

ZONING BOARD OF APPEALS
Regular Meeting
March 26, 2024

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

Present: Chairman Russ Boersma, Members 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: Member Ross De Vries, Member Jack Vander Meulen, and Alternate Member Steve Haberkorn.

There were no public comments.

** It was moved by De Vries and supported by Church to approve the minutes from the February 20, 2024, meeting as printed. Motion carried.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open for the consideration of a petition for a Nonuse Variance submitted by Bryan and Stacy Huffman for property located at 516 Howard Ave, known more specifically as Parcel Number 70-16-30-176-013. Petitioner is requesting variances consisting of: 1) 74 feet 3 inches from the required 90-foot Macatawa Waterfront building setback for a retaining wall over 30 inches in height, resulting in a Macatawa Waterfront setback of 15 feet 9 inches; 2) 1 detached accessory building in addition to the maximum 1 detached accessory building permitted; and 3) 20 feet from the required 40-foot waterfront setback for a new detached accessory building, resulting in a waterfront setback of 20 feet. The variances are being requested for a new retaining wall system and new detached accessory building. The subject property is zoned R-1 Low Density Residential, FP Floodplain, and Macatawa Residential Setback Overlay.

Present for this request were Bryan and Stacy Huffman, property owners of 516 Howard Ave.

Mr. Huffman would like to replace the failing retaining wall and what he described as a pump house. The house was built in 1936 and was added onto in 2009 and 2011. The house has had a pump house since 1948. The pump house is connected to the terraced retaining wall. The retaining wall was built in the early 1990's. It is a wooden wall, and the lakeside is collapsing, impacting the stability of surrounding lawn as well as the integrity of the pump house building. It is also home to hornets. The house sits on the peak of a long bluff on Lake Macatawa. Other homes in the neighborhood have taken out the natural bluffs and put in walkout basements. Mr. Huffman's property is in a steeper area of the bluff. He needs a retaining wall to keep the ground stable and preserve the natural edge of the bluff.

The majority of the wall would be 10 feet further away from the lake than the existing wall. It would be constructed of concrete rather than wood. It would be wedge shaped with height diminishing to the east. The height would be the same as the overall height of current retaining wall – 12 feet on the western edge and 7 feet at the eastern end, flattening to match the area. The existing retaining wall encroaches 10 feet onto the neighboring property to the west. The proposed wall would not.

Mr. Huffman further stated that the first issue is the number of detached accessory buildings existing on the property. By ordinance, the property is only allowed one detached accessory building, but the property currently has two detached accessory buildings: the pump house and pool house building. The ordinance does allow for an exempt 15 square foot pump house; however, his current pump house is larger than 15

square feet. Mr. Huffman was before the Board last month requesting an addition to attach the existing detached pool house to the existing attached garage. When this addition is completed, there will only be one detached accessory building on the property - the pump house in the retaining wall.

The other issues are the building setbacks for the retaining wall and accessory building – a building setback of 90 feet from the Macatawa Waterfront for the retaining wall over 30 inches in height and the 40-foot setback from the Macatawa Waterfront for the detached accessory building.

The proposed accessory building would be in the approximate location as the existing one. The stairs by the pump house would be eliminated. The patio would be one foot wider and one foot longer than the existing patio. The roof would be one foot higher than the existing roof. There would be a three-foot-high fence around the structure for safety (fall risk). The storage area would not be in the hillside. The back wall of the storage building would be part of the retaining wall. If built into the hill, there would be a considerable amount of earth above the building and the concern is that the pump house will fill with water. Mr. Huffman argued that the purpose of the required building setbacks from the Macatawa Waterfront is to preserve lakeside views from adjacent properties. The only thing visible to the neighbors would be the railing around the structure. The railing is proposed to be a sailboat style rail system from the photos submitted by the applicant.

There was discussion about if the wall and accessory building were to conform to the ordinance where would they be located on the property. They would be under the edge of the deck of the house. There was further discussion of terraced retaining walls. In particular, Elliot Church asked about the feasibility of the terraced retaining wall option and whether more conforming design options were considered. Mr. Huffman commented that the terraced retaining wall they have now is overgrown and a waste of space. Mr. Broersma explained that the applicant could install a series of 30-inch walls. Discussion continued on how to make the wall less visible. Mr. Huffman stated that he thought about putting stone veneer on the front of the wall or plant an ivy to grow up to cover it. The Board commented that looking at the pictures with retaining walls and pump houses (photos included in packet), they all looked old because they are not allowed. Russ Boersma noted his concern was with setting a precedent. Mr. Huffman stated that when other property owners are rebuilding in this same situation, they are choosing to build a walkout removing the piles of dirt creating the bluff.

