

Item 23-1484: The applicant proposes to construct an accessory building that is four (4) feet from the principal building. Section 23-43(f)(1)(a) of the Zoning Ordinance requires a five (5) foot separation from the principal building

Board of Zoning Appeals
Mon, Dec 18, 2023 7:00PM

Paul McCann (BOZ Chair) 15:13

Kurt, if you could read the request for 611 South Clara Street, please. And while he's doing that, if the applicant could come forward.

Supervisor Kurt Craanen (Inspections) 15:21

The applicant proposes to construct an accessory building that is four feet from the principal building. Section 23-43(f)(1)(a) of the zoning ordinance requires a five-foot separation from the principal building.

Paul McCann (BOZ Chair) 15:36

Okay, sir, could you introduce yourself, please.

Nathan S. (Resident) 15:38

[Nathan S.]

Paul McCann (BOZ Chair) 15:41

All right. And then if you could just address why this should be permitted a variance based on a hardship for the property.

Nathan S. (Resident) 15:52

I guess, if you don't mind, if I read this. The hardship would be—uh, our contractor, we applied for the permit. Everything was signed off, good to go. After the building was built, they came in measured, and it was a foot closer than what it was supposed to be. But I guess in the notes, we're—we are fire rating, the whole garage. It's, you know, five eighths—double five eighths on the front, all the way down. So, we're doing our part to make sure that it's what it is. And ultimately, it was signed off on and they granted it. And then later on, it's—now if it is not granted variance, I'll have to tear it down, move it a foot back, and then start over, and it's just gonna cost a lot of money.

Paul McCann (BOZ Chair) 16:52

Can you look to the description of the property or photo? I mean, is there a reason that it needs to be that close other than it's already there?

Nathan S. (Resident) 17:02

I just wanted it as close to that house as I possibly could get it, so you know, to fill the hole, because we're—otherwise you're walking from the garage, you know, 30 feet, or whatever it is to the house. So, I tried to bring it as close as I possibly could.

Paul McCann (BOZ Chair) 17:16

But we have to look at this as if it's not there.

Nathan S. (Resident) 17:19
Oh, gotcha.

Paul McCann (BOZ Chair) 17:20
So...

Nathan S. (Resident) 17:21
The reason I had to tear the garage down is because you could stick your finger through the base plate of—

Paul McCann (BOZ Chair) 17:25
Sure

Nathan S. (Resident) 17:25
—the old one. So, it was—it had to come down no matter what.

Paul McCann (BOZ Chair) 17:29
And did you put this one where the old one was or you moved it closer to the house?

Nathan S. (Resident) 17:33
It's a bigger pad, it's a bigger garage.

Paul McCann (BOZ Chair) 17:36
So, it's closer to the house?

Nathan S. (Resident) 17:38
It is closer to the house.

Supervisor Kurt Craanen (Inspections) 17:41
This is a arial of the former garage. But it's basically in the same location.

Nathan S. (Resident) 17:48
In the same location.

Kelly Sperl (BOZ Member) 17:55
So, the blue garage is where we're talking about?

Nathan S. (Resident) 17:57
Yeah.

Kelly Sperl (BOZ Member) 17:57
And that's the old garage?

Nathan S. (Resident) 17:59
That's the old one.

Kelly Sperl (BOZ Member) 18:01
And essentially, it's the same scenario?

Nathan S. (Resident) 18:04
Yeah.

Kelly Sperl (BOZ Member) 18:06
Just a little bigger and a little closer, apparently.

Nathan S. (Resident) 18:07
Correct. Yeah.

Paul McCann (BOZ Chair) 18:12
So, with the, with the methods of construction here, Kurt, this structure could be attached. Right? I mean, this, this is being built?

Supervisor Kurt Craanen (Inspections) 18:20
This could be attached. Well, it could be attached, but then it would have to meet the setbacks of the principal building. Six foot from the side yard, 25 feet from the rear yard. You can—the zoning code requires—

Supervisor Kurt Craanen (Inspections) 18:31
No, it would—there be other violations if it was attached.

Paul McCann (BOZ Chair) 18:31
So, it wouldn't comply with that. If it were attached to the house, it wouldn't?

Paul McCann (BOZ Chair) 18:38
That's what I was kind of trying to understand. I can't tell from the information we have where it sits on the property.

