

## ZONING BOARD OF APPEALS MINUTES OF MAY 9, 2006

Meeting called to order by acting Chairman Zimmermann at 4:45 p.m. in the Executive Conference Room, City Hall Plaza.

**PRESENT:** Marvin Duerr, Dean Markwardt, Wallace Reek, Don Wink, Karl Zimmermann and 2<sup>nd</sup> Alternate Donald Schnitzler

**ALSO PRESENT:** Planner/Zoning Administrator Curtiss, Director of Planning and Economic Development Miller, Building Services Supervisor Donath, Deputy Clerk Panzer, Mike Hoerl, John Bujalski, Peter Chrouser, Sally Chrouser, Robert Burrell, Christopher Meadows, Brad Werger, Dale Anderson, Jerry Meissner, Barb Fleisner and Mayor Meyers

Due to the fact that per state statutes the Mayor shall designate one of the members as the chairperson and the Mayor was not present at the start of the meeting items on the agenda were taken out of order.

**ZB06-008** Motion by Duerr, second by Wink to approve the minutes of April 11, 2006 as submitted. All Ayes.

**Motion carried**

Zimmermann welcomed Donald Schnitzler. He is the new 2<sup>nd</sup> alternate Zoning Board of Appeals member.

Deputy Clerk read the variance request from Automated Products, Inc. to construct a 1,500-sq. ft. office addition at 1812 Karau Drive, zoned 'M-2' Light Industrial District. Section 18-64 (3)(f) of the Municipal Code requires a minimum 50' front yard setback. Applicant requests a variance of 21'-1" in order to build the addition 28'-11" from the Karau Drive lot line.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request.

1. The subject property consists of two contiguous parcels totaling over 6-acres in size.
2. This property, located on the south side of Karau Drive and west side of Popple Avenue, is part of the total land that supports the Automated Products, Inc. manufacturing industry.
3. These parcels are currently developed with 4 plant buildings for manufacturing & production, one shop building, open storage areas and some hard surface parking, access and loading areas.
4. This is a corner lot, located on the south side of Karau Drive and west side of Popple Avenue.
5. The property is zoned "M-2" Light Industrial.
6. A minimum 50-ft front setback is required from both public streets.
7. The site plan proposes a 1,500-square foot office addition on the north end of the Plant No. 2 building.
8. The north elevation of the existing Plant No. 2 building is located over 58' from the Karau Drive right-of-way.
9. Plants No. 1 & 3 are both built less than the required 50' setback, located 24'-6" & 33'-11" respectively from Karau Drive right-of-way. However, industrial-zoned properties do not qualify under the averaging provisions of Sections 18-04(5)(g).
10. While the developed characteristics of the site may limit the layout options for the addition, the property itself has no unique physical limitations (small lot, steep slopes, wetlands, etc) that would prevent compliance with setback requirements.

11. The area of the proposed addition currently provides for some off-street parking. The applicant indicates that off-street parking for the existing and proposed development is currently being provided by an employee parking lot on the north side of Karau Drive.

John Bujalski of Automated Products explained the reason for the variance request. They are expanding and they are completely out of office space.

Duerr mentioned that he went out and looked at the site to see how the proposal would affect the property and any of the surroundings. Since they own the surrounding property, there is no affect on anyone. He pointed out on the map that the sideline between Plant #1 and Karau Drive shows a distance of 24'6", but in measuring the shortest distance from the corner immediately to the front side of the property it is about 20' in all actuality.

**ZB06-009** Motion by Duerr, second by Reek to grant a 21'-1" variance in order to build the addition 28'-11" from the Karau Drive lot line.

Director of Planning & Economic Development Miller asked how Automated Products proposes to have additional office space as they continue to expand.

John Bujalski replied that they could go up another floor. He explained that their long range plan is to put up two new buildings on Hume Avenue.

Vote on motion **ZB06-009**; All Ayes.

**Motion carried**

Christopher Meadows of Borgelt, Powell, Peterson & Frauen S.C. passed out the following three documents pertaining to the appeal of Peter C. & Sally M. Chrouser:

- 1) Position statement of Acuity Mutual Insurance Company
- 2) Affidavit of Kevin C. Boyer
- 3) Affidavit of Christopher G. Meadows

Mayor Meyers by duty of statute appointed Karl Zimmermann as Chairman. Karl Zimmermann accepted the position of Chairman.

Wallace Reek nominated Marvin Duerr for Vice Chairman.

**ZB06-010** Motion by Reek, second by Markwardt to close nominations and cast a unanimous ballot for Marvin Duerr as Vice Chairman. All Ayes.

**Motion carried**

Deputy Clerk read the appeal of Peter C. & Sally M. Chrouser and their insurer Acuity Mutual Insurance Company of Sheboygan. Appealing a building repair order issued by the City of Marshfield to repair a fire damaged building wall remaining after the building was razed at 216 South Central Avenue, Marshfield, WI 54449. The order requires various repairs to a masonry wall pursuant to Section 15-51 of the Municipal Code and various Subsections of the Wisconsin Administrative Building Code.

Building Services Supervisor Donath explained the reasons for the appeal. He said that there is a conflict between the two surveys that were done. One was done by Northern Environmental at the direction of

Peter and Sally Chrouser and the second one was done by Lampert-Lee & Associates for Dale Anderson's property. It is a question of which survey is correct and who pays for what. He indicated that he recently sent an order to Dale Anderson. He explained that the reason the Chrouser's received the order first was because the fire originated in their building, and it was arson. The wall that is remaining that needs the repairs is the inside of the wall of the Chrouser's property. The Chrouser building had some big steel beams across it. There was a concrete deck on part of it in the back and the columns still remain there and they are not solidly tied into that building. They are actually covered by lath and plaster and at some point in time something is going to separate up there which will cause some failures. Part of the building is clay tile and that tile in its present condition is not suitable for exterior wall covering. It has to be covered with something or a building.

Zimmermann asked what is to happen with the open space.

Building Services Supervisor Donath said that the Meissner family is interested in acquiring the Chrouser property and constructing a new building in there.

Duerr asked why the insurance companies aren't taking responsibility for this and why we are even involved.

Christopher Meadows from the Law Firm of Borgelt, Powell, Peterson & Frauen S.C. explained that the insurance companies are involved in this matter and Acuity Mutual Insurance Company wants to pay its fair share. He said that the property line is basically inside the wall and because it touches it, we are responsible for a certain portion of that party wall. The unanswered question is how much of that wall is a party wall. How much of that wall is straddling the property line and then how much of the wall is entirely on Penny Court property? Both surveys are in agreement that a portion of the wall is entirely on Penny Court property. He believes that that is the portion of the wall that Mr. Donath has issued an order to Mr. Anderson from Penny Court for saying that he is responsible for those repairs.

Building Services Supervisor Donath said that that was the order that was issued.

Building Services Supervisor Donath said that he feels that the wall originally was intended to be a party wall. Back in the late 1800's when people were building; there weren't a lot of surveyors around. Road alignment or something else could have gone haywire. He doesn't think it is as simple as telling Dale Anderson to repair his wall, because there are several structural elements that are known to be the Chrouser's property. The columns and beams that are still up there held up the Chrouser building and they are separate and distinct elements. They are embedded in that wall or they could be beyond that point. Part of the order states get rid of the ledges and steel beams which were part of the Chrouser building. They don't have anything to do with Dale Anderson's building, but they are there. Whose responsibility is that? We have two different surveys both signed by registered land surveyors in the State of Wisconsin that come up with different conclusions and the only way to resolve that is somebody has to look at that and figure out where that line is if it is important. It is important right now if you go by Northern Environmental's survey.

Brad Werger gave an example of how insurance coverage works. If a wind storm came and blew down your tree and it fell on your neighbor's house, you would not be responsible for your neighbor's house. In this case, the Chrouser's had no negligence in the fire it was an arsonist. What wall is our responsibility?

Building Services Supervisor Donath said that he is not in a position to recommend how many feet is Anderson's responsibility or how many feet is joint responsibility. He said that his office is getting a lot of pressure and just wants to resolve this. This has been going on for a year. He doesn't know how to resolve it other than issuing orders.

Markwardt asked where Dale Anderson's order was in the packet.

Dale Anderson said that he did not receive an order yet.

