



MINUTES OF AN OFFICIAL MEETING:

Regular / Special Meeting: **Board of Zoning Appeals**
Date and Time: March 11, 2021, at 7:00 PM
Location: City Hall, 2000 N. Calhoun Road, Brookfield, Wisconsin

Members Present: Rod Carter, Gordon Rozmus, Frank DeGuire, Dean Marquardt, Mark Krause

Members Excused: Ald. Bill Carnell, Ald. Jenna Meza

Others Present: Zoning & Building Administrator Larry Goudy

1. ROLL CALL

Gordon Rozmus called the Board of Appeals to order at 7:00 pm. He stated that the notice of hearing has been duly published pursuant to the State open meetings law and explained the procedure to present the appeals to the Board this evening. Mr. Rozmus indicated that a quorum was present and that the request for variances must receive the affirmative vote of three members of the Board in order for a request to be granted.

2. MINUTES OF THE AUGUST 13, 2020, BOARD OF APPEALS

Dean Marquardt moved approval of the August 13, 2020 Board of Appeals minutes. The motion was seconded by Frank DeGuire and carried unanimously.

Public Hearing & Consideration of Appeal: *Certain requests for building and sign permits have been submitted to the City of Brookfield and have been denied by the Zoning & Building Administrator because they did not comply with the Zoning, Building or Sign Code of the City of Brookfield. There will be a Public Hearing held on March 11, 2021, at 7:00 pm at the Common Council Chambers for the express purpose of considering the following request(s) for variance. Please note that following the public hearing(s), the Board intends to take action by considering the request indicated.*

New Business

3A. NADIA & JAMAL QURESHI, 18580 PATTI LN., FOR AN INGROUND SWIMMING POOL

The request of Nadia & Jamal Qureshi, Lot 13 Weston Highlands being in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec 33, to appeal Sections 15.04.330 C.1 & C.3 to permit an inground swimming pool and fence at 18580 Patti Lane. The proposed pool is located within the required 25' offset area. The fence is located on the north lot line. The required fence offset is 10 feet.

Mr. Larry Goudy stated this is a request for both a swimming pool and fence. The variance request is for both of them because they don't comply with the Code. The proposed pool must be located outside of the offset lines. In Weston Highlands, the

offset area from interior lot lines is 25'. In the case of swimming pools, it's not to water's edge. Three feet around an inground pool is considered part of the pool. Therefore, it is 28' to water's edge. The proposed pool is 7-1/2' from the north lot line. In regards to fences, they may not go beyond 10' from the hardscape area but never closer than 10' to the lot line. The shed is shown on the plan and meets all the standards of the Code. The proposed pool is 20'x40' in the rear yard. The unique thing to this property is that property directly to the north is an outlot that is part of the Weston Highlands subdivision. It's not a buildable area. The outlot serves as a water retention area. Staff has received no comments from the neighbors.

Mr. Goudy stated in the Board's packet, there is a copy from the Weston Highlands's Homeowners Association and Board of Directors. Mr. Rozmus stated the Board of Directors approved the plans.

Mr. Marquardt asked if the concept to move the pool closer to the rear of the house, moving it south closer to the planters, has been reviewed. Is there a reason why that can't be done? Mr. Qureshi replied if he did it that way, he would still need a variance or break into the existing concrete to meet the 28' limit. It could be done, but they use that space a lot. He stated it definitely was not a preference. Mr. Qureshi stated the outlot is 42' on the north lot line. It looks like that is yard, but it is not. He maintains it, though. The tree line is at the lot line. Mr. Rozmus asked if the outlot has street access. Mr. Goudy replied no, it is not a buildable lot. Mr. Qureshi explained that the property to the east of the outlot is actually someone's property (not an outlot). Mr. Marquardt added that just north of that outlot is where another property line starts. Mr. Qureshi stated that the outlot behind him is 42.4 feet. He wouldn't be touching that outlot but would want to use that outlot as part of the 28' offset requirement. The Homeowners Association discussed this and the Board of Directors agreed that it was fine. They actually wanted to sell the outlot to them, but they are not allowed to. Mr. Rozmus asked if the fence surrounds the entire pool area. Mr. Qureshi replied yes. Mr. Rozmus asked if the shed meets all the standards. Mr. Goudy replied yes, it meets all the standards. Mr. Marquardt stated the only issue he struggles with is if the pool could move closer to home. He doesn't like a fence right on the property line. It sets up future maintenance issues. However, the outlot resolves that problem of maintenance of the fence. Mr. Marquardt stated when he looks at the photos, he doesn't see a reason why it couldn't be moved somewhat. Mrs. Qureshi stated she plans to maintain the outlot. Mr. Marquardt stated the next homeowner may not, though.

