

**CITY OF OKOBOJI BOARD OF ADJUSTMENT MINUTES  
FOR THE MEETING HELD ON TUESDAY, MAY 29<sup>th</sup>, 2018 at 6:00 PM  
OKOBOJI CITY HALL**

The Board of Adjustment for the City of Okoboji met on the above date at 6:00 PM in the Okoboji City Hall. Board members present were Owen Primavera, Ann Mugge, Dan Sanders, and Steve Dulin. Joyce Waddell was present via telephone. Others present were Michael Meyers, City Administrator, Ned Bjornstad, Barry Nadler, Andrea Nadler, Jason Grinnen, Cynthia Cramer, Missy Theodosen, Ernie Eddy.

Board Member Owen Primavera chaired the meeting. Introductions were made at this time. Primavera explained the process that would be followed. Primavera called the meeting to order at 6:00 P.M.

Primavera acknowledged that Mr. Barry Nadler approached him prior to the meeting and told all those in attendance that he did not advise Nadler and explicitly told him to contact the City. Primavera acknowledged his familiarity with the Theodosens and the history of the two properties.

Primavera read through the pertinent information relating to the requested variance by Mr. Barry and Mrs. Andrea Nadler located at 5707 Lakeshore Drive, Okoboji, Dickinson County, Iowa. Primavera read through multiple documents outlining the need for a variance, specifically the expansion of an existing non-conforming structure. Primavera also read allowed a submitted letter of appeal from the Nadlers. Primavera also confirmed that proper notification and publication was performed by the City of Okoboji. Primavera also commented on the relevant law suits to this variance including, but not limited to, Shriver v. Okoboji which directly addressed side view.

Primavera invited Mr. Nadler to speak to the board. Mr. Nadler explained that when the house was designed he was most concerned about three different sets of people. The first was the Nadler family, the second was the Okoboji Community, and the third was the immediate neighbors. Mr. Nadler explained that he wanted to reduce the impact to any neighbors within the immediate vicinity. Mr. Nadler explained that had they torn the house down and built it within the City's zoning regulations they could have built the house taller than what is being proposed and effectively had the same result.

Primavera invited Mr. Ned Bjornstad to address the Board. Bjornstad acknowledged that the Board has a difficult decision to make. Bjornstad advised the Board that the Okoboji Zoning Ordinance specifically mentions that the intention of the zoning regulations are not to further expand or encourage the expansion of a non-conforming structure. Bjornstad addresses that the Nadlers should have previously known about the City's zoning regulations prior to the purchase of his home. Bjornstad also mentioned that a denial of this variance does not stop the Nadlers from building within conforming regulations.

Ernie Eddy spoke about the overall proximity of the Nadler home to the Theodosen property. Eddy asked how the property owner plans to lean a ladder on the house without encroaching onto private property. Eddy also spoke to potential water drainage issues off of the second story of the home.

Mr. Nadler explained that they have no intention to trespass onto the Theodosen property and explained that it is possible to construct the home without utilizing the Theodosen's property. Mr. Nadler told the Board that he has discussed this with his builder. Mr. Nadler said that it is his job and his obligation to not trespass.

Board Member Muggge asked Mr. Nadler what his lot width was, Mr. Nadler commented that it was 50 feet. Muggge made mention that his setbacks should be 5 feet.

Board Member Sanders asked Michael Meyers for clarification on setbacks displayed on the map and drawings.

Mr. Nadler addressed his estimation of the setbacks and Eddy disagreed with Mr. Nadler's assessment. Eddy estimated that the setbacks are less than 3 feet at spots and even as little as 10 inches at another. Meyers agreed that the setback visually observed between himself and Eddy was approximately 12 inches plus or minus. Eddy commented on the Nadler's overhangs and how those will encroach into the setbacks.

Primavera commented that previous ordinances did not take into account the house as it was existing today.

Muggge asked questions to Mr. Nadler relating to the eaves of the home. Muggge asked if 28 inches was an accurate measurement from the end of the eave from the property line. Mr. Nadler was unsure of the exact measurement. Muggge commented that the eaves on the second floor of the addition would continue to be non-conforming. Muggge further confirmed that the structure will be going straight up and Mr. Nadler agreed with that assessment.

Muggge asked about the overall height. Meyers advised that the height was 24 feet, 9 inches. Eddy acknowledged that he did not have much issue with the height.