Supervisor Kurt Craanen (Inspections) 18:47
Well, you know, I have the application here. This is the application that was submitted. You look here? This is setback of the accessory building, which says on the permit is 63 feet from the front property line. I think—maybe the applicant can tell me what this number is. I think it's 42. This—which should be the distance from the property which clearly that's not that's not correct. That's not what was intended.

Paul McCann (BOZ Chair) 19:23
Could be 4.2.

Supervisor Kurt Craanen (Inspections) 19:26
Yeah, I don't know. Was it 4.2?

Nathan S. (Resident) 19:28
I'm not sure. I'd have to—our contractor is the one that filled out the permit.

Supervisor Kurt Craanen (Inspections) 19:37
So then this was the map that was submitted. This is the garage. This is the pool. This is the house.

Paul McCann (BOZ Chair) 19:46
And what does it show there as a distance?

Supervisor Kurt Craanen (Inspections) 19:49

This shows that first—well this is a 36-inch door which apparently got moved over here.

Nathan S. (Resident) 19:53

Yep.

Supervisor Kurt Craanen (Inspections) 19:55

So there really is no dimension on the diagram showing this distance.

Nathan S. (Resident) 19:58

I guess one of the other things I'd like to—is when—I know when he put the permit out. On these permits, is there any, you know, A to Z step by step protocols? Because there was no site inspection before. You know, I mean, this all could have been prevented if somebody would have showed up, or would have known that they had—I'm not, I'm just, I have no idea if he would have known that it had to be inspected before, you know, framing and all that other stuff. But there's on the permits, there is no A to Z—I mean, if I would pull my own permit, how am I supposed to know, you know, the order of which. Because in the city of Appleton, you could pull your permit, your own permit, you know, so—

Kelly Sperl (BOZ Member) 20:57

Then you're taking on the liability by doing that.

Nathan S. (Resident) 20:59

Correct. Yeah. So, I was just—

Kelly Sperl (BOZ Member) 21:01

Yeah.

Nathan S. (Resident) 21:01

There's no step-by-step process for—

Paul McCann (BOZ Chair) 21:06

Yeah, there's just a, there's just an affirmation by you that says you're gonna build it according to everything that's in this book. So, all you got to do is have one of those. And so, Kurt, what do you—is there a step that was missed in the inspection process at all?

Supervisor Kurt Craanen (Inspections) 21:22

With all projects, there's a stakeout inspection where when you lay out the concrete—and also the conc—you have to show that you have rebar in it and meets—and has the thickened edge on the slab, and all those things which are typically called in. Just like anytime you build a house, you call for a foundation inspection, footing inspection, make sure you have drain tile in. We can't approve a permit, for example, if you backfill the drain tile. So that's pretty common. Whether it's told every time I can't say for sure, but usually contractors know you call for a stakeout inspection. Then—that's when it would have been caught, when they say "Okay, we want to put the slab right here." "Wait a minute, you got to be five feet away." And that just was never called in.

Nathan S. (Resident) 22:09

But I guess I guess what I'm would say is you know, we're doing everything fire rated that we need to do as if it was an attached garage, you know, and more.

Supervisor Kurt Craanen (Inspections) 22:19

Yes, and we did we did talk about this. Like, hey, the board, the board members, are gonna ask (you probably Kelly), "Are you gonna have a rated wall? So, you don't have a fire separation problem?" Because what you—

Paul McCann (BOZ Chair) 22:31

We have a combination of architects, engineers, and lawyers up here.

Kelly Sperl (BOZ Member) 22:35

I don't know if that's a good combination, but we're here.

Supervisor Kurt Craanen (Inspections) 22:37

But with the door being moved to the side there, we feel he's meeting the five-foot UDC [**Universal Dwelling Code**]. Well, it's—yes, it's actually 10 feet. You can be 10 feet away without having any protection. With anything within five feet—or anything within 10 feet has to have a fire rating.

Nathan S. (Resident) 22:55

And we're doing a fire rated service door.

Kelly Sperl (BOZ Member) 22:59

Where's the overhead door fall with all that? And go back to that—does that fall within that 10 feet? That...?

Supervisor Kurt Craanen (Inspections) 23:08

It would be corner here from the opening.

Paul McCann (BOZ Chair) 23:13

Do you know that dimension?

Nathan S. (Resident) 23:14

I do not know that dimension.

Paul McCann (BOZ Chair) 23:16

If you wanted to guess that dimension, what would you guess?

Nathan S. (Resident) 23:20

I'd say pretty close to that, I would say. I'm not sure—to be honest I'm not, haven't...

Paul McCann (BOZ Chair) 23:26

You haven't been out there with your tape measure measuring every little detail?

Nathan S. (Resident) 23:29

No, I'm just...

Paul McCann (BOZ Chair) 23:30

Okay. I mean, that would be a concern, right? But—

Supervisor Kurt Craanen (Inspections) 23:34

—speak to the building inspector, and he says he thinks they can beat it.

Paul McCann (BOZ Chair) 23:38

Okay.

Kelly Sperl (BOZ Member) 23:39

That's good. So...and typically the overhead doors are noncombustible steel materials. So, it's not like, you know, the siding is typically vinyl and got flashpoints and melting points and everything else. So, you know if that's allowed within that, you know, the overhead door, whether it's rated or not, being non-combustible is a good thing.

Supervisor Kurt Craanen (Inspections) 24:06

But it wouldn't meet the UDC standard. So, if it's not 10 feet then there's still a problem. That that UDC is not a part of the zoning code, so they couldn't issue a variance for that.

Kelly Sperl (BOZ Member) 24:18

But you said you thought the inspector thought it was?

Supervisor Kurt Craanen (Inspections) 24:20

Close.

Kelly Sperl (BOZ Member) 24:21

Close?

Supervisor Kurt Craanen (Inspections) 24:22

And you know, you could remedy that. You could put a smaller door in.

Scott Engstrom (BOZ Member) 24:29

Were there any complaints at all about this?

Supervisor Kurt Craanen (Inspections) 24:31

No.

Nathan S. (Resident) 24:34

I could bring my neighbors. But they [indecipherable] talk so we don't know. We'll never know.

Supervisor Kurt Craanen (Inspections) 24:39

I get it.

Nathan S. (Resident) 24:39

Well, I've lived in the neighborhood since I was this big, and my parents live next door, and I know everybody.

Michael Babbitts (BOZ Member) 24:47

Kurt, can you explain what the setbacks would be if it were attached?

Supervisor Kurt Craanen (Inspections) 24:56

Here's the four foot. This would be a six-foot side yard setback. This is nine. This would be a 25-foot rear yard setback.

Paul McCann (BOZ Chair) 25:18

Overall size of the lot is not an issue, right? I mean, there's a—it's a pretty good-sized lot compared to—?

Nathan S. (Resident) 25:25

And we're tearing the pool out.

Scott Engstrom (BOZ Member) 25:26

It was 8100—

Nathan S. (Resident) 25:27

The whole liner is. So, it's coming out. That's all.

Kelly Sperl (BOZ Member) 25:31

Is 2100 square feet larger than the minimum?

Supervisor Kurt Craanen (Inspections) 25:34

This is an 8100 square foot lot, and the minimum allowed lot in R-1B's zoning district is 6000.

Karen Cain (BOZ Member) 25:41

Kurt, the intent with the 60 inches is fire, right? So that—?

Supervisor Kurt Craanen (Inspections) 25:46

No, that's the zoning code requirement just for, you know, community standard, for five feet, just doesn't give a reason. Just we want—there's some break, separation that we just don't have things real close, so you can't walk between them, you know. It'd be odd to have had it two feet away. And granted, it's arbitrary; six feet is arbitrary. But can you fit a snowblower through there? Lawn equipment or something like that? So, it doesn't look odd. That sound like a good answer reason why this five-foot separation?

Paul McCann (BOZ Chair) 26:22

Over the years we've been led—I mean, maybe it's other people from inspections or whatever, have said that the fire department is pretty steadfast about making sure that they can get themselves and equipment in between, especially between a garage that may be on fire and the principal dwelling. So, I mean, you've addressed that with the method of construction.

Paul McCann (BOZ Chair) 26:52

You know, it's pretty difficult to find a hardship other than the fact that it's all sitting there, but we're supposed to pretend it's not. So, I think we've got a little bit of work to do.

Scott Engstrom (BOZ Member) 27:04

You know, one consideration that we have to take into account is whether or not it's self-created. But I think there's kind of that intermediary event of the contractor not having requested the stakeout. So, I'm not sure that I guess in the truest restrictive sense that it's self-created, because the applicant was trying to follow the correct process.

Paul McCann (BOZ Chair) 27:32

His agent.

Scott Engstrom (BOZ Member) 27:34
Right. And—

Kelly Sperl (BOZ Member) 27:34
And that's where mistake was made.

Scott Engstrom (BOZ Member) 27:36
Right. And that's where it gets into, you know, is it a issue for the zoning board to resolve or a private issue between the applicant and their contractor?

Kelly Sperl (BOZ Member) 27:46
And the fact that they're obviously making an attempt here to fire rate that, the entire interior of that, is a good thing.

Paul McCann (BOZ Chair) 27:58
So, Kurt, they'd be allowed to be this exact same structure three feet off the property line?

Supervisor Kurt Craanen (Inspections) 28:05
Yes, this—

Paul McCann (BOZ Chair) 28:06
So, I mean, if it were three feet, instead of four feet off the side property line, it'd be five feet away from the principal dwelling, and it would comply, right? If we could blink our eyes and move it one foot?

Supervisor Kurt Craanen (Inspections) 28:19
I wouldn't say that would be the case. If you move this building one foot over this way I don't know if it'd be clear.

Paul McCann (BOZ Chair) 28:27
Okay. Because there is and overlap there.

Kelly Sperl (BOZ Member) 28:29
What's the rear yard?

Paul McCann (BOZ Chair) 28:30
Nine feet.

Supervisor Kurt Craanen (Inspections) 28:31
Nine feet.

Kelly Sperl (BOZ Member) 28:32
What's required though?

Supervisor Kurt Craanen (Inspections) 28:34
Three.

Nathan S. (Resident) 28:34
We just measured—

Supervisor Kurt Craanen (Inspections) 28:35

He could move it back

Kelly Sperl (BOZ Member) 28:36

So, he could move it back that way. And obviously, that's not going to happen with where we're at now, but...

Paul McCann (BOZ Chair) 28:43

It could have been built in compliance.

Scott Engstrom (BOZ Member) 28:45

Right?

Kelly Sperl (BOZ Member) 28:47

Right.

[Somebody spoke off microphone. He was presumably asking to speak about the matter.]

Paul McCann (BOZ Chair) 29:03

You could have about a half hour ago. Go ahead and come forward. If you'd introduce yourself, and we'll flashback 29 minutes.

Jason B. (Contractor) 29:13

I'm the contractor, and the reason why I didn't move it back farther is because there's—

Paul McCann (BOZ Chair) 29:21

The podium mic should work.

Jason B. (Contractor) 29:23

—there's a easement for electrical back there. So that's why I didn't go back there. So, when I applied for it, I applied and brought it to here because I knew it was a big structure, and it was going to be replacing this new structure. And I made sure I had in my setbacks from the power company and stuff in the back, and I made sure I had more than enough on the left side. I guess I didn't put in that difference from the house to the building. But—and again, when I was in there, I asked the inspector over and over to make sure (because I knew it was going to be a new big structure back there) if everything looked good and whatever. And then I was granted the permit at that time.

Paul McCann (BOZ Chair) 29:34

Do you know what that number for the distance between the structure and the principal building—Four Two or whatever that is?

Jason B. (Contractor) 30:18

Yeah, I don't know. I don't remember.

Supervisor Kurt Craanen (Inspections) 30:21

I will say this confirms there is an easement back there. Typically, the—these are six-foot easements. I could check the plat.

Jason B. (Contractor) 30:31

And when I called WE energies, they were hoping to be around 9 or 10 feet is what they were hoping for when I called directly to WE Energies.

Paul McCann (BOZ Chair) 30:41

Okay.

Kelly Sperl (BOZ Member) 30:42

So back to your point though, if that's a six-foot easement, there would have been room. You know, obviously just a mistake was made here, there was room to move that or place it to where be compliant.

Jason B. (Contractor) 30:53

And I went from what we energies was asking, I guess, compared to what the city was asking for whatever. And that's, that's where I come back to the mistake was made. I guess the mistake was made when I was issued the permit. And what we're trying to remedy is making everything fireproof, to the same compliance as what a normal attached garage would be—need to be done right now. If you build an attached garage to your house, you need a fire rated fire wall and a fire rated ceiling and such. And we're fire rating this garage as if it were the attached garage.

Paul McCann (BOZ Chair) 31:42

Just to clear up the one difference you and I have with this situation, I don't think the city—the city gave you a permit based on the information that's on that request. There's some vagueness to what that dimension is supposed to be.

Jason B. (Contractor) 31:59

Okay.

Paul McCann (BOZ Chair) 32:00

That's why an inspector sitting in his office isn't going to reject this—

Jason B. (Contractor) 32:04

Okay.

Paul McCann (BOZ Chair) 32:04

—permit. The mistake was probably made by not calling for someone to come out when you had it staked out. Because they would have come out.

