

SAUK COUNTY BOARD OF ADJUSTMENT  
January 26, 2017 Session of the Board

PRESENT: Linda White, Chair  
Dan Kettner, Vice Chair  
David Allen  
Henry Netzing  
Nick Ladas

ABSENT: None.

STAFF PRESENT: Dave Lorenz  
Gina Templin  
Lisa Wilson

OTHERS PRESENT: See Registration slips

Chair White 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 Allen, seconded by Netzing. **Motion carried, 5-0.**

The Board adopted the agenda for the March 30, 2017 session of the Board on a motion by Allen, seconded by Ladas. **Motion carried, 5-0.**

The Board adopted the minutes from the January 2017 Board of Adjustment meeting on a motion by Kettner, seconded by Netzing. **Motion carried 5-0.**

COMMUNICATIONS:  
None.

APPEALS:

A. Joe Carbonaro (SP-03-17) requesting a special exception permit to authorize the continued operation of a lodging house.

Dave Lorenz, Conservation, Planning and Zoning, provided a history and background of the request, verified the Town of Baraboo has reviewed and suggested approval of the request. Lorenz reviewed photos and a video of the project and property and concluded with conditions to be placed on the appeal if it is to be granted.

Joe Carbonaro, applicant, appearing in favor of the request, stated that all inspections are currently up to date, including the State of Wisconsin and has had no issues. Carbonaro stated the house is well maintained, lawn and snow removal service, garbage service and all taxes are paid on time. He also stated that he has had no complaints from any neighbors, the Township or the County. He screens his renters and is geared towards mostly families. He requested an extension of the permit as well as the renewal.

49  
50 White asked who the primary contact is. Carbonaro stated he is the primary contact, as well as  
51 the person who cleans the house and the person who takes care of the lawn and the snow  
52 removal.

53  
54 White spoke of the letter to all neighbors notifying them of who the contact information is and  
55 reminded him that with the new permit that will need to be done again. Carbonaro stated he will  
56 do that again.

57  
58 Allen spoke of the renewal term. Carbonaro stated he would like a 5 year permit this time versus  
59 the 2 years. He would like to finish up the 3 year and then get an additional 5 year term.

60  
61 White explained that they don't owe another 3 years and reviewed how the renewal permits  
62 operate.

63  
64 Randy Puttkamer, representing the Town of Baraboo, appearing as interest may appear, stated  
65 the Town has had no complaints and at present time people are able to rent their homes out for  
66 income prior to retiring in the area. He stated they also shadow this applicant for other  
67 applications.

68  
69 Seeing as no one else wished to appear, Chair White closed the public portion of the hearing at  
70 9:21 a.m. and the board went into deliberation.

71  
72 White stated she felt it is a good application

73  
74 Ladas asked if they can issue an 8 year permit. White state she felt they need to be consistent  
75 which is a 5 year permit.

76  
77 Motion by White, seconded by Ladas, to approve the special exception permit to authorize the  
78 proposed location and operation of a lodging house, with the conditions requested by  
79 Conservation, Planning and Zoning in addition to notification provided to all neighbors within  
80 1,000 feet mailed with contact information and a copy to CPZ with a list of who it was sent to.

81 **Motion carried, 5-0.**

82  
83 B. Cloud 1, LLC (SP-04-17) requesting a change of administrative decision regarding the  
84 denial of a conditional use permit for a cellular tower by the Sauk County Conservation,  
85 Planning and Zoning Committee January 24, 2017.

86  
87 Dave Lorenz, Conservation, Planning and Zoning, provided a history and background of the  
88 request, reviewed photos and a video of the project and property.

89  
90 Kettner asked if there is electricity at this site. Lorenz stated there is electric service at the site.

91  
92 Kettner asked if there is electric service at the site and does it follow the easement. Lorenz stated  
93 he does believe there is service and it does follow the easement.

