

Shorewood Board of Appeals Meeting Minutes

August 9, 2016

3930 N. Murray Avenue, Shorewood, WI 53211



1. Call to Order.

The meeting was called to order at 5:31 p.m.

2. Roll Call.

Kathy Nusslock	Aye
Lance Mueller	Aye
Michael Paulson	Aye
Beth Aldana	No
Jeff Schmekpeper	No

Mr. Paulson was acting chair.

Also present: Village Attorney Nathan Bayer, Building Inspector Justin Burris and Planning Director Ericka Lang.

3. Statement of Public Notice.

The meeting had been published and posted according to law.

4. Approval of June 14, 2016 meeting minutes.

Ms. Nusslock moved, seconded Mr, Mueller. Vote 3-0 to approve the minutes.

5. Attorney to Review the Standards by which the Board of Appeals must abide.

Village Attorney Nathan Bayer reviewed the standards for variance requests per 535-19. The Board of Appeals has power to hear and grant appeals that are not contrary to public appearance. Zoning Section 535-58 specifically says that no variance to the provisions of this chapter shall be granted by the Board unless it finds that all of the following facts and conditions exist and so indicates in the minutes of its proceedings:

- A. Exceptional circumstances. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot, parcel or structure that do not apply generally to other properties in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that this chapter should be changed.
- B. Absence of detriment. The variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and the spirit of this chapter or the public interest.

6. Public Hearing: Appeal of denial of building application to construct a pergola within the zoning rear setback at residential property 4030 N. Downer Ave.

Property owner Sandra McClellan was present. Building Inspector Justin Burris introduced the item. The Village received a Board of Appeals application on May 26, 2016 from property owners Sandra and Tom McLellan, who are requesting a variance for a pergola proposed within the zoning rear yard setback. The building application was denied May 6, 2016.

The property is located in the R-6 Zoning District; Village zoning code section 535-19 F. (5) states: setback: (a) rear, minimum three feet. The gazebo is about one foot within the side yard setback. The northeast corner of the pergola is located two feet from the rear lot line. Per the survey, the rear yard angles, so the remaining pergola is not within the rear setback.

- 8.75-foot pergola height at far northern post
- 5.5 feet from the northern side property boundary
- No roof
- 18" overhang, possibly reduce to 14"

Materials provided: BOA application, applicant materials, pictures, building application, denial letter, property survey.

Attorney Bayer clarified that the pergola encroaches one-foot into the rear setback.

Mr. Burris noted that the pergola runs about 8 feet along the rear boundary.

Ms. Nusslock stated that on the marked survey, there is an existing patio area highlighted, then the patio block highlighted. Would the proposed posts go just beyond the proposed patio- at the point the patio block stops and not be within the setback? Mr. Burris confirmed that is correct. The size of the proposed pergola is 9' 22'.

Property owner Sandra McClellan was present. The rear patio has been there for years. Recently the neighbors cleared trees, so the pergola is for privacy. Can't plant trees because under power lines.

Ms. Nusslock stated that if the pergola is only the size of patio, it wouldn't be in the setback. Ms. McClellan replied correct; however, it is a wood chipped area and there is a hot tub in area, not on the patio and off to the side. The purpose of the pergola is to also screen the hot tub.

Mr. Paulson opened the item for public comments. No comments received.

Mr. Mueller feels the shape of the property is unique. The challenge of standpoint is how show unreasonably burdensome.

Mr. Paulson: owing to special conditions, which is the angle of lot, is whether it results in practical difficulty. Given minor intrusion into setback, seemed forcing attempt on arbitrary lot line in a form of pergola to provide any release, as what explained, privacy and

protection was afforded by trees.

Ms. Nusslock moved to approve a variance, meeting the findings in 535-58, seconded by Mr. Mueller. Roll call vote:

Lance Mueller	aye
Kathy Nusslock	aye
Michael Paulson	aye.

7. Public Hearing: Appeal of denial of HVAC application to install an air conditioning unit within the street side yard zoning setback at residential property 2200 E. Jarvis Street.

Building Inspector Justin Burriss introduced the item. The Village received a Board of Appeals application on June 21, 2016 from property owners Paul and Patti Rohde, appealing the denial of a HVAC application that identifies an AC unit within the street side yard setback.

The property is located in the R-6 Zoning District; Village zoning code section 535-19 F. (5) states: setback: (c) Side: [2] street side: 25% of the width of the lot but not less than 10 feet, provided that the buildable width of the lot shall be not less than 20 feet.

To meet zoning code setbacks, any structure on this parcel must be 31.875 feet from the street side property boundary. Per the attached site plan, the house is located 22 feet from the side boundary, measured to the bay or 31.083 feet measured to the primary structure. The AC unit outside edge is measured 27.5 feet from the side boundary and is entirely within the setback. Given the house is not setback 31.875 feet from the property boundary, it is a legal nonconforming structure.

Materials provided: BOA application, pictures/aerials, denial letter, property survey.

Mr. Paulson asked if anything on Maryland Ave side would be within the street side yard setback. Mr. Burriss replied yes.