Muggge asked Mr. Nadler if they ever considered building when they originally purchased the property. Mr. Nadler advised that it was their hope to do the addition instead of tearing down the structure and replacing with new. Mr. Nadler acknowledged that they like the structure and where it is presently located.

Theodosen asked if they ever considered purchasing a larger home to accommodate their larger family. Mr. Nadler advised that this was the home they found at that time.

Muggge asked Meyers on the 2<sup>nd</sup> floor how close they are to the lot line. She followed up saying that she visited the property and was concerned that this was almost like building an 18

foot wall on top of somebody. Muggge mentioned that generally the Board doesn't see structures this close to the property line. Muggge commented on previous experience of a neighbor building close to the property line and commented that it was an enclosing feeling.

Waddell was curious if the plan could be amended so that the 2<sup>nd</sup> story would not be as close to the property line as it is presently designed. Eddy mentioned that was a valid point and consideration. Waddell and Muggge asked about the setback nearest to the lake. Meyers advised that about half the home was set over the currently available building envelope.

Primavera explained how legal non-conforming has affected multiple properties in town and how the regulations have continuously changed. Primavera then noted that the Nadlers did not change the dimensions on the floor plan.

Bjornstad again reminded the board that the zoning regulations specifically mentioned that the City is not to encourage the further non-conformity of the property. Mr. Nadler then commented that if the Board of Adjustment were adamantly strict to that regulation then the Board of Adjustment would never grant a variance. Eddy commented that they were not discussing inches they were discussing feet.

Sanders complimented the Nadlers on not tearing down the house commenting that the Nadlers could have built a much larger and taller structure. Sanders believes that they are trying to be good citizens and not destroy some of the historic architecture. Sanders acknowledged that he was torn but appreciated the fact that the Nadlers did take a lot of consideration into the design. Sanders also complimented the fact that the Nadlers allowed for the northwest section of the property to be open and not built upon. Sanders then hoped the property owners could continue to leave in harmony near each other.

Theodosen commented that they have lived at their property since 1960 and have not made any changes to their property other than bringing in utilities. Theodosen said she's happy and has no plans to ever change what is there.

Mr. Jason Grinnen commented how the Nadler addition will greatly affect the value of the Theodosen property. Grinnen said that while the Nadlers are adding value to their property that the Theodosen's home will lose value. Grinnen commented that the house is one of the oldest homes on the lake and is not going to move forward anytime soon.

Primavera reviewed some historical court cases relating to non-conformities and acknowledged that the Board needs to make a decision one way or the other. Primavera commented that the day of the smaller cottages are gone and that property owners want to be closer to the lake. Primavera said that the eave will be the same after construction as it is today and that nothing is changing in that effect.

Board Member Dulin acknowledged that he was part of the Planning and Zoning Board originally when these regulations were being discussed. Dulin commented that his biggest concern is that if the Board tells the Nadlers they cannot do what they are requesting that the Nadlers could then build a oversized and large home that may destroy the look of the neighborhood. Dulin commented that this is a good mixture of new and old.

Theodosen commented that with the new addition the breeze that hits her home will be blocked off. Theodosen said that a conforming structure would not have that issue.

Waddell reiterated that a conforming structure will create a view problem for the Theodosen property.

Primavera commented that the Board has set a precedent as the Board has approved most variances that do not further encroach into the setbacks or further create non-conformity.

Muggee objected commenting that each property needs to be looked at individually and that previous variances should not always be taken into consideration. Muggee commented that several of those are inches over and not as much as this property. Muggee commented that the zoning regulations call out guidelines to follow in making this decision and that one of those is that the variance isn't to detriment the neighboring property.

Theodosen commented that the water from the structure will drain onto their property. Mr. Nadler said that it is not their intent to harm any neighbor. Mr. Nadler again reiterated that their intent is to keep in harmony with the neighborhood and that their addition is reasonable and a compromise compared to tearing down and rebuilding.

Eddy said that he is a builder and that he has applied for many permits that have been denied for being too close to the lot line.

Meyers read aloud Article 17.6.5 of the City of Okoboji Zoning Ordinance. Article 17.6.5 explains for what the Board of Adjustment may grant a variance.

Mr. Nadler commented that there is a large tree essentially on the property line between their property and the Theodosen property. Mr. Nadler commented that they designed this addition specifically to save the tree.

Primavera said that he agrees runoff water could be an issue but at the same time the eaves would not further obstruct into the setback. Primavera said that the addition likely will be a better case scenario than a new structure. Primavera agreed with Muggee that each property needs to be seen individually but still felt as though this variance was in line with the majority of previous variances granted. Primavera felt as though perhaps a judge's opinion may someday be needed on these sorts of properties.

