

ZONING BOARD OF APPEALS
Regular Meeting
July 26, 2022

The meeting was called to order by Chairman Russ Boersma at 5:30 p.m.

Present: Chairman Russ Boersma, Vice-Chairman Ross De Vries, and Member Robert De Vries. Also present were Community Development Director Corey Broersma, Assistant Planner and Zoning Administrator Kate White and Recording Secretary Laurie Slater.

Absent: Jack Vander Meulen, Elliott Church

Public Comment: None

** It was moved by Robert De Vries and supported by Ross De Vries to approve the minutes of June 28, 2022 as written. Motion carried.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Jennifer Simon on behalf of Speedway LLC for property located at 365 Butternut Drive, known more specifically as 70-16-19-200-005. Petitioner is requesting variances consisting of 1) A 12.9-foot variance from the required 15-foot side yard building setback; resulting in a side yard setback of 2.1 feet; and 2) A 34.2-foot variance from the 50-foot front yard building setback; resulting in a front yard setback of 15.8 feet. Variances are being requested in order to seek zoning approval for a former ground water remediation building to remain for storage. The subject property is zoned C-2 Community Commercial.

Present for this request was Mandy Gauss of ESO for Speedway and Amanda Kowalczyk, Store Manager of Speedway on Butternut.

Ms. Gauss explained that in 2008 the Township approved a temporary type shed for remediation. It was agreed that the shed would be removed once the remediation was complete. The remediation was completed in 2018. Since then, the building has been used for storage of bottles and cans that are returned to the store. This would normally be stored in the backroom of the store. The returned bottles and cans create a sticky, messy area.

Ms. Gauss explained that they had a survey done, the side yard setback is 2.1 feet from the property line and 15.8 feet to the Butternut public right-of-way. The property is an odd shape of .58 acres with a developable area of .086 percent. The building is nice looking in appearance, matches the principal structure.

Ms. Kowalczyk spoke to the Board about the advantages of being able to use the building for storage of the returned bottles and cans. The storage building has kept that mess out of the store away from the backstock and extra product. The garage part of the building has been used by the maintenance tech to store supplies and back up maintenance supplies. He has further used it for working on ovens and other equipment in need of repair. The store is small and has no room for extra storage.

Ms. Gauss explained that in the staff report it stated that the "driveway must be removed and the curb restored per Ottawa County Road Commission standards, the non-motorized path be

restored to Township specification and a 10-foot-wide buffer be installed in the areas of demolition”, she pointed out that the driveway was originally there, there was not much impact to the walkway when the building was constructed and there is not a lot of room for landscaping. The curb cut is slightly narrower than it previously was. It was 25’ and it is now 22’. It is 40’ from the edge of the concrete door to the raised curb. The building size is 28’ X 28’, which was required and a necessity for the environmental services.

Ms. Gauss further explained that new Speedway stores have a double wide dumpster enclosure with an area of eight to ten feet deep on the back for bottle returns to be stored, keeping the smell out of the building.

There was discussion about the possibility of putting such an area on this property on the Butternut side of the principal building. Ms. Gauss responded that it would take away from parking, which is already limited and would encroach on the rear property line. They would be removing one non-conforming temporary building just to put in another nonconforming area for the same purpose as they are currently using the existing building.

The Board asked Mr. Broersma if this were a newly constructed site, would there be room for an additional building or a possibility of adding on to the existing building.

He responded that they would need to request a nonuse variance or request the extension of a non-conforming use variance.

Ms. Gauss further stated that the Township required the building to be built out of brick, which created a cost of \$100,000. Ms. Gauss presented pictures of what the sheds for remediation would normally be versus what was required by the Township. Normally, the remediation would consist of three buildings, separated for different uses.

Community Development Director, Corey Broersma, spoke to the remark that the Township required the building to be brick. He explained that because of the close proximity of the remediation building to the principal building and northern property line, it was required by Building Code to be constructed with a fire rated wall.

There was further discussion among the Board Members. They commented that the business was in operation before the temporary remediation building was constructed. They can continue to operate without the building.

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

** It was moved by Ross De Vries and supported by Robert De Vries to close the hearing. Motion carried.

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

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 land is a unique corner lot. They knew that this building was to be removed once the remediation was complete. The business was there before the remediation building was there.

- 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.***

If others were in need of a temporary remediation building, we would do the same thing, allow the building with the stipulation that it is to be removed when the remediation is completed.

- 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 will lose additional storage. It is not necessary for the preservation and enjoyment of a substantial property right.

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

The granting of a nonuse variance will prolong an encroachment that was granted under the need for emergency clean-up.

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

The applicant's desire to maintain a building conditioned for removal as part of the 2008 variance is a self-created matter.

- 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 of the original variance was in the public's interest as was the condition that the building be removed upon the completion of the environmental clean-up.

** It was moved by Robert De Vries and supported by Ross De Vries to deny the request parts 1 and 2 as presented. Motion carried with a unanimous roll call vote.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Joseph Waldner of Waldner Investments for property located at 129 Reed Avenue, known more

specifically as 70-16-28-199-010. Petitioner is requesting a variance of 11 feet 10 inches from the required 35-foot front yard building setback; resulting in a front yard setback of 23 feet 2 inches. Variance is being requested in order to construct a new single-family dwelling. The subject property is zoned R-2 Moderate Density Residential.

Present for this request was Joseph Waldner.

Mr. Waldner told the Board that he ran several scenarios on the proposed property since he last appeared before the Board trying to figure a way to bring the existing structure as close to compliance as possible and concluded the only solution was to tear down the existing structure and build a new house. He would like to leave the existing garage. The only variance he would be asking for is a 11'10" front yard setback.

