

ZONING BOARD OF APPEALS MINUTES OF MAY 20, 2008

Meeting called to order by Chairman Markwardt at 4:45 p.m. in the Executive Conference Room, City Hall Plaza.

PRESENT: Dean Markwardt, Wallace Reek, Don Schnitzler, Don Wink, Karl Zimmermann, 1st Alternate Ed Gerl and 2nd Alternate Todd Zieglmeier

ALSO PRESENT: Planner/Zoning Administrator Curtiss, Deputy Clerk Panzer, Francis J. Lang, Lacie Pohl, Robert Pohl, Dennis Bruckschen, Blake Schultz and Jess Hutzler

Mayor Meyer by duty of statute appointed Dean Markwardt as Chairman for the Zoning Board of Appeals at the Common Council meeting of April 22, 2008.

Karl Zimmermann nominated Wallace Reek for Vice Chairman.

ZB08-006 Motion by Zimmermann, second by Schnitzler to close nominations and cast a unanimous ballot for Wallace Reek for Vice Chairman. All Ayes.

Motion carried

ZB08-007 Motion by Reek, second by Wink to approve the minutes of April 8, 2008 as submitted. All Ayes.

Motion carried

Zimmermann asked to be excused from voting on the variance request from Blake Schultz, because he was involved in the sale of the property.

1st Alternate Ed Gerl and 2nd Alternate Todd Zieglmeier were welcomed and introductions were made.

Deputy Clerk read the variance request from Blake Schultz to enlarge/alter the non-conforming commercial structure at 809 North Central Avenue, zoned B-4 General Commercial District. Section 18-33 (4) (b) of the Municipal Code prohibits enlargement or alteration of a non-conforming structure in any way which increases its nonconformity, except as permitted by the Zoning Board of Appeals. Section 18-63 (5) (f) of the Municipal Code requires a minimum 10-ft side yard setback. Applicant requests a 9.5-ft variance to the north side yard setback and a 1-ft variance to the south side yard setback, to match the existing elevations and expand the building westward into the required 10-ft side yard area, with new building additions 6" to the north lot line and 9-ft to the south lot line.

Background

The applicant has an option to purchase the property, desiring to remodel the car wash structure into a two or three-unit commercial building for office/retail use. However, this proposed development would alter and enlarge a non-conforming structure and increase its extent of non-conformity in the north and south side yard setbacks. The non-conforming structure provisions of the zoning ordinance limit enlargement/alteration of non-conforming structures, except as permitted by the Board.

Applicant requests that the Board permit the alteration of the non-conforming structure and grant a 9.5 ft. variance to the 10 ft. side yard setback requirement on the north side of the building and grant a 1 ft. variance to the 10 ft. side yard setback requirement on the south side of the building.

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

1. The property is 15,543 sq. ft. in area, 157 ft. in depth and 99 ft. in width.
2. The property consists of Lots 4, 5 and the southerly 11-ft of Lot 6 of Block 290, City of Marshfield Plat.

3. The B-4 district requires a minimum lot size of 12,000 sq. ft. and a minimum lot width of 80 ft.
4. The property is a conforming lot in the B-4 District.
5. The property is developed commercially with a self service auto wash. The Assessor's records indicate the structure was built in 1988.
6. The existing structure is considered a "non-conforming structure"; not developed according to the current setback restrictions of the B-4 district. The B-4 regulations in effect in 1988 allowed a zero side yard setback with the exception that if a side yard is provided it shall be a minimum of 6-feet.
7. Section 18-63(5)(f)(4) now requires a minimum 10 ft. side yard setback in the B-4 District.
8. The attached site plan indicates that the existing structure is located 6 in. from the north lot line and 9 ft. from the south lot line. The proposed addition to the existing structure would extend the north and south walls westward, adding more structure and mass in the side yard setback areas.
9. 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.
10. The variance request is substantial on the north side yard, encompassing almost the entire setback.
11. The general purpose of requiring a minimum side setback is to provide adequate yard areas for access to and around buildings and/or to provide a distance and visual buffer between different uses and buildings.
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.

Blake Schultz showed the building plan elevations to the committee members and distributed a small elevation site plan.

Zimmermann said the building will not extend any further to the north or south. Letters were received from both adjacent property owners stating that they have no objections to this variance request. The front of the building won't extend out any further than the sub station next door.

