

ZONING BOARD OF APPEALS
Regular Meeting
May 28, 2024

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

Present: Chairman Russ Boersma, Members Elliott Church, Ross De Vries, 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 Tricia Kiekintveld.

Absent: None

There were no public comments.

** It was moved by Robert De Vries and supported by VanderMeulen to approve the minutes from the April 23, 2024, meeting as printed. Motion carried with a roll call vote of 5 Yes and 0 No.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open for the consideration of a petition for an Administrative Appeal submitted by Ben Fogg of 3303 John F Donnelly Drive, LLC for property located at 23 James St., known more specifically as Parcel Number 70-16-17-300-067. Petitioner is appealing the decision that a 6-foot-tall fence is required to be installed as part of the required Type A Buffer along the property's northern lot line. The subject property is zoned I-1 Light Industrial.

Present for this request was Ben Fogg of Tulip City Self Storage and Brian Lamar of CL Construction.

Mr. Fogg explained to the Board that he feels it is a bad idea to put up a second fence along the north property line of his parcel as there is already a fence on the neighboring properties where he has not installed fencing. He said that having two fences so close to each other would cause garbage and other things to collect in that area with no way of anyone being able to get in there to clean it out. Mr. Fogg also said it is a safety concern if someone got between the fences, as they would not be able to get out. He also noted that they have a 6-foot berm on the property which, as he reads in the ordinance, means they do not have to have a fence.

Mr. Lamar stated that the plans were originally approved without a fence, and they were caught off-guard when they were told they would need a second fence. As he reads in the ordinance, it states there needs to be a 6-foot-tall fence, but it does not state that it needs to be on their property. Since there is already a 6-foot-tall fence on the adjoining property they do not feel it is a good idea to have one on their property so close to the neighbor's fence.

Mr. Lamar also noted that the Staff Report states that the project was not built "to plan." He said they have certified documents from Holland Engineering stating it was built "to plan."

Commissioners reviewed site pictures and it was asked where the berm was. Mr. Lamar explained that when the building inspector came to inspect the site, he told them they needed to change the grade of the berm to have a 5% slope to meet code. At that point they took the top of the berm off in order to pass inspection.

Mr. Lamar noted that they have not had any concerns raised by neighbors. He also stated that if any part of the fence on the neighboring property came down or was in disrepair they would be very willing to fix or replace it. If the neighbors ever took the fence down, they would then put up a fence on their property, as security is important to them, and they would want the fence.

Robert DeVries asked if they have a fence along the east and west side of their property. They explained that the property is 100% enclosed by fences with no breaks in the fence line.

Chairman Russ Boersma asked the applicant why they would not want a fence on their own property so that they would have control of the fence. Mr. Fogg answered that they feel the fence that is there is secure and that any fence can be broken into regardless of if it is their fence or a neighbor's fence.

The Board and Staff discussed the alternate requirement of a berm instead of a fence. Mr. Fogg noted that he would prefer not to install shrubs with the berm as he wouldn't see the point in having them for buffering if the shrubs cannot be viewed by the neighbors who have fencing up.

Church asked whether Staff received any comments from neighbors regarding the request and public hearing. Staff noted they had not received any comments. Church then asked about the kind of noises the self-storage use might produce. Mr. Fogg noted the loudest sound might be a car door closing. He noted there is no outdoor storage on the property; all storage is inside units.

VanderMeulen noted that he cannot think of any other properties in the Township that have back-to-back fences on the property lines and he is concerned about the safety and liability of erecting two fences so close together.

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

** It was moved by Robert DeVries and supported by Vander Meulen to close the hearing. Motion carried by voice vote.

The Board went over the standards for granting an administrative appeal.

1. *Was arbitrary or capricious.*

Measurements were taken on-site by Staff and, therefore, the conclusion was not arbitrary or capricious. The Board feels that Staff was interpreting and applying the ordinance per the measurements they took on site.

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

The business is relying on the current fence, however, as they noted, portions of the current fence are not on their property and, therefore, not enforceable by the township if something should happen to it.

