

ZONING BOARD OF APPEALS

Regular Meeting
July 27, 2010

Present: Chairman Steve Haberkorn, Vice-Chairman Vern Johnson, Member Norm Nykamp and alternate member Robert Swartz. Also present was Zoning Administrator Jon Mersman and Assistant Zoning Administrator Meghann Reynolds.

Absent: Marty Corbin and Elliott Church

The meeting was called to order by Chairman Haberkorn at 5:30 p.m. Mr. Haberkorn explained to the audience the public hearing process.

1) Hearing declared open to consider a Nonuse Variance petition submitted by Harold Bluhm for property at 3720 104th Avenue to permit one split of a 9.8 acre parcel resulting in two parcels, one to be 5 acres and the other to be 4.75 acres. This property is zoned A Agricultural. The zoning ordinance current requires a 5 acre lot minimum in this zone (70-16-12-100-005).

Present for this request was Harold Bluhm.

Mr. Bluhn explained that he has a 9.8 acre parcel that he would like to split. It was originally sold to him as 10 acres. When he had it surveyed it was actually 9.8 acres. He has owned the land for 22 years. He would like to sell the south side of the property with the house and barn on it. The pond would go with the house as it is essential for the sewage system. The north portion has been rented out in the past for farming. The field edge would be the side of the

property that would be an even 5 acres. The parcel with the house and barn and pond would be 4.8.

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

** It was moved by Mr. Johnson and supported by Mr. Nykamp to close the hearing. Motion carried.

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

1. Strict compliance would be unnecessarily burdensome to the applicant in that he would not be able to split the property.

2. Granting this request would give substantial justice to the applicant. The property was purchased in good faith 22 years ago that it was 10 acres in size. The density is not increasing. There is a subdivision across the street.

3. If the property were .02 of an acre larger there would be no problem.

4. The situation was not self-created. The owner believed the property to be 10 acres in size when purchased 22 years ago. A recent survey showed otherwise.

** It was moved by Mr. Nykamp and supported by Mr. Johnson to grant the request with the stipulation that the 5 acres be the south side that is being farmed and the parcel with the house, barn and pond be the lesser of the two. Motion carried.

2) Hearing declared open to consider a Nonuse Variance petition submitted by Rex Hodge for property at 9674 Smidderks Street to build a raised bed garden and place an accessory building

in the required second front yard of a corner lot. The required set back is 35 feet and they are requesting a variance of 33 feet to allow the beds to be placed within 2 feet of the property line and to have the accessory building to be 12 feet off the property line, a variance of 23 feet. This property is zoned R-1 Residential (70-16-25-249-002).

Present for this request was Rex Hodge.

Mr. Hodge explained to the Board that he would like to put in a raised bed garden and a small 10'x12' accessory building for gardening supplies in the side yard, which is considered a second front yard because the property is a corner lot. The ground on this parcel is mostly sand and gravel, hard to get anything to grow in.

There is currently one existing accessory building (14'x17') and an attached garage on the property.

The structures (raised beds) would be 3 cement blocks or 24 inches high. Mr. Hodge plans on staining the cement blocks. There are no footings under the cement blocks. The structure, like a fence, would have a height limit of 30 inches that would include whatever would be planted in the raised beds. The applicant expressed that he would be planting rose bushes or fruit trees around the blocks. That too would have a height limit of 30 inches.

The cement block raised garden beds would cover an area of about 500 square feet if you put a rectangle around it. The beds are 4'x8' each, with two rows of four at an angle and two straight between the two rows of four. Even if the applicant were to move the first row of raised cement blocks, he would still need a 12 to 13 foot variance.

The blocks would be 2 feet off the property line, requiring a 33 foot variance. The accessory building would be 12 feet off the property line, requiring a 23 foot variance.

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

** It was moved by Mr. Nykamp and supported by Mr. Johnson to close the hearing. Motion carried.

The Board went over the eight standards to review for a petition for a second accessory building.

1. The size of the parcel is approximately one third of an acre.
2. The intended use of the building is for gardening supplies, wheel barrel, tools, etc.
3. The accessory building would be 10'x12' with cement block flooring, made of wood – sided and shingled.
4. There is one detached accessory building of 14'x17' in the back yard. There is also a two stall attached garage.
5. There is not another parcel that has more than one accessory building on it which are adjoining and in the same neighborhood. Actually there are not many that even have one accessory building.
6. The building would not affect the light and air circulation of any adjoining properties. It would be visible from other properties as well as any traffic.
7. If approved this would be the first parcel with two out buildings on it.
8. The building would be used to support a garden. There would be no adverse environmental effect of the building or its proposed use.

** It was moved by Mr. Nykamp and supported by Mr. Swartz to deny the request for a second accessory building. Motion carried.

The Board went over the four standards to review when considering a nonuse variance request. This is for the raised garden beds made of cement blocks in the front yard.

1. Strict compliance would not be unnecessarily burdensome to the applicant. There are other alternatives. Take out the blocks and put in good soil and plant a garden.
2. Granting this request would not do substantial justice to the applicant as well as other property owners in the district. The Board could ask that the garden be two blocks high instead of three, but the 30 foot height restriction would still apply. The Board asked itself if this were an addition to the house would we consider it?
3. The Plight of the applicant is not due to unique circumstances of the property. All corner lots have the same setbacks.
4. The situation is self-created. The applicant has other options. He chose to have raised cement block garden beds for convenience, doesn't have to bend over.

** It was moved by Mr. Nykamp and supported by Mr. Swart to deny the request. Motion carried.

3) Hearing declared open to consider a petition to continue a non-conforming use by Noeng Chau for property at 93 E. Lakewood to use the property as residential in an Office zone. The property was built as a residence but that use has been discontinued for over a year while the structure was vacant. The property is zoned OS Office (70-16-20-253-015).

Present for this request was Noeng Chau.

Mr. Chau explained to the Board that he purchased this property last year. The property needed repairs before it could be rented out. The applicant did not have the money to make all the repairs immediately. He did it over time. The house is zoned Office Service. The property has been vacant for over a year. The Building Inspector feels it is not feasible to convert this structure into offices or a store or a restaurant. It would have to be destroyed and rebuilt.

Mr. Chau has finished the flooring, the roof, there is heat, the windows have screens and there are smoke alarms and the house is now in condition for the applicant to rent out. Mr. Chau could get some economical return on his purchase if he could use the house as a rental until the economy picks up and someone wants to purchase the property for business purposes.

The surrounding properties are an oil change business to the east and other houses to the west.

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

**□ It was moved by Mr. Nykamp and supported by Mr. Johnson to close the hearing. Motion carried.

The Board went over the three standards to review when considering a request to extend a non-conforming use.

1. The Board determined that allowing the house to be used as a residence would not substantially extend the probable duration of the non-conforming building or its use. The house is there. It is not selling in this economy. Mr. Chau needs to rent it out or tear it down. If he rents it out he can pay the taxes.

2. Using this property as a rental would not 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. The house has been there. The only change is that the house is now functional.

3. There would be no adverse effect of the non-conforming structure or its use on the adjoining lands in the surround neighborhood. There is an oil change business to the east and other houses to the west.

** It was moved by Mr. Johnson and supported by Mr. Nykamp to grant the request as presented. Motion carried.

The Minutes of June 22, 2010 were approved as printed.

The meeting adjourned at 6:50 p.m.

Sincerely,

Laurie Slater
Recording Secretary