

Board of Adjustment

MINUTES

August 18, 2016

Meeting Called To Order at 9:00 a.m. by Ron Carney, Chairman of the Board of Adjustment.

Members Present: Ron Carney, Chuck Jensen, Max Hart, Tom Clark, Danny Iverson and Alternates – Larry Blaken and Tom Reid.

Others Present: Terry Schmidt, Zoning Administrator; and Gaylord Olson II, Land Conservation.

Qualifying Questions:

Are you an immediate family member of the petitioner?

No response.

Do you have any business activity or financial interests with the petitioner?

No response.

Have you prejudged the case or do you have a bias in favor or against the petition?

No response.

A Motion by Danny Iverson, to approve the July 14, 2016 minutes as presented, seconded by Chuck Jensen. Motion carried.

NEW BUSINESS:

- **VARIANCE REQUEST # 2016-52** as requested by John Molstad on property known as Lot 8 of Sunrise Addition subdivision located in the NE1/4-NE1/4, Section 3, T22N, R3W, Town of Adams, Jackson County, WI. The request is to allow for a small storage shed to be located within seventy-five (75) feet setback buffer from Lake Arbutus. This is contrary to Section 16.05 (2) (a) and Section 16.15 (5) (a) 3 of the Jackson County Shoreland Ordinance which requires a minimum setback of seventy-five (75) feet from the ordinary high water mark.

Mr. Molstad stated that they just constructed a shed on the property and it's about 50 feet from the water's edge. Terry was notified by unanimous phone call that the shed was constructed. He viewed the property and sent Mr. Molstad a letter on June 15th explaining that it is located within the shoreland area and any structure within the shoreland area is subject to receiving a Land Use Permit and meeting the 75 foot setback from the ordinary high water mark. Mr. Molstad came to our office and asked what his options were. Terry explained that he could remove it from the property, move it to meet the required setback, or apply for a variance hearing. He chose to apply for the variance.

Mr. Molstad said that there are 15 lots in the subdivision and there are some structures that are closer than his shed. Terry stated our office will address that matter now that we have been informed about the structure. He added that some structures are legal non-conforming structures as they have been in existence since NSP was the owner of the property and had lease agreements with individuals.

Public comment was received in opposition. Letters in opposition were read into the minutes.

- **VARIANCE REQUEST # 2016-53** as requested by Jerry Verhagen on property known as Lot 1 of CSM 3517 located in the NW1/4-SW1/4, Section 35, T24N, R5W, Town of Cleveland, Jackson County, WI. The request is to allow for an animal confinement structures to be within one hundred (100) feet of the property line and for an ag building to be within forty (40) feet of a property line. This is contrary to Section 17.33 (2) (d) and 17.96 (1) (b) of the Jackson County Zoning Ordinance which requires a minimum setback of forty (40) feet from the property for agricultural buildings and 23.20 (2) and 23.30 (2) of the Jackson County Livestock and Animal Facility Licensing Ordinance require a minimum setback of one hundred (100) feet for structures that house animals.

Jerry Verhagen purchased the property and had 8 cows within a hay shed. The barn was onsite as well as the hay shed and the previous owner had horses within the buildings. He's been maintaining steers within the building. He confines the animals within one building and milks the cows in the other with a feedlot area between the two structures.

Gaylord Olson II informed the Board of Adjustment about the history of the parcel. Will Heinz owned the property until 2010 and he maintained livestock within the facility. The number of animals at the site steadily decreased over time and for several months prior to sale of the property, there were no animals at the site. Justin Thur purchased the property in September 2010, all 78 acres. Mr. Thur separated a 2 acre parcel with the buildings from the cropland and then sold the 2 acre parcel to Mr. Verhagen. On September 16, 2014 Terry Schmidt sent a letter to Mr. Verhagen explaining that if additional animals were added that a variance as well Livestock and Animal Facility License from Land Conservation may be needed. Gaylord was traveling past the property in May 2016 and noticed more animals at the site than what has been there in the past. He contacted Mr. Verhagen who replied immediately to meet and discuss what needs to be done to be in compliance. They discussed the plans for the operation over the past couple of months with several visits and emails.

Gaylord shared an aerial photography with the committee and stated that he feels that Mr. Verhagen intends on having up to 10 dairy cows, which is 14 animal units. At the time of their visit, Mr. Verhagen had some young stock and the dairy cows. He stated he was willing to go down to the 10 dairy cows only. Gaylord's concern is if the site is mismanaged what is to environmental threat to the neighbors or any water body. In his opinion the immediate threat would be to the Thur's, the buildings are

right next to the property lines. If there is a mismanagement, it will impact the neighbors almost immediately. The nearest water body is Halls Creek, which is 1800 feet away. It would be very difficult with 10 cows that any runoff would impact Halls Creek. The soil types are sandy loam. With proper bedding, ground water would not be impacted. The committee reviewed a map identifying the parcel and proximity to Halls Creek. The surrounding cropland is farmed and tilled.

The management measures that Gaylord Olson II would like the committee to consider are as follows:

1. No more than fourteen (14) animal units at the site at one time.
 2. Livestock or animals are confined to the barn/shed for the majority of the day. A maximum of six hours outside the barn or shed is allowed each day.
 3. Feeding of the animals should be done inside the buildings.
 4. The loafing area that is outside the building should be cleaned of accumulated manure at least once by May 15th and October 15th. The entire area of the barn/shed should also be cleaned at least that often.
 5. The barn/shed should be bedded with enough material to maintain a solid bedding pack consistency to avoid manure solids and liquids from leaving the building.
 6. Manure will be spread on cropland fields discussed and approved by the Land Conservation Department.
 7. A Jackson County Livestock and Animal Facility License must be obtained by Mr. Verhagen by September 1, 2016.
 8. A site inspection by the Land Conservation Department will occur in 2017 to monitor compliance with the Board of Adjustment approval conditions along with the State and County agricultural environmental standards.
- **VARIANCE REQUEST # 2016-57** as requested by Claude Riglemon on property located in the NW1/4-NW1/4, Section 33, T20N, R1W, Town of Knapp, Jackson County, WI. The request is to allow for security and safety fencing to be placed within the township road right-of-way. This is contrary to Section 17.61 (4) and 17.96 of the Jackson County Zoning Ordinance which requires that fencing be placed at or beyond the road right-of-way.

Mr. Riglemon explained that he was approached by USDA about a free elk fence around his cranberry marsh. After the site visit with USDA, he'd have to build a 14 foot road around the perimeter of the marsh with extensive grading work. There was a wetland issue with his reservoir, which has an overflow area that goes to the north. This would have required wetland mitigation and multiple agencies

involvement with permitting, if he utilized the program through USDA. He opted out and has decided to build a fence himself. Thus the variance request, he feels it's especially needed off of Starlight Rd. It's easier off of Arrow Rd., he feels that he can meet the setback off of Arrow Rd.

Terry stated that the Town of Knapp Board did send a note stating that they do not have an issue with the fence location at this time, as currently flagged. Claude said that the entire forty will be fenced in. He has had nine elk walk through the beds before they were planted.

The committee departed at 9:40 a.m. to complete the site visit. They returned to the courthouse at approximately 12:05 p.m. reconvening to open session and began deliberations and additional discussion.

The committee discussed the request by John Molstad. Terry stated the main point to be made is there is no unnecessary hardship for the structure, they chose to build it on their own without checking on permit requirements. There are spots on the parcel where it could be moved that meet the setback requirement. It is not unique. The committee added that it's not permanently secured and could easily be moved.

A Motion by Danny Iverson, to deny variance request # 2016-52 for John Molstad, seconded by Max Hart. Motion carried 5 - 0.

Gaylord Olson said that there needs to be some improvement there and with less animals at the site, the hope is that some greening up can occur as well. Keeping it cleaned up it will keep the manure contained and will not impact the surface waters nearby. Tom Clark inquired how the animal units are determined. Gaylord stated that a 1000 pound steer is equal to 1 animal unit. The federal government has determined the standards that we use for calculating animal units based on the type of animal and its weight. This is to determine the amount of manure that will be coming out of each animal. The volume of a dairy cow is more, so they are 1.4. A heifer between 800 to 1200 pounds is 1.1. Is there a breed difference as well? A full grown dairy cow, of any breed, is 1.4. A horse, no matter the type such as miniature horse or full size are 2 animal units. Gaylord has a complete breakdown that he can share with the committee.

A Motion by Max Hart, to approve variance request # 2016-53 for Jerry Verhagen with the stipulation of the conditions recommended by the Land Conservation Department, seconded by Tom Clark. Motion carried unanimously.

Terry feels that with this request we should make an approval based on the town's recommendation that it doesn't encroach any closer than the 28 feet as flagged. He doesn't feel that Mr. Ringlemon needs to come any closer nor does the town want him to do so.

A Motion by Chuck Jensen, to approve variance request # 2016-57 for Claude Ringlemon with the stipulation that the fence is twenty-eight (28) feet from the

centerline of the town road, seconded by Danny Iverson. Motion carried unanimously.

Update on Wagler request. Terry shared the note that Mr. Wagler sent to the office requesting an appeal. Nothing has been filed with the circuit court at this time. Tom Clark questioned if horses are to be allowed in the building? Gaylord and Terry stated that no animals are allowed in the structure at this time. Gaylord went by the property very early in morning on Tuesday and there are 10 horses with 5 cows. The biggest issue that we will have is catching him with them in the barn, we know he's probably doing it. Gaylord's concern is that if Mr. Wagler allows the confinement of the animals in the barn or that general area next the barn and creek, it will create a feedlot and environment damage will occur. He has been told that cannot let that happen. That's the Board's concern.

Terry added that Mr. Wagler's thirty day appeal timeframe is up today. The animals are there, if they are in the barn or around it, Terry would need to talk with Gaylord but he feels then Mr. Wagler would be in violation. We would need to begin the regulatory process and that's the issuance of a citation. We've talked about that possibility unfortunately, that's what it's coming to. It seems to Terry that the only time that you seem to get response is when you start hitting the pocketbook, we hate to do that but we don't have any other avenue.

Gaylord spoke with Corporation Counsel and upon Terry issuing citations, if he ignores that then we can get a court order. He knows that this seems extreme but that's what we need for a legal basis. If he ignores this action, then we can take the legal steps to get an order for the removal of the animals from the site. Gaylord realizes this is an extreme measure, but it's necessary to ensure that someone isn't allowed to pollute a pristine waterbody continually. Once the pollution starts, it will continue.

Max Hart inquired if Mr. Wagler has talked about building a barn back behind the home where it was recommended. Tom Clark added that he asked him that the other day and was told no he wasn't going to do that. Gaylord said that he already has a machine shed under construction right next to the road. In Gaylord's opinion, Mr. Wagler is spending money on another machine shed which should have gone towards the construction of a properly located barn east of the house. Terry added that Mr. Wagler has been told numerous times that the existing barn could be used as a machine shed, just not for confining animals. The Highway Department has an issue with the fence location as well, it has not been moved yet.

The Board recommended following all legal procedures very deliberately so that we have all our ducks in a row, if it needs to move forward with more extensive legal action.

A Motion by Chuck Jensen, to adjourn, seconded by Max Hart. Motion carried. Meeting adjourned at 12:30 p.m.

Minutes respectfully submitted by Elizabeth Storlie, Secretary.