



TOWN OF BEAUX ARTS VILLAGE

BOARD OF ADJUSTMENT

MINUTES

April 5, 2006

Hauck

PRESENT: Acting Board Chairman Steve Hauck, Boardmembers Peggy Bates, Steve Matsudaira, and Kathryn Murray.

GUESTS: Town Planner Mona Green; Applicants Steve & Teresa Tegeler, Helen Lewis and Nancy Vanderhorn.

DEPUTY TOWN CLERK: Betsy Donworth

Acting Board Chairman Steve Hauck called the meeting to order.

PUBLIC HEARING ON VARIANCE NO. 6-01 – Steve & Teresa Tegeler

Acting Board Chairman Steve Hauck opened the public hearing.

Applicants Steve and Teresa Tegeler seek relief from Section 8.B of the Town of Beaux Arts Village Zoning Code Ordinance (No.333) in order to allow an intrusion of 2' into the required 10' side yard setback for installation of a heat pump. 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.

As required in Ordinance No. 258, notice for a public hearing at 10606 SE 29th St. was posted on March 22, 2006 and published on March 22, 2006. Notices were sent to property owners within 300 feet of the property on March 22, 2006.

The following exhibits were submitted:

- Exhibit A - Application (3/12/06)
- Exhibit B - Staff Analysis (3/27/06)
- Exhibit C - Public Hearing Notices
- Exhibit D - Public Hearing Affidavits
- Exhibit E - Letter from Sylvia Hobbs (4/5/06)
- Exhibit F - Letter from Helen Lewis (4/5/06)
- Exhibit G - Letter from Scott Harpster (3/30/06)
- Exhibit H - Applicant's Supporting Documents/Photos

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

Letters from Sylvia Hobbs and Helen Lewis were entered into the record asking that the Board deny the Tegeler variance. A letter from Scott Harpster asking that the Board approve the variance was read into the record. Acting Chairman Hauck 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 the Tegegers propose to place a heat pump unit on a 3 x 3 concrete pad within their side yard setback area. The concrete pad would be located 1' from the side of the house. Heat pump units are metal appliances and are typically 3' x 3' x 3'. The Tegegers state that they were not aware at the time they designed their house that the heat pump could not be located within the setback area.

The Board of Adjustment may grant a setback variance from Section 8.B of Zoning Code Ordinance 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:

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

Applicants do not satisfy this criterion. The Beaux Arts Zoning Code prohibits the use of setback areas for structures other than fences, retaining walls, and driveways. Allowing a side setback area for placement of a noise-generating heat pump would be 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. Heat pumps generate noise, and it could be a problem to the neighboring property. Applicants have not supplied any data regarding the unit.

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. The Tegeler lot is 5,400 square feet, smaller than the minimum 10,000 square foot lot size required in Beaux Arts.

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

Applicants do not satisfy this criterion. This is a self-created problem. The applicants designed and constructed the home without consideration of proper placement of the desired heat pump unit.

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

Applicants do not satisfy this criterion. Reasonable use of the property is attained without the placement of a heat pump unit within the setback area. In addition, applicants have indicated that a conforming location is available on the property.

Planner Green's conclusion was that the Applicants do not satisfy four of the five variance criteria and recommends denial of Variance 06-01.

APPLICANT PRESENTATION:

Steve Tegeler gave a description of the proposed project. He explained that it had been his intent from the design phase forward to not get a variance, preferring to conform to Beaux Arts zoning requirements. It was not until a HVAC walk-thru that he found out that installation of a heat pump would require placing a 3' x 3' concrete slab in his property setback. The slab would be placed 1' from the house and intrude 1'8" into the side setback, to the south.

He explained why the proposed project satisfies the five variance criteria.

Criterion 1: The variance does not constitute a grant of special privilege because a two foot variance is minor and is a better alternative than installing the heat pump on the roof.

Criterion 2: The variance will not be materially detrimental to the public welfare or injurious to other properties or improvements within the town. The proposed heat pump will be screened by a fence, which will also mitigate noise from the pump. If the variance is not granted, the heat pump will need to be installed on the roof. This is a much worse choice for the community and the Tegeler's direct neighbors because it may be visible from the street.

Criterion 3: The variance is necessary based on the fact that the applicants have a very difficult building situation, given the size of their lot. At the time of the design, applicants were not aware the heat pump couldn't be located in the setback. This was only realized during the HVAC walk-through.

Criterion 4: The need for a variance has not arisen from actions previously taken by the current owner in that the owners were faced with a difficult building situation due to the small size of their lot.

Criterion 5: The proposed variance has the least amount of impact on the setbacks and the neighborhood based on the footprint of the house. Applicants have spoken to neighbor Scott Harpster and he is OK with the location of the unit. The unit will not be visible to the Harpsters.

Due to ever-increasing costs of electricity and gas, a heat pump is the most energy efficient way to heat the applicant's new home.

Steve presented information on his proposed fence that would both screen the heat pump and reduce the noise heard by neighbors. He explained that his primary motivation for installing the heat pump is for cost-effective heating, with air conditioning a side benefit.

PUBLIC TESTIMONY:

Nancy Vanderhorn stated that she and her husband Bob are concerned about the sound of the heat pump if it is placed in the rear of the Tegeler's home, and that it would be better placed on the side, as proposed. She added that she would like to see the Tegeler's in their home, indicating that it has been a drawn out project.

The Board members have reviewed the application submittal for Variance 06-01 against the five variance criteria of Ordinance No.313, Section 1.

From the foregoing findings the board makes the following CONCLUSIONS:

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 not 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 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 not 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. 06-01 does not satisfy all five of the variance criteria.

DECISION: MOTION: Based on the foregoing findings and conclusions Variance No. 06-01 does not satisfy the 5 variance criteria and is hereby denied.

DECISION: MOTION: Based on the foregoing findings and conclusions Variance No. 06-01 does not satisfy the 5 variance criteria and is hereby granted.

The Board approved the motion to adjourn the meeting.

Respectfully submitted,

Betsy Donworth
Deputy Town Clerk