

**VILLAGE OF PLEASANT PRAIRIE
ZONING BOARD OF APPEALS
Monday, March 12, 2012
5:00 PM**

Members Present: Christine Genthner, Chairperson; William Morris; Jennie Holman; Steve Kumorkiewicz; and David Hildreth (Alternate #1). Mark Riley was absent. Tom Glassman was excused.

Also Present: Jean Werbie-Harris, Community Development Director; and Jan Petrovic, Clerical Secretary.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CORRESPONDENCE.**
- 4. CITIZEN COMMENTS.**

Christine Genthner:

This is an opportunity for anybody to approach the Board. We will have individual public hearing.

- 5. CONSIDER THE MINUTES OF THE OCTOBER 10, 2011 BOARD OF APPEALS MEETING.**

Christine Genthner:

Does everybody have their minutes? Do I have a motion?

Bill Morris:

Move to approve.

David Hildreth:

Second.

Christine Genthner:

We have a second by Mr. Hildreth. All in favor say aye.

Voices:

Aye.

6. NEW BUSINESS

- A. **PUBLIC HEARING AND CONSIDERATION OF A NONCONFORMING USE SUBSTITUTION USE for the request of William Jecevicus, owner of the property located at 8448 104th Avenue to substitute and convert the non-conforming commercial area on a portion of the first floor of the existing structure to an equally restrictive nonconforming use-an apartment unit within the R-5, Urban Single-Family Residential Zoning District. The request is being made pursuant to Section 420-140 I. and Chapter 18, Article V of the Village Municipal Code.**

The property is located in a part of the Southeast One Quarter of U.S. Public Land Survey Section 7, Township 1 North, Range 22 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie, County of Kenosha, State of Wisconsin and further identified as Tax Parcel Number 91-4-122-074-0630.

Christine Genthner:

With that, do we have findings of fact by staff?

Jean Werbie-Harris:

We do.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Jean Werbie-Harris:

I do.

Christine Genthner:

Please proceed.

Jean Werbie-Harris:

Under the findings of fact for the March 12, 2012 public hearing, the first item for item A:

1. William Jecevicus, owner of the property located at 8448 104th Avenue is requesting to substitute and convert the non-conforming commercial area on a portion of the first floor of the existing structure to an equally restrictive nonconforming use, an apartment unit within the R-5, Urban Single-Family Residential Zoning District. This request is being made pursuant to Section 420-140 I. and Chapter 18, Article V of the Village Municipal Code. See Exhibit 1 for the application and related materials.
2. The property is located in a part of the Southeast One Quarter of U.S. Public Land Survey Section 7, Township 1 North, Range 22 East of the Fourth Principal Meridian, in the

Village of Pleasant Prairie, County of Kenosha, State of Wisconsin and further identified as Tax Parcel Number 91-4-122-074-0630.

3. The property is approximately 6,718 square feet and the two story structure, constructed in 1900, is approximately 2,995 square feet excluding the basement. The upper level has two apartments and the lower level has one apartment in the rear and a store front that has been used over the years for several small businesses and most recently as storage for St. Anne Catholic Church.
4. On March 15, 2010, as a part of a comprehensive Village-wide rezoning effort, this property was rezoned from the then B-1, Neighborhood Business District, to the current R-5 District. This rezoning occurred to comply with the State's Smart Growth law, which requires that the Zoning Ordinance, including the Zoning Map to be consistent with the Village's Comprehensive Plan.
5. As noted in the application, the petitioner is proposing to substitute and convert a non-conforming commercial area on a portion of the first floor to an equally restrictive nonconforming use, an apartment unit.
6. Because the previous use of this property was commercial prior to and after the zoning change, the commercial use has been classified as a legal non-conforming use. Pursuant to the Village Zoning Ordinance the commercial use may continue with certain limitations including:
 - a. Such nonconforming use may not be extended.
 - b. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 percent of the assessed value of the building unless permanently changed to a nonconforming use.
 - c. If such nonconforming use is discontinued for a period of 12 months, any future use of the building and premises shall conform to the ordinance.
 - d. Once a nonconforming use or structure has been changed or altered so as to comply with the provisions of this chapter, it shall not revert back to a nonconforming use or structure.
 - e. Once the Zoning Board of Appeals has permitted the substitution of a more or equally restrictive nonconforming use for an existing nonconforming use pursuant to the provisions of Chapter 18, Article V of the Village Code, the existing use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Board of Appeals as a substitution use.
7. Section 18-35 A (3) of the Village ordinances, the Board of Appeals has the authority to hear and to grant applications for substitution of more or equally restrictive nonconforming uses for existing nonconforming uses provided that no structural alterations are to be made. Whenever the Board of Appeals permits such a substitution, the use may not thereafter be changed without application and hearing.

8. The proposed change of a nonconforming use from a commercial store front to a residential apartment unit is considered by the staff to be an equally or less restrictive nonconforming use for the purposes of the substitution of an existing nonconforming use.
9. All of the abutting and adjacent property owners within 100 feet were notified of the nonconforming use substitution request via regular U.S. mail on February 17, 2012 as noted in Exhibit 2. The Board of Appeals agenda was published in the *Kenosha News* on February 27, 2012.

As shown on the slide, there is a photograph of the existing building when it was a commercial use prior to the St. Anne's storage use. And, again, their request is to convert the front area of the first floor to a residential apartment. With that I'd like to continue the hearing.

Christine Genthner:

Thank you. Before we continue on with the staff recommendation is there anybody else who'd like to approach and be heard on this matter? Could you come forward? If you could approach and state your name for the record?

William Jecevicus:

William Jecevicus.

Christine Genthner:

And do you swear to tell the truth, the whole truth and nothing but the truth?

William Jecevicus:

I hope so. Okay, now what?

Christine Genthner:

Is there anything you'd like to tell us that wasn't part of the findings of fact?

William Jecevicus:

She covered it all with that big sled, yeah.

Christine Genthner:

Okay, and you'll agree to abide by all of the conditions that are set forth?

William Jecevicus:

I think so. I don't see nothing I cannot abide by.

Christine Genthner:

And it talks about no structural alterations. Are you –

William Jecevicus:

What does that mean? I'm putting two windows and a door in.

Christine Genthner:

Okay, that was my question.

Jean Werbie-Harris:

Those would not be considered structural alterations. We're talking about expanding the size of the building, going up higher in height or area.

Christine Genthner:

Anything else?

William Jecevicus:

That's it.

Christine Genthner:

Alright, thank you. You may have a seat. With that does staff have a recommendation?

Jean Werbie-Harris:

Yes, we do. Under staff recommendation, the Village staff recommends approval of the nonconforming use substitution request to convert the commercial area on the first floor of the building located at 8448 104th Avenue to a residential apartment unit as presented during this public hearing and in the application materials because the proposed nonconforming use can be considered an equally or less restrictive nonconforming use as a commercial warehouse storage area or a commercial store front.

Furthermore, the Village staff recommends that the nonconforming use substitution request be approved subject to the following conditions. If you'd like I can read these specific conditions into the record, or we can make them as part of the public hearing as part of the comments this evening.

Christine Genthner:

We can make it part of the public hearing. With that, before I close the public hearing does anybody on the Board have any questions of staff or anybody else? Seeing no questions then we'll close the public hearing. Do I have a motion?

Steve Kumorkiewicz:

So moved.

Christine Genthner:

We have a motion by Mr. Kumorkiewicz to approve subject to the conditions set forth on staff recommendation.

Jennie Holman:

I will second.

Christine Genthner:

I have a second by Ms. Holman. Do you need a voice vote?

Jean Werbie-Harris:

Yes, we do.

Christine Genthner:

Before I close that anybody have anything they'd like to discuss on the motion? Seeing none, alright, we may take a vote. I support the recommendation.

Bill Morris:

I vote in favor.

Jennie Holman:

I vote in favor.

Steve Kumorkiewicz:

In favor, yes.

David Hildreth:

I'll vote in favor as well.

Christine Genthner:

Alright, the application then for substitute use has been approved.

B. PUBLIC HEARING AND CONSIDERATION OF VARIANCE for the request of Michael Warwick of American Transmission Company from Section 420-125.1 J (4) (c) [2] of the Village Zoning Ordinance to construct one (1) monopole transmission structure outside of the west side of the switchyard (6.5 feet from Ordinary High Water Mark (OHWM)) and five (5) transmission structures within the fence line of the updated switchyard (at 74, 72, 72, 63, and 74 feet from the OHWM, respectively) wherein a 75 foot setback is required for the proposed Pleasant Prairie switchyard expansion project on the property located west of the main We Energies Pleasant Prairie Power Plant property at 8000 95th Street.

The subject properties are located in a part of the U.S. Public Land Survey Section 16, Township 1 North, Range 22 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie and further identified as Tax Parcel Numbers 92-4-122-163-0115 and 92-4-122-164-0011.

Christine Genthner:

With that, do we have findings of fact by staff?

Jean Werbie-Harris:

We do.

Christine Genthner:

Ms. Werbie, do you swear to tell the truth, the whole truth and nothing but the truth?

Jean Werbie-Harris:

I do.

Christine Genthner:

Please proceed.

Jean Werbie-Harris:

Under findings of fact for Item B on the agenda for March 12, 2012:

1. The petitioner, Michael Warwick of American Transmission Company, is requesting approval of a variance from Section 420-125.1 J (4) (c) [2] of the Village Zoning Ordinance to construct one monopole transmission structure outside of the west side of the switchyard which would be 6.5 feet from ordinary high water mark and five transmission structures within the fence line of the updated switchyard at 74, 72, 72, 63, and 74 feet respectively from the ordinary high water mark, wherein a 75 foot setback is required by ordinance. The monopole transmission structures are being proposed as part of the Pleasant Prairie switchyard expansion project on the property located west of the

main We Energies Pleasant Prairie Power Plant property at 8000 95th Street. See Exhibit A for a copy of the application and the related materials.

2. The subject properties are located in a part of the U.S. Public Land Survey Section 16, Township 1 North, Range 22 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie and further identified as being on Tax Parcel Numbers 92-4-122-163-0115 and 92-4-122-164-0011.
3. The applicant has requested approval of a conditional use permit including site and operational plans for the proposed Pleasant Prairie switchyard project including the expansion of an existing electrical switchyard that will involve filling and grading, installation of storm drainage features, construction of a detention pond, relocation of a microwave communication facility and installation of several steel monopole structures that will route transmission lines into and out of the expanded switchyard.

This application is being considered by the Plan Commission at a public hearing this evening following the Board of Appeals meeting.

4. On October 29, 2010, November 9, 2010 and April 1, 2011 the wetland areas in proximity to the project area were field delineated by GAI Consultants. A portion of the wetlands have been approved by the Wisconsin DNR to be filled for this project. See Exhibit B in your packets. As a result of the wetland staking and the subsequent permit to fill a small portion of the wetlands, the Village Zoning Map is proposed to be corrected to rezone the field delineated wetlands, excluding the wetlands allowed to be filled into the C-1, Lowland Resource Conservancy District and the non-wetlands into the M-4, Power Generating District. See Exhibit C.

The zoning map amendment is being considered by the Plan Commission at a public hearing following this Board of Appeals meeting.

5. Several new steel monopoles are proposed to be constructed near the switchyard station that is needed to route transmission lines in and out of the expanded switchyard station. One such structure has been approved by the Wisconsin DNR to be constructed within the wetlands area on the west side of the railroad. All of the other structures have been placed outside of the wetlands but are located within the shoreland area of a tributary to the Jerome Creek. And Peggy is identifying each of these structures on the overhead screen, and they're marked with X's on the screen. All of the other structures have been placed outside of the wetlands but are located within the shoreland area of a tributary to the Jerome Creek. The project will require the Village to issue a stipulated shoreland permit for work within 75 feet of the ordinary high water mark of said navigable waterway.

The construction of the expanded switchyard and associated transmission structures and the storm water facilities will result in the following work occurring within 75 feet of the tributary to Jerome Creek located along the west fence line of the existing switchyard:

- a. So we have an expansion of a portion of the gravel substation pad and the perimeter fencing, and

- b. Construction of one monopole transmission structure outside of the west side of the switchyard 6.5 feet from ordinary high water mark and five transmission structures within the fence line of the updated switchyard, again, at 72, 72, 74, 74 and 63 feet from the high water mark respectively. The variances being considered tonight relate to these six monopole transmission structures.
6. Pursuant to the application, this project is an expansion of an existing switchyard on the power plant property, and it is not feasible to design a functional switchyard that meets the project needs while excluding all components from within 75 feet of the navigable waterway.
7. The Wisconsin Department of Natural Resources has approved the project as proposed and issued a permit under Chapter 30.025, Wisconsin Statutes, including water quality certification pursuant to Section 401 of the Federal Clean Water Act, Chapter NR 299, Wisconsin Administrative Code and 281.36 (2), Wisconsin Statutes dated February 14, 2012 as provided in Exhibit B. In addition, on February 22, 2012 the Wisconsin DNR Storm Water and Erosion Control Permit conditions dated February 22, 2012 were approved. See Exhibit D.
8. All of the abutting and adjacent property owners within 300 feet of the properties were notified via regular U.S. mail on February 17, 2012, and that's identified in Exhibit E. The Board of Appeals agenda was published in the *Kenosha News* on February 27, 2012.
9. Under the State of Wisconsin Supreme Court case law pertaining to the granting of variances, a variance may be granted only if the applicant can show that the standards set forth in the statutes and interpretive case law for granting variances will be met. The statutes provide that a variance may be allowed when it will not be contrary to the public interest; where owing to special conditions a literal enforcement of the provisions of the ordinance will result in a practical difficulty or unnecessary hardship, so that the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.

With that I'd like to continue the hearing.

Christine Genthner:

Thank you. Is there anybody else who'd like to approach since this is a public hearing? Please state your name for the record and provide an address.

Neil Palmer:

My name is Neil Palmer. I'm here for American Transmission Company. My business address is 890 Elm Grove Road, Elm Grove, Wisconsin, 53122.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Neil Palmer:

Yes, I do.

Christine Genthner:

Please proceed.

Neil Palmer:

Thank you for the opportunity to appear tonight and consider our variance request. I think the staff memo and documentation very well summarizes the situation. I think in addition to answering any questions you might have, I would like to just simply limit my comments to say that this variance request does not harm the public interest in any way, that the uniqueness of the situation for these six poles, five in one position one in the other, is such that it really would be an undue hardship because of its unique status. We literally in order to avoid this variance request we'd have to move the entire substation to a different location. These poles have to be where they are to service the new expanded substation and still maintain their adequate separation based on national and state electrical codes.

While we did everything we could to keep them out of these special areas, this is as close as we can get them without violating those safety standards and safe operating practices. We believe that we meet the test under the variance law that literal of the law as it exists would be an undue hardship and is impractical. So we request that you approve this variance.

Christine Genthner:

Thank you. Ms. Werbie?

Jean Werbie-Harris:

Neil, for the record, if we could have you just summarize the project, the larger portion of the project as to why this transmission expansion is taking place.

Neil Palmer:

Well, the substation is being expanded and a new line brought in from the north effectively to make this station a much more usable in the overall electrical system to move electric power throughout Wisconsin and south into Illinois and back so that we all have the access to the most economic power at any given time whether it's from our side of the boarder or the other, and also to meet new standards for control in substations that have come about from changes in federal regulations and law. New stations have very different requirements in terms of how they're controlled.

Maybe it's important to point out that some of the other work we're doing in the community we have an application moving forward at the PSC for the new transmission connection going to the south. The two aren't completely linked. This substation project would go forward and, in fact,

has already been approved by the Public Service Commission even if we weren't proposing to build the new line to the south because it still is necessary in order to facilitate adequate power movement throughout Wisconsin. So that's the principle reason. And it needs to be here because it's already here to a large extent. We're just expanding it and making it a safer station.

Christine Genthner:

Any questions? Mr. Morris?

Bill Morris:

So just to the point, so these monopoles basically are supporting transmission, electrical transmission lines?

Neil Palmer:

Yes. Monopole is the term for instead of the old lattice kind of tinker toy structures, they're steel poles, single pole, they're holding transmission lines bringing it around to bring it into the right part of the station in a safe manner.

Bill Morris:

But these are not monopoles associated to hold communication –

Neil Palmer:

Absolutely not. They're the same kind – in the engineering world they're both called monopoles because they were single, mono, structure, solid steel, but all they will hold is strictly the transmission circuits coming in from the north side.

Christine Genthner:

Any other questions?

Steve Kumorkiewicz:

I have a question. I was looking through my papers here. I believe there is a request for you to build a bridge over the Jerome Creek?

Neil Palmer:

Yes, sir.

Steve Kumorkiewicz:

Okay, how big is the span of that bridge?

Neil Palmer:

And the bridge is strictly required during construction. It will be removed afterwards. This is part of the regulations from the DNR that any time you work in an area like this you must – in order to pass over that creek instead of just driving through it with heavy equipment you're required to put in a bridge so that you don't cause erosion into the creek. It will be installed prior to construction and removed afterwards. Basically it's big enough for a construction vehicle to go over it. It's about 12 feet wide I believe. I don't have the dimensions in my head, Steve. I can get them.

Steve Kumorkiewicz:

Okay, you're talking about 12 feet wide. I was talking about the span, how long it's going to be.

Neil Palmer:

Well, it has to be – it's set by regulations. I'm sorry I don't have those specs in my head. It's long enough to support that little bit of height so it's probably about 28 to 30 feet long I would guess. And it comes out afterwards just like all the erosion control. Any other matting we do or any erosion fence it's simply to protect the stream banks when you work.

Steve Kumorkiewicz:

[Inaudible] I didn't see no part in here how long the span was or why [inaudible]. Thank you.

Neil Palmer:

You're very welcome.

Christine Genthner:

Any other questions? Thank you. Anybody else who'd like to come forward for the public hearing? Seeing nobody else do I have a recommendation by staff?

Jean Werbie-Harris:

Yes, we do.

Christine Genthner:

Please proceed.

Jean Werbie-Harris:

The staff recommendation, based on the findings of fact and the variance filed and the information presented this evening, the Village staff finds that the application may meet the requirements for the granting of the requested variance from Section 420-125.1 J (4) (c) [2] of the Village Zoning Ordinance to construct one monopole transmission structure outside of the west

side of the switchyard 6.5 feet from ordinary high water mark, and five transmission structures within the fence line of the updated switchyard at 63, 72, 72, 74 and 74 feet from the ordinary high water mark respectively, wherein a 75 foot setback is required for the proposed Pleasant Prairie switchyard expansion for the property located west of the main We Energies Pleasant Prairie Power Plant property at 8000 95th Street. And we feel that if the Board finds this application and the facts are warranting the variances to be granted, then the following conditions as outlined in the staff comments should be part of the conditions, and there are ten of them.

Christine Genthner:

Thank you. I have a question. Has staff met to discuss the ten conditions listed in their recommendation with the applicant?

Jean Werbie-Harris:

Yes.

Christine Genthner:

Before I close the public hearing any questions on the staff recommendation? Seeing none, at this time then I would close the public hearing. Do I have a motion?

Bill Morris:

I'll move to approve the requested variance with the ten conditions as outlined by staff.

Christine Genthner:

I have a motion by Mr. Morris. Do I have a second?

Steve Kumorkiewicz:

Second.

Christine Genthner:

A second by Mr. Kumorkiewicz. Before we take a vote, does anybody have any discussion on the motion? Seeing none then, proceed with a roll call vote. I support the variance subject to the ten conditions set forth in the staff recommendation.

Bill Morris:

I support the request.

Jennie Holman:

I approve the variance.

Steve Kumorkiewicz:

In favor, yes.

David Hildreth:

In favor.

Christine Genthner:

The motion carries then.

7. ADJOURNMENT.

Bill Morris:

So moved.

Steve Kumorkiewicz:

Second.

Christine Genthner:

All in favor say aye.

Voices:

Aye.