

ZONING BOARD OF APPEALS
Regular Meeting
November 24, 2020

Present: Chairman Steve Haberkorn, Vice-Chairman Russ Boersma, Members Jack Vander Meulen, Elliott Church and Ross DeVries. Also present were 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.

** It was moved by Mr. Vander Meulen and supported by Mr. De Vries that the Minutes of October 27, 2020 be approved as written. Motion carried.

Public Comment

No one was present to provide public comments.

Chairman Haberkorn explained the Public Hearing process to the audience.

Hearing declared open to consider a nonuse variance submitted by Craig Architects on behalf of West Michigan Cancer and Hematology Centers for property located at 12460 Riley, known more specifically as 70-16-16-100-097. Petitioner is requesting the following: 1) A 5-foot variance from the required 10-foot landscape buffer adjacent to a right-of-way; resulting in a 5 foot landscape buffer along the north property line; and 2) A reduction of 5 trees and 38 shrubs from the required 1 canopy tree (5 required) and 7 shrubs (38 required) required per 40 lineal feet of Front Yard; resulting in 0 canopy trees and 0 shrubs.

Present for this request was Richard Craig of Craig Architects of Grand Rapids, Michigan.

Mr. Craig explained to the ZBA that WMCHC remodeled their existing building to allow for more patients. With that, they need more parking. The staff currently parks at the Auto Store with permission, but that is a temporary solution. The proposed plan would add 20 parking spaces. When Mr. Craig drew up the plans, he noticed that Wendy's Restaurant was closer than 5 feet to the right-of-way and in the same zoning district and assumed that it was okay to put their parking lot closer as well. He further stated that they intend to put in the required landscaping.

The Board asked how many patients they have at one time. Mr. Craig responded that they could have close to 45 patients at any given time. The patients are there anywhere from 15 minutes to six hours. They have eight examination rooms and 35 private infusion rooms. They currently have 40 people on staff. Thursday is their busiest day because they are closed on Friday. On that day, they need all the parking spaces. They currently have approximately 60 spaces.

There was discussion of alternate options for the parking. Mr. Craig stated that if they had to go the ten feet, they could remove the landscape spot between the new and old parking and have four less parking spaces than originally planned. Checking with surrounding land owner to see about purchasing additional land was also discussed. Another suggestion was to place the parking north and south instead of east and west. He indicated that they do have an alternative plan if this request is not approved.

Staff commented that Wendy's and WMCHC was built prior to the current Zoning Ordinance that was approved three years ago. The new buildings like the office buildings to the east are meeting the setbacks required by the ordinance.

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

** It was moved by Mr. Vander Meulen and supported by Mr. Boersma 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.***

There is nothing extraordinary about this parcel of land compared to others. They did not mention any exceptions to the landscaping.

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. They have the same conditions as others in the same zoning district.

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.***

There is nothing unusual about the lot. The variance is not necessary for the preservation of a substantial property right. They have the ability to add spaces without the variance.

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

Granting this variance does not serve in the best interest of the Township. Aesthetics are important.

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

There are other avenues to make better use of the parking lot for adding parking spaces.

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 proposed variance would serve the applicant's interest and convenience, but not serve the spirit of the Zoning Ordinance nor the public interest.

** It was moved by Mr. Church and supported by Mr. De Vries to deny the petition for the setback and the landscaping. Motion carried.

Hearing declared open to consider a nonuse variance submitted by Brian Meiste for property located at 4743 Bella Court, known more specifically as 70-16-06-200-036. Petitioner is requesting a variance of 130 square feet of area from the maximum allowed 720 square feet area; resulting in a detached accessory building of 850 square feet. The subject property is zoned R-2 Moderate Density Residential.

Present for this request was Brian Meiste.

Mr. Meiste explained to the ZBA that when he purchased the property it was presented as being zoned AG Agricultural. He purchased the property with plans of building a larger accessory building for his vehicles as the property is five acres in size. He was later informed that it was zoned Residential. He would like a three-stall garage with three overhead garage doors for his cargo trailer and job trail, which are slightly larger than a regular vehicle.

Mr. Meiste further stated that because his property is five acres in size it objectively makes sense to allow for the larger accessory building. His neighbors have no objections. His vehicles would be out of sight and not an eye sore. He would have a paved driveway to the accessory building. Mr. Meiste commented that 1) he did not change the zoning believed to be Agricultural when he purchased the property and 2) there is a provision for the ZBA to approve a larger accessory building when it makes sense.

The Board asked about Mr. Meiste's prior approved variance request. In 2017 Mr. Meiste was approved for a variance for an oversized attached garage of 1,220 square feet. He explained that he needed four stalls as they are a large family with five vehicles. He knows that he could put up a 720 square foot accessory building with 2 stalls, but he would rather not have to run to storage. Houses are bigger, cars are bigger, toys are bigger, the Township should allow bigger accessory buildings when it makes sense and they can according to the ordinance.

