

MINUTES
BOARD OF ZONING APPEALS
June 3, 2024 7:00 p.m.

1. The meeting was held in the Tower Room and called to order at 7:00 p.m. by Chairman Randy Gregorek.
2. On roll call the following Board members were present: Larry Bodette, Stacey Henne, Richard Yerkey, Peter Wagner, Donald Garcia-Dwyer and Chairman Randy Gregorek. Dan Jakubczyk excused. Also in attendance was Kari Papelbon, Senior Planner, Melanie Perez, Planner and Karolyn Lipp, Secretary.
3. Richard Yerkey, seconded by Larry Bodette, moved to approve the minutes of the May 6, 2024 meeting, **Case #24-0004, Paul Tarczewski & Kris Skenandore-Tarczewski**. On roll call, Bodette, Henne, Yerkey, Wagner, Gregorek voted aye. Jakubczyk excused.
4. **Case #24-0005, 10441 S. Nicholson Road** – Ralf R. Kelm, TDI Associates, Architects, is requesting a variance from Oak Creek Municipal Code Section 17.0301, Table 17.0301(a) which states: “No multi-family structure shall be located closer than 50 feet to a single-family district line”. This property is located in an Rm-1 zoning district.

The Board heard sworn testimony from **John Coury, Clint Lampshire** (Clint Lampshire Construction) and **Richard Coury**.

John Coury stated that there was currently a 14-unit facility on the site and they want to put an addition on but the way the building is set and to make it work they would have to get in to the setback to do it right. Otherwise, this won't work.

Chairman Gregorek stated that it's like a second building. The closest point to the Residential area is 23'10".

Clint Lampshire stated that the function of this building is the layout of the rooms and how the corridor goes along with the common areas. You can't take a building like this per State Code for the layout per the Department of Health and bend a building like this. You have to design it to follow through with your common area in the middle and your rooms that go along the outside.

Richard Coury stated that the lot line seems to follow the telephone pole wire maybe for utility purposes at one time.

Clint Lampshire stated that the way the CBRF is laid out, we can't really shrink this down and if we scooted it more to the south we would be encroaching and covering up the building that's already here and then we have to save some room for some storm water management. So, basically this is the only location we have to work with on the property. It was also stated that the size of the property was 4.08 acres but we're very limited where we can place the structure.

Chairman Gregorek asked to have CBRF clarified as to what it is.

Richard Coury stated that it was a "Community Based Residential Facility". It's a Senior Assisted Living facility. We basically take care of people until the end of life. They can even go on Hospice there.

John Coury stated that they were before the Board of Zoning a while ago and were granted a variance but it ran out because something else came up and then Covid came up so now they are reapplying.

Richard Yerkey questioned if this building is very close to the building where the variance was granted back in 2016 and the response was "yes". The footprint is exactly the same.

Richard Coury stated that the buildings would not be attached by a covered walkway simply because of the cost right now. He wished they would have done it back in 2016. Construction costs are way up.

Larry Bodette asked about the alternate water retention pond area and if they moved that, would they have more room?

Richard Coury stated that the Engineers would be happy to work that out and take it more to the west because everything flows to the north and then to the east but is not sure it would work because of the elevation. There are pick-up drains right now all over the property and it does flow east.

Larry Bodette asked if this building would cause any more water to flow north on to the residential properties?

Richard Coury stated that the way everything is working right now, it is unencumbered so it's not going to a pond. There is a lot of greenspace there that sucks up a lot of it and slows it but now the water will be picked up and run in to a pond. I can't really speak professionally but the way I understand it that slows down flow. We have ponds all over our properties. The Engineers will design that to pick up the capacity of the site.

Stacey Henne questioned Kari Papelbon or Melanie Perez about the granting this variance for something very similar in 2016 but there has since been zoning code changes. Could you tell us what codes, if any, have changed since 2016 so maybe we can just go – we approved it once – we could approve it again because it’s relatively the same?

Kari Papelbon stated that in terms of the setback requirement and the requirement for a multi-family building to be closer to a single-family residential district line that is completely the same. Staying outside of easements, the same. The only difference that may come in to play, if it would even be on this property would be if there was a wetland, in which case there would be a 15’ setback with a 5’ buffer.

The Board then heard sworn testimony against this variance request.

Bradley Johnson, 10455 S Nicholson Rd, was sworn in and testified that he is opposed to the building. He is the resident directly to the south of this. He bought his property because of the privacy. He works 2nd shift and doesn’t want to wake up every morning to construction work right outside his bedroom window. His property is actually on the other side of the property where the construction will be.

Troy Kaun, 1445 E. Meadow Dr, was sworn in and testified that he is opposed to the building because he feels that it is almost doubled in size to the existing building. The existing building is 11,082 square feet and the proposed building will be 19,976 square feet. He feels that it will take up the majority of the greenspace. His other concern is the water issue.

