

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_09-02-2020

Chairperson Pfannkuch called to order the September 2, 2020, regularly scheduled meeting of the Board of Adjustment at 5:39 p.m. as an electronic Zoom meeting. Residents were allowed to attend through Zoom or in person in Council Chambers, City Hall, 4200 Mills Civic Parkway.

Roll Call: Blaser, Cunningham, Pfannkuch, Stevens Present
Christiansen..... Absent

Motion carried.

Item 1 – Consent Agenda

Item 1a – Minutes of August 19, 2020

Chair Pfannkuch asked for any questions or modifications to the meeting minutes of August 19, 2020.

Board Member Cunningham noted that there was not a quorum present from the August 19, 2020 meeting and recommended deferring approval of the minutes until a later meeting. It was agreed by affirmation to defer the meeting minutes approval.

Item 2 – Old Business

There was one (1) Old Business item.

Item 2a – Setback Variance - 117 S 33rd Street – Request approval of a 3’6” variance from the 35’ front yard setback to add a 3rd stall to the garage – VAR-004794-2020 (Continued from August 19, 2020)

Chair Pfannkuch informed that the minutes and audio file from the previous meeting had been made available to those Board Members absent from the first meeting, and that she had reviewed both. Board Member Stevens added a comment that she had also reviewed the audio file. It was determined that only new information should be provided at this meeting.

Chair Pfannkuch invited the applicant to speak.

David Kruse, Grand Homes & Renovations, 1910 Normandy Dr, Carlisle, stated he was present with Carrie Norris and owner Matthew Campbell, 117 S 33rd St, West Des Moines. Mr. Kruse stated that they believed the variance finding #2 was met as the topography and lot size would not allow the addition of this garage to another part of the site. He commented that the majority of homes in the immediate area had a third garage stall and inquired whether the property across the street had been required to have a variance as their structure was very close to the lot line. He also stated that any run-off issues to the adjacent neighbor could be addressed with this building addition.

Chair Pfannkuch asked for any other questions or comments from the audience.

BOARD OF ADJUSTMENT MEETING MINUTES

Paul Babikian, 201 S 33rd St, stated his objection to the addition, citing a history of run-off issues and asking who would be responsible if these continued due to the addition. He also questioned the finding that stated this addition would not pose a danger to health and welfare of those in the area, as he believes it will directly impact his property with storm run-off and by impeding his view.

As there were no further comments from the public, Chair Pfannkuch asked Staff for additional comments.

Development Coordinator Linda Schemmel inserted that the Engineering Department would be the best department to review and respond to drainage concerns.

Brian Portz, Development Services Planner, responded that the Staff had reviewed the area for variance requests and found none had been granted for the neighbor across the street or any other properties in the immediate neighborhood. He informed that Staff believed the hardship was self-imposed, as the Zoning Code parking requirements have been met and therefore is not requiring the addition of a third stall on the garage.

Chair Pfannkuch asked for continued discussion or a motion and a second for this item.

Board Member Stevens requested clarification regarding defining a self-imposed hardship. Assistant City Attorney Jessica Spoden defined unnecessary hardship as a finding requiring that the land could not yield a reasonable return without the variance; this is further defined that the owner has been deprived of all value of the land rather than merely depreciated or that the owner would obtain a more profitable use, based on case law from 1982. The second item is the plight of the owner, which is required to be due to unique circumstances compared with the general conditions of the neighborhood and not of the owners' own making. This means that the zoning ordinance is shown to be somewhat unreasonable as applied to the property. The third item is use of the third garage stall would not alter the essential character of the locality.

Board Member Stevens questioned point 2 of Staff Findings, and clarification regarding parking off street. Planner Portz responded that the lot size is similar to others in the area and the house is placed at the 35-foot setback line, and so is not unique. An alternative to the third stall would be to pave the area next to the drive to allow for additional off-street parking. Board Member Stevens asked if additional paving would require a variance, and Planner Portz responded that it would not. Board Member Stevens concluded that the owner would just need to address the water run-off issue if paving were pursued, and Planner Portz agreed that they could pave up to one foot off the property line.

Board Member Stevens confirmed that she had read the previous minutes and listen to the audio file.

