TOWN OF EAGLE
P.O. Box 327
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TOWN OF EAGLE
Zoning Board of Appeals
March 5, 2012
Approved Minutes

Chairman Day called the meeting to order at 6:10 p.m.

Present: Chairman Day; Members Erikson, Harthun, Wambach, and West; Also present: Town Clerk Lynn Pepper and Town Planner Tim Schwecke.

Minutes: Motion by Member Harthun, seconded by Member Erikson to approve the minutes from November 28, 2011. Upon voice vote, motion carried.

ZA12-01 Public Hearing – Randy and Jessica Haumschild for property located at W355 S9305 Bennington Drive – Tax Key EGLT 1820-017. The petitioner is seeking a variance from Sec. 5.07(6)(A) of the zoning code, which requires a minimum setback of 50 feet from the front property boundary line. The variance is for the "after-the-fact" construction of a covered porch which is closer than 50 feet. – Town Planner Schwecke reviewed his staff report with the Board. Planner Schwecke explained that based on that plat of survey dated 1978, the front wall of the house is 52 feet from the front property boundary line. There was a concrete stoop leading up to the front door that was about four feet wide by 8 feet long. Therefore, a portion of the concrete stoop was located in the setback area. Presumably, the zoning regulations at the time allowed for stoops within the setback area. In 2010 or 2011, the petitioner removed the concrete stoop and constructed a porch with a roof measuring 12 feet by 12 feet without first obtaining a building permit. The petitioner has submitted this variance application as a means to correct the violation. However, the fact that the porch now exists is irrelevant to the criteria the Board must consider. The fact that the porch now exists does not constitute a hardship.

In response to Chairman Day, Planner Schwecke explained that the petitioner is actually requesting a dimensional variance. The original concrete stoop was presumably built in 1978 within the 50 foot setback. Planner Schwecke explained that he suggested to the petitioner to obtain a new survey however the petitioner did not want the additional expense.

In response to Chairman Day, petitioner Randy Haumschild explained that there is a detached garage located on the property, which is not shown on the survey. Mr. Haumschild showed the Board the approximate location of the garage. Mr. Haumschild explained that the covered porch is compatible with the surrounding neighborhood and that some of the homes in the area have these types of structures.

Chairman Day explained that in a statement written by the petitioner dated 2/2/12, the petitioner stated that due to the house being 52 feet from the lot line, no porch would be in compliance. If there is no porch under the front door, the door would be unsafe and unusable because there is over a 3 foot drop.

Chairman Day explained that in order to approve this variance request, a hardship must be identified. The hardship cannot be self-created by the current owner or any previous owners.

In response to Chairman Day, Mr. Haumschild explained that due to damage from the tornado he had to put new siding on his house, along with replacing his roof and windows. It was at this time he decided to remove the stoop that allowed him entrance to his house. The stoop, which had no railing, was unsafe to get his 2 kids in and out of the home. Mr. Haumschild explained that while he was in the process of selling his house, his realtor suggested that he obtain a building permit for his porch. It was at this time that it was discovered that the porch was built within the setback area. Mr. Haumschild added that the survey he obtained was from the septic inspector, not from Waukesha County.

Member West explained that the Town was under Waukesha County zoning back in 1978. If the setback in 1978 was less than 50 feet, then the Town created the hardship by requiring a 50 foot setback. Discussion followed regarding the purpose of the plat. Planner Schwecke explained that, other than the lot's legal description, the only thing Waukesha County may have is the survey as part of the subdivision.

Planner Schwecke explained that when the zoning code was adopted, it affected all parcels and from there forward, no one could go further into the setback. Planner Schwecke added that stoop and steps are not factored in to the setback requirement. Mr. Haumschild stated that he thought the setback was 12 feet off of the road.

At this time, the floor was opened to public comments.

Mr. Mike Capezi and his wife Dawn, S93W35510 Canfield Court stated that they live directly to the west of the subject property and are in favor of the porch. Esthetically, adding the porch, in his opinion was a good move. Mrs. Capezi explained that the porch now has lighting, railing and steps. Mr. Capezi added that the old stoop was not safe to step out onto.

Mr. Craig Schultz, S93W35491Bennington Drive, stated that he is also in favor of the porch for the same reasons as the previous speakers. Mr. Schultz added that the porch improves the value of the subdivision.

Mr. Gary Kleser and his wife Angie, W355S9382 Bennington Drive, explained that they have resided in their home for 23 years and agree with everyone else speaking tonight. The porch looks nicer and is much safer. The previous stoop was very slippery when wet and there was nothing to hold on to.

Chairman Day explained that the Board has an obligation to identify a hardship i.e. a non-conforming lot, wetland area. Member West reiterated that the house was built under county zoning. When the Town adopted its own zoning code, the homeowner fell into a predicament where he would be unable to build, other than the 2 feet. Member West explained that the front door can't be closed off. Chairman Day suggested that the hardship could be the placement of the house and that the new zoning requirement restricted his ability to build. Planner Schwecke explained that the stoop was not an issue. The petitioner could have made a larger stoop with additional steps and a railing because stoops can be located within the setback. The issue resulted when the roof was added.

In response to Member Harthun, Planner Schwecke explained that although feedback from the neighbors is important, it is not a factor for making a determination. The Zoning Board of Appeals has to follow the law as set by the state. Chairman Day concurred stating that he did some research on variances and found that public comment does not justify approval of a variance.

Ms. Stephanie Schultz, S93 W35491 Bennington Drive spoke in favor of the porch. She asked that the Board not look at this as "black and white" but rather use good judgment.

After hearing no additional public comments, a motion was made by Member West, seconded by Member Wambach to close the public hearing at 6:43 P.M.

At this time, the Board reviewed the variance checklist. Discussion took place regarding the placement of the house under Waukesha County zoning and how the current zoning limits the property owner's ability. Planner Schwecke explained that there is nothing unique to this petitioner as there is to anyone else in the Town who falls under the town zoning. By definition, zoning imposes constraints and constraints in itself are not a hardship. In the R-1 zoning district, a porch with a deck and roof has to be compliant. In this instance, the porch becomes a deck because it is elevated.

Chairman Day explained that in late 2011, he contacted Lynne Markham with the Center for Land Use Education and asked her about setting precedence. Ms. Markham explained to him that a precedence is not set as long as the decision is based on legal hardship but clarified that a precedence is set if a variance is approved without legitimate rationale.

Member West questioned what the Board would have done if this were not an "after-the fact" structure. Planner Schwecke explained that some municipalities allow these types of structures within their zoning code. Planner Schwecke explained that the code could be modified to allow these structures, not to exceed a certain distance. The idea is to not fix this problem with a variance, rather fix the code. The Zoning Board of Appeals is bound by state statues and has to evaluate the law, apart from emotion. Planner Schwecke explained that this situation does not fall in the category of a special exception. Chairman Day added that it would be a special exception if a portion of the house was closer than the 50 feet, which is not the case here. Planner Schwecke added that setback averaging does not apply to this case either.

Discussion ensued regarding the purpose of public comment, modifying the current zoning text, and the possibility of tabling this request. Planner Schwecke explained that while no one wants to object to this request, he cannot find a legal reason to approve it. Planner Schwecke reiterated that whenever zoning is adopted, whether the new regulation has a 10 or 50 foot setback, the rules are still being applied to everyone equally.

Discussion ensued regarding the process of modifying the zoning code. Planner Schwecke explained the process adding that the entire process could take a year to 14 months. Discussion followed regarding reasons to table this matter to another date. Planner Schwecke explained that if the Board denied the variance this evening, even though the porch would be in violation, as long as he and the Building Inspector know that the code will be reviewed, neither he nor the Building Inspector would make the petitioner remove the structure until a final decision is made on the code.

A motion was made by Member Harthun, seconded by Member Erikson to table this request to the April 2, 2012 Zoning Board of Appeals Meeting with the request for the Town Planner to provide answers to the following four questions: 1) When was the 50 foot setback approved?; 2), What is the current Waukesha County ordinance relative to setback?; 3) What was the Waukesha County Ordinance when this house was built, relative to setback?; and 4) Will the Zoning Text Review Committee consider whether they would consider if a deck or porch could encroach into the 50 foot setback area. 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 7:24 P.M. Motion carried.

Lynn M. Pepper
Eagle Town Clerk