

ZONING BOARD OF APPEALS MINUTES OF OCTOBER 14, 2014

Meeting called to order by Chairperson Gerl at 5:00 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ken Bargender, Ed Gerl, Richard Kenyon, Robert Lewerenz, Dean Markwardt and 1st Alternate Todd Zieglmeier (arrived at 5:27 p.m.)

ALSO PRESENT: City Planner Miller, Zoning Administrator Schroeder, Deputy Clerk Panzer, Scott Riedel, Jeff Gaier (arrived at 5:07 p.m.) and Wanda Pelo (arrived at 5:15 p.m.)

ZB14-019 Motion by Bargender, second by Kenyon to approve the minutes of the August 26, 2014 special meeting as submitted.

Motion carried

Deputy Clerk read the variance request from Scott Riedel, for the property located at 714 South Highland Avenue, zoned "SR-3" Single Family Residential District, for a variance of 6 feet to expand the garage 4 feet towards the south property line at a 1.5 foot setback. Section 18-27(7) requires a minimum side yard setback of 7.5 feet. The existing garage is approximately setback 5.5 feet from the south property line. The Applicant is also requesting a 0 foot pavement setback for the south property line of 714 South Highland Avenue and a 0 foot pavement setback for the north property line of 716 South Highland Avenue to adjoin a portion of the adjacent driveways. Section 18-27(7) requires a minimum pavement setback of 3 feet from the side property line.

Background

Scott Riedel is requesting a 6 foot variance to construct a 4 foot addition to the south side of his garage with a proposed 1.5 foot setback from the south property line, located at 714 South Highland Avenue, zoned "SR-3" Single Family Residential District.

The existing home at 714 South Highland Avenue was constructed in 1939. The existing attached garage is only 10' by 19' or 190 square feet in area. Because of the narrow width of the garage, the lack of space between the garage door and the sidewalls, and the chimney location, this garage has never been able to store a car the way a garage is intended. The applicant is planning to move his elderly mother into the home and he would like her to have the ability to park her vehicle in an enclosed garage and out of the natural elements.

According to Section 18-27 of the Municipal Zoning Code, "SR-3" Single Family Zoning District Restrictions, the minimum lot width is 60 feet, the minimum lot area is 10,000 square feet in area, the minimum side yard setback is 7.5 feet and the minimum pavement setback is 3 feet for driveways that are not shared between two properties. The subject property currently does not meet any of the above zoning restriction. The existing property is 58 feet wide, 8,700 square feet in area, has a side setback to the south of 5.5 feet and has existing concrete within the 3 foot setback.

The neighboring property, the "affected property", located to the south at 716 South Highland Avenue is also zoned "SR-3" Single Family Residential. This property also does not meet the minimum lot width, minimum lot area, minimum side setback for a detached accessory structure, or the minimum pavement setback.

The proposed driveway addition to both properties is being proposed for ease of maintenance. Currently, the two properties have a snow plowing agreement, during heavy snow falls the Applicant will plow the snow of both driveways behind the subject properties home. The small grass area between the Applicant's garage and the neighbor's driveway often does not survive the winter. Both property owners would prefer that area to be paved. Although there is a 0 foot setback requirement for shared driveways,

because the majority of the grass area between the two driveways closer to the street will remain grass, staff is not considering this a “shared driveway.”

