



Meeting Minutes - Final  
Board of Zoning Appeals

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Wednesday, September 21, 2016

7:00 PM

3rd Floor Conference Room

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**Call to Order, Roll Call**

*Chairman Nohr called the meeting to order at 7:01 p.m. and explained the Board of Zoning Appeals meeting procedure.*

**Present:** 5 - Douglas Farmer, Carol Haefs, Tom Knothe, Philip Nohr, Anastasia Gentry

**Excused:** 2 - Charles Clemence, Darlene Lassig

**Variance appeals:**

*Chairman Nohr opened the public hearing.*

[2567](#)

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 1827 Avon St., La Crosse, Wisconsin.

*Terry Thienes, 400 La Crosse Street, representing the Inspections Department, is sworn in to speak. The owner has applied to construct a new single-family dwelling 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. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. Three variances will be required on this project for it to proceed as proposed. A variance of 7 feet on the north side of the structure, a variance of 9 feet on the south side of the structure, and a variance of 9 ½ feet on the west side of the structure.*

*Thienes shows a picture of a retaining wall that will be similar to the one they will be putting in. He shows an aerial view of the property and states that the building in the picture has been demolished. Farmer asks where the retaining walls will go and he points the retaining walls on the site plan and on the aerial photo. Thienes states that it will be three feet off the property line. The ordinance states that if the retaining wall is more than two feet tall, it has to be three feet inward from the property line.*

*Thienes shows the site plan and states that the shaded area is where 15 feet of fill extends. The blue is the retaining wall. The dark area in the back is where the driveway will be. Farmer asks if the house is set in the middle of the structure and for Thienes to confirm that the grey is the fill required. Thienes points out the property line and shows that in order to comply with the ordinance that is where the 15 foot line would be – it would be over the property line. He shows the retaining wall on the north and south. Nohr asks about the blue area. Thienes states that the blue is concrete – patio, sidewalk and retaining wall. That's the way the architect drew it. The black is a driveway; part of it would have to have fill and the black portion shows where the fill would need to go – it slopes down so that is part of the variance.*

Haefs asks about the photo of the proposed wall. Thienes states that it is the type they are going to be using. Haefs also asks if it will be about the same height. Thienes states that it will be pretty close; they will be almost 4 feet - 45 inches. Nohr asks if there is another requirement in addition to the 15 feet. He states that he thought there was an ordinance that is going to be part of something that they are going to be reviewing later that was passed after Wendling built the house on the north side which stated they could only add 2 feet of fill. Thienes states that unless they went through the Design Review Board, and they did go get approval for the design of the retaining wall and the property, not the elevation.

Nohr states that he believes that the ordinance stated that you couldn't go over two feet of fill without proper approvals. Brent Thielen, 400 La Crosse Street, representing the Inspection Department, is sworn in to speak. Thielen states that you can be two feet three inches above the BFE (base flood elevation). That is the maximum that you can put in above the base elevation. Code requires two feet above the BFE. Nohr confirms that they can legally fill to two feet three above the property. Thielen states that you have all of the criteria for the wall. Nohr states that by this then the houses would be high in the air. Thielen says that it depends on where you are at; this one happens to be buried in the floodplain. The property at 1827 Avon Street is buried. The BFE is 643.8 and the top of the wall is at 645 which makes it is 3 foot 10 inches. Thielen states that he needs 18 or 19 just to get it up to base flood elevation.

Nohr states that he thought that the basic purpose of the ordinance was to never again have a situation like the Wendling situation. Thielen states that then you are going to limit all of the construction in the floodplain. Farmer states that it strikes him that there are some offsets to remediate the Wendling in a sense that he would have to construct the wall three feet back and then he's have to come before the board to get approval. Nohr states that he did have to get approvals for the 15 foot of fill, but there was no requirement for the wall. Farmer states that there are two offsets here; you have to be 3 feet off the property line which means the neighboring property would have some space so the lawnmower will get through and it will be decorative.

Farmer asks if the Design Review Committee notifies the neighbors. Thielen states that he is not sure, but it was approved by the committee. It went through and met all of the criteria. Farmer asks who is on the board and Thielen responds that it is each department for that area - the building inspector, water, traffic, police, fire, engineering, and stormwater management, planning, and Tim Acklin. Farmer states that this is the city asking permission for this; and goes on to say that Mayor Jonsrud tried to exempt the city from going through these kinds of approval processes. Thienes states that he believes there is criteria in the code that you can place it on the property line but you have to get affidavits from the neighbors for approval. Nohr asks if this is a Habitat home and Thielen responds that it is through the City Housing Rehab Program. Farmer states that over the years, everyone will be above the street. Thielen states that they keep track of all of the repairs, remodels and additions; they can only repair up to 50% until they have to tear it down or jack it up and make it compliant.

*Speaking in Favor of the Request:*

Kevin Clements, 400 La Crosse Street, representing the Planning Department, is sworn in to speak. Clements states that the intention is to build a house. Early on, neighbors were involved; they did talk to them to let them know what was going on prior to the Design Review Committee. The retaining wall will be 3 feet, 10 inches high. The Design Committee required a section view of the property showing the heights. Clements shows each member the section view and he states that it shows

*the height of the retaining wall and grades. It also shows the landscaping and the gutters and where they drain. They will be draining to the rear and also to the front so they won't divert to the neighbor's property.*

*Farmer asks what kind of gutters are being used and Clements responds that they will be seamless, the standard 5-inch with enlarged downspouts and screens on them. Nohr asks if there are some holdings areas. Clements states that they do and he points it out on the plan. Knothe asks if the house was razed already and Clements responds that it was. Nohr asks if it already contains fill and Clements responds that it is vacant and there is no fill yet. Nohr asks if there was an attempt to seek approval to put the retaining wall on the property line. Clements states that he did not ask the neighbors about that. One neighbor has a retaining wall on the property and there is a fence on the other side that encroaches a bit. The intentions are to remove the retaining wall and leave the fence alone because that neighbor has a small dog.*

*Clements states that it is not a preferred scenario, but they have to start somewhere. Nohr asks for the width of the lot and Clements responds that it is 50 (feet). For the city, it is a pretty decent size lot. Nohr asks if the City already owns the property. Clements responds that the City took it back on a housing rehab loan. Nohr asks if the adjoining property owner has seen the plans, and Clements states that he explained it to them. The neighbor has a short retaining wall about 25 feet long, that they put on the property years ago. The floodplain manager was also there to explain the 19 inches to reach BFE and how high things would come to be after construction.*

*Farmer asks what the distance between the house and retaining wall will be and Clements responds that it is – 8 feet, 10 inches. Farmer asks if they are sloping down to it. Clements states that they slope down at half an inch per foot. Farmer states that they are coming down four inches, which is not much; if he were the neighbor, he'd ask for more. Nohr asks how many bedrooms it will hold and Clements states that it will have three. Nohr asks how the program works. Clements states that the house will go up for sale; the City has plans available and they will be bidding out to general contractors. He plans that they will put in footings before winter so the general contractor has a start – it will be completed by May 31.*

*Farmer states that when they are built it is usually in a period style. Clements states that it will be a shingled roof with smart siding, Marvin Integrity windows and (inaudible) doors. It will have an attached garage with everything on one floor wider; it is a universal design with wider doors and such. Farmer states that when he has gotten questions from people he has sent them to Clements and he has never heard any complaints.*

**Knothe: with regard to file number 2567 regarding property located at 1827 Avon Street, I hereby move that we grant the variances as proposed, which includes three variances; a variance of 7 feet on the north side of the structure, a variance of 9 feet on the south side of the structure, and a variance of 9 feet, six inches on the west side of the structure. The proposed variances are not contrary to the public interest; in fact, it is in alignment and accordance with the public interest to get this property out of the floodplain. The property has a special and unique condition in that it is only 50 feet wide, complying with the ordinance with 15 foot setbacks on both sides call for an extraordinarily narrow house, which would greatly reduce the use of this property. The special condition of the property creates an unnecessary hardship in that the property would be virtually unmarketable and unusable if we did not grant the variance. For these reasons I move that we grant the variances.**

