

## Board of Zoning Appeals

August 24, 2023

Members Present: Gordon Kinder, Joe Rademacher (A), John Robertson, Ken Brost, Blake Draper

Members Absent: Art Luetke

Staff Present: Andrew Bremer, Jim Trebian, Karen Knoll

### 1. CALL TO ORDER

Kinder called the meeting to order at 4:01 p.m. Kinder noted that alternate member, Joe Rademacher who joined at 4:05 p.m. will be serving in place of Art Luetke who is absent. Kinder requested any members who had a conflict of interest to identify so at this time. None were noted.

### 2. PUBLIC APPEARANCES.

None.

### 3. APPROVAL OF MINUTES.

- a. Motion to approve the minutes of the June 21, 2023 Board of Zoning Appeals meeting. Motioned by Robertson and seconded by Draper to approve the minutes. Motion passes 5-0.

### 4. ANNOUNCEMENT OF PROCEEDINGS

Kinder and Bremer provided background on the purpose and authority of the Board of Zoning Appeals, the announcement of proceedings, and procedure for the meeting as included in packets. Bremer indicated that parties wishing to speak in regard to this request will be taken in the order of those in person will be allowed to speak first, they will then take those appearing via ZOOM, and any letters received will be read in after that point.

### 5. PUBLIC HEARING

- a. Public Hearing for a request by Mike and Candice Pennekamp for a variance to the front, street, and rear yard minimum setback requirements of Sec. 62-70 to construct a replacement two-story single-family dwelling in the location of the existing foundation of the two-story single-family dwelling at 4503 Beckler Street, McFarland, WI. Property zoned R-1B.

Kinder opened the public hearing at 4:13 p.m.

Applicant Opening Statement. Chris Landerud, of Landerud Plan & Design, LLC, 4426 Mahoney Road indicated he is representing Mike and Candice Pennekamp, recited the oath before providing his opening statement. The Pennekamps hired Landerud to explore opportunities for them for the property, it is zoned R-1B and they understand it is currently

non-conforming, with the setbacks being encroached upon. They envisioned using the exact same footprint, the property is currently a two-bedroom two story structure, they are proposing to replace it in the same footprint as a two story two-bedroom structure and add garage parking on the main level with living space above. Landerud concurs this is a small lot; he feels their proposal meets all the zoning requirements except for the already encroached upon setbacks.

Staff Opening Statement. Bremer recited the oath before providing the staff report to the Board. Bremer indicated the Building Inspector had joined the meeting via ZOOM and is available for any questions or testimony if needed. Bremer provided staff's review of the variance request, that staff felt not all six of the requirements for obtaining a variance under the municipal code were met and therefore the application should be denied. Staff does not question the current residence needs work, and the home proposed is a much nicer home. The lot is small non-conforming, you could not build a home on this lot and meet all of the setbacks, however, there has not been enough evidence provided showing why the home could not be built like for like which would not require a variance as a legal nonconforming structure and, it was not shown why granting of this variance is the minimum amount of relief necessary. The staff report includes property conditions, zoning, size of the property along with setbacks and what is and is not conforming. Bremer reviewed them with the information as provided in packets.

No comments or questions from the Board members regarding staff review.

Applicant Case. Landerud indicated the case he wishes to make is the request for a variance is a non self-inflicted hardship, the hardship is they have a non-conforming lot which the owners cannot do anything with unless they are granted a variance. Landerud stated he finds the current home charming, but when asked why they do not rebuild as is, is due to structural issues with the home, current technology and building code does not support it. He feels the Pennekamps cannot rebuild this home exactly as it currently is, walls would have to be thicker, doors wider, etc. They need relief in order to maintain the character of the neighborhood and in building a new two-bedroom two story home. Landerud advised the proposed living space is actually smaller than the existing one, the Pennekamps would be maintaining affordable housing in the Village, with a smaller, safer, more energy efficient two-bedroom home in place of what is currently there. Landerud feels it would be an improvement to the neighborhood and understands this is a complicated project. Landerud indicated he did not have any witnesses wishing to speak in for or against the proposal and the Pennekamps, owners of the property, did not wish to speak at the public hearing.

Staff Case. Bremer provided staff summary as provided in packets. The zoning code provides six standards which must be met, Bremer reviewed the standards and staff's opinions on them as to how they have either been met or failed to be met by submitted application. Staff does not agree with the applicant's statement that the proposed structure will maintain the nonconforming setbacks as the proposal increases the amount of the cubic volume of the structure that is nonconforming to the setbacks. The existing home can be utilized for its permitted use, and if it is in such poor condition, it can be razed and rebuilt

on the existing foundation like for like. Bremer stated the Landerud provided examples of what he feels is precedent, however the structure they referred to (5018 Card) conforms to all R-1B minimum setbacks, and the applicant has not provided any additional information as to why replacing the home like for like without increasing cubic volume nonconformity would result in a home which was less safe, less energy efficient and less affordable than the proposed structure. Other structures indicated as precedent do not include garages as the proposed structure does. The proposed structure would also result in the loss of at least one on street parking stall for the neighborhood in order to accommodate the three-car garage. Bremer reviewed the standard of the hardship not being self-imposed, while the lot is non-conforming the applicant likely knew that when they made the purchase. Bremer included supplemental information in the packet regarding the variance is not based on desire to increase the value or income potential. The applicant states it is their intention to use the property for personal use, ownership and their enjoyment of lake access.

Kinder opened up the meeting to comments from the Board.

Robertson questioned what the Pennekamps actual intention is for this residence as they also own the property next door at 4501 Beckler Street and another full-time residence in the community. Landerud replied in working with the Pennekamps what they do with this property will depend on what they are able to do with the property based on this meeting, Landerud feels ownership and how they use the property is not a factor of zoning. Landerud said if they can improve the house, they would occupy it. Rademacher inquired about the testimony of bringing affordable housing, that would indicate that they are looking for use of this property as a rental, is that correct? Landerud advised that is not correct, the ownership of the property has nothing to do with zoning, the reason Landerud brought it up was replacing a two bedroom two story home with a two bedroom two story home provides housing in the Village of which there is a small inventory of, most of the housing in the Village is 3 -4 bedrooms and much larger, what they are proposing is an affordable housing option. Rademacher found it hard to believe that what they are proposing would maintain this as affordable housing, especially with a three-car garage.

Draper inquired about the statement if not building this plan as proposed Pennekamps cannot do anything with the lot, per code there are minimal non-conformity changes is it your position the plan you have submitted is the minimal expansion amount that the non-conforming at the minimum or is it beyond that amount. Landerud replied and questioned what is the minimum relief, there are items such as building with a flat roof, what is the smallest home someone can live in, what is the smallest car someone needs, etc., yes, the house could be smaller. Landerud indicated he had looked at other homes and felt they could have been built smaller when they were built. Could this house be built smaller, yes. Landerud reviewed the property at 5913 Lake Edge Road. Kinder pointed out properties are not specific to the lot for which they are applying for the variance, they need to keep specific to the property which they are applying for the variance. Brost inquired if Landerud knew what the cubic living space of the existing house was, the livable space. Landerud replied the existing square footage of the home is approximately 1444 square feet, but he did not have specifics on the ceiling height, as he did not measure them, he believes they are seven feet in height. The proposed is 1168 square feet with eight-foot ceilings. Brost

felt living space is the issue. Landerud advised that the square footage living space is 19% less, he does not have the cubic square footage. Bremer reviewed the information the applicant provided which is included in the packets under existing property conditions.

Draper asked Landerud in regard to his looking around the neighborhood, staff has indicated this project would increase the non-conformity. Were you able to interpret the Village code when you were working on this project to see that it would be non-conforming? Landerud replied he does not know the exact answer to that as he does not feel the code spells it out and Dane County and other municipalities all interpret it differently. He is gathering information based on what he reads in the code, what he sees in the neighborhood and how Dane County interprets things. Landerud advised when he met with Bremer, he understood how the Village interprets the code and is open to ideas. Landerud stated that his opinion is the Village code does not specify cubic footage or height, but that is an interpretation made by the Board of Zoning Appeals and Staff.

Kinder polled members to see if there were any further questions.

Bremer summarized his question was confirmed by Landerud that it would be possible to design a house that while it may still not be conforming, would not be as non-conforming as what is being proposed at this time. Bremer review the next steps in the hearing process.

Kinder polled members to see if they had any questions for staff.

Draper asked of Bremer does he share Landerud's opinion of the Village code that it does not specify height or cubic volume of a structure. Bremer responded he does not and referred to Sec. 62-150 (b) (2) "ordinary repairs and alterations, as well as structural alterations, may be made to a nonconforming building or structure that is nonconforming as to bulk, provided said ordinary repairs, alterations and structural alterations do not increase the nonconformity to the regulations of the district in which it is located." Which covers you cannot increase the non-conformity per code without a variance. While the living space may be decreasing the applicant proposes adding a three-car garage and the code does not differentiate between the non-conforming space as garage or living space, it is the entire structure. Bremer summarized there is minimum setbacks for a building, maximum height requirements for a building, buildings are expected to meet both.

Landerud asked about the minimum relief possible, he feels if they followed the zoning code, they could make the structure much larger, what actually is minimum relief? Bremer stated the Board looks at what is presented in keeping with the spirit of the code with the particular lot, also the addition of a three-car garage, is that in keeping with minimal relief.

Knoll read in for the record statements received:

Denise and Eric Faust – 4504 Field Avenue – emailed a letter of support.

Todd MacDonald and Jennifer Sonnentag – 5022 Card Avenue – emailed a letter in opposition.

All parties addressing the Board recited the oath prior to speaking:

Dee Lancour – 5018 Card Avenue – spoke in favor of the proposal but also had concerns.  
Jody Armstrong – 5019 Card Avenue – spoke in opposition.

Concerns were height of the proposed structure, blocking of the neighbor's views of the lake, loss of on street parking, whether the property would be used as a rental or have an apartment in it.

Bremer indicated testimony heard from the applicant's representative when there was a question about a potential apartment Landerud stated no, the Pennekamps did not intend to have an apartment, nor were they building an apartment building.

Kinder asked if any parties online wished to address the Board of Zoning Appeals, with no one indicating they wished to speak Kinder closed the public hearing at 5:26 p.m.

## 6. BUSINESS.

a. Discussion and action on a request by Mike and Candice Pennekamp for a variance to the front, street, and rear yard minimum setback requirements of Sec. 62-70 to construct a replacement two-story single-family dwelling in the location of the existing foundation of the two-story single-family dwelling at 4503 Beckler Street, McFarland, WI. Property zoned R-1B.

Kinder surveyed the Board members for additional comments or concerns.

Draper felt this was a reasonable request, but there is reasonable concern over the parking issue and if there was consideration to a design which would better accommodate the loss of a parking space due to the proposal. It would be helpful for the applicant to consider a design which did not remove any parking from the neighborhood. Kinder feels someone could rebuild on that site without a variance, the proposed three car garage and height above it would create an imposing structure. Brost felt if the living space is smaller than the current building has it would meet minimum relief.

Kinder moved to denying the request as submitted referencing Village staff's written summary provided in the packet.

1. Denial of the variance would not unreasonably prevent the owner from using the property for a permitted purpose. The owner may reconstruct the home to its same size and location without the need for a variance.
2. The granting of the variance would be so general or recurrent in nature as to suggest the Zoning Code should be changed. There are other nonconforming lots with nonconforming structures that could similarly request a variance to increase the cubic volume of nonconforming structures.
3. The applicant has not provided any additional information as to why replacing the existing home like for like without the cubic volume increase in nonconformity would result in a home that was less safe, less energy efficient or less affordable than the proposed structure.
4. The applicant has not provided specific justification for what specific construction and

building code requirements require the cubic volume increase in the nonconformity of the proposed home.

5. The applicant has not provided justification as to why the proposed design is the minimum amount of relief necessary.

6. Harm to public interests, including the removal of at least one on-street parking space, potential solar access and Lake Waubesa viewshed impacts to adjacent properties.

Rademacher seconded the motion.

The following rationale was provided by each Board member.

- Rademacher voted yes to deny the request based on the neighborhood would be denied parking spaces, ability to see the lake, the proposal is not a proper way to handle this structure.
- Robertson voted yes for the motion to deny as proposed, there are alternatives available to this proposal.
- Draper voted nay against the motion due to ambiguity in the concept of minimum relief, making a livable space within current building code beyond what the current volume, size and height of the existing structure, due to the totality of all of those are arguments and some ambiguity in the zoning code.
- Kinder voted yes, he concurs with staff comments, the owner has right to rebuild something there within the footprint, the code is not what us up for discussion, the loss of parking on the street hurts neighborhood and public. Feels something workable can be done on this site.
- Brost - nay to the motion, if all in the neighborhood handled parking in this way there would not be a problem with parking.

Motion passes 3-2. Kinder indicated staff would send a letter to the applicant regarding the outcome of the meeting. Encouraged applicant to work with Director Bremer on possible alternative designs to address the concerns raised at the meeting.

#### 7. SCHEDULE NEXT MEETING DATE.

- a. To be determined.

#### 8. ADJOURNMENT.

Brost motioned to adjourn, seconded by Draper. Motion passed 5-0. Meeting adjourned at 5:41 p.m.