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

1. The property is located at 714 South Highland Avenue.
2. The property is zoned “SR-3” Single Family Residential District.
3. The property has 58 feet of frontage along South Highland Avenue and is 8,700 square feet in area (0.200 acres).
4. Section 18-27(7) requires a minimum lot area of 10,000 square feet and a minimum width of 60 feet.
5. The property does not meet minimum lot area or the minimum lot width requirements of the “SR-3” Single Family Residential District.
6. The existing building that was constructed in 1939 is currently setback 5.5 feet from the south property line.
7. Section 18-27(7) requires a minimum building side yard setback of 7.5 feet. The existing structure is currently 2 feet within the required setback.
8. The applicant is requesting a variance to construct a 4 foot addition towards the south property line. This addition would leave the property at a 1.5 foot setback from the south property line.
9. Because the existing structure is already located 2 feet into the required setback, the applicant is requesting a 6 foot variance into the required 7.5 foot setback.
10. Section 18-27(7) requires a minimum side pavement setback of 3 feet or 0 feet for shared driveways in the “SR-3” Single Family Residential District.
11. The remaining area between the proposed garage addition and the existing neighbor’s driveway is proposed to be hard surfaced to allow a wider driveway and ease of maintenance for both properties. So each property would have a 0 foot side setback for their driveway along the Applicant’s garage.
12. The affected neighbor located at 716 South Highland Avenue has written a letter to the City stating they have no objection to the proposed garage addition.
13. The variance request is in harmony with the following planning goals of the Comprehensive plan: compact development patterns, maintain and improve the quality of the City’s housing stock, promote quality architectural, encourage maintenance of residential properties, and require infill development.

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

(How will the variance not be contrary to the public interest?) *“Although the garage would be closer to the neighbor’s driveway, their driveway is long enough and would not cause visibility issues when pulling onto the street.”*

(Will substantial justice be done by granting the variance?) *“Allowing the expansion of the garage will make the garage useable for today’s standard vehicles.”*

(Is the variance needed so that the spirit of the ordinance is observed?) *“The spirit of the ordinance of a 7.5 foot setback is to allow separation between new structures.”*

(Due to special conditions, will a literal enforcement of the provisions of the zoning ordinance result in unnecessary hardship?) *?) “The existing garage is only 10’ wide making it unusable for storing vehicle. The door itself is even less than that. My truck [let alone a small vehicle] cannot fit in the opening of the garage. Single stall garages are typically 12 feet wide at a minimum and even that would be tight. Also backing out of the garage the existing chimney sticks out into the existing driveway making it even harder to back out of.”*

With a proper fire wall, per the Wisconsin State Statutes, the proposed development should not have any adverse effect on the general public or the neighboring properties. The proposed variance will improve the existing home and allow the resident of the home to use the garage for its intention.

Jeff Gaier arrived at 5:07 p.m.

The current snow removal process for 714 South Highland Avenue and 716 South Highland Avenue was discussed.

Bargender expressed concerns of possible problems with infringing on the neighbor's property when it is time to do maintenance to the garage in the future if the variance is granted.

Riedel explained that he does remodeling for a living and most times if someone is making improvements to their home the neighbors don't mind if someone infringes on their lot line to make those improvements.

Wanda Pelo arrived at 5:15 p.m.

Bargender felt the best solution for both properties would be for the applicant to tear off the attached garage and put up a detached single or double garage right behind where the existing attached garage stands now.

Riedel felt a detached garage would devalue his property. Having to put concrete even further back on his property would be an expense. He explained that most people want to be able to walk from their garage to their house and not have to worry about the elements. He pointed out that he doesn't have a back yard. His property doesn't meet code as far as the size of the yard and he has the smallest yard on that entire block and a half. If he built a detached garage further back on his property, he would basically be looking at a garage and another garage from his concrete slab in his backyard.

Bargender also felt that there would be problems with people banging into the garage when they open their car door if they park in the driveway to the south.

Riedel said he has had three different neighbors and all of them have said that they would allow him to do this if it gets approved, because it will make life easier for them and it will be aesthetically more pleasing. They wouldn't have to deal with mud, because the center piece would be concrete. They even offered to pay to have that all turned into concrete. Before he moved in, his old neighbor would pile the snow up against his garage and the cedar siding on his garage is totally crap now.

Bargender pointed out that there is more of a chance of problems in the future if the garage is moved over and party "A" doesn't get along with party "B". You don't know who is going to move in next door.

Riedel pointed out that if the house next door would go up for sale the buyers would be aware of the garage when they purchased the property.

