



CITY OF WAUWATOSA

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MINUTES MEETING OF THE BOARD OF ZONING APPEALS Thursday, April 22, 2010

PRESENT: Mr. Randall, Mr. Subotich, Mr. O'Connell, Mr. Pennoyer, Ms. Bruderle-Baran – 5

EXCUSED: Ms. Meyer

ALSO PRESENT: T. Szudy, Planner

Mr. O'Connell as Chair called the meeting to order at 7: 05p.m.

8415 Ravenswood Circle

Variance

Ms. Szudy reported that Mr. Toth, the owner of the property, wants to construct a fence that is greater than the allowed 4-1/2 feet to enclose the rear yard of his property. The fence would run along the property lines in the rear yard and return to the sides of the house. The preferred fence height is 6' 8" but the applicant is amenable to a 6 ft fence. The reasoning for the 6' 8" height is to conceal the existing retaining wall of the same height on the north side of the property and then continue with a uniform fence height around the rest of the back yard which is at a much lower grade than the surrounding properties.

Present in favor: Mr. Toth, 8415 Ravenswood Circle
Jeffrey Zuppan, Zupan Carpentry
Edith Patterson, 8403 Ravenswood

No one present in opposition.

Mr. Zuppan explained that they are requesting a variance in order to cover the north side retaining wall which sits 6'8". They would also like to cover the east side retaining wall and carry that over to the home. The applicant, Mr. Toth, would like to have a fenced in yard to be able to confine their children. The applicant had to install a large pump station which is situated in their yard, and they will install a deck over that part of the yard.

Mr. Toth said they would like to block the neighbors crumbling concrete walls. They felt that a fence would be much better looking and he has talked with his neighbors' and they are OK with the fence.

Ms. Edith Patterson is the owner of the parcel with the concrete wall. She said she has no problem with them building the fence. Mr. Toth advised that he will use screws on the fence to make some panels removable for property access.

The committee discussed the pictures in their packets. Mr. Randall inquired about the fence on the south side which the applicant said was about two and one half feet tall. Due to the elevation differences a code compliant fence would cover the retaining wall but not the fence. Mr. Toth would like the fence consistent on all three sides of his property. There is a lannon stone wall about two feet high on the east which will be removed.

Ms. Bruderle-Baran asked Mr. Toth about the lift station he had to build on his property to collect storm water from surrounding properties. The station goes 12 feet deep and is five feet wide. There is also a gas generator in the event of a power failure. Ms. Szudy responded to a question that this is probably the only parcel in Wauwatosa that has a lift station.

Mr. Randall asked Mr. Toth what the exceptional circumstances were that would allow him a variance. Mr. Toth responded that for safety reasons the taller fence would prevent people from climbing the fences and getting hurt. Mr. Toth advised that it is not feasible to add fill dirt. The best use of the lift station area is to put a deck over it. In 2008 neighbors informed Mr. Toth that there was so much water on his property that it was up to the window sills in the back, about 18”.

Mr. Zuppan informed the committee that the city and state provided very strict instructions on the height at the bottom of the catch basin for the east side properties to flow into there.

Mr. Randall asked if the applicant considered planting fast growing arborvitaes or growing vines on the retaining wall. Ms. Patterson said that was not feasible and she would not approve of vines on the retaining wall.

Mr. Randall made a motion to grant the variance request with respect only to the north side of the property located at 8415 Ravenswood Circle.

The board finds that exceptional circumstances do exist pertaining to this lot, in that the parcel previously was a low lying lot that collected storm water from surrounding properties. With the new home construction, the back yard remains very low compared to the surrounding parcels.

A variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity in that the homeowner had to install a lift station and storm water connection.

That the variance will not create special detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this or to the public interests as the homeowner indicated that the fence along the retaining walls would be removable for any future wall maintenance and that the storm water conveyance function further serves to protect the adjacent homes.

That the difficulty or hardship was not created by the property owner, in that the property has been this way for a very long time.

Based upon these findings I move that the application for a variance be granted with respect to the north property line only. A code compliance fence could be installed on the south and east sides of the property. The fence panels should be constructed with screws so that they would be easily removable with permission by the neighbors when repairs would be necessary.

Mr. Pennoyer noted that the motion doesn't apply to the entire variance requested. Mr. Randall said he doesn't feel the applicant meets the criteria for the entire area to be fenced at 6' 8". Mr. Subotich seconded the motion.

Mr. Toth replied to the question asked that he thought the fence would look poorly with a 6' 8" fence on one property side and a conforming 4' 6" fence on the other two sides. He thought the neighbors would look poorly on this. Mr. Randall said he didn't feel that the east side of the parcel met the same criteria as the north side. He commented that the aesthetics of the fence doesn't fit the criteria for approving a variance.

Mr. Toth and Mr. Zuppan discussed in length with the committee why the 4' 6" panels wouldn't be the best option on the east and south sides of the parcel. Due to the varying elevation in some places the 4' 6" panel wouldn't even match up with the neighbor's fence.

Mr. O'Connell noted that it is not unique to have varying elevations in Wauwatosa. The committee advised that the lack of a visual barrier doesn't justify a hardship. Mr. Pennoyer commented that he didn't feel that a fence stepping down step 4' 6" would necessarily look bad. Mr. Toth asked the committee to consider a 6'8" fence on both the north and south sides and a conforming 4' 6" to the east.

Ms. Bruderle-Baran felt that the nature of the hardship is not the neighbor's retaining wall. Rather the hardship is the elevation of the lot and because of the pump and drainage catch basin. She felt that this would not be specific to direction rather that it makes the whole lot unique. She felt that this wouldn't set a precedent in that this is probably the only parcel in Wauwatosa like this and it is more in the spirit of the code to approve the variance request on all three sides of the property.

Mr. O'Connell agreed with her and Ms. Bruderle-Baran asked Mr. Randall if he would accept a friendly amendment to his motion. Mr. Randall declined. The amendment made by Ms. Bruderle-Baran fails for lack of a second.

Ms. Bruderle-Baran asked for an amendment to the motion that the fence height of 6' 8" be allowed on the north and south property sides due to the uniqueness of the parcel with a code compliant fence on the east side. Mr. Pennoyer seconded.

Ms. Szudy thought that clarification from the board be made regarding allowance of a step down on the east side.

Vote on the amended motion - Ayes: 3 Noes: 2 (Randall, Subotich)

There was open discussion on the amended motion and if it should be stated that a step down on the east side fence be permissible, with the majority of the fence height at 4' 6". Mr. Toth felt that this would enhance the look. Ms. Bruderle-Baran questioned whether the motion be amended that staff approve the step down. Mr. Pennoyer felt that the contractor and the owner would design the step down to be aesthetically pleasing.

Mr. Pennoyer made an amendment to the motion that the fence on the east elevation be constructed in a step down from the 6' 8" to 4' 6" with staff approval. The majority of the fence cannot be 6' 8". Ms. Bruderle-Baran seconded. Vote on the amendment to the amendment – Ayes: 5

Roll call vote taken on the motion as amended – Ayes: 3
Noes: 2 (Randall, Subotich)

Meeting adjourned at 7:46 p.m.

Tamara Szudy, Secretary

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