

ZONING BOARD OF APPEALS MINUTES OF MAY 13, 2014

Meeting called to order by Chairperson Gerl at 5:01 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ken Bargender, Ed Gerl, Richard Kenyon, Dean Markwardt and 1st Alternate Todd Zieglmeier

ALSO PRESENT: City Planner Miller, Deputy Clerk Panzer and Steven Egle

ABSENT: Robert Lewerenz (excused)

Mayor Meyer by duty of statute appointed Ed Gerl as Chairman for the Zoning Board of Appeals at the Common Council meeting of April 22, 2014.

Chairperson Gerl asked for nominations for Vice Chairman.

Dean Markwardt nominated Rich Kenyon.

There being no further nominations Chairperson Gerl declared nominations closed.

ZB14-06 Motion by Markwardt, second by Zieglmeier to elect Rich Kenyon as Vice Chairman.

Motion carried

ZB14-07 Motion by Kenyon, second by Zieglmeier to approve the minutes of April 8, 2014 as submitted.

Motion carried

Deputy Clerk read the variance request from Steven Egle, for property located at 2412 South Felker Avenue, zoned "SR-3" Single Family Residential District, to construct a garage and driveway addition on the south side of the home, at a setback of 7 feet from the unopened right-of-way of East 25th Street. Section 65(8)(i)(2) requires a minimum 20 foot street side setback and Section 18-27(7) requires a 10 foot setback for a driveway. The Applicant is requesting a 13 foot variance along the south property line for the garage and a 3 foot variance from the right-of-way line for the driveway.

City Planner Miller mentioned that the Municipal Code reference Section 65(8)(i)(2) should be Section 18-65(8)(i)(2). The variance was listed accurately; the Municipal Code reference was incorrect.

City Planner Miller referred to an aerial photo map and a GIS map and explained that the applicant's property line is pretty much where the center line of 25th Street would be if 25th Street continued west. Generally the city reserves right-of-way in order to provide for additional streets in the future for future roads if they are unopened just like Felker Avenue going to the north. There is a 60' wide strip there going north and if that would ever be opened then Felker Avenue would continue north. In this case, the right-of-way was not reserved. Only a 30' stretch of it was, so no street will go through there. The applicant's house was placed where the right-of-way would be located and if the street were to go through it would be right tight up against his house. There is also a drainage way through there and a park right behind it, so it would not be ideal for a road right-of-way to be located in this area.

Background

Steven Egle is requesting a 13 foot variance along the south property line to construct an addition to the garage and a 10 foot variance along the south property line to expand the existing driveway, located at 2412 South Felker Avenue, zoned "SR-3" Single Family Residential District.

According to the Zoning Code a residential garage located on a corner lot with a lot width greater than 50 feet, must be setback from the right-of-way no less than 20 feet. The Applicant is proposing to extend the garage to a setback of 7 feet from the right-of-way, which is 13 feet into the required setback. Although the subject property is located on a corner lot, the lot is a unique circumstance because both rights-of-way are unopened. In addition, there is only a half right-of-way (30 feet) to the south of the Applicant's property. The Applicant owns the north half of what would be the 25th Street right-of-way and his garage would be encroaching into the right-of-way if it were to ever continue east from Felker Avenue.

The Director of Public Works reviewed the request and stated there are no plans to open this right-of-way to extend East 25th Street (the Applicant's side street) west from South Felker Avenue to South Palmetto Avenue. The Applicant is requesting the south property line be treated as a side yard. A lot width that isn't located on a corner lot requires a 7.5 foot side yard setback for attached accessory structures. The Applicant would still be requesting a half of foot variance from the side yard requirements.

The Zoning Code also requires a minimum pavement setback of 10 feet from the right-of-way. The applicant is proposing to extend the driveway for access into the proposed garage addition and is proposing to place the driveway in line with the garage and at a setback of 7 feet. Extending the driveway would intrude into the required setback by 3 feet. Again, if this street side yard is treated as a side yard, the Code only requires a 3 foot setback.

