Meeting Minutes

Zoning Board of Adjustment

Tuesday, October 21, 2014
Ankeny City Hall – City Council Chambers
410 W. First Street, Ankeny, Iowa

CALL TO ORDER

The October 21, 2014 regular meeting of the Zoning Board of Adjustment was called to order at 5:05 pm by Vice Chairman N.Sungren. Members present: C.Dissell, B.Friest, N.Sungren, K.Tomlinson. Absent M.Ott. Staff present: E.Jensen, E.Bodeker T.Kuhn.

AMENDMENTS TO THE AGENDA

There were no amendments.

MINUTES OF THE OCTOBER 7, 2014 MEETING

Motion by K.Tomlinson to approve the October 7, 2014 meeting minutes as submitted. Second by C.Dissell. Motion carried 4 – 0.

COMMUNICATIONS / CORRESPONDENCE

Motion by K.Tomlinson to receive and file e-mail correspondence from Perry & LaVaun Schaeffer, 2647 NW Heritage Ave., Ankeny, Iowa, dated October 12, 2014. Second by C.Dissell. All voted aye. Motion carried 4 – 0.

BUSINESS ITEMS

#14-34 Nathon Keith
2001 NW Maple Street
Lot 8, Georgetown Plat 9
RE: Accessory Structure

Vice Chairman N.Sungren opened the public hearing.

Nate Keith, 2001 NW Maple Street stated that the shed was constructed in 2005 or 2006 according to the City and he questions why he is just now getting a request to remove the shed after it being allowed to exist openly and notoriously for 8 years under the previous owners. He said the literature provided to him by the city was dated June, 2011 and questioned if that represents the date of the Ordinance, and if the prior Ordinance would have allowed a shed in the sideyard. He asked if this is a violation because no permit was filed, if so, he was not the one who constructed the shed, it was a previous owner and they are the ones that caused the violation. Mr.Keith said he heard that the shed was constructed by the high school at the same time a deck was added on; adding that there was a permit filed for the deck. He commented that if the school constructed the shed, they did not follow procedure. Mr.Keith said the location of the shed was a selling point when they purchased the home because the size of the garage is just 20' x 20' with little room to store a mower and snowblower – the shed was key to storing those items and providing room in the garage to walk around the vehicles with a car seat. He said they constructed a back yard fence this summer so moving the shed at this time will require partial demolition of the fence which will be an additional cost and burden; had they known the shed was in violation prior to the installation of the fence, they would not have the problem. Mr.Keith said the staff's position in their report is that there are plenty of sites in the rear yard to locate the shed, however, if the heart of the issue for this violation is wanting Ankeny to look nice, he believes locating the shed in the rear yard will make it look worse as there is no location without the shed just "floating" somewhere on the corner lot. He added that water sits along the east property line after a rainfall and would not be an ideal place to locate the shed; and there are utilities along the north property line that may need to be dug up, as Mediacom did this summer, so the shed would need to be moved. In summary, Mr.Keith said that

his biggest grievance would be that the shed has been allowed to stand for 8 years and his question is why all of the sudden does it need to be moved. He said he spoke to his neighbors, many of whom are in the audience and has a signed document showing their support and acceptance of the shed in its current location.

C.Dissell asked how the shed is anchored. Mr.Keith responded that it's on concrete, he's not sure how it is anchored.

Referencing the plat drawing, B.Friest commented that there does not appear to be any recorded easements along the north property line. Mr.Keith said that was correct, however he had his utilities located this summer and that is what is shown on the drawing included with his submittal. B.Friest concluded that there are no public easements, just the services coming into his home. Mr.Keith agreed saying that this summer something had to be dug up and replaced and it's likely that could happen again. Additionally he said, the shed is required to be set back 3 feet from the property line which results in the shed "floating" on the property which is not attractive.

Staff Report: E.Bodeker reported that the request is for a variance to Section 191.07 (1) to allow an existing shed to remain in the side yard of 2001 NW Maple Street. She presented an aerial map identifying the location as east of NW Ash Drive and north of NW 20th Street, zoned R-2. Code Section 191.07 (1) prohibits accessory buildings in one-family and two-family residential zone districts and use areas from being erected in any yard other than a rear yard. The home was built in 2002 and based on Polk County aerials, the existing shed was built on the property between 2005 and 2006. The shed was constructed without a building permit. Had a building permit been submitted, the shed would not have been allowed to be located within the side yard. Based on the timing, it appears the first owner of the home had constructed the shed and there has been two different homeowners since then. Code Enforcement first contacted the homeowner about the non-conforming shed on August 15th, 2014 and sent a letter to the homeowner September 17th, 2014. Staff position is to deny the requested variance for the existing shed based on a determination that no building permit has been obtained and if a building permit had been applied for the shed would not be allowed to be located in its current location. There is no hardship based on topography or lot configuration and there are other places on the lot the shed could be placed.

K.Tomlinson asked if this was discovered based on the application of the fence permit. E.Bodeker said she believes it was based on a complaint.

K.Tomlinson commented that from the aerial, it appears there are a number of sheds located in rear yards in this neighborhood, which is where they are supposed to be, so the "floating" issue is not an issue in her opinion.

C.Dissell asked for clarification regarding the applicant's inquiry if the City regulations have always required shed to be placed in rear yards. E.Jensen said that the zoning ordinance has always required sheds to be located in the rear yard, he believes the handout provided to Mr.Keith likely indicated the last date which the handout was revised.

C.Dissell asked if the shed shows up as an assessory building on the County Assessor's site. E.Bodeker responded that the record shows a detached structure with a 2014 built date. C.Dissell asked about the size of the shed. Mr.Keith responded that it is 8' x 8'.

B.Friest asked what the city's definition of a rear yard is. E.Jensen identified on the aerial an area extending from the southeast corner of the dwelling along the rear and north property line, south to

the northeast corner of the home; explaining that on a corner lot, the front yard setback applies to both street sides of the lot.

Rich Watson, 709 NW 20th Street, said he agrees with Nate and said that he understands everyone wants everything in Ankeny to look good. He believes that this structure is aesthetically clean, has the same siding as the home and does not hurt the value of the neighborhood. As a neighbor he has no issue with the shed at its current location. He believes the City needs to take a common sense look at this especially since Nate is the third owner of the property and because costs will be incurred moving the structure.

Jackie Tschirren, 2002 NW Maple Street stated that she lives across the street and related that when the concrete was poured, the plan was to build a 3rd stall garage however the city inspector on site said that would not be allowed because the footing were not deep enough so the owner, Mike Fontana, had the shed constructed. She said she and her husband were there when the inspector came back out after the shed was in place. She said that it was not a complaint that started this process, a neighbor wanting to construct a shed in a similar location identified it as an example of what they wanted to do.

Joseph Tschirren, 2002 NW Maple Street said the first owner, Mike was in the construction business and he believes the City looked the way on this project. He recalls a truck full of lumber pulling up when the third stall was going to be built, and when the garage could not be constructed, the shed and deck were built.

Tashia Foster, 2005 NW Maple Street said they have never had an issue with the location of the shed and believe it's actually appealing because of the siding, making the neighborhood look nice, certainly not decreasing value. She does not believe it's fair for the 3rd owner to have to move the shed.

Susannah Cole, 2006 NW Maple Street said she understands that it was her neighbor that wanted to build a similar shed because it does look nice and they actually signed the document in support of the request. She said she spoke to Mike Fontana, the original owner and was told that it was a high school project, they designed and built the deck and in lieu of the 3rd stall garage, the shed. He said he thought he had pulled the permit, but it was all handled by the school, he simply supplied the lumber and was present during construction. She said she has no problem with it, with the concrete in place, the area will look vacant absent the shed.

Kurt Weitl, 2009 NW Maple Street said he has no issues with the shed. He said that flooding in the rear yards is a problem, which is why his shed was placed nearer his home. He said that everyone in the neighborhood is fine with the shed and its location and as he drives around the community he sees things that are a lot worse and not brought to the City's attention adding that these violations can be brought forward in the future.

Mr.Keith said he works in real estate and believes this is similar to trying to change the terms of a real estate agreement 8 years later. The shed existed in its current state for 8 years, he believes it's a little late bringing it forward as an issue. He does not believe the realtor would have any knowledge that the shed was in violation. Mr.Keith said he spoke to the previous owner and they had no idea the shed was in violation. He said it just seems unfair.

Motion by K.Tomlinson to close the public hearing and receive and file documents. Second by B.Friest. All voted aye. Motion carried 4 – 0.

C.Dissell asked staff to explain the enforcement process is this situation. E.Jensen said that typically the enforcement officer will try to reach out to the property owner and let them know there's a violation and ask them to bring it into compliance. He said it really depends on the situation and circumstances. If compliance isn't reached, typically a letter is sent. Moving a shed doesn't happen very often. C.Dissell said it probably safe to say voluntary compliance is sought rather than going through the courts. E.Jensen agreed.

B.Friest said in looking at past practices, the Board has always given a little in the back yard, but really never gives anything in the front yard. K.Tomlinson agreed. She added that there may be a hardship with a corner lot, with the location of utilities and flooding. C.Dissell added that with a corner lot, the area where a shed can be located is greatly reduced. C.Dissell agreed that the shed doesn't look bad, his problem is that granting a variance in this case opens the doors for others wanting a similar variance. He added that zoning is the law, it's there for a reason; the intent of this regulation is to limit accessory structures anywhere except in the rear yard and although there are circumstances associated with this one, he doesn't want to "open Pandora's box". K.Tomlinson commented that the circumstances surrounding the person that built it has no weight at all on the Board, most of the reasons for appeal have no bearing on the Board. The Board's guidelines are strict, the topography of the lot could be an issue, she could agree to that. C.Dissell agreed that the circumstances raised by the applicant are unfortunate and he sympathizes, however the Board is held to strict standards in approving a variance and he leans more toward where the shed could be moved. N.Sungren said the utilities, a corner lot and the flooding limits the area the shed can be placed. B.Friest said that utilities are not an issue, even if it were an electric issue, they would just go around the shed; adding that most all sheds "float" in the back yard.

The Board requested Mr.Keith respond to further questions.

B.Friest asked about the placement of the fence. Mr.Keith responded that it runs from the northeast corner of the house to the property line so in order to move the shed, concrete placed posts will need to be removed.

C.Dissell asked how much space there is between the underground utilities lines shown on the drawing. Mr.Keith said not enough room for the shed.

B.Friest said he just not in favor of the shed in this location, he might consider allowing it to move back so the rear is in line with the rear of the house. K.Tomlinson said she does not want to set a precedent. B.Friest said that as far as utilities go, the shed is not a permanent structure, it's something that can be moved and most likely the utility company would just go around it.

Board Action on Filing #14-34 for property at 2001 NW Maple Street

Motion by C.Dissel to deny a variance the Ankeny Municipal Code Section 191.07 (1) requesting to allow an existing shed to remain in the side yard of 2001 NW Maple Street. This decision is based on a determination that although the shed has been existing for a number of years, it is not in compliance with the zoning code. The Board's position to deny the variance is on the basis that no hardship related to topography or lot configuration is apparent at this address and there are other locations within the lot where the shed can be placed. If a permit had been applied for when the shed was first erected, the shed would not be allowed to be placed at its current location. Second by B.Friest. Motion carried 3 – 1 (Nay: N.Sungren).

REPORTS

Renewed Special Use Permits

#13-12 Crozier, LLC dba On the Rocks – 1810 SW White Birch Circle

E.Jensen reported that the Special Use Permit renewal for the Outdoor Service Area was approved administratively following staff review and no report of complaints from police, fire and code enforcement.

C.Dissell asked about the letter sent last June to the Council by the Zoning Board of Adjustment regarding Cabaret. E.Jensen responded that based on issues with Cabaret and well as with another outdoor services area, the police chief, city clerk and city manager are planning to work on the noise ordinance and possibly come up with other alternatives as to how the noise ordinance is processed and applied. C.Dissell said he appreciates Council taking the letter and complaints seriously since the Zoning Board of Adjustment seems to bear the brunt of the complaints.

There being no further business, the meeting adjourned at 5:45 pm.

Submitted by, Trish Kuhn,

Recording Secretary,
Zoning Board of Adjustment