

CITY OF DELAFIELD BOARD OF ZONING APPEALS MINUTES

1. CALL MEETING TO ORDER
Chair B. Maslowski called the meeting to order at 7:30 P.M., noting the meeting had been properly noticed and permit fees paid.

2. ROLL CALL

<u>Present</u>	<u>Absent</u>
Bill Maslowski	Al Johnson
Thomas Hoffmann	
Gerry Holton	
Gerry MacDougall	
Rick Lieblang	

Also present
Scott Hussinger, City Building Inspector
James Hammes, City Attorney

3. APPROVE MINUTES OF APRIL 12, 2012 MEETING

G. MACDOUGALL MOVED TO APPROVE THE BOARD OF ZONING APPEALS MEETING MINUTES OF APRIL 12, 2012 AS PRESENTED. G. HOLTON SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. THREE WERE IN FAVOR. R. LIEBLANG ABSTAINED. MOTION CARRIED.

4. OLD BUSINESS

None.

5. NEW BUSINESS

CASE 776 RESCHEDULED FROM APRIL 12, 2012 - APPEAL OF BERNARD GUNAR AND LESLIE ANN GRUENKE TO REVISE PLANS TO INCLUDE AN ADDITIONAL 1,448 SQ FT OF FLOOR AREA IN VIOLATION OF SECTION 17.39(9)(M) AND A DECK EXPANSION THAT ENCROACHES INTO THE REQUIRED MINIMUM SIDE YARD IN VIOLATION OF SECTION 17.39(9)(I) AND REDUCES OPEN SPACE IN VIOLATION OF SECTION 17.39(9)(N).

B. Maslowski briefly reviewed the case, noting the responsibilities of the Board of Zoning Appeals and the process utilized in this case. This case had been revised since the last hearing and moved from a previous date on the calendar. The applicant, Gunar Gruenke was present. B. Maslowski stated this appeal violated City Building Code requirements related to minimum sideyard requirements and open space requirements and thus required variance consideration. He requested consideration be given to the case one section at a time.

With regard to the sideyard deck, G. Gruenke stated there was a revision to the first floor plan submitted in that the deck had a ramp and that plan had changed to allow access to the deck via a set of four foot wide stairs that would come off the side of the deck rather than in the front as approved previously. This would amount to

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approximately two feet of encroachment into the sideyard setback. There was a ten foot easement along the side of the house that was owned by the property owner across the street. S. Hussinger clarified the request for installation of steps off the side of the deck would encroach 2.89 feet into the sideyard setback. In response to a question from G. Holton, he further clarified fire code requirements were not necessary for stairs off the deck.

T. Hoffmann questioned whether the stairs could come straight off the deck as approved at the last hearing. G. Gruenke stated the stairs would have to be countersunk and would interfere with the view from the lower level of the house as there were two giant maples on the property located in this space. Also, he clarified that the drawing submitted to the Board showed a three-season porch that should be removed from the request. He had decided to remove the porch as the neighbor to the east did not want the porch due to an impediment of lake view. G. Gruenke also noted the location of the stairs would impact this neighbor's view as well if the steps were to come straight off the house to the front rather than as requested on the side.

G. Holton questioned the hardship in this case. G. Gruenke stated the hardship was that the zoning of the lot made his house non-conforming and he did not think his house should have to conform in the same way to the standards that other houses did. He had stayed within the footprint of the original house and would like to make reasonable use of his house by being able to have outdoor access to the deck in this way to make it usable.

R. Lieblang questioned whether the steps could be moved to get rid of the interference with the maple tree. G. Gruenke stated there was a retaining wall for the lower level steps that was going to be part of the originally proposed landscaping; however that had been changed and the steps would now go right into the maple tree.

T. Hoffmann stated he was concerned about the small distance between the garage and the street as a fire truck would not be able to get to portions of the property easily. G. Gruenke explained the garage was located less than two feet from the property line; however, it was constructed in 1989 with heat and would not make sense mathematically to tear it down.

G. Holton requested clarification from S. Hussinger regarding the easement associated with this property. S. Hussinger explained there was a ten foot lake access easement between the properties owned by the property owner across the street. The requirement included an eight foot sideyard setback from the property line which was honored by the home just to the west of the access easement. G. Gruenke agreed, noting the homeowner across the street had seen his proposed plans and had no issue with the request for stairs as they were not encroaching any further toward his land than the garage location.

T. Hoffmann questioned what would happen to the easement if the property owner sold the property across the street. S. Hussinger explained the new owner would also own the easement strip of land.

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B. Maslowski stated it would have been helpful to be aware of the withdrawal of the request for the three-season porch earlier in the review process as it could have impacted decisions made moving forward. G. Gruenke stated he had sent a notice in writing but was told he could withdraw it here at this meeting. B. Maslowski stated the area in front of the house was what was allowed by the zoning and lateral property lines were "sacred" areas for homeowners as they provide a buffer between structures. When looking at the original plan with a generous deck and steps already approved, he thought there was ample room to move the steps to another location. G. Gruenke disagreed that an eight foot deck was considered generous. Also, his request was to encroach two feet less into the sideyard than what his garage currently encroached.