Jason B. (Contractor) 32:12

[Said something that was indecipherable] that that step needed to be.

Paul McCann (BOZ Chair) 32:13

Well do that from now on.

Jason B. (Contractor) 32:15

I will.

Paul McCann (BOZ Chair) 32:16

I mean, because that's when—

Jason B. (Contractor) 32:18

Because I knew there was gonna be a foundation inspection. But when you're building a building like that, we had no backfill, we had nothing. I knew that.

Kelly Sperl (BOZ Member) 32:27

But was there a foundation inspection done?

Jason B. (Contractor) 32:30

Again, when—I figured when—I don't want to waste the inspectors time. So, a foundation inspection, usually, I feel like could be done with a rough-in inspection, electrici—electrician, and whatever. And I don't want to waste the inspector's time, and I want him to come and be able to do all that. Because you could see that [...]

Kelly Sperl (BOZ Member) 32:49

The whole purpose of a foundation inspection is to understand and inspect what's going into the concrete, and how it's formed and all that kind of thing. So, but—

Jason B. (Contractor) 32:59

And I didn't know, again, when going back to step by step, you know....

Paul McCann (BOZ Chair) 33:05

Would it take you more time to move this garage than it would take for an inspector to come out and look at that foundation? Yes. It would I think.

Jason B. (Contractor) 33:12

Oh, yes, it would take longer for me to move it correct, yes.

Paul McCann (BOZ Chair) 33:15

So don't worry about calling the inspections department. I mean, we're—there is not a good hardship that meets the definition of what we have in front of us. I mean the factors that you put in place to try to remedy the concern with having a building that close to the principal structure, I think are admirable, but...

Jason B. (Contractor) 33:44

Our job is going to be that, yeah, we have to disassemble the front; we're gonna have to move it back; we're gonna have to cut out the front cement and re-pour the new apron so that it'll...

Paul McCann (BOZ Chair) 33:58

That doesn't sound like any fun at all.

Jason B. (Contractor) 34:04

It's gonna be an expensive instead of us being able to fireproof it and do whatever—it's going to be expensive—

Paul McCann (BOZ Chair) 34:10

Were you planning to fireproof it in the original plan?

Jason B. (Contractor) 34:14

Yeah.

Paul McCann (BOZ Chair) 34:14

So, it's not—you're not going above and beyond what you were planning to do, anyway?

Jason B. (Contractor) 34:19

Well.

Paul McCann (BOZ Chair) 34:20

Just observing. It's not a judgment or—I mean, it's a good idea.

Jason B. (Contractor) 34:28

I mean, we would have used half inch on the wall and stuff instead of five eighths.

Paul McCann (BOZ Chair) 34:31

Sure. Okay. All right. Are there any other questions of the applicant and his contractor? If not, we'll entertain a motion on the request.

Karen Cain (BOZ Member) 34:53

I move to approve based on the series of events that have happened. I mean, I understand that a contractor's in a situation where, like you said A to Z the list, but it sounds like they did their best to try to get the approval as it stood and they got a permit. And I think if the—if a measurement is unclear, to me, it's up to the city to get a clear measurement, to understand what they're approving. So, I feel like the hardship was not created by the owner. It was more created by a series of events.

Paul McCann (BOZ Chair) 35:28

Okay. Is there a second?

Kelly Sperl (BOZ Member) 35:32

I'll second that.

Paul McCann (BOZ Chair) 35:34

Moved and seconded. Any further discussion? Okay, if there's no further discussion, we'll take a vote. Miss Cain?

Karen Cain (BOZ Member) 35:45

Aye.

Paul McCann (BOZ Chair) 35:46

Mr. Sperl?

Paul McCann (BOZ Chair) 35:47

Mr. Engstrom.

Kelly Sperl (BOZ Member) 35:47

Aye.

Scott Engstrom (BOZ Member) 35:51

Aye.

Paul McCann (BOZ Chair) 35:52

I will vote aye as well. Mr. Babbitts?

Michael Babbitts (BOZ Member) 35:54

Aye.

Paul McCann (BOZ Chair) 35:55

Okay, good luck. Well, I assume you're finished.

Jason B. (Contractor) 35:59

No, we stopped. We stopped everything because...

Paul McCann (BOZ Chair) 36:02

I haven't had a chance to get out that way. But, okay, well, good luck completing you project.

Jason B. (Contractor) 36:06

Thank you very much. I appreciate it.