



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Meeting Minutes - Final

Board of Zoning Appeals

Wednesday, November 21, 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: 4 - Douglas Farmer, James Cherf, Philip Nohr, Lu Selover

Excused: 3 - Charles Clemence, Carol Haefs, Anastasia Gentry

Variance appeals:

Chairman Nohr opened the public hearing.

Note: Presentation by FPBS staff is attached to each file item.

2616

An appeal regarding the requirement that fill around the perimeter of a building shall not be less than one foot below the flood protection elevation and shall extend at least 15 feet beyond the limits of any structure at 710 George St., La Crosse, Wisconsin.

Jon Molledahl, representing Fire Prevention & Building Safety, is sworn in to speak. Molledahl goes over the requirements for granting a variance; unnecessary hardship, hardship due to a unique property limitation, and no harm to the public interest. Molledahl says in order to qualify for a variance, an applicant must demonstrate that all three criteria are met. He states that the owner is proposing to raze the existing retail store at 710 George Street and build a new retail store which will not meet the minimum requirement for fill around the perimeter of a building in the floodplain. Municipal Code section 115-281 (a)(1) states that the elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirements of section 115-281 (3)(a)(2) can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. For this project to proceed as proposed the board would have to grant two variances: nine feet on the north side and four feet on the west side to the fifteen foot requirement of elevated fill beyond the limits of the structure.

Nohr asks if they can read item number two again, that the lowest floor shall be at or above the flood elevation on fill unless the requirements of section 115-281 (3)(a)(2) can be met. He asks what that means. Molledahl says he's not familiar with that section and the floodplain manager is not here. Matt Diehl, Fire Prevention & Building Safety, is sworn in to speak. Diehl believes that it is regarding the lowest floor elevation and not the fill around it, so if that section can be met then the floor can be lower than the base flood, but this variance is regarding the fill around it. He states that is what he knows. Farmer says that makes some sense.

Molledahl shows a site plan of the property and points out the proposed new building and sidewalk along George Street. Farmer asks if this is the site of the old Champion Auto and Molledahl responds that he is correct. Molledahl says it will be built basically where the parking lot is now. He points out where the existing building is located and again shows where the new building will be. Molledahl shows a google map photo that shows what it looks like now and he points out where the new building will go. A street-view photo is also shown of the location. Farmer says the map in the Board's packet has two areas that are highlighted in green and asks if they denote the two variances that are needed. Molledahl responds that he believes that is correct. Farmer asks if the variances could be met if the building was pushed back closer to the property line and south a bit. Molledahl says he believes if it was pushed back they might be able to get the perimeter fill in there that is required. Farmer says they have loading docks back there though; if they push it back that would make that problematic. Molledahl states that he is correct.

Molledahl says that the three requirements for granting a variance appear to be met and this variance has been granted previously, possibly in February. Nohr asks if it expired; Molledahl responds that he is correct. Selover asks if there have been changes between then and now and Farmer responds that they haven't said that. Nohr says it will be asked.

Speaking in favor:

Gary Thagerstrom, 800 Washington Avenue, Minneapolis, Minnesota, is sworn in to speak. He states that he is with CM Architecture, the architect for this project, and he was here six months ago relating to it and it was approved at that time. Thagerstrom says the only things have changed are related to the permit review process; the size and location of the building hasn't changed. What happened is the slow review process that they got stuck in and the original expired and so they are back. Farmer asks where the review process was and Thagerstrom responds that it was a building permit review. Farmer asks if it was state or local and if it had to go before another board. Nohr says the Board normally grant variances for building permits. Farmer says he thinks Thagerstrom is implying that commercial buildings have to have various standards to be approved by committees such as a commercial building review committee to verify that you have enough brick in the front and shrubbery and other things.

Thagerstrom says there's two reviews for getting a building permit; there is a state review and then there is a local review where there are other things like the fire and things like that that are reviewed on the property. Nohr says that is the inspection department that does that review and if you don't meet that then it comes back before this board, for us to consider granting a variance. He goes on to say that the other may have been a state review and that is what held up the project. Thagerstrom that it was probably both; they did the state and then the local and usually the local doesn't review until after the state has approved. Nohr says the bottom line is the reviews got them out beyond the 180 days. Thagerstrom says that they will start in the spring if this gets approved; they have reviewed has been completed so they can pick up the building permit if this is approved.

