

SAUK COUNTY BOARD OF ADJUSTMENT
October 23, 2008 Session of the Board

PRESENT: Bruce Duckworth, Chair
Robert Roloff, Secretary
Halsey Sprecher
Ron Lestikow, Alternate
David Wernecke, Alternate

ABSENT: Linda White
Richard Vogt

STAFF PRESENT: Gina Templin
Steve Sorenson
Mark Steward

OTHERS PRESENT: See individual appeal files for registration appearance slips.

Chair Duckworth called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:00 A.M. The Chair introduced the members of the Board, explained the procedures and the order of business for the day. The staff certified that the legally required notices had been provided for the scheduled public hearing. The certification of notice was accepted on a motion by Lestikow, seconded by Wernecke. **Motion carried 5-0.**

The Board adopted the agenda for the October 23, 2008 session of the Board on a Motion by Roloff, seconded by Sprecher. **Motion carried 5-0.**

Motion by Roloff, seconded by Sprecher to adopt the September, 2008 minutes. **Motion carried 4-0, with Wernecke abstaining.**

COMMUNICATIONS:

Duckworth spoke of communications turned over to Planning & Zoning regarding the case that was withdrawn, and from an appeal last month. The Board confirmed they all received the information on the case that was withdrawn.

The Board then discussed the meeting dates for the 2009 Board of Adjustment. Motion by Sprecher, seconded by Roloff to approve the meeting dates for 2009. **Motion carried 5-0.**

APPEALS:

- A. Gehri Rentals LLC (SP-24-08) a change of administrative decision to deny a permit for a cabin built within the floodway.

Steve Sorenson, Assistant Zoning Administrator, appeared and gave the history and background of the request. He presented Exhibit XVI, 1-3c and reviewed with the Board and ask the Board to make a decision on whether or not they wish to hear the appeal based on the fact that the application to appeal the decision was after the 30 day time limit.

Duckworth asked if the letter of denial was sent out certified mail. Sorenson stated it was not.

Sprecher asked if there was any indication that the application could appeal the denial in 30 days. The Board discussed that no indication was appealed.

The Board asked to hear from the Applicant.

Patrick Taggart, II., appearing in favor of the applicant, stated that section 9.08 does not apply and feels they are dealing with Section 7.17, and does not state a time limitation on the appeal. He also stated that the July 18 and 22nd letters were defective in that they did not inform his client with the right to appeal. He also spoke of the study of the floodway which could not be done in 30 days.

Duckworth asked why he feels they are under Chapter 7 versus Chapter 9. Taggart stated it is a denial of a building permit.

Duckworth stated he is still confused as to why he is referring to Chapter 7. Taggart stated that Chapter 7 deals with building permits and the Board of Adjustment and their ability to hear appeals for denials of building permits.

Wernecke asked about Chapter 9 indicating that you have the right to appeal a decision and the location determines this issue. Taggart stated he feels Chapter 7 applies and neither of letters sent to his client inform him of his appeal rights or that there was a 30 day time limit.

Wernecke stated that both letters stated the structure was located in the floodplain/floodway. Taggart stated that Chapter 7 applies, and feels they did file within a reasonable time and feels Planning & Zoning is prejudice.

Duckworth asked why he feels it is prejudice. Taggart stated he feels Planning & Zoning is prepared for todays hearing and feels the letters are defective because they don't state which ordinance is referred to and appeal rights and deadline are not addressed.

Duckworth asked if he feels we are under Section 7 because it is zoned Agricultural. Taggart stated that he does feel it is under Section 7 of the Sauk County Ordinances.

Duckworth discussed the course of action, which included the time limit of approximately 8 days over the 30 day limit does not matter and the Board can proceed, with no document of when the denial was mailed. They can hear the case under Chapter 7 rules instead of Chapter 9 rules, or it is unclear which rules it is under for the appeal and they should proceed.

Roloff stated he would like to hear if Planning & Zoning has any reasons why they should hear it.

Wernecke stated the time limit has been exceeded, however they don't have a start date. He also stated it is clear that it is a Floodway issue and is very clear in all the letters and he feels that thought the time limit should be taken seriously, there is not a certified start date, and the appeal should be heard.

Sprecher agrees with Wernecke on the time limit.

Sorenson, reappearing, stated that the letters of denial were based upon the Chapter 9, Floodplain ordinance, and not Chapter 7, Sauk County Code of Ordinances. He also stated that the letters were not sent certified so the dates can not be certain.

Duckworth stated that Planning & Zoning's denial letter was dated July 22nd and the Attorney mailed his letter August 25th, approximately 32-33 days between notification of permit denial and the appeal request by the attorney. Motion by Duckworth, seconded by Roloff to set aside the 30 day time limit and hear the rest of the case with a decision based on its merits. **Motion carried 5-0.**

Sorenson, reappearing, presented Exhibit XVII, which includes a number of definitions from the dictionary and Sauk County ordinances, that will be referred to today. He then spoke of the history of the property.

Duckworth asked if the permit was for a structure or sanitary permit. Sorenson stated it was for a cabin structure and a sanitary system which was a privy.

Duckworth asked if there is any question that this is in the floodplain/floodway. Sorenson referred to the map provided in their packet done by MSA, Exhibit XIV, 1, and the cabin is located between the north and south boundaries of the floodway, there is no disputing that.

Duckworth asked which part of the ordinance the permit was denied under. Sorenson stated it was denied under 9.04, based on building a structure in the floodway.

Wernecke asked if the walking bridge has a permit. Duckworth stated that they are not talking about the bridge today, but only the cabin and privy.

Wernecke asked about the structure that the county is denying, besides propane tanks and how would that fair in the Floodplain ordinance. Sorenson stated any structure in the floodway must be removed.

Taggart, reappearing in favor. Duckworth asked if they are disputing that the structure is within the floodway. Taggart stated there is no dispute that is located in the floodway. He also spoke of the video and the structures shown. He then provided background of the property and ownership, and in 2005, they received a permit from the Township for a hunting shanty. He spoke of the wetlands and floodway, however the structure was above the base flood elevation

and is on a high spot, but the permits were denied because the structures were located in a floodway. He doesn't feel the permit can be denied because the structure is in a floodway. He read from the open space uses in the floodway district.

Duckworth asked which sections does he feels applies. Taggert stated sections (c) and (d). He continued to read from the ordinance under section 3, as well as structures allowed as accessory to open space units. He also referred to the trial transcripts and suggested that the structure is an accessory structure to the open space use of hunting, used during the gun season and never used for human habitation or for any overnight stays and only used for a place to get warm during the winter hunting months. He also stated that he has not rented the property out. He concluded that structures are allowed in the floodway and this hunting shanty is allowed in the floodway.

Duckworth asked what the definition of a "shanty" according to some dictionary and how it differs from cabin. Taggert stated that he can not tell you what the definition is and how it differs but doesn't feel that is relevant to this appeal. Duckworth asked how this structure is not designed for human habitation. He also read from Section 9.04 and asked how this structure is not designed for human habitation and feels a cabin by definition is for human habitation and asked for them to explain how this cabin is not built for human habitation.

Taggert stated that a structure is what is being addressed under 9.04 and feels a structure is defined in the ordinance, in which he read. He then referred to Exhibit X, which is a transcript of the trial, page 22, the applicant indicates that it has been only used for the deer gun hunt season and never used for an overnight stay.

Duckworth stated the ordinance states "designed", not used. He then referred to Exhibit VII,6, of the photos and asked strangers what the photos are, would people identify it of a small house. The ordinance clearly states that you can't put a structure "designed" for human habitation in the floodway. Taggert stated that since it does not have electricity, water or septic, it is not for human habitation. Duckworth spoke of the religious community that currently resides in homes without those amenities.

Roloff spoke of the definition of a shanty as a small, flimsy, shabby house.

Taggert stated because it doesn't have any amenities it is not meant for human habitation.

Sorenson, reappearing, and presented Exhibit XVII, the floodplain ordinance, Exhibit XIX, which shows the history that he spoke about early. He also spoke of the definition of shanty and feels that it does not fit this structure, but the definition of a cabin, as referred to in the dictionary. He also read from Section 9.04 and permitted uses, and his permit was for the structure and the sanitary requirements and the definition of an open space, shown in Exhibit XVII, 7.

Duckworth asked about the structures we can build in a floodway tend to be agricultural use structure. Sorenson stated something such as a crop, greenhouse, etc., but there is no structure associated with a farming practice on this property.

Wernecke asked if a hunting stand is considered a structure in accordance to this ordinance. Sorenson stated he does not have a definition of a hunting stand.

Taggert, reappearing, stated that the structure has been used for hunting purposes and to get warm when they get cold from being up in a tree stand. He then spoke of a sanitary permit and was required by Planning & Zoning when applying for a permit, but his client never wanted one. He then spoke more about the structures allowed that are accessory to open space uses.

Wernecke asked if he felt it was possible for someone to sleep in this structure. Taggert stated it would be as possible as sleeping in a tree stand. Wernecke asked if it would be more comfortable being that it had heat, a TV, etc. Taggert stated that it could be more comfortable and also feels that there is any dispute that hunting stands are allowable.

Sorenson, reappearing, spoke of the definition on Exhibit XVII, 4-8, the definitions referring to habitation, inhabit, habitable structure, human habitation, and occupancy.

Seeing as no one else wished to speak, Chair Duckworth closed this portion of the meeting at 10:06 a.m.

Duckworth spoke of the request, a building permit from the Town of Woodland stating it is a hunting cabin, testimony stating it is a “shanty”, Section 9.04 speaks of structures and the fact that it can not be designed for human habitation and looking at Exhibit X, page 20 and 21 which shows that the applicant stated they were going to install tile on the floors, kitchen cabinets, bathroom, and feels that the applicant is talking about a structure “designed” for human habitation. He feels that the argument in Sauk County that it a structure is not designed for human habitation because it has no electricity is invalid, as we have a large community for religious beliefs build structures for human habitation that do not include electricity and certain amenities.

Motion by Duckworth, seconded by Wernecke, to uphold the Planning and Zoning Departments decision to deny the permit to build a hunting cabin in the Floodway. **Motion carried 5-0.**

Respectfully submitted,

Robert Roloff,
Secretary