

**MINUTES OF THE REGULAR MEETING OF THE
AMES ZONING BOARD OF ADJUSTMENT**

AMES, IOWA

NOVEMBER 8, 2023

The Ames Zoning Board of Adjustment met, pursuant to law, in Regular Session at 6:00 p.m. on October 25, 2023, in the Council Chambers of City Hall. The following members were present: Leila Ammar, Chad Schneider, Caleb Whitehouse, Michael Zenor, Leah Patton. Also present were Assistant City Attorney Jane Chang, and City Planner Amelia Schoeneman.

Approval of Minutes; October 25, 2023:

Moved by Whitehouse seconded by Ammar to approve the minutes of the October 25, 2023, Zoning Board of Adjustment meeting.

Vote on Motion: 5-0. Motion declared carried unanimously.

Chad Schneider, Chairperson moved the item for continuance to the first case of the meeting.

CASE NO. 23-07

Public Hearing on a request for a Variance at 1006 S Dayton Place for the placement of factory-built homes at a required Base Flood Elevation that is two feet lower than the required Base Flood Elevation Protection Level in Chapter 9. (Parcel Number 10-07-300-020).

Moved by Ammar seconded by Zenor to approve the continuance of this case to December 13, 2023.

Vote on Motion: 5-0. Motion declared carried unanimously.

CASE NO. 23-06

Public Hearing on a request for a Variance of two feet to allow a reduced side yard setback from the required five-foot side setback in the "F-VR" Village Residential District for two accessory structures at 2623 Somerset Drive (Parcel Number 05-34-102-040).

Planner Amelia Schoeneman stated this is a Variance Request at 2623 Somerset Dr. It is an interior lot with a parking lot at the rear of the property. The Variance is to allow the structure on the north side of the dwelling. The structure was constructed without a permit. The Variance is requesting a two-foot setback from the required five-foot setback. Detached sheds in a rear yard don't need a permit and they have a lesser setback of three feet. Currently the structure is fully in the side yard and attached to the dwelling. The Variance is for an accessory structure so they would need to fully detach the structure from the dwelling, or they would need to meet the frost proof footing requirement if the Variance were not granted and pursue a minor area modification. Mr. Schneider clarified that even if it were detached it would require a five-foot setback because it is in the side yard. Ms. Schoeneman stated that if it were fully detached yes that is why they are requesting the Variance. If it remains attached, they will need to meet the setback and the building code requirements for structures that are attached. However, there is a special exception process through the Board of Adjustment for additions to principal structures if they put in frost proof footings and met the other building code requirements, they could pursue the exception instead of the Variance. They chose to pursue a Variance and detach the structure.

The first standard states: *The granting of the variance shall not be contrary to the public interest.* Staff found this criteria was met.

The second standard states: *That without granting of the variance, and due to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship.* This standard asks if there is any possible use of the property without the Variance. This is a single-family home with

an attached two-car garage. Not having the sheds would not compromise a reasonable return on the dwelling. Staff found this criteria was not met.

The third standard states: *The plight of the owners is due to unique circumstances and not to the general conditions in the neighborhood.* Usually, this standard is about topography or flood plain. The property is a rectangular parcel relatively flat. The applicant stated that there is a brick patio, trees and other plantings that putting the shed in the rear yard would be difficult. There is not a unique circumstance to the property that would not make it possible. Preference of use is not part of the standard. Staff found this criteria was not met.

The fourth standard states: *The use to be authorized by the variance will not alter the essential character of the locality.* Staff found this criteria was met.

The fifth standard states: *The spirit of the Ordinance shall be observed even when the variance is granted.* This standard is asking if there are there any other options on the property to place these sheds. If there are no other options, then the standard would be met. In this case there are other locations for the sheds to be located and there is an option of asking for a special exception if they were attached or they could be reduced in size to meet the setback. Staff found this criteria was not met.

The last standard states: *Substantial justice shall be done as a result of granting the variance.* Substantial justice speaks to the requirement that the hardship must be peculiar to the property or that an issue of equity in the use of property exists. The applicant indicates the situation was created due to a misunderstanding of the code requirements and not a property-specific circumstance. Staff found this criteria was not met.

