is only asking for a replacement of what was already there for storage of farming equipment.

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. – There would be no adverse effect. The proposed addition would be further away from the side yard lot line than the existing barn. It would not impact the existing nonconformity.

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 would be no adverse effect. The proposed addition would be further away from the side yard lot line than the existing barn. It would not impact the existing nonconformity.

\*\* It was moved by Mr. Swartz and supported by Mr. Boersma to approve the request for a petition for an extension of a nonconforming use for an existing farm building for the construction of a 30' by 53' addition to the rear of the existing building with the stipulation that the appropriate Agricultural Use Exempt Structure Affidavit be completed and recorded with the Ottawa County Registrar of Deeds. Motion carried.

Hearing declared open to consider a petition for a nonuse variance submitted by Midwest Construction Group, LLC on behalf of Children's Assessment Center of Ottawa County for property located at 12125 Union Street, known more specifically as parcel number 70-16-16-400-091. Petitioner is requesting a variance of 5 feet from the minimum 10 feet required between accessory buildings; resulting in a separation distance of 5 feet. The subject property is zoned C-2, General Commercial.

Present for this request Derek Eade, Project Manager with Midwest Construction.

Mr. Eade explained that there is only five feet between the accessory building and ordinance requires ten feet. The accessory buildings are used to accept donations of larger items such as mattresses and for fund raising purposes. They cannot be moved to the west as there is an existing dumpster enclosure there.

It was the consensus of the Board that the accessory buildings were well placed when you factor in the placement of the parking lot and the main building. Also, the location of the accessory buildings would keep them from being tampered with.

When asked what the reason for the ten-foot separation rule is, Mr. Broersma replied that it's a fire separation between an accessory building and the primary structure. Having it be two accessory structures is a unique situation.

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

\*\* It was moved by Mr. Devries 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.

1. Whether strict compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would render conformity with such restrictions unnecessarily burdensome. - There is nowhere to go with the accessory buildings, they are landlocked. They are doing no harm. There is no work being done in them, no living quarters, they are used for storage only.
2. Whether granting a variance would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property and be more consistent with justice to other property owners. - There are no property owners around. Keeping the accessory buildings close to the main building makes tampering less likely.
3. Whether the plight of the owner/applicant is due to unique circumstances of the property and not to general conditions in the area. – It is a unique area and property. There is no other place to put the accessory buildings – they can't be moved due to the dumpster enclosure to the west.

Whether the problem is self-created. – There is limited space, not a whole lot of choice.

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

Hearing declared open to consider of multiple petitions submitted by Eric Vander Zwaag on behalf of Larry Vanden Bosch for property located at 4267 104th Avenue, known more specifically as parcel number 70-16-02-400-004. Petitioner is requesting the following variances for the purposes of constructing a dwelling and an oversized accessory building on a nonconforming lot within the Agriculture Zoning District: 1) An extension of a 1 acre nonconforming lot for a single-family dwelling; resulting in a single-family dwelling on a lot with less than 325 feet of frontage and an area less than 5 acres; 2) A variance of 25 feet from the minimum 100 feet rear yard setback required for a single-family dwelling; resulting in a rear yard setback of 75 feet; and 3) A variance of 720 square feet from the maximum 480 square foot allowable size for a single-family dwelling's detached accessory structure on land 1 acre or more in area but less than 2 acres; resulting in an accessory structure of 1,200 square feet.

Present for this request was Eric Vander Zwaag, contractor for Larry Vanden Bosch.

Addressing the extension of a nonconforming use:

Mr. Vander Zwaag explained to the Board that Mr. Vanden Bosch would like to rebuild a house on the one-acre parcel where there was once a house. The previous house was too far gone to repair - the foundation was falling apart. It was an old farm house passed down through the generations.

Mr. Broersma explained that a single-family residence is allowed in the Agricultural Zoning District, it is the lot size that is the issue. Lots by ordinance are required to be five acres in size in the Agricultural Zoning District. This one is one acre so it cannot meet the setback requirements of 100 feet.

