



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Meeting Minutes - Final

Board of Zoning Appeals

Wednesday, August 17, 2016

7:00 PM

3rd Floor Conference Room

Call to Order, Roll Call

Chairman Nohr called the meeting to order at 7:00 p.m. and explained the Board of Zoning Appeals meeting procedure.

Present: 4 - Douglas Farmer, Carol Haefs, Philip Nohr, Anastasia Gentry

Excused: 2 - Charles Clemence, Darlene Lassig

Absent: 1 - Tom Knothe

Variance appeals:

Chairman Nohr opened the public hearing.

[2564](#)

An appeal regarding the requirement to provide a 4 foot side yard setback at 609 9th St. N., La Crosse, Wisconsin.

Terry Thienes, 400 La Crosse Street, representing the Inspections Department, is sworn in to speak. A contractor had applied to construct a new single-family dwelling. Upon a survey provided by the adjoining neighbor, it was discovered that the new dwelling was placed one foot too close to the property line. Municipal Code Section 115-143 (c)(3)(b) states that on lots less than 44 feet in width the side yard setback may not be less than 4 feet in width. On the plans submitted to this office, the contractor proposed a four foot side yard setback. A one foot variance to the required four foot side yard setback will need to be granted for this project to proceed as proposed.

Farmer asks when it was constructed and Thienes states that it was recently constructed in the last couple of months. Nohr asks to go back to the information screen and asks for clarification. Thienes states that since the lot size is less than 44 feet, and there is an exception to the side yard setback, normally it is six feet. Nohr confirms that the plans showed that there would be a four foot setback. Thienes shows the original plot plan with four foot setbacks. He shows an aerial view of the property and points out the property and the neighboring yard.

What happened was they measured along the property line compared to the neighbors, but the back of the sidewalk is not on the property line. They set their property based off of the sidewalk, which was incorrect. Nohr confirms where the property line is and Thienes states that it is not the edge of the sidewalk; it is one foot into the lots along the sidewalk. Because the property line is off, it shifted everything one foot; it was discovered after the house was finished.

Nohr asks why it was discovered after the fact. Thienes states that the property owner can talk about why the survey was done. Farmer states that in the application it states that they reviewed the property lines before construction. Thienes states that

by State Statute, the City cannot demand a survey before they issue a permit. They go off the back of the sidewalk or they ask engineering where the line is off the curb; usually it is placed correctly. Farmer states that everything on that block would be off by one foot. Thienes states that the side yards may be wrong, but they were built before the sidewalk was there. Farmer states that the survey only proves if it the previous survey was right or wrong.

Speaking in Favor of the Request:

Phil Addis, 504 Main Street, representing the contractor, is sworn in to speak. Addis points out where the leading edge of the sidewalk is and states that usually that is the property line. Addis states that this block and about three others in the City are in this situation. When the street was reconstructed, it threw off. At one time it may have been a wider sidewalk, and it would've been accurate at that time, but it throws off the measurement. The house that was replaced was 26 feet wide and this house is 21.5 feet wide. Now as opposed to 4 and 4 it is 3 and 5 (for the setbacks).

Addis states that it was completely unintentional; they thought that everything was correct. Unless a survey had been done from across the street, they wouldn't have known beforehand. The house is 90-95 percent done and has already been sold. As soon as they found out, they contacted the inspection department. Nohr asks why the survey done and Addis responds that he will have to ask the adjacent property owner. On the adjoining lot, there is a garage and a patio area; there is no house. Nohr asks which lot line needs the variance and Addis points it out on the photograph. Based on the fence line (that is on the adjacent property), you would've assumed that it was the property line and so that is how they measured.

Speaking in Opposition:

Jackie Mailey-Faas, W4945 Harvest Lane, La Crosse, is sworn in to speak. She states that she is one of the children of Marilyn Begeman; they own the property at 821 La Crosse Street as a trust. Two years ago she bought the lot adjacent which had a condemned house on it. She purchased it and they had a survey done then. She shows where the markers were when they did the survey. Mailey-Faas states that her mother built a garage at the back of the lot. The rest of the property she uses as her yard.