Blake Schultz said that there will be approximately 35' of separation on the north side towards Taco Johns and approximately 26' on the south side towards Grand Central Subs. Access for purposes of servicing will be off the alley. There will not be any door access or windows on the north side of the building.

Zimmermann pointed out that there is room for parking off the back side in the alley.

Jess Hutzler said you will see windows on the extension, but not on the existing structure when looking south.

Dennis Bruckschen asked how tall the building was going to be.

Blake Schultz said that it will probably be the same height as the sub shop building, but because of the grade of the land it will look lower than the sub shop.

ZB08-008 Motion by Reek, second by Gerl to grant the variance request from Blake Schultz.

Zimmermann Abstained, rest Aye.

Motion carried

Deputy Clerk read the variance request from Lacie & Robert Pohl to construct a 2-story addition on the east end of the non-conforming residential structure at 307 N. Peach Avenue, 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 in any way which increases its nonconformity, except as permitted by the Zoning Board of Appeals. Sections 18-62 (6)(f) & 18-04 (5)(i) require a minimum 9.5-ft side yard setback for this 2-story addition. Applicants request to alter the non-conforming structure and to request a 5.5-ft south side yard setback variance to build the 2-story addition in line with the existing south elevation of the home, 4-ft from the property line.

Background

The property owners desire to add a two-story addition onto the east end of their house. However, the proposed development would alter and enlarge a non-conforming structure and increase its extent of non-conformity in the south side yard setback. The non-conforming structure provisions of the zoning ordinance limit enlargement/alteration of non-conforming structures, except as permitted by the Board.

Applicants request that the Board permit the alteration of the non-conforming structure and grant a 5.5 ft. variance to the 7.5 ft. side yard setback requirement and additional 2 ft. setback requirement for two-story structures.

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

1. The property is 7,175 sq. ft. in lot size and 41 ft. in lot width.
2. The property is part of Lot 1, Block U of J.P. Humes 1st Addition and is considered a conforming lot in the R-5 medium-low density residential district.
3. The R-5 district requires a minimum lot size of 6,000 sq. ft. and a minimum lot width of 40 ft. for single family dwellings.
4. The property is developed with a single-story, single-family residence and detached garage. The Assessor's records indicate the structure was built in 1948.
5. 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-5 district.
6. Section 18-62(6)(f)(3)(a) requires a minimum 7.5 ft. side yard setback for single-family dwellings. The site plan indicates that the existing dwelling is located only 4 ft. from the south lot line.
7. 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.
8. The proposed two-story addition would alter the non-conforming structure and increase the degree of non-conformity in the south side yard setback, adding more mass and height of structure in the required yard area.
9. Section 18-04(5)(i) requires an additional 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 9.5 ft. side yard setback in the R-5 district.
10. The general purpose of additional setbacks for second-story structures is to preserve adequate air, light, views and privacy of adjoining residential properties.
11. The adjacent home at 303 N. Peach Ave. is a one-story structure and there is approximately 25 ft. between this structure and the structure at 307 N. Peach Ave.
12. The variance request is somewhat substantial, over half of the entire setback.
13. There are limited legal alternatives to alter the non-conforming structure without increasing its degree of non-conformity. An addition to the north would restrict driveway access to the existing detached garage.
14. There is questionable compliance with all six conditions necessary to obtain a variance as specified in Section 18-35(2) of the Municipal Code.

Planner/Zoning Administrator Curtiss recommended postponing this variance request to allow for publishing of third variance necessary to the zoning ordinance for the proposed development. **Section 18-04 (2) (b) requires a minimum 6-ft separation distance between a principal structures and a detached accessory building.** The addition would be located only 4-ft from the detached garage. This fact was discovered too late to revise the public notice already set for publishing. Applicants will not be charged for the readvertising.

Reek asked Robert and Lacie Pohl if they had considered tearing the garage down. If they tore the garage down, it would eliminate this current variance request. He felt they could use the materials from the garage to build a new roof and then at a later time they could put up a nicer garage further back.

Robert Pohl asked if they would have to apply for another variance when they build a garage later.

Markwardt said no, not if it is set back adequately.

Lacie Pohl said there is a garden shed behind the garage, so if we move everything back it would significantly shorten our back yard. If we leave the garage up nonconforming, we would construct the south wall of the garage to make it fire grade.

