



TOWN OF EAGLE
Zoning Board of Appeals
September 6, 2011
Approved Minutes

Chairman Day called the meeting to order at 6:30 p.m.

Present: Chairman Day; Members Erickson, Harthun, Olsen, Wambach, and West; Town Clerk Lynn Pepper, Town Planner Tim Schwecke and Town Attorney Paul Alexy.

Chairman Day abstained from voting at tonight's meeting. Alternate Member Olsen will be voting. Chairman Day will act as meeting chair.

Minutes: Motion by Member Olsen, seconded by Member West to approve the minutes from August 1, 2011, as corrected. Upon voice vote, motion carried.

ZA11-02 Public Hearing: Applicant- Brent Hegwood. Property location: W349 S10140 Highview Road, Town of Eagle, Waukesha County, Wisconsin. The petitioner is seeking a variance from Sec. 3.03(6)(A)(3) and Sec. 5.08(6)(B) of the zoning code, which require a minimum offset of 20 feet on the above-referenced property to allow an offset of 14 feet for a fireplace and an offset of 8 feet for a pergola. The property's tax key and legal description is as follows: EGLT 1827-993, PT SW1/4 SEC 25 T5N R17E COM NW COR S 1990.83 FT & S82 05'E 12.60 FT S71 20'E 137.72 FT S4 50'E 88.19 FT S86 58'E 190.51 FT N3 03'E 100.57 FT N83 33'E 81.82 FT THE BGN N27 42'E 165.52 FT S38 07'E 93.02 FT S34 49'E 78.30 FT S37 34'W 66.90 FT N66 25'W 118.15 FT S83 33'W 30 FT TO BGN EX VOL 1134/425 (KNOWN AS LOT 6 & 7 REINERTSEN & VANCE UNREC) DOC# 2618531, more specifically, the address listed above.

Town Planner Tim Schwecke explained that the petitioner is seeking a variance from Sec. 3.03(6)(A)(3) and Sec. 5.08(6)(B) of the zoning code, which require a minimum offset of 20 feet from side property boundary lines. The plat of survey provided by the petitioner, a portion of which is included as Exhibit A, shows an offset of about 14 feet for the fireplace and an offset of about 8 feet for the pergola. The area in yellow is the area the petitioner recently acquired from the adjoining property owner.

Planner Schwecke explained that Exhibit B is a photograph of the fireplace taken by the petitioner. Exhibit C is a photograph, also taken by the petitioner, of the pergola during or soon after construction. Planner Schwecke explained that it is his understanding that the fireplace consists of a number of modules (i.e., fireboxes on either side are separate modules and the fireplace consists of two more modules that are placed one on top of the other). The fireplace is not attached to nor does it rest on a foundation. It is entirely movable.

Planner Schwecke explained that the pergola was constructed as a permanent structure. As shown in the photograph, the posts are set into the ground to avoid frost-heave action. It is not known if the posts are set in a concrete column or not. Planner Schwecke explained that when the pergola was constructed, it had a metal roof. Because it had a roof, it was classified as a building. According to the zoning code, accessory buildings must maintain a separation of 10 feet from principal buildings. It was closer than 10 feet to the house. To remedy that situation, the roof has since been removed. No longer classified as a building, the pergola is no longer in violation of that separation

requirement. Planner Schwecke explained that according to the definition of a structure in the Town's zoning code, both the pergola and the fireplace are classified as a structure and as such must comply with the offset requirements.

In response to Member West, Planner Schwecke explained that the variance request is an after-the-fact request. If the Zoning Board approves the variance, Mr. Hegwood would be issued a building permit and he would need to meet the building code.

In response to Member Erikson, Planner Schwecke explained that once the roof was removed from the building, it became classified as a structure however the structure still needs to meet the twenty (20) foot offset requirement in the Town's zoning code.

Chairman Day explained that since the fireplace is currently located fourteen (14) feet from the lot line, a six (6) foot variance would be needed. The pergola is located eight (8) feet from the lot line which would need a twelve (12) foot variance.

In response to Member Harthun, the structure will not have a roof, only rafters.

Chairman Day explained that the lot in question is a legal non-conforming 1/3 acre lot which has topographical issues and a steep slope to the lake. Planner Schwecke added that the minimum lot size in this area is one (1) acre.

Mr. Brent Hegwood, petitioner explained that he was informed that he needed to show a hardship in regards to property limitations in order for the variance to be granted. Mr. Hegwood explained that his lot is non-conforming. Thirty percent (30%) of the lot is on a 45° slope. Due to the orientation of the house, the pergola and fireplace are in their most logical position due to the slope and the limitations put in place by Waukesha County for a lake lot. Mr. Hegwood explained that Waukesha County has determined that no variance is needed and that this project does not create a public detriment. In hindsight, Mr. Hegwood stated that he should have obtained a survey of the lot before he purchased it, instead of assuming the fence was on the lot line. Mr. Hegwood explained that at the May Joint Planning & Zoning Commission and Town Board Meeting, the Boards committed to Waukesha County's decision. In response, Chairman Day explained that the Planning & Zoning Commission's and the Town Board's actions may not be applicable to this variance Board's responsibilities. Discussion followed regarding Waukesha County's offset requirement.

