



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, May 26, 2011

PRESENT: Mr. Randall, Ms. Meyer, Mr. Pennoyer, Mr. Subotich – 4

ALSO PRESENT: T. Szudy, Planner; J. Roznowski, Alderman-District 6

Mr. Randall as acting Chair called the meeting to order at 7:04 p.m.

9874 W. Argonne Drive

Variance

Request by Paul and Pamela Jacobson for a Variance to the maximum fence height in order to construct a six-foot high fence in the rear yard of the property located at 9874 West Argonne Drive.

Ms. Szudy said that the applicants want to construct a 6 foot high fence on the property line to enclose their rear yard. City code allows a fence with a maximum height of 4-1/2 feet. The fence would run along the property lines in the rear yard and return to the sides of the house. The applicants have a daughter with special needs and the fence is necessary to protect her and keep her within the yard. The property directly to the rear of the applicants has a driveway which is a hazard for their child as well as their home's proximity to the Menomonee River. The applicants received financial assistance from the county to assist with the construction of the fence, funding that is difficult to receive. The two adjacent properties to the rear of this property are located in the City of Milwaukee where 6 foot high fences are allowed in rear yards.

Present in favor: Pamela Jacobson, 9874 W. Argonne Drive
Jeff Roznowski, Alderman-District 6, 2609 N. 82nd Street
Brick Schuster, 9601 W. Argonne Drive

Mr. Randall recognized that Ms. Jacobson provided supporting documentation of her daughter's unique medical condition from her physicians. A statement was provided from the Milwaukee County Department of Health and Human Services Disability Services Division identifying special needs funding granted to Ms. Jacobson for the installation of the fence. Mr. Randall asked Ms. Jacobson to explain the reason for the request of variance.

Ms. Jacobson explained that her daughter has a unique medical condition in which her daughter displays poor judgment and decision making skills. Ms. Jacobson gave an example that should a person speak to her daughter over the four and a half foot fence and ask her to go with them, her daughter would go. She further commented that her daughter would be able to climb a lower fence. Ms. Jacobson's house is also near the Menomonee River and the back yard has a driveway all of which makes the situation dangerous for her daughter. Ms. Jacobson commented that her daughter's genetic doctor has recommended GPS for her any time she is not in the house for additional safety.

Ald. Roznowski expressed his support for Ms. Jacobson's application for the variance. He commented that the Milwaukee County Department of Health and Human Services Disability Services Division recommends the

fence for safety and to prevent out of home placement. The State of Wisconsin and Disability Services Division has granted the Jacobson family funding in the amount of \$5,000 for the six foot fence. He further commented that the area surrounding the home is of particular risk to Ms. Jacobson's daughter as it is near the parkway and Menomonee River. Ald. Roznowski stated that the property is adjacent to a Milwaukee residence which allows a six foot fence.

Brick Schuster shared his support for the need for the variance. He is a neighbor of Ms. Jacobson and stated that Mr. and Ms. Jacobson have spoken to the neighbors regarding the fence and he is not opposed to it. He further indicated that should the variance be granted, there will be a small portion of fence that is connected with his property and a Milwaukee property that will not have the six foot fence. Mr. Randall informed Mr. Schuster that if he is interested in completing this area with a six foot fence, he would have to apply for his own variance. Ms. Szudy recommended he speak to the owner of the Milwaukee residence.

Mr. Randall asked if Ms. Jacobson has approached the Milwaukee neighbor to erect the fence. Ms. Jacobson indicated that if the fence is erected on property not owned by her, she would lose the funding for the project and the fence would only be on the dividing back lot line, it would not include the sides which are Wauwatosa properties. She stressed that funding for projects of this type is extremely difficult to receive. She was on a waiting list with the State for three years before receiving consideration for the project. If she had to pay for this out-of-pocket, it would be a hardship on her family. Ms. Meyer commented that she is familiar with the State program and concurs that funding is very limited and difficult to receive.

Mr. Pennoyer commented that the board looks at criteria which depend on adjacent properties. He asked if there has been any response received from the Milwaukee neighbor. Ms. Szudy informed the board that letters were sent to owners adjacent to the property, including the Milwaukee neighbor informing them of the variance request.

Ms. Meyer commented that this is an unusual request due to the child's circumstances for safety. The purpose of the Board of Zoning Appeals is for such situations. There is a high need for the safety of this child.

