



TOWN OF BEAUX ARTS VILLAGE

BOARD OF ADJUSTMENT

MINUTES

May 5, 2004
Matsudaira

PRESENT: Board Chairman Bob Welsh, Boardmembers Steve Matsudaira, Kevin Peterson, Steve Hauck and Jan Johnson

GUESTS: Town Planner Mona Green; Applicants Kevin Kay, Blair Carleton and Jens Molbak, Architect Bob Swain, Wesley Pierce, Robin Stefan, Cindy Davis, and Ann Peterson

DEPUTY TOWN CLERK: Betsy Donworth

Board Chairman Welsh called the meeting to order.

MINUTES: Steve Matsudaira moved to approve the Minutes of March 3, 2004 as submitted. Boardmember Hauck seconded. Motion carried unanimously.

PUBLIC HEARING ON VARIANCE NO. 04-1 –Kevin Kay

Chairman Welsh opened the public hearing.

Chairman Welsh began by explaining that although a variance applicant will benefit from the presence of a full quorum at the Board of Adjustment meeting, for the Kay variance having Jan Johnston present and voting was not possible due to a conflict of interest. She is also representing Kevin and Jenny Kay as their architect, and case law in Washington State suggests that where a board member has stepped down and spoken as a citizen at a meeting and did not vote, the board member still influenced the vote thereby making the decision invalid.

Applicants Kevin and Jenny Kay are requesting a variance (from Sections 8.A, 8.B and 9.A of the Town of Beaux Arts Village Zoning Code Ordinance (No. 289) in order to expand the footprint of a legal nonconforming structure on a legal nonconforming lot. Section 17 of the Ordinance allows the Board of Adjustment to vary the provisions of Sections 8 and 9 provided that the Board finds that all five variance criteria are met. Variance 04-1 includes 4 variance requests:

Variance #1: Variance from Section 8/B of Ordinance 289 to allow a 6” encroachment into the required 10’ side setback (south side).

Variance #2: Variance from Section 8.B of Ordinance 289 to allow a 3’1” encroachment into the required 10’ side setback (north side).

Variance #3: Variance from Section 8.A of Ordinance 289 to allow a 5' encroachment into the required 20' front setback (west side).

Variance #4: Variance from Section 9.A of Ordinance 289 to allow a one car garage instead of the required two-car garage.

Chairman Welsh asked the Boardmembers present if they had participated in any ex parte conversation regarding this application. No Boardmember has had any ex parte conversations.

Board Chairman Welsh reported he had several discussions with Villagers: Jens Molbak, Cindy Davis regarding the timing of the project, Anne Rutledge stated she has no concerns about the project, Ruth Cowan called indicating that she is concerned about trees coming out and the utility pole.

Bob added that only two properties on the block where the subject property is located are conforming. The rest are con-conforming, and have similar issues to Kevin Kay's. Steve Matsudaira stated that he had a conversation with Bob Welsh re the location of trees on the property. Two letters were read and entered into the record: one from Helen Lewis, asking that the Board deny the Kay variance; one from Sylvia Hobbs requesting the Board deny the Kay variance. Board Chairman Welsh asked if any Boardmember had a conflict of interest in hearing the variance. No conflict of interest was noted. There were no challenges from the applicant or public as to appearance of fairness of any Boardmember to hear the variance.

Staff Presentation: Kevin and Jenny Kay plan to reconstruct their existing non-conforming single-family residence in order to provide enclosed parking for one vehicle and to increase the square footage of their home. The lot is one of the smallest lots in Beaux Arts, containing 6,705 square feet, according to a survey prepared by Reid Middleton on October 29, 2002. Recent Beaux Arts' code changes allow minimum house size of 2500 square feet, including garage, regardless of the Gross Floor Area ratio. The Kay's house is currently 1,572 square feet; the reconstructed house will contain 2,385 square feet, including the garage.

A garage is proposed on the south side of the existing residence that would encroach 6'2" into the required 10' side setback. The resulting setback would be 3'10" for the entire 24' length of the garage. Currently, there are no encroachments into the south (side) setback. The garage would contain 350 square feet, less than the minimum 360 square feet required for a two car garage per Section 9.D.1. Thus, a variance is required for both the setback intrusion and construction of a 350 square foot (one-car) garage.

