

## ZONING BOARD OF APPEALS MINUTES OF JULY 14, 2009

Meeting called to order by Chairman Markwardt at 5:00 p.m. in the 1<sup>st</sup> Floor Conference Room, Suite 108, City Hall Plaza.

**PRESENT:** Richard Kenyon, Dean Markwardt, Wallace Reek, Todd Zieglmeier and Ed Gerl

**ALSO PRESENT:** Planner/Zoning Administrator Curtiss, Deputy Clerk Panzer, Bruce Carolfi, Linda Carolfi, Mark Bowman, Bob Nikolay and Joe Kottwitz

Chairperson Markwardt said that he voted Naye on motion ZB09-014; tabling the variance request from Bruce Carolfi.

**ZB09-015** Motion by Reek, second by Kenyon to approve the minutes of June 9, 2009 as corrected. All Ayes.

### **Motion carried**

Deputy Clerk read the **Revised Variance Request** from Bruce & Linda 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. Applicants requested a 31.25-inch setback variance for the as-built driveway to remain 4.75-inches from the north lot line. **(This item was tabled from the June 9, 2009 meeting; revised request based on new measurement provided by appellant.)**

### 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.

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

**At the June 9<sup>th</sup> meeting, the Board voted to table this item for 30 days to allow time for the applicant to obtain a survey or find existing survey markers for accurate measurement and amount of dimensional variance being requested.**

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.
5. According to applicant's measurements from a nearby reference point, the southwest pin of Lot #60/northwest pin of Lot #59 of Heritage Heights Estates, the new driveway is located 4-  $\frac{3}{4}$  " from the north property line of his lot (Lot #58).

6. Planner/Zoning Administrator was not able to confirm or dispute this new measurement, as it is very difficult to establish a straight 90-degree angle without a second reference point. Only one reference point was identified and used in the applicant's measurement. If an angle is not perfectly straight, a measurement will be off. An as-built survey would provide an accurate location of the driveway relative to the north lot line.
7. 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.
8. 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).
9. There is questionable compliance with the six variance criteria outlined in Section 18-35 (2) of the Municipal Code.

Bruce Carolfi said the original variance request was not worded correctly. He tried to take out a permit the same day that the contractor showed up. He talked with the Secretary of Public Works and he explained what was going on and asked her to have Cheryl Uthmeier, Building Services Secretary call him. Cheryl called him that following Monday and told him that he needed to take out a permit for his driveway. He told her he would be right up and Cheryl told him it was not a big rush, so he went up on Tuesday and that is when he found out about the setback. He did make an attempt. He did not try to defraud the City.

Chairman Markwardt asked Mr. Carolfi if the contractor asked him if he had a building permit.

Bruce Carolfi said no.

Chairman Markwardt read a statement expressing his opinions. Of all the variance requests we receive from time to time, this is the type he especially dislikes, because it was brought after the fact. These requests make the job of the Board more difficult for two reasons. We are aware that rejecting the request incurs, in effect, financial penalty on the petitioners who must pay to have undone that which is already done. But on the other hand, allowing the variance may encourage people to just go ahead with non-permissible building projects because the Board seems reluctant to take a hard line in these cases.

There are situations in which this Board can justify granting a variance for an after-the-fact request, and this is one of those situations for the following reasons:

The Carolfi's acted in good faith. First, they didn't know a building permit was required for the work being done. They were ignorant to the law, not flouting the law. Second, by aligning the driveway with the existing fence line, they assumed they were not encroaching on the required side yard setback. This assumption was incorrect, of course, but how many property owners know the specifics of zoning regulations in Marshfield. Third, the Carolfi's made sure the driveway was designed to minimize or eliminate the possibility of rain water run-off onto the neighbor's property.

The Carolfi's didn't perform the work themselves. They hired a contractor to lay the driveway for them. Although it may not be required by law, it is inexcusable that a professional contractor would not ask the property owner if they have obtained a permit. Further, if the contractor is reputable at all, it is his responsibility to know the zoning ordinances well enough that he can warn the landowner of a possible violation. This is his job. This is what he does every day.

Apparently Mr. Bowman knew or suspected the driveway expansion was in violation of zoning requirements. He knew the work was being done. He showed us pictures he took of the work while it was in progress. Yet he said nothing to the Carolfi's and only acted after the fact. This "gotcha" action on the neighbor's part is the exact opposite of neighborliness and he finds it reprehensible. If the contractor had acted professionally or if the neighbor had behaved responsibly, this matter could have been avoided and would never have come to the attention of this Board.

Reek said he can relate to Chairman Markwardt's statements, but on the other side, we are here as a committee to uphold the City's zoning rules. It is not justifiable because you or someone or someone else made a mistake.

Kenyon felt some concrete cutting could be done and the driveway could still be wide enough to suit Mr. Carolfi's needs.

Planner/Zoning Administrator Curtiss asked Mr. Carolfi to explain the attempts he made to locate his rear pins on his property.