Richard Coury stated that there are pick-up drains all over the property and they all connect and they all run to the east. The water has to flow east which is the natural flow path. Essentially the way the property will be engineered, the water runs basically to the west and then to the north and then back to the east and then it goes underneath the road. The retention pond will be running north and south along Nicholson.

Kari Papelbon stated that there is a storm water management requirement.

Andrew DeRosia, 1505 E. Meadowview Dr, was sworn in and testified that he is opposed to the building. His question was regarding the parking lots that were in the first proposal. Will they be in this proposal? But his major concern is the water. His house was built in 1972 and hasn’t had a wet basement yet and is afraid of that happening.

Clint Lampshire pointed out the two proposed retention ponds, one being an alternate which will be the backup plan showing where it possibly “could” be.

Stacey Henne questioned if there would be any lighting in the back of the building that would be a disturbance to the neighbors on Meadowview Drive?

Richard Coury stated that typically perimeter lighting is put around facing down but they can be flexible on that. A photo matrix plan has to be submitted which will show all the proposed lighting and the City guidelines have to be followed. They have been in the community since 2011. This will be a tax-paying entity. He thinks it is important to make this point plus they are bringing more living to seniors. This is their “Cadillac” product. It is their #1 product right now.

Gary Geiger, 10481 S. Nicholson Rd, was sworn in and testified against the proposal. His concern is more than doubling the occupancy of the property. Currently one point that he has always had is the trash. He has walked over many times to talk to someone about the dumpster always being left open. Along their tree line they clean up and find gloves and medical trash. They never close the dumpster and he fears the trash will now be doubled.

The hearing was closed at 7:49pm and no more testimony was heard.

5. The Board discussed the case and the criteria for each of the “**Findings of Fact**” as follows:
 - a. Preservation of Intent: A CBRF is permitted in a Rm-1, Multi-Family Residential zoning district.
 - b. Exceptional Circumstances: Granting the variance in 2016 for a similar setback request is an exceptional circumstance. The appellant let the original variance lapse.
 - c. Economic Hardship and Self-Imposed Hardship not Grounds for Variance: High cost of construction cannot be considered in granting a variance. The original variance was allowed to lapse for a variety of issues which is considered a self-imposed hardship.
 - d. Preservation of Property Rights: The appellant will preserve their property rights without a variance if they construct a smaller CBRF that meets the district setbacks. The appellant has other options.
 - e. Absence of Detriment: Granting of the variance would not cause a detriment to adjacent properties.
 - f. Additional Requirements in a Floodplain District: Does not apply.
6. Peter Wagner, seconded by Stacey Henne, moved to **deny** the variance requested to reduce the setback to the north lot line to 23’ 10” based on the Findings of Fact discussed by the Board and the additional fact that the appellant has other options and could comply with the current zoning code.

On roll call, Bodette, Henne, Yerkey, Wagner, Gregorek voted aye.

7. **Case #24-0006, 8371 S. 20th Street** – Kurt W. Gunderson, appellant, is requesting a variance from Oak Creek Municipal Code Section 17.0414(a)(3), which states: “On residential lots greater than 0.5 acre, the aggregate maximum area of all accessory buildings shall not exceed 1,200 square feet or 75% of the livable area of the principal building, whichever is less”. This property is located in an Rs-2, Single Family Residential district.

The Board heard sworn testimony from Kurt W. Gunderson, appellant. Debra L. Lehrke Gunderson gave sworn testimony in favor of and no testimony was provided against the request.

Kurt Gunderson stated that the garage on the property now needs to come down because the slab is breaking up. It was also built back in the 70's directly under the overhead wires. The wires pass 12 inches off the roof. He would like to get it moved back and get a bigger garage, straight back from underneath the wires. He does not want to tear down the existing shed to do that to get the square footage. He inherited some vehicles from his father. He needs this garage to keep the existing space that he has and store 2 more cars.

Stacey Henne asked what the square footage is of the existing garage?

Kurt Gunderson stated that it is 22' X 24" (528 square feet). So, basically the new garage would be doubled, from a 2-car to a 4-car. (1,064 square feet)

Stacey Henne questioned why the appellant wouldn't want to go 1,200 square feet and remove the shed?

Kurt Gunderson stated that they would be encroaching on the woods behind the property. He does not want to clear any woods down to go back farther. The shed is off to the side and across the driveway from there.

Chairman Gregorek asked for confirmation of the appellant's actual size of his living space.

Kurt Gunderson stated that it was 1,542 square feet.

Chairman Gregorek stated that 75% of 1,542 equals 1,156.50 which is less than 1,200 that is stated. So, that would mean the variance request is actually larger. Take note of that. 75% of his current living space makes the variance a greater variance. The actual variance is 387.50 square feet instead of 344 square feet.

(1064+480=1544-1156.50=387.50) (1064+480=1544-1200=344)

Kurt Gunderson stated he would like to keep his current workshop plus store the 2 vehicles. He also stated that they have a 2-car attached garage, also. He would like to store the 2 inherited vehicles on his property instead of storing them somewhere else.

Debra Lehrke Gunderson gave sworn testimony that she definitely is in favor of this garage. The cars that were inherited mean so much to Mr. Gunderson and were very well kept by his father. They would prefer to store the vehicles on the property in case they wanted to drive them. It would mean a lot to them. It's very emotional with the cars.

Chairman Gregorek asked to have a satellite view of the property on the screen to show how secluded this property is. Three (3) letters from surrounding neighbors that were “in favor of” were also mentioned.

Peter Wagner asked Melanie Perez, Planner, if attached garages were considered a part of the total square footage of all buildings?

Melanie Perez gave sworn testimony that attached garages are not considered part of the total square footage of all buildings. The 1,200 square feet is for lots over 0.5 acres and is for detached accessory buildings, so it would be the new garage and the shed. It’s not for the existing attached garage.

Donald Garcia-Dwyer asked the appellant what was butted up against the back of his property?

Kurt Gunderson stated that it was a development and all woods which is county property and apartments off of 27th Street. It’s solid woods that you can’t see through at all.

Richard Yerkey suggested making the correction of the 75% of the living space being 1,542 square feet and not using the 1,200 square feet.

Chairman Gregorek stated that the Letter of Denial cannot be changed but this correction will be stated in the record.

Peter Wagner asked that a map be brought up on the screen showing the designations and Kari Papelbon will explain.

Kari Papelbon explained in her sworn testimony a map which was from Sewer Pack which is (SERC) Southeastern Wisconsin Regional Planning Commission and they have what are called environmental corridors. Environmental corridors have certain restrictions on them and what is shown on the screen is actually something that is identified as a natural area. That’s what the pink is. If it was in a primary environmental corridor it would show blue and that might be an area where we might have to have a little discussion but since this is a natural area there is no additional restriction.

Stacey Henne questioned what the old code stated for this size property? What was allowed for accessory structures?

Kari Papelbon stated the code is the same, the maximum of 1,200 square feet. The maximum square footage of detached accessory buildings or garages on a single-family residential lot greater than ½ acre shall be the greater of 720 square feet or 75% of the square footage of the living area within the principal building but in no event shall the detached accessory building be larger than 1,200 square feet.

The hearing was closed at 9:07pm and no more testimony was heard.

8. The Board discussed the case and the criteria for each of the **“Findings of Fact”** as follows:
 - a. Preservation of Intent: The variance would preserve the intent of the code as the use is a permitted use in an Rs-2, Single Family Residential district.
 - b. Exceptional Circumstances: The fact that this lot is 1.41 acres and is being held to the same standards as a 0.5 acre lot is considered to be an exceptional circumstance. Also, there are Sewer Pack identified natural resource areas on the parcel.
 - c. Economic Hardship and Self-Imposed Hardship not Grounds for Variance: Do not apply.
 - d. Preservation of Property Rights: Granting of the variance would allow for the preservation of property rights for the appellant to build a 1,064 square foot garage which is within the 75% of the appellant’s total living square footage of his primary residence which would equal 1,156.50 square feet.
 - e. Absence of Detriment: Granting of the variance would not create any detriment to any surrounding properties based on the size of the property and the setbacks of the neighboring lot lines.
 - f. Additional Requirements in a Floodplain District: Does not apply.

9. Stacey Henne, seconded by Richard Yerkey, moved to **grant** the variance allowing the proposed 1,064 square foot garage and retain the 480 square foot shed on the property based on the Findings of Fact discussed by the Board.

On roll call, Bodette, Henne, Yerkey, Wagner and Gregorek voted aye.

10. There was one additional item on the agenda regarding the minutes. Stacey Henne had concerns about the summary of minutes vs the “verbatim” minutes. She does not feel that she can reasonably be expected to know that is what we said without reading the minutes verbatim. There are facts and details in there that are often times forgotten. Chairman Gregorek stated that the difference between the summary and the total minutes typed allows you to go to any section and quickly review it. Stacey Henne feels that it is necessary mostly when the decision is made. She isn’t sure if the correct verbiage was used. Peter Wagner suggested having more detail and that the Board could have access to the audio possibly online. Larry Bodette stated that if the City appealed our decision or the appellant appealed our decision, the Courts want to see our minutes. They want to read them and if they don’t have the minutes we would have to go to Court. Kari Papelbon suggested that a good middle ground would be to follow the Planning Commission minutes. They do a summary of the discussion, a summarization of what someone said. Then they have the motion and what the outcome was. At times they may have verbatim of what was said. You also get the “exact” motion that was made but with shorter minutes. Technically, what is required is the summary of the conversations and the action taken. The Board is willing to try the Planning Commission format. Stacey Henne requested that she has the right to bring it up again if she is not happy with the new format.

Larry Bodette, seconded by Peter Wagner, moved to adjourn the hearing at **9:39 p.m.**

On roll call, Bodette, Henne, Yerkey, Wagner and Gregorek all voted aye.

ATTEST:



08/05/2024

Karolyn S. Lipp, Secretary

Date