

ZONING BOARD OF APPEALS
Regular Meeting
April 28, 2020

Present: Chairman Steve Haberkorn, Vice-Chairman Russ Boersma, Member Jack Vander Meulen, 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. Also, present was the ZBA Alternate Bob De Vries.

Absent: None

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

** It was moved by Mr. Vander Meulen and supported by Mr. Church that the Minutes of November 26, 2019 be approved as written. Motion carried.

Chairman Haberkorn explained the Public Hearing process to the audience.

Hearing declared open to consider a petition for a nonuse variance submitted by Joseph & Myra Ocasio for vacant property located at River Hills Drive (unaddressed parcel), known more specifically as parcel number 70-16-20-476-030. Petitioner is requesting a variance of 28 feet from the required 35-foot front yard setback; resulting in a front setback of 7 feet, for a proposed single-family residential dwelling and attached garage. The subject property is zoned R-2 Moderate Density Residential and FP Floodplain.

Present for this request was Joseph and Myra Ocasio.

Mr. Ocasio explained to the Board that due to the uniqueness of the property he purchased in August, the way the wetlands are situated and the slope, he needs a 28-foot variance on the front yard that is required by ordinance to be 35 feet, resulting in a 7-foot front yard setback in order to build a house on it. He further explained they had a Geotech Survey performed.

Mr. Vander Meulen asked what the survey showed. Mr. Ocasio stated that the engineer recommended that they utilize helical foundation piles going down about 30 to 35 feet below the grade to get to more solid ground. The previous owners dumped sand and debris on the property to make it more buildable. They have some site work to do to get to stable ground. They would like to begin building this summer. They are in the midst of finalizing the construction drawings with the architect.

Mr. Church asked where the house is in relation to the road. Community Development Director, John Said, stated that there is approximately 68 feet of distance separating the front of the actual structure to the edge of the road rather than the center of the right of way. The road right-of-way on River Hills Drive is wider than a typical right-of-way. It is approximately 90 feet wide. River Hills Drive hugs the northern portion of the road right-of-way. The distance would be 61 feet is right-of-way and 7 feet is the setback.

There was discussion of the location of the driveway and it being in the road right-of-way with the exception of 7 to 8 feet.

Mr. Church stated that generally one is not permitted to park in the right-of way. Staff stated that enforcement of parking in the right-of-way is usually when there is parking on the street that impacts safety and access, not parking in the driveway, unless there is a bike path and it is being blocked by vehicles.

Mr. Church stated that the objective of the ZBA is to protect the rights of the public. We do not want to grant a variance that would infringe on the public's rights. The road right of way is a public right of way and routinely parking on the right of way is infringing on the public's rights. He further stated that he respects the fact that the property is an unusual piece of property. It is our practice to grant some relief and there are reasons to grant a minimum variance to enable someone to build on the property. Perhaps a lesser amount that would be adequate. He asked for staff's input.

Mr. Said pointed out to the Board on the aerial photo on page 1 of the applicant's application that the gray area is the floodplain and this leaves a very small buildable area. The proposed positioning of the house on the property leaves the rear of the house five to ten feet from the floodplain area. He further stated that if the house were moved to the west and south there are grade changes that would also make building difficult.

The neighbor to the east was previously granted a 5-foot variance for similar reasons. He had less floodplain area and more buildable area on his lot.

There is space to park on the property. The house would have a two-car garage. Mr. Ocasio stated that they intend to park two of their vehicles in the garage. Their son just turned 16 so there would be a third vehicle which would be parked in the driveway. Even with a car in the driveway there would be 50 feet of driveway open.

Mr. Church wanted to make sure that the applicant was aware that since a portion of the driveway is in the road right-of-way, the Road Commission has the liberty to change the location of the road, which would make the road closer to the house.

Mr. Ocasio stated that he understood.

There was discussion about the neighboring properties and how the properties on the south side of River Hills Drive all have the same issue because of the topography and floodplain on the properties. The applicant is asking for the same as everyone else.

Mr. Broersma asked if the proposed house would have a basement or a retaining wall as the property drops 13 feet from the front of the garage to the back of the house.

Mr. Ocasio stated that there would be a walk out basement. The walkout would be three to four feet above the grade from the rear. This will be identified in the final plans.

There was no one online 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.

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.*

This is a very difficult piece of property and the applicant has done a very exceptional job of working with what they have to fit a house on it. There is a lot involved in knowing what it takes to keep the house there with what's underneath, besides the added complexity of building on a hillside.

There are a lot of practical difficulties. The exceptional narrowness of the lot, the topographical issues with sloping and the extraordinary dimensional issues and the lot characteristics of being in the floodplain.

2. ***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 applicant has the same issue as others in the neighborhood to the east and on the south side of the road. Consistent with previous actions.

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.***

Due to the characteristics of the property, looking at the property as a whole, the applicant is doing the best he can do with what the property has given him.

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

Neighboring properties are in the same boat. Last year the neighbor was granted a similar variance for his property. Other property owners are parking in their driveways that are

also in the road right-of-way. If and when the Road Commission would decide to change the road, they have that right to. The applicant is aware.

There is enough room between the edge of the road and where the parking will be. There is more driveway on his property than on some of the other properties along the south side of River Hills Drive. All the property owners are aware their driveways are in the road right-of-way.

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

The applicant did not create the floodplain. He bought the property in August of 2019 with the preexisting issue. He inherited the problem.

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.***

Granting this request would not be contrary to the public interest as long as the applicant confirms that he is aware the Road Commission has the right to move the road whenever they want. Mr. Ocasio has confirmed he is aware of this. This request is similar to other properties along the south side of River Hills Drive.

** It was moved by Mr. Boersma and supported by Mr. Vander Meulen to approve the request as presented. The applicant is asking for a similar request as the neighboring properties, he is not asking for a greater variance. Roll call vote. Motion carried unanimously.

Chairman Haberkorn asked if there were for any general public comments.

The meeting adjourned at 6:18.
Respectfully submitted,

Laurie Slater
Recording Secretary