94

95 Todd Liebman, Sauk County Corporation Counsel appeared and stated he is representing the  
96 Conservation, Planning and Zoning Committee and the Board of Adjustment has counsel  
97 available, Mike McKenna.  
98

99 Mike McKenna, Counsel for the Board of Adjustment, stated he reviewed the standard, and not  
100 taking new evidence is correct. He stated the Board will serve as an error correcting agency. He  
101 stated it would be out of order to provide new evidence or discuss how the decision was made.  
102

103 Todd Liebman, appearing on behalf of the Conservation, Planning and Zoning Committee,  
104 provided Exhibit L, which is a brief supporting the upholding of the committee's decision. He  
105 believes what is not at issue is whether it was properly noticed and published, the application  
106 was presented, although there could be some discrepancies between the application and the  
107 ordinance and those matters were not raised during the meeting and the committee did not make  
108 their decision based on those errors. He stated all parties were given ample opportunities to  
109 present their case and be heard including impacts and issues to include the private  
110 drive/easement that the site is being served. He did state that he advised the committee not to  
111 interpret the easement, but allow for a court of law. He also spoke to the tower siting ordinance  
112 being a part of the zoning ordinance to comply with state law and what can be part of a decision  
113 in approving a tower. He felt the committee did not include anything in their decision that was  
114 against State or Federal law. He feels the greater weight of evidence and the law supports the  
115 committee's decision and urges the Board of Adjustment to uphold the decision.  
116

117 Ladas asked if their basis for using the conditional use and the question about the ingress/egress  
118 on the road. Liebman stated if you reviewed the motion by Supervisor Johnson he mentioned  
119 that was one of the issues for not approving the site.  
120

121 Ladas said the fact that the electric company has an easement on the road is different than the  
122 tower company coming in one time to put up a tower. Liebman stated that an electric company  
123 is a necessary service of modern life. He also stated he didn't believe you could prevent the  
124 power company from using the easement versus a land owner from allowing a use on his land  
125 that would use the easement.  
126

127 Joshua Fernald, Applicant, stated that this is the first time he's attended an appeal like this. He  
128 stated that when he applied some of the data wasn't available when they applied with their  
129 appeal due to time constraints. He stated that he has no other legal arguments to make outside  
130 of what was provided in the brief.  
131

132 White asked if there were any challenge to the legal notice or the public hearing or all people  
133 being able to speak. Fernald stated they have no objection to those issues.  
134

135 White asked about the aesthetics or the easement. Fernald stated that the aesthetics were  
136 discussed at length and the easement was also discussed. It was their understanding that the  
137 easement was able to be used.  
138

139 White asked on what basis are you challenging they made their decision inappropriately.  
140 Fernald stated they felt that the decision was made based on aesthetics and not on the easement  
141 and that the easement should be decided in court.  
142

143 White asked if they received a copy of the transcript. Fernald stated they did now.

144  
145 Natalie Bussan, Cross, Jenks, Mercer and Mafai, appearing in opposition, stated she is involved  
146 is due to the decision issued, referring to Exhibit C (X-1), speaking of the findings of fact and  
147 conditional use criteria, for some reason when these were drafted they are in support of issuing  
148 the permit, the evidence was different than what was provided in the decision. She also spoke of  
149 the misunderstanding of an electrical easement and can establish that there is not an electrical  
150 easement, which is not new testimony, but was provided originally.

151  
152 White asked if all the easement owners would need to sign off on any electrical service. Bussan  
153 stated she believes they would have to sign off on fiber conduit.

154  
155 White stated if this is a review of what happened at the meeting, it would be applicable. She  
156 stated that if she has gone outside of this to research statutes, then it will not be heard. Bussan  
157 stated she has argument that is based on what was heard at the hearing, but would like to see  
158 today that the Board correct the finding of fact on this document that allow them to do that.

159  
160 Mike McKenna, reappearing, urged the Board to consider the error correcting functions of the  
161 Board and the findings of fact and conclusion of law need to support what the decision was.

162  
163 Kettner asked about the criteria that the committee set forth, is the Board now being asked to  
164 change the criteria because it was not adequate in making the original judgement.

165  
166 White asked if this simply is a case where the document doesn't simply match the decision made  
167 by the committee.

168  
169 McKenna had the Board walk through the findings of fact from Exhibit C.

170  
171 Board allowed the Bussan to review material to support the error correcting function. She  
172 provided Exhibit M which is a copy of a powerpoint she reviewed.

173  
174 Kettner asked if there is electricity provided to the structure that is there now. Bussan stated  
175 there is electric power there now. She explained law regarding electricity.

176  
177 The conditions for a conditional use permit for a mobile tower site is missing from the decision,  
178 which Bussan reviewed.

179  
180 White asked how many electrical feet would need to be available in section 18 for the tower to be  
181 available. Bussan stated based on what her clients have told her she feels it would have to be  
182 trenched from some other electrical source.

183  
184 White stated it has already been indicated there is an electrical power source and asked if there is  
185 power to the site. Bussan stated there is power to the residence there, but it is unclear if there is  
186 power available, but knows there is not an easement available for power for a tower.

