



TOWN OF BEAUX ARTS VILLAGE
BOARD OF ADJUSTMENT
MINUTES

April 1, 2009
Bates

PRESENT: Chairperson Peggie Bates, Board members Steve Matsudaira, Tom Stowe, Francine Johnson

EXCUSED: Board member Robin Stefan

STAFF: Town Planner Mona Green, Deputy Town Clerk Angela Kulp

GUESTS: Applicant Paula Dix, Resident Dick Johnson

Chairperson Bates called the meeting to order at 7:35 pm. Deputy Clerk Kulp noted for the record that Board member Stefan has resigned from this Board. A vacancy notice has been posted in the April Town newsletter and Mayor Rose will be working with interested parties, and a nominating committee if needed, to fill the position. The Council will confirm the appointed candidate.

PUBLIC HEARING:

Chairperson Bates opened the public hearing at 7:36 pm.

DIX REQUEST FOR VARIANCE #V09-1 (Lot 6, Block 13) FOR ADDITION:

Chairperson Bates stated that Applicant Paula Dix is requesting a variance to add an addition to her existing nonconforming home.

In appearance of fairness, Chairperson Bates asked if there had been any *ex parte* contacts regarding this application. There were no *ex parte* contacts regarding this application. Chairperson Bates also asked regarding this application if there was any conflict to the appearance of fairness, or challenge to any potential conflict to this appearance of fairness and there was none.

Deputy Clerk Kulp noted for the record that public notices for 2739 – 106th PI. SE were posted, published, and mailed to property owners within 300 feet of the property on March 18, 2009 as required by Town Ordinance No. 258 and that this matter is properly before the Board of Adjustment.

The following exhibits were submitted for this request:

- Exhibit A - Applicant's Application, and Plans
(1/8/09 & 3/6/09)
- Exhibit B - Staff Analysis Report with Aerial Plan (3/23/09)
- Exhibit C - Public Hearing Notices (3/18/09)

Staff Report:

Chairperson Bates asked Town Planner Green to give her staff report. Ms. Green stated that the applicant Paula Dix seeks relief from Section 8.B of the Town of Beaux Arts Village Zoning Code Ordinance (No.349) in order to continue an intrusion into the required side yard setback area. The applicant proposes to construct a carport (190 square feet) and accessory dwelling accommodations (449 square feet) in accordance with the current Beaux Arts Zoning Code. The existing structure is nonconforming due to a side yard setback encroachment of two feet. No additional nonconformities are proposed.

VARIANCE CRITERIA & ANALYSIS

Ms. Dix is asking the Board of Adjustment to consider in the variance request that their property is triangular in shape giving the front along 106th a 20' setback. The side yards are along the Wells property line and along SE 27th Place. The rear yard abuts the Stefan side yard at an angle. A smaller triangular piece of property creating this angle was transferred from Dix to Stefan at an unknown date. The existing structure predates the Dix's ownership of the property. The new addition does not encroach into any setback at all.

Planner Green noted there were code issues present upon receipt of the original application for this variance, but those code issues were addressed immediately and there are no code issues in the resubmittal before us today. Planner Green stated she has reviewed the property and construction files for this property. There are no permits on file that have been issued since the original structure was built in 1951. The home's construction was prior to the establishment of the 10' side yard setbacks. The foundation of the home is approximately 8' from the side property line. The roof overhang encroaches further into the setback; however, recent changes to the Zoning Code allow an 18" encroachment.

The project plans include the addition of 449 square feet of space, to be used as an accessory dwelling unit (ADU). A second carport space is also proposed. Parking in the driveway is ample to supply parking for the ADU.

The Beaux Arts Zoning Code allows ADUs per Section 6.D:

Rooms may be rented to not more than one person other than the family occupying a single-family dwelling. The family must comply with health and building-code requirements. The owners of the rooms to be rented shall provide additional off-street parking for all vehicles owned or used by the roomer.

Section 16 of the Code governs nonconforming structures. The remodel of a non-conforming structure is allowed without a variance only

To reduce the setback encroachment...of that portion of the nonconforming building or structure located within the setback.

The Dix plan does not propose to remove the nonconforming portion of the structure, thus the variance is necessary.

Remodel is defined as

Any construction in which the enclosed living space added to the existing structure comprises 20% or less of the existing structure and the value of the construction is less than or equal to the greater of the assessed value of existing improvements or \$250,000.

The Dix proposal is valued at approximately \$160,000. The proposed living space is 449 square feet; the existing structure area is 2450 square feet, thus meeting the 20% threshold.

As proposed, the Dix addition will meet the Town requirements regarding gross floor area, maximum lot coverage and parking.

The Board of Adjustment may grant a setback variance from Section 8.B of Zoning Code Ordinance 349 provided that the Board finds that all five of the variance criteria listed in Section 17 of the Ordinance has been met.

No variance shall be approved or approved with modifications unless the Board finds that all of the following five criteria have been met:

1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town.

Applicant satisfies this criterion. It is not a special privilege inconsistent with the limitations upon uses of other properties in the Town.

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.

Applicant satisfies this criterion. The project is fully consistent with the existing Code. Additional setback encroachments are not proposed.

3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, surroundings, and special features of the subject property.

Applicant satisfies this criterion. The lot is an unusual shape, and the structure only became classified as a nonconforming building when the setback requirements were increased from 5' to 10'.

4. The need for a variance has not arisen from actions previously taken by the applicant (owner).

Applicant satisfies this criterion. The applicant is not responsible for the change in the side setback requirements from 5' to 10'.

5. *It is the minimum necessary to permit the owner reasonable use of the property.*
Applicant satisfies this criterion. The proposed 449 square foot ADU is of minimum size, and meets the size requirement for classification as a remodel rather than new construction.

CONCLUSION

Planner Green stated that the applicant satisfies all of the five variance criteria and recommended approval on Variance 09-01 for an Addition. Planner Green further noted in addition to obtaining a variance for this project, the Applicant will need a Building Permit, Mechanical Permit, Plumbing Permit, Electrical Permit and a Tree Removal Permit. A Heavy Truck Fee will be assessed as well.

Applicant Presentation:

Chairperson Bates asked the Applicant to present her request. Paula Dix stated that she resides at 2739 – 106th Pl. SE. Ms. Dix explained her wish to add an ADU and carport to her existing nonconforming structure, built in 1951 in compliance with the Codes at that time. She explained she has only remodeled one bathroom in the house since her purchase in 1989. She noted she is not aware of any alterations made to the house since its original construction in 1951.

In response to the five BOA Variance criteria to Ordinance No. 349, Section 17, Ms. Dix summarized her request to meet the variance criteria as follows:

1. *Explain why the variance will not constitute a grant of a special privilege inconsistent with the limitations upon uses of other properties.*

The request is simply to allow what has been in place for fifty-eight years to remain. The placement of the house should be grandfathered.

2. *Explain why the granting of the variance will not be materially detrimental to the public welfare of injurious to other properties or improvements in the town. It will be consistent with the town's comprehensive plan.*

Because no alternations are to take place along this boundary, granting a variance could not result in a detrimental impact on neighbors or the neighborhood. The new addition is in total compliance with current regulations.

3. *Explain why the variance is necessary because of special circumstances relating to the size, shape, topography, location, surroundings and features of the subject property.*

Due to the triangulation of the lot, the buildable area is limited. There is no way to bring the house into compliance without tearing down the existing home and moving a portion of the foundation two feet south. The house has

stood here happily since constructed in 1951.

4. *Has the need for a variance arisen from actions previously taken by the applicant (owner)?*

No

5. *Explain that the variance is the minimum necessary to permit the owner reasonable use of the property.*

What is planned is a modest attempt to bring the house closer to current living standards and to hopefully prevent its being torn down in the future. The average 1950's two-bedroom home is inadequate by today's measure and a variance is needed to allow this progressive step to take place.

PUBLIC TESTIMONY

Chairperson Bates asked if there were any questions for Town Planner Green or the applicant, Ms. Dix. Board member Stowe asked Planner Green why this situation requires a variance. Ms. Green answered the Zoning Code Ordinance #349 requires all nonconforming structures to request a variance in order to continue a nonconformance when construction is planned. Board member Stowe asked Planner Green when the Zoning Code was changed to 10' on the side setback. Planner Green answered she believed it was less than ten years ago but after Ms. Dix acquired the property nonetheless.

Board member Matsudaira asked if any trees would be cut during construction of the proposed addition. Applicant Dix replied one tree would be cut that is in the buildable footprint of the proposed addition. Deputy Clerk Kulp noted that due to the proximity of the Eagle's nest in Board member Matsudaira's yard, a site specific Bald Eagle Management Plan (BEMP) would also be required by the WA State Dept. of Fish & Wildlife (WDFW). Applicant Dix noted she already has a letter from WDFW that will meet their requirements.

Chairperson Bates then asked for comments from the public. Resident D. Johnson stated he supports the granting of the variance request.

Deputy Clerk Kulp did not receive any letters to read into the record, but reported that Resident Helen Lewis called to express her support of the granting of the variance request and noted she feels it is not Ms. Dix's fault that her house is nonconforming.

Chairperson Bates closed the public hearing at 7:55 pm.

DISCUSSION of variance request for V09-01:

Board member F. Johnson stated she had no further comments or discussion on this variance request. Board member Matsudaira stated he had no further comments or discussion on this variance request. Chairperson Bates stated she had no further comments or discussion on this variance request. Board member Stowe stated he had no further comments or discussion on this variance request.

The Board members have reviewed the application submittal for Variance 09-01 against the five variance criteria of Ordinance No.349, Section 17.

MOTION: Chairperson Bates moved to conduct a VOTE on each of the five criteria needed for each request. Board member F. Johnson seconded.

From the foregoing findings, the board makes the following CONCLUSIONS, for V09-01:

1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

The Board is unanimous that Criterion 1 is satisfied.

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

The Board is unanimous that Criterion 2 is satisfied.

3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, and special features of the subject property.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

The Board is unanimous that Criterion 3 is satisfied.

4. The need for a variance has not arisen from actions previously taken by the applicant (owner).

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

The Board is unanimous that Criterion 4 is satisfied.

5. It is the minimum necessary to permit the owner reasonable use of the property.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

The Board is unanimous that Criterion 5 is satisfied.

Variance No. 09-01 does satisfy all five of the variance criteria.

DECISION: MOTION: Based on the foregoing findings and conclusions Variance No. 09-01 does satisfy the five variance criteria and is hereby approved and granted.

Chairperson Bates explained to both the Board and the Applicant that Deputy Clerk Kulp would prepare Findings of Fact based on tonight's proceedings and forward them to Town Attorney Wayne Stewart for review and then to Chairperson Bates for review, approval and signature. She added that, when approved, copies of the Findings would be distributed to the Board and the applicant as appropriate.

Chairperson Bates adjourned the meeting at 8:00pm.

Respectfully submitted,

Angela Kulp
Deputy Clerk

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Final 4/20/09