Community Development Director, Corey Broersma, read comments sent in by ZBA Member Jack Vander Meulen. (Comments attached). In conclusion, he stated that the applicant's request was reasonable. And it would be appropriate that they were granted some relief.

There was further discussion by the Board about an area on the survey that shows as a 4.7 foot by 12.5 foot building. It is a square fenced in area for compost with a stack of wood behind it. There is a roof over the firewood stand. The Board asked Staff if that would be considered an accessory building. Mr. Broersma stated that it would. Mr. Huffman stated that he would be willing to remove the roof and cover it with a tarp.

Ross Hoek of 512 Howard Avenue was present in the audience to speak to this request. Mr. Hoek stated that he has lived there for three years and was not aware that there was a pump house on Mr. Huffman's property. Mr. Hoek has a walkout basement that is not nearly the elevation of the Huffman property. Visually, the only thing he sees is the railing. He appreciates not having to look at the shore stations. He stated that the proposed replacement of the retaining wall and accessory building seem to be very well thought out and aesthetically pleasing. His only concern was that the railing be as see-through as possible. The proposed cable railing would be amazing. He would rather see the railing than have kayaks all over the yard. He further stated that he would rather have a roof over the wood/compost pile than a blue tarp.

** It was moved by Church and supported by Bob De Vries to close the hearing. Motion carried by voice vote.

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.***

Based on GIS contour layer (showing approximate grade changes) and the applicant's narrative, the land slopes more significantly the closer one gets to the waterfront. While this is not unusual along the Lake Macatawa waterfront properties, this is a unique feature and condition of the property. To preserve the topography of the land, one needs a retaining wall unless the property is excavated massively.

2. ***That the unusual circumstances do not apply to most other lots of record in the same manner to the same extent to other lots of record in the same zoning district.***

Neighbors have excavated and have walk outs. Mr. Huffman's property has more prominent bluff and extends out further than the others.

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 no increased financial return involved. The retaining wall needs to be there to preserve the existing topography. To install terrace retaining walls would take up much of the property.

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

Granting this variance will not be of substantial detriment to adjacent and nearby land uses and properties. Some Board members stated that granting this would set a precedence. Others stated that each situation is different (e.g. topography, etc.) and this improvement would eliminate the existing retaining wall encroachment onto the neighboring property.

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

The applicant did not put in the existing wall or system. Something needs to be there – he's rebuilding a failing wall. The land slopes down from the house to the 12-foot wall. It is not impacting the view of neighbors. The wall needs to match the lay of the land. Once the pool

house is attached to the garage, there will be no second accessory building.

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 variances will not be contrary to securing public safety. The proposed variance for the new retaining wall will improve the unsafe condition of the failing retaining wall and eliminate the encroachment onto the westerly neighbor's property.

**** It was moved by Church and supported by De Vries to approve a variance of 74 feet 3 inches from the required 90-foot Macatawa Waterfront building setback for a retaining wall over 30 inches in height, resulting in a Macatawa Waterfront setback of 15 feet 9 inches with the stipulations that 1) the petitioner apply aesthetic treatment to the face of the retaining wall that is designed to minimize the visual impact that is satisfactory with staff, and 2) the petitioner installs a fence system with low visual impact as proposed in the packet. Motion carried unanimously with a roll call vote.**

**** It was moved by Boersma and supported by Church to deny a variance of 1 detached accessory building in addition to the maximum 1 detached accessory building permitted. Motion carried unanimously with a roll call vote.**

**** It was moved by Church and supported by De Vries to approve a variance of 20 feet from the required 40-foot waterfront setback for a new detached accessory building, resulting in a waterfront setback of 20 feet. Motion carried unanimously with a roll call vote.**

Next on the Agenda was the consideration of a petition for a Nonuse Variance submitted by Elida Hernandez for property located at 10983 Ryans Ways, known specifically as Parcel Number 70-16-35-331-012. Petition is requesting variances consisting of: 1) 23 feet from the required 35-foot rear yard building setback, resulting in a rear yard setback of 12 feet for an attached deck; 2) 3 feet from the required 7-foot side yard setback, resulting in a side yard setback of 4 feet for an attached deck; and 3) 2.1 feet from the required 10-foot setback for an above-ground swimming pool, resulting in a setback of 7.9 feet. The variances are being requested for an existing above-ground swimming pool and attached deck. The subject property is zoned R-1 Low Density Residential.

Present for this request was Elida Hernandez, property owner and applicant.

Ms. Hernandez explained to the Board that she had filled out an application for a building permit for the pool. She thought her father and his friend had taken care of obtaining the permit before installing the pool and deck on her property. Her father passed away in December.

