

ZONING BOARD OF APPEALS MINUTES OF NOVEMBER 13, 2007

Meeting called to order by Chairman Markwardt at 4:43 p.m. in the Executive Conference Room, City Hall Plaza.

PRESENT: Dean Markwardt, Wallace Reek, Don Wink, Karl Zimmermann and 1st Alternate Donald Schnitzler

EXCUSED: Marvin Duerr

ALSO PRESENT: Planner/Zoning Administrator Curtiss, Building Services Supervisor Donath, Alderperson Siegler, Deputy Clerk Panzer, Raymond Howen, Mabel Lewallen, Dennis Juncer, Tom Henseler, Gary Gray, Mary Jo Knobloch, Tim Knobloch and Melissa Pittsley

ZB07-015 Motion by Zimmermann, second by Wink to approve the minutes of the September 11, 2007 regular meeting and the September 25, 2007 special meeting as submitted. 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 requested 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.

Background

This request was tabled at the September 11th Zoning Board of Appeals meeting to allow applicants more time to consider other options. Since then, the applicants have reviewed options with their builder and have determined the addition over the garage as the most feasible. Mr. Howen submitted a letter to update the Board, asking that his original variance request be placed back on the Zoning Board agenda for consideration.

Planner/Zoning Administrator Curtiss said if a non-conforming structure is enlarged or altered in any way which increases its non-conformity it is not allowed except as permitted by this Board. The rule that applies for 2-story type structures is additional height added to the standard zoning height. With this variance request that is 2' added to the 10' required by the district. Mr. Howen looked at adding onto the back of the home, which is possible, because there is room on the property, but due to economic consideration that option is not feasible. As the rules are to be tested to the hardship of the property there would be less of a variance required on that side of the property as opposed to this side.

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 considered a "non-conforming lot" in the R-2 Large Lot Residential District.
3. The property is not the only non-conforming lot in this R-2 Residential District. There are at least a dozen other lots on the north & south sides of W. 8th Street, between S. Oak Avenue and George Drive, that also 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 considered 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 site plan indicates that 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 provides that no nonconforming structure may be enlarged or altered in any way which increases its nonconformity, except as permitted by the Zoning Board of 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 setback with additional structure mass in the west side yard area non-conforming with current side setback requirements for two-story structures in the R-2 District.
10. Section 18-04(5)(i) requires a minimum 2-ft side yard setback for two-story residential structures in addition to the standard side yard of the zoning district. Two-story structures require a 12-ft side yard setback in the R-2 District.
11. The general 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.

Discussion was held on what is allowed for the height of this structure without a variance.

Planner/Zoning Administrator Curtiss said that a roof gable pitch could be designed on top of the garage without a variance and it could be done at less of a pitch than what it is designed as, but for aesthetically reasons the Howens want the roof to sort of match what is already there.

Mabel Lewallen said that she is opposed to the variance request for the same reasons that she mentioned at the last Zoning Board of Appeals meeting.

Chairman Markwardt read Mabel Lewallen’s comments from the last meeting minutes.

Mabel Lewallen felt that since the Howens are only having extra people living with them for a short period of time that a bedroom in their basement could be another option.

Raymond Howen said the problem with putting bedrooms in the basement is that you need to have window egress. And putting bedrooms in the basement won’t take care of the roof problems in the back. By putting on a gable pitch roof there will be extra space above the garage, so why not make living space out of that extra space. Why go to the extent of putting that roof on and not taking advantage of it?

Mabel Lewallen said that she has a flat roof and she doesn’t have any problem with hers.

Markwardt asked Mr. Howen if he explored options to solve the roof problems with the help of a contractor.

Raymond Howen said yes and he explained the existing addition was built for a roof and not for living space above, so some additional structure modification would have to be made.