Paul and Patti Rhode present. They live on a corner lot and have no backyard, so only two options for the AC unit: putting it on SE side or the NW side. The SE side would be compliant, but that is where the patio is and would restrict any expansion in future. On the NW it would be shielded from the street because of landscaping. Letters from neighbors were shown.

Ms. Nusslock asked that for the preferred location, if it would not go past where the bay windows end. The Rhodes replied correct.

Mr. Paulson opened the item for public comments. No comments received.

Ms. Nusslock: given there is no backyard, it creates an exceptional circumstance. Question if meets standards of practical difficulty or unnecessary hardship.

Mr. Paulson agreed about hardship. Practical difficulty comes down to what's a reasonable location for the unit given inset of sunroom and absence of backyard. Placing anywhere other than there, is aesthetically difficult and is inconsistent with general purpose of code to create efficient use of parcel with least amount of interference with neighbors and community. There is practical difficulty to find another location that would conceal this unit.

Ms. Nusslock agrees better location on NW side from aesthetic view point. The difficulty is limiting future expansion of what can do outside and application said about noise, which is a difficulty at SE location.

Attorney Bayer reviewed zoning section 535-55, about power to grant variances. Per 535-58 the two findings that must go into the records is exceptional circumstance and absence of detriment.

Mr. Paulson stated that this is not a general type location so can make findings under 535-58.

Mr. Mueller moved to approve a variance, meeting the findings in 535-58, seconded by Ms. Nusslock. Roll call vote:

Lance Mueller	aye
Kathy Nusslock	aye
Michael Paulson	aye

8. Public Hearing: Appeal of denial of building application to construct a parking slab within the side yard setback at residential property 4540-42 N. Morris Blvd.

Building Inspector Justin Burris introduced the item. The village received a Board of Appeals application on July 6, 2016 from property owner Liesel Geyer Gilmore, appealing the denial of construction a single-car parking slab that would be within the side yard zoning setback. Parking slabs are considered structures and must meet zoning setback requirements.

The property has a two-car detached garage accessed via a rear alley. Per 535-449H(4) two-family dwellings may install up to a two-car parking slab alongside a garage. The proposal is for a 9' x 22' slab. As a point of reference, the minimum required parking stall size in a lot is 9' x 18'. Currently there is a narrow path and dirt on the north side of the garage, which is the proposed location.

Per the attached survey, the distance between the garage and the northern property boundary is 10.2 feet, locating the slab within 1.8 feet of the zoning side yard setback (or 1.2 feet from side property boundary). Per 535-19F(5)[c] the zoning interior side yard setback is 3 feet.

The property is located in the R-6 residential zoning district, allowing one- and two-family residences. The property is a nonconforming lot size because the lot width is 30 feet. Per 535-F(3)[a], minimum lot width is 40 feet.

Materials: BOA application, building permit, property survey, aerial, photo's, code sections.

Ms. Nusslock confirmed part of the parking slab will be within the side setback.

John Krause was present, property manager and representative for the property owner. Tenants have been parking on dirt next to the garage. The owner would like to better the neighborhood and install a slab. There are four cars for the units at this time.

Mr. Paulson asked if parking provided absence the slab. Mr. Krause said no. The owner has been purchasing a hardship permit while working through this. Tenants have been parking alongside the garage on dirt for many years.

Mr. Paulson opened the item for public comments. No comments received.

Ms. Nusslock stated that the fact the lot width is 10 feet narrower than the required 40 feet, creates exceptional circumstance that doesn't apply to other parcels. Do not see any detriment by the slab being in the zoning setback. It has been used and most likely would go back to being used for parking that doesn't add to value because nothing grows. Literal enforcement of ordinance would result in practical difficulty for tenant parking and do not see detriment to neighboring property.

Ms. Nusslock moved to approve a variance, meeting the findings in 535-58, seconded by Mr. Mueller. Roll call vote:

Kathy Nusslock	aye
Lance Mueller	aye
Michael Paulson	aye.

9. Public Hearing: Appeal of notice to reduce height of fence from 6 foot to 4 foot at residential property 4503-05 N. Marlborough Drive.

Building Inspector Justin Burris introduced the item. The village received a Board of Appeals application on July 20, 2016 from property owner Jo Ellen Bilgo, appealing the correction notice from the village to lower the rear yard fence height of a recently constructed solid wood fence to meet village code. The fence is six feet tall and is adjacent to residential property 1022 E. Kensington. The fence parallels the side yard of the neighboring property.

The property is located in the R-6 residential zoning district, allowing one- and two-family residences. The property is a nonowner-occupied two-family dwelling. Per building code 225-8 (5) No fence more than four feet in height may be erected between adjoining properties when the fence parallels an existing residence and the distance between the fence and the residence on either property is less than six feet.

Fence facts:

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- Fence located rear yard
- 6-foot height, solid cedar
- 3.25 feet distance fence to neighbor's house 1022 Kensington
- 3.76 feet distance fence to 4503 Marlborough

Materials: BOA application, building permit, notice of correction letter, property survey, aerial, photo's, building chapter 225-8.

Mr. Paulson noted that the building permit was granted but the permit itself did not indicate the height.

Ms. Nusslock asked if when a building permit is issued, is the applicant directed to the appropriate code section. Mr. Burris said yes.

Jo Ellen Bilgo was present who is the owner of the rental property. The fence originally built fell down. It was a five-foot fence that graduated to six feet. The house next door is a side-by-side condominium. The rear of this house has a bedroom that is completely exposed to the condo neighbors. She has letters from both condo owners that prefer the higher privacy fence.

Ms. Bilgo explained where the neighbors deck is and windows. Ms. Bilgo showed pictures of the dilapidated fence before replacement.

Ms. Bilgo said the contractor didn't interpret the code correctly. Mr. Burris said the contractor met with more than one inspector at the village.

Mr. Paulson opened the item for public comments. No comments received.

Mr. Mueller questioned amendments on code. Attorney Bayer cannot answer exactly what was changed in the fence code when it was amended in 1990, 2004 and thereafter.

Mr. Paulson added that don't know if the prior fence pre-existed the ordinance.

Mr. Mueller stated the issue with the property is its close proximity to the neighbor and lack of space between the property. This is consistent with public interest but question if compliance is unreasonable or practical difficulty.

Ms. Nusslock commented that without a fence of some sort, there would be a complete lack of privacy, which is the practical difficulty.

Mr. Paulson stated that even with various lots sizes and density, don't often get homes with less than 6 feet distance between them, so practical difficulty. Clearly no detriment or adverse to public interest, legitimately claim, that enforcement would result in practical difficulty.

Mr. Paulson moved to grant the variance, meeting the findings under 535-58, seconded by

Ms. Nusslock.

Ms. Nusslock is troubled that the fence was installed and the code section known by the contractor.

Roll call vote:

Lance Mueller	No
Kathy Nusslock	aye
Michael Paulson	aye

10. Public Hearing: Appeal of notice to construct a detached garage at residential property 4604 N. Woodruff Ave.

Building Inspector Justin Burriss introduced the item. The village received a Board of Appeals application on July 7, 2016 from property owner Tanner Teipel, appealing the denial for the reconstruction of a driveway and requesting a variance. The driveway was reconstructed before a permit was issued. The application was denied because the driveway does not lead to a garage per 535-9F(4).

The single family dwelling was built in 1950 without a garage. A copy of a 1951 plat of survey is attached and does not show a garage. The property is located in the R-6 residential zoning district, allowing one- and two-family residences. The property is a nonconforming lot because the lot width is 39 feet. Per zoning section 535-F(3)[a], minimum lot width is 40 feet.

Lot: 39'w x 131.4'd; •8' driveway width and the distance between south side house to side property boundary; 8' min driveway width required per 535-9F(5); 5,124.6 sqft lot size.
Min requirement 4500 sqft

Materials: BOA application, building permit, property survey, aerial, photo's, code section 535-94.

Property owner Tanner Tiepel was present. There were slabs as driveway but tree roots upheaved. Hired contractor who was told the property was in Whitefish Bay, which doesn't require permits for driveways, so the driveway was installed. Also had to replace because the old driveway settled so all water pooling into basement. The new driveway now takes water away from the house. It's not financially feasible to construct a garage. Backyard has five cedar trees and porch so all would have to be removed if built a garage.

Mr. Paulson noted the phrasing of the code, that a new driveway cannot be constructed unless it leads to a garage, whereas, the only reference to a reconstructed garage, that a reconstructed should be 8 feet. The code has a distinction between new driveway and reconstructed driveway must lead to a garage. Nothing in code that a driveway previously permitted, if it was reconstructed has to go to a garage.

Attorney Bayer reviewed nonconforming structure regulations.

Mr. Burris stated that per zoning section 535-47, a single family dwelling must have minimum of one parking space in approved garage.

Mr. Paulson stated that presumably the house was built before that requirement, so nonconforming.

Mr. Paulson opened the item for public comments. Jean Pierre at 4538 N. Morris questioned if something was pre-existing, why can't it be grandfathered through. There is no issue if is a slab. Why was the house built without a garage?

Ms. Nusslock: the situation is the use of that strip of property, whatever it might be, it meets all requirements except not having a garage. Constructing a garage would take up a good part of the backyard and a means of turning would be hard to get out because of how narrow the driveway is. Having to build a garage would be a practical difficulty. Heard from property owner that the driveway has served the benefit by creating runoff, achieving one purpose of driveway, to redirect stormwater. Requiring the property owner to tear up the new driveway would recreate the circumstance that lead to water into the basement. So literal enforcement would create practical difficulty. Given the house was built without a garage and that the driveway does not appear to be a detriment to anyone, Ms. Nusslock moved to approve, making findings per 535-58, seconded by Mr. Mueller.

Roll call vote:

Lance Mueller	aye
Kathy Nusslock	aye
Michael Paulson	aye

11. Adjournment.

M. Nusslock moved to adjourn the meeting at 7:04 p.m., seconded by Mr. Mueller. Vote 3-0.

Recorded by,



Planning Director Ericka Lang