

**City of Oconomowoc
Zoning Board of Appeals Minutes**

May 6, 2009

The Deputy Clerk called the meeting to order at 7:02 pm.

Members Present: Bill Mielke, Craig Pruscha, Bill Paton, John Gross and Bonnie Goodson
Members Excused: Matthew Rosek
Staff Present: Gallo, Sayre and Dehnert
Others Present: Brenda Young, Court Reporter

Due to the absence of a chairman, motion by Pruscha to nominate Mielke as Chairman pro tem; second by Gross. Motion carried 5-0.

Public Hearing – 7:00 PM: The hearing was scheduled at the request of Brett Etzel of Stone Brook Homes, on behalf of Mark Debyl (property owner), who is requesting a variance for an addition to a non-conforming structure at 48 Riverview Lane, which is 34.5' from the Oconomowoc River. Pursuant to Section 17.409(9) of the City Zoning Ordinance, non-conforming residential dwellings shall not be permitted to enlarge, expand, or extend, unless a variance is granted by the Board of Zoning Appeals. The precise plans include adding 720 SF of living space above the garage, without increasing the footprint of the existing structure.

The hearing opened at 7:02 pm. Mark Debyl, property owner of 48 Riverview Lane and his brother Brett Debyl were duly sworn in by Chairman Mielke. The two bedroom home was built in the 1950's and is located 34.5' from the high water mark of Lac LaBelle. A two car garage was added on to the home later. They would now like to add on and remodel the interior of the home to accommodate future family needs. In order to stay within the footprint of the home, they would like to add a second story to the existing garage and tie it into the house. They would also like to add a covered porch to the front of the home and update the outside façade at the same time to help blend the addition to the home. Initially they thought about building a new garage and turning the existing garage into living space. They determined, however, that adding a second story was going to cause the least amount of damage to the yard and trees and overall was the best way to go.

Mary F. Patrick, 52 Riverview Lane, was duly sworn in by Chairman Mielke. She lives next door to the property and said there have been renters living in the home most of the time since she has lived there. While she appreciates a family living there now, she doesn't see the necessity of granting a variance to enlarge the home for solely that purpose.

Daniel Frank, 28 and 34 Riverview Lane, was duly sworn in by Chairman Mielke. He believes the applicant should be allowed to add on to the home as they have requested. He believes adding a second story to the garage is the only way to enlarge the home and spare trees as well.

Trent Perkins, 1184 Riverview Lane, was duly sworn in by Chairman Mielke. He stated he was unaware of any problems caused by the home owner and appreciated their efforts to make the house a real home.

There were no additional comments. The Hearing closed at 7:14 pm.

Mielke called the meeting to order at 7:14 pm and the Deputy Clerk confirmed appropriate notice had been given.

3. Approve Minutes of March 4, 2009: Motion by Pruscha to approve the minutes of March 4, 2009; second by Mielke. Motion carried 5-0.

4. Consider / act on the variance request of Brett Etzel, Stone Brook Homes, on behalf of Mark Debyl (property owner), who is requesting a variance to allow a 720 sf addition to the residence located at 48 Riverview Lane. The requested variance is from Section 17.409(9) of the City Zoning Ordinance.

Sayre explained this applicant came to staff with the property owner's request for an addition which would add 720 sf of additional living space as well as add a covered porch on the front of the home. The plans call for a new master bedroom and bath, walk in closet along with a sitting room and dining room. The existing roof would be removed and when the

addition is complete, the home would be taller than before. Currently there are two buildings on the property; one which is the main residence and one secondary residence. The main residence is non-conforming as it is located less than 75 feet from the ordinary high water mark and city ordinance only allows for normal maintenance and minor alterations to non-conforming structures. Additions are allowed to non-conforming structures subject to meeting all setback requirements.

Sayre said this request is for an area variance as the applicant is requesting relief from a set distance in order to build the addition in the location requested. There are 3 standards the board should use to determine if the request for a variance is reasonable. These tests are 1) Unnecessary Hardship; 2) Unique Physical Property Limitations; and 3) No Harm to Public Interests. Sayre does not believe an unnecessary burden would be placed on the applicant if the variance were denied. Staff believes the request is more for the purpose of adding a master bedroom suite instead of the applicant's reasoning of a growing family as the size of the addition surpasses what could be deemed necessary for family needs. There is also an additional building on the property which could be used for a family member if necessary. Lastly, the trees on the property could cause an issue being located so near to the home so the applicant's argument that removing mature trees is an unnecessary burden is not convincing to staff. Overall staff felt the applicant failed to provide a good argument for the first test of unnecessary hardship.

Sayre believes the property and location do not have unique physical characteristics, which is the second test for determining a variance. While it has waterfront on both sides of the property, he noted there are other properties around the area that have these same characteristics. The property also has large trees which make it somewhat unique; however, at some point they could become a safety issue for the house and may have to be removed. Staff does not believe an argument has been made for the property having unique physical characteristics.

Sayre does not believe the addition will harm the public interests, which is the third test. The applicant is not adding surface area so he doesn't believe the addition would have any impact that would cause harm. He does believe, however, there are alternatives to granting a variance. They could simply remodel the existing home to meet family needs. They could also convert the garage into living space and build a detached garage on a different part of the property 75' from the ordinary high water mark. The applicant could also build an addition onto the existing home or tear the home down completely and build a new home as long as it complied with the setback. Sayre stated the request has failed two of the three tests for granting a variance and therefore, staff recommends denial.

Gallo wanted to clarify a statement he heard during the public hearing, noting the code says an individual can add on to a non-conforming structure as long as the addition is 75' from the high water mark. The attached deck was previously approved even though the home is non-conforming as it was added on at that part of the home that complies with the setback. He pointed out generally a variance is approved when an applicant is requesting the least amount in order to accomplish what they need. In this case, the applicant is asking for a variance for a substantial change to the property. Because of this, he feels it is time to make the building come into conformance.

Mielke noted the owner has viable options to utilize the existing property and no physical limitations to deny them use of the property. Thus, he felt there was no hardship to the applicant which the other members agreed. Gary Etzel of Stone Brook Homes asked if they have to come back with new plans for an addition. Gallo noted it is not necessary as long as the addition is outside of the 75' setback and complies with the ordinance.

Motion by Gross to deny the variance based upon staff's report that denial would not cause any hardship; there was not sufficient proof shown of physical property limitations; no harm would be caused to the public; thus, the variance request does not pass the three required tests for granting a variance; second by Goodson. Motion carried 5-0.

No further discussion or action was taken.

Motion by Pruscha to adjourn the meeting of the Zoning Board of Appeals at 7:34 pm; second by Gross. Motion carried 5-0.

Chris Dehnert, Deputy City Clerk