

ZONING BOARD OF APPEALS
Regular Meeting
June 28, 2022

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

Present: Chairman Russ Boersma, Vice-Chairman Ross De Vries, Members Jack Vander Meulen and Robert De Vries. Also present were Community Development Director Corey Broersma and Recording Secretary Laurie Slater.

Absent: Elliott Church

Public Comment: None

** It was moved by Ross De Vries and supported by Bob De Vries to approve the minutes of May 24, 2022 as written. Motion carried.

Chairman Boersma explained the Public Hearing process to the audience.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Mike Bocks on behalf of HS&J / Dutch Village for property located at 12350 James Street, known more specifically as 70-16-21-200-078. Petitioner is requesting a variance from the 50-foot front yard building setback for multiple buildings and structures; resulting in a front yard setback ranging from 2.5 feet to 37.5 feet. The subject property is zoned C-2 Community Commercial.

Present for this request was Mike Bocks.

Mr. Bocks explained to the Board that these variance requests are for clean-up of existing attractions and buildings. He further stated that HS&J have arranged for a survey of the property and at this time it is not complete, therefore, they would like to withdraw the requests for everything except the tractor ride storage building with a setback of 37.5 feet instead of the required 50-foot front yard setback. They would like to get this ride up and going since most of their income comes from the rides. They cannot obtain a building permit and get inspections done if they do not get the variance.

Mr. Bocks further explained that this is a compact sight. This train ride has a 300-foot track. The storage building is to store the 10 train cars during down time. The building is 8 feet tall with a 4/12 pitch. The building is on the west side of the tracks because they do not want people to access the building. Also, they are running out of space with plans of adding three new buildings to the park.

Mr. Bocks also questioned whether the frontage along US-31 was the front yard because there is no access to the Theme Park from US-31, access is on James Street.

The park was developed in the late 1950's. Since then, James Street has become a divided highway and US-31 has gotten widened causing the setbacks to become further out of compliance.

Mr. Broersma explained that the property actually has two front yards, James Street and US-31 because it is on a corner lot.

Mr. Bocks continued that this is a Theme Park and there are no others in the Township, it's different. They have a county drain on the property. They have 1200 feet of frontage on US-31. They are not blocking visibility to other businesses.

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

** It was moved by Bob De Vries and supported by Vander Meulen to close the hearing. Motion carried.

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

- 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.*

The attraction is close to US-31. US-31 has expanded since the park was first started in the 1950's. They are land limited. Looking at the whole picture, the buildings fit well together. They have done a great job with the improvement of the parking lot.

- 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.**

They are the only outdoor commercial recreational facility within the Township.

- 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.**

They need to keep updating and adding different things to keep attracting people to the park, otherwise it will become stagnant.

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

Granting this variance would not be of substantial detriment to adjacent and nearby land uses and properties. They have 1200 feet of frontage on US-31.

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

In 2019 US-31 was widened squeezing the property closer to the highway.

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 building is for the storage of the tractors. There is no safety issue.

** It was moved by Vander Meulen and supported by Bob De Vries to grant the request with a 15-foot variance from the required 50-foot front yard setback for the tractor ride storage building resulting in a minimum front yard setback of 35 feet. Motion carried with a unanimous roll call vote.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Adam Sieting for property located at 868 136th Avenue, known more specifically as 70-16-18-230-029. Petitioner is requesting a variance of 42 inches from the maximum 30-inch front yard fence height when within 15 feet of the public right-of-way; resulting in fence with a height of 6 feet. The subject property is zoned R-1 Low Density Residential.

Present for this request was Adam and Faith Sieting.

Mr. and Mrs. Sieting explained to the Board that it was brought to their attention that their existing fence is 3 feet into the public road right-of-way. Also, the fence is in the front yard low fence zone, which is the 15 feet along a public right-of-way where it only allows for a 30-inch fence height and theirs is 72 inches high.

Mr. Broersma explained that this is a corner lot so it has two front yards. The road right-of-way extends 33 feet from the center line of the road. There is also a utility easement where the fence is. He further stated that there is another fence three lots to the west in the road right-of-way that Staff will be addressing also.

Mr. and Mrs. Sieting further explained that if the fence were placed where it should be, there

would be 15 feet of yard for their dog and child to play outside. Also, the 30-foot height is not safe. The Sieting's hired professions to install the fence in October of 2019. They wanted it done correctly.

Present in the audience to speak to this request was Linda Bazan of 241 Elemeda Street, property owner to the west. She spoke in favor of the request for the fence height variance.

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

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

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.**

Jack -This property is no different that hundreds of other lots in the township.

Ross – This house is on a corner lot. Not everybody is on a corner lot. Also, the house could have been built going either direction. The way the house was placed on the lot, the side yard is small and impractical.

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.

Ross - It's a corner lot.

Jack -A corner lot would not be considered unusual from Staff's perspective; therefore, Staff would conclude there are no unusual circumstances on the lot of record.

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.

Ross – The variance is necessary to retain a substantial usable piece of property for a child and a pet.

Bob – asked what the required balcony handrail height is. Jack replied that it is 36 inches. That is the safety concern – Zoning’s 30 inch required height of the fence.

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

Granting of the variance would not be of substantial detriment to adjacent and nearby land uses or properties. There was no communication from neighbors.

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

The applicant hired a contractor to put in the fence. They acted in faith. They were not pros in putting in a fence, so they hired someone who would know what they were doing.

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 variance would set a precedent for other fences too high. Also, it is a corner lot, the line of sight for traffic is a safety concern, although it was recognized this corner on Elemeda, is not a heavy traffic area.

Bob De Vries agreed with Staff comment:

Granting this variance as proposed will be contrary to the spirit of the ordinance in its effort to ensure clear viability at the right-of-way line for motorists and pedestrians. In this particular case there is not currently a sidewalk at the right-of-way line, however, there is room for one to be added.

