



## MINUTES OF AN OFFICIAL MEETING:

Regular / Special Meeting: **Board of Zoning Appeals**  
Date and Time: September 9, 2021, at 7:00 PM  
Location: City Hall, 2000 N. Calhoun Road, Brookfield, Wisconsin

Members Present: Rod Carter, Gordon Rozmus, Ald. Bill Carnell, Dean Marquardt

Members Excused: Mark Krause, Ald. Jenna Meza, Frank DeGuire

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 JUNE 10, 2021, BOARD OF APPEALS

***Motion by Dean Marquardt, seconded by Alderman Bill Carnell, to approve the June 10, 2021, Board of Appeals minutes. Motion 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 September 9, 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. BRIAN & STEPHANIE SUTTON, 370 WESTMOOR DR.: RESIDENTIAL ADDITION

The request of Brian & Stephanie Sutton, Lots 1 & 2 Blk 4 Westmoor Highlands Pt SW ¼ Sec 26 T7N R20E, to appeal Section 17.36.020 to permit a residential addition at 370 Westmoor Drive. The proposed addition is 30' from the Clairmont Drive property line.

Mr. Goudy stated they are proposing an addition and also a covered porch area on their existing home. Section 17.36.020 requires a 50' setback minimum. The proposed addition is 30' from the Clairmont Drive property line. The applicant will speak to the location of the home and direction it faces. Mr. Goudy stated this is an older subdivision in Brookfield and it predates today's Zoning Code. Quite a few of the properties in the subdivision are far less than 50' from the front property line because it was developed under the Town of Brookfield's rules before it was annexed into the City. However, the current Code still remains, which requires a 50' setback. Notification was given to the surrounding area and Mr. Goudy said

he did not receive any responses. He included two letters that were submitted by the applicant from the Aldermen in District 7.

Mr. Rozmus asked what is the status of the two-car garage proposed for this site. Mr. Goudy replied that it is within 43'. Mr. Rozmus asked if the setback to the east is adequate. Mr. Goudy replied yes, it is at 20', the minimum.

Brian Sutton stated his architect couldn't be here tonight. The garage will actually be within setback. It'll stay up to code. We are setting it back around 4'-5'. The only thing that should be discussed tonight is the front porch. The front patio and front door vs. the driveway are on two completely different streets. Guests walk around the garage into a back entrance to the kitchen. He will be losing that door with the new garage. He would want that for safety for older people and when it snows.

Dean Marquardt asked if the entry door is far to the east and if relocated around the corner, then he wouldn't need the porch. Mr. Sutton stated that the door on the north side is going to be a mud room if available within their budget.

It was asked if the entrance on the rear of the property will still be maintained. Mr. Sutton replied the garage will take that all up. It wouldn't be feasible to walk around the back porch.

Alderman Carnell stated he visited the site and a lot of homes are close to the road. It's a very nice subdivision. He asked if living space is part of the existing garage. Mr. Sutton replied yes, they are changing the upstairs too. They are expanding the upstairs bathroom. They are taking out the garage and adding more foot space so they can have a bigger living room, create a larger kitchen and hopefully create a mudroom while building a new garage. Alderman Carnell asked what is next to the mudroom. Mr. Sutton replied a living area without having a mudroom. Mr. Sutton replied that he remembers the architect saying it would add more cost because of the beams and supports they would need to have. At one point, they talked about moving the front door underneath so they could have the garage and a small footpath to the front door. The architect said the cost would be way out of their budget for that.

Mr. Rozmus stated a mudroom can be very practical. Alderman Carnell asked why people can't go thru the mudroom into a living room area. Mr. Sutton replied yes, but once again, the question comes up to is if they can afford it. Alderman Carnell stated he has a hard time understanding the costs associated with this. Mr. Sutton stated they are keeping the existing garage from his understanding and adding a sub-floor to make it even with their current floor. Most of the budget will go into the kitchen and the upstairs bathroom. Whatever they have left over, would hopefully go into the mudroom. It will be a two car garage.

