

MINUTES
BOARD OF ZONING APPEALS
August 5, 2024 7:00 p.m.

1. The meeting was held in the Lake Vista 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, Dan Jakubczyk, Stacey Henne, Richard Yerkey, Peter Wagner, Donald Garcia-Dwyer and Chairman Randy Gregorek.

Also in attendance was Melanie Perez, Planner and Karolyn Lipp, Secretary.

3. Stacey Henne, seconded by Larry Bodette, moved to approve the minutes of the June 3, 2024 meeting, **Case #24-0005, Ralf R. Kelm, TDI Associates, Architects.**

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

Jakubczyk excused.

Stacey Henne, seconded by Larry Bodette, moved to approve the minutes of the June 3, 2024 meeting, **Case #24-0006, Kurt W. Gunderson.**

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

Jakubczyk excused.

4. **Case #24-0007, 4145 E. Oakwood Road** – Andrew J. and Nicole C. Walters are requesting a variance from **Oak Creek Municipal Code Section 17.0403(d)(4)g.1[a]**, which states: “The garage may be set ahead a maximum of five feet from the front façade of the home, inclusive of porches, bay windows, or other minor projections.”

Also, a variance from **Oak Creek Municipal Code Section 17.0403(d)(4)g.1[b]**, which states: “If the garage is set ahead of the front façade of the home, as detailed in Subsection (d)(4)g.1[a] above, it shall not exceed 45% of the façade’s total width.” This property is located in an Rs-1 zoning district.

The Board heard sworn testimony from **Andrew J. Walters, appellant. Amber Stancato (Mastercraft), Bruce Bertelsen** and **Jack Marshall** gave sworn testimony “in favor” of and no testimony was provided “in opposition” of the request.

Andrew J. Walters stated that they began the process of building their new home back in January/February, 2024. They closed on the land and the construction loan on May 17th. This date is very important because the construction and land loan date is a 12-month loan. June 1st of next year is the end of their loan through the bank for the construction and coincides with the end of their lease. Things are timed appropriately.

Their submitted plans were approved by their Covenant. There was a Covenant that they had to have a specific type of home. Once that was approved by Jack and Lisa Marshall they submitted the plans to the City of Oak Creek that included a Plot Plan and a Lay Out that was approved at one point and then the design in June.

The reason for the variance is, financially to change plans at this time would be monumental. Change of design would back up their time frame quite a bit. Everything would have to be resubmitted. He also stated that there are a lot of house plans out there that do not meet this Code. This is a tough Code to meet unless you're building a much different home. This Code was just changed in July of 2023. This house is set back 100' from Oakwood Road. He feels that if you look at most of the new homes here in Oak Creek, they would struggle to match that 5' setback but they were all built before the Code changed. From a uniformity stand point the house they have designed is definitely in line with the majority of houses in Oak Creek both from the setback and the width of the garage. Many of the three-car garages in Oak Creek don't match the 45%. They're larger, even the newer homes that were constructed.

The appellant enclosed in the meeting packets several examples of newer construction homes (built before the Code changed) even without driveways yet, that have a wider than 45% garage. He also stated houses that the Knight's Construction team built have a much wider than 45% garage and those are fairly new homes built in Oak Creek with large setbacks from the front of the garage. The fact is that they're there! And they are uniform with what they are trying to build.

He brought up information about a Common Council meeting held on July 16 regarding the Stonebrook on the Park development. During that meeting the developer asked for a variance for 20 homes to be built along that development right on Abendschein with 55% garages. The Common Council voted unanimously to approve that. The issue was brought up as to why they didn't need Board of Zoning approval but their discussion was that a PUD with a developer doesn't require the same as a private citizen who has lived in Oak Creek for 16 years. We have to go through a little bit more effort because we're not developing a large community. The reason for the Code is so people don't build these monster big garages or "garage-mahals" with a tiny shack of a house. He feels with everything he has presented, that is not what they're doing. It's a very standard home.

His request is to build a well-balanced classic design of a timeless home that will be an attractive addition to the City. In an attempt to meet the requirements of the Covenant they are also trying to meet the guidelines of their loan and their lease in the time allowed and that's the reason for their request for a variance on this project.

Melanie Perez gave sworn testimony that the Code was changed in March of 2022 but with the grace transitional period that the former Director allowed but after January 2023 was the hard stop for that grace period.

Stacey Henne asked what the old Code allowed and Melanie Perez stated that she was not here at the City yet but it should not be relevant to this case as we're under new Code now. Stacey Henne stated that she struggles with the idea that the Board is supposed to enforce this Code and yet the Common Council just approved 20 homes with a different percentage. They are already bending the Code.

Peter Wagner stated that there were no regulations before. That new design standard is new with the Code and more regulated than they were before.

Melanie Perez wanted to provide clarity on the Stonebrook project off of Drexel which is a PUD and those are side-by-sides with garages and different models. The PUD process is a really long process so before they can even apply for any permits they have to apply for Plan Commission approval one month before the Plan Commission date and then they come back and meet with the Common Council within the next month in order to apply for the permit. They have quite an extensive process before they get approved but the ones they got approved for with the extra percentage are side-by-sides.

Stacey Henne made a statement that they are still homes with 55% versus what Code allows.

Bruce Bertelsen, 4183 E. Oakwood Rd, gave sworn testimony in favor of this approval and that he just built last year and had to go through the same process and had some issues with the zoning codes. His question to the City was why did the Codes change? He stated he is all for Codes for safety and that but for aesthetics, that has him a little turmoiled. He made changes and tried to make it work and it is very costly but he also pays a lot of taxes. He stated he had a lot of questions but never got a lot of answers.

Jack Marshall, 10245 S. Camden Ct, gave sworn testimony in favor of this approval. He owns a couple of lots there and will be renovating one of the homes. Mr. Marshall owns lot 1. He and his wife are very proud of what this area has become. He stated that the houses here fit the lots and look great. Three years ago you couldn't even walk on the lots. All of the residents feel that they are adding to the value of their homes. The Marshall's support this approval. If there are families here that want to invest in the cost and have roots in the community, I commend them for what they're trying to do.

Chairman Gregorek stated that it doesn't look like 52%.

Andrew J. Walters stated that the issue with the Code is exactly what Chairman Gregorek stated. Imagine looking at that from 100' away on Oakwood Road. You definitely don't know. But the blue print is the blue print. The measurement is the measurement. It's 52%! When you look at the house it is one continuous thing. It's not a garage here and a house over here. It's one whole structure with a standard 3-car garage on a 2,000 square foot ranch home. As an aesthetic Code, it bears discussion at least to have this Board consider the variance.

Amber Stancato, 4238 Meachem Road, Mt. Pleasant (Mastercraft Builders) gave sworn testimony that being on the builders side to meet this Code in that square footage range (1800 to 2000), it is a tough Code to meet with the stretch of the front façade of the home versus the 3-car garage.

Peter Wagner asked if the owner was prohibited to have a detached accessory structure on the property.

Andrew J Walters stated as per Covenant, it is not prohibited but has to follow Covenant regulations and be voted on by the Covenant members. The Covenant rules have been filed with the City and the Plan Commission. With that Covenant though, it does require a 3-car garage so it is not an option to reduce the size of the garage to a 2-car. Mr. Walters feels that this is a reasonable request and it falls within the spirit of the zoning board to consider something like this. The spirit of the zoning is to maintain continuity and to drive the vision of Oak Creek forward.

The hearing was closed at **7:51pm** 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 3-car garage is permitted in a Rs-1, Single-Family Residential zoning district.
 - b. Exceptional Circumstances: The only exceptional circumstance with this property is the Covenant that requires a 3-car garage which makes it very difficult to make the 45% Code according to the Builder’s testimony.
 - c. Economic Hardship and Self-Imposed Hardship not Grounds for Variance: Do not apply.
 - d. Preservation of Property Rights: The granting of the variance would preserve the property owner’s rights by allowing the appellant to be in compliance with the Covenant that was in place at the time they purchased the parcel. The Covenant was filed with the City prior to the new Codes and with the understanding that there were no restrictions on percentages of facades and therefore, this Covenant was made under old Codes. Other properties in the vicinity do not have Covenants to abide by.
 - 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. Stacey Henne, seconded by Richard Yerkey, moved to **grant** the first variance request of 5’ allowing the appellant to have a maximum of 10’ from the front facade of the home inclusive of porches, bay windows, or other minor projections based on the Findings of Fact discussed by the Board.

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

Stacey Henne, seconded by Richard Yerkey, moved to **grant** the second variance request of an additional 7% allowing the appellant to construct a garage not to exceed 52% of the façade's total width based on the same Findings of Fact discussed by the Board.

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

Richard Yerkey, seconded by Stacey Henne, moved to adjourn the hearing at **8:45 p.m.**

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

ATTEST:

Karolyn S. Lipp

Date

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