



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Meeting Minutes - Final

Board of Zoning Appeals

Monday, September 21, 2020

4:00 PM

Council Chambers

Call to Order, Roll Call

Present: 5 - Douglas Farmer, James Cherf, Anastasia Gentry, Delores Spies, George Kimmet

Variance appeals:

[2649](#)

An appeal regarding the requirement to provide a 20 foot rear yard setback and an appeal to the requirement to provide 15 feet of perimeter fill around an addition at 712 Cliffwood Ln., La Crosse, Wisconsin.

Jon Molledahl, representing Fire Prevention & Building Safety was sworn in to speak. Molledahl states that the owner has applied for a permit to construct a 14- by 14-foot sunroom addition to the rear of the dwelling. This project will require two variances. Per municipal Code 115-143 there shall be a rear yard setback of not less than 20 percent of the depth of the lot. The required rear yard setback for this property would be 20 feet. The owner proposes a rear yard setback of 13 feet. Per municipal code 115-281, properties in the floodplain shall have fill placed one foot or more above the BFE (base flood elevation) extending at least 15 feet beyond the limits of the structure. The owner proposes to place fill one foot above BFE 3 feet beyond the addition. Molledahl says for this project to proceed as proposed two variances will need to be granted: a variance of 7 feet to the rear yard setback and a variance of 12 feet to the perimeter fill for this project to proceed as proposed.

Molledahl shows a plot plan showing the location of the addition on the back of the house and where the proposed three feet of fill will be placed. He also shows an aerial view of the floodplain overlay. Farmer confirms that it is the property in the middle that is shown on the screen and asks if the reason he needs the variance because he is close enough to the property line that he can't go any further with the fill. Molledahl says the side yard looks to have enough room, but the rear yard does not have enough room. Farmer asks if the variance of 12 feet is around the entire structure; Molledahl says that the 15 feet of fill needs to be placed around the entire addition. Farmer asks if the property backs up to a bluff or something else. Molledahl says he believes it is a residence.

Gene Linse, 712 Cliffwood Ln., is sworn in to speak. Linse says he was before the Board two years ago with a variance for a 7-foot addition to the back of the house which was granted; the variance was for the amount of dollars they were able to spend on improvements to their property that is in the floodplain. He says the City filed a lawsuit to block it. Linse points out that if the floodplain map is correct, the back side of their house is not in the floodplain. He says that if part of the property is in the floodplain, it is treated as if the entire property is in the floodplain. He says they actually dropped the building permit application because they didn't want to be in a lawsuit with the City and also because they were issued a new elevation certificate that

raised their base elevation 7 or 8 inches. Linse goes on to say that because of that they would've had to create a room with two different elevations, which they didn't want to do.

Linse says in the meantime a study was being done and has been submitted; he says based on that study their entire property should be out of the floodplain. He says it is probable that they will be entirely out because they are basically on the fringe. Cherf says he appreciates the background, but wants to focus on the business at hand here and the variances that he is requesting today; he says they cannot approve something based upon something that may or may not have happened. Linse says the structure will be built to comply with floodplain requirements. They will have a stepped-up elevation when they enter this room as opposed to adding (inaudible). What they really need is the variance of the 15 feet of fill; they can do three feet of fill with no problem. Linse says he knows that type of thing has been approved in the past.

Farmer asks why the rear yard setback is needed. He states that there must be a unique property limitation and no harm to the public interest and no self-created hardship. Linse says he has letters from three of the five neighbors that are okay with the project. He says the most impacted neighbor is the one directly to the rear and there are some unusual circumstances where the neighbor passed away and the house is intestate. He says the executors of the estate filed a letter of protest, but after he explained what was going on the executors issued or filed a letter to the clerk withdrawing their protest. Linse says he is hoping that the Board received those. Cherf confirms that there was a letter of protest signed by Joan Markos-Horejs and a letter from Regina Hilby rescinding the letter, Cherf says that each letter is signed by a different individual so...Linse says they are both executors. He also says that the reason those letters are significant is it demonstrates that, in fact, they have reviewed the matter and they are comfortable with it.

Farmer says he is not sure that the Board can jump to those conclusions because there is more than one trustee so the final letter doesn't necessarily negate the other unless they both signed the final letter. Farmer says that what is missing here is a document indicating whether there are more trustees or if they are executors. Linse says one of the trustees left town and the Markos sisters are all executors or trustees and he is not sure how they can verify that immediately but they could probably provide some documentation that the person that signed it is authorized. Cherf says to Linse that he has stated that with time he could get situation cleared up with Joan and Regina and that his testimony was that he believed his property will be classified as not being in the floodplain sometime soon. Cherf asks if Linse would like the Board to consider referring this for a matter of time which would allow for his property to come out of the floodplain. Linse says the problem with that is it would be one or two years until this gets taken care of because government moves so slowly; it goes through the DNR and they've waited a long time already. Linse says even if it is not approved, even with the current data, what they've asked for is permissible because the Board has authorized this type of request in the past. They have a house near them that has been approved in the past. He would like to start on this project yet this fall.

