



TOWN OF EAGLE
Zoning Board of Appeals
November 7, 2011
Approved Minutes

Chairman Day called the meeting to order at 6:00 p.m.

Present: Chairman Day; Members Erickson, Harthun, Wambach, and West; Alternate Member Olsen was also present, but was not a voting member. Also present: Town Clerk Lynn Pepper and Town Planner Tim Schwecke.

Minutes: Motion by Member Harthun, seconded by Member Wambach to approve the minutes from October 3, 2011. Upon voice vote, motion carried.

ZA11-03 Public Hearing: Lauri Gebhard and Bill White for property located at S102 W34688 Lower Clarks Park – Tax Key EGLT 1827-046. The petitioner is seeking a variance from Sec. 5.08(32)(A) of the zoning code, which requires a minimum garage area of 400 square feet. The petitioner is proposing a garage area of 360 square feet. Property Owner Bill White and Business Development Director for Miracle Homes Tom Engel were present.

Town Planner Schwecke summarized his staff report, explaining that, after receiving variances from Waukesha County, the petitioner designed the residence to not exceed the maximum floor area ratio of 2,290 square feet, without apparently knowing that the Town of Eagle has established a minimum garage area through its zoning code. When the petitioner came to obtain a building permit from the Town's Building Inspector, it was noted that the floor area of the garage is less than what is required. As stated in the petitioner's application, the petitioner is claiming that if the garage would be increased in size to meet the required minimum, there would be a significant impact on the remaining floor plan. The petitioner is seeking a variance from Sec. 5.08(3)(A) of the zoning code, which requires a minimum floor area of 400 square feet. The intent of this provision is likely intended to make sure that there is enough enclosed space so that normal household items are not stored out-of-doors. The petitioner is proposing a two-car garage with a floor area of 360 square feet. If the Board is inclined to approve the variance as requested, staff recommends, in addition to the standard conditions, that the petitioner file a deed restriction and agreement waiving all future rights to apply for a variance from any standard adopted by the Town of Eagle which would limit the maximum floor area of accessory buildings. Such deed restriction should be approved by the Town Planner or the Town Attorney. The petitioner should also merge lots 46 and 47 of Lower Clarks Park Subdivision through a Certified Survey Map (CSM) prior to obtaining a building permit for a new residence. Planner Schwecke explained that the three main criteria to consider are hardship, unique dimensional standard, and public interest.

Chairman Day explained that as a member of Waukesha County Board of Adjustment, he voted against the motion to approve with conditions because he felt that the Board should have been more lenient. Chairman Day explained that the property in question is bound on three (3) sides by common ground. In response to Chairman Day, Planner Schwecke explained that some municipalities have a 400 square foot requirement, others do not. Member Erikson questioned if the petitioner had any other options. In response, Mr. Engel stated that because of the county restrictions, they already had to take the roof off in three (3) areas.

In response to Planner Schwecke, Mr. Engel stated that the Town's Building Inspector approved the plan prior to their application with Waukesha County. Planner Schwecke questioned the Building Inspector's approval. Mr.

Engel stated that he had his draftsmen send an e-mail to Building Inspector Montoya, who verbally stated that he makes the decisions and that it was okay. Planner Schwecke responded that it is unfortunate that this may have happened because the Building Inspector cannot approve anything that is in violation of the zoning code. Planner Schwecke stated that the Zoning Board of Appeals cannot take this point into consideration as part of their decision.

Chairman Day stated that this case deals with a model home, which limits the applicants design flexibility, i.e. self-created hardship. Chairman Day stated that their hardship is that the lot is legal non-conforming, even though the two (2) lots will be combined. The second hardship is that Waukesha County limited the Floor Area Ratio to 2,290 square feet or 18.3%. Discussion followed regarding the design of the home. Mr. Engel added that time is of the essence because there was a fire at the home and they have been given a time frame in which to work with.

Planner Schwecke stated that, for the record, Waukesha County did not require a garage of a certain size. For the record, the matter was scheduled for last month in which the petitioner did not appear so the time frame is not a factor. Property Owner Bill White explained that they were relocated because of the fire and did not receive the notice of the hearing last month.

After hearing no public comment, the public hearing was closed at 6:27 P.M.

Member West stated that this is a legal non-conforming lot and the county approved 2,290 sq. ft., not the configuration. Member Harthun pointed out that there are no neighbors present to object.

A motion was made by Member Wambach, seconded by member Harthun to approve the variance request due to the legal non-conforming lot and the County's direction on the 18.3% Floor Area Ratio. Upon voice vote, motion carried.

ZA11-04 Public Hearing – David Kersey Living Trust for property located at S108W34712 South Shore Drive – Tax Key EGLT 1871-009. The petitioner is seeking two variances. The first variance is from Sec. 5.08(6)(A) of the zoning code, which requires a minimum setback of 50 feet, to allow a setback of 5 feet. The second variance is from Sec. 5.08(6)(B), which requires a minimum offset of 20 feet, to allow an offset of 5 feet. Property owner David Kersey and Builder Steve Schuyler from J.D. Griffiths were present.

Town Planner Schwecke noted for the record that the site plan submitted showed a hand-drawn building. Planner Schwecke explained that the petitioners are seeking a variance from Sec. 5.08(6)(A) of the zoning code which requires a minimum setback of 50 ft., to allow a setback of 5 feet. The second variance is from Sec. 5.06(6)(B), which requires a minimum offset of 20 ft., to allow for an offset of 5 feet. As shown on page two of the staff report, if a car is parked in front of or perpendicular to the garage door, a portion of the vehicle will extend into the public right-of-way. Highway Superintendent Betts has indicated to him that this would be problematic and is not in the public's best interest.

