



CITY OF WAUWATOSA
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MINUTES
MEETING OF THE BOARD OF ZONING APPEALS
Thursday, May 28, 2015

| Attendee Name | Title | Status | Arrived |
|--------------------|--------------|---------|---------|
| Peter Subotich | Member | Excused | |
| James Bittner | Board Member | Present | |
| David Kern | Board Member | Present | |
| Jamie Kristof | Board Member | Excused | |
| Brian Randall | Board Member | Present | |
| Pamela Stokke-Ceci | Board Member | Present | |
| Jennifer Ferguson | Planner | Present | |

9330 Jackson Park

Variance

Request by Bryan and Rebecca Shaw for a variance to the height and side yard setback requirements for a fence at 9330 Jackson Park Blvd in the R1-6 Residential District.

The applicant is requesting a variance for fence height and location in order to install a six foot/four foot fence on the lot line across a portion of their lot along Stickney Avenue.

Per Section 15.28.020 (Fences) of the Code, a fence located in a side yard abutting a street must be located three feet off the lot line and be no more than four and a half feet in height. In this case, the proposed six foot section of fence needs a height variance and setback variance; the four foot section of fence needs a two foot setback variance. Fences must also be located 18 inches off an alley, with which the proposed fence does not comply.

For this lot, a six foot fence must be placed 15 feet off the side lot line along Stickney Avenue and 25 feet off the rear lot line along the alley to not need a variance. Also a fence 4.5 feet or less in height could be located three feet from the side lot line and 18 inches off the rear lot line without needing a variance.

Due to the location of the house on the lot, the main part of the usable yard is located along the Stickney Avenue side of the property. The existing shrubbery would be replaced with a six foot fence section and then the fence would dip down to four feet until it returns to the home (per the attached survey). The owners would like to fence this portion of the yard to create a safe play area for their children.

Present in favor: Bryan Shaw, 9330 Jackson Park Boulevard, Wauwatosa, WI

Mr. Shaw is asking to be able to provide a safe yard for his children. His property is narrow and long and abuts an alley which has several duplexes behind his home. Currently there are bushes that are eight feet tall and located on the property lot line. These bushes are old and an eye sore. The applicant intends on removing these bushes and replacing them with a six foot fence which will then drop down to a four foot fence. He would like to place the fence two feet off the lot line because if he placed it the required five feet, it would take up most of his yard and look out of place. A four fence in the area of his patio, he worries about individuals walking by being able to look into his back yard and reaching over the fence. A six foot fence will provide for more privacy and safety for his children.

Present in opposition: No one

Mr. Randall requested Ms. Ferguson clarify the variances that are needed for this request. Ms. Ferguson responded that a variance is needed for the side yard setback. A four and a half foot fence needs a three foot variance. A six foot fence needs to be 15 feet off the lot line. A six foot fence on the alley of the property needs to be 18" off the lot line. A six foot fence would also need a height variance.

Mr. Randall asked Mr. Shaw to clarify the reasoning for the fence to drop from the proposed six foot to four foot along the side yard. Mr. Shaw responded that the six foot area will be in his rear yard and at the point of where the patio door comes out it will give a better appearance to the property to then have a four foot fence.

Mr. Randall commented that a six foot fence will cut off visual site lines with his house being at the end of the alley.

Moved by Mr. Kern, seconded by Ms. Stokke-Ceci to deny the request by Bryan and Rebecca Shaw for a variance to the height requirements for a fence located at 9330 Jackson Park Blvd in the R1-6 Residential District. It is recognized that the applicant for the variance would like to develop his 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 give 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 variance.

The variance is not necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity.

The variance will create special detriment to adjacent property and will materially impair and be contrary to the purpose and spirit of this or to the public interests.

Granting a six foot fence height variance on the basis of aesthetics does run contrary to the height requirements.

Ayes: 4

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| RESULT: | DENIED [UNANIMOUS] |
| MOVER: | David Kern, Board Member |
| SECONDER: | Pamela Stokke-Ceci, Board Member |
| AYES: | Bittner, Kern, Randall, Stokke-Ceci |
| EXCUSED: | Subotich, Kristof |

9330 Jackson Park

Variance

Request by Bryan and Rebecca Shaw for a variance to the height and side yard setback requirements for a fence at 9330 Jackson Park Blvd in the R1-6 Residential District.

The applicant is requesting a variance for fence height and location in order to install a six foot/four foot fence on the lot line across a portion of their lot along Stickney Avenue.

