



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Meeting Minutes - Final

Board of Zoning Appeals

Wednesday, November 15, 2017

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: 5 - James Cherf, Charles Clemence, Carol Haefs, Philip Nohr, Anastasia Gentry

Excused: 2 - Douglas Farmer, Joe Konradt

Variance appeals:

Chairman Nohr opened the public hearing.

2598

An appeal regarding the requirement that does not allow the erection of a new daycare building in Zone B-1 of the HLZO at 2100 Dawson Ave, La Crosse, Wisconsin.

Brent Thielen, 400 La Crosse Street, representing the Building & Inspection Department, is sworn in to speak. The owner has applied for a height permit in conjunction with a building project at this address. Municipal Code Section 8-170 (1) (b) states that any existing use can otherwise be enlarged as long as the expansion meets the requirements of the La Crosse Regional Airport Height Limitations Zoning Map. This project is in a B-1 zone on the HLZO. A daycare building is not a permitted use in this zone. For this project to proceed as proposed, the Board would have to grant a variance to allow the construction of the new building in a B-1 zone of the HLZO.

Thielen shows a plan and points out the existing Shenanigans and daycare and then points out the daycare that they propose. He shows the HLZ map and where the Shenanigans is; Nohr asks about the numbers listed on the map. Thielen states that the map is just to show where they are on the map; the numbers relate to how high you can build at right there (above mean sea level). Nohr asks if they are looking for a height variance and Thielen states that they need a variance to build in that zone because it is a non-permitted use in that zone. Clemence confirms with Thielen that height is not the problem, it is the use. Thielen states that he just wanted to show the board where it was located on the height map.

Clemence asks if there is a daycare now and Thielen states that they have one and it is grandfathered in because it was already there when HLZO (Height Limitations Zoning Ordinance) went in. If someone expands, enlarges, or tries to create, that's when the new ordinance kicks in. He points out Shenanigans on an aerial view of the property; he states that the owner can give more details of where it will go on the property at the south end. Thielen points out the north end where the paintball building is located.

Gentry asks if the ordinance was created because of the daycare; Thielen states that it was created to encompass a 3 mile radius and he believes it was done in 2009 possibly. Nohr asks why this has been created it is not height related. Thielen states that it is because of the uses. Nohr asks why it would be a problem for the airport. Thielen responds that there are zones A, B, C, B-1, B-2, B-3, and D right in the flight path. This is going to hold a large number of children and if there is a plane crash a lot of children are at risk. Thielen and the Board confirm that there is a document from the Airport Manager that talks about that.

Speaking in Favor of the Request:

Dave Pretasky 220 17th St S., La Crosse, is sworn in to speak. He gives the board a drawing of an overview. Pretasky states that they have a daycare at the south end of the Shenanigans building, which is grandfathered in. He says it must've been the FAA that changed the regulations. He states that they aren't in the main line of the north/south (runway), but they are off to the side and are still covered under this regulation. Currently they have 65 children in the daycare, but they have the ability to expand to 90. When they looked at the economic feasibility of expanding on the inside, versus building a new building for about 400,000 which would add to the tax base, they thought that made sense when they applied for a permit from the FAA zoning.

Pretasky stated that it will be built to the size for the daycare, and not be an add-on like they did last time; it will hold it to 65 children or less. If they stay in the existing building they need to grow to 90 kids to make it economically feasible; when they are in the new building they will be cap it at 65 which is controlled by State law. Pretasky states that since it is grandfathered it is not a radical variance request; nobody wants an airport crash, but there will be 65 children in the building compared to 90 that they could have. Cherf asks how many children are in the current building and Pretasky states that it is between 63 and 65.

Haefs asks if they will operate both areas as a daycare; Pretasky responds that they will close the original one and the new one will be capped at 65. Nohr confirms that Pretasky's testimony is 65 in new building, and because they are grandfathered they have the ability to put 90 in the existing building. Pretasky responds that they are not controlled by FAA on the number of children; the State sets the growth potential by square footage. Pretasky adds that they have the ability to expand on the inside of the Shenanigans building, but they don't want to because it is not economically feasible.

Nohr states that Pretasky keeps mentioning Dawson Park, but he does not see it on the map. Pretasky points out the road, which is actually Dawson Court. Nohr states that the proposed entrance will tie onto Dawson Court and Pretasky agrees. Pretasky states that the only way they could ever expand the new building in the future would be to come before the board. They look at it as it is already grandfathered in and they are going to cap the number of kids and add a safer entrance to get in and out. Haefs asks about the cap if they expand the existing daycare and Pretasky states that they wouldn't want to go more than 90 because it gets to be a manpower issue.

