

AGENDA
CITY OF STURGEON BAY
ZONING BOARD OF APPEALS

Tuesday, October 13, 2020
12:00 Noon
Council Chambers, City Hall
421 Michigan Street

1. Roll call.
2. Adoption of agenda.
3. Approval of minutes from August 25, 2020.
4. Public Hearing: Petition from Richard Bosman to allow construction of a temporary/seasonal pier on a vacant lot located on Memorial Drive, parcel #281-62-31000229.
5. Consideration of: Petition from Richard Bosman to allow construction of a temporary/seasonal pier on a vacant lot located on Memorial Drive, parcel #281-62-31000229.
6. Consideration of: Ratification of decision letter regarding request from Fincantieri Bay Shipbuilding Co. for variances from Section 20.27(2) of the Municipal Code (Zoning Code) for expansion of a building located on parcel #281-10-85340109B (formerly addressed as 273 N First Avenue).
7. Consideration of: Ratification of decision letter regarding request from Fincantieri Bay Shipbuilding Co. for a building height variance from Section 20.27(2) of the Municipal Code (Zoning Code) for construction of a new building located on parcel #281-20-85360101C.
8. Adjourn.

NOTE: DEVIATION FROM THE AGENDA ORDER SHOWN MAY OCCUR.

ZBA Board Members
William Murrock, Chair
Dave Augustson
Wayne Spritka
Bill Chaudoir
Nancy Schopf
Morgan Rusnak, 1st Alternate

10/9/20
3:00 p.m.
CN

ZONING BOARD OF APPEALS
Tuesday, August 25, 2020

The City of Sturgeon Bay Zoning Board of Appeals meeting was called to order at 12:00 Noon by Chairperson William Murrock in the Council Chambers, City Hall, 421 Michigan Street.

Roll call: Members Wayne Spritka, William Murrock, Nancy Schopf, Bill Chaudoir and Dave Augustson were present. Mr. Augustson appeared virtually via Zoom. Also present were Mayor David Ward, Sturgeon Bay Utilities General Manager Jim Stawicki, Alderpersons Dan Williams, Helen Bacon, Kirsten Reeths, Spencer Gustafson, and Seth Weideranders, City Administrator Josh Van Lieshout, Community Development Director Marty Olejniczak, Planner/Zoning Administrator Chris Sullivan-Robinson, Community Development Secretary Cheryl Nault, and several members of the public.

Adoption of agenda: Moved by Mr. Spritka, seconded by Ms. Schopf to adopt the following agenda:

1. Roll call.
2. Adoption of agenda.
3. Approval of minutes from July 14, 2020.
4. Public Hearing: Petition from Fincantieri Bay Shipbuilding Co. for variances from the minimum side yard and maximum building height requirements of the I-2 district for an addition to an existing building, located at a former address known as 273 N. 1st Avenue.
5. Consideration of: Petition from Fincantieri Bay Shipbuilding Co. for variances from the minimum side yard and maximum building height requirements of the I-2 district for an addition to an existing building, located at a former address known as 273 N. 1st Avenue.
6. Public Hearing: Petition from Fincantieri Bay Shipbuilding for a variance from the maximum building height requirement of the I-2 district for a building located in the south yard of Fincantieri Bay Shipbuilding Co. and westerly of the property at 341 N. 3rd Avenue.
7. Consideration of: Petition from Fincantieri Bay Shipbuilding for a variance from the maximum building height requirement of the I-2 district for a building located in the south yard of Fincantieri Bay Shipbuilding Co. and westerly of the property at 341 N. 3rd Avenue.
8. Adjourn.

Carried.

Approval of minutes from July 14, 2020: Moved by Mr. Chaudoir, seconded by Mr. Spritka to approve the minutes from July 14, 2020. All ayes. Carried.

Public hearing: Petition from Fincantieri Bay Shipbuilding Co. for variances from the minimum side yard and maximum building height requirements of the I-2 district for an addition to an existing building, located at a former address known as 273 N. 1st Avenue: Mr. Sullivan-Robinson stated that there are two variance requests, with the first being the 420 building at the base of N. 1st Avenue. In the I-2 district, the height limit is 45 feet. The setback along the south lot line is 20 feet. Fincantieri is requesting to build a 60,000 square-foot addition that would encroach the side yard setback by 15 feet and would match the existing height in the front of the building on the street side and would decrease in height in the back of the building. The same setback of 5 feet would be followed along the south lot line as existing. In 2007, a variance was granted for a 59-foot building height, as well as the 5-foot side yard on the south lot line. There is commercial property to the East and South, and residential condos further to the south. Across from 3rd Avenue is a mix of residential and commercial development. There are three primary criteria to granting a variance, including unnecessary hardship, unique property circumstances, and protection of public interest. If a variance is granted, the property owner will need to adjust the lot line or combine the lots to avoid having the proposed addition cross a lot line. The Board has the ability to approve the variance as presented or a lesser variance. Conditions can be placed on the variance, but should be related to the project.

Mr. Olejniczak reminded Board members that they must clearly state the reasons for granting or denying the variances.

Chairperson Murrock opened the public hearing at 12:05 p.m.

Fincantieri's General Manager Todd Thayse stated that Miron Construction was selected as their construction firm. The U.S. Navy's FFGX contract was awarded to Fincantieri, which is a huge program. It is a very big deal that this is coming to Northeast Wisconsin. Fincantieri has three contracts for vessel construction, including the recently awarded FFGX Program. The other two are LCS, which they have been working on for approximately seven years, and the MMSC, which is a continuation of the LCS Program. Things that they have done in preparation for this is the purchase of the Palmer Johnson property, the request to have the City vacate 1st Avenue, the acquiring of the Railroad Depot, the acquiring of the Wagner Mall property (former Red Oak Winery), Berth One improvements by acquiring a grant from the State of Wisconsin to remove the shipwreck at Berth One and develop a deep water port, which has been completed, and relocation of the high powered lines that went across the former Palmer Johnson property. These were all things that were steps to achieving the eventual goal of being ready to become a Department of Defense contractor. The south portion of the property is what is considered the military area. What they will do is build the forward third of the vessel. All the steel will be coming to Sturgeon Bay. It will be blasted and primed upon arrival. It must be housed indoors. They will be building the forward end, receiving, blasting, priming, kitting, shaping, burning and manufacturing all the components of the vessel. They will be doing that for the LCS program, the MMSC program, and the FFGX program. This will continue to keep their employees employed and offer more employment as they work toward the Department of Defense work.

About 75% of their current, modern construction buildings are much taller than the maximum 45-foot height restriction. The tallest building currently on the site is Building 311, which is at 82 feet high. The setback they are requesting is a continuation of an existing building that is currently 5 feet from their southern property line.

Mr. Thayse gave a slide presentation that gave a depiction of what this will look like. The 433 building, which will be an 80,000 square-foot manufacturing building, will house the blasting and priming equipment. They are asking for a variance for a height of 110 feet. One of the reasons this building is proposed to be located where it is at is because of the Berth One improvements that were made. The launch ramp needs to line up with the end of the building so they can roll out the large sections onto the launch ramp and then onto a barge to be transported to Marinette Marine for the larger construction of the vessel. Marinette Marine will finish and launch the vessel. The current blast, prime, small parts, plate storage, etc. that is in the South Yard will be removed to make room for new construction. All construction for the Department of Defense must be done indoors. Steel has to be stored indoors. The reason for the requested height is for the crane and 75-foot hook height. The 110-foot height is to the top of the parapet wall that houses the door as it coils up. There will be six workstations within the building.

Building 420 will contain steel storage. This building will be located alongside the existing Palmer Johnson building. The upper end of the roof will be visible coming down Jefferson Street.

Mr. Thayse reminded everyone that this has a substantial bearing for years to come on how they do their business, the kind of business that they do, and the volume of business that they do. This is more than a \$30 million dollar investment for them.

Mr. Thayse added that the steel will be trucked up to Sturgeon Bay in 40 ton loads on the same route as they currently use. The 422 building will have the access modified on the north side in order to get sections out of the building. Utilities will be relocated. The building will be split in two with a sandblasting side and a painting side. Two new doors will be installed, one on the north side and one on the south side. There will be several modifications throughout the yard to support this. There will be existing buildings that will be repurposed for offices.

Ms. Schopf asked what the employment projection is. Mr. Thayse responded that there will be an increase. They have fluctuated between 600-1200 employees over the past 8 or more years. They are expecting a downturn in the commercial end of the business and would be moving them into the military end. This means a lot of continued jobs. If the variance was not approved, it would be very difficult and doubt if they would be able to make the schedule.

Mr. Spritka asked if they were addressing the stormwater run-off issues. Peter Glassen, representing Bay Shipbuilding, responded that the stormwater will be going into the bay like the rest of the yard.

Mr. Olejniczak added that the Fire Department had no concerns.

Mr. Glassen mentioned that new air systems will be installed with heating and air make-up. There will be fume control systems added, as well as sprinkler system and monitors.

Mr. Thayse said Marinette does not have room for this at their location. He added that they have been working with the youth apprenticeship program trying to bring in the next generation of shipbuilders.

Mr. Chaudoir asked what these buildings will do for the company after this contract. Mr. Thayse responded that hopefully there will be more contracts. Commercial vessels could flow through here easily. One of the goals initially was to build tugs. It can be used for any of the commercial work they are doing. There are 10 frigates anticipated, and the program of record is 20. They will package kits of parts for the things that are not built here and will be shipped to Marinette for assembly. Larger sections would be shipped by water and smaller kits by truck. Marinette has larger fabrication buildings.

Mr. Spritka asked that with considering the height of the building, if there have been any airport runway studies completed. Mr. Thayse responded that the top of the existing Gantry Crane is more than 160 feet tall. It is part of the permitting process to get aviation permits.

Kurt Wolfram, representing Miron construction, W2991 Sunshine Road, Freedom, WI stated that the addition for the 420 building will sit on a driven pipe pile system, concrete foundations, with construction to start in October and complete in April, 2021. It will be a steel structure, with insulated metal panel skin and membrane roof.

Mr. Stawicki stated that as far as infrastructure, Bay Ship is set up as its own little city. They have their own electric distribution system within the yard, as well as water. They have their own fire mains within the yard. He confirmed that Sturgeon Bay Utilities has ample capacity for the additions.

Chairperson Murrock then asked if there was anyone in the public who wished to speak in favor of the variance.

John Hanson, 1627 Memorial Drive stated that Bay Ship has been vital to their businesses.

Richard Wickman, Vice-President of Eagle Mechanical, said that they do a lot of work for Bay Ship.

Kelly Catarazoli, 344 N. 3rd Avenue, stated they can continue to do work. The City keeps giving them variances. This affects our City and dominates our skyline. The City has ordinances for a reason. Noise has not yet been addressed. There is no buffer. This will hurt her bed & breakfast.

Kirsten Reeths, 124 N 8th Pl. and District 7 alderperson. ZBA should allow this to be approved. Fincantieri is Sturgeon Bay's #1 employer. She didn't want to see any more empty buildings. This is something to be proud of. She asked that all future remodel and building projects be turned over to the Plan Commission in the I-2 zoning district.

Tony Scimeca, business owner at 11 E Oak St., and lives at 6535 Monument Bluff Pass, Egg Harbor, recommended to re-examine the charter and what their purpose is. Fincantieri has not been a good guest as

far as beautification in the area surrounding the shipyard and have not maintained a good corporate neighbor image. The shipyard should contribute more and absorb all real estate bills within 1000 feet.

Ms. Nault read nine letters in favor of the variance request from:

Nancy Bertz, General Manager/Co-Owner of Stone Harbor Resort.
Steve Jenkins, 4416 W. Madeline Lane, Sturgeon Bay
Joel Kitchens, State Representative-1st Assembly District
John Asher, Roen Salvage Company
Ken Pabich, Door County Administrator
Jim Stawicki, General Manager, Sturgeon Bay Utilities
Gene LaPlant, President, Great Lakes Protective Coatings inc.
Amy Austad LaBott, Owner of Door County Hardware
Mike Gallagher, Member of Congress

Chairperson Murrock asked for testimony against the variance request.

Hans Christian, 330 N 3rd Avenue, played a recording of the noise from Bay Ship Building 366. He is concerned that other local businesses will have to shut down.

Melaniejane wants to have full-time jobs. There is a problem with training in constructing those ships.

Kelly Avenson, 26 N 3rd Avenue, stated that she didn't know if Sturgeon Bay wanted to be a military community. It is only one contract right now.

Jay Renstrom, 34 Bluebird Drive, stated that there is no beautification project for the City. Nothing was said to address the noise issue. They have overflow parking at Sunset Park. They could help shore up Sunset Park. There should be paved employee parking lots so employees don't have to park on the streets. They need to reinvest into the City.

Phil Rockwell, 368 N 3rd Avenue, said this is one of the three properties he owns close to Bay Ship. He wondered what was in it for our community. Everything must be hard surfaced. Will the doors be closed on the new buildings? Who does air quality standards? He was concerned about heroin in Marinette. Residential people should be taken care of. Cars should be released on 1st Avenue. How many shifts will there be? What is going to be done about keeping the water clean?

Bertz Silvensky, 217 N 1st Avenue, was not necessarily against the project, but cares about air and water quality and Bay Ship should be concerned about the environment. Protection is needed from the noise. There should be some beautification required for the neighbors.

Kathy Grier, 153 S 3rd Avenue, stated the project was too large. Third Avenue is packed when the shipyard gets out. She commended Bay Ship getting a military contract, but wondered if the City wanted to be a military community.

Dan Whetter, 217 N. 1st Avenue, #6, said the proposal will block their view. Values will plummet. The 57-foot height is like the Wall of China. This would destroy the downtown. Many things have to be proven to the City.

Ms. Nault read one letter that was neither for nor against from Barb Allmann in regard to lighting.

Ms. Nault read five letters in opposition from the following:

Ross Schmelzer, 253 N 1st Avenue
Hans Christian, 330 N 3rd Avenue
Carrie Whetter, 217 N 1st Avenue
Beth Renstrom, 34 Bluebird Drive.

Elliot Goettelman, 451 N 4th Avenue

Mr. Murrock then asked if there was any rebuttal testimony.

Mr. Thayse stated that he listened to all testimony. The cases stood on their own. He had no rebuttal testimony.

Hans Christian stated that prosperity hasn't happened since 1st Avenue closed.

The public hearing was declared closed at 2:10 p.m.

Consideration of: Petition from Fincantieri Bay Shipbuilding Co. for variances from the minimum side yard and maximum building height requirements of the I-2 district for an addition to an existing building, located at a former address known as 273 N. 1st Avenue: Mr. Chaudoir asked Mr. Thayse how hard would it be if they had to meet the side yard setback. Mr. Thayse responded that it would encroach on the space that they have in between the 433 and the other building and would cause some misalignment on how the work is done on the inside. It would be a hardship to maneuver trucks in the yard with the steel and the units in and out of those buildings. He added that the existing blast and prime lab would be incorporated into 420 building, along with the rolling, shaping, and burning machines.

Mr. Chaudoir asked if the new addition and the removal of the old blast and prime line would reduce dust, noise, and odors. Mr. Thayse responded that it would greatly improve the situation.

Mr. Chaudoir inquired about the design of the south wall of the addition. Mr. Wolfgram added that the building will have insulated panels for sound suppression.

Ryan Hoernke, Fincantieri Bay Shipbuilding's Assistant General Manager and Director of Finance & Technical Operations, added that the blast and prime will be located on the north side of the building and enclosed in a wall, then separated to the cold storage area. It will be buffered on the north side of the building.

Mr. Murrock asked if there had been any complaints about the view when ships come in for repair. Mr. Thayse responded that he did recall any complaints.

Mr. Thayse added that additional security will be increased on that side of the yard.

Mr. Chaudoir suggested a reuse and revitalization plan for 3rd Avenue, submitted within 6 months, that would enhance the neighborhood, as well as paving the employee parking area.

Mr. Thayse was not opposed to that suggestion. He said the north section of the yard is already blacktopped.

Mr. Chaudoir stated that the proposed building was located far from 3rd Avenue and the height could be mitigated with street enhancements.

Mr. Chaudoir asked about painting operations. Mr. Thayse stated that all operations would be covered.

Mr. Thayse also addressed the lighting issue. Downward lighting will be installed. There may be bright lights at times when boats are pulling in.

Mr. Olejniczak reminded the Board that there are two different actions, with the first being the variance request for the expansion of the 420 building. The second variance request is for the 433 building. Even though testimony has been taken, someone may want to speak specifically on the 433 building.

Mr. Murrock commented on Mr. Gallagher's letter where he emphasized how vital the FFGX will be to the nation's defense. Mr. Murrock thought that we are very fortunate to land something like this. We have to keep our guard up.

Ms. Schopf can understand concerns of immediate neighbors. For the bigger picture of the community, the economic development, and tourists that come to Sturgeon Bay to see the ships, we need to continue to expand and grow that industry for our area as a whole.

Mr. Chaudoir felt it would be a blessing to the community to have these improvements made, provided it is done in a manner that minimizes impacts from the shipyard. He believed the setback variance was required.

After further discussion, it was moved by Mr. Chaudoir, seconded by Ms. Schopf to approve the request for variance, subject to providing a 3rd Avenue improvement plan and schedule to implement the plan within 6 months, addressing landscaping along 3rd Avenue, paving of parking areas, the appearance and use of the buildings at 325 N. 3rd Avenue (former Red Oak Winery), 341 N. 3rd Avenue (former Train Depot), and the temporary steel buildings in that corridor, and to follow the Wisconsin DNR and City of Sturgeon Bay stormwater management plan. The plan and schedule need to meet City staff approval.

Roll call vote: Mr. Murrock, Mr. Chaudoir, Ms. Schopf, and Mr. Spritka voted aye. Mr. Augustson was unavailable via Zoom at the time of roll call due to technical difficulties. Carried.

The Board took a 10 minute break at 2:33 p.m.

Public Hearing: Petition from Fincantieri Bay Shipbuilding for a variance from the maximum building height requirement of the I-2 district for a building located in the south yard of Fincantieri Bay Shipbuilding Co. and westerly of the property at 341 N. 3rd Avenue: Chairperson Murrock opened the public hearing at 2:43 p.m.

Mr. Murrock stated that all testimony heard at the previous public hearing also pertained to this request.

Mr. Thayse had no more to state. Everything had been presented during the first variance.

No one spoke in favor of the variance. Ms. Nault stated that all letters in favor and in opposition were read during the previous public hearing.

Hans Christian, 330 N. 3rd Avenue, stated that in his effort to mitigate, he has been talking with Mr. Thayse about moving the proposed building south 70 feet back that would tuck it behind Building 422.

Mr. Thayse stated that the site is not fully surveyed, so the exact position of the building is not finalized. The center of the bay should be lined up with the center of the launch. If not lined up, it would pinch off the center area with trucks. It can be moved back as much as possible with a survey done. It needs a clear, smooth path. It will be no closer than 75 feet to Berth Two.

Mr. Christian asked if the shipyard doesn't have a survey, how can the Board make an educated decision?

Mr. Thayse corrected himself and said there is a survey of their yard. Final placement of the building as it relates to the survey has not been set. Engineering is still taking place.

The public hearing was declared closed at 2:54 p.m.

Consideration of: Petition from Fincantieri Bay Shipbuilding for a variance from the maximum building height requirement of the I-2 district for a building located in the south yard of Fincantieri Bay Shipbuilding Co. and westerly of the property at 341 N. 3rd Avenue: The Board discussed the variance request.

Ms. Schopf supported the variance for the same reasons for approval as the first variance.

Mr. Spritka stated that the hardship is that the nature of shipbuilding is different than 20 years ago. Ships are

no longer built outside. The requested building height is needed for modern shipbuilding. The process needs to be controlled in an indoor environment. He also stated that the shipyard is vital to our community.

Discussion continued. Moved by Mr. Chaudoir, seconded by Mr. Spritka to approve the variance request, subject to the same conditions as the previous variance and, in addition, that the exact location of the building can fluctuate up to 3 feet in all directions from submitted site plan, but shall not be less than 75 feet south of Berth Two. It is better aligned for new contracts; building should last for another 50 years; naval architecture has changed and there is a need for the size of the building to accomplish their goal. Roll call vote. All ayes including Mr. Augustson who voted via Zoom videoconference. Carried.

Adjourn: Moved by Ms. Schopf, seconded by Mr. Murrock to adjourn. Carried. Meeting adjourned at 3:03 p.m.

Respectfully submitted,



Cheryl Nault
Community Development Secretary



MEMO

To: Zoning Board of Appeals
From: Christopher Sullivan-Robinson
Date: October 13, 2020
Subject: Variance Request from section 20.33(6) for Richard Bosman

Richard Bosman is petitioning the Zoning Board of Appeals to grant a variance from section 20.33(6) to allow the construction of a temporary / seasonal pier to be located on parcel 281-68-31000229. This section of code allows the construction of a temporary or permanent dock (pier) by abutting property owners. The property that Richard Bosman owns is not considered an abutting property.

Earlier this year Richard Bosman applied for a pier permit, which was approved by staff and Common Council in July. The interpretation by staff was that Mr. Bosman was an abutting property eligible to have a pier. Following this approval, neighboring property owners provided a documentation from a former City Attorney in 1993 that determined that the placement of a pier on this property (now owned by Mr. Bosman) is not a permitted use of the property. Since there was contradicting interpretations of allowed uses on this property, the current City Attorney was asked to review the ordinance. In your agenda packet is the legal opinion provided by the City Attorney Jim Kalny. He agreed with the previous City Attorney. Based on his review, the permit was granted in error and, thus, the permit has since been revoked pending this variance application.

The subject property is zoned conservancy, which is intended to provide parkland and open space, to preserve the natural state of scenic areas, to provide natural areas and buffer strips, and to discourage intensive development of marginal lands so as to prevent potential hazards to public and private property. Attached is the code for the conservancy district, the memorial drive restrictions, and the pier ordinance.

Variance Standards: There are standards for granting a zoning variance, which is defined by State Statute 62.23(7)(e)7. d. *A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.*

According to the City Attorney, this variance should be examined as a use variance.

1. Unnecessary Hardship: The property owner has illustrated that of the properties regulated by section 20.33 (Memorial Drive Restrictions) he owns the only property that doesn't have an abutting property.
2. Unique Physical Property Limitations: The property owner has illustrated that his property is uniquely limited due to not having an abutting inland property.
3. Protection of Public Interest: The property owner identifies that there was a dock located on this property for 13 years and the fact the City approved a dock this year is proof that there is no negative impact to the City or community.

The Board must review the applicant's claims and decide based primarily on whether request meets the variance standards. Other determining factors should include the purpose / intent of the ordinance, the public's safety, potential future effects, if the hardship is self-created, and if substantial justice is achieved.

Options: The Board has the ability to approve the request. In addition, conditions can be added which are relevant to the variance request. If there are other considerations or additional information required, the Board can push back their decision to the next meeting. The petitions can also be denied. The Board's decision must include reasons based on the variance standards and other relevant determining factors identified above.



July 23, 2020

Via Email

Marty Olejniczak
Community Development Director
City of Sturgeon Bay

**Re: Direction of Pier at Tax Parcel No. 281-62-31000229
Located on Memorial Drive**

Dear Mr. Olejniczak:

I am in receipt of your email of July 1 regarding the above-referenced matter. As you are aware, the question you pose is complex and includes the analysis of a site specific zoning regulation with undefined terms.

Background

On or about July 7, 1993, then building inspector/zoning administrator for the City of Sturgeon Bay, Roger Strege, sent a letter to Kay Herlache informing her that the pier erected at her property, particularly Parcel No. 281-62-31000229, on Memorial Drive (Subject Parcel) was not permitted. A copy of that correspondence is attached and marked Exhibit A.

Apparently Ms. Herlache did not agree and ultimately the matter was forwarded to then City Attorney, Jeffery Weir, for an opinion which he issued on July 30, 1993. A copy of that opinion is attached as Exhibit B.

Apparently Ms. Herlache informed the City that they intended to comply with the Opinion and not construct a pier on the property.

Interestingly, in reviewing the aerial photographs of this vicinity, the aerial photograph of 2007 shows a pier had been placed on Subject Parcel and was apparently stored there for some time as well. Based on information given to me by you, I understand that pier was mistakenly placed there by the adjoining property owners, who were uncertain of the location of the lot line.

The property is currently owned by Bosman Trust. In March of 2020, the Trust applied for a pier permit for the subject parcel. The City reviewed the permit but did not uncover the 1993 opinion of Mr. Weir. The Harbor Master, having reviewed the pier plans for compliance with the pier

permitting ordinances, approved the permit. Although the ordinance does not require it, the permit was placed on the agenda of the Common Council, who approved the application.

On June 30, the owners of two neighboring properties abutting each side of the Subject Parcel came to discuss this issue with the City and presented a copy of Exhibit B, questioning why a pier is being permitted on this parcel. Staff reviewed the 1993 Opinion and raised several issues regarding the interpretations set forth therein. Because of those questions, and seeing as the permit has been issued and the appeal period has run, you have requested an opinion from me regarding whether the pier permit was properly issued. For the reasons set forth below, I believe the pier permit was improperly issued.

Discussion

In Exhibit B, Mr. Weir gave two reasons for his conclusion that a pier could not be constructed on the Subject Parcel:

1. The Subject Parcel is a substandard lot and would not meet the width and area requirements required by Section 20.19 of the Municipal Code for an R1 District.
2. The permit could not be granted because of the Memorial Drive restrictions set forth in Section 20.32 of the Municipal Code. These restrictions allow only property owners of abutting party to erect or construct temporary or removable docks.

With regard to the first issue, I believe Mr. Weir was correct when he rendered his opinion in 1993. At that time the Code addressed nonconforming uses but did not directly address uses in nonconforming lots. The provision in 1993 read:

20.18 Nonconforming Uses. Present uses of buildings and premises may be continued even though they do not conform to the restrictions of this chapter. The Inspection Department may use a permit for structural repairs or alterations of such building or premises and may issue a permit to reconstruct a nonconforming building which has been damaged or destroyed by fire or act of God, but nothing in this section shall be construed as permitting any new nonconforming use or building. Any nonconforming use that is abandoned for one year shall be permanently discontinued.

The foregoing ordinance is reasonably read to suggest that a substandard, and therefore nonconforming lot, could not host a new use.

However, the Zoning Code was updated in 1995 with more complete and conclusive language directly addressing the use of legally creating nonconforming lots. The language reads:

20.26 Nonconforming Uses, Structures and Lots.

(3) Legal Nonconforming Lots. In all districts, all legal nonconforming lots may be used as building sites for any uses permitted in that district provided that all structures meet all setbacks for area and other applicable provisions of this chapter.

(b) Any legal nonconforming lot may be enlarged without meeting the lot width or area requirements of this chapter.

I have no reason to believe that the Subject Parcel was not legally created and that issue appears to be conceded by Mr. Weir. So under current law, assuming the lot could legally host a pier use, that use would not be prohibited due to the fact that the subject parcel is a non-conforming lot, so long as all of the other setback and listed area requirements could be met. In other words, due to the change of the law, the first rationale for not permitting the pier on the subject parcel is no longer valid.

The second issue rests on some site-specific zoning regulations found in Section 20.33 of the Sturgeon Bay Zoning Code. Specifically, in question are subsections (4) and (6) which read as follows:

20.33-Memorial Drive Restrictions.

The area described as a line southwesterly of the westerly curved line of Memorial Drive and extending from a point on the center line of Memorial Drive which is 100 feet northwesterly of its intersection with the center line of South 8th Avenue, to a point on the center line of Memorial Drive which is 415 feet northwesterly of the intersection with the center line of South 15th Avenue is hereby restricted as follows:

*** (4) No building or structure shall be erected, constructed or placed thereon.

*** (6) Abutting property owners may erect or construct one dock and/or one boat lift whether temporary or permanent.

(a) Neither a temporary or permanent dock shall extend beyond a line drawn parallel to the center line of Memorial Avenue and 165 feet southwesterly therefrom.

(b) All permanent docks shall require a permit.

Clearly Section 20.33 SBC restricts the described property which includes the Subject Parcel. The provision prohibits any structures providing an exception to "abutting property owners" to place a dock and boat lift on the Memorial Drive restricted property. The question is whether the applicant here is an "abutting property owner".

Mr. Weir clearly did not believe Ms. Herlache was an "abutting property owner" as that term is used in Section 20.33 SBC. He states in his Opinion:

When I discussed this matter with you, you indicated that the lot that she owns, which does not have an abutting lot on the other side of Memorial Drive, was split out in 1961. Kay Herlache also indicated that fact in her letter to Robert Strege dated July 27, 1993.

You further indicated that you thought that the City Zoning Ordinance did not come into effect until 1978, and, therefore this lot predated the ordinance. If that were so that may raise some questions; however the City has had zoning ordinances for many years prior to 1978, and those zoning ordinances have the same prohibitions as in the current ordinance concerning the requirement that the person who wants to erect a dock must be the owner of an abutting lot.

Clearly Mr. Weir believes the term abutting property owner as used in 20.33(6) refers to property owners who own property on both sides of Memorial Drive. While this is at first glance an odd reading of the term "abutting" further research supports the conclusion that this is what was intended by the term "abutting property owner" in the Memorial Drive Restrictions.

In researching this matter, a discussion of an easement in 1977 by the Plan Commission was particularly enlightening. During those discussions, reference was made to an intent by the City to severely restrict the riparian side of Memorial Drive so as to protect the view lines. From what I can determine from the documents available to me, the Memorial Drive restrictions have been in place since the late 1940s. It appears the property along the water in the vicinity of the subject parcels were split by Memorial Drive. Most, in fact all of the lots except the Subject Parcel, have property on both sides of Memorial Drive. The City was interested in preserving view lines in this area so significant restrictions were placed on the riparian side of Memorial Drive codified into what is now Section 20.33(4) SBC. The City recognized the interest of those owning property on both sides of Memorial Drive and allowed them to use the riparian property associated with their "abutting property" on the other side of Memorial Drive as provided by and subject to the limits of Section 20.33 SBC. The City specifically used the term "abutting property owner" to effectively limit the number of piers that could be constructed in the restricted area. As the City sought to determine anything that would block the view lines or otherwise hamper the beauty of this shore front was to be severely restricted. By limiting the pier construction to only those property owners that had property on both sides of Memorial Drive, an additional limit was placed on the number of piers that could be placed on the waterfront.

Mr. Weir's interpretation of the term "abutting property owners", to mean those property owners who have property on both sides of Memorial Drive, is consistent with the discussions of that language in 1977, and, the intent of the City to preserve sight lines, and clear intent to limit the use of the property subject to the Memorial Drive Restrictions.

As concluded by Mr. Weir, the subject parcel does not share abutting property on the other side of Memorial Drive. The owner of the subject parcel is not an abutting property owner and

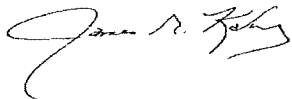
therefore does not fall within the limited exception of 20.33(6) SBC. The 1993 interpretation by Mr. Weir is reasonable, and consistent with the intent of the City with regard to the severe restrictions of the Memorial Drive restricted area. I have no alternative interpretation of the term "abutting property owner" that would form a basis to reverse the prior opinion.

The permit is therefore, in my opinion, issued contrary to the Memorial Drive Restrictions provision of Section 20.33(4) and as the owner of the subject parcel is not an abutting property owner, the exception of Section 20.33(6) does not apply.

While it is unfortunate that the permit was reviewed and issued before the current staff was aware of the past application of the Memorial Drive Restrictions, case law holds that citizens have a right to rely on the enforcement of police regulations (such as zoning code provisions) even in situations where there was a delay or error with regard to enforcement. That same case law holds that the error or delay or does not afford a basis form the basis for estopping the municipality from later enforcing its ordinance (see for example *City of Milwaukee v. Leavitt*, 31 Wis. 2d 72, 76–77, 142 N.W.2d 169, 171–72 (1966)). Without some change in the Memorial Drive Restrictions the property owners neighboring the Subject Parcel have the right to right to rely on the uniform enforcement of those police regulations as they have been reasonably interpreted and applied in the past, regardless of the issuance of the permit.

Please contact me with any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James M. Kalny".

James M. Kalny

JMK/das

EXHIBIT A

CITY of STURGEON BAY

ROGER STREGE

INSPECTION DEPT. - ZONING DEPT.

Phone (414) 746-2915
835 N. 14th Ave.
Sturgeon Bay, WI 54235

CERTIFIED & P 107 650 294

July 7, 1993

FILE COPY

Ray Herlache
3740 Bay Shore Drive
Sturgeon Bay, WI 54235

Subject Property: Memorial Drive Property, Parcel #281-62-31
000229

Ms. Herlache:

A recent inspection of the above subject property reveals that a dock has been constructed abutting this property. It also appears as though you have two moorings located in front of this property, the Municipal Code of the City of Sturgeon Bay permits only one mooring for the amount of shore frontage of this property, and because the lot is nonconforming, no type of structures are allowed such as docks.

Please contact me at 746-2915 within the next three (3) days to discuss plans for compliance with the Municipal Code. Failure to do so could result in action by the City to gain compliance.

Roger Strega
Building Inspector/
Zoning Administrator

RS:sh

cc: Director of Municipal Services
Harbor Master

EXHIBIT B

ROGER PINKERT
JAMES R. SMITH
JEFFERY M. WEIR
MARK A. JINKINS
RANDALL J. NESBITT
RICHARD A. HAUSER
DAVID L. WEBER

LAW OFFICES
PINKERT, SMITH, WEIR, JINKINS, NESBITT & HAUSER

464 KENTUCKY STREET
P.O. BOX 89
STURGEON BAY, WISCONSIN 54235-0089

AREA CODE 414
TELEPHONE 743-8505
FACSIMILE 743-4760

BRANCH OFFICE:
350 SUNSET DRIVE
SISTER BAY, WISCONSIN 54224
AREA CODE 414
TELEPHONE 854-2618

HERMAN J. LEASUM, OF COUNSEL

July 30, 1993

Mr. Robert A. Ross, Esq.
216 S. 4th Avenue
P.O. Box 317
Sturgeon Bay, WI 54235-0317

RE: Erection of Dock by Kay Herlache on Memorial Drive

Dear Bob:

As you are aware, our firm is acting as City Attorney for the City of Sturgeon Bay.

Roger Strega, the Building Inspector/Zoning Administrator for the City discussed with me the issue of the dock erected by Kay Herlache, your client, on Memorial Drive on the parcel that she owns located in between Memorial Drive and the waters of the ship channel. He furnished to me copies of the letters that he sent to Kay Herlache, dated July 7, 1993 and July 21, 1993, advising her that she was in violation of the Municipal Code of the City of Sturgeon Bay and demanding that the dock be removed.

In reviewing this matter it appears that she is in violation of Section 15.065(2)(a) of the City Municipal Code for not having first obtained a permit prior to erecting the dock.

Even if she did apply for the permit, though, it further appears that the permit could not be granted because the lot is a substandard lot and would not meet the width and area regulations required by Section 20.19 of the Municipal Code for an R-1 District. Specifically, she would not meet the requirements of subsection (5) on lot area and subsection (6) on lot width.

More importantly, though, the permit could not be granted because of the Memorial Drive restrictions set forth in Section 20.32 of the Municipal Code. These restrictions allow only property owners of abutting property to erect or construct temporary or removable docks.

Re: ROBERT A. STREGE
Erection of Dock on Memorial Drive

July 30, 1993
page 2

When I discussed this matter with you, you indicated that the lot that she owns, which does not have an abutting lot on the other side of Memorial Drive, was split out in 1961. Kay Herlache also indicated that fact in her letter to Roger Strege, dated July 27, 1993.

You further indicated that you thought the City Zoning Ordinance did not come into effect until 1978, and, therefore, this lot predated the ordinance. If that were so, that may raise some questions; however, the City has had zoning ordinances for many years prior to 1978, and those zoning ordinances have the same prohibitions as in the current ordinance concerning the requirement that the person who wants to erect a dock must be the owner of an abutting lot.

Enclosed for your review is a copy of City Ordinance #418, which was enacted in 1947. You will note on the very last page the aforementioned requirement.

Based on the facts as I understand them and a review of the existing code and the prior zoning code, it does appear to me that she is in violation of the ordinance. On behalf of the City, therefore, she should be advised to remove the dock. If she does not do so in the time frame set forth in Roger Strege's letter to her, dated July 21, 1993, then the City may elect to commence an enforcement action with appropriate penalties.

Pursuant to Section 25.04(1)(a) of the City of Sturgeon Bay Municipal Code, if found to be in violation, the general penalty provision indicates that for a first offense any violator shall "forfeit not less than \$1.00 nor more than \$200.00, together with the costs of prosecution", and pursuant to Section 25.04(2), "each day a violation continues or occurs shall constitute a separate offense".

Yours very truly,

PINKERT, SMITH, WEIR, JINKINS,
NESBITT & HAUSER

Jeffery M. Weir
Jeffery M. Weir (mg)

JMW/mg

pc: Mr. Roger Strege-Building Inspector/Zoning Administrator
bpc: Mr. Dennis Jordan-City Administrator
Mr. John Kolodziej-City Engineer

20.23 - Use regulations for CON district.

The conservancy district is intended to provide parkland and open space, to preserve the natural state of scenic areas, to provide natural areas and buffer strips and to discourage intensive development of marginal lands so as to prevent potential hazards to public and private property.

(1) Permitted uses are:

- (a) Bicycle or hiking trails.
- (b) Parks or picnic areas.
- (c) Accessory uses customarily incidental and subordinate to a principal use.
- (d) Public buildings and educational facilities.

(2) Conditional uses are:

- (a) Water pumping or water storage facilities.
- (b) Golf courses.
- (c) Offices and educational facilities for nonprofit conservation-related organizations.

(Ord. No. 961-1195, § 3, 11-7-95; Ord. No. 1101-0603, § 1, 6-17-03)

20.33 - Memorial Drive restrictions.

The area described as lying southwesterly of the westerly curb line of Memorial Dr. and extending from a point on the centerline of Memorial Dr. which is 100 feet northwesterly of its intersection with the centerline of S. Eighth Ave. to a point on the centerline of Memorial Dr. which is 415 feet northwesterly of the intersection with the centerline of S. 15th Ave., is hereby restricted as follows:

- (1) The use of this area shall be for scenic purposes only. Physical use of the property is restricted to the property owners and/or their invited guests.
- (2) No fill material shall be placed beyond the shoreline without approval from all required agencies (Corps of Engineers, Wisconsin Department of Natural Resources, etc.) and from the city council upon specific recommendation of the city plan commission.
- (3) No fill material shall be placed upon the area between the shoreline and Memorial Dr. without the express consent of the city council.
- (4) No building or structure shall be erected, constructed, or placed thereon.
- (5) No fences, trees, shrubs, bushes or gardens may be planted in the area between the shoreline and Memorial Dr. without the express consent of the city council.
- * (6) Abutting property owners may erect or construct one dock and/or one boat lift, whether temporary or permanent.
 - (a) Neither a temporary nor permanent dock shall extend beyond a line drawn parallel to the centerline of Memorial Dr. and 165 feet southwesterly therefrom.
 - (b) All permanent docks shall require a permit.
 1. Approvals shall be obtained from all required agencies (Corps of Engineers, Wisconsin Department of Natural Resources, etc.) and from the city harbor commission.
 2. A construction permit shall be obtained from the inspection department prior to commencement of construction.
 - (c) Where cribs are used in a permanent dock, the combined total length of such cribs shall not exceed 20 percent of the total length of the dock.
 - (d) L-type or T-type construction across the end of the dock may be a solid crib provided the length of the L or T does not exceed 40 feet.
 - (e) The elevation of the top of all docks shall not be higher than one foot below the elevation of the centerline of Memorial Dr.
 - (f) No portable docks or boat lifts shall be stored on the shore during June, July and August.
 - (g) No building or other structure shall be erected, constructed or placed on any dock, temporary or permanent.

14.09 - Pier permits.**(1) Definitions.**

- (a) *Statutory definitions.* The definitions contained within § 30.01, Wis. Stats., are incorporated in and adopted as part of this section.
- (b) *Preexisting pier.* A pier that has been placed in the riparian zone in the same general location and with the same general size and configuration during any of the three years prior to the enactment of this section is considered a preexisting pier if it is not extended or expanded after the adoption of this section. The seasonal removal of a pier does not affect its status as a permissible preexisting pier if it is reestablished in substantially the same form and same general location.
- (c) *Riparian zone.* The area of water adjacent to a parcel of riparian land within which the riparian owner may place structures. The riparian zone is bounded by the land and the line of navigation. The side boundaries of the riparian zone are to be determined consistent with § NR 326.07, Wis. Adm. Code.

(2) Permit required.

- (a) No riparian shall construct any pier in the city without first having secured a permit therefor from the city. A permit is valid for the life of the pier, whether a permanent or portable pier, as long as its location and construction remain substantially unchanged and the pier and its use comply with the provisions of this section.
 - (b) Any required U.S. Army Corps of Engineers or Department of Natural Resources permit required for the proposed pier shall be obtained prior to issuance of a pier permit from the City of Sturgeon Bay.
 - (c) The applicant for any pier used for commercial purposes, to generate revenue, or in riparian zones abutting multiple-family residential housing shall make application to the Harbor Commission of the City of Sturgeon Bay for a pier permit and must meet all standards of this section.
 - (d) The applicant for any pier located in an area where the lakebed has been granted to the City of Sturgeon Bay shall make application to the Common Council of the City of Sturgeon Bay for placement of any piers in such area.
 - (e) A preexisting pier which fails to conform with the requirements of this section is permissible as a nonconforming structure. Owners of nonconforming structures may perform repairs and maintenance upon the nonconforming structure without expanding the structure. A permit shall be required for any repair or modification of a preexisting pier exceeding \$250.00 in value.
- (3) *Application for permit.* All applications for a permit shall be in writing on forms provided by the harbor master. The application shall include a copy of any permit required by the U.S. Army Corps of Engineers and/or Department of Natural Resources. The application shall

include the fee as established by resolution of the common council.

- (4) *[Consulting fees and expenses.]* The harbor master may, in his/her sole judgment determine that the opinion of a consultant is necessary to determine whether the pier proposed by the applicant meets the standards of this section. In such event the applicant shall be required to reimburse the city for all consulting fees and expenses incurred in such review.
- (5) *Standards for pier construction and use.*
- (a) No pier or vessel attached to it may extend beyond the pierhead line of the City of Sturgeon Bay.
 - (b) No solid pier or pier that uses rock-filled cribs as a foundation shall be allowed unless a permit for such pier has been issued by the Department of Natural Resources.
 - (c) No pier shall totally enclose any portion of navigable waters.
 - (d) No pier shall be placed less than 25 feet from the side boundaries of the owner's riparian zone.
 - (e) No pier may include attached lighting in excess of that required in aid to navigation, or signs unless they are specifically authorized in permits issued by the Department of Natural Resources, Wisconsin Department of Transportation or U.S. Army Corps of Engineers.
 - (f) All pier materials shall be of neutral colors so that they blend in with surroundings.
 - (g) No roofs, canopies, decks, water slides or other construction not essential for mooring watercraft shall be permitted.
 - (h) No pier or vessel attached to it shall unreasonably obstruct navigation or otherwise interfere with public rights in navigable waters.
 - (i) No pier or vessel attached to it shall unreasonably interfere with the rights of other riparians.
 - (j) No pier shall be constructed or maintained with a screen or in any other manner which would trap or accumulate aquatic plants.
 - (k) Unless they are preexisting, the total number of piers shall not exceed one for riparian zones abutting parcels with single-family dwellings and shall not exceed two for riparian zones abutting parcels with two-family dwellings. The total number of piers for riparian zones abutting multiple-family residential developments, or common areas for condominiums or residential subdivisions, shall be determined by the harbor commission, but shall not exceed the total number of dwelling units.
- (6) *Removal of unlawful construction and use.* Any pier that is not in compliance with the requirements of this section shall constitute an unlawful obstruction to navigable waters, and the procedures for removal of such unlawful structures shall be as provided in § 30.13, Wis.

Stats. Any pier and/or its use that is not in compliance with the provisions of this section shall constitute a public nuisance and may be subject to abatement procedures as provided by law.

- (7) *Enforcement; forfeiture.* Any person or entity in violation of this section may be subject to a forfeiture of up to \$100.00, plus costs, for each violation, with each day that the unlawful structure remains in place constituting a separate offense. In addition, the city may seek an order to abate the public nuisance, seek removal of the unlawful structure under applicable law and may be awarded the costs of prosecution, including reasonable attorney fees, for any proceeding filed hereunder.
- (8) *Variance.*
- (a) An applicant for a pier permit may request a variance from the terms of this ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this section will result in practical difficulty or unnecessary hardship, so that the spirit shall be observed, public safety and welfare secured, and substantial justice done.
 - (b) A request for variance from the terms of this section shall be submitted in writing to the harbor master with payment to the City of Sturgeon Bay of the variance fee. Fees for variance requests shall be established by resolution of the common council.
 - (c) Requests for variance under this section shall be considered by the harbor commission of the City of Sturgeon Bay with a variance to be granted only upon the vote of a majority of the harbor commissioners present. In considering the request for variance the harbor commission shall consider the factors set forth in subsection 14.09(8)(a) hereof, as well as other relevant information.
 - (d) Whenever a request for variance is to be presented to the harbor commission of the City of Sturgeon Bay the applicant shall give notice, by registered mail sent at least 14 days prior to the scheduled meeting, of the proposed variance to adjoining riparian property owners on both sides of the property subject to the variance request.
- (9) *Appeals.*
- (a) The applicant or any party aggrieved by a decision of the harbor master upon a pier permit application may appeal such decision by filing a written request for appeal within 30 days after the determination to issue or deny the application to the harbor commission of the City of Sturgeon Bay, with the appeal request to be filed with the city clerk.
 - (b) The applicant or any party aggrieved by a decision of the harbor commission upon a commercial pier permit application may appeal such decision by filing a written request for appeal within 30 days after the determination to issue or deny the application to the

board of appeals of the City of Sturgeon Bay, with the appeal request to be filed with the city clerk.

(Ord. No. 1142-0305, § 2, 3-15-05; Ord. No. 1148-0705, § 1, 7-19-05)

**CITY OF STURGEON BAY
VARIANCE APPLICATION
ZONING BOARD OF APPEALS**

Date Received: 8/27/20
Fee Paid \$ 300 + 50 dep
Received By: CN

	APPLICANT/AGENT	LEGAL PROPERTY OWNER (if different)
Name	<u>RICHARD BOGMAN</u>	<u>SAME</u>
Company		
Street Address	<u>1650 SYCAMORE ST. 34</u>	
City/State/Zip	<u>STURGEON BAY, WI 54235</u>	
Daytime Telephone No.	<u>920-495-5096</u>	
Fax No.	<u>—</u>	

STREET ADDRESS OF SUBJECT PROPERTY:
Location if not assigned a common address: ACROSS FROM 1322 MEMORIAL DRIVE

TAX PARCEL NUMBER: 2816231000229

CURRENT ZONING CLASSIFICATION: CONSERVANCY

CURRENT USE AND IMPROVEMENTS:
VACANT LOT. A TEMPORARY PIER WAS PREVIOUSLY ON THIS LOT FROM 2007 UNTIL JUNE 2020

IDENTIFY MUNICIPAL CODE SECTION PERTINENT TO REQUEST AND STATEMENT OF SPECIFIC ITEM BEING REQUESTED FOR REVIEW: 20.33 (SUB 6)

ZONING AND USES OF ADJACENT SURROUNDING PROPERTIES:
North: R-1 RESIDENTIAL
South: WATER
East: CONSERVANCY
West: CONSERVANCY

VARIANCE STANDARDS

Please address how the proposed variance meets each of the three required standards for authorizing variances. (Attach additional sheets, if necessary)

1. Unnecessary hardship: IT IS A LEGAL LOT UNLIKE ANY OTHER LOT ON MEMORIAL DRIVE RESTRICTED TO HAVING A DOCK AND AN APPROVED PERMIT.
2. Unique physical property limitation: ONLY LOT ON MEMORIAL DRIVE THAT DOES NOT HAVE AN INLAND LOT.
3. Protection of public interest: THERE WAS A DOCK ON THE LOT FOR 13-YEARS AND A PERMIT WAS APPROVED BY CITY COUNCIL IN MAY 2020, AND MET ALL OF THE CITY'S RULES AND REGULATIONS.

HAVE THERE BEEN ANY VARIANCES, CONDITIONAL USE PERMITS, ETC. GRANTED PREVIOUSLY FOR THIS PROPERTY? NO IF YES, EXPLAIN: _____

Attach an 8-1/2" X 11" detailed site plan (if site plan is larger than 8-1/2" x 11", also include 15 large sized copies), full legal description (preferably on disk), 8-1/2 x 11" location map, construction plans for the proposed project, and Agreement for Reimbursement of expenses. Site plan shall include dimensions of property, pertinent structures and buildings, proposed site improvements, signature of person who drew plan, etc.

Richard Bosman
Property Owner (Print Name)

[Signature]
Signature

8-24-2020
Date

Applicant/Agent (Print Name)

Signature

Date

I, _____, have attended a review meeting with at least one member of staff and understand that I am responsible for sign placement and following all stages listed on the check list in regard to the applicant.

Date of review meeting

Applicant Signature

Staff Signature

Attachments:

Procedure & Check List

Agreement For Reimbursement of Expenses

STAFF USE ONLY

Application conditions of approval or denial:

Date

Community Development Director

**CITY OF STURGEON BAY
CONSTRUCTION OF PIER APPLICATION**

hereby make application for a pier construction permit, as required under Chapter 14 of the Municipal Code of the City of Sturgeon Bay, as specified below.

Date of Application: 3-19-2020

Owner of Premises: Dick Bosman

Address or Legal Description: 281 6231 000 229 R

Prior to issuance, approvals shall be obtained from:

MI Dept. of Natural Resources Permit # NOT REQUIRED

Army Corps. Of Engineers Permit # NOT REQUIRED

Sturgeon Bay Utilities Approved by: James Jauriski, Gen. Mgr.

City Engineer Approved by: CM M

City Council Approval date: 05 MAY 2020

CERTIFICATE OF APPLICANT

hereby certify that I am familiar with, and will conform to all the requirements of the State and Federal codes, and the City of Sturgeon Bay codes covering the work for which this permit is requested, and that I will notify the proper departments to request the required inspections by said codes.

Signed 
Person Making Application

Permit No. 2020-001 is hereby issued for the above described work, and is to be completed in accordance with State, Federal and City Codes.

Date Permit Issued 5 / 6 / 2020

Date Permit Expires - / - / -

Signed Alphonse A. Bernhardt, City Clerk
Issued By

FOR OFFICE USE ONLY

Work Completed / /

Inspected / /

BAY

PROPOSED

← Dock

PARCEL #

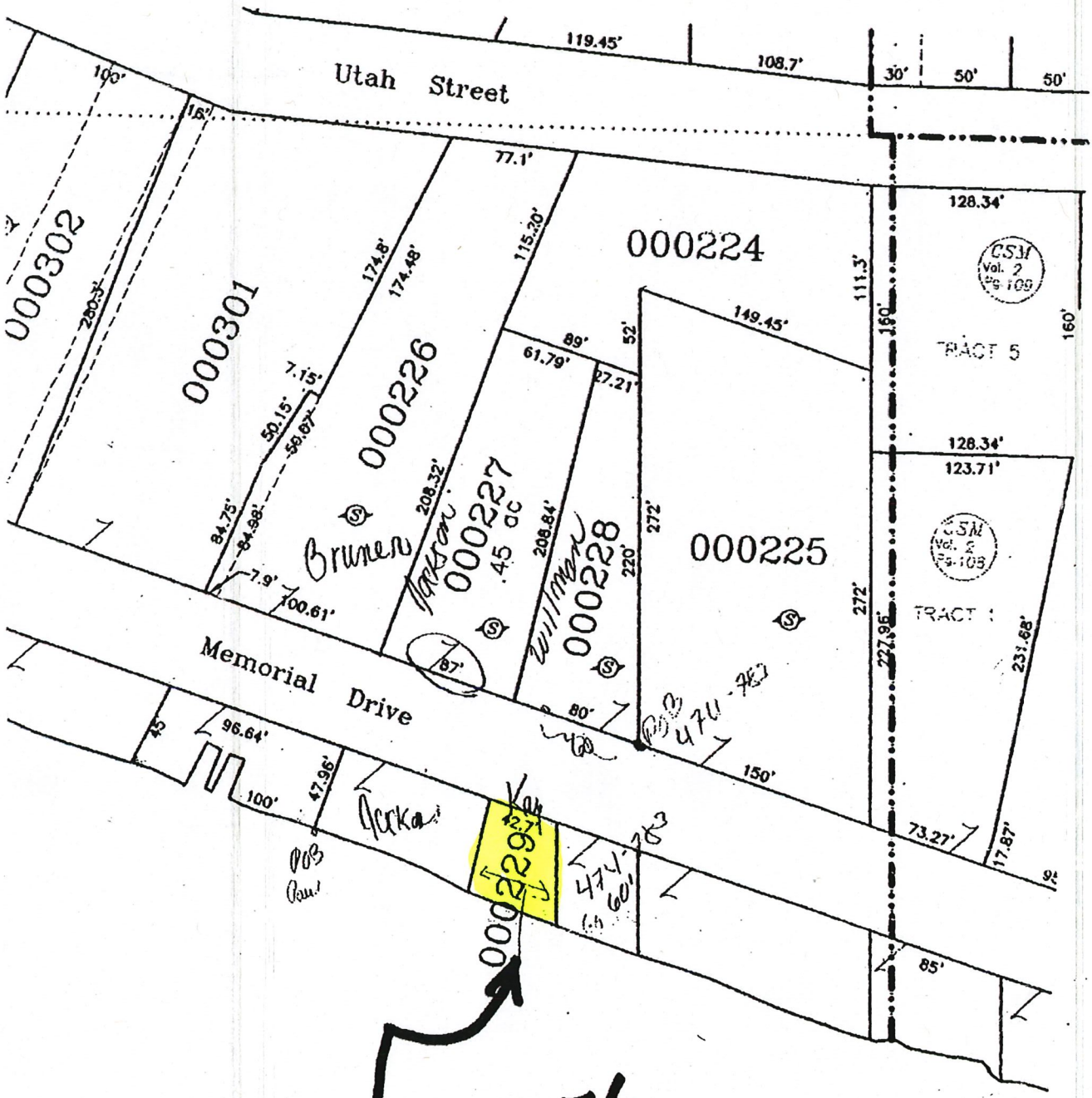
281 6231000229 R

MEMORIAL DRIVE

n Bay
onsin

281-62-31000229

Se



PARCEL

B A Y

226 670/819
254/76

P 0841

DOOR COUNTY TREASURER

2018 TAX BILL

281 6231000229 R

Bill#: 4202 Desc: COM N LN MEM DR&
31 NWLY ALG DR 21
Acres: S LN DR&BG N71DW4
Sch#: 5642 TO SHR SLY ALG SH
Voc#: 1300 OF BEG N TO BG SU

Doc# 799954; 762720

	Land	Improvements	E.F
DENTIAL	15000	0	1

RE Tax: 350.06 RE Tax Paid:

Lottery: Lottery Used:

alf: 175.03 TOTAL TAX: 350.06 TOTAL PAID:

alf: 175.03 BALANCE DUE:

=====

DELINQUENT TAX AMOUNTS BY YEAR

PRIOR YEARS TOTAL DUE AS OF 11/06/201

YEAR	TAX DUE	INT/PEN DUE	TOTAL DU
------	---------	-------------	----------

**** NO DELINQUENT TAXES DUE ****CLOSE WINDOW

PLAT OF SURVEY

LOCATED IN:
SUBDIVISION 31 OF THE
CITY OF STURGEON BAY,
TOWNSHIP 27 NORTH, RANGE 26 EAST,
DOOR COUNTY,
WISCONSIN

SW CORNER LOT 1 OF C.S.M. #337,
AS RECORDED IN VOL. 3, PAGE
108, AS DOC. #438018



NORTH
1" = 10'



PREPARED FOR:
DICK BOSMAN JR. TRUST
1650 SYCAMORE ST. #34
STURGEON BAY, WI.
54235

LEGEND

- ⊕ - FOUND 1" STEEL PIPE
- Ⓡ - FOUND 5/8" REBAR

PREPARED BY:
**BAUDHUIN SURVEYING
& ENGINEERING**
312 N. 5TH AVENUE
P.O. BOX 105
STURGEON BAY, WI 54235
(920)743-8211
www.baudhuin.com
DRAWN BY: C.M.M.

JOB NO. 24222

CAD : CMM\DWG\BOSMAN 24222\DWG\222-POS

SHEET 1 OF

caption:

Parcel located in Subdivision 31 of the City of Sturgeon Bay, Township 27 North, Range 26 East, Door County, Wisconsin, bounded and described as follows:

Beginning at the SW corner of Lot 1 of Certified Survey Map number 337 as recorded in Volume 3, page 108 as document number 18, said corner also being the intersection of the east line of Subdivision 31 and the northerly right of way of Memorial Drive; thence S 00°05'33" W, 63.52 feet along said east line to the southerly right of way of Memorial Drive; thence N 70°44'35" W, 210.18 feet along southerly right of way to a 1" steel pipe being the point of beginning of lands to be described; thence S 00°06'37" W, 38.99 feet to steel pipe on a meander line, thence continue 9+/- to the approximate ordinary highwater mark of Sturgeon Bay, thence northwest 11.25 feet along the approximate ordinary highwatermark of Sturgeon Bay, thence N 12°05'39" E, 1+/- feet to a 1" steel pipe, said pipe being the point of beginning; thence N 69°00'53" W, 51.20 feet from the aforementioned 1" steel pipe, thence; N 12°05'39" E, 35.57 feet to a 1" steel pipe on said southerly right of way; thence S 70°44'35" E, 42.82 feet along said southerly right of way to a 1" steel pipe being the point of beginning.

Parcel contains 1,875 SQ FT.

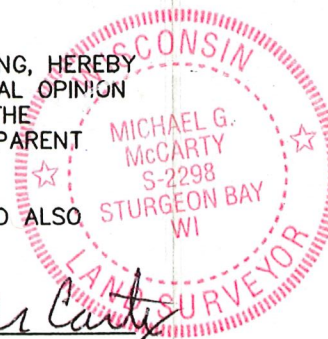
VEYOR'S CERTIFICATE:

MICHAEL G. McCARTY, PROFESSIONAL LAND SURVEYOR FOR BAUDHUIN SURVEYING & ENGINEERING, HEREBY CERTIFY THAT I HAVE SURVEYED THE ABOVE-DESCRIBED PROPERTY AND THAT IN MY PROFESSIONAL OPINION THE ABOVE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY, ITS EXTERIOR BOUNDARIES, THE LOCATION OF ALL STRUCTURES THEREON, FENCES, APPARENT ENCROACHMENTS AND ROADWAYS AND VISIBLE ENCROACHMENTS, IF ANY.

SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNERS OF THE PROPERTY, AND ALSO FOR THE BENEFIT OF ANY PERSON WHO PURCHASE, MORTGAGE, OR INSURE THE TITLE THERETO.

WITNESSED THIS 2ND DAY OF JUNE 2020

Michael McCarty
MICHAEL G. McCARTY S-2298



MEMORIAL DRIVE

CENTERLINE (60' RIGHT OF WAY)

BACK OF CURB

Tax Parcel Number
281 6231000229

PARCEL
CONTAINS
1,875 SQ. FT.

N70°44'35"
210.18'

48' +/-

38.99'

S00°06'37"W

9' +/-

N69°00'53"W
51.20'

55' +/-

N12°05'39"E

35.57'

37' +/-

S70°44'35"E
42.82'

APPROXIMATE ORDINARY
HIGH WATER MARK

STURGEON
BAY

DOCK

1272 Jackson Harbor Road
Washington Island, WI 54246

July 31, 2006

Pat Willman
1322 Memorial Drive
Sturgeon Bay, WI 54235

Dear Pat:

Per my phone message to you on Saturday, July 29, 2006, Brian Frisque, Registered Land Surveyor, located and marked the four pins for my lot on Memorial Drive. I didn't know whether your property or the Jackson property was encroaching on my land. The Jackson property may be over a couple of inches, but your dock and light pole are both entirely on my property. If you wish to leave the dock where it is for the balance of this season, that is all right with me, however, upon lifting and storing it this fall, I expect it to be stored on your land and a new spot found for it next spring. I am not sure what you might wish to do about the light pole.

I am enclosing a copy of the Real Property Tax Listing Map showing the area as well as an aerial photo from the Door County Mapping Department, which, apparently, was taken sometime while the dock was stored on land.

If you have any questions or comments, my home address is above, and my home phone is 920-847-2857; office phone 920-854-6522.

Sincerely,

Kay Herlache

/kh
Enclosures

NOTICE OF PUBLIC HEARING

The City of Sturgeon Bay Zoning Board of Appeals will hold a public hearing in the Council Chambers, 421 Michigan Street, Sturgeon Bay, Wisconsin on Tuesday, October 13, 2020 at 12:00 noon or shortly thereafter, regarding a request from Richard Bosman, for a variance from section 20.33(6) of the Municipal Code (Zoning Code) to allow the construction of a temporary / seasonal pier. This section of the code states that abutting property owners may erect or construct one dock and/or one boat lift, whether temporary or permanent. The subject property is located at parcel 281-62-31000229. The variance application is on file with the Community Development Department and can be viewed at City Hall, 421 Michigan Street, weekdays between 8:00 a.m. and 4:30 p.m. The public is invited to attend the hearing and give testimony in favor or against the proposed variance, either in person at the hearing or in writing.

By order of:
City of Sturgeon Zoning Board of Appeals

Location Map
Parcel 281-62-31000229
Variance Request - Section 20.33(6)



Subject Property



Please Note: The public hearing will be held on October 13, 2020 @ 12:00 p.m.

City of Sturgeon Bay
421 Michigan St.
Sturgeon Bay WI 54235
Chris Robinson
October 8, 2020
re: Memorial Drive Shorefront Variance Request,

Dear Zoning Variance commission,

We are property owners very near the subject property that is requesting a variance to install a Dock on the 25 ft wide property. As you are aware only property owners of properties on both sides of Memorial are currently legally able to install a dock. I object to the request of variance for this property as it most likely would be used for commercial purposes ie; Charter fishing or a work boat for doing dock work. We do not want an obstructed view of the bay caused by owners, customers or workers parking cars along the street, blocking the bay view. The long standing agreement with the city is to provide a view of the bay for visitors. This will cause the exact opposite result and therefore I am requesting that this variance request be denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "Helen H. Urban". The signature is fluid and extends across the width of the text area.

Helen H. Urban
1350 Memorial Dr.
Sturgeon Bay WI. 54235

Olejniczak, Marty

From: Holly Feldman <hollyfeldman@gmail.com>
Sent: Wednesday, October 07, 2020 11:04 AM
To: Olejniczak, Marty
Subject: Public Feedback on Variance Request -Section 20.33(6) on parcel 281-62-31000229

Dear Marty and the Sturgeon Bay Zoning Board of Appeals,

We are writing with regard to the Variance Request -Section 20.33(6) on parcel 281-62-31000229. We reside at 1309 Utah Street, Sturgeon Bay.

We do not support the variance requested by Mr. Bosman to allow the construction of a temporary/seasonal pier on Memorial Drive.

We are in support of the current and historical Memorial Drive Restrictions which state that only abutting property owners may erect or construct one dock and/or boat lift whether temporary or permanent on the subject parcel. Mr. Bosman does not own an abutting property to the property in question.

Furthermore, Mr. Bosman does not make his case with regard to variance standards. In fact, his statements in support of his request could be deemed as misleading.

First, this variance request does not meet any unnecessary hardship as Mr. Bosman should have been aware of the limitations when he took ownership of the property. The unique physical limitation is there to protect the public interest and has been for quite some time.

Second, the dock that Mr. Bosman cites as having been on the property for 13 years was indeed a neighboring (abutting) property owner's dock. His answer to the question on the protection of public interest does not include this critical detail.

Lastly, in citing, that a permit was approved for him to build a dock in May of 2020, Mr. Bosman does not disclose that that permit was rescinded prior to his request for a variance. The permit that was given in error was rescinded after further review on or around the end of July 2020 and Mr. Bosman applied for the variance at the end of August 2020.

Mr. Bosman recently listed the property for sale. We do not believe that he wants this variance for his own use but rather to increase the value of his property for sale which is not in the public interest but is solely in the interest of Mr. Bosman.

We appreciate your good service to the community and for considering our objections in reviewing this variance.

Thank you,
Jason Feldman
1309 Utah Street, Sturgeon Bay, WI 54235

Holly Feldman

October 6, 2020

To Sturgeon Bay Zoning Board of Appeals,

I am writing this letter to voice my objection to the variance request of Richard Bosman to construct a seasonal/permanent dock on his property on Memorial Drive. I own adjacent property to tax parcel 281-62-31000229. I am including documentation from the city attorney to Mr. Olejnicek dated July, 23, 2020 regarding background history and interpretation of Section 20.32(6) of the Municipal Code.

Mr. Bosman states a permit was obtained by Mike Barker of the city Public Works Department. I spoke with Mike Baker on October 5, 2020 and was told the permit was issued in error after it was brought to his attention that Municipal Code 20.32(6) states only abutting property owners may erect or construct one dock and/or one boat lift whether temporary or permanent. Mr. Barker told me the initial permit has since been rescinded.

Mr. Bosman states a dock has been placed on the property for 13 years. This is a dock owned by the abutting property owner directly adjacent to Mr. Bosman's property.

This property was listed for sale by Mr. Bosman earlier this summer. If a variance is approved to place or build a dock, the potential exists for a business to purchase the property such as a dock installation company, a commercial charter fisherman to use as a base for operation, or even a seasonal yacht to live in requiring street parking. I can foresee serious parking issues and congestion on Memorial Drive.

As an adjacent property owner, any individual or business without abutting property, there risks the potential for parking congestion and severely hampering the scenic beauty of this shore front that our residents, visitors, and abutting home owners want to enjoy and preserve.

I urge you to deny Mr. Bosman's request for a variance from Municipal Code 20.33(6)

Sincerely,

Thomas Hilbert
Roxanne Hilbert

Thomas and Roxanne Hilbert
1344 Memorial Dr.
Sturgeon Bay, WI



July 23, 2020

Via Email

Marty Olejniczak
Community Development Director
City of Sturgeon Bay

**Re: Direction of Pier at Tax Parcel No. 281-62-31000229
Located on Memorial Drive**

Dear Mr. Olejniczak:

I am in receipt of your email of July 1 regarding the above-referenced matter. As you are aware, the question you pose is complex and includes the analysis of a site specific zoning regulation with undefined terms.

Background

On or about July 7, 1993, then building inspector/zoning administrator for the City of Sturgeon Bay, Roger Strege, sent a letter to Kay Herlache informing her that the pier erected at her property, particularly Parcel No. 281-62-31000229, on Memorial Drive (Subject Parcel) was not permitted. A copy of that correspondence is attached and marked Exhibit A.

Apparently Ms. Herlache did not agree and ultimately the matter was forwarded to then City Attorney, Jeffery Weir, for an opinion which he issued on July 30, 1993. A copy of that opinion is attached as Exhibit B.

Apparently Ms. Herlache informed the City that they intended to comply with the Opinion and not construct a pier on the property.

Interestingly, in reviewing the aerial photographs of this vicinity, the aerial photograph of 2007 shows a pier had been placed on Subject Parcel and was apparently stored there for some time as well. Based on information given to me by you, I understand that pier was mistakenly placed there by the adjoining property owners, who were uncertain of the location of the lot line.

The property is currently owned by Bosman Trust. In March of 2020, the Trust applied for a pier permit for the subject parcel. The City reviewed the permit but did not uncover the 1993 opinion of Mr. Weir. The Harbor Master, having reviewed the pier plans for compliance with the pier

permitting ordinances, approved the permit. Although the ordinance does not require it, the permit was placed on the agenda of the Common Council, who approved the application.

On June 30, the owners of two neighboring properties abutting each side of the Subject Parcel came to discuss this issue with the City and presented a copy of Exhibit B, questioning why a pier is being permitted on this parcel. Staff reviewed the 1993 Opinion and raised several issues regarding the interpretations set forth therein. Because of those questions, and seeing as the permit has been issued and the appeal period has run, you have requested an opinion from me regarding whether the pier permit was properly issued. For the reasons set forth below, I believe the pier permit was improperly issued.

Discussion

In Exhibit B, Mr. Weir gave two reasons for his conclusion that a pier could not be constructed on the Subject Parcel:

1. The Subject Parcel is a substandard lot and would not meet the width and area requirements required by Section 20.19 of the Municipal Code for an R1 District.
2. The permit could not be granted because of the Memorial Drive restrictions set forth in Section 20.32 of the Municipal Code. These restrictions allow only property owners of abutting party to erect or construct temporary or removable docks.

With regard to the first issue, I believe Mr. Weir was correct when he rendered his opinion in 1993. At that time the Code addressed nonconforming uses but did not directly address uses in nonconforming lots. The provision in 1993 read:

20.18 Nonconforming Uses. Present uses of buildings and premises may be continued even though they do not conform to the restrictions of this chapter. The Inspection Department may use a permit for structural repairs or alterations of such building or premises and may issue a permit to reconstruct a nonconforming building which has been damaged or destroyed by fire or act of God, but nothing in this section shall be construed as permitting any new nonconforming use or building. Any nonconforming use that is abandoned for one year shall be permanently discontinued.

The foregoing ordinance is reasonably read to suggest that a substandard, and therefore nonconforming lot, could not host a new use.

However, the Zoning Code was updated in 1995 with more complete and conclusive language directly addressing the use of legally creating nonconforming lots. The language reads:

20.26 Nonconforming Uses, Structures and Lots.

(3) Legal Nonconforming Lots. In all districts, all legal nonconforming lots may be used as building sites for any uses permitted in that district provided that all structures meet all setbacks for area and other applicable provisions of this chapter.

(b) Any legal nonconforming lot may be enlarged without meeting the lot width or area requirements of this chapter.

I have no reason to believe that the Subject Parcel was not legally created and that issue appears to be conceded by Mr. Weir. So under current law, assuming the lot could legally host a pier use, that use would not be prohibited due to the fact that the subject parcel is a non-conforming lot, so long as all of the other setback and listed area requirements could be met. In other words, due to the change of the law, the first rationale for not permitting the pier on the subject parcel is no longer valid.

The second issue rests on some site-specific zoning regulations found in Section 20.33 of the Sturgeon Bay Zoning Code. Specifically, in question are subsections (4) and (6) which read as follows:

20.33-Memorial Drive Restrictions.

The area described as a line southwesterly of the westerly curved line of Memorial Drive and extending from a point on the center line of Memorial Drive which is 100 feet northwesterly of its intersection with the center line of South 8th Avenue, to a point on the center line of Memorial Drive which is 415 feet northwesterly of the intersection with the center line of South 15th Avenue is hereby restricted as follows:

*** (4) No building or structure shall be erected, constructed or placed thereon.

*** (6) Abutting property owners may erect or construct one dock and/or one boat lift whether temporary or permanent.

(a) Neither a temporary or permanent dock shall extend beyond a line drawn parallel to the center line of Memorial Avenue and 165 feet southwesterly therefrom.

(b) All permanent docks shall require a permit.

Clearly Section 20.33 SBC restricts the described property which includes the Subject Parcel. The provision prohibits any structures providing an exception to "abutting property owners" to place a dock and boat lift on the Memorial Drive restricted property. The question is whether the applicant here is an "abutting property owner".

Mr. Weir clearly did not believe Ms. Herlache was an "abutting property owner" as that term is used in Section 20.33 SBC. He states in his Opinion:

When I discussed this matter with you, you indicated that the lot that she owns, which does not have an abutting lot on the other side of Memorial Drive, was split out in 1961. Kay Herlache also indicated that fact in her letter to Robert Strege dated July 27, 1993.

You further indicated that you thought that the City Zoning Ordinance did not come into effect until 1978, and, therefore this lot predated the ordinance. If that were so that may raise some questions; however the City has had zoning ordinances for many years prior to 1978, and those zoning ordinances have the same prohibitions as in the current ordinance concerning the requirement that the person who wants to erect a dock must be the owner of an abutting lot.

Clearly Mr. Weir believes the term abutting property owner as used in 20.33(6) refers to property owners who own property on both sides of Memorial Drive. While this is at first glance an odd reading of the term "abutting" further research supports the conclusion that this is what was intended by the term "abutting property owner" in the Memorial Drive Restrictions.

In researching this matter, a discussion of an easement in 1977 by the Plan Commission was particularly enlightening. During those discussions, reference was made to an intent by the City to severely restrict the riparian side of Memorial Drive so as to protect the view lines. From what I can determine from the documents available to me, the Memorial Drive restrictions have been in place since the late 1940s. It appears the property along the water in the vicinity of the subject parcels were split by Memorial Drive. Most, in fact all of the lots except the Subject Parcel, have property on both sides of Memorial Drive. The City was interested in preserving view lines in this area so significant restrictions were placed on the riparian side of Memorial Drive codified into what is now Section 20.33(4) SBC. The City recognized the interest of those owning property on both sides of Memorial Drive and allowed them to use the riparian property associated with their "abutting property" on the other side of Memorial Drive as provided by and subject to the limits of Section 20.33 SBC. The City specifically used the term "abutting property owner" to effectively limit the number of piers that could be constructed in the restricted area. As the City sought to determine anything that would block the view lines or otherwise hamper the beauty of this shore front was to be severely restricted. By limiting the pier construction to only those property owners that had property on both sides of Memorial Drive, an additional limit was placed on the number of piers that could be placed on the waterfront.

Mr. Weir's interpretation of the term "abutting property owners", to mean those property owners who have property on both sides of Memorial Drive, is consistent with the discussions of that language in 1977, and, the intent of the City to preserve sight lines, and clear intent to limit the use of the property subject to the Memorial Drive Restrictions.

As concluded by Mr. Weir, the subject parcel does not share abutting property on the other side of Memorial Drive. The owner of the subject parcel is not an abutting property owner and

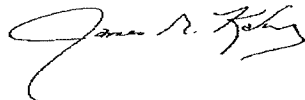
therefore does not fall within the limited exception of 20.33(6) SBC. The 1993 interpretation by Mr. Weir is reasonable, and consistent with the intent of the City with regard to the severe restrictions of the Memorial Drive restricted area. I have no alternative interpretation of the term "abutting property owner" that would form a basis to reverse the prior opinion.

The permit is therefore, in my opinion, issued contrary to the Memorial Drive Restrictions provision of Section 20.33(4) and as the owner of the subject parcel is not an abutting property owner, the exception of Section 20.33(6) does not apply.

While it is unfortunate that the permit was reviewed and issued before the current staff was aware of the past application of the Memorial Drive Restrictions, case law holds that citizens have a right to rely on the enforcement of police regulations (such as zoning code provisions) even in situations where there was a delay or error with regard to enforcement. That same case law holds that the error or delay does not afford a basis for the basis for estopping the municipality from later enforcing its ordinance (see for example *City of Milwaukee v. Leavitt*, 31 Wis. 2d 72, 76-77, 142 N.W.2d 169, 171-72 (1966)). Without some change in the Memorial Drive Restrictions the property owners neighboring the Subject Parcel have the right to rely on the uniform enforcement of those police regulations as they have been reasonably interpreted and applied in the past, regardless of the issuance of the permit.

Please contact me with any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James M. Kalny".

James M. Kalny

JMK/das

CITY of STURGEON BAY

ROGER STREGE

INSPECTION DEPT. - ZONING DEPT.

Phone (414) 746-2915
835 N. 14th Ave.
Sturgeon Bay, WI 54235

CERTIFIED & P 107 650 294

July 7, 1993

FILE COPY

Kay Herlache
3740 Bay Shore Drive
Sturgeon Bay, WI 54235

Subject Property: Memorial Drive Property, Parcel #281-62-31
000229

Ms. Herlache:

A recent inspection of the above subject property reveals that a dock has been constructed abutting this property. It also appears as though you have two moorings located in front of this property, the Municipal Code of the City of Sturgeon Bay permits only one mooring for the amount of shore frontage of this property, and because the lot is nonconforming, no type of structures are allowed such as docks.

Please contact me at 746-2915 within the next three (3) days to discuss plans for compliance with the Municipal Code. Failure to do so could result in action by the City to gain compliance.

Roger Strega
Building Inspector/
Zoning Administrator

RS:sh

cc: Director of Municipal Services
Harbor Master

EXHIBIT B

LAW OFFICES
PINKERT, SMITH, WEIR, JINKINS, NESBITT & HAUSER
464 KENTUCKY STREET
P.O. BOX 89
STURGEON BAY, WISCONSIN 54235-0089
AREA CODE 414
TELEPHONE 743-8605
FACSIMILE 743-4760
ROGER PINKERT
JAMES R. SMITH
JEFFERY M. WEIR
MARK A. JINKINS
RANDALL J. NESBITT
RICHARD A. HAUSER
DAVID L. WEBER

BRANCH OFFICE:
350 SUNSET DRIVE
SISTER BAY, WISCONSIN 54234
AREA CODE 414
TELEPHONE 854-2516
HERMAN J. LEASUM, OF COUNSEL

July 30, 1993

Mr. Robert A. Ross, Esq.
216 S. 4th Avenue
P.O. Box 317
Sturgeon Bay, WI 54235-0317

RE: Erection of Dock by Kay Herlache on Memorial Drive

Dear Bob:-

As you are aware, our firm is acting as City Attorney for the City of Sturgeon Bay.

Roger Strega, the Building Inspector/Zoning Administrator for the City discussed with me the issue of the dock erected by Kay Herlache, your client, on Memorial Drive on the parcel that she owns located in between Memorial Drive and the waters of the ship channel. He furnished to me copies of the letters that he sent to Kay Herlache, dated July 7, 1993 and July 21, 1993, advising her that she was in violation of the Municipal Code of the City of Sturgeon Bay and demanding that the dock be removed.

In reviewing this matter it appears that she is in violation of Section 15.065(2)(a) of the City Municipal Code for not having first obtained a permit prior to erecting the dock.

Even if she did apply for the permit, though, it further appears that the permit could not be granted because the lot is a substandard lot and would not meet the width and area regulations required by Section 20.19 of the Municipal Code for an R-1 District. Specifically, she would not meet the requirements of subsection (5) on lot area and subsection (6) on lot width.

More importantly, though, the permit could not be granted because of the Memorial Drive restrictions set forth in Section 20.32 of the Municipal Code. These restrictions allow only property owners of abutting property to erect or construct temporary or removable docks.

Rey Robert A. Sturgeon
Erection of Dock on Memorial Drive
on Memorial Drive
July 30, 1993
page 2

When I discussed this matter with you, you indicated that the lot that she owns, which does not have an abutting lot on the other side of Memorial Drive, was split out in 1961. Kay Herlache also indicated that fact in her letter to Roger Strege, dated July 27, 1993.

You further indicated that you thought the City Zoning Ordinance did not come into effect until 1978, and, therefore, this lot predated the ordinance. If that were so, that may raise some questions; however, the City has had zoning ordinances for many years prior to 1978, and those zoning ordinances have the same prohibitions as in the current ordinance concerning the requirement that the person who wants to erect a dock must be the owner of an abutting lot.

Enclosed for your review is a copy of City Ordinance #418, which was enacted in 1947. You will note on the very last page the aforementioned requirement.

Based on the facts as I understand them and a review of the existing code and the prior zoning code, it does appear to me that she is in violation of the ordinance. On behalf of the City, therefore, she should be advised to remove the dock. If she does not do so in the time frame set forth in Roger Strege's letter to her, dated July 21, 1993, then the City may elect to commence an enforcement action with appropriate penalties.

Pursuant to Section 25.04(1)(a) of the City of Sturgeon Bay Municipal Code, if found to be in violation, the general penalty provision indicates that for a first offense any violator shall "forfeit not less than \$1.00 nor more than \$200.00, together with the costs of prosecution", and pursuant to Section 25.04(2), "each day a violation continues or occurs shall constitute a separate offense".

Yours very truly,

PINKERT, SMITH, WEIR, JINKINS,
NESBITT & HAUSER

Jeffery M. Weir
Jeffery M. Weir (sig)

JMW/mg
pc: Mr. Roger Strege-Building Inspector/Zoning Administrator
bpc: Mr. Dennis Jordan-City Administrator
Mr. John Kolodziej-City Engineer

Christopher Sullivan-Robinson
Planner/Zoning Administrator
421 Michigan Street
Sturgeon Bay, WI 54235



Phone: 920-746-2907
Fax: 920-746-2905
E-mail: csullivan-robinson@sturgeonbaywi.org
Website: www.sturgeonbaywi.org

August 28, 2020

Fincantieri Bay Shipbuilding Company
Attn: Peter Glassen
605 N. Third Avenue
Sturgeon Bay, WI 54235

Decision letter regarding request from Fincantieri Bay Shipbuilding Co. for variances from Section 20.27(2) of the Municipal Code (Zoning Code) for expansion of a building located on parcel no. 2811085340109B (formerly addressed as 273 N. First Ave)

Dear Mr. Glassen:

During the August 25, 2020 meeting of the Sturgeon Bay Zoning Board of Appeals (ZBA), the request from Fincantieri Bay Shipbuilding Company for building height and side yard variances for the proposed 68,200 square foot expansion of the building at south edge of Bay Shipbuilding property was heard. This building was formerly addressed at 273 N. First Avenue prior to the street vacation of N. First Avenue.

The ZBA voted to approve the building height and side yard variances in order for the building expansion to match the current height and current side yard dimension of the existing building. The approval was contingent on the following conditions:

- a. Within 6 months, Fincantieri must submit a Third Avenue improvement plan and schedule for completing improvements that addresses the appearance of the shipyard to mitigate the new building project, including addressing landscaping along Third Avenue, paving of parking areas, the appearance and use of the buildings at 325 N. Third Ave (former Red Oak Winery), 341 N. Third Ave (former R.R. Depot), and the temporary steel buildings in that corridor. The plan and schedule need to meet staff approval.
- b. Fincantieri must comply with applicable Wisconsin DNR and City of Sturgeon Bay requirements for managing stormwater runoff.

The following facts from the application and public hearing testimony support the granting of the variances:

1. The existing building was previously granted variances from the maximum building height and minimum side yard requirements of the zoning code.
2. The proposed addition is no taller than the existing building and no closer to the south lot line than the existing building.
3. There are no concerns with the height or location of the building from a fire suppression standpoint per the Sturgeon Bay Fire Chief.
4. The building height for the portion of the addition along the south lot line is lower than the current building.

5. Due to difficulty to maneuver trucks and steel on the north side of the proposed building and impact to the flow of steel during the processing, jogging the addition to the building to meet the 20-foot side yard requirement would impose a practical difficulty or unnecessary hardship.
6. The proposed use of the building is permitted within the Heavy Industrial (I-2) district.
7. The project has public benefits to surrounding properties and the community by:
 - Allowing the current outdoor steel storage to be conducted indoors;
 - Upgrading the steel blasting, priming, and painting to be conducted in a modern, state-of-the-art building, including improved dust and environmental controls, thereby improving air quality.
 - The south wall of the building along the adjoining property line will have sound suppression measures and that portion of the building will be used for steel storage and not processing.
 - The ability to conduct more operations inside a new building and replace older buildings will lessen the potential for noise, dust, and odors harming nearby properties.


Given the foregoing the variance is consistent with the spirit of the zoning code, serves the public health and safety and results in substantial justice.

Please note that the grant of variances will lapse if the project is not commenced within one year of the date of this letter.

In addition, as stated by staff at the meeting, Fincantieri is required to adjust the north property line of the current parcel in order to comply with the required yard on that side of the building. This can be accomplished by combining the subject parcel with the rest of the south yard of the Fincantieri shipyard.

If you have any questions, please feel free to call.

Sincerely,



Christopher Sullivan-Robinson
Planner/Zoning Administrator

Christopher Sullivan-Robinson
Planner/Zoning Administrator
421 Michigan Street
Sturgeon Bay, WI 54235



Phone: 920-746-2907
Fax: 920-746-2905
E-mail: csullivan-robinson@sturgeonbaywi.org
Website: www.sturgeonbaywi.org

August 28, 2020

Fincantieri Bay Shipbuilding Company
Attn: Peter Glassen
605 N. Third Avenue
Sturgeon Bay, WI 54235

Decision letter regarding request from Fincantieri Bay Shipbuilding Co. for building height variance from Section 20.27(2) of the Municipal Code (Zoning Code) for construction of a new building located on parcel no. 281-10-85360101C

Dear Mr. Glassen:

During the August 25, 2020 meeting of the Sturgeon Bay Zoning Board of Appeals (ZBA), the request from Fincantieri Bay Shipbuilding Company for a building height variance for the proposed 88,000 square foot new building to be constructed in the south yard of the Bay Shipbuilding property was heard. This building is proposed to be located westerly of the property at 341 N. Third Ave.

The ZBA voted to approve the requested building height variance in order for the building to be at a height up to 110 feet. The approval was contingent on the following conditions:

- a. Within 6 months, Fincantieri must submit a Third Avenue improvement plan and schedule for completing improvements that addresses the appearance of the shipyard to mitigate the new building project, including addressing landscaping along Third Avenue, paving of parking areas, the appearance and use of the buildings at 325 N. Third Ave (former Red Oak Winery), 341 N. Third Ave (former R.R. epot), and the temporary steel buildings in that corridor. The plan and schedule need to meet staff approval.
- b. Fincantieri must comply with applicable Wisconsin DNR and City of Sturgeon Bay requirements for managing stormwater runoff.
- c. The location of the building shall be at least 75 feet from Berth Two on the north side of the building and may be adjusted not more than three feet in all directions from the location depicted in the submitted site plan.

The grant of variances was based upon the following findings from the application and public hearing testimony:

1. There are no concerns with the height or location of the building from a fire suppression standpoint per the Sturgeon Bay Fire Chief.
2. The building is proposed to be located approximately 250 feet from the nearest property not owned by the applicant, approximately 330 feet from the nearest public street right-of-way and approximately 390 feet from the nearest residential property across Third Avenue.
3. The proposed use of the building is permitted within the Heavy Industrial (I-2) district.

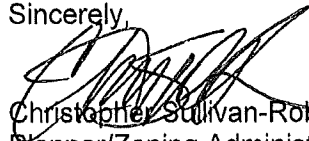
4. The nature of modern shipbuilding has changed and ships are no longer constructed outdoors. The increased building height is necessary for the conducting of the permitted use. Compliance with the 45-foot building height limit is an unnecessary hardship.
5. The proposed 110-foot building height has been demonstrated by the applicant to be necessary for the proposed shipbuilding and not merely for convenience of the property owner.
6. The project has public benefits to surrounding properties and the community due the ability to conduct shipbuilding operations inside a new building, which will lessen the potential for noise, dust, and odors harming nearby properties.

Given the foregoing the variance is consistent with the spirit of the zoning code, serves the public health and safety and results in substantial justice.

Please note that the grant of variances will lapse if the project is not commenced within one year of the date of this letter.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Sullivan-Robinson", written over a horizontal line.

Christopher Sullivan-Robinson
Planner/Zoning Administrator