



## Board of Zoning Appeals Meeting

Whitewater Municipal Building Community Room,  
312 West Whitewater St., Whitewater, WI 53190  
\*In Person and Virtual

**Thursday, January 25, 2024 - 6:00 PM**

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### MINUTES

#### CALL TO ORDER

Meeting called to order at 6:10 p.m.

#### ROLL CALL

PRESENT: Patrick Taylor, John Nelson, Lee Loveall, Justin Wesolek

RECUSED SELF: Beverly Stone

STAFF PRESENT: Heather Boehm, City Clerk, Jonathon McDonnell, City Attorney, Allison Schwark, Municipal Code Enforcement, Llana Dostie, Neighborhood Services

#### APPROVAL OF AGENDA

*A committee member can choose to remove an item from the agenda or rearrange its order; however, introducing new items to the agenda is not allowed. Any proposed changes require a motion, a second, and approval from the committee to be implemented. The agenda shall be approved at each meeting even if no changes are being made at that meeting*

Motion to approve agenda was brought by Nelson, Wesolek asked that it just be passed by unanimous consent. Motion passed unanimously.

1. Approval of Minutes from December 7, 2023.

Motion to approve December 7, 2023 was brought by Nelson with a second from Loveall. Motion passed unanimously.

#### SECRETARY PRESENTS CASE TO BE HEARD

2. Applicant: RLA Properties

Property: 355 W. James Street

Relative Code: 19.21.060 Yard Requirements Side yard of 15 feet.

Variance Requested: To place new structure on old structure location that is only 4.5 feet from side property line.

#### PRESENTATIONS

3. Board presentation of hearing procedures.

Attorney McDonnell presented procedures. Once a variance is granted it is permanently attached to the land. Written comment doesn't need to be read in since it was posted in the packet. Taylor asked about an appeal process. McDonnell stated it is located in 19.72.050 for appeals must be filed with the secretary within 15 days of the written notice of decision or order from the planner.

#### 4. Applicant Presentation requesting Variance.

Applicant purchased property in 2015 it was a good rental for a few years. Tenants reported an issue with a leak. A contractor went out to look at the roof and called the applicant to let him know he needed to come out and look at the roof which showed that the previous owner had just covered up with new framing and drywall covering an entire section of rotting building this was in 2018. Damage to the building resulted in the removal of the building in 2020 and applicant kept the garage. He has been in the area for 20 years as a landlord. and student. He knew that he would have twelve months to rebuild on the old foot print. He stated that at that time due to COVID and rising prices he was unable to build within that time frame. He stated that he has had multiple hardships related to this property. He is asking to be to rebuild in the same foot print wants to be more maintenance free and ADA compliant.

Taylor asked for clarification about if he had built within one year he would have not needed variance.

Wesolek asked if the request is for the original foot print or not. Applicant clarified that it is but if push came to shove if we were willing to work with him on setbacks he would be willing to move. He is willing to work on the eastside set back since he is also not a fan of the location.

Nelson asked about whether they had a new drawing of the proposed property with the location of the proposed residence or just the one from 2019. Applicant stated that these are the only plans he shared.

Nelson asked about what the zoning of the property is. Applicant stated that the zoning was R-3 five unrelated.

Taylor to summarize what I hear you saying is that we are looking at 2019 drawings and that if you removed the garage and slide the house over you would be code compliant.

Allison stated common practice is that when the primary structure comes down the garage would come down too. This is because you need a primary structure to have an accessory structure.

Applicant stated that he can't move forward with plans without knowing what his setbacks are.

Taylor asked if the variance is not granted would he have to remove the garage and be further back than his neighbor's properties are.

Nelson asked to be able to use the property adequately a variance is need. Applicant confirmed.

## 5. Statement by Planner

Asking for variance relief for the side yard, front yard and back yard. The old structure was nonconforming in most all aspects. Doesn't believe the applicant has a hardship. The applicant has adequate space to build a new structure.

Patrick asked about what the square footage the home would be.

Our code does allow for the ability to take the average of the adjacent properties for the front yard setback without a variance.

Wesolek would a fair way to summarize would be the City is aware that the lots are nonconforming but the effort is to get them over time to be conforming.

Allison confirmed this is the case. The goal is to make every property more conforming.

Wesolek understanding that the office would now have the garage torn down. The city didn't require it at that time.

Allison confirmed that this would have been a requirement but hearing from the applicant that his intention was to rebuild right away this could be why the garage was allowed to remain.

Taylor asked for elaboration on what was meant by the hardship was self-imposed.

Allison stated that it should not be self-imposed.

Taylor asked if it was Allison's view that it was self-imposed and to elaborate if it was.

Allison stated that potentially it was, but it would be a legal discussion. Her recommendation that a variance not be approved because of an owner's financial situation. He had the opportunity to rebuild within that 12-month period within our code but unfortunately missed that window.

Nelson asked about variance process about conditions to the variance.

Allison stated it would be her position that the variance not be given since there is plenty of space to meet our code.

## 6. Public Comment and Input.

Bev stated that her comment was all in her letter and that if the variance is granted it would be a hardship for her property.

7. Written input presented.

Written input was included in the agenda packet.

8. Applicant response to statements.

Improved property from 2015 to 2018. He disagrees with the planner and states the hardship exists and is not self-imposed.

9. Board deliberations of case (Open Session).

Nelson keep zoning/compliance over time. The concern that he has is what can be done with conditions to a variance. What kind of building can be built with the new current setbacks.

Attorney McDonnell stated the Board as the right to approve the variance that is requested, deny the variance that is requested or say we are going to come somewhere in the middle. The Board can say they want supplement information from applicant and have another meeting.

Taylor it is not our job to question zoning they are there for a reason. There is a burden on the applicant to show hardship. Sympathetic to land owners to develop their properties in a reasonable way. Sympathetic to the objection of the next-door neighbor that this would impede her quite enjoyment of her property. And to the planner who has agreed with that assessment and has recommended denial.

Would like to look at this further with more information to see if we can work on some resolution. Maybe have the applicant submit plans that meet the side yard setback but may impinge on the front and back yard set-backs.

Wesolek there is wiggle room for the front and back. There is no proposal in front of them except for what it is. Mindful of setting a precedence.

Loveall east line is the property line not the house. Understands hardships with COVID. Agrees with others more plans needed we can be flexible with setback off the street.

Wesolek asked did the city set up the situation with allowing the garage to stay that and whether that has created a hardship.

Loveall understanding was that the new house would be built within a year which is why the garage stayed.

Nelson presuming, we get more information and presuming it would not require the garage to come down. Is there a minimum set back between the garage and the primary structure and would this be something we will need to consider in a future meeting?

Allison there typical is a set back between the primary and accessory structure which is usually 10 ft but would have to look.

Nelson so this would need to be considered in supplement information.

Allison he can work with her to get the plans together.

Attorney McDonnell stated that one option is to not act on the proposal and ask for supplemental information.

10. Board action on request, including findings regarding variance request.

Motion made by Taylor that the Board move postpone any decision on the current application and wait for any supplemental information submitted to City Planner for review.

Wesolek attempted to second but was interrupted by Attorney.

Attorney asked for clarification if this was an indefinite motion or time restriction. Taylor stated indefinite to give the applicant time to get information to the information to the city.

Recommendation from planner stated that the applicant should give the board everything they have up to the final plan.

Wesolek and Taylor agrees with the planner.

Nelson made a motion to postpone consideration of the application as currently filed and ask the applicant to work with the City to supplement the application to provide us more detailed information about what he is proposing any and all options that he may wish to propose and when complete it will be put on another Board of Zoning Appeals Agenda at that time.

Loveall seconded the motion. Motion passed unanimously.

**ADJOURN**

Motion to Adjourn made by Wesolek and a second by Nelson. Passed unanimously. Meeting ended at 7:47 p.m.

A new meeting date will be posted at a later date.

**Anyone requiring special arrangements is asked to call the Office of the City Manager / City Clerk (262-473-0102) at least 72 hours prior to the meeting.**