



Board of Appeals

335 South Broadway

Special Meeting

De Pere, WI 54115
<http://www.de-pere.org>

Final Minutes

Monday, November 11, 2013

4:45 PM

De Pere City Hall Council Chambers

Call to Order

The meeting was called to order at 5:05 PM by Board Member Thomas Keidatz

Attendee Name	Title	Status	Arrived
Thomas Keidatz	Board Member	Present	
Bob De Groot	Board Member	Present	
John Fairchild	Board Member	Excused	
William Vande Hei	Board Member	Present	
Jason Peebles	Board Member	Present	
Alice Schipper	Board Member	Present	

Also present: Building Inspector Dave Hongisto and members of the public.

2. Review of minutes of the regular meeting on October 28, 2013.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Alice Schipper, Board Member
SECONDER:	William Vande Hei, Board Member
AYES:	Keidatz, De Groot, Vande Hei, Peebles, Schipper
EXCUSED:	John Fairchild

3. Request submitted by Michael Hartmann & Ruth Warren, 923 Georgia Drive, De Pere, Wisconsin to construct 1) a boat house which would require a four (4) foot interior side yard setback variance and a three (3) foot rear yard setback variance and 2) a "cave storage structure" which would require a four (4) foot interior side yard setback variance on the property located at 1106 Fox River Drive, De Pere, Wisconsin.
- Chairman Keidatz explained the steps of the proceedings: he will read the variance request, and Hongisto will explain why the permit could not be granted. A neighbor has submitted information from Hanaway & Ross law firm and they will have an opportunity to be heard. The board will proceed under state statute standards for variances. Keidatz noted that at one time the statute required four affirmative votes; it now requires a simple majority. Keidatz then read the notice of public hearing. He stated that the permits were denied under code section 14.38, sub (6)(3)(b).

Building Inspector Hongisto summarized the applicant's previous appearances in front of the board for variances regarding the house. He stated it was important to note that during meetings with the architects, when he was told there would be a storage cave, he envisioned the structure being underground. As far as the boathouse, the property owner had a survey done by Mau & Associates to establish the north property line; this survey showed that the existing boathouse structure was 7/10 of a foot over the property line onto city right of way (Cook St). At that time there was talk of repairing the foundation wall of the existing boat house. Then the whole focus shifted to zeroing in on the residence. Once the excavation occurred & foundation walls were poured Hongisto received a call from the neighboring property owner to the north (John Meyer), expressing concern about the boathouse wall's proximity to the water. The way it is poured right now, the wall extends further towards the river than the existing property pin noted by Mau & Associates in their plat of survey. Hongisto visited the site and viewed the wall of the storage cave up out of the ground, and the proximity of the structure to the

sea wall; at that point he felt it necessary to bring the matter to the Board of Appeals before any work proceeded further. He contacted the homeowner and general contractor Andy Benson. Together they came up with the request for variances which was published in the De Pere Journal on 10/31/13. Hongisto also asked the homeowner what the Wisconsin Department of Natural Resources' opinion was of the project, and requested some type of approval from them before the project went too far. Mr. Hartmann forwarded information from his architect to the DNR and at that point Crystal Schiefelbein from the Green Bay office of the DNR and Heidi Kennedy, the DNR's Shoreland Policy Coordinator, became involved. Hongisto then read three emails into the record. Hongisto's interpretation of those correspondences is that the Board of Appeals will have to determine if this project meets the statutory criteria for the issuance of a variance.

Keidatz then invited the property owner to explain why he feels the variances should be granted, and how they fit into statutory requirements.

Andy Benson from C&C Custom Homes spoke on behalf of the applicant. He pointed out that there was a pre-existing established building which sets precedence; the owners are basically replacing it for personal use. They have corrected the problem of encroaching across the north property line. The storage cave area is still below grade although the north wall is going to be exposed, similar to a retaining wall. The top will be grass and part of the lawn structure. Benson stated that if the parcel was more uniformly shaped, there would not be an issue. The restrictions of the lot are preventing an above grade storage structure. He noted that the new boathouse is a little taller than the original, but the footprint is actually smaller.

Hongisto pointed out that the city of De Pere's zoning code states that the height of any detached accessory structure(s) cannot exceed the height of the principal structure, or 15 ft, whichever is most restrictive. Benson reported that the boathouse height is approximately 9 ft.

Hartmann then spoke and thanked the group for allowing him to meet. He stated that they have made a significant effort to understand the rules and to check and double check everything they've done throughout the process. The boathouse structure could be up to 700 square feet in size, but the dimensions are actually smaller than that of the original building. They purposely kept the height down in consideration of sight lines. They needed storage, but the small lot limited them; they also felt that an above ground structure would be more detrimental to the neighborhood. He noted that there is a beautiful maple on the shoreline that would have to be taken down if the boathouse was moved.

Hongisto clarified that code states a detached accessory structure shall not exceed a maximum of 700 square feet in area. The method of calculation uses the width of the lot multiplied by the rear yard setback, multiplied by 45%.

Vande Hei stated that in good faith, he would not consider voting on the variance requests until written documentation from the DNR is produced. He cited a recent riverfront project that required DNR involvement.

Benson asked for clarification that the seawall and boathouse variance are two separate issues; Hongisto confirmed. Hartmann stated that he contracted with Schmidt Brothers to put in the seawall. Benson then received notification from the DNR that the seawall was a problem, because the DNR had not permitted for it. He feels there is some question

about whether it would be grandfathered. The DNR's Schiefelbein is trying to determine what to do at this point, and Hartmann is still awaiting her response.

Keidatz then invited the neighboring property owner to the north to address the board.

Randy Gast, attorney with Hanaway Ross law firm, spoke on behalf of property owner John Meyer. He stated their intent is to express their opinion that the board should not grant the variances. He emphasized that this is not personal, that Meyer does not want a dispute with his neighbor; they simply believe that the zoning ordinances should be enforced as written. Gast provided a written statement to the board, addressing the necessary criteria for variance approval. He stated that there has to be something about this lot that creates a hardship, instead of a mere inconvenience. The board also must determine if granting the variances would be detrimental to the neighbors. The new structure detracts from Meyer's view of the river. While he could hardly see the old boathouse, this building is going to be higher once the roof is added. The boathouse and underground cave are structures of convenience and luxury. The foundational walls of the underground structure are above grade. The boathouse is essentially a three season room for entertaining, and potentially habitation. The riverfront does not generally have these types of structures right on the banks, just docks & lifts. Meyer is concerned that allowing the variances would set a precedent to allow these structures all up and down the river. They feel it is incompatible with neighboring uses and not a matter of good public policy. Although they feel the variances should be denied on the basis of the variance criteria alone, they are also questioning whether additional ordinance provisions come into play, even if the structures were moved and the setbacks were not an issue. Section 14-10 of De Pere Municipal Code permits only one principal detached building; in this situation there are two. The code also states that buildings cannot be situated less than five feet apart. Section 14-12-2 of the code states that an accessory structure cannot occupy more than 45% of the rear yard. The building inspector alluded to a formula to determine the allowable area; Gast is questioning whether the two structures take up too much of the rear yard. Gast inquired whether the structures exceed the 700 square feet threshold. Gast also questioned whether the project violates the city's shoreland wetland ordinance. There is a provision in that code that drops the limitation to 500 square feet and also limits filling and excavating. He stated that they don't think a variance is appropriate because the criteria have not been met; and the project should not go forward because of other provisions in the city code. Gast noted that he has also contacted Schiefelbein of the DNR, but she has been out of the office and has not yet responded. He concluded by expressing appreciation for the board's consideration.

Keidatz gave Hartmann an opportunity for rebuttal, which he declined.

Discussion followed about the location of the original structure and setbacks.

Vande Hei motioned, seconded by De Groot, to table the discussion until some type of confirmation is received from the DNR.

Hartmann indicated that he has an appointment on December 1st with Schiefelbein to visit the site. Keidatz asked if that meeting will affect the proposed structure. Hartmann replied that it did not according to Crystal. Gast posed the question if there is a problem with the structures themselves as opposed to the retaining wall, and state that he has not gotten definitive answer from Crystal whether the sea wall was separate from the structure. Benson stated that he had a conversation with Crystal before they started any foundation work, and showed her the site plan; she told him that there was no issue with the DNR as long as they are working behind the existing seawall.

Keidatz stated his belief that they are two separate issues, but that the board needs to act on the motion.

The board voted unanimously to table the matter until the DNR issues a written response. Keidatz stated that although these are separable issues, the board wants to look at the overall picture and how it will play into precedent for the future, as well as its effect on the neighbors. The board will do its best to schedule a special meeting at such time as the DNR's response is received by Hongisto or the board.

Keidatz thanked both parties for their cooperation, and providing information and details to the board.

Hongisto inquired whether the special meeting needs to be noticed in the media since it was tabled; Keidatz felt that written notice to the involved parties is sufficient.

Vande Hei recommended meeting within five days of the DNR's onsite meeting.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	William Vande Hei, Board Member
SECONDER:	Bob De Groot, Board Member
AYES:	Keidatz, De Groot, Vande Hei, Peebles, Schipper
EXCUSED:	John Fairchild

Adjournment

Peebles motioned, seconded by Schipper, to adjourn the meeting at 6:10 PM. Upon vote, motion carried unanimously.

Respectfully submitted,
Carey Danen