ZONING BOARD OF APPEALS MINUTES OF JUNE 9, 2009

Meeting called to order by Chairman Markwardt at 5:00 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.
PRESENT: Dean Markwardt, Wallace Reek, Todd Zieglmeier and Ed Gerl
ABSENT: Richard Kenyon
ALSO PRESENT: Planner/Zoning Administrator Curtiss, Director of Planning and Economic Development Angell, Deputy Clerk Panzer, Bruce Carolfi, Linda Carolfi, Victoria Foemmel, David Foemmel and Mark Bowman

ZB09-012 Motion by Reek, second by Gerl to approve the minutes of May 12, 2009 as submitted.

Planner/Zoning Administrator Curtiss announced that the special joint meeting with the Plan Commission is tentatively scheduled for Tuesday, June 16th at 7:30 p.m.

Vote on motion **ZB09-012**; All Ayes.
Motion carried

Deputy Clerk read the Variance Request from Victoria and David Foemmel to construct an 18'x 24' addition onto the north side of the residence at 214 S. Concord Avenue, zoned "R-3" Residential (Standard Single-Family) District. Section 18-62(4)(f)3(a) of the Municipal Code requires a minimum 7.5-ft side yard setback. Applicants requested a 3.5-ft variance to the north side yard setback to construct the new addition 4-ft from the lot line.

Background
The applicants currently have a garage attached to the north side of their residence. They proposed to remove this garage and build a master bedroom addition. The addition would only be 4-ft from the lot line.

A building permit would be administratively denied for this plan, based on non-compliance with Section 18-62 (4) (f) 3(a) of the Municipal Code, which requires a minimum 7.5-ft side yard setback for residences. The applicant requested a 3.5-ft variance to the requirement.

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

1. The property is zoned "R-3" Residential (Standard Single-Family) and is Part of Lot 9, Block A of Loffy's Addition to the City of Marshfield.
2. The property is 12,033-sq. ft. in size, 63.2-ft wide and is a conforming lot in the R-3 Residential District. R-3 standards for a Single-Family Residence are 10,000-sq. ft. minimum lot size and 60-ft. minimum lot width. The property is not unique in size; a good number of the lots in Loffy's Addition are even smaller with 50-ft or less in width.
3. The property was developed in 1944 with a single-family residence with attached garage and detached garage. The residence is served by two driveways, one on each side of the lot.
4. The owners wish to remove the 20'W x 22'L attached garage and build a new 18'W x 24'L master bedroom addition in its place.
5. The existing structure is non-conforming with the 7.5-ft side yard setback requirement. The attached garage sets 2-ft from the north lot line. The structure predates the code and is a legal, nonconforming structure. A preexisting structure may be continued so long as it remains otherwise lawful. Enlargement or alteration of a nonconforming structure, where it doesn't conform to the current ordinance, is not permitted unless approved by the Zoning Board.
6. The proposed addition, while 2-ft less in width than the attached garage, still would encroach into the required 7.5-ft side yard setback by 3.5-ft.

7. The plans indicate that the addition will be 1-story and match the existing flat-roof line. The owners propose some interior remodeling and additional new construction as shown on the plan. A large attached garage is planned for the rear of the house. The owners will need to downsize the new garage or remove the older 24 x 24 detached garage in order to be comply with the maximum 1,200-square feet accessory structure size allowance of the R-3 District.
8. The plans present one alternative to provide extra bedroom space; there may be other alternatives to build a bedroom addition without a variance.
9. The general purposes of side yard setbacks are to ensure access to sunlight, to ensure access around a structure, to ensure adequate room for maintenance, open space, privacy and line of sight. Houses that are side-by-side with little setback could potentially cut off solar light, potentially leaving a wall in permanent shadow. Setbacks can provide room for easy and convenient maintenance to, or access around, a building. Setbacks also provide a sense of open space and privacy between adjoining buildings, to avoid the window-to-window effect, and can provide a clear line of sight to street and back yards.
10. There is questionable compliance with variance criteria outlined in Section 18-35 (2) of the Municipal Code.

Markwardt pointed out that this variance request is for the removal of the existing attached garage and the addition of a bedroom only not the plans for a large attached garage for the rear of the home.

Planner/Zoning Administrator Curtiss said she called Mr. Foemmel and told him that something will have to be revised within the plan for the large attached garage for the rear of the home and he indicated that they could look at some alternative to revise that; either by the removal of the detached garage or building the new garage a little larger.

