

ZONING BOARD OF APPEALS MINUTES OF SEPTEMBER 11, 2007

Meeting called to order by Chairman Markwardt at 4:47 p.m. in the Executive Conference Room, City Hall Plaza.

PRESENT: Marvin Duerr, Dean Markwardt, Wallace Reek and Don Wink

EXCUSED: Karl Zimmermann

ALSO PRESENT: Planner/Zoning Administrator Curtiss, Director of Planning and Economic Development Miller, Deputy Clerk Panzer, Arthur Capener, Lori Capener, Elizabeth Kracht, Cheryl Hall, Raymond Howen, Sarah Fuelleman, Daniel Wolfgram, Mabel Lewallen, Linda Sommerfeld, Gary Gray and Dee Schultz

Chairman Markwardt moved the agenda item to approve the July 10, 2007 minutes to the end of the agenda to allow the Zoning Board members time to look through them since they were distributed right before the meeting.

Chairman Markwardt also moved the variance request from Arthur and Lori Capener to follow the other three variance requests due to the anticipated discussion on this item.

Deputy Clerk read the variance request from Elizabeth & Curtis Kracht to construct a rear deck addition to the non-conforming residence at 1101 Fairview Drive, zoned R-3 Standard Single-Family Residential. Section 18-33 (4)(b) of the Municipal Code prohibits enlargement or alteration of a non-conforming structure, except as permitted by the Board of Zoning Appeals. Section 18-62 (4)(f) of the Municipal Code requires a minimum 25-ft rear yard setback. Applicants request a variance to allow the alteration of the non-conforming structure and a 12-ft rear yard setback variance for the proposed deck addition.

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

1. The property is 16,430-S.F. in size and has approximately 155-ft of lot width on Fairview Drive and approximately 100-ft of lot width on Marathon Street.
2. This is not a substandard lot under the R-3 district size requirements.
3. The property is located in the R-3 Residential District where the minimum lot size is 10,000-S.F. and the minimum lot width is 60-feet.
4. The property is an irregular-shaped corner lot.
5. The property was developed in 1973 with a single-family residence and attached garage.
6. The house was laid out on the corner lot with the front yard on Fairview Drive, resulting in a rear yard on the north side of lot and a lot depth of 100-ft.
7. The existing house is a non-conforming structure, not constructed according to the current required rear yard setbacks of the R-3 District. The house was built under the old zoning code where rear yards of corner lots were only required a minimum 7-ft setback.
8. Section 18-62(4)(f) of the current zoning ordinance requires a minimum 25-ft rear setback; the house is located 13-ft to the rear lot line. Corner lots are not given general exception to rear yard setback requirements under the current zoning regulations.
9. Decks are considered attachments and part of the residential structure and are subject to the same setbacks as the principal structure.
10. The proposed deck addition would enlarge the non-conforming structure and increase the degree of non-conformity (mass of building footprint) in the rear yard setback area.
11. The deck addition would be located 13-ft from the rear lot line, in line with the existing house footprint.
12. This "rear yard" faces the "side yard" of the adjoining lot at 506 Marathon Street.
The attached garage @ 506 Marathon is located approximately 25-ft from proposed deck addition.

13. Section 18-33 (4)(b) of the Municipal Code prohibits enlargement or alteration of non-conforming structure, except as permitted by the Zoning Board of Appeals.
14. The deck addition enlarges the size of the building footprint in the rear setback area by 244-sq. ft. Approximately 700-sq. ft. of the residential structure is already located in the rear yard area.
15. The deck on the west side of the residence was enlarged in 2006 under a permit issued by the Building Inspector with administrative oversight of the non-conforming structure and rear yard setback issue. That deck addition enlarged the structure footprint in the rear yard setback by 72-sq. ft.

Planner/Zoning Administrator Curtiss pointed out that corner lots under today's code do require setbacks on both streets. It is optional to the property owner on how they choose that layout and depending on how the functional front yard is laid out the opposite side of the property is then defined as the rear yard and requiring that rear yard setback. In zoning language, the rear yard is 25' running the entire length of the lot.