Planner/Zoning Administrator Curtiss said that basically it is going to add a little bit more mass and the amount of wall space if it was just designed for a cold roof to take care of the situation of the flat roof garage. Extending out for the second-story, you are going to have a little bit more length and mass to the wall. It is hard to sometimes understand the purpose behind regulating nonconforming structures as it would increase the extent of nonconformity. The degree of nonconformity here is a little bit different. It is dealing with an increase in height and an additional requirement that kicks in for buildings over 20-ft in height. A change in a non-conforming structure resulting in less than 20-ft does not increase the degree of non-conformity. This may be a technicality or an area within the code that should be addressed later.

Zimmermann said the variance request is for another 1 1/2'.

ZB07-016 Motion by Zimmermann, second by Reek to grant the variance request from Raymond and Mary Howen. All Ayes.

Motion carried

Deputy Clerk read the appeal of The Heritage Bank. Appealing a condemnation order issued by the City of Marshfield on property located at 505 West 7th Street, Marshfield, WI 54449. The condemnation order declares the building a public nuisance and requires that the building be razed pursuant to Section 15-53 (7)(a) of the Municipal Code of the City of Marshfield.

Building Services Supervisor Donath gave a background and analysis on the property located at 505 West 7th Street for the condemnation order. He explained the choices that the Zoning Board of Appeals has in this matter. He recommended denying the appeal of The Heritage Bank.

Dennis A. Juncer, Attorney for The Heritage Bank, spoke in opposition of the condemnation order. Condemnation is not the only way the City can enforce building codes. The neighbors are complaining of the outside appearance of the building. It doesn't take \$40,000 to correct the appearance of that building. If you do everything that the City has on their laundry list that probably would make \$40,000. But all of this doesn't have to be done to correct the nuisance. The building is basically structurally sound. It is well built. It is not going to fall over. It is not completely abandoned. The owners have done some work in there. They are paying their taxes and their mortgage.

He suggested the following repairs to get the property out of the public nuisance category:

- Replace the decorative siding on the front of the home that runs up and down.
- Replace the door and garage door.
- Tear down the deck. There may be a safety hazard there.
- Fix the add-on family room. The ceiling has collapsed inside the building. The family room should either be torn off or put a new roof on it.

It is not necessary to do everything on the City's list. It is not the City's interest to make it a house that is completely habitable. The City's interest is to make it not a nuisance per code for the public. The aesthetics can be done for a lot less than \$40,000. The city should proceed on other matters as they have done before like when they have had the swimming pool taken down. You can take other actions to debate whatever is necessary without resulting in going overboard.

He felt that the following repairs could wait:

- Electrical and water repairs. They do not make the building a nuisance.
- Mold. It is inside of the house and is not a particular problem to the neighbors or anybody else.

Schnitzler asked if they have tried to sell the house the way it is.

Dennis Juncer said the house is not for sale. As long as they are making their payments we can't foreclose on it. He didn't think that they have any intent to sell it. They do come back and use it every so often. He doesn't know why they haven't tried to sell it or rent it or do something with it.

Zimmermann said that the roof looks terrible. He asked if they are willing to do the exterior work necessary to bring it up to standards.

Dennis Juncer said The Heritage Bank may be willing to do that if the owners will cooperate, but the point is that it can be accomplished by an order for them to do it by giving them a fine or putting pressure on them without having to tear down the entire building. It is awful hard to say what they are willing to do, because in talking with her he thought she was going to submit something to the Board and that she might even be here for this meeting and she is not.

Wink asked what the exact deficiency was.

Building Services Supervisor Donath said what is needed to bring it up to code is listed in his memo. He understands that they do come back from time to time. He would be perfectly happy to enter into any kind of a stipulation with anybody to repair this property. The problem is that he can't get the present owners to do it. They have been unresponsive. He has urged them in several conversations to sell the house and let somebody take care of it that has the money. They are either unwilling or unable to do that. People are sick and tired of the shape of this property. There were two contractors involved that the owners actually did contact to look at this property and one of them said that he wouldn't even want to begin to repair this building. The other contractor who is a local contractor gave them a verbal estimate of \$60,000 to \$80,000 to do the repairs on that building. There are a lot of inside repairs that you can not see anymore because the shutters are closed shut now. There is a mold issue. If that comes out of there that is going to affect the neighbors. Everything in the basement is black. Something has to be done in that lower level. He is not sure how much deterioration there is to the wood itself holding up the floors. In the past, we have backed off on a couple of condemnations, but we have done it with willing buyers and willing sellers and a willing City. Right now, as far as the City is concerned we are willing, but we can't convince the owner to do something in this case. Why would you want to have a property for 17 or 18 years, pay taxes and not get a nickel worth of revenue off of it? And let it go this bad? He talked about the last problem that he had six or seven years ago in dealing with attorneys at that time on the old swimming pool and the deck falling down. We are running into some nuisance issues beyond that building itself. The City Garage has been involved in mowing that property several times. Nobody is taking care of it. We need somebody to take care of that property.