Mailey-Faas states that when they heard that Steve bought the property she called the inspector's office was told that he was planning on building a single-family dwelling. She talked to Eddie Young about the setback rules and he told her it was four feet. She had the survey and thought it was on file. They went along with it and as they started construction it did seem like it was too close. Mailey-Faas had a surveyor come back and did it again. He marked on the sidewalk and with spray paint where the line was. The construction was going on in the last two months and when the sidewalk was put in on the adjacent property, they met with Steve and Eddie, but their surveyor was out of town. Both Eddie and Steve thought they were right. Even at that time, Mailey-Faas stated that were confused as why it didn't seem right.

While the surveyor was out of town, they discovered across the street that there were markers for the lot lines – they were a foot in, so she called Eddie again and asked him to look at the property line based on the markers on the other street. It was determined that the survey was right and when they (contractors) started measuring it was wrong. The property is three feet from their property line and the sidewalk is one foot over. He cut the sidewalk down one foot, so they are all good with that.

Mailey-Faas states that they don't want to make them move the property, but they are

concerned about the effects it will have on the possibility of putting in a fence. Mailey-Faas says that even through surveys are not required by state law; it would've helped in this case because of the narrow lot. They would've known right away and they wouldn't have had to try to convince the City – it took over a month. They don't want to make him move it, but the second part of this is that if they want to build a fence. The front entry to that house is not on the front; because the door is on side, they can't put a vinyl fence on the lot line, because of the doorway that is there.

Mailey-Faas says that the fence would have to be four feet from their door and it would need to have a kick-out panel or gate. So they are being restricted because the house was built too close. Nohr asks what remediation she would suggest. Mailey-Faas states that now they are having this monetary amount added if they want to put up a fence because they have to deal with the property being too close. Farmer asks Thienes if she would be able to request a variance for the fence and Thienes states that if it is in the fence code, they could, but it might be a fire department thing. Farmer states that before they passed the fence ordinance it wouldn't have been required. Farmer states that he can't guarantee that you could get a variance, but Mailey-Faas could request one.

Haefs asks Mailey-Faas if they want to build a fence and Mailey-Faas responds that they do. The property would be sold to another group. It is going to be a student rental property. There have been a couple young men over there already. She states that her mother is 85 and lives in the brick house; they (students in the new property) are going to think that it (the grassy area) is part of their yard. Mailey-Faas states that her mother has taken good care of the lot since the house was torn down.

Mailey-Faas states that they will put up a fence of some type. They got estimates for a four foot high fence with a lattice on top and it came out to like \$5,000. For her mother, it is a large amount to pay. They are now getting an estimate for a difference type of fence. They are assuming that it has to be 4 or 6 foot vinyl fence, with access for the fire department if they need to get in there. Even without a break-out they are looking at maybe a different type of fence. Her mom is surrounded by student rentals and she is ok with that, but it doesn't always work out that way. They would like to have a fence preferably a solid fence. They would go towards a variance, but her brother is out of town and he was supposed to get a drawing from a contractor to see about getting a permit and requesting a variance. Farmer suggests if they do it, they do it in the next couple of months while this situation is fresh in their minds.

Marilyn Begeman, 821 La Crosse Street, is sworn in to speak. If she has to put a gate there, she will, but kids are going to come through that yard. She has lived there for 58 years. She has dealt with the kids for a long time. Begeman states that she has met two of them. She wants to protect her yard which is full of flowers and grass. On La Crosse Street she is the only one with flowers. Begeman states that she doesn't want them crossing through her yard. If they need a variance it would be defeating a purpose. Farmer states that if she asks for a variance they possibly could put up a straight fence. Begeman states that they don't want to cause any problems, but they asked the property owner if they had it surveyed and they hadn't. The county found out that is a state highway and that is how you have to measure the lot.