Staff is recommending Alternative 1 that the Variance be denied. They would need to modify it and met the setback requirements or pursue the special exception option for being fully attached to the dwelling. These are the two options if the Variance is denied. If you chose Alternative 2 then Staff request conditions that the finishes be consistent with the principal structure and meet all building code requirements within nine months of the Decision and Order. The Board can also table the request.

Applicant: Beth Foreman, owner of 2623 Somerset Drive was sworn in. Ms. Foreman has owned this home for 21 years and resides in the home with Mike Stevens. A year ago, they combined households and decided they wanted to get both cars in the garage. This was difficult with all the yard equipment. The neighborhood does not allow for three car garages. The rules of Somerset is that garbage receptacles cannot be outside for more than 24 hours. There wasn't space for everything. Visited with brother who is a retired handyman to make plans for a shed. There was a lot of planning done prior. Talking with neighbors and looking at the neighborhood. Decided to attach it to the garage to allow for stability. Neighbor to the north agreed that the side yard was best so not to interfere with all the plantings. Ms. Foreman searched the website for information and thought she found everything she needed. She found that a garden shed under 120 square feet didn't require a building permit. Their sketch was for a shed that was 113 square feet. It does say that the ordinances must be met. She found that the setback for garden sheds was three feet. In September the concrete pad was poured and built the structure and only had a few boards left to put up, Scott McCambridge stopped by to say that these structures needed a building permit. After some clarification Ms. Foreman understood what her errors were; that a garden shed is free standing building and not attached to the garage. Also, the three-foot setback for a garden shed is when it's in the backyard and not the side yard. Ms Foreman stated that it is 100% on her and wished that some things were done different. Mr. McCambridge asked them to stop building which they did. They started the process to detach the sheds but knew a neighbor had complained and didn't want it to appear that they were still constructing. They stopped the entire process. They did ask for permission to weatherize the structure and were given permission. They were told that if it were to remain attached to the garage all building codes must be met including 42" footings. At that time that was the only option given was to detach the sheds and apply for this Variance. Conversation was held with Ms. Shoeneman about possible exceptions. Phone messages went back and forth. Ms Foreman stated the Ms. Schoeneman thought that the deadline for applying for the Variance was that day October 10th. Ms. Foreman found the packet online and began to complete it. She finished the application just before midnight and it was dropped off first thing in the morning, she stated it was not her best work.

Ms. Foreman is looking for a solution to the storage issue on their property. Ms. Foreman passed out some supplemental materials. She stated the property line is deceiving as the property line doesn't go down the middle. Ms. Foreman's property is eight feet from the property line and her neighbor's home is five feet from the property line. Ms. Foreman provided information about the neighborhood support. Ms. Foreman doesn't feel that there is space in the backyard for the shed due to the canopy of the mature trees. She is not willing to cut down the trees. She believes there is discrepancy in the Code language. Also, there is a walking trail between her property and the parking lot. The back five feet is part of the Neighborhood Assn. and so the shed would need to be eight feet into the yard. Feels the sheds in the backyard would devalue her and the neighbor's properties and the sightlines.

At this time Ms. Foreman asked what the process was for the rest of the meeting. She stated that she would speak, then the public and then Ms. Schoeneman would speak again. Mr. Schneider stated that usually that is the process and Ms. Schoeneman stated only if there are questions for Staff would she (Ms. Schoeneman) speak again. Ms. Foreman asked if she would speak again as she had two more items. Ms. Schoeneman stated the Board can ask the applicant questions again as well. Mr. Schneider said to continue with the last items in her statement as the Board may not come back to her if there were no questions. Ms. Ammar reiterated that the applicant can only speak later if the Board has questions for the applicant. She instructed Ms. Foreman to finish her statement to the Board now.

Ms. Foreman stated that if the Variance is granted, she would be modifying the structure to a fire rated wall on the north side of the shed. Applying for the exception of a minor modification would allow for a three-foot setback and her project has 37 inches. The challenge is the 42-inch frost footing requirement with a structure that is already built. This would also require the fire rated wall which she plans on doing either way. Ms. Foreman asked if there was a hybrid option where the sheds could be detached and add the fire rated wall and then wouldn't require the footings if the Variance was granted.