**Farmer seconded.**

**The motion carried by the following vote:**

**Yes:** 5 - Farmer, Haefs, Knothe, Nohr, Gentry

**Excused:** 2 - Clemence, Lassig

[2568](#)

An appeal regarding the requirement that all structures be set back at least 75 feet or the average of the buildings on each side from the Ordinary High Water Mark at 529, 601, and 621 Park Plaza Drive, La Crosse, Wisconsin.

*Thienes, still sworn, states that the owner has applied for a permit to construct footings and foundations for five multiple-family dwellings. State Statute 62.233 (5) states that provisions of a county shore land zoning ordinance under 59.692 that were applicable, prior to annexation, to any shore land annexed by a city after May 7, 1982, shall continue in effect and shall be enforced after annexation by the annexing city until the effective date of an ordinance enacted by the city under sub. (2). County Ordinance 20.31 states that all buildings and structures shall be set back at least 75 feet from the ordinary high-water mark of navigable waters. The owner will need a variance of 50.94 feet for building A, 28.24 feet for building B, 42.18 feet for building C, 47.78 for building D, and of 47.55 feet for building E.*

*Thielen shows a picture of the site plan with three buildings and points out the distances to high water mark. He shows a picture of the other two buildings and states that all five would not fit on one photo. It is over on Water Place One on the pike. Thienes adds that the aerial view shows a lot of parcels, but they have all been combined. Thienes points out that the buildings are going to go along the water line. Nohr asks for confirmation that Park Place Drive was reclaimed by the DOT, so it is not considered a legal road and asks why these buildings can't be placed farther back. Thienes states that there will be other buildings behind the ones that are along the shore. He adds that the ones along the shoreline are the only ones affected by the ordinary high water mark. Thienes also shows a view from Park Plaza Drive toward the water.*

*Nohr states that they did have this situation on Cherokee – Konrad property. He thinks that there was discussion at some time about who determines the high water mark. Thielen states that it is determined through a surveyed; he contractor and the representative are here to talk about the survey. Thielen points out the high water line on the map and the next dotted line represents the property line.*

*Speaking in Favor of the Request:*

*Phil Addis, 504 Main St, La Crosse is sworn in to speak. Addis points out the original high water line (shoreline); it has been redetermined by the DNR to be farther in where it is now. Addis states that it used to be farther out in the water. It is based on elevation. The surveyor relies on what the DNR says. Addis shows a large site plan that has all of the buildings on it.*

*The reason for the appeal has to do with Park Plaza Drive. Everyone assumed Park Plaza Drive was owned by the City of La Crosse. The requirement is that you have to be 150 feet from the right-of-way of the highway, which would be 14/61. Park Plaza Drive has been there since there was a hotel on this site; it has been there for 30 plus years. When the developers went in with their plan, which they've worked on for four years, they measured from the highway. They asked the DOT about tearing out the road. It was determined that it was not a road and it is owned by the States. There was a deed, but neither the State nor the City has it. Because there is no record of it being owned by the City, the buildings have to be 150 feet from Park Plaza Drive instead of the highway.*

*There is no way to fit all of the buildings on the site, if they have to go 75 feet from the high water mark on one side and 150 feet from the road on the other side. The DOT has agreed to a compromise, giving them 50 feet and if the board gives them 50 feet on the water side gives them 100 feet back and allows them to build on the site. Nobody knew it was not a legal road. Nohr asks Addis to repeat the compromise from the DOT. Addis again states that they agreed to give them 50 feet, so they only need to be 100 feet from the road. Nohr asks how that equals 100 feet; Addis states that if the board gives them about 50 feet for the variances, they will get about 100 feet back.*

