



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

Meeting Minutes - Final

Board of Zoning Appeals

Monday, August 17, 2020

4:00 PM

Council Chambers

Call to Order, Roll Call

Cherf called the meeting to order at 4:00 p.m., explained the meeting procedure, called the roll, and opened the public hearing.

Present: 4 - Douglas Farmer, James Cherf, Delores Spies, George Kimmet

Variance Appeals:

[2646](#)

An appeal to allow a solid fence over ten feet in height located on a heavy industrial zoned property at 1813 Kramer St., La Crosse, Wisconsin.

Matt Diehl, representing the Inspections Department, is sworn in to speak. Diehl goes over the requirements for granting a variance: unnecessary hardship, hardship due to unique property limitations, and no harm to public interests. Diehl states that the owner has applied for a permit to construct a fence at this property. Per Municipal Code Section 115-398(d), fences on commercial and industrial zoned properties must be of an open type similar to woven wire, chain link, or wrought iron and limited to 10 feet in height. The proposed fence consists of solid materials and is 11.5 feet tall. For this project to proceed as proposed two variances will need to be granted: a variance of 1.5 feet to the maximum height and a variance to allow the fence to be constructed of solid materials not of an open type.

Diehl shows a map of the area and points out that this variance would be for the section closest to the building. Farmer asks where the fence is at and if it is the red lines? Diehl states that the fence is shown with a red line. The area to the right of the fence is parking and the area to the left is the building. Diehl adds that the blue lines for the gates are right near the property line. Diehl states that the section to the left of the gates is for this variance (at 1813 Kramer St) and the portion to the left is for the next variance appeal (at 1735 Kramer St). Farmer states that the appellant has said in their application that the building has been built to meet all setback requirement; he says that it appears that the fence is not compensating for that as the fence comes to the front of the building. Diehl responds that it does come to the front of the building. Diehl states that the issue here is that the building was so large and the building codes restricted the size. Farmer asks if that is true even with all of the parking that is there; Diehl responds that the parking area is a separate parcel. Farmer asks if this would still need a variance if it were one parcel. Diehl responds that they would still need variances for their proposed fence. Farmer says that the application states that the unique property limitation is the setback, but it seems like it is more that two lots are being used as one.

Cherf says he can see on the drawing where Kramer Street is designated; he asks what street is at the bottom. Diehl responds that it is Oak Street at the bottom. Diehl shows an elevation drawing that shows the height (and materials) of the proposed

fence. The proposed fence is 11.5 feet, the metal panel of the fence will match the wall of the building. Farmer asks Diehl why the code was designed with the 10-foot limitation. Diehl states that he does not know. Diehl shows another drawing of the proposed fence, this time in a 3-D view depicting the section of the fencing for this parcel's variance. He again states that the gate is near where the property line is. Farmer asks again if this parcel were bigger, if they would need the variance. Diehl states again that they would still need a variance for the height and materials.

Diehl shows an aerial view of the parcel and points out that the buildings shown are no longer there (it is an older photo). Diehl shows the reasons the Inspections Department believes the variance should not be granted: there is no unnecessary hardship as this is a new building, there are no unique property limitations, and there is harm to the public interests as trucks will be pulling out into the street without being able to see traffic.

Cherf asks Kimmet, who is appearing virtually, if he has any questions. Kimmet he is wondering what the advantage might be for the extra 1.5 feet and says that might be a question for the property owner.

Todd Nedegaard, W6009 Ruth Ln, Onalaska, is sworn in to speak. Nedegaard says that there are two parcels and they did look at combining them but they couldn't do that at the time because of a couple of different things. The corner of the southern lot is in the flood fringe so they could not build on that parcel. Farmer asks which portion is in the flood fringe; Nedegaard responds in the affirmative – in the drawing it is in the top right corner. Farmer confirms with Nedegaard that the parcel is compromised because when part of a property is in the floodplain, it is treated as if the whole property is in the floodplain.

Nedegaard says they want to use building materials to match the store engineering building that was just put up. Nedegaard says that by matching the building it would have a good look to it for a person that is passing by. They are keeping store brick (bricks used for building their stores), gas dispensers, and other things that you want to store, but don't necessarily want to keep inside a building. They want to keep these things in an enclosed secure area that is out of view of the public. He says they have been trying to improve the appearance of the Kwik Trip "campus" and this is one of the ways to do that.

