

## ZONING BOARD OF APPEALS

Regular Meeting

June 25, 2024

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

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

There were no public comments.

\*\* It was moved by Vander Meulen and supported by Robert DeVries to approve the minutes from the May 28, 2024, meeting with an amendment to the Kid's Food Basket Request related to the requested signage being necessary for improved way-finding and safety. Motion carried unanimously by voice vote.

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 Ben Fogg of 3303 John F Donnelly Drive, LLC for property located at 23 James Street, known more specifically as Parcel Number 70-16-17-300-067. Petitioner is requesting a variance to not install a 6-foot-tall fence as part of the required Type A Buffer located along the approximately western 486 feet of the north lot line. The subject property is zoned I-1 Light Industrial.

Present for this request was Ben Fogg of Tulip City Self Storage, Tyler Brown of Buckman MacDonald & Brown PC (Attorney for Ben Fogg), and Brian Lamar of CL Construction.

Mr. Brown explained that the applicant has two choices to comply with the Type A Buffer. He could either put in a 6-foot-high vertical wall (fencing) or put in a 4-foot berm with a specific number of trees and shrubs.

Mr. Brown further explained to the Board that they are asking for relief from installing a 6-foot-tall fence where there is an existing fence that belongs to the neighbors. Two fences back-to-back create a significant safety issue. There is also the issue of maintenance with access to only one side and keeping the fence clean for appearance of the property. There is currently a vegetation buffer on the applicant's side of the property line. If they were to put up the required fencing for the type A buffer, six to seven of those mature trees would need to be cut down. The current trees add screening and shade for the neighbors. The buffer of trees is more aesthetically appealing than a 6-foot-high fence would be.

Mr. Brown continued to explain the liability of having two fences that close together. Animals or children could fall in between and get trapped. The applicant is willing to maintain the existing

fence. He further stated that one would be hard pressed to find a place where there are two fences back-to-back.

Mr. Church asked if the property was developed according to the plan submitted. Did it deviate in any way?

Mr. Brown presented the Board with a letter from Holland Engineering to Ottawa County Water Resource's Commission stating that the detention basin and site stormwater drainage were built according to plan. Mr. Church stated that the letter addressed one aspect of the plan – the storm water.

Mr. Brown replied that their position is it was built to spec. He questioned what we are calling into question the buffer or the fence. The buffer seemed to be agreed upon at the previous meeting.

Mr. Church responded that the preliminary issue is whether the applicant has a way to meet the requirement without breaking the law.

Mr. Brown stated that we are here because at the previous meeting, the applicant was told he could seek relief from the fence through a variance.

Brian Lamar of CL Construction came to the podium and stated that staff came out and counted the plants. There was sufficient vegetation for the buffer. He further explained that they originally had a 4-foot-high berm adjacent to a building, which is a second option rather than the fence, however, due to the building code requirements, grade must slope away from the building to keep water from pooling at the building foundation. The building inspector asked that they take the top of the berm off and grade away from the building. So, a berm is not practical. This was discussed at the last meeting.

Board Member Vander Meulen commented that we should be looking at the request before us – installing a second fence. The property needs to be safe and secure. Putting in the second fence would result in mature trees being removed. Staff enforce the ordinances to the letter. As the Zoning Board of Appeals, we can grant the applicant a way to legally break the rule and stay legal by looking at the physical characteristics and what is practical and feasible. In our motion, we can make reference to maintenance, and repair and what happens in the future. He continued by referencing the pictures of the buffer. Keeping the tall trees is better buffering and landscaping than most properties have. It would take 20-30 years to meet the maturity that is here. Going forward, the applicant will maintain the current fence and if the owner decides to take it down, the applicant will put up a new fence on their own property. We are looking at a uniqueness that the ordinances do not cover.

Chairman Boersma stated the property is zoned Industrial. Buffering is more intense between Industrial and Residential. It is a storage place that could be zoned commercial and have a lesser buffer.

Chairman Boersma opened the floor to public comment. No one was present in the audience to speak to the request; however, Community Development Director, Corey Broersma, presented a letter received from Peter Cavanaugh of 2534 Oak Forest Drive in support of the variance request.

