

ZONING BOARD OF APPEALS MINUTES OF FEBRUARY 9, 2016

Meeting called to order by Chairperson Gerl at 5:02 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ken Bargender, Ed Gerl, Robert Lewerenz, Dean Markwardt and 2nd Alternate Adam Wegner

EXCUSED: Richard Kenyon

ALSO PRESENT: Zoning Administrator Schroeder, Gregory Collins, Dan O'Connell and Deputy Clerk Panzer

Wegner pointed out a typo in the first paragraph on page 3 of the minutes. The sentence "Harold did is so improperly." should read "Harold did it so improperly."

Deputy Clerk Panzer noted a few small changes as well. The word "Luan" on page 3 of the minutes should be capitalized. And the Building Inspector's notation "See attached estimate" should be removed from the Building Inspector's Background section on page 1 of the minutes, because the estimate is not included with the minutes.

ZB16-03 Motion by Bargender, second by Lewerenz to approve the minutes of January 12, 2016 with the above listed corrections. All Ayes.

Motion carried.

Deputy Clerk read the variance request by Gregory Collins representing WHPC-Laurel Gardens-Marshfield, LLC, for an 8 foot variance to the minimum required front yard setback, to allow the existing Laurel Garden apartment located at 620 Laurel Court, Marshfield, WI 54449, to remain as constructed in 1971 with a 17.99' front setback. Section 18-32 in the existing Zoning Code requires a minimum front setback of 25', as did the Zoning Code at the time of construction, under Section 13.15 which also required a minimum 25' setback.

Background

The Laurel Garden Apartments located at 620-622 Laurel Court and 617 Laurel Court includes three 20-unit apartment complexes that were all constructed in the early 1970's. As many investors do, prior to purchasing, the Appellant researched these properties to make sure it is in conformance and to identify any unknowns before purchasing. During this research process the Appellant had a survey done to identify site details including property boundaries, easements, structure locations, and other site improvements.

After the survey was completed, the Appellant requested a Zoning Verification Letter from the City to make sure the properties were in compliance with the Zoning Code. As pointed out by the Appellant and the survey submitted, there are multiple nonconforming situations regarding this existing development. As noted in the zoning verification letter there are multiple nonconforming situations which include not meeting the minimum lot size, not meeting the required setback, extending the parking area into the City ROW, and not officially combining the two properties of 620 and 622 Laurel Court. While there are multiple nonconforming situations to point out, the focus of this variance request is solely on the structure not meeting the required setback making it an illegal nonconforming situation.

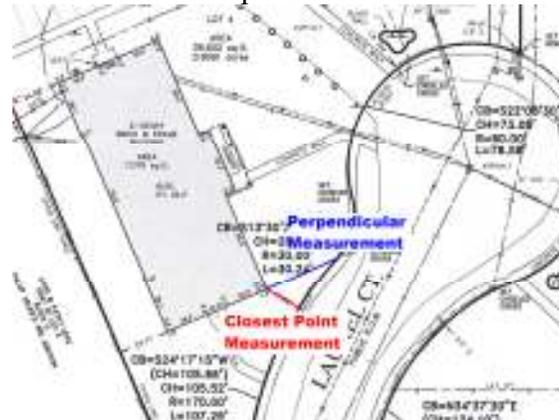
The survey shows that this development is setback from the front property line 17.99'. The current zoning code would require a minimum of a 25' front setback. The Appellant is proposing an 8' variance

to the property in hopes to bring the existing Laurel Garden apartment complex, at 620 Laurel Court, one step closer to compliance, and to allow this development to remain as constructed and approved in the early 1970's.

Analysis

In the early 1970's when this development was reviewed and constructed this property was zoned "B" Residential. "B" Residential required a minimum front yard setback of 25'. In reviewing the original building plans for the Laurel Garden development, the front setback that is on record is approximately 20'. This would lead us to assume one of two things: a) there was a discrepancy as to how the required setback is measured or b) there was a staff error at the time the building permits were approved permitting a 20' setback when the regulations required a 25' setback.

Currently a setback is measured as the shortest distance from the property line to the closest point of the structure. See definitions under "Applicable Ordinance Section(s)" below. Staff has firsthand observed where past employees interpreted the setback to be measured as a perpendicular line from the front building façade at closest point of the structure to the point where such perpendicular line intersects with the nearest property line. See Figure below. In this instance, measuring the setback as a perpendicular line, the existing development would meet the required setback.



Reviewing option b) above, even if there was an administrative error in reviewing the building permit application and the staff member at the time knowingly approved a 20' setback instead of the required 25' setback, the building was still constructed at a setback of 17.99' which is even closer to the property line by approximately 2 feet. However, there are a lot of unknowns about what took place at the time of this development because the staff members are no longer employed by the City of Marshfield and the lack of records prior to the 1990's – 2000's. In addition to approving the site plan for this development, we also do not know if staff inspected and approved the property in relationship to the setback. Case law has upheld that a Zoning Board may consider an error of local government staff when deciding whether to grant a variance (*Accent Developers, LLC v. City of Menomonie BOA and Timber Ridge Homes LLC*, 2007 WI Court of Appeals).

Zoning Administrator's statement of facts regarding the variance request:

1. The Appellant is Greg Collins representing the Owners, WHPC-Laurel Gardens, Marshfield, LLC.
2. The subject property is located at 620 Laurel Court.
3. The existing zoning district classification is "MR-24" Multifamily Residential.
4. The zoning district classification at the time of construction/permit approval was "B" Residential."
5. The required front setback in the current Zoning Code is 25' for "MR-24" Multifamily Residential properties.

6. The required setback at the time the permit was issued and the building was constructed was 25' for "B" Residential properties.
7. The building plan on record with the City shows an approximate setback of 20'.
8. The present structure was built in 1971 and has existed as is for 45 years.
9. The existing building setback per the submitted survey is 17.99'.
10. The requested variance is 8' (the required setback within current regulations of 25' minus the existing setback as constructed 17.99').

Applicable Ordinance Section(s)

1. Current Zoning Code (adopted January 1, 2013)
 - a. Section 18-32(7) of the current Municipal Zoning Code states that the minimum front setback for residential uses is 25 feet.
 - b. Setback as defined under the current Municipal Zoning Code under Section 18-12 is "the shortest distance between the exterior of a building or structure and the nearest point on the referenced lot line, excluding permitted intrusions per Section 18-73."
2. Previous Zoning Code (1947 to 1979)
 - a. Section 13.01 Definitions
 - i. (23) Setback is defined as "the minimum horizontal distance between the front line of the building, excluding steps and unenclosed porches, and the street line."
 - ii. (26)(e) Front yard is defined as a yard between the front line of the building and the front line of the lot.
 - b. Section 13.15(b) requires a setback line of not less than 25' for buildings erected in the "B" Residential District.

Variance Criteria (Section 18-165(6)(a))

The Zoning Board of Appeals shall review all variance requests against the standards provided under Wisconsin Statutes and applicable case law. To qualify for a variance, an applicant would have the burden of proof to demonstrate that the variance criteria are met. The following are the criteria and the Applicants response:

(How will the variance not be contrary to the public interest?) *"The variance will not result in harm to the public interest because permitting the building to remain in its present location does not have any negative impact on the neighborhood or the immediately surrounding properties. Furthermore, the public interest is served by allowing the building to remain because it affords quality housing to low-income families. Having to remove a portion of the building would displace residents."*

(Will substantial justice be done by granting the variance?) *By granting the variance "Substantial justice will be done by granting the area variance because low-income families who reside in the building will not be forced out and required to find alternative housing in the area."*

(Is the variance needed so that the spirit of the ordinance is observed?) *"The property's lot lines and the existing parking lot that serves the residents preclude the building from being moved. The only way to observe the setback ordinance is to remove a portion of the building."*

(Due to special conditions, will a literal enforcement of the provisions of the zoning ordinance result in unnecessary hardship?) *"By enforcing the zoning code the Owner will be forced to remove a portion of the building which will necessitate re-engineering the building and removing several families from the property. This is an unnecessary hardship especially considering the Owner did not cause the problem. Rather, the owner of the property in 1971 caused the problem when the building was constructed."*

Although a hardship is questionable because we do not have detailed records at the time the development was constructed, there are multiple justifications that the other three criteria are met; including that no harm has come to the public in the last 45 years the development has been in use, the existing owner did not cause the issue, there is no certainty as to what caused the issue, and that the spirit of the ordinance should reflect the continuance of existing development that have been constant for as long as this development has.

In addition to the criteria listed above which are stated in our Municipal Zoning Code that reflects Wisconsin State Statute, case law has historically viewed unique property limitations as an additional variance criterion, separate from the hardship requirement. Arguably, the unique property limitation specific to this property could be the shape of the lot. This lot is a trapezoid shape in addition to being located along the bulb of the cul-de-sac which can reduce the amount of usable space within the property.

Markwardt asked about the other possible code violations that were discovered.

Zoning Administrator Schroeder said the other non-conforming situations wouldn't get resolved through a variance or through the Zoning Board of Appeals and they are taking other routes to bring everything into compliance including a conditional use permit and other clean ups of the property to make sure that that property is conformant with the City's Zoning Code and in compliance.

Gregory Collins explained that Wisconsin Housing Preservation Corp is a statewide organization that acquires, renovates and preserves properties around the state and in doing so they try to do improvements appropriately and correctly. They try to make improvements as necessary but to do them appropriately and correctly they have surveys done of the properties. A lot of times the properties have little infringements or encroachments. This was a little more significant. They would like to get this property back into compliance by getting the variance so they can move forward making sure this property is rentable.

ZB16-04 Motion by Lewerenz, second by Markwardt to grant the variance request from Gregory Collins representing WHPC-Laurel Gardens-Marshfield, LLC, for an 8 foot variance to the minimum required front yard setback, to allow the existing Laurel Garden apartment located at 620 Laurel Court, Marshfield, WI 54449, to remain as constructed in 1971 with a 17.99' front setback for the following reasons:

- There is no harm to public interest. The building is not on a corner where line of sight for drivers is obstructed and it seems no harm has come to the public in the last 45 years since the building was constructed.
- Having to remove two apartments from one end of the building to move the wall in is an unreasonable thing to do considering low income families would be forced out of their homes and required to find alternative housing.
- Since no one knows why this all happened we should allow business to continue as it is.

Motion carried

Zoning Administrator Schroeder summarized the 2015 Zoning Board of Appeals decisions. The Zoning Board of Appeals only made one decision last year, which was on the Ministry Health Care's appeal.

Motion by Markwardt, second by Lewerenz to adjourn at 5:26 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk