

CITY OF DELAFIELD BOARD OF ZONING APPEALS MINUTES

1. CALL MEETING TO ORDER

B. Maslowski called the meeting to order at 7:30 P.M.

2. ROLL CALL

Present

Bill Maslowski
Gerry Holton
Al Johnson
Rick Lieblang
Marty Sawell

Absent

Also present

Attorney Jim Hammes

3. APPROVE MINUTES OF SEPTEMBER 10, 2009 MEETING

R. LIEBLANG MOTIONED TO APPROVE THE SEPTEMBER 10, 2009 BOARD OF ZONING APPEALS MEETING MINUTES AS PRESENTED. M. SAWELL SECONDED THE MOTION. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

4. NEW BUSINESS

Prior to consideration of this case, B. Maslowski read into record information related to the legal notice posted for Case 761. The legal notice posted contained a typographical error in that Section 17.39(8)(i) was incorrectly identified as Section 17.39(9)(i) relating to interior side yard setbacks for residential lake RL-1A city properties and a second error noted in that the letter issued by the City to Mr. Hyde also contained a typographical error. The appropriate section of the Zoning Code, Section 17.38(8)(i) was incorrectly identified as Section 17.39(3)(i) which pertained to the City's agricultural district zoning. He apologized on behalf of the Board of Zoning Appeals for these errors.

CASE 761 – APPEAL OF ROBERT HYDE (OWNER) OF 1920 BARK RIVER DR., DELC 0754.995.001, TO BUILD DETACHED GARAGE RELATING TO SECTION 17.39(8)(F) AND SECTION 17.39(9)(I) REGARDING FRONT STREET SETBACK REQUIREMENTS AND INTERIOR SIDE YARD REQUIREMENTS.

B. Maslowski reviewed the case, noting the request to rebuild a detached garage regarding front street setback requirements and interior side yard requirements had been denied. He read into record a letter from the City Building Inspector denying the request for a building permit as the proposed garage was only 25 feet from the front property line and 10 feet from the easterly side lot line. He also noted a letter from the applicant requesting consideration be given to a

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variance for front street setback requirements and interior side yard setbacks necessary to complete the rebuilding of the garage was included in the materials submitted for the meeting. B. Maslowski distributed a letter from a neighbor in support of the request to the Board at this time, noting it had been received after the packets for the meeting had been distributed to Board members.

Robert Hyde, applicant, of 1920 Bark River Drive, was present and explained he wanted to construct a new garage to store boats, lawn mowers, and watercraft currently in the yard. He had chosen the proposed location of the garage because the back yard could not be accessed as his lot was already non-conforming with only ten feet between the house and the property line and included a steep hill to the backyard. The front west side would have less than 25 feet from the road, and many ornamental trees were located in that area. In addition, a second driveway would be required. The proposed new garage could not be attached to the existing garage as it would not be within the ten foot side yard already in existence. He noted within 800 feet of his property, there were several garages already built within setback areas that would require a variance.

G. Holton questioned whether it was possible to move the garage off the road an additional 25 feet and south or west five feet. This would require the existing drive to be rerouted, but only one tree would be lost. B. Hyde stated this location would encroach onto the driveway that would need to be rerouted. The driveway angle was already quite difficult in accessing the property and would pose additional difficulties getting to the existing garage. In addition, he noted the house did not sit square with the lot line and this would place the garage too close to the lot line and would look terrible in his opinion.

In response to a question, B. Hyde noted he owned the lot to the west of this property as a separate lot and he did not want to place this structure on that buildable lot. He then distributed several photos to the Board depicting other garages in his neighborhood that were within the setback.

R. Lieblang questioned whether the width and depth of the proposed garage could be made smaller. B. Hyde explained the dimensions proposed were due to the fact that he needed that specific length to store his pontoon boat.

B. Maslowski questioned the Board on whether this case constituted a hardship in each Board member's opinion.

G. Holton stated while he knew it was less desirable for the owner, he would like to see the garage slid to the west and south toward the primary residence.

R. Lieblang agreed, noting even if the garage was moved back, it still would not meet the front street setback requirements.

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M. Sawell stated to move the garage to the location being discussed would only gain 10-15 feet and would block the existing garage.

A. Johnson stated while he would like to see the garage further away from the roadway, he thought in this case it should be moved closer to the road and further from the neighboring lot line.

M. Sawell stated the garage could be constructed approximately 12-15 feet from the easterly lot line and be 25 feet from the road.

B. Maslowski stated he was concerned that this neighborhood was undergoing redevelopment at this time that could be seen on all properties and he did not see a hardship in this case. All materials he had read regarding the zoning determination in any case stated there should be a hardship and state guidelines provided to determine what legitimate hardships would be. He noted he had come to accept that fact that he would not be able to develop his own lot to his liking as he did not have the property to build it on to meet the zoning codes. He thought the Hyde's should reconsider moving the garage location so that it was further from the road as this property was at the main entrance to the subdivision. While he thought the property was extremely well kept, he still thought it would make a statement to the community if allowed to be constructed in the proposed location. He suggested the applicants be creative in moving the driveway or consider storing the items off site; however, he did not see a hardship in this case.

B. Hyde noted the lot was already non-conforming and moving the drive was not a good option in this case.

Discussion ensued regarding options the Board had in requesting an applicant return at a later date with other alternatives. A. Johnson stated the Board was allowed to make a recommendation as desired; however, the role of the Board was to determine if a hardship was present in any matter, and in this case, he did not think the case should be approved as it would set a precedent negatively. J. Hammes explained the procedural possibilities for the Board.

It was the consensus of the Board there was no hardship in this case.

G. HOLTON MOVED TO TABLE THIS MATTER UNTIL A FUTURE MEETING OF THE BOARD OF ZONING APPEALS. R. LIEBLANG SECONDED THE MOTION. B. MASLOWSKI EXPLAINED THIS MOTION WOULD ALLOW THE APPLICANT TO RETURN WITH MODIFICATIONS TO THE PROPOSAL IN THE FUTURE. THERE WAS NO FURTHER DISCUSSION. ALL WERE IN FAVOR. MOTION CARRIED.

With regard to the next case on the agenda, A. Johnson stated he did not think much of letters written anonymously threatening legal action as it was important to hear the case first.

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CASE 762 – APPEAL OF MICHAEL AND SUSANNE MICHELS (OWNERS) OF 34264 VALLEY RD, DELC 0624.001.003, FOR A BOATHOUSE UNDER CONSTRUCTION RELATING TO SECTION 17.22(7) REGARDING LOCATION OF THE BOATHOUSE TO THE ORDINARY HIGH WATER MARK

B. Maslowski stated this was both a simple and complicated case at the same time as all documents submitted were approved by the City but a hurdle was missed along the way.

B. Maslowski then reviewed the case, noting the request to build a boathouse, currently under construction, at 34264 Valley Road, had been stopped due to the location of the boathouse relative to the ordinary high water mark (OHWM). He read into record a letter from the City Building Inspector denying the request for continued construction of the boathouse as it was being constructed at a location 18 feet from the OHWM with the back wall 48 feet from the OHWM and this distance was beyond the maximum allowance of 35 feet from the OHWM. A stop work order had been issued until this matter could be resolved. He also noted a letter from the applicant requesting consideration be given to a variance for the existing location of the boathouse was included in the materials submitted for the meeting. Several petitions from neighbors showing support were also submitted for the Board to review.

Mike and Sue Michels, applicants, currently residing at 3038 Interlachen Drive, Oconomowoc, were present.

J. Hammes explained that in order to grant a variance the Board had to find a hardship in any case. A hardship was defined as an issue where one cannot reasonably or practically comply with the City's ordinance. In this case, it would be the reason why the boathouse could not be placed within the setback of the City's Code requirements.

M. Michels stated that when he had hired an architect and other professionals, the current location of the boathouse was determined as being the one that would look best from the lakeshore due to the topography as it fit into the hill and to have to move the current boathouse would be a hardship for other residents to look at it. He stated he did not want to be the neighbor that made it worse for others and to that end, had circulated a petition to all neighbors on the lake regarding movement of the boathouse. Those petitions had been submitted to the Board with the case documentation.

S. Michels stated the developer owned the lot next to theirs and he had stated he would prefer it to be kept in its current location.

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M. Michels explained the City had issued a building permit, footings had been inspected and the boathouse had been constructed to plan with no changes.

R. Lieblang stated he walked the property earlier in the day, and he would not want to see it any closer to the lake as he thought the setting was perfect. He was concerned about the soil being disturbed as a result of having to move the boathouse closer to the lake and approximately six to eight trees would need to be removed in order to accommodate the movement.

David Barnam, 3758 North Hickory Lane, Summit, stated aesthetically he had no problem with the boathouse location. He knew there had been many extraneous circumstances with the construction and it had received a great deal of attention. He also knew the Michels had gone through the entire application process with all inspections and approvals granted. He thought as a result of those actions, it was a hardship to expect a homeowner to anticipate other things as professionals had been hired and utilized to guide them through the process. To deconstruct and construct the boathouse further forward with other environmental impacts would not be prudent. He thought the Michels had acted in good faith through the entire process.