A variance for the work on the north side of the house is required to allow the existing family room and kitchen to remain. Currently, there is a 2'3" intrusion into the required 10' side setback area, resulting in a setback of 7'9". Upon completion of the project, the intrusion will increase to 3'1", resulting in a setback of 6'11".

The northwest section of the existing house is currently located 19'7" from the front property line. The required front setback is 20', thus there exists a 5' intrusion. The project plans contemplate a continuation of the 5' encroachment.

Planner Green stated the following regarding variance criteria:

1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon used of other properties in the Town.

Applicants satisfy this criterion for each of the four variance requests. Reconstruction of a 2,385 square foot home, including a one-car garage, is not a grant of special privilege.

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.

Applicants satisfy this criterion for each of the four variance requests. Additional on-site parking will benefit property owners and the public. Currently, the owners are not able to provide any covered parking. The additional parking space, to be constructed of a porous material, will no be injurious to other properties or improvements in the Town.

3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, surroundings, and special features of the subject property.

Applicants satisfy this criterion for each of the four variance requests. The special circumstance of the lot is its size: it contains 6,705 square feet instead of the minimum lot size of 10,000 square feet as required by Section 5 of Ordinance 289. In addition, the lot is located on 104th Avenue SE which does not allow for on-street parking.

4. The need for a variance has not arisen from actions previously taken by the applicant (owner)

Applicants satisfy this criterion for each of the four variance requests. The Kays purchased their home on September 12, 2002 and have not contributed to the lots' non-conforming status.

5. It is the minimum necessary to permit the owner reasonable use of the property.

Applicants satisfy this criterion for each of the four variance requests. The applicants have attempted to encroach as little as possible into the setback areas, while at the same time planning for a home that meets the size requirements of the Section 8.H of the Zoning Code.

Planner Green concluded that it is her recommendation that the four variances that make up Variance #04-01 be approved by the Board of Adjustment. She further recommended that approval of Variance Request #1 (the 6'2" encroachment into the required 10' side setback) include the condition that screening vegetation must be maintained on the Kays' property between their lot and the adjacent (south) property. She added that, in response to questions of previous variance(s) that may have been granted to the subject property, whatever was done before is moot because of the enactment of new zoning ordinances.

Applicants Presentation: Kevin Kay explained that he and his wife Jenny would like a variance to build a single car garage on the south side of the house. When he bought the house, he was assured, with confirmation in writing, that he could build a two car garage in front of the house. As it turned out, the information was incorrect and it is impossible to build even a single car garage in front or on either side of the house. He is proposing to tear down the existing stairway to the second floor, which is on the south of the house, and build a garage that extends 6'2" into the south setback. The foundation of the existing house is within inches of the 20' setback line in front and into the setback on the north. Since this project qualifies as a "reconstruction" rather than a "remodel" a variance is needed for the existing encroachment into the front and side setbacks. A variance is also needed to allow for a 1 car rather than a 2 car garage.

Kay emphasized that the garage is not being added to make up square footage, but is necessary and it is a matter of where to locate the garage. Vegetation will be provided along the side of the home facing Ruth Cowan. In response to Sylvia Hobb's letter, he again emphasized that he bought the house with the assurance that he could build a garage in front of the house. He later found out that this was incorrect.

Public Testimony: Boardmember Casey voiced concern about the intrusion into the required 20' setback necessary for the proposed garage, adding that new construction, which this remodel qualifies as, must meet current zoning code requirements. Planner Green responded that when an applicant believes that the rules can't be followed for a particular project, the open record hearing process is available to determine if a variance should be granted. Robin Stefan asked if Kay considered converting the family room to a garage and putting the family room in back of the house where there's more room. Kay reiterated that he is trying to avoid tearing the house down; he is interested in maintaining a tasteful structure that conforms to the Village while keeping the cost affordable. Cindy Davis asked for clarification on if and when previous variance requests have been submitted on the subject property. This will be looked into. Planner Green stated, in response to questions of previous variance(s) that may have been granted to the subject property, whatever was done before is moot because of the enactment of new zoning ordinances.

Hearing no further discussion Chairman Welsh closed the public hearing.