Mr. Vanden Bosch explained that at this time all the surrounding properties are owned by family. The smaller parcels were broken off and given to family to build houses on.

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

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

The Board went over the three 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 is no option to make the lot larger. The properties surrounding are all owned and not for sale. The use of the property will remain unchanged.

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. – No adverse effect – the surrounding properties are farm lands.

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. – They are replacing a house with a house. No adverse effect.

There was a brief discussion about the drain field being in the front yard and approval from the Drain Commission.

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

They next considered the rear yard setback:

The house would not fit on the parcel if it were in compliance with the setbacks. They are asking for a 75-foot rear yard setback instead of 100-foot setback as required by ordinance. The existing well is in the front yard so they do not want to move the house forward. Also, there are trees in the front yard that they would like to keep. They need enough room in the front yard for the drain field. The ground there is clay.

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

The Board reviewed the four standards to consider when granting a nonuse variance request.

Whether strict compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would render conformity with such restrictions unnecessarily burdensome. – Yes, it would be burdensome, the lot is small. It's farm county all around, and saving some trees is good.

1. Whether granting a variance would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property and be more consistent with justice to other property owners. - It is surrounded by farmland.

2. Whether the plight of the owner/applicant is due to unique circumstances of the property and not to general conditions in the area. – It is a small corner surrounded by farmland.

3. Whether the problem is self-created. – No, it's been there a long time.

\*\* It was moved by Mr. Boersma and supported by Mr. Swartz to approve the request for the 25-foot variance from the required setback of 100 feet resulting in a 75-foot rear yard setback. Motion carried.

The Board next considered the request for an oversized accessory building:

The property is surrounded by farmland. There are no residential neighbors. The characteristic of the accessory building would look like a barn.

Mr. Said informed the Board that the proposed ordinance does not change the accessory building sizes, but does allow for one recreational vehicle to be parked outside adjacent to the garage on a paved surface.

The size of the property is one acre. Most of the surrounding land owners have five acres or more.

Mr. Johnson commented that he would rather see a larger building than have stuff sitting outside – less clutter.

The lot coverage for an accessory building of 1200-square feet on a one-acre parcel would be 2.75% of the total lot cover.

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

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

The Board went over the eight standards to review when considering an oversized accessory building.

1. The size of the lot or parcel of land - 1 Acre
2. The intended use for the building - Personal Storage
3. The size, proposed location, type and construction, and general architectural character of the building(s). - A 30' x 40' accessory building located in the rear yard would be stick frame on a foundation with walls of steel or siding – not a pole barn - and would match house in color.
4. The type and kind of other principal and accessory buildings and structures presently located on the lot or parcel of land - There are currently two old sheds Mr. Vander Zwaag would like to keep one for the storage of a lawn mower until the new one is constructed at which time he would take it down.
5. The type and kind of principal and accessory buildings and structures located on properties which are adjoining and in the same neighborhood - Agricultural buildings located approximately 1,000 feet to the north and south.
6. Whether the building(s) will affect the light and air circulation of any adjoining properties or be visible from any adjoining properties - No adverse effect.
7. The effect of the building(s) on the surrounding neighborhood - No adverse effect.
8. The environmental effect of the building(s) or their proposed use - No adverse effect.

\*\* It was moved by Mr. DeVries and supported by Mr. Johnson to approve the requested for an oversized accessory building as presented with no greater than 1200 square feet, upon completion all other existing accessory buildings (2) will be removed prior to an occupancy permit being issued. Motion carried with one opposition from Mr. Boersma.

There were no public comments.

The Board, Mr. Said and Mr. Broersma discussed the sections of the proposed ordinance amendments that would affect the Zoning Board of Appeals – setbacks, shed sizes, and signage.

The meeting adjourned at 7:30 p.m.

Respectfully submitted

Laurie Slater  
Recording Secretary