Questions for the applicant:

Caleb Whitehouse asked what the gap is currently from the structure to the neighbor's house. Ms. Foreman stated it is eight feet. Mr. Whitehouse asked what the space is between her house and the one to the south. Ms. Foreman stated that the flowerbed is at the property line. Mr. Schneider stated that there would be similar space to the south as to the north. Ms. Ammar questioned what the requirements of fully detached meant. Ms. Foreman stated that the house and the shed would both need to have siding all the way down.

Members of the Audience:

Cara Brandenburg, 2637 Somerset was sworn in. Ms. Brandenburg has lived at the property on the northside of Ms. Foreman for seven years. She stated that Ms. Foreman takes great care of the property and loves doing the yard and brings many people enjoyment as they walk on the trail. Ms. Brandenburg has heard about the project from the beginning. She said Ms. Foreman's intentions are for the windows and siding to match the house. Ms. Brandenburg fully supports the project, and it will improve the look of the property and the neighborhood. She clarified that Ms. Foreman spoke to other neighbors in the neighborhood about the project and did her best to follow the intent of the rules.

Board Discussion:

Mr. Whitehouse asked for requirements of the detached structures. Ms. Schoeneman stated that detached and attached structures have the same setbacks for the side yard. The side yard is anything fully to the side of the dwelling. The backyard has a three-foot setback. Again, the side yard does require five-foot setback for both attached and detached structures. When structures are detached, there are no special exceptions for a lesser setback. When they are attached to the principal structure there could be an exception process. There would have to be footings but attached structures meeting building code requirements, could pursue a minor area modification as an addition to the principal structure. The detached option would need a Variance to the side yard setback. To be detached, there needs to be siding on both sides, no bracing, the roof couldn't have roof paper going up the side of the principal structure. Attached there is a different exception process to that same setback. Ms. Ammar clarified that if it is detached, it doesn't meet the setback

requirement unless they have a Variance. Mr. Whitehouse questioned what the procedure would be for the attached option. Ms. Schoeneman stated that attached structures must meet the requirements of a minor area modification. This would be considered an addition to the principal structure. That exception would also come back to the Board of Adjustment but instead of there being a reasonable return standard there is a practical difficulty standard, so it is less strict standard. If the Variance is not granted that could be an option if the applicant wanted to pursue it. Mr. Schneider stated that option would require frost proof footings. Ms. Ammar stated that would be required now even if there was a Variance. Ms. Schoeneman said the Variance before the Board is for a detached accessory structure, that would not need frost proof footings. It would require hurricane ties, and other improvements to meet detached structure requirements of the Building Code. Ms. Ammar clarified that the Variance is specifically for detached structures. Ms. Schoeneman agreed.

Ms. Ammar stated that the problem is that we can't find a different Finding of Fact to meet the criteria. Mr. Whitehouse asked if it was about the return. Ms. Ammar stated yes, it is not about the return for the owner for what they have spent. Mr. Schneider questioned if they wanted to look at the standards one by one. Mr. Whitehouse asked the Staff about the spirit of the ordinance. Ms. Schoeneman stated the spirit of the ordinance is observed and met if there is no other alternative available, no option of a different location, different size, attaching it. That criteria is not met.

Moved by Schneider for Alternative 1. Second. Zenor

The Zoning Board of Adjustment denies this request for a Variance of two feet to allow a reduced side yard setback from the required five-foot side setback in the "F-VR" Village Residential District for a detached accessory structure at 2623 Somerset Drive by adopting findings that the evidence does not support the explicit finding of consistency with all the Variance criteria.

Discussion: Ammar agrees with the motion because of the criteria. Mr. Schneider said it is unfortunate that questions weren't asked beforehand. Standards need to be applied.

Roll Call: Ammar, aye; Schneider, aye; Patton, aye; Zenor, aye; Whitehouse, aye


Vote on Motion: 5-0. Motion denied and declared carried unanimously.

Mr. Schneider stated that this decision can be appealed through the District Court within 30 days after the filing of the Decision and Order.

ADJOURNMENT: Moved by Ammar seconded by Schneider to adjourn the meeting at 6:47 p.m.

Vote on Motion: 5-0. Motion declared carried unanimously.


Natalie Rekemeyer, Recording Secretary


Chad Schneider, Chair