

ZONING BOARD OF APPEALS

Regular Meeting

July 23, 2024

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

Present: Chairman Russ Boersma, Members Ross De Vries Jack Vander Meulen, Robert De Vries, and Steve Haberkorn. Also present were Community Development Director Corey Broersma and Assistant Planner/ Zoning Administrator Kate White.

Absent: Elliot Church, Recording Secretary Laurie Slater

There were no public comments.

** It was moved by Vander Meulen and supported by Robert DeVries to approve the minutes from the June 25, 2024 meeting as presented. Motion carried unanimously by roll call vote.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open for the consideration of a petition to Extend a Nonconforming Use submitted by William A. Sikkel on behalf of Maria Garza for property located at 184 Florence Street, known more specifically as Parcel Number 70-16-20-151-015. Petitioner is requesting permission to extend the life of a nonconforming residential use. The subject property is zoned C-2 Community Commercial.

Present for this request was William Sikkel of 42 E Lakewood Blvd; Maria Garza, property owner of 184 Florence St; Tino Garza, builder for the project; and Dennis Reckley, architect for the project.

Mr. Sikkel explained that the single-family dwelling was lawfully constructed sometime in the 1950s. He noted that the zoning for the subject property eventually changed to commercial designation after the construction of the house which made the residential use nonconforming. The building has been used as a single-family dwelling consistently throughout the years. Mr. Sikkel stated that more recently, the current owner intended to make the dwelling her permanent residence and wanted to update the house to live there long term. Mr. Sikkel noted that her in-laws had previously been living there.

Mr. Sikkel noted that Ms. Garza's ex-husband, Tino Garza, indicated that his crew could do some work to the house to see what all needed to be done to the house to bring it up to code. Mr. Sikkel noted that due to some miscommunication between the parties, building permits had not been pulled yet and when the electrician pulled an electrical permit, the Township inspector found work being done without the necessary building permits. This resulted in a code enforcement from the Township as well as the Township zoning staff informing the owner of the extension of a nonconforming use requiring ZBA review and authorization.

Mr. Sikkel stated his client intends to get the proper permits for the work. The house has had the drywall removed down to the studs. The owner intends to install new electrical, plumbing, insulation, and drywall, as well as install new fixtures/cabinets/etc. When the drywall was removed, the workers found some water damage to some boards, which were replaced.

Mr. Sikkel said that the ordinance has certain provisions in place for remodeling/renovating nonconforming buildings. He noted that the focus of this petition is whether the proposed remodeling work substantially extends the probable duration of the building. He noted the probable duration of a properly maintained home is most likely indefinite. He argued that given no changes are proposed to the foundation and that there are minor changes made to the framing, the work does not substantially extend the probable duration of the building. Primarily, the overall structure and foundation have remained the same. Mr. Sikkel then argued that the proposed remodeling work will not interfere with the use of adjoining lands and that there is no adverse effect on any adjoining lands.

Mr. Sikkel discussed access for the property. He noted that the existing access is unusual; an easement was granted in the 1970s for access to this property as well as other neighboring properties. The easement is on property owned by a separate owner to the east and that the Township shows up as a grantor on the easement record. Mr. Sikkel noted Michigan law states that any party benefitting from use of an easement has the obligation to also maintain said easement. Given Staff's concerns about ensuring safe access for the residents and emergency vehicles, Mr. Sikkel indicated his client is agreeable to a condition of the petition approval being that access is maintained safe for emergency vehicles.

Mr. Sikkel rhetorically asked that if the request is not granted, what happens to this property? He noted that the house would come down and the lot sold for a commercial use; however, he stated that he didn't think commercial development on this lot would be desirable given the conditions of the area.

Member Haberkorn asked if there were any curbs cuts for the "Florence Street" access on Lakewood? Mr. Sikkel stated he didn't think so.

Member Bob De Vries asked Staff when the zoning of a property is proposed to change, how is the owner notified of the change? Staff noted that under the current rezoning process, there is a public hearing, legal advertising and notices sent out to adjacent property owners to inform them of the proposed zoning change and give them an opportunity to voice any comments about the change at the public hearing.

Chair Boersma asked Staff if the property was zoned for residential, would the property still have a nonconforming status? Staff stated that access to the property would still be considered legal nonconforming.

