



CITY OF WAUWATOSA

7725 WEST NORTH AVENUE
WAUWATOSA, WI 53213
Telephone: (414) 479-8917
Fax: (414) 479-8989
www.wauwatosa.net

MINUTES MEETING OF THE BOARD OF ZONING APPEALS Thursday, March 26, 2009

PRESENT: Mr. O'Connell, Ms. Meyer, Ms. Bruderle-Baran, Mr. Randall, Mr. Subotich,
Mr. Pennoyer - 6

ALSO PRESENT: T. Szudy, Planner; G. Blando, Property Maintenance Inspector

Mr. O'Connell as Chair called the meeting to order at 7:00 p.m.

2515 Lefebor Avenue

Variance

Request by Christopher and Kim Meidl for a variance for a fence that exceeds maximum height regulations in the AA Single Family Residence District at 2515 Lefebor Avenue.

Ms. Szudy said the applicants installed an iron gate across their driveway and on a portion of their neighbor's property, David and Kelley Ruzicka, 2509 Lefebor Avenue, that is not compliant with the 4- ½ foot maximum fence height. Upon receiving a complaint, the city inspected the gate and took various measurements of the gate height from grade. At the post along the driveway, the height is 4' 10" and rises to a height of 5' 8" at the center of the gate which includes the finial. The property maintenance inspector issued a Notice of Noncompliance to both the applicant and their neighbors for violating the fence height. The Meidl's have an easement with the neighbors that allows the gate to be located on a portion of their property. The applicants appealed the Noncompliance Notice, which was denied by the Board at the February meeting and are now asking for a variance in order to retain the gate as it was constructed.

If the variance is denied the applicants have two options: 1) petition for a circuit court review of the Board of Zoning Appeals decision; or they can 2) modify the installation to comply with the fence code. If the variance is granted, there is no further action to be taken by the applicant. For a point of clarification, as the easement is a civil matter between the property owners, the variance approval or denial has no bearing on the status of the easement. The only item at issue before the board is ruling on the variance for the height of the fence.

Mr. Dave Sayas, representing the Meidl's, said that the Meidl's came to City Hall two times for approval to install their gate and was told by Mr. Schreiber that there shouldn't be a problem. They got an easement from the neighbors allowing them to use their property and the fence was installed. In October Ms. Meidl brought in a drawing which Ms. Welch signed off on. Mr. Sayas said the Meidl's did everything they were supposed to.

Mr. O'Connell asked if anyone in attendance wished to speak for or against the variance request.

Present in favor: Christopher and Kim Meidl, 2515 Lefebor Ave.
Atty. Dave Sayas, 11430 W. Blue Mound Road

Present in opposition: Dave and Kelly Ruzicka, 2509 N. Lefebor Ave.
John Maher, 2476 Lefebor Ave.

Mr. Dave Ruzicka said he owns the home south of the Meidl's and said the non complaint gate is on their property. He said that since there is a city ordinance, there is no good reason to allow a fence of excessive height and felt it would set a precedent. He said there is no practical reason why this gate needs to exist in its current form and hopes that the variance is not approved.

Ms. Kelly Ruzicka also stated that they don't feel the Meidl's will be able to meet the four criteria necessary to have a variance approved. She said the fence goes right up to their property and when they look out their window they see a 5' 8" gate. She said that the Meidl's were aware of the city ordinances as this was discussed before the easement was signed. Ms. Meidl noted that the drawing signed by Ms. Welch was after the fence was installed. Ms. Ruzicka said she and her husband have started a petition in the event the city allows this gate to remain. Everyone then should be given the same opportunity to secure their yards.

Mr. Ruzicka said they built a fence and gate on their property following the city code, and if there is an ordinance it should be followed.

John Maher, 2476 Lefeber Ave., spoke against allowing the variance. He said in the past he had work done and hired a contractor who researched the code, applied and received a variance and then started the construction, which is the way it should be done.

Mr. Randall noted that Mr. Sayas in his presentation acknowledged the criteria needed for a variance to be approved and asked how they feel they meet the criteria. Mr. Sayas said that it will cost over \$5,000 to modify the fence. On two occasions Ms. Meidl came into the city for approval and this is not a hardship that they created.

Mr. Pennoyer said the monetary cost to modify cannot be considered and the document that was approved does appear to have a 4" discrepancy in the fence height measurement. The approval was based on a drawing that was not constructed. The drawing was misleading to the person making the approval.

Ms. Meidl said Mr. Schreiber told her to bring in gate specs and someone would sign off on these. She said the drawings are accurate other than the finial dimension which she was told could be above the 4' 6" height.

Mr. O'Connell asked Ms. Meidl if she presented anything to the city showing that the fence would be 4" off the pavement. He said if the gate were installed on grade it would be a different story. He thought the approved document was a drawing not really a spec sheet on the gate. He said the four criteria need to be met.

Ms. Meyer asked what the difficulty or hardship is, other than the cost, which prohibit you from enjoying your property. Mr. Sayas responded that they have to figure the cost in and they have to rely on the information told them by the city before the gate was constructed. Ms. Meidl said she made it perfectly clear to Mr. Schreiber that she needed assurance that the fence would be to code. Ms. Meyer asked if there is anything exceptional with the property that would allow the committee to allow a variance. She asked if there were a grade or slope issue. Mr. Sayas said it is an unlevel grade and that the electronic gate couldn't be put flat on grade.

Mr. Ruzicka said that the gate door opens toward their house not affecting where the grade issue is.

Mr. O'Connell commented that the drawing signed off by Ms. Welsh does not show grade issues or room for the electronic gate. There is nothing on the document stating that. Mr. Sayas responded that after the Meidl's made two trips to city hall they should have been told about a variance process. Ms. Meidl said they told the contractor not to construct anything until approval from the city was received. Mr. O'Connell again asked how they meet the variance criteria.

Ms. Meyer read the four criteria needed to prove the variance. She said these are very high standards and understands that the code might be confusing to some people. Her question is in looking at the criteria she hasn't heard anything that meets these requirements. Ms. Meidl said they wanted their property gated in and it was approved. She said had they been told to go through a variance process they would have.

Mr. Randall said there seems to be some disagreement as to what the city approved and asked Ms. Meidl for a timeline. Ms. Meidl said she didn't have exact dates, but signed a proposal with their contractor on April 3 for an iron gate. She said she then met with the city and talked with Mr. Schreiber about adding an arch sometime in April. She didn't remember who told her about the 4 ½ ft. height restriction. Mr. Randall asked if she presented any paperwork at that time. Ms. Meidl said she discussed with Mr. Schreiber that the gate would be higher than 4 ½ feet with an exaggerated arch. She said she either drew a picture or brought an exhibit in. She remembered drawing something for him in one of their discussion. Mr. Schreiber was aware that the gate would be higher than 4-1/2 feet and a subtle arch would be fine. She said she told him it was going to be a custom gate and she needed to be sure it would be compliant. She told Mr. Schreiber it would be higher than 4 ½ ft. though no grade issues were discussed. After two meetings with Mr. Schreiber she told her contractor to go ahead with construction.

Mr. Randall asked Ms. Meidl if the fence had been constructed before the second meeting with the city. She said not until she received that approval sometime in April. Ms. Meidl said they then contracted with the contractor. The gate was installed in late June. She said that there were two easement options presented to the Ruzicka's before the gate was installed. The first easement was presented to them was dated June 1, and then made the requested revisions. Ms. Meidl said the Ruzicka's were in favor of an encroachment. She said they hired an attorney for the easement at the end of May. Ms. Meidl answered Mr. Randall that the final easement was dated July 24, 2008. Ms. Meidl said the easement had been discussed before the gate was installed.

Mr. Randall asked what happened after the gate was installed. Ms. Meidl said they received a letter from the Ruzicka's attorney. She then presented a document to the city for approval on October 9th. Mr. Randall asked Ms. Meidl who wrote the 4' 10" dimension at the top of her document and Ms. Meidl said she did. She responded to Mr. Randall that she still did not talk to Mr. Schreiber about the grading.

Mr. Randall asked the Ruzicka's if the information they heard related to the timeline were accurate. Mr. Randall noted that their easement issue is not subject to the variance and were there any points they would like to enter. Mr. Ruzicka said if the gate were constructed and installed before receiving written approval, he felt that was a mistake on the Meidl's part. Ms. Ruzicka said the timeline was vaguely correct.

Mr. O'Connell questioned whether the committee should discuss the third criteria which states that the variance will not create special detriment to adjacent property and noted that this gate does encroach the neighbor's property.

Mr. Pennoyer said that in his opinion, there is a difference in what was approved and what was constructed. He felt that if this variance were approved a precedent would be set. He thought it was very difficult to fit this situation into any of the criteria.

Ms. Meyer noted that the neighbors feel the gate is a detriment to their property. She said that it is rare when a variance is granted unless it is for safety.

Mr. Randall said that the City Attorney has cited a 2004 case before the Wisconsin Supreme Court which said that the applicants have a very high burden of proof of hardship. He asked the Meidl's what is preventing them from enjoying their property without this gate. Mr. Sayas said that since it is an electronic fence it has to be off the ground due to ice and snow. He said that the Meidl's were told the

finals and the slight curve would not be a problem. He said if you cannot rely on the information the city gives them, what would their options be. He said the hardship was not caused by his clients, they feel the hardship was caused by the city by telling the Meidl's to go ahead with the gate.

Mr. O'Connell asked why this variance is needed for the Meidl's to enjoy their property the way that their neighbors do. Mr. Sayas said the gate is there for security and safety. He said if the finals are disregarded there is a very minor variance. Mr. Ruzicka said if the gate is considered for security, they feel the finals should be counted in the overall height. Mr. O'Connell again asked if the gate were necessary for the preservation and enjoyment of their property.

Mr. Randall noted that since a security issue was discussed he didn't know how well a gate would provide protection when it is 5" 10" at the top of the arch and three feet at the sides.

Moved by Ms. Meyer, seconded by Mr. Pennoyer to deny the variance. It is recognized that the applicant for the variance would like to develop his land to the highest and best use and for the greatest economic return; however, it is the finding of this Board, that there is nothing unusual or exceptional or extraordinary about the circumstances pertaining to this lot and the owner is able to make reasonable use of the property given the zoning requirements. They are general hardships that zoning imposes generally on all property. There are many uses permitted under the zoning code for which this land can be used without the need of a variance. Upon a roll call vote – Ayes: 6

Ms. Meidl asked what the time line is for compliance. Ms. Szudy replied that they have 30 days from today's decision date.

~741 Honey Creek Parkway

Variance

Request by Jennifer Wright, MMSD, for a Variance to the side yard setback for construction of a pumping station emergency generator in the Parks and Open Space District at ~741 Honey Creek Parkway.

Ms. Szudy said MMSD proposes to construct a structure to house a pumping station emergency generator. The approximately 400 square foot structure will control the generator noise and will have four walls, a door and no roof. The natural gas powered generator is necessary for public safety as it will provide emergency power to the pumping station located at the corner of Wisconsin Avenue and Honey Creek Parkway. The generator will be located approximately 260 feet north of Wisconsin Avenue on the west side of Honey Creek Parkway and will be setback 25 feet west of the curb but approximately 80 feet from the property line, which is on the east side of the roadway. However, Parks and Open Space zoning requires a 100 foot side yard setback. MMSD explored three possible locations for the generator and all locations would require a variance of some type due to limitations of the terrain, floodplain location, and the parcel configuration. The Common Council recently approved a Conditional Use for this location and the emergency generator is necessary for public safety.

Ms. Wright said a bypass pump station is needed for public safety. If the power were to fail sewage could back up into homes if the pump station did not run. She said they looked at putting a pump station in this location previously in 2000 but there was too much opposition. Photos have been presented of the enclosure which would have an open top. The top would be screened to prevent anyone or anything from getting into the enclosure. This location is being proposed because the location is higher than the location to the west so the building profile will actually be slightly lower.

Present in favor: Jennifer Wright, Milwaukee Metropolitan Sewerage District,
3/26/09 BZA

260 W. Seeboth, Milwaukee
Steven Franks, TN&A Associates, Inc., 1033 N. Mayfair Road

Present in opposition: Dan Beyer, 1451 N. 51st St., Milwaukee
Larry Beyer, 740 Honey Creek Parkway

Dan Beyer said he is here on behalf of his father who lives directly across from this proposed location. Mr. Beyer said that it was only at the last Plan Commission meeting that the setback was discussed, not at previous meetings. He acknowledged that the pumping station will contribute to the health and safety but is concerned with the location. He suggested moving the structure twenty feet north and west.

Larry Beyer said if the structure goes up in the location it would violate his view. He said by moving this twenty feet it would alleviate some of this. His objection is the location and property value impact. He mentioned one of the criteria in allowing a variance is that it will not create a special detriment to adjacent property. He felt this could be addressed by putting the structure on the west side of the creek. Mr. O'Connell asked how many homes on the parkway could be affected and Mr. Beyer said three or four. Mr. O'Connell asked Ms. Wright if the generator could be moved outside the setback.

Ms. Wright said that this location was proposed because of the least impact of encroachment of the flood plain. Moving it would put it at an elevation in the flood plain and the building would have to sit higher in order to keep out the flood waters. The building wall would be higher and would have a greater impact on the flood plain elevation which is an issue of city ordinance. The equipment has to be installed above the grade level.

Dan Beyer said his understanding is that this proposal is still located in the floodplain. Mr. Franks said a portion of the building is. Mr. Beyer presented a FEMA map which he said shows differently. Ms. Wright said that this location is a high spot in the area resulting in minimal impact to the floodplain.

Ms. Bruderle-Baran asked about the structures dimension and asked about proposed landscaping. Ms. Wright said the enclosure would be approximately 14 feet wide, 25 feet long, and a minimum of 10 feet high. They have asked for junipers to be planted where it faced the road. Ms. Wright said if the generator were moved 20 feet to the north and west other neighbors would be impacted. Larry Beyer agreed that was a possibility.

The committee reviewed the map and the other options were discussed. Mr. Pennoyer asked if the additional two feet in height wouldn't still be obtrusive if moved toward the creek. Mr. Franks said the roof line would be the same but the foundation and walls must be raised three feet above grade to avoid generator flooding.

Larry Beyer asked if it makes sense to build the structure with no roof. Mr. Franks said a totally enclosed building would require heating, ventilating, lighting, and motorized louvers and vents for the intake air and the exhaust gas from the generator engine. Estimates indicate that a totally enclosed unit will be from two to four times more expensive.

The committee asked to explain the bypass system. Ms. Wright said during a storm event when the sewers fill up this station will pump sewage into the creek to prevent back up into the homes. She said that an easement with the district is in process.

Mr. Franks pointed out on the FEMA map showing the flood plain elevation at 678. A survey was done in this area with the elevation showing the high spot in this vicinity. Mr. Franks said if flood waters occur, they will go out into the street. The building only encroaches on the west side into the 678 standard slightly. Mr. Randall asked what a 20 x 20 move would look like. Mr. Franks said it would be within the

678 floodplain. Mr. Randall asked if any type of variance that would be needed if moved. Mr. Franks said not that they are aware of.

Mr. Randall said given that there are no homes on the east side what is the impact of the water displacement. Mr. Franks said that since the park area is so wide it would have minimal impact. The water will be contained within the county's property which is why they are proposing this location.

Mr. Randall asked what problem it would pose if the structure were moved 20 feet. Ms. Wright said they would have to check to make sure that it wouldn't cause any problems. Mr. Franks said more clearing would have to be done and it would be more likely that large trees would have to be removed.

Mr. Randall asked Ms. Szudy if the setback issue was discussed at the Plan Commission. Ms. Szudy replied that this has been ongoing for six months and has been in flux. She said there was no immediate recognition that a variance may be needed because no location had been set. Ms. Szudy said any chosen location would need a variance. Mr. Randall said except the discussed 20 foot move.

Mr. Pennoyer asked if other county approval would be needed if they moved the structure. Ms. Wright said a larger easement related to this would be doable. Ms. Meyer asked if the process would have to be started over again if other neighbors are affected. Ms. Szudy said yes.

Mr. Franks said a clearance to the front of the building would have to be made so a vehicle would be able to get in there for maintenance. He thought more effort would be required for construction and maintenance to get there from the roadway. A ramp would have to be put in for construction.

Dan Beyer said he is not quite convinced that trees would have to be cut down, his suggestion to move the structure 20 feet has not been measured out by them. He didn't feel the tree situation is very relevant.

Dan Beyer felt the only reason the pump is here is to add more water to the parkway which also affects the flood plain, which is contrary to the notion of pumping more water out.

Ms. Bruderle-Baran said she has sat through numerous meetings where residents asked why there wasn't a back up system in place. She said a lot of residents have suffered through these floods with basement backups. She said it is an established fact in Wauwatosa that sewer backups happen. Larry Beyer commented that he has had water in his yard but not in his basement.

Mr. Pennoyer commented that it is hard to decipher the environmental impact from the small aerial photograph. Additional information may be needed if it will affect other neighbors.

Ms. Meyer asked for clarification on the status of county approval. Ms. Wright responded that on February 5th this was presented to the County Board of Supervisors which approved that an easement would be negotiated. She didn't feel it would need to be taken back for more approval if only a 20 foot change were being made. Ms. Meyer asked if this really is the best location and noted that the county hasn't approved that exact location in the parkway.

Mr. Randall said he is not convinced that the criteria has been met, but is not prepared to make a motion to deny.

Moved by Mr. Randall, seconded by Ms. Bruderle-Baran to hold this item to allow the applicant to investigate another site that wouldn't require a variance and that would be acceptable to the county....

Discussion ensued as to whether another conditional use would be necessary. Mr. Randall asked Ms. Wright about their timeline and if this would hold them up. Ms. Wright said they would like to advertise

this in mid April but the exact location would have to be made. She said they would have to redesign the make sure the new documents would work. This is one of five pump station projects they have going on.

Mr. Randall commented that this might not set them back time wise. He asked if they could come back to this committee with final approval by the county or negotiation status.

Mr. Randall amended the motion that when this item is brought back to this committee they provide a status report or the easement agreement...

Mr. Randall requested that city staff have the county board minutes and the applicant should provide a status update. He also asked for any further information on tree removal, etc.

Moved by Mr. Randall, seconded by Ms. Bruderle-Baran to hold this matter for further proceedings, if necessary.
Upon a roll call vote – Ayes: 4 Noes: (2) Meyer, Pennoyer

Meeting adjourned at 8:35

Tamara Szudy, Secretary

mks