

BOARD OF APPEALS

July 1, 2004

The meeting was called to order at New Berlin City Hall, at 7:00 PM.

On roll call, Chairman McGrath, Messrs. Galke, Loohuis, Rath and Wallner. Also present was Associate Planner Nikki Jones. Excused were Inspection Services Manager Robert Sigrist, Messrs. Goetter and Klappa.

Chairman McGrath reviewed the procedures for taking testimony for the pending petitions with the persons assembled for the meeting, noting, that if your case was approved, a building permit is required and it can be picked up at the Building Inspection Department. Mr. McGrath also noted that it takes 4 affirmative votes to approve any variance request.

The first petition called was that of David Church (Petitioner) and Workshop Architects (Agent), Case No. 2477. Mr. McGrath read the petition. It was noted that 12 addresses were notified by mail and that publication had been made on two occasions. Scott Kindness of Workshop Architects, 614 N Broadway, Milwaukee, WI, Agent for the Petitioner, David Church of 20045 W Chestnut Drive, New Berlin, came forward to speak in favor of the petition. Mr. Kindness stated he would like to make two clarifications. First, the setback is actually 12-feet; second, the number of parking spaces required would be 448 due to the reduction of the actual capacity of the building. Mr. Kindness stated that he was going to walk through what the proposed development is, and what the property constraints are. About 45% of this property is wetlands, plus a 30-foot setback from the wetlands in which nothing can be built. In addition to that, Rock Ridge Road is required to come through which further reduces the developable land. They have worked with New Berlin to keep that a public road and respect all the engineering requirements as part of the City's Master Plan. What this creates is two front yards, one on Moorland Road and the other Rock Ridge Road, according to the Zoning Code. Mr. Kindness believes that if it weren't for this, they wouldn't need the variance.

Mr. Kindness went on to say that the grades on this property are significant. There is about a 27-foot drop from the eastern edge at about the mid-point of the parking area, and they are creating some nice landscaped retaining wall steppings, and a safety zone so the neighbors will not actually see the building.

Mr. McGrath asked who the current property owner is? Mr. Kindness replied that the School Board is the current owner, and his client, David Church, has put in an offer to purchase the property. The offer to purchase is subject to getting all the necessary zoning approvals and permits.

Mr. Kindness then stated that because of the wetlands, and to maximize the amount of parking, an underground retention system is proposed for the property.

Mr. Church has also retained the services of White Hutchinson, a consulting group for the type of facilities such as the one Mr. Church is proposing to build which is children's entertainment. White Hutchinson has completed the research related to what this neighborhood could support in terms of this type of venue. They found that this type of venue could support a building that is over 40,000 square feet, however, due to the constraints of the property, it has been reduce to 32,966 square feet. Mr. Kindness stated they are only looking for relief along the western edge for parking.

At this point discussion was held about the 50-foot setback requirement in the Zoning Code for property zoned M1, Light Manufacturing, and why this property was zoned for industrial use instead

of commercial use.

Mr. Rath asked about the reduction in the size of the building and the number of parking spaces. Discussion was held with regards to the reasons the size of the building was reduced and the parking ratios.

Mr. McGrath asked for clarification on how many feet would actually be needed for the requested variance. Mr. Kindness stated they are now 12-feet off the right of way, not 10 feet as originally proposed, so they will actually need a 38-foot variance. He also stated they really tried to reduce everything down in the east-west direction by making the building as narrow as possible. They worked to keep everything off of the rear setback so that it doesn't encroach with any exiting, and to maximize the landscaping between Rock Ridge Road and the building.

Mr. McGrath asked Ms. Jones for clarification on why there is a 50-foot setback requirement in an industrial area, and 10-foot in a commercial area. Discussion on this issue followed.

Mr. McGrath then asked who is requiring that Rock Ridge Road be pushed through instead of requiring a common easement to everyone in the development? Ms. Jones stated it was part of a City initiative when the movie theatre went in. They were required, per their developer's agreement, to provide two access points, one on Small Road and one on Moorland Road.

There was no one further to speak in favor of the petition.

Mr. Craig Miller of 15230 W Small Road came forward to speak in opposition to the petition. Mr. Miller stated he owns the property just east of the School District property. Mr. Miller stated he is opposed to the variance request because he is opposed to the non-conforming use. He spoke with neighbors who checked up on what the Bounce House is. It is a hip-hop, teenage club with a lot of teenage traffic in the area. Mr. McGrath advised Mr. Miller that this meeting was the wrong venue to speak against the non-conforming use, and asked if he had any concerns about the parking being too close to what will be Rock Ridge Road when it is put through? Mr. Miller stated that at this point he doesn't have any specific concerns about that. Mr. McGrath then advised Mr. Miller that he would have an opportunity to voice his concerns about the non-conforming use at the Public Hearing in front of the Plan Commission when it gets to that point.

Steve Hordyk of 14930 W Small Road came forward to speak in opposition of the petition. Mr. Hordyk stated he is also opposed to the non-conforming use of the property. Mr. McGrath reiterated to Mr. Hordyk that he would have to come to the Public Hearing in front of the Plan Commission to state his opposition to the non-conforming use. Mr. Hordyk said he understood that, and he had nothing to say with regards to the petition for the variance for the parking.

There was no one else present to speak in opposition to the petition.

Mr. McGrath asked if anyone has anything else they would like to address. Ms. Jones stated that she received two e-mails today that have information in them not necessarily related to the issue in front of the Board, but she would like to make them part of the public record. Mr. McGrath read the written communication from Mark Kastner of 15185 W Small Road into the record. Mr. Kastner did not specifically state whether he is for or opposed to the request for a variance with regard to the parking. Mr. McGrath then read the written communication from Shari Kastner of 15185 W Small Road in opposition to the requested variance into the record. At this point Mr. Hordyk brought forth a written communication from a neighbor. Mr. McGrath read the written communication from Louis and Mary Fennig of 5090 S Small Road into the record. The communication addressed many concerns about the proposed establishment, and the Fennig's stated that they do not think it would

be a detriment to New Berlin. The Fennig's did not specifically state whether they are for or opposed to the request for a variance with regard to the parking.

Case No. 2477 was declared closed.

At this point Mr. McGrath declared the evidentiary portion of the meeting completed, and the Board made the following decisions.

The first petition considered by the Board was that of David Church (Petitioner) and Workshop Architects (Agent), Case No. 2477. Mr. McGrath made a motion to approve the petition as requested, and Mr. Galke seconded the motion. Mr. McGrath then withdrew the motion and moved to grant the Petitioner a 38-foot variance allowing the parking area to be 12-feet from the right-of-way. Mr. Galke seconded the motion. All members voted in favor of granting the 38-foot variance.

There being no further matters to be discussed in front of the Board of Appeals, the said meeting was adjourned at 7:45 PM.

BOARD OF APPEALS
CITY OF NEW BERLIN

Brian McGrath, Chairman