Mr. Marquardt suggested that the staff do a survey of the subdivision of setbacks. Almost all are less than 50'. Unfortunately, for the variance request and case law, granting a variance to solve an issue that is common among many parcels in that area, a variance is not warranted. It needs a different action to solve the problem. It means to address legalizing all those parcels. The standard is high. There is nothing different with the applicant's lot and all the other lots around him. One of the standards is the lot needs to be unique, and have specific issues that would warrant a variance. Mr. Marquardt stated he also looked at one of the things that the courts were clear about is a growing family wanting a bigger garage is not something that would justify being out of compliance with the law. He has empathy for the applicant's situation but it is very hard to come up with something that would say there is a unique hardship difficulty that is different on this parcel that would stop development of any kind in the absence of a variance. The parcel doesn't meet that standard. Mr. Sutton replied even with the front porch on one street and the driveway on another street? Mr. Marquardt replied we could probably find another home like that. The subdivision would need to be addressed on a larger scope through proper zoning analysis by redoing setbacks and offsets. The Code is clear by looking at this long term.

Mr. Carter stated he loves the house and the proposal. His concern is the Board needs to follow a legal standard. He is struggling to find something unique about the property. Another concern is if they can't find a unique property characteristic, is it then setting precedent. If it was based on aesthetics alone, then he would approve. With the variance, he is struggling with this.

Mr. Sutton clarified that it isn't a full wall they are bringing out. It's not going to ruin the site lines from the neighbors. It will still be an open area. He is not extending the living room, but just extending an area where a pathway could be. He wants it covered for winter when guests arrive. Mr. Marquardt asked if the zoning code allows for this? Mr. Goudy replied the only exception to the setback rule is a 2' roof eave. If the decision comes into question and can be overturned, the addition would need to go away.

Mr. Rozmus stated there is difficulty in setting up specific zoning for the entire area because we are not dealing with vacant land. We are dealing with existing properties. There is such a variety of setbacks. These are legal nonconforming lots. Alderman Carnell stated he is in agreement with these comments. He is leery with setting a new standard that would apply to other properties.

James Kaun, 15145 Clairmont Dr., stated he is the neighbor to the east. This area is a diverse, older neighborhood. Their house begs for this design. He has no objections to the proposal. There are so many different styles in the neighborhood. It will make the house and neighborhood look better, and make his look better too. Mr. Marquardt stated the board members agree with the comments about the aesthetics; however, this board doesn't look at aesthetics. The board looks at area variance and dimensional variance. Mr. Kaun asked if there was another precedent they could rely upon. Mr. Marquardt asked that is not appropriate for this Board to do. Each parcel must stand on its own merits based on the unique difficulty of that individual parcel. There are so many lots like this property. You don't grant variances, you solve it another way. Mr. Kaun asked if nobody objects in the neighborhood, is that a deal breaker. Mr. Marquardt replied the Board can't look at it that way. The issue would try to get recognition of these parcels that are legal nonconforming and address setbacks and offsets possibly through the Plan Commission, such as Greenfield Heights, Kinsey's Garvendale. These subdivisions have faced this and have addressed these problems.

Mr. Rozmus stated we are talking about two things – parcels and setbacks. The parcels are, in many cases, the same (dimensions). It's where the houses were located on the site that make it different (setbacks). Very few of these individual sites have the same setbacks. That is difficult to handle in the Code. Maybe this should be a referral to the City Attorney and Common Council. It is very difficult to resolve this otherwise. Mr. Carter felt this was a compelling case for the Plan Commission to review the whole neighborhood for setbacks and offsets. Mr. Kaun asked if this is an appeal or search for a variance. Mr. Sutton asked if the next step was to go to the Plan Commission as many homes in his subdivision violate the rules. This needs a different attack. Mr. Goudy stated staff can discuss with Community Development and the City Attorney for further direction.

**Motion by Alderman Carnell, seconded by Dean Marquardt, to deny the variance and staff discuss with Community Development and the City Attorney for further direction and other instructions. Motion carried unanimously.**

4. ADJOURNMENT

***Motion by Alderman Bill Carnell, seconded by Dean Marquardt, to adjourn the meeting at 7:45 pm. Motion carried unanimously 4-0.***

RESPECTFULLY SUBMITTED:  
RENEE J. TADYCH, DEPUTY CITY CLERK  
CITY CLERK'S OFFICE