B. Maslowski explained that approval had been granted at the last hearing on this case with stairs going off the front of the house. This request would create a non-conforming situation and a solution was already approved. G. Gruenke stated the deck was designed with the stairs going down inside the deck and there was going to be steps with a landscaped retaining wall. Now that had changed and the resulting look would constitute a set of steps coming down into a mound of dirt. B. Maslowski stated it would be a different situation if there was no solution for steps anywhere, but a solution had been granted approval in January of this year.

T. Hoffmann clarified that G. Gruenke understood his lot was non-conforming upon purchase. G. Gruenke noted the lot was in existence prior to the zoning code designation making it non-conforming. B. Maslowski clarified that the only non-conformity on the lot currently was the garage; all other parts of the house structure were located within the appropriate conforming areas. He did not think it was proper to allow a conforming structure to be non-conforming due to a stairway when solutions were available that had been approved.

G. MacDougall stated the purpose of the Board did not include changing zoning laws in this matter and mitigating hardships. These issues were addressed in January, 2012.

G. Gruenke expressed concern that this project had been delayed due to the City's schedule. He had changed travel plans to accommodate the hearings and had footings and landscaped retaining walls ready to go while waiting for approval. B. Maslowski expressed concern for the footings and retaining walls being placed prior to approval.

G. Gruenke questioned the logic being utilized in this case as it would seem that nothing would ever be approved if it was non-conforming to the zoning code. B. Maslowski explained the Board was present to deliberate over any hardships presented; however that pertained to the use of the property. This request had other solutions already approved by the Board. Also, it was the job of the Board of Zoning Appeals to uphold ordinances currently in existence and not create specialty situations throughout the City.

J. Hammes further explained it was the responsibility of the applicant to establish hardship which meant that absent the granting of the variance, there would be unreasonable use of the property for its permitted purpose or restrictions on the property were unnecessarily burdensome.

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G. Gruenke stated the request was not any more non-conforming than the garage. Due to the City's lack of proper posting and time constraints, it was now unreasonable for him to have to take his retaining wall down. G. Holton stated it was the job of the Board to review any case that came before it and make a determination through the review process. B. Maslowksi stated the original proposal had been approved. There were stairs being allowed in this case. Concrete and retaining walls should not have been constructed. G. Gruenke stated the denial of this case would seem unreasonable and illogical to him.

G. HOLTON MOVED TO DENY THE REQUEST IN CASE 776 FOR A DECK EXPANSION THAT ENCROACHED INTO THE REQUIRED MINIMUM SIDE YARD IN VIOLATION OF SECTION 17.39(9)(I) ON THE BASIS THAT THE ENCROACHMENT DID NOT CAUSE UNDUE HARDSHIP. T. HOFFMANN SECONDED THE MOTION. T. HOFFMANN READ SECTION 17.60 OF THE CITY ZONING CODE AT THIS TIME, NOTING THE RULE RELATED TO NON-CONFORMING STRUCTURES. R. LIEBLANG QUESTIONED WHETHER THE DECK STAIRWAY COULD BE REDUCED IN SIZE TO MITIGATE ENCROACHING INTO THE SIDEYARD. S. HUSSINGER STATED THE STAIR WIDTH WOULD NO LONGER MEET THE ZONING CODE REQUIREMENTS. G. MACDOUGALL STATED WHILE HE AGREED THE BOARD SHOULD NOT CREATE MORE NON-CONFORMING STRUCTURES, HE WONDERED IF THE GARAGE LOCATION WAS CAUSING MORE NON-CONFORMITY ON THE LOT. WHILE THE BOARD DID NOT LIKE THE REQUEST, THE GARAGE NON-CONFORMITY SEEMED TO MITIGATE THE REQUEST. T. HOFFMANN STATED THIS REQUEST DID NOT INCLUDE A GARAGE LOCATION, IT WAS FOR THE STAIRS. B. MASLOWSKI STATED IF THERE WAS NO OTHER ALTERNATIVE AND A MANDATED FIRE EXIT NON-EXISTENT IN OTHER PARTS OF THE HOUSE, THIS LOGIC MIGHT APPLY; HOWEVER, IN THIS CASE, THERE WAS STILL AN ENCROACHMENT BEING REQUESTED. G. MACDOUGALL STATED THE VARIANCE APPROVED AT THE JANUARY 12, 2012 BOARD OF ZONING APPEALS MEETING SEEMED TO "LOCK" THIS CASE. **THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

With regard to the open space requirement variance request, B. Maslowksi explained there was an additional 1,448 square feet of floor area to be constructed in the basement. S. Hussinger clarified the amount would now be 1,328 square feet as a result of the changes being made to the plans.

G. Gruenke noted changes on page 6 of the plans submitted. He explained the basement of the purchased house was originally finished in a majority of the square footage.

B. Maslowksi stated if this was approved the floor area ratio would be out of line, but it would make sense to finish off the basement as it was before and was considered a hardship not to be able to use it.

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R. LIEBLANG MOVED TO APPROVE THE REQUEST TO REVISE PLANS TO REDUCE OPEN SPACE IN VIOLATION OF SECTION 17.39(9)(N) WITH A FINISHED BASEMENT OF 1, 328 SQUARE FEET. G. MACDOUGALL SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. THREE WERE IN FAVOR WITH G. HOLTON VOTING NAY.

G. Gruenke questioned whether he was required to return another time if the location of the steps was changed. S. Hussinger clarified that if G. Gruenke constructed outside of the setback areas and stayed within the allowable building pad areas, then conformity could take place and a permit could be secured.

6. Presentation by City Attorney regarding duties of Board of Zoning Appeals.

James Hammes, City Attorney, explained he had distributed a short memorandum to the Board regarding an overview of the information being presented this evening. He noted there was no right way or wrong way to approach these matters as all Zoning Appeals Boards handled things differently. He then explained that most cases heard before the Board would be related to a disagreement with the Building Inspector or a variance request from the Zoning Code. When a variance was requested a public hearing was noticed as part of the process. Board members were allowed to individually familiarize themselves with the case property; however, neighbors should not be interviewed while a Board member was on site. Board members could gather facts but should not investigate further. With regard to the public hearing, it was recommended that the hearing be called to order with the petitioner stating his/her position and provide informational materials to the Board as to why the request was being made. This should include why a variance was considered appropriate. With all information gathered, the public hearing should be closed so that deliberation by the Board might begin. Clarification could be gotten after the hearing was closed and it was important to remember that when the hearing was closed, the public was being cut off from presenting additional evidence. For this reason, it was considered important that all evidence be presented from both sides of the case prior to closing the public hearing. It was also important to hear the information presented, close the hearing and make a decision on the matter rather than adjourning the meeting for months and then reconsidering the case as changes often took place over time and people lost track of what had been presented.

J. Hammes also explained there were two types of variances granted. One was a use variance which would effectively rezone a property to allow it to be used for something that was not a permitted use in that zoning district. The second was an area variance and was most common. This type of variance required that the property owner show that the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The term "hardship" was used because courts had gotten away from the wording of being "unnecessarily burdensome." This was more than simply a matter of "I'd like to be able to do this or that with my property." Oftentimes, these requests were in dealing with substandard lots and those substandard lots could be used for permitted uses. When a substandard lot was purchased, the property

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owner would know in advance that the lot was substandard and would function as such. J. Hammes also noted variances granted remained with the land and there was no expiration of the variation unless there was a date of expiration noted in a motion granting the variance or in an ordinance governing the time limits associated with variances. He suggested that when variances are granted for building or construction, the Board should consider putting a time limit on the construction start time and then consider a permit limit of one year or other appropriate time limit. It would be prudent to talk to the Building Inspector for an appropriate length of time to be included in the motion and examine what type of construction would be take place. Conversely, there were times when the Board might also desire flexibility in consideration of what would be prudent for each case.

G. Holton stated the Board should consider establishing criteria that could be examined with each variance request. J. Hammes stated there was usefulness in rendering decisions in a consistent manner; however, the granting or denial of a case did not set precedent in other cases. Courts did not consider precedent as a factor in cases.

G. Holton requested clarification on verbal information presented by applicants regarding lack of objections for a project. J. Hammes encouraged the Board to consider hearing information at the public hearing on each case; however, the fact that a neighbor might verbally agree with a request would have less influence on a decision than objections. Credence should be given to any neighbors' comments when brought in written form or heard at the public hearing.

B. Maslowski questioned whether the Board would be justified in supporting an existing ordinance if the applicant could resolve the matter in another manner. J. Hammes restated that the variance would be granted only if the application of the ordinance was burdensome; if there was another way to resolve the situation, it would be difficult to meet that burden. The Board would need to determine whether a hardship exists. Neighbors can comment and homeowners can state opinions; but that is not necessarily a hardship.

G. Holton questioned when an adjournment of a case would be appropriate. J. Hammes stated when there would be the need for the adjustment of proposed plans. It was important when adjourning to provide a specific time and date to reconvene so that the appropriate two week notice would be given to allow neighbors to review the new plans and provide feedback.

G. Holton also questioned the appropriateness of suggesting potential alternatives. J. Hammes stated while the Board would not want to be architects in each case, it would be appropriate to raise the question of alternatives to make use of the property without the use of a variance.

B. Maslowski thanked all present for time spent reviewing the variance information presented by J. Hammes.

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7. ADJOURN

T. HOFFMANN MOVED TO ADJOURN THE APRIL 26, 2012 BOARD OF ZONING MEETING AT 8:53 P.M. G. HOLTON SECONDED THE MOTION. ALL WERE IN FAVOR. MOTION CARRIED.

Minutes prepared by:

Accurate Business Communications, Inc.