\*\* It was moved by Church 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.*

The practical difficulty would be letter b – the exceptional natural features located on the lot of record. There are existing significant trees, as well as an existing fence.

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***

If other lots of record in the same zoning district, having the same requirements, has an existing fence and vegetation, we would keep that in mind for them as well.

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.***

It is a right of the neighbors to enjoy the existing trees.

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

If the existing fence comes down, is destroyed, or a tree comes down on it and the property owner replaces or repairs it, then the Board does not believe there is a substantial detriment. They have to maintain the buffer between the properties. Entrapment issues could be a cause of substantial detriment as people, animals, trash could get between the two fences.

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

No, the applicant did not create the problem. They did plan to install the 4-foot-high berm allowed by ordinance, in place of the fence. However, they had to eliminate the berm due to building code requirements which eliminated one of their Type A Buffer options. Not their choice.

**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.**

A proper buffer is in the public interest. They would have more of a buffer as is with the significant existing trees. The existing trees provide a much better than a lot of places have.

\*\* It was moved by Vander Meulen and supported by Robert DeVries to allow for the use of the existing fence for compliance in meeting the zoning regulations for northern Type A Buffer at this time. But if at any time the fence needs maintenance or repair, it is the applicant's burden to do so and if the existing fencing is ever removed, it must be replaced by the property owner on their property. Motion carried with a roll call vote – 4 Yes, 0 No, 1 Absent.

**Hearing declared open** to consider a petition for a Nonuse Variance submitted by Shawn Bates of Dan Vos Construction Co. Inc. on behalf of Boar's Head Provisions Co. Inc. for property located by 284 Roost Road, known specifically as Parcel Number 70-16-21-304-008. Petitioner is requesting a variance of 59 feet from required 75-foot front yard building setback, resulting in a front yard setback of 16 feet from the northern property line. The variance is being requested for a new fire protection pump building. The subject property is zoned I-2 General Industrial.

Present for this request was Shawn Bates of Dan Vos Construction Co. Inc. and Toby Benson of Boar's Head Provisions Co. Inc.

Mr. Bates explained that they went back to the plans after being denied permission to build in the clear vision area and shifted the proposed Fire Pump Room to the south. It is now abutting the existing building. They rerouted the piping to the zone needed and they are 16' off the front property line. They need the room for safety purposes.

Vander Meulen commented that granting this request would not place the Fire Pump Room any closer to the road than they already are. He did ask that the applicant work with Staff on the landscaping on this parcel.

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

\*\* It was moved by Church and supported by Vander Meulen 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 existing building is in an extraordinary location given the numerous variances granted previously for front yard and side yard encroachments for building additions. They need the Fire Pump Room for safety. There are some issues with the lot and where they can build on it. It will not be any closer to the front lot line than they already are.

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 existing building is in an extraordinary location due to variances granted by the Zoning Board for building additions closer to the front lot line over the years.

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 building would be an important safety feature for the building and its proposed location may be an asset for convenient fire department access.

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

No more detriment than what's already there. It could help other property owners if there is a fire emergency as it will provide closer, convenient access for the fire department.

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

The issue goes back to 1975 when they were allowed to build within 5 feet from the property line and the number of variances granted after that. That has impacted the ability to place the fire pump building on-site. It needs to be in the best possible spot where the waterline comes into the 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.*

A fire pump building is an important safety feature for fire protection and an accessible location is a benefit for the fire department. The front yard setback variance will not be visually impactful given the full building front wall is abnormally close to the Scotts Drive public right-of-way and given the building's extraordinary location over decades, this may be considered an "expectation" with the property.

\*\* It was moved by Vander Meulen and supported by Robert DeVries to approve the request with the condition that Staff look at the landscaping upon site review. The landscaping needs to adhere to the ordinance as much as possible. Motion carried with a roll call vote Yes-4, No-0, Absent-1.

**Other Business:**

Community Development Director Corey Broersma informed the Board that they may be asked for their input on setbacks for flag poles.

The meeting adjourned at 6:30 p.m.

Respectfully submitted,

Laurie Slater  
Recording Secretary