

ZONING BOARD OF APPEALS  
Regular Meeting (held via Zoom)  
March 23, 2021

The meeting was called to order by Chairman Boersma at 5:37 p.m. due to technical difficulties.

Present: Chairman Russ Boersma, Vice-Chairman Ross DeVries (joined at 5:43), Members Jack Vander Meulen (joined at 5:49), Elliott Church and Robert DeVries. Also present were Community Development Director John D. Said, Assistant Community Development Director Corey Broersma and Recording Secretary Laurie Slater.

Absent: None

It was moved by Mr. Bob DeVries and supported by Mr. Church to approve the February 23, 2021 minutes as written. Motion Carried.

**Public Comment** – None.

Chairman Boersma explained the Public Hearing process to the audience.

**Hearing declared open to consider** a petition to extend a nonconforming use submitted by Kevin Nash on behalf of Nathan Michmerhuizen for property located at 0 James Street, known more specifically as 70-16-14-400-065. The request is to extend and alter a nonconforming accessory building and change the nonconforming use to another nonconforming use on the subject property. The subject property is zoned AG Agricultural.

Mr. Ross DeVries joined the meeting at 5:43 pm due to technical difficulties.

Present for this request was Kevin Nash.

Mr. Nash explained to the Board he owns the property at 10593, where he and his family live, and the property at 10581 James street, which he rents out. The property next to his is zoned Agricultural with accessory buildings on it, which he would like to purchase. His goal would be to renovate the largest of the accessory buildings into an indoor recreation facility for his kids. With a basketball hoop, floors, and heat for the winter and air for the summer. He understands that improving this accessory building presents challenges with the current Zoning Ordinance.

Mr. Michmerhuizen built the accessory building in the late 2000's for the operation of his Agricultural use, which has since then ceased.

Chairman Boersma asked Staff to give the Board an overview of each request.

Mr. Vander Meulen joined the meeting at 5:49 pm due to technical difficulties.

Mr. Said explained the nonconformities for the extension of nonconforming accessory building and change nonconforming use to another nonconforming. They are:

- AG Agriculture zoned property less than 5 acres (1.5 acres)
- AG Agriculture zoned property less than 325 feet of frontage (84 feet)
- Three agricultural buildings do not comply with the 60 ' side yard setback

- Note 45’ variance granted for largest building in 2001
- No principal use (typically a residence for an accessory private use)

Mr. Said went over the applicable Zoning Ordinances Sections:

**Applicable Zoning Ordinance Sections:**

***Section 2.4.F. - Accessory Uses***

*Accessory uses are permitted in conjunction with all permitted and special land uses. The Administrator shall review and determine allowable accessory uses to ensure they are customarily associated with the permitted or special land use and are incidental and subordinate to the principal use.*

***Section 3.3 - Spatial Requirements (AG Agricultural District) - Table 3.3A***

*Minimum Lot Area - 5 acres.*

***Section 8.3 Accessory Buildings – Table 8.3A***

*Maximum Number of Detached Accessory Buildings for Lots of Record with a Principal Building with Attached Garage = 1 Detached Accessory Building*

*Maximum Size of a Detached Accessory Building on a Lot of Record with a Principal Building with Attached Garage and 1-2 acres in area = 480 Square Feet*

***Section 20.1.B. - Extending of Use Prohibited***

*No building, structure or use which is nonconforming under this ordinance or any amendment or restatement thereto may be extended, enlarged, altered, remodeled or modernized unless such extension, enlargement, alteration, remodeling or modernization is first authorized by the Zoning Administrator. The Zoning Administrator may, in their discretion, decline to determine whether or not such authorization should be granted and, instead, refer [the] decision thereon to the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to the Michigan Zoning Enabling Act.*

***Section 20.1.C. - Changing of Uses***

*The nonconforming use of any building, structure or land shall not be changed to any other nonconforming use unless first authorized by the Zoning Administrator. The Zoning Administrator may, in their discretion, decline to determine whether or not such authorization should be granted and, instead, refer [the] decision thereon to the Zoning Board of Appeals as a matter for Zoning Board of Appeals decision pursuant to the Michigan Zoning Enabling Act.*

Other concerns Staff has if either of these requests are approved are:

- Proposal amounts to having five detached accessory buildings on a single lot.
- Four of the agricultural buildings would not be in rear yard as required.
- Three agricultural buildings do not comply with the 60’ side yard setback.
- Two buildings building exceed maximum allowed size (720 SF)
  - Applicant already obtained variance for pool/storage building size in 2016.
- Agricultural buildings remain uninhabitable for personal storage or personal recreation without structural engineering, code review, permits, and inspections.

These agricultural buildings have no Township Building Department approval of any kind. Because of the agricultural use and zoning they are exempt from Township rules and requirements. If the use of the property changes the building needs to meet current building code.