Markwardt asked if the proposed new rear deck would be a covered deck.

Elizabeth Kracht responded no.

Planner/Zoning Administrator Curtiss said that the deck is a little bit different. It is only 1' or so up off the ground. She explained one reason why decks are considered a structural attachment. In Wisconsin we do have decks not being attached to the homes because of the frost, so they are considered floating decks, but they are still considered structural attachments because they don't otherwise provide the 6' of separation and because at the same time they can later be enclosed into actually more of a structure and living space. She reminded the Zoning Board members that they can attach conditions.

ZB07-009 Motion by Reek, second by Duerr to grant the variance request from Elizabeth and Curtis Kracht to allow the alteration of the non-conforming structure and a 12-ft rear yard setback variance for the proposed deck addition. All Ayes.

Motion carried

Deputy Clerk read the variance request from Matthew & Cheryl Hall to construct a new covered front porch addition on the non-conforming residence at 1515 N. Shawano Drive, zoned R-3 Standard Single Family Residential. Section 18-33 (4)(b) of the Municipal Code prohibits enlargement or alteration of a non-conforming structure, except as permitted by the Board of Zoning Appeals. Section 18-62 (4)(f) requires a minimum 25-ft front yard setback. Applicants request a variance to allow the alteration of the non-conforming structure and a 2-ft front yard setback variance for the proposed front porch addition.

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

1. The property is 16,750-S.F. in size and has a lot width of approximately 125-ft. This is not a substandard lot.
2. The property is located in the R-3 Residential District where the minimum lot size is 10,000-S.F. and the minimum lot width is 60-feet.
3. The property is platted as Lot #12, Block 2 of The First Addition to Northern Hills Subdivision.
4. The lot is located at the beginning of the curve in Shawano Drive, resulting in a curve in the front lot line and a curved front yard setback area.
5. The property is developed with a single-family residence and attached garage. The house was built in 1970 and is a 1 ½ story structure.
6. The existing house is a non-conforming structure, not constructed according to the current required front yard setbacks of the R-3 District.

7. Section 18-62(4)(f) requires a minimum 25-ft front setback; the structure was built with a 24-ft front setback.
8. The proposed front porch addition would alter the non-conforming structure and increase the degree of non-conformity in the front yard setback area. The covered porch addition, at its closest point, would be located 23-ft from the front lot line on Shawano Drive.
9. Section 18-33 (4)(b) of the Municipal Code prohibits enlargement or alteration of non-conforming structure, except as permitted by the Zoning Board of Appeals.
10. The porch addition would extend the structure one (1) additional foot into the front yard setback area.
11. The variance request is minimal.
12. There is questionable compliance with the six conditions necessary to obtain a variance as specified in Section 18-35(2) of the Municipal Code.

Reek asked if they were putting a hip roof on the top.

Cheryl Hall explained that they are putting a dormer on the front half of the house to make the structure more level and a flat based structure which is an eyebrow where the two levels would meet. They are requesting the porch to give it depth and so that it is more visually appealing.

Reek asked if there was going to be a roof extension over the porch.

Cheryl Hall said yes. The porch will be covered but not enclosed. No railing is planned at this time.

Planner/Zoning Administrator Curtiss explained that this lot has a curve which results in a little unusual front yard area.

ZB07-010 Motion by Duerr, second by Wink to grant the variance request from Matthew and Cheryl Hall to allow the alteration of the non-conforming structure and a 2-ft front yard setback variance for the proposed front porch addition. All Ayes.

Motion carried

Deputy Clerk read the variance request from Raymond & Mary Howen to construct a second-story addition onto the non-conforming residence at 900 W. 8th Street, zoned R-2 Large Lot Single Family Residential. Section 18-33 (4)(b) of the Municipal Code prohibits enlargement or alteration of a non-conforming structure, except as permitted by the Board of Zoning Appeals. Sections 18-62 (3)(f) & 18-04 (5)(i) require a minimum 12-ft side yard setback for a 2-story residential structure. Applicants request a variance to allow the alteration of the non-conforming structure and a 10.5-ft side yard setback variance for the proposed 2nd-story addition.

