



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, July 23, 2009

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

EXCUSED: Mr. Randall, Ms. Meyer

ALSO PRESENT: T. Szudy, Planner; Ald. D. Birschel

Mr. O'Connell as Chair called the meeting to order at 7:00 p.m.

12233 Watertown Plank Road

Variance

The applicants are constructing a new home with a detached garage in front of the house. The zoning code requires accessory structures that are not located in the rear yard to meet the principal building setbacks. In this case, the required setback for the garage is eight feet on the east whereas the applicants are proposing a two foot setback in this location. If the garage was located in the rear yard, the accessory structure setback of 18 inches would be permitted. Due to the existing driveway that will be shared with the house to the west, the narrowness of the lot, and the lot's terrain (it is more level at the front and slopes to the rear), the house was designed with the garage in front of the home. The Design Review Board approved the garage design on May 7th with a modification to the gable orientation and a few other aesthetic considerations.

Present in favor: David and Anne Ellsworth, 12233 Watertown Plank Road
Steve Homa, P.E.A. Builders, W195 S7548 Woodland Place, Muskego

Present in opposition: Joe Kresl, Hawk's Nursery, 12217 Watertown Plank Road

Mr. Ellsworth reported that due to the narrowness of the lot, they are requesting a variance. The map shows the topography which is quite steep to the rear of the lot. They are requesting a variance for a two foot setback as an eight foot setback would bring the garage out so far that the shared driveway would be impassable. He said that they have located the garage between two large trees to keep as many trees intact as possible. The garage would be about 16 feet from the front of the house. Mr. Ellsworth said that the Design Review Board liked the aesthetics of the home and made a gable change on the garage to match the house.

Mr. Kresl, owner of Hawk's Nursery commented that he didn't have a problem with the design, but with the location of the garage proximity to the property line. He said his office is right next door and his view will now be a garage wall instead of trees. He was also concerned that the maple trees along the property line would be in jeopardy of living. Mr. Kresl said he would prefer that the garage be set further back.

Mr. Subotich asked why the garage cannot be set any farther back on the lot. Mr. Homa said that there is a drop off of about one foot for every five feet and it continually worsens. If the garage gets moved back the house would also have to be moved back and the location of the home works best at the requested location. Mr. Homa said if they moved the house back ten feet they would lose the maple trees and it wouldn't help any views. He said they are trying to block views of the Hawk's office as well. He noted

that there are trees on both side of the property line. He also said moving it back creates a problem from the easement road as well.

Mr. Pennoyer inquired why the homeowners took their plans to the Design Review Board first before coming in front of the Board of Zoning Appeals. Mr. Homa said they did this because they thought garage setbacks were compliant. Mr. Homa said the question was asked but apparently not to the correct person before they started designing the home. He said no one gave them the part of the code saying the garage could not be placed in front of the home. Ms. Szudy replied that when she gave them the code this wasn't discussed at all.

Mr. O'Connell noted that the easement coming in and out of the lot is certainly tight. The committee discussed the driveway easement and various ideas on how this could be worked out.

Mr. Kresl felt that the garage could be built in the back of the home. Mr. Homa said that the property is not wide enough. He said the city code only allows for a 10% grade. Ms. Bruderle-Baran asked why they didn't change the home design. The builder said no matter what you do, because of the drop off in the back the garage would still have to be in the front. Mr. O'Connell thought that an attached garage was another option. Mr. Homa said an attached garage would ruin the look of the front of the home and because of the drop off there are drainage issues. Discussion ensued whether the garage could be moved to the other side of the property and to move the driveway.

Mr. Homa said he felt that since it is a business located next to the garage it was different than putting a garage in front of a homeowner's picture window.

Mr. O'Connell asked how the easement came to be. Ms. Szudy replied that the easement was created when the lot was created which was recently. Mr. O'Connell said part of the criteria to be met is that the homeowner did not create the problem. He wondered whether with the easement they created the problem.

Ms. Bruderle-Baran said on the criteria for the preservation and enjoyment of property she struggles how this pertains to a garage. Mr. O'Connell said not everyone has a 24 x 24 foot garage and there are other ways to go about this to have the rights that other properties do. Mr. Pennoyer reported that there are four rigid criteria that need to be met and he doesn't think they have been justified. He felt that there are other options available.

Mr. Homa commented that the easement was at the time of the sale of the property. He said it happened during negotiations of the property and didn't think it was caused by the Ellsworth's.

Mr. Ellsworth said he thinks they have shown reasons for wanting to build their home and garage in this location. He reiterated that the lot is very narrow and certainly works well. He said changing things now would impact them financially. He said they are scheduled to close next week on their construction loan.

Mr. O'Connell noted that the board has to follow the very strict Wisconsin guidelines. He said they need to be fair and consistent month after month. He said there is a concern when a neighbor comes and voices an opinion on one of the criteria for the variance to be granted.

Ms. Bruderle-Baran said that with the setback the issue is size of the garage on that sized lot. She said if you reduced the garage size you would only have to shift the garage two feet. She doesn't feel that the homeowner has proven their hardship. She said the garage size should not be taken lightly.

Mr. Ellsworth said being next to a commercial property makes them unique. He said they have brought approval from the other two neighbors to the west and they didn't have any problem at all. Mr. Ellsworth

submitted four pictures. He said that Hawk's Nursery has already put up arborvitae which will grow very tall. Mr. Homa said the owner's view would be obstructed if the garage were built in front of the house. Mr. Ellsworth said he didn't think there would be a problem with the narrowness of the lot. He said they were at the mercy of the surveyors and the architect.

Mr. Kresl said he is in favor of a compromise and if the garage size were reduced to a 20 x 20 and placed four feet further from his property he would be OK with that. Mr. Pennoyer said that in an older community like Wauwatosa, he didn't think there is necessarily a right to have a 24 x 24 foot garage with a detriment to the other property and it would be difficult to approve this variance request. He said a compromise on the garage size is something to be considered. Ms. Bruderle-Baran said the exceptional circumstance is the slope for the garage except for that large size of garage. She said for the preservation of enjoyment that size garage is not necessary and it would affect the neighbor. Ms. Bruderle-Baran said she would have a real problem voting for approval. She thought since this lot is so unusual that a 20 x 20 foot garage might work.

Mr. Pennoyer said if they approved the 24 x 24 foot garage in the front yard it could set a precedent and anyone could put a 24 x 24 garage in their front yard. Mr. O'Connell said he didn't think they have ever granted a six foot variance. This is a large setback which could impact the neighbor's property value either today or down the road. He asked Mr. Ellsworth if they would consider a two foot variance with a six foot setback in order to build a 20 x 20 foot garage.

Moved by Ms. Bruderle-Baran, seconded by Mr. Subotich
to take a five minute recess – 4

The meeting reconvened at 7:44 p.m.

Mr. Ellsworth said that they would follow the Board's recommendation and change the garage size to 20 x 20. As requested by Mr. Kresl they will keep the southwest corner location as shown on the plans. The request for approval for this 20 x 20 foot garage is a two foot variance with a six foot setback.

Moved by Mr. Pennoyer, 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 due to the fact that the width of the lot being quite narrow and the slope is quite steep with few options to locate the home and garage; 2) a variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district in that a compromise has been made to conserve the adjacent property; 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 the orientation of the garages door will face west and 4) the difficulty or hardship was not created by the property owner in that the easement was existing - 4

Meeting adjourned at 7:48 p.m.

Tamara Szudy, Secretary

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