

ZONING BOARD OF APPEALS
Regular Meeting
August 25, 2020

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

Absent: None

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

** It was moved by Mr. Church and supported by Mr. Boersma that the Minutes of July 28, 2020 be approved as corrected. 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 Robert Kloosterman for property located at 2665 104th Ave., known more specifically as parcel number 70-16-14-400-012. Petitioner is requesting a variance of 1,920 square feet of area from the maximum allowed 480 square feet area for an accessory building of 2,400 square feet. The subject property is zoned R-2 Moderate Density Residential and AG Agricultural.

Present for this request was Robert Kloosterman.

Mr. Said stated that there was an error in the legal ad. The allowed square footage for an accessory building on a lot of this size is 720 square feet, not 480 as stated in the ad. The variance is for 1,680 square feet of area not 1,920 square feet of area.

Mr. Kloosterman explained that they want a building where they can have their hobby woodshop, which now takes up 600 square feet in their basement, store their travel trailer, utility trailer, 4-wheel drive tractor, and wood splitter.

He further stated that they do not live in a subdivision. We deserve to have more. All five neighboring properties have acreage, with a depth of 1,000 feet. The first 100 feet of the property is zoned R-2 Residential, with the remainder being in the AG Agricultural Zoning District. Looking to the west you see no neighbors as it is forest and flood plain. South of him is light industrial with barns larger than what he is asking for. Across the street from 104th in Graystone the lots are smaller, but they have nice space for a nice garden. Properties with acreage and larger lots should be considered for more. His ideal size would be 2,400 square feet, the minimum he would be willing to go is 1,800 square feet.

There was further discussion about where on the property it would go. The neighbor to the north has a two-story barn, he would put it in line with that. It is the only good dry land he has, which is about 165 feet off the road. The Board asked how big the neighbors accessory building is. A rough guess of 20' x 30' was made by Mr. Said. Mr. Kloosterman stated that the barn on the property to the south is 40' long by approximately 30' wide.

Mr. Boersma asked if Mr. Kloosterman planned on having a driveway back to the accessory building as his plans show no driveway. Mr. Kloosterman responded that the travel trailer that is now sitting out in the sun, would be stored in the accessory building so yes, he would put in a crushed gravel or concrete driveway if he has to. He currently drives over the grass with the pickup truck to get the travel trailer. He would like to leave it as is he does not drive back there very often.

Mr. Said explained to the Board that he would have to have a driveway connection of some sort. There is a limit of 50% of the front yard can be driveway. If a separate driveway would be needed, the Road Commission would have to approve it. Mr. Vander Meulen further stated that the fire department would require a driveway back to a building of that size.

The Board discussed other options available to the applicant. His current garage is 437 square feet. He is allowed 50% of the total building footprint or 1,050 whichever is less. He has room to add on to his existing garage. He is allowed a 720 square foot accessory building. His travel trailer is 37 feet long and 8-9 feet wide, so he would need approximately 400 square feet for his travel trailer. Between the two, he would have at least 1,600 addition square feet of area for storage and his woodshop and would comply with the current ordinance.

There is an existing shed with a leanto on the property of 304 square feet. A branch came down on it and knocked it off the foundation.

When asked if he had considered expanding his existing garage, Mr. Kloosterman replied no. He has never considered adding on to the existing garage unless there is some real advantage to it. Mr. Church further explained that he had two options to accomplish his goals – add on to the existing garage and build the 720 square foot accessory building and be within the requirements of the ordinance. Mr. Kloosterman replied that he is not a man with a lot of money. It would be easier on the budget to build a pole building.

There was further discussion about the accessory buildings Mr. Kloosterman referenced in his opening statement. Mr. Said explained that the only pertinent building on Residential Zoned Property is the approximately 20' x 30' one to the north. The accessory buildings on Industrial property are completely different. Also, Mr. Said further stated that the larger accessory buildings in the surrounding area were developed prior to the currently ordinance, if they exceed the maximum square footage allowed, they are now considered legal non-conforming structures.

Sue Dalman of 2642 Pebble Ct. was present in the audience to speak to this request. Her property is adjacent (west) to Mr. Kloosterman's. If this request is granted it would set a precedent for the entire Township. There could be others that want a building of this size. The proposed building is larger than her house with the garage. The back yard is a beautiful forest for 6 months out of the year. However, the back of her house is all windows and October thru May she can see through to his property. That is a rather large building to have to look at. She further stated that Mr. Kloosterman came before the ZBA with a similar request in 2012 and was not approved.

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

The Board went over the six 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.***

There are no unique circumstances concerning this property.

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.***

There are no unusual circumstances.

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 variance is not necessary for the continued enjoyment of the property right. He can add an accessory building within our ordinance and add on to his garage as well.

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

Granting the variance would be a detriment to adjacent properties because of the size. The proposed building would be larger than accessory buildings to either side of him. Also, there would be another driveway.

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

The problem is self-created. The variance is being sought for storage space. He has an option within the ordinance – add on to the attached existing garage and construct a 720 square foot access building that meets ordinance requirements. That would come close to meeting the space requirement he has described. Not having considered the alternative that is permitted makes the situation self-created.

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.***

An accessory building of this size is not within the spirit of the ordinance. It is nowhere

near the size that is allowed in the ordinance.

** It was moved by Mr. Vander Meulen and supported by Mr.Boersma to deny the request for reasons stated in the standards. He has other options within the ordinance. The request exceeds what the ordinance allows and would not be in keeping with other accessory building in the neighborhood. Motion carried unanimously.

Hearing declared open to consider an administrative appeal submitted by Joel Bouwens on behalf of Kyle and Jacki Curtiss for property located at 2726 Meadow Drive, known more specifically 70-16-14-420-018. Petitioner is requesting an appeal of an administrative decision regarding a detached accessory structure. The subject property is zoned R-1 Low Density Residential.

Present for this request was Joel Bouwens, Attorney for Kyle and Jacki Curtiss. Kyle and Jacki Curtiss, Laura Davidson of Dwellings, and Doug Van Dussen of DVD Builders LLC were also present for support and interpretation of the plans.

Mr. Bouwens explained that they were before the Zoning Board of Appeals to get interpretation of whether the architectural character of the proposed pool house was “similar and compatible” with the existing house and provided definitions from a dictionary source.

Compatible – Capable of existing together without conflict. The house and the proposed pool house are both of traditional architecture and modern architecture. Both could be considered transitional architecture.

Similar – Resembling without being identical. Architectural character is broader than the shape of a roof. It includes the overall shape, material, craftsmanship, decorative details, interior spaces, site and environment.

The pool house as proposed does not fail to meet the standard of compatible and similar. They were designed to be compatible with each other.

Mr. Bouwens referenced the packet of 4 photos of the existing house of the porch and the deck in the back of the house adjacent to the pool. The roof is a very prominent feature of the house with its triangular shape both in the front and the back, one side higher, one side lower. The existing roof material is identical to the material to be used on the pool house. He pointed out the series of windows across the back of the house and how they are attached with black borders, which is not considered traditional. There were also letters from the designer, architect, and builder, as well as from surrounding property owners and a map highlighting the surrounding property owners that signed and submitted the form letter stating they feel the proposed pool house is compatible and similar with the existing house. Mr. Bouwens stated that at the time that Mr. and Mrs. Curtiss presented the materials to Mr. Said and Mr. Broersma, they did not have all the information that was presented tonight. It was a black and white drawing.

At the conclusion of Mr. Bouwens presentation, Mr. Said had some clarifying notes.

The letters from the designer and builders are people who are involved in the project and are a part of the application. They are not independent letters.

He further reminded the Board that Staff asked for direction on how to deal with roof styles in both June and July.

There was discussion about the materials that are going to be used to construct the pool house. The windows would have the same trim around them, the roof would be of the same material and color as the house, the color of the siding would match the house shutters – medium gray. The size would meet the ordinance – 720 square feet.

There was further discussion about location of the pool house, visibility from the road and from surrounding properties and the height of the proposed pool house. The location would be between the basketball court and the house. It would not be visible from the road. Mr. Curtiss commented that it would be visible to the property owner to the west, Paul Krumpke of 2752 Meadow Drive. Mr. Krumpke was the first property owner Mr. Curtiss spoke with about the proposed pool house and Mr. Krumpke did sign the letter stating that he was not opposed the request. The height would be 16 feet, the existing house is double that height.

It was the consensus of the Board that they could see why Community Development Staff, Mr. Broersma and Mr. Said, made the decision they did. They went about the process correctly with consulting the ZBA and a majority of the Board indicating that the design was not consistent – specifying the roof style. However, the Board stated that the difference in making the decision tonight is that the Board was presented information that was not presented to Staff prior to the packet submitted by the applicant for tonight's meeting. They did not have all the facts.

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 four requirements to reverse an order of an administrative official.

It was the consensus of the Board that Staff did nothing wrong. They did what was right and brought the issue to the Board; the meaning of the ordinance about “similar and compatible” which is subjective at best. Given the proposed building's position behind the house, a unique situation, and the Curtiss' own all the property behind the house, it is simply a concern of aesthetics.

The Board asked Staff how to proceed to approve the request in light of all four requirements not being able to be applied in this situation.

Mr. Said reminded the Board that they did make a decision that they did say it did not meet the requirements of compatible and similar in the ordinance. They are allowed to have a different interpretation and to state the reason for the decision.

Mr. Vander Meulen stated more information was given – color, roof lines, windows. When they made the decision before it was a general discussion about roof lines. He further stated that if there is a question on interpretation that Staff can continue to bring that to the ZBA.

Staff cited Section 19.4 Powers and Decision, Part A Interpretations to support Mr. Vander Meulen's statement.

Mr. Curtiss said that at the time Mr. Said and Mr. Broersma made their decision, they did not have the pictures or all the facts about how the pool house would match the existing house, windows, architecture, etc. They did set out to intentionally make the house and the pool house match.

1. **Was arbitrary or capricious.** No, they studied the plans and made a logical decision based on their interpretation of the ordinance.
2. **Was based on an erroneous finding of a material fact.** Brought all the facts to us that were brought to them. There were additional facts shared at this meeting.
3. **Constituted an abuse of discretion.** – No, does not apply here at all.
4. **Was based on erroneous interpretation of this ordinance or the Michigan Zoning Enable Act.** – Comes into interpretation and what direction and facts were given. Just have a different interpretation of the ordinance of what it says is compatible and similar with more facts at our discretion. The Staff made a different and more conservative interpretation, which can be superseded by ZBA. The ZBA has a higher authority than Staff. Their decision was not invalid or erroneous, but it might be superseded by this Board. Staff was very open that they had a hard time interpreting this.

** It was moved by Mr. Church and supported by Mr. Vander Meulen that in light of all the facts and circumstances of this petition, including the existing structures on the property, the shape and intent of the property, and other factors that make this building itself inconspicuous, in light of the fact it is not visible from the road; in light of all the facts and circumstances of this petition it is the Boards view that the terms compatible and similar as used in the ordinance encompass this building. This decision is limited to this specific project and does not create a precedent. Motion carried unanimously.

** It was moved by Mr. Boersma and supported by Mr. DeVries to remove a request submitted by Daris DeGroot from the table having been tabled at the July meeting at the request of the applicant. Motion carried.

Hearing declared open to consider a petition for an extension of a nonconforming use submitted by Daris DeGroot/DLM Ventures for property located at 11269 E. Lakewood Blvd., known more specifically as 70-16-22-200-016. Petitioner is requesting to extend the nonconforming use of a pylon sign.

Present for this request was Daris DeGroot.

Mr. DeGroot stated that he was wrong for installing the sign and did not know the ordinance. He has lost 70% of his revenue over COVID-19. Putting up the new sign was a way to grab attention. Mr. DeGroot further stated that it is tough to match the ordinance. If he were to put in a monument sign it would be covered by snow in the winter. The sign would only be visible from one direction because of the parking situation and it would not match any other business sign from 112th to Fasteners. They all have pylon signs.

Mr. DeGroot asked if he had the option of paying a fine and putting the original sign back up because he can't afford to redo the sign at this time.

He put the sign in himself. He had done it in years past. He looked at the neighbors, this looks like the one down the road, so he figured the sign was okay.

The sign is 8' x 9'. There was discussion about where a monument sign could go. The first option was to take out the first parking space and put it there. Without going to the sight to measure, it was the opinion of Staff, that it would meet the setback requirements. Mr. DeGroot commented that someone might back into it. The Board suggested moving it to the east to be out of the way of potential damage.

Mr. Boersma asked for clarification from Mr. DeGroot of a statement made in the Staff Report "after removal of the original sign and prior to the new sign's installation, the applicant was informed by Township Staff that the proposed pylon sign was not permitted and a ground sign was required; however, the applicant chose to install the new sign anyway and now seeks Township approval after-the-fact." Mr. DeGroot stated that he misinterpreted the notice from Mr. Broersma.

He figured he had to go to request a variance through the ZBA anyway, he might as well put up the sign. He further stated that he pays a lot of money in marketing. He put up the sign to drive more traffic through during COVID trying to get some payroll money through the door.

A second suggestion from the ZBA was to put the sign in the grassy area in front of the building. Mr. DeGroot said that at some time in the future he might want to change the parking or add on to the building and the sign would be in the way there.

The Board commented that there is a 75-foot strip of grass, put the sign in the middle of it.

Mr. DeGroot responded to the comment made by Mr. Haberkorn that the current sign versus a monument sign can be seen equally from a car and that the monument is probably easier to see because it is at eye level. He stated that at their facility it is easier to see a pylon sign because of the way the parking lot flows and the neighbors parking lot sometimes would block the view of the sign if it were a monument.

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

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

The Board went over the three standards to review when considering the extension of a non-conforming use.

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

It would prolong the amount of time that sign will be on the property.

- 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.**

A couple of years ago a new ordinance went into effect and any new sign should be up to par with the ordinance. It may take a long period of time, but the pylon signs will go. Approving this request would be a poor precedence to set.

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.***

It would not impact adjoining lands.

He sought approval after-the-fact.

** It was moved by Mr. Vander Meulen and supported by Mr. Boersma that the request be denied per comments made in the hearing and standards. There is other property available on which to place the monument sign. If developed at a later date, they could deal with the sign then. They need to adhere to the ordinance. Motion carried unanimously.

There were no public comments.

Chairman Steve Haberkorn announced to the Board that he has given notice to the Township Supervisor, Terry Nienhuis, that after 20 years of service on the Zoning Board of Appeal, he will be resigning as of December 31, 2020.

The meeting adjourned at 7:53 pm.

Respectfully submitted,
Laurie Slater
Recording Secretary