

CITY OF DELAFIELD BOARD OF ZONING MINUTES

- 1. CALL MEETING TO ORDER

Chairperson H. Bills called the meeting to order at 7:30 p.m.

- 2. ROLL CALL

Present

Absent

Henry Bills
Thomas Hoffmann
Al Johnson
Gerry Maier
Keith Strege

Also Present

Timothy M. Van de Kamp, Assistant City Attorney

- 3. APPROVE MINUTES OF OCTOBER 27TH, 2005 MEETING.

G. MAIER MOTIONED TO APPROVE THE MINUTES OF THE OCTOBER 27, 2005 MEETING. K. STREGE SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

- 4. NEW BUSINESS

CASE 719 – APPEAL OF RICHARD DALLEN & TRACY KNAPP (NEIGHBORS) REGARDING THE ISSUANCE OF A BUILDING PERMIT FOR THE CONSTRUCTION OF A DETACHED GARAGE AT 3370 BROKEN BOW TRAIL, DELAFIELD (ERIC & SARAH JORGENSEN, OWNERS).

This case will not be heard since the City Attorney stated it was not filed on time. The individuals may continue to build the garage. Per the attorney, the drainage problem has been solved. Grading has been done to provide for run-off.

CASE 714 – CONTINUATION FROM 10/27/05 BOARD OF ZONING REQUEST OF TOM & KIM SCHUBERT (OWNERS) AND WADE WEISSMANN (AGENT) FOR A PROPOSED REBUILDING OF A NEW HOME AT 2022 BAY POINT LANE

Correspondence from Steve J. Begum had been received prior to the meeting. Attorney Hector de la Mora was present representing the neighboring owners (Mr. & Mrs. Steve Bergum, Mr. & Mrs. William Maslowski, Mr. & Mrs. Thomas Butler Butler, and Mr. & Mrs. Mills Perry). He requested that all of the correspondence be read. H. Bills proceeded to read the letters from S. Bergum dated November 8, 2005, from T. Schubert dated November 3, 2005, and from S. Bergum dated October 31, 2005.

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Steve Bergum was present at the meeting and read a letter that he wrote to the Board of Zoning Appeals dated November 10, 2005. This letter was given to the commissioners just prior to the meeting. He stated that he has not received cooperation from the Schuberts. The proposed house is 40% bigger than other homes on Bay Point Lane, yet would be on one of the smallest lots on that road. He distributed a photo that was published in the Milwaukee Journal/Sentinel showing contrasting homes on Brewer's Hill. He gave other examples of large homes in other areas. He thought that the home was not a good fit for the neighborhood. He stated that this issue was about size and conformity to the neighborhood.

Attorney del la Mora stated that the applicant had the burden of proof and suggested that Attorney Richards speak first.

Attorney Dean Richards, representing Mr. & Mrs. Tom Schubert was present. It was confirmed that his letter dated November 4, 2005 had been received by all commission members. Attorney Richards read the letter dated November 4, 2005 addressed to H. Bills and the Board of Zoning Appeals.

H. Bills stated that research had been done regarding relocating the road. It was determined that this would not be a feasible option as it would entail going to circuit court to accomplish the task.

H. Bills asked Attorney Richards if there was feasibility of additional land being purchased between the Perlick Family and the Schuberts and if it would be advantageous to hold this case open in an attempt to do so. Attorney Richards stated that there is not a reasonable expectation that something could be worked out and asked that this case not be held open. Mr. Schubert's letters to Mr. Bergum demonstrate that significant efforts were made to acquire land.

Attorney del la Mora briefly reviewed his background as a municipal attorney and experiences with other board of appeals. He stated that procedures that control the situation must be considered. The parties making the application have the burden of persuasion to prove with adequate evidence that there is a defensible reason for suspending the rules. The Board of Zoning Appeals must come up with a "bullet-proof" decision. He proposed that the board should recognize that the Board of Zoning Appeals was a creature of state law and must confine itself to the evidence received in this case, not what has been done in other situations or other communities. He stated that the parties purchased this property aware that this parcel was substandard to begin with in terms of size. He stated that the Schuberts did not qualify for a bigger house and that this was a self-created hardship. Section 17.60 "structural alteration" as referenced in Attorney Richards letter was discussed. He distributed a copy of a section of the City Zoning Code and read portions. He did not think there was anything in the record that the existing home met the setbacks at the time of construction. The pre-condition that applies is that you can only accept that the Board of Zoning Appeals has the authority if the structure met the setbacks

