

# Board of Adjustment

## MINUTES

February 25, 2021

**Meeting Called to Order** at 8:30 a.m. by Chairman Ron Carney.

**Members Present:** Ron Carney, Chuck Jensen, Larry Blaken, John Higgins, and Max Hart. Tom Clark attempted to appear via Zoom but we experienced technical problems with the Zoom software and he was not able to join.

**Others Present:** Gaylord Olson II, Land Conservationist, Jay Borek, Highway Commissioner, Terry Schmidt, Zoning Administrator; and Beth Storlie, Zoning Assistant.

Note: The audio recording of this meeting was damaged and not legible.

### **Corporation Counsel Report:**

Kerry Sullivan-Flock joined the meeting via teleconference. She discussed with the Board the practice of adding stipulations or conditions of approval to variance requests. In her legal opinion, she does not believe that the Board of Adjustment should place conditions on approvals as you are a legislative body and do not have regulatory or enforcement authority under state statute. She feels that the decisions should be a simple yes or no, either approve or deny with no conditions. The enforcement side comes under the ordinance language and is the responsibility of the department staff that oversee the ordinance. The approval of any variance will still need to meet the three criteria for an approval, namely proving unnecessary hardship and that is not self-created, uniqueness or specific limitations such as topography, and is it in the best interest of the public, health or safety.

The Board had several questions to clarify their procedures. They inquired with Gaylord, Terry and Jay, if when a request would require conditions for ordinance enforcement such as environmental standards, will this be presented to the petitioners prior to the hearing? Gaylord shared that he tries to meet with the petitioners to discuss their requirements that would need to be met prior to the hearings and makes an effort to clarify this with them.

### **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 Chuck Jensen, to approve the December 3, 2020 minutes as presented, seconded by Max Hart. Motion carried.**

Based on input from Gaylord Olson II and Jay Borek, the Board declined the need to perform an onsite to these requests as the imagery is clear and they can make a determination on the variances based on this information and staff input.

**OLD BUSINESS:**

**NEW BUSINESS:**

**VARIANCE REQUEST # 2021-02** as requested by Jesse Makes on property being located in the NE1/4-SW1/4, Section 20, T20N, R6W, Town of Franklin, Jackson County, WI. The request is to allow for an animal confinement facility to encroach on the required setback from the centerline of S. Steine Rd. This is contrary to Section 23.07 (3) (b) (3b) of the Jackson County Livestock and Animal Facility Licensing Ordinance, which requires a setback of 63 feet from the centerline of such highway or 30 feet from the right-of-way, whichever is greater.

Jesse Makes and his partners stated that the existing barn has been onsite for over 100 years. Back when the farm was established, the existing town road was actually the driveway to the property and ended at the farm. Over time, the driveway became a township road and expanded further north to its current route as traveled. This was all done prior to any ordinances and setback establishment. The property hasn't been a working farm for many years, and they intend on utilizing it as a working farm. The previous owner never disclosed any issues with encroachments of any buildings at the time of their purchase.

Gaylord Olson II stated in the 1980's and 1990's, the facility had animals in it but later on the animals were removed and the barn vacated. The structure has been vacated for quite some time, which would require a variance for the re-introduction of animals into the facility. The structure meets the minimum setback from the creek to the west but the barn does not meet the road setback. When Mr. Makes purchased the property, Gaylord reached out to him regarding the barn and its limitations for potential use and if the intent was to use the barn for animal confinement that they would need to apply for a variance. The owners promptly applied the variance and had initial discussions with Gaylord on the animal units and he feels that 25-50 animal units is appropriate.

Max Hart inquired that the board is only looking at potentially approving utilizing the existing barn due to its encroachment on the roadway. Gaylord stated that is correct.

**A Motion by Larry Blaken, to approve variance request # 2021-02 for Jesse Makes, seconded by John Higgins. Motion carried unanimously.**

**VARIANCE REQUEST # 2021-03** as requested by Joseph Stoltzfus on property located in the NE1/4-NW1/4, Section 31, T21N, R4W, Town of Albion, Jackson County, WI. The request is to allow for an animal confinement facility to encroach on the required setback from a property line. This is contrary to Section 23.07 (3) (b) of the Jackson County Livestock and Animal Facility Licensing Ordinance, which requires a minimum setback of 100 feet from the property line.

Petitioner was not present at the hearing. Gaylord said that the building that is subject to the variance request it located along the western edge and south of the house. Mr. Stoltzfus has met with Gaylord to discuss his operation, animal units and the use of the existing structures. He obtained a livestock and animal facility license four years ago, for a few horses and was

made aware of the need for a variance to utilize the structure for animal confinement. Gaylord added that there is not a water body near the property, Mr. Stoltzfus has limited animals onsite and he is licensed for 30 animal units. He stated that this is a variance for an existing structure which encroaches on the property line setback to be utilized for animal confinement.

**A Motion by John Higgins, to approve variance # 2021-03 for Joseph Stoltzfus, seconded by Max Hart. Motion carried 5 – 0.**

**VARIANCE REQUEST # 2021-07** as requested by John Wallace, agent on behalf of Tillman Infrastructure on property located in the NE1/4-NW1/4, Section 36, T23N, R6W, Town of Northfield, Jackson County, WI. The request is to allow for a telecommunication structure to encroach on the required setback from the centerline of a county highway. This is contrary to Section 7.12 (1) (b) and (c) of the Jackson County Highway Ordinance, which requires a minimum setback of 75 feet from the center of the county highway to the structure.

John Wallace of Tillman Infrastructure shared their proposal to construct a self-standing communication tower in the Town of Northfield. He said that because the township is unzoned, they did not require a Land Use Permit from the county. Normally at this point with the county review process, the road setbacks would have been recognized. It simply fell through the cracks until Highway Commissioner Jay Borek issued the stop work order. Mr. Wallace met with the Highway Committee to discuss the proposal. At that meeting, design modifications were reviewed to ensure that any erosion issues on the south side of the tower were controlled. Additionally, the Highway Committee requested a written agreement to co-locate radio equipment to improve the Jackson County Public Safety Radio System. Tillman Infrastructure agrees to locate radio equipment free of charge for the Jackson County Public Safety Radio System if needed, see attached letter of agreement.

Jay Borek, Highway Commissioner, initially asked that the entire tower structure be off of the setback area to County Rd F, but this made the tower encroach on Ridge Rd. This was not ideal as it created greater erosion concerns due to the steep topography. Modified plans submitted to him dated January 22, 2021 moved the tower a little closer to County Rd F and would be setback 57 feet from the roadway. It is a self-supporting, 300-foot tower.

**A Motion by Larry Blaken, to approve variance request # 2021-07 for John Wallace, representing Tillman Infrastructure, seconded by Chuck Jensen. Motion carried unanimously.**

**Litigation Updates:**

- Raymond Wagler. A pre-trial is scheduled for in early March for the recently issued citations and outstanding citations action.
- Jerome Laufenberg. Kerry Sullivan-Flock, Corporation Counsel is preparing additional information to be submitted next week to Judge Goodman.
- Two or three years ago, a variance was granted to Casey Kirschenmann to allow three horses and one steer on his 2-acre parcel. Several environmental standards and conditions were placed with the approval including re-locating the feeding area further away from the creek and limiting the site to only three horses and one steer. Gaylord shared that the feeding area has never been moved because they would lose backyard space and they have

more than the approved number of animals at the site. Mr. Kirschenmann is ignoring the numerous correspondences sent by the Zoning Department as well as the Land Conservation Department. Gaylord added that this situation is one that Kerry Sullivan-Flock was referring to regarding stipulations on approvals and how difficult it is to enforce conditions of approval such as these. He stated that he feels that some landowners hear yes for the variance and then they believe it's acceptable for them to do what they want and then later they do not cooperate, they ignore correspondence and orders for compliance. He feels that this site is an example for denial as prior to the variance request, it never had livestock or animals located on the property.

**Motion by John Higgins, to adjourn, seconded by Max Hart. Meeting adjourned at 10:00 a.m.**

Minutes respectfully submitted by Beth Storlie.