Staff asked what provision Mr. Meiste was referencing when he said the ZBA had a provision to approve a larger accessory building when it makes sense. He replied that it was Section 8.3A of the Zoning Ordinance. (Staff Note: The provision the applicant referred to was in an old edition of the Ordinance, but was previously omitted and as such is no longer part of the Zoning Ordinance.)

Mr. Said explained that they can consider an oversized accessory building based on the standards which we go through for every request for an oversized accessory building.

Mr. Broersma further explained that going back to April of 2011 the property was zoned R-2 Residential.

Mr. Meiste replied that it was marketed to him as be zoning AG Agricultural at the time of purchase.

Mr. Boersma confirmed with Staff that in the ordinance parcels two acres and larger are allowed the 720 square foot accessory building, it is not broke down beyond the two acres. He further commented that he noticed on the map that Mr. Meiste put in a dashed line for a possible future split of the property. He asked Mr. Meiste what that split would be.

Mr. Meiste replied that looking into the future 10-15 years, he would possibly split one acre off the property, leaving his parcel size at four acres.

Mr. Church asked Staff to explain the relationship between the attached garage variance and the proposed variance for the accessory building. Staff stated it is to show that the previous variance allowed him more storage space in the attached accessory building. It is not all for vehicle parking. He was allowed 1050 square feet of garage and he got a variance for at approximately 200 square feet more.

It was the consensus of the Board that on a five-acre parcel going from 720 square feet to 850 square feet is not huge.

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

** It was moved by Mr. Vander Meulen and supported by Mr. Church 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.*

The lot is large – 5 acres. No unique circumstances or condition on this property.

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.***

No unusual circumstances here. It is a large lot. The amount they are asking for is not huge. Don't know how the lot might be split at a later date.

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 preservation and enjoyment of the property right does no rely on this accessory building.

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

No adverse effect.

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

It is self-created as he is asking for the variance.

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 ordinance would not be observed if this variance is granted. The ordinance does not address larger accessory building for larger lots above the two acres. This parcel is five acres.

Staff pointed out that you have to look at the ordinance long term. As the Township grows, this parcel could be split a number of times. It could create a nonconforming lot in the future.

** It was moved by Mr. Vander Meulen and supported by Mr. Church to grant the request as presented for the additional 130 square feet with a paved driveway leading from the road to the accessory building. Motion carried.

Hearing declared open for the Consideration of Administrative Appeals submitted by Brian Meiste for property located at 4743 Bella Court, known more specifically as 70-16-06-200-036. Petitioner is requesting the following appeals to administrative determinations: 1) accessory structure character, including roof type; and 2) rear yard definition for the subject lot. The subject property is zoned R-2 Moderate Density Residential.

Present for this request was Brian Meiste.

The appearance of the accessory building was discussed first.

Mr. Meiste explained the house is a modern farm house with five different roof pitches. He had to pick one of the pitches for the barn. He picked one of the lower slopped ones with a steel roof. He was looking for a masculine / feminine balance. The color of the barn is a dark gray to match the iron ore color on the shutters of the house. The height would be 14.5 feet tall well within the allowed 16 feet. The windows, doors and garage doors would match those on the existing house. They did not want the barn to match the house exactly. They wanted them to complement each other.

Mr. Meiste pointed out that there are letters of support from the neighbors in the application packet.

Staff reminded the ZBA that when they discussed if such issues should be brought to this Board, they said if a building permit is involved it has to meet the style of the house. If the house has gables, the accessory building needs gables.

Mr. Vander Meulen stated that we need better guidance on this. We talked about this before – eave lines and overhangs-I don't see that it is strikingly different than the main house.

Mr. Church commented that these requirements are about aesthetics. Making sure that someone is not going to put up an eye sore. We should decide in each individual case if it is going to adversely or positively affect the aesthetics of the Township. These issues should come up for review if they are unconventional.

The Board went over the criteria for Administrative Appeals:

1. ***Was arbitrary or capricious.***

No, it was not arbitrary or capricious. The color doesn't match and neither does the slope of the

roof.

2. ***Was based on an erroneous finding of a material fact.***

No

3. ***Constituted an abuse of discretion.***

No, they are following guidelines and ordinances.

4. ***Was based on erroneous interpretation of this ordinance or the Michigan Zoning Enable Act.***

No error was made. Just a more subjective decision needs to make about if the building subtracts from the aesthetics of the Township or not. Is the design appropriate.

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

A roll call vote was taken to uphold or overturn the administrative decision on the roof design and color of the proposed accessory building. 4 – Overturn / 1 – Uphold. Decision overturned.

Next the Board considered the administrative decision on which yard is actually the rear yard by definition of the Zoning Ordinance.