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and requirements at the time of construction. He stated that this is a nonconforming property and these provisions do not apply. Section 17.55 was then reviewed. H. Bills stated most of the lots in this area are nonconforming. The present structure is in very bad repair. G. Maier stated that this house was worn out and should be replaced or repaired. H. Bills read Section 17.60. G. Maier stated that attention should be paid to the fact that rebuilding of homes creates a mess and should be considered. Attorney del la Mora stated that a new home should be per scale and in proportion to the lot itself. He would like the board to render a decision that is "bullet-proof", defensible. Make the appellant meet the burden of proof. He felt that the record was lacking in this area. G. Maier stated that if all decisions were "bullet-proof", no variances would ever be granted. Attorney del la Mora asked that proportionality in the neighborhood and that the allowance of the home now does away with that proportionality.

Attorney Van de Kamp stated that it was his understanding that the evidence was closed as of the previous meeting and that the meeting was adjourned to determine whether the road could be moved. Moving the road is not a viable option. The request for variance and evidence that exists is sufficient under 17.552 for the board to either grant or deny the variance.

Attorney Richards stated that there are two types of nonconformity – a nonconforming structure or a nonconforming use. These are different variances and different circumstances. He stood by Section 17.60. Section 17.55 regards nonconforming uses and does not apply in this case. This is a single family residential use and a single family residential district.

H. Bills stated that the research has determined that the road must stay where it is. The proposed house meets the offsets on both the east and west lot lines, it meets the offset from the lake, and the only thing in question is the road offset and the road has been determined as a dedicated road and that it will be 18', the FAR went from 26.6 down to 19.92 and has decreased, the open space will be more than 24,000 with the removal of the garage and will increase by 2,100+ sf. Attorney Richards stated that the figures in his letter are net after the garage is removed. H. Bills stated that the open space and print of the house as shown will be less than the print of the existing house now. Attorney Van de kamp stated that a list of Findings was prepared based on the evidence presented to aid in the decision making process. The board could either grant or deny the variance. What he had prepared presupposes the granting of the variance. Whether the request for variance is denied or granted, criteria must be laid out. Adopting this would be sufficient to that effect in the event that the Board were to determine the granting of the variance. He clarified 17.55 and 17.60 and stated that he thought that Attorney del la Mora was confused because he was looking at this as one transaction. It is two separate transactions: the razing of the existing nonconforming use gets rid of 17.55 and is not an issue and the new home that would be built as proposed would then fall under 17.60 as nonconforming characteristic of a residential structure. The Findings were distributing to the commissioners.

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H. Bills stated that this would place a home on the lot that would meet the setbacks of the front lakeside and both side yards properly, with 18' on the roadside because it cannot be changed, open space would be increased due to the house being smaller than the original house print now (24,772 to 26,621 sf as opposed to the required 30,000 sf). An honest effort was made to acquire additional land. FAR currently is 26.6% and will be reduced to 19.92%. Overall house will be bigger because it will be higher and is a different design. A. Johnson stated that overall the nonconformity would be decreased. G. Maier stated that the worn out house would be replaced. The garage will be removed.

H. Bills read the Findings. He stated that it was an existing nonconforming lot and that is the hardship.

It was clarified that FAR, street, open space are the main factors. The minimum front street setback will be 18', the FAR will be reduced from 19.92% and the open space will be increased to 26,621 sf, and the garage will be removed.

G. MAIER MOTIONED TO GRANT THE VARIANCE AS DEFINED WITH A PROVISIO THAT SINCE THE CONSTRUCTION SITE WILL BE DIFFICULT FOR THE NEIGHBORS THAT EVERY EFFORT IS MADE BY CONTRACTORS TO KEEP THE SITE CLEAN AND SAFE. A. JOHNSON SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

Attorney del la Mora asked that a provision be made that in granting this variance that it is not intended that any additional structures be built on the property. The board stated that this would need to come up at a separate time and would need to go through the building inspector. Attorney Van de Kamp stated that any further variances would need to go through the same process. Attorney del la Mora asked that this be added into the determination. It was not.

5. CORRESPONDENCE

None.

6. ADJOURN

K. STREGE MOTIONED TO ADJOURN FROM THE MEETING. T. HOFFMANN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED. THE MEETING ADJOURNED AT 8:50 P.M.

Minutes Prepared By:

November 10, 2005

7:30 PM

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