Bruce Carolfi explained that he bought a special locator, but did not find the pins in the front or the back. His neighbor on the other side found a pin, so they used the 3-5-4 geometry method which gives a 90 degree angle and then shot it back to the pin on the neighbor's property.

Zieglmeier wondered if 3' of the driveway extension on the lot line could be converted into landscaping somehow to create some type of separation or screen.

Mark Bowman said he had some conversation and some questions for the contractors, but he can't stop construction that is not on his property.

Discussion on attaching conditions followed.

**ZB09-016** Motion by Gerl, second by Kenyon to grant the variance request from Bruce and Linda Carolfi with the conditions that there will be a certified survey incurred to locate all the lot lines to establish the setback and once the survey is done a permanent 6" height block curb for landscaping purposes will be placed at the location for the 3' setback from the lot line on the side.

Bruce Carolfi couldn't understand why he should have to have a certified survey done.

After much discussion the Board as well as Mark Bowman agreed that Bruce Carolfi's measurements using triangulation must be fairly close to where the actual lot line is.

**ZB09-017** Motion by Gerl, second by Zieglmeier to amend motion ZB09-016; by removing the requirement for the certified survey and using accepted lot line measurements as submitted by Mr. Carolfi. Reek voted Naye, rest Aye.

**Motion carried**

Vote on motion ZB09-016 as amended; Reek voted Naye, rest Aye.

**Motion carried**

Deputy Clerk read the Variance Request from Quality Ingredients Corporation to construct a parts room addition on the southwest corner of the plant at 211 E. Depot Street, zoned “M-2” Light Industrial District. Section 18-64 (3) (f) of the Municipal Code requires minimum 50-ft front yard and 25-ft side yard setbacks. Section 18-64 (3) (h) restricts the maximum building coverage to .50 of the lot area. The applicant requested Board permission to alter the existing non-conforming structure and requested granting of 46-ft front yard and 14-ft side yard setback variances and a variance to exceed the maximum .50 floor area ratio.

### Background

Applicants propose a new parts room addition on the southwest corner of their plant.

A building permit was administratively denied for the proposed addition, based on non-compliance with development standards of the M-2 Industrial District.

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

1. The property is zoned “M-2” Light Industrial.
2. The property is approximately 86,419 – square feet in size and is a conforming lot size in the M-2 District. M-2 standards are 30,000-sq. ft. minimum lot size and 150-ft. minimum lot width.
3. This property is irregular-shaped with double-frontage; approximately 170-ft on Arnold Street and 250-ft on Depot Street.
4. The property was developed in approximately 1926. The main plant structure is pre-existing and non-conforming to current development standards of the M-2 Districts. Preexisting structures may be continued so long as they remain otherwise lawful. Enlargement or alteration of a nonconforming structure is not permitted unless approved by the Zoning Board.
5. The proposed addition would encroach into the required 50-ft front yard and 25-ft side yard setbacks and exceed the maximum .50 floor area ratio for the lot.
6. Floor Area Ratio (FAR) is the maximum allowable lot coverage and is the gross floor area of all buildings or structures on a lot divided by the total lot area. The current FAR of the property is approximately .81 (apprx. 70,500-sq. ft. of floor area to apprx. 86,419 -sq. ft. of lot area.) The small 406-sq. ft. addition will only slightly increase the extent of the existing FAR non-conformity – to approximately .82 FAR for the property.
7. The existing plant is built at a zero front setback from East Depot. The Central State Supply warehouse to the east is only approximately 2-ft from the sidewalk. The structures on the south side of E. Depot Street also have similar small front yards/setbacks.
8. The proposed addition and requested side yard variance abuts a 16-ft wide public alley. The property on the west side of the alley is owned by Quality Ingredients and developed with a boiler house. The reduced side yard area should not significantly impact any servicing or access function of the alley.
9. The addition will be built on an existing concrete foundation, formerly used for silo tanks. Corner vision should not be impacted by enclosing this foundation with solid building walls. The structure will not encroach in the required 10-ft vision triangle at the alley/street intersection.
10. There is questionable compliance with all six variance criteria outlined in Section 18-35 (2) of the Municipal Code.

Bob Nikolay of Nikolay Transport Company said the reason Quality Ingredients wants to build the Parts Room there is because they are moving their maintenance shop to the front of the building and the back part where the maintenance is located now is going to be for more production area. Right now they are running 24 hours a day, 7 days a week. They own everything on Maple Avenue between Depot and Arnold Streets west of the alley except for one home.

Reek said that the concrete foundation that is in there now can be a hindrance or a blessing whatever way you want to look at it. If we put a building on top of it, it is not going to make any difference at all and evidently they are not going to tear it out.

Zieglmeier said there are very few people parking in front of that area and as noted in the Administrator's report there shouldn't be any concern with the vision triangle or access to the alley. It is really kind of there already.

**ZB09-017** Motion by Kenyon, second by Zieglmeier to grant the variance request from Quality Ingredients Corporation. All Ayes.

**Motion carried.**

Motion by Kenyon, second by Reek to adjourn at 6:05 p.m. All Ayes.

**Motion carried**

Lori A. Panzer  
Deputy City Clerk