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

1. The property is 14,080-S.F. in lot size and 55-ft in lot width.
2. The property is part of Lot 11, Block 1 of J.P. Humes 2nd Addition and is a non-conforming lot in the R-2 Large Lot Residential District.
3. This lot is not the only non-conforming lot in this R-2 Residential District between S. Oak Avenue and George Drive. There are at least twelve lots on the north & south sides of W. 8th Street that do not meet the lot requirements of the R-2 District.
4. The R-2 Residential District requires a minimum lot size of 14,000-S.F. and a minimum lot width of 80-ft.
5. The property is developed with a 1 ½ story, single-family residence and attached garage. The Assessor's records indicate the structure was built in 1950.

6. The existing house predates the current code and is a non-conforming structure; not developed according to the current setback restrictions of the R-2 District.
7. Section 18-62(3) (f) requires a minimum 10-ft side yard setback for dwellings. The existing dwelling is located only 1.5-ft from the west lot line and 7.5-ft from the east lot line.
8. Section 18-33 of the Zoning Ordinance regulates non-conforming structures, requiring that no nonconforming structure may be enlarged or altered in any way which increases its nonconformity, except as permitted by the Board of Zoning Appeals.
9. The proposed 2nd story addition would alter the non-conforming structure and increase the degree of non-conformity in the west side yard by adding additional structure mass in the yard area not compliant with setback requirements for two-story structures in the R-2 District.
10. Section 18-04(5)(i) requires additional side yard setbacks for two-story structures. An additional 2-ft setback is required in addition to the standard side yard of the zoning district. This new second-story addition requires a 12-ft side yard setback.
11. The purpose of additional setbacks for second story structures is to preserve adequate air, light, views and privacy of adjoining residential properties.
12. The adjacent home at 902 W. 8th Street is a two-story structure and is located approximately 8-ft from the side lot line. The distance between the two residential structures is approximately 9.5-feet.
13. The variance request is substantial, almost the entire setback.
14. There is questionable compliance with the six conditions necessary to obtain a variance as specified in Section 18-35(2) of the Municipal Code.

Mabel Lewallen spoke in opposition of the variance request from Raymond and Mary Howen. She felt the addition would keep the morning sun out of her upstairs bedroom, devalue her property and would further infringe on her privacy. She said that she bought her house in November of 1948 and before her and her husband were totally moved into the home their neighbor came over and asked for a variance. He said it was imperative to his business and his livelihood. He immediately put up a larger garage for his inventory and he only lived there for about a year or so and needless to say we were stuck with the mistake when he moved to another state. Now neither property owner can get into their backyards with equipment to trim trees. There were three more owners in the meantime and none of them had children until the Howens bought it. The Howens raised four children there and in order for us to have some privacy we had to put up a wooden fence which really gave both of us privacy. She felt that the Howens have other options in this matter.

Mabel Lewallen shared photos of her property from when she first bought it with the Zoning Board members and explained the variance that occurred around 1948.

Planner/Zoning Administrator Curtiss said that Mrs. Lewallen called her and mentioned the variance that occurred in 1949 or 1950, but our record keeping back then wasn't so good on zoning, so I wasn't able to confirm that the City did or did not grant the variance.

Raymond Howen explained how this variance request came about. He has had problems with the addition he put on the back ever since he put it on. It brings water onto the flat roof back there. He has to get up there every year to rake or shovel and decided to do something about it before he gets too old to get up there to rake or shovel ice off of it. He talked to a builder about putting a cold roof on and also changing the roof line on the garage from a flat roof to a gable roof. The builder did work with the City on this, and found out that we couldn't go any higher than 19'. When he measured the 19' it was 2' below the peak of the roofline, so at that point we decided that we needed an additional room at this point in our lives. With only a 2' difference that is when we decided to start this process. He doesn't want to cause his neighbor any problems and is willing to try to get some kind of a compromise where he could

get a gable roof on there and take care of that problem without going so far as to blocking out the morning sun or having a room there. If we did have a room there we wouldn't put a window in on west side.

