

ZONING BOARD OF APPEALS
Regular Meeting
June 25, 2019

Present: Chairman Steve Haberkorn, Vice-Chairman Russ Boersma, Members Bob Swartz, Elliott Church and Ross DeVries. Also present were Community Development Director John D. Said, Assistant Community Development Director Corey Broersma and Recording Secretary Laurie Slater.

Absent: Jack Vander Meulen

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

** The Minutes of March 26, 2019 were approved as written.

Chairman Haberkorn explained the Public Hearing process to the audience.

Mr. DeVries, being a member of Community Reformed Church, recused himself from the variance request for Community Reformed Church and left the Boardroom.

Hearing declared open to consider multiple nonuse variance petitions submitted by Brian Lamar on behalf of Community Reformed Church for property located at 10376 Felch Street, known more specifically as parcel number 70-16-13-300-055. Petitioner is requesting: 1) A variance of 7.5 feet from the required 10-foot wide landscape buffer necessary for a front yard; 2) A variance of 6 trees and 37 shrubs from the required 6 trees and 37 shrubs required for a front yard; and 3) A variance of 8 square feet from the maximum 40 square feet for a sign, resulting in a sign area of 48 square feet. The purpose of the variances is for the construction of a parking lot expansion. The subject property is zoned R-2 Moderate Density Residential.

Present for this request was Brian Lamar on behalf of Community Reformed Church.

Mr. Lamar explained that there is approximately a 4' area between the bike path and the parking lot, not enough room for a 10' landscape buffer required in a front yard. If they were to put in the buffer according to ordinance, they would be 9-1/2' away from the building. They are willing to plant a small row of hedges about 30" in height in the 4' area to defuse the headlights. Also, there is a powerline overhead so they would have to plant trees and shrubs that would not grow too high.

The Board asked what the applicant would do if they were not granted the variance. Mr. Lamar responded that that they looked at diagonal parking and that was just confusing. They would have only one side of parking instead of two. He further explained that they are in the process of revitalizing the basement. They need the closer parking for the elderly. They are just trying to continue through with what was set in motion years ago. They further discussed the area by the offices and how tight it would be for emergency vehicles.

Mr. Church explained that there are two reasons for the ordinance; one is for safety and the other is the aesthetics of the property. The vehicles being parked so close to the bike path pose safety issues. There are always children running around before and after church. In a more walkable community, there is more use of the bike path than in the past. The buffer lets people know what is private property, what is motorized and what is walkable. Mr. Church further stated that it's not the Boards job to make the property to comply with the applicants wants, it's the applicant's job to comply with the ordinance. There is limited site area to work with, work within those limits. There are options.

Mr. Lamar responded that he does not know that they have ever had a safety issue. Parking is currently 4' from the bike path that hasn't changed. The parking setback changed a year ago with the new ordinance.

Mr. Lamar further stated that they could tear out the sidewalk that was put in two years ago, however, it is a couple of feet higher than the nursery. They are trying not to lose parking places especially closest to the building. They could do a 6-1/2' buffer.

The Board asked staff why they had to change the parking lot to comply with the new ordinance.

Mr. Broersma explained that they are making enough changes to the property to warrant it according to Section 10.2.B.3 of the Ordinance.

Community Reformed Church put up the existing sign in 2016. At that time, they got a permit for it. The sign is now in the way and they need to move it. The sign is now 8 square feet too large. The changing of the sign ordinance last year made it noncompliant. The words "Community Reformed Church" are stationary and the other portion of the sign is luminated.

The sign does not endanger anyone and it's not an inconvenience to surrounding properties. It was approved two years ago. It will be within the setbacks so no safety issues.

Staff is working with Community Reformed Church on the placement of the sign and the 30' clear vision triangle as it is on a corner.

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

** It was moved by Mr. Boersma and supported by Mr. Church to close the hearing. Motion carried.

The Board went over the standards to review when considering a nonuse variance request.

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:

- 1. Exceptional narrowness of the width or depth of a lot of record, or irregular shape.**
- 2. 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.**
- 3. Extraordinary location of an existing building or structure that allows no other practical or feasible location for expansion because of exceptional land features.**
- 4. Other exceptional or extraordinary dimensional conditions or characteristics of land or lot of record.**

There are no exceptional, extraordinary, or unique characteristics or conditions of the land. It is the applicant's desire to develop the property.