** It was moved by Ross De Vries to approve the variance as request. Motion died due to no support.

** It was moved by Vander Meulen and supported by Bob De Vries to deny the request. Motion carried with a 3 in favor to 1 in opposition (Ross De Vries) roll call vote.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Manuel Barajas for property located at 3245 100th Avenue, known more specifically as 70-16-12-300-026. Petitioner is requesting a variance of 30 feet from the 60-foot side yard building setback required for non-residential buildings; resulting in side yard setback of 30 feet. The subject property is zoned AG Agriculture.

Present for this request was Manuel Barajas.

Mr. Barajas explained to the Board that he would like to tear down the two existing barns and build one nice barn that would match the house. One of the existing barns is in disrepair and the other has been remodeled inside. He has cattle, goats and chickens, which he would like to continue to have.

If he places the new barn within the setbacks, he would have to move it 30 feet to the south. He would lose some of his pasture and he would have to rotate the barn from east to west to north to south because the barn would interfere with the pool, which would change the whole dynamic. He would also have to move the fence. The proposed barn would have the same setback as the existing two buildings.

Mr. Barajas further explained that the barn would be perfect in the same location as the existing two barns. In his opinion, it would affect the property values to change the location of the barn, as half of the barn would then be behind the house.

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

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

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

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 - 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 practical difficulties due to the land.

- 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. There are two existing buildings, they want the same setback.

- 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.***

It is a large lot.

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

Granting of the variance would not be of substantial detriment to the adjacent and nearby land uses and properties.

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

It is the applicant's preference of location that has created the issue.

- 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.***

There is currently a building within the setback. They want to place the new building in the same location – nothing is going to change.

** It was moved by Ross De Vries and supported by Vander Meulen to approve the request as presented with the requirement that the applicant signs an affidavit that the use of the barn is limited to agricultural uses. No storage of RV's, etc. Motion carried with a 3 in favor to 1 in opposition (Bob De Vries) roll call vote.

Hearing declared open to consider a petition for a Nonuse Variance submitted by Doug Damstra on behalf of Douglas Kopp for property located at 602 Lawn Avenue, known more specifically as 70-16-30-306-007. Petitioner is requesting a variance of 20 feet 9 inches from the 35-foot front yard building setback; resulting in a front yard setback of 14 feet 3 inches. The subject property is zoned R-1 Low Density Residential.

Present for this request was Mark Lauterbach of Lauterbach Architecture LLC and Doug Damstra of 42 North Custom Homes.

Mr. Lauterbach explained to the Board that the house was built in the 1920's. They explored ways to retain parts of the house similar to the way a neighboring property had, but came to the conclusion that it was not feasible with this house. They would like to build new.

They took into consideration the 7' side yard setback to the neighbor's properties, the lakeside of the house, and the water views from the surrounding properties when drawing up the plans for the new house.

The house would be of contemporary design with a courtyard. The three-stall garage would be entered from the side of the property rather than off the road. There would be a landscape buffer in the front. There are some oak trees they will do their best to save. The property does slope significantly. They do not want to build into the hill, which would take away the windows on one side of that level.

Mr. Lauterbach continued to explain that none of the houses on Lawn Avenue are at the full 35-foot setback. If Mr. Lauterbach put the house at the 35-foot setback it would be 20 feet in front of the neighbor's houses and take away from their views of the lake. He would like to stay within the line created by the neighbors.

On the water side of the house, not many homes comply with the 50 feet from the traverse line. If the proposed garage were to meet the setback, the owner would end up with a box type house. What they want is more trees and light.

When asked if they really need a three-stall garage, Mr. Lauterbach replied that a third stall is expected on a house of this price point, 3500 to 4000 square feet. It would be a one-story structure.

There was discussion among the Board Members about staying within the setbacks the neighboring properties have. The neighbor at 610 received a variance for a 16-foot front yard setback on May 8, 2018.

Present in the audience to speak to this request was Esther Walters of 600 Lawn Avenue. She stated that they appreciate what the applicant is doing. Building closer to the road so their view of the lake is not encroached upon.

Staff stated that there was an email received from Dave DeYoung of 592 Lawn Avenue that was distributed to the Zoning Board of Appeals prior to the meeting. He was in support of the request.

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

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

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 - 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 is a steep hill on the property. They are trying to keep the structure within the feel of the neighborhood.

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.*

Other lots within this neighborhood have the same issues with size constraints, the building envelope and the water.

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 applicant has enough usable space to build without a variance.

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

Granting this variance would not be of substantial detriment to adjacent and nearby land use or properties. It would preserve the neighbor's property rights, by not taking away their view of the lake. Also, the neighbors that have commented on the request are in favor of it.

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

The applicant created the problem by the desired design of the structure.

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 variance would do justice for others by keeping their views of the lake and not encroaching any further.

Board Members continued to discuss the setbacks to the Traverse line and the front yard setback. Lawn Avenue residents keep coming before the Board. Board commented that it is not a busy road. Staff suggested that if a lesser variance is being considered, a front yard

setback of not less than 16 feet should be held as that would be the same as the neighbors had received.

** It was moved by Boersma and supported by Bob De Vries to approve the request with the same setback as the neighbor; 16 feet from the road right-of-way and 83 feet from the back of the house to the Traverse Line. Motion carried with a unanimous roll call vote.

Under Other Business, Mr. Broersma informed the Board that the greenhouse at 3353 Creek Court that has been table since the April ZBA meeting, has turned in some additional information. They should be appearing at the July meeting at which time a decision should be made.

The meeting adjourned at 7:25 pm.

Respectfully submitted,

Laurie Slater
Recording Secretary