

The Zoning Board of the Village of Winnebago met by remote meeting via GoToMeeting with Chairman Charles R. Van Sickle presiding and calling the meeting to order at 7:00 p.m.

ROLL CALL

EMMERT-EUBANK-KONING –MCDOUGALL-COOK- MEDEARIS were present.

Guests: Attorney Gaziano, Jason & Teresa Ackerman, Sandra Faulkner, Sue Theden, Guy Cunningham, and Kellie Symonds,

CONFLICT OF INTEREST INQUIRY:

MR. MEDEARIS commented he does have a conflict of interest on the Ackerman's proposal in that he is owner of Winnebago Safe Storage and he will excuse himself from that matter.

NO PUBLIC COMMENT

SIDE LOT VARIANCE FOR 214 N. PECATONICA STREET.

MR. VAN SICKLE read into the minutes the document stating the response from Sandra Faulkner as to how she believes her request meets the following requirements in order to have a variance granted:

#1. There are special circumstances applying to the land or buildings for which the variance is sought, which circumstances are peculiar to such land or building and do not apply generally to land or building in the vicinity: The home to the south (on Pecatonica Street) built an addition on the easement making that structure closer to the lot line. This occurred under Winnebago County Zoning. With a 20 foot setback this will put the new structure directly in line with the house to the east and the house to the west.

#2. Said circumstances are such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of such land or building: The new structure is designed to be situated in an East-West orientation with the front located facing Pecatonica Street as current home is located. Variance will allow the structure to be placed as previous home. An old septic area is located in the area to the South and requires dig out to secure stability for the new foundation, to change the orientation of the structure is NOT a possibility.

#3. The variance as granted by the Board of Appeals is the minimum variance that will accomplish the reasonable use of land or building in question. The site is to have installed a water collection system as rainwater has been historically a problem. With compromised ability to properly achieve drainage to the South, the water drainage solution is restricted. The variance will allow drainage on both sides of the property.

#4. The granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare: There is a strong possibility for rainwater to collect on the area south of the property due to close proximity of the structures and inability to properly landscape. Consequently, the potential for standing water and water collecting in the neighbor's, basement. The property to the South is currently located closer to the property line. (see Item 1 above).

MR. VAN SICKLE asked if there were any questions.

Attorney Gaziano clarified a public hearing on a variance is not required based on the size of the Village. In essence, the Zoning Board decides. Attorney Gaziano indicated, per statute, that for a municipality greater than 500,000 in population and where the Zoning Board is the entity that has control over variances, a public hearing would be needed. That same requirement would hold if a municipality has a population of less than 500,000 and the power to grant a variance were vested in the Board of Trustees and passed by ordinance. Attorney Gaziano also made reference to case law she had found that indicated what type of evidence did and did not support the granting of a variance. She indicated that some of the language referenced differs a little from the requirements listed in the Village's Zoning Ordinance for when the criteria are met for the granting of a variance, but are close in intent. Attorney Gaziano indicated that, as an example, case law indicates a person would have to show evidence of lack of a reasonable rate of return on property in support for having a variance granted, but evidence the person paid more than the property was worth, or showing property would be worth more if a variance was granted, is not evidence of the inability to obtain a reasonable rate of return on the property. Also, a self-imposed hardship, or a showing that a piece of property would be better used for a forbidden use vs. a permitted use, cannot be evidence of unique circumstances. However, a showing that other improvements in the area were made without compliance with the requirements for which a variation is requested is evidence that the variance will not alter the essential character of the locality.

MR. EUBANK commented on the special circumstance involved with the instant property and said it appears there is an argument for that. He stated the 20 foot setback is in line with other structures in the immediate area with a 20 foot setback. It would look more uniform. The area to the south with an addition has a situation where it almost encroaches on the property line. MR. COOK expressed concern for the proximity of the home to the south, which appears to be about 6 to 7 feet from the lot line. MR. MEDEARIS stated he spent time with Guy Cunningham and noted the biggest issue is the drainage. The property naturally drains to the south, and the homeowner to the south has two basement window wells on the north side of the foundation, which could lead to the flooding of his basement without proper drainage where the property drains toward Pecatonica Street, and MR. COOK commented the property already has flooding issues. MR. MEDEARIS said Guy Cunningham had talked about putting a swale there to divert water, and he needs room to put in a swale. MR. EUBANK agreed that would be another reason to allow the variance as it would enable a swale to be put in. MR. MCDOUGALL asked if there is a guarantee a swale would correct the problem.

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MR. VAN SICKLE commented the swale would be installed and be designed for that purpose, and Mr. Cunningham has been working with Mr. Insko of public works to design the ditch and sidewalk height to correct this.

MR. EMMERT stated that condition #2 is the only issue—whether or not the strict application of the ordinance would deprive the owner of the reasonable use of the land. He asked the applicants to explain their response as to why they could not reasonably use the land or building, as he believes their request meets the other conditions for the granting of a variance. He also asked them if the septic area to the south and west would make the area unbuildable. Mr. Cunningham responded for the owner and said the septic tank does not make it unbuildable, but without the granting of a variance there is no room to take the water anywhere except to the property lines. MR. EMMERT stated he has no issue with #1, #3 and #4, but is looking for a factual or legal reason for number #2. He said the building could be put on the land with a different configuration, but the same square footage unless the west and south area could not be built on for some reason. The owner indicated the house was designed on the east and west with lots of windows to allow the natural sunlight from the east to come through.

MR. COOK stated the location of the house on the south's close proximity to the lot line causes a problem for building the new home. He believes the Village created that issue, and if that house had been built where it was supposed to be, there probably would not be an issue for the property owner to now seek a variance. There was also discussion that years back there were not always exact records kept so it could not be necessarily determined what the Village did and did not allow and/or what permits were actually obtained.

Ms. Faulkner clarified the issue with the septic tank and the ground around it. She said in the design plans there was an option to put the garage in that location without having it dug out for the foundation of the home, but she did not want to do that because of the septic tank. Even if the garage would be put there, her house would be closer to the house on the south that has built their home closer to the lot line than it should have been.

Ms. Theden clarified the orientation of the house and stated that it would deprive them of the enjoyment of the intention of its design if they could not have the setback requested. MR. EMMERT said that would deprive them of what they want, but they need to show why it would deprive them of reasonable use of the land. Mr. Cunningham affirmed again that it would cause the house on the south water issues. MR. COOK stated that because the village allowed the house on the south to build that home in the current situation is a reason to allow the variance. Attorney Gaziano, commented that there are many locations within the village that do not meet requirements, but do not necessarily have records to show the building was approved by the Village. MR. VAN SICKLE stated it is hard to meet condition #2.

MR. KONING made the motion to grant a variance at 214 N. Pecatonica Street to allow the building of the house with a 20 foot setback from the north property line, MR. COOK seconded.

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Attorney Gaziano, stated they need findings of fact as to why the variance should be granted. MR. EMMERT reiterated to the homeowners as to the reason why the findings of fact are important should the decision in this case be challenged in the future.

MR. EMMERT stated the findings of fact for condition #1 in support of granting a variance is that other properties on the east and west have a 20 foot setback, and it would make the home at 214 N. Pecatonica Street consistent with those homes built in the area built before there was an ordinance for new subdivisions. As for #3, the variance is the minimum necessary as need to allow 20 feet to allow for the swale to prevent flooding for the neighbor. They are only asking for the minimum variation necessary so as to not flood the property to the south. Condition #4 states the granting of the variance will be in harmony with the general purpose and intent, and not be injurious to the neighborhood. In this case it helps the neighbor to the south and makes it consistent with properties to the north, east and west, and is in harmony with the neighborhood.

Attorney Gaziano questioned the finding for #1, addressing MR. EMMERT. MR. EUBANK commented the finding of fact for #1 is the drainage issue, and the consideration of how the house should be built so as not to create problems for the house on the south.

MR. MEDEARIS asked what the setbacks were in the early 1930s and 1940s, since they all have a common setback. MR. VAN SICKLE stated there were none before 1957, as that is when the Village's Zoning Ordinance was initially passed.

MR. COOK's response to the finding of fact for condition #2 is the situation of the house to the south. If anyone built there it could cause a problem with the neighboring house to the south. MR. EMMERT asked about the west side preventing building there. Mr. Cunningham stated it is flat and lower than the street. MR. EUBANK agreed flooding is a problem there.

MR. EUBANK expressed his thought as to "reasonable use". He does not believe it must be that, for example, an octagon shaped house would be a reasonable use of the property even though that is the type of house that would fit on a given property and comply with the Zoning Ordinance. MR EMMERT asked if there was anything wrong with the west side of the property such that one cannot build there. Mr. Cunningham stated they are allowed to build it there, but in doing so it would create a flood problem. It was expressed that because of the situation with the house to the south of the subject property, it does not allow for the reasonable use of the subject property without the granting of a variance.

MR. EMMERT called for a vote.

EUBANK – yes
EMMERT – no
COOK – yes
KONING – yes

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MEDEARIS – yes
MCDOUGALL – yes
VAN SICKLE - yes

Motioned carried on roll call vote.

ACKERMAN REZONING REQUEST WITH SPECIAL USE PERMIT FOR STORAGE UNITS

MR. VAN SICKLE moved to the next item, which is the Ackerman's lighting and fencing information provided, and to set up a public hearing.

MR. EMMERT asked would everyone agree to a condition that the fence to the south has to be at least 6 feet in height, and light cannot shine through it, and the lights on the buildings have to be at least one foot lower than the fence. As long as the lights are 12" below the height of the fence there should not be a problem with lights, and a 6 foot tall fence should take care of the headlight problem.

Attorney Gaziano stated that the village does have a maximum 6 foot fence requirement and if higher would require a variance. **(NOTE: THIS INFORMATION TURNED OUT TO APPLY JUST TO RESIDENTIAL, NOT COMMERCIAL.)** MR. VAN SICKLE stated if that had to be we would grant a variance.

MR. MEDEARIS stated that any fence that exceeds 6 feet has to meet code wind loads, which means it must sustain 110 mile an hour wind for 90 seconds. Basically, it has to be engineered. He indicated most fences in the Village are 6 feet tall or lower in height.

MR. EUBANK asked Mr. Ackerman the height at which he was looking to put the lights. If the lights are higher than 5 ft., than the fence would have to be higher than 6 ft. and would require a variance. Mr. Ackerman's response was that they would need to be higher since the doors are 7 feet height. Attorney Gaziano suggested putting a maximum height restriction on the fence. Mr. Ackerman is uncertain of the distance between the doors of the proposed units.

MR. MCDOUGALL asked if the light fixtures protrude about 12" from the building, and Mr. Ackerman confirmed. Mr. Ackerman prefers the lights over the door, as if they are lower people could hit them. MR. EMMERT suggested a fixture more flush with the building. MR. KONING verified also the light does not project to the side, but rather goes downward. Mr. Ackerman agreed that is true. Mr. Ackerman will inquire into other lighting as well. Lights do not need to be over the driveway.

Mr. Ackerman again stated the fence he is looking at is tongue and groove type, completely sealed, and would not allow light to shine through.

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He does not have the wind load for the 8 foot fence to confirm, but will get that information. It was agreed whatever type of light is installed it has to be lower than the fence.

MR. KONING indicated we might want to say the light cannot be shining to the sides rather than specifying the height of the light. MR. VAN SICKLE indicated we want it such that the light cannot be visible from the south lot line. MR. EMMERT indicated it must be a solid fence such that headlights of vehicles coming between buildings will not shine into people's backyards, but rather will just hit the fence.

MR. VAN SICKLE asked for a public hearing, and suggested it could be 30 minutes prior to the regular Zoning Board meeting scheduled in June. Attorney Gaziano discussed the statutorily required newspaper publication time for the Public Hearing for the June meeting, namely, publication not less than 15 nor more than 30 days prior to the public hearing, and it was decided that the public hearing will be held at 6:45 P.M. on June 22, 2020. All agreed.

MR. VAN SICKLE said he does not believe there is any business for the regularly scheduled May 18, 2020 Zoning Board Meeting so he does not anticipate we will be having that meeting unless something comes up.

MR. COOK made the motion to adjourn, and was seconded by MR. EMMERT.

Meeting adjourned at 8:05PM.

APPROVED

Charles R. Van Sickle, Chairman
(Approved June 22, 2020)

PREPARED BY:
Kellie Symonds, Deputy Clerk