



## CITY OF WAUWATOSA

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### MINUTES MEETING OF THE BOARD OF ZONING APPEALS

Thursday, December 16, 2010

PRESENT: E. Meyer, B. Randall, P. Subotich – 3

EXCUSED: E. Bruderle-Baran, W. Pennoyer

ALSO PRESENT: T. Szudy, Planner

Mr. Randall as Chair called the meeting to order at 7:08 p.m.

#### 6627 Vista Avenue

#### Variance

#### **Request by Sonny Bando, Santino Group, and Rory Palubiski, Fein Design, LLC, for a Variance to the rear and side yard setbacks in the AA Single Family Residence District to construct an attached garage at 6627 Vista Avenue**

Ms. Szudy said the applicants want to construct a new attached two-car garage at the rear of the house as there currently is no garage on the property. The new addition has a proposed setback of one foot, four inches from the rear property line and two feet 11 inches from the interior side property line whereas the AA Single Family Residence District requires a 25-foot rear yard setback and a six-foot interior side yard setback for principal buildings. The existing house is nonconforming as it is situated at the rear of the lot and also does not meet the rear or side yard setbacks for principal buildings. The applicants indicate they want to construct the attached garage at the rear of the house as it is the most appropriate location for a garage and there is an existing curb cut and driveway in this location to accommodate a garage.

Staff does not believe that the recent Wisconsin Supreme Court ruling regarding area variances gives carte blanche to approve all variance applications. The applicants still must show a very high burden of proof of unnecessary hardship. As staff is to consistently enforce the code that is adopted by the Common Council, it is difficult for staff to give a recommendation regarding a variance without compromising the code we have to enforce. The Board of Zoning Appeals is granted the authority to overrule the regulations set forth by the Common Council if the Board feels that there is sufficient evidence to support such variance. Please refer to the memo from the City Attorney and the language to approve or deny a variance application.

Present in favor: Rory Palubiski, Fein Design, LLC, 11124 N. Cedarburg Rd., Mequon  
Sonny Bando, Santino Group, 135 W. Wells Street, Milwaukee

Mr. Palubiski appeared in favor saying that the existing house is non-conforming already and they would like to do more than a one-car detached garage. Their current design provides space for two cars and is much better looking on the property. Mr. Bando agreed with Mr. Palubiski's assessment.

Ms. Meyer asked if there was anywhere else on the lot that the garage could be built. Ms. Szudy noted that there would be room in the front of the house including the setbacks and they could build a very small detached garage in the back of the property.

Mr. Randall asked why there was an extra deep setback for this property. Ms. Szudy responded that construction of the house probably predates the current zoning code. Mr. Randall observed that there was a more conventional neighborhood built around this home later. He further observed that if the garage were to be located in the front of the property it would change the ingress and egress.

Mr. Palubiski reiterated that the existing house is non-conforming, but the current design of the garage would make it look more conforming. Mr. Randall asked if there was room for a car in the driveway. He further inquired why this proposal was the only option when rear and front space would be compliant.

Mr. Palubiski explained that a garage in the front would take away from the house's very nice front yard. A detached smaller garage would be very close to the existing home. He added that the owner would like to have the space to grow for his family.

Mr. Randall asked if the proper notices were sent. Ms. Szudy replied in the affirmative. Mr. Randall also observed that no one appeared or expressed opposition to the plan.

Mr. Randall asked about the depth of the garage and if it was to accommodate more than two cars or cars parking in tandem. Mr. Palubiski noted that the depth is necessary to accommodate the design of the house, to provide more storage, and to eliminate a snow trap. Mr. Randall asked if there was enough room between the garage and the fence for yard maintenance. Mr. Palubiski responded that there was enough room for a trimmer. Mr. Randall cautioned that the placement should not cause maintenance issues. He observed that there were really two variance issues here. He asked if the applicant could give more space in the rear corner to be able to move around more easily. If the rear wall could be moved three feet then the applicants would only need one variance for the side yard setback.

Mr. Palubiski explained that the footprint of the garage is based on the roof line overhang. Ms. Szudy added that the code allows for the roof to hang two feet into the setback. Mr. Palubiski noted that if they pulled the wall in they would need to put a door in.

Mr. Randall noted that the proposed floor plan indicates a door on page two of six that is an acknowledged mistake by the architect. He asked that that observation be added to the record. Mr. Randall noted that there is still a very high fence that gives a closed in feeling. Ms. Szudy pointed out the chain link fence on the south.

Ms. Meyer observed a curb cut and driveway and asked if anyone had built there. She also asked if there was a setback for pavement. Ms. Szudy replied that there are no variances for driveways or setbacks for pavement. Ms. Meyer thought that the proposed design encroached less upon the neighbor's properties.

Moved by Ms. Meyer, seconded by Mr. Subotich to approve the Variance. The board finds beyond a reasonable doubt that: 1) exceptional circumstances do exist pertaining to this lot in that the house is an unusual non-conforming current structure built before the rest of the block was fully developed; 2) a variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity in that an attached garage would complement the surrounding properties; 3) the variance will not create a special detriment to adjacent properties and will not materially impair or be contrary to the purpose and spirit of this or to the public interest in that the option to place a garage in the front of the yard setback will negatively affect the surrounding properties; and 4) the difficulty or hardship was not created by the property owner in that this home was built before current building codes so the proposed garage design will enhance the neighborhood – 3

The meeting adjourned at 7:42 p.m.

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Tamara Szudy, Secretary

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12/16/10