Staff put up a slide showing the definition of lot yards. This lot is considered a corner lot and by definition of the ordinance the front yard is the narrower of the two yards. According to definition, New Holland is clearly the front yard. The definition of yards, the interpretation of yards, enforcement of yards is a fundamental element of the Zoning Ordinance. Overturning this administrative decision would set an extremely poor precedent for how yards are defined the future, and would severely impact Staff's ability to appropriately administer the Zoning Ordinance.

Mr. Meiste stated that he does not have a city lot that is square, it is an irregular shaped lot. The road and the lot lines curve. Because of that one should be allowed to pick the best use for the property, which he believes he did. By putting the accessory building where he placed it, he would not have to cut down trees and the paved driveway would be 150' long not 700' long as it would if he placed it in the back yard by definition of the ordinance. He further stated he does not see how it would set a dangerous precedent.

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

A roll call vote was taken to uphold or overturn the administrative decision on the definition of which yard is the front yard for this parcel. 5 – Uphold / 0 – Overturn. Decision accepted.

Chairman Haberkorn was out of the meeting from 7:09 until 7:13 (computer difficulties).

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

** **It was moved by Mr. Boersma and supported by Mr. De Vries to remove from the table and consider a petition for a nonuse variance** submitted by Kory Gier/Holland Bowl Mill on behalf of Myra Keuning for property located at 120 James Street, known more specifically as parcel number 70-16-20-126-014. Petitioner is requesting a 25-foot variance from the required 50-foot setback for an outdoor

storage area adjacent to a residential use or zoning; resulting in a 25-foot setback. The subject property is zoned I-2 General Industrial. This item was table at the October 27, 2020 meeting.

Present for this request was Kory Gier and Craig Gengler from Driesenga and Associates.

Mr. Gengler explained that Holland Bowl Mill was working with Staff on a site plan for remodeling of the building and were granted a Special Use Permit by the Planning Commission for outdoor storage in the rear of the building. It was at this time that it was brought to their attention that the pile of in the rear of the building falls within the 50' setback. The logs are 25' from the property line, which is where they need to be for delivery and access. They are stored in piles by species. They are not asking for more storage, but to be allowed to leave the pile of logs in its current location. He further explained that they get two deliveries of logs per week and use them up throughout the week.

The lots to the south are deep lots with the houses approximately 350' away. There have been no complaints from the neighbors. The lot line to the south is screened by trees.

There was discussion about placing the pile of logs to the west. There is less screening. There would need to be more trees planted or a fence put up. There is also a slight slant making rolling of the logs a possibility. The area would be square rather than oblong, making it difficult to move the logs around.

If the piles were placed closer to the building, the trucks would be to close to the building to unload the logs and it would make getting out of the rear yard harder for the trucks.

The Board noted that the pile of logs being closer to the building could pose a fire safety in regards to access and ability for firetrucks to get around the building.

There was further discussion of other options. Purchasing 25' of the R-2 Residential lands from the four land owners to the south. The property would have to be rezoned and all the land owners would need to consent to it. The Holland Bowl Mill is one of the tenants of this building. It would be something that would need to be coordinated with the property owner.

Mr. Broersma pointed out to the applicant and ZBA that a 30' Type A buffer to the south is needed. Article 11 of ordinance – R-2 Residential to I-2 General Industrial buffer.

Mr. Gier reiterated that they have been operating this way for the past 20 years with the logs in the current location with no complaints. Really need the logs to be where they are to operate efficiently.

Variance goes with the land. Holland Bowl Mill may not always be the tenant. Someone who is not as quiet as them could be future tenants. A motion can be very specific to the storage of logs.

There was no one present 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.*

There are some slopes to the west. Potential of rolling logs.

- 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.*

It's the nature of the product that is being stored that makes them different. Logs are not going to be something that other companies use.

- 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.*

They may not be able to conduct business how they want without the variance. The current location of the log piles is necessary for delivery and access. This location is the most practical. There is screening of the piles of logs where they are currently located. This area is very narrowly tailed to logs.

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

Granting the variance would allow room for access roads for firetrucks. It's just a matter of time before the residential lots to the south are split. Putting in the 30' Type A buffer to the south would be a win-win.

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

The applicant unknowingly created the problem. They are trying to make things right.

- 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.*

Granting a 30' buffer between the Residential and Industrial zoning districts would allow the Bowl Mill its' storage area to utilize as the business needs see fit. There is nothing contrary.

** It was moved by Mr. Vander Meulen and supported by Mr. Boersma to approve the request for storage of logs only for the use of making bowls and other similar wooden objects with the stipulation that there is a 30' Type A buffer to the south; making this a 20' variance. Motion carried.

Mr. Said informed the ZBA the Comprehensive Master Plan was approved by the Township Board last week.

The meeting adjourned at 7:57 p.m.

Respectfully submitted,

Laurie Slater
Recording Secretary