

ZONING BOARD OF APPEALS
Regular Meeting (held via Zoom)
April 27, 2021

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

Present: Chairman Russ Boersma, Vice-Chairman Ross DeVries (5:34 pm), Members Jack Vander Meulen, Elliott Church and Robert DeVries. Alternate Steve Darrow filled in for Ross DeVries until he arrived. 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 Vander Meulen and supported by Robert DeVries to approve the minutes of March 23, 2021 with one correction. Motion Carried.

Public Comment – None.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open to consider a petition for nonuse variances submitted by Laurie Hoek for property located at 2520 Valarie Drive, known more specifically as 70-16-14-379-004. Petitioner is requesting variances for separations between a Group Day Care Home and: (1) another Group Day Care Home; and (2) an Adult Foster Care Small Group Home. The subject property is zoned R-1 Low Density Residential.

Present for this request was Laurie Hoek.

Mrs. Hoek explained that she has had in Home Day Care for 25 years at this residence. She would like to upgrade to a Group Family Day Care for the next four years – until she can retire. There are two other care homes in the area closer than the 1500 feet required by ordinance. There is one on Gay Pree with one adult living there. The other one is on Spring Court which is in a different neighborhood that is not accessible by Valarie Drive.

Mrs. Hoek further explained that the reason she needs to upgrade is to care for two to three more children because two of the families that currently use her services are expanding their families. There would be no more traffic than there currently is. Most of the Day Care activities are in the backyard. She is inspected by the State yearly. Due to job insecurity this year, her husband has decided to stay home and help her. Mrs. Hoek stated that she spoke with some of her neighbors about the upgrade and some did not even know she had a Day Care out of her home. The children are usually gone by 5:15 pm.

The Board had questions for Staff about the variance being granted on a temporary basis since she planned on being done in four years. She did have to go before the Planning Commission to obtain a Special Use Permit as well as asking for this variance. If she were to voluntarily withdraw the variance, that could be an option. Also, there are the State inspections for the renewal of the license to do Day Care that take place once a year.

Mrs. Hoek stated that she would be willing to terminating the variance at the time of the sale of their house.

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

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

The Board went over 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 characteristics or land conditions that justify these requests, especially for the distance to the adult foster care home. However, the distance to the other group day care facility is a direct-line measurement, although the travel distance is greater than the required 1,500 feet. The adult foster care home has one adult. Granting this variance for the Group Day Care within 1,500 feet of another would not degrade the neighborhood by being there.

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.***

It is the closeness of the care facilities to each other. Not a factor that is going to affect the neighborhood.

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.***

Neighbors did not even know they have a day care in their home. That says a lot to how it effects the neighborhood.

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

Again, the neighbors did not know they have a day care in their home. By expanding by 2-3 children, it would not create a detriment to the neighborhood.

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

It is a matter of following the strictness of the ordinance and asking for an exception due to circumstances.

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.***

This is true. With the approval from the Planning Commission, Township Staff was going to inspect the fencing and backyard stuff. The property is overall very well taken care of with State

inspections. Not at all worried about public safety. Can't tell there is a day care by driving by.

** It was moved by Vander Meulen and supported by Church to approve the request as presented with the variance to be voluntarily terminated when the house is sold. Motion carried.

Hearing declared open to consider a petition for a nonuse variance submitted by Matt Wickstra/Douglas Woods LLC for property located at 495/499/503 Douglas Ave., known more specifically as 70-16-19-376-001. Petitioner is requesting a variance from landscape buffer requirements between commercial properties. The subject property is zoned C-2 Community Commercial.

Present for this request was Bill Sikkel on behalf of Douglas Woods LLC, and Matt Wickstra. Also present was Dave Lamar, owner of Advantage Marine (property to the east).

Mr. Sikkel explained to the Board that there is a 90-foot flagpole driveway to the property to the north. Advantage Marine is the property to the east of this driveway. They also use this drive to access their property. There is a buffer all along the west property which abuts a residential zoning district. That buffer complies with what is required by ordinance. The adjacent use is a driveway. Ordinance requires three rows of screening. They would like to remove the middle row of buffering that is between the driveway and Advantage Marina. There would still be two rows of screening. There is also a fence on the north end of the drive for Advantage Marine's outdoor storage. There is a lot of buffering for the driveway going back to the flag lot. The area in question has pavement, three feet of flat area, a ditch, and four feet of flat area, which is where the buffer would need to go. There is a gas line that runs in the three-foot flat area. It is difficult to plant trees over a gas line. Mr. Sikkel stated that it is overkill for this much screening for a driveway. The spirit and intent of the ordinance was for screening between uses, this is between a driveway, not a commercial use.

Mr. Sikkel went through the standards stating how the applicant meets the standards.

- The practical difficulty is that a 90-foot strip of land is used as a driveway to a large flag lot.
- Most other lots in a C-2 zoning district do not have a 90-foot strip of with no commercial use taking place within it other than a driveway.
- It is not typical to have to provide three layers of buffering for no activities taking place other than a driveway.
- There are two owners effected. To the west they have their buffer that is a solid buffer (meets ordinance) the property to the east has no objections. Only a couple of cars drive this driveway. Advantage Marine uses the driveway to get to their business. They don't need a double buffer to shield themselves from the driveway.
- The unusual set of circumstances is that there is no commercial use in the 90-foot driveway.
- The spirit of the ordinance is to buffer between adjacent uses, to protect from adverse effect. It is already buffered on both sides of the driveway. To the west got a full buffer, as they expected. To the east there is an adequate buffer. The literal interpretation of the ordinance is it contemplates a use happening in this 90-foot strip. It does not contemplate anything more than a driveway with no use taking place.

Mr. Lamar, owner of Advantage Marine, stated that he is good with the request.

The fact that there is a gas line on the east side of Advantage Marine was new information for Staff and the Board.

Mr. Sikkel further stated they are only asking for the variance for the driveway. The rest of the property would meet ordinance requirements.

Community Development Director, John Said, responded to Mr. Sikkel's review of how the applicant met the standards.

It was the applicant's choice based on interest in developing the property as he did, creating the situation.

It affects two properties today used by Advantage Marine, but later may be something else.

Placement of the improvements over a gas line should have been thought out better.

By granting this variance it could be setting a precedent. The ordinance requires buffering.

Mr. Sikkel commented that if this was an easement rather than a 90-foot property frontage it would not be required to have the extra row of buffering. It is extra, it has no purpose. There is no other commercial activity taking place.

There was further discussion among the Board about buffers in zoning districts.

The Board had questions as to who the landscaping and buffering plans had been submitted for approval.

Mr. Sikkel stated that the landscaping and buffering plans had not been presented to anyone other than staff prior to this meeting.

There was further discussion on the buffer, traffic noise and the gas line.

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

** It was moved by Ross DeVries and supported by Bob DeVries to close the hearing. Motion carried.

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

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 not a common scenario. Seeing 90-foot of frontage used as a driveway is a different situation than what we have run across before. The gas line is causing difficulties with the second buffer.

There was further discussion by the Board. The gas line was new information. Is the buffering compatible with the gas line? Don't know the exact location of the gas line. Mr. Church commented that it is not an exceptional condition if they knew the gas line was going to be there. The compatibility of all these things should have been considered prior to development.

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.*

Not any unique 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.*

Mr. Church stated that there is no justification as to why the variance is necessary. It is convenient not to have to plant trees. The driveway won't impede the use of the property.

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

There is still one buffer on the west and one on the east. It is not detrimental to adjacent properties and nearby land uses. Are three layers of buffers overkill or necessary. The number of trees and shrubs would be the same for both buffers on the east side. There would be no lesser amount because of there being two buffers. They would both have the same number of trees and shrubs.

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

Changing of the lot to a flagpole lot was created solely by the applicant.

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.*

Church – It is contrary to the public interest whenever we decide to not observe the law for convenience. The ordinances say a certain way, that's the way it should be unless there is a necessity to grant the variance.

Vander Meulen – It is not going to affect property owners in the neighborhood.
Ross DeVries – Somethings could be contrary to public interest but may not be harmful to the public interest.

Vander Meulen commented could we put the two adjacent buffers into one buffer? Trees on top of utilities is never a good thing.

Staff stated there is a drainage ditch in between the two buffers. You wouldn't want trees in the drainage ditch. It is not a good idea to design on the fly. Also, the buffer would be on someone else's property other than the applicant. Can't legally place that burden on the adjacent property owner.

The Board would like to see the applicant come back with a layout of exactly where things are and what they would propose as to extra buffering on the east side of the driveway. The Board would like Staff to meet with the applicant to see if they could come up with some kind of solution to make one buffer out of two. The Board also wants to see the cuts of elevation through this area.

** It was moved by Church and supported by Boersma to table this item. Motion carried.

Hearing declared open to consider a petition for a nonuse variance submitted by Apotheker Real Estate/Tim Apotheker for property located at 13181 Driesenga Drive, known more specifically as 70-16-

05-400-051. Petitioner is requesting a side yard setback variance for a proposed dust collection unit. The subject property is zoned I-2 General Industrial.

Present for this request was Becky Page with Holland Engineering, Tim Apotheker of Superior Cuttings, and Dave Ash and Marcel Vander Laan with Lakewood Construction.

Ms. Page stated that the building was built in 2014 or 2015 under the old ordinance. They are now in need of a full buildout, which was on the original design. All the requirements have changed. They are working with the Holland Charter Township, the HCT Fire Department and the Ottawa County Water Resources Department. It is difficult to meet all the standards.

They have tried to make this portion of the building similar to the existing portion. They would like to relocate the dust collector unit to the east side of the building. Currently the three concrete pads are being used for HVAC units. They would be moving one of them. Since the dust collector unit is larger than the HVAC unit, they would need a variance for it to go on the NE corner.

Ms. Page asked the Board to refer to the packet and the pictures for further information. Ms. Page asked Tim to explain to the Board what is done at this site. Tim explained that it is a metal fabrication company and they moved into this building in 2014/2015. They have been there for 5 to 6 years. The dust collector has been there too it is not new, it is just a relocation. The dust collector is used in the welding department, which is on the east side of the building, where the dust collector would be located. The dust collector is for the health and safety of the employees. It makes sense to put the dust collector on the east side for effectiveness. It vacuums the smoke out of the work area away from the employees. It does not work as effectively so far away.

Mr. Ash from Lakewood Construction addressed the Board about the request. He explained how the property was developed. It's in an Industrial Park with no residential properties around. The applicant keeps the dust collector painted and nice looking.

The Board asked why the dust collector cannot go on the north side of the building.

Staff responded that the fire access road is on the north side, along with water drainage required by the Ottawa County Water Resource Commission, so the north side of the real estate is used up.

Fire Chief Kohsel was consulted on the project. It is not his preference for the location of the dust collector to go on the east side of the property for fire response purposes.

If the dust collector does not go there, another HVAC unit will be installed on that cement pad.

There was discussion of visibility and screening from Driesenga & Hallacy.

Mr. Ash stated it is prudent to put the dust collector in the proposed spot. It is the same footprint as the HVAC unit however, it is taller. The dust collector does have built in fire protection. It is mostly smoke that it collects.

Dave with Lakewood Construction commented that they are going to landscape the entire east side of the building including the seven-year-old building, even though it was not required in 2014. The dust collector would be far less visible with the landscaping. There would not be that dramatic of a change in the view of it.

The Board commented that it is not the visibility of the dust collector that is the issue. It is the accessibility for the fire department should a fire happen to break out.

Mr. Apotheker stated that the hoods for the dust collector are six feet above the welding tables catching smoke, no sparks. There has not been a single fire in the 5-6 years of having the dust/smoke collector. It mainly collects smoke. They empty the dust collector 1-2 times per year. There is a very small collection of particles in it and at that point they are not flammable.

Ms. Page commented that the depth for access to the back of the building would be no different. The dust collector would be less intrusive than the HVAC.

Mr. Said pointed out that the level above the legs does have an overhang. It goes from 4'8" to 6'4".

Mr. Ash stated that he met with Fire Chief Kohsel and discussed the change. If they could bring the fire lane to the far east edge, and they could get a fire truck back there, he was okay with it. He knows the building is nothing but steel and they have a sprinkling system.

Fire fighters would be on foot, not in a truck, with a 150' hose, whether it is 12 feet or 4 feet high, how would that effect firefighting on foot with a hose.

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

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

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

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They are utilizing all the space available on the north side of the building. The fire chief is not in favor of the dust collector going on the northside due to access in case of a fire. There is also a drainage ditch. These are the features that prevent putting the fire lane further north.

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.***

Made use of every square foot of land, now there is nowhere to go with it.

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 Board did not believe this Standard was met, as the variance is not necessary for preservation and enjoyment of this property, nor is there any right affected. The variance is proposed for convenience.

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

Additional screening by the applicant. No complaints to the noise or visibility of the dust collector in the six years it has been there.

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

They could have somewhere along the line put the dust collector in a corner of the building. Maybe filled in the pond a little bit. Don't know that they have exhausted all their possibilities.

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.***

The proposed variance would serve only the applicant's interest and convenience; it would not serve the interest of this Ordinance nor other property owners in the district. Not sure it's within the spirit of the ordinance. Larger than the previously approved HAVC units.

** It was moved by Ross DeVries and supported by Boersma to approve the request as presented. Motion failed with a roll call vote of 2 Yes and 3 No.

** It was moved by Vander Meulen and supported by Bob DeVries to deny the request. Motion carried with a roll call vote of 3 Yes and 2 No.

There was no other business.

The meeting adjourned at 7:40 pm.

Respectfully submitted,

Laurie Slater
Recording Secretary