



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

**MINUTES
MEETING OF THE BOARD OF ZONING APPEALS
Thursday, November 11, 2014**

PRESENT: Mr. Randall, Mr. Kern, Mr. Bittner, Mr. Subotich – 4

EXCUSED: Ms. Kristoff

ALSO PRESENT: J. Ferguson, Planner

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

7022 W. Clarke Street

Variance

Ms. Ferguson said that the applicant is proposing to construct a new, attached covered porch to a portion of the west side and along the south side of the home. As a corner lot, the front yard setback of the property is measured from N. 71st Street (west side of property) as this side has the shortest amount of street frontage. While the front of the house faces Clarke Street, zoning considers this the street side yard setback.

For this property, the front setback off 71st Street is 18.5 feet and the applicant is requesting a three foot variance in order to build the porch 15.5 feet from the lot line. (The front setback in this case is determined by averaging with the setback of the two homes to north as they are all nonconforming with respect to the 30 foot front setback for the R1-6 zoning district). The required street side yard setback off Clarke Street is eight feet and the applicant is requesting a two foot variance to accommodate the proposed porch and locate it six feet off of the lot line. The Board can consider the two variances as separate requests to act on.

The applicant desires to enhance the front of their home in a manner they believe is consistent with the surrounding homes in the neighborhood. Street side setbacks for the other three homes located on the intersection of N. 71st Street & Clarke range from 7.64 – 10.3 feet off lot lines along Clarke Street.

Ms. Ferguson noted that she received four phone calls from the neighbors. Two neighbors called supporting the project and two additional called for additional information and they were not opposed to the project.

Staff does not believe that the recent Wisconsin Supreme Court ruling regarding area variances gives carte blanche to approve all variance applications. The applicants still must show a very high burden of proof of unnecessary hardship. As staff is to consistently enforce the code that is adopted by the Common Council, it is difficult for staff to give a recommendation regarding a variance without compromising the code we have to enforce. The Board of Zoning Appeals is granted the authority to overrule the regulations set forth by the Common Council if the Board feels that there is sufficient evidence to support such variance. Please refer to the memo from the City Attorney and the language to approve or deny a variance application.

Present in favor: Cory Gabor, 7022 W. Clarke Street, applicant

Mr. Gabor explained that for aesthetic purposes he would like to put on a front porch to their home. He said that when he purchased the foreclosed home there was a concrete stoop that was failing. Mr. Gabor explained that their lot lines are a little odd with their house being on the corner. The front yard setback of the property is measured from N. 71st Street as this side has the shortest amount of street frontage.

No one in attendance in opposition.

Mr. Gabor felt that two-foot is the smallest setback that would work because the family would like to use the porch as a divide for the children before getting to the street. He said he wrapped the porch around to 71st Street is for the aesthetic value instead of just cutting it off. Mr. Gabor said that a 4' 8" depth off the house was a reasonable depth for a couple of chairs and some potted plants. He said it would be sufficiently wide to be usable without being too narrow. Mr. Randall asked why one of the plans presented showed a 5' depth? Mr. Gabor said they wanted to reduce the easement as much as possible, while still having enough room to enjoy.

Mr. Kern suggested the neighbors would find the wrap-around porch attractive and felt that the 4' 8" depth is adequate enough to be comfortable.

Mr. Gabor replied to a question that they could install a patio all the way to the street since it would not be attached to the house, similar to their neighbors.

Mr. Randall asked the City Planner if the applicant could put a structure like a fence in; since a fence is structural looking it would speak to what a porch would look like. Ms. Ferguson responded that a fence could be legally installed with a street setback of 3-feet with a height up to 4 ½ feet high without approvals. She explained that a fence could be installed closer to the street on the side yard than what the applicant is suggesting for a porch.

Mr. Randall noted that a home two blocks to the west, had a variance approved by this board for a wall barrier and felt some precedent was established on tight lots when that was approved.

Mr. Bittner asked for clarification on the zoning code most recent update. Ms. Ferguson said that the update in 2013 did not change any setback requirements. Mr. Bittner noted that this variance request is for an open porch in lieu of a family room addition with a complete wall that would go into the site lines. The porch will not obstruct any views.

Mr. Randall reviewed the applicant's original survey for a new garage. Mr. Gabor said originally when they bought the house they intended to replace the garage as one of their first projects. He further explained that along with the garage is an existing wood deck in the back of the house which will eventually be removed for a garden area and possibly a small patio.

Ms. Ferguson was asked how the front setback of the home was determined. She replied that it is averaged out between the two surrounding homes. She said that all of the homes in this area are non-conforming lots which is why an average is used. It was noted that there is a home in the area with the same type of setback as being requested.

When asked about the front window of his home, Mr. Gabor explained that the window bumps out onto the porch depth five or six inches, taking up more room in that area, so the depth couldn't be much smaller for them to have two chairs sitting out there comfortably.

Moved by Mr. Kern, seconded by Mr. Subotich to approve of both variance requests by Cory Gabor with a single vote. A three-foot variance on the front setback and a two-foot variance on the side setback. This Board finds that 1). Exceptional circumstances do exist pertaining to this lot in that the specific orientation of the house positioning is similar to other houses on Clarke Street;

2). A variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity in that there is the existent crumbling porch will be replaced with a wrap-around porch, that other options available to the homeowner as a matter of right are less attractive and other properties aren't served as well, but acting to serve them with a better aesthetic plan;

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 or to the public interest in that a porch of this design will enhance the neighborhood and the community, the setback is determined by the average setback of the adjacent property along with other non-conforming homes, the proposed porch construction does not create any safety issues because of the open design, and the applicant has taken efforts to not over-create the porch, rather, the applicant has downsized the encroachment through this process;

4). The difficulty or hardship was not created by the property owner in that the homeowner did not build the house in the position it is placed on the parcel, and they want to enhance their enjoyment by having a porch to sit out on.

Roll call vote taken: Ayes: 3 Noes: 1 (Randall)

Meeting adjourned at 7:32 p.m.

Jennifer Ferguson, Secretary