

ZONING BOARD OF APPEALS
Tuesday, October 13, 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 William Murrock, Nancy Schopf, Dave Augustson, and Alternate Morgan Rusnak were present. Excused: Members Wayne Spritka and Bill Chaudoir. Also present were Municipal Services Director Mike Barker, Community Development Director Marty Olejniczak, Planner/Zoning Administrator Chris Sullivan-Robinson, and Community Development Secretary Cheryl Nault.

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

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.

All ayes. Carried.

Approval of minutes from August 25, 2020: Moved by Ms. Schopf, seconded by Mr. Murrock to approve the minutes from August 25, 2020. All ayes. Carried.

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: Chairperson Murrock opened the public hearing at 12:03 p.m.

Mr. Sullivan-Robinson stated that Richard Bosman requested a variance from section 20.336 of the Municipal Code regarding Memorial Drive restrictions. This section allows construction of a temporary or permanent pier or dock to abutting property owners. Mr. Bosman is not considered an abutting property owner. Earlier this year, he sought a pier permit to construct a dock on his vacant parcel. At that time, staff's interpretation of the code allowed for the construction of the pier. The pier permit was approved at Council. During the approval time, the City received letters of correspondence from surrounding property owners. One letter included correspondence from a previous building inspector/zoning administrator, as well as correspondence from a previous city attorney. That letter included determination that the property owner could not build a pier. Because of a conflict of interpretation, it was appropriate to bring this to our current city attorney, James Kalny, for a new determination on this matter for construction of a pier on Memorial Drive. His determination was consistent with the previous city attorney. Because this permit was issued in error, it is currently on hold until a Zoning Board of Appeals decision is made. This property is zoned conservancy. Other things to consider are public safety, as well as potential future effects to the property and surrounding properties. Any self-created hardship should not be granted. The Board can grant the variance, conditions can be added, a decision can be held off if additional information is needed, or the variance can be denied. Mr. Sullivan-Robinson did point out that this property has been split off from at least the 1960's. It is considered legally non-conforming and grandfathered in. It is not attached to any property across Memorial Drive.

Mr. Olejniczak added that once the permit was revoked for the pier the City offered Mr. Bosman three options. Those options included appealing the revocation, applying for a variance, or requesting the Council to amend the code to make it clear that a pier is actually permitted. Much of the correspondence received expressed concern about commercial use. If the variance was approved, it would be for personal use. It is not zoned commercial, so marina-type use or charter fishing would not be permitted. If inclined to approve, he suggested that conditions be placed and made very clear to prohibit that.

Richard Bosman, 1650 Sycamore Street, stated that for the past 13 years there has been a dock on that property. From 2017-2018 he rented the dock that was on his property. He put his boatlift there and kept his boat at that dock. In 2019, only half the dock was put in because of the high water. The boatlift did not work there. The dock stayed in until June, 2020, at which time he knew that dock wasn't going to work for him, since he was renting it from the neighbor. He then put the property up for sale. The property was surveyed. He asked the dock owner's permission if the dock could be moved off his property onto her property and she agreed. This property is unique, because it is the only one like it on Memorial Drive. As far as negative impact to other property owners, he used the dock for two years and never had any complaints. The dock is four feet wide and 20 feet long. The dock that was approved by the Council in May was 40 feet long. He owned this property for the last 4 years, and he and his girlfriend owned it for two years before that. Only one boat would be using the dock. It would not be used for commercial use.

Mr. Olejniczak stated there is a grey area as far as letting a friend dock a boat, etc. He defined commercial as the principal use of the dock is to make money.

Mr. Bosman added that the previous owner had issues in 2006. There was a dock on the property and the building inspector at the time wrote the owner a letter that stated she had to remove the dock. The owner said she never applied for a permit. The highest and best use of the lot is to put a dock on the property. Neither of the adjoining property owners were interested in purchasing the property.

No one spoke in favor of the variance request.

There were no letters of correspondence in favor of the variance request.

The following spoke in opposition of the variance request:

Dan Mc Cluskey, 1312 Memorial Drive, was concerned with parking. If a dock was installed, there would be an addition of cars, which would limit the view of the water. Safety was also a concern.

Tom Hilbert, 1344 Memorial Drive, agreed with Mr. Mc Cluskey. It is a busy street. The view would be obstructed with cars parked on the street.

Ms. Nault read the following letters in opposition:

Helen Hendricks Urban, 1350 Memorial Drive
Jason & Holly Feldman, 1309 Utah Street
Thomas & Roxanne Hilbert, 1344 Memorial Drive
James & Mary Michaud, 1304 Memorial Drive

Mr. Murrock offered rebuttal testimony. Mr. Bosman stated for the past 13 years there has been a dock stored on that lot. In Mr. Mc Cluskey's testimony, he stated it would limit his view of the water. Half way down Memorial Drive there are docks stored on lots. There would only be one boat parked by the dock, not 8-10 boats as heard in the testimony. There would only be one car parked on the street, which would be Mr. Bosman's car.

Pat Willman, 1322 Memorial Drive, stated that the City allows a property owner to store their dock on their property. It has to be in the water by Memorial Day weekend. She has lived in Sturgeon Bay since 1973 and

this is where the dock has always been. There has never been any problem with it. When the previous owner had it she got a letter from the City stating that the dock had to be removed.

Mr. Sullivan-Robinson stated that a portable seasonal dock can be stored on the property and has to be put back in the water in the summer. No porta-potties are allowed. The property cannot be turned into a commercial use. It is zoned conservancy. Signage or exchange of cash is not allowed.

Mr. Murrock wondered why this parcel got split off in the first place. Mr. Sullivan-Robinson responded that they pulled maps from the 1960's. That is how the property existed.

Mr. Olejniczak added that the lot is considered legal non-conforming because at the time it was created the City did not have the lot area and width standards that the code has now. According to a previous city attorney, the lot was created in 1961.

Mr. Olejniczak gave a history on the property. Back in the 90's, the previous property owner wanted to install a dock. The building inspector told her she couldn't. Jeff Wier, the city attorney at that time, came up with the original opinion that said abutting property owners means homeowners across the street. After Mr. Bosman got his permit, Mr. Mc Cluskey and Ms. Willman wondered how he was able to obtain a permit. The City was not aware of the attorney's opinion. The current city attorney's opinion matched the previous attorney's opinion.

The public hearing was declared closed at 12:53 p.m.

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: Ms. Schopf wondered who would maintain the property if there was no dock. Mr. Augustson responded that the City cuts the grass on the waterside of Memorial Drive. It seemed like it was coming down to objections over parking on Memorial Drive. You can't rent out space. It is for a single boat. All property owners can store a dock.

Mr. Barker said that there are no parking restrictions on Memorial Drive. Parking is allowed on both sides of the street.

Mr. Mc Cluskey stressed that the point he was hoping to address was the statement made about this being just a parking issue. The city attorney's letter was more than that. It is the intent of the original ordinance to provide waterfront views. If there is another temporary dock stored in this small width of the lot, views will be limited. This would be an additional hindrance to that property.

Mr. Olejniczak stated that based on the ordinance language, the use of the area on Memorial Drive is for scenic purposes only. Physical use of the property is restricted to the property owners and/or their invited guests.

Ms. Schopf wondered if there would be an issue if a new owner of the property wanted to install a permanent dock. Mr. Barker responded that he didn't think it would change anything being permanent or temporary. There are about 3-5 docks pulled out of the water for the winter. Many of them are maintained better than the permanent docks.

Mr. Olejniczak recommended that members are to look at the standards for the use variance and consider whether those have been met and to look at the hardship, unique physical property limitation, and protection of the public interest. Increasing economic value of the property is not grounds for a variance. Showing that there is no reasonable alternative use for the property would be grounds for a variance. This is the only property in the entire area of Memorial Drive restrictions that does not have property across the street on which to build a house.

Ms. Schopf can see both sides. She also lives on the waterfront and can understand the obstruction of the view with cars, but that is part of living where they live. She can also see this being a useless piece of property if they didn't allow a dock.

Moved by Ms. Schopf, seconded by Mr. Augustson to approve the variance to make the property useable and to allow construction of a dock, subject to no commercial use and only one boat allowed. Also, there shall be no porta potties allowed on the property. Roll call vote. All ayes. Carried.

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): Mr. Olejniczak stated that traditionally variances are approved orally at the meeting and then staff creates the official decision letter. If someone does not initiate the variance within one year it is voided. If someone wants to appeal a variance they have 30 days from the filing of the decision to appeal it. It is normally brought back to the ZBA. But, for those cases that are complicated or controversial, they may be brought back to make sure that staff correctly interpreted the decision. The city attorney thought that the ZBA should ratify the decision for Fincantieri Bay Shipbuilding since it is being appealed. It more or less puts the ZBA stamp of approval on the decision letter. The first letter is in regard to building 420.

Moved by Mr. Murrock, seconded by Ms. Schopf to approve the decision letter for building 420. Roll call vote. All ayes. Carried.

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: Mr. Olejniczak stated that this decision letter is in regard to building 433, which is the 110-foot tall structure.

Moved by Mr. Augustson, seconded by Ms. Schopf to approve the decision letter for building 433. Roll call vote. All ayes. Carried.

Adjourn: Moved by Ms. Schopf, seconded by Mr. Murrock to adjourn. All ayes. Carried. Meeting adjourned at 1:13 p.m.

Respectfully submitted,

Cheryl Nault
Community Development Secretary