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MEMORANDUM

To: Tallmadge Charter Township Zoning Board of Appeals
From: Gregory L. Ransford, MPA
Date: January 25, 2023
Re: Buist – Dimensional Variance Requests

Attached is an application for dimensional variance requests from Diana Buist for property located at 3585 River Hill Drive, parcel number 70-10-20-400-074. The property is located within the Rural Preserve (RP) Zoning District. The applicant seeks relief from Section 14.04(c) – Residential PUD Development Standards, Mixed Uses; Section 15.04 – Required Parking Spaces and Aisles; and Section 15.05(e) – Parking Lot Layout and Construction, Surfacing of the Tallmadge Charter Township Zoning Ordinance (TCTZO) to operate a wedding venue as a Planned Unit Development (PUD).

As you will immediately note, the applicant is proposing to operate the wedding venue through a mixed use PUD, where commercial uses are allowed in an underlying residential zoning district. The applicant was before the Tallmadge Charter Township Planning Commission on January 24, 2023 for review of their Preliminary Plan and will be returning to the Planning Commission for the same, tentatively, at their February meeting.

The applicant seeks variances from Section 14.04(c) to allow a reduction in the required greenbelt, Section 15.04 to allow a reduction in the aisleway between parking spaces as well as the driveway length and, Section 15.05(e) to allow gravel for new parking spaces.

The application has been reviewed and found complete. We believe granting relief may be appropriate.

Property Details

As you may know, prior to the subject property containing a dwelling, it previously housed a restaurant and bar named Beer Food and Entertainment, as well as a Chinese restaurant. Given this, an area for asphalt parking exists on site. Subsequent to each restaurant, the property owner rezoned the parcel to RP and remodeled the building into a single-family dwelling.

The subject property is located entirely within the floodplain of the Grand River and almost entirely within the floodway of the Grand River.

Dimensional Requests

Given that the applicant has requested variances from three separate sections of the TCTZO, we have provided each request below independent of the others along with review standards in the same regard.

Variance #1

Section 14.04(c) – Residential PUD Development Standards, Mixed Uses

The applicant requests a reduction in the required width of the greenbelt pursuant to Section 14.04(c) – Residential PUD Development Standards, Mixed Uses of the TCTZO, within some areas of the property, as a result of existing conditions on the site. Said Section requires a

width of 30 feet abutting property outside of the PUD. A copy of Section 14.04(c) is provided below for your convenience.

Section 14.04 – Residential PUD Development Standards

- (c) Mixed Uses. Commercial uses in underlying residential zoning districts may be permitted with a residential component to the extent the applicant demonstrates by expert analysis, and the Township Board finds in accordance with the factors of this Chapter, that the residential and commercial uses are compatible. Commercial uses, including parking lots and driveways serving them, shall be separated and buffered from dwelling units in the proposed PUD in a manner consistent with Section 3.17(c) and shall comply with any applicable commercial chapter provisions. In addition, a greenbelt at least thirty (30) feet wide shall be required when a commercial use abuts property outside the proposed PUD which includes a residential area, residential zoning district, residentially used lot, school site, park, or similar area.

Standards for Review

As you know, you are required to examine your Standards for Review (Section 21.07(d) below) to appropriately consider the request, and in order to grant a variance, all of the standards shall be met. In an effort to assist with your review, we provided our comments in italic font for each standard. As aforementioned, we believe approval of the variance request may be appropriate.

- (d) Standards for Review - Dimensional Variance. For a dimensional variance, two-thirds of the members of the Board of Appeals must find that all of the following facts and conditions exist.

1. There are exceptional or extraordinary circumstances or conditions applying to the property in question, as to its intended use, that do not apply generally to other properties or classes of uses in the same zone.

While the applicant could remove and relocate existing parking to achieve most of the required greenbelt, given the property is located entirely within the floodway for the Grand River, we anticipate that such an action may not receive approval from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) because it would likely change the flood waters. As a result, it appears that exceptional or extraordinary circumstances exist that do not generally apply to other properties in the RP District.