Planner/Zoning Administrator Curtiss said that she was given an elevation shot of the structure from the contractor, but somehow it didn't get included in the packets.

Director of Planning and Economic Development Miller asked if Mr. Howen could put a gable roof on without a variance request.

Planner/Zoning Administrator Curtiss yes, if it was a cold roof without bringing the walls up.

Discussion was held on cold roofs.

Director of Planning and Economic Development Miller pointed out to Mrs. Lewallen that if this variance is not granted Mr. Howen would still be able to put on a peaked roof that is 9' over the existing roof to take care of the drainage without a variance.

Planner/Zoning Administrator Curtiss felt that this could probably be designed with less of an angle.

Duerr asked if Mr. Howen ever considered an addition to the back of the home.

Raymond Howen responded no.

Raymond Howen said that he understood Mrs. Lewallen's concerns and didn't want to cause any problems. He asked the Zoning Board to table his request to allow him more time to look at some other options.

ZB07-011 Motion by Wink, second by Duerr to table the action of the variance request from Raymond and Mary Howen until a later date. All Ayes.

Motion carried

Deputy Clerk read the variance request from Arthur & Lori Capener to permit a second-story addition to the non-conforming residence at 502 W. MaGee Street, zoned R-5 Medium Low-Density Single and Two-Family Residential. Section 18-33 (4)(b) of the Municipal Code prohibits enlargement or alteration of a non-conforming structure, except as permitted by the Board of Zoning Appeals. Sections 18-62(6)(f) & 18-04 (5)(i) require a minimum 9.5-ft side yard setback for a 2-story residential structure. Applicants request a variance to allow the after-the-fact alteration of the non-conforming structure and a 6.5-ft side yard setback variance for the as-built 2nd-story addition.

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

1. The property is 9,600-S.F. in lot size and 60-ft in lot width.
2. The property is not a substandard lot under the zoning district requirements.
3. The property is located in the R-5 Residential District where the minimum lot size is 6,000-S.F. and the minimum lot width is 40-feet.
4. The property is developed with a single-family residence and attached garage. The house was originally built in 1940 as a 1 ½ story structure.
5. The residence as constructed in 1940 with a 3-ft setback from the west lot line is considered a "non-conforming structure."
6. The R-5 District (Section 18-62(6)(f)) requires a minimum 7.5-ft side yard setback for dwellings.
7. Non-conforming structures can remain "as-is" without enlargement or alteration.

8. Section 18-33 (4) (b) of the Zoning Ordinance prohibits enlargement or alteration of a non-conforming structure, except as permitted by the BZA.
9. Records indicate that the non-conforming residential structure was altered in 1974, with Zoning Board approval, for a 480-sq. ft. one-story rear addition. A 4.5-ft side yard setback variance was granted for the addition, which was in line with the existing west façade of the house, at a 3-ft setback.
10. The new 2nd-story addition is 480-sq. ft. and was constructed on top of the 1974 addition.
11. The new 2nd-story addition is a second alteration of the non-conforming structure, increasing the mass & height of the structure in the required side yard setback.
12. The 2nd story addition does not meet the minimum side yard setback requirements. Sections 18-62(6)(f) & 18-04(5)(i) require a minimum 9.5-ft side yard setback for two-story additions/structures in the R-5 District.
13. Additional minimum side yard setbacks for two-story structures are required to preserve adequate air, light, views, fire access and privacy of adjoining residential properties.
14. The adjacent home at 500 W. MaGee Street is a 1 ½ story dwelling and is located approximately 5-ft from the side lot line. The distance between the two residential structures is approximately 8-feet.
15. There is questionable compliance with the six conditions necessary to obtain a variance as specified in Section 18-35(2) of the Municipal Code. The hardship appears self-created.