Mr. Rozmus stated the hard surface areas would still be accommodated. Mr. Goudy replied the concrete around the pool can be done any which way. If the pool was to be moved, the concrete would follow the location of the pool. When we get in-ground swimming pool permits, we have our storm water engineer review them as well to make there is no negative impact on the surrounding neighbors. In this case, he didn't feel that would be an issue given that there is no neighbor to the north. The engineer will review this regardless.

In terms of the variance, Mr. Goudy stated it could be moved 10' without infringing on that patio.

Mr. Carter stated he felt torn. He could comply but there is also the outlot which is a uniqueness. The owner could minimize the variance by doing some things.

Mr. Marquardt asked the owner his comfort level moving the pool somewhat south, away from the property line. Mrs. Qureshi replied they are flexible, but from a mother's perspective, she would feel much more comfortable with her children having the pool further back. Mr. Qureshi also added that if it's a matter of maintenance of the lot line where the fence would be, 5' would be more than enough for him. One of the planters is actually a fire pit with a gas line feed. He would have to tear the existing third of the patio, including the fire pit, to get close to the 28' line.

Mr. Qureshi stated 3'-5' would be ok. Mr. Marquardt stated the variance would be for the pool and the fence. The Zoning Code really looks to visual and impact on the neighborhoods. A pool in the ground is not unlike a patio. It doesn't really reach a visual impact for neighboring properties like a house or garage addition. He would support the variance relocated 5' to the south (pool and fence). That would make it 11'-12' from the property line.

Moved by Dean Marquardt, seconded by Mark Krause, to approve the variance for the pool and fence but to move it 5' further to the south from the original request. Motion carried 5-0.

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3B. SANDRA AND MATTHEW NIES, 2430 BROOK SPRINGS DR.: GARAGE ADDITION

The next item is the request of Sandra & Matthew Nies, Lot 4 Blk 1 Brook Springs PT SW ¼ SW ¼ Sec 15 T7N R20ER/2388 I/94 ('97), to appeal sections 17.32.020 B, to permit a garage addition at 2430 Brook Springs Drive. The proposed garage addition is located 16' from the property line. The required offset is 20'.

Mr. Rozmus stated the proposed garage is added on to an existing garage. The new garage is setback 5' and is 16' away from the existing garage and 18' from the rear. There is a letter of agreement from the neighboring property.

Mr. Goudy stated the applicant has created a photoshop picture if the proposed was approved. It's an addition of 14'x27-1/2' single bay addition to the side of the house. It was setback 5' from the existing home to meet that standard with the setback or it would have been more in violation. At one point it is 16' from lot line. At the rear of the property (pie shaped) is 18'. The variance request would be for a 4' variance.

Mr. Matthew Nies stated he doesn't feel it causes any hardship to his neighbors.

Mr. Marquardt stated if the garage is pushed, and change the depth of the garage, and reduce it by 5' to lessen the impact rather than 16', the proposal would have less impact on the property. Mr. Nies stated part of the reason of doing this is he has a trailer that would go into that garage space. He needs 25'-26' to accommodate a boat trailer. It is not kept on site currently.

Mr. Rozmus stated that the aerial photo shows the property well. It varies in sizes of lots on the street.

Mr. Marquardt stated the property to the north would see the addition from their front door, because of the lot configuration. Mr. Rozmus stated the roof line of the building would be extended over that structure. Mr. Krause stated it seems a lot of the residents were closer than 20' to the lot line. Mr. Rozmus stated the plans list the distance at 100.15' to the property to the north. Mr. Marquardt asked if this addition was built, would it meet the Code for total garage space? Mr. Goudy replied yes. In addition to this proposal, he is also planning on doing an addition to the family room. The square footage of the garage is not to exceed 50% of the square footage of the principle dwelling. The owner is within that number. Mr. Marquardt stated he is assuming the garage is 14' wide because of the boat. Mr. Nies replied he needs a 10' door. Mr. Marquardt added that if it's reduced to 12' width, it would reduce the distance. He asked if he would be willing to reduce the width? Mr. Nies replied it would be tough to reduce it based on leaving some space on the sides of the door. Mr. Marquardt stated he is struggling with this. Neighbors don't live there forever and the decisions made by this Board could last long term. If we reduce the width, only one corner would violate. Mr. Rozmus asked what is the width? Mr. Nies replied the proposed garage is 14' across with a 10' door. Mr. Nies stated that the neighbors

who face his house already look at the side of the house. There wouldn't be much difference. Mr. Nies stated that the exterior of the garage will match the brick on the front and probably do the same type of brick 3-4' up around the addition to match what is already there. There is already a small shop at the back end of that. His plan is to add a man door going from the original garage to the new garage. Mr. Rozmus stated regardless of what is put into that garage, there are minimum dimensions. Two feet on either side is tight with a 10' door. There is no way to reduce that.

Mr. Rozmus asked in looking at the new roof line, would it be in alignment with the peak on the existing roof. Mr. Nies replied he isn't sure yet. Mr. DeGuire stated the photo shows the offset. Mr. Marquardt added that if the board grants approval of the variance, they can do whatever they wish with the roof.

Motion by Frank DeGuire, seconded by Mark Krause, to approve the variance as requested for the reasons the owner has taken the measures to minimize the impact of the variance, there is a large distance to the neighbor's property, and the neighbor has agreed to it. Motion carried 3-2 with Rod Carter and Dean Marquardt voting no.

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3c. **Elizabeth & Charles Bongert, 12900 Blythe Rd.: Garage Addition & Residential Alteration**

The next item was the request of Elizabeth & Charles Bongert, Lot 14 Blk 8 Royal Oak PT NE ¼ Sec 13 T7N R20E, to appeal Sections 17.32.020 A & B, to permit a garage addition and residential alteration at 12900 Blythe Road. The proposed garage is located 46' from the front property line. The required setback is 50'. The existing home and proposed garage are located 18' from the side property line. The required offset is 20'.

Mr. Goudy stated the existing house has been in place for a very long time. The existing house is at 18' from the side property line. Looking thru historical records, we were unable to find anything that a variance was granted. This request is both to propose a garage addition that is part of an overall house alteration and to legalize the existing condition of the side offset. In this zoning district, the minimum setback is 50'. The proposed addition is located 46' from the front property line. The offset minimum is 20'. The proposed addition follows the existing line of the home which is 18' from the property line. There is no record of a previous variance on the home. This is a 21'x21.6' addition to the front of the home or 451 square feet. Staff did not receive any comments regarding this proposed variance.

Mr. Rozmus stated there is an existing garage on the property. Mr. Bongert stated the existing garage is currently directed to the west of the proposed garage. The existing garage would be converted to additional living room space and convert the family room to a 4th bedroom at the southwest corner of the house. Mr. Rozmus asked what the dimensions are. Mr. Goudy replied 21'x21.6' or 451 square feet. Mr. Rozmus asked if this will be a two-car garage. Mr. Bongert replied yes. They are taking the garage currently there and sliding it forward. Mr. Rozmus asked what the room behind the garage is. Mr. Bongert replied that would be a family room addition (existing garage) and mud room. Mr. Krause asked if there would be a fireplace. Mr. Bongert yes but there is a new location for it.

Mr. Goudy explained the existing house is located 2' within the required offset area. Not only is the existing house, but the proposed addition follows that same line. What is requested is a 2' variance to the side of the house which would take care of the existing condition as well as this proposal. Mr. Goudy also explained that it is a 4' variance request from the front setback for the addition. Mr. Marquardt stated the front setback in the City of Brookfield is considered very valuable. There is a document called the *Brookfield Concept* that explains back in the 1960's why Brookfield went with 50'

setbacks with a 60' road right-of-way, giving the 160' vista between homes. It's also explains why the roads are considered travel ways which you can walk and hike because of the large open spaces. He has a very hard time justifying any variance that goes into that setback area. He understands the reasons for the owner's idea and concept but he has a problem supporting it.

Mr. Bongert stated when he was looking at surveys of his neighbors, he tried to take that into consideration as much as possible. The neighbor to the south is currently 5' over the front setback. It was replied the subdivision was built in the 1950's and 1960's.

Mr. Carter asked what if the variance was denied. Mr. Bongert replied he would probably look for another home. Mr. Krause asked what if the current garage was reduced and the future garage was moved back a few feet. Mr. Bongert explained that he asked for less because he thought it would be more favorable. He tried to compromise by making the garage as small as possible. Maybe he could move it a foot.

Elizabeth Bongert stated the wall of the living room and dining room is shared with the current garage. They would take down that wall and open it up to expand the living space. The garage would be moved forward. They are cramped in the living room. The kitchen is adequate but outside of that, it's very tight. Mr. Krause asked if they are planning on making a bedroom. Mrs. Bongert replied yes, the kids need another bedroom which will be made out of the 13' family room. Mr. Bongert stated they thought of pushing it back but there is an existing tree back there. Their current living space goes up to the garage. Mr. Rozmus felt that by moving the garage back, they could put in a larger family room to the rear and use the existing roof line. The setback variances would be eliminated. It would not conform to the side yard but that variance would possibly be considered. Mrs. Bongert stated they really don't want to do that because they couldn't have a fourth bedroom then and it's down a hallway and doesn't tie into the open concept. They really don't want to take down the tree. Mr. Marquardt felt that the variance for the existing home is appropriate, but he would not support the variance to the front setback. Mr. Carter felt that other alternatives were established. Mr. Bongert agreed but because of the hallway situation, you can't tie the kitchen to the southwest corner of the home (there are basement stairs). Mrs. Bongert also eliminates the option for the 4th bedroom too. Mr. Rozmus stated he is a little concerned about legalizing the existing home without being sure what they wish to do. Mrs. Bongert stated expanding to the rear of the house would not do it, as it does not their achieve goals. Mr. Marquardt stated even if this isn't approved, it would be beneficial to legalize the variance in the existing home.

