

SAUK COUNTY BOARD OF ADJUSTMENT
July 27, 2017 Session of the Board

PRESENT: Linda White, Chair
Dan Kettner, Vice Chair
David Allen
Jim Mercier
David Wernecke, Alternate

ABSENT: Henry Netzing

STAFF PRESENT: Dave Lorenz
Gina Templin

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

The Board adopted the agenda for the July 27, 2017 session of the Board on a motion by Wernecke, seconded by Kettner. **Motion carried, 5-0.**

The Board adopted the minutes from the June 29, 2017 Board of Adjustment meeting on a motion by White, seconded by Allen. **Motion carried 5-0.**

COMMUNICATIONS:

Kettner stated that he viewed the site for item SP-19-17, and at that time, he spoke to Mr. Komendowski, but at no time was the appeal discussed.

DISCUSSION AND POSSIBLE ACTION ON AN APPEAL POSTPONED JUNE 29,2017:

Motion by Allen, seconded by Kettner, to open the public hearing for the SP-14-17 to take additional testimony from the applicant.

A. Dennis & Sally Fitzgerald, (SP-14-17), a special exception permit to authorize the location and operation of a lodging house.

Sally Fitzgerald, appearing in favor of the request, provided house rules and rental agreement for the Board to review.

White asked if a copy has been provided to Conservation, Planning and Zoning. Fitzgerald stated it had. She also reviewed the fireworks, firearms, bonfires and contact information.

White asked for a copy of the letter that will be sent to all neighbors with contact information. Fitzgerald stated she did not understand she needed to do that. White explained.

Seeing as no one else wished to appear, Chair White closed the public portion of the hearing at 9:11 a.m. and the board went into deliberation.

White stated the applicant has provided what was requested.

Motion by White, seconded by Allen, to approve the special exception permit for a lodging house with the conditions recommended by Conservation, Planning and Zoning, providing the house rules and contract be provided as the operating conditions with the permit. Motion carried, **5-0**.

APPEALS:

A. Thomas Kuester, (SP-18-17), a special exception permit to authorize the location and operation of a proposed lodging house. The property is described as; S5743 Coleman Rd., lot 3 Tranquility Subdivision, part of the NE ¼, NE ¼, section 14, Town of Baraboo.

Dave Lorenz, Conservation, Planning and Zoning, provided a history and background of the request, verified the Town of Baraboo is aware of the application, 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.

White asked about the statement that the top two floors are going to be leased. Lorenz stated he is unaware.

White stated if there is a kitchen in the lower level, it could be looked at as a duplex. Lorenz explained that for a duplex it would also need its own access. White stated it does have its own access.

Mercier stated there is a letter from the Town of Baraboo and Plan commission in the packet. Lorenz stated he was unaware.

Wernecke asked if everyone in the subdivision was made aware of the lodging house request. Lorenz stated he believed so.

Wernecke asked about erosion potential and issues in the area. Lorenz stated these are all completed residences with complete landscaping and there is no exposed soil.

Wernecke requested for all future hearings that a topo map be provided for all properties. Lorenz stated the department can do that.

Tom Kuester, applicant, provided Exhibit 8, which is an updated list of cabin rules that includes no tent camping.

White asked where he will be when this will be rented. Kuester stated he will be living at 404 Hill Street, Rock Springs.

White asked about not renting out the basement. Kuester stated they will have the basement sealed off and will keep cleaning supplies and other things in the basement.

Wernecke asked if this will be rented out as two units or one. Kuester stated it will be rented out as one single unit, one rental agreement per time period. He confirmed it will be the same as what

everyone else is doing out there. He verified the house rules are posted, and there are two site managers which includes himself.

Wernecke verified that this unit is connected to City sewer and water. Kuester verified it is.

White asked about Exhibit II,13 regarding rates for 6-8 guest, but the rental agreement states 10 guest. Kuester stated his house can be up to 10 guest. White stated his cabin rules should be updated to be consistent.

Kettner asked about the average age for renter should be 30. Kuester stated he prefers to go with that age preference for who is responsible, not necessarily all the occupants.

Randy Puttkamer, Town of Baraboo Supervisor and Plan Commission member, appearing as interest may appear, spoke of the use in the area. Puttkamer stated there are no complaints on any of the units that have special exception permits and the Town recommends approval. He also spoke of the fact that the use should not be everywhere, but this location is a good location for the use and that the Town is addressing it with an ordinance.

Wernecke asked about the change of use complying with the goals of the comprehensive plan. Puttkamer stated the Town feels it does, as this is a temporary use.

Seeing as no one else wished to appear, Chair White closed the public portion of the hearing at 9:35 a.m. and the board went into deliberation.

Kettner stated that this community has had a positive reputation and everyone is in favor of it.

Allen stated he has no problem, as it is similar to those in the past.

Mercier stated the uses surrounding it are similar and has not issues with it.

White stated she is happy the Town has reviewed the use and passed an ordinance to address it.

Motion by Allen, seconded by Kettner, to approve the special exception permit to authorize the proposed location and operation of a lodging house with the conditions recommended by Conservation, Planning & Zoning. **Motion carried, 5-0.**

B. Stan & Colleen Komendowski, (SP-19-17), a change of administrative decision regarding the granting of a conditional use permit for a proposed wood fabrication business by the Sauk County Conservation, Planning and Zoning Committee May 23, 2017. The property is described as; S3530 Chapel Rd., part of the SE ¼, NW ¼, section 4, Town of Bear Creek.

Dave Lorenz, Conservation, Planning and Zoning, provided a history and background of the request, previous appeals, and reviewed photos and a video of the property.