Farmer asks if they don't want to move it back because of the loading docks. Nohr says it looks like they wouldn't need the variance if they moved it back. Thagerstrom states that they need the drive on the side to get vehicles over there and that is where the loading occurs and it is nice to have access on the St. Cloud street side. Nohr

asks if the parking will be where the current building is now and Thagerstrom responds that he is correct. Nohr says this apparently has adequate parking and Thagerstrom replies that they do.

Speaking in Opposition: None.

Farmer: the motion for File 2616 at 710 George Street; there's a request for two variances, one for nine feet on the north side and one for four feet on the west side. This would be a variance to the fifteen foot requirement for elevated fill beyond the limits of the structure. The unique property limitation is that the property is configured or bound by street to make the use of the loading docks and the flood fill extremely difficult if both were to be honored. You could have the fifteen foot flood fill, but the loading docks would become immaterial and that would severely compromise the utility of the building. There's no harm to the public interest; the main floor of the building would be above the flood level and thus no direct harm to the public interest. And then finally the unnecessary hardship – compliance with the flood requirement would result in a substantially smaller building which wasn't what they were thinking they were buying when they bought it. So that being the case I would move for the approval of the two variances.

Secunder: Cherf

The motion carried by the following vote:

Yes: 4 - Nohr, Farmer, Cherf, Seloover

Excused: 3 - Clemence, Haefs, Gentry

2617

An appeal regarding the requirement to provide a 25 foot setback from the front property line at 2118 19th Street S., La Crosse, Wisconsin.

Molledahl, already sworn states that the owner has applied for a permit for an already constructed front entry deck at this address. Municipal Code Section 115-143 states that in every lot in the Residence District there shall be a front yard having a depth of not less than 25 feet. The deck was constructed with a front yard depth of 18 feet. A variance of 7 feet will need to be granted for this deck to remain as it has been built.

Molledahl shows a picture of what the home previously looked like prior to the deck being built. He also shows a picture of the newly constructed deck. Nohr says the two pictures look so different. He says in one photo it looks like the home is way back and the other looks like it is much closer to the front; it doesn't look like the same house. Molledahl shows a satellite view of the property and says the distance from the house to property line is 25 feet so anything built in the front yard is in the setback.

Molledahl says an unnecessary hardship is present where, in the absence of a variance, no reasonable use can be made of the property; this property can still be used as a single family dwelling if the variance is not granted Molledahl says there can be no self-imposed hardship and this one was self-created due to the fact that the deck was already built without a permit. Molledahl also says financial hardship is not a deciding factor and that accessory structures are not eligible. Nohr asks what they are not eligible for and Molledahl responds that they are not eligible for a variance and he was told that was based on a handout that was put out in roughly 2006, the criteria for a variance.

Farmer says where they have traditionally had trouble when this comes up is if the same deck was made of concrete they wouldn't be before the board; Molledahl says he is correct. Nohr says because it is made of wood they need a variance. Farmer

says the Board is left putting a human face on these things; it seems contradictory or unreasonable to say if it was concrete that would be there forever, you'd be okay, but if it is wood you have to do the dance. Molledahl says the deck could be constructed out of wood if it is under two feet off the ground and less than 18 square feet, so you could have a 3 by 6 entry deck if it is less than two feet off the ground in that setback without needing a permit. Farmer says if they did it with concrete it would be considered an extension of the sidewalk; Molledahl says he is correct. Farmer says that's where the solution isn't here in this room it is something that needs to be straightened out by City Council. Molledahl adds that if this is granted there are other code issues with the deck that will need to be corrected. Farmer asks if that would be Molledahl's responsibility; Molledahl says that is correct. Farmer asks if the spindles aren't the correct space apart and Molledahl responds that the posts and the way the framing is attached and not having proper footing depth are to be corrected.

Speaking in favor:

Ryan Lium and Mary Jo Lium, 5665 Meir Ct., are sworn in to speak. Mary Jo states that the property was purchased for her mother who is disabled and legally blind. It was purchased quickly after her father had passed away from an accident. Her parents had been living in Minneapolis, so they needed to move her here quickly after her father passed away due to complications from a fall. Mary Jo says they purchased the home for her because it was a great fit for size and location. They still wanted to give her the independence, but because of the loss of Mary Jo's father, she needed to be moved here so Mary Jo and her husband could help out with bills and other things that Mary Jo's father used to do for his wife. Mary Jo said there was one thing that had to happen before she moved in and that was the front landing that was a small concrete landing with little steps and no railing; the steps were slanted and an uneven height. Mary Jo says her mother could not get into home safely her own with it the way it was.