The size of the proposed structure would meet the size requirement as long as the breezeway is a habitable area. There would be no basement under the breezeway, only a crawl space and it would be insulated. It would meet the code as a habitable area.

There was discussion about the enclosed plans for the basement and a possible location for an egress window.

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

** It was moved by Robert De Vries and supported by Ross De Vries to close the hearing. Motion carried.

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

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 lot is about as small as you could find. Keeping the existing garage and rebuilding the house, he is working with what he has and has reached a balance.

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 placement of the proposed house on the property is not an unusual circumstance in this neighborhood.

- 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 variance it would be difficult to build a house on this property and retain the existing garage building. It would remain a vacant lot.

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

The nonconforming front yard is a common condition of the neighborhood.

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

The property owner did not create the non-conforming lot of record or the placement for the existing accessory building which should be accounted for.

- 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 this variance would not be contrary to the public interest and it would be within the spirit of the ordinance by eliminating as many nonconforming issues as possible. The front yard is a usual circumstance of the neighborhood.

** It was moved by Ross De Vries and supported by Robert De Vries to grant the request as presented. Motion carried with a unanimous roll call vote.

Hearing declared open to consider a petition for to Appeal a Decision of the Zoning Administrator submitted by Ronald Lichte for property located at 3353 Creek Court, known more specifically as 70-16-07-365-012. Petitioner is appealing a decision that a post and bow frame greenhouse structure is not a building. The subject property is zoned R-2 Moderate Density Residential.

Present for this request was Ron Lichte.

Mr. Lichte explained that he now has the specs from the contractor on the greenhouse. He has the approval of the neighbors for the structure. Many of them are using it to grow their own plants. The snow load surpasses the required 20 pound to 30 pound per square foot. It is built to withstand heavy winds and is a permanent structure. It is double insulated and inflated. It has 2' steel panels around the base.

Mr. Lichte further stated he does not understand why it is not considered a permanent structure.

The Board stated that the life expectancy of the structure's insulating material is four to five years. That is not a permanent structure. Also, it has soft sides.

Chairman Boersma read the definition of a permanent structure for the applicant and the Board Members.

Building. *A permanent independent structure with a roof, supported by walls, columns or other supports that is designed for the shelter, housing or enclosure of persons, animals, possessions or property of any kind, or to conduct business activities. Shipping containers, cargo containers, semi-trailers, and soft-sided structures shall not be permitted as temporary or permanent structures, whether accessory or principle.*

It was the consensus of the Board that this cannot be considered anything other than a soft sided structure, which by definition is not a permanent structure. They acknowledged that it was a gift and it is hard to hear that it is not allowed by Ordinance of the Township.

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

** It was moved by Robert De Vries and supported by Ross De Vries to close the hearing. Motion carried.

The Board went over the standards to review when considering an Appeal to a Decision of the Zoning Administrator.

1. Was arbitrary or capricious.

No, the decision was not arbitrary or capricious. He applied the rules to correctly conclude whether it was a building.

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

After the facts were supplied, it was still not considered a permanent structure.

3. Constituted an abuse of discretion.

He had no choice. Clearly it is not a permanent structure according to zoning ordinance specifications.

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

No, the conclusion that it is not a permanent structure was based on the zoning ordinance itself.

** It was moved by Robert De Vries and supported by Boersma to affirm the staff decision on the definition of a building. Motion carried with a unanimous roll call vote.

The Board asked Mr. Lichte if he wanted to move forward with his variance request from April and have a formal decision or if he would like to withdraw the requests as his greenhouse did not meet the definition of a permanent structure.

He asked if there was anything he could do to keep his greenhouse. Chairman Boersma replied that there was not any way to keep it. He further stated that before it was built, his wife called to see if a permit was needed for it and was told no. They had no idea that it would cause this situation. No one knows it's there, it is not visible from the road, but he understands they have to uphold the zoning requirements. He would like to move forward with a formal decision.

Consideration of a petition for Nonuse Variances submitted by Ronald Lichte for property

located at 3353 Creek Court, known more specifically as 70-16-07-365-012 was removed from the table (this item was tabled from the April 26, 2022 Zoning Board of Appeals Meeting).

Petitioner is requesting permission to install a greenhouse not meeting the size, separation distance, or character requirements for a detached accessory building within the rear yard.

As the public hearing for this request was held at the April 26th meeting, the Board moved forward by going 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 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 structure is not a building by definition, it is a temporary soft sided structure and not permitted by ordinance. Therefore, it does not meet standard #1 for granting a variance.

- 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 structure is not a building by definition, it is a temporary soft sided structure and not permitted by ordinance. Therefore, it does not meet standard #2 for granting a 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 structure is not a building by definition, it is a temporary soft sided structure and not permitted by ordinance. Therefore, it does not meet standard #3 for granting a variance.

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

The structure is not a building by definition, it is a temporary soft sided structure and not permitted by ordinance. Therefore, it does not meet standard #4 for granting a variance.

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

The applicant has created the problem for which the variance is being sought.

- 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 structure is not a building by definition, it is a temporary soft sided structure and not permitted by ordinance. Therefore, it does not meet standard #6 for granting a variance.

** It was moved by Robert De Vries and supported by Ross De Vries to deny both parts 1 and 2 of the request as it is not a permitted building. Motion carried with a unanimous roll call vote.

The meeting adjourned at 6:37 pm.

Respectfully submitted,

Laurie Slater
Recording Secretary