In response to Chairman Day, Mr. Hegwood explained that even though the fireplace is movable, based on the lot and the orientation of the house, the fireplace is currently in its most logical position. Discussion followed regarding other possible locations for the fireplace and how the slope of the property affects the location.

Attorney Alexy reiterated that Mr. Hegwood stated that his hardship is due to the non-conforming lot and its extreme topography. Attorney Alexy asked Mr. Hegwood to explain the unnecessary hardship if he could not have either the pergola or the fireplace. In response, Mr. Hegwood stated that not having them would lower the value of his home. Mr. Hegwood stated that the unique property limitation doesn't allow him to put this anywhere else on the lot. The pergola creates a relaxing area, adds value to his home and the community, and does not create a public detriment. Attorney Alexy questioned what the hardship would be if the pergola and fireplace were not allowed. Attorney Alexy explained that the courts say that an offset is created to afford for lawns and trees, to promote rest and recreation, to enhance the appearance of the neighborhood and to provide access to light and air.

Member Harthun stated that he agrees with Mr. Hegwood statement that this type of recreational structure, rather than a canvas structure would add to Mr. Hegwood's property value.

Member West explained that the Zoning Board has granted variances for non-conforming lots for buildings, structures, garages, and additions. The concern is if allowing a variance for this purpose would set precedence. This situation presented tonight was self-created. Had Mr. Hegwood applied for a building permit to begin with, the permit would probably have been denied.

Ms. Pam Meyer, S101 W34849 CTH LO stated that this structure would not add value to the community because it is not visible to the neighbors.

Mr. John Mann, W349 S10110 Bittersweet Court questioned if Mr. Hegwood were to have gone through the proper process, would this structure be permitted. In response, Chairman Day explained that Building Inspector Montoya would have required that the pergola be located twenty (20) feet off of the lot line. Mr. Hegwood added that he would have then applied for a variance and was told by the building inspector and the former Town Planner that the variance would have been granted.

Mr. Hegwood stated that he has tried to comply with Waukesha County's and the Town's requests and conditions. Mr. Hegwood questioned if this variance would be granted, if it were not an after-the-fact application. In response, Chairman Day stated that whatever the decision, Mr. Hegwood could appeal the decision within thirty (30) days to the Circuit Court.

Hearing no other public comment, a motion was made by Member West, seconded by Member Olsen to close the public hearing at 7:12 P.M. Upon voice vote, motion carried.

Member West explained that the Town has had issues with outdoor wood burners and questioned if the Town would start receiving complaints regarding fireplaces and smoke issues. Member West stated that if these types of variance requests are granted, where would the approvals stop? In response, Chairman Day explained that, in most cases, one situation is not as unique as a previous request. In other words, no two requests are that similar. Member Harthun stated that the fireplace is more similar to a barbeque rather than a home heating source. Member Olsen stated that she believes that this would be precedent setting. Approving this request would encourage people to not get permits. She added if Mr. Hegwood had gone through the permit process, perhaps options for compliance could have been considered such as reducing the size of the pergola.

Planner Schwecke explained that Mr. Hegwood is requesting two (2) variances which need to be considered separately.

In response to Member Harthun, Planner Schwecke explained that Building Inspector Montoya can advise and give his perspective however the opinion is not binding.

In regards to Waukesha County's position, Chairman Day explained that they changed their position because Mr. Hegwood removed the roof and it is no longer considered a building. Planner Schwecke added that it is considered a structure per the Town's zoning code and it does require an offset.

At this time, the Board reviewed the variance checklist for the fireplace. After reviewing all of the questions, Chairman Day asked if the applicant has shown/proved that a hardship exists for him to literally comply with the code. Hardship cannot be self-created. Attorney Alexy stated that if a member decides to vote no, rationale for the decision should be provided. Member Olsen stated she would vote no, stating that the issue was self-created and the fireplace is movable. Member West agreed with Member Olsen, stating that it was self-created and that it could have possibly been prevented if a building permit had been applied for. Members Erikson, Wambach and Harthun also stated they would vote no.

At this time, the Board reviewed the variance checklist for the pergola. Member Harthun stated his opinion that there is nowhere else but the current location for the pergola. Discussion followed regarding this being a self-created situation. Planner Schwecke asked that the Board direct the Town Planner and Town Attorney to prepare the decision letter. If the Board does not concur with their findings, the Board could reconvene to re-evaluate the final decision.

A motion was made by Member West, seconded by Member Olsen to deny the fireplace variance request and to direct the Town Planner and Town Attorney to prepare the decision letter. If the Board does not concur with their findings, the Board will reconvene to re-evaluate the final decision. Upon voice vote, motion carried.

A motion was made by Member Olsen, seconded by Member West to deny the pergola variance request and to direct the Town Planner and Town Attorney to prepare the decision letter. If the Board does not concur with their findings, the Board will reconvene to re-evaluate the final decision. Upon voice vote, motion carried.

There being no further business on the agenda, Member Harthun moved, seconded by Member Olsen to adjourn the meeting at 7:40 P.M. Motion carried.

Lynn M. Pepper
Eagle Town Clerk