



TOWN OF EAGLE  
Special Zoning Board of Appeals  
November 28, 2011  
Approved Minutes

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

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

Minutes: Motion by Member Wambach, seconded by Member Harthun to approve the minutes from November 7, 2011. Upon voice vote, motion carried.

Reconsideration of Decision - A motion was made by Member Harthun, seconded by Member Wambach to reconsider the decision of November 7, 2011 for David Kersey Living Trust, on the advice of Town Attorney Alexy in his letter to Chairman Day dated November 9, 2011. 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 2.7 feet. The second variance is from Sec. 5.08(6)(B), which requires a minimum offset of 20 feet, to allow an offset of 7.6 feet and 15.2 feet. Builder Steve Schuyler from J.D. Griffiths was present on behalf of the property owner who is out of the country.

Town Planner Schwecke explained that his staff report remains the same, with the exception of the requested footage. Planner Schwecke explained that the Town's Zoning Code does allow setback averaging when there are other non-conforming uses in the area. Based off of Waukesha County's system, it appears that the existing garage to the west is twelve (12) feet off of the roadway and a neighbor to the east appears to be three (3) feet off of the roadway. These figures have to be verified. Planner Schwecke explained that the owner submitted a newly revised plat of survey at the last meeting which shows the garage 2.7 feet off of the right-of-way and offsets of 7.6 feet and 15.2 feet. Because of the new dimensions, a new public hearing had to be held. Chairman Day added that the new plat of survey has the revision date of 11-3-2011.

Supervisor West questioned the property boundary line. In response to Supervisor West, Planner Schwecke explained that the southeast property boundary is right on the road right-of-way. Supervisor West explained that his concern is a safety concern, whether for snowplowing, water runoff or pulling in or out of the garage. Planner Schwecke explained that he received feedback from Highway Superintendent Betts who also has safety concerns.

Planner Schwecke explained that it is the applicant's responsibility to request the least variance possible. Planner Schwecke suggested possibly a single car garage or a side loaded garage. Member Wambach suggested backing in to the garage to resolve the ingress/egress safety issue. Supervisor West agreed with Planner Schwecke adding that the applicant is entitled to have storage however he needs to work within the limits.

Chairman Day stated that he too spoke with Highway Superintendent Betts regarding snowplowing. Chairman Day explained that he was told that the homes on that South Shore Drive are all lakefront and that Superintendent Betts plows the snow to the opposite side of the street.

Chairman Day suggested reducing the depth of the garage to eighteen (18) feet. In response, Member Erikson stated that it is not the responsibility of the Zoning Board to change what the applicant is proposing. The Board needs to either approve the request or not approve the request. Planner Schwecke explained that the Zoning Board can grant a more restrictive variance than what is being requested but nothing less restrictive.

Chairman Day explained that he spoke with a planner at Waukesha County who explained that asking the applicant to move the retaining wall closer to the lake could be considered unreasonably burdensome. Chairman Day explained that filling in the area may require Department of Natural Resources (DNR) approval. Chairman Day explained that he spoke with Surveyor Terry Pisarek. Mr. Pisarek explained to him that the edge of the pavement on the southeast corner of the lot is right at the corner of the lot. The entire south lot line is essentially the right-of-way of the road. Chairman Day explained that the Board should also consider where the applicant will park in the winter without a garage. Chairman Day stated that the garage may be more of an asset than a detriment. Discussion followed regarding neighboring garages. In response to Member Harthun, Chairman Day explained that the Board could place conditions on the approval, such as mandating gravel or concrete.

Alternate Member Olsen stated that she shares Member West's concerns regarding emergency vehicles, snow, and water. This Board cannot change what happened years ago. This Board can be more protective of the town.

Builder Steve Schuyler explained that the property owner wants to build a two-car garage so the owner can move and retire in Eagle.

Mr. Schuyler referred to snowplowing in the City of Milwaukee. Mr. Schuyler explained that the garage depth cannot be less than twenty (20) feet. They tried to design the garage as far off the road as possible.

Town Chairman Bob Kwiatkowski, W360 S15445 Nature Road spoke on behalf of the Town's Highway Department, stating that the Town is against approval of a 2.7 foot variance. Town Chairman Kwiatkowski explained that he rode with Superintendent Betts to the property. Yes, the snow would be plowed away from the houses however the wing plow, which is down and to the right of the vehicle, will push the snow up against the garage. In addition, Town Chairman Kwiatkowski explained that the Zoning Board also needs to consider that in 2013, the Town will be using grant money to resurface South Shore Drive. In the meantime, hunks of asphalt have been placed to channel the water runoff correctly. Town Chairman Kwiatkowski referred to the water drainage issues that have occurred on Jacks Bay Road. Town Chairman Kwiatkowski raised concern over emergency vehicles getting through on South Shore Drive. There are already cars parked on both sides of the road. Town Chairman Kwiatkowski stated that the applicant does deserve a garage but also needs to satisfy not only his own needs but the Town's as well.

After hearing no further public comment, the public hearing was closed at 7:04 P.M.

Member Harthun stated that South Shore Drive is not an alley, as is the case in Milwaukee, and the road will be a lot less traveled compared to Milwaukee. In regards to moving the retaining wall, Member Harthun stated that this sounds like an expensive project.

Member Wambach stated that the DNR owns the land across the street from the applicant so nothing will be built there.

At this time, the Zoning Board of Appeals reviewed the variance checklist. In regards to Question #1, the consensus of the Board was that safety is a problem, not only for egress and ingress but for snowplowing and emergency vehicles. The applicant could reposition the garage or build a smaller garage.

It was the consensus of the Zoning Board of Appeals that the answer to Questions #2 and #3 were no, the request would not injure the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or substantially diminish and impair property values within the neighborhood and the request would not

impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

In regards to Question #4, the consensus of the Board was that drainage is also a concern, ice conditions, water drainage, utilities, and access to the road. There needs to be distance between the roadway and the garage. The applicant could move the garage further to the north or build a smaller garage.

It was the consensus of the Zoning Board of Appeals that the answer to Questions #5 and #6 were no, ingress and egress would not cause traffic congestion in the public streets and the request in any other respect, would not conflict with any other applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the Town Board pursuant to recommendations of the Planning Commission.

Discussion ensued regarding Question #7, "Has the applicant shown/proved that a hardship exists for the applicant to literally comply with the code? Hardship cannot be self-created." Planner Schwecke explained that the applicant installed the retaining wall and that his hardship is self-created. Chairman Day explained that the hardship is that the lot is legal non-conforming and there are topography issues. Member West agreed but added that the hardship is not the placement or the size of the garage. Discussion followed regarding what would be an acceptable distance off of the roadway. Planner Schwecke explained that his earlier figures were based off of Waukesha County's online Geographical Information System (GIS). If averaging were to be used in this situation, all of the neighboring parcels would have to be surveyed to determine the average. In response to Chairman Day, Planner Schwecke explained that Waukesha County is the body who regulates the permit for moving a retaining wall. The DNR does have the ability to object to it. In regards to the comment from the Waukesha County planner, Planner Schwecke explained that that was her personal opinion that moving the retaining wall could be considered burdensome. The issue tonight is the garage setback, not the offset.

Chairman Day explained that if the numbers are verified for the purpose of averaging and the garages were reconfigured to that setback, then the applicant would not need to appear again before the Zoning Board of Appeals. Member Olsen added that if the garage were repositioned, the applicant should be cautious of changing the offsets.

A motion was made by Member West, seconded by Member Harthun to deny the variance request for a setback of 2.7 feet and to have the Town Planner prepare a decision letter based on what has been discussed. If any Board Member objects to the decision letter, a Zoning Board of Appeals Meeting will be called to discuss the findings. Upon voice vote, motion carried with Chairman Day and Member Wambach opposing.

A motion was made by Member Harthun, seconded by Member Wambach to approve the variance request of 7.6 feet and 15.2 feet offset and to have the Town Planner prepare a decision letter based on what has been discussed. If any Board Member objects to the decision letter, a Zoning Board of Appeals Meeting will be called to discuss the findings. Upon voice vote, motion carried.

There being no further business on the agenda, Member Erikson moved, seconded by Member Harthun to adjourn the meeting at 7:33 P.M. Motion carried.

Lynn M. Pepper  
Eagle Town Clerk