Aldersperson Siegler said that she became involved with this issue 1 ½ years ago when she was first elected. She was aware of this home being in the neighborhood and depreciating and becoming a nuisance. The unfortunate thing is that Mr. Donath has made efforts to send letters and there has been no effort by those homeowners to step up and do something about it. The fact of the matter is if they were willing participants to step up and take care of their responsibilities in this home we wouldn't be here. She is fully supportive of the neighbors wishes and Roland Donath and his assessment. She doesn't see any other alternative at this point.

Tim Knobloch, owner of neighboring property said that this issue has been going on for years. The swimming pool was the last issue that deteriorated and it got to be an issue where it just collected water for mosquitoes. They haven't done anything and if they ever did come it was in the middle of the night.

Mary Knobloch said that the property is not abandoned totally. They do come back maybe once a year. They use to come a few times a year for a couple of days at a time, but now not only the amount of days spent there, but also the times per year have diminished. She has seen squirrels go into the house through a hole in front; she has witnessed a bird going into the house. She has a health background and she was the one who called the Health Department about the pool. She was worried that a kid in the neighborhood would drown in that pool, because they didn't have a cap there. She called the Human Society. It is not just the appearance thing. It scares her that there is mold in there. Their trees have ruined one of our backyard trees.

Schnitzler left meeting at 5:20 p.m.

Tim Knobloch said that there is a TV antenna tower that the trees have grown into that goes back and forth in the frame and is one day going to go into my house. He would love to tear it down, but legally he can't.

Mary Knobloch said that they had a realtor come over, because they were thinking about moving and the realtor basically said it is going to be kind of hard to sell with an abandoned house next to you and because of the way the house next door looks. This home has devalued our property and the other properties in the neighborhood.

Alderperson Siegler said that luckily we are in a close neighborhood where nobody has been living in there or doing anything. We do have a neighborhood watch, but there is a concern of issues like that coming up in the future.

Planner/Zoning Administrator Curtiss mentioned that Mr. Juncer indicated that the City has other measures through citations. She asked Mr. Donath to explain what has been the result of the owners coming to court and paying forfeitures. What happens?

Building Services Supervisor Donath said normally when we get involved, we do the inspections, we list the deficiencies, and we write orders. If the owners do not comply, we have citation powers. Once in awhile we write orders on tenants. We do issue tickets. Usually the first time around it is about \$350.00. If they don't comply it goes up almost twice as much. But at some point there is a break off point depending on the shape of the property and in the past on some of these abandoned properties we have condemned them. Some of them were dumps. They were 90 year old properties that were just falling apart, which is not the case with this house. It is not that old, but there are a lot of repairs that need to be done. He disagreed with Mr. Juncer's comments about only fixing up the outside, because that is the only nuisance. He is nervous about the mold issue. He is nervous about kids coming over there and breaking out the windows and everybody in the neighborhood is going to smell it. Those types of things happen once people know that the property is not being used. Nobody is there, anything can happen. Unless somebody can convince the owners to step forward and do something to this property he doesn't know what else the City can do.

Tom Henseler of Heritage Bank said that he spoke with the owner about fifteen minutes before he had to leave for this meeting and the owner did apologize for not coming down here. He couldn't make the trip.

