



## CITY OF WAUWATOSA

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### MEETING OF THE BOARD OF ZONING APPEALS Thursday, December 19, 2013

PRESENT: Mr. Randall, Mr. Bittner, Mr. Kern, Ms. Kristoff, Mr. McGuan

EXCUSED: Mr. Subotich

ALSO PRESENT: J. Ferguson, Planner

Mr. Randall as Chair called the meeting to order at 7:00 p.m.

#### **605 N. 79<sup>th</sup> Street**

#### **Variance**

**Request by Owen and Kim Sullivan for a side yard setback variance to construct a detached garage at 605 N. 79<sup>th</sup> Street in the R1-6 District**

This item was held at the November Board of Zoning meeting so the applicant could provide more detailed information about the nine foot utility easement located on the west side of the property. To reiterate the request, the applicant is seeking a 6.2-foot variance to the street side yard setback for a detached garage. On this property, the street side setback is 14.7 feet (along Mary Ellen Place) – the rear setback (west side) is 18 inches, however a nin-foot utility easement that cannot be built on restricts the area for a garage beyond the setback. While it is not the ideal location for the applicants, it would be possible to construct the same size garage in a similar location that meets all applicable setbacks.

The easement across this property does pertain to the water utility. It is a no-build easement and the Water Utility does not support any structure being built in the easement. Structures to the north of this property that are located in the easement were most likely constructed at a time the City wasn't closely reviewing structure locations or they were built without proper permits.

Should the roof or any portion of the garage overhang the easement boundary, the applicant would need to get approval for an encroachment agreement from the Board of Public Works. If an encroachment agreement is not approved, the garage would have to be located in such a way that does not extend across the easement, while still meeting the conditions of any variance the Board may approve.

Present in favor: Matt Retzak, Contractor for the applicants  
Kim Sullivan, 8113 W. Wisconsin Avenue, Wauwatosa, WI  
Owen Sullivan, 8113 W. Wisconsin Avenue, Wauwatosa, WI

Ms. Sullivan stated that without this variance, the garage will be three feet from the house and will encroach six feet from the back of the house. The variance will allow the property to aesthetically look better. The house has been neglected over the years and they want to bring it back to what it originally was.

Present in opposition: No one

Mr. McGuan asked if the plat survey reflects the adjustment to the eight inch overhang. He commented that the site plan indicates there is a seven-foot by 18.5-foot addition; does this include a porch. Mr. Retzak responded yes, however, the footprint of the house will remain the same and will have a second story on the addition.

Responding to Mr. Randall's question, Ms. Sullivan stated that the house is located on the corner and there are no sidewalks on Mary Ellen which is where the entrance to the garage would be, but there is a sidewalk on 79<sup>th</sup> Street.

Mr. Randall commented that there appears to currently be a 17-foot right of way before their property begins plus 8.5-foot setback for the garage which totals 25 feet and without the sidewalk is this the neighborhood custom where structures are for other properties in the area. Mr. Sullivan responded that most neighboring structures are the same. Mr. Sullivan also commented that the issue of aesthetics has been important to the neighborhood. The persons to the immediate south provided a letter of support.

Mr. Bittner asked if the City has future plans for sidewalks in this neighborhood. Ms. Ferguson responded no. Mr. Bittner asked what the distance between the revised proposal for the garage and the new addition, what is the width of the gap. It was four feet but will now be at three feet-four inches.

Mr. Randall asked why the garage cannot be moved to the north enough outside of the encroachment area to no longer need the variance. Mr. Retzak responded that living inside and looking out of the sun room, all the west facing windows will be looking out to a garage and the family windows will be dark for the majority of the day. Looking outside, it will appear to be crowded and not match the remainder of the houses in the neighborhood.

Moved by Mr. Kern, seconded by Ms. Kristoff to approve the request for a variance to the side yard setback to construct a detached garage at 605 N. 79<sup>th</sup> Street.

1. Exceptional circumstances do exist pertaining to this lot. The applicants satisfied the requirement that the no-build water easement precludes them from moving to the west and moving the structure to the north puts the garage too close to the house. There is no sidewalk along the south frontage of the property so it gives more space to encroach.
2. That a variance is necessary for the preservation and enjoyment of the property rights possessed by other properties in the district and vicinity. Increased distance between the garage and the house will be more aesthetically pleasing and preserve property values. By adhering to the no-build easement and keeping the structure off of this utility easement serves as preservation and enjoyment and preserves the rights of the property owners and should there be a water issue and the City needs to access the utility line it will expedite the work and



meet and discuss lessons and the sheds will provide storage for materials and equipment such as chairs. Mr. Heun commented that they hope to not disturb much of the nature in the area when installing these items.