3. *Constituted an abuse of discretion.*

Staff is doing their job of interpreting the ordinance, it is not abusive.

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

Staff is doing their job and applying the zoning ordinances. The applicant was also advised that they could submit a nonuse variance request if they would like to do so. Members of the Board felt that the nonuse variance application is the appropriate request petition to file for this situation.

It was recommended that the applicant could submit a non-use variance request or install the 6-foot fence where required.

** It was moved by Robert De Vries and supported by Church to deny the administrative appeal of the decision that a 6-foot-tall fence is required to be installed as part of the required Type A Buffer along the property's northern lot line. Motion carried with a roll call vote of 5 Yes and 0 No.

Hearing declared open for the consideration of a petition for an Administrative Appeal submitted by Jake Elenbaas of 128th Avenue Storage, LLC, located at 4095 128th Ave., known more specifically as Parcel Number 70-16-05-400-012. Petitioner is appealing the decision to deny issuance of a building permit for roof repair because the proposed work was determined to extend the life of the nonconforming building. The subject property is zoned C-2 Community Commercial.

Present for this request was Jake Elenbaas of 128th Avenue Storage, LLC and Jerry Alkema of Ridgeland Builders, LLC.

Mr. Elenbaas explained to the Board that they are here regarding a roof repair on a non-conforming building that collapsed under the weight of 29" of snow on January 29, 2024.

Mr. Alkema distributed a handout to the Board and then read through the handout that described the event that happened on January 29, 2024, along with the subsequent events, as well as a description of their interpretation of the Township ordinance and how it relates to their situation.

Mr. Alkema indicated that ZBA had approved a variance sometime before the 2018 restatement of the zoning ordinance, which determined the lot line along US-31 to be a rear lot line, not a front lot line. He noted that would make the building conforming if the US-31 lot line was previously determined to be a rear lot line. Staff clarified that they have no record of the ZBA approving such a variance.

There was discussion regarding why the collapse occurred. Whether it was from a lack of maintenance, wood that had rotted, or damage to the structure. Mr. Alkema noted that because the reason for the collapse is unknown, he feels the repair work could have proceeded under Sec. 20.3.B of the Township Zoning Ordinance, as the permitted reasons for repair include “collapse”. How collapse occurs is not clearly defined in his opinion. Staff noted that the building permit application that was applied for would replace parts of the nonconforming building that were not damaged in the collapse and that is why an extension of a nonconforming building petition with the ZBA was provided as an option to the owner and builder.

Mr. Elenbaas feels that he received conflicting information from the Township. The building inspector told him he could take down the trusses and replace them, so they submitted the building permit. Zoning Staff denied the building permit saying that it was extending the life of a nonconforming building. Mr. Elenbaas said that he did not realize he had purchased a building that he could not repair.

There was discussion regarding what is actually being asked for tonight, versus what was in the legal notice. Both the legal notice and the application states that the petitioner is appealing the decision to deny issuance of a building permit for roof repair because the proposed work was determined to extend the life of the nonconforming building. Mr. Alkema said he is asking for the Board to look into the rear yard determination made by the ZBA in previous years. Staff clarified again that there is no record of such a ZBA decision. The Board also clarified that they are only making a decision based on what was presented in the application request and was what noted in the public hearing, and that the request will be reviewed against the four standards for an administrative appeal.

Church asked Staff how they came to their decision that is being appealed tonight. Mr. Broersma noted that he made the decision based on the information he received which indicated that there was lack of maintenance over time causing the roof to collapse. Additionally, the building permit application indicated that proposed roof repair work would go beyond the area of roof failure, so he indicated that they would have the option to seek an extension of the nonconforming building through the ZBA.

Mr. Elenbaas noted the building as-is is an eyesore and all he wants to do is fix it up.

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

** It was moved by Robert DeVries and supported by Ross DeVries to close the public hearing. Motion carried with a voice vote.

The Board went over the standards for granting an administrative appeal.