Nohr asks what will be planned for that space and Pretasky states that it will take to sometime next year to get daycare built and they might consider of adding a smaller secondary banquet room for smaller functions of 100 people; the main banquet facility would dwarf 100 people. Nohr asks where that is located and Pretasky points it out and points out the building they used to store boats in. He states that it is owned by his partner and Mark Etrheim from Mastercraft Homes. Nohr asks what the large building to the north is used for and Pretasky responds that it is for paintball and storage. He

adds that it's not functionally heatable because it has a vinyl skin over it.

Nohr asks if Pretasky has seen the letter from the Airport Manager and he responds that he has not seen it. Pretasky states that they are proposing the construction of a new institution of a daycare facility, but they believe they are requesting a transfer from one building to another building on the same property. He states that it is not a new request or a new daycare. Cherf says they are currently grandfathered in with the daycare center and if they chose to convert the entire existing facility into a daycare center; he then asks if it would be permitted under state code. Pretasky believes he would be right.

Cherf asks if the number of children is solely on square footage and staffing and is controlled by the State and Pretasky responds that they inspect and measure the building to the square inch. If you have, say, eight infants in one room there have to be two teachers in that room at all times and you have to have a minimum square footage. Pretasky says the State checks twice a year and they come unannounced and they measure to see if there have been any changes; the State restrictions are tough, which is why you see many daycare facilities come and go. Unless you are a YMCA, you don't see facilities that go beyond 90 or 100 children. Nohr asks if they are one of the larger daycares in the area and Pretasky responds that most are between 30 and 40 the YMCAs both in Onalaska and La Crosse do significantly more, they are maybe 150 kids each.

Pretasky says the point he wants to make is they are grandfathered and just want to move it 110-120 feet and cap the number of kids in there; it is not a new request for a daycare, if it was it would get turned down. If you'd want to build a new school it would get probably get turned down. Nohr asks what the total square footage of the building is and Pretasky responds that he doesn't know. Nohr states that if Pretasky wants to read the letter, he can then respond to it after someone else speaks in favor of the appeal. Clemence asks what Pretasky would do if this was denied and he responds that financially they feel they have to grow the number of kids to make it economical. If they convert part of the building into a daycare, they definitely need to get it to 80-85 kids to be economically viable. Clemence asks if they would need a building permit and Pretasky says they would only need to move some walls.

Nohr asks for clarification as to why he says they would need 80 to 85 if they expand inside, when the new building would be capped at 65. Pretasky responds that the facility doesn't have a kitchen or meeting room and if they take space away from Shenanigans to grow the daycare, they are taking away revenue for Shenanigans. The new building will be 100 percent daycare and more functional and will make more economic sense for them. Clemence states that what he was getting at is if they would have to expand inside, if they (Inspections) would still have to deny a permit. Thielen states that he would have to get an interpretation, but he believes they would still have to go through the same thing because it would still be a nonconforming use. Pretasky states that if they cut down the size of Shenanigans you'd have less kids there, but more in the daycare Monday through Friday.

Adam Etrheim, 223 Olivet St., La Crosse, is sworn in to speak. Etrheim states that the square footage it is about 4,000 or less. Etrheim states that the point he would like to make is he doesn't have hard data, but the number of kids that would be injured in a bus accident would be more than in a plane crash and the chances of an airplane are less. All they are doing is moving the daycare 110 feet to the south, they are not asking for a new daycare.

Nohr states that there was testimony earlier about inadequate cooking facilities; he asks if that is something that is being proposed in the new structure. Etrheim states that the daycare will have cooking facilities that can handle the daycare's needs, but right now Shenanigans is under-equipped to handle food for weddings and for Shenanigans and they would expand it when the daycare moves. Nohr asks if there is a plan for the area to be used for weddings and that type of thing and Etrheim responds that it would be similar to what is already in Shenanigans and they would be using the existing footprint.

Nohr asks what kind of material they are using for the external portion of the building. Etrheim states that it is largely undecided, but it is most likely going to be cement board siding like a typical commercial building. He says the bottom four feet of the Shenanigans building is brick and the top 20 feet is tin and that's not what they are planning for the daycare. They daycare would probably be like a normal two-by-six exterior wall with cement-board siding with some nice trim on it and it would look like a million bucks.

Nohr asks if the daycare structure has to meet any State guidelines and Etrheim responds that it has to meet certain requirements, but he is not an expert on them; they have had some preliminary approvals, but they are waiting to move forward once this is decided here. State commercial codes will still have to be met for the daycare. Nohr confirms that it will be about 4,000 square feet and Etrheim states that it will be a little less, but somewhere in that neighborhood.

Nohr asks if the parking lot that is shown on the south side is already there or if it is proposed. Etrheim says that it is basically gravel parking lot for Shenanigans some of it is grass and there is a berm blocking Dawson Place. Nohr asks if they are creating a new entrance and Etrheim responds that they are. Nohr asks what kind of surface the area would be and Etrheim says it would be a blacktop parking lot there and a new entrance. It will be safer than having to turn right or left onto Dawson Avenue. Nohr asks if today children are bussed out on Dawson Avenue. Etrheim agrees and Nohr states either way they would have to get onto Dawson Avenue (from the parking lot or the new entrance/exit). Etrheim says with the new entrance/exit there is a stop sign at Dawson Avenue, but there is not one from the current parking lot.

Pretasky is allowed to speak again and states that the letter from the airport makes it seem like they are opening a new business, but they are just moving the existing one.

Speaking in Opposition: none

Cherf: I will make a motion to allow this variance to allow construction of a new daycare building for file 2598. The reasoning for that is the new structure would, by design, prohibit the expansion of the number of children beyond the 63-65 that it is presently accommodating. They really haven't changed the situation that they are currently grandfathered in; it is still the same parcel number and still the same number of children. It is just a segregated facility versus one that is contained within the larger structure.

Seconder: Nohr

The motion failed by the following vote (four concurring votes are needed to grant a variance):

Yes: 3 - Nohr, Cherf, Gentry

No: 2 - Clemence, Haefs

Excused: 2 - Farmer, Konradt

[2599](#)

An appeal regarding the requirement that fill around the perimeter of a building shall be not less than one foot below the flood protection elevation and shall extend at least 15 feet beyond the limits of any structures at 1619 Palace St., La Crosse, Wisconsin.

Thielen, still sworn, states that a permit has been applied for, and granted, for an addition to the dwelling at this address. Municipal Code Section 115-281 states that the elevation of the lowest floor shall be at Flood Protection Elevation on fill. The fill shall be one foot above base flood elevation or one foot below the flood protection elevation, extending at least 15 feet beyond the limits of the structure. This requirement was a condition of the permit approval. Upon inspecting the addition for occupancy, it was discovered that the perimeter fill was not in place. A variance of 15 feet to the 15 feet of perimeter fill requirement will be needed in order for occupancy to be granted on this addition as it has been constructed.

Thielen shows the conditional approval letter from the Inspection Department and he states that it gives the code sections on the input of perimeter fill. The owner of the property did go through and get a Letter of Map Revision (LOM-R) from FEMA and had the existing structure taken out of the floodplain. Thielen states that the letter says that portions of the property are still in the floodplain which means that all state and local flood ordinances area still in effect on the property. Thielen shows a drawing of the property and gives them a hard copy of the drawing because it did not scan well. He points out the addition area that is still in the floodplain.

Thielen states that they took the existing structure out (of the floodplain) and not anything else. Cherf asks the existing structure had a minimum of the 15...Thielen states that the existing structure was removed from FEMA on a letter of map revision based on fill. They put some fill around there and they were working with Doug Kerns, our floodplain manager; they were also working with a land surveyor. Nohr confirms that there was some fill and Thielen says that the existing structure was removed, but not the land around it. Nohr says usually the LOM-R is usually applied to the land and not a building.

Thielen shows a picture of the owner's addition and he points out where it is one foot above (FPE). He points out the property on an aerial view of the lot and he points out where the addition comes off of the structure. Nohr asks if any of this changes if this addition was not attached to the building. Thielen states that he couldn't build another dwelling; Nohr states that he wasn't aware that it was a dwelling that he was added onto. He thought that it was a garage by the size (24 by 24) that was noted. Thielen agrees it is large for an addition and adds that there is a garage and a storage building on the property. Clemence asks if they had to fill in to a...Thielen states that he believes he added 6 feet 4 inches of fill outward from the addition (he points it out on the drawing) and states that only the existing structure was taken out of the floodplain, so he needs to go around the addition for 15 feet. Thielen states that they cut part of the deck off for the addition.