Riedel mentioned that his mom has a huge house in the country that she will be selling and since he lives in Minneapolis part of the time he would be more than happy to move her into his house, but the biggest problem is how would she park her vehicle? She will be 87 and she doesn't want to have to get out of her vehicle and then walk to the house in snow, ice or whatever. Anyone moving into this neighborhood would be buying for the character of the homes and the quietness of the neighborhood. He doesn't intend on selling his house for a long time.

Riedel pointed out that his house is the lowest house in the entire block and because of that he has water running from the west going into his house and he has water coming from the north and the south. He is the only one that has a sump pump that is running with about a 3 or 4 second break when it is raining.

Markwardt asked if the variance would have to be specific about where the additional pavement would have to stop.

Zoning Administrator Schroeder explained that that would be up to the board as to where you would want it to stop or where you wouldn't want it to stop. If he were to connect those two driveways the entire length of the driveway he wouldn't even need a variance, because we have a 0' setback on shared driveways. The reason this is not being considered as a shared driveway currently is because of that extended grass area.

Replacing the grass area with pavement in the future to create a shared driveway was discussed.

Zoning Administrator Schroeder said if that were to happen there would probably need to be communication between both parties and both parties would need to sign off on that.

Riedel said that this has been discussed, but he is not ready to take on that expense. There is nothing wrong with his driveway as is. The problem being is that he would actually have to grade his driveway down, because he can't come up.

1st Alternate Todd Zieglmeier arrived at 5:27 p.m.

ZB14-020 Motion by Markwardt, second by Kenyon to grant the variance request from Scott Riedel for a 6 foot variance at 714 South Highland Avenue to expand the garage 4 feet towards the south property line at a 1.5 foot setback and also a 0 foot pavement setback for the south property line of 714 South Highland Avenue and a 0 foot pavement setback for the north property line of 716 South Highland Avenue to adjoin a portion of the adjacent driveways.

Findings:

- a. The variance will not be contrary to the public interest.
- b. The garage would be useable. It is not useable today.
- c. The spirit of the ordinance would be observed by granting the variance.

Vote on motion **ZB14-020**; Ayes – 4; Nay – 1 (Bargender)

Motion carried

Deputy Clerk read the variance request from Wanda Pelo, for the property located at 1117 West Onstad Drive, zoned “SR-3” Single Family Residential District, for a 3 foot variance to expand their driveway to a 0 foot side setback along the east property line, east of their garage. Section 18-27(7) requires a minimum pavement setback of 3 feet from the side property line.

Background

David and Wanda Pelo are requesting a 3 foot variance along their east side property line to expand a parking pad to the east of the garage with a zero foot setback, located at 1117 West Onstad Drive, zoned “SR-3” single family residential district.

The existing house is located approximately 8 to 9 feet from the side property line (house is not exactly parallel with the side property line). Section 18-27(7) of the Municipal Zoning Code requires a minimum side pavement setback of 3 feet. If the proposed parking pad was constructed to meet the requirements of

the Zoning Code, the pad would only be 5 to 6 feet wide. The average parking stall within the City of Marshfield is 9 feet wide.

Because of the grading issues between the subject property and the neighboring property to the east (1113 West Onstad Drive) the applicants will also be installing a retaining wall at the property line. The affected neighbors have submitted a letter stating they do not have any objections to the neighbor installing a parking pad and retaining wall at the adjoining property lines provided that the Pelo's (and all future property owners) bear responsibility for the maintenance of the retaining wall.

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

1. The property is located at 1117 West Onstad Drive.
2. The property is zoned "SR-3" Single Family Residential District.
3. The property has 100 feet of frontage along West Onstad Drive and is 13,000 square feet in area (0.298 acres).
4. The property meets the minimum lot size and width requirements of the "SR-3" Single Family Residential District.
5. Section 18-27(7) requires a minimum side pavement setback of 3 feet in the "SR-3" Single Family Residential District.
6. The Applicant is proposing a concrete parking pad and a retaining wall along the east side of the garage.
7. The proposed setback is 0 feet which requires a 3 foot variance.
8. The affected neighbors located at 1113 West Onstad Drive have written a letter to the City stating they have no objection to the proposed parking pad and retaining wall.
9. The variance requests is in harmony with the following planning goals of the Comprehensive plan: promote design that is both functional and attractive, compact development patterns, maintain and improve the quality of the City's housing stock, and require infill development.

