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MEETING OF THE BOARD OF ZONING APPEALS
Thursday, June 23, 2011

PRESENT: Mr. Randall, Ms. Harris, Mr. Pennoyer, Mr. Bittner – 4

ALSO PRESENT: J. Ferguson, Planner; D. Birschel, Alderman-District 7

ABSENT: Ms. Meyer, Mr. Subotich

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

6228 W. State Street **Variance**
Request by Tyler Sullivan and Tom Schuler for a Temporary Use in the AA Light Manufacturing District at 6228 West State Street to operate a CrossFit gym

Mr. Sullivan is requesting a temporary use to operate a CrossFit gym at a location zoned AA Light Manufacturing, a district that does not allow physical fitness uses. These uses are allowed, with the appropriate approvals, in areas of the City zoned for business/commercial uses. However, the City is currently in the process of revising the zoning code, with one of the goals to make zoning consistent with the Comprehensive Plan. The Comprehensive Plan identifies this location as changing to a Planned Mixed Use designation, which would include provisions for physical fitness uses. The Community Development Director and City Attorney determined that, pending the new zoning code adoption, a Temporary Use was the appropriate course of action for this proposal.

The proposed business is described as not a typical gym or fitness studio with moving parts or machines, but instead offers different, overall fitness workouts through personal training sessions by appointment as well as group classes of 5-10 persons per class. Possible class times are 5:30 AM, 5:30 PM and 6:30 PM.

Present in favor: Tyler Sullivan, 6228 W. State Street
Tom Schuller, 6228 W. State Street

No one present in opposition.

Mr. Sullivan explained that this type of gym is not a “typical” fitness gym, but a training fitness center. He trains a cycling team that would benefit from this type of fitness center. It is a personal training atmosphere and is used for athletic teams. Mr. Sullivan provided pictures of what the gym would look like when completed.

Mr. Pennoyer asked about the provisions for parking for his customers. Mr. Sullivan explained that parking was only available on the street, however, there would only be approximately five people present at the gym at any given time.

Mr. Pennoyer requested information about the other tenants of the building. Mr. Schuller, owner of the property, indicated that tenants include a sports management business, an account management firm, a commercial kitchen, and Greg Finishing; Grede Foundry uses this facility for storage only.

Mr. Randall asked how classes will be conducted and why is an industrial building appropriate for this type of business. Mr. Sullivan commented that this building was ideal because with his training programs, there might be shaking of the ground with the dropping of weights. There would also be music, which might disturb other tenants in another location.

Mr. Randall inquired if it is known when the change of zoning will occur. Ms. Ferguson informed the committee that should the zoning change to what is identified in the comprehensive plan, this type of business could be permitted.

Mr. Randall commented that this proposal is for up to one year with the temporary use permit, but it could change. If no action is taken in one year's time, would Mr. Sullivan need to apply for an extension. Ms. Ferguson answered that Mr. Sullivan would need to apply for a renewal.

Moved Mr. Pennoyer, seconded by Ms. Harris to approve the variance request for a temporary use permit. Regarding the Temporary Use application by Tyler Sullivan for Crossfit Gym at 6228 West State Street, this board finds:

1. That the establishment, maintenance or operation of the Temporary Use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the Temporary Use.
3. That the establishment of the Temporary Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and other necessary site improvements have been or are being provided.
5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the Temporary Use shall meet all applicable building setbacks of the district in which it is located or as otherwise provided for.

Based upon these findings, I move that the Temporary Use be granted for one year beginning July 1, 2011 to expire June 30, 2012, subject to the following conditions:

- A. Hours of Operation
Monday through Saturday
5:00 a.m. to 9:00 p.m.

Roll call vote taken: Ayes: 4

Request by Trent and Caroline Eichmann for a Variance to the front yard setback in the AAA Single Family Residence District to construct an addition at 2354 N. 120th Street

The applicants received a variance for a side yard setback in January, 2011 for an addition that included a new, attached two-car garage with living space above. The survey and site plans submitted at that time indicated the addition would be 6.5 feet from the side lot line, whereas a 10 foot setback is required, and 37 feet from the front lot line, whereas a 35 foot setback is required. Staff informed the homeowner that a variance would be needed to meet the side yard setback, which the applicant subsequently applied for and received.

Based on the owner's submission of a site plan identifying the front setback as 37 feet as well as a survey in which the homeowner had handwritten a 37 foot front setback and a signed survey waiver certifying the accuracy of the survey measurements, staff approved the rest of the proposal pending the resolution of the January variance application. After that variance request was approved, the permit was issued and the construction was started.

Unfortunately in the past month or so, while investigating a recent complaint that this addition is being built too close to the road, staff discovered that the front setback represented on the plans/survey was inaccurate. In reality, the addition to the home is setback 27 feet from the front property line instead of the 37 feet shown on the submitted plans/survey, for an encroachment of eight feet into the required 35 foot front yard setback. Had this measurement discrepancy been discovered in January, the front yard setback could have been reviewed at same time as the side yard variance. However, the addition is now nearing completion, and therefore staff urges approval of the variance, as it was not a deliberate attempt by the homeowner to misrepresent the measurement and staff didn't identify the error until recently.

