



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Meeting Minutes - Final

Board of Zoning Appeals

Wednesday, August 15, 2018

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 - Douglas Farmer, Charles Clemence, Carol Haefs, Philip Nohr, Anastasia Gentry

Excused: 2 - James Cherf, Lu Selover

Variance appeals:

Chairman Nohr opened the public hearing.

[2614](#)

An appeal regarding the regulation to provide a corner vision triangle at a street and alley intersection, a corner vision triangle at driveway and alley intersection, installing a fence closer than 3 feet to the public right-of-way line in an alley and not providing the 50 percent open area above the 4 foot height abutting a public sidewalk in the rear yard at 1303 Main St., La Crosse, Wisconsin.

Dave Reinhart, 400 La Crosse Street, is sworn in to speak. Reinhart welcomes the Board and says this is the first time he has done this in a while and he wants to start by reminding the Board of the requirements for granting a variance. The property owner has to show three things: unnecessary hardship, hardship due to unique property limitation, and no harm to the public interest. To qualify for a variance, an applicant must demonstrate that all three criteria are met. Unnecessary hardship is present where, in the absence of a variance, no reasonable use can be made of the property. No self-imposed hardship. Financial hardship is not a deciding factor. Accessory structures are not eligible. Decks and other accessory structures are not essential to the reasonable use of the property are not eligible for variances. Unnecessary hardship must be due to unique limitations of the property including physical features of the property that prevent compliance with the ordinance (steep slopes, wetlands, etc.).

Reinhart says a variance may not be granted which results in harm to public interests. The zoning board should review the purpose statement of the ordinance and related statutes in order to identify public interests. He shows a section out of the Code and says that it is the purpose statement sentence from a section 115-3 that really matters. The sentence is as follows: "In interpreting and applying the provisions of this chapter, they shall be held to the minimum requirements for the promotion of the public health, safety, convenience, prosperity, or general welfare." Reinhart says that is the main sentence in that code section. Reinhart says other considerations such as nearby ordinance violations, even if similar to the requested variance, do not provide ground for granting a variance. A lack of objections from neighbors does not provide a

basis for granting a variance.

Reinhart says now we are ready to get to why we are here tonight. The owner has applied for a permit for a fence that has already been constructed. Municipal Code 115-143 (d) states that the vision clearance of this district, at the intersection of an alley line and street line shall be 10 feet in each direction and at the intersection of a driveway line and alley line shall be 15 feet in each direction. Municipal Code Section 115-398 (c) (1) states that a fence shall not be closer than 3 feet to any public right-of-way along a public alley. Municipal Code 115-398 (c) (1) (d) states that a fence erected in the rear yard abutting a public sidewalk may be erected to a height of 6 feet if the area above four feet is at least 50 percent open.

Reinhart says in order to issue a permit, four variances will need to be granted for this project: a variance to allow a fence taller than three feet in the vision clearance area created by a street and alley intersection, a variance to allow a fence taller than three feet in the vision clearance area created by a driveway and an alley intersection, a variance to allow a fence closer than three feet to the public right-of-way along an alley, and a variance to allow a six foot fence that does not have the top two feet 50 percent open in the rear yard abutting a public sidewalk.

Reinhart shows a plan of the fence and points out an existing fence and shows where the new fence goes. He shows a picture of the fence which was taken from the alley and then shows an aerial view of the property and points out where the previous fence was and points out where the new fence currently sits. Reinhart asks if there unnecessary hardship shown; he states that unnecessary hardship is present where, in the absence of a variance, no reasonable use can be made of the property. He says the property is currently used as a single family dwelling; it has a use. Technically this variance shouldn't be granted. Reinhart says another requirement is no self-imposed hardship; he says the fence was built without a permit, which is a self-created hardship. He also says that accessory structures are not eligible; there was an existing fence that was removed but technically this variance should not be granted because it is not eligible.

Reinhart says the unique hardship due to property limitation does not exist as there are multiple lots in the City of La Crosse with the same size and configuration. There is nothing unique to this property. Reinhart says there may be no harm to the public interest; currently there is harm in two ways: the fence doesn't allow for vehicles exiting the alley to view pedestrians on the sidewalk, and the fence doesn't allow the homeowner to view vehicles in the alley while backing out of the garage. So in following the requirements in granting a variance, as stated before, these cannot be granted.