City Planner's statement of facts regarding the variance request:

1. The property is located at 2412 South Felker Avenue.
2. The property is zoned "SR-3" Single Family Residential District.
3. The property consists of one corner lot with an unopened right-of-way to the south.
4. The property has 100 feet of frontage to the East along South Felker Avenue and 140 feet of frontage to the south along the unopened East 25th Street right-of-way.
5. Section 18-27(7) requires a minimum pavement setback from the right-of-way of 10 feet.
6. The Applicant requests a 3 foot variance to the pavement setback to pave the driveway 7 feet away from the vacant East 25th Street.
7. Sections 18-65(8)(i)2. Requires a minimum setback for residential garages located on a corner lot with lot widths greater than 50 feet to no less than 20 feet.
8. The Applicant requests a 13 foot variance to the minimum garage setback on a corner lot that is greater than 50 feet wide to allow for a garage addition to be placed at a 7 foot setback along the vacant East 25th Street.

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

(How will the variance not be contrary to the public interest?) The south side of my lot does not have a street and will not have a street in the future. Therefore, I would like to consider this a side yard, allowing for a reduced setback of 7.0 feet (actual required setback is 7.5 feet). The Public Works Department did not have an issue with the proposed variance as this unopened right-of-way will not be opened in the future as it's only 30 feet wide and my lot currently goes to the "centerline" of 25th St.

(Will substantial justice be done by granting the variance?) Since the road won't go through, it wouldn't be fair to treat this property line as a street side yard.

(Is the variance needed so that the spirit of the ordinance is observed?) The spirit of the ordinance is to require a greater setback on street side yards because there is usually a street adjacent to them. In this instance, no street will be going through there and using a standard side setback makes more sense.

(Due to special conditions, will a literal enforcement of the provisions of the zoning ordinance result in unnecessary hardship?) If the variance is not granted, I would not be able to add onto my garage. My current garage is somewhat small which makes it difficult to use (only 20 feet deep stall).

Bargender felt the applicant should petition the city to abandon the right-of-way instead of trying for the variance request. If the right-of-way is abandoned, the 30 feet would be split in half and half would go to the people to the applicant's south and the other half would go to the applicant. By doing this the applicant would acquire 15 more feet of property and he wouldn't need a variance. He also felt that this variance request is more of a want thing than an actual need.

Markwardt asked if abandoning the right-of-way was a realistic alternative.

City Planner Miller said this right-of-way is actually a storm drainage way and the city usually protects its drainage ways and doesn't generally give them up.

Bargender encouraged the applicant to pursue petitioning for the abandonment of right-of-way.

ZB14-08 Motion by Markwardt, second by Kenyon to grant the variance request from Steven Egle for a 13 foot variance along the south property line for the garage and a 3 foot variance from the right-of-way line for the driveway at 2412 South Felker Avenue to construct a garage and driveway addition on the south side of the home, at a setback of 7 feet from the unopened right-of-way of East 25th Street. Gerl, Kenyon, Markwardt and Zieglmeier voted Aye; Bargender voted Nay.

Motion carried

City Planner Miller will check to see if the city would consider abandoning this right-of-way and follow up with Steven Egle.

Deputy Clerk read the variance request from Nicolet Lumber for the temporary use of a crane at 800-1102 Heritage Drive, zoned MR-12, Multi-Family Residential. The base elevation of this site is 1239 feet above mean sea level (AMSL). The "Airport Overlay & Height Limitation Zoning Map, Marshfield Municipal Airport, Marshfield, Wisconsin," as identified in Sec. 18-93(4), limits structures at this location to not exceed 1,325.4 feet above mean sea level (AMSL). The Applicant is requesting a 20 foot temporary variance so the proposed crane could extend up to 105 feet above ground level (AGL), potentially reaching an elevation of 1,344 feet AMSL. The crane will be temporary and utilized during the construction of the apartments.

Background

Nicolet Lumber is requesting a temporary variance to the Height Limitation Zoning Ordinance for the purpose of constructing the new apartments, located at 800, 802, 804, 900, 1000, 1100, 1102 Heritage Drive, zoned "MR-12" Multifamily Residential District. Per Section 18-93(8) of the Municipal Code, a temporary height variance cannot be administratively approved.

