

ZONING BOARD OF APPEALS
Regular Meeting
September 25, 2018

Present: Chairman Steve Haberkorn, Vice-Chairman Russ Boersma, Members Elliott Church, Jack Vander Meulen 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 nonuse variance submitted by David Nienhuis for property located at 10162 Holiday Drive, known more specifically as parcel number 70-16-13-146-002. Petitioner is requesting a 4-foot variance from the required 35-foot setback from a rear property line for the principle building; resulting in a rear yard setback of 31 feet. The property is zoned Single-family Residential (R-1).

Present for this request was David Nienhuis. Mr. Nienhuis stated that he has owned and occupied this house for the past 25 years. He would like to renovate the kitchen/dining area and the sunroom.

There is a drain easement to the west of the property. To the rear of the property is a cemetery owned by Zeeland City. He further stated that he talked with some of his neighbors and there were no objections to his proposed plans. The addition would go where the deck is currently. The existing roof line would continue as it is, no wider, no narrower. The existing deck has stairs coming off of it. The addition would not include the area where the steps are, only up to the railing of the deck.

The properties to the east and west both have swimming pools that go further back than the proposed addition. If Mr. Nienhuis were to add a deck in the future, it would go to the east of the addition.

The Board asked Staff if there were any similar requests in the surrounding neighborhood. Staff was not aware of any similar variances that have been granted in the surrounding neighborhood.

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

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

The Board went over the six 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.

This is a typical subdivision lot.

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 conditions on this lot concerning 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.

The property does not rely on this proposed addition for continued enjoyment and property rights.

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

The requested addition would not appear to have a detrimental impact on adjacent properties in the area. The neighbors swimming pools encroach on the 35' setback further back than the proposed addition.

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

The problem was created due to the applicant's request for an addition that exceeds the allowed setback.

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 request is not contrary to the spirit of the ordinance. There is no one living behind Mr. Nienhuis, so no one to protect. The magnitude of the request is minor – four feet.

** It was moved by Mr. Vander Meulen and supported by Mr. Church to approve the request for a variance of 4 feet to the required 35-foot rear yard setback, for a proposed addition, as presented. The request is fairly minor. The swimming pools on the neighboring properties encroach on the 35' setback more than the proposed addition. Motion carried unanimously.

Hearing declared open to consider a petition to extend a non-conforming use submitted by Mark Tomasik on behalf of KAL Properties LLC for properties located at 12671 James Street (Parcel Number 70-16-16-300-016 zoned Community Commercial (C-2)) and 12685 James Street (Parcel Number 70-16-16-300-012 zoned Moderate Density Residential (R-2)). Petitioner is requesting permission to expand the existing vehicle repair facility (Wonderland Tire) which presently spans a common property line and falls within two zoning districts.

Present for this request was Mark Tomasik, Architect on behalf of Wonderland Tire.

Mr. Tomasik stated that Wonderland Tire would like to renovate the property at 12671 James Street with an addition on the front of the site. The owners are in the process of relocating the property line which currently bisects the existing building, therefore, the building is on two lots; one zoned Community Commercial and one zoned Moderate Family Residential. The future land use map has these properties designated as Moderate Family Residential.

Staff indicated the Planning Commission will be revising the future land use map in 2019 and will revisit the future land use for these lots.

The neighboring lot to the east is vacant and has a wooded area, County Drain, and possible wetlands in the areas of designated floodplain. The owner of Wonderland Tire intends to purchase the neighboring lot and will then need to investigate installing a private road to access the property, as there is not enough frontage for anything other means of access.

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

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

The Board went over the three standards to view when considering an extension of a non-conforming use.

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

Once the lot line adjustment is finalized setback issues will be resolved. The proposed addition is on the southern end of the building within the Community Commercial zoning district. With ZBA approval the Owner will then seek a Future Land Use Map revision and rezoning so the non-conformity will no longer be an issue.

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 vacant lot with the existing trees and County Drain remain a buffer to the west and businesses are to the east.

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.

No adverse effect.

** It was moved by Mr. Church and supported by Mr. Boersma to approve the request to extend a nonconforming use, to allow a proposed building addition, subject to the following stipulations:

1. The lots are to be consolidated.
2. The proposed building will comply with the C-2 building setbacks.
3. An application to rezone will be submitted within 30 days.