Member Haberkorn asked whether there is any criteria that may help the Board to understand how "substantial" is determined in terms of extending the duration/life of the building? Staff noted there is no firm qualifier, but in the past, structural work like work involving foundation repair or

new foundation has been understood to substantially extend the probable duration of a nonconforming building. Chair Boersma asked whether roof repairs require ZBA review? Staff said that normally maintenance work, like new shingles or roof tarpaper, is permitted, but structural work with new trusses, framing, etc. may need a review by the ZBA.

Chair Boersma asked Ms. Garza about the work that had been done without permits. Ms. Garza said she had contacted the Township about the permits, process, requirements, etc. Mr. Garza noted that there was miscommunication between him and Ms. Garza. He indicated that as she is the owner of the property, it is her responsibility to get the permits; he knew they needed permits for the work they were going to do and that they were waiting on drawings to be completed for permit submission. He stopped the work they were doing when the Township inspector informed them of the violation. Chair Boersma asked if they have the drawings now for the work they will be doing? Mr. Garza stated yes.

Member Bob De Vries asked if the work will be a “gut rehab”? Mr. Garza noted it will be; when they tore down walls to the studs, they found a lot of stuff not up to code.

Member Vander Meulen wondered what else the lot could be used if the dwelling is not allowed to stay? He noted commercial development may not make sense here and had some comments on whether denial tonight could be a “taking”. He noted he felt this case is rather unique.

Chair Boersma asked if Staff received any correspondence from neighboring properties? Staff noted there were some conversations with the owner of the access easement property, generally called Florence Street. That owner said they are willing to sell the property and they feel they do not need to maintain the easement for access based on a court judgement the owner received.

There was discussion among Board members about the work done to tear the walls down to studs and indicated that sometimes, you can’t know the extent of the work that needs to be done until stuff is demo-ed and torn out.

Member Vander Meulen indicated that the decision really comes down to the owner on whether they want to invest in the work needed to bring the building up to code.

Member Bob De Vries asked what the owner would do if the ZBA were to deny the petition. Mr. Sikkel stated they would tear down the house and try to the property for a commercial use, but he didn’t know who would want to the buy the property for such use. Mr. Sikkel stated he knows a decent amount of interior work is planned and needed but none of the work is structural, so he feels it does not substantially extend the life of the building.

Chair Boersma opened the floor for public comment. No one was present to speak to the request.

** It was moved by Haberkorn and supported by Ross DeVries to close the hearing. Motion carried by voice vote.

The Board went over the standards to review when considering an extension of a nonconforming use request.

1. Whether the extension, enlargement, alteration, remodeling or modernization will substantially extend the probable duration of the nonconforming structure, building or use.

Member Bob De Vries feels the work may substantially extend the duration of the dwelling once you have to bring the building up to current code. Chair Boersma and Member Ross De Vries noted that given there is no structural/foundation work proposed, the work does not extend the duration of the dwelling.

Further discussion recognized that whether a dwelling was occupied or not could factor into the duration of the use. Member Ross De Vries pointed out that the dwelling was only unoccupied because of the current work being done.

2. Whether the extension, enlargement, alteration, remodeling or modernization of the nonconforming structure, building or use will 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.

Member Haberkorn noted that there is no effect on adjacent properties given all remodeling work is interior to the building; those properties will not see the work being done.

3. The effect of the nonconforming structure, building or use and such extension, enlargement, alteration, remodeling or modernization thereof on adjoining lands in the surrounding neighborhood.

Chair Boersma stated with the proposed interior work, he couldn't see how there would be an impact on adjacent lands.

Chair Boersma reminded the Board that the owner has offered up maintaining safe access for Florence St.

** It was moved by Vander Meulen and supported by Robert DeVries to approve the request to extend the life of the nonconforming residential use with the condition that safe and adequate access for emergency vehicles be maintained.

Prior to the roll call vote it was clarified that access maintenance would be the responsibility of the subject property owner.

Motion carried unanimously with a roll call vote.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Doug Gritter of DMG of Holland, LLC for two vacant lots of record located on Manley Ave, known specifically as Parcel Numbers 70-16-20-177-006 and 70-16-20-177-007. Petitioner is requesting a variance to allow each of the legal nonconforming contiguous lots to be developed for a single-family dwelling. The petitioner is seeking relief from Section 20.4.B which requires two or more

noncomplying lots of record to be combined into one lot when they share a common side lot line and are in common ownership. The subject property is zoned R-2 Moderate Density Residential.