Board Deliberation and Decision: Kevin Peterson stated that after reviewing the plans, he determined that it would be possible to construct the house differently. The applicant did not present any alternative plans with reasons why they would not be viable, or anything that substantiates that the remodel has to be done this particular way. The applicant's plans are not the only conceivable way to do the house. He acknowledged that it is very awkward that the architect is not here to discuss the drawings. Steve Matsudaira stated that he had been thinking about alternatives while reviewing plans and has some concern about how alternative designs have been addressed. After further discussion, the Board concurred that they would like to see more options for the proposal. Chairman Welsh suggested continuing

the hearing, and asked for a motion to continue open record hearing on Variance 04-01 until the June 2 2004 Board of Adjustment meeting. Board member Peterson so moved, Steve Matsudaira seconded the motion and it was agreed unanimously to continue the hearing at the June 2, 2004 meeting.

Chairman Welsh opened the public hearing on Variance 04-2.

PUBLIC HEARING ON VARIANCE NO. 04-2 Blair Carleton and Jens Molbak

Applicants Blair Carleton and Jens Molbak are requesting a variance (relief from Section 8/B and 8.C of the town of beaux Arts Village Zoning Code Ordinance (No. 289) in order to install a hot tub up to 9' into the side yard setbacks. Section 17 of the Ordinance allows the Board of Adjustment to vary the provision of Section 8 provided that the board finds that all five variance criteria are met.

Chairman Welsh asked the Boardmembers present if they had participated in any ex parte conversation regarding this application. No Boardmember has had any ex parte conversations.

Board Chairman Welsh reported he had discussions with Jens Molbak and Anne Rutledge. Kevin Peterson, Jan Johnston and Steve Hauck had none, and Steve Matusdaira had a conversation with Bob Welsh. Two letters were entered into the record: one from Helen Lewis asking that the Board deny the Molbak variance, and one from Julia Morse, acknowledging her understanding of the Molbak variance. Board Chairman Welsh asked if any Boardmember had a conflict of interest in hearing the variance. No conflict of interest was noted. There were no challenges from the applicant or public as to appearance of fairness of any Boardmember to hear the variance.

Staff Report: Planner Green stated that Wesley Pierce has presented an extensive hardscape/landscape plan for the 17,205 square foot Carleton/Molbak property. The project included recirculating ornamental pools, waterfalls, paved areas, a green house, a trellis, planting with a variety of species, and installation of a hot tub. The variance request only covers structures that the Beaux Arts zoning code prohibits within setback areas.

The first variance identified above concerns the placement of a hot tub and waterfall 9' within the side property setback area. The Town's Building Official has defined the hot tub as "major structures".

Ordinance 289 prohibits all buildings and structures, including appurtenant devices and structures, from setback areas, with the exception of fences and retaining walls (Definition of "setback" and Section 8). Ordinance 187, "governing the construction, maintenance, use of swimming pools, wading pools, hot tubs and saunas, as well as landscape and ornamental pools" requires that "minimum setback requirements will be governed by the town building and zoning codes for appurtenant structures and/or devices." (Section 5/1(c)).

Although irregular in shape, the property contains ample room to accommodate a variety of hardscape features within the allowed building/structure area. The lot's configuration has the advantage of offering a smaller rear setback area, calculated from the lot's 100' rear property line, compared to the front property line of 141'.

The Board of Adjustment may grant a setback variance from Sections 8.B and 8.C of Zoning Code Ordinance 289 provided the Board finds that all five of the variance criteria listed in Section 17 of the Ordinance have been met.

Planner Green concluded the following regarding these variance criteria for the Carlton/Molbak variance request:

1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon used of other properties in the town.

Applicants satisfy this criterion for the variance request. Installation of landscape/hardscape features is not a grant of special privilege.

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.

Applicants do not satisfy this criterion for either of the variance requests. While properly tended water features will not be injurious to other properties or improvements in the Town, the second condition, regarding compliance with the Comprehensive Plan, hasn't been met. The Comprehensive Plan does not promote construction of nonconforming accessory structures on large lots.

3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, surroundings, and special features of the subject property.

Applicants do not satisfy this criterion for the hot tub request. There is ample room within the 17,205 square foot lot to provide the requested appurtenant structures. There are no compelling circumstances that would dictate placement of these features in the setback area.

4. The need for a variance has not arisen from actions previously taken by the applicant (owner).

Applicants satisfy this criterion.

5. It is the minimum necessary to permit the owner reasonable use of the property.

Applicants do not satisfy this criterion for either of the variance requests. As stated previously, there is ample room within the allowed structure area of the lot to accommodate a hot tub. As a viable alternative, the project could be scaled back to preserve the setback areas.

