

Minutes of Meeting Zoning Board of Adjustment Regular Meeting

May 3, 2023

ROLL CALL: Board members present: Billingsley, Otto, Rossow
Board members absent: Birkenholz, Hanson

STAFF PRESENT: Brian Dunkelberger, City Planner
Melvin Duncan, Building Official
Joe Grife, Public Works Director

A quorum being present, Chair Rossow called the meeting to order at 4:31 PM

Minutes

The Board reviewed the minutes of the previous meeting from February 1, 2023. **Motion** by Otto, **seconded** by Billingsley to approve the minutes as written. **Voice vote**: approved, 3-0.

Public Hearing

A. V23-2: Front yard setback variance for a detached accessory building at 1500 North 3rd Avenue West. Machele Vos, applicant.

Dunkelberger reviewed the prepared staff report and shared maps and images of the structure and subject property. Dunkelberger also shared four submitted comments from Newton residents:

- 1) Email received 4/29/2023: "I am writing in regards to the variance request for the detached accessory building at 1500 N 3rd Ave W. My greatest concern about the building is the way in which it interferes with the vision lines around the corner of N 3rd Ave W and W 15th St N. Because the building comes quite close to the street, it does cut into the lines of vision of vehicles coming around that corner. If a car was parked close to the corner (which is often the case) on either of these streets, another car going around the corner would be forced into a dangerous position if there was oncoming traffic. Please review any regulations that may govern intersection clearance requirements as well as other requirements for sizing, placement and construction approvals as consideration is given to this request. Thank you."
- 2) Letter received 5/2/2023: "Reference garage 1500 N. 3rd Ave. W. Why have you involved the neighbors in this matter? I have nothing personal against them but if it was built not following code and regulations then it should be taken down. It is up to your board to fully enforce the code. If not, then anyone can build anything anywhere on their property. A rule is a rule! No matter the situation. I hope your board doesn't disappoint our neighborhood and do the right logical thing."
- 3) Call received 5/3/2023: "I oppose the garage because it is an eyesore and it is obvious that it does not meet code. I question whether or not it poses a fire hazard and I am especially concerned about the potential impact it might have on my property value due to the enormous size of the garage. I also have concerns about traffic safety around the curve. We have rules and regulations for a reason."

- 4) Call received 5/3/2023: "I am calling in opposition of the garage. It was built without permits and approvals from the city, and that fact should not be ignored. Anything completed not in compliance should not be allowed, and an exception to the rules should not be given in this case."

Board members asked staff to clarify a few points about the application and the Board's role in the variance review process. Dunkelberger answered and provided additional information.

Machelle Vos, applicant, approached the Board and shared information from her perspective about the sequence of events and the reasoning behind the variance request. Vos provided information about previous communications with city staff and contractors. She shared that their intent was never to upset neighbors, but instead to get their vehicles off the street and to create a safe work space for her husband, Jan, who recently suffered three strokes and was unable to communicate but could understand.

Vos stated that they had assumed everything would have been handled by the contractors, and she provided examples of other properties around Newton with smaller front yard setbacks. Dunkelberger clarified setback rules and Zoning Code requirements. Board members asked about the applicant's experience with the various contractors and how it got to this point. Vos answered and referred to answers provided to the six variance questions. She also referred to previous communications with city staff about attached vs. detached structure rules. Dunkelberger confirmed and shared additional information.

Helen Henry, 304 W. 15th St. N., asked the Board questions about the review process and why it was necessary to involve neighbors. Otto described the variance review process and shared how neighbors are invited to provide feedback, but it is not required. Henry stated that she researched variances online and felt that it was not possible to claim that the current property owner did not create the alleged hardship nor was the hardship unique to their property. Henry also stated that it is the responsibility of a property owner to acquire permits before any construction activity, and she referenced a personal experience from a past project at her own property. Henry reiterated that codes existed for a reason and they should be enforced.

Otto clarified that the Zoning Board of Adjustment was not a code enforcement body, but rather they were tasked with determining if the variance was approvable or not. The appropriate steps were followed by the City and variance reviews are in place to evaluate whether or not a specific property has a unique hardship and if an exception to an established Zoning Code regulation would be appropriate.

Hearing no additional questions or comments, Chair Rossow called for a motion to close the public hearing.

Motion by Otto, seconded by Billingsley. Voice vote: Approved 3-0.

Billingsley stated that it was unfortunate that the contractors did not follow the rules and acquire the necessary permits before work began because that is what caused all the issues. Otto agreed, but also shared that the property owner was clearly made aware of requirements through previous correspondence with city staff – especially thanks to the Stop Work Order that the Building Official sent to the owners in May 2022. Billingsley agreed and stated that it would be hard to ignore the bright red notice. Rossow agreed and felt that it would give pause and encourage a property owner to double or triple check to make sure permits are in place.

Otto shared that other variances were generally not applicable due to the fact that the situations were not comparable. It seemed that no effort was made to meet the setback requirement – especially by the contractor. Otto's largest concern was with impaired sightlines and emergency vehicles navigating the neighborhood. Rossow agreed and felt that the structure does not fit within the neighborhood.

Otto shared that everyone was sensitive to expense and difficulty with the permitting process, but the permit runs with the property and the owner. Rossow referenced the six variance questions and the applicant's answers. She shared that her own answers to the questions were opposite of the provided answers, so she did not feel the variance application was approvable. Otto concurred and came to the same conclusion. She stated that it is difficult to not hold the current owner responsible for creating the alleged difficulty. Billingsley agreed because they pursued the garage construction without a permit, and the alleged difficulty was not valid.

The applicant asked a question from the audience. It was clarified that the public hearing had been closed, but it could be re-opened. **Motion** by Billingsley to re-open the public hearing for the purpose of question and answer, **seconded** by Otto. **Voice vote:** Approved 3-0.

Vos asked if there was any negotiation in how much of the garage would need to be cut. Billingsley responded by saying the applicant would need to review that information with city staff. Dunkelberger shared that the stipulations of the vote that evening would need to be met, but a separate variance application could be pursued if they wanted to propose a different setback. Vos also asked if the members could share what they would be open to in regards to a setback variance. Dunkelberger answered that it would be up to the property owner to submit that proposal. Members encouraged the applicant to visit with city staff to create a plan. Otto shared that the vast majority of Zoning Board of Adjustment hearings occur before any construction begins or before a permit is issued. Board members don't negotiate or make proposals, they just review and vote on an application before anything is in place.

Chair Rossow called for another motion to close the public hearing. **Motion** by Otto, **seconded** by Billingsley. **Voice vote:** Approved 3-0.

Billingsley reiterated that the variance application was not approvable considering the stop work order and sequence of events. The applicant could work with city staff and contractors to figure out how to make the garage fit on the property. Rossow stated that the Board needed to establish a deadline to bring the property back into compliance. Members decided on 60 days, and staff expressed support for a 30- or 60-day deadline to resolve the violations.

Motion by Billingsley to deny the V23-2 application and to establish a 60-day deadline for the property owner to remedy all violations at 1500 North 3rd Avenue West, **seconded** by Otto. **Roll call vote:** Motion to deny, approved 3-0.

Old Business

None.

New Business

1. 6/7/2023 Meeting

Dunkelberger inquired about Board members' availability for a June 7th meeting. Discussion ensued about availability and the likelihood of achieving a quorum at a meeting on that date.

Motion by Billingsley to adjourn the meeting, **seconded** by Otto. **Voice Vote:** approved, 3-0. The meeting was adjourned at 5:40 PM.