Daniel Wolfgram of 1914 East Fillmore Street spoke in opposition of the variance request from Arthur and Lori Capener. He is a prior joint tenant of the 506 West MaGee Street property which is an adjacent property to the 502 West MaGee Street property and he has first right of refusal on adjacent 506 West MaGee property that Miss Fuelleman owns currently. He said that when he was a tenant of the 506 West MaGee Street property he and Miss Fuelleman did also choose to remodel their home and when they performed their remodel, they obtained all the necessary permits. We conducted all required inspections in a timely manner and followed all the guidelines in code set in place by the City of Marshfield. Those codes, guidelines and requirements are in place for a very specific reason. I'm not an expert in these issues and that is why I believe the process is very important to be followed. I also believe everyone has a right to enjoy their property to the fullest extent. This is a difficult circumstance because Mr. and Mrs. Capener feel that for them to fully enjoy their property they need to build this 2nd story addition however, I would ask that this Board balance that right to enjoyment with the right to enjoyment of any adjacent property owners such as the 506 West MaGee Street property whether that is Miss Fuellman, myself at some future date or any other property owner. He said that the 506 West MaGee property has an interlocking brick patio attached to the south part of the house between the south main structure of the home and the garage. The 506 West MaGee Street property also has a large oak tree on the west lot line which shades any sunlight from the west, so the only sunlight reaching that patio is going to be from the east. Now the view from the east is this 2nd story addition. The issue of privacy is also a concern. When I still resided at the 506 West MaGee property, the Capeners installed a fence. The act of installing that fence indicates that they obviously have a respect for the privacy of each individual property owner. Now, any privacy that would have been imported to that back patio at the 506 West MaGee property is mitigated, because now their 2nd story addition is essentially staring down on it.

Gary Gray of 507 West Park Street said that he feels that zoning codes are very important and it is a little disturbing to him that those zoning codes are not followed. He asked if there was some kind of a fine for not following the zoning code. He said that he was not in favor of or opposed to the proposed variance. He said that he is new to Marshfield and has some experience in another city.

Planner/Zoning Administrator Curtiss said that the processes are there for a reason and where those processes aren't followed then the validity of the process becomes in question. She explained that there are some penalties that could happen here. Citations can be issued for building without a permit.

Dee Schultz of D & D Construction spoke in favor of the variance request. He said that he is the person responsible for the 2nd story addition. He explained how the addition happened without a permit. He said he got the proper permit for siding, soffit, fascia, roof and remodeling of the whole house and the existing porch was actually included with that. We knew that we were going to pull windows out and make it into an open porch. As the process went, Art and Lori came to him and asked him about the roof in the back which was terrible. If you would have stepped out onto it you probably would have fallen into their back living room. Art and Lori said that if it was ever possible to put a second room over the top of the already existing square footage that was already there they would like to do that. We already had one building permit in place. Normally I come up to the City and tell them what we want to do and get the permit and pay our permit fee and go to work. We talked about the addition and I went on vacation and when I came back my workers already had a majority of it done. It was never done intentionally. The roof is actually a little bit shorter than what was already there from the dormer that went out the back. Lori started a new job which required her to do work from home and needed office space.

Duerr said that he spoke with Jeff and Julie Will who are the neighbors to the east of 502 West MaGee Street and they are very happy with what the Capeners did to their home. Duerr pointed out that in the last two years six or seven homes have done major construction and remodeling and brought the value of that entire street up. Aesthetically the whole block is starting to look a lot better.

Duerr felt that denying this variance would create a hardship on the family. They would have to tear this structure out, come back in to get a permit to redo the whole entire thing. To open their home up again just before winter is a hardship. It is unfortunate that the permits were not in place prior to construction, but it happened. Why would you want to place anybody into that situation when the construction is done to go and tear it out?

Daniel Wolfgram said that he was one of the residents on MaGee Street who added to the value of the neighborhood, but he reminded the Zoning Board that him and Miss Fuellman remodeled within all the zoning criteria, all the city codes, all the guidelines and the residential construction requirements that the City of Marshfield has in place and this does affect the 506 West MaGee Street property that he still has interest in.