Nohr asks if the addition is in place and Thielen responds that it is there; he discovered that it wasn't compliant on the final inspection for occupancy. Nohr states that he thought it was proposed construction, but it is actually completed. Thielen reiterates that upon occupancy inspection, he discovered that the 15 feet of perimeter fill was not in place. Cherf asks if his only remedy if the variance is not granted would be to add 15 feet of fill around the three sides. Thielen says that he would only need the fill around the addition because the existing structure was taken out. Thielen states that he got the final elevation certificate emailed to him at about 3:30 and the

addition meets the requirements set forth. Nohr asks if it is an option to have FEMA reevaluate this and Thielen responds that he can't answer that question. Thielen says he does not believe they are cheap. Nohr states that he did one for \$300 a few years ago.

Speaking in Favor of the Request:

Tammy Schyvinck, 1619 Palace St., is sworn in to speak. She thanks the Board for seeing them. She has hard copies of pictures and pictures that she bought on a flash drive. Nohr states that the Board will look at what she has. Schyvinck shows a picture of the front of house which was part of the original building. She states that they filled around that plus they took out 4 windows from the basement area and put fill in around. She shows a picture that was taken from the alley side and states that that was everything that they took out of the floodplain.

Cherf states that there is a 2-story section and 1-story section and then asks if the new addition is the 1-story section. Schyvinck states that they added on and built up on the 2-story side. Nohr says that the photo does not show the addition and Schyvinck states that for this picture she was showing the fill that they put in to get it out of FEMA. Clemence confirms that it is out of the floodplain because of the fill they put in and Schyvinck states that he is correct. Nohr states that it must not have been 15 feet and Schyvinck states that it wasn't 15 feet. When they talked to the floodplain gentleman, he said they could put the fill in and if they wanted to take it out, no one would check again. She says they obviously wanted to protect their house so they did the fill and put rubber lining down with rocks over the top.

Schyvinck points out a picture of a new addition and points out where the addition ends. She shows the area where the fill has to come out from. Nohr confirms that part of the building was there but all of the lower roof was the new addition. Schyvinck states that they were told that any new addition would have to be built out of the floodplain so they built it high to be out of the floodplain and they continued with the same rocks around the entire house and that is when Brent came and said it was not proper enough.

Schyvinck states that they are frustrated because they got the house out of the floodplain by the fill that they put in there. She states that the reason why they had to go with the addition is because she has osteoporosis of the spine along with degenerative disc disease so she will be in a wheelchair at some point, so this addition is for her bedroom. Their previous bedroom was 100 square foot bedroom with a king sized bed so there was not much room to move in there. Because it was in the floodplain they had to build it up, which means when they come into the house, which is the laundry room, they have to step down into what was the current building and then step up to the bedroom area. Schyvinck states that because of this she is going to have to have ramps.

Schyvinck states that they understood the reasoning for the requirements, but it was frustrating. She states that they want to protect their house and make it look uniform. They made it out of the floodplain, so in their understanding if it was out, they didn't have to put the fill in there for the addition. She states that they wanted to put in fill to protect their new investment. She shows a picture of the back of the house and points out the back of the new addition and states that it (the fill) goes around to the existing structure. Gentry asks Schyvinck why they can't contact FEMA or another floodplain certification person to get that portion out of the floodplain as well. Schyvinck states that she didn't know that was an option for them to do.

Schyvinck states that in some areas they actually have more fill projecting out more than what they had to do. They filled the back side even more because they were trying to make it uniform. She says they did a lot of work and they have all of the stone pretty much done. She says they stopped work after Brent told them they had an issue. She reiterates that they are frustrated because FEMA told them they could get out of the floodplain with the minimum that they have, and they didn't feel that they needed the same amount or anything less than what they put around the addition. Cherf asks if they have a basement of the area where she has to step down. She states that they have a basement. Schyvinck says they were given the option to fill in the basement or get rid of the windows and fill up, which is what they did on the existing part of the house. Gentry asks if the addition has basement and Schyvinck states that it has crawl space. Nohr asks how long it took to get the LOM-R and what the cost was; Schyvinck states that John would be able to answer that.

John Bruring, 1619 Palace St., is sworn in to speak. Bruring says that they started two and a half years ago. Originally they wouldn't let them do it because the amount of improvement was too high. Nohr asks for clarification; Bruring states that if it is in the floodplain, the dollar amount can only be half as much as the structure is worth and to do more than that he had to get it out of the floodplain. He states that they don't need flood insurance anymore. Nohr asks if they had a building permit and Bruring responds that at that time he didn't have a permit. They got it out of the floodplain, which was approved by FEMA and then filed for a building permit.

Nohr asks if they have a permit now and Bruring states that they did. Nohr asks if they were told that they could build it but not occupy it. Bruring states that they did not know that. Nohr states that they got the building permit after they got the LOM-R and then they went to occupy it....Nohr asks if there is a final inspection for occupancy and Thielen states that they do have a final inspection for occupancy. Thielen states that on the conditional approval letter he stated that they needed 15 feet of fill per Municipal Code. Nohr confirms that it stated that right on the permit.

Bruring says that when they got the LOM-R, Doug Kerns told him if he did a nice job and if they continued the fill around the house like the rest of it was that it should be ok to pass final inspection. Nohr asks how long did it take to get the LOM-R and what did it cost; Bruring says it was \$600 and the surveying was \$350. Nohr states that he is asking because he wants to know what the burden is because of time and how much it cost. Bruring states that it might've been 5 months from start to end. Nohr states that it was over 900 for the cost...Bruring adds that he did all the work himself; it was 20 bags of concrete and two dump truck loads of fill, the rest was sweat and labor.

Cherf says that both Bruring and Schyvinck stated that Doug Kerns indicated that once they were approved that the fill was irrelevant; he asks if that statement was in reference the to the original structure or to the original structure and the addition. Bruring says it related to the original structure. Cherf confirms that that one was back when they were applying from FEMA. Bruring says he (Kerns) jokingly said if this was gone tomorrow, they would never know, they would never come back and inspect it again. Cherf confirms that it wasn't a statement made in relation to the addition, but the original structure.

Gentry asks why they can't fill 15 feet out. Bruring points out the picture and says that passed the garbage cans they have a planting area and on the other side there is a sidewalk. To go out 15 feet it would be covered with fill. There is a pool at the end of the sidewalk there and a fish pond there and it would be hard to get to. He points them

out on the aerial view showing that the 15 feet would come out to the pond. Bruring says that the 15 feet of fill will have to be the same height all the way out and then they'd have to taper down another 5 to 10 feet. Cherf asks how much fill there would be and says it looks like it is up to the siding. Bruring says that it is all different levels; there might be 3 feet of fill in one location. Cherf asks how high it is at the area near the stairs and Bruring says it is 32 inches of steps and that is from the base to the house.

Nohr asks if they are in the middle of putting in some railings. Bruring said they took it off and moved it over because the screen door wouldn't fit on it right. Clemence states that he is not quite clear why the house is out of the floodplain, but the addition needs 15 feet. Nohr says that's FEMA for you. Schyvinck states that it is confusing; passed the pine tree is another lot that they bought. She points it out on the aerial view and says the land that their swimming pool is on is out of the floodplain. The ground there is higher and it tapers down to the house. She says the amount of fill on the corner is consistent with around the side of the house, but the land on the pool side will have less fill because of the slope. The people behind them theirs wasn't in the floodplain, but the land right next to theirs that they purchased, was in the floodplain.

Gentry states she is all for improving the properties in the floodplain and getting them out, she asks if with only that portion being in it were the measurements taken aerially or on the ground. Schyvinck states that it was by a surveyor on the ground. Cherf asks about the addition. She puts two pictures together and shows that the swimming pool is higher and it tapers to the house and toward the alley. She states that there is less height required for the fill on one end and more toward the steps area. Schyvinck states that they do have a drain tube that drains out into the alleyway. Bruring adds that they wouldn't have gone rock around the house if they didn't think it was right.

Andrea Richmond, 1312 Cunningham St., is sworn in to speak. Richmond states that she's the Council Member for their district and she has been helping them out for a long time. She says that the confusion is in that the former floodplain manager was approving them getting out of the floodplain and somehow the Inspection Department in their recording found out it wasn't accurate and they have been going back and forth. Richmond says there is a hardship with the money that was spent. She asks if Thielen has a picture of the whole house and Thielen responds that he does not. She states that it is a wonderful addition and it is was featured in the La Crosse Tribune at one time.

Richmond states that as chairperson of the floodplain committee; it is something that they focus on all of the time, which is getting houses out of the floodplain. She states that it is a difficult process with having to fill. Richmond says that they really did not get all the information that they needed; some said they were in the floodplain and some said they were out and it was very confusing all along. She hopes that the committee grants them the variance because it is going to be a hardship with her handicap issue in getting around with a wheelchair

Speaking in Opposition: none

A motion was made by Clemence, seconded by Haefs, that the Request for Variance be GRANTED . The motion carried by the following vote:

Yes: 5 - Nohr, Cherf, Clemence, Haefs, Gentry

Excused: 2 - Farmer, Konradt

Adjournment

Motion by Nohr, seconded by Haefs to adjourn at 8:11 p.m.