Motion carried unanimously.

Hearing declared open to consider a petition to extend a nonconforming use submitted by Todd and Susan Boersma for property located at 10283 Chicago Drive, known more specifically as parcel number 70-16-13-300-024. Petitioner is requesting permission to re-establish a second dwelling on the property. The subject property is zoned Office and Service (O-S).

Present for this request was Todd Boersma.

Mr. Boorsma explained to the Board that he would like to reinstate the carriage house as a rental. It had been used as a rental after WW II. The property has some historical significance. The previous owner had a letter dated 2014 stating that the property had been removed from the list of rental properties and if she wanted to use it as a rental, she would need to call Township Staff.

Mr. Boorsma bought the property with the intension of the carriage house being a rental. He has put in its own septic and has a letter of approval from the health department. The smoke detectors have been brought up to code. The carriage house has its own gas and electric and its own address. The carriage house is structurally sound and has been being taxed as a rental. The previous owner added a cement foundation. The fire place is functional. It has all new plumbing. The roof was redone in 2010. The furnace will be replaced.

Mr. Boorsma had letters from two of his neighbors stating that they have no objections to the carriage house being used as a rental. (enclosed)

The Board asked what the non-conformity of the property was. The property is zoned Office Service with a residential use. The future land use has this property zoned as light industrial. The Master Plan will be reviewed in 2019.

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

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

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

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

The dwelling has been modernized through time. No, the modernization will not substantially extend the probable duration of the non-conforming use.

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, the non-conforming use will not interfere with the use of adjoining lands or the properties in the surrounding neighborhood.

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.

No adverse effect.

** It was moved by Mr. Boersma and supported by Mr. Vander Meulen to approve the request as presented. Motion carried unanimously.

Hearing declared open to consider a petition for an additional or larger accessory building submitted by Greg and Pamela Sas for property located at 475 Riley Street, known more specifically as parcel number 70-16-07-381-018. Petitioner is requesting the following variances for the purposes of constructing an accessory building on a residential lot consisting of more than 1 acre but less than 2 acres of land: 1) A variance of 840 square feet from the maximum 480 square foot allowable size; resulting in an accessory structure of 1,320 square feet; 2) A 1-foot variance from the maximum 16-foot allowable height; resulting in an accessory structure height of 17 feet. The subject property is zoned Single-family Residential (R-1).

Present for this request were Greg and Pamela Sas.

Mr. Sas explained to the Board that they would like to construct a 30' x 44' pole barn style accessory building for the storage of a camper, motorcycles and vehicles. The property is slightly over 1 acre in size; 75' wide x 600' deep. The proposed location is 180' from the back property line. The property due east has multiple accessory buildings and the property to the west is vacant.

Currently on the property there is a movable car port and two other buildings – one with a cement floor. They are allowed one detached accessory building by ordinance. The two accessory buildings are being used for the storage of lawn mower and chain saws and motor cycles. The existing accessory buildings will be removed and their contents moved into the proposed building if they get the approval for this request.

The proposed pole barn would have electric and a cement floor. The siding would match the existing house. It would have landscaping around it. There would be a crushed concrete path to access the building.

Mr. Sas has a business called "Greg's Tree Service". It has no place of operation. The truck, tractor and chipper are stored on this property. There are also rows of fire wood piled up on site as seen in the presented aerial imagery from 2017. Mr. Sas explained that he brings wood home from the job if the client doesn't want it. He and several of his family members burn wood for heat in the winter.

Present in the audience to speak to this request was Mr. Jakubecz of 14086 Brook Lane. He had concerns of where it was going and if there would be more trees put in to

buffer the view from his property. Mr Sas pointed to the proposed location on the screen and indicated additional trees were planned.

Also present was a neighbor from 14100 Brook Lane who had concerns about with the size being three times larger than allowed by ordinance. He further commented that he had concerns with the business activities on the property. The cutting of logs, removal of sawdust and the constant traffic of logs in and out of the property.

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

The Board went over the six standards to review when considering a request for an oversized accessory building.

