

## BOARD OF APPEALS

September 4, 2003

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

On roll call, Messrs. Galke, Goetter, Klappa, Loohaus, McGrath, Rath and Wallner. Also present was Inspection Services Manager Robert Sigrist.

Mr. 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 Reese Vanselow, Case No. 2462. Mr. McGrath read the petition. It was noted that thirteen people were notified by mail and that publication had been made on two occasions. Reese Vanselow of 18931 W Greenfield Ave. came forward to speak in favor of the petition. Mr. Vanselow stated that they have five people (3 adults and 2 children) living in this 1100 square foot house. He would like to build a bedroom for his mother-in-law, a bathroom, closet, and play area in the basement. The current ceiling height is 6 foot 9 inches and cannot be made any higher due to the basement being a 10-course basement. Mr. Vanselow was then asked by one of the board members if the 3 inches requested for the variance is for the whole bedroom space or just a part of it. He stated that it is for the whole space. Mr. McGrath then asked if recessed lighting or ceiling fans are being put in. Mr. Vanselow said recessed lighting would be put in but no ceiling fans.

There was no one further to speak in favor of the petition, and there was no one to speak in opposition to the petition. Case No. 2462 was declared closed.

The next petition called was that of Theresa Glowinski, Case No. 2463. Mr. McGrath read the petition. It was noted that eleven people were notified by mail and that publication had been made on two occasions. Ms. Glowinski of 19125 W National Ave. came forward to speak in favor of the petition. Ms. Glowinski stated she would like to put an addition on the back of the home. It would be a two-story addition that includes a bedroom above a new garage. The existing garage, which is rotting away, is a one-car garage that gets flooded during heavy storms because the foundation is lower than the driveway. Water comes down the hill from a neighbor's yard and from the Prospect nursery and goes right into the garage. She had to build a berm to stop the water from flooding the garage. This garage would be torn down. Ms. Glowinski stated that as long as she has to replace the garage she would like to make the new garage higher and bigger, and add the living space above it. This way she would not have to disrupt a hundred year old tree. At this point Mr. McGrath asked why the garage couldn't be moved to another spot. Ms. Glowinski stated that the septic is to the north, the well is to the west, and the driveway is to the east. Mr. McGrath then asked how far from her lot line is the next structure or building. Ms. Glowinski said that would be the neighbor's house, which is well over a hundred feet from her house. Mr. McGrath then asked for clarification of the size of the addition (32 ½' x 22') and why this is the necessary size. Mr. Don Erno, who was attending the meeting along with Ms. Glowinski, stated that they really wanted to go 24 feet in width but they didn't want to push their luck. They went to 22 feet so they can get at least a two car garage door with room on each side to swing the door

open. The existing garage is 13 feet, so they are trying to get another 11 feet in width. The length will give them extra storage.

There was no one further to speak in favor of the petition, there was no one to speak in opposition to the petition. Case No. 2463 was declared closed.

The next petition called was that of Tim and Andrea Schmidt, Case No. 2459 that was tabled at the August 7<sup>th</sup> meeting for the purpose of seeking an opinion from the City Attorney on whether somebody that has a demonstrated agricultural use can store non-agricultural items in an agricultural building (section 275-4 of the Municipal Code). Mr. McGrath read the petition. It was noted that sixteen people were notified by mail and that publication had been made on two occasions. Mr. Schmidt of 19560 Pheasant Run Drive came forward to speak in favor of the petition. Mr. McGrath stated that Mr. Sigrist sent an email to the City Attorney on August 13, 2003 and there was a response the same day. The City Attorney stated, "As I review section 275-42 it appears to say that accessory buildings must meet the aforementioned requirements or must have a demonstrated agricultural use. The term "demonstrated agricultural use" is further defined in 275-42(A)(2) when it states that accessory uses for a demonstrated agricultural use shall only be used for storage and demonstrated agricultural purposes. To say that any agricultural use would satisfy this provision, regardless of how limited, would result in the exception swallowing the whole. The word "for" means the purpose identified. I interpret that to mean that the primary purpose of the building must be for agriculture or the exception doesn't apply.

As to your question of whether the use of a portion of the building for agriculture would allow the rest to be considered an accessory building, I don't buy it. A variance should only be issued to the extent that it is in harmony with the spirit of chapter 275. Their argument would in my opinion torture that standard."

Mr. Schmidt asked for clarification of what the City Attorney means. Mr. McGrath stated that he thinks the City Attorney is saying that under his reading of the code, if it's going to be an agricultural building with a demonstrated agricultural use, you have to use the majority of it for the demonstrated agricultural purpose. Just using a portion of it for that purpose wouldn't then satisfy the code. Mr. McGrath then asked the petitioner what the majority use of this building is, and what would the hardship be if the petitioner had to use the majority of this building for agricultural purposes while still using just a part of it for other purposes? Mr. Schmidt stated he doesn't think that there is a hardship as he can move some of his personal things out and put them in the garage. The biggest question was what percentage constitutes an actual agricultural piece of equipment? Mr. McGrath asked Bob Sigrist what happens if the board denies his request for a variance? Mr. Sigrist stated that before he gets to that, he had another communication from City Attorney Mark Blum that he wanted to address. The City Attorney advised Mr. Sigrist that he spoke to Mr. Schmidt about the garage and the variance request. He told Mr. Schmidt that he has two options. The first is to obtain a BOA approval for the building as an accessory structure with accessory use, or to remove the non-farm vehicles and equipment for the existing agricultural building. He also told Mr. Schmidt that if his tools are used for the upkeep of the farm and farm equipment that he would not object to them, but if he was operating a millwork shop for his use that was something else. Mr. Sigrist then said if the board does not grant the variance, the personal items in the building would have to be

traded with the agricultural items that are stored outside of the building.

Further discussion was held about what percentage of the building could be used for personal storage. At this point Mr. McGrath wanted to be sure that Mr. Schmidt had the opportunity to respond to his question. Mr. McGrath stated that it appears to him that there is no hardship because the petitioner took advantage of the code and built an agricultural building that was much bigger than an accessory building that could have been built at the time. In addition he clearly had intended it for agricultural use at that time based upon what was submitted. Even if the petition is denied, he still has other options. Mr. Schmidt stated that he agreed with Mr. McGrath's statements.

There was no one further to speak in favor of the petition, and there was no one to speak in opposition to the petition. Case No. 2459 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 Reese Vanselow, Case No. 2462. Mr. Klappa made a motion to grant the petition, and, Mr. Goetter seconded the motion. All members voted in favor of granting the petition with the conditions that there is recessed lighting, no paddle fans, and no construction lower than the ceiling. All members voted in favor of granting the petition.

The next petition considered by the Board was that of Theresa Glowinski, Case No. 2463. Mr. Loohaus made a motion to grant the petition, and, Mr. Galke seconded the motion. All members voted in favor of granting the petition.

The next petition considered by the Board was that of Tim & Andrea Schmidt, Case No. 2459. Mr. Goetter made a motion to deny the petition, and, Mr. Galke seconded the motion. All members voted to deny the petition for the variance as requested.

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

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Brian McGrath, Chairman