Farmer says whatever the Board did in the past is in the past. The reasons for approving in the past doesn't necessarily transfer from one property to another. He also says that when the variance for this property was approved in the past it probably didn't include a request for a rear yard setback. Farmer says that got quite a bit of criticism for their disregard of the floodplain measures and that is what caused the City to file suit. Farmer asks Linse what has changed that makes him think that the City won't do the same this time. Linse says the City revised the floodplain requirements regarding

the amount that they could spend. They were originally told that they could only spend \$4,000 and now they can spend \$40,000. Linse again says if they never get out of the floodplain everything being asked for is acceptable. They will meet the fill requirements that are established and they will have the proper height. There is nothing that is contingent up them getting around the floodplain.

Farmer says the 7-foot setback is a different issue. He says normally these setbacks are in place for fire reasons or to control additional developments on a site. Farmer says that others in the same situation have said a 7-foot setback is okay because the next property's house is 20 feet from the property line and so in a sense they are borrowing space from the other property. Farmer says that is why he asked what was on the other side of Linse's property. Farmer says even if the other property is vacant, they are giving up the option for them to expand. Linse says the structure that is being proposed will actually be further from the lot line than the structure that is currently there. There is currently a deck in place and they will be further away from the lot line if they are able to build the addition. Farmer says that the deck is open air and doesn't take up as much space and he's not sure that the deck would be compliant if it were built today. Farmer says his concern is having a structure so close to the lot line which would prevent the other property owner from adding onto their structure.

Linse says there is a privacy fence in between the two properties which can be seen on the aerial view of the property. Farmer says that he is hesitant to do something that is going to foreclose someone else's possibility to do something to their property years from now. Linse says he's not sure why that is a problem. Farmer says that if you go closer to the lot line than is permitted then the other property owner also goes closer to the lot line then you have a problem; the best example that he can give is that the fire department needs a setback on each property so it can accommodate some kind of fire fighting equipment. Farmer says structures can get too close together for firefighting purposes. Farmer again says that creating a smaller setback infringes on the other property being able to do something on that property. Linse says he takes issue with part of that logic because there is already a fence between the properties; if firefighting equipment needs to be brought in on one side or the other they will run the fence over. He adds that there will be more room than there is now if the addition is approved.

Kimmet asks how much space the addition would add to the setback. Linse says they are proposing to add four feet to the setback which would create a 13-foot setback; currently the setback is only 9 feet. Linse says he would argue that this would improve public safety. Farmer says the third test of the Supreme Court is that there must be an unnecessary hardship that would fall upon the applicant if the variance is not approved; he asks if Linse can speak to that. Linse says they would certainly like to increase the revenue on their property and the space that they feel they need, otherwise they wouldn't be doing it.

Speaking Opposition: None

Farmer: For the motion at 712 Cliffwood Lane, file 2649, requesting a variance of 7 feet to the rear yard setback and a variance of 12 feet for the perimeter fill, the motion as crafted is to approve the variances. The unique property limitation is the property is located in the floodplain and any expansion is limited by those regulations. There is no discernable harm to the public interest. The proposed addition would not be generally visible. The unnecessary hardship, because of the floodplain regulations the home owner would be denied any further expansion of the property.

No seconder.

The motion to grant failed to carry. The variance was not granted.

Concurring: Anastasia Gentry

Dissenting: James Cherf, Douglas Farmer, George Kimmet, Delores Spies

[2650](#)

An appeal regarding the requirements 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 structure at a property known as 2829 Hamilton St., La Crosse, Wisconsin.

Molledahl, still sworn states that the owner has applied for a permit to construct a new single-family dwelling at this address. Per municipal code section 115-281, properties in the floodplain shall have fill placed one foot or more above the base flood elevation extending at least 15 feet beyond the limits of the structure. The owner proposes having four feet of perimeter fill around the structure. For this project to proceed as proposed, a variance of 11 feet will need to be granted to the perimeter fill requirement.

Molledahl shows a plot plan and states that the darkened areas are where the fill is being proposed, and the light area in the center is the proposed new home. Cherf says it looks like the property to the south is at a higher elevation; Molledahl brings up an aerial view of the block and responds that the southern property is higher. Cherf asks if it is above the floodplain and Molledahl brings up a floodplain overlay of the property showing that the property to the south is out of the floodplain. Cherf confirms that the property abutting on the north side is also in the floodplain. Molledahl says this parcel's owner also is the owner of the two properties to the north and he is going to try and raise them all out of the floodplain.