2. The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties or classes of uses in the same zone. The possibility of increased financial return shall not of itself be deemed sufficient to warrant the granting of a variance.

As aforementioned, the existing structure was two different commercial businesses prior to being remodeled into a single-family dwelling. While the structure has been converted to a single-family dwelling, the variance may be necessary for the enjoyment of a commercial property right through the requested PUD before the Planning Commission given that the site was previously commercially established. In other words, beyond the remodeled structure, the site improvements related to the past businesses were generally left unchanged. Given that these improvements are located within the floodway and floodplain of the Grand River, modifications to those areas may be difficult if not impossible, and therefore to use the site commercially, relief may be necessary.

3. The variance, if granted, will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or the public interest.

While we do not believe a variance will materially impair the intent and purpose of the ordinance given the historic use of the property and its location within the floodway and floodplain of the Grand River, we cannot determine if it will be of substantial detriment to adjacent property until the public hearing is held.

4. The condition or situation of the property or its intended use is not of so general or recurrent a nature as to make reasonably practicable a general regulation for the condition or situation.

We do not believe that the condition or situation of the property or its intended use is so general or recurrent that a regulation should be created.

5. Any exceptional or extraordinary circumstances applying to the property in question are not self-created.

While current owners of property are typically "responsible" for past property owner actions, given the age of the previous businesses and the related improvements as commercial entities prior to the conversion to a single-family dwelling, we do not believe that the circumstances are self-created. Again, while the applicant could remove and relocate parking spaces, we contemplate if such would be approved by EGLE.

Variance #2

Section 15.04 – Required Parking Spaces and Aisles

The applicant requests a reduction in the required width of the parking lot aisleway pursuant to Section 15.04 – Required Parking Spaces and Aisles of the TCTZO at the driveway entrance and the eastern portion of the parking lot, as a result of existing conditions on the site. Said Section requires a width of 26 feet for two-way traffic. While we would ordinarily provide a copy of said Section within our memorandum, it is within a table and the time to "rebuild" (as a result of copy and paste) that table did not seem worth the value of the remainder of the section.

Standards for Review

As you know, you are required to examine your Standards for Review (Section 21.07(d) below) to appropriately consider the request, and in order to grant a variance, all of the standards shall be met. In an effort to assist with your review, we provided our comments in italic font for each standard. As aforementioned, we believe approval of the variance request may be appropriate.

- (d) Standards for Review - Dimensional Variance. For a dimensional variance, two-thirds of the members of the Board of Appeals must find that all of the following facts and conditions exist.

1. There are exceptional or extraordinary circumstances or conditions applying to the property in question, as to its intended use, that do not apply generally to other properties or classes of uses in the same zone.

The exceptional or extraordinary circumstances on the property may include the historic commercial use of the property as well as the floodway and floodplain when considering construction of new pavement, which could affect the floodway and

floodplain. Given this, it may be reasonable to conclude that the applicant is designing the parking lot within the existing pavement footprint to the dimensions required by the TCTZO. While the parking lot aiseways could be altered with different parking space striping, the driveway width is likely to be unchanged given the aforementioned, which are regulated through EGLE.

2. The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties or classes of uses in the same zone. The possibility of increased financial return shall not of itself be deemed sufficient to warrant the granting of a variance.

The variance only appears necessary for the existing driveway. The internal parking lot spaces could be reduced in number to provide the necessary aisleway. That said, the required aisleway typically experiences constant traffic to and from the parking lot. For this use, users typically arrive at the same time and leave at the same time so two-way traffic is less likely to occur.

3. The variance, if granted, will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or the public interest.

The Township Fire Department has indicated that they can service the site with the proposed aiseways. Again, two-way traffic is not likely to occur given the type of use proposed so the need for a large aisleway to allow vehicles to pass each other is limited. As a result, unless public comment provides otherwise, the proposed should not impair the intent and purpose of the TCTZO.