Kimmet asks why the extra 1.5 feet are needed since a person wouldn't be able to see over a 10-foot fence. Nedegaard responds that they are going to be storing palette heights. They plan on double-stacking palettes in some areas; each palette is just over 5 feet in height. Kimmet says it becomes a bit of a safety issue – pedestrians could potentially be harmed if things were knocked off over a 10-foot fence.

Farmer says he needs more information on the unnecessary hardship. Nedegaard says by not allowing them the variance they would have to store these items inside and gas dispensers are not something you want to store inside. Farmer asks if these items are potentially fire hazards; Nedegaard says some of the gas dispensers they store are new and some are used, so there is a residual gas smell. Farmer asks what the building is for and Nedegaard says it is used for the store engineering department, the department that builds and maintains all of their stores, so all of the equipment they use is housed in that building. Farmer asks if the pumps are serviced inside the building; Nedegaard says they don't bring them in the building at all.

Speaking Opposition: None

Farmer: I would propose for variance request 2646 having to do with 1813 Kramer Street and variance request 2647 having to do with 1735 Kramer Street, that we would approve the variance of 1 foot six inches to the maximum height and a variance to allow the fence to be constructed of solid materials not of an open type. The reasons for that is the limitation is caused by the fact that the parcel being used is divided by the property line. This is evidenced by the variances required for two small "rumps" on this first application and the rest of the fence on the second application. The parking lot section is also a limitation because it is in the floodplain and combining the lots would require the entire parcel subject to flood limitations. I know that from personal experience having to deal with flood insurance and it becomes cumbersome. There'd be no harm to the public interest and there has been no demonstrated harm to the public interest; the truck traffic referenced is not unusual for this area. The additional screening resulting from 11.5 fence and the architectural similarity to the building both are in public interest and desirable. The unnecessary hardship is addressed because the fence relating to servicing the gas pumps would be serviced outside. Not granting the variance would require servicing and related forms to be done inside resulting in air quality issues. I move for approval of both.

Second by Spies.

The motion carried by the following vote:

Yes: 4 - Farmer, Cherf, Spies, Kimmet

2647

An appeal to allow a solid fence over ten feet in height located on a heavy industrial zoned property at 1735 Kramer St., La Crosse, Wisconsin.

Matt Diehl, still sworn, states that the owner has applied for a permit to construct a fence at this property, which is directly south of 1813 Kramer Street. Per municipal code section 115-398(d), fences on commercial and industrial zoned properties must be of an open type similar to woven wire, chain link or wrought iron and limited to 10 feet in height. The proposed fence consists of solid materials and is 11.5 feet tall. For this project to proceed as proposed two variances will need to be granted: a variance of 1.5 feet to the maximum height and a variance to allow the fence to be constructed of solid materials not of an open type.

Diehl shows the plans for the fencing and points out the areas of the fence that are on this property; the fence to the right of the gates. He shows the design for the fencing which is metal to match the building. He shows a 3-D view of the proposal and points out the section of fencing.

Nedegaard, still sworn, says that this is the other part of the fencing that they need for enclosing the area for the bricks and gas pumps. Cherf clarifies that this is a similar use enclosure as 1813 Kramer Street. Farmer asks if this is the other half and Nedegaard confirms. Farmer asks if the solid paneling is an extra cost, to which Nedegaard responds that it is a bigger expense.

Speaking Opposition: None

Farmer: I would propose for variance request 2646 having to do with 1813 Kramer Street and variance request 2647 having to do with 1735 Kramer Street, that we would approve the variance of 1 foot six inches to the maximum height and a variance to allow the fence to be constructed of solid materials not of an open type. The reasons for that is the limitation is caused by the fact that the parcel being used is divided by the property line. This is evidenced by the variances required for two small "rumps" on this first application and the

rest of the fence³ on the second application. The parking lot section is also a limitation because it is in the floodplain and combining the lots would require the entire parcel subject to flood limitations. I know that from personal experience having to deal with flood insurance and it becomes cumbersome. There'd be no harm to the public interest and there has been no demonstrated harm to the public interest; the truck traffic referenced is not unusual for this area. The additional screening resulting from 11.5 fence and the architectural similarity to the building both are in public interest and desirable. The unnecessary hardship is addressed because the fence relating to servicing the gas pumps would be serviced outside. Not granting the variance would require servicing and related forms to be done inside resulting in air quality issues. I move for approval of both.

