

**CITY OF OAK CREEK
BOARD OF ZONING APPEALS**

Appeal No.: 18-0005

Hearing Date: September 24, 2018

Appellant: Glen McCoy and Christine Smith are requesting a variance of Oak Creek Municipal Code, Section 17.0501(b)(3), which states: No accessory building shall have more than one story, nor exceed seventeen (17) feet in height; unless otherwise permitted as accessory to business and manufacturing uses or to authorized special uses.

If granted, the variance would allow the applicant to construct an accessory building with a height of 20 feet for the parcel located at 7739 South Pennsylvania Avenue, Tax Key #779-9000-000.

The hearing was called to order by Chairman Gregorek at 7:00 p.m.
Members present: Larry Bodette, Melissa Hakes, Dan Jakubczyk, Stacey Henne, Richard Yerkey and Randy Gregorek.

Gregorek:

We will now hear Case #18-0005. Secretary please read the report into the record.

This hearing will be held under the Rules and Procedures adopted by the Board of Zoning Appeals. Persons giving testimony shall give their name and address and be sworn in by the Vice Chairman. After the appellant's testimony, the letter of denial will then be read into the record. We will then hear from those in favor, and those in opposition. After all testimony is heard and the public hearing closed, the Board will then deliberate for the purpose of making a decision on this case.

You are welcome to wait while we do that.

Bodette:

Before we get started with the testimony I need some clarification from Peter. Can we swear Peter in about which zoning it is?

Hakes:

Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Wagner:

I will.

Bodette:

I just want to make sure it doesn't have any effect on the accessory buildings.

Wagner:

It is zoned Rs-1, Single-Family Residential.

Bodette:

Okay, that's what our paperwork says but the December map that I have says that it is RM-1.

Wagner:

That looks like our Comp Plan Land Use map, not a zoning map that you're looking at right there. Our Comp Plan is Land Use Categories which is, in that case, Multi-Family Residential but our Zoning is Single-Family and so as long as they never change they can continue to have that Rs-1 zoning designation. All around them is RM-1 for the Drexel Ridge Apartments.

Bodette:

So, their property is Rs-1.

Wagner:

Yes and it will remain so until such time they would like to...they could rezone it to multi-family sometime in the future but...

Bodette:

Thank you.

Gregorek:

Please state your name and address and be sworn in now by the acting Vice Chair.

Glen McCoy, 7739 South Pennsylvania, City of Oak Creek.

Hakes:

Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

McCoy:

I do.

Gregorek:

Please provide the reason for your request of a variance.

McCoy:

Originally, I went to my builder and as you can see in the picture of my house it was built 150 years ago. We're the third owner of the house. The reason I went to my builder was I just didn't want a garage. I used to have a shed there. It was 10 x 14 and because of the building of the Drexel Square Apartments, I felt I needed a little bit more security. So, I was going to build a garage when you changed the Ordinance for the City. I'm going to go with just not a shed but with the size of a garage that they allow me to build on my acreage that I do have. I didn't want to just build a regular garage. I wanted to build a garage that kind of fits the home. If you look at the houses on 15th and Forest Hill they all have a high peak on there. That's the way they were built a long time ago. I went to him and requested that it would be built at the same pitch. And the pitch was 8-12 pitch. That's how we came to that when we were reading the pamphlet. It was kind of vague on the maximum height. We didn't see that. That's why we just submitted it to be the way it was because we didn't see that maximum height, so we were denied. It was in the Ordinance. That was the reason. And I'm going to make it red to look more like a barn with white trim. I'm incorporating cream city brick that I have left over. It's been on the property for a long time.

I'm incorporating cream city brick on the front of – that I would see from my house, not from the street level, because I don't have that much brick. It would be on the front like a wainscoting type of brick that comes up about 3 or 4 feet.

Gregorek:

Okay, then in terms of the picture it looks like it's going to be just off to the side of that...

McCoy:

So, my property – this is the road that goes back. My property is right here so it's right where the trees used to be. The little shed is under that clump of trees. So, it's right here. (pointing to map)

The idea would be to have – this is my garage that's attached to my house – and it would be to the edge of this back here. 30 X 40. And then that's why because of the 40 going across the street you pretty much won't be able to see it because of these trees that are here and that have been there for a long time but I wanted it to match my pre-existing roof line that I already have on my house.

Gregorek:

Okay. Is that the extent of your testimony at this time? You will be able to speak further.

McCoy:

Yes, I think that pretty much covers it.

Gregorek:

Do the Board Members have anything to add or ask right now?

Secretary, would you please read the Letter of Denial in to the record.

Is there anyone here wishing to speak in favor? Please state your name and address and the name of your company.

Ryan Kurz, Kurz Construction LLC.

Hakes:

Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Kurz:

I do. There's just a couple of things I have to add. You can't really tell the grade in this picture.

The house is up pretty high. Down where we're going to put his garage is 2 to 3 feet lower. That height would really look pretty squatty if we stayed at the 17 feet. The house pitch is an 8-12 pitch. The peak of it is about 28 feet – somewhere between 28 and 30 feet. We wouldn't be dwarfing the house at all. Our main goal is to not have a garage that looks like the cheapest garage that we could build. Matching the house and making it look like it's coming from the same time frame is very important to the customer. I didn't actually figure out the percentage of roof line like if you do a layover on the trusses. It's probably like maybe 5 to 10 per cent of the building that's going to be over the 17 feet. When you change the pitch to 6-12 to an 8-12 and intersect those lines, it would be a very small triangle that's actually going over the 17 feet.

Other than that...our other concern was that in the future if he ever wants to sell the property somebody might think the building looks not good and actually will detract from the value. I

hate to say a “Menards” garage but we don’t want it to look like a “Menards” garage.

Gregorek:

And you mentioned that you want to put the same kind of brick on the front part of it so it matches the house.

McCoy:

I have cream city brick to put on each side of the garage.

Kurz:

Like 40” up on the face. I have a 3-D rendering of what it will look like. (Exhibit “A”)
I also have the mapping of the old shed and then just kind of how big the building is compared to his property and then his house.

Gregorek:

We have a picture of that.

Kurz:

We’re going to have one door that faces to the north and one service door that faces to the east. This will probably just all stay grass on this side, maybe a little walk way to the service door. Probably pretty minimal use on this side. I guess one other thing is we were going to do the storage trusses to so you could get up there and put the junk that you don’t want to get rid of up there – a little extra space and not banging your head on the things when you’re up there.

Gregorek:

Okay. Do any of the Board Members have any questions?

Bodette:

I’ve got one right off the bat. You said the north side is going to have the cream city brick wainscoting?

Kurz:

It would be on both sides of that garage.

Bodette:

On the overhead door.

Gregorek:

Just to clarify. You mean the part that is facing your house.

McCoy:

Facing my house – where the cars would pull in – the main garage door, on each side of the garage door there would be cream city brick.

Gregorek:

Okay, thank you.

Yerkey:

I’m having a hard time wrapping myself around the economic aspect of this. If you look at a typical farm there are many buildings and sheds and they use all kinds of different pitches. There’s a major addition on to your dwelling that’s probably built – I knew one of the owners.

I'm not sure.

Kurz:

Quintens or Dahlmans.

Yerkey:

Oh, the Dahlmans. I believe that was built in the early 70's.

McCoy:

That addition was built before the Dahlmans were there. Just a family room and a two-car garage.

Yerkey:

That had obviously - they made no effort at all to match the house. So, we have a major addition on to the house and basically a 1970 ranch home type of roof pitches and things like that. If the building is going to be an economic impact where does that leave us with the actual major addition to the house itself?

McCoy:

Well, my point was that of what you can see from Pennsylvania Avenue and as you would come up my driveway. You really don't see the addition at all other than if you're going to go back to the apartments. Before the apartments you never saw the addition. You never would have known it was there. So, I just wanted more of the look as you would drive by and you would see it.

Yerkey:

I drove back there. I knew it was back there only by knowing Benny.

McCoy:

And then now as you come by the box elder trees that were around that area that are in that area are down now so as you would drive through south you'll be able to see the garage. So that's the one I wanted to kind of match up where you could see it from the road.

Kurz:

If I could I just have a few things to add – on matching. I'm sure as you all know a lot of times farmers are barely getting by and they probably do what they could but mainly they matched up the pitch of the addition so it wouldn't cover the second floor windows. I mean, it's literally right under the window sill and actually the one is going through the window sill. So, they wouldn't have been able to do an 8-12 pitch on there without losing the windows on the house. I'm sure that was a factor and maybe they just couldn't afford to match the house at that time. I know farmers and they've got 5 different styles of sheds and stuff laying all over. They do what they can to make money and get by.

Yerkey:

I just think the aesthetics and the siding and what you put on the building is more important than the roof pitch.

Kurz:

Well, we just resided the whole addition and the garage and did the roof line and tried to make it look as nice as we could. It isn't looking like it's falling apart. We want it to look like it's an up-kept farmhouse. There's about a half dozen of these unique homes right here in Oak Creek.

We'd like to keep it unique. There's a lot of people who know Glen and they say "is that the guy with the old farmhouse on Pennsylvania"? It's kind of a cool thing to be known for!

Gregorek:

Any other Board Members have any other questions?

Bodette:

Back to the pitch. I noticed where the shed is going to be placed you really can't tell the pitch of the roof if you're driving by the road anyway. So, I don't understand where a 17 foot height would really matter. You say you want to match the pitch of the house but to me, I don't think that's that important especially where it is, way back off the road. Nobody is really going to be able ... it's not really visible where they're going to compare a pitch of that to the pitch of the house, number one. I understand that you would like it higher so you don't bump your head on the second floor. That would be the only other thing. To me, I'm not quite sure on that aspect of it, why that pitch is so important to match the house.

McCoy:

I don't know how to explain it other than I just explained those are my ideas when I went to the builder. That's why I submitted it, just to match it to the house. Ryan did explain to me later on that there would be more storage room but initially when I first wanted to build something and build a garage it was just to match the roof line – the same one that is on my house and that's the period that would be similar to in that time and that's why we still continued to go to the Board of Appeals because we are still on that thought process.

Hakes:

Please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Smith:

I do.

Hakes:

Please state your name and address for the record.

Smith:

Christine Smith, 7739 S. Pennsylvania Avenue, Oak Creek.

I understand what you're saying that from Pennsylvania Avenue you don't really see the pitch but the room that we spend the most time in in our house is the family room and that has a direct view out to where this garage is going to be and as I mentioned where that garage is going to be sitting is already a little bit lower than the house. We would like something out there that looks aesthetically correct with the time period of our house and given a lower area and if we go with that lower pitch it's simply going to look like a squat garage sitting in our side yard as opposed to something that's a little bit more unique. We would love to replace it with a barn like what was behind our house originally but financially we can't do that and obviously it's zoned as Rs-1 and we can't do that anymore. So we would want to get it to be as close to that as possible. As Glen said, our house, this year actually, is the 150th anniversary of the building of our house. It was one of the first houses in Oak Creek. We plan to live there for a very long time and just aesthetically looking out in that direction all the time it just going to make more sense and be visibly pleasing to have something that matches the pitch of the house that we live in. It also

somewhat matches the pitch of all the apartment buildings that have been built behind us. So, it kind of fits in with what is going on around us as well.

Bodette:

I also drove back there and back by the apartments but either you're looking this way or you're looking at the apartments. I don't think a person is going to perceive the pitch from that far away.

Smith:

But the other thing is that I'm looking at it from my own house, the pitch will be very distinct and the height and whether it looks squat and short or tall and majestic. It's going to make a very big difference from our vantage point. What you're saying is that all these other people aren't really going to be able to see it so, I guess it's an opposite argument and what harm is it in making it the extra height if it isn't going to matter to anybody else.

Gregorek:

Dan, do you have a question?

Jakubczyk:

It's not a question; it's more like a statement. I could see why these zoning laws for the 20 foot but like he's mentioned this is a 150 year old house and a building like this is going to be more aesthetically in line with the rest of the building and plus the fact that it's off in back like that. I think it would be a good addition to this.

Gregorek:

Can I ask you how much lower is the elevation? Can you restate that?

Kurz:

From what I could just eyeball on it, it's at least 2 feet lower maybe 3 feet. I didn't shoot a laser.

Gregorek:

Can you stand up there again and show us how it's dipping down there?

Kurz:

This whole area kind of goes down here and this is all lower and it all drains out to the front. Without bringing that grade up 3 feet we can't match the height of where the garage is so it's going to be probably 2 feet maybe 3 feet lower than the house.

Gregorek:

When you say you can't match the height, is it because of the lower elevation, correct?

McCoy:

Yes, the driveway goes down – the pitch on the driveway. It's not a flat driveway. My daughter used to slide on it.

Kurz:

Even to the other side of the garage it goes down a little bit farther, too.

Gregorek:

Now, can I ask a question here? With this part here, what are you thinking of putting where

these trees have been removed? This looks like it's still sloping there too, correct?
Are you going to have to bring in fill to bring that – level that off?

Kurz:

We're going to have to bring in some to get it to at least to the height of the gravel driveway that's there now.

Gregorek:

Okay. That's what you said, it's like 2 foot.

Kurz:

From the garage down to there – that garage is, I believe a 5-12 pitch. My guess is its going to be pretty close in height. The other thing about views is this new road coming through here, the views from there – you can see the house here and you're going to be able to see that garage. This is actually closer though – Pennsylvania as far as people going in and out of the apartments. And all of the apartments are 8-12 pitch.

Gregorek:

Thank you. Any other Board Members have any other questions?

Yerkey:

Is there going to be a tree line on the east side of that building?

McCoy:

There is already a tree line. This is the end of my property right here. There is a tree line already set from the Drexel Ridge Apartment Complex.

Kurz:

That's the west side.

McCoy:

Oh, sorry, the east side? Nothing would be on this side at all other than right here – the existing is like a privacy...

Yerkey:

You are actually going to be east of that existing tree line.

McCoy:

The tree line to the west is here. The garage will go right here. There's just a couple gardens here but this is all grass.

Kurz:

The views from Pennsylvania are probably mostly blocked.

Gregorek:

Alright. Any other questions? Does the Zoning Administrator have anything to add at this time?

Wagner:

Not at this time.

Gregorek:

Is there anything that you would like to add? Are you here to speak in favor as well?

Just a neighbor.

Gregorek:

Is there anyone here wishing to speak in opposition? Is there anyone here wishing to speak in opposition? Is there anyone here wishing to speak in opposition? We do not have anybody here.

Are there any other questions or does anyone have anything else to add besides what was stated so far?

McCoy:

No, we're happy with that.

Gregorek:

Before I close this hearing, if the Board grants you this variance you must start construction within six (6) months. If within six (6) months you fail to start construction the Building Inspector can grant you a six (6) month extension. If the construction is not started within one (1) year from the date of granting this variance, the variance will expire. Any further extensions, thereafter, will require approval from the Board of Zoning Appeals.

If you are denied this variance you have a right to challenge this Boards decision in Circuit Court and you must do so within 30 days from the time the decision is placed on file in the City Clerk's office. You cannot appeal the same decision for one year and you will be notified of the final decision of this Board or you have the right to stay and hear the decision on this case tonight.

The Board will move in to Deliberations at this time. No more testimony will be heard.

I hereby declare this part of the hearing closed. (7:35 pm)

DELIBERATIONS:

This is in an Rs-1 district and the appellant is asking for a variance of 3 additional feet beyond the stated accessory building height limit.

FINDINGS:

Preservation of Intent: Accessory buildings are a permitted use in an Rs-1 district.

Exceptional Circumstances: The fact that the house is 150 years old is exceptional. There are not many homes that old in the city.

Economic Hardship and Self-Imposed Hardship Not Grounds for Variance:

Economic hardship and self-imposed hardship do not apply.

Preservation of Property Rights: Granting of the variance would not be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and same vicinity.

Absence of Detriment: The granting of this variance would not create substantial detriment to any surrounding properties.

Additional Requirements in Floodplain Districts: Not applicable.

DECISION:

Gregorek:

A motion is in order to grant or deny.

Jakubczyk:

I make a motion we deny the variance because there are no exceptions under the code. Other options exist. The variance is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and same vicinity.

Henne:

I'll second that.

First by Jakubczyk; seconded by Henne.

Secretary please call roll. Bodette, aye; Hakes, aye; Jakubczyk, aye; Henne, aye; Yerkey, aye; Gregorek, aye.

Gregorek:

A motion is in order to adjourn.

Henne:

So moved.

Yerkey:

Seconded.

First by Henne; seconded by Yerkey.

Secretary please call roll. Bodette, aye; Hakes, aye; Jakubczyk, aye; Henne, aye; Yerkey, aye; Gregorek, aye.

This hearing is adjourned.

Meeting was adjourned at 8:15 p.m.