



CITY OF WAUWATOSA

7725 WEST NORTH AVENUE
WAUWATOSA, WI 53213
Telephone: (414) 479-8917
Fax: (414) 479-8989
www.wauwatosa.net

MINUTES MEETING OF THE BOARD OF ZONING APPEALS Thursday, June 25, 2009

PRESENT: Mr. O'Connell, Ms. Bruderle-Baran, Mr. Randall, Mr. Pennoyer – 4

EXCUSED: Ms. Meyer, Mr. Subotich

ALSO PRESENT: T. Szudy, Planner

Mr. O'Connell as Chair called the meeting to order at 7:01 p.m.

2137 Crestview Court

Variance

Ms. Szudy said the applicants want to construct a six foot fence along their rear property line in order to screen traffic from 124th Street. A 4 ½ foot fence is permitted in this location. The applicants also plan to install fencing along the side property lines that will comply with the 4 ½ foot height maximum.

Present in favor: Ryan and Katherine Schoen, 2137 Crestview Court
Amy Zimmerman, 2127 Crestview Court

Ms. Schoen said that there was an existing 4 ½ foot fence and over the winter half of it blew over. She said they would like to put up a six foot fence backing up to 124th Street. She said because the grade level of the street is higher and due to the busy thoroughfare a 4 ½ foot fence provided no privacy.

Amy Zimmerman, 2127 Crestview Court, is the neighbor to the south and they have no issues with the request and are in favor of allowing the 6 foot fence.

Mr. Randall asked if all of the houses are lower on grade on 124th Street. Mr. Schoen replied yes. Mr. Randall asked Ms. Zimmerman if they had a fence on 124th Street. She said they had all of the bushes cleared out and they are looking to put a berm back there with landscaping.

Mr. Pennoyer asked why the 6 foot fence height was needed. Mr. Schoen said with the grading a 4 ½ foot fence would not provide any privacy. They would like to prevent people driving by from looking into their yard. Ms. Bruderle-Baran asked what kind of fencing other neighbors have. Ms. Schoen said the property to the north has a high tree/bush line. Another neighbor has a fence approximately 6 feet high around their patio.

Mr. O'Connell explained to the Schoen's that the committee has to see what makes this a unique situation. He asked if they had considered a berm with a fence. Mr. Schoen said it would be more cost and time sensitive.

Ms. Szudy said that to legally have a setback the Schoen's would have to have 25 feet and also a side setback which really wouldn't serve their purpose.

Mr. Randall said that this is a somewhat unique parcel. That the frontage is really a back yard and remembered that a variance was approved for a higher fence along Blue Mound Road with a back yard frontage. The committee discussed that Blue Mound Road is a major arterial and asked Ms. Szudy if she

felt 124th Street was. Ms. Szudy said she didn't feel it is an arterial, but said it is a busy street. Ms. Zimmerman said the traffic noise has gotten incredibly worse since 2000.

Mr. O'Connell noted that there is something to be said that the backyard is set against a major thoroughfare. Mr. Schoen said when cooking out at dinner time there is a lot of traffic, and said it isn't their fault that the grade is so low.

The committee discussed that there are four very specific burdens you must comply with. A variance is approved when there are no other options.

Ms. Schoen noted that their house is a block and a half from the corner of North Avenue where it turns into four lanes of traffic. She said the fence they want to install is about \$2,000. Ms. Zimmerman said the berm and landscaping they were planning on putting in was priced out five years ago at \$15,000.

Mr. O'Connell said the fact that this property abuts up to a busy road does weigh in on the decision, most back yards are bordered up against another back yard.

Ms. Bruderle-Baran asked what the height difference of the street and back yard is. Ms. Zimmerman responded about three feet. Ms. Bruderle-Baran noted that would be like a ditch and the applicants said it is. She said that this property is unique in that most streets are not that significant when trying to provide protection from the street.

Mr. Randall noted that the code is written so that the city doesn't have walls all around the roadways. He said the Schoen's want the fence for privacy, safety, security and sound. He commented that the road traffic just did not occur. Mr. Pennoyer commented that there are many properties in the city whose back yard faces a busy roadway. Ms. Schoen again said the traffic feeds into four lanes of traffic right by their home. Mr. Pennoyer said that there could be some support that 124th is a major roadway.

The committee reviewed the map and noted that the stretch from Watertown Plank Road to North Avenue is the only area on 124th Street with single family houses that about 124th Street, most are apartments. They counted a total of nine homes.

Mr. Randall asked Ms. Szudy about another application on 124th Street that was approved. Ms. Szudy said it was for a variance to the side yard setback and to build a shed.

Mr. Randall commented that while some of your neighbors might not object to the fence, down the road it could matter to someone. He said it was helpful that the neighbor attended in support of the request.