The Board asked Staff for the history of the situation. Assistant Planner and Zoning Administrator Kate White explained that when the request for the permit was submitted, she needed a better site plan. There was no response. No permit was issued and the application was quiet for six months. At that time, it is customary to do a drive-by of the property to see if the work has proceeded without permits. The pool with a deck around it had been installed on the property without the issued permit. A violation letter was sent to the applicant. Her options were explained to her. She could either remove the pool and deck, move the pool and decking to a conforming location with the proper building permits or seek a nonuse variance for the existing nonconforming location of the built structures.

The pool does not meet the minimum 10-foot setback along the western property line. The deck of the

pool is a continuation of the deck attached to the house, so it has the same setbacks as a building would have – 35-foot rear yard setback and 7-foot side yard setback. If it were not attached, the setbacks would be 10 feet from the side and rear yard property lines and 10 feet between the existing house and the pool.

Mr. Church asked what full denial of the request would mean for the applicant. Ms. White replied that the pool would have to come down or be moved to a conforming area on the property. If nothing were done, it would go to court.

There was discussion of how to make the pool just a pool by removing the portion of the deck that attaches it to the existing house deck. Also, removing pool decking to meet the setbacks as close as possible.

Moving the pool would require the applicant to drain the pool, take it apart and put it back together. There is probably electricity for the water pump involved. Moving the pool could result in a hole in the liner.

Mr. Church further stated that the people putting the pool up and building the deck around it were in the construction trade, as noted by Ms. Hernandez, and had a sense that what they were doing was not permitted. They were intentionally non-compliant, not accidentally non-compliant. They can easily relocate the pool with no variance.

Ms. Hernandez responded that she did not do it but has learned a lot through this process. She thought the permit was completed.

Other Board members commented that it would be a bigger undertaking to move the pool than to remove the deck.

Mr. Church commented that they willfully disregarded the ordinance. He would find it hard to justify approving this request.

It was explained that with two members of the Board absent, there is just a quorum and any vote of the request must be unanimous. If the applicant would like to table this request until more Board members are present, she may request to do so. Ms. Hernandez asked for the request to be tabled.

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

** It was moved by Boersma and supported by De Vries to table this request and associated public hearing until next month. Motion carried with a unanimous roll call vote.

Next on the agenda was the consideration of a petition for a Nonuse Variance submitted by Michael Bocks on behalf of HS&J Land Company, LLC for property located by 12350 James St, known specifically as Parcel Number 70-16-21-200-083. Petitioner is requesting a variance of 31.3 square feet from the maximum 29.4 square feet permitted for wall signs, resulting in a wall sign area of 60.7 square feet. The variance is being requested for wall signs on a new entrance building. The subject property is zoned C-2 Community Commercial.

Present for this request was Mike Bocks on behalf of HS&J Land Company, LLC.

Mr. Bocks stated that this property has the unique land use of a theme park. Gate entrances with signage on them is typical of this land use. The building is very small, two lanes in and one lane out for access control. The signage is needed to catch the public eye, so they know where to enter the park.

The Board commented that it is also the first photo op as they enter the park, showing where they are at. Other theme parks have them. They appreciate the sign size and know what they are trying to accomplish.

Mr. Broersma read the comments sent in by Member Jack Vander Meulen. “My opinion is that being a tourist destination makes this a unique request. Visitors plan this into their visit to the area and taking a photo going into the park would be common. Signage is appropriate for that purpose.”

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

** It was moved by De Vries and supported by Boersma 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.***

For general building setbacks, there are no exceptional characteristics of the land that would impact the need to grant a variance beyond a previously discussed drain along US-31; however, in this case the location of the customer gate relative to the limited James Street frontage, combined with the scale of the Outdoor Commercial Recreational Facility use, is considered unique.

2. ***That the unusual circumstances do not apply to most other lots of record in the same manner to the same extent to other lots of record in the same zoning district.***

There is not another lot of record with a theme park use in Holland Charter Township so the use is unique.

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 variance is not necessary for the enjoyment of the owner, but for the visitors and the preservation of the property.

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

Granting of the variance will not be of substantial detriment to adjacent and nearby land uses and properties.

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

It is the unique use of the property. They are trying to fit within the Zoning Requirements. A theme park has to have a certain presence, certain characteristics.

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.

This is not a Las Vegas style sign. It is conservative, and not too tall. It is Theme Park tastefully done.

** It was moved by Bob De Vries and supported by Boersma to approve the request as presented.
Motion carried with a unanimous roll call vote.

The meeting adjourned at 7:35 p.m.

Respectfully submitted,

Laurie Slater
Recording Secretary