



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

MEETING OF THE BOARD OF ZONING APPEALS
Thursday, April 26, 2012

PRESENT: Mr. Randall, Mr. Bittner, Mr. McGuan, Mr. Pennoyer,

EXCUSED: Ms. Meyer, Mr. Subotich

ALSO PRESENT: J. Ferguson, Planner

Mr. Randall as acting Chair called the meeting to order at 7:01 p.m.

2603 Lefeber Avenue Variance
Request by Steven Cramey for a Variance to the side yard setback in the AA Single Family District at 2603 Lefeber Avenue for a fence.

The applicant is requesting a variance to the side yard setback for a masonry fence. As a corner lot, the City's fence regulations require that a four and a half foot tall fence be setback three feet from the side lot line along the side street, incorporate landscaping, and obtain a building permit. The current fence encroaches approximately one inch over the lot line, which also means Board of Public Works approval is necessary pending the variance approval.

Prior to installation of this fence, an 18 inch tall retaining wall was located along this side, abutting the sidewalk. The property owner replaced that wall with the current structure, setting it back 18 inches from the edge of the sidewalk, which is what the owner believed to be in compliance with City regulations. Upon investigation by the City's property maintenance inspector, it was determined that because the structure exceeded the preexisting height of the grade, the portion that extends above grade is considered a masonry fence that needs to comply with fence regulations. As a result, the applicant is requesting a variance for the fence in its present location.

The property does not have a usable backyard and this side yard is the only feasible area that provides space for enjoying the yard. The masonry fence provides the owners with some privacy and protection.

Present in favor: Steven Cramey, 2603 Lefeber Avenue

Mr. Cramey stated that the original grade was 18" above the sidewalk and went right to the edge of the sidewalk. The retaining wall needed to be replaced. Due to an addition to the home made by the previous owner, there is no back yard to the property. He is attempting to provide an outside play area for his child that would be safe.

Mr. Cramey provided letters from his neighbors supporting the installation of his fence. Mr. Cramey has also provided additional pictures of the property.

Mr. Pennoyer commented that he noticed this is one inch over the lot line and asked if this is correct. Ms. Ferguson responded that it was correct and because it is one inch over the lot line, it is considered City property

therefore would also need approval from the Board of Public Works. Mr. Cramey indicated that the previous retaining wall that he removed was right up against the sidewalk. The new one will be 18" set back so he can plant greenery, such as bushes, flowers, etc.

Mr. Randall asked if the previous retaining wall was up to the grade. Mr. Cramey responded that it was. Mr. Randall commented that the current structure is above grade and this is why it is considered a fence. Mr. Blando commented that if Mr. Cramey would have replaced the retaining wall at the 18" height up to the grade, this would not be an issue, however, going above the grade is now considered a fence.

Mr. Cramey attempted to obtain information regarding the installation of the fence. The pamphlet provided by the City and the information he received he believed that his property line was the sidewalk and he determined his measurements from that calculation.

Mr. Blando stated that when he spoke with the owner he identified this as a retaining wall, however, a retaining wall is something that is retaining something. Mr. Cramey's project begins as a retaining wall, but once he builds past the grade, it becomes a fence. A fence has a three foot setback from the lot line. Mr. Blando also commented that there is an addition that was built onto the rear of the house so Mr. Cramey is building the fence on the side-yard.

Mr. Bittner asked how far the distance is from the house to the lot line. Mr. Cramey responded that it is 17 feet, however, some of this space has a porch and stairs with an arch way, leaving nine feet of space for the yard area. Mr. Cramey stated that this area is the only space that his property has to allow his child to play. He is building the fence to keep his child safe. Vehicles drive down the street area at higher than speed limits and he feels that there is a possibility of unsafe conditions without a fence, a ball could roll, toys, his child could go out of the yard or unwanted individuals could wander in. Creating this play area would also improve the view of the property should there be toys outside, etc.

Mr. Randall recommended that a condition be placed as it relates to landscaping near the sidewalk. Ms. Ferguson also stated that because it is one inch over the lot line, the fence is considered to be on City property and the City could become liable if someone were to be injured. The owner would need to have an agreement with the City and provide proof of insurance of the property owner's responsibility.

Moved Mr. Pennoyer, seconded by Mr. Randall to approve the variance request to the side yard setback to allow a fence to be built, this board finds:

1. Exceptional circumstances do exist pertaining to this lot. It is a corner lot that has little area safe for children to play due to the close proximity of the streets. The home has an archway which divides the small area of the yard portion creating space issues.
2. That the variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. It is the only area useable for a yard. A structure would block the view of items in the play area and provide some privacy.

