

City of Oconomowoc
Zoning Board of Appeals Minutes - March 15, 2010

Public Hearing – 7 PM: The hearing was held at the request of Jonathan Wojciechowski, property owner, who is requesting to construct a 12' x 20' garage at 2 possible locations at 521 Westover Street. At site #1, the building would be located 15' from the residential side lot line and 15' from the residential rear lot line, requiring a 10' variance to encroach into the side yard and a 10' variance to encroach into the rear yard. At site #2, the building would be located 15' from the residential side lot line and 10' from the existing building, requiring a 10' variance to encroach into the side yard and a 10' variance from the building separation requirements. Sec. 17.105(3)(a)4.b.D of the Zoning Code requires a minimum side yard building setback of 25' abutting a residential side lot line; Sec. 17.105(3)(a)4.b.E. requires a minimum rear yard building setback of 25' abutting a residential side lot line and Sec. 17.105(3)(a)4.b.J requires a minimum building separation of 20'.

The public hearing opened at 7 pm. Jonathan Wojciechowski, property owner, was present and duly sworn in by Chairman Rosek. Wojciechowski explained his tenant, Rich Wagner, moved his vehicle leasing business from Milwaukee to its present location at 521 Westover. The Dept of Transportation told Wagner he must have a building at the present location able to house 1 vehicle in order to comply with his license, and they prefer that it be attached to the main business location. They have agreed, however, to allow the structure to be detached from the building though it must be located nearby. Wojciechowski said he is requesting to erect a non-permanent shed consisting of a 12' x 20' wood structure with an 8' wide overhead door which will be painted to be compatible with the existing building on the property. His preferred location is in the northeast corner of the lot 15' from the southern boundary of the vacant lot to the north and 15' from the western boundary of the lot to the east. He said if he is not allowed to construct the building in 1 of the 2 proposed locations, then he will end up losing his tenant and the tenant will be forced to move his business out of Oconomowoc to accommodate the State's requirement.

Rich Wagner was present and duly sworn in by Chairman Rosek. Wagner said he is not in the business of retail cars and only deals with the paperwork from leasing vehicles. He noted this is a DOT facility requirement for his retail license to lease vehicles. There were no additional comments. The hearing closed at 7:08 pm.

Chairman Rosek called the meeting to order at 7:08 pm and the Deputy Clerk confirmed appropriate notice had been given.

Members Present: Matthew Rosek, Bill Mielke, John Gross, William Paton and Bonnie Goodson.
Members Excused: None.
Staff Present: Gallo, Sayre and Dehnert
Others Present: Brenda Young, Court Reporter

3. Approve Minutes of May 6, 2009: Motion by Mielke to approve the May 6, 2009 minutes; second by Paton. Motion carried 5-0.

4. Consider/act on the variance request of Jonathan Wojciechowski, who is requesting a variance to construct a 12' x 20' garage at 521 Westover Street:

Gallo gave a power point presentation on the applicant's variance request for a 240 sf 12'x 20' structure. Currently the property contains a multi-tenant building which is located in a mostly residential neighborhood and zoned EO-Estate Office. The only location available to place the building without requiring a variance would be in the center of the existing parking lot which is not possible. Gallo reported the applicant's request is for an area variance to place a physical structure in 1 of 2 possible locations on the property. Location #1 requires a variance from the side yard and rear yard setback requirements and location #2 requires variances from the side yard and building separation requirements. Gallo said in 2006 the applicant was granted an area variance on the property to divide it into 3 separate lots through a CSM. Lot #1 is vacant and currently for sale and being marketed for a single

family home. Lot #2 was sold and a single family home was built on it. The current variance request is on the remaining lot, #3. Gallo stated this is a complicated issue, and the following 3 findings/criteria must be met for each requested variance to be granted: 1) unnecessary burden; 2) unique physical property limitations; and 3) no harm to public interests.

Sayre reported on what staff found when applying the tests of each of the criteria to the variances requested. Under the unnecessary burden standard, staff found the business has operated out of the office building the past few years without State approval. The burden is caused due to the State of Wisconsin's requirement, not the City's. Sayre added the applicant said at a City Staff meeting that the building would not be used as a showroom but instead for storage of equipment and other items. Sayre noted the applicant was granted a variance in 2006 to split the single lot into 3 separate lots. If this had not been done, he would be able to construct the shed without the need for a variance. Staff believes this is a self-created hardship. Sayre added according to the City's Zoning Ordinance a self imposed hardship shall not be used as grounds for granting a variance.

Sayre reported on the next standard which is unique physical limitations of the property. Planning staff could not find any wetlands, steep slopes or other natural physical features which make the property unique. The lot is similar to other residential lots in the City, and its size was created by actions taken by the applicant. Sayre concluded staff finds no unique physical limitations to the property.

The last standard is no harm to public interests. Sayre reported granting the variance would not cause harm to the public interests. However, staff was concerned with the loss of parking spaces in what is already a busy area as well as lack of snow storage. In addition, lot #1 is for sale and being marketed for a single family residence. Staff has concerns with placement of a shed in a primarily residential neighborhood.

Sayre stated the applicant has the following alternatives available to him: 1) he could decide not to build the structure; 2) he could appeal the State's requirement; 3) he could put the building on Lot 1 (Sayre noted the applicant was hesitate to do this for financial reasons); 4) he could combine Lots 1 and 3 and then build the structure without any real issue; and 5) he could reconfigure the lot lines in order to be able to build the structure. Sayre concluded the applicant has failed to meet the statutory requirements of granting a variance.

Rosek questioned parking space requirements for the location in question which Gallo explained is based on its use. Staff has found there is a demand for parking on site. Discussion then focused on the 2006 variance and how the applicant could reconfigure the lot lines. Gallo explained how this could be completed, noting his concern was that lot #2 could end up becoming a unique shaped lot and lot #1 could become unbuildable. Discussion ensued on how the building would be constructed, and the applicant was asked to explain. Wojciechowski said the building is a quality structure built on a platform. They are not planning on putting it on a concrete pad or doing excavating of any type. The platform will be placed directly on the asphalt. Mielke was concerned with the structure and its ability to be built to hold a car. Wojciechowski said a car will be able to park inside the structure.

Discussion ensued among the members. Rosek didn't want to create a situation where an applicant requests a variance on a property and then requests another variance to change it back to the way it was. He also believes the applicant has created the hardship himself. Mielke didn't feel the applicant met the burden of proof. He noted no one wants to see a person lose a business; however, the board is here to follow the law. Gross noted granting the variance does not serve the public's best interests. He felt they have to respect the residential nature of the neighborhood.

Motion by Mielke to deny the variance as requested as it fails to meet the three tests as follows: 1) there are no unique physical limitations of the property; 2) the variance will harm the public interests by placement of a shed in a residential area; and 3) the unnecessary hardship standard has not been met as the hardship was created and could be corrected by the applicant; second by Gross. Motion carried 5-0.

No further discussion or action was taken.

Motion by Mielke to adjourn the meeting of the Zoning Board of Appeals; second by Gross. Motion carried 5-0. The meeting adjourned at 7:50 pm.

Chris Dehnert, Deputy City Clerk