Mr. Bob DeVries had further question about rezoning the parcel and combining it with the property Mr.

Nash currently resides at and would the driveways need to be changed. Mr. Nash replied that he did not plan on changing the driveway at all other than to make the driveway of the parcel with the accessory buildings matching his current driveway.

There was further discussion about how many accessory buildings are on the surrounding properties. Also, the number of accessory buildings on this parcel and what kind of precedence that would set for the surrounding properties when they are no longer being used as Agricultural and they want to keep their out buildings too. This entire area on the Future Land Use Map is R-1 Residential.

Mr. Church asked Mr. Nash what improvements he would be making on the exterior of the accessory building. Mr. Nash replied that he has plans to install underground sprinkling, put up a fence to match the one on his residence, trees and plants for privacy, paint the exterior white and put on black shingles to match his existing house and eventually put in a driveway to match his existing driveway.

There was discussion of what the surrounding properties are zoned. To the east of Mr. Nash's dwelling, all properties, including the subject property with agricultural buildings, are zoned Agricultural up to 104<sup>th</sup>. To the west of Mr. Nash's dwelling there are two properties zoned Agricultural before reaching the Country Meadows Estates Subdivision which is zoned R-1 Low Density Residential.

Mr. Broersma stated that properties in this area are moving towards R-1 Residential. The difficulties will be in that they will want to use the agricultural buildings for something else. Mr. Nash could rezone, combine the properties and get rid of three building to move closer towards compliance.

Mr. Said stated that would set a precedence for larger accessory buildings. We have had requests in the past from applicants that wanted very large accessory buildings and the ZBA voted to deny. This would be a second oversized accessory building. The one by the pool was granted with a variance in 2016.

Mr. Nash stated that the buildings are going to exist either way. He is not asking for a new building. The buildings have existed for a long time. There is value in them. He assumes Mr. Michmerhuizen's plan is to maintain the buildings going forward.

Staff commented that that is speculative. Someone could purchase this piece of property in the future, take down the accessory buildings, and put in a small residential project.

The Board asked if there was going to be a kitchen, bathroom or shower facility as a part of the plan for this building. Mr. Nash stated that there will not be. There is a well pump inside that he plans to use for sprinkling. He was further questioned about the other three buildings. He explained they are old chicken coops with plaster walls, electrical and garage doors-pretty basic buildings.

Present in the audience to speak to this request was Tim and Barb Rusticus of 10558 Graystone Drive. They live behind the Nash family, kiddy corner to the east side. Their concerns were with additional housing and how to prevent it if the property were rezoned to Residential.

Mr. Said explained that yes, that is a possibility. If someone were to purchase the property and rezone it, they could split it and build houses back there. It is all speculative, but possible.

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

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

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

Yes, the remodeling of the pole barn would clearly and substantially extend the probable duration of the nonconforming structure.

- 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.***

That is an impossible question to answer. There is a high agricultural usage parcel to the west. However, most of their activity is during the day. The activities that are proposed on this parcel could extend into the evening, but not more so than the swimming pool next door.

- 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.***

That is an impossible question to answer. There is a high agricultural usage parcel to the west. However, most of their activity is during the day. The activities that are proposed on this parcel could extend into the evening, but not more so than the swimming pool next door.

Next the Board went over the Standards to review when considering changing the nonconforming use.

- 1. Whether the proposed use is equivalent to or more appropriate than the present nonconforming use to the zoning district in which the building, structure or land is located. No change to a less appropriate use may be authorized by the Zoning Administrator or the Zoning Board of Appeals.***

It is not any more appropriate being zoned Agricultural. It's not equivalent either. It is currently used for storage of farm equipment, but not actively farming. They want to change it to recreational uses with no principle use and the applicant would need to rezone the parcel to R-1 and combine the parcels.

- 2. Whether the proposed use will substantially extend the probable duration of the use of the nonconforming structure, building or use.***

Yes, the proposed use will substantially extend the probable duration of the use of the nonconforming structure.

- 3. Whether the proposed 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.***

It is hard to say. It is possible.

- 4. The effect of the proposed use on adjoining lands in the surrounding neighborhood.***

It is hard to say. It is possible.

There was further discussion among the Board Members about the public comments by the Rusticus'. There are no other neighbors present to speak to the request. It is here, it exists, not the same kind of impact that a new one would have. Not alarmed by the proposed use. What Mr. Church was concerned about was

the five accessory buildings. If rezoned to residential, they would then have two oversized accessory buildings. It would be hard to say no to future similar requests if we approve this one. The precedence they would be setting, what it would take to bring this building up to code, speculation about the future of this parcel and the consensus of the Board.

\*\* It was moved by Mr. Vander Meulen and supported by Mr. Bob DeVries to deny the request to extend the nonconforming use. Motion carried with one opposition from Mr. Ross DeVries.