Mr. Bittner stated that to address the installation of a four and a half foot fence, the applicant is requesting a three foot setback. The sidewalk is two feet, the property line is two feet from the sidewalk, the setback is three feet off the property line, placing the fence five feet off the sidewalk. The applicant is requesting to be two feet off the lot line.

Ms. Stokke-Ceci stated that the pictures of the other properties in the area show their fences similar to what the applicant is requesting.

Mr. Bittner commented that with a four and a half foot fence, as opposed to a six foot fence, traffic will be able to have a visual site line.

Moved by Mr. Kern, seconded by Ms. Stokke-Ceci to approve the request for a variance to the side yard setback requirement for a fence located at 9330 Jackson Park Blvd in the R1-6 Residential District.

1. Exceptional circumstances do exist pertaining to this lot. The corner lot is a long and narrow configuration and compliance with the required setback would encroach on the enjoyment and use of the lot.
2. That a variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. There is a large span of grass from the curb to the sidewalk and by moving the fence an additional five feet off the sidewalk would compound the aesthetic of the property and will look out of place for the neighborhood thus potentially affecting the value of the other properties of the area.
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 is ample room for snow removal to keep the sidewalk clean.

4. That the difficulty or hardship was not created by the property owner. The applicant has owned the home for two years and the placement of the house was not created by him.

Amendment made by Ms. Stokke-Ceci for criteria #2:
Consistency of other properties in the neighborhood.
Amendment accepted.
Ayes: 4

Meeting adjourned for 5 minute break at 8:13 p.m.
Meeting reconvened at 8:20 p.m.

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|------------------|-------------------------------------|
| RESULT: | APPROVED [UNANIMOUS] |
| MOVER: | David Kern, Board Member |
| SECONDER: | Pamela Stokke-Ceci, Board Member |
| AYES: | Bittner, Kern, Randall, Stokke-Ceci |
| EXCUSED: | Subotich, Kristof |

St. Camillus

Variance

Request by Michael Schaefer, Plunkett Raysick Architects, and Rick Johnson, St. Camillus, for a variance to rear yard setbacks at 10101 West Wisconsin Avenue in the SP-INS Institutional District for a new and existing building construction

The applicant is requesting a rear yard setback variance for two lots as a result of a new Certified Survey Map (CSM) and the construction of a new building that will be attached to an existing building.

The applicants received Common Council approval of a Certified Survey Map (CSM) that creates three parcels at the St. Camillus campus as opposed to 12 parcels that currently exist per City assessment records. Each parcel will be owned by a different subsidiary of the St. Camillus organization. In addition, they are in the process of obtaining a Conditional Use permit to construct group living facilities in the SP-INS District. At this time, the Conditional Use has been referred to the Community Affairs Committee for a discussion and recommendation to Council.

The proposed new development is to construct a multi-phase group living development on the St. Camillus campus consisting of the following buildings that can be identified on the "proposed" property exhibit.

Northwest corner (Parcel C) - demolition of the existing homes in order to construct a 20-unit Community House with 10 underground parking spaces for Camillian priests;

Northeast corner of campus (Parcel B) - additions to the existing health center consisting of 72-unit assisted living addition with underground parking and 50-unit Jesuit residence;

Southeast/southern parcel (Parcel A) - demolition of the Court East building in order to construct a 144-unit, 21-story independent living tower with a 290-stall parking structure. This building will also include expansion of the corporate offices, a chapel addition, and a wellness

center. This building is proposed to connect to the existing health center building and a setback variance approval from the Board of Zoning Appeals.

The existing St. Camillus campus parcel configuration has many non-conformities relating to setbacks and lot coverage; the proposed CSM, by reducing the number of parcels, corrects most of these issues. The area requiring a variance involves the shared lot line of Parcels A and B. Approval of a rear setback variance is required due to the changing lot line from its current position, in addition to the proposed new construction connecting to the existing building on Parcel B, resulting in zero setback.

The required rear yard setback in the SP-INS District is 24 feet plus one foot for each foot of building height above 35 feet. Given the height of the proposed building on Parcel A, a 200 foot rear setback would be required, leaving a small, ill configured build able footprint that would locate any structure closer to existing residential homes on the west side of the campus. However, regardless of height, building connectivity would require a rear setback variance. The applicant is proposing to connect the buildings in order to allow safe, shared circulation between the buildings as the uses are also contiguous.

Present in favor: Michael Schaefer, Plunkett Raysich Architects, 2616 N. 89th Street, Wauwatosa
Greg Golden, Plunkett Raysich Architects
Aaron Cook, 15850 W. Bluemound Road, Brookfield, WI

Mr. Schaefer provided a powerpoint presentation on the request for the variance. He stated the existing site on W. Wisconsin Avenue and N. 103rd Street and W. Blue Mound Road formerly was 12 parcels. At the last Common Council meeting the Certified Survey Map was approved to combine the 12 parcels into three parcels to relieve some zoning discrepancies. The three parcels are each held by different entities under St. Camillus and have different purposes. Overall the new lot lines are in compliance and will be code compliant with fire requirements on all buildings. Each of the lots have about 28% lot coverage.

The applicants have had a number of meetings with the City of Wauwatosa and the current plans are the result of the direction that was worked out with City staff. The applicants also held a meeting with the neighbors.

The Jesuit facility will connect to the health center which will also connect with the proposed independent living center and St. Camillus center. The intention is to be able to continuously go between buildings without having to go outside and to provide delivery of services within the buildings.

Present in opposition: Steve Lovinus , 515 N. 103rd Street, Wauwatosa, WI
Lisa Vallone, 505 N. 103rd Street, Wauwatosa, WI

Mr. Lovinus lives across the street and with the construction of a 21 story building, this will take away his view. He quoted the criteria for #4 and in his opinion, the applicant has created the hardship. The plan has been put on hold by the Community Affairs Committee for additional information.

Mr. Randall asked the applicant to show the area that the 21 story could be built without a variance. The area was identified on parcel A.

Ms. Vallone asked why this is being discussed since it is on hold by the Community Affairs

Committee. She would also like to know why these parcels needed to be divided into three different parcels and could not be one large parcel. The proposed 21 story will have 144 units and will be a PILOT. Mr. Randall clarified that Ms. Vallone meant that the PILOT was a payment in lieu of taxes.

Mr. Randall asked that the City in conjunction with the applicant, requests that they apply for everything at once for efficiency. Ms. Ferguson stated that this was correct. Ms. Ferguson stated that the CSM was approved by Plan Commission and Council. The Conditional Use is a separate approval process. This was approved by the Plan Commission with the exception of the 21 story height which was referred to the Community Affairs Committee for further discussion. The application is currently on hold for further information and is scheduled for Community Affairs on June 9, 2015. They are requesting additional information from public safety officials. Mr. Randall asked if the CSM was approved with a condition that a variance is required or is the variance required as related to specific building plans. Ms. Ferguson responded that the variance is requested specific to the new building construction.

Mr. Randall stated that he believes that the creation of Lot B with an existing building that now encroaches in the rear yard setback is not a valid CSM without a variance. On the plans, the hashed building indicating an existing building, encroaches on the 24 foot rear yard setback. The CSM as it relates to Lot B, which has an existing building, needs a variance to be valid. He would like to see the Common Council Resolution as it relates to the CSM to see if there is a reference for a conditional use variance for the existing building.

Mr. Randall stated that since there is a buildable area to place the 21 story building without a variance and would like additional information why the variance is necessary. He would also like to hold this item until after receiving information related to the Community Affairs Committee meeting that will be held next week.

Mr. Kern commented that the rear setback on Lot B needs to be 34 feet and currently there is none. Mr. Kern would like additional information related to the reasoning for making this three parcels.

Moved by Mr. Kern, seconded by Ms. Stokke-Ceci to hold the request by Michael Schaefer, Plunkett Raysich Architects, and Rick Johnson, St. Camillus, for a variance to rear yard setbacks at 10101 W. Wisconsin Avenue in the SP-INS Institutional District for new and existing building construction.

1. more information is needed related to the Common Council decision to see if the approved CSM had conditions relating to the setback on the existing building.
2. The Board of Zoning Appeals members are concerned about acting out of sequence for the approval process.
3. Criteria 4 for granting a variance in the Board of Zoning Appeals process indicates that the difficulty or hardship was not created by the property owner. More information is needed such as who is the property owner and why three parcels were created versus one.

Amendment request was made by Mr. Randall to hold until the next Board of Zoning Appeals meeting or until the applicant is ready. Amendment accepted.

Ayes: 4

RESULT:

HELD

Next: 6/25/2015 7:00 PM

Meeting Adjourned at 9:05 PM

Jennifer Ferguson, Secretary