187  
188 White spoke of the reference between section 17 or 18. Bussan stated the project is on 17.  
189 Bussan explained that the easement is only on 17 and not on 18 and would need to be through  
190 Section 18 to get to Section 17. She also spoke of a Fiber Conduit easement.

191 Allen spoke of good cellphone service in the area and stated there is no good cellphone service  
192 on Lake Redstone. Bussan stated she can only refer to what was testified to in the record.

193  
194 Ladas stated that the finding of facts was wrong, but the decision was correct. Bussan stated she  
195 feels the document simply needs to have the errors fixed.

196  
197 Joshua Fernald, reappearing, stated the Town of Winfield did approve the request.

198  
199 White asked about the application. Fernald stated that the state law is that if it is incomplete they  
200 have to be notified within 45 or 90 days.

201  
202 White reviewed the information suggested was not in the application. Fernald explained. White  
203 spoke specifically about the electrical easement. Fernald stated he believed the easement was up  
204 the entire road, however, he believes they can pull all the power they would need right off of Mr.  
205 Carr's property, and addressed the power usage of a tower.

206  
207 White asked Fernald to address the access issues. Fernald explained the road, the conditions, and  
208 monitors. Fernald stated that staff that would simply walk to access the site, no matter how long  
209 the access is.

210  
211 White asked about the length of time to build and the traffic. Fernald explained it would take  
212 about 6 weeks to build, but only 1 day of a semi/crane.

213  
214 Netzinger asked about coverage maps. Fernald stated the site will serve Lake Redstone and two  
215 neighbors did show up to the Town meeting stating were looking forward to the services, as well  
216 as AT&T looking to contract on the tower, however, he cannot share the contract. He spoke of  
217 other sites, the location and topography.

218  
219 White asked how much is covered by LaValle telephone or Reedsburg phone. Fernald  
220 explained.

221  
222 Ladas asked about the road condition and repair. Fernald explained that they would record the  
223 conditions of the road and they would make improvements on the road.

224  
225 White spoke of information in the transcript from Mr. Franzen speaking of AT&T and TMobile.  
226 The Board confirmed there was previous testimony regarding AT&T.

227  
228 White asked why they believe the decision was made inappropriately. Fernald stated he felt the  
229 aesthetics and emotional appeal was the main decision, the access was not completely  
230 understood and at the time was understood that they had the right to use the access. He stated he  
231 understands it was a contentious site.

232  
233 Seeing as no one else wished to appear, Chair White closed the public portion of the hearing at  
234 10:50 a.m. and the board went into deliberation.

235  
236 White stated she is very concerned they don't have access for fiber optics and having historical  
237 basis for having power run is enough to give them access. She also believes the record needs to  
238 be corrected.

239  
240 Kettner stated he feels uneasy that they are being asked to correct a record or substantiate a  
241 record to support a decision that had been made and then have someone say “we would have said  
242 this”. Kettner feels if we change one side, should the other side be allowed to also change.  
243

244 White stated she feels maybe they should send this back to the committee to have them address  
245 these correctly.  
246

247 Kettner stated the restriction says aesthetics shall not be the basis of the decision. One can say  
248 it’s not the sole decision, but reading through the overwhelming majority, it is very clear it was  
249 in fact, aesthetic reasoning and it seems that was a huge factor in weighing this decision.  
250

251 Ladas feels aesthesis played a role in the decision, but doesn’t feel it significantly increases  
252 coverages and LaValle has fiber access and he doesn’t see necessity for this. He agrees that  
253 finding of facts don’t support what they did it on conditional use. He also has an issue with the  
254 ingress/egress on the private road.  
255

256 Netzinger feels that Exhibit C needs to be done over and it should be done over by the  
257 Committee not the Board of Adjustment.  
258

259 White stated the testimony supports the decision, but she feels the office simply didn’t catch  
260 what went on versus what they sent out.  
261

262 Netzinger stated he doesn’t even feel the road supports residents living back there.  
263

264 White stated the Board’s decision is whether the committee said if they made their decision  
265 correctly, not whether the decision was written correctly. She said they can send it back to them  
266 to correct.  
267

268 Kettner asked if the applicant gets another shot to redress the difficulties that claim to exist.  
269

270 Mike McKenna, reappearing, stated they have the authority to immediately correct the record or  
271 remand back to the zoning board to correct the record and ensure the findings are consistent with  
272 the decision. He suggested that the motion include that you state it is not for a rehearing.  
273

274 White stated she believes the concerns for the access are the primary reason for being denied, so  
275 she believes the committee acted appropriately.  
276

277 Kettner stated he feels the Board is “prettying up” what they failed to, but feels aesthetics was a  
278 major reason for their decision, although not the only one, as the access road was an issue. He  
279 does believe the committee itself needs to take care of its own inadequacies.  
280

281 Allen stated he has a problem overturning the committee’s decision, as they acted appropriately  
282 based on the information they had at the time. He said he would have liked to have seen more  
283 information provided.  
284

285 Netzinger stated they are looking at something they don't have all the information on, however,  
286 he supports the decision the Committee has made, although he believes their decision leaned  
287 towards the aesthetics, even though they did consider the access.

288  
289 Ladas stated he feels the Committee looked at everything properly, and even though aesthetics  
290 was a large issue, the other conditional use standards were also looked at. He also believes they  
291 need to go back and edit their findings of fact to match the decision that was made.

292  
293 Mike McKenna, reappearing, based on the suggestions of remanding the matter back to the  
294 zoning board to make sure the findings match the decision. McKenna advised that a new hearing  
295 not be allowed, but the applicant could then re-appeal.

296  
297 Motion by White, seconded Ladas to support the decision made by the Conservation, Planning  
298 and Zoning Committee, but remand the decision rendered to edit the findings of fact to match the  
299 decision made based on testimony provided at the hearing. Said edit would not include a new  
300 public hearing. **Motion carried, 5-0.**

301  
302 The Board recessed for 10 minutes.

303  
304 C. Lee Oliver & Jonathan Hofeld (SP-05-17) requesting a special exception permit to  
305 authorize the location and operation of a lodging house.

306  
307 Dave Lorenz, Conservation, Planning and Zoning, provided a history and background of the  
308 request, reviewed photos and a video of the project and property and concluded with conditions  
309 to be placed on the appeal if it is to be granted.

310  
311 Ladas stated they've been operating since 2009 and what brought it to our attention. Lorenz  
312 stated the neighbor went through the process to go through the permit for a lodging house and  
313 informed them they needed one.

314  
315 Lee Oliver, applicant, appearing in favor of the request, stated they live in the San Francisco Bay  
316 area, the neighbor; Bill Hetzel manages the property onsite, while they manage the property  
317 online. She spoke of the property and renovations done.

318  
319 Kettner asked if there has been an inspection of the home since the remodel of the home. Oliver  
320 stated the State did an inspection of the home and then they are reinspected every year. She  
321 stated they limit the number of guest, she has contact with everyone, the house has 4 bedrooms  
322 and an office, which is allowed for the septic system.

323  
324 White asked how they ended up in Sauk County. Oliver stated they have family in the area.

325  
326 White asked if they allow outdoor fires. Oliver stated they do and it is between her property and  
327 Hetzel property. White asked if there fire extinguishers. Oliver stated they have 2.

328  
329 White asked if there are fireworks allowed. Oliver stated they do fireworks, but not renters.  
330 White stated they need to put into their general guidelines.

331

White asked if tents or campers are allowed. Oliver stated they are not. White stated they needed to be added to their general guidelines.

Jean Berlin, appearing as interest may appear, stated she is County Board Supervisor District 22, stated there is an influx of people that own property in Bear Creek that don't live in Wisconsin and believes the community needs to stay rural and worries about absentee owners.

White asked if there have been any reports of problems. Berlin stated she has heard a lot of things, but everyone needs to be good stewards of their land. She is also concerned about the fact that they have been operating for so long without permits.

Ladas questioned if there have been any formal complaints to the Town. Berlin explained her supervisory district and said she has had people talk to her, but is not sure anyone has provided a formal complaint.

White explained what Berlin could do to assist the Town and keep into contact if there are any issues.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at 11:40 a.m.

White stated she feels they fit the criteria.

Netzinger feels it is ok and they live in the house.

White would like to add that there are no tents or campers and no fireworks allowed.

Motion by Netzinger, seconded by Allen, to approve the special exception permit to authorize the location and operation of a lodging house the conditions recommended by Conservation Planning and Zoning, as well as no tents or campers, no fireworks allowed and notification to all neighbors within a mile of the property which contains all contact information. **Motion carried 5-0.**

Lisa Wilson, Director, appeared and updated the BOA on the "hog house" lodging house operated by Mr. Hetzel.

Motion by Netzinger, seconded by White, to adjourn at 11:45 a.m. **Motion carried, 5-0.**

Respectfully submitted,

Henry Netzinger, Secretary