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 applicant has received support from the neighbors. The 18” setback should be consistent with the neighborhood greenery with plants. The public will be safe guarded by the Board of Public Works in the review of the encroachment of the City property and we would trust the Board of Public Works to evaluate this.
4. That the difficulty of hardship was not created by the property owner. The owner did contact the City prior to starting the project but was confused with the information that was provided. The owner believed his assumption was correct. This owner did not build the house or divide the lot and did not put the addition on the home which creates a small space for the play area.

Based upon these findings, I move that the variance be granted with the following conditions

That the Board of Public Works reviews the plans, greenery is planted in the 18” setback and the Mr. Cramey applies for a permit for the fence.

Roll call vote taken: Ayes: 4

8334 W. North Avenue **Variance**
Request by Steven Sharpe and Ansar Hasan for a Variance to all for an accessory structure in the front yard in the DD Eight Family District at 8334 North Avenue.

The applicant is requesting a variance to construct an accessory structure in the front yard of the property. The property has operated as a gasoline station, and therefore an existing non-conforming use in the DD Eight Family Residential District, for many years. Per zoning, an accessory canopy structure like the one being proposed is not allowed in the front yard of residential districts, therefore necessitating the variance.

The applicant would like to construct the canopy to provide patrons protection from the elements and does not believe the structure will have a detrimental effect on neighboring properties.

Present in favor: Steven Sharpe, Architect for the project
 Ansar Hasan, 8334 W. North Avenue
 Dorothy Urban, 8617 W. North Avenue
 Sandy Yerdon, 9115 W. North Avenue

Ms. Urban and Ms. Yerdon commented that they have been going to Mr. Hasan’s establishment for many years. Mr. Hasan is a full service station and caters to his customers as much as he can. The canopy would help customers that come to be protected by the rain and snow.

Mr. Steven Sharpe informed the board that he is the architect for the project and he is trying to help the owner install a canopy at his gas station located on 83rd and North Avenue. This is a historic building and the canopy will be designed to coordinate with the current building. Mr. Sharpe stated that the current sign will remain. Mr. Sharpe stated that the canopy is 15 feet high and the current sign is 12 feet.

Mr. Hasan stated that currently his business does not have a canopy and his customers have to walk from their vehicles to the building to pay for gas. His business is legal non-conforming use and has been there since the 1935. Mr. Hasan has two gas pumps but they are not equipped with credit card use, so payment must happen inside the establishment. Mr. Hasan would like to install the canopy to protect his customers during bad weather. His business does not stay open late, he generally closes by 8:00 p.m. so the lights would be off early.

Mr. Sharpe commented that the lighting would be LED lighting. There will be two columns and no signage. The canopy would be painted matching colors to the building with two stripes. All of the water will be collected on the roof and come down the columns in gutters. Ms. Ferguson stated that the Design Review Board does need to approve this project also.

Mr. Randall asked if Mr. Sharpe went over this plan with the City of Wauwatosa. Mr. Sharpe indicated that he did not find anything in the zoning requirements about setbacks. Mr. Sharpe stated that the footing is four feet square, four feet into the ground and two feet thick. Mr. Sharpe informed the board that the columns will be fastened just below grade with anchor bolts four feet long. Mr. Sharpe stated that it will not be in relationship to the tanks but service lines will be taken into account.

Mr. Randall asked Ms. Ferguson to explain the legal non-conforming status of the business. Ms. Ferguson replied that the area is currently zoned DD 8 family. The business existed before this zoning went into effect. Ms. Ferguson commented that if the business stopped operating for 12 months or more, the property would turn into an 8 family zoned property.

Mr. Randall asked what the hours of operation are for this business. Mr. Hasan responded that he is open from 7:00 a.m. to 7:00 p.m. and the lights go out when they close. Mr. Hasan stated that his permit allows him to be open from 6:00 a.m. to 9:00 p.m. Ms. Ferguson stated that if Mr. Hasan wanted to go beyond the current allowable hours of operation, he would have to apply for a new permit.

Moved Mr. Bittner, seconded by Mr. Pennoyer to approve the variance request to allow for an accessory structure to be built, this board finds:

1. Exceptional circumstances do exist pertaining to this lot. It has been legal non-conforming for many years because the historical nature of the business. The use is unique and long standing.
2. That the variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. It adds a commercial value in providing a valuable service to the community.
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. It will not be intrusive and will compliment the neighborhood.

4. That the difficulty of hardship was not created by the property owner. This lot has existed since 1934.

Based upon these findings, I move that the variance be granted with the following conditions

That the hours of operation for the canopy will not remain on outside of the 6:00 a.m. to 9:00 p.m. permit.

Roll call vote taken: Ayes: 4

Meeting adjourned 8:15 p.m.

Jennifer Ferguson

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