Included in the packet is the testimony from the January meeting, stating that there is no other feasible placement for a garage other than at the front of the house due to location of the existing garage/driveway, configuration of the house floor plan, and high tension power lines in the back yard. Also, the meeting minutes from the January variance approval reiterate the Board's findings for the side yard variance, which may apply to this request as well.

Present in favor: Trent and Caroline Eichmann, 222 Brad Drive, Kewaskum
Richard Schimmel, 2326 N. 120th Street
Alderman Birschel District 7

No one present in opposition.

Alderman Birschel informed the board that the owners seeking this variance have previously sent their plans to the Design Review Board and was approved. The plans were examined at that time, however, when a complaint was received by the Building Department there was a discovery of a miscalculation in the measurement of the property line. It was the city's mistake and he does not feel that this addition to the property should be taken down. He is present in favor of Mr. and Mrs. Eichmann.

Mr. Randall asked Mr. Eichmann if he received any complaints regarding the setback. Mr. Eichmann replied that the complaint was received by the Building Department.

Mr. Schimmel informed the board that this property had several owners in the past and prior to Mr. Eichmann, the property was in foreclosure and was left in disrepair. Mr. Eichmann purchased the property and began to improve it. He and some of the other neighbors noticed that construction had stopped on the property which prompted him to call the zoning department. Mr. Schimmel discovered that there was a complaint received about the setback measurement. Mr. Schimmel urges the board to approve this variance because Mr. Eichmann has not only purchased the property, but is improving its appearance.

Mr. Randall mentioned that there was a petition signed by the neighbors in favor of the first variance request which was approved.

Mr. Eichmann explained that he received a survey provided by the city. At that time, he asked about the 35 foot setback was only told to measure from the lot line, so he measured from the curb because there were no sidewalks. The plans were approved by the Design Review Board. He has since received several inspections during the process of construction and at no time did an inspector inform him of the miscalculation. He has already completed the garage, two bedrooms on the second floor and heated flooring. Mr. Eichmann contracted with an engineer to complete the plans for the project. The engineer called the city to clarify where to begin measuring and received the response to measure from the lot line.

Mr. Eichmann responded that if he does not receive approval for this variance, it would cause great hardship for his family. The floor he has installed is radiant heat and cannot be removed in sections. It would have to be completely removed from all areas of the home and garage. If he removed the structure above the installed floor, it would cost a lot of money. Mr. Eichmann informed the board that the inspector, Bill Mainus, approved the footing foundation inspection and go onto the next step. Mr. Eichmann called to have the rough carpentry inspected but Mr. Mainus requested he wait until the mechanicals were ready to be inspected.

Mr. Pennoyer commented that he believes that the verification of measurements is completed when the plans are reviewed and a permit is issued. He does not believe that further review of setback measurements are completed during inspection processes. This miscalculation only presented itself due to the complaint the Building Department received. Mr. Randall commented that perhaps the city should re-examine the process for permit issuances so as to avoid measurement miscalculations in the future. Ms. Ferguson commented that the city does not ask homeowners after an inspection is completed to provide another survey.

Mr. Bittner inquired if Mr. Eichmann discovered a survey pipe in the back of his property. Mr. Eichmann stated that it is extremely overgrown in the back of the house and could not locate any pipes.

Mr. Randall asked how many months Mr. Eichmann has halted construction. Mr. Eichmann has discontinued construction for five months. Mr. Mainus indicated that he could continue but he should not do anything to the front of the home. Mr. Eichmann's contractors are unable to get into the home for the mechanicals or drywall.

Mr. Randall asked if the 35 foot setback is typical for this area. Ms. Ferguson informed the board that the majority of Wauwatosa is 30 foot setback, however, this particular area is 35 feet. Mr. Randall asked if the city has any plans to widen the street in this area or to install sidewalks. Ms. Ferguson answered that the city currently has no plans.

Mr. Randall asked if there were any other viable options for the location of the garage. Mr. Eichmann commented that due to the location of the WE Energies power towers in the yard, there was no other alternative.

Moved by Mr. Pennoyer, seconded by Ms. Harris to approve the variance request by Trent and Caroline Eichmann. This Board finds that 1). Exceptional circumstances do exist pertaining to this lot in that the existing WE Energies structure poses limitations on the rear property and is already a legal non-conforming property. It was determined that using the existing structure in the remodel seemed to be most logical due to the original layout of the home; 2). A variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in that the existing home has been left in disrepair and an eyesore which brings down the property values and the proposed variance will upgrade the disrepair. The property is no longer an eyesore to the neighborhood and a neighbor appeared in favor of the variance request; 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 this would be consistent with the other split level properties in the neighborhood; in fact adding a “code compliant two-story” addition would be inconsistent which may cause a detriment. The neighbors were notified of the variance request and the variance will actually be an enhancement to the neighborhood and a neighbor also appeared in favor; ; 4). The difficulty or hardship was not created by the property owner and is not imposing; the property was annexed into the city in about 1956 and is legal non-conforming structure currently. The applicant was not aware of where the setback measurement started and due to the city process, the front yard setback was overlooked in the plans.

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

Roll call vote taken: Ayes: 4

Meeting adjourned 8:16 p.m.

Jennifer Ferguson

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