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

It's hard to say if this would apply to just this lot or others too.

The sign is existing. They only wish to move it.

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 request is for convenience not necessity. They would have less parking. They could redo the sidewalk. They have architects and engineers who could come up with a way to lay this out so that it complies with the ordinance and works for the applicant.

The sign is just being moved it is not changing.

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

It depends on the screening. If they build within the scope of the variance there is no issue.

The sign would not be a detriment as it is already existing.

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

The variance is sought for their own wishes.

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.

The proposed variances would serve the petitioner's interest and convenience, and in the case of the reduced buffer widths would be contrary to the public interest, due to the visual impact along 104th.

However, Staff does not believe that approval of a request for an existing sign will be contrary to the public interest.

** It was moved by Mr. Church and supported by Mr. Swartz to deny the request for 1) A variance of 7.5 feet from the required 10-foot wide landscape buffer necessary for a front yard; and 2) A variance of 6 trees and 37 shrubs from the required 6 trees and 37 shrubs required for a front yard, and approve the request for a variance of 8 square feet from the maximum 40 square feet for a sign, resulting in a sign area of 48 square feet with staff approval of the placement of the sign.

Motion carried unanimously.

6:27 p.m. Ross DeVries returned to the Board Room.

Hearing declared open to consider a nonuse variance petition submitted by Todd Sneller on behalf of Dirkse Capital Management LLC for property located at 12659 Riley Street, known more specifically as parcel number 70-16-09-300-083. Petitioner is requesting: a variance of 6 vehicle spaces from the required 10 drive-through vehicle stacking spaces, resulting in a total of 4 drive-through vehicle stacking spaces. The purpose of the variance is for the construction of a restaurant drive-through lane. The subject property is required to adhere to the C-1 Neighborhood Commercial Zoning District requirements per an approved Planned Unit Development agreement.

Present for this request was Lynnelle Berkenpas of Holland Engineering.

Ms. Berkenpas explained to the Board that Rita's Ice Custard would like to put in a drive through for their business to be located in the Riley Plaza. The building has been there since 2002 at that time the plan was to add parking spaces along the northern most property line if they were needed. Since then the flood maps have been revised and that is no longer an option.

Ordinance requires there to be enough room in the drive through for ten stacked spaces. Since that is not possible due to physical conditions of the property, they are proposing to have 4 stacking spaces with two additional designated parking spaces on the other side of the drive through and two spaces ahead of the window for a total of 8 spaces.

The options are limited due to the property to the north no longer being available for development and that the current parking spaces serve other businesses in the plaza, so making a change to parking is not an option either.

The Board asked what if all the spaces were filled and there were still more than six cars in line, would it obstruct traffic.

Ms. Berkenpas explained that their peak hours are between 6 pm and 9 pm and that what they serve is less complicated than Dairy Queen. They serve ice and custard only. It takes 30 seconds or less to serve a customer.

There was discussion of the service/pay window being relocated further to the south, making more room for additional vehicles.

Mr. Snelling replied that there is a support column to the south and that is why the window cannot be located further to the south.

The Board asked for data on walk-in customers versus drive through customers. They replied that this would be the first Rita's with a drive through so they have no data. The average number of customers per day is 100. This Rita's would also have an outside seating area.

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

Mr. Broersma reminded the Board that whatever is granted runs with the land not the business. What may not be a concern for this type of business, may be for a future tenant.

Ms. Berkenpas told the Board that they still have to go before the Planning Commission to get a Special Use Permit because of the land being zoning C-1. So, any future business would have to do the same.

In response Mr. Said clarified that in Section 15.6 of the Zoning Ordinance, it states that a Special Use shall run with the land.

There was further discussion of other options, all of which they had considered and did not work for reasons of mobility.

** It was moved by Mr. DeVries and supported by Mr. Church to close the hearing. Motion carried.

The Board went over the standards to review when considering a nonuse variance request.

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:

1. **Exceptional narrowness of the width or depth of a lot of record, or irregular shape.**
2. **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.**
3. **Extraordinary location of an existing building or structure that allows no other practical or feasible location for expansion because of exceptional land features.**
4. **Other exceptional or extraordinary dimensional conditions or characteristics of land or lot of record.**

There are some features that are practical difficulties. The flood plain has an impact on what can be built where which makes it difficult. Whether they need a drive through is questionable, it's what they want. It is the desire of the applicant to have a drive through, Rita's does not normally have a drive through, this would be the first one. Maybe this is the wrong place for it. This building supports the use as a restaurant, but the land is not equipped for a drive through.