Mary Jo says they looked around at what some other properties had and got a contractor involved. They put the deck on quickly, not as a permanent structure, but the contractor said that it is kind of a floating deal. She says they were not aware of any ordinance that they were violating. Farmer asks to see the picture of the deck again. Mary Jo says the picture was taken at a very different angle than the one without the deck. She says with her mother being legally blind it requires her to have consistent step heights and to be able to set her belongings down in order to get her keys and find things in her purse. Mary Jo says the screen door opens there and her mother needs both hands to get into the house; she also needs railings on both sides. This allows her safe access into her home. If she would have to step back she would be really close to that back step and she has a fear of falling because of her age and the accident her husband had. Mary Jo says her mother is well-adjusted right now and knows the number of steps she needs to get around. She has been legally blind since she was 30. Mary Jo asks that the Board grant the variance based on her mother's needs. Mr. Lium states that they are really looking for safety and ease of access for their mother.

Nohr says there was testimony from both parties that this probably is not on proper footings. He says that means that there will be quite a bit of rework to get proper footings. Mr. Lium says the contractor said he put it the posts are on concrete slab; he says the contractor's idea was to do it that way. Nohr says he understands that but it needs to be repaired. Mr. Lium says they are willing to work with that. Nohr says he doesn't know if it can be done without having to tear it off. Nohr says at this point they can have a deck that is maybe that large, but if it was concrete they wouldn't even need to be here. Nohr says if it would be a major rework that is something that they

might want to consider. Farmer says the irony is if you put in concrete it is permanent and never going to go away, whereas this is temporary and the next occupants aren't condemned to keep it.

Mary Jo says it was placed in that location because of the sidewalk that goes around the side of house, so that had to be taken into consideration as well. Mary Jo says to swing the door in the way that is safest is their utmost concern. Mr. Lium says most of the homes in that neighborhood are right at 25 feet at the house and there are other houses, four or five houses up, that have steps that are not concrete within 5 feet of the sidewalk. Nohr says they may have been there before the ordinance. Mr. Lium says he understands that and they made the mistake of not knowing the setback ordinance. Nohr says the contractor should've known that any type of construction requires a building permit and having proper footings and so-on. He also says that the contractor really let them down.

Speaking in Opposition:

None.

Farmer: this is the motion for file 2617 at 2118 19th Street South; requesting a variance of seven feet to the required 25 foot setback. The unique property limitation is the larger turnaround and landing that's needed by the occupant who is both blind and 82, and there's not sufficient space in the front yard to accommodate that turnaround. There'd be no harm to the public interest; ironically in this case, the deck is wood and would be considered more temporary than a concrete one that would not require a permit, not require a variance, wouldn't be here and would be permanent. The unnecessary hardship is that the occupant is blind and 82 and I am sorry to put that in the minutes here but it does put a human face on it as to why, and it does require a larger turnaround space than normal. I give her credit for still living along. So that being the case I would move for approval of the variance.

Seconder: Selover

The motion carried by the following vote:

Yes: 4 - Nohr, Farmer, Cherf, Selover

Excused: 3 - Clemence, Haefs, Gentry

2618

An appeal regarding the requirement that detached residential accessory buildings be placed in the rear or side yard at 1524 Prospect St., La Crosse, Wisconsin.

Molledahl states that the owner has applied for a permit to construct an 8 by 10 storage shed at this address. Municipal Code Section 115-390 (2)(c) states that detached residential accessory buildings may be placed in the rear or side yard when not in conflict with any other requirements of this code. The owner proposes to place the shed in the front yard of this parcel. A variance to allow a shed to be placed in the front yard will be required for this project to proceed as it has been proposed.

Molledahl shows a plot map of the property and points out the front yard and house. Farmer asks where Swanson Field is and Molledahl points it out along with Ranger drive. Molledahl says it is technically the front yard straight across and shed is proposed to be in that area. Nohr asks if a garage is there right now. Molledahl says there was a small utility shed that has since been removed. He shows an aerial photo

with the pole shed and points out where the new shed will go. Farmer says he knows where that is now and that Gail's tailoring shop is across the way. Molledahl shows a street view of the property and says the previous shed was not in the front yard setback.