\*\* It was moved by Mr. Church and supported by Mr. Vander Meulen to deny the request to change the nonconforming use from Agricultural to personal recreation. Motion carried with one opposition from Mr. Ross DeVries.

**Hearing declared open** to consider an administrative appeal submitted by Douglas Woods LLC for property located at 495 Douglas Ave., known more specifically as 70-16-19-376-028. Petitioner is requesting the following appeal of an administrative determination: (1) landscape buffer requirements adjacent to residentially-zoned properties. The subject property is zoned R-3 High Density Residential.

Present for this request was Matt Wickstra representing Douglas Woods. Also present was Dave Lamar owner of Advantage Marine (the parcel along the easement).

Mr. Wickstra first wanted to clarify what areas of the parcel were being discussed and the size of the parcel Advantage Marina occupies. He further explained that he is in no way trying to delete the buffer to the west, but put in only what is needed.

Mr. Wickstra explained that the access point to the parcel is via an easement. The easement was previously owned by Mr. Lamar and is now owned by Douglas Woods, LLC. Nothing changed other than ownership of the easement. The Township is requiring three rows of buffers – one on the west side of the drive, one on the east side of the drive and another one on the west side of Advantage Marine, which is also the east side of the drive. He is willing to put in the buffering, just why does there need to be three, could it be 2 strips instead.

Staff noted that level of detail was not included in the application. It simply requested to omit the requirements for landscape strips. The landscape buffering is not a staff decision. It is in our ordinance. Along the road and the edge of the property to the west is critically important to provide transition of commercial to residential. Staff has had no communication with the applicant prior to this meeting. This hearing is an appeal to an administrative decision, not a nonuse variance request to alter things. We can't grant the applicant anything.

Mr. Wickstra stated that he may have used the wrong form. He is okay with the strip on the west side of the property. The intent of the ordinance is to screen between uses. Dave's driveway and building are not separate uses. Why do we need two landscape buffers on the west side.

Staff believes they need three buffers according to the ordinance. One on each side of the driveway always, and one between Advantage Marine and the driveway.

Mr. Wickstra understood the ordinance to intend buffers between uses, not property lines.

Mr. Broersma read section 11.7 of the Zoning Ordinance where it stated that a type C buffer is needed between C-2 and C-2 Zoned properties. That would be one canopy type tree and 7 shrubs per 40 linear feet. It's a hard and fast rule in the Zoning Ordinance.

There was further discussion of how the applicant wished to proceed – withdraw his appeal and submit a nonuse variance request or continue with the hearing. The Board continued with the hearing.

The consensus of the Board was that administration had made the correct decision in the amount of buffering required by ordinance.

There was no one present to speak to this request.

Mr. Said presented two letters he received on this request.

The first was from Bill Hart, the owner of 515 Douglas Avenue, and partner and Manager of the 529 Douglas Avenue Townhouses. He feels the landscape buffer requirements are essential to protect the adjacent properties (letter with application).

The second letter was from Dixie Brunton, the resident of 515 Douglas Avenue. She feels the landscaping buffer along the driveway would go a long way towards reducing the noise and make the use of this residence more enjoyable (letter with application).

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

The Board went over the standards to review when considering an appeal to an administrative decision.

**1. Was arbitrary or capricious.**

No, staff correctly interpreted the Zoning Ordinance

**2. Was based on an erroneous finding of a material fact.**

No, the ordinance is clear that there is to be a buffer between zones, whether or not the applicant realized it when they made the change.

**3. Constituted an abuse of discretion.**

Absolutely not.

**4. Was based on erroneous interpretation of this ordinance or the Michigan Zoning Enabling Act.**

No, the applicant stated that further into the Ordinance Staff's interpretation was correct Section 11.7.

\*\* It was moved by Mr. Ross DeVries and supported by Mr. Vander Meulen to deny the request. Motion carried.

Next on the agenda was other business:

Staff asked ZBA for their input on Special Events. Are these events regional and are they commercial or noncommercial?

The definition of a special event in the ordinance is a temporary noncommercial community event such as a festival, fair, carnival, car show or sporting event. The Ordinance was put in place to control how many of these events happen in the community.

In particular a commercial event not charging admission but selling beer to donate the money to an animal rescue mission.

The second event is a house of worship holding a concert that is not religious and charging admission.

These events draw to the community, some from surrounding communities. The Shops at Westshore are designed to be a gathering place.

It comes down to what is commercial and what is noncommercial? What is the intent in the definition? Who's benefiting from it?

It was suggested by the Board that Staff confer with the Township Attorney on whether or not these events meet the definition of a Special Event. Are they commercial or noncommercial? They agree they are regional.

The next meeting is April 27.

Meeting adjourned at 7:48 pm.

Respectfully submitted,

Laurie Slater  
Recording Secretary