

ZONING BOARD OF APPEALS MINUTES OF AUGUST 26, 2014

A special meeting of the Zoning Board of Appeals was called to order by Chairperson Gerl at 5:01 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ken Bargender, Ed Gerl, Richard Kenyon, Robert Lewerenz, Dean Markwardt and 1st Alternate Todd Zieglmeier

ALSO PRESENT: City Planner Miller, Zoning Administrator Schroeder, City Administrator Barg, Alderperson Wagner, Deputy Clerk Panzer, Dave Wasserburger, Bob Trussoni, Mike Trulen, Jack Bremer, John Berg, Jim Reigel, Scott Larson, Dennis Immerfall, Jeff Gaier and Elizabeth Gaier

EXCUSED: None

ZB14-015 Motion by Kenyon, second by Bargender to approve the minutes of July 8, 2014 as submitted.

Motion carried

Deputy Clerk read the variance request from Marshfield Utilities for the use of temporary cranes, located in the 1700 Block of East Depot Street (parcel 33-02484), zoned "SR-3" Single Family Residential, for a 97 foot temporary variance to construct a new water tower. The proposed maximum elevation for either crane would be 1,495 feet above mean sea level (AMSL), extending up to 225 feet above ground level (AGL). The "Airport Overlay & Height Limitation Zoning Map, Marshfield Municipal Airport, Marshfield, Wisconsin," as identified in Sec. 18-93(4) of the Municipal Code, requires structures at this location, in the Overflight Zone (AIR-4), to not exceed 1,399 feet above mean sea level (AMSL).

Background

Marshfield Utilities is requesting a temporary variance to the Height Limitation Zoning Ordinance (HLZO) for the purpose of constructing a new water tower, located in the 1700 Block of East Depot Street, zoned "SR-3" Single Family Residential District. Per Section 18-93(8) of the Municipal Code, a temporary height variance cannot be administratively approved. Back in April, the Zoning Board of Appeals granted a 39 foot variance to construct a water tower in the same location at an elevation of 1,437 feet above mean sea level (AMSL).

The Applicant is requesting a 97 foot temporary variance to exceed the Height Limitation Zone of 1,399 feet AMSL to allow the largest temporary crane to reach an elevation of 1,495 AMSL or 225 feet above ground level (AGL). There will be three separate cranes on site throughout the project. The Aeronautical Study Number listed after each crane coincides with the Federal Aviation Administration's (FAA) determination letter.

- The first crane will be in the Fall of 2014 for the construction of the foundation. This crane does not require a variance as it is below the HLZO. (Aeronautical Study No. 2014-AGL-636-OE)
- The second crane will be the tallest one to be installed late Winter/Spring of 2015. This crane will extend up to 225 feet AGL (1,495 feet AMSL) and will be there for one day to setup and one day to remove the third crane, the Jib Crane. (Aeronautical Study No. 2014-AGL-635-OE)
- The third crane will be the Jib Crane which will be on the tank pedestal approximately 8-10 weeks in the Spring 2015. The Jib Crane will extend 198 feet AGL to a maximum elevation of 1,468 feet AMSL. (Aeronautical Study No. 2014-AGL-4691-OE)

The requested variance covers the maximum height of the tallest crane (225 feet AGL), even though that crane will only be in use for two days, and will also cover the use of the Jib Crane at a lower elevation in use for 8-10 weeks. Both cranes will require the minimums for the approaches to be raised during the crane's use. It will be vital that Marshfield Utilities communicate with the Marshfield Airport for when the crane is in use.

City Planner's statement of facts regarding the variance request:

1. The property is located in the 1700 Block of East Depot Street (parcel 33-02484) in the "SR-3" Single Family Residential district.
2. The Lot is 15.344 acres in size with the proposed tower to be located on the south side furthest from the residential properties and closest to the railroad.
3. The proposed water tower height is 167 feet AGL, 1,437 feet AMSL.
4. The ground elevation at the proposed tower location is 1270 feet.
5. The maximum elevation permitted at this location by the Height Overlay Zoning Ordinance (HLZO) is 1,399 feet AMSL.
6. The proposed cranes would exceed the Height Limitation Zoning Overlay District by up to 97 feet.
7. The Applicant is requesting a 97 foot temporary variance from the HLZO.
8. The HLZO requires a determination from the FAA, the Wisconsin DOT and a recommendation from the airport manager.
9. The FAA issued a letter regarding the request and has made a "determination of no hazard to air navigation for temporary structure."
10. The Wisconsin DOT, Bureau of Aeronautics also issued a letter regarding the request stating "since the FAA's airspace study found there to be no hazard to air navigation, we will have no objection to the proposed structure so long as there are no objections from the Marshfield Airport."

Variance Criteria (Section 18-165(6))

(The variance will not be contrary to the public interest.) *"In order to build the approved project, it is necessary to have all three cranes at various parts of the project. Without the use of the cranes, Marshfield Utilities cannot build the approved project."*

(Substantial justice will be done by granting the variance.) *By granting the variance it will allow Marshfield Utilities to build the approved project. The variance for the cranes will be temporary.*

(The variance is needed so that the spirit of the ordinance is observed.) *"Yes. This temporary variance will still allow the City of Marshfield to maintain control of its airspace."*

(Due to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship.) *"Yes, without approval of the variance, Marshfield Utilities will not be able to build a project that has already been approved through proper channels."*

City Planner Miller pointed out that there are a few other conditions in the letter from the FAA that would raise the minimums of aircraft coming into the approach, especially for the taller crane that would raise the minimums 50'-60' depending on the approach and then for the lower crane it would raise the minimums 20'. So, even though there is no hazard to air navigation they are still increasing the minimums, which limits the ability of aircraft to land on that runway during crosswinds and severe weather. These increases would be temporary to the minimums.

City Planner Miller referred to the minutes of the Marshfield Airport Committee of August 21, 2014 which were distributed before the meeting started. The Marshfield Airport Committee's opposition to Marshfield Utilities variance request to build a water tower in the 1700 Block of East Depot Street from the April 8, 2014 meeting was attached to Marshfield Airport Committee's minutes of August 21, 2014. The Marshfield Airport Committee reviewed both variance requests at their August 21, 2014 meeting and their recommendation was to not approve the cranes use for this project. The FAA has no objections contingent upon the Marshfield Airport having none.

John Berg distributed and read a letter (*see attached*) that was drafted on May 19, 2014. This letter was sent to the Mayor, City Administrator, Common Council, Zoning Board of Appeals members and City Planner. He signed and dated the letter again today in case someone didn't receive it.

John Berg mentioned that the Common Council agreed to a 25 year assurance that the City of Marshfield would abide by DOT/BOA guidelines when they accepted federal monies and grants. The BOA has the power to eliminate future funding or request reimbursement of past funding if guidelines are not followed.

Jeff Gaier explained that when the Airport was built it was a mile out of town. The runway 34/16 has already been extended. We have absolutely no growth potential on 4/22 because of the City now, so there is no way we are going to be able to grow. As the city is growing it is going to surround the Airport so we have to do everything to protect what we have. Right now the Federal Aviation is telling us to protect our clear zones which we are buying property for at the moment. We are going to get more and more people coming in with requests to penetrate the height limitation zone, because the City is going to grow. The City is going to need more infrastructure, but the problem is if we keep having incursions we are going to lose our funding for the Airport. We count on the Federal Aviation Administration and the State to help us out with projects. We are the only department in the City that has cost shares that are at 90% right now with federal funding and 5% with the State, so the City is only paying 5% for cost share projects at the Airport.

Jeff Gaier said the only growth potential that the Airport has is to expand 500' to the north and approximately 1,000' to the south.

Dave Wasserburger mentioned that Marshfield Utilities would need a variance anywhere in the City, because of the three mile circle around the Airport. The entire city is in the overfly zone.

City Administrator Barg asked if we were fighting a battle that has already been discussed at length and decided on at an earlier meeting, since the variance for the tower was already approved and this request is a temporary situation for a crane to erect the tower.

Dave Wasserburger said the City may want to revisit their ordinance to allow for something like the future construction of water towers, because you can't allow the city to grow without a water supply.

Alternative locations were discussed.

John Berg said the Airport is objecting to the height of this variance request and the fact that the tower will be dead center of the overfly zone.

Jeff Gaier explained the flight patterns in the City.

Jet traffic was discussed.

John Berg said the high performance airplanes and jets are coming in a whole lot more quieter. We have much more air traffic than the average citizen to Marshfield realizes.

Jack Bremer said the FAA will always approve, they will just raise the height limitations down the road. If the water tower was to the right or left 100 yards, 200 yards, a half a mile or whatever we would still object to it and wouldn't approve it, but we probably wouldn't be sitting here tonight if it wasn't dead center. Our main objection is that it is dead center.

City Planner Miller said if the variance is approved there are recommendations to approve conditions that

it would follow the FAA requirements including that it be lit, taken down at night, flagged, NOTAMS being issued and such.

Dave Wasserburger passed around pictures of a water tower that was recently built on Mann Road which showed the cranes used to build it.

ZB14-016 Motion by Markwardt, second by Kenyon to deny the variance request from Marshfield Utilities for a 97 foot temporary variance to use cranes in the 1700 Block of East Depot Street (parcel 33-02484) to construct a new water tower.

Bargender said that Dave Wasserburger explained things a lot better at the first meeting than he did today. He gave us a lot more detail. We spent at least this amount of time just with Dave. We asked as many questions as we possibly could. We approved the tower and now you are not going to approve the variance to build the tower. That sounds ridiculous. Why did we waste our time giving them the variance? We knew at that time that they needed a crane to build the thing. You can't build a tower without a crane. This is almost a mute point, once we approved the tower to come back and tell the Utility now you can't build it. It doesn't make any sense.

Markwardt said if we don't give permission for the crane then the tower will not be built in that location. Fortunately there haven't been any airplanes in distress coming through there.

Bargender said any airplane in distress is going to find a way to get back to the airport or find a safe place to put it down. Anything out there is going to be an obstruction.

Markwardt said there is even further consideration of jeopardizing funding from the State that is significant.

Bargender said he could understand that for cell towers. Things that are not all that necessary that are a convenience thing. We found that we can relocate train control towers outside the city, but how do we locate a water tower outside the city? It would cost tens of millions of dollars to relocate this water tower, so we would be losing that too and that is a direct impact on every utility customer in this city. Everyone that is hooked to that water is going to pay.

Markwardt said although the Airport representatives might formally not approve a request for a different location within that three mile radius they wouldn't fight it either, so there may be acceptable alternatives that do not have to be located outside of the City limits.

Bargender said Dave Wasserburger explained all that to us at the last meeting. It was pretty black and white. This was the best location because the existing water tower that is located in Grant Mini Park has to have the same height for the water pressure to be the same. The existing tower needs maintenance. It has been up for 25 years. It needs to be shut down and an alternative supply of water has to be provided for all of our safeties, so if there is a fire at your house there is going to be water pressure there to fight the fire.

Lewerenz said the two towers have to have equal height. One of the towers has to come down for maintenance and without this tower we don't have the water pressure throughout the City for fighting fire not to mention just running plumbing and what not and businesses use of water. Having a water tower in a place where it actually puts the pressure so that it is going to do us any good is a key item and we can't let the City not have fire protection. We went round and round with them. We talked and talked and talked about the pros and cons during that meeting and the fact is that we granted the variance at that meeting.

City Administrator Barg left the meeting at 5:45 p.m.

Markwardt called for the question.

Vote on motion **ZB14-016**; Ayes – 3 (Gerl, Kenyon and Markwardt); Nays - 2 (Bargender and Lewerenz)
Motion carried

Aldersperson Wagner left the meeting at 5:58 p.m.

1st Alternate Todd Zieglmeier left the meeting at 6:00 p.m.

Deputy Clerk read the variance request from Dennis Immerfall, on behalf of Paget Equipment, for the use of a temporary crane, located at 417 East 29th Street, zoned “LI” Light Industrial, for a 60 foot temporary variance to construct a new addition. The proposed maximum elevation for the crane would be 1,343 feet above mean sea level (AMSL), extending up to 120 feet above ground level (AGL). The "Airport Overlay & Height Limitation Zoning Map, Marshfield Municipal Airport, Marshfield, Wisconsin," as identified in Sec. 18-93(4) of the Municipal Code, requires structures at this location, in the Overflight Zone (AIR-2), to not exceed 1,284 feet above mean sea level (AMSL).

Background

Paget Equipment is requesting a temporary variance to the Height Limitation Zoning Ordinance (HLZO) for the purpose of constructing a new addition, located at 417 East 29th Street, zoned “LI” Light Industrial District. Per Section 18-93(8) of the Municipal Code, a temporary height variance cannot be administratively approved. Back in July, the Common Council granted an exception to the district height limit to allow the construction of an addition up to 60 feet tall. The addition will fall just below the HLZO elevation of 1,284 feet above mean sea level (AMSL) and does not require a variance. However, the crane to construct the addition does require a temporary variance.

The Applicant is requesting a 60 foot temporary variance to exceed the Height Limitation Zone of 1,284 feet AMSL to allow the temporary crane to reach an elevation of 1,343 AMSL or 120 feet above ground level (AGL).

The proposed crane will require an increase to the initial climb area by 47 feet during the crane’s use. It will be vital that Paget Equipment communicate with the Marshfield Airport for when the crane is in use.

City Planner’s statement of facts regarding the variance request:

1. The property is located at 417 East 29th Street in the “LI” Light Industrial district.
2. The Lot is 5.6 acres in size with the proposed addition to be located on the west side of the manufacturing building.
3. The proposed crane would extend 120 feet AGL, 1,343 feet AMSL.
4. The ground elevation at the proposed tower location is 1223 feet AMSL.
5. The maximum elevation permitted at this location by the Height Overlay Zoning Ordinance (HLZO) is 1,284 feet AMSL.
6. The proposed crane would exceed the Height Limitation Zoning Overlay District by up to 60 feet.
7. The Applicant is requesting a 60 foot temporary variance from the HLZO.
8. The HLZO requires a determination from the FAA, the Wisconsin DOT and a recommendation from the airport manager.
9. The FAA issued a letter regarding the request and has made a “determination of no hazard to air navigation for temporary structure.”
10. The Wisconsin DOT, Bureau of Aeronautics also issued a letter regarding the request stating

“since the FAA’s airspace study found there to be no hazard to air navigation, we will have no objection to the proposed structure so long as there are no objections from the Marshfield Airport.”

Variance Criteria (Section 18-165(6))

(The variance will not be contrary to the public interest.) *“The crane will only operate during daylight hours over the next three months to set building materials for an addition at Paget Equipment. This building addition will eventually bring additional jobs and additional revenue to the area and therefore is in the best interest to the public to grant the variance.”*

(Substantial justice will be done by granting the variance.) *“The use of the crane is only temporary until the building is erected and the FAA has issued a determination that there is not hazard to air navigation by its operation at the subject site. No party would be adversely affected by granting the variance.”*

(The variance is needed so that the spirit of the ordinance is observed.) *“The spirit of the HLZO District is to protect the airspace for air traffic into and out of the airport. We are required by the FAA determination to provide the crane with markers and to lower the crane when it is not in use and during the hours between sunset and sunrise.”*

(Due to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship.) *“Granting the variance is in the public's best interest.”*

The Airport Committee met last Thursday and they recommended approval of the crane with the following conditions:

1. The crane shall be flagged and or have a strobe light on the tip.
2. The crane can be used in the daylight hours only and down during the night.
3. The crane not be used during bad weather or low visibility.
4. Coordinate with the Airport Manager on prevailing wind days and when in use.

City Planner Miller recommended including the FAA requirements per the FAA’s Determination of No Hazard to Air Navigation for Temporary Structure, Aeronautical Study No. 2014-AGL-6767-OE for the crane at the given location in addition to the Airport Committee conditions.

Chairperson Gerl stated that he worked for Mr. Reigel at Paget Equipment and there is no conflict of interest with this variance request.

Mike Trulen of Power Pac urged the Zoning Board of Appeals to approve this variance request. The millions of dollars that Jim Reigel and his company has invested in this community is going to help our community now and in the future with added jobs and the increased property tax base this can only help improve our local community and our local job market. Surely the Airport can work to accommodate this temporary easement for the betterment of our community and our local economy.

Markwardt asked if the Airport’s conditions are slightly more stringent than those that the FAA puts forward.

Scott Larson of Marshfield Chamber of Commerce and Industry spoke in favor of the variance request. As was mentioned, he hoped that the Zoning Board of Appeals will concur with both the FAA and the Airport Committee in granting the approval of this. As was stated, the structure will still be under the limits that are necessary with regard to the runway height requirements and the added economic impact of

the community will be much beneficial for what will transpire for the additional growth and opportunities that will come from this new addition to this business.

ZB14-017 Motion by Kenyon, second by Lewerenz to grant the variance request from Dennis Immerfall, on behalf of Paget Equipment for a 60 foot temporary variance to use a crane at 417 East 29th Street to construct a new addition as long as they follow both the FAA and local Airport conditions.

Bargender said he didn't think this Board should take into consideration the economic impact of a business and pose the safety of an aircraft. We should basically vote on the crane. Is it safe or is it unsafe? He didn't think economic impact of any one business should supersede the decision if it is safe or not safe.

Jim Reigel said unlike the previous discussion this is not in direct lineup for that runway. We are quite a ways off of that, so there isn't an issue with that especially using the safeguards that were requested.

Vote on motion **ZB14-017**; Ayes – 4; Bargender abstained.

Motion carried

Deputy Clerk Panzer pointed out that a second is needed to call for the question and that didn't happen earlier in the meeting when the Marshfield Utilities variance was discussed and voted on. She also questioned if four Aye votes were needed to deny the variance request.

Discussion was held on how to handle the situation since the discussion was not properly terminated.

City Planner Miller reviewed the City's Municipal Code and read Section 18-156 (7):

In exercising the above listed duties and responsibilities, the Board may reverse or affirm, wholly or in part, or may modify any order, requirement, decision, or determination of the Zoning Administrator or other administrative officer from whom the appeal is taken. The concurring vote of 4 members of the Board shall be necessary to reverse any order, requirement, decision, or determination for which an appeal has been requested.

He said he didn't know if that pertains to variances or if that is an appeal to the Zoning Administrator only. He said we would have to find that out.

Markwardt said if we were to reconsider the April decision for example that would require four votes. Can we overrule a previous decision?

City Planner Miller said the Zoning Board can't reverse its own decision. The only way to appeal a Zoning Board decision is to take it to court. The Common Council can't reverse this decision. It has to go to court and that has a 30 day time limit from the time the decision is made. We can't go back and reverse the decision on any item.

Zoning Administrator Schroeder read the definition of an appeal from Chapter 18 of the City's Municipal Code:

An appeal is a means for obtaining the view of a decision, determination, order or a failure to act pursuant to the terms of this Chapter as expressly authorized by the provisions of Section 18-170.

City Planner Miller said this was not an appeal. This was to hear special exceptions or variances, so he believes this section is referring to an administrative decision that is being appealed not a variance.

Bargender suggested having the City Attorney look at this.

City Planner Miller said he would run this by the City Attorney, but we still have to adjourn this meeting.

ZB14-018 Motion by Markwardt, second by Kenyon to call for the question, to properly close discussion on the request for a variance from Marshfield Utilities. Ayes – 3 (Gerl, Kenyon and Markwardt); Nays - 2 (Bargender and Lewerenz)

Motion carried

Vote on motion **ZB14-016** again; Ayes – 3 (Gerl, Kenyon and Markwardt); Nays - 2 (Bargender and Lewerenz)

Motion carried

City Planner Miller confirmed that the action to deny or approve a variance only needs a majority vote per the policy that was adopted by the Zoning Board and Common Council back in 2007. He read the reference from Policy Number 7.410 (4) (C) (1) in the Planning and Economic Development section of the City of Marshfield, Wisconsin Policy and Procedures:

Order and Determination

Board votes on case. A board member makes a motion to grant or deny the relief requested by the appellant. The motion is discussed. The vote is taken with each vote being recorded including those abstaining. If the motion is passed by majority vote of the Board, this constitutes the decision of the board.

Motion by Markwardt, second by Kenyon to adjourn at 6:23 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk