

ZONING BOARD OF APPEALS
Regular Meeting
August 27, 2024

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

Present: Chairman Russ Boersma, Members Elliott Church, Ross DeVries, Robert DeVries, and Steve Haberkorn. Also present were Community Development Director Corey Broersma and Assistant Planner/ Zoning Administrator Kate White and Recording Secretary Tricia Kiekintveld.

Absent: Jack VanderMeulen, Recording Secretary Laurie Slater.

There were no public comments.

** It was moved by Haberkorn and supported by Robert DeVries to approve the minutes from the July 23, 2024 meeting as presented. Motion carried unanimously.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open for the consideration of a petition to nonuse variance submitted by Jon Andersh of Rhoades McKee PC on behalf of Andrew and Jennifer Foley for property located at 506 Orchard Hill Road, known more specifically as Parcel Number 70-16-30-176-041. Petitioner is requesting permission for the following variances in order to divide the subject property into 2 lots: 1) 55 feet from the minimum required 70-foot lot width and frontage on a public right-of-way, resulting in a lot width and frontage of 15 feet for each of the proposed lots; 2) relief from the 4:1 lot depth-to-width ratio for a lot of record with a depth of 149.07 feet and a width of 15 feet, resulting in a ratio of 9.93:1 for each of the proposed lots, and 3) 28 feet from the minimum required 35-foot rear yard building setback, resulting in a rear yard setback of 7 feet for the northern proposed lot. The subject property is zoned R-1 Low Density Residential, FP Floodplain, and Macatawa Residential Setback Overlay.

Present for this request were Jon Andersh of Rhoads McKee PC, and Andrew and Jennifer Foley, property owners of 506 Orchard Hill.

Mr. Foley explained the history of the property. He said that their family has a long history in the area, as Ms. Foley's parents live next door and Mr. Foley grew up along the lake as well. He stated that in 2017 they requested the Orchard Hill Road public right-of-way be abandoned by the Ottawa County Road Commission. At that time, their family requested the abandonment of the public right-of-way because of the neglect and disrepair of the road surface. Mr. Foley said they had to personally maintain the road because the county and the township were not maintaining it appropriately; however, because of county regulations, they were not able to bring the road up to county standards. He noted that after the abandonment they paved the access drive, which was a costly endeavor. Ms. Foley said that after the access drive was paved, the plow trucks started plowing it even though it now is a private access drive and not a county road.

Mr. Foley said they would like to build a home on the part of their property that is on the other side of the abandoned road. They would like to build the house as far north as possible so as to not block the view of the lake for the neighbors to the east. He pointed out that they have received several letters of support from the neighbors that would be most impacted by the development of the space, other than the neighbor directly to the west. Mr. Foley said that the development of the empty space would create new tax revenue for the Township.

Mr. Andersh explained that they are requesting a couple variances so that the owners may divide 506 Orchard Hill into two lots of record. The first one is for the frontage requirement. He referenced Section 8.2 regarding private easements in the zoning ordinance. Section 8.2 requires a lot frontage along the public street or 66-foot-wide private easement of at least 70' in the R-1 zoning district and they are requesting a frontage and lot width of 15 feet along Pinecrest Drive. At the time Orchard Hill was abandoned, the property owners received a variance of 30' for frontage. The second variance would be for the lot depth to width ratio. Currently, the front width is proposed to be 15' and the depth would be 149.07', which creates a depth to width ratio of 9.9:1 which is a violation of the 4:1 ratio. Regarding the rear yard setback variance, they are asking for a variance from the 35' setback to a 7' setback, due to the lot's location. The rear yard will abut the side yard of the neighboring parcel.

Mr. Andersh went through the standards for granting a variance.

- a. Standard 1 – Mr. Andersh feels they meet both items: a. (Exceptional narrowness of the width or depth of a lot of record, or irregular shape) and item d. (Other exceptional or extraordinary dimensional conditions or characteristics of land or lot of record.) He said this lot is a unique flag lot which is what is driving this request.
- b. Standard 2 – Mr. Andersh stated that flag lots are unique in this neighborhood. He said they plan to maintain the existing 30' wide access easement which will provide access, maintain utility access, as well maintain the emergency access that is currently there (they have a draft easement that they will record with the property that would provide access for the proposed new lot).

Regarding the depth to width ratio, Mr. Andersh argued that Section 22.2 in the ordinance does not dictate where you measure lot width. He thinks it would be appropriate that they measure along the buildable area as lot width and not include the flagpole area of the property. Mr. Andersh cited other parcels in the township that have unusual shaped lots that create ratios that do not meet the ordinance requirements.

- c. Standard 3 – The variance is not being sought for financial gain, rather it is being sought to allow the land to be used to its full potential.
- d. Standard 4 – Several letters have been submitted to the Township in agreement with the plan for the land.
- e. Standard 5 – This request stems from the Orchard Hill abandonment, which was not self-inflicted.

- f. Standard 6 – The proposed home is not contrary to public interest and the style of the home would align with the neighborhood.

Mr. Andersh also noted that they plan to preserve the original access and utility easement, as was a stipulation of their previous nonuse variance for the 30-foot lot width from 2017.