G. Holton agreed with R. Lieblang and questioned the number of lots on the lake. It was noted to be approximately 31. In addition, he stated he thought the property was gorgeous and would be stunning if the garage was any indication of construction outcomes. He stated he was searching for a hardship in this case. He read the letter submitted as well as past minutes that noted the applicants understood the minimum of 5 feet from the lake but he was confused as to the determination of the Ordinary High Water Mark (OHWM) referenced in minutes related to this case.

M. Michels explained the process for determining the OHWM in his case, noting this determination did not come from the DNR until after the survey for his property was submitted to the Plan Commission for use in approval of the boathouse plans. It was determined by the DNR that the OHWM was the shoreline and thus, no corrections to the survey were needed.

S. Michels stated that once she and her husband had been given the approval letter from the City stating that approval was required by the Building Inspector, and that approval had been granted, they did not learn anything was amiss with the construction of their boathouse until the DNR raised the issue as a stop work order.

G. Holton explained he found a reference to the appropriate location of the boathouse as specified in the City Code in the October 28, 2008 Plan Commission meeting minutes. He had spoken to the Building Inspector in recent days and found that at that time, the Inspector had visited the site to inspect the footings and measure four stakes for the boathouse location. There

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was no OHWM delineated at that time, so an assumption was made that the stakes were correct.

R. Lieblang stated it was uncertain where the mistake was made, but he could not see moving the boathouse closer to the lake in this case at this time. A. Johnson agreed.

M. Sawell agreed, noting it would be more detrimental to move it toward the lake in this matter.

B. Maslowski stated the hardship was the way that this issue was handled. He thought the hardship was found in that the City did not do their job very well and put the applicants into this position. He agreed that the applicants did all that they should have done and were now being asked to do something retrospectively.

G. Holton stated it was important not to put the whole burden on the City as the code requirements were stated in the minutes. He did not see a hardship in this case as the new zoning codes were the same as the old zoning codes regarding the location of the boathouse. In addition, a variance had already been granted for this boathouse under the old code to be wider.

R. Lieblang disagreed, as he thought there would be sight problems on the lake for other residents that were unwanted and there would need to be 8-12 trees removed if the boathouse was required to be moved.

A. Johnson agreed, while he did not see a hardship, he thought the boathouse should stay five feet from the lake.

M. Sawell stated he did see a hardship in this case as someone made an error; however, in this case, the boathouse should be kept back at its current location.

R. LIEBLANG MOVED TO APPROVE THE EXISTING SETBACKS ON THE PROPERTY BECAUSE OF THE IMPACTS TO THE SIGHT VIEW TO MOVE THE BOATHOUSE FORWARD AND IMPACTS TO THE TREES ON THE PROPERTY. A. JOHNSON SECONDED THE MOTION. G. HOLTON STATED HE THOUGHT THIS CONCERN WAS DUE TO AESTHETICS AND IF THE BOATHOUSE WERE MOVED TO THE PROPER SPOT HE DID NOT SEE IT INFRINGING ON ANY NEIGHBORS VIEW. S. MICHELS STATED TO MOVE THE BOATHOUSE FORWARD WOULD PULL IT OUT OF THE HILLSIDE AND IT WOULD BE INTRUSIVE TO THE LAKE. G. HOLTON QUESTIONED WHETHER THE CITY CODE WOULD ALLOW GRANTING A VARIANCE DUE TO AESTHETICS. R. LIEBLANG STATED SIGHT VIEWS WERE A LARGE PART OF ZONING ISSUES, FOR EXAMPLE IF SOMEONE BLOCKED VIEWS OF OTHERS WITH A GARAGE, PROPERTIES WOULD BE DEVALUED. J. HAMMES STATED AS A PRACTICAL MATTER, THE PLANNING COMMISSION SHOULD SEND

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ITEMS REQUIRING VARIANCE TO THE BOARD OF ZONING APPEALS FOR RESOLUTION PRIOR TO APPROVING THE PLANS REQUESTED. **THERE WAS NO FURTHER DISCUSSION. FOUR WERE IN FAVOR. G. HOLTON OPPOSED. MOTION CARRIED.**

A. Johnson requested that when people bring in plat drawings, trees and neighboring structures be included on those drawings for the Board to consider during the review process.

J. Hammes distributed a list of specific items to be included in documentation submissions for the Board to consider, and he stated he thought it important to also include space on those forms to explain the hardship in written form. Also, when anonymous letters were submitted, they would become part of the record on the case, but the Board should decide the amount of credence to give them. He requested feedback on the list of specified items included in document submission at the next meeting of the Board.

5. ADJOURN

R. LIEBLANG MOTIONED TO ADJOURN THE NOVEMBER 12, 2009, BOARD OF ZONING MEETING AT 8:40 P.M. A. JOHNSON SECONDED THE MOTION. ALL WERE IN FAVOR. MOTION CARRIED.

Minutes prepared by:

Accurate Business Communications, Inc.