

BOARD OF ADJUSTMENT MINUTES
February 11, 2019
7:00 p.m.

A. Call to Order:

Members Present: Brandt, Charlson, Juhl, Lampe, Shea

Staff Members Present: Tim Kangas, Council Liaison
Rachel Leitz, Zoning Administrator

B. Approval of Agenda:

Motion By: Juhl

Seconded By: Brandt

Move that the agenda be approved as printed.

Yes: 4

No: 0

Absent: 1

C. Approval of the minutes of the January 14, 2019:

Motion By: Brandt

Seconded By: Charlson

Move that the minutes of the January 14, 2019, Board of Adjustment meeting be approved.

Yes: 5

No: 0

Absent: 0

D. Public Hearing:

1. James Hinders – Variance Request for 216 3rd Street NW.

Leitz stated that the applicant currently has a detached garage on the property that meets setback requirements. The applicant is proposing to construct an attached garage that is proposed to be 3 ft. from the existing detached garage. The code stated that “accessory buildings closer than ten (10) feet or less to a main building shall be considered a part of the main building and shall be provided with the side and rear yards required for the main building.” Therefore, the applicant is requesting a 10 ft. rear yard setback, where the zoning district requires a setback of 20 ft., and a 5 ft. side yard setback, where the zoning district requires a setback of 7.5 ft for the existing detached garage. Leitz described the practical difficulties including reasonable use, unique circumstances, character of the neighborhood, and spirit and intent. Leitz stated that it is in staff’s opinion that the applicant meets all the criteria necessary to approve the variance request. Leitz recommended the Board open the public hearing and also stated that the applicant was in the audience if the Commission had any questions.

Chair Lampe opened the public hearing.

James Hinders, 216 3rd St. NW, approached the podium. He stated that he bought the property almost 20 years ago and the current detached garage was already constructed. He stated the

detached garage is used for storage and he is looking to construct an attached garage to park his vehicles in. Mr. Hinders stated that because his property is long and narrow the only location to construct the attached garage is behind his house, which unfortunately puts his existing detached garage out of compliance with setback requirements. He stated he did not want to tear down the existing detached garage, which is still in good shape.

Juhl asked if there was a maximum area that could be covered on a lot.

Leitz stated that there is an impervious coverage requirement. 50% of the lot may be covered in impervious surface, inclusive of primary and accessory building square footage area other and impervious surface areas.

Juhl asked how the 3 ft. separation between buildings was allowed.

Chair Lampe stated that he had discussions with both the Bremer County Building Official and the Waverly Fire Dept. whom stated that having a 3 ft. space between buildings is allowed, but there will be certain requirements, specifically with fire protection, that will need to be followed in the building process.

The Board had discussions on the Code and fire protection of buildings.

Leitz stated that she had talked to the County Building Official whom stated the plan would work as long as the building and fire code is abided by when plans are submitted with the building permit. She stated if the variance is approved and the building permit does not meet state building and fire requirements, then it will not be approved by the County and will not be allowed to be constructed. Leitz stated that this process should be left up to the County Building Official and should not impact the Board's variance decision.

Juhl asked for clarification on the setback requirements for detached accessory buildings, specifically the rule regarding the 10 ft. separation between buildings.

Leitz clarified that a detached structure may be closer than 10 ft. from principle structure, however, it would then be counted as part of the principle building and would need to meet setback requirements for such.

Shea stated that she is having a difficult time finding a substantial hardship to approve a variance when the property owner already has a two-car garage and just wants additional space. She stated that the property owner would have the option to tear down the existing detached garage and construct a larger attached garage that meets City setback requirements.

Leitz stated that the existing accessory building meets City requirements for both setbacks and size. She stated the proposed attached garage meets setback requirements and the site plan, in whole, meets impervious surface requirements. Leitz stated the unique part of the request is that the proposed attached garage puts the existing detached garage out of compliance, even though it is not being enlarged or changed and will have the same impact to the surrounding property owners.

Juhl asked questions on the space between buildings in association with setback requirements.

Mr. Hinders stated that the three feet in between the buildings isn't in question. He stated he would not be in front of the Board if the existing detached structure met setback requirements.

Leitz stated that Mr. Hinders was correct. She described that he would just need to apply for a building permit and the County would review the construction plans in accordance with the building and fire code. Leitz reminded the Commission that the proposed variance was for the rear and side yard setback only, not the space between the buildings.

Shea stated that it was in her opinion that the applicant did not have a case for a variance because she did not see a substantial hardship.

Lampe stated that the Iowa Supreme Court gave a definition for "hardship." 1) The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone. 2) The plight of the owner is due to unique circumstances and not to the general condition of the neighborhood which may reflect the unreasonableness of the zoning ordinance itself. 3) The use to authorized by the variance will not alter the essential character of the location. They stated that the burden is on the applicant to show all three elements.

Charlson stated that the applicant does have the ability to add more garage space, however believes that it would have to be accommodated through removal of the existing detached garage and compliance with the setbacks.

Juhl inquired into the property the applicant owns to the south of the property in question.

Leitz stated that combining the properties was discussed with the applicant, however, the rear setback would still not be met and then the property would exceed impervious surface requirements, as well.

Juhl asked Lampe if the Board had ever considered a case like the one proposed where constructing a new structure would put an existing structure out of compliance with code standards.

Lampe stated that the proposed variance was unique and he did not believe that a case, such as this one, had been considered before.

Mr. Hinders asked why the setback for an attached (or closer than 10 ft.) structure is so much more significant than the setback for a detached (or 10 ft. or more) structure.

Leitz stated that from a visual standpoint, a structure attached (or closer than 10 ft.) becomes part of the main building. The City wants to make sure that a structure is setback far enough where it is not a visual impairment. Setbacks also allow for proper planning for impervious surface and green space on a property. Leitz stated that the City has certain requirements for square footage of accessory buildings and the maximum size of those do not provide the same visual impact as would a principle structure, therefore, they may be setback closer to property lines.

Shea asked if there were any issues that the proposed attached garage was similar in size to the principle building and the combined garage space on the property was almost double the principle building.

Leitz stated that the existing detached garage meets accessory building size requirements for a lot that size and that the City has no size requirements on attached garages. She stated that the buildings and remaining impervious on the lot must meet impervious requirements.

Juhl stated that he felt comfortable with the setbacks and if houses were ever constructed on the empty lots to the north of the property, the north wall of Fareway would be screened from view by the proposed attached garage, which he didn't see as an issue.

Brandt agreed and stated the way the site is laid out directly north of this property, there would be really no visual impact to the property owner sitting in their home.

The Board had many questions regarding the code standards for the 10 ft. between buildings.

Chair Lampe closed the public hearing.

Motion By: Charlson

Seconded By: Juhl

Move that the Board of Adjustment approve the variance request with the expansion of the main structure, the detached garage will be considered part of the main structure to allow a 10 ft. rear yard setback and a 5 ft. side yard setback for an existing detached garage located at 216 3rd Street NW, with the condition of approval that the 8x12 storage shed be removed from the property.

Yes: 2

No: 3

Absent: 0

Motion did not pass.

E. Old Business:

F. New Business:

G. Adjournment:

Motion By: Brandt

Seconded By: Shea

Move that the Board of Adjustment meeting be adjourned at 7:50 pm.

Yes: 5

No: 0

Absent: 0