Building Services Supervisor Donath apologized and said that he knew that an order was to go out. He said that Dale Anderson was verbally informed of the order and he assured that Mr. Anderson would be getting the order.

Dale Anderson feels that the building was built crooked. The front portion of the wall is entirely on the Chrouser property and the back portion of the wall is entirely on his property. In researching it, the Chrouser's building was built in the 1880's and his building was built in the 1930's. His building has its own foundation, a cement poured wall that his own wall rests on, but his wall is just a studded wall and it was built up against the existing wall of the building that was there. The conflict here is that wall on that side of those studs we now find out from the survey is partly on my property, but that wall was being used by the Chrouser's building since the 1880's.

Building Services Supervisor Donath pointed out that in Detail 2 of the survey done at the direction of Anderson it shows that that lot line is some where in the middle of that masonry wall.

Markwardt wondered what the next step or recourse is if no action is taken on the validity of the survey.

Building Services Supervisor Donath said that he would have to talk to the City Attorney.

Dale Anderson stated that they want to resolve this issue to, it is not a question of not wanting to fix the wall, but it needs to be done fairly. His insurance company was not present because the fire maxed out his policy. He said that Brad Werger tried calling him yesterday, but he wasn't around and that today is the first that they were able to talk. He felt that the Chrousers, Brad Werger and him could sit down and hammer this out at a table and resolve the issue.

Brad Werger said it is just a matter of who owns what. He feels that the order is making them responsible for all the repairs and he doesn't feel that that is fair. Dale realizes that part of it is his and part of it is ours. What that is, is the big question?

Christopher Meadows said they understand the City's thought process, but they don't think that it is proper to issue an order that puts it all on one party, because that seems to be the correct thing to do. He doesn't think that the Building Inspector or the zoning board has that power. We all agree that that is a judicial determination and should be properly litigated, if there is a question of who was there first. We are trying to say that we can come to some determination just based on where the property is. We want to come to some resolution and move forward.

Zimmermann asked if postponing the appeal would be the way to go.

Planner/Zoning Administrator Curtiss felt that it would probably be a good idea to get some legal clarification on this. Postponing would allow additional time to get additional information for the two disputed surveys. Maybe it would benefit the board to get some additional information rather than just coming to some agreement.

Building Services Supervisor Donath doesn't believe that the zoning board can come to an agreement of where that magical line is.

Reek felt that the damage is done and if they are responsible, they should fix it.

Markwardt felt that if they do litigate they will be entirely responsible to repair the wall all the way back. He also agreed that the board isn't empowered to make that kind of a decision.

ZB06-000 Motion by Duerr, second by Markwardt to uphold the building repair order dated March 15, 2006 as issued making Peter C. & Sally M. Chrouser and their insurer Acuity Mutual Insurance Company of Sheboygan responsible for repairs.

Christopher Meadows said they still need clarification on what the order actually is. That is the only problem, because the order standing alone is different from the order taken in context with the order issued to Mr. Anderson.

Duerr said he will leave his motion as is making them responsible for it because that way if there is litigation, they can take it to court. Someone should be responsible for the damage.

Mayor Meyers said there is a lot to be said for the suggestion that both parties sit down and talk about this. This is a unique situation. He felt that more could be resolved by talking it out.

Building Services Supervisor Donath asked if the parties could see advantages to this if it were postponed.

They replied yes.

Christopher Meadows said that if an order is issued making us completely responsible it is going to really slow everything down, because then we have an order that he has to appeal, because that order clearly oversteps any bounds that the Building Inspector or the board would have. We will have to go to court and get that order thrown out and then we will be back months and months later trying to sit down and just figure it out which is what we want to do in the first place.

Mayor Meyers said that there was mention of a new building being built in its place. If a building is built there it may take care of a big chunk of this problem. It would give Mr. Anderson's building something to lean up on.

Duerr and Markwardt withdrew their motion.

ZB06-011 Motion by Duerr, second by Markwardt to postpone the appeal until the next regular Zoning Board of Appeals meeting of June 13, 2006. All Ayes.

**Motion carried**

Motion by Duerr, second by Reek to adjourn at 5:41 p.m.

**Motion carried**

Lori A. Panzer  
Deputy City Clerk

F:\Home\Minutes\Zoning Board\Minutes 2006\ZB060509.doc