

BOARD OF ADJUSTMENT & APPEALS

Zoom Meeting

January 13, 2021

Present: Charles Block, Larry Wright, Tim Wondra
Absent: Jerry Hamelton
Staff: Doug Krogmeier
Visitors: Council Liaison Mark Lair, Derek Doherty, Kristin Denning

Chuck Block called the meeting to order at 6:00. A quorum was declared with three members present.

Minutes from the November 12, 2020 meeting were approved as written on a motion by Block; seconded by Wondra. Approval was unanimous.

NON-AGENDA ITEMS: none

Case File #20-15: Variance to exceed lot coverage at 411 Ave G.

Block reviewed the variance request and noted there were no drawings or site plans of the proposed structure submitted.

Staff reviewed the report. Krogmeier explained the parcel at 411 Ave G is zoned B-1, and as the use of the parcel is residential the code requires compliance with the code for R4 district for single family dwellings. That section has a maximum allowed lot coverage of 35%. This is a standard sized lot (50' x 145') where they can cover 2537.5 sq. ft. with structure and with the existing house there is still 935.5 sq. ft. available that can be covered by structure while staying within the allowed 35%. This could accommodate a standard 3-car garage without a variance. The proposed garage is 1440 sq. ft. so would be 504.5 sq. ft. beyond the allowed 35%.

Block opened the public hearing at 6:08 pm.

Derek Doherty, 411 Ave G, explained they wish to build a large garage to accommodate vehicles for 5 drivers plus a boat that would be stored 3 seasons of the year. They hope to get extra vehicles, the boat and an ATV off the street parking and stored within the enclosed structure. The building would match the house and be aesthetically pleasing. A rundown garage on the lot has already been demolished earlier this year.

Block asked about the 3-car garage referenced in the application and pointed out a 3-car garage would fit on the lot without the variance, but the size being proposed would be more like a 5-car garage. Doherty agreed the proposed structure is larger than what is allowed and explained they need the extra space for their boat. He went on to say they rent a slip from the marina, but cannot leave it in the slip all year and have had issues with citations when parking it on the street during the off-season. So, they feel stuck on options for storing the boat. He also mentioned the vehicles are full sized trucks so a regular sized garage is not big enough to accommodate them.

Block closed the public hearing at 6:14 pm.

Board reviewed finding of fact.

1. The applicant can demonstrate that without the variance there can be no reasonable use of the property.
 - Report indicates a 3-car garage can legally fit so anything bigger than that would be beyond the reasonable use. Block, Wright and Wondra concurred.
2. Limitations on the use of the property due to physical, topographical and geological features.
 - There is some slope to it, but could be adjusted, so nothing to really limit the use. Block, Wright and Wondra concurred.
3. The grant of the variance will not grant any special privilege to the property owner.
 - With a standard sized lot would we consider allowing more lot coverage to every other standard sized lot? If not, this would seem to be a special privilege. Wright, Block and Wondra agree.
4. The grant of the variance is not based solely on economic reasons.

- It would add value, but that does not seem to be the main reason for the variance. Block, Wright and Wondra agree.
5. The necessity for the variance was not created by the property owner.
 - Staff believes it is, because a standard sized garage will already fit, so the request is for personal reasons. Block mentioned they simply want more than what is allowed and Wright and Wondra agreed.
 6. The variance requested is the minimum variance necessary to allow reasonable use of the property.
 - In the past the Board has considered a 2-car garage to be the standard size to allow reasonable use of a residential parcel. So with the already allowed 3-car garage, a variance is not necessary for reasonable use of this property. All Board members concurred.
 7. The grant of the variance will not be injurious to the public health, safety or welfare.
 - It is on private property, so should not have any bearing on that and should not be a problem. Block, Wondra and Wright concurred.
 8. The property subject to the variance request possesses one or more characteristics generally not applicable to similarly situated properties.
 - Lot is similar in size to other properties. The house is large, but does not create any unique circumstance. Block, Wondra and Wright agreed.

Block stated that of the 8 criteria, the application failed to meet #1, 3, 5, 6, and 8.

Doherty commented that they called the Building/Zoning department originally and were told they were zoned business. He continued, saying the mayor is focusing on clearing off the streets and they are trying to do their part to get vehicles off the streets. He added that they are only asking for an additional 4% and there are other properties in town that exceed lot coverage by more than that.

Kristin Denning, 411 Ave G, explained that she called the department in October and was told the only requirement was to be 3 ft from the side yard property lines. So they ordered the building and when the contractor called about permits was told they did not need one for the concrete work, but the lot coverage and height requirements were brought up at that point. She said they were not trying to move forward without permission or permits, but they had removed the old garage and poured the footings for the new garage before Mayor Mohrfeld told them to apply for the variance. They requested Mr. Krogmeier to hand measure the property. She said they stopped work when told and never had any intentions of going against what it allowed by City Code. With the structure already ordered and the foundation footings poured they are sorry that they didn't know about the codes, but they don't want to back out of the project at this point and lose money on it.

Block pointed out that they were told in early December that a variance was needed but they proceeded with the footings after that anyway. Doherty said they were told by the contractor that he spoke directly to Krogmeier and permits were not needed for the foundation. He felt that they asked all the questions ahead of time and trusted the information given by the professionals but it was misleading. They feel it is unfair to be expected to know these codes themselves and they were relying on what they were told. He continued that it feels unfair to have a stop work order after they have done their part to get the information needed. He said they were frustrated in making contact with the City and feels they did everything they could to follow the rules. Denning added that they were told a variance was needed for the building but the contractor told them no permit was needed for the cement, so they started based on that but did stop work once they received the stop work order. Doherty also mentioned they are professionals in this community and would not just continue work without permission.

Wright asked if all necessary permits have been obtained up until this point. Krogmeier answered that no permits have been issued, but the building permit cannot be issued unless the variance is approved so he was waiting for this meeting before the possibility of issuing it. There was not a demolition permit issued but it could still be applied for at this point. Wright asked if the demolition permit is necessary and if it was requested or obtained before tearing down the old garage and Krogmeier said it is required and no, there was not one issued. Doherty stated they were told otherwise. Wright said he believes anyone in the business of demolishing buildings would be aware of the requirement by city code to get a permit. Doherty said the contractor said he asked Krogmeier directly and was told he did not need a permit for the demo. He reiterated that they were misled and have no issues paying for the demo permit and doing this right, but they didn't know it was needed.

Block mentioned that work was still done without permits and asked if any drawings had been submitted. Denning said they were never told they had to submit drawings. Block pointed out it is listed under number 9 in the variance application along with specifications on what the site plan should include. Doherty said when they called down about the variance they should have been told to submit drawings. He reiterated that it's the City's job to get that information out because he's not the professional in this situation. Wright stated the City has put in a lot of effort to put that information out there on the website and the entire city code is available with a search bar to make it easy to find the information. Beyond the requirements, the processes and procedures necessary for the variance application and along with variance requirements are all on there. Doherty asked why they weren't directed to the website when they called. Wright said he cannot speak to that, but this Board can only look at the variance request in question, and the facts for this case. He established that the information is all available in more forms than one. Doherty asked why they would look further after asking. Wright said he simply wanted to establish the fact that the information is available but as a Board member he does not know what communications took place prior to this meeting. He continued that he wanted to know if the necessary steps had been done up until this point. He continued that his real concern is the finding of facts and that 5 of the 8 criteria are not met, so the Board does not have the ability to legally grant this variance.

Block referenced an email from Krogmeier to Denning on December 4th that outlined the requirements. Denning said she did not get an email from Krogmeier until the stop work order. Doherty again reiterated his frustration with the lack of communication and the expense they have already incurred for this project. Block again pointed out that all the information was specified in the email and it was dated before work started. He then reminded the applicants that the Board can only make decisions based on the facts they are given and they still fail to meet the criteria for variance approval. Block asked Krogmeier for comment and he stated that we do not have the same recollection of those conversations, but at the end of every conversation is that a building permit is needed for construction.

Wright asked for clarification on the email from Krogmeier to Denning dated December 4th and Denning said, yes it talked about needing a variance but not about anything else. Block said it clearly states in that email that work cannot proceed without the variance approval. He went on to point out that work was started after that email and before a variance application was submitted in mid-December. Doherty again complained they did not know the requirements and said his contractor assured him he had spoken in person to Krogmeier and a permit was not needed. He also asked how other people have been allowed to exceed lot coverage. Wright prompted the Board to move forward on this issue as reviewing all variances from the past is not feasible. Block concurred that they cannot look at the complete history of Fort Madison to determine why other properties exceed lot coverage and should only be considering the facts for this case.

Wright moved to deny the variance request to exceed lot coverage at 411 Ave G.

Wondra asked for clarification on making a motion to deny and how a yes/no vote would count. Block explained the motion should be made in the affirmative then voted against instead of moving to deny. Wright expressed his concern with making a motion that does not meet legal criteria and Block assured him that the motion in the affirmative would simply open the vote on the subject but it can be moved and voted against.

Wright withdrew his motion to deny the variance to exceed lot coverage at 411 Ave G.

Wondra moved, seconded by Block, to approve the variance to exceed lot coverage at 411 Ave G.

Vote: 0-yes, 3-no.

Motion denied.

Wondra moved, seconded by Wright, to adjourn the meeting.

Vote: 3-yes, 0-no.

Meeting adjourned at 6:49 pm.

Chuck Block