

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

A. Call to Order:

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

Staff Members Present: Rachel Leitz, Zoning Administrator

B. Approval of Agenda:

Motion By: Brandt

Seconded By: Shea

Move that the agenda be approved as printed.

Yes: 5

No: 0

Absent: 0

C. Approval of the minutes of February 11, 2019:

Motion By: Brandt

Seconded By: Charlson

Move that the minutes of the February 11, 2019, Board of Adjustment meeting be approved.

Yes: 5

No: 0

Absent: 0

D. Public Hearing:

E. New Business:

F. Old Business:

At its February 11, 2019 meeting, the Board of Adjustment considered and denied the applicant's variance request. The applicant appealed the Board of Adjustment's decision to the City Council. At its March 4, 2019 meeting, the City Council considered and recommended approval of the variance request and remanded the request back to the Board of Adjustment for reconsideration.

Chair Lampe invited the applicant to the podium to speak.

James Hinders stated that he felt like he did not present his case well enough to the Board at their last meeting, therefore wanted to appeal the decision and have Council hear the request. He stated that the Council believed there were enough unique circumstances regarding the property and request to justify granting the variance, therefore sent it back to the Board for reconsideration.

Chair Lampe invited Council Member Drenkow to the podium to give background on the Council's consideration of the variance request since Council Liaison, Kangas, could not be in attendance.

Rod Drenkow, Ward 3 Council member, approached the podium. He first thanked the Board for all of their hard work, especially for decisions made on the variety of difficult variance requests. Drenkow stated that the variance being requested is an “area variance” instead of a “use variance,” which he stated is a variance that is being requested for an already permitted use in the zoning district. He stated it is difficult to use a strict definition for “hardship” when looking at area variances because no property would ever strictly meet all three criteria, specifically one: the standard for the inability to make any reasonable use of the land or failure of the land as zoned to produce a reasonable return. In the typical area variance case, if the variance is not granted, the land at issue can almost always be put to some reasonable use and produce a reasonable return. Drenkow stated that the Council believed the proposal for an attached garage was a reasonable request and did not see tearing down the existing garage to meet ordinance standards as reasonable nor practical. The Council agreed that the request would not diminish the character of the neighborhood nor would the request be setting a precedent with the practical difficulties observed in this request. Drenkow stated that the Council would like to see consideration for residents requesting variances where the variance will not affect neighbors, will not affect reasons for having the provision in the zoning code, and will help the resident enjoy their property in a reasonable manner.

Charlson and Drenkow had a discussion regarding area variances and proving practical difficulties in complying with the City Code standards. It was discussed that although there may be some flexibility on the definition of “hardship” for area variances, the Board will still have to look at the request in regards to a reasonable use of the property, if a solution could be met by a simple re-design of a plan, if the property offers unique circumstances (narrowness, shallowness, topography, etc.), if the request will change the overall character of the neighborhood, and any other considerations that may be important to said request.

Shea stated that she did not believe the Board has the power to not uphold the strict meaning or criteria the Iowa Supreme Court has set for defining “hardship” in variance cases. She stated if changes need to be made to the criteria in which variances are granted, it would need to be through a legislative process. Otherwise, there is always an option to have setback standards changed through City code amendments. Shea stated that she did not believe the applicant meets the current hardship standards, especially with a request where the applicant already has a garage and is requesting another garage for more space/storage. She stated the applicant has the ability to tear down the existing garage to meet code standards.

Lampe stated that in the time he’s been on the Board, the Council has remanded a couple of requests back to the Board, however, usually upon being presented with new evidence or information supporting the request. Lampe did not believe there was any new evidence in the applicant’s request to consider in accordance with the variance criteria, specifically the “hardship” definition.

Juhl stated that if the property currently had an attached garage and asked for the same variance on an accessory building, he would vote to deny the request. He believed part of the uniqueness is the fact that the variance is on an existing structure.

Charlson stated another unique factor of the request is that the applicant owns the alley to the south. He stated that because of this, he has no issue with the side yard setback variance request.

Charlson stated that after another look at the request, he believes there are unique circumstances surrounding the request.

Brandt stated that there are many variations in zoning ordinance standards within this area of town where the proposal would not be out of character with the area. She stated that she does not feel like there would be any adverse effect on neighboring properties, especially because the structure is currently existing.

Leitz stated that she wanted to summarize some of the points that are considered unique to the proposed variance. She stated that the proposed attached garage meets current setback code requirements however there is a unique situation that by construction said attached garage, it puts an existing structure out of conformance. The variance request will not impact neighboring properties any more than currently because it is remaining where it has sat for more than 20 years. Leitz stated that the property is quite narrow, which accommodated the types of houses being constructed in 1890, however doesn't accommodate a current-day home with an attached garage. Leitz believed the Board would not be seeing many requests like this where the interior of a home in this age range and on a similar lot would've been designed to be able to add on an attached garage. Leitz stated that the fact the applicant also owns the alley to the south is also unique. She stated that it was considered that the applicant combines these parcels so he would not have to ask for the side yard variance, however, after calculations, he would be over on impervious surface requirements. Leitz also described that the applicant is allowed by Code to have a 720-sf. accessory building and an attached garage and is not asking for a use that is not permitted, but purely on flexibility to setback standards. Leitz stated that it was in her opinion that this would not be out of character for this area and had received no comment from the public regarding the request. Leitz stated that she agreed with Council Member Drenkow on the difficulties in interpreting Iowa's criteria on evaluating variance requests. She stated if the criteria were strictly abided by, nearly all of the variance requests heard by the Board would have to be denied based on the standard for the inability to make any reasonable use of the land or failure of the land as zoned to produce a reasonable return. Lastly, Leitz stated that from this request, she believes staff needs to further evaluate the rational behind the different setbacks for accessory structures 10 ft. away from principle buildings as well as an analysis of zoning district standards for the more historic residential areas in town.

Charlson asked for clarification on the idea that an accessory building is considered part of the main structure if closer than 10 ft. from the principle dwelling.

Leitz stated that is true only for setbacks. She stated that it would still be considered an accessory building and would need to abide by size requirements designated within the City code.

Motion By: Shea

Seconded By: Charlson

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: 3
(Brandt, Charlson, Juhl)

No: 2
(Lampe, Shea)

Absent: 0

Motion passed.

G. **Adjournment:**

Motion By: Juhl

Seconded By: Brandt

Move that the Board of Adjustment meeting be adjourned at 8:02 pm.

Yes: 5

No: 0

Absent: 0