

ZONING BOARD OF APPEALS
Tuesday, August 28, 2018

The City of Sturgeon Bay Zoning Board of Appeals meeting was called to order at 12:00 noon by Chairperson William Murrock in Council Chambers, City Hall, 421 Michigan Street.

Roll call: Members James Goodwin, William Murrock, Andrew Starr, Bill Chaudoir, and Alternate Dave Augustson were present. Excused: Member Wayne Spritka. Also present were DNR representative Michelle Staff, Planner/Zoning Administrator Chris Sullivan-Robinson and Community Development Secretary Cheryl Nault.

Adoption of agenda: Moved by Mr. Starr, seconded by Mr. Goodwin to adopt the following agenda:

1. Roll call.
2. Adoption of agenda.
3. Approval of minutes from Tuesday, July 24, 2018.
4. Public Hearing: Petition for variance from Sections 23.04(3)(a)(1), 23.06(1)(b)(4), and 23.06(3)(a) of the Municipal Code (Floodplain Zoning Code) for a 22' x 40' addition, located at 719 Memorial Drive.
5. Consideration of: Petition for variance from Sections 23.04(3)(a)(1), 23.06(1)(b)(4), and 23.06(3)(a) of the Municipal Code (Floodplain Zoning Code) for a 22' x 40' addition, located at 719 Memorial Drive.
6. Adjourn.

Carried.

Approval of minutes from Tuesday, July 24, 2018: Moved by Mr. Murrock, seconded by Mr. Augustson to approve the minutes from July 24, 2018. All ayes. Carried.

Public Hearing: Petition for variance from Sections 23.04(3)(a)(1), 23.06(1)(b)(4), and 23.06(3)(a) of the Municipal Code (Floodplain Zoning Code) for a 22' x 40' addition, located at 719 Memorial Drive: Chairperson Murrock opened the public hearing at 12:02 p.m.

Bob LeCapitaine, 719 Memorial Drive, stated that this is his summer home. The house was built in the 1950's. It is not adequate in size. He would like to add an addition, which would include a bathroom and enlarging the existing bedroom. The addition would be 40 feet from the water. He does not want to raise the house, since it couldn't be guaranteed that there would be no issues with cracked walls, etc. If raised to an elevation of 587', the house would be higher than the rest of the homes. His neighbor to the north already has have water problems in their basement. Raising the house would make it worse. It would be more feasible just to add the addition at the current level. He would also like to revise their patio and add some type of covering for it also.

Mr. Sullivan-Robinson stated that the issue is the Floodplain code. The base flood elevation is 585'. The bottom floor needs to be at 587'. Fill is required 15 feet around the structure.

The addition is slab on grade, and will match the floor elevation of the existing building at 585'. This addition will need a variance from the flood protection elevation. The second variance request is to not add any fill under or around the structure. Mr. LeCapitaine had said that there is no room to extend 15 feet out with fill. The third variance is requesting to exceed 50% of the tax assessed value of the dwelling. The addition would cost over \$100,000. The current assessed value for the dwelling is \$126,000.

Mr. Sullivan-Robinson read sections of a letter received from Michelle Staff, State National Flood Insurance Program Coordinator, Dam Safety and Floodplain Section. The letter stated that the intent of the Floodplain Ordinance provision is to prevent existing buildings from being turned into a new or substantially improved building. Increasing the value of the structure without protecting them from flood risk does not meet new development standards. The applicant must demonstrate unique property conditions which are not common to adjacent lots or premises. There are no unique characteristics to the property in this case that differs from any other property within the floodplain. A variance may not be granted which results in harm to public interest. The incremental benefits of allowing the development are outweighed by the increased costs of future flood damage. An unnecessary hardship exists only if the property owner shows that they would have no reasonable use of the property without a variance. A variance is intended to provide only the minimum relief necessary to preserve a reasonable use of the property. Floodplain variances should be a rare occurrence and should not be used as a tool for relief of the two feet of freeboard in this situation.

The letter continued to say that Wisconsin Statutes provides the opportunity for certiorari review of the variance under s. 62.23(7)(e). NR116.22 outlines additional enforcement actions that the department may take to ensure community compliance with the ordinance.

In addition, if the variance was granted as is, the ZBA may encounter difficulty meeting NFIP standards. FEMA (Federal Emergency Management Agency) can review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound floodplain management, FEMA may take appropriate action up to and could suspend the community from the National Flood Insurance Program.

Board members discussed the letter. Mr. Sullivan-Robinson said if the variance is approved, FEMA could audit the City and ultimately cut the City from the program or the DNR could legally appeal the City's decision. He felt that it was in the City's best interest to deny the variance request.

Mr. Goodwin thought this should be tabled to obtain an opinion from the City Attorney.

Ms. Staff stated that the statutory requirements for floodplain variances are in the City's ordinance, which are a combination of state and federal regulations. The reason for the floodplain protection elevation is that the floodplain is not designed for ice or other anomalies that would go over that base. It gives that added protection if it does go over that 1% chance it will be protected.

Mr. Starr stated that if the issue of the 50% was met, it doesn't seem that the issue of the grade was as concerning. Ms. Staff agreed. If it was only the fill, you wouldn't see her at the meeting. It is an accumulative type of process over the lifetime.

Ms. Staff stated that she works with FEMA. The property has limitations. The purpose of the ordinance is to keep from putting money into nonconforming uses. The ZBA needs to decide if the variance request meets all requirements. She gets concerned when structures go over the 50% rule. Using the current value and estimated amount of improvements, it's an accumulative at the time of permitting. If the variance is granted, Mr. LeCapitaine will be locked on that. If a future owner wants to do another addition, they cannot because the 50% had already been granted.

Mr. Starr felt that the assessment was too low for the structure. He asked what would happen if they granted the variance.

Ms. Staff said it was not uncommon to raise the structure. It cannot be a financial situation. There is a 30 day appeal process, if it has not met the statutory requirements, through the Dept. of Justice or the DNR. All correspondence is submitted to FEMA. They may audit the City's permits. She urged the Board to review the criteria in the Floodplain Ordinance. Everything must be met, not only part of it.

Dave Corbisier, 729 Memorial Drive, said he had no problems with the variance request.

Mr. Goodwin read an email from Bob & Terri Starr stating that since the request is to allow for an addition to an existing home, they were in favor of granting the request.

No one spoke in opposition. There were no letters in opposition.

Chairperson Murrock offered rebuttal testimony to Mr. LeCapitaine.

Mr. LeCapitaine stated that he was told that FEMA is in the process of lowering the floodplain level. He wasn't sure why the DNR or FEMA was involved. He does not plan on obtaining flood insurance.

Mr. Sullivan-Robinson stated that FEMA is in the process of going through a floodplain map revision. They may be lowering the level a couple of feet. As of now, we need to continue going off of the current maps and ordinance.

Ms. Staff added that it may be two years before the maps are completed. The preliminary maps may be coming out in spring. It may be harder to sell a home without flood insurance.

Mr. LeCapitaine added that he will probably make other modifications to the existing home to match the addition. He did not think that he would come anywhere close to the 50%.

Chairperson Murrock closed the public hearing at 12:53 p.m.

Consideration of: Petition for variance from Sections 23.04(3)(a)(1), 23.06(1)(b)(4), and 23.06(3)(a) of the Municipal Code (Floodplain Zoning Code) for a 22' x 40' addition, located at 719 Memorial Drive: Board members agreed that it would be easier to approve with a plan that had an exact cost figure rather than an estimated cost for the addition.

Mr. Starr stated that this is a tough situation for the homeowner. He understands the 50% rule. The ideal situation would be to raise the level of the whole building.

Mr. Chaudoir said that he hasn't heard anything that would encourage him to vote for this request given the liability that it puts the City in.

Mr. Le Capitaine stated that most contractors did not even want to take a look at raising the home. They could not offer a guarantee that there would be no cracked walls, being uneven, etc. There is not 15 feet available to fill around the structure.

After further discussion, it was moved by Mr. Goodwin, seconded by Mr. Augustson to deny the request for variances since there is not sufficient information in which to base the decision on. There is no hardship presented since the home is still usable as is. It does not meet the floodplain requirements. This is causing liability for the City as far as legal costs defending the position with the DNR and potentially risking our participation with the federal flood insurance program for the entire community. The lot has no physical restrictions. There are other options.

Roll call vote: All ayes. Carried.

Adjourn: Moved by Mr. Starr, seconded by Mr. Augustson to adjourn. All ayes. Carried. Meeting adjourned at 1:04 p.m.

Respectfully submitted,

Cheryl Nault
Community Development Secretary