Present for this request was Doug Gritter of DMG of Holland, LLC.

Mr. Gritter noted he has a background with Pine Creek Construction and that he is here in the pursuit of affordable housing.

Mr. Gritter noted that the two subject lots are 50-feet-wide which does not meet current zoning requirements for the R-2 Zoning District. These lots are from an old plat which was established in the early 1900s.

Mr. Gritter also indicated that both lots have sanitary sewer laterals to serve the properties. He noted that according to the utility connection charge sheet he received from the Water and Sewer Department, it is the same cost to connect one of the lots to the public utility system as it does to connect both lots if they were combined.

Mr. Gritter argued that by keeping the lots as two separate lots, this helps reduce land cost to build a more affordable home. Additionally, he also argued that the Township gets a better long-term revenue sources from two lots rather than one lot.

Mr. Gritter noted the area has smaller lots from the old plat and that there is a variety of housing types in the neighborhood, from duplexes to modular homes to traditional-built single-family homes. He argued the mixed housing types and mixed lot sizes can be good for housing affordability. Mr. Gritter also noted that the area is a little rough around the edges and that one way to improve the area could be to get new houses built for homeownership.

Mr. Gritter emphasized that he is not asking for any reduction in building setbacks for these two lots; he is looking to maintain the minimum building setbacks for the R-2 District, meaning minimum 35-foot front, 7-foot side, and 25-rear setbacks. He noted that he has house layouts that would fit well within those setbacks.

Member Bob De Vries asked if Mr. Gritter would be the one building/developing the properties. Mr. Gritter said he works with different builders for the houses.

There was discussion about driveway connections, maximum front yard driveway coverage, and options for a shared driveway between the two lots.

Member Ross De Vries asked about the price points for the proposed houses and what is “affordable”? Mr. Gritter said the data he sees says \$400k or less may be considered affordable today, but that recent sales suggest a range between \$349k-399k. Mr. Gritter noted that if the lots needed to be combined, that would increase the price.

Chair Boersma asked Mr. Gritter if he felt he could build on these lots and meet all applicable zoning requirements. Mr. Gritter indicated yes.

Chair Boersma asked Staff if they received any correspondence from neighbors. Staff said no. Member Bob De Vries asked if building a duplex is an option for the properties or property (if combined). Staff stated a duplex is not an option under the current ordinance as duplex lots in the R-2 Zoning District must be located on a County Primary Road, and Manley Avenue is not.

Chair Boersma opened the floor for public comment. There was no one present in the audience to speak to this request.

** It was moved by Bob De Vries and supported by Haberkorn 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.***

Members indicated that comments from the Staff Report for this standard were true, however, there are several nonconforming lots in this area which is a unique condition of the neighborhood. Though this lot width may not work in other circumstances or areas, it fits in here.

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***

Member Bob De Vries asked whether other 50-foot-wide lots were left to be developed? Staff noted there are a few left to be developed. Member Bob De Vries noted he may not mind setting a precedent in this neighborhood with allowing the 50-foot-wide lots to be developed given the character of the 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.***

Member Vander Meulen noted he felt the question is more how you get affordable housing in. Chair Boersma noted that there is a possibility of financial gain, but it is not the sole motivation for the request.

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

land uses and properties.

Member Haberkorn stated he felt granting the variance will have the opposite effect on adjacent properties; it will be an improvement for those properties. Chair Boersma also noted that there other 50-foot-wide lots in the area so it's not abnormal here.

Member Bob De Vries noted he does not like the option that allows the side yard setbacks to be reduced for lots narrower than the minimum requirements and notes that should be a consideration for this request.

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

Members agreed that the applicant did not create the lots of record; they came from an old 1903 plat/subdivision.

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.*

Member Bob De Vries agreed with Staff' comment in the report that said "providing a variety of housing options is in the public interest and the subject location would support smaller lots more easily than many other subdivisions". He also agreed with Staff that public safety will not be impacted by the variance.

** It was moved by Robert De Vries and supported by Haberkorn to grant the variance with the condition that the setbacks for the two lots do not change from the setbacks shown on the survey in the petition submittal; in particular, setbacks shall not deviate from the minimum required front yard setback of 35 feet, side yard setback of 7 and rear yard setback of 25 feet. Motion carried unanimously with a roll call vote.

The meeting adjourned at 6:38 p.m.

Respectfully submitted,

Kate White
Assistant Planner/Zoning Administrator