Markwardt asked what the intent of the 6' separation is.

Planner/Zoning Administrator Curtiss explained that the purpose behind the 6' separation is to provide the fire expression necessary, because those walls aren't fire rated. If you had an attached structure you certainly would have to construct the proper fire rated wall there, whether that is several layers of drywall or fire rated doors. It is repeated within the zoning ordinance, but it is more of a building code type of requirement, so as you would deal with development you could recognize that this is the separation for those purposes.

Zimmermann asked if this variance request was something that is critical as far as timing.

Lacie Pohl said that they do have some contractors lined up.

Schnitzler wondered if they could go 12' wide instead of 14' wide.

Lacie Pohl said that they are trying not to go too far into the backyard. The existing porch goes out 11' and we are going to take that off and go out an additional 8'.

Zimmermann wondered if the variance could be approved subject to advertisement.

Planner/Zoning Administrator Curtiss said she wouldn't recommend doing that.

ZB08-009 Motion by Zimmermann, second by Wink to postpone the variance request from Lacie and Robert Pohl until the next regular meeting to allow for publishing of third variance necessary to the zoning ordinance for the proposed development. All Ayes.

Motion carried

Deputy Clerk read the variance request from Francis J. Lang to construct a two-family dwelling on part of Outlot 1 of Wood County CSM #5141, a 6-acre parcel located on the east side of North Hume Avenue, south of East McMillan Street, zoned "R-4" Low Density Single and Two-Family District. Municipal Code Sec. 18-62 (5) (e) requires a minimum lot width of 80-ft for two-family dwellings. The existing

frontage of the outlot is 60-ft wide. Applicant requests a 20-ft frontage variance to create a lot for a proposed two-family dwelling. (This item was tabled at the February 9, 2008 meeting.)

Ed Gerl left meeting at 5:25 p.m.

Background

The applicant has an offer to purchase the property with the intent to construct one (1) two-family dwelling. The property is 6+ acres in size with only 60-ft of lot frontage on North Hume Avenue. The R-4 District requires a minimum lot width of 80-ft for two-family dwellings.

The ZBA postponed this item at the February meeting till the wetland delineation was completed and certified by the ACOE. Applicant has since then submitted a wetland delineation that was completed and validated by the ACOE in 2004. The ACOE has commented on the delineation in an email.

Planner/Zoning Administrator Curtiss said that the Army Corps of Engineers certifications are only good for 5 years, so if there is development that will occur here it should occur within the next year or else they will require a new certification of that.

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

1. The property consists of a 6.28-acre parcel of land, zoned "R-4" Low-Density Single and Two-Family Residential.
2. The property is recorded as Outlot 1 of Wood County Certified Survey Map No. 5141. The Subdivision & Platting Code provides that "outlots cannot be used for development purposes until platted by means of a major or minor subdivision."
A minor subdivision can be accomplished by a certified survey map.
3. The minimum lot size of the "R-4" Residential District for a two-family dwelling is 10,800-sq. ft.; minimum lot width is 80-ft.
4. The property has only 60-ft of frontage on North Hume Avenue. This 60-ft was originally reserved for future road right-of-way to provide alignment with Debra Lane and eventual connection with Brookfield Parkway and to aid in the further development of large tracts of lands. Brookfield Parkway is present right-of-way; however, it is very unlikely it will ever be opened due to the presence of wetlands and the environmentally sensitive Northeast Greenway corridor.
5. A storm sewer line is located within the 60-ft frontage of the outlot. The sewer line runs into a storm water discharge point approximately 300-ft into the property. A 30-ft easement exists over the storm water line.
6. No structures can be built over the storm sewer easement or in the wetlands. A dwelling would have to be built on the larger back part of the lot on either the north or south sides of the easement in an upland area.
7. The outlot is not a typical lot configuration. It more resembles a "backlot" or "flaglot" configuration with the 60-ft serving as access to a proposed building site located behind other lots fronting on N. Hume Avenue.
8. General provisions of the zoning ordinance allow frontage modifications for non-typical lots on curvilinear or cul-de-sac streets; but, not for this scenario.
9. The general purpose for additional lot width for two-family dwellings is to allow for a larger building footprint and side setbacks on typical lot configurations in the R-4 District.
10. Lot width for a proposed building line at the rear of the other lots fronting on N. Hume would not be an issue. A more likely issue would be adequate setback & orientation of the dwelling from the rear property line of the existing lots on Hume to ensure privacy of those dwellings fronting on Hume.

