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**MINUTES**  
**MEETING OF THE BOARD OF ZONING APPEALS**  
**Thursday, April 23, 2009**

PRESENT: Mr. O'Connell, Ms. Meyer, Mr. Randall, Mr. Pennoyer - 4

EXCUSED: Mr. Subotich, Ms. Bruderle-Baran

ALSO PRESENT: T. Szudy, Planner

Mr. O'Connell as Chair called the meeting to order at 7:02 p.m.

**~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 since the last Board of Zoning Appeals meeting, the applicants have reviewed the site and still feel the most suitable location is the same one previously requested. Included in the packet is a letter from James Keegan, Milwaukee County Parks with their recommendation.

Present in favor: Jennifer Wright, Milwaukee Metropolitan Sewerage District,  
260 W. Seeboth, Milwaukee  
Steven Franks, TN&A Associates, Inc., 1033 N. Mayfair Road

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

Ms. Wright commented that since the last Board of Zoning Appeals meeting in March, MMSD has met with the Beyer's at the site and looked at their alternative site that is the open area to the north of the proposed site. The land at this location is lower and closer to the river. She said if the structure were to be built there the building height would remain the same however the foundation would be two feet higher and a ramp would be needed for maintenance. She said that they feel the original location requested is the best location. The structure would be built in the mostly wooded area and the least favorable trees would be removed.

Mr. Franks said in trying to find a reasonable location, they had to balance out the feelings of those involved, while also being compliant with the flood-plain ordinance. The property is owned by Milwaukee County and they have ideas where this structure should go. Alternative factors included the buildings aesthetics, floodplain impacts, noise, and access were considered as well as consideration of alternate uses of the property. He said in the course of balancing all of this, as the consultant advising the district, he feels the best option is the one they have chosen. He noted that the preferred location would look aesthetically better and it is a location that is more sheltered which would allow better screening of the structure.

Dan Beyer said that he doesn't feel that MMSD has made a compelling case in regards to the four criteria necessary for a variance to be granted. He doesn't understand what their exceptional circumstances are. He felt that the area proposed by MMSD is closer to the river bank than the site the Beyer's would like them to use. He questioned why MMSD is reluctant to put a building in an open site instead of tearing down trees in a park setting. Mr. Franks responded that the wooded site would screen the building better.

Larry Beyer said that MMSD should have to prove unconditionally why the preferred site is better, and he doesn't feel that their case has been proven to allow a variance.

Mr. O'Connell asked if the alternative site suggested by the Beyer's would require a variance. Ms. Szudy replied that anywhere in the area would probably be a variance issue.

Mr. Randall questioned whether a variance would need to be granted for both sides of the structure. Ms. Szudy responded that the request wasn't stipulated in which direction, so it could be for both sides if needed.

Mr. O'Connell said that the variance requested is for a side yard, not stipulated east or west and said that there may not be a spot where a variance wouldn't be required.

Dan Beyer asked how the map was plotted. Ms. Szudy said it was an approximate drawing, not to scale and only an approximate representation of where the building would be placed. Dan Beyer said that this should be indicated better on a map.

Larry Beyer asked if the city was saying a variance would be needed if the building were moved 60 feet north. Ms. Szudy replied that she felt a variance would be needed.

Mr. Randall asked Mr. Franks what areas the stakes are marking at the site. Mr. Franks said the stakes are outlining the boundary of the enclosure and another set of stakes represent the location suggested by the Beyer's from last month's meeting. After meeting on site with the Beyer's, they wanted to move the structure north of where these stakes are.

Mr. Randall asked if the alternate stake location was measured and is it 100 feet setback. Mr. Franks said yes and 60 feet to the north which was right on the edge of the bank.

Mr. Randall asked where on the property, is the proximity zone to the pumping station exceeded? Mr. Franks replied around 350 feet from the station which is located on the corner of Honey Creek Parkway. Mr. Franks said their chosen location is a little over 200 feet away. Mr. Randall commented that to be in the zone of reasonable proximity, the Beyer's structure could be moved about 150 feet further to the north. Mr. Randall noted that Ms. Szudy had provided a recommendation for this site as the Common Council and the Milwaukee County Boards approved this location and the emergency generator is necessary for public safety. A conditional use would be needed if another location were chosen. Ms. Szudy said that a mailing is sent out to the addresses within 200 feet around the parcel. Mr. Randall noted that the approximate address given of 741 Honey Creek Parkway listed could be problematic.

Mr. O'Connell noted that with the selection of the preferred parcel, several factors were considered, such as aesthetics, floodplain impacts, noise, access, as well as the minimal disturbance to the trees as possible.

Dan Beyer asked if the Beyer's suggested location were used, would the disturbance of trees be less. Mr. Franks said yes but in discussion with the city and county there was reluctance to encroach on the open space which is used from time to time. Mr. Franks also said they were in favor of using the existing vegetation for part of the screening of the building.

Mr. Randall asked Larry Beyer what type and frequency is the park area used. Larry Beyer said very little. Mr. Randall asked Larry Beyer if he felt in that open space was it his opinion that other plantings could be planted to hide and disguise the structure and he said yes.

Ms. Meyer asked if part of the consideration is the proximity to the pumping station and that there is no space closer to the pumping station, in many ways this area is the least invasive upon the open park land. Mr. Franks responded yes. Mr. Randall said that the attachment in the paperwork shows a submission of an alternate location right next to the pumping station. Mr. Franks said many possible locations were addressed and right next to the pumping station was one they felt needed to be evaluated. Once the unit was sized, it was determined that this wasn't a good spot. Ms. Meyer noted that a bigger structure would impede more at that location to the corner, and it is a very tight corner.

Other locations were further discussed which had been ruled out by the applicant. Mr. Franks said they had to consider the utility work that would have to be done.

Mr. Randall discussed the four criteria needed for variance approval and felt that there may be another suitable location where a variance wouldn't be needed. He thought that a survey with exact dimensions shown would have been helpful for the board to look at.

Ms. Meyer said in prior variances, the criteria was based on the fact that the property value would be the detriment for the owner, and wondered if this would reduce the property values in this vicinity. Larry Beyer said as addressed at previous meetings, that he felt it would be a detriment. Ms. Meyer felt that an assessment would have to be done for this to be known. Ms. Meyer felt that anywhere in the parcel some kind of variance for setback would be needed due to the creek and the floodplain. She said that by moving it to the Beyer's alternate location would be more of a detriment to the public, as people do use the park.

Mr. Pennoyer commented that the view out of the Beyer's home could be a detriment. Though he doesn't find the structure intrusive, he said that as far as public interest goes there has to be a pumping station with a backup system and said there is no ideal spot where there is no handicap.

Larry Beyer said if you examine the alternate location they have suggested, it would be easier to make the landscaping more desirable.

Ms. Meyer noted that with the Beyer proposed location closer to the bank, the elevation of the building would be the same, but the foundation would have to be built up higher. Dan Beyer said farther away he felt the structure would look smaller. Mr. Randall thought it would also be less imposing. Mr. O'Connell encouraged the board to discuss the variance, but that they didn't have the authority to move the location.

Mr. Randall said it is important to note that the pumping station and the backup generator are necessary because it is the system that MMSD decided to pursue. He felt that other options could be available, though this is the most reasonable one. Mr. Randall felt that more information needs to be presented to ensure that another location would not require a variance.

The board discussed that a site layout would be helpful. It is the applicant's burden of proof. Mr. O'Connell noted that the applicants are only telling the board that this is the chosen location and this is where they want to install it. The board felt there isn't enough information known about the parcel and whether there are other suitable locations that wouldn't require a variance. It was noted that if the structure was moved, it would require a new conditional use that will have the neighbors coming to protest one by one.

Ms. Meyer moved to hold the item for more information on the parcel, seconded by Mr. Randall . . . . .

Mr. Randall asked for a friendly amendment to the motion for the applicant to submit more information including regulatory issues, side and front setback issues, any variances required for east and west side setbacks, in fact for the entire parcel; as well as the flood plain requirements. Further information requested is to show whether there is a location that this structure could be placed where a variance would not be required, and information presented why MMSD could not use this location.

Mr. O'Connell asked that the applicant bring this information back for any location deemed suitable.

Ms. Meyer noted that MMSD could place this generator anywhere on the property without a structure and a variance would not be required and would hate to see them do this.

Mr. Randall asked for a legal opinion from the city for the approximate address being used. Ms. Meyer commented that an improper variance would be better than a bad encroachment. Also requested were facts as to why the generator has to be located within 350 feet of the pumping station.

Roll call vote taken on the motion to hold. Ayes: 4

Further discussion ensued as to what the applicants should provide. Mr. O'Connell said a map showing the locations on the parcel wherever a variance is needed should be submitted. He said they cannot grant a variance based on what has been told, and it is the responsibility of the applicants to present their best case. They were asked to red line the detrimental area with an explanation of why.

Mr. Franks said the major reason is that if they go deeper into the floodplain, they would net to get a floodplain variance. If they moved it they would then have to prove to the Plan Commission and Community Development that they have minimized and not encroached too much on this.

Mr. Randall said that MMSD needs to determine the approximate vicinity marked on a map and to check if a variance will be needed on both side yard setbacks.

Ms. Wright said she was unaware of the other side setback. Ms. Szudy replied that maybe that is not the case. A map marked out will show the board if there is a location or not that could be used without receiving a variance. Mr. Pennoyer reiterated that they need to rule out the other options showing that there is not another choice available.

Meeting adjourned at 8:07p.m.

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Tamara Szudy, Secretary

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