Nohr asks Reinhart if he is here presenting or if he prepared it. Reinhart says he prepared it and Nohr asks if it was prepared at anyone's direction because the Board has not had a presentation like this before. Reinhart says that he's not sure if directed is the right word, or if it is relevant here, but in the future we will skip the first ones (slides)...Nohr says he is talking about the entire initial presentation and again asks if Reinhart was directed to present it. Reinhart says starting tonight the Inspection Department will have the last three slides from here on out. Nohr asks if it just on this property. Farmer says Nohr is trying to get at why there is a shift in the presentation. Reinhart says it needs to be on record to why the variances should not be granted. Farmer says you want the Inspection Department to be on record as to why it shouldn't be granted; Reinhart says he is correct.

Farmer says the motions always address the three points and that started with Michael Stoker and has followed ever since. Farmer says it isn't like the Board doesn't know the three points. Nohr also states that the Board knows the three points so he is curious why...Reinhart says it is just a friendly reminder. Farmer says last month the staff from the Planning Department decided to tell us on the flood stuff what we could or couldn't do and that didn't...we are wondering what is going on. Reinhart says it is a friendly reminder. Nohr asks if it was at his direction and Reinhart says yes. Farmer asks Reinhart if the Board will be seeing more of him and Reinhart says it depends on how the meeting goes. Reinhart again adds that each presentation will have the last three slides.

Clemence asks Reinhart if he goes over with staff the purpose of the laws and ordinances because we've asked more than once what the purpose of the ordinance is and we have never been able to get an answer. Reinhart says that is a good question and they ask that themselves; they've asked for commentary regarding why a new ordinance is passed, kind of like way building code has commentary on why it is there, but they have been told that they cannot have that. Reinhart says some of the ordinances were passed prior to he was here. Farmer says what Clemence is getting at is that they've heard "I don't make the rules; I just have to enforce them." Farmer says usually if you think about it, you can figure it out. Clemence says sometimes it isn't obvious; Farmer says it is especially important here because in the office they can think about it and discuss it. Clemence says it should be part of the preparation. Reinhart says he understands their frustrations, but they don't go to the Council meetings and they don't know the reasons behind them. Farmer says often times they ask why an ordinance is in place and they usually figure out a reason why when the Inspection Department says they don't know.

Reinhart says again that it is a friendly reminder; Farmer says they feel that they meet the Supreme Court tests. Clemence says what he is seeing is that the Inspection Department has never taken a position that a variance should or should not be granted. Clemence says the Board may see things differently and that is part of their job; they are supposed to make judgements in this semi-legal proceeding and Inspection is enforcing the law in black and white which is what they are supposed to do and then the Board has to see the grey and it is very difficult. Clemence adds that Inspection denies a permit when they have felt it didn't meet the requirements and that is their job and they aren't complaining about that; to take a position that the variance shouldn't be granted is new. Clemence and Nohr both say that they don't think that's appropriate. Farmer says they've turned down the permit, so it is implied.

Reinhart says it doesn't mean that they feel the law hasn't been met; on paper it doesn't meet the requirements. Clemence says they are following the letter-of-the-law and that is what they are supposed to do. Farmer says there is some sensitivity here. Farmer says while he was a Council member, he heard a staff member say that the Board of Zoning Appeals does whatever they want; when he started to come to the meetings he realized that he only disagreed with them once. Farmer said he told the staff member that if he would also attend the meetings, he would realize that they do the best they can, but he would never come. Farmer says this group takes a lot of flak; a previous Council Member also had a problem with the Board, but also never came to meetings. Farmer says it isn't Reinhart; it is just an ongoing thing. Nohr said remind them of the rules they've known for quite some time and they are trying to apply them the best that they can, so they are a little sensitive.

Clemence asks if there is a way the fence can be built...Farmer says the Chairman is really getting at if this new procedure is just to bury these people, they need to know

that. Reinhart says in no way is this to, in Farmer's words, bury a property owner. Clemence again asks what would be required for them to grant a variance, would it be if they had 50 percent view. Clemence says one of the proposals is to take out every other picket in the fence. Clemence asks if it would meet the requirements. Reinhart asks which variance he is referring to; Clemence says he believes it is the height. Reinhart says there are four variances here and asks if he means for the corner vision clearance. Reinhart says if it is a picket fence with 50 percent open, it would meet the requirements for the vision corner clearance. Clemence says it still wouldn't meet the setbacks and Reinhart says he is correct. Reinhart says if they took out every other picket it would be 50 percent open, but they'd still have to move it back.

