

ROCK COUNTY BOARD OF ADJUSTMENT
July 26th, 2017
COURTHOUSE CONFERENCE CENTER
SECOND FLOOR, ROCK COUNTY COURTHOUSE
JANESVILLE, WISCONSIN

MINUTES

Vice Chair Lengjak called the July 26th, 2017 meeting of the Rock County Board of Adjustment to order at 6:00 p.m. at Courthouse Conference Center

Board of Adjustment members in attendance at roll call: JP Lengjak, Rich Plywacz and Michael Saunders. Jo Miller was excused.

Development staff in attendance: Andrew Baker (Senior Planner/Zoning Administrator), and Kurt Wheeler (Planner III /Acting Secretary).

Others in attendance: Scott White, Julie and Jim Watson, Scott Besaw.

Adoption of Agenda:

Motion by Mike Saunders to adopt the agenda, **Seconded** by Rich Plywacz. Adopted (3-0)

Reading and Approval of the Minutes –May 24th, 2017:

Motion was made by Rich Plywacz to approve the minutes, **Seconded** by Mike Saunders.

Minutes approved. (3-0).

Reading and Approval of Findings of Fact from previous meeting:

Vice Chair Lengjak read the findings of fact from the previous May 24th, 2017 meeting.

Motion by Rich Plywacz to approve the findings of fact from last meeting, **Seconded** by JP Lengjak. The members voted unanimously to approve.

Announcement of Decision from Last Meeting

Vice Chair Lengjak read the decisions from the last meeting to all.

Communications:

Mike Saunders asked that the article regarding E-Coli that was included in the packet be re-issued in future packets, as it is one of the core topics to our ordinance enforcement actions.

Reports of Committees: None

Deliberation of Cases:

a. Scott and Heather White

Scott White was sworn in by Vice-Chair Lengjak. Mr. White explained the project details and reasoning behind his variance request. Mr. White offered two photos (Exhibit A) that showed the current configuration of the property to the Board. Discussion followed. In addition, the builder, Scott Besaw offered a site plan for the board to view which further illustrated the current and future project overview.

REVIEW OF THE THREE STANDARDS FOR EVALUATING VARIANCES

Findings of Fact

1. Unnecessary Hardship

The board felt that strict conformity to the ordinance would not prohibit the use of this property as a residence because a residence currently exists. However, the setback regulations are considered unnecessarily burdensome based on the owners' desired plan for the property. The owners prefer to remodel and expand the existing original farmhouse to suit their needs rather than tearing it down and building an entirely new house. The existing house was clearly built prior to setback regulations and Hwy N has been relocated closer to the house in the past. In absence of a variance in this case, the alternatives would be to live in the house as is or build a new house beyond the required setback area.

2. Unique Property Limitation

The board felt that because of a wider road right of way in this location than is normally found along County Highways contributed to the greater setback requirement from the centerline of the road. In many instances in rural areas, there is no dedicated right-of-way and therefore setbacks are measured solely from the road centerline.

In addition, the board agreed that the existing out-buildings on the property would make building a new house beyond the setback requirement but still within the footprint of the existing farmstead somewhat challenging or crowded. There are other locations on the property that would be suitable for a new home building site without physical property limitations, but building within the existing farmstead area would be preferable from an overall land use perspective.

3. Protection of the Public Interest

The board felt that remodeling work within the current structure can be permitted regardless of the fact the structure is "too close" to the highway. In other words, the changes to State Law mean that the existing residence can effectively be rebuilt where it is and cannot be required to be removed based on condition. The board's opinion was that the purpose and intent of the Ordinance can be met and public welfare will generally not be effected with the less than standard setback from the Highway.

Based on the evidence presented, the board approved the variance and the board voted that the three standards were met. The following conditions of approval apply.

1. The new addition to the structure is located no closer than forty-seven feet from the right of way of Hwy N.
2. The applicant obtains any and all necessary approval and/or permits from other entities with jurisdiction including the Town of Milton within ninety days and substantially completes the project within six months of the date of the decision.

Mike Saunders cautioned the applicant that any further development of the property, in particular the creation of “Flag lots” or “Flag Driveways” would not be permitted.

The vote to approve was unanimous (3-0). Variance Granted with conditions.

Unfinished Business:

None.

New Business:

None

Motion to Adjourn made by Jo Miller, **Seconded** by J.P. Lengjak.
All in Favor. **Time: 6:54 pm.**

Respectfully Submitted, by Kurt Wheeler, Acting Secretary

These Minutes are not official until approved by The Rock County Board of Adjustment

Rock County Board of Adjustment Standards for Evaluating Variances

The variance procedure allows the dimensional standards in an ordinance to be varied in response to unusual circumstances, which constitute unnecessary hardship. Variances are not to be granted routinely. **The applicant for a variance must clearly show the Board of Adjustment/Appeals that three statutory standards that govern the granting of a variance will be met.** These three standards require the existence of unnecessary hardship, the presence of a unique property limitation, and the protection of the public interest.

1. Unnecessary Hardship

Unnecessary hardship is a situation where, in the absence of a variance, an owner can make no feasible use of a property, or strict conformity is unnecessarily burdensome. Board members must judge what is feasible use for a particular parcel as a whole. A variance is not warranted if the physical character of the property allows a landowner to build or develop in compliance with the zoning ordinance.

- (A) The hardship or difficulty must be peculiar to the zoning parcel in question and different from that of the other parcels, not one that affects all parcels similarly. Hardship arises because of some unique property limitation of a parcel, or because the property was created before the passage of the zoning ordinance. If either circumstance renders the parcel unsuitable for any use permitted under the existing ordinance – if all area, yard and setback requirements are observed – the parcel may qualify for a hardship.
- (B) Loss of profit or pecuniary (financial) hardship is not and of itself grounds for a variance.
- (C) Self imposed hardship is not grounds for a variance. Reductions resulting from a sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, deed restrictions imposed by the owner's predecessor in title, and improvements that were made in violation of the ordinance are generally considered to be self-imposed hardships.
- (D) The hardship cannot be one that would have existed in absence of a zoning ordinance. Sometimes, a legitimate hardship results from the interaction of the provision of the zoning ordinance with other actions or regulations adopted by public authorities.

Notes:

2. Unique Property Limitation

Unique Property Limitations where unique physical characteristics of the property, not the desires of or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. These features may be wetland, soil type, parcel shape, or a steep slope that limits the reasonable use of the property.

Notes:

3. Protection of the Public Interest

Protection of the Public Interest is where granting a variance must neither harm the public interest nor undermine the purpose of the ordinance. The Board actions should be consistent with the “Purpose” and “Intent” sections stated in this Ordinance. The public interest includes the interests of the public at large, not just that of nearby property owners. Lack of opposition does not in itself mean that a variance will not harm the public interest.

Notes:

General considerations

- (A) In granting variances the Board may impose special conditions to ensure that the public welfare is not damaged. The conditions must relate reasonably to the purpose and intent established in this ordinance.
- (B) A variance should include only the minimum relief necessary to allow reasonable use of a property.
- (C) Violations by or variances granted to neighboring owners do not justify variance.
- (D) Variances are attached to the property as a permanent right. Once a variance has been granted, it is permanently attached to the property. A new owner of the property may make use of the variance that was granted to the previous owner if all the conditions that are attached to the variance are met.