****Farmer states that he wants on the record that his wife works for Mr. Addis in his law office. If five members were here, he would abstain, and leave it to the other four members of the board, because there has to be four votes one way or the other. If he abstains, that kills it and he feels that it is not fair to abstain. He will vote, but he wants everyone to know he had this conflict. It is not that important because it has to be a unanimous vote. By voting he is making it possible for a decision to be made tonight.**

Farmer: the unique property limitation has been demonstrated in several different ways - the narrowness of the lot that allows four feet on each side and in this case the unique property limitation began down on La Crosse Street where it was presumed by many people that the normal practice of the interior line of the sidewalk being the lot line and if not for that everything would've been fine. There is no harm to the public interest and in this case that includes the neighbors because there are variances to the fence ordinance that are available to be requested, which would allow them to put the straight vinyl fence down the property line without breakout panels or gates. It results in an inconvenience for them to have to request a variance, but in that respect there is no harm to the public interest. Life is filled with inconveniences where you have to be inconvenienced to protect your rights. The unnecessary hardship if we don't grant the variance is extraordinary because I can't imagine what the solution is, if there would be negotiations to purchase that one foot, or the property has to be moved. With those three tests of the Supreme Court being met, I move for approval of the variance.

Haefs seconded the motion.

Haefs moves to amend to add that it is File 2564. All in favor.

The motion carried by the following vote:

Yes: 4 - Farmer, Haefs, Nohr, Gentry

Excused: 2 - Clemence, Lassig

Absent: 1 - Knothe

2565

An appeal regarding the requirement to provide a 2 foot section of lattice on top of a fence when installed within 10 feet of a neighboring dwelling unit at 1908 21st St. S., La Crosse, Wisconsin.

Thienes, still sworn, states that the owner has applied for a permit to erect a six foot tall vinyl privacy fence. Municipal Code 115-398(c) states that a fence that is to be placed within ten feet of a neighboring dwelling can be erected to a height of six feet with the top two feet of the fence being fifty percent open. The owner proposes a solid fence to a height of six feet. A variance to allow the fence to be erected to a height of six feet within ten feet of the neighboring dwelling without the top two feet of the fence being fifty percent open will need to be granted to allow this project to proceed as proposed.

Thienes shows a plan of the area and points out where the fence will go on either side; the one side is ok, but the other one near the garage is closer. He points it out on the aerial view. One house is eight feet away and the other is closer. There are two houses on the one parcel. Farmer asks how close the one building is and Thienes states that it might be two or three feet. Farmer asks if there are windows on the side of the house. Thienes states that he assumes both of them have windows on the side. He shows a view from the front and points out the two adjacent houses and where the fence will go. Nohr asks about the other side and Thienes states that the other side is ok – it is 10 feet.

Speaking in Favor of the Request:

Julie Ramos, 2103 14th Street South, is sworn in to speak. Ramos states that she has a few handouts for the board. She states that there is a line where a fence was

previously. It is an aerial photo. The fence was taken down when the house was put up for sale. She states that her son works at Chart and this is his first home. He is now laid off from Chart and has been there for two years. The neighboring parcel is one with two homes and one garage. One home has no land for the renters to use. The renters have changed over the last two years. The fences that are there used to abut to the original fence and are probably five feet in length.

Ramos states that the current renters (of one property) have two pit bulls that are not leashed and they meander. She states that her son heard the renters state that they want to put up a fence. They went to Menards and got a solid 6-foot fence and started putting it up that evening. They didn't know that they needed a permit for the fence. It is important to know that because they are both rental properties and rental properties that are allowed to have animals; there are going to be many pets brought in and out. Many breeds can jump a six foot fence and pit bulls are a very strong breed. She states that one of the handouts says that they can be docile but when you have dogs that are in breeding, it only takes a bit to make them aggressive.