Second by Spies.

The motion carried by the following vote:

Yes: 4 - Farmer, Cherf, Spies, Kimmert

[2648](#)

An appeal to allow a solid fence, barbed wire eight feet above grade, and barbed wire projecting outward at 3131 Commerce St., La Crosse, Wisconsin.

Diehl, still sworn, states that the owner has applied for a permit for a fence at 3131 Commerce Street. Per Municipal Code Sections 115-398 (d) and (e), fences on commercial and industrial zoned parcels must be of an open type similar to woven wire, chain link or wrought iron; barbed wire must be installed at a height of 10 feet above grade and point towards the fenced property. The proposed fence consists of solid materials, barbed wire at a height of 8 feet above grade, and points away from the property. Three variances will be required for this variance to proceed as proposed: a variance to allow a fence to be constructed of solid materials not of an open type, a variance to allow barbed wire to be installed at a height of 8 feet above grade, and a variance to allow the barbed wire to point away from the property.

Diehl shows an overhead view of the property and points out the location of the fence. He states that it will be one fence permit, but the whole fence isn't the same in all areas. He points out that the section closest to the building will be block type fencing and the rest will be chain link with barbed wire at the top. Cherf asks if the block portion would be a similar in appearance and somewhat of a continuation of the building. Diehl responds that it will be similar. Cherf asks if that portion will be the same height and what the corrugated metal portion will look like; Diehl says that would be a better question for the applicant. He brings up a picture of what the block wall will look like and says it will be at 8 feet or slightly higher. Farmer asks why they are using block for part of the fencing. Diehl says he believes it is because it will provide a bit of cover for the materials being stored in that location since it is adjacent to the street. Farmer asks if they have any fencing now and Diehl responds that it is all brand new. Farmer asks how tall the barbed wire will be and Diehl responds that the barbed wire would sit on top of an 8-foot fence – he shows a picture of fencing that is similar to what is proposed. Farmer asks if the code allows barbed wire at all; Diehl responds that industrial zoned parcels are allowed to have barbed wire atop a 10-foot fence and it must point inward toward the fenced in area.

Bill Torrance, 1604 Nakomis Ave, La Crosse is sworn in to speak. Torrance states that they have put their plans before the planning commission because of the covenants in the interstate industrial park that have to be met. He says they have been working to maintain the aesthetics of the parcel. The fencing is going in for the protection of their employees. They've noticed over the years that there have been

fatalities where people having been coming into businesses and shooting people. Torrance says the barbed wire won't do any good if it is pointed inward. He adds that the fencing will match up with the neighbors 8-foot fence topped with barbed wire that points outward. Torrance says the concrete block part is an extension of the existing building wall which will be 10 feet high; it will become part of an addition that will be built in three or four years. He adds that it will protect the view of the materials inside of that area and it actually costs more than if they were to use chain link fence.

Farmer asks Torrance to address the unique property limitation. Farmer explains that the property must have a unique property condition, for example, it is pie shaped or it doesn't have the square footage that the law requires because it is so old. Farmer states that the unique property limitation for the last variance appeal was that there is a property line running down the middle. Torrance states that there are no limitations. Farmer reiterates that the Board needs to meet the three requirements of the Supreme Court and a unique property limitation must exist in order to grant the variance. Farmer says one of the other requirements is that there can be no harm to the public interest and he believes that the variance does meet that. Torrance says they are just complying with the planning commission's requirements for the industrial park. Farmer asks for more explanation.

Torrance says there was a covenant that was put in place for the industrial park in 1972 and that is still in place. It requires the building to have a 50-foot setback from the street and it has to have a decorative finish on it. Farmer says that answers it somewhat for the block part of the fence. He asks what it would have to do with the chain link fence. Torrance says they are really just matching with what the neighbor to the north has. Cherf asks if anyone else has questions. Kimmet states that having the barbed wire is a pretty standard thing and he is surprised it is not allowed. Farmer says without a unique property limitation this variance could fail; he asks Torrance if they would be okay with deferring this if they cannot come up with something tonight. Torrance says it could only be based on the covenants. Farmer says they could be a limitation, but the Board would need to know the specifics. Cherf says if they cannot find a legal way to approve this, would Torrance make use of the 30-day referral as it is his understanding that if the variance is not approved, they cannot appeal again for one calendar year. Torrance says the covenants state that all materials stored outside the buildings must be behind the building setback, must be screened from the view of the public with solid materials or screening approved by the planning commission, the fence must be at least 6 feet high and must be kept painted, or have such other finish as is generally accepted for good appearance, wire fencing is not acceptable for this purpose.

Matt Gobel, 521 8th Ave. N., Onalaska is sworn in to speak. Goebel states the masonry wall will match up to the existing corner of the building; it will actually vary in height based on the grade. He adds that it will be 10 feet at the building and between 8 and 9 feet as the grade moves. He states that the masonry wall is required by covenant. He says the hardship for the masonry wall is because of the covenant. The barbed wire hardship is because having barbed wire pointing in does not protect the property as well as it could if it was pointing out. Gobel states that he believes Torrance would accept approval of a portion of the three variances, which would be better than denial of all three parts. Kimmet asks if there is any evidence that having a taller fence would be better than what code allows. Gobel states that the fence they are asking for is shorter; as long as the barbed wire can point outward, the 8 feet is effective and would meet their needs. Gobel says having the barbed wire is to protect people from underneath it, but no-one is walking near it as it is off the right-of-way by about 50 feet, and on the sides and back there is no public access.

Torrance states that along the roughly 500 feet of chain link on the south property line and on the west side there is no public access. He says Oak Street is on the west side and you'd climb up a hillside to get to their property; it is all covered with vegetation, your average person is not going to be travelling in that area. He goes on to say that the only reason someone would be in that area would be to climb the fence. Farmer asks Torrance why 10 feet is a hardship and 8 feet is not. Torrance says other than the financial reason, there is none. He says they are mostly concerned with the barbed wire facing out and not in rather than the height of the fence. Farmer says they are basically stating that at 8 feet they would get 95 percent security at 80 percent of the cost. Torrance says that reasoning is fair. Farmer says he understands that pointing in or out may not be a deal breaker, he understands that pointing out is discouraging, but it would be much better. Kimmet says that Torrance said there is a rise adjacent to the fencing on the side. Torrance responds that it is about 15 to 20 feet in height. Kimmet asks if that makes for the reason that they would go for the 8-foot fence. Torrance says there is a ditch near the road then at the top of the hill is where they would put the fencing.

Farmer: I'll make a motion on application 2648, property 3131 commerce street, a motion to approve a portion of the fence to be constructed of solid materials and to allow barbed wire installed at a height of 8 feet as opposed to 10 feet to be pointed away from the property instead of toward the property. As I said in the discussion the unique property limitation while it is still one of the legs of the stool we have to approve, doesn't really apply in this case because we are addressing height and materials of the fence and the limitation does not have anything to do with that. I personally think that 8 feet versus 10 feet is open for discussion, it is all in the same area. The idea that you could get 99 percent of the security with 80 percent of the cost is a relatively sound argument. It is lost on me why the ordinance calls for the barbed wire to be facing in when every fence in America it's facing out. I would suggest to the planning department and inspection department that the ordinance be changed otherwise we'll have this issue over and over again. There would be no harm to the public interest because this fence would be consistent and similar to fences in that neighborhood. The unnecessary hardship is without the fence there would be less security. And I move for approval.

Second by Spies.

The motion carried by the following vote:

Yes: 4 - Farmer, Cherf, Spies, Kimmet

Other Business

[20-1111](#)

Discussion on Circuit Court Case regarding BOZA File 2644 (Finishing Touch Signs/Bethany Riverside Lutheran Home)

Cherf stated that legal counsel has been obtained to represent BOZA and let the Board know they have been instructed not to discuss anything with anyone other than legal counsel.

Adjournment

Motion by Farmer, second by Spies to adjourn at 5:15 p.m. Motion carried.