Mr. Randall asked Ms. Jacobson if the funding she is receiving to erect the six foot fence versus the four foot fence because of concerns from medical professionals. Ms. Jacobson replied yes, the genetics department recommends this high of a fence to keep her daughter safe. She commented that her daughter's disability and the consequences she suffers from is causes her to make bad decisions. Erecting a six foot fence would enable Ms. Jacobson to keep the child in the home versus institutionalizing her. The doctors involved in her case recommend her daughter experience playing outside and a six foot fence would provide a safe environment for her daughter outside.

Mr. Randall thanked Ms. Jacobson for providing the neurology report, however, is concerned about the confidentiality of the report. Ms. Jacobson commented that it was not her intention to release confidential information regarding her daughter's medical condition to the public and would ask that the report remain confidential. Ms. Jacobson informed the board that she provided this report for information purposes to allow the board to better understand the severity of her daughter's medical condition. Mr. Randall recommended that the board does not include the evaluation as part of the report.

No one present in opposition.

Moved by Ms. Meyer, seconded by Mr. Subotich to
approve the variance request by Paul and Pamela Jacobson.

This Board finds that 1). Exceptional circumstances do exist pertaining to this due to home owner's medical condition of their minor child; 2). A variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in that it will provide a safe environment for the child; 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 a portion of the property is the city of Milwaukee which allows for a six foot fence; 4). The difficulty or hardship was not created by the property owner, erection of the six foot fence would allow for the minor child to remain in the home and not be institutionalized. Based upon these findings, it is found that the Variance request be granted.

Roll call vote taken: Ayes: 4

6708 Hillcrest Drive

Variance

Ms. Szudy said that the applicants want to demolish a cantilevered bay window on the rear of their home and replace it with a slightly larger addition that has a foundation. As this property is a corner lot, the front of the property by zoning standards is considered Revere Avenue as it is the narrowest frontage along a street even though the house is situated and addressed from Hillcrest Drive. As a result, the proposed addition will have a rear yard setback of 8' 4" whereas 25 feet is required. The proposed addition will be 24.5 inches wide and will encroach about a foot further into the setback than the existing bay that is 12.5 inches wide. If the front of the lot was actually Hillcrest, there would be no need for a variance as the setback would be met as it would be considered the side yard of the property.

Present in favor: Julia and Bladen Burns, 6708 Hillcrest Drive

Ms. Burns explained that her property was unique in that the front of the home is actually considered the side of the home by zoning standards and the side is the front. The cantilever needing replacement also needs a foundation. There is moisture which is affecting the condition of the home. They are requesting an additional 12" to make the new construction functional and to also correct drainage issues. Currently there exists a slant toward the home and drainage is an issue. They have discussed this with their neighbors and have received no opposition.

Mr. Randall asked if this replacement could be done without adding the 12". Ms. Burns explained that the 12" would add aesthetics to the appearance of the home as well as correct drainage issues. By correcting the angle of this side of the home, it would be an improvement as well as enhance the appearance. Water runs toward the property rather than away from the home. Repairing this angle would correct this issue. The materials used will be a better quality and more durable. Mr. & Mrs. Burns are working with a historical consultant as it relates to the materials to keep the historical significance of the home.

Mr. Pennoyer asked if they have received approval from the Washington Highlands Review Committee and/or do they need to issue an approval before this is considered by the board. Ms. Burns replied that she has not

approached the Washington Highlands Review Committee yet, however, she believes she needs to receive approval from the board and present this along with historical significance to the property in order to receive approval from the Highland Review Committee.

Ms. Meyer asked if there was an option to apply to have the home's property address changed so the side of the home is the front? Ms. Szudy replied that this would require zoning changes for the entire city of Wauwatosa and is not an option at this time. Ms. Meyer recognized that this is a unique property and Ms. Burns would not need a variance if the actual front of the home was zoned as such.

No one present in opposition.

Moved by Mr. Pennoyer, seconded by Ms. Meyer to approve the variance request by Julia and Bladen Burns. This Board finds that 1). Exceptional circumstances do exist pertaining to this lot in that the legal description of the lot is conflicting with the actual home, the front of the home is the side; 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 the existing projection of the house is not compatible with 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 in that the projection is only an additional 12" and should not pose a difficulty; 4). The difficulty or hardship was not created by the property owner and is not imposing in that the ordinance was created in 1972 with the home orientation opposite of the norm;

Based upon these finding, it is found that the Variance request be granted.

Roll call vote taken: Ayes: 4

Meeting adjourned 8:12 p.m.

Tamara Szudy, Secretary

mks