Ramos states that a dog's sense of smell is enough to cause it to behave offensively. Couple that with visibility, meaning the top two feet of the fencing, couple that with a strong pack mentality when more than one dog lives in the same place and unexpectedly aggressive behavior can be the result. She feels strongly that a four foot break in this fence, above which would be at least 50 percent visibility, not only provides for a potential irritant to an animal that by all personality/characteristic descriptions includes his ready will to engage with other dogs, but also invites a dog to place front paws at this level, thus putting side pressure on the fence which it isn't designed for, many times a day.

Ramos states that she gave the board a picture of her dog and her brother's dog that her son takes care of; she also states that his girlfriend has a one-year-old dog. At this time she fears leaving her dog at her son's house because of the dogs next door. There is a lengthy list of property defending breeds that could move in to this rental property. Once when she was in the inspector's office, she overheard that someone who had been in homes with dogs was asked to do an inspection at a residence and was familiar the dogs there – they started to attack this inspector for no known reason. One dog in particular started, and the others joined in. She implores the board to view this as a hardship. She states that they've already established that it is unique that two homes on a very small parcel.

Nohr asks what the status is of the fence. Ramos agrees that it was partially built; if it isn't allowed they are going to have to modify what is there. Ramos points out that there is a letter from the adjacent property owner that prefers this style of fence and will be building off of it. The letter is in the packet. Nohr asks where the neighbor would build and Ramos responds that he would use one of the corner posts and would continue. He felt that because he has other animals there, he doesn't want the problem with the animals either. She doesn't want to pick on pit bulls as a breed, but there are aggressive breeds that can change what they are doing and how they are thinking.

Farmer states that all dogs can be that way, even his Boston terrier took. Nohr asks if the letter she is referring to is in the packet and Ramos responds in the affirmative and states that it is from Kevin Herman. Nohr asks if he owns the front or the back property and Ramos states that he owns both. Nohr asks Ramos if she can show the status of the fencing that was put in. She points out the property line is and shows that they put in fencing that is even with the house; there is a six foot panel that is eight feet wide. She points out the front end and the back end and where it abuts to the neighbors fences that are already there. Nohr asks how far to the front it comes

and she states that it doesn't come to the front of the house; that neighbor is going to bring the fence up farther on his side. They didn't put anything in on the other side. Nohr asks the inspection department if in the ordinance if this applied to where the homes are or to the whole lot; Thienes states that it is just between the houses; anything within 10 feet of neighboring dwelling as long as long as it is not in the front yard.

Speaking in Opposition: none

Farmer: relative to File 2565 the property contains a unique property limitation in that the property next door has a narrow lot where it is not uncommon to have fences that a little to closer to some properties than others; also the fact that this property has the proverbial mother-in-law dwelling in the back. Those pieces of property are always difficult, both as rental units and as single-family; no one wants a single-family with a rental unit in the back yard. If not for the rental unit, it has the density of a duplex but none of the advantages. That creates an additional limitation. There is no harm to the public interest and that is satisfied by the letter from the adjoining property owner, Kevin Herman, indicating that not only does he approve of it, but that he intends to extend a six foot fence of his own. So assuming he goes to the same supplier, the two fences could look very similar and would actually be an improvement to the neighborhood. The unnecessary hardship in this case is, regretfully, that they went forward and bought the materials so they would have to return those if they could and especially since there's no objection. So I move to approve the variance.

Haefs seconds the motion.

The motion carried by the following vote:

Yes: 4 - Farmer, Haefs, Nohr, Gentry

Excused: 2 - Clemence, Lassig

Absent: 1 - Knothe

2566

An appeal regarding the requirement to provide a 25 foot front yard setback at 2126 Winnebago St., La Crosse, Wisconsin.

Thienes states that a contractor has applied for a building permit to put a wooden entry deck on the front of a single-family dwelling. Municipal Code Section 115-143(c) (2) states that there shall be a front yard setback in the residence district of twenty-five feet or the average to the two adjacent main buildings. The contractor proposes a front yard setback of twenty feet. A variance of five feet to the required twenty-five will be needed for this project to proceed as proposed.

Thienes shows a plan of the property and states that it didn't copy well. He shows the property line and points out he proposed deck; he points out the house and states that it is back 26 feet from the property line and they are proposing 20. Thienes points the house out on the aerial view. Farmer asks if they just putting it on the front and if it will be six feet into the front. Thienes states that Farmer is correct and that it will not be roofed. It will be a wooden deck and then steps going off of it. Thienes shows a front view of the property so the board can see the steps. They are making the deck wide enough to cover the steps since the concrete steps are there are deteriorating. The most economical way to fix it is to put a deck over it. Nohr asks if the steps are already there; Thienes states that the steps can go into the setback, but the deck cannot. They will be putting steps on the deck, so basically everything will

be pushed out six feet. They need a five foot variance; they are moving everything six feet because the deck is six feet deep. Currently the deck won't be bigger than what the steps are now, but they are going farther because the deck is six feet deep. Thienes states that the houses on the block basically line up and have the same front yard setback.

Speaking in Favor of the Request:

Kraig Lassig, W4941 Woodhaven Dr., La Crosse, is sworn in to speak. Lassig states that the existing steps are six by ten. The current homeowner issues with his legs, and it is hard for him to take care of the steps. They are 40 years old and require a lot of upkeep. So they proposed a bigger landing so he can get up easier. Farmer asks how big the landing is and Lassig states that it will be six by ten and will be the same size as the landing that is there; they are not increasing the perimeter. Farmer asks about the perimeter of the landing at the top of the stairs and Lassig states that the current landing is three feet by three and a half feet on the top.

Lassig states that when the house was built, the setback rules were made, the houses were already built. The concrete steps are allowed into the setback. Farmer states that they are regarded as sidewalk that is why they are allowed. Lassig states that Bamber contacted five cement contractors and didn't get anywhere. Lassig states that Bamber contacted him they decided that a deck would be better for access and steps aren't included in the setback, so that was their plan. They are making the exact same perimeter. Farmer asks how wide the portion right in front of the door will be and Lassig states that it will be ten feet wide by six feet deep. The whole purpose of this is that he wanted something with low maintenance. They are using a railing that concrete guy fixed when they did the sidewalk.

Stephen Bamber, 2126 Winnebago St, is sworn in to speak. They bought the house in 2007 and the steps looked great, but after the first winter it was bad; they have been working on it and sanding it and filling it and painting it. In 2014 they wanted to fix the sidewalk and they called five different concrete guys and none of them showed up. They just did their best at patching it and it looks awful, but right now he has arthritis and can't get at it every year. The holes that he fills don't last. The deck would look nice and be great. He is 70 next year and doesn't want to have to deal with it any longer.

Speaking in Opposition: none

Farmer: on File 2566, the board finds the unique property limitation is in a sense the Code which allows the same structure in concrete, but doesn't allow it in wood, which in many respects is counter to the public interest because the entire structure would be there forever and a permanent addition where a deck out of wood would have a much shorter life if someone wanted to make a change to the look. While it is not the normal unique property limitation that we look for, it is the limitation. There is no harm to the public interest given by the fact that no one spoke during the public hearing opposed to the project. We also have seen these requests many times before. It is just what people come to expect, so there is no harm to the public interest. The unnecessary hardship is that that he never used the word spalling, but that is what I thought was the case, and that is a no-win battle. To try and maintain the current steps would be an unnecessary hardship. For that I move for approval.

Seconded by Haefs.

The motion carried by the following vote:

Yes: 4 - Farmer, Haefs, Nohr, Gentry

Excused: 2 - Clemence, Lassig

Absent: 1 - Knothe

Adjournment

Motion by Farmer, second by Haefs to adjourn at approximately 8:10 p.m..