Board Member Blaser referred to an earlier variance which was more extensive and involved mature trees. He agreed that it was a self-imposed hardship, and that a percent had been established, and that point #3 had been overstated. Chair Pfannkuch agreed, stating that was a larger variance, and that the City is working on code issues so the Board

BOARD OF ADJUSTMENT MEETING MINUTES

will not have to address these issues in the future.

Board Member Stevens asked for detail regarding the previous variance. Board Member Blaser provided a summary, concluding that if the owner built the size of garage he preferred and followed the setback requirements, it would endanger three mature oak trees. The variance was approved to spare the trees. Chair Pfannkuch stated she had also reviewed the previous case in preparing for this hearing. She offered to send that case to Board Member Stevens.

Board Member Cunningham agreed with Mr. Blaser’s summary, however he noted that the Board has a better appreciation now of the legal standards are for granting variances than 2 years earlier, and since it had been made clear to the Board the difference between what constitutes a variance and what constitutes a special exception. He stated that he would vote differently today than he did on the previous variance and that a mistake had been made. He commented that continuing to make that same mistake was not the best course of action. He concluded that he would vote to approve a special exception for this case, however he felt an obligation to observe the variance requirements. Mr. Cunningham noted that denial of the variance today would not prohibit the application of a special exception for this situation in the future.

Chair Pfannkuch asked the timeline for the special exception ordinance amendment. Asst. Attorney Spoden responded that it is being written, and she expected it to be presented and voted on by City Council within the next three months.

Mr. Kruse asked to rebut a comment and was informed by Development Coordinator Schemmel that the Public Hearing had not yet been closed, so he could comment if the Chair allowed.

Chair Pfannkuch stated Mr. Kruse could make his comment. Mr. Kruse informed of similar variances which were granted with similar issues where topography would not allow other options. He stated the applicant would prefer to build this fall rather than wait for a special exception ordinance to be put into place. He postulated that if this would pass a special exception in the future, could the Board not allow it at this point tonight as a variance for a 3’ 2” encroachment.

Chair Pfannkuch closed the Public Hearing, asking for additional discussion or a motion.

Board Member Cunningham moved to deny the variance based on requirement #3 of the variance requirements not being met. Board Member Blaser seconded the motion.

Vote: Blaser, Cunningham, StevensYes
Pfannkuch.....No
Christiansen.....Absent

Motion to deny the variance carried.

Development Coordinator Schemmel asked if the Board was adopting Staff Findings for this item. Asst Attorney asked the Board to note which requirements have not been met.

BOARD OF ADJUSTMENT MEETING MINUTES

Board Member Cunningham stated that requirement #3 was not met which would be inconsistent with Staff’s findings. Development Coordinator asked if the rest of the Board was in agreement with the adoption of Board findings indicating requirement #3 was not met. Board Member Blaser stated the other 4 items were met, however he agreed that #3 was not.

Item 3 – Public Hearings

Item 3a – Setback Variance – 1490 S Deer Rd – Variance of the front yard setbacks to accommodate a building addition – VAR-004820-2020

Chair Pfannkuch opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary stated that the notice was published on August 22, 2020, in the Des Moines Register.

Moved by Board Member Blaser, seconded by Board Member Stephens, the Board of Adjustment accepted and made a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Cunningham, Pfannkuch, Stevens.....Yes
Christiansen..... Absent

Motion carried.

Michael Wahlert, Bishop Engineering, 3501 104th St, Urbandale, informed that he was present with applicant Daniel Pearson and builder Mick DePhillips, to present their variance request for a third stall garage with some additional living space. Mr. Wahler noted they contacted City staff in 2019 to see if the project was feasible, staff indicated that it was and the owner spent money moving forward with the project, bringing revised plans in 2020, and was told by staff they could continue with survey work to establish the location of the house and front boundary line. A site plan was submitted, and it was discovered that a new ordinance in place pertaining to average setbacks of adjacent neighbors would prohibit the project. Some homes in the neighborhood have 200-foot setbacks. Mr. Wahlert noted that the house would improve in value with the addition of the third stall, and additional living space. The disparity between the neighboring setbacks put those closer to the front lot line at a disadvantage and would not be upgradable for any buyers, whereas some neighboring homes could potentially be altered up to 50 feet. Mr. Wahlert pointed out differences in driveways of adjacent lots. The neighbors approved of the variance request and the applicant provided a letter of approval from the HOA. He noted they are requesting a 17-foot extension but have learned that there is no possibility of expansion up front after spending a considerable amount of money, under the mistaken belief that the project would be allowed.

Chair Pfannkuch asked for any other questions or comments from the audience. As there were no comments from the public, Chair Pfannkuch declared the public hearing item closed.

Brian Portz, Development Services Planner, informed that the lot had a 35-foot setback at

BOARD OF ADJUSTMENT MEETING MINUTES

the time of platting in 1972, when it was located in Dallas County. The City annexed the property in 2003, and the lot came under City zoning regulations. The property is designated as Residential Estate, which has a 50-foot setback. The average front yard setback requirement averages the distance of the neighboring houses to the front property line, which totals 66 feet in this case. The variance request is a 10 foot variance from the 50-foot City setback requirement and a 26 foot variance from the average setback requirement of 66 feet. The 35-foot setback no longer applies since the City zoning rules apply and not the County. Regarding the findings, Staff thinks that the first finding has been met, the second finding regarding uniqueness of the property applies as the lot is smaller and the house set further forward than many in the development. There are a lot of large trees on the site would obstruct views of the proposed garage addition. Finding #3, an unnecessary hardship, is not met, as they are adding on to the garage by choice. Application of the zoning code is not creating an unnecessary hardship. Staff feels that findings 4 and 5 can be met.

Board Member Blaser stated he believes this case is slightly different because the setbacks changed after the City annexed the property. He asked if that makes a distinction for staff. Planner Portz stated that it met County requirements when built in 1984 and agreed that the distinction could be made. Asst. City Attorney Spoden asked that that be included in the motion for the record if the Board wished to stipulate. She noted that the applicant wanted to rebut the Staff findings and asked if the Chair would allow this comment to be made, as Staff was availed to respond.

Chair Pfannkuch agreed to allow the comment. Mr. Wahlert, Bishop Engineering, noted regarding the double variance pertaining to the setback at the time of platting. He understood from staff that they had confirmed with legal that one of the variances had been met. He also believed the hardship had not been created by the applicant, however annexation with new setbacks post-purchase has created a hardship.

Asst. Attorney Spoden agreed that there was a miscommunication between herself and staff stating that the City standards do apply so any changes to the property would have to fall under the current requirements regarding RE setbacks and the average front yard requirement. She noted that there are two separate variance requirements from two code provisions, likely addressed by the same findings.

Board Member Stevens asked when the property was annexed. Planner Portz stated it was annexed in 2003.

Board Member Stevens asked when the property was purchased by the applicant. Mr. Wahlert responded it was purchased in 1984.

Board Member Stevens asked if there was a reasonable alternative proposed. Planner Portz commented that the applicant had space to construct a detached garage. Mr. Pearson stated a detached garage would have to be set quite a bit further back from the existing house.

Chair Pfannkuch asked for continued discussion or a motion and a second for this item.

BOARD OF ADJUSTMENT MEETING MINUTES

Board Member Blaser commented that he did not believe this situation presented a self-imposed hardship, since the setback requirements changed with City annexation after the property was purchased. He moved to approve the variance request and requested changing finding #3 with setbacks changing post annexation and having to meet the existing City of West Des Moines ordinance; motion was seconded by Chair Pfannkuch.

Vote: Blaser, Pfannkuch..... Yes
Cunningham, Stevens..... No
Christiansen..... Absent
Motion failed.

Assistant City Attorney informed that any Board Member who had moved for approval had the opportunity with a tie vote to further the discussion and call for a reconsideration. There was a brief discussion followed by a second vote with the same outcome.

Item 4 – New Business

There were no New Business items.

Item 5 – Staff Reports

There were no Staff Reports.

Item 6 – Adjournment

Chair Pfannkuch asked for a motion to adjourn the meeting.

Moved by Board Member Stevens, seconded by Board Member Pfannkuch, the Board of Adjustment meeting adjourned at 6:53 PM.

Angie Pfannkuch, Chairperson

Jennifer Canaday, Recording Secretary