



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, September 26, 2013

PRESENT: Mr. Kern, Ms. Kristoff (alt), Mr. Subotich, Ms. Stokke-Ceci (alt)

EXCUSED: Mr. Randal, Mr. Bittner, Mr. McGuan

ALSO PRESENT: J. Ferguson, Planner

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

2160 Wauwatosa Avenue

Variance

Request by Jennifer Pandelis and Saints Constantine & Helen Greek Orthodox Church for a front yard fence variance at 2160 Wauwatosa Avenue in the R1-6 District

The applicant is requesting a variance to the fence code that limits the height, width, and location of fences in the front yard setback. In residential districts, fences in front yards are limited to three feet in height, cannot extend more than 20% of the lot in length (which would be approximately 37 feet for this property), and must be located in at least 18 inches off of the lot line.

This lot is a double front, corner lot. As such, it has two front yards (along Garfield Avenue and Oakhill Avenue) and a three foot setback for fences along Wauwatosa Avenue. The fence could go to the interior lot line on the east side of the property.

The applicant is proposing a four foot tall fence, stretching 57 feet across the width of the building and extending into the City right-of-way (necessitating an encroachment agreement from the Board of Public Works). The proposed fence would enclose an outdoor play area for the daycare/preschool and as such, must meet state licensing requirements, outlined in the enclosed information submitted by the applicant.

The Board could choose to approve the fence proposal as presented or just some of the individual components requiring a variance should the Board feel a variance is justified.

Present in favor: Jennifer Pandelis, 7573 S. 75h Street, Franklin, WI
Charles Mitchell, 7525 Oakhill Avenue, Wauwatosa, WI
Preston Dakolias, 17701 Westward Drive, New Berlin, WI
Jon Jensen, 7516 Oakhill Avenue, Wauwatosa, WI

David Rinka, Winters Design Group LLC, 7772 Harwood Avenue
Terrence Bender, 11111 W. Appleton Avenue, Milwaukee, WI
Jared Summers, 1154 N. 46th Street, Milwaukee, WI

Ms. Pandelis is the Acting Director of the day care/preschool at the Saints Constantine and Helen Greek Orthodox Church. She explained that in order to be licensed for a day care, the State of Wisconsin mandates a fence to be four feet in height for safety reasons. Ms. Pandelis provided pictures of neighboring properties with similar fences. The fenced in area has the closest entrance to the classrooms.

Mr. Mitchell stated that the fence will be visible from his front stoop and felt that it would be an improvement to the property. He did feel that the fence should not be as close to the sidewalk as proposed.

Present in opposition: Cheryl Hokenson, 7440 Melrose Avenue, Wauwatosa, WI

Ms. Hokenson stated that she would like to see the fence at least two feet from the sidewalk.

In response to Mr. Kern's question, Ms. Pandelis stated that the day care is scheduled to be open in the summer of 2014.

Ms. Kristoff asked what the results would be if the fence were moved back to the zoning requirements. Ms. Pandelis stated that they are currently applying for a license for 50 children. Moving the fence back five feet would result in a reduction of licensing to 47 children.

Mr. Kern asked Ms. Ferguson if the applicant could extend the fence toward Wauwatosa Avenue. Ms. Ferguson responded that this could be done in a manner that would not require a location variance.

Moved by Mr. Kern, seconded by Ms. Stokke-Ceci to approve the request for a variance to the height and width of a fence in the front yard setback

1. Exceptional circumstances do exist pertaining to this lot. The owner has the ability to utilize the property's multiple fronts and the State of Wisconsin is mandating the height requirement.
2. That a variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. The fence will create a safe environment for the day care center children.
3. That the variance will not create special detriment to adjacent property and will not materially impair or be contrary to the proposed and spirit of this or to the public interests. The fence will be an enhancement to the property.
4. That the difficult or hardship was not created by the property owner. The State of Wisconsin mandates the fence requirements for a day care center.

Based upon these findings, I move that the variance for the height and width be approved.

It is recognized that the applicant for the variance for the location would like to develop her land to the highest and best use and for

the greatest economic return. However it is the finding of this Board that there is nothing unusual or exceptional or extraordinary about the circumstances pertaining to this lot and the owner is able to make reasonable use of the property given the zoning requirements. There are general hardships that zoning imposes generally on all property. There are many uses permitted under the zoning code for which this land can be used without the need of a location variance.

The applicant has the option of extending the fence toward Wauwatosa Avenue without the need of a variance.

Based upon these findings, I move that the application for the variance for the location of the fence be denied.

Roll call vote taken: Ayes: 4

7437 Melrose Avenue

Variance

Request by David Rinka and Elizabeth Sedgwick for a height variance to a detached garage at 7437 Melrose Avenue in the R1-6 District

The applicant is proposing to construct a detached garage that exceeds the Zoning Code's height limitation of 20 feet. The code defines building height as the vertical distance measured from the established grade located at the front of the building to the highest point of the roof. Established grade is that which exists prior to any construction.

The applicant would add five feet of fill to extend the existing driveway to the new garage location. In the manner this is being proposed, the conditions as depicted after fill is added in the enclosed plans result in the garage height being 20 feet at the front, but exceeding that limitation at the other elevations. Without the added fill, it would not be possible to construct the proposed garage without exceeding the height limitation at the front of the garage. Staff determined that the proposal necessitates a height variance that the applicant is requesting at this time.

Present in favor: David Rinka, 7772 Harwood Avenue, Wauwatosa, WI

Mr. Rinka explained that the current garage is 70 to 80 years old. The owner is requesting to build a garage on the back property line. The property drops off from the street to the back approximately six and a half to seven feet. He is proposing to fill in the back of the property to meet with the front, creating a level surface. The view of the garage from the street will be level and appear to be 20 feet. The style of the garage will be a carriage house and has been approved by the Design Review Board. If the garage is left where the pitch is now, they will have to grade the remainder of the property for the proper water flow. Mr. Rinka is installing PVC pipes to help with the water flow so it will not dump onto the neighbor's property. Mr. Rinka indicated that at 1928 N. Wauwatosa and 7500 Hillcrest the garages exceed the height requirements.

Present in opposition: Cheryl Hokenson, 7440 Melrose Avenue, Wauwatosa, WI

Ms. Hokenson stated that she is concerned about the height of the garage. It appears that there is an access door on the back of the garage; she asked if this was a first floor storage area. Mr. Rinka responded that there is a small area on the ground level in the back of the garage to store lawn mowers and other equipment. Ms. Hokenson also indicated that there is a staircase and a room on the top of the garage. Mr. Rinka stated that this was also storage and not living space.

Mr. Kern read the letter from Jakob and Kaye Kern at 7434 Melrose Avenue. The Kern's are concerned about the drainage and if it will create further issues with their property. They currently receive drainage from the Kneeland Walker property which causes damage to the plantings and grass on their property. Increased water flow from 7437 Melrose would not be welcome.

Present for comment: Tyler Rivera, 7505 Melrose Avenue, Wauwatosa, WI

Mr. Rivera is the neighbor to the west of the applicant's property. He attended the Design Review Board meeting and he wanted to make sure that what was proposed by the Design Review Board was also agreed upon here, but he did express concern about the height of the garage.

Moved by Mr. Kern, seconded by Ms. Kristoff to approve the request for a variance to the height for a detached garage

1. Exceptional circumstances do exist pertaining to this lot given the terrain and the ability to build the garage without the variance.
2. That a variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. If the garage is not built with the added fill the storm water issue will worsen.
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 carriage house design does fit with the Kneeland Walker design and their effort is consistent with the carriage house look.
4. That the difficulty or hardship was not created by the property owner. The applicants did not create the grade difference within the property.

Roll call vote taken: Ayes: 4

Meeting adjourned at 7:55 p.m.

Jennifer Ferguson

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