



CITY OF WAUWATOSA
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MEETING OF THE BOARD OF ZONING APPEALS
Thursday, August 25, 2011

PRESENT: Mr. Randall, Ms. Harris, Mr. Pennoyer, Mr. Bittner, Mr. Subotich – 5

ALSO PRESENT: T. Szudy, Planner

EXCUSED: Ms. Meyer

Mr. Randall as acting Chair called the meeting to order at 7:00 p.m.

7030 St. James Street

Variance

Request by John and Tom Vajda for a Variance to the side yard setback in the BB two family residence district for construction of a deck at 7030 St. James Street

The applicants are requesting a variance to a street side setback for a 12 foot by 16 foot deck that has already been constructed (without a building permit) on their property located at the corner of 70th Street and St. James Street. It is staff's understanding that the applicants were unaware that the deck required a building permit and was subject to zoning requirements. The deck was constructed with a setback of three feet from the 70th Street property line, aligning it with the legally constructed fence. However, as the deck is attached to the house and over two feet above grade, the deck must meet the principal building street side setback of eight feet. As indicated in the information provided by the applicant, there is no functional back yard due to the location of the house and garage. In addition, the size of the lot, approximately 40' wide by 90' deep, is smaller than the average lot in Wauwatosa.

Present in favor: John Vajda, 7030 St. James Street
Cindy Vajda, 7030 St. James Street
Tom Vajda, 143 N. Mooreland Blvd
Paul Holub, 1347 N. 71st Street
John Neuleib, 1323 N. 70th Street
Mark Sgarlata, 1339 N. 70th Street
James Bintley, 7034 St. James Street

No one present in opposition.

Mr. John Vajda provided letters of support to the Board members from neighbors. He also provided pictures to Board members to allow them to see the property. Mr. Vajda explained that he was installing the deck to provide a safe area for his children to play and for entertainment purposes. Mr. Vajda explained that his property is unique and is smaller than other properties. This property is located on the corner and does not have a back yard. He built the deck on the side of the house to align with the current fence line and to allow them to go onto the deck from the front of the house. At the current time, the deck does not have skirting or all of the rails installed. Mr. Vajda informed the Board that the deck does not interfere with the visibility of the stop signs nor the sidewalk. Mr. Vajda commented that he wanted to make the property more usable and be aesthetically pleasing.

Ms. Vajda said she and her husband wanted to have a safe area for their children to play and to have an area in which family and friends could visit and keep an eye on their children. Prior to the installation of the deck, when the children would play in the fenced in area, they would have to go out the front door, down the porch and around to the side of the house. She commented that there is a lot of traffic in the area and the cars go quite fast down the street. The deck provides a safe and more secure area for the children should a vehicle lose control and come into their yard.

Mr. John Vajda informed the Board that the deck is not attached to the house. There is one leg bolt that is attached to the current porch; however, if he needs to remove this and install another post, he is willing to do this.

Mr. Tom Vajda spoke in favor of the applicant. He commented that since Mr. John and Mrs. Cindy Vajda purchased the home, they have continuously improved its appearance. He indicated that the location of the deck is the only area in which they could have built it and provide a safe area for their children to play. It does not go past the fence line and does not interfere with the line of sight.

Mr. Paul Holub informed the Board that the applicants are located on the corner and have taken pride in their house. Many people have commented to him on how nice the house looks and have been an improvement to the neighborhood.

Mr. John Neuleib commented that the applicants have no back yard and the way the property is laid out, the back side of the house is OutPost. He stated that it is not impeding on any other house. It is pleasing in terms of how it matches up to the corner because of how it is so open and the lay-out of the corner.

Mr. Mark Sgarlata indicated that Mr. and Mrs. Vajda installed the deck and brought the fence and front porch together. It is welcoming and passerby's comment on how nice it looks.

Mr. James Bintley commented that it makes sense that the side yard is connected to the deck. It makes it more pleasing to the eye.

Ms. Szudy indicated that the applicant needs a permit for the deck; currently it is attached to the house and is above grade.

Mr. Pennoyer asked if it was code compliant if he had only a fenced in area. Ms. Szudy commented that the deck aligns with the fence line and this is compliant. Ms. Szudy commented that the height of the deck is not compliant and the bolt is attached to the front porch.

Mr. John Vajda commented that if he changed the height of the deck, there would be an extreme drop between the present porch and deck. Currently when you come off the existing deck you take one step down and when you come to the second part of the deck, you come down another step.

Mr. Randall asked if this would need to be approved by the Design Review Board. Ms. Szudy replied that she would have to check with the inspector who would make this decision. Mr. Randall commented that this is a unique property and it appears that it is smaller than other lot sizes in the area. Mr. Randall asked Ms. Szudy if this lot size and lot lay out is a rare occurrence. Ms. Szudy replied yes.

Moved Mr. Pennoyer, seconded by Mr. Subotich to approve the variance request to the side yard setback in the BB Two Family Residence District for construction of a deck this board finds:

1. Exceptional circumstances do exist pertaining to this lot. It is a corner lot; the structure of the home is not consistent with corner lots and has a side yard rather than a back yard.
2. That the variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. Traffic on 70th Street is busy. Construction of the deck would provide a safer situation. The neighboring property owners responded to the applicants and are here in support of this property making a case for safety and aesthetics.
3. That the variance will not create 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. The deck is designed to be consistent with the structure and meets the design intent.
4. That the difficulty of hardship was not created by the property owner but rather exists due to the lay-out of the property.

Based upon these findings, I move that the variance be granted, subject to the following conditions:

- A. That the plans are presented to the Design Review Board if determined necessary by the building inspector.

Roll call vote taken: Ayes: 4 No: 1 (Bittner)

Meeting adjourned 8:15 p.m.

Tammy Szudy

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