The Applicant is requesting a 18.6 (rounded up to 20 in the notice) foot temporary variance to exceed the Height Limitation Zone of 1,325.4 feet above mean sea level (AMSL) to allow the temporary crane to reach an elevation of 1,344 AMSL or 105 feet above ground level (AGL). When we put the notice for the public hearing together, the variance was listed for 20 feet due to rounding. The actual variance request is 18.6 feet AMSL. Staff is noting that if approved, 18.6 feet is the maximum variance that can be granted as that was all that was approved by the FAA, not 20 feet.

The Applicant has requested the use of the crane over the next 3-5 years. The only portion of the site within the restricted area is on the northwest corner of the property. These will likely be the first apartments constructed, so after the first year or two, it is unlikely the variance will still be needed. The

current determination is only valid until 3/10/2015 unless extended, revised, or terminated by the issuing office. Typically, the FAA can grant an extension for an additional 18 month period. The Applicant is requesting that the variance be in place until the project is complete over the restricted air space, provided the FAA determination is still valid (including any approved extensions by the FAA).

City Planner's statement of facts regarding the variance request:

1. The property is located at 800, 802, 804, 900, 1000, 1100, 1102 Heritage Drive (parcel 33-07360).
2. The property is zoned "MR-12" Multifamily Residential District.
3. The Lot is 497,141 square feet or 11.413 acres in size, with 1,309 feet of frontage along Heritage Drive.
4. The proposed development is seven – 12 unit apartment complexes. These seven apartments are spread out throughout the Heritage Drive Frontage.
5. The apartment complexes will be built throughout the next three to five years.
6. The site elevation for the proposed crane is 1,239 feet AMSL.
7. The proposed crane is 105 feet AGL.
8. The allowable elevation for the HLZO is 1,325.4 feet AMSL.
9. The proposed crane would extend no more than 18.6 feet into the maximum elevation of the "Air-3" Height Limitation Zoning District.
10. The HLZO requires a determination from the FAA, the Wisconsin DOT and a recommendation from the airport manager.
11. The FAA issued a letter regarding the request and has made a "determination of no hazard to air navigation for temporary structure."
12. The Wisconsin DOT, Bureau of Aeronautics also issued a letter regarding the request stating "since the FAA's airspace study found there to be no hazard to air navigation, we will have no objection to the proposed structure so long as there are no objections from the Marshfield Airport."

Variance Criteria (Section 18-165 (6))

The following are the criteria and the Applicants response:

- a. *The variance will not be contrary to the public interest.* "The crane will only operate for few months each year for the next three to five years to set roof trusses and roofing materials for the construction of apartments that provide low cost affordable rental unit that have been identified as being needed by the Economic Development ("ED") Studies prepared by the City of Marshfield, As such, it (is) very much in the public(s) best interest to grant the variance."
- b. *Substantial justice will be done by granting the variance.* "The use of the crane is only temporary and the FAA has issued a determination that there is no hazard to air navigation by its operations at the subject site associated with the crane operation and even though the HLZO District's minimums will be exceeded those exceedances will only be temporary. As such, no party would be adversely affected by granting the variance."
- c. *The variance is needed so that the spirit of the ordinance is observed.* "The spirit of the HLZO District is to protect the airspace for air traffic into and out of the airport. The proposed location and height of the crane will not impact air traffic or the standards established in the HLZO District."
- d. *Due to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship.* "Granting the variance is in the public best interests and should be granted. If not granted it will be hardship to all the existing and potential rental residents of the

City of Marshfield and its employers, as well.”

Airport Committee Recommendation

The Airport Committee met on Thursday, April 24, 2014 to discuss the proposed variance and make a recommendation. The Airport Committee recommended approval of the variance request.

ZB14-09 Motion by Bargender, second by Kenyon to grant the variance request from Nicolet Lumber for an 18.6 foot temporary variance for the temporary use of a temporary crane at 800-1102 Heritage Drive, so that the proposed crane can extend up to 105 feet above ground level (AGL), potentially reaching an elevation of 1,344 feet AMSL for the construction of apartments.

ZB14-10 Motion by Bargender, second by Kenyon to amend motion **ZB14-09**; to include the condition that the temporary variance is valid until 3-10-2016 provided that the FAA has a valid no hazard determination.

Motion carried

Vote on motion **ZB14-09** as amended; All Ayes.

Motion carried

Motion by Kenyon, second by Markwardt to adjourn at 5:42 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk