

Board of Zoning Appeals

of the City of Onalaska

Monday, May 16, 2016

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1 The meeting of the Board of Zoning Appeals was called to order at 6:30 p.m. on Monday, May
2 16, 2016. It was noted that the meeting had been announced and posted at City Hall.

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4 Roll call was taken, with the following members present: Brent Larson, Robert Wehrenberg,
5 Kristen Odegaard, Craig Breitsprecher, Ald. Bob Muth

6
7 Also Present: City Clerk Cari Burmaster, Interim Land Use and Development Director Katie
8 Aspenson

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10 **Item 2 – Approval of minutes from the previous meeting**

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12 Motion by Craig, second by Brent, to approve the minutes from the previous meeting as printed
13 and on file in the City Clerk’s Office.

14
15 On voice vote, motion carried.

16
17 **Item 3 – Public Input (limited to 3 minutes per individual)**

18
19 Ald. Muth called three times for anyone wishing to provide public input and closed that portion
20 of the meeting.

21
22 **Consideration and possible action on the following items:**

23
24 **Item 4 – Public Hearing approximately 6:30 p.m. (or immediately following the public**
25 **input) – Request for variance filed by Tyler & April Brown, 122 9th Avenue South,**
26 **Onalaska, WI 54650 for the purpose of reducing the side yard setback from six (6) feet to**
27 **four (4) feet at 122 9th Avenue South, Onalaska, WI 54650 (Tax Parcel #18-1118-0)**

28
29 Ald. Muth reviewed the Order of Business for Public Hearing per Development Review
30 Procedures Appeal, Section 13-8-42 (g), Order of Business:

31
32 General Hearing:

- 33
- 34 • Statement of the nature of the case by the chairperson (Ald. Muth).
 - 35 • Appellate side of the case (Applicant).
 - 36 • Questions from the Board of Zoning Appeals members.
 - 37 • Land Use and Development Director’s side (Katie).
 - 38 • Questions from the Board of Zoning Appeals members.
 - 39 • Statements from interested persons such as neighbors or abutting land owners.
 - 40 • Questions from the Board of Zoning Appeals members.
 - 41 • Appellate rebuttal.

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Ald. Muth invited the applicant to approach the microphone.

April Brown
122 9th Avenue South
Onalaska

“There was a carport along the south side of the home. We had taken that down this weekend; we got a permit for that from here last week. What we wanted to do was in the future put up an attached, one-car garage in that spot. Whoever put up that carport prior to us ever living there never had a permit, and it doesn’t have the required 6-foot setback from the property line. What we’re asking is if we can have a 4-foot setback from the property line to put up that attached garage. Right now the driveway and the concrete floor of the carport is settled and leaning toward the house. There is a window over there that the water runs down into during heavy rainstorms, or even if there aren’t heavy rainstorms it all just accumulates around there so you can’t utilize the driveway to get into the home. You have to go to the front door and unlock that to go inside. We have removed the carport and we need to take care of some business in the backyard first, but we need to redo the driveway and then the floor of the old carport to bring it up to level. Then in the future, if the variance is approved, we would like to build a one-stall, attached garage – pretty much what you’re looking at in the photo, only it would be a garage and not an enclosed carport. The entrance door for people to walk in was on the front of the carport. That would have to be moved to the south side. You could pull your car all the way forward and walk in through an entrance that way. It would be a little bit taller than that because it’s sloped, but I’m not sure of the dimensions on how tall it would be. Obviously it would be no taller than the house.”

Ald. Muth invited questions from board members.

Robert asked if the roofline would be the same.

April said the slope would be different, adding that there would not be another level added. April noted that while her husband Tyler’s classic car fit in the space, the couple’s Chevrolet Suburban would not fit due to the slope.

Robert asked if the new slab would be 2 feet wider than it is now, or if it would remain the same.

April said it would remain the same. April pointed out the location where a screen door was located and said the plan is to move the entrance door to the south side and construct the garage higher so there is a real one-stall garage door on the structure.

Robert asked if the Brown’s neighbor to the south objects to their plans.

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84 April said no, noting that although the neighbor was unable to attend tonight’s meeting she has
85 stated her support for the project. April said the neighbor offered to sell her and Tyler [husband]
86 a couple of feet so they could construct a garage, but it was not possible to do so. April said the
87 neighbor was under the impression a grassy area was the Brown’s property; however, a 2015
88 property survey showed that the area in question belonged to the neighbor.

89

90 Craig asked April if the variance will give her and Tyler the space they need.

91

92 April said believes it will, noting that several items in addition to her husband’s automobile were
93 removed prior to the carport being taken down. April also noted that a shed on the property
94 contains several bicycles and a lawn mower and said, “I feel like if we had an actual garage with
95 real walls that you could put up hooks for bikes and the weed trimmer and things like that, I
96 think that would be a big benefit to having extra space there.”

97

98 Craig asked, “This is enough of a variance that you’re requesting?”

99

100 April said, “I think so. My husband thinks so.”

101

102 As there were no further questions from board members, Ald. Muth invited Katie to make her
103 presentation.

104

105 Katie highlighted the following points from the staff report:

106

- 107 • The property, located at 122 9th Avenue South, is located on top of a hill. The carport
108 was removed after the Browns obtained a demolition permit. The enclosed carport was
109 not permitted and it did not meet required City of Onalaska setbacks. The Browns wish
110 to construct an attached single-car garage in the same footprint as to the carport that was
111 previously there. This action would remove an unpermitted structure that did not meet
112 required setbacks to a permitted addition that, with a variance, would reduce the required
113 side yard setback from 6 feet to 4 feet. The Browns stated that the variance is necessary
114 due to both the topography of the lot and the lot size/layout.
- 115 • The section of the Zoning Code from which the variance is being requested is Section 13-
116 2-6(d)(3), Code of Ordinances, City of Onalaska, Wisconsin, which states “the minimum
117 side yard setback is six (6) feet for single family dwellings in the R-2 Single Family
118 and/or Duplex Residential District.”
- 119 • The 2015 Comprehensive Plan’s Future Land Use Plan identifies the parcel in question
120 and surrounding area as Mixed Density Residential District. The intent of this future land
121 use district is to accommodate residential units.
- 122 • The requested variance is an area variance, which provides an increment of relief from a
123 physical dimensional restriction such as a building height or setback. The applicant has
124 the burden of proof to demonstrate that unnecessary hardship exists when compliance
125 would unreasonably prevent the owner from using the property for a permitted purpose

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126 (leaving the property owner without any use that is permitted for the property) or would
127 render conformity with such restrictions “unnecessarily burdensome.”

128

129 Katie addressed the following criteria set forth in Section 13-8-44 as follows:

130

131 **1. Some sort of hardship to the property owner (or intended use) due to physiographical**
132 **consideration.**

133

134 Katie said staff believes this criteria has been met. The property is located the older portion of
135 the city and was not constructed as part of a formal subdivision process. City staff ensures that
136 when new land is platted every lot that comes forward meets lot area and has appropriate
137 frontage. The house was constructed in 1958, which was prior to the adoption of the city’s
138 Zoning Code, and it is therefore grandfathered in under the Unified Code of Ordinances today.
139 Current standards require a minimum frontage of 70 feet and a minimum lot size of 7,700 feet.
140 The property in question does not meet either standard with 60 feet of frontage and a lot area of
141 7,406 square feet. Katie noted that this typically occurs throughout the city and described the
142 layout of the property in question as “unique,” as it continues to narrow in width further
143 westward in the property to 33 feet at the rear lot line. Another unique characteristic of the
144 property is the dramatic change in slope from the rear property line to the rear of the house. To
145 be specific, there is a change of 25 percent (a 20-foot drop) over 100 feet. As shown by the
146 images provided by the applicant, numerous retaining walls are in use today to stabilize the
147 property due to the slopes of the property. Based on the aforementioned characteristics of the
148 property lot layout and topography, physiographical unique circumstances exist.

149

150 **2. Uniqueness of the situation.**

151

152 Katie said staff believes this criteria has been met. The applicant is attempting to request the
153 smallest variance possible to allow for an attached single-stall garage by reducing the setback by
154 2 feet. This action would allow the applicant to substantially invest in an older residence in the
155 city, improve the concrete footings of the residence, and repair the water damage to a basement
156 wall caused by the existing roofline of the carport as well as by the issues of the driveway within
157 the carport itself. Observing the other properties along 9th Avenue South, all either have single-
158 or double-car garages, most typically attached. Those that are unattached do not have the
159 topographic features that would prevent a detached garage behind the residential structure.
160 While other properties along 9th Avenue South do have some topography issues, none are as
161 notable as 122 9th Avenue South.

162

163 **3. Whether or not the variation is based exclusively upon a desire to increase value or**
164 **income potential.**

165

166 Katie said staff believes this criteria has been met as there is no indication that the purpose of the
167 requested variance is based exclusively upon value or income potential motivations.

Reviewed 5/19/16 by Katie Aspenson

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168

169 **4. Detrimental to Public Welfare or injurious to other property owners.**

170

171 Katie said staff believes this criteria has been met.

172

173 **5. Purpose of the variation would not undermine the spirit of the Zoning Code.**

174

175 Katie said staff believes this criteria has been met.

176

177 Katie said staff recommends approval of the proposed variance as all five criteria have been met
178 along with the following three conditions of approval:

179

180 1. Complete and submit a Building Permit for the attached garage and all subsequent
181 applications, permits and fees to the Inspection Department prior to obtaining a building
182 permit.

183

184 2. Any omissions of any conditions not listed shall not release the property owner/developer
185 from abiding by the city's Unified Development Code requirements.

186

187 3. All conditions run with the land and are binding upon the property owner and all heirs,
188 successors and assigns. The sale or transfer of all or any portion of the property does not
189 relieve the original property owner from meeting any conditions.

190

191 Ald. Muth invited board members to ask Katie questions.

192

193 Ald. Muth noted that the carport walls had been thin, and also that blocks will be installed for the
194 garage. Ald. Muth asked if this means the overall width of the garage will be reduced.

195

196 April said she is unsure, adding that she also is unsure if the garage will be insulated.

197

198 Ald. Muth said he believes the garage will be smaller from the inside of the house to the wall.

199

200 Craig said this is why he had asked if the variance the Browns are seeking is sufficient.

201

202 April said she and Tyler did not believe they would be able to construct a garage in place of the
203 carport. April noted the condition of the carport had deteriorated to the point that it needed to be
204 taken down and said she and Tyler are losing storage space. April added, "I'm not sure that we
205 thought we could make it much bigger being so close to the property line."

206

207 Brent noted that there will not be any block up against the house and said the only block will be
208 on the outside wall.

209

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210 Craig asked if the board has any latitude in granting additional space.

211

212 Katie said the board has the authority to give the Browns an additional foot.

213

214 Craig said he wants to ensure that if the board approves the variance it creates useable space for
215 the Browns.

216

217 Ald. Muth told April that if the board grants the variance as she and Tyler are requesting it the
218 width of the garage could be narrower due to the width of the blocks. Ald. Muth noted there are
219 instances where contractors will instead place rods in the cement and attach the wall to the slabs.
220 Ald. Muth asked April what Tyler plans to do.

221

222 April said she is unsure of Tyler's plans, telling the board that they hope to construct the garage
223 in 2017. April noted that the retaining walls and the driveway need to be repaired first and said
224 she would not object to the variance being increased by a foot. April told the board the existing
225 slab and driveway will be replaced.

226

227 Katie told April that she and Tyler would have to construct the garage within one year of the
228 variance being approved. Once the garage is constructed, the variance always will run with the
229 land. Katie also told April that she and Tyler would have to pull a permit within the next six
230 months, and the garage would have to be substantially completed within one year.

231

232 Ald. Muth opened the public hearing and called for anyone wishing to speak in support of the
233 requested variance.

234

235 Ald. Muth called three times for anyone wishing to speak in support of the requested variance
236 and closed that portion of the public hearing.

237

238 Ald. Muth called three times for anyone wishing to speak in opposition to the requested variance
239 and closed the public hearing.

240

241 Ald. Muth welcomed questions from the board members.

242

243 As there were no questions from board members, Ald. Muth welcomed April to comment.

244

245 April said she had no additional comments to make.

246

247 Ald. Muth referenced Section 13-8-43, "Decision and Disposition of Cases – Item D: Vote
248 Required," and read the following: "*All orders or decisions of the Board of Appeals granting a
249 variance, exception or conditional use, or reversing any action or order of the administrator
250 require the affirmative vote of four members.*"

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252 Ald. Muth read Section 13-8-44, Section E:

253

254 “Action of the board of appeals standards, for the board to grant a variance, it must find that:

255

256 1. Denial of variance may result in hardship to the property owner due to physiographical
257 consideration. There must be exceptional, extraordinary, or unusual circumstances or
258 conditions applying to the lot or parcel structure use or intended use that do not apply
259 generally to other properties or uses in the same district. The granting of the variance
260 would not be of so general or recurrent nature as to suggest that the zoning code should
261 be changed.

262

263 2. The conditions upon which a petition for a variation is based are unique to the property
264 for which variation is being sought and that such variance is necessary for the
265 preservation and enjoyment of substantial property rights possessed by other properties of
266 the same district and same vicinity.

267

268 3. The purpose of the variation is not based exclusively upon a desire to increase the value
269 or income potential of the property.

270

271 4. The granting of the variation will not be detrimental to the public welfare or injurious to
272 the other property or improvements to the neighborhood in which the property is located.

273

274 5. A proposed variation will not undermine the spirit and general and specific purposes of
275 the zoning code, specifically the standards of Section 13-1-6.”

276

277 Motion by Craig, second by Robert, to approve with the three listed conditions of approval a
278 request for a variance filed by Tyler & April Brown, 122 9th Avenue South, Onalaska, WI 54650
279 for the purpose of maintaining a 3-foot side yard setback at 122 9th Avenue South, Onalaska, WI
280 54650.

281

282 Brent noted that the public hearing was for a 4-foot setback and asked if a new public hearing
283 needs to be held because the setback is now 3 feet.

284

285 Katie said no, noting that the board may make the determination as to the size of the setback.

286

287 Brent said April’s neighbor might not approve of the change as it was her understanding that the
288 setback was being reduced from 6 feet to 4 feet. Brent also said, “If we give you the 4 feet and
289 this has to be where the structure is, the blocks should have no problem with that because the
290 designer of the garage is going to say, ‘This is what you have. The garage door has to be this far.
291 You have to have support for the garage door. You can’t have concrete block. You have to have
292 a concrete slab with your re-rod to hold that up.’ Therefore, you would still be asked to build a
293 garage in the confines of what the variance was.”

Reviewed 5/19/16 by Katie Aspenson

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294
295 Ald. Muth noted the Brown’s neighbor was under the impression that the area in question
296 already was the Brown’s property and said, “The difference there wouldn’t seem to make much
297 difference.”

298
299 April said that is the reason the neighbor was going to sell the land to her and Tyler.

300
301 Ald. Muth told April that the board is granting an extra foot as “a buffer zone.”

302
303 Craig said, “If we’re going to grant this variance – and I’m predisposed to do that – I want to
304 make sure whatever we do does allow them sufficient space to do what really should be done
305 rather than what has to be done to shoehorn it into a space that may be a little on the thin side.
306 As far as a neighbor, I’m sorry that they can’t be here. But one of the things we have some
307 flexibility on is we can grant more if we feel that is warranted. In this case, I just think it is.”

308
309 On roll call vote: Ald. Bob Muth – aye, Craig Breitsprecher – aye, Brent Larson – aye, Robert
310 Wehrenberg – aye, Kristen Odegaard – aye. Motion carried unanimously.

311
312 **Item 5 – Consideration and Approval of 2016 Board of Zoning Appeals Meeting Schedule**

313
314 Motion by Brent, second by Craig, to approve the 2016 Board of Zoning Appeals Meeting
315 Schedule.

316
317 On voice vote, motion carried.

318
319 **Adjournment**

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321 Motion by Ald. Muth, second by Craig, to adjourn at 7:11 p.m.

322
323 On voice vote, motion carried.

324
325
326 Recorded by:

327
328 Kirk Bey