Arthur Capener said that before they put the addition on he could see the patio at 506 West MaGee Street unobstructed without any problem. And as far as the sunlight being blocked from Mr. Wolfgram's patio it was already blocked by the Will's house. We might have blocked a little bit more but not a whole lot from the east.

Lori Capener said that she never built a home, never remodeled a home in the City of Marshfield and that is why she hired a licensed contractor because they know things about the City that she as a health care worker doesn't. She tried to stay on top the project. She has tried to understand everything that occurred but she simply didn't ask some questions because she didn't know enough to ask them. She had never even heard of a variance before she received a letter from Bonnie Curtiss. In no way, shape or form did her husband and she take a cavalier approach at this. This is what we want so we are going to put this on our house and let the cards fall where they may be.

Arthur Capener agreed with his wife. We didn't know about variances and all this stuff. We thought our contractor was taking care of it. We had no idea of what the process is that is why we hired a contractor.

Markwardt wondered if it hadn't been built yet and they were coming to us with a variance request what the Board would have done under those circumstances.

Duerr felt that he would have been in favor of granting the variance especially with the fact that the structure of the Will home isn't lower.

ZB07-012 Motion by Duerr, second by Reek to grant the variance request from Arthur and Lori Capener to allow the after-the-fact alteration of the non-conforming structure and a 6.5-ft side yard setback variance for the as-built 2nd-story addition.

Director of Planning and Economic Development Miller said that there is certainly substantial room on this property and this addition could have been accomplished without increasing the nonconforming structure on this property. There is evidence that there is more than enough room on this lot to build an addition without increasing the variance on the east side of the lot. Ignorance of the law is not an excuse. Particularly with this individual property, these are not the only permits that they have not gotten. The driveway permit and fence permit that they also did not get and still have not gotten.

Reek said that he has a cottage near Minocqua and he gets the Minocqua paper and watches the variances from up in that area and if this had happened in Minocqua, you would be tearing your addition off. If we grant this we are doing a favor to you and your contractor.

Planner/Zoning Administrator Curtiss asked if there was opportunity of coming off in the south direction behind the garage for extra living space.

Dee Schultz responded we could have, but then there is a hallway and bathroom right there. It would not have been as cost effective. He thought that the garage was poured after the foundation was done. He didn't know if the footings would be structurally sound enough to carry it on that particular spot. In looking on the front of the house unless you turn and go over to the side, you would never know it was actually there. It was never our intention to do anything wrong. We weren't trying to hide it. We had several trailers, dumpsters and workers there for six months.

Discussion was held on when construction was started and the length of time it took to do the remodeling.

Markwardt said that D&D Construction really let things slide.

Duerr called for the question.

Vote on motion **ZB07-012**; All Ayes.

Motion carried

Planner/Zoning Administrator Curtiss asked the Zoning Board members what their hardship justification was for granting the variance.

Duerr said he couldn't see putting the existing family in that home through such a hardship to have to destroy their home after the fact.

Planner/Zoning Administrator Curtiss reminded the Zoning Board of Appeals members that this decision could still be appealed by the aggrieved party and recommended that their decision be clearly related to the criteria. She explained that there is still an appeal process of the Board of Zoning Appeals to Wood County Circuit Court within 30 days after this decision and that can be by any aggrieved party.

Markwardt said that it appears that the existing home was clearly in sad shape prior to the remodeling work that has been done. The roof in back was in very bad shape. The existing house would not have accommodated the home work environment that the owner wished to have.

Planner/Zoning Administrator Curtiss explained that there are case laws out there that identify what is and what isn't a hardship and financial circumstances of property owners aren't hardships as opposed to circumstances of the property whether it be an irregular shape, physical features or topographic constraints. Those are the hardships that hold within the context of the law.

Planner/Zoning Administrator Curtiss explained what a hardship means per state statutes.

ZB07-013 Motion by Wink, second by Duerr to approve the minutes of July 10, 2007 as submitted. All Ayes.

Motion carried

Motion by Duerr, second by Reek to adjourn at 6:23 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk