



**CITY OF NEW BERLIN
BOARD OF APPEALS - MINUTES
Thursday, February 3, 2022**

**Council Chambers
3805 S. Casper Drive, New Berlin, WI, 53151**

6:00 PM

Please note: Minutes are unofficial until approved by the Board of Appeals at the next regularly scheduled meeting.

All votes were taken via a voice roll call vote.

CALL MEETING TO ORDER; PLEDGE OF ALLEGIANCE

Chair Goetter called the meeting to order at 6:00PM

ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

Present were: Chairman Goetter, Board Members Klappa, Oldham, Schulpus, and Alternate # 1 Willoughby.

Also present: Code Compliance Specialist Dan Hogan, Lead Inspector Steve Krentz, Deputy City Clerk, Sherri Hanson and Alternate Board Member #2 Stair

Excused: Board Member Langer

APPROVAL OF MINUTES

January 6, 2022 Meeting Minutes

MOTION: Motion to approve the January 6, 2022 Board of Appeals Minutes

VOTE: Motion by: Board Member Oldham
Second by: Board Member Schulpus
Motion passed 5-0.

NEW BUSINESS

ITEM: BA-22-2660 Petitioner requests to construct a 225 square foot addition 17 feet from the rear property line. The property is zoned R-5 Medium-Density Single-Family Residential District and requires a rear yard setback of 35 feet when the lot fronts a street with a curb and gutter. A variance of 18 feet is required in order to obtain a building permit.

Chairman Goetter gave an overview of the appeals process. The staff report and variance request were read into the record. Chairman Goetter then swore in the petitioner, Robert Dickinson, on behalf of Champion Windows who resides at 2305 S. Ronke Ln.

Petitioner Dickinson provided a brief description of his roots with the City. In 2003 he and his wife purchased the residence at 2003 Ronke Ln and since that time he has spent thousands of hours and thousands of dollars on renovations, landscaping and improvements to maintain a standard that the homes in their cul-de-sac share.

Petitioner Dickinson is looking for the City to allow him to build a sunroom within the existing footprint of their patio and furthermore to allow them to be able to use the legal description for their property that is used for taxes as the perimeter for calculating

setbacks. His immediate desire is to build a sunroom but he would like to see if he can use this time to actually clarify what his property lines are. He presented a map with the property description from the city. The City granted a variance for the patio in 1992.

He brought with him his wife, Alderman Maxey his Alderperson, neighbor David Kogut and staff from Champion Windows

Petitioner Dickinson provided a copy of his hardship letter with the actual survey of his property which had been signed by his adjacent neighbors in agreement that they support him.

Chair Goetter said that the Board is there to decide whether or not to grant him a variance. He stated he doesn't believe they have any authority to rule on his property line. He suggested that petitioner Dickinson may have to take that up with the City Attorney.

Board Member Klappa stated that Parcel 2 was not part of the original survey and asked when it was added.

Petitioner Dickinson said the best he can tell is around 1992, right about the time when he discovered a letter from the City Attorney apologizing for not issuing a complete Deed for 5 years.

Chair Goetter said to put the Quit Claim Deed issue aside and that he was looking for a setback from the second parcel to his property. Assuming that the second parcel is his property, he asked what the setback was from the North end of the second parcel to the corner of the proposed sunroom.

Petitioner Dickinson said 37 feet.

Chair Goetter replied that if we, as a board, were satisfied that their property includes the 20 foot and the setback is 35 feet than they really wouldn't need a variance at all.

Petitioner Dickinson replied that's correct.

Chair Goetter than asked Dan Hogan to explain why the City was requiring a variance application.

Dan Hogan replied that in 1999 when the subdivision to the north was developed, there was a strip of land for future Lincoln Ave. What happened is the City decided they didn't need it so they deeded it to the neighbors to the south which is why he has that 20 feet. That 20 feet is his, however they can't combine the 2 parcels without replatting both subdivisions. He said they would have to get every person in his subdivision to say yes and then they would have to go back to the State to replat it. Petitioner Dickinson is correct that is his property, but he technically has 2 parcels, parcel 1 and parcel 2. The survey shows that so he can't use that 20 feet for his setback, it has to be to parcel 1 which is why the setback is based on parcel 1.

Chair Goetter said it would be quite a bit of an expense to replat this and asked if we were to go about the exercise of replatting who pays for the cost of that.

Dan Hogan said the applicant would have to pay for it and it would be a monumental task. It wouldn't just be his subdivision it would also be the subdivision to the North, so you're talking about 100's of lots. Petitioner Dickinson is not the only one with this situation. His neighbors could run into the same problem. This is an extremely unique situation

Chair Goetter than asked if anyone else had any questions. With no questions, he asked if there was anyone else there to speak in favor of the variance.

David Kogut of 2300 S. Ronke Ln. stated he was instrumental in moving the Lincoln Ave

Sanctuary Complex from the Northeast Corner to where it is currently today. He was shocked to hear that the additional 20 feet was a separate lot and wouldn't have known it if he wasn't in attendance tonight. He was never informed that there were two separate parcels and was just told it would be added to his property. He went on to say he has no problem with the Dickinson's adding a sunroom. He said he doesn't understand why they were even there tonight.

Chair Goetter than asked if anyone else was there to speak in favor or against. Seeing none the meeting moved to close session.

Motion by Board Member Oldham to Approve the Variance, seconded by Board Member Schulpus

Board Member Schulpus stated for clarification so we are clear the motion is for the setback on parcel 1.

Board Member Oldham said the petitioner is caught between a rock and hard place and part of the problem is caused by the City. There was a setback in 1992 and if we used the lot line of the property (not the parcel) we wouldn't even be here.

Board Member Schulpus said he had the same sentiments.

Chair Goetter said the property had received a variance for a deck already and now it's just a matter of putting on a roof and siding. He said he doesn't see it as a big deal other than the technicality of the 20 feet parcel makes a variance necessary.

MOTION: Motion to Approve the Variance

VOTE: Motion by: Board Member Oldham
Second by: Board Member Schulpus
Motion passed 5-0.

ITEM: BA-22-2661 Petitioner requests to construct a 498 square foot addition 4 feet from the east side property line. The property is zoned I-1 institutional District and requires a side yard setback of 50 feet. A variance of 46 feet is required in order to obtain a building permit.

BA-22-2661 Petitioner Maria Koerner, 17990 W. Cleveland Ave. Petitioner requests to construct a 498 square foot addition 4 feet from the east side property line. The property is zoned I-1 institutional District and requires a side yard setback of 50 feet. A variance of 46 feet is required in order to obtain a building permit.

Chair Goetter presented the second case and swore in Petitioner Ken Moutvic who works for We Energies out of the Pewaukee Office located at 2425 Busse Rd. Pewaukee,

Petitioner Moutvic explained the nature of the appeal is to get a variance to add an addition to the existing southeast building on the property to enclose and relocate the existing odorant tank that is currently located outside, north of the northwest building. They would like to bring the odorant system up to today's codes which require a containment area. The building would be a 14.4 feet by 34 feet addition on the **east** side of the current building. The addition will be matched to the existing brick and a new roof will be added to match the building to the west. It will be the same elevation and the roof pitch will be the same so it will look nicer from the street. By enclosing the odorant tank any residual smell from the tank will be mitigated by putting it inside the building. The entire project cost is \$2,000,000. Existing gas pipelines and underground pipes prevent putting the addition on the west side of the building.

Board Member Willoughby asked who the owner of the parcel is.

Petitioner Moutvic said Trans Canada, TC Energy out of Houston. We Energies has easement and a right of use agreement with them. They are in the process of getting a facility agreement that their lawyers will agree to. Construction rights will not be granted until all agreements are signed. Time of construction is scheduled beginning in May and extending through summer.

Board member Willoughby asked to clarify if ANR pipeline is part of We Energies. Petitioner Moutvic said no that is TC Energy, ANR is a subsidiary pipeline owned by TC Energy.

Chair Goetter asked if Maria Koerner was with TC Energy. Petitioner Moutvic said she is with WE Energies, she is the property management person who handles all the paperwork.

Board Member Schulpus asked if they looked at the southeast building and if they can put the addition straight out to the back or the north versus putting it to the side. Petitioner Moutvic said there is two concerns with that. One is most of the gas facilities are going in that location that are there now, which are right to the north of that building.

Board Member Schulpus than asked if the tank could be enclosed in the existing location. Petitioner Moutvic said the existing pipeline and equipment is old and is 50 year old technology. Today with the injection pump systems it is best to pump straight out of the bulk tank down into the pipe, so it is best to site the tank directly over the regulators. The existing spot is 150 feet away and we have issues if we try to pump it that far. We've had concerns over the last 30 years with the current system being so far away.

Chair Goetter followed up with stating right now the tank is sitting outside and north of the larger building, correct? Petitioner Moutvic said it's the smaller building where they have their scada system and electronics. The larger building is ANR Trans Canada. He then showed on the map where the tank was located.

Chair Goetter said he understands that this location is a more efficient way of getting the odorant into the pipeline. Petitioner Moutvic said that was correct. WE Energies buys gas from the Interstate pipeline and this particular station feeds the greater Milwaukee and Waukesha Counties. This is one of the top 3 outputs for WE Energies designed to serve 3 to 4 million people.

Chair Goetter replied so you are piping the odorant many miles to the outreaches of Milwaukee and Waukesha. Considering the area you are serving and the miles of piping why can't you move the addition to the north and not even need a variance?

Petitioner Moutvic said it is not a good option because an addition there would be encroaching on ANR's scada building which has a lot of electrical conduit that goes into that big building that they own. Directly northwest is all of ANR's facilities. They have a 30 inch and a 24 inch pipeline west of all the buildings and we can't go there because that is their area.

Chair Goetter than asked what would happen if we didn't grant this variance. Petitioner Moutvic said they would leave the tank where it is.

Chair Goetter than asked what the downside of leaving the tank where it is. Petitioner Moutvic said it's not ideal to have an injection type system at the current location and try to push the odorant of liquid that far. The current system uses a mechanical pump. The new system is an injection pump which is a lot more efficient. Mechanical pumps fail, seals fail and then you get odorant and we don't want that because people would complain about the odor from the leak.

Board Member Oldhan asked to explain why they can't just enclose the existing tank.

Petitioner Moutvic said it's the distance to the pipe that is the concern. If the underground pipe leaked, the environmental issues would require the removal of a lot of soil to figure out where the leak is. We design the piping, made with stainless steel, to go straight down into the pipeline so there is no risk of leakage below ground.

Chair Goetter than asked if anyone wished to speak in favor or against the variance. Seeing none the hearing was closed and the meeting went into closed session.

Motion by Board Member Klappa to approve the variance, seconded by Chair Goetter.

Board Member Klappa said he felt the reasons are more than adequate being that the facility is as old as it is and the explanation made about the reasoning to do it. If something does go wrong where it is located now it seems to be quite a catastrophe. We wouldn't want to risk something happening at the location where it is now.

Chair Goetter agreed with Board Member Klappa that the choice of not doing it would be foolish. Notice was provided to the property owners to the east and the Board has not received any communication from them objecting.

Petitioner Moutvic said he is willing to reach out to the neighboring church to ask if there is any aesthetic issues. They will be happy to add a couple trees.

MOTION: Motion to Approve the Variance

VOTE: Motion by: Board Member Klappa
Second by: Board Member Goetter
Motion passed 5-0.

ADJOURN Motion to Adjourn at 6:53PM

VOTE: Motion by: Board Member Schulpus
Second by: Board Member Oldham
Motion passed 5-0.

Respectfully submitted,

Sherri L Hanson
Deputy City Clerk/Election Specialist