*Knothe asks if the agreement with the State has any bearing on their variance requests. Addis states that it does not; if they had the 150 feet– they wouldn't be here. If they don't have this variance, they would not be able to do any construction. Nohr states that he has seen that it has a lot of fill there and Addis responds that it is now out of the floodplain by a couple of feet. Nohr asks if it will require a retaining wall. Addis states that it will not require a retaining wall. Nohr states that the surrounding property is not going to be at the elevation of this project. Addis states that all of the property is owned by the developer. The other property owner is the Company Store. Nohr states that the other property line isn't going to be at street elevation.*

*Jeff Wieser, 200 Twilight Street, is sworn in to speak. Wieser states that it is out of the floodplain right now. They are going to build it up three more feet to get a little bit higher, to be safe from the 500 year floods. Nohr asks about where the property meets the roadway and Wieser states that that end is actually up a bit higher. It is the higher part of the whole site. It might only be one foot there and it will blend up to the curb. The Company Store driveway is over that way. That is kind of what is going on there.*

*Farmer asks what would happen if they didn't have the compromise with that State and if the board doesn't grant the variance. He also asks how much the percentage the construction would shrink. Addis states that three buildings would be gone and you'd only have the center ones. Wieser states that they would lose close to 60 percent. Farmer states that the property taxes would then be less. Nohr states that the problem would also be with the County if it is a TIF district. Addis states that it is in a TIF district; it would mean less in taxes to the City and County.*

*Nohr says that he would like to explore the arrangement with the State more and asks if it is a done deal or if they are just considering. Addis states that they were given a verbal agreement that if they will grant the 50 feet. They didn't make it contingent on getting this variance. They won't have it in writing yet. The plans require State approval and approval of the Design Review Committee. Nohr asks if this development go on the tax rolls immediately. Addis responds that it will go into the TIF that is 10 or 12 year old now; it will be used to pay off the debt that was incurred to tear down the Holiday Inn and the removal the contamination. After that it will go on the tax roll.*

*Knothe asks if there is a building associated with the marina. Addis states that all of those buildings were removed. The docks will be reduced in number. Nohr asks if they have an effect on the development as far as setbacks for the high water mark; Addis responds that they are preexisting structures and they have no bearing. Wieser states that there was a pump and lift station for Baron Island but it was torn down last summer. It used to serve Pettibone Boat Club.*

*Nohr asks if this development is meant to be condos. Addis responds that they will be*

condos – they are called zero lot lines now. Some buildings are two condos, some are three, and some are four. It is one association for all of them. Farmer asks how long it has been vacant and Addis responds that it has been 13 years since the buildings were torn down. It was taken off the taxes 16 years ago. Gentry asks when it was bought and Addis responds that the developer bought it from the County 2 years ago. The first construction proposal was three years ago. Addis states that is the 4th or 5th set of plans that went to Design Review and City Council and was approved. Notices were sent to other property owners. Nohr asks why it has to be approved by Council. Addis responds that the property was rezoned about 25 years ago and any new construction has to be approved by City Council. Right now it is Zoned Planned Development.

**Knothe:** with regard to File 2568, regarding the property located on Park Plaza Drive in the City of La Crosse, I hereby move that we grant the requested variance from the ordinary high-water mark setback of 75 feet; in specific, a variance of 50.94 feet for building A, 28.24 feet for building B, 42.18 for building C, 47.78 feet for building D, and 47.55 feet for building E. The proposed variance is not contrary to the public interest. We have heard testimony that it will make the TIF District repayment possible and faster. The property has a special unique condition in that the developer bought the property with the understanding that the City owned the drive into the setback on the eastern side of the property and it turned out differently after the State said the at the road was not properly installed. The special condition of the property creates an unnecessary hardship for the developer in that the development would not be viable if these variances are not granted. For these reasons I move that we grant all of the variances as proposed.

**Secunder:** Haefs

The motion carried by the following vote:

**Yes:** 5 - Farmer, Haefs, Knothe, Nohr, Gentry

**Excused:** 2 - Clemence, Lassig

## Adjournment

On motion by Knothe, second by Farmer, carried unanimously to adjourn at approximately 7:55 p.m.