

ZONING BOARD OF APPEALS  
Regular Meeting  
August 23, 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, Members Jack Vander Meulen, Elliott Church and Robert De Vries. Also present were Community Development Director, Corey Broersma, Assistant Planner and Zoning Administrator, Kate White, and Recording Secretary, Laurie Slater.

Absent: None

Public Comment: None

\*\* It was moved by Robert De Vries and supported by Ross De Vries to approve the minutes of July 26, 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 John Kochans on behalf of Travis and Dina Matchinsky for property located at 1381 Steader's Pass, known more specifically as 70-16-26-275-001. Petitioner is requesting a variance of 5 feet 6 inches from the required 35-foot rear yard building setback; resulting in a rear yard building setback of 29 feet 6 inches. Variance is being requested in order to build an addition consisting of a patio roof structure. The subject property is zoned R-1 Low Density Residential.

Present for this request was a representative from John Kochans Builders as well as the homeowners, Travis and Dina Matchinsky.

The Builder's representative explained to the Board that the Matchinsky's would like to build a roof structure over a new concrete patio where the deck currently is. The new concrete patio would be smaller than the existing 16' x 20' ground level deck. They would not need the variance for the patio itself, but for the roof they would like to come out over the patio. The roof would slant down over the patio and have no sides. It would be similar to a pergola, but the roof would be shingled to supply shade and rain cover.

The positioning of the house on the lot, at an angle and set back farther from the front yard property line, makes a variance necessary to add the roof over the patio.

There was one letter of support submitted by Todd and Peg Housenga of 10577 River Bluff Trail. They are the neighbor directly to the south. Their garage faces the applicant's property.

\*\* 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.***

How far the house sits back on the property. It has a large front and side yard.

- 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 unusual circumstance was that the house was built on an angle.

- 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 Matchinsky's are not the original owners. Poor placement of the original structure. As the lot sizes keep getting smaller there is not enough room to add on outdoor areas allowing furthering enjoyment of the property.

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

It would not be of substantial detriment to adjacent and nearby land uses and properties. Driving by most do not know if it's a side yard or a rear yard. It is a minor encroachment. The nearest property owner is in support of the variance.

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

The applicant did not put the house there. If the house was positioned differently on the property, they would not need a variance. The deck that is there is larger than what is proposed.

***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 for a small corner of the roof, not the whole thing. It is not close to the property line.

\*\* It was moved by Robert De Vries and supported by Vander Meulen to approve the request for a 5' 6" encroachment for the patio roof structure as described in the appeal packet. Motion carried with a unanimous roll call vote.

**Hearing declared open to consider** a petition for a Nonuse Variance submitted by Mike Bocks on behalf of HS&J / Dutch Village for property located at 12350 James Street, known more specifically as 70-16-21-200-083. Petitioner is requesting a variance of 25 feet 4 inches from the required 50-foot front yard building setback; resulting in a front yard setback of 24 feet 8 inches. Variance is being requested in order to construct a windmill themed structure. The subject property is zoned C-2 Community Commercial.

Present for this request was Mike Bocks.

Mr. Bocks explained that the windmill's design is from the original farm around the 1930's. There is to be a little track of electric tractors with the windmill in the middle of the track with no access to it or within it. It would be decorative only. They are hoping to have it completed in the spring of 2023.

The theme park takes up the whole block. Most of it was built prior to the highway being widened. There are four other structures closer to the front yard setback than what is proposed for this attraction. The proposed structure would be behind a tree, with a 25' front yard setback. It would not obstruct the view of the neighbors.

The Board asked how the restrooms were coming along as they were a condition of other requests that were granted. Mr. Bocks stated that they were coming along good. They are working on the plans and should be done in a couple of weeks. The restrooms and the barn are high priority.

The Board asked if the windmill currently sitting on the property is the one for the attraction. Mr. Bocks stated that it is not. It is the original windmill from the Queen's Inn. It will be going on top of the restrooms, first aid, guest services, entrance building.

The Board asked the height of the windmill. Mr. Bocks replied that it is just under 16' 6".

The Board had more questions about other variances granted previously and the conditions that were attached to them and where the theme park was at with fulfilling those conditions. They would also like to see the whole picture of what is proposed for the park, not one attraction at a time. They need to know what is going where and what currently exists to make an informed decision. Other questions they had were does the 16' 6" on the windmill height include the blades? Will the blades be functioning? The Pirate attraction – is it going to be moved or are they going to seek a variance?

Mr. Broersma gave a summary of the requests that have been granted by both Planning Commission and Zoning Board of Appeals since the re-statement of the zoning ordinance in 2018:

On November 26, 2019, the Zoning Board of Appeals approved a variance of 8 feet from the required 50-foot front yard setback; resulting in a front yard setback of 42 feet for a new building. The new building replaced a previous building damaged by fire.

On May 10, 2022, the Planning Commission conditionally approved a Special Land Use Permit (amendment) for an Outdoor Commercial Recreation Facility, including new facilities and attractions at Dutch Village. The conditions included attractions be moved as required to comply with setbacks or seek necessary variances.

On June 28, 2022, the Zoning Board of Appeals approved a 15-foot variance from the required 50-foot front yard setback for the tractor ride storage building, resulting in a minimum front yard setback of 35 feet.

Restrooms are to be reconstructed as required, immediately.

Mr. Broersma further stated that there are some things outside the owner's control and the Township has made allowances for that. The widening of the highway resulted in the County Drain having to be moved further onto the property. The Ferris Wheel was granted a legal nonconforming for being closer to the front yard property line and is an amusement ride inspected by the State. The chapel has a legal nonconforming status because of how long it has been there.

It was the consensus of the Board that they would like to see some of the conditions that were attached to previously granted requests be fulfilled. They would also like to see a legible survey, a site plan (Master Plan) of where exactly the upcoming future attractions are going. The restrooms to be started as agreed upon previously.

\*\* It was moved by Church and supported by Ross De Vries to table this request until all prior conditions are met: 1) A legible survey is submitted; 2) A site plan is submitted indicating where current and future attractions are/will be placed; 3) The building permit for the restrooms is to be issued and the construction started; and 4) Attractions such as the pirate ships are moved as required to comply with setbacks or seek necessary variances. Motion carried with a unanimous roll call vote.

**Hearing declared open to consider** a petition for a Nonuse Variance submitted by Black Lake Property, LLC for property located at 873 Black River Drive, known more specifically as 70-16-25-474-008. Petitioner is requesting variances consisting of: 1) The elimination of 8 canopy trees and 62 shrubs from the required southern Type C buffer, resulting in a buffer consisting of 3 canopy trees and 21 shrubs; 2) The elimination of 9 canopy trees and 63 shrubs from the required western Front Yard Landscape, resulting in a Landscape consisting of 0 canopy trees and 0 shrubs; and 3) The elimination of 7 canopy trees and 53 shrubs from the required northern Type C buffer, resulting in a buffer consisting of 3 canopy trees and 21 shrubs. The subject property is zoned C-3 Highway Commercial.

Present for this request was John Male of Exxel Engineering and Kirk Kahner of DJ's Landscape Management.

The Planning Commission approved a Special Use Permit for Black Lake Property LLC for outdoor storage. The associated buildings are currently under construction. At the time of the request for the permit they submitted a landscaping plan that met the ordinance so they could get their building permit and get started on the buildings to meet the deadline of November 1 for being operational. They are before the Zoning Board now asking for changes to the landscaping. On the north side yard buffer, they would like to eliminate all landscaping except 3

canopy trees and 21 shrubs at the east end of the property line, then place 12 Black Hills Spruce trees finishing out the buffer with chain link fencing behind them. On the south side yard buffer, they would like to eliminate all landscaping except 3 canopy trees and 21 shrubs at the east end of the property line, then place 14 Black Hills Spruce trees finishing out the buffer with chain link fencing behind them. In the western front yard adjacent to I-196, they would like to remove the buffer entirely. There is a 50-to-60-foot-wide area, partially a slope and partially a detention basin and the on ramp to the highway is behind that. Their concerns are with the landscaping surviving the wet slope area.

After their landscape designer, Joyce Weise, spoke with Community Development Director, Corey Broersma, about concerns in the staff report, the applicant presented a plan with additional evergreens on the north and south property lines. They also added 9 canopy trees to the west property line.

There was discussion among the Board members regarding how long it would take for the 6' evergreen trees to grow into a buffer. Screening would be better year around with evergreens versus canopy trees and 2 ½" high shrubs. There are more trees proposed than originally submitted. The western front yard has a slope 7' below the highway, it's not going to be seen. Also, they would like plants that are going to stay in good condition through the years.

Currently there are no neighbors on either side of them. The applicant does own lots 11 & 12 to the south. Loading docks and a parking lot would be at the rear property lines of those lots. They are separate lots with different uses. They are planning their buffer knowing that these lots will need buffers too.

There was further discussion about whether the proposed landscaping is in the spirit of the ordinance. Mr. Vander Meulen stated that there is more than one way to do things right. Although the proposed buffering does not meet the technical wording of the ordinance, it does meet the spirit of the ordinance.

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.***

Mr. Church indicated there are no practical difficulties, the original plan as submitted to the Planning Commission is viable. Others identified the practical difficulties are to the west with the characteristics of the land, including the marshy area, the slope, and the retention basin.

***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.***

Not all properties have a retention basin or a slope.

***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 would be no increased financial return by granting this variance. Mr. Church stated the key word is “necessary”. They were willing to do the original landscape design. Some changes were requested for convenience. This variance is not necessary for the preservation and enjoyment of the property.

Mr. Vander Meulen mentioned the ordinance gives the minimum regulations necessary. They are proposing to do more.

***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 not be of substantial detriment to adjacent or nearby land uses and properties. They would be increasing the buffering on the north and south which would be beneficial to adjacent property owners. The western side backs up to the on ramp to the highway, it would not be a detriment to adjacent properties or their uses.

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

They did create the problem for which the variance is being requested. The original site plan submitted to the Township for building permits met the ordinance.

***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 the variance would not be contrary. The west side screening and the viability of trees. The north and south side are a matter of perspective, evergreens versus canopy and shrubs, fencing inside or out.

\*\* It was moved by Robert De Vries and supported by Boersma to approve the amended western property line landscaping resulting in 9 canopy trees. The shrubs to be eliminated completely. Motion carried with roll call vote of 4 in favor and 1 in opposition.

\*\* It was moved by Boersma and supported by Robert De Vries to deny the north and south property line landscaping variance request. The original plan approved by the Township in conjunction with the building permit is to be installed. Motion carried with roll call vote of 4 in favor and 1 in opposition.

The meeting adjourned at 8:02 pm.

Respectfully submitted,

Laurie Slater  
Recording Secretary