Mr. Robert DeVries asked if Orchard Hill bisected the lot. Staff said it had and created 2 lots of record. He then said that the width of 76' (east to west) meets the minimum width of a lot if Orchard Hill was a road. Mr. Robert DeVries asked if there was a minimum lot depth requirement. Staff indicated that there is no minimum depth requirement; it would then be based on area and Staff indicated that the minimum area would need to be 10,500 sq. ft. for an R-1 lot. Mr. Robert DeVries said it looks like they are looking at about 11,000 sq. ft. He asked if it was correct that if the public right-of-way wasn't abandoned, they would not need the variances? Staff stated if the public right-of-way had not been abandoned, it would be a nonconforming lot. There would have been a front yard setback of 35' and rear yard setback of 35' which could have created a tight building envelope and could have needed a variance as well as a nonconforming building approval from Zoning Board of Appeals.

Mr. Foley explained that they plan to build a small home meeting the minimum requirements of 1,200 sq. ft. for their parents as they age.

Mr. Robert DeVries asked who maintains the access easement currently? Mr. Foley replied that they do. Staff noted that this lot would need to be added to the access easement as the easement currently reads 2 parties and this would change it to 3 parties. As was done with the 2017 variance for this property, the ZBA could stipulate that Staff review the easement language to ensure there is added verbiage for maintenance and maintaining emergency and utility access.

Chairman Boersma said that the Board has received letters of support. He pointed out that the neighbor to the west would be the most impacted by a smaller rear yard setback and they do not have a letter of support from him.

Chairman Boersma asked where they plan to build the house with 7' setbacks on all sides. Mr. & Ms. Foley said they plan to build as far north as possible.

Mr. Church asked if the use of this area was discussed at the time of abandonment. He asked if current staff were involved with the abandonment discussion. Mr. Broersma said that he was and remembers that the way the lot was configured with the public road, the owners would not be able to build an accessory building and by abandoning the road they would be able to build an accessory building. Mr. Foley said that he doesn't agree with Mr. Broersma's recollection of the discussions, and he didn't even realize that prior to the road being abandoned they would not have been able to build an accessory building in that area. Mr. Broersma said that before Orchard Hill was abandoned, portion of the lot northwest of the Orchard Hill was a separate lot of record. Mr. Foley stated that they always thought it was 1 lot of record. Staff explained that with the public right-of-way dividing the property that would have made 2 separate lots. Mr. Foley stated that they pushed for the abandonment of Orchard Hill because of the issues they had with the County and

Township not maintaining or plowing the road; abandoning the road would allow the Foleys to maintain their drive access. Mr. Church requested the notes from the abandonment meeting be pulled up for review. Mr. Church noted that the original intention for this land weighs in on his decision.

Mr. Robert DeVries asked if they were denied an accessory building at that time. Mr. Foley said they never requested an accessory building in 2017.

Mr. Church asked if the road had not been abandoned, would just a minimal variance be needed now? Staff said it would have potentially needed a front or a rear yard setback, but it would be an undersized lot; however, because it was a plat, there may have been provisions to build by-right. Mr. Church clarified that fewer variances would have been needed. He also asked why the easement is being split, why can't the whole easement be part of one of the parcels. Mr. Andersh said a private street easement for three homes would need to be 66' wide. Mr. Church did note that a private drive easement with a width variance could be a possible option as opposed to their current variance requests.

Mr. Andersh asked if this was a plated lot of record, would the build area still apply. Staff said that it would not, they may have only needed a variance for either a front or rear yard setback.

Mr. Church asked if option B would be a better option so there are less variances, and the variances needed would be more consistent with what the Zoning Board of Appeals has done in the past. Staff indicated that if it was a private drive, it would affect how the front and rear lot lines are considered; the northern lot line would then be the rear lot line making it subject to a 35' rear setback, therefore not allowing them to keep the house as far north as possible.

The Board then discussed running water service to the property. Staff said they talked to the Director of Public Works, and he said a new service would need to be run in a separate private utility easement; this may be achieved either through the neighbor to the east or the lot to the west's yards from Howard Ave. Mr. Andersh said there is water in the easement and wondered if they could just hook in through that service. Staff answered that the Director of Public Works said they cannot connect to the service from Orchard Hill.

Chairman Boersma asked if the applicant should find out if a 10' easement is possible before the Zoning Board of Appeals grants any variances. Mr. Andersh asked the Board to grant the variances under the condition that either a 10' easement is given or that they can tie into the water service in the area already.

Staff noted that they still need to secure an answer from the Fire Chief regarding adding a house to this property and whether the firetruck turnaround on-site would be sufficient.

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.

** It was moved by Boersma and supported by Ross DeVries to table all variance requests to allow Staff time to retrieve minutes from the 2017 meeting when Orchard Hill was abandoned, obtain information from the Fire Chief, and obtain more information from the Public Works Department regarding water service. Motion carried unanimously with a roll call vote.

The meeting adjourned at 6:34 p.m.

Respectfully submitted,

Tricia Kiekintveld
Recording Secretary