Cherf what treatment would be given to the northern property if the variance is granted to this property; he asks if there would be a retaining wall or a hill. Molledahl says he is not positive, but the plan was to go four feet and then slope the land, then when the owner starts on the northern property, the fill would be brought to the same level across the two. Cherf asks Molledahl how big the hill is going to be and how much fill has to come in. Molledahl says he doesn't know the exact number, but the southern house is does appear to be higher. Molledahl shows a street view of the southern property and the property in question; he states that fill was brought in to build the house above the floodplain. Farmer confirms that the current property owner owns the other two. Molledahl says the lot where the trees are is the proposed building site. Farmer asks if there are any building plans for the house; Molledahl responds that all they have is the plot plan as of right now.

Farmer asks if the house has the normal 6-foot setback since they are not requesting a setback variance. Molledahl states that he does have the required six-foot setbacks on each side. Farmer says that the house must have a 38-foot house; Molledahl says the lot is 40 feet wide and the house will be 28 feet wide. Farmer asks if the other lots are 40 feet also; Molledahl says he believes they are. Farmer asks if this will be a single-family home and Molledahl responds in the affirmative. Kimmet asks if there will be a slope from 2829 to the 2825 after the fill is brought in and how much of a slope it will be. Molledahl says they will slope the grade instead of doing a retaining wall. Kimmet says there was something mentioned (in the application) about a retention pond for 100 percent of the rain; he asks what the assumptions were for that. Molledahl is not familiar with the retention pond part since he's not the inspector for that location and says the builder could elaborate on that.

Cherf confirms that this property is adjacent on the southern side to a property that is out of the floodplain. Molledahl states that a portion of the property is out of the floodplain, the area around the structure is out of the floodplain. The blue checked area is the floodplain and the black checked area is out of the floodplain.

Speaking in Favor:

Jared White, 275 Hickory Lane, Onalaska, Wisconsin, is sworn in to speak. White says that is proposing to tie in with the fill of the existing property to the south to keep some consistency, so that is why they are asking for the adjustment of the fill on the front of the property. White says the two properties north of the one in question are owned by the City at this time, but he is working on purchasing them. White says his plans are to slope the fill toward the City lots, the only issue is the detached garage. Cherf asks if White controls the lots to the north and White again states that he does not yet own them; he did not get his plans submitted in time for approvals by the City; he has been working with Dawn Reinhart at the City. Cherf asks if he is in negotiation on the properties; White says he is in the process of negotiation and just needs to have an approved plan before he can purchase. White says one of the possibilities was to bring a zero-lot-line twin home on the next two lots, which would get him a little bit more of a setback from Taylor Street where there is a bus stop. He would do a retaining wall on the end of that lot to finish the project and to make it look nice for the neighborhood.

White says the retention pond idea came about because of the process of bringing up the next two lots, they didn't want to push any water off onto other properties or onto the alley. White says he wants to keep consistency by matching the slope (on the Hamilton Street side) of the property to the south and then he would have a nicer slope going toward the detached garage which will be one foot below the finished floor of the residence. Cherf asks White if he would be agreeable to delay these proceedings to allow time for him to firm up the negotiations on the other two properties. White says he would like that or he would possibly bring in 15 feet of fill if the City allows him to leave it on the property.

Kimmet asks about the retention pond; he asks if White is basing the retention pond on some sort of historical weather data. White says he has been working with Doug Kerns from the City as he is trying not to impact others while working on developing this property. Farmer confirms that White would be okay with a referral if that is what the board wants, but with winter approaching he does want to get started as soon as he can. White says with the purchase of the City lot, he must start construction within 60 days and he wants to wait on purchasing because he won't be able to start anything in the winter. Farmer asks if deferring for 90 days would work better with what White is planning. White asks if he could bring it back before the board prior to the 90 days and Farmer says he suspects so, if White can coordinate the three lots together it would probably be better than doing them piecemeal. Farmer asks if that is a fair statement and White responds that is a fair statement, but he would like to get going on the project. White asks if he could do a temporary retaining wall, Farmer says he isn't sure about that.

Doug Kerns, 4162 Pfeffer Valley Road, La Crescent, Minnesota, is sworn in to speak. Kerns states the participation link is not working. Cherf asks if Kerns is on speakerphone and Kerns says he is on a landline. Kerns says the project is a cookie-cutter (very inaudible). Farmer says to Kerns that the Board is not able to hear Kerns without feedback; they Board cannot understand what he is saying. Cherf says

this most likely will be referred.

Speaking Opposition: None

A motion was made by Farmer, seconded by Gentry, that the Request for Variance be referred for 90 days. The motion carried by the following vote:

Yes: 5 - Farmer, Cherf, Gentry, Spies, Kimmet

Adjournment

Motion by Farmer, second by Spies to adjourn at approximately 5:07 p.m. All in favor, motion carried.