He quizzed them and asked what their intentions were. They do want to reinvest. They may need some help, but they feel that they want to keep the property. He said about a year ago they owed over \$6,000 of delinquent property taxes and they have since paid that, so he doesn't think that they are going to be too willing to walk away. The bank is not interested in financing property that is dilapidated, falling apart and would like to see it go back on the tax roll as a nice property and continue. He feels that they are genuinely interested in taking care of it and perhaps some specified time period that they can come forward with a contract and a plan and say this is what we plan to do and here is our means of getting the payment for it. Let us get it done and we would be satisfied.

Zimmermann asked Mr. Henseler what he felt a reasonable time frame was.

Tom Henseler said that they have had 30 days plus now just mulling it over. Perhaps a 60 day range, because we would like to see it done to. He agreed that it will probably cost more than 50% of the assessed value of that property of \$46,000, but if you invest that back in there it is probably going to be nearing \$100,000 in value to be put back on the tax roll, which is much better than a vacant lot.

Dennis Juncer said if you do the condemnation order and we have to go to court it will cost the City money and it will cost the bank with attorney fees. It makes no sense to condemn this property. A better way to go about it would be to issue some orders starting with the television tower and enforce them that way without condemning the property. The home has been there for eighteen years and hasn't been vandalized yet.

Alderperson Siegler left at 5:29 p.m.

Markwardt said that Dennis Juncer's letter says the cost of repairs will not exceed 50%. He wondered how he could say that.

Dennis Juncer responded that you don't have to put in new plumbing to make it less of a nuisance.

Building Services Supervisor Donath said if you don't do what has to be done on the inside you can't occupy it. He doesn't think that would be a wise move.

Zimmermann felt that decision should be left up to the bank.

Building Services Supervisor Donath said that he would not be in favor of partial list, because that puts the City in an awkward situation.

Dennis Juncer said it is not the City's job to put it into a saleable condition. It is to debate the nuisance. The City has no requirement that a furnace be in there. If they want to camp out in there and not have a furnace there is no reason that they can't do that as long as it is properly maintained.

Building Services Supervisor Donath said we know what happens to buildings when you don't maintain and keep some minimum heat in them. The freeze thaw cycles that they go through during winter and summer raise all kinds of problems with buildings. He said that he didn't have a problem with delaying this for some period of time and not scheduling it for Circuit Court action, but at some point in time someone is going to have to sell the property or bite the bullet and do what has to be done to it.

Mary Knobloch felt that only fixing the outside isn't right. It would be like not having a foundation to anything. It is going to crumble eventually again if you make it look nice on the outside, but there is nothing on the inside to support that. Would you want to live next to a house that has animals crawling around in it and mold?

Building Services Supervisor Donath said the family room in back is totally caved in. The ceiling is falling in. The ceiling in the entryway going into the house has fallen in. The roof is beyond help. He doesn't know how much sheathing needs to be replaced on the roof. There are a lot of issues in that house and they are all caused by neglect.

Tim Knobloch expressed his concerns about the TV antenna.

Building Services Supervisor Donath said that he can write the owners an order telling them to take it down within 30 days.

ZB07-017 Motion by Zimmermann, second by Wink to uphold the order for 90 days to give the owners time to come up with a plan, hold off any court action and in the meantime handle the situation with the TV tower. The bank and the attorney would report back with results and solid papers on this.

Reek felt that this is a lost cause. This has gone on and on and on and it is a dead issue. He admired the City of Marshfield for stepping forward and taking some action on this. The bank is not going to do anything.

Vote on motion **ZB07-017**; Zimmermann and Wink voted Aye, Markwardt and Reek voted Naye.
Motion failed. (Appeal denied with a tie vote.)

Building Services Supervisor Donath said that he is willing to work with somebody on this, but he is afraid that the action with the present owner is not going to materialize. The City doesn't like going through condemnation court either, because it costs everybody money.

Zimmermann felt the home is just too good of a property to totally destroy. With \$30,000 to \$40,000 worth of reconstruction that property could be worth \$100,000 or more.

Motion by Zimmermann, second by Wink to adjourn at 5:43 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk

