

ZONING BOARD OF APPEALS  
Regular Meeting  
November 22, 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 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: Elliott Church

Public Comment: None

\*\* It was moved by Ross DeVries and supported by Vander Meulen to approve the minutes of October 25, 2022, as written. Motion carried.

Chairman Russ Boersma explained the Public Hearing process to the audience.

**Hearing declared open to consider** a petition for a Nonuse Variance submitted by Ben Fogg for property located at 128 Manufacturer's Drive, known more specifically as 70-16-17-310-006. Petitioner is requesting variances consisting of: 1) 10 feet from the required 50-foot front yard building setback; resulting in a front yard setback of 40 feet; and 2) 1.3% above the maximum 40% building coverage; resulting in a building coverage of 41.3%. The variances are being requested for a 1,800 square foot addition to existing building. The subject property is zoned I-1 Light Industrial.

Present for this request was Ben Fogg.

Mr. Fogg explained to the Board that the business has been growing. The lot is very small. He would like to make a great office space and lunchroom for the employees. The area would be two stories tall. They would be adding 1,800 square feet to the existing building. The current office space is 20' x 40'. This current space would be removed, and the new area would be 30' x 60'. The addition would be 10 feet into the front yard setback. The lot coverage would also be greater than allowed by ordinance by 1.3%. Mr. Fogg stated that he would be willing take 5 feet of a variance over no variance.

There was discussion about the location of the expansion and if it could be located elsewhere on the parcel. Mr. Fogg replied that they did look at other layouts, but this was the most feasible because of the layout of the inside of the building. He did talk to property owners to the south about purchasing that property, but they were not willing to sell at this time.

The Board discussed with the applicant bringing the parcel into compliance with the landscaping requirements. A 10-foot setback from the pavement with landscaping of one tree and seven shrubs per 40 feet is required by ordinance. Because of the additional parking that will be required with the additional square footage of the office space, Mr. Fogg stated that he cannot lose any of the parking spaces.

Board members further discussed that the parking already exists, trees and shrubs west of the existing parking lot along Manufacturers Drive would not block the sight lines at the intersection with Commerce Court.

There was no one 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 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.***

Front Yard Setback – Nothing exceptional or extraordinary. Business owners want to make their business better – to draw in more talent and make people want to work there. What they are asking for is small.

Lot Coverage – Nothing exceptional or extraordinary

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.***

Front Yard Setback – All the industrial buildings along the street comply with a setback of 50’

Lot Coverage – All the buildings along the street comply with a lot coverage of 40%.

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.***

Front Yard Setback – The building is in use and serviceable to use now. The Board members discussed future manufacturing use of the building and how the CNC machinery is now larger.

Lot Coverage – The variance they are asking for is so small at 1.3%.

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

Granting of the variances for the front yard and lot coverage will not be of substantial detriment to adjacent and nearby land uses and properties. This area is contractor’s facilities and warehouses with overhead doors. This is not a highly visible area. With some landscaping it would look nicer than the east side of Commerce and Manufacturers drive too.

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 two variances are 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.***

There is nothing detrimental to other property owners in the area, by granting these variances. Adding landscaping, it will look nicer than any other parcel on the street.

Community Development Director, Corey Broersma, commented that this is an aging area and staff would expect to see improvements. If approved this project will still need to comply with parking requirements by adding spaces, seeking a deferred parking agreement, or returning to the ZBA for a non-use variance.

Board members commented that dressing the area up with trees and shrubs, perhaps the rest of the neighbors would do so too. They further discussed giving them flexibility with the landscaping because of the existing parking lot. With trees along the streets and shrubs near the building or parking lot.

There was further discussion about the lot coverage and that an area of 22' x 60' would comply with the lot coverage, that would be a variance of 2' rather than 10'.

**Motion, Front Yard Setback Variance:** It was moved by Vander Meulen and supported by Boersma to grant a 5' variance, not the 10' he's requesting. Front Yard Landscaping shall be installed along Manufacturers Drive within the Front Yard and be calculated using the frontage west of the existing parking lot. Motion carried with a unanimous roll call vote.

**Motion, Lot Coverage:** It was moved by Robert De Vries and supported by Vander Meulen to approve .7 percent additional lot coverage. Motion carried with a unanimous roll call vote.

**Hearing declared open to consider** a petition for a Nonuse Variance submitted by Leo Barajas for property located at 580 Lawn Avenue, known more specifically as 70-16-30-306-011. Petitioner is requesting variances consisting of: 1) 1.6 feet from the required 35-foot front yard building setback, resulting in a front yard setback of 33.4 feet; and 2) 30.3 feet from the required 50-foot Macatawa Waterfront setback, resulting in a rear yard setback of 19.7 feet. The variances are being requested for a home renovation consisting of a second story, new garage, and expanded deck. The subject property is zoned R-1 Low Density Residential, FP Floodplain, and Macatawa Residential Setback Overlay.

Present for this request was Leo Barajas and Kristal Dykstra.

Mr. Barajas stated that he wishes to remodel the existing house and wanted to clear up the misunderstanding that he intended to build the house closer to the water. He is not. He is using the existing foundation, adding a second story, and extending the deck east along the face of the home.

He further stated that the rebuilt deck would not be closer to the water than the current deck, however, would place the east end of the deck further into the setback established by the traverse line. The house is not parallel to the traverse line.

Also, he wishes to change the layout of the garage so it faces the street, and he would also be adding a third stall. Changing the layout of the garage would make it comply with the side yard setback. There is currently another garage in the front yard of the property that is very close to the road. Mr. Barajas commented that they use that accessory building to store bikes, but he would be willing to take it down. He would only ask that he be allowed to keep it up until after the construction on his house is completed.

There was discussion of how the proposed deck would affect the surrounding neighbor's view of the lake. The neighbor to the east stated that when the existing deck was built, her sight line through the deck blocked her view of Boatworks. Mr. Barajas explained that if he removed the deck, her view would still be blocked with the yellow house to the west which is closer to the water than his deck.

The Board asked Staff to explain the purpose of the traverse line. Mr. Broersma replied that it was put in effect to create consistency along the inland lake given physical lot boundaries have the ability to change with fluctuating water levels and seawall permits.

Corey Broersma read correspondence received from property owners.

Esther Walters of 600 Lawn Avenue had objections to the request.

Dave DeYoung of 580 Lawn Avenue was in support of the variances.

Karen Van Ess of 584 Lawn Avenue had objections to the request.

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

Chairman Boersma summarized a few of the considerations related to the requests: 1) there is no issue with the second story addition as it is going up not creating a greater nonconformity; 2) if the applicant were to remove the deck the neighbor would see a solid yellow building of house next to Mr. Barajas's house; 3) the further east the deck goes, the more nonconforming it is because the house does not run parallel to the traverse line; 4) with the relocation of the garage in the front yard, the front and side yard setbacks are more in compliance.

There was further discussion about the impact of the improvements to the neighbors.

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 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.***

Front Yard Setback – The neighborhood has several encroachments. The petition is not proposing to increase the encroachment. With the relocation of the garage, it would be less intrusive than it currently is.

Waterfront Setback – Property owners do not typically deal with the traverse line unless they are on the water. If the deck was not there, the surrounding neighbors would see the neighbor to the west of the applicant anyway – yellow house. The current deck is approximately 22 feet off the traverse line.

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.***

Front Yard Setback – The history of the plat and location of the homes does create unusual circumstances, and does apply to others in this neighborhood. Residents from this neighborhood have been before the Board before for front yard setbacks.

Waterfront Setback – This is an issue. The establishment of a traverse line is now a common factor for all homes in this area.

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.***

Neither of the two variances is necessary for the preservation and enjoyment of a substantial property right. The existing house has a deck now. If denied the request, they will still use the deck.

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

Front Yard Setback – Granting this variance will not be substantial detriment to adjacent and nearby land uses and properties. According to the written comments, it would seem the neighbors did not fully understand what was being proposed. The Board has no say over simply adding a second story.

Waterfront Setback – The Board is not here to grant the neighbors a great side view of the lake. The applicant could install vegetation and block a view without violating any Township ordinance. The view is not guaranteed except directly in front of your property. The neighboring views toward the lake would not be less than before.

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

Front Yard Setback – No issue with the garage – the applicant is trying to improve the setbacks with the renovation of the garage and will eliminate a side yard encroachment.

Waterfront Setback – He bought the house with the deck where it is.

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 Board agreed with Staff's comments:

Front Yard Setback- Granting the variance will not worsen the current setback encroachment in the front yard and the westward extension of the garage would be within the buildable area of the lot.

Waterfront Setback - The granting of the variance will be contrary to the spirit of the ordinance in maintaining a community standard and upholding adjacent property owners' expectations for development.

**Motion, Front Yard Setback:** It was moved by Robert De Vries and supported by Vander Meulen to approve the front yard setback with the condition of the removal of the existing accessory building. The applicant may use the building for storage until construction on the house is completed. Motion carried with a unanimous roll call vote.

There was further discussion about the deck and how to keep it from further encroachment into the traverse line setback. A four-foot jog of the deck, parallel with the rear façade would keep it within the current 22-foot setback.

**Motion, Waterfront Setback:** It was moved by Ross De Vries and supported by Robert De Vries to allow a 27-foot variance, not the 30.3 requested. Motion carried with a unanimous roll call vote.

**Hearing declared open to consider** a petition for a Nonuse Variance submitted by Kyle Friar of KMF Construction for property located at 0 (vacant) 136<sup>th</sup> Avenue, known more specifically as 70-16-07-200-044. Petitioner is requesting variances consisting of: 1) The elimination of 6 canopy trees and 42 shrubs from the required northern Type C buffer, resulting in a buffer consisting of 0 canopy trees and 0 shrubs; 2) the elimination of 12 trees and 68 shrubs from the required eastern Type C buffer, resulting in a buffer consisting of 3 canopy trees and 37 shrubs; 3) the elimination of 6 canopy trees and 31 shrubs from the required southern Type C buffer, resulting in a buffer consisting of 6 canopy trees and 53 shrubs; and 4) the elimination of 5 canopy trees and 35 shrubs from the required Front Yard Landscaping, resulting in Front Yard Landscaping consisting of 0 canopy trees and 0 shrubs. The subject property is zoned R-3 High Density Residential.

Present for this request was Dave Hanko, PE for Feenstra & Associates.

Mr. Hanko explained that they had gone before the Planning Commission and received the approval for two apartment buildings to be constructed on this parcel. They would like three different variances on landscaping. To the north, there are existing trees approximately 29 deciduous and 21 evergreen trees. In that area with that much of a buffer it is not feasible to plan more. To the east, the buffer would run through a pond. To the south the buffer would be along the shore of the pond. On the plan submitted, the dark circles are evergreen trees, and the lighter circles are deciduous trees. The trees are 6 inches to 18 inches in diameter.

Mr. Hanko further explained that if they were required to put shrubs on the north property line, they would need to cut down some of the existing trees to put in the shrubs.

The Board responded that the decision of how many shrubs would need to be planted would depend on the number of trees are retained on the north property line.

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

It was moved by Vander Meulen 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 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.*

**Norther Buffer:** Several trees already there –with confirmation of how many deciduous and evergreen trees, including their diameter being provided to staff it may be possible to eliminate the shrubs.

**Eastern and Southern Buffer:** The exiting pond would make planting impossible and adding the vegetation required along the existing shoreline would be impractical.

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.*

**Northern Buffer:** The Board agreed with Staffs’ comment that the natural vegetation is not necessarily an unusual circumstance, however, the attempts to retain it is appreciated.

**Eastern and Southern Buffer:** To the east there is currently a pond and the pond is proposed to be enlarged.

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 Board agreed with Staff Comments:

**Northern Buffer:** Along the northern boundary of the property, there is a natural abundance of canopy and coniferous trees, however, a tree survey has not been provided to establish tree credits and no shrubs have been identified per ordinance requirements.

**Eastern Buffer:** The northern 50 feet of the eastern boundary contains a natural abundance of canopy and coniferous trees, however, a tree survey has not been provided to establish tree credits and no shrubs have been identified per ordinance requirements. The southeastern boundary of the property contains an existing detention pond that is being expanded.

**Southern Buffer:** The southeastern boundary of the property contains an existing detention pond that is being expanded.

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

**Northern Buffer:** There is a good natural boundary already there that will hide the headlights with the building between them.

**Eastern and Southern Buffer:** The trees would need to be very tall to screen a building three stories tall.

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

**Northern Buffer:** The applicant is attempting to preserve the existing trees and natural buffer along the northern boundary, however, has not provided the required information related to the existing trees.

**Eastern and Southern Buffer:** The applicant did not place the existing detention pond and the existing pond should be excluded from a buffer calculation.

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.*

For the Northern Buffer, Board agreed with Staff comments:

**Northern Buffer:** Keeping the natural buffer of existing canopy trees is in the public interest and upholds the spirit of the ordinance, provided the appropriate tree credits can be determined and the buffer depth offsets the need for shrubs.

**Eastern and Southern Buffer:** Board wanted to make sure to get the right amount of land calculated in. The Board wants to see buffering on the peninsula of the pond as far east as it can go. There needs to be as much screening as can be done to screen the houses from the apartments.

**Motion, Northern Buffer:** It was moved by Boersma and supported by Vander Meulen to approve the **Northern Buffer** as presented with the condition that the applicant provides staff with the information needed to receive tree credits and Staff may determine the needed shrubs on the west end. Motion carried with a unanimous roll call vote.

**Motion, Eastern Buffer:** It was moved by Vander Meulen and supported by Boersma to exempt 217 feet of property line which is within the water from the Type C Landscape Buffer calculation, all other segments of the eastern property lines must comply with the zoning ordinance. Motion carried with a unanimous roll call vote.

**Motion, Southern Buffer:** It was moved by Boersma and supported by Ross De Vries to exempt 174 feet of property line which is within the water from the Type C Landscape Buffer calculation, all other segments of the southern property line must comply with the zoning ordinance. Motion carried with a unanimous roll call vote.

The meeting dates and meeting start time of 5:30 pm for the 2023 calendar year were recommended to the Clerk for final approval.

The meeting adjourned at 7:53 p.m.

Respectfully submitted,

Laurie Slater  
Recording Secretary