

# Minutes

## BOARD OF APPEALS

May 6, 1999

The meeting was called to order at 7:10 PM.

On roll call, Chairman Dorlack, Messrs. Goetter, McGrath, Liljestrand, Wallner, and Boya. Also present was Chief Inspector Howard Gyax.

Chairman Dorlack 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. Dorlack also noted that it takes 4 affirmative votes to approve any variance request.

The first petition called was that of Phil Larsen, Cases No. 2338 and No. 2339. Mr. McGrath read the petition. It was noted that 17 people were notified by mail for both cases and that publication had been made on two occasions. Joe Fons, of P.O.Box 1089, Brookfield, WI, owner of the two lots at 4840 S Hawthorne Lane and 4860 S Hawthorne Lane came forward to speak in favor of the petition. Mr. Larsen stated that the reason he wants a variance for the front yard setbacks is so that the sizes of the backyards would be larger and would be better able to be used and enjoyed by the potential home owners. He also stated that the proposed houses would be built in line with the two adjacent existing homes which have already been granted variances for the front setbacks. It was noted that the homes would fit on the lots within the allowed setback requirements. Mr. Larsen stated that there is a berm located in the backyards of both lots which takes up a large part of the backyards. The Petitioner noted that he has owned both lots for about 6 to 7 months and that he was aware of the setback requirements of the lots when he bought them. It was noted that there are no other lots along the street that would need a variance of this nature in order for the proposed homes to be built in line with the others. Mr. Larsen stated that there is a curvature in the road that creates a difficult situation, and a 9 foot variance is needed for most of the house but because of the overhang, 11 foot variances are being requested. It was noted that the distance from the back of the proposed house to the start of the berm is approximately 25 feet. The Board noted that it would be helpful to have a drawing showing the four lots and how the houses would all line up. Mr. Dorlack stated that providing these drawings would not guarantee the Petitioner that variances would be granted for the front setbacks for either of the lots.

Mr. Dorlack read a communication from Steve Hoese into the record regarding the front setbacks for 2840 S Hawthorne Lane and 2860 S Hawthorne Lane.

Mr. Dorlack made a motion to table Cases #2338 & #2339 until the June 3<sup>rd</sup>, 1999 meeting so that the applicant can provide a drawing of the four lots and houses, as well as a drawing that shows details of the berm in the backyards. Mr. Goetter seconded the motion, and the motion to table the cases was tabled.

There was no one further to speak in favor of the petitions, and there was no one to speak in opposition to the petitions. Cases No. 2338 & No. 2339 were declared closed, and the Board proceeded to the next petition.

The next petition called was that of Reid Murphy, Case No. 2341. Mr. McGrath read the petition. It was noted that 16 people were notified by mail and that publication had been made on two occasions. Reid Murphy of 15801 W Robin Road, came forward to speak in favor of the petition. Mr. Murphy stated that he is before the Board with utmost respect for the Board of Appeals and that there was not a lack of personal integrity on his part in the building of his garage. Mr. Murphy provided the Board with most of the information that was requested at the last meeting. He gave the Board the original contract from Four

Seasons for the building of the garage, which states that the contractor will supply the building permit. Mr. Murphy also gave the Board a copy of the receipt from the D.Gary Company for the concrete slab for the garage. It was noted that there is no permit required for the pouring of concrete. Mr. Gygax stated that whatever the Board decides regarding the variance, Bob Sigrist will be called to the counter to make a decision regarding the fees for the building permit for the garage. Mr. Murphy stated that, for personal reasons, he was not able to obtain letters of approval from the neighbors. Mr. Murphy stated that the driveway is blocked from the view of the neighbors by many bushes and trees. It was noted that the Industrial Park is located directly behind the Petitioner's property.

The time line for the permits and construction of the garage was discussed in detail. Mr. Murphy stated that when he first applied for the permit, he had intended to do all the work himself. He noted that it was only after he applied for the permit that he found he needed a variance. Mr. Murphy stated that he was unclear about the variance that was granted as he thought the variance was for more than he actually received. He stated that he did not pay for the permit as the contract with Four Seasons Construction states that the builder was going to do that. Mr. Murphy noted that he received the signed Facts and Decisions from the City on March 23<sup>rd</sup> or 24<sup>th</sup>, 1997 which showed that the variance granted was for a 24 foot by 32 foot accessory building. It was noted that the proposal for the concrete work was dated March 25<sup>th</sup>, 1997 and it was for a 24 foot by 36 foot accessory building. Mr. Murphy stated that all the concrete work was completed by March 25<sup>th</sup>, 1997. He noted that most of the concrete work was done approximately two weeks prior to this date, but that the D.Gary Company came out on March 25<sup>th</sup> to finish the job. Mr. Murphy stated that he realized there was a problem with the size of the garage after he received the minutes. He said that shortly after he received the Facts and Decisions from the City in early April, he contacted the Inspection Department about the discrepancy, and that in May he contacted an Attorney about the problem he was having with the City regarding the size of the building. Mr. Murphy stated the construction of the garage began on April 14, 1997, although no permit had been issued and the size of the garage was larger than what the variance was granted for. He noted that the contract from Four Seasons shows the wrong start date and also states that they would be responsible for taking out the building permit. Mr. Murphy said that both of these items were incorrect, and that this shows that the construction company is not reliable or ethical in their business dealings. It was noted that when the home owner has sub contractors working for him, the home owner is considered to be the general contractor, and as such, is responsible for making sure all permits are obtained. Mr. Murphy stated that he is not, by occupation, a general contractor and that he is inexperienced in the area of general contracting. There was discussion about the code requirements for garage footings, and it was noted that there was an inspection for the footings for the detached garage. Mr. Murphy stated that it would be difficult to cut 4 feet off the garage and that the extra area of the building is not built into the setback area but rather it projects into his back yard area and therefore there would not be a problem for any of the adjoining neighbors.

Mr. Murphy stated that the driveway cost \$2,800 to install. He said that it would be impossible to move the driveway further away from the lot line because there is a garage, house and mature trees that would have to be removed first. It was noted that the driveway is over 100 feet away from the nearest neighbor.

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. 2341 was declared closed, and the Board proceeded to the next petition.

The next petition called was that of Petra Kegley, Case No. 2342. Mr. McGrath read the petition. It was noted that 33 people were notified by mail and that publication had been made on two occasions. Petra Kegley of 15509 S 168<sup>th</sup> Street, came forward to speak in favor of the petition. Ms. Kegley stated that they have owned the property since 1987 and that they do not have a garage at the present time. She noted that the size of the lot is 80 feet wide by 120 feet long and consists of lots 28 and 29. Ms. Kegley said that the size of the proposed garage would be 24 feet by 20 feet and three cars, a lawn mower, and other lawn equipment would be stored in it. Ms. Kegley noted that the driveway would be extended into the back yard to the garage. It was noted that a variance would be needed for any placement of a garage on the Petitioner's property except if it were located right in the middle of the back yard. Ms. Kegley stated that there would be no usable back yard space if the garage were placed in the middle of it. The

Petitioner noted that there is a hedge along one side of the driveway and the lot line. It was noted that the lot directly behind the Petitioner is vacant and this would be the area most affected by the proposed garage.

Mr. Nowak of 1500 S 169<sup>th</sup> Street, came forward to speak in favor of the petition. Mr. Nowak stated that his house is located sideways on his lot and his driveway is along the side where the proposed garage would be. He stated that he does not see a problem with granting the variance. 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. 2342 was declared closed, and the Board proceeded to the next petition.

The next petition called was that of Dawn Koenitzer, Case No. 2343. Mr. McGrath read the petition. It was noted that nineteen people were notified by mail and that publication had been made on two occasions. Dawn Koenitzer of 2245 W Woodshire Drive, came forward to speak in favor of the petition. Ms. Koenitzer stated that they would like to move the air conditioner to the side of the house because they are planning to put an addition onto their house where the air conditioner is currently located. She said that there are also three ash trees and 2 pine trees in the back area that may be affected by the re-location of the air conditioner. Ms. Koenitzer stated that the unit could not be re-located to the south of the addition because, as part of the proposed addition, a porch and overhang will be built over the existing patio. It was noted that if the unit were placed at the rear of the house, the length of the run from the furnace to the air conditioner would be too long to be efficient. Ms. Koenitzer stated that there are mature trees that would help screen the unit if re-located on the side of the house.

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. 2343 was declared closed, and the Board proceeded to the next petition.

The next petition called was that of Brian Spaeth, Case No. 2344. Mr. McGrath read the petition. It was noted that twenty people were notified by mail and that publication had been made on two occasions. Mr. Spaeth of 12425 W Wilbur Drive, came forward to speak in favor of the petition. Mr. Spaeth stated that his property slopes along the lot line and that there is a seven foot stretch of land that no one is able to access or maintain because of the steep slope. He said that the New Berlin Water Utility owns the adjoining property along the rear lot line. Mr. Spaeth stated that the City is also not able to access their property to maintain it without going on his property because of the sloping terrain. He noted that the proposed pool deck would be built tight against the retaining wall. Mr. Spaeth said he built the existing timber retaining wall about eleven years ago and it is still in good shape. He stated that if he is not able to build the deck, he would not install a pool, and, if he can not build the proposed retaining wall, he would not be able to maintain the property properly.

Mr. Wilms, New Berlin Water Utility Superintendent, of 16450 W National Avenue, came forward to state that he would not object to the proposed retaining wall.

Mr. Dorlack read letters of approval into the record from the property owner at 3520 S Russell Drive and from the adjoining property owner, Georgie Friemuth.

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. 2344 was declared closed, and the Board proceeded to the next petition.

The next petition called was that of Larry Wilms, Case No. 2345. Mr. McGrath read the petition. It was noted that twenty-four people were notified by mail and that publication had been made on two occasions. Larry Wilms, New Berlin Water Utility Superintendent, of 16450 W National Avenue, came forward to speak in favor of the petition. Mr. Wilms stated that the variances are not contrary to public interest because the existing building serves the public water system and the proposed addition will enable the city to better serve the citizens. He stated that the addition will not only meet the needs of the Utility Department, but will also be built to be architecturally and aesthetically pleasing to the neighborhood. Mr. Wilms stated that the current use of the property limits expansion to the north and north west of the

building because of the existing reservoir which is not able to sustain the heavy load of an addition. He noted that the only other practical location for the proposed addition would be on the south side. The Petitioner stated that there are no practical alternatives to providing the extra services that would be provided by the addition. It was noted that the existing building is in need of repair. Mr. Wilms said that it would be more aesthetic to place the equipment inside a building, the generator would also be more quiet for the neighbors if it were placed inside a building, and, it would be easier for the utility workers to maintain the equipment inside rather than outside in the elements. He said that the reliability of the water system may be compromised if the generator were placed outside and this could have an impact on the water supply for the entire city. It was also noted that the Zoning Code has changed since the existing building was constructed. Mr. Wilms stated that there will not be substantial detriment to the adjacent property as the building repairs and addition will enhance the neighborhood. It was noted that the nearest neighbor is on a hill and looks down on top of the water utility building.

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. 2345 was declared closed.

At this point a five minute break was taken, and the Board then reconvened to make the following decisions.

The first petition considered by the Board was that of Reid Murphy, Case No. 2341.

Mr. McGrath made a motion to deny the portion of the petition in regard to the detached garage, and, Mr. Wallner seconded the motion. Ms. Boya and Mr. Liljestrand did not participate in the voting. Mr. McGrath, and Mr. Wallner voted to approve the motion to deny the garage variance. Mr. Dorlack and Mr. Goetter voted to deny the motion to deny the garage variance. The motion to deny the portion of the petition in regard to the detached garage did not pass.

Mr. Dorlack made a motion to grant the portion of the petition in regard to the detached garage and Mr. Goetter seconded the motion. Ms. Boya and Mr. Liljestrand did not participate in the voting. Mr. Dorlack and Mr. Goetter voted to grant the petition and Mr. McGrath and Mr. Wallner voted to deny the petition. The motion to approve the portion of the petition in regard to the detached garage did not pass.

Mr. Goetter made a motion to grant the portion of the petition in regard to the driveway, and Mr. Wallner seconded the motion. Ms. Boya did not participate in the voting. Mr. Goetter, Mr. Wallner, Mr. Dorlack, and Mr. Liljestrand voted to approve the petition. Mr. McGrath voted to deny the petition. The motion to grant the portion of the petition in regard to the driveway passed by a four to one vote.

The next petition considered by the Board was that of Petra Kegley, Case No. 2342.

Mr. Wallner made a motion to grant the petition, and, Mr. Goetter seconded the motion.

All members voted in favor of granting the petition.

The next petition considered by the Board was that of Dawn Koenitzer, Case No. 2343.

Mr. McGrath made a motion to grant the petition, and, Mr. Liljestrand seconded the motion.

Mr. Dorlack, Mr. Wallner, Mr. McGrath, and Mr. Liljestrand voted to approve the petition, and Mr. Goetter voted to deny the petition. The petition was granted by a four to one vote.

The next petition considered by the Board was that of Brian Spaeth, Case No. 2344.

Mr. McGrath made a motion to grant the portions of the petition in regard to the rear setbacks for the proposed retaining wall and the proposed deck, and, Mr. Goetter seconded the motion.

All members voted in favor of granting the portions of the petition in regard to the rear setbacks.

Mr. McGrath made a motion to deny the portions of the petition in regard to the side setbacks for the proposed retaining wall and the proposed deck, and, Mr. Goetter seconded the motion. Mr. Dorlack, Mr. Wallner, Mr. McGrath, and Mr. Goetter voted to approve the motion to deny the side setback variances, and Mr. Liljestrand voted to deny the motion to deny the variances. The petition, in regard to the side setbacks, is denied by a four to one vote.

The next petition considered by the Board was that of Larry Wilms, Case No. 2345.

Mr. McGrath made a motion to grant the petition, and, Mr. Dorlack seconded the motion. Mr. Goetter did not participate in the voting. All members voted in favor of granting the petition.

There being no further matters to be discussed in front of the Board of Appeals, the said meeting was adjourned at 10:30 PM.

BOARD OF APPEALS  
CITY OF NEW BERLIN

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Joseph J. Dorlack, Chairman