1. Was arbitrary or capricious.

It was noted that ordinances are meant to be interpreted from beginning to end. In this case section 20.1 was used to determine the denial of the building permit. The applicant is asking that the language in section 20.3 be applied here; however, that only comes into play if section 20.1 doesn't apply, which in this case it does.

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

It was determined by the Board that there was not a clear error by Staff as they are justified based on the ordinance language. The Board noted that were some theories on why the building had collapsed, but not firm facts. Based on the information Staff had, there is no proof that they were wrong in their decision.

3. *Constituted an abuse of discretion.*

There was not an abuse of discretion here as Staff articulated their decision clearly to the application and gave the applicant options for repairing the building.

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

The Board noted that an extension of the nonconforming use can be applied here. They also stated that they are replacing parts of the roof that didn't collapse and are not in need of repair. The Board noted that Staff had also checked with the Township Attorney on their decision.

** It was moved by VanderMeulen and supported by Ross DeVries to deny the appeal of the decision to deny issuance of a building permit for roof repair because the proposed work was determined to extend the life of the nonconforming building. Motion carried with a roll call vote of 5 Yes and 0 No.

Hearing declared open for the consideration of a petition for a Nonuse Variance request submitted by submitted by Shawn Bates of Dan Vos Construction Co. Inc. on behalf of Boar's Head Provisions Co. Inc. for property located at 284 Roost Rd., known specifically as Parcel Number 70-16-21-304-008. Petitioner is requesting a variance consisting of: 1) 65 feet 3 inches from required 75-foot front yard building setback, resulting in a front yard setback of 9 feet 9 inches from the northern property line; 2) an encroachment of 4 feet 2 inches into the required clear vision area; and 3) 9.89% from the maximum 40% lot coverage by building, resulting in a total building coverage of 49.89%. The variance is being requested for new fire protection pump building. The subject property is zoned I-2 General Industrial.

Present for this request was Shawn Bates and Mark Scobell of Dan Vos Construction Co. Inc. on behalf of Boar's Head Provision Co. Inc.

Mr. Bates explained to the Board that they are requesting to put up a fire protection pump building on Boar's Head's property. This request is for safety reasons and not for financial gain. They

have been working with their fire safety contractor and architect for the best placement on the property and have come up with the proposed location.

Mr. Bates explained that they have three requests:

- 1) 65 feet 3 inches from required 75-foot front yard building setback, resulting in a front yard setback of 9 feet 9 inches from the northern property line.
 - a. He stated that they have very limited space on the property and this location does not protrude any closer to the front yard boundary than other parts of the building on the property that were previously granted variances. He also said that this is the smallest footprint they could design.
 - b. He also noted that this proximity to the road provides good access for the fire department.

- 2) An encroachment of 4 feet 2 inches into the required clear vision area.
 - a. He explained that the site lines to the west (left) of the road/driveway are good and that traffic that comes from the east (right) is naturally slowed down due to the curve in the road.
 - b. He also noted that trucks usually only turn right on Scotts Drive from the driveway so they can get to Lakewood Blvd.
 - c. They looked at moving the pump building further to the south as recommended by Staff, however, that might cause problems with current water lines that are under the ground to the south. There is also an existing vault in the current location which they would like to utilize. Mr. Scobell explained that there could be hydraulic and structural issues with moving the building further south.
 - d. He also stated that Boar's Head would be willing to put up "Limited Site Distance" signs to alert drivers.

- 3) 9.89% from the maximum 40% lot coverage by building, resulting in a total building coverage of 49.89%.
 - a. At this time, Boar's Head is not looking at combining their two lots into one and, therefore, is requesting the variance. He also noted that the past variances for the property seemed to not account for lot coverage and he felt that the subject lot and the Boar's Head parking lot property immediately west were traditionally considered as one lot.

There was discussion if moving the building is possible or not. Mr. Scobell said there are potential concerns with maintaining pressure if they move the building because it could require line replacement/relocation. Ultimately, they want to reduce as many fittings and pipe angles as possible to limit impacts on water pressure. That would be something they would need to have Cofessco Fire Protection calculate. Mr. Bates stated that they are just looking to have the most effective pump.

Mr. Church noted that he does not hear that the building relocation is impossible but may be challenging. He asked whether there are any mitigation techniques that could be used if the

building were relocated from its proposed location; Mr. Scobell said he does not know at this time. Mr. Bates noted that they have presented what they feel is the best option and, at the end of the day, this building is needed for safety.

The Board discussed the safety of having the building so close to the driveway intersection with Scotts Drive. Mr. Church noted that other variances were granted did not affect safety, however safety is a big concern with this request. Mr. VanderMeulen also brought up the lighting and that it is too bright at night and is in violation of the ordinance. This was brought to their attention in 2022 and has not been handled yet. Mr. Toby Benson from Boar's Head was present in the audience and stated that he had directed that to be taken care of back in 2022 and said he will look into this further.

Mr. Church noted that if there are technical options to improve public safety with the clear vision area, then those options should be pursued to secure public safety.

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

** It was moved by Ross DeVries and supported by Robert DeVries 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.***

It was stated that the Board agrees with Staff that this is an extraordinary location with numerous variances granted in both the front and side yards, and they also see the need for the pump building.

It was also stated that there are practical solutions that can be made to limit public safety impacts with the clear vision area encroachment.

- 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 are not many other lots like this in the Township where so much leniency has been granted with building setback variances. The Board recognizes the importance of the fire pump building but not at the cost of traffic safety.

- 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 fire pump is an important safety feature in the proposed location. There are water lines to consider for location, however, there are concerns about clear vision at the driveway intersection.

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

It was stated that this will not be a detriment to adjacent land but possibly to vehicles that travel in that area. Lot coverage and front yard setback is not as big of a concern, but road safety is if there is a detrimental impact to the clear vision area.

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

The Board agrees with the Staff's comments in the Staff Report and there are some options that do not need a variance.

- 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.**

Public safety is in question with the encroachment into the clear vision area. However, safety of the employees and the need for the fire pump building with clear access for the fire department is also important.

** It was moved by Boersma and supported by Ross DeVries to approve the variance request for a front yard setback of 9 feet 9 inches from the northern property line but not to encroach into the clear vision area corner. Motion failed with a roll call vote of 2 Yes and 3 No.

** It was moved by Bob DeVries and supported by Church to deny the variance request of 65 feet 3 inches from required 75-foot front yard building setback, resulting in a front yard setback of 9 feet 9 inches from the northern property line. Motion passed with a roll call vote of 3 Yes and 2 No.

** It was moved by Bob DeVries and supported by Church to deny the variance request for an encroachment of 4 feet 2 inches into the required clear vision area. Motion passes with a roll call vote of 5 Yes and 0 No.

** It was moved by VanderMeulen and supported by Boersma to approve the variance request for 9.89% from the maximum 40% lot coverage by building, resulting in a total building coverage of 49.89%. Motion passed with a roll call vote of 4 Yes and 1 No.

Other Business:

Tabled items:

10983 Ryans Way (70-16-35-331-012) – Nonuse Variance (Tabled March 26, 2024)

Petition submitted by Elida Hernandez for 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.

** It was moved by Ross DeVries and supported by Boersma to untable the matter and associated public hearing. Motion passed by voice vote.

Present for this request was Elida Hernandez of 10983 Ryans Way.

Ms. Hernandez explained that she is back with revised plans that comply better with the ordinance. She is now asking that the pool remain in its current location, and she will remove a large portion of the deck to bring the deck into compliance.

Mr. Boersma gave some background information for the 2 Board members that were not present at the original hearing on March 26, 2024.

Mr. Church said that he doesn't want to set a precedent that it is ok to build something out of compliance and then come back to ask for forgiveness. He then asked the applicant to explain further the course of events that took place and why she had not obtained the proper permits for the construction of the pool and deck. Ms. Hernandez indicated that her dad, who has since passed away, was handling the management of the project for her including helping her apply for the permit. She and her father came to the Township Hall and spoke with Staff regarding what the drawings needed to include and she thought her dad was taking care of it from there. However, Staff noted that the proper drawings were never submitted. It was also noted that the company that installed the pool did not ask Ms. Hernandez if she had obtained the necessary permits for the installation of the pool. Therefore, they installed the pool without the proper permits. Mr. Church indicated that it sounds like the pool company should take some responsibility here and help pay for any additional work that needs to be done or fees that are paid.