- Dean Marquardt moved to legalize the south side yard offset by granting a 2' variance. The motion was seconded by Rod Carter and carried unanimously.
- Dean Marquardt moved to deny the 4' variance to the 50' front setback. The motion was seconded by Frank DeGuire and carried unanimously.

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4d. **Anne Horner, 16415 Dane Ct. East: Garden House**

The next item is the request of Anne Horner, Lot 37 Fountain Plaza Addn 1 PT SW ¼ Sec 3 T7N R20E, to appeal Section 15.04.420 C.1.a to permit a garden house at 16415 Dane Ct. East. The proposed garden house is located on the property line. The required offset is 5'.

Mr. Goudy stated this is a request to place a new yard maintenance building within the 5' offset line. The regulation for sheds is with a new survey or survey that is within 1 year old, you may go up to 5'

from the property line. If there is an older survey, then it has to be a minimum of 20'. He stated this is another situation where we have a structure that is located in an area that did not get a variance. It did get a permit for the swimming pool. The pool is too close to the lot line. It makes it difficult to place anything else in that area legally. The other component of this is that there is a city controlled drainage easement on the east side of the property. He has spoken to the Engineering Department and their generally philosophy on easements is keep everything out of them. The stormwater engineer has a comfort level with two or three feet within the easements with the applicant signing a Hold Harmless Agreement between them and the City. The pipe that is back there isn't that close to the easement edge, so it is unlikely to occur. A 10'x18' yard maintenance building is the maximum allowed by Code and that is what the applicant is asking for. By fitting it next to the swimming pool, it places the corner of the yard maintenance building directly on the lot line.

Mr. Krause asked does it have to be so big. Mr. Marcus Horner replied not necessarily, but his mother is looking at the maximum possible storage space.

Mr. Marquardt asked where the pool equipment is stored today. Mr. Horner replied it is on the northeast corner of the pool. Mr. Marquardt asked what if the building was relocated on the driveway side (northeast side) of the pool. It was replied there is not much room there as shown on the survey. Mr. Carter asked if the variance is denied, what is the plan? Mr. Horner replied there is no other plan. He would have to defer to the mother. Everyone else in the neighborhood has one and it would be nice. Mr. DeGuire also asked why does it have to be the maximize size.

It was asked about the elevations. Mr. Goudy replied there is a significant drop off from where the pool is to carrying thru the easement area and a retaining wall. This is a duplex.

Mr. Rozmus stated the aerial photo shows a lot of coverage with the pool area. It was stated the size seems very large. Mr. Goudy stated that is the maximum allowed by Code. Garden sheds in many cases, are 10'x12' or 120 sq. ft. It depends on what the applicant wants and what is able to fit.

Mr. Carter stated if a 10'x12' shed is approved, how that changes it. Mr. Horner replied if he can move it over a little bit more, 10'x12' would work. Mr. Goudy stated the stormwater engineer would feel comfortable with 3' max encroachment. Mr. Goudy stated the shed can't be moved more eastward as it would violate the easement more. The pool is 20'x40'. Mr. Goudy added that there are topography issues on the other side making moving the shed impossible.

Mr. Marquardt stated the topography creates a hardship. The pool is very much lower than the house. It can't be moved closer to the garage. The drainage easement is an issue too. Those elements create a hardship. He would be more comfortable granting a variance for a smaller size shed, not 10'x18'. Mr. Goudy suggested a size and their survey company can scale that on the drawing so we know the exact dimension to the lot line. We would be guessing right now with a 2' variance. We could get it on the next Board of Appeals meeting. The owner said that was doable by him. Decreasing the size of the shed to something more reasonable should be discussed with the owner's surveyor. Mr. Marquardt suggested a conventional variance of 3' (not 5') and the owner could make it fit. He stated there are topographical issues on the property that create a hardship. In the absence of those, this wouldn't be an issue.

- Dean Marquardt moved approval of a 2' variance (3' off the lot line.) The motion was seconded by Mark Krause and carried unanimously.

4. ADJOURNMENT

***Motion by Dean Marquardt, seconded by Frank DeGuire, to adjourn the meeting at 8:35 pm.
Motion carried unanimously 5-0.***

RESPECTFULLY SUBMITTED:

RENEE J. TADYCH, DEPUTY CITY CLERK
CITY CLERK'S OFFICE