



CITY OF WAUWATOSA
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MEETING OF THE BOARD OF ZONING APPEALS
Thursday, August 2, 2012

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

EXCUSED: Mr. Bittner

ALSO PRESENT: J. Ferguson, Planner, Greg Blando, Property Maintenance Inspector

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

6504 West Wisconsin Avenue **Variance**
Request by Wendy Hagaman for a Variance to the side yard setback in order to construct a deck in the BB Two Family District at 6504 W. Wisconsin Avenue.

The applicant is requesting a variance to the side yard setback to construct a deck. As a corner lot, the City's setback requirements for the deck are 10 feet from the property line along the N 65th Street side. The applicant is proposing to encroach approximately seven feet, two inches into this setback. Lot characteristics and the placement of existing structures does not allow for a new deck in a different location. The Design Review Board has approved plans for the deck that took into consideration size and green space.

Present in favor: Nick Kerzner, 1200 Capital Drive, Oconomowoc, WI
Wendy Hagaman, 6504 West Wisconsin Avenue

Present in opposition: None

Mr. Kerzner, Kerzner Remodeling and Construction, stated that Ms. Hagaman's house and garage take up most of the property. There is no yard, no protection for pets and children. Vehicles travel very fast on Wisconsin Avenue which creates a dangerous situation. Mr. Kerzner has made changes to the original plan to accommodate a 45 degree angle on the front of the deck.

Mr. Pennoyer asked how far into the setback is the deck and can the size be reduced to a nine or seven foot. Ms. Ferguson responded that the encroachment is now 5.4 feet into the setback as the Design Review Board did make a change in the length of the deck.

Mr. Randall stated that Ms. Hagaman provided letters of support from her neighbors at 6518 W. Wisconsin, 717 N. 65th, 6503 W. Wells, 6432 W. Wisconsin, 6430 W. Wisconsin, 6431 W. Wells, 6432 W. Wells.

Mr. Kerzner also commented that there are other houses in this neighborhood with similar setbacks. There are homes with fences that are approximately five feet from the property line which would be consistent with the proposed property line.

Mr. Pennoyer asked if another option was considered such as a patio with a four and one-half foot fence. Mr. Kerzner stated that they would then need a retaining wall built. Mr. Blando was asked if this was possible and

responded that this could be a possibility. The lot line is approximately three feet off the side walk and the side yard setback for a fence would be three feet versus ten feet for the deck.

Mr. Kerzner commented to the Board that he believes this option would be more expensive for the owner and that there are buried lines in this area. Mr. Subotich responded that there are four foot penetrations needed for the deck and this area should have already been tagged for buried lines.

Mr. Randall provided information to the owner and Mr. Kerzner to decide if they would prefer to proceed with the proposed deck or to return to the next meeting with additional information supporting their request. Mr. Kerzner and Ms. Hagaman would need to contact Ms. Ferguson by August 15th to be placed on the next agenda.

Ms. Hagaman has chosen to return to the next meeting with additional information.

Moved by Mr. Pennoyer, seconded by Mr. Subotich to
Table this request for a Variance at 6504 W. Wisconsin
Avenue to the next Board of Zoning meeting to be held
on August 23, 2012 for the applicant to do additional
investigations as it relates to the requested deck.

Roll call vote taken: Ayes: 4

2228 N 62nd Street

Variance

Request by Jeremy Fyke for a Variance to the maximum fence height for a six foot high fence in the rear and side yard in the AA Single Family District at 2228 N. 62nd Street.

The applicant is requesting a variance to the maximum fence height for a six foot tall fence. The City's fence regulations require that a six foot tall fence adhere to the buildable setbacks of the lot, in this case three feet from the north side lot line and 25 feet from the rear lot line. In order to meet the requirements in the current location on the lot line, a fence could not exceed four and half feet in height.

The fence was erected by the previous property owner and the current owner (applicant) was unaware the fence was constructed in violation of City Ordinance when they purchased the home. A complaint filed by the property owner to the north (2232 N. 62nd Street) is what brought this violation to attention.

Present in favor: Jeremy Fyke, 2228 N. 62nd Street
 Rick Amen, 2222 N. 62nd Street
 Brian Faltinson, 2209 N. 62nd Street

Present in opposition: None

After receiving the complaint, Mr. Blando visited the property and explained to the property owner that at the current location, the fence cannot exceed four and a half feet in height. The property owner explained to him at that time that the previous owner erected the fence. Mr. Blando did notice that the fence was weathered and it appears that it is more than six months old.

Mr. Fyke stated that the fence was present when he purchased the home. He stated that it was part of the reason he purchased the property. He was not aware that it was in violation of City ordinance. Mr Fyke explained that it separates his property from the property to the north, provides privacy and eliminates the tenants in the property to the north from using his driveway to get to their property. Mr. Fyke also explained that the upkeep

of the property to the north is not good and the fence assists with noise level as well as their lights shining into his yard. Mr. Fyke has letters from other neighbors supporting his request to keep the fence at six feet.