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

(How will the variance not be contrary to the public interest?) *"In my judgment, the public will not be affected by this variance."*

(Will substantial justice be done by granting the variance?) *By granting the variance "I will be able to use that portion of my property to park another vehicle, which will allow greater ease in accessing and utilizing my garage."*

(Is the variance needed so that the spirit of the ordinance is observed?) *"In my estimations, yes, so that I can legally construct a parking pad on my property."*

(Due to special conditions, will a literal enforcement of the provisions of the zoning ordinance result in unnecessary hardship?) *"In my estimation, yes it will because it will leave me only about 8 feet from the edge of my garage, which will make parking a vehicle on it more difficult and will also hinder snow removal."*

Although the proposal is a questionable hardship, the Applicant's request is just a small parking pad, which will not adversely affect the general public, and the affected property has submitted a letter stating that they are in favor of the City granting the variance, and the primary objective of the 3 foot setback is to allow for snow removal but there is plenty of room to remove the snow to the north (rear) of the property.

Gerl asked if it would be feasible to put something different than concrete there.

City Planner Miller said that wasn't his expertise. This is a pretty minimal space. It is not a huge concrete garage. He explained that the retaining wall would actually face the other way than what you would think of a retaining wall for a property. In this case, the retaining wall will be facing their property, but it is going to be her retaining wall. It is a unique situation.

Zoning Administrator Schroeder pointed out that there isn't a setback requirement for a retaining wall. The only setback requirement is for the pad, so you could already have a retaining wall at a 0' setback.

Markwardt asked if a variance would be required if they were able to improve that space somehow without pouring a concrete pad.

Zoning Administrator Schroeder said a parking pad is needed to park a car in one's front yard and it needs to be hard surfaced. It can't be gravel, because we don't allow any new gravel expansion of any driveway. It would have to be some type of hard surface, such as concrete, asphalt, or brick pavers.

Kenyon compared this variance request to the previous variance request and he felt the previous one was a true hardship. The applicant had an unusable space. This variance request is more of a want than a need.

Lewerenz said he lived with this type of situation when he had kids growing up and it's worse than just would be nice.

Pelo explained that many of the homes in her neighborhood have a three car garage and they wanted to look more like them. This was actually her neighbor's idea and that is why she is here.

Bargender pointed out that a variance is not guaranteed just because someone pays the \$250.00. There is criteria and we have to follow it as close as we can. This is more a want than a need. There are neighbors in your area that have parking pads, but they are not that close to the lot line. He explained that he has the same situation at his home and you work it out. He believes needs and wants are different.

ZB14-021 Motion by Bargender, second by Kenyon to deny the variance request from Wanda Pelo for a 3 foot variance at 1117 West Onstad Drive to expand their driveway to a 0' side setback along the east property line, east of their garage.

Findings

a. This is not a necessary hardship. The applicant has a nice two car garage, a beautiful driveway, a nice home and a beautiful neighborhood.

Vote on motion **ZB14-021**; Ayes – 2 (Bargender and Kenyon); Nays – 2 (Lewerenz and Markwardt); Abstain – 1 (Gerl)

Motion failed

ZB14-022 Motion by Lewerenz, second by Markwardt to grant the variance request from Wanda Pelo for a 3 foot variance at 1117 West Onstad Drive to expand their driveway to a 0' side setback along the east property line, east of their garage.

Findings

We are not here to keep people from building reasonable things in the City of Marshfield. If it causes the neighborhood no harm to the public, if it is a reasonable thing to do, it is good for the family, and there is a use and a need there is no reason to deny the variance to allow a parking pad.

Vote on motion **ZB14-022**; Ayes – 2 (Lewerenz and Markwardt); Nays – 2 (Bargender and Kenyon); Abstain – 1 (Gerl)

Motion failed

City Planner Miller said we can't compel anyone to vote.

Markwardt asked Chairperson Gerl to declare his reason for abstaining.