Victoria Foemmel said that the attached garage that they want to tear down was built in 1944 with non-pressure treated lumber as with the back garage. The attached garage was actually the house on the property and then in the late 1950's Mr. and Mrs. Delmore Peterson constructed the house and turned the former house into an attached garage. Because it is not pressure treated lumber we are having structural issues, and that garage needs to be removed and not replacing it would impact the architecture of the home.

Reek pointed out that if this variance is approved there would be more room on the side of the house than what is currently there.

Zieglmeier asked about alternatives.

Planner/Zoning Administrator Curtiss said that there may be other alternatives, but they might not be the most economical or feasible.

Victoria Foemmel explained that the wall that adjoins the garage into the house is not a firewall. If we tear this garage down, something has to be done to that side of the house and it would probably be more economical for us to close off that side of the house and build on more in the back, but the architecture of the house is rather unique. It is a flat-roofed house and removing that piece would dramatically impact the architecture. The proposed bedroom would be adjacent to our neighbor's garage and she is in support of it.

Chairperson Markwardt asked if any comments from people in the neighborhood were received.

Planner/Zoning Administrator Curtiss and Deputy Clerk Panzer said that they did not receive any comments from the neighbors.

David Foemmel explained the photos that he provided that were included in the packet.

ZB09-013 Motion by Reek, second by Gerl to grant the variance request from Victoria and David Foemmel, because the house doesn't meet the codes and because a new addition would be an improvement to the home and an improvement to the neighborhood. All Ayes.
Motion carried

Deputy Clerk read the Variance Request from Bruce Carolfi for the recently widened concrete driveway at 312 S. Larch Avenue, zoned "R-3" Residential (Standard Single-Family) District. Section 18-04 (10)(a) of the Municipal Code requires a minimum 3-ft maintenance setback for driveways from side property lines. Applicant submitted an after-the-fact permit and requested a 9-inch setback variance for the as-built driveway to remain 2'-3" from the north lot line.

Background
A concrete driveway addition was installed without a permit on the subject property. After being brought to attention of the city, the property owner was notified and subsequently submitted an after-the-fact building permit application and site plan. The site plan indicated that the driveway was built 27" from the north lot line, instead of the 3-ft required by code.

The building permit was denied, based on non-compliance with Sec.18-04 (10)(a) of the Municipal Code. The property owner requested a variance to this particular section of the code.

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

1. The property is zoned "R-3" Residential (Standard Single-Family) and is platted as Lot 58 of Heritage Heights Estates.
2. The Lot is 13,500-sq. ft. in size, 100-ft wide and is a conforming lot in the R-3 Residential District. R-3 standards for a Single-Family Residence are 10,000-sq. ft. minimum lot size and 60-ft. minimum lot width. The lot is comparable in size to the majority of lots in the neighborhood.
3. The property was developed in 1991 with a ranch-style single-family home/attached garage and served by a 20-ft wide asphalt driveway with access to South Larch Avenue.
4. The driveway was recently widened to 30.5-ft by a 10.5-ft concrete addition on the north side. The new driveway addition was constructed without a permit and does not meet the minimum 3-ft maintenance setback, according to the property owner's measurements. According to the site plan attached to the variance request, the new driveway is 27" from the north lot line.
5. The north edge of the new driveway aligns with a fence on the property. The fence was installed in 2006; the permit and site plan indicated the fence location as 6-inches off the lot line. The fence connects to the neighbor's fence to the west; that permit and site plan also indicated a 6-inch setback from the north lot line. This is a notable discrepancy in measurements and needs clarification for dimensional amount of incremental relief requested/granted or dimensional amount of driveway to be removed. Where a 9-inch variance to a 3-ft requirement might be minimal, a 2.5-ft variance to a 3-ft requirement is substantial. A survey may be necessary to determine the existing lot lines, especially since minimum setbacks are in question for variance consideration or removal of non-compliant portion of construction.
6. Section 18-04 (10)(a) of the Zoning Ordinance requires a minimum 3-ft maintenance setback for driveways and parking lots, except where driveways are shared by two or more property owners, or where the lot is 50-feet or less in width. The subject property does not qualify for either exception.
7. Driveway standards were updated as part of the 1992 zoning code revisions. A 3-ft setback requirement was added to the code in order to provide adequate space on property to accommodate any impacts due to maintenance of driveways (repair, snow plowing, drainage, etc).
8. There is questionable compliance with the six variance criteria outlined in Section 18-35 (2) of the Municipal Code.

Planner/Zoning Administrator Curtiss said that there needs to be something cleared up regarding the discrepancy in measurements. A survey may be necessary or an alternative would be for the property owners to actually find the survey markers, so the Board knows what they are considering: a 9-inch variance or 2.5-ft variance.

Mark Bowman of 308 South Larch Avenue expressed concerns about the fact that nobody knows where the lot line is. When Mike Collins, previous owner of 312 South Larch Avenue, put the fence in nobody could find a stake. We were out there with metal detectors, shovels and everything and we couldn't find a stake. At that time there was some verbiage in the code that recommended an 18" setback for a fence so that you could do maintenance around the fence line, because if you put it too closely to the lot line then you have to most likely come on the neighbor's property to weed whack underneath it and so on. Therefore; the 18" went into the book from the fence to the lot line. Since then when the gentleman from Advance Concrete came, he told me that the City told him they had 18" to work in. There are so many numbers floating around and none of them are factual. He feels the lot should be surveyed, so we know where the lot line is.

Planner/Zoning Administrator Curtiss said there has never been an 18" reference in the section of the code that relates to fences. The Building Inspection Department will sometimes advise people to locate a fence a mower width away so it can be easily maintained. The side setback requirement for fences is the property owner's responsibility to install it accordingly and may be placed up to, but not on the lot line, because if it is installed on the lot line it becomes disputable under common law. Where one neighbor would own half of it and the other neighbor would own the other half of it.

Mark Bowman said the problem is that Mike Collins took that advice and went 18" back from what he thought was the lot line.

Director of Planning and Economic Development Angell explained that they are hollow pipes that are about a foot long that have a tap on the top of them with a number on it.

Curtiss explained that initially when they do a survey the stakes are usually established at grade level or just barely below grade level, but over time as property becomes landscaped, and dirt is moved around those things become underground. What usually happens in newer subdivisions is a stake above ground will be driven in the ground to indicate that is where your survey marker is. There are survey markers out there somewhere.

Bruce Carolfi said that he did everything that he could think of to save his neighbor from any snow or rain run off, so it would not seep into his basement.

Mark Bowman expressed concerns about where the snow will go.

Chairperson Markwardt said according to the information that was provided in the packet the applicant will not be blowing snow to the north and the camper will be stored elsewhere, so the snow shouldn't be an issue.

Reek asked Mr. Bowman if he had any suggestions what to do about this problem.

Mark Bowman said the permit came in after the fact and he feels it should be revoked and the widened concrete driveway should be removed.

Gerl asked who would have to pay for a survey if it needs to be done.

Planner/Zoning Administrator Curtiss said the applicant would pay for the survey.

ZB09-014 Motion by Gerl, second by Zieglmeier to table the variance request from Bruce Carolfi until a survey is done or until the survey markers are found, so that we have accurate measurements to determine how much of a variance is needed.

Planner/Zoning Administrator Curtiss suggested that the Board attach a time frame to the motion.

Gerl amended his motion to include a time frame of 30 days or until the next regular Zoning Board of Appeals meeting. Zieglmeier agreed to amendment.

Reek suggested that Mr. Carolfi cut the cement and make it correct at some point, since he went ahead without a permit.

Bruce Carolfi asked if he could run gravel right to the lot line if he cuts the cement.

Planner/Zoning Administrator Curtiss said if it is part of your driveway surface that you are using for a parking pad it is part of your driveway regardless of the material.

Gerl asked if gravel was an approved material per the Sustainable Marshfield ordinance.

Curtiss said according to the Municipal Code, gravel is not an approved material for new driveways. New driveways are a new driveway or an expansion to the driveway.

Chairperson Markwardt asked if 30 days would be a reasonable period of time.

Planner/Zoning Administrator Curtiss felt that time frame would be reasonable for them to at least report back with finding the survey markers or obtaining the services of the surveyor and possibly getting it completed in that time period. This time of year surveyors can be pretty busy. If they can't find the survey markers by then, they should at least report back at the next meeting of what the status is.

Vote on motion **ZB09-014** as amended; All Ayes.
Motion carried

Deputy Clerk Panzer announced that the Mayor is still looking for some alternates to serve on the Zoning Board of Appeals. She asked the Board to let the Mayor know if they know of anyone who would be interested in serving on this Board.

Motion by Reek, second by Gerl to adjourn at 5:47 p.m. All Ayes.
Motion carried

Lori A. Panzer
Deputy City Clerk