4. The condition or situation of the property or its intended use is not of so general or recurrent a nature as to make reasonably practicable a general regulation for the condition or situation.

We do not believe that the condition or situation of the property or its intended use is so general or recurrent that a regulation should be created.

5. Any exceptional or extraordinary circumstances applying to the property in question are not self-created.

We assume that the applicant requires the number of parking spaces proposed to provide for a profitable business. While the parking lot layout could be regarded as self-created, it may also be the minimum amount necessary to be viable on site within the parameters of the existing pavement. Given this, the existing improvements could create exceptional or extraordinary circumstances to accomplish a mixed use PUD.

Variance #3

Section 15.05(e) – Parking Lot Layout and Construction, Surfacing

The applicant requests eight proposed parking spaces are permitted to be constructed with gravel rather than pavement pursuant to Section 15.05(e) – Parking Lot Layout and Construction, Surfacing of the TCTZO given the proposed use to be conducted on the property is seasonal and the site is within the floodway of the Grand River. A copy of Section 15.05(e) is provided below for your convenience.

Section 15.05 – Parking Lot Layout and Construction

- (e) Surfacing. All parking and loading facilities and access drives for uses other than one and two family residential uses, active farms, and accessory farm produce sales shall be provided with a pavement surface consisting of bituminous concrete or concrete. Commercial driveways shall be constructed with materials equal to or better than the standards set forth by the Ottawa County Road Commission for driveways.

This subsection shall not apply to a new outdoor processing area or an increase in the size of an existing outdoor processing area related to the raw processing of materials by excavators, composting operations of similar uses.

Gravel, crushed concrete or another alternative and equally supportive surface, as determined by the Planning Commission, may be used in lieu of bituminous concrete or concrete.

Standards for Review

As you know, you are required to examine your Standards for Review (Section 21.07(d) below) to appropriately consider the request, and in order to grant a variance, all of the standards shall be met. In an effort to assist with your review, we provided our comments in italic font for each standard. As aforementioned, we believe approval of the variance request may be appropriate.

- (d) Standards for Review - Dimensional Variance. For a dimensional variance, two-thirds of the members of the Board of Appeals must find that all of the following facts and conditions exist.

1. There are exceptional or extraordinary circumstances or conditions applying to the property in question, as to its intended use, that do not apply generally to other properties or classes of uses in the same zone.

As aforementioned, the entire site is generally within the floodway and floodplain of the Grand River. We do not anticipate that EGLE will approve additional impervious surface on site because it could alter both the floodway and floodplain.

2. The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties or classes of uses in the same zone. The possibility of increased financial return shall not of itself be deemed sufficient to warrant the granting of a variance.

In the instance that EGLE would not permit additional paved spaces because of the floodway and floodplain, it appears that the enjoyment of a property right to establish the business may be hindered.

3. The variance, if granted, will not be of substantial detriment to adjacent property and will not materially impair the intent and purpose of this Ordinance or the public interest.

Given that the drive, which serves a dwelling to the north off-site, that will abut the proposed gravel parking is also gravel, we anticipate that the parking spaces will not be detrimental to the neighboring uses.

4. The condition or situation of the property or its intended use is not of so general or recurrent a nature as to make reasonably practicable a general regulation for the condition or situation.

We do not believe that the condition or situation of the property or its intended use is so general or recurrent that a regulation should be created given the floodway and floodplain exist for generally the entire site.

5. Any exceptional or extraordinary circumstances applying to the property in question are not self-created.

Again, the ability of the applicant to construct paved parking spaces may be restricted by EGLE

Recommendation

As aforementioned, depending on the limitations from EGLE in some instances, we believe that approval of the variance requests may be appropriate. The application has been scheduled for a public hearing at your February 7, 2023 meeting at 7:00pm. If you have any questions, please let us know.

GLR
Planner

Attachment

cc: Mark Bennett, Supervisor