Gerl said the reason he abstained is because he could see that there is no hardship to this property, but he could also see the reason why the applicant needs it.

Kenyon said he could see both reasons and could have abstained as well on both.

Pelo said she didn't think this was unreasonable. The only reason she is here is because her neighbors encouraged her to do this. She explained that another reason was because of the other 3 car garages around them and they wanted to offer a third spot so they could be comparable to their neighbors. This is not a disservice to anybody in the public. In fact the only thing that is here from our neighborhood is support and love.

City Planner Miller said whenever you make a negative motion; it throws a wrench into things. When you make a negative motion to deny something, it is always a challenge, because if you vote down the denial then what? Is it an automatic approval? And that is something we will have to run by our City Attorney. The second vote may not be needed and the variance may be granted based on how the motion was originally framed. This is unique. We are not Roberts Rules experts. We will have to do some research and find out. We will inform the board of the findings and we may possibly have to reconvene.

Chairperson Gerl recommended that City Planner Miller take this matter to the City Clerk and/or City Attorney and then follow up on the findings with the board members.

City Planner Miller explained his memorandum regarding the use of temporary cranes. With the rewriting of our zoning code we changed a lot of things; some intentionally and some unintentionally. When we went through the code, we gutted a lot of things, we had changed definitions. Anytime you do something of that magnitude you are going to have references and citations of different sections of code that refer back to other things that you have now changed. We are still going through the code and occasionally have code amendments that go to the Plan Commission. As we are working through the code, we are learning of things that need to be tweaked and changed. One of the things that we learned after the last meeting in August is the definition of structure had now been changed to address other things. We met with the Plan Commission and we talked about specific things like temporary sheds and things like that that we didn't want to see classified as structures, so we classified them as their own category. So we took the temporary affordable aspect of the structure out of the definition and put it into its own land use category while what that ended up affecting in the airport criteria was it doesn't allow a structure into the height limitation zoning overlay. When you look at the definition of structure it is only a permanent object and so a crane would not be considered a permanent object when used for construction. So over the past year and a half or so we have been requesting variances for cranes and according to our City Attorney he felt that while he understood the reason why and didn't fault us for it, he said that if we were to deny a variance based on that criteria we would not be able to enforce it in the court of law. So essentially the stance with him and the Council was that moving forward unless the code

gets changed and made clearer, some of the ambiguities cleaned up we are not going to require a variance for cranes.

Prior to 2009 there were no variances for cranes. There is no record of a variance ever being requested for a crane in our records, so we didn't have them. He explained why this changed. When he came on board he read everything because he didn't want to miss things and when Miron Construction was putting up the FHC building by the Clinic they had a tall crane and it was brought to his attention that we have a height limitation zoning overlay district, so he looked into that and according to the definition and according to the requirements of that section a crane fit under that definition. At the time, City Attorney John Hutchinson said he didn't see any other way around this, and we should require a crane to get a variance. At that time, Dean Markwardt had pointed out an email that we had come back to staff asking the Zoning Board and the Airport Committee if we needed to go through this process because we never did this before. Both the Zoning Board and Airport Committee felt that a variance should be in place. We never took it any further.

If a crane operator is within 3 miles of an airport they are supposed to submit notice criteria to the FAA. If that comes back that they are required to file with the FAA, then they are supposed to follow the rules and procedures laid out by the FAA. The FAA is responsible for enforcing that and addressing that. Previously the City took on that role. In reality the FAA kind of governs that. For most cases they are required to notify the Airport Manager when the crane is in use and when the crane comes down. They have to give three days prior notice to the Airport for when the crane is in use. Does that happen every single time? Probably not, so there are potential gaps in the system as it is laid out right now.

City Planner Miller also explained the pros and cons of having the variance in place.

1. It gives us extra communication in place in the law that the Airport Committee has a review.
2. The Bureau of Aeronautics also has to sign off on it.
3. There is communication and enforcement level. The challenge to that is that it can add up to 30 days or more to the review process for a crane to be on site for construction.
4. It does give the Airport an opportunity to put some conditions on the cranes.