Mr. Boersma asked the applicant if she would like to withdraw the first 2 variance requests related to the deck setback since the new drawings do not require two of the original requests. Ms. Hernandez indicated that she would like to withdraw variance request (1) and (2).

** It was moved by Boersma and supported by Robert DeVries to accept the withdrawal 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. Motion carried by voice vote.

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

** It was moved by Ross DeVries and supported by Robert DeVries 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.***

It was determined there are no unusual characteristics of the land.

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.***

The unusual circumstance is that the pool company installed a pool without verifying a permit had been pulled.

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 will be financial loss with tearing down a large portion of the decking and moving the pool; therefore, if the pool does not need to be moved in effect there will be financial gain. It was also noted that the preservation of the pool liner is at stake if she is required to move the pool.

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

Relocating the pool is not going to benefit anyone and there is no detriment to nearby properties as no neighbors have voiced concerns.

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

There is some question of applications for previous permits, follow through and the pool company.

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.

Due to the fact that she is removing existing decking, it tells others that we will enforce the rules, but the public interest will be served by just removing the deck and not making her move the pool.

** It was moved by Ross DeVries and supported by Robert DeVries to approve the request for variance of 2.1 feet from the required 10-foot setback for an above-ground swimming pool, resulting in a setback of 7.9 feet. The motion passed with a roll call vote of 5 Yes and 0 No.

340 104th Ave. (70-16-36-300-016) – Nonuse Variance (Tabled April 23, 2024)

Consideration of a petition for a Nonuse Variance submitted by Kids’ Food Basket (“KFB”) on behalf of Ridge Point Community Church for a variance of 1 ground sign in addition to the maximum 1 ground sign permitted on the property. The variance is being requested for a new ground sign for the KFB facility. The subject property is zoned AG Agriculture.

** It was moved by Robert DeVries and supported by Ross DeVries to untable the matter and associated public hearing. Motion passed by voice vote.

Present for this request was Kendra Beckstrom, Kids’ Food Basket.

Ms. Beckstrom explained that they would like to put up a ground sign in front of their building/barn to aid visitors and volunteers in finding their building. She said that many people have a hard time finding their building because of the size of the property they are on with Ridge Point Church. She noted that they have 30-50 volunteers each day and some have had trouble finding them to come and serve. She emphasized that there is a lot confusion where the farm and building are located or what the building even is.

The Board members commented that having a sign is a good thing for the safety of organizations as it gives volunteer groups direction as well as a good place to take pictures and post on social media, etc. that they volunteered there and could help to get more people involved with volunteering.

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

** It was moved by Robert DeVries and supported by Ross DeVries 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.***

The land is so large and spread out and the topography of the land makes it hard to see around the parcel in order to identify the Kids' Food Basket building.

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 are not many other AG lots of record similar to this with dual uses (i.e., church and non-profit farming operation).

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.***

This is a non-profit so there will not be any financial return and it could aid in helping emergency vehicles find the location, as well as for volunteers to find the building.

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

Because of the proposed internal location of the sign near the barn building, people on surrounding parcels will hardly even be able to see the sign.

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

This is not their fault; they need to be able to differentiate uses and buildings on the large property for visitors and emergency vehicles.

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 excessive signage; this is necessary on such a large piece of property. The sign essentially acts as an oversized directional sign.

** It was moved by Ross DeVries and supported by Robert DeVries to approve the request for variance of 1 ground sign in addition to the maximum 1 ground sign permitted on the property. The motion passed with a roll call vote of 5 Yes and 0 No.

The meeting adjourned at 8:26 p.m.

Respectfully submitted,

Tricia Kiekintveld
Recording Secretary