Theodosen commented that this is now the third attempt from a property owner of this property. Theodosen said that she has a problem when property owners seem to think that they should have their own way, she then commented that in this instance she wants her own way.

Bjornstad commented that the Nadlers have no proven that they have some sort of undue hardship and that the burden of proof to satisfy that should be on the Nadlers.

Mr. Nadler commented that he felt it unfair to consider their request an attempt to get their way. Mr. Nadler again reiterated that they spoke with all the neighbors and that they chose to have a design that fit the neighborhood. Mr. Nadler commented that many neighbors have mentioned several things that they appreciated about the existing house and the Nadlers wanted to keep that character. Mr. Nadler commented that this was a house that a realtor would advise them to tear this house down and that he wanted to save it.

Theodosen said that she was not implying that the Nadlers were bullying their way. Instead Theodosen said that they should have done their homework prior to purchasing the house.

Grinnen asked the Nadlers if their title opinion showed that the property went to the Supreme Court for a ruling. Several Board members commented that this property was not associated with the aforementioned court case.

Bjornstad mentioned that the abstract should have shown the zoning rules and regulations of the property. Nadler acknowledged that they knew the zoning rules and that they were not trying to circumnavigate the process. Nadler said that if they get a no answer they will try another route but felt as though this was a good compromise solution.

Bjornstad said that if you are going to come before the Board of Adjustment that the property owner should satisfy each and every question that the Board has. Bjornstad commented that if the Board still has questions or problems with the proposal that it should be a no vote until those questions can be answered and resolved. Bjornstad said that he does not see any hardship.

Sanders asked Meyers if the Board can require the Nadlers to provide a runoff plan prior to issuance of the permit. Meyers commented that the Board can apply conditions to an approval.

Nadler commented that they have no intention of dumping water onto either side of the property and that was their intention anyways.

Mugge asked the Nadlers how many feet they were from the south side of the property. Mr. Nadler commented approximately 7 feet. Mugge commented if they built a new structure the house would likely be further south giving some reprieve to the north encroachment.

Primavera closed the public hearing and opened it up to the Board of Adjustment for further comments and questions. Primavera said there could be something to consider with the downspout and the water.

Muggee said that it's hard to play the "what could be" game and commenting what could be built could potentially be better than the proposal. Muggee said there is probably a decent reason as to why the other neighbors don't have a problem because it doesn't affect them as much as it does the Theodosen property. Muggee said she is trying to put herself in both situations and appreciates the Nadler's effect to save the character of the home but on the other hand she is considered what it must be like for the Theodosen property have a large wall near their property line. Muggee would like to consider the Nadlers pull their addition in so that it is not right on top of their property. Muggee commented that each situation is different and that this one is really near the property line. Muggee thinks that it is difficult to say that this will not be detrimental to the neighboring property.

Waddell commented that she still believes it will be very difficult to work on that side of the house without encroaching on the Theodosen property. Waddell says it is going to be very difficult for the contractor to work on this home as proposed.

Dulin commented that he has seen the work the contractor has done incorporating new with old homes and that he does a wonderful job. Dulin understand they cannot play the "what could be" game but commented that the plan as presented does not further increase the non-conformity.

Sanders had no additional comments.

Motion made by Board Member Mugge to disapprove the requested variance to allow for the expansion of an existing non-conforming structure for Mr. Barry and Mrs. Andrea Nadler at 5707 Lakeshore Drive, Okoboji, Dickinson County, Iowa. The motion died with no second.

Motion made by Board Member Sanders and a second by Board Member Dulin to approve the requested variance to allow for the expansion of an existing non-conforming structure for Mr. Barry and Mrs. Andrea Nadler at 5707 Lakeshore Drive, Okoboji, Dickinson County, Iowa with the condition that the Nadlers provide the City of Okoboji a run-off plan as to not affect the neighboring properties to be approved by the City Engineer. The following Board Members voted "YEA": Primavera, Dulin, Sanders. The following Board Members voted "NAY": Muggee, Waddell. Motion passed 3-2.

Motion made by Board Member Mugge and a second by Board Member Dulin adjourn the meeting. The following Board Members voted "YEA": Primavera, Waddell, Mugge, Sanders, and Dulin. The following Board Members voted "NAY": None. Motion passed 5-0.

The meeting was adjourned at 7:41pm

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Michael Meyers  
City Administrator