Planner/Zoning Administrator Curtiss recommended attaching the following conditions if the variance is approved:

- 1) Provide a minimum 25-ft setback from the rear property line of existing lots on Hume Avenue and orient the front of the dwelling facing north or south to help minimize rear yard/front yard conflicts and ensure privacy of abutting residential dwellings.
- 2) Record a Certified Survey Map to create a lot for development and to record the extent of the wetlands and location of the storm sewer easement.
- 3) Structures shall not be located within the storm sewer easement area.

Planner/Zoning Administrator Curtiss said that the neighbor doesn't have any rights to continue to use the private property to get to the snowmobile trail. The Municipal Code will allow him to use the road right-of-way to get to the other accessible trail locations.

Zimmermann feels one house on a 6-acre parcel is such a waste of land. He asked who would maintain the lawn.

Francis Lang said that he would build two houses if we would let him.

Planner/Zoning Administrator Curtiss explained that per Municipal Code he could only have one dwelling unit on one lot. He would have to have public street frontage if he wanted to build two homes.

Zimmermann asked Mr. Lang why he didn't want to make this a public street.

Planner/Zoning Administrator Curtiss said because of the infrastructure costs and he wouldn't be able to connect it to anything. Ron Meyer did check into this and it wasn't feasible.

Zimmermann feels this 6-acre parcel could have three or four lots if it was developed.

Planner/Zoning Administrator Curtiss said to get a properly designed cul-de-sac it has to be adequate for emergency vehicles to turn around. You have to look at the cost of infrastructure and feasibility. The property is not currently zoned multi-family. She asked Mr. Lang if there was another option.

Ed Gerl returned at 5:34 p.m.

Zimmermann asked Mr. Lang how he was going to handle the mowing. This property is going to have to be maintained.

Francis Lang said he assumes that the City is going to take the majority of it for some kind of park in the future.

Planner/Zoning Administrator Curtiss said the City will certainly consider that to add to the function of the Greenway corridor and any maintenance of the wetlands area if a dedication of the wetlands area is offered to the City.

Reek asked Mr. Lang if he was going to build this to sell it, rent it or live in it himself.

Francis Lang said that his plan is to sell at a minimum one side.

Reek feels having a road in there would be better than having a double driveway for two places.

Francis Lang said that he won't put a road in there, because it would cost \$60,000 or \$80,000 to do that and the lots aren't worth that much to him.

Reek feels granting something like this is ridiculous, because there won't be any frontage.

Francis Lang said it is not simple and easy to put a street in and it costs a lot to put a street in. He can put a blacktop driveway in at a reasonable cost. Ron Meyer is going to do part of the sewer and he will pick up the rest of the sewer at a reasonable cost. He already has one person that is interested in it.

Schnitzler asked if Mr. Lang looked at putting in a cul-de-sac at the end.

Francis Lang said he got a price for it four or five years ago and at that time it was \$220.00 per foot for a street. It would be a lot higher now.

Planner/Zoning Administrator Curtiss feels that the maintaining of the remainder outside of the condo unit would need to be a part of the Condo Association. Obviously, the wetlands area is natural and you wouldn't have to mow that, but there is a good part of yard there that would need to be kept up. She did address this issue with Mr. Lang and feels that the people buying into these condos should be made aware that their yard is everything outside of the wetlands area.

Francis Lang said that he would get Casperson to mow two or three times a year.

Zimmermann feels these lots should be worth \$30,000 a piece.

Planner/Zoning Administrator Curtiss said that you would be surprised how much room a cul-de-sac would take up on that property.

ZB08-000 Motion by Schnitzler to grant the variance request as is.
Schnitzler withdrew his motion.

Planner Zoning/Administrator Curtiss explained what a Certified Survey Map is.

ZB08-010 Motion by Wink, second by Schnitzler to grant the variance request from Francis J. Lang with the three recommended conditions in the Planner/Zoning Administrator's report. Reek voted Naye, rest Aye.

Motion carried

Planner/Zoning Administrator Curtiss said that the Zoning Board of Appeals will be meeting in the 1st Floor Conference Room of City Hall from now on.

Motion by Zimmermann, second by Wink to adjourn at 5:53 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk