

**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  
Present Absent  
Bill Maslowski  
Thomas Hoffmann  
Gerry Holton  
Al Johnson  
Rick Lieblang

Also present  
Scott Hussinger, City Building Inspector

3. APPROVE MINUTES OF MAY 10, 2012 MEETING

**R. LIEBLANG MOVED TO APPROVE THE BOARD OF ZONING APPEALS MEETING MINUTES OF MAY 10, 2012 AS PRESENTED. T. HOFFMANN SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

4. OLD BUSINESS

None.

5. NEW BUSINESS

CASE 778 APPEAL OF DAN LEBEAU, BADGER HOME BUILDERS, AGENT OF BRIAN MUELLER & DINAH DIRKSE-MUELLER (OWNERS), TO CONSTRUCT A TWO STORY SINGLE FAMILY HOME AT 1207 MILWAUKEE ST. THE PROPOSED SIDE YARD DOES NOT MEET THE 15 FEET MINIMUM REQUIREMENT IN THE R1-D DISTRICT PER SECTION 17.39(11)(H).

B. Maslowski briefly reviewed the case, noting the responsibilities of the Board of Zoning Appeals and the process utilized in this case. The applicant, Brian Mueller and Dinah Dirkse-Mueller were present along with their representative, Dan Tinte of Badger Home Builders. B. Maslowski stated this appeal violated City Building Code requirements related to 15 feet minimum requirements in the R1-D District and thus, required variance consideration.

Dan Tinte, 1323 Poplar Dr., Waukesha, WI 53188, of Badger Home Builders and representing the Mueller's in this case, was present. D. Tinte stated the 10 foot setback had been proposed from the westerly lot line in order to allow the property owner to park the cars in the driveway and without this variance it would be difficult to do so. With the 15 foot setback, the driveway would be forced to be shorter and it would be difficult to maneuver into the transfer driveway to the north. He went on to explain another house that was longer and narrower had originally been designed for the site; however, that

## CITY OF DELAFIELD BOARD OF ZONING APPEALS MINUTES

design would have required several trees to be removed in order to get the garage placed on the site. The current house had been redesigned to better fit into the style of the neighborhood as a bungalow style house. After review of the County GIS aerial photos of the area, he had determined that there were several other properties in the neighborhood that had less than a 15 foot setback.

B. Maslowski questioned whether a grading plan had been submitted to the City in consideration of this matter. D. Tinte stated he had not done so as the decision of this Board would influence the design plan choices and it was expensive to create a drainage plan. B. Maslowski questioned whether an erosion control permit had been secured. D. Tinte stated a building permit had been obtained that included the erosion control permit; however, when the request for variance was denied, all work stopped as they were waiting for the outcome of this meeting. D. Tinte went on to explain he was aware of the concerns about water flow on this property. The water flow would not be hindered as it would divert around the new construction and would still continue to drain water off the property just as it did today.

B. Mueller stated the intention of the house design was to give the utmost privacy to the neighbor immediately to the west. He thought that if the house was placed forward on the lot and the driveway placed on the other side of the lot facing the condos, then it would give them the most privacy and tree removal would be less. He and his wife had lived in Delafield for a year and had chosen this city over many others to downsize. He also worked in the area as his company, called Maverick Innovation Labs, had leased property through the Steiner Group so he lived and worked in the area. The design for the property had tried to provide the most privacy and toward that end, Andy Johnson, the adjoining property owner to the west, and he were cooperating on landscaping to provide privacy.

Wayne Foster, Manager of the Water's Edge Condos, expressed concern for the water that came down the driveway as in heavy storms the water passes to the east onto the condo property. By putting this house in without proper drainage and raising the driveway, there would be a substantial increase in water and would also change the direction of the water flow. He believed strongly that the setback should be maintained in the area as all have had to do it.

Gail Straub, President of the Board of Directors at Water's Edge Condos, stated laws were made to be kept and the land was bought prior to them picking out landscaping and a house design. She thought a bit more thought should have been given to these matters before the land purchase.

Andy Johnson, 1133 Milwaukee Street, stated he had met with the Mueller's regarding their proposed plans. When he heard that the plans being proposed included placement near the lot line he was concerned; however, given the original house design as an alternative, he thought the current proposal would stagger the houses in the immediate area and would benefit the area overall. He was now in favor of the current design. He had lived in his house for 11 years and seen the woods come down. The current house design, while close to the lot line, would allow more of the woods area to remain and would provide them some privacy as well as providing a landscape buffer.

## CITY OF DELAFIELD BOARD OF ZONING APPEALS MINUTES

Dave Oteman, 1127 Milwaukee Street, stated he had lived in his house for two years. His opinion was that he and his wife were in favor of doing whatever choice yielded the least impact to the ecosystem and deforestation. He questioned how the trees could be allowed to be cut on the property before these issues came to light. He stated it seemed as though something had gone wrong somewhere and he wanted to better understand that.

Kathy Case, 1227 B Milwaukee Street, agreed. To see the lot stripped of trees and no plan in place was upsetting to her. If the changes were made for the house design to move forward, she also thought there should be a plan in place to attempt to heal the landscape from all that was removed. She used to look at trees and now she saw a garage and a back door. This was a big change and she had assumed all was fine with the request. When the permitted actions did not go forward, she was concerned and wondered how this happened.

B. Mueller stated he appreciated the concern. His love for trees was the reason the lot was purchased. The currently proposed house design preserved the largest number of trees. With the lot only being 73 feet in depth, room was needed for equipment to move in order to allow the house construction to move forward. He was really interested in keeping as many trees as possible and giving the immediate neighbors on both sides as much privacy as possible. He thought there was some miscommunication about initial review of the project plans and when the project could be started.

D. Oteman questioned whether this was typical in that someone would do this much to the land before the Board of Zoning Appeals could review the setback issue. S. Hussinger stated the typical procedure was that someone would proceed at their own risk to remove trees and construct a building pad before all plans were approved. He had never been asked about setbacks until the plans were submitted for this meeting.

R. Lieblang stated the Board of Zoning Appeals was not responsible for drainage or tree removal; only to represent the setbacks in this case.

A. Johnson questioned the hardship in this matter.

G. Holton requested clarification on the hardship as he had heard D. Tinte refer to the driveway and trees. D. Tinte stated the hardship in this case was both the driveway room needed to maneuver and park and the tree removal.

B. Maslowski questioned whether the original house design that would have been moved farther north would have required the applicants to request a variance. D. Tinte stated he was uncertain without referencing the original plans but he thinks it might have all fit within the setbacks; however, that plan was abandoned as the homeowner did not like the way the house laid out on the lot.

B. Maslowski questioned whether there was any encroachment on the easterly side of the property as well. D. Tinte stated there was only the encroachment on the westerly

## CITY OF DELAFIELD BOARD OF ZONING APPEALS MINUTES

side. There was no additional water being diverted. The rain water would come off the house and be diverted in the same way it was being done today.

B. Maslowski stated he was concerned that no grading or erosion control plan was presented in consideration of this case as the applicant was asking the Board to provide judgment on a plan that did not reflect what could potentially develop into a future problem. Without this information he considered the application incomplete. He began to review various options on how to proceed at this time.

R. Lieblang stated the Board could make a ruling on the setback with the information at hand. G. Holton agreed.

D. Tinte stated his experience allowed him to know that a grading plan could be developed that would accommodate the house design should the setback variance be allowed. B. Maslowski stated he was not questioning his ability to do so in this case, only that there was other information that was required before he was able to make a decision. Even though some information had been provided, there were other options that might be available should the drainage plans have been submitted for all to review. At this point, he considered this application to be incomplete.

G. Holton stated any grading plan would be required to go through an approval process by the Building Inspector and City Engineer before moving forward. The Board was being asked to rule on the sideyard setback issue and he wanted to rule on that. R. Lieblang agreed.

R. Lieblang stated he did not see the hardship in this case that would make the property have to go with a smaller setback. B. Maslowski explained that the hardship was not identified in his opinion. Based on City ordinance, the Board should avoid creating a non-conformity and it was the Board's responsibility to examine the hardship as to why the encroachment was required in order to make use of the property. Because there was no drainage plan provided, he felt very strongly about not being able to decide on the matter.

D. Tinte stated he disagreed as the Building Inspector had the authority to stop the work on the site. He thought the water flow issue was easily mitigated and was easily obtainable.

B. Maslowski stated it was understood by all that this lot drained directly into Nagawicka Lake and no plan was provided regarding drainage. D. Tinte stated the original plans for the house would require additional trees to be cut down and did fit the site. This house plan also included a nice house and fit in well with the neighborhood.

B. Maslowski agreed it was a nice house but thought it was too big for the site.

A. Johnson stated the letter of denial did not state a drainage or grading plan was required in coming forward with the request for variance. B. Maslowski stated he still thought there was insufficient information to make a ruling.

**CITY OF DELAFIELD BOARD OF ZONING APPEALS MINUTES**

T. Hoffmann stated he had reviewed this site and noticed that there were two large oak trees in the back and mostly shrubbery. He did not think it seemed to impact the trees very much as the shrubbery in the corner would be impacted most. He thought it important to abide by the setbacks for individual lots and he didn't feel comfortable approving anything unless a hardship was established. At this time he did not think there was a hardship demonstrated in this case.

B. Maslowski stated the Board was trying to be helpful in providing information so that the applicant could see where modification was required. D. Tinte stated he could construct the original house plans but it would not be the best for the neighborhood. He did not think the Board was considering common sense in this matter and was only following the law.

A. Johnson requested the letter sent to all from Water's Edge Condos be read into the record at this time. B. Maslowski did so, noting that there was opposition to granting the variance as they thought proper setbacks should be maintained in this case out of concern for the storm water being diverted.

**R. LIEBLANG MOVED TO DENY THE APPEAL OF DAN LEBEAU, BADGER HOME BUILDERS, AGENT OF BRIAN MUELLER & DINAH DIRKSE-MUELLER (OWNERS), TO CONSTRUCT A TWO STORY SINGLE FAMILY HOME AT 1207 MILWAUKEE ST. THE PROPOSED SIDE YARD DOES NOT MEET THE 15 FEET MINIMUM REQUIREMENT IN THE R1-D DISTRICT PER SECTION 17.39(11)(H) BASED UPON VIOLATION OF THE CURRENT SETBACK ORDINANCE AND NO HARDSHIP HAD BEEN ESTABLISHED. A. JOHNSON SECONDED THE MOTION. DISCUSSION ENSUED REGARDING THE LACK OF PLAN INFORMATION SUBMITTED. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.**

6. ADJOURN

**R. LIEBLANG MOVED TO ADJOURN THE JULY 26, 2012 BOARD OF ZONING MEETING AT 8:21 P.M. G. HOLTON SECONDED THE MOTION. ALL WERE IN FAVOR. MOTION CARRIED.**

Minutes prepared by:

Accurate Business Communications, Inc.