Others commented that in reality today's customers want to go through a drive through rather than having to park and go in; it's today's society.

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

The existing site conditions, including floodplain, pavement, and building locations, result in an unusual set of circumstances not normally seen in lots of record in this zoning district.

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.

Provision of a drive-through is necessary for the preservation and enjoyment of a property right.

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

It is questionable, it may or may not be of substantial detriment to adjacent properties. Rita's may not be, but a future use might be.

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

They did not create the flood plain, but it is their desire to put in a drive through window.

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.

The proposed variance would serve the petitioner's interest and convenience, but would not be in the public interest nor would it serve the spirit of the ordinance.

** It was moved by Mr. Church and supported by Mr. Boersma to deny the request as presented because of concerns for future uses. Motion defeated 3 to 2 with a roll call vote; with opposition from Swartz, DeVries, and Haberkorn.

** It was moved by Mr. DeVries and supported by Mr. Swartz to approve the request as presented with 6 vehicle spaces in the drive-through and 4 designated parking spaces. Motion carried 3 – 2 with opposition from Church and Boersma.

** It was moved by Mr. Boersma and supported by Mr. Swartz to remove from the table a petition for a nonuse variance submitted by Robert and Pam Molenhouse for property located on Howard Avenue (unaddressed parcel), known more specifically as parcel number 70-16-30-150-033. In order to proceed with a land division within a recorded plat, the Petitioner is requesting a nonuse variance of 273 feet from the maximum allowed depth of 256 feet for a lot with a width of 64 feet; resulting in a total depth of 529 feet. The subject property is zoned R-2, Moderate Density Residential District. This item was tabled at the December 2018 ZBA Meeting.

Present for this request was Bob Molenhouse.

Mr. Molenhouse explained that he would like to put two houses on this two-acre parcel. One for himself and one for his son. They did try to be compliant and go with staff's suggestion of a 66' easement. That created a very small buildable envelope on parcel A because it created a corner lot with two setbacks of 35 feet on the side and the front. They don't want the house facing the other houses to the sides, they are on the lake, they want to face the lake. So, they are going back to their original plan, asking for relieve in the depth to width ratio.

Mr. Molenhouse further stated they are looking for direction. They just want to put one house on the road and one on the lake. The parcel is 2 acres in size. They need to

access the portion of the parcel that would be on the lake if they were granted the land division. It's the lake on one side and Howard Avenue on the other.

Mr. Broersma pointed out to the Board that Orchard Hill was once the access to this portion of the parcel, but has since been vacated.

Mr. Church stated that this variance is for convenience. It is the depth to width ratio creating the problems. It does not meet the standard that you cannot make use of the property without a variance. You can use the land, maybe just not the way you want.

The Board asked how long Mr. Molenhouse has owned the property. He stated that he has owned it for two and a half years and that it would have a low density compared to the surrounding area.

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

** It was moved by Mr. Church and supported by Mr. Boersma to close the hearing. Motion carried.

The Board went over the standards to review when considering a nonuse variance request.

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:

- 1. Exceptional narrowness of the width or depth of a lot of record, or irregular shape.**
- 2. 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.**
- 3. Extraordinary location of an existing building or structure that allows no other practical or feasible location for expansion because of exceptional land features.**
- 4. Other exceptional or extraordinary dimensional conditions or characteristics of land or lot of record.**

It's the depth to width ratio that is exceptional here. The lot is sloped, but no drop off. There are currently no buildings on the parcel.

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

Other lots that are narrower predate the ordinance.

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 for convenience. The property can still be enjoyed without splitting it.

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

There would be no adverse effect on other lands.

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

The applicant created the problem by wanting to split the lot.

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.

No adverse effect.

** It was moved by Mr. Boersma and supported by Mr. Swartz to deny the request as presented. The applicant has other options. Motion carried unanimously.

There were no public comments.

There was no other business

The meeting adjourned at 7:55 pm.

Respectfully submitted,

Laurie Slater
Recording Secretary