Farmer says he is confused as to the setbacks and says he thought this was a vision clearance issue. Reinhart says there are two corner vision clearance issues; one for the alley...Farmer says if they go back 10 or 15 feet with the picket deal, then that would be met, you would meet both of them. Reinhart says it would be met but the fence along the alley would need to be three feet off of the alley; that part of the code will still need to be met. Farmer asks if that is part of the fence code. Reinhart says it is all part of the fence code. Farmer says the fence code used to be where you have to be 3 feet off the sidewalk too. Reinhart says that is what the ordinance is today. Farmer says he wants to point out that no one shovels their sidewalks today; they all use snow blowers and the snow goes up and over the fence.

Speaking in favor:

Michael Margulis, property owner, is sworn in to speak. Margulis states that he didn't know there was a fence permit; they just moved here from St. Louis. Margulis says he was an architect there so he is familiar with code, but he is used to having permits being issued for structural...He says he is used to ordinances that govern things but only needing permits for electrical or structural or something that could hurt someone if you built it wrong. Margulis says they would have built it to code initially. Margulis says he did look up the building code and the La Crosse building code refers to IBC which is the International Building Code. Margulis goes on to say that according to this code, structures have to be 18 inches off the alley, which is why he built the fence that way. He points out the 18 inches in the picture of the fence and the alley and states that the fence is not directly on the alley.

Nohr asks what code he looked at and Margulis says he looked at the International Building Code; it is the building code that the City's code defers to, instead of hiring engineers every four years to write a code for every single thing, and most places do it, must follow IBC. They put out a book every two years and the City follows it. Clemence asks if he assumed that the IBC was enforced with the 18 inches. Margulis says he didn't know there was additional fence code; he assumed that it was 18 inches. Margulis says he still doesn't know why a fence has to be back farther than a building. Farmer says in this case the alley is 18 feet paved and they claim a foot on each side that they didn't pave; Farmer says he's gotten hung up by that. Margulis states that he made sure it was behind where... Farmer says that is more the driver here than anything else, so if you are 18 inches you are more than the foot they want.

Margulis says he didn't know about the vision clearance part. After the fact he thought if he took out every other picket it would be at 52 percent visibility. Clemence asks if he would be willing to do that and Margulis responds that he would try to match the code. Clemence asks if the posts are set in concrete; Margulis says they are in a foam... Clemence says he is just trying to get at how much trouble it would be. Margulis says they are 3.5 feet down so that they are past the frost line instead of

concrete he used new product sort of like a space foam. Farmer says of the variances requested, he's already found a way to take care of the two. Margulis says the variance he really is hoping for is not to have to move the fence back. Margulis says he would like to leave the rest as it is, but willing to do whatever he needs to do. Clemence says they try to find a reasonable way to for them to use property the way they want to, but you have to meet the requirements of the law.

Margulis states that if he moves the fence in they don't have space needed for the swing set. Nohr asks Margulis if he is only asking for one variance now. Margulis says he would like all of them, but the one is...Farmer says he thinks there are two that he is asking for and that would be not having to be 3 feet back from alley and number 4, a variance to allow a six-foot fence that does not have the top 50 percent open in the rear yard abutting the public sidewalk. Margulis says if he took out every other picket, he believes it would meet three of the...(many members talking at once)...

Margulis says he thinks regarding the sidewalk it says that it has to be 50 percent visible over four feet and then...Farmer says a 4 foot fence in a rear yard on the sidewalk doesn't give you much privacy; again the snow blower theory. Margulis asks what the snow blower theory is since he is from St. Louis and Farmer responds that you can't shovel snow over a fence but a snow blower shoots it over the fence. Margulis says they didn't get much snow in St. Louis and Farmer says we used to get six feet in winter. Nohr asks if everyone (on the Board) is clear about what Margulis could live with. Farmer says we definitely have to do something because it is a safety thing, skip all of the stuff about 10 and 15 feet. Farmer says it is like downtown here with people coming out of the alley and clipping people; in a residential section it is going to happen sooner or later.

Nohr confirms that Margulis didn't realize he needed a permit and he responds that he wouldn't have done this without a permit; they have laws in St. Louis where if you break them they fine you afterward, but you only need permits for stuff if built wrong someone would die or electrical or plumbing. Farmer says the fence ordinance here is relatively recent and it is still being refined. Margulis says half the alley has fences right up against it and he knows that grandfathered things don't apply to the case, but....Farmer says the fence ordinance is probably not even 10 years old.

Reinhardt comes back to speak. Nohr says the Board has heard testimony that there would be modifications for vision clearance and asks if they would meet the City's requirements so the Board would not need to a grant variance on two to three of these matters. Reinhardt says it wounds correct. Reinhardt says he would like to address Clemence's question about the four variances; he says the reason that there are four different ones is there are four different code sections. Clemence asks if three are regarding vision clearance and Reinhardt says it is two; two are for vision and two are about setbacks. Farmer asks which two are about setbacks on the sheet

Reinhardt says number one is a vision corner for the fence in the street and alley. Farmer says that one is taken care of with the picket fence; Reinhardt says that is right. Farmer says if he agrees to the picket fence then number one is no longer needed. Reinhardt says number two is the same vision clearance, but it is the driveway and alley; Farmer and Nohr both say that would be taken care of...Reinhardt says that is correct if the homeowner does the picket fence. Clemence says to skip number three and move to number four because three is regarding the setback and four is another vision clearance. Reinhardt says number four is the 50 percent open area....you can have a 6-foot fence along a public sidewalk but the top two feet have to be 50 percent open. Clemence says if he agrees to do...Reinhardt says if he does it all the way

around, not just in the corners, he could be ok here.

Clemence says if he takes every other picket out along the whole fence, three of them would not need a variance and Reinhart says he is correct. Margulis asks if it is all of it or just the part down by the sidewalk. Farmer asks if the whole alley has to have a picket. Margulis says he would do it if he needed to. Reinhart asks if the area he is pointing out is all new and Margulis says he is correct. Reinhart points out the area that needs to be picketed (the area along the sidewalk, around the corner 15 feet in to the center along the alley and then all of the garage side of the fence to the corner and 10 feet in to the center on the alley. Clemence says if he took out every other picket on the whole fence...Reinhart says he would then meet three out of the four, but he would still need to be three feet off of the alley. Reinhart says the width of the alley right-of-way usually doesn't stop at the end of the concrete, it is usually wider. It is usually where the curb cut comes in, so the fence is probably right on the alley property line. Reinhart says the alley concrete width is usually 18 feet wide, but the right-of-way is usually 24 feet.

Farmer says he doesn't know how you solve that; it is just a natural human thing to think that it just goes to the property line. Haefs says it is moot point if it is on the alley or 18 inches back, it is still a problem. Reinhart says she is correct; they would need to be three feet from where it is currently. Nohr says they heard testimony that there was an existing fence and asks if this was all new construction. Reinhart points out the areas on the aerial view that have new fencing and asks Margulis to correct him if he is wrong. Margulis says the house used to be apartments and the area that was newly fenced used to be a gravel area for parking. He took out the gravel and fenced around that area. Nohr asks if it is all new fencing and Margulis says that only some of it is new and Reinhart points it out on the picture and says the old fence meets current code. Nohr says he wouldn't have to do anything to the old fence, only the new; Reinhart says he is correct.

Reinhart says the fence ordinance went into effect in September of 2009. Reinhart says that the homeowner referenced the IBC; that is commercial building code and not one and two family building code. Farmer asks Reinhart to stay and says he's always felt that the inspection department leaving at the end of the public hearing is a bad message to send to everybody and they should stay here and listen to our deliberation so they would know more about why the Board does what it does. Farmer says he just wants to make that point before they all leave because the deliberation portion is an important part to be there for.

Clemence asks if homeowner wants to say more. Margulis says he didn't know where the alley stopped and it looks like other buildings that people have built on the alley. Margulis says it is the one variance that is important. Nohr asks how long they have lived here and Margulis responds that it has been 10 months now. Nohr confirms that he is willing to meet the three vision requirements and the setback is the only one that is really needed. Margulis responds that he would like all of them, but he is willing to make modifications. Nohr again confirms with Margulis that the one he really needs is the setback.

Farmer: I would move for approval of the variance to allow a fence closer than three feet to the public right-of-way along the alley, which I believe is the only variance remaining as a result of the applicant's offer to compromise and do a picket type fence. The property is a corner lot and a corner lot is unique because it has additional challenges being on a corner. I would never want a corner lot between the shoveling and everything else and snow blowing and the lack of privacy in the back yard. It can be said that one picked that, and I

can understand that argument, but one also picks the house they financially fit. Corner lots are at a discount so that is why they financially fit the person. I can't see any harm to the public interest in allowing this and evidence of no harm to the public interest we have situations all across the city and I know it doesn't create a precedent, but there are garages and fences right up to the alley and there is no apparent ill-affect. The unnecessary hardship again is, I think, the corner lot. It has got to be difficult on a corner lot and while I don't think the fence is particularly pretty, no offense, it is an unnecessary hardship to insist upon the various variances so I move for approval.

Clemence seconds.

Haefs requests for the File number to be stated and Farmer says this is for file number 2614.

The motion carried by the following vote:

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

Excused: 2 - Cherf, Selover

Adjournment

On motion by Haefs, second by Clemence, carried unanimously to adjourn at approximately 7:45 p.m.