Member West explained that the right-of-way is 33 ft. from the center of the road on South Shore Drive. Planner Schwecke stated that a typical stall is 20 feet long, which would bring the parked vehicles awfully close to the roadway. In regards to topography, Planner Schwecke stated he is unsure as to why the building is being proposed on an angle.

Builder Steve Schuyler stated that the original application showed an angled garage however they have come up with a new plan due to the grade issue. This new plan still needs to be submitted to the County. Planner Schwecke explained that this presents a problem because the public notice was based on the original application. The new request shows a setback of 2.72 feet. Planner Schwecke stated that a new hearing should be held, along with a new public notice because the new request is less than what was originally asked for. Mr. Schuyler stated that the original plan was drawn because they didn't have the new survey yet. Planner Schwecke explained that neither he nor the Town received any of the new documents. Chairman Day referred to the survey with a revision date of 9/12/2011, which was approved by Waukesha County. Chairman Day explained that the county gave the petitioners a requirement however the Town can be more or less restrictive.

Discussion ensued regarding the retaining wall. Planner Schwecke questioned if the retaining wall could be moved. Member West stated that he may have the road plans for South Shore Drive in his vehicle.

The meeting was recessed at 6:57 P.M.
The meeting reconvened at 7:01 P.M.

Member West explained that he did not have drawings of South Shore Drive in his vehicle and that the scale on the map is not accurate enough to determine the right-of-way width.

Chairman Day noted that Waukesha County approved the plan which showed a 1.51 foot setback. Chairman Day suggested that the Town could approve the new plan subject to Waukesha County and Building Inspector approval in terms of road offset. In response to Planner Schwecke, Chairman Day explained that the county has a road setback of 50 feet, but approved this project with a 1.51 foot setback. The rationale was that there are other garages in the area with similar situations. Member Wambach added that the topography in the area is terrible.

Property Owner David Kersey explained that that even though the parking would be close to the road, there are pontoons that are already parked in the same fashion. Mr. Kersey explained that the garage location that they are currently requesting is further back from the road than the plan that the county approved. With the revised orientation of the garage, Mr. Kersey stated that he does not anticipate any issues with the county.

Chairman Day questioned how Waukesha County notices public hearings and whether or not they publish the specific dimensions. Chairman Day explained that there are other garages in the area that have the same location and snow removal issues. If the garage is moved back, retaining wall issues would be created.

After hearing no public comment, the public hearing was closed at 7:11 P.M.

Member West stated that with the building being located two feet off of the road, snow plowing and water runoff will be an issue.

Planner Schwecke stated that he would advise against taking any action tonight, based on the legal notice publication issue. Planner Schwecke explained that the application was submitted and the staff report was based on the original application. The petitioners did not submit any of the future surveys and are now asking for something different than what was originally submitted. Planner Schwecke suggested that the board table this item to the next public hearing date.

A motion was made by Member Harthun, seconded by Member Wambach to approve the variance request of 2.72 feet, as submitted tonight, for a detached garage. Upon voice vote, motion carried with Member West opposing.

Member West explained that his vote to deny tonight does not mean that he is against building the garage, rather his opposition is due to a potential legal matter of posting. Member West stated that he cannot vote on something that was not posted.

ZA11-04 Public Hearing – Paul Stirmel for property located at W345 S10733 South Shore Drive – Tax Key EGLT 1871-997. The petitioner is seeking a variance from Sec. 5.08(6)(B) of the zoning code, which requires a minimum offset of 20 feet, to allow an offset of 7.5 feet. Petitioner Paul Stirmel was present.

Town Planner Schwecke explained that the existing structure is a non-conforming structure. Mr. Stirmel is putting in a new foundation and basement under the existing structure. The variance he is requesting is to “square off” the perimeter of the structure. The small additions would eliminate the need for and costs associated with four corners in the foundation and would keep the project under Waukesha County’s 50% threshold. The petitioner explored the possibility of moving the house to the south however this would require the installation of a new septic system and removal of mature trees. Planner Schwecke reminded the Board that the decision criteria should be based on hardship, public interest, and dimensional standards. Planner Schwecke added that the parcel to the north is an unbuildable lot and is used strictly for lake access.

Chairman Day stated that Mr. Stirmel’s hardship is that the lot is legal non-conforming. In addition, to move the home to another location on the lot would create an issue with the septic field and the removal of trees.

Planner Schwecke questioned if not having the addition is a hardship. Chairman Day explained that the petitioner is requesting to square-off the northwest corner in order to stay under the 50% rule.

Mr. Stirmel explained that when he first started this project, he did not intend to square it off. When the 50% rule was raised, his contractor indicated to him that he could save \$3,000 by squaring it off, which would bring him under the 50% rule. Not getting a variance from the Town would create a hardship. Mr. Stirmel went on to explain that the basement is only going to be seven (7) feet, with three (3) feet of it above ground, per Waukesha County. The basement will be used for both storage and mechanical equipment.

Mr. Joe Zewiski, W345 S10675 South Shore Drive explained that he owns the property to the north and he has no objections to Mr. Stirmel's variance request. As far as the footprint, the footprint is already not within the code.

After hearing no other public comment, the public hearing was closed at 7:34 P.m.

A motion was made by Member West, seconded by Member Harthun to approve the variance request to allow an offset of 7.5 feet. Upon voice vote, motion carried.

There being no further business on the agenda, Member West moved, seconded by Member Wambach to adjourn the meeting at 7:36 P.M. Motion carried.

Lynn M. Pepper
Eagle Town Clerk