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.

These conditions do not apply concerning this request. It appears there are two commercial vehicles and a chipper on site.

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 conditions on this lot concerning 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.

Without the accessory building nothing really changes. They don't have to have the camper in the building per ordinance.

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

The building would be visible to the houses to the north. This is not the place for an accessory building of this size. There are neighbors in the audience who oppose the request.

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

The problem was created due to the applicant's request for a new accessory building that far exceeds applicable requirements. The travel trailer will be there a limited number of years, the pole barn indefinitely.

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.

This request is not consistent with the spirit of the ordinance. The accessory building being asked for is three times the size allowed by ordinance. There are people living nearby that would be inconvenienced.

The Board first made a motion regarding the size requested.

** It was moved by Mr. Boersman and supported by Mr. Vander Meulen to deny the request for a variance of 840 square feet from the maximum 480 square foot allowable size; resulting in an accessory structure of 1,320 square feet based upon the Zoning Board's findings of the applicable factors for review of variance requests as reflected in the minutes, and for the reasons set forth in the minutes. Motion carried unanimously.

They next made a motion regarding the height of an accessory building that would be within the size limitations set forth in the zoning ordinance.

** It was moved by Mr. Vander Meulen and supported by Mr. Church to approve the one foot variance from the maximum 16 foot allowable height; resulting in an accessory structure height of 17 feet with the following stipulations:

The building has a peaked roof.

Prior to the issuance of a Certificate of Occupancy for the proposed detached accessory building, the applicant shall remove all other existing detached accessory buildings on the property, and shall allow a Staff inspection of the property to verify such.

Should Staff observe any code violations on the property, such as an illegal home occupation, or any other zoning or property maintenance violations, Staff shall pursue enforcement so that the applicant complies with applicable Ordinance requirements.

Motion carried unanimously.

Next the Board considered an application appealing the Zoning Administrator's decision concerning changes (including modernization) to existing signs, consisting of the replacement of static signs and message boards with Electronic Message Centers (EMCs). The signs involved in the decision are freestanding, located on properties that are not along US-31 or I-196, and are considered legal nonconforming signs as all such signs are now required to be ground signs.

Present for this request was Doug Smith of D-signs. It was his opinion that changing a sign from a static sign (one with manually changeable, plastic letters) to an electric sign with a reader board was maintenance of a sign; not modernization of a sign. Previously all he needed to make the switch was an electrical permit, he did not need a sign permit, nor did his client need to have a monument style sign, he could have a pylon sign.

Staff explained that adding EMCs, changing the internal light system, and/or making structural alterations change the nature of the sign and prolongs the life of the sign. With the current ordinance such changes would require either a variance request or a request for extension of a legal non-conforming sign, as pylon signs are no longer allowed by ordinance.

The appeal is not supported, based on the following:

The new equipment is of a nature sufficient to extend the life of the sign (Sec. 13.10.C.1.b.).

While no cost information has ever been provided, Staff believes that the new equipment to be installed is more than 50% of the value of the sign (Sec. 13.10.C.4.)

Only one of these is required to identify the sign as nonconforming. As such, these alterations are beyond a normal repair, as claimed by the applicant and Staff concludes that such changes require the signs to either:

Obtain approval of an extension of a nonconforming use; or

Obtain a zoning variance.

The question to the ZBA is – does replacing a static sign with an EMC need to come before the ZBA for an extension of a non-conforming use, or is it just maintenance.

In the audience to speak to this request was Robert Schaup, owner of EBC at 193 W Lakewood Blvd. His issue was with his sign being seen if it were to comply with the new ordinance of being a monument sign it would be under the eight-foot tall fence that his sign is next to. He also had the opinion that switching from a static sign to a LED sign would not prolong the life of the sign and that it should be considered maintenance.

** It was moved by Mr. Church and supported by Mr. Schwartz that the Board agrees with staff if a business wants to continue to use a non-conforming sign and would like to update that signage they must come before the ZBA for an extension of a non-conforming use. Motion carried unanimously.

The minutes of August 28, 2018 were approved as written.

The meeting adjourned at 7:41 p.m.

Respectfully submitted,

Laurie Slater
Recording Secretary