Mr. Amen informed the Board that he is the owner of the property to the south of Mr. Fyke. Mr. Amen and Mr. Fyke share a driveway. He is here in support of Mr. Fyke's request. Mr. Amen stated that prior to the erection of the fence, the tenants of the property to the north would utilize his driveway to get to their property. These tenants would have disregard for his property and damage it while driving through or backing out. They would also use his and Mr. Fyke's driveway as a parking area, preventing him and Mr. Fyke from use of their own property. These tenants have damaged his garage, his cement steps, his lawn, and have blocked the driveway with their vehicles preventing him from entering and/or exiting. The tenant's vehicles are also not well maintained and are loud during operation. The yard to the north is not maintained, which results in unpleasant views from his property. The fence provides a sound barrier and assists with blocking the lights that shine into his yard. Since the erection of the fence, he has been able to enjoy his property.

Mr. Faltinson has lived in the neighborhood for 11 years. He commented that the traffic through this property before the fence was erected was considerable. This property used to be one of the worst kept properties in the neighborhood. Mr. Fyke has improved the property extensively. Mr. Faltinson also has a six foot fence on his property. He supports Mr. Fyke's request.

Mr. Randall asked Mr. Fyke if he has looked at reducing the height of the fence. Mr. Fyke stated that if he cut the fence down to four and a half feet, it would be unsightly. The reduction in height would also affect the level of noise it blocks from the vehicles as well as the lighting that shines on his and Mr. Amen's properties.

Moved Mr. Pennoyer, seconded by Ms. Subotich to
approve the variance request for a six foot fence located at 2228 N. 62nd
Street this board finds:

1. Exceptional circumstances do exist pertaining to this lot. There is a shared driveway for multi-use.
2. That the variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. The six foot fence in lieu of a four and a half foot fence offers a buffer for light and sound for the adjacent properties which are renters. Applicant has two individuals that spoke in support.
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. There are persons present supporting this fence. The use between the properties does lead to safety concerns with cars driving through the properties and damage to property. Applicant has two individuals that spoke in support.
4. That the difficulty of hardship was not created by the property owner. The applicant purchased the property with the six foot fence and was part of the reason it was purchased, for privacy.

Based upon these findings, I move that the variance be granted.

Roll call vote taken: Ayes: 4

Mr. Randall requested a break at 8:10 p.m.

Meeting resumed at 8:20 p.m.

7527 Wright Street

Variance

Request by Matthew Kirklewski for a Variance to the front yard setback in order to construct a chimney in BB Two Family District at 7527 Wright Street.

The applicant is requesting a variance to the front yard setback (18.5 feet as averaged along the block) in order to add a chimney to the existing house. The structure is already nonconforming with respect to the setback (at 10.9 feet) and the chimney would extend this nonconformity 18 inches further. The applicant states this is the only feasible location for a chimney, given the layout of the house and its location on the lot. Design Review Board approval for this change would be necessary, should the Board grant the variance.

Present in favor: Matthew Kirklewski, 2815 N. Hartung, Milwaukee, WI

Mr. Kirklewski informed the Board that his current plans have not been reviewed by the Design Review Board and he only has previous plans with him at this time. He commented that the chimney would project 18 inches out from the front building line and extend two feet above the roof line. The chimney will be cream city brick on the outside of the home to match aesthetics and the period of the home. The location would be in the living room. He is keeping the base of the house. The chimney will be seven feet wide and there will be windows on each side of the chimney on both floors. Mr. Kirklewski noted that there are external chimneys in the area on approximately one third of the homes.

Mr. Randall asked if his home was the closest to the street or are there others. Ms. Ferguson responded that this home was the closest to the street.

Mr. Pennoyer asked if there was another place for the chimney? Mr. Kirklewski responded that this would be in the living room and visibility would be from his kitchen. On the first floor, the door is on one wall and then there is the alley. His home is one foot off the alley. The chimney will be 40 inches into the living room. If the chimney would be placed on the other side of the home, this would affect the kitchen area.

Mr. Randall provided information to Mr. Kirklewski as it relates to carrying over this to the next meeting. Mr. Randall is requesting further information as it relates to the homes in the neighborhood, other nonconforming properties, benefits energy wise, justification of placement of the fireplace as opposed to another location and/or an internal fireplace option.

Mr. Kirklewski agreed to be placed on the next agenda for August 23rd. Mr. Randall reminded Mr. Kirklewski to inform Ms. Ferguson by August 17th.

Moved by Mr. Pennoyer, seconded by Mr. McGuan to
Table this request for a Variance at 7527 W. Wright
Street to the next Board of Zoning meeting to be held on
August 23, 2012 for the applicant to provide additional
information as it relates to placement of this chimney.

Roll call vote taken: Ayes: 4

Meeting adjourned 9:30 p.m.

Jennifer Ferguson