Mr. Beaudry commented that he has two daughters working on this project and is thrilled to see students working on keeping this area trimmed and learning about science and nature. Since the drawing have been completed, Milwaukee County has had their input which resulted in alterations.

Mr. Lavin stated that the drawings show a patio setting around a tree but the pavers around the tree will not be there. There will be a 1 ½ foot retaining wall toward the street edge. They do not want to disturb the plant life. There are three trees in this area that they do not want to disturb.

Present in opposition: Brian Halligan, 7892 Portland Avenue

Mr. Halligan stated that traffic in this area is very bad. This is a busy intersection during the morning and evening rush hours and vehicles do not stop at the signs. He is concerned about stalkers behind the sheds and in the portable toilet. Mr. Halligan further stated that there is a flooding issue in this entire area. Water during rainstorms can come all the way out to the street. He is concerned if there is a lot of rain, the portable toilet would flood and this would become a sanitary problem.

Mr. Randall asked if the portable toilet is enclosed. Mr. Lavin responded that it is enclosed but does not have a roof. Mr. Lavin responded to Ms. Kristoff's question that the portable toilet would be located to the south.

Mr. McGuan asked if any other sites were explored. Mr. Heun responded no because the proposed site is within walking distance of the school and the parkway is part of Milwaukee County. The school is working with Milwaukee County Parks. This site has a visual connection with the school and the area is close to where they will be walking and what they will be working on for the students' projects. Milwaukee County has detailed where to place these structures, the school does not own the land.

Mr. Randall asked Mr. Heun to explain how the area will be utilized by the students. Mr. Heun stated that this will be an outdoor classroom. Students will remove invasive species of plants, they will create walking paths around the area, explore the birds, they have set up trail posts with signage identifying their research on birds, trees and wild flowers, students have created bird and bathhouses to place in this area. The long range goal is to bring back a butterfly field.

Ms. Ferguson responded to Mr. McGuan's concerns regarding the grading stating that if it needs to change, this can be done within the Building Department. The Building Department will make sure it is graded properly. She further stated that the other side of the river is sloped and has soccer fields.

Mr. Randall asked if they built within the required 100-foot area, would this be in the flood plain. Ms. Ferguson responded that it would.

Mr. Heun stated that the trellis would be 13 ½ feet off of the curb and the students would always have supervision. Teachers and volunteers help with the classes that will utilize this area. There will be an adult between the students and the road. Chairs will be brought out to this area from the sheds for the students to sit on for group discussion as well as any tools that they may need.

Mr. Randall asked Mr. Heun to expand on the safety of the children. Mr. Heun stated that classes are not taken to this area during peak hours of traffic. Students are escorted from the school by teachers and parent volunteers. Volunteers are assigned as small of a group as possible.

Mr. Kern suggested a railing be installed or large boulders on the side of the street to help with safety of the children. Ms. Ferguson suggested that this may be something Engineering would have to look at for the path of vision of traffic.

Ms. Kristoff asked what the timeframe was for this project. Mr. Heun stated that the cost for this project is \$17,000 and so far fundraising efforts have raised one-quarter of the funds. He would like to have this built by the end of this school year.

Ms. Kristoff recommended that Mr. Heun provide an informational session with the neighbors to help distribute the information and also let them know about the fundraising efforts. Ms. Kristoff also stated that perhaps the applicants should address the Traffic and Safety Committee for the possibility of blinking lights on the stop signs. Mr. Heun stated that flyers and pamphlets have been sent out but he is open to an informational meeting.

Mr. Heun asked if they would be able to place a sign at this site to advertise that this would be “the future home of” to help raise funds for the project. Mr. Randall clarified that this would not be a decision that this Board could make. Ms. Ferguson recommended that they speak with the Building Department for a permit for this sign

Moved by Mr. Kern, seconded by Mr. McGuan to hold the request for a setback variance for an outdoor classroom at the southeast corner of Portland Avenue and Honey Creek Parkway in the SP-POS District to allow the applicants:

1. To have an actual site plan with property lines depicted, to identify exactly where the structure would be and visually correct removing the pavers from around the tree.
2. To provide a dated survey with dimensions and grading.

Roll call vote taken:   Ayes:   4 (Bittner, Kern, Kristoff, McGuan)  
                              Nos:    1 (Randall)

Meeting adjourned at 8:38 p.m.

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Jennifer Ferguson

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