

CITY OF DELAFIELD BOARD OF ZONING APPEALS MEETING MINUTES

Call Board of Zoning Appeals Meeting to Order
Sawall called the meeting to order at 6:00PM.

Pledge of Allegiance
The Pledge of Allegiance was recited.

Roll Call for the Thursday, June 29, 2018 Board of Zoning Appeals Meeting:

Present

Marty Sawall, Chair
Thomas Hoffmann
Al Johnson
Jeff Krajacic
George Bogdanovich

Absent

Gerry Holton
Jeff Krickhahn

1. Approve minutes of the February 9, 2017 Board of Zoning Appeals meetings.

JOHNSON MOVED TO APPROVE THE FEBRUARY 9, 2017 BOARD OF ZONING APPEALS MEETING MINUTES AS PRESENTED. HOFFMANN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

2. Unfinished Business – None.

3. New Business

- a. **Discussion and action on Case 795: Appeal of Ronald and Sally Hammerschlag, owners, to develop floor area in lower level at 1620 West Shore Dr, Tax Key # 0786.008. The parcel is zoned RL-2. Maximum RL-2 floor area ratio is 30%. Proposed addition of 897 sq ft will exceed maximum allowable floor area by approximately 897 sq ft in violation of Section 17.39(9)(m) of the City of Delafield Zoning Code.**

Tim Langer, attorney for the applicants and Ronald and Sally Hammerschlag, applicants, were present. A letter from his office had been provided after distribution of the epacket for this meeting. (Clerk's note: The submitted document is attached to these minutes.) Langer provided two photo exhibits for the Board. The Hammerschlags had purchased their house in 2017 from a previous owner. The house was constructed in 2005 as noted in a building permit issued by the City of Delafield. There were three areas approved as noted in Exhibit A including a bathroom, a staircase and set of sliding glass doors. The intervening space had electricity and lighting, was served by an exit door and included habitable space.

Krajacic questioned the finished and unfinished number of square feet included in the approved house plan in 2005 and what was in existence at this time. Langer explained what was known was that the submitted plan had been approved. If the Building Inspector had calculated the floor area ratio (FAR), it

CITY OF DELAFIELD BOARD OF ZONING APPEALS MEETING MINUTES

remained unclear; only that the submitted plan was reviewed and approved by the Building Inspector. The portion of the house that was unfinished was unclear because it was undefined in the ordinance

Krajacic noted the FAR always applied in all applications with 30% unless there was a hardship. As he calculated the highlighted spaces in his diagram, the first floor upstairs and the garage equated to 30% of the space. Hoffmann assumed that at the time of construction the proper FAR square footage (sf) was applied. Langer noted this was probably true; however, there was no documentary evidence. The highlighted information came with approval grants at the time the house was first built and approvals were built first. The new owners were left with only the ability to transit from finished to finished space through the basement. Langer contended that 897 sf was implicitly approved at the time to be served by the bathroom, set of stairs and exterior exit.

Krajacic questioned how the building inspector could have then made an assertion about the overage on the FAR. Langer explained finished space was not defined as a term in the ordinance, so he had concluded the space being referenced was not finished space. He was asking to finish the space that was included in the original approval.

Krajacic explained that when a house was built on a conforming lot, people had to build their houses with a 30% FAR. Many houses had been built in that area with space to make the required FAR and homeowners knew that going into the project. The Building Code was the requirement. If people went over 30% in FAR, a hardship was required for a variance. He heard no hardship.

Langer explained there were three basis points that he thought should be considered in overturning the Building Inspector's denial for floor area ratio in this matter. A hardship had been created when the City approved the finished bathroom, set of stairs to the basement and exterior staircase. This approval intended use of the finished basement because people were required to transit those areas without having enclosed mechanicals and electrical service in the walls. It was a hardship to make comfortable use of the components in the basement. In addition, the City based its findings on the portion of the ordinance that dealt with height. There was no expectation that the Hammerschlags were going to modify the height, thus, there was an error in the reference to the ordinance. The error should be rescinded and his clients given a building permit. A finished basement required access. A hardship was to make use of the approved completed space. The completed space should be safe and comfortable for guests. If the Hammerschlags could not access the finished space in that way, then he wondered if the approval was happenstance or unintended. A finished basement required access.

Hoffmann questioned the procedure to be used if there was an error by the Building Inspector. No information was available at this time from the Building

CITY OF DELAFIELD BOARD OF ZONING APPEALS MEETING MINUTES

Inspector on whether an error had taken place in referencing the portion of the code in his denial letter to the Hammerschlags.

Bogdanovich clarified the area noted by Langer included the area approved in the original plan that was completed in 2005. He also questioned the Hammerschlags whether they were led to believe the owner and original contractor had intended the use of the basement as fully finished. He also questioned why the area was vacant and unfinished for almost 14 years. Hammerschlag noted there was no discussion of the permit during negotiations for the house. The contractor that began work on his property expected that there would be no issue with the building permit and it would be approved without further comment. Hammerschlag questioned whether the Building Inspector had an obligation to notify him that work on his property was not allowed prior to construction because he was not notified prior to beginning construction on the unfinished portion of his house.

Johnson noted the lumber for finishing the basement was already in place and construction had begun according to pictures provided. He also noted the applicant was not changing the footprint of the house and not infringing on anyone in this case. Krajacic did not want to proceed with approval until the amount of finished square footage could be determined on the house. After that calculation could be made, the case should return to the Board of Zoning Appeals for additional review and consideration.

KRAJACIC MOVED TO REQUEST THE SQUARE FOOTAGE OF THE FINISHED SPACE CURRENTLY EXISTING IN THE HOUSE BE MEASURED AND PROVIDED TO CITY STAFF AND TO RETURN THIS MATTER TO THE BOARD OF ZONING APPEALS FOR ADDITIONAL CONSIDERATION AND REVIEW AT THAT TIME. JOHNSON SECONDED THE MOTION. HAMMERSCHLAG QUESTIONED WHAT HARM THIS REQUEST WAS DOING IN TRYING TO MAKE THE SPACE LOOK NICE. KRAJACIC CLARIFIED CODES WERE IN PLACE FOR BUILDING. ONCE THE EXISTING SQUARE FOOTAGE WAS VERIFIED, THE MATTER COULD BE CONSIDERED FOR REVIEW. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

4. Adjournment

JOHNSON MOVED TO ADJOURN THE THURSDAY, JUNE 28, 2018 BOARD OF ZONING APPEALS MEETING AT 6:28 P.M. KRAJACIC SECONDED THE MOTION. ALL WERE IN FAVOR. MOTION CARRIED.

Minutes prepared by: Accurate Business Communications, Inc.
Approved August 23, 2018



June 20, 2018

Board of Zoning Appeals
City Clerk
City of Delafield
500 Genesee St.
Delafield, WI 530018

RE: Ronald & Sally Hammerschlag
BOZA Case No.: 795
Property Address: 1620 West Shore Drive, City of Delafield, WI

Gentlepeople:

This letter relates to the Hammerschlags' desire to refinish their exposed, walk-out basement.

I. History.

The home in question was constructed in 2005 pursuant to a building permit issued by the City of Delafield. The Hammerschlags bought this Nagawicka Lake home in 2017. Upon purchase, the Hammerschlags made ordinary inquiries of the homeowner about finishing the remainder of the existing walk-out basement. They were told this was intended from the start, and thus were lead to believe that such interior improvements were allowed. Their remodeling contractor concurred. The City has denied their request to refinish their basement.

II. Description of Premises.

The exposed basement is partially improved, and should be completed. At the time of construction in 2005, three areas of the basement were properly approved for completion. These were the staircase, bathroom and glass sliding-door (which provides the home's only at-grade access to the lakefront). These three components are completed, but are separated from one another by unimproved basement space. This open space has exposed electrical, plumbing, insulation and mechanical systems. It is impossible to get from the stairs to either the bathroom or the glass door without passing through the unimproved space. Similarly, it is impossible to get from the exterior entrance to the stairs or the bathroom without traversing unimproved space. The basement bathroom is entirely inaccessible except through unimproved space.

Timothy V. Langer
langer@langerandpetersen.com

Edith M. Petersen
petersen@langerandpetersen.com

Hartland office
155 East Capitol Drive, Suite 3
Hartland, WI 53029
phone (262) 367-3800
fax (262) 367-3841

Watertown office
111 S. 5th Street
Watertown, WI 53094
phone (920) 206-2931

www.langerandpetersen.com

III. Proposed Improvements.

It is the Hammerschlags' desire to improve only that part of the basement serving the 3 previously approved and completed components of the basement (stairs, bathroom & sliding doors). Attached as **Exhibit A** is the plan showing the existing stairs, bathroom and glass door, as well as the open space now proposed for completion. Presumably these 3 completed spaces were approved with the expectation that they would be used, and certainly now are in use along with those portions of the basement needed for access to the stairs, bathroom and glass door. Thus, completion of the exposed basement merely improves the safety and comfort of those transiting the open space already in use. No additional living space is proposed.

IV. Grounds for Appeal or Variance.

The Hammerschlags appeal the rejection of their Building Permit Application. The City has found that the Hammerschlags' “. . .proposed addition of 897 sqft will exceed the maximum allowable floor area by approximately 897 sqft in violation of section 17-39(9)(m) of the City of Delafield Code.” This determination should be rejected because **(a)** it is an erroneous application of §17-39(9)(m) (which only restricts building height, not floor area ratio); **(b)** it is an erroneous recitation of facts (there is no “addition” proposed, but merely refinishing existing space); and **(c)** any zoning code section restricting “floor area ratio” should be disregarded because *(i)* it is not on the agenda, *(ii)* it is unduly burdensome, and *(iii)* it should be subject to variance.

A. Building Permit Erroneously Rejected Under §17-39(9)(m) of Code.

The City erroneously refused Hammerschlags' application to refinish their existing basement, based upon inapplicable height restrictions. All City Notices, Agendas and correspondence on this topic (See attached **Exhibits B, C & D**) cite section 17-39(9)(m) of the City of Delafield Zoning Code, as the sole ordinance supporting rejection. This ordinance addresses building height as follow:

“(m) *Maximum building height.*

1. *Principal building.* 35' if averaging; 45' maximum for gable, gambrel, hip and pitch roofs.
2. *Accessory building other than a boathouse.* 15'.
3. *Boathouse above ordinary high water level.* 12' or 18'. See § 17.22.”

No request has been made to modify the height of the Hammerschlag home, and thus the cited ordinance does not apply. No other ordinance is on the Agenda for consideration tonight, and so I would ask that this Board acknowledge that §17-39(9)(m) was applied in error, and order the issuance of the Building Permit.

B. No “Addition” is Proposed so No Floor Area Ratio Changes Occur.

Hammerschlags merely propose superficial interior improvements to existing living space, so no change in the floor area ratio is sought. BOZA should reject any assertion to the contrary, and approve the Building Permit.

The City has erroneously asserted that installing drywall in this living space expands the floor area ratio, by “finishing” the basement. It does not. The space was “finished” for use when heat, light, exterior access and a bathroom were approved in 2005. These improvements provide the essentials for residential shelter, whereas drywall is optional and is not used in many homes. The basement was “finished” for recreational use in 2005, and so no change in floor area ratio is requested now. Thus the building permit should be approved.

C. Alternatively, A Floor Area Variance Should Be Granted.

To qualify for a variance, the Hammerschlags must show that they have “. . .special conditions. . .which cause practical difficulty or unnecessary hardship. . .” Here the City itself created the “special conditions” by approving the location of a bathroom, a stairwell and sliding glass doors, in disparate parts of the basement, separated by unimproved open space. Presumably these improved spaces were intended to be used, but cannot be accessed except through the unimproved space. This arrangement is both impractical and dangerous. Exposed timbers, insulation, mechanical equipment and utility connections, increase the risk that those passing through this space will be injured in the process. This is both a “practical difficulty” and an “unnecessary hardship.” Thus, a variance allowing the connection of these improved spaces is proper.

Such a variance would not apply generally to other homeowners because it would apply only to where there is an exposed basement (a) containing a principal point of entrance, (b) containing islands of lawful improvements accessible solely through an unimproved space, and (c) acquired by an unwitting buyer lead to believe that such space could be lawfully improved.

V. Conclusion.

The Hammerschlags neighbors have stated their approval of this project. (See attached Exhibit E). Such permit may be issued if this Board finds that the building permit was denied in error (either because §17.39(9)(m) restricting height is inapplicable, or because there was no change in floor area ratio); or if a variance is granted which will

Board of Zoning Appeals
June 20, 2018
Page 4

allow for completion of this walk-out basement.

Thank you for your attention and consideration.

Very truly yours,

Langer & Petersen, LLC
Attorneys for Ronald and Sally Hammerschlag

A handwritten signature in black ink, appearing to read 'Timothy V. Langer', written over the typed name below.

Timothy V. Langer
State Bar No.: 1000920

TVL/js
cc: Ronald and Sally Hammerschlag

EXHIBIT A

EXHIBIT B

CITY OF DELAFIELD
(262) 646-6220

Board of Zoning Appeals Agenda
Thursday, June 28, 2018
6:00 p.m.

****CITY HALL COMMON COUNCIL CHAMBERS****
500 Genesee Street, Delafield, WI 53018

Call Board of Zoning Appeals Meeting to Order.
Pledge of Allegiance.
Roll Call.

1. Approve minutes of February 9, 2017 Board of Zoning Appeals meeting.
2. Unfinished Business
4. New Business
 - a. Discussion and action on Case 795: Appeal of Ronald and Sally Hammerschlag, owners, to develop floor area in lower level at 1620 West Shore Dr, Tax Key # 0786.008. The parcel is zoned RL-2. Maximum RL-2 floor area ratio is 30%. Proposed addition of 897 sq ft will exceed maximum allowable floor area by approximately 897 sq ft in violation of Section 17.39(9)(m) of the City of Delafield Zoning Code.
4. Adjournment

Any person who has a qualifying disability as defined by the Americans with Disabilities Act shall not be excluded from participation at City of Delafield meetings. Please advise the City Clerk 5 days prior to the meeting for special accommodations. For additional information or to submit a request, please contact the City Clerk at 262-646-6220, stop by City Hall at 500 Genesee Street, or make your request online at www.cityofdelafield.com under the Clerk page.

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the City may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice. This constitutes a meeting pursuant to State ex rel. Badke v. Greendale Village Bd., 173 Wis. 2d 553, 494 N.W. 2d 408 (1993), and must be noticed as such.

Utility Clerk SJ

Posted: 2018-6-1

City Hall Bulletin Board
 Faxed to Newspapers

Website

EXHIBIT C

Public Notice of Zoning Appeals

LEGAL NOTICE

To Whom It May Concern:

The Board of Zoning Appeals of the City of Delafield will hear Case 795. A public hearing will be held in the City Hall Council Chambers at 500 Genesee St, Delafield, on June 28, 2018 at 6:00 p.m. to consider the following request.

Appeal of Ronald and Sally Hammerschlag, owners, to develop floor area in lower level at 1620 West Shore Dr, Tax Key # 0786.008. The parcel is zoned RL-2. Maximum RL-2 floor area ratio is 30%. Proposed addition of 897 sq ft will exceed maximum allowable floor area by approximately 897 sq ft in violation of Section 17.39(9)(m) of the City of Delafield Zoning Code.

All interested persons wishing to be heard are invited to be present.

Board of Zoning Appeals

City of Delafield

By: Marty Sawall, Chairperson

Persons requiring an interpreter or other assistance should contact the City Clerk's Office 72 hours prior to the meeting.

Please publish on 6/13/18 and 6/20/2018

EXHIBIT D



May 22, 2018

Ron & Sally Hammerschlag
1620 West Shore Dr
Delafield, WI 53018

Re: Building Permit application to develop floor area in lower level at 1620 West Shore Drive, Tax Key # 786.008,

Mr. and Mrs. Hammerschlag,

I received and reviewed a building permit application along with building plans to add approximately 897 sqft of floor area to an existing lower level located at 1620 West Shore Dr. The parcel is zoned RL2. Maximum RL-2 floor area ratio is 30%.

Plat of survey from the construction of this house in 2005 indicates a lot area of 12,660 sqft. Original house plans confirm that maximum allowable floor area of approximately 3,790 sqft was developed at the time the house was constructed. No additional floor area is allowed unless variance is granted by the Board of Zoning Appeals.

I must deny the building permit application because the proposed addition of 897 sqft will exceed the maximum allowable floor area by approximately 897 sqft in violation of section 17-39(9)(m) of the City of Delafield Zoning Code.

Please submit this letter with Board of Zoning Appeals application to Susan Johnson in the City Clerk's office. Her phone number is 646-6220.

Contact me at (262) 490-8222 with any questions you might have.

Scott Hussinger
City of Delafield Building Inspector

EXHIBIT E

Ron Hammerschlag

From: Sally Hammerschlag <sallyhammerschlag@yahoo.com>
Sent: Monday, May 28, 2018 9:07 PM
To: Ron Hammerschlag
Subject: Fw: upcoming work on your home.

----- Forwarded Message -----

From: Schmidt, Bart <bschmidt@mhemail.org>
To: sallyhammerschlag@yahoo.com <sallyhammerschlag@yahoo.com>
Sent: Thursday, May 24, 2018, 10:41:11 PM EDT
Subject: upcoming work on your home.

Sally,

It is my understanding that you are planning on having some interior work done on your home. I don't have any objections to interior work you would be having done.

Regards,

Bart J. Schmidt, MD

Diagnostic and Interventional Radiologist



1626 West Shore Drive

Delafield, WI

608-289-1979