Planners Green's conclusion is that the variance should be denied by the Board of Adjustment for failing to meet three of the five Variance Criteria. Criteria 2, 3 and 5 have not been met.

Jens Molbak explained that the landscape plan has been designed to deal with the drainage problem on his property, to increase privacy between applicants and their neighbors to the interior southeast corner, and to create additional off-street parking. The hot tub specifically deals with the privacy issue; the theory is that having the hot tub is tucked inside setback, next to the proposed concrete fence with water sheeting over the wall, would be best for privacy as it mitigates the interior corner noise problem.

The Molbaks responded to the five variance criteria as follows:

- 1) The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties because the odd-shaped lot, although large, has a disproportionately large percentage of the property absorbed by the setbacks. It will not set a future precedent due to the unique configuration of the property in question.
- 2) The granting of a variance to locate the hot tub within the setback will not be materially detrimental to the public welfare or injurious to other properties or improvement in the Town, and it will be consistent with the Town's Comprehensive Plan. The proposed hot tub location will not visually impact any surrounding properties. Privacy concerns are mitigated by the use of the board-formed concrete fence with ornamental water feature. The south east interior neighbor benefits from acoustical and visual privacy from design and location of the hot tub, and its placement leaves the land to the immediate north and west of the neighbor's house wide open and free of structural elements.
- 3) Special circumstances that make the variance necessary because the design will improve the overall quality of utility of both the owner's and south east neighbor's sites. The concrete fence, just behind the hot tub, limits sound transmission, and it adds water sound allowing for excellent screening of noise between the two properties.
- 4) The need for a variance has not arisen from any actions taken by the applicant.
- 5) The variance is the minimum necessary to permit the owner reasonable use of the property because a disproportionately large percentage of the property is absorbed by the setbacks, and the design will benefit the owner's property as well as the neighbor's by improving visual and acoustic privacy of both property owners.

Architect Bob Swain stated that the theme of the Staff Report is that the Molbaks have enough land to build out side of the setback; yet the design deals with the mitigation of problems on the Molbaks property; in the case of the hot tub next to the concrete wall, noise from the neighbors.

Planner Green stated that the formal variance request submitted was for the hot-tub, although the plans provide for the construction of additional water features that the Town's Building Official has defined as "major structures" (zoning code 289). The issue being dealt with is the construction of structures in the setback. She addressed these features in her staff report along with the hot tub.

Chairman Welsh stated that there are currently several water features in the Village that are in the setbacks and this issue will have to be addressed at some point.

Jens Molbak state that they need feedback on the hot tub, and that as far as discussion and decisions on the different structural elements of the design that sit within the setbacks, each should be addressed separately.

Chairman Welsh closed the public hearing.

The Board agreed to break the discussion the various landscape features into 5 issues: Water feature, rill, trellis, water feature in front yard, and hot tub. Planner Green again reviewed the zoning code, stating that there is no allowance for anything manmade in the setback. After some discussion, there was consensus by the Board that the rill, water feature in corner, trellis and water feature in the front yard should be considered structures under the Town Zoning Code. Discussion then focused on what part of the design could be voted on at the meeting, as the hot tub was the only aspect of the design that was given proper legal notice. It was agreed that the hot tub would be the only feature voted upon at the meeting, and discussion of the remaining features would be continued to the following Board of Adjustment meeting, if the Molbaks choose to leave them in their landscape plans.

The Board discussed the five variance criteria with respect to the hot tub:

1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town

The Board is unanimous that Criterion 1 is satisfied.

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.

The Board is unanimous that Criterion 2 is not satisfied.

3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, and special features of the subject property.

The Board is unanimous that Criterion 3 is not satisfied.

4. The need for a variance has not arisen from actions previously taken by the applicant (owner).

The Board is unanimous that Criterion 4 is satisfied.

5. It is the minimum necessary to permit the owner reasonable use of the property.

The Board is unanimous that Criterion 5 is not satisfied.

Variance No. 04-2 does not satisfy three (3) of the variance criteria, and satisfies two (2).

DECISION: MOTION: Based on the foregoing findings and conclusions **Variance No. 04-2** does not satisfy three of the 5 variance criteria and is hereby denied.

ADJOURN: Chairman Welsh moved to adjourn. Boardmember Matsudaira seconded. Motion carried unanimously.

Respectfully submitted,

Betsy Donworth
Deputy Town Clerk