Moved by Ms. Bruderle-Baran, seconded by Mr. Pennoyer to approve the Variance. The board finds beyond a reasonable doubt that: 1) exceptional circumstances do exist pertaining to this lot due to the fact that the properties back yard abuts 124th Street and that there is a significant grade difference of the street being much higher than the property; 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 directly north of this parcel on 124th Street the street feeds into four lanes wide and there is significant traffic and noise; 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 interests in that an improvement of a quality constructed fence would promote and support the remaining neighbor's high quality family occupied homes, and that there are only nine properties on Watertown Plank Road that abut 124th Street and 4) the difficulty or hardship was not created by the property owner, in that the traffic has increased

and due to the fact of the grading issues – 5

2623 North 71st Street and 2624 North 72nd Street

Variance

Ms. Szudy said the applicants own two properties that are back to back in the AA Single Family Residence District. The applicants want to shift the shared rear property line 13 feet west to increase the size of the 71st Street by 520 square feet. The area of the 71st Street property is currently 5,600 square feet and would become 5,080 square feet. The AA Single Family Residence District requires a minimum lot size of 6,000 square feet and both properties are non-conforming as they were platted prior to the adoption of this standard in 1972.

In favor: James and Christine Halverson, 2623 North 71st Street and 2624 North 72nd Street

Mr. Halverson said after they purchased the duplex behind them they heard that in the 70's a land division was approved for the previous owners to shift the rear property lines but was never followed through on. He said anytime they have company they have trouble using their backyard. Since they own both properties and the duplex has a much bigger yard they would like to move the property line by 13 feet. Mr. Halverson said the 13 feet that would be taken away from the duplex is land behind the garage and is not utilized.

Ms. Szudy noted that there is a storm sewer in this area which has been abandoned. If they were ever to be resurrected the city would have to get an easement.

Ms. Bruderle-Baran noted that the real question at hand would be the land division which is not being ruled on here. She wondered if the parcels are all in a straight row and this home would be askew. Mr. Randall asked Ms. Szudy what the Community Development department felt about the deviation on the property boundaries. She replied that she discussed this with Ms. Welch and she didn't have a problem with it.

The committee discussed what the hardship to the homeowner was. They didn't feel they would be able to meet the criteria. They said a want is not enough to grant a variance.

Mr. Randall suggested that the Halverson's look into granting themselves an easement since they own both parcels. The footage behind the duplex garage is not used and nothing can be built there. Mr. Pennoyer said that if you had the easement as a seller you would have more flexibility from a resale standpoint. Mr. Randall explained that the property line would remain the same. You would grant yourself the right to use the land.

Mr. Randall said they could hold this item without prejudice for the homeowner's to explore an easement.

Moved by Ms. Bruderle-Baran, seconded by Mr. Pennoyer
to hold this item without prejudice – Ayes: 4

1506 North 123rd Street

Variance

Ms. Szudy said the applicants want to demolish the existing one-car garage and rebuild a new two-car attached garage in a similar location, due to health issues. The existing garage, attached to house via a breezeway, is setback 1.7 feet from the rear property line. The new garage's setback will be increased to 6.3 feet from the rear property line which is an improvement over existing non conforming condition. However, the AAA Single Family Residence District requires a 24 foot rear yard setback. Additionally,

the house was built in 1945 in the Town of Wauwatosa, meaning that it predates the current zoning standards.

Ms. Szudy reported that there is an amendment to the setback which is reflected in the paperwork.

In favor: David Rinka, CMC, 27631 Elk Valley Road, Waukesha

Mr. Rinka, as the architect of the plans, advised that the existing house was built in 1945 and is located on a corner property which borders Cherry Street and 123rd. He said the current driveway faces Cherry Street and the homeowner would like to maintain the existing curb cut and newer driveway. He said the homeowner has suffered two strokes which is driving the need for an accessible ramp. A mud room and first floor bathroom are part of the plan. Mr. Rinka thought that putting the garage in front of the home would ruin the streetscape. The new garage would be set back five feet from the current location.

Mr. Randall asked why a tandem garage wouldn't work. Mr. Rinka questioned whether it would fit and said it would take up most of the yard and there would still be a setback issue. Mr. Rinka said they need access for a ramp to the garage and a tandem across the back would block an egress.

Mr. O'Connell said the footprint would bring the garage tighter to the home and doesn't see a huge change to it. Mr. Pennoyer said making improvements for ADA is a positive improvement.

Mr. Rinka said the homeowner would like to maintain the setback on Cherry Street to keep it less intrusive.

Moved by Ms. Randall, seconded by Ms. Bruderle-Baran, to approve the Variance. The board finds beyond a reasonable doubt that: 1) exceptional circumstances do exist pertaining to this lot; because of the 50 foot front yard setback, the rear yard is much smaller than the typical parcel; 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 this will actually be an improvement to an existing non-conforming parcel and will add more of a buffer, and improvements will be beneficial to the property values in the neighborhood; 3) the variance will not create a 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 in that it will be an improvement to the existing non-conforming parcel and 4) the difficulty or hardship was not created by the property owner as the homeowners did not construct the home 50 feet back and granting this variance will bring the home to contemporary standards – Ayes: 4

Meeting adjourned at 8:25 p.m.

Tamara Szudy, Secretary

mks