Molledahl says hardship is present where no reasonable use can be made of the property; this can still be used as a single family dwelling if the variance is not granted. It cannot have a self-imposed hardship, financial hardship cannot be a deciding factor, and accessory structures are not eligible. Molledahl says the hardship must be due to unique limitations of the property where physical features of the property prevent compliance with the ordinance; this lot may be uniquely shaped, but there are other areas on the lot that the shed could be placed that would meet code requirements. Cherf asks if he is correct in saying that the previous shed was in an acceptable location because it was not in that front yard setback and even though it all looks to be the same, it was the side yard. Molledahl says he is correct.

Farmer and Nohr ask where the previous shed was and Molledahl says it was behind the front line of the house, so it was not considered in the front yard. Farmer asks how many feet long the lot is along Prospect Street. Nohr says it is 135 feet. Nohr says it is a very unique lot. Farmer says that you could make the argument that the unique property limitation is the fact that the ordinance was drafted with the idea that lots are 50 feet wide or 100 feet wide and you don't want these things in the front yard; here is a lot that has 135 feet of frontage and given the pie shaped nature of the lot what else are you going to do. Farmer says it is so far down there and Nohr says they will ask the owner about that. Farmer says it is crimping his living space. Cherf confirms the old and new shed locations and asks if there is a sidewalk not a street there. Molledahl points out Prospect Street and Cherf says it is not blocking a line of sight for traffic if it is in that corner. Molledahl states that it is out of the vision corner clearance area.

Speaking in favor:

Brian and Marie Legg, 1324 George Street, are sworn in to speak. Mr. Legg says that there is no room on the property for a garage for storage of snow blower, lawnmower, and other equipment. He says they have a front porch but it is enclosed and he doesn't want gasoline products in there. The little shed was in the existing drive location for parking. He points it out the shed and says it was made of steel that was rusted; when he purchased the property they didn't realize all of the stuff was on the property such as boats and cars and other things. To make the improvement they wanted to make the driveway to park a vehicle on and not encroach upon sidewalk. He says that this property is almost useless for them because it is a pie shape. They want to protect what they have for machines. Mr. Legg says they are across from Logan High school and up the street from Gail's. He says that the corner of their property is known as Logan High School "smoker's corner." They put up cameras because they lost a lawnmower; kids have figured that out so they go down the street to smoke now.

Mr. Legg says they need a shed to protect their investments; they just need an 8 by 10 shed. It will be made of vinyl so there will be no wood to rot. Nohr asks why they can't put it where the old shed was. Mr. Legg states that the old shed was where the driveway is now, so if they park in the driveway...Nohr asks about placing it closer to the house. Mr. Legg says there is a tree that is no longer there and he points out where it is in the picture. Mr. Legg says they'd have a large root span to dig out in order to put concrete in. Nohr asks if the tree is still there and Mr. Legg says it was a stump there when he bought the property, the tree is no longer there. Nohr asks if they want to park where the old shed is in the picture. Nohr says it looks like there is a curb cut there

and you possibly could park there before. Mr. Legg responds that it was possible but you would be partly on top of the sidewalk.

Mrs. Legg says what they did was they made the driveway accessible because it is two-hour parking right there since it is across street from Logan. They made the driveway so the car can be off the street and they want to put the shed off to the side; the little end is not actually their property. Nohr asks for her to point it out and he says it is a very small portion. Mrs. Legg says on Ranger Drive they have a wall there so they have a limited area to work with. They did add a parking spot so that does take away from the alternate and two-hour parking for the tenant. She says the shed did not look like it does in the picture; when they purchased the property it was in bad shape and the whole yard looked like a parking lot with boats, cars, and 23 mattresses and box-springs in the yard. She states they worked really hard on it because it is across the street from the high school. She says they live on the north side.

Mrs. Legg says they wanted to give their tenant a place to park so they don't have to worry about alternate side parking and the two-hour parking. Nohr confirms that this is a rental property and Mrs. Legg states that their son lives in it. Nohr asks inspection if the proposed parking is front yard parking. Diehl states that the curb cut and driveway were there prior to the front yard parking code; he doesn't see any violation as long as they are parking only on the gravel driveway area within the curb cut. Nohr is wondering why it has to be way out there on the corner and particularly since they don't have a garage with only a gravel parking area. Nohr says he doesn't understand why it can't be back over in the other area because they may not need a variance if it is behind the front yard line area; he confirms that it is because of the tree stump.

Selover asks for the dimensions of the old shed and Mr. Legg says he doesn't know for sure; Mrs. Legg says it wasn't big at all. Mr. Legg says it may have been 8 by 10; Selover confirms that the new shed will be 8 by 10 as well. Nohr asks if this is the one where there was two feet overhang no closer than 2 feet to the property line. Diehl states that there was a mistake when the original letter went out; a correction was made and the required variance is actually to allow the shed in the front yard; no overhang problems are there. Farmer says they are stuck with the code that is designed for traditional square lots and this is one where the front yard is so long and so peculiarly shaped and from the aerial photo you would assume that the wedged shaped area is back yard.

Farmer says it reminds him of the congregational church nursery school's request to put a sign there and the sign ordinance said they could only have one but it is designed for spots where you don't have 100 feet and the congregational church had more like 250 feet, so they made a variance based on that. Farmer says this is one of the few lots in the older section of the City that has a frontage of 135 feet; it is very rare and very valuable. Nohr asks if he would prefer to see the building in another area and it is only a tree stump that is holding them up. Farmer says he's not building a full-scale garage down there is the wedge; it is a little vinyl shed and if the next party objects to it they can move it. Farmer says if the issue comes regarding holding onto that curb cut; he states that if he were living there he wouldn't want to place the shed between the driveway and the house because then you are always walking around the shed to get to the car. Selover agrees that it makes it not very useable in that corner.

Nohr was thinking that it would be better if the shed could sit closer to house without requiring a variance. Farmer says the absurdity is if he asked to change is address Ranger Drive the back would become the front and it would be perfectly legal. Farmer says it is not as simple as changing your address though, that's why this is nuts. Mr.

Legg says the view is misleading because the yellow line in the photo is not where the edge of the property line is, but there is a retaining wall along there because that part of the land is higher than the wedge area. Molledahl says the GIS lines are not an exact science; it's just a reference. Farmer says most of the variances come from where the ordinance reasonably affects 95 percent of the properties and the other 5 percent just doesn't fit.

Speaking in Opposition:

None.

Farmer: the motion for file 2618 at 1524 Prospect St. to allow a shed to be placed into the front yard (and there should be quotation marks around front yard). And then I'll say facetiously if the lot was a more traditional lot this wouldn't be the issue. The unique property limitation – the property has 135 feet of street frontage and is triangular or pie shaped and by testimony this represents the least-used portion of their property both by distance and by shape. The lot is also 6,340 square feet and would not be approved today because it is below the minimum standard. So not only does it have an awkward shape, but it would be too small to be approved today, so it's got two things going against it in terms of unique property limitation. There's no harm to the public interest; the proposed shed is such a distance from the house to mitigate the traditional front yard prohibitions anticipated from a more traditional sized lot. Visually when you look at it even by the drawings here, your first reaction isn't front yard. Their first reaction is - way down the street. The unnecessary hardship if placement of the vinyl shed where it is will allow better parking and better use of the remainder of the lot. And so it doesn't seem unreasonable. I would move for approval.

Seconder: Selover

The motion carried by the following vote:

Yes: 4 - Nohr, Farmer, Cherf, Selover

Excused: 3 - Clemence, Haefs, Gentry

Other Business:

[18-1532](#)

Update regarding Complaint for Certiorari Relief (2422 Onalaska Ave. - Nylander property).

(Note: The Committee and/or Council may convene in closed session pursuant to Wis. Stat. 19.85(1)(g) to confer with legal counsel. Following such closed session, the Committees and/or Council may reconvene in open session.)

Motion by Cherf, second by Selover, to convene in closed session pursuant to Wis. Stat. 19.85(1)(g) to confer with legal counsel for both other business items (File 18-1532 and 18-1249). Chair Nohr noted that legal consultation is by phone with Chris Gierhart from Weld and Associates in Eau Claire.

Ayes: Nohr, Farmer, Selover, Cherf

Noes: None

[18-1249](#)

Update regarding Petition for Administrative Review of BOZA File 2611 (712 Cliffwood Lane).

(Note: The Committee and/or Council may convene in closed session pursuant to Wis. Stat. 19.85(1)(g) to confer with legal counsel. Following such closed

session, the Committees and/or Council may reconvene in open session.)

The Board remained in closed session for this item.

Motion by Farmer, second by Cherf, to reconvene in open session. All in favor.

Chair Nohr: I move to approve the Joint Motion to vacate variances and Order vacating variances in La Crosse County Case Number 18-CV-476 and to authorize Chairperson Phil Nohr to sign the Joint Motion on behalf of the City of La Crosse Board of Zoning Appeals.

Seconder: Cherf.

Ayes: Nohr, Farmer, Selover, Cherf

Noes: None

Adjournment

Motion by Cherf, second by Selover, to adjourn at 8:27 p.m.