The Airport Committee would like to be kept in the loop; some trigger or mechanism for them to review these and have some say, whether that is approval or just notification.

City Planner Miller asked for feedback from the Zoning Board and said staff will ask the same of the Plan Commission next week.

Wausau is the only surrounding area that has a variance process in place for cranes. Three of the four communities that we talked to didn't require a formal process for cranes.

Discussion was held.

Bargender feels there should be some criteria in place for cranes. He plans on going to the October 21st Plan Commission meeting.

Bargender and Markwardt feel there should be rules in place.

Kenyon suggested having a fast track process and a fielded process. The way that you go about this is you talk to the Airport Manager first. If the Airport Manager has no objection, there is no 30 day period, and you go ahead. If the Airport Manager objects, there will be a 30 day delay and they will have to go to the Zoning Board of Appeals.

Jeff Gaier believes it is an obstruction whether it is temporary or permanent and somehow or another the Airport needs to be notified.

City Planner Miller believes the process should go through the Airport, because they are the experts. It would be nice to put the decision in the Airport Manager's or the Airport Committee's hands ultimately. If the Airport denies it and the City wants it there needs to be an appeals process.

Zieglmeier reminded the board that they have to be prepared to table things if they need more information.

City Planner Miller said that one of the things the Economic Development Board has been working on with staff is looking for more specific timelines for developing land use permits, conditional uses, variances, rezonings and then having specific deadlines. Right now, for a rezoning, we have a certain timeline to have a public hearing and get that process started, but there is no end date, and so we get the can kicked back and forth sometimes between bodies and a decision is often just kind of kicked down the road. In order to avoid that, we would like to have a set date of whether it is 60 or 90 days to give us a little more latitude to come back to a regular meeting but to still have a final timeline. He doesn't believe there is one for the variances, so as long as we have the public hearing in 30 days of the application and that is our job to make sure that happens you can table an item asking for further information.

The process for tabling a variance was discussed.

Chairperson Gerl apologized for the way the previous meeting was handled and the aftermath of that meeting. He felt things got out of line.

Lewerenz suggested writing the code so that if you were given a variance to build a building, because it was too tall it would either be to write the application to include the crane or we would automatically include the crane, because it makes sense and because we should be dealing with them together. If somebody bought a 500' crane to build a 200' building that doesn't make sense. Cranes cost money and they cost a great deal per hour and they cost a great deal more per hour for a huge crane than for an average crane. If the city were more involved in planning and wanted to make it work they would look at them together and deal with them together.

Markwardt said this is the only crane variance request that we had that involved building a structure that also violated the air space. It goes back to having stringent very specific information in place for people who use cranes. That these are the requirements whether it is lighting, or flagging or taking it down at night.

Bargender believes there should be set criteria that they have to follow.

City Planner Miller said the challenge in doing that is the FAA has different requirements for different locations and different heights of cranes in proximity of the Airport, so we couldn't just give a blanket crane down at night, and flag lighted, because it may not be required by the FAA.

City Planner Miller said the best would be that they file, they work with the FAA and work with the Airport Manager. The main thing is that the Airport Manager, because they are local. They can get those NOTAMS out if they are concerned about the height. The FAA, they take 45 days to review and that is a challenge sometimes.

Zieglmeier said they should follow the FAA rules and the most important thing is that the Airport Manager is really responsible for the air space. He knows best about what is going on. As far as the emergency medical services and stuff as well there is communications to the Airport Manager and if there is something major the Airport Manager is going to watch out for anything coming into the area. That is the easiest approach to this all.

City Planner Miller said they come in sometimes a day before and then it is too late. Once we figure out a process, we will proactively send notification to the heavy users like the hospital and then to Nikolay and Maurer, the different construction companies that use those cranes. It is not going to be a heavy handed permit; it will just be simple rules they will need to follow to use the crane. Our concern is safety and then aviation traffic, being able to operate the airport.

Motion by Kenyon, second by Lewerenz to adjourn at 6:42 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk