

ROCK COUNTY BOARD OF ADJUSTMENT
August 26th, 2015
COURTHOUSE CONFERENCE CENTER
SECOND FLOOR, ROCK COUNTY COURTHOUSE
JANESVILLE, WISCONSIN

MINUTES

Chair Jones called the August 26th meeting of the Rock County Board of Adjustment to order at 4:00 p.m. at the Proposed Traynor Non-Metallic Mine Site.

Board of Adjustment members in attendance at roll call: Henry Stockwell, Francette Hamilton. Jo Miller arrived at approximately 4:25. Harry O'Leary and J.P. Lengjak were absent.

Development staff in attendance: Colin Byrnes (Acting Planning Director/Zoning Administrator), and Kurt Wheeler (Acting Secretary).

Others in attendance at mine site: Andrew Baker, Alan Sweeney, Jeff Kuglitch, Scott Traynor, Mike Ettner, Matt Fleming, Steve Uulich, Rebecca Kanable, Buck Sweeney, Mitch Olson, Mary Mawhinney, Jake Magee, Anthony Wahl, Andrew Phillips, and Quentin Carpenter.

Meeting was reconvened at: 6:35 p.m. at Courthouse Conference Center.

Roll Call: Jones, Lengjak, and Stockwell were present. O'Leary Absent. Miller and Hamilton Absent (delayed).

Development staff in attendance: Colin Byrnes (Acting Planning Director/Zoning Administrator), and Kurt Wheeler (Acting Secretary).

Others in attendance: Andrew Baker, Alan Sweeney, Jeff Kuglitch, Scott Traynor, Mike Ettner, Matt Fleming, Steve Uulich, Rebecca Kanable, Buck Sweeney, Mitch Olson, Mary Mawhinney, Jake Magee, Anthony Wahl, Andrew Phillips, Quentin Carpenter, Sandy Caley, Russ Caley, Ken Soergel, Warren Hansen, Linda Bricco Schalk, William Springer, Kevin Brown, Geraldine Brown, Brandon Crandall, Mike Sheridan, Mary Mawhinney, Mike McConnell.

Proceedings of the following meeting were recorded by a Court Reporter.

Adoption of Agenda: Motion by Henry Stockwell to adopt the agenda as amended, Seconded by J.P. Lengjak. Motion approved 3-0

Reading and Approval of the Minutes – July 15th, 2015: Motion by Lengjak to approve the minutes, Henry Stockwell seconded the motion. Minutes approved 3-0.

Reading and Approval of the Findings of Fact – July 15th, 2015: Motion by Henry Stockwell to approve the Findings of Fact. Lengjak seconded the motion. Approved 3-0.

Announcements of Decisions – July 15th, 2015:

Decision of Brian and Debra Cross variance request from July 15th, 2015 read by Chair Jones to all in attendance.

Communications: None

Reports of Committees: There were no reports of committees at this time.

Geraldine Brown Variance Request:

Chair Jones read into the minutes the public hearing notice and application.

GENERAL DESCRIPTION

Description of Request: Variance to allow the construction of a residential structure on a Shoreland Substandard Lot served by Public Sanitary Sewer (Section 4.205 Rock County Shoreland Zoning Ordinance).

Location: NE1/4, NE1/4 of Section 11, Town of Fulton, Lot 3, (433 E. Ellendale Rd. Edgerton WI)

Current Zoning/Land Use: RL (Residential), Town of Fulton

STAFF REVIEW COMMENTS

Planning staff has reviewed the petition for issues in accordance with the Rock County Shoreland Zoning district and has the following comments:

The applicant is proposing to convert an existing residential structure (summer cottage) to a year round residence at 433 E. Ellendale Rd. In order to do this, the proposal includes constructing additions to the residential structure, converting an accessory structure (garage) to habitable space and add ADA ramps and landings for accessibility. The applicant is asking the BOA to extend variances to allow for the expansion as indicated on the new site plan.

In order to accomplish this project, variances will need to be granted for setbacks from the Rock River and E. Ellendale Rd. The setback from the Ordinary Highwater Mark (OHWM) is 75 feet. The Shoreland Ordinance allows placement of structures within the 75 foot setback under certain conditions. For example, boathouses, gazebos, decks, patios and screen houses. There is a calculation that is available to reduce setbacks for principal structures taking into account adjacent principal structures. But, the Shoreland Ordinance does not allow any structures, except a boathouse, to be within 35 feet of the OHWM. Currently, both the residential and accessory structure sit within the 35 foot primary

riparian buffer zone. Therefore, the proposed additions will be within the 35 foot protected area.

Additionally, FEMA floodplain maps indicate this area will be within the regulated Floodway when new maps are adopted by the Rock County Board on September 10th, 2015. Residential structures are not an allowed use within the Floodway. In the recent past, Rock County has purchased and demolished two adjacent residences.

The proximity of the structure to E. Ellendale Rd. is problematic also. There is a safety issue with constructing additions within 25 feet or less of the centerline of the road. Converting the garage to habitable space eliminates a parking area. This causes additional pressure on the parking cantilevered over the shoreline. The proposal includes additional riprap and then fill behind the riprap as means to rehab this parking. Inspection of the area notes that riprap is in good condition and a small area under the parking slab could be addressed.

Consideration of three criteria for granting a variance shall be met:

1. **Unnecessary Hardship**
2. **Hardship due to Unique Property Limitation**
3. **Protection of the Public Interest**

Geraldine Brown's Son (Kevin Brown) spoke on her behalf and gave an overview of the history of the structure, use, and project scope. Discussion followed.

Motion to Deny by Henry Stockwell, **Seconded** by Lengjak.

Roll Call Vote: (No meaning to Deny) Stockwell **No**, Lengjak **No**, Jones **No**. **Denied** 3-0

Note: Unbuildable Lot based on 2015 FEMA Floodplain Maps and Ordinance.

Findings of Fact:

1. The proposed development of the residence at 433 E. Ellendale Rd. does not protect the Public Interest concerning construction within the 35 foot primary riparian buffer zone. All of the proposed work falls within that area.
2. This was a property developed as a summer cottage and not for year round habitation. The applicant knew this limitation at the time of purchase. Any new development shall be reviewed according to the code. The Shoreland Ordinance allows existing nonconforming structures to be maintained. The Floodplain

Ordinance allows maintenance as long as flood damage is under 50% of the estimated fair market value of the improvement.

3. The hardship in this case is self-imposed. Safety concerns are heightened by converting a summer cottage to year round use. This results in more traffic movements per day, year round – causing additional risk to the owners and travelers on E. Ellendale Rd. Additionally, the applicant's decision to convert the garage takes away parking space.

After the above case (Geraldine Brown), J.P Lengjak excused himself. Jo Miller and Francette Hamilton joined the Board of Adjustment meeting to participate on the Traynor Gravel Pit Public Hearing.

Legal notice read by Chair Jones regarding the Traynor Public Hearing.

Traynor Application Public Hearing

Andrew Phillips explained the history of this case and prior meetings. He also introduced a new fact submitted by the Trainor's to offer an additional 300 foot buffer on the operational plan. This additional buffer is contained in a new map labeled exhibit 6.

First to speak was the Applicants. (Those opposed to the Appeal).
Buck Sweeney, Mike Ettner, Adam Tegelman, Mitch Olson, Jeff Kuglitch,

Next to speak was the Appellants (Those in favor of the Appeal).
Clinton Carpenter and Matt Fleming.

Recess @ 8:25 till 8:35pm.

At this time, rebuttal was permitted by persons for and against the appeal:

James Hanlon spoke in favor of the gravel pit. Oz Kinas spoke in favor of the gravel pit.
Matt Fleming reiterated his clients' position on the denial of the proposed gravel pit.

Motion by Henry Stockwell, **Seconded** by Francette Hamilton, to approve the appeal (deny the permit application); **roll call vote: (Yes 2 - No 2) (motion fails).**

Motion by Jo Miller, **Seconded** by Francette Hamilton to deny the appeal (approve the permit application) and affirm the decision of the Planning and Development Committee;

Motion by Jo Miller, **Seconded** by Jones to amend the motion to include as an additional condition to the permit a 300-foot setback from the lot line requirement, established through deed restriction, consistent with the 300-foot setback from the lot line identified on Exhibit 6; **roll call vote: (3-1) (motion carries).**

Recess called by Chair Jones at 10:15 pm. Until 10:25 pm.

Motion to postpone consideration of Motion on Table to September 16th meeting of the BOA made by Jo Miller, **Seconded** by Francette Hamilton. All in Favor. Passed.

Unfinished Business: None

New Business:

Mr. Byrnes gave a status update on previous cases.

Motion to Adjourn made by Jo Miller, Seconded by Henry Stockwell. Time 10:45pm.