

Meeting Minutes

Zoning Board of Adjustment

Wednesday, September 7, 2022

Ankeny City Council Chambers

1250 SW District Drive, Second Floor, Ankeny, Iowa

CALL TO ORDER

Chair Matt Ott called the September 7, 2022 regular meeting of the Zoning Board of Adjustment to order at 5:00 p.m.

ROLL CALL

Members present: Jeff Baxter, Matt Ott, Kristi Tomlinson, Nichole Sungren, and Brett Walker.

Staff present: E.Jensen, E.Carstens, D.Silverthorn, B.Morrissey, R.Kirschman, B.Fuglsang.

AMENDMENTS TO THE AGENDA

There were no amendments to the agenda.

MINUTES OF THE AUGUST 16, 2022 REGULAR MEETING

Motion by J.Baxter to approve the August 16, 2022 meeting minutes as submitted. Second by N.Sungren.

Motion carried. 4 – 0 – 1 (Abstain: M.Ott).

COMMUNICATIONS / CORRESPONDENCE

Chair M.Ott shared that the Board received from Chuck Stewart, 1112 NE 31st Street, Ankeny a homeowner's petition in opposition to the variance, which will be received and filed during the public hearing for Appeal #22-14.

BUSINESS ITEMS

PUBLIC HEARINGS:

#22-14

Long Creek Design, LLC

for property located at

1107 NE Milan Avenue

Lots 45 & 46, Briar Creek Plat 1

RE: Variance – Accessory Building - Height

Chair M.Ott opened the public hearing.

Jason Flaherty, Long Creek Design, LLC, 212 Park Avenue, Des Moines said that his client would like to build an accessory building in the back of his property. He said the item in question is the building height and said in their opinion, it does meet the 12-foot requirement. He stated the concern is with the height of the wall on the second floor, where the proposed sundeck is located. Jason Flaherty said in the last year they removed the roof on the second floor to help reduce the height. He asked that the variance be approved so they can move forward with construction.

J.Baxter commented that under the Code, there has to be a reason for the variance and it has to be due to the exceptional narrowness, shallowness, or shape of the property and asked what is it about this property that leads the need for this variance. Jason Flaherty said, nothing. He stated that it sits far enough off of the property lines and commented that the structural roof itself, actually meets the guidelines of the 12-foot mean elevation.

There were no further questions from the Board.

D.Silverthorn reported that the appellant is requesting a 6-foot variance to the maximum allowable height of 12-feet for an accessory building other than a garage in an R-1, One-Family Residence Zoning District. He stated the proposed accessory building on the property at 1107 NE Milan Avenue, if approved, would be a maximum height of 18-feet. He said the property is located southeast of the intersection of NE Delaware

Avenue and NE Milan Avenue and is zoned R-1, One-Family Residence District. Properties to the east, south and west are zoned R-1 and the properties to the north are zoned R-3, Multiple-Family Residence district, with landscape restrictions.

D.Silverthorn stated the property is 0.67 acres, which is larger than most single-family residential lots in an R-1 zoning district and since the property has been built, the property contains or has been permitted a 640 square-foot shed, hot tub, trellises, and basketball/tennis court. D.Silverthorn said that the appellant is proposing to construct an 18-foot tall accessory building other than a garage located in the southeast corner of the property and it would be located approximately 8-feet from the shared property line to the east. The accessory building would contain a bar, office, bathroom, storage and a sundeck on the second level. He noted that a variance is required for the proposed structure since it does not conform to Ankeny Municipal Code Chapter 192.03.3.F stating that accessory buildings other than garages may be a maximum height of 12-feet. He said, to staff's knowledge, there has been one height variance granted for an accessory building other than a garage. Zoning Board of Adjustment Docket #12-03 was a variance request for the property located at 4780 SE Four Mile Drive. That area is very agricultural and industrial; and staff would not consider the characteristics of the property on SE Four Mile Drive to be similar to the appellant's property. D.Silverthorn explained that accessory structures that have been approved previously were garages and shared the details of those properties with the Commission. D.Silverthorn stated that based on the powers and duties of the Zoning Board of Adjustment within Chapter 197.01.4 of the Zoning Ordinance to grant variations in the regulations, staff finds there are no exceptional topographical conditions or other extraordinary or exceptional situations related to the property. He noted that the property is generally flat, with approximately two feet of elevation change across the entire property. Additionally, staff finds that the strict application of the terms of the Zoning Ordinance does not prohibit the use of this property in the district. Given the size of the property and its existing amenities, staff finds no unnecessary hardship resulting from the literal enforcement of the provisions of the Zoning Ordinance. He commented that there has been no correspondence received regarding this request except for the correspondence that was provided at the meeting by Chuck Stewart. Staff's position is that the Zoning Board of Adjustment deny a variance to Ankeny Municipal Code Chapter 192.03.3.F, allowing an 18-foot tall accessory building for the property located at 1107 NE Milan Avenue. This position is based on a determination that there is no exceptional narrowness, shallowness, or shape of the specific piece of property; no exceptional topographical conditions or other extraordinary or exceptional situation; no unnecessary hardship resulting from the literal enforcement of the provisions of the Zoning Ordinance; and that this request is not in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

J.Baxter asked for clarification on the applicant's statement regarding the roof height being actually 12-feet. D.Silverthorn explained that the applicant is referring to the second level wall, which is 12-feet but a railing extends above the roofline. J.Baxter confirmed that the top of the railing is 18-feet. D.Silverthorn stated, yes. The upper most point of the structure is 18-feet and further commented that there is a little bit of disconnect between this building and other accessory buildings when related to "mean" elevation. D.Silverthorn explained to the Commission what the Code refers to as "mean" elevation.

M.Ott clarified what type of accessory building was previously approved by the Board. D.Silverthorn responded that it was an addition to an existing garage.

D.Silverthorn presented some examples of accessory buildings that were approved. He shared that if the accessory building is attached to the primary structure there would be no need for a height variance. He then provided an overview of what is considered attached by providing examples. He noted that the accessory building that is under consideration, if attached, would have to meet the setbacks for the primary structure.

Chuck Stuart, 1112 NE 31st Street, Ankeny presented a homeowner's petition in opposition to the variance. He said it is signed by seven neighbors. Chuck Stuart shared that he is concerned by the privacy aspect due to the height of the accessory building. He said if it is 18-feet high, they would basically be looking down onto his deck and be able to see into his dining room.

M.Ott asked Mr. Stuart to show the Board on the map where the seven properties are located that signed the petition in opposition to the variance request. Mr. Stuart noted them on the aerial map.

Kevin Kostelecky, 1105 NE 31st Street, Ankeny said he is representing the Homeowners Association for the property owners who live on NE 31st Street. He said his concern is with the height being 18-feet. The homeowner would be able to have umbrellas on the second level since it will be a sundeck. He also has concerns that no other variances have been approved, except for the one that is situated primarily in a rural location. He feels it would be setting a precedent that could possibly be used to allow others to build structures higher than 12-feet. He personally is not concerned about the privacy since his home is a little further away. J.Baxter asked if the applicant was part of the Homeowners Association. Mr. Kostelecky said he believes they are since they own interest in the property at 1106 NE 31st Street. M.Ott asked how far the Association extends. Mr. Kostelecky said he believes there are 37 or 38 properties associated with it. M.Ott clarified whether he was speaking on behalf of the Homeowners Association or himself. Mr. Kostelecky responded, the Homeowners Association. J.Baxter asked if the Association had any type of vote on the variance request. Mr. Kostelecky said no, since their meeting is not for a couple of weeks but if this is still unsettled, he would take it before the Association for a vote.

Brian Waddingham, 1118 NE 31st Street, Ankeny said he feels the accessory building, due to its size, would upset the aesthetics of the neighborhood. He also has concerns regarding parties that may be held in the accessory building causing noise issues in the neighborhood. He would like to see this request be denied.

Jason Flaherty, Long Creek Design, LLC, 212 Park Avenue, Des Moines presented some examples of accessory buildings on other properties comparing them to their request. He further stated that their plan is to add lattice and greenery on the backside for privacy and are trying to be mindful with the height and still have a sundeck on the second level.

Motion by M.Ott to close the public hearing, and receive and file documents. Second by K.Tomlinson. All voted aye. Motion carried 5 – 0.

J.Baxter said he does not see how the Board can grant a variance since their ability is based on specific criteria in the Code. It is based on the exceptional narrowness, shallowness, or shape of this specific piece of property or by reason of topographical conditions. He said as the applicant stated, there is none with this property. M.Ott agreed. He also noted that the surrounding property owners have raised concerns. K.Tomlinson, N.Sungren and B.Walker agreed.

Board Action on Filing #22-13 property located at 1055 & 1075 SW Oralabor Road

Motion by J.Baxter that the Zoning Board of Adjustment deny a variance to Ankeny Municipal Code Chapter 192.03.3.F, allowing an 18-foot tall accessory building other than a garage for the property located at 1107 NE Milan Avenue. The Board's position is based on a determination that there is no exceptional narrowness, shallowness, or shape of the specific piece of property; no exceptional topographical conditions or other extraordinary or exceptional situation; no unnecessary hardship resulting from the literal enforcement of the provisions of the Zoning Ordinance; and that this request is not in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

Second by N.Sungren. All voted aye to deny request. Motion carried. 5 – 0.

NEW BUSINESS

There was no new business.

REPORTS

There were no reports.

There being no further business, the meeting adjourned at 5:35 p.m.



Submitted by Brenda Fuglsang, Board Secretary
Zoning Board of Adjustment