White asked if the house is visible from the Chapel. Lorenz didn't think it was, however, Kettner stated it was.

Kettner asked what the weight limit was on the road. Lorenz stated he didn't know, however it is a Town Rd.

White reviewed the process for clarification.

Wernecke asked about the site plan that was in the packet that the Committee used to base their decision on. Lorenz stated the information in the packet is what they used, Exhibit III,12.

Wernecke asked if that meets the criteria that it is supposed to. Wernecke read what is required in the ordinance. Lorenz stated he felt this met what it is required to show where the location is.

Wernecke asked if there is a drainage plan provided. Lorenz stated it was determined one was not necessary.

Wernecke asked if a topo map was provided. Lorenz stated one was not necessary as he feels the site is flat.

Kettner asked about the Town Board giving approval at the May 2nd meeting. Lorenz stated that is correct. Kettner stated that the minutes stated that they will wait if there are complaints from neighbors before they gave final approval. He asked if after that meeting they gave final approval.

White stated they gave final approval at that meeting, not after it. They said they were going to wait, but then they said yes. Lorenz referred to staff and the Town Chair.

Wernecke, referring to committee action options, asked if those are generic options and if the staff came up with that language. Lorenz stated those are the committee options. Wernecke asked what plans those are referring to. Lorenz believes it was the Bear Creek comprehensive plan.

Wernecke asked if that statement believes that the staff feels the Town plan was complied with from the applicant's proposal. Lorenz stated that those statements are merely the committee's options.

Wernecke asked if the staff are weighing in with an opinion on the plans. Lorenz stated the staff are not giving an opinion.

Wernecke stated the committee would have to look at the comprehensive plan and the staff are not stating that the application met with the comprehensive plan. Lorenz stated that is correct.

Kettner asked if the staff looked at the suitability of the road. Lorenz stated it is a paved Town road.

White stated it would be up to the Town to determine. Lorenz stated a milk hauling truck or similar could function.

Mercier questioned if the house located between the Chapel and the Truss Plant. Lorenz stated that is correct.

Mr. Mark Steichen, Boardman and Clark, representing the applicant, stated that the Board can only consider the information that was conducted at the hearing on the 23rd and it would not be appropriate to take additional comment from either the Town Board members or Committee members.

Kettner stated he reviewed the original public hearing before the CPZ Committee and there was no one present from the Town Board at the original hearing and their judgement was made without full evidence.

Steichen provided Exhibit 8, which is a transcript of the original CPZ public hearing. He reviewed the process for Conditional Use requests, starting with appearing before the Township and the standards that need to be met. He spoke of the standards that the county committee needs to follow, such as the decision made based on evidence in the record to support findings made, and written findings lacking in the staff report. He spoke of all the testimony, being unanimously talking about the town comprehensive plan not supporting this use in the Town of Bear Creek.

Kettner asked about reversing the decision and what would be the next step. Steichen stated he is unsure, as he has discussed this with Corporation Counsel without a definitive answer, but it could go back to the CPZ committee to be reheard or it could be a denial. Either way the decision could be reversed and then it would be up to Corporation Counsel to determine.

White stated she feels in this type of case, the decision would be nullified, as she feels if they determine the county did it wrong, the applicant should have the ability to come back and have a new hearing.

Marty McCluskey, Town Board Chair.

White asked about the minutes from May 2nd, and why there is nothing in the minutes that states a motion was made. McCluskey stated a motion was made but it did not get into the minutes.

Debra O'Rourke, Assistant Corporation Counsel, stated that the only thing the board can consider is what was the record before the CPZ committee, and it is not appropriate for the Board to ask clarification questions of what the CPZ committee asked. You have to use the record that was submitted. She stated she differs with the submittal of findings.

Wernecke asked if the committee did not get findings of fact from the Towns, did they have an obligation to acquire that on its own. O'Rourke stated she feels the Town's recommendation is advisory, not binding.

Wernecke asked from the perspective of the committee, as you move further down in the ordinance when you review standards in Section 7.151(5)(b), in order for them to do that, they would have to review the Town Comprehensive plan, in absence of the town providing them that information. O'Rourke stated she does not feel so. Wernecke asked why not. O'Rourke stated she felt it not a requirement.

Kettner asked what if they were working under an assumption that is not correct, such as the Town approving the request, but it may not have happened. O'Rourke stated she doesn't follow.

White stated there is nothing in testimony that the Town passed the request, nor do the minutes state it happened. O'Rourke stated she felt there was testimony that she thought someone stated it was approved.

Kettner stated that even though Lorenz may have stated that, there is no proof of that and he is not sure they did that. The only written proof stated they were going to wait.

O'Rourke stated there is no requirement of written findings in the ordinance. She also spoke about the site map provided and the lack of measurements.

Mercier spoke of Exhibit IV,3, stating Sorenson was present and the Board was going to speak to neighbors and get comments before approval, yet later voted to approve after speaking to Sorenson.

Steichen, reappearing, stated the Town did not vote to approve, they vote to recommend one way or the other. He spoke of the applicant being responsible to submit all evidence required to support the request – it is not the committee's fault, but it is up to the applicant, but when the evidence is not there, the committee should not approve it.

Wernecke asked about the statement in Section 7.151(4)(b) where it states the failure of the Town to submit findings of fact.... shall be unconditional approval...". Steichen explained what he interprets that to mean and the intent. He stated what is clear, it states "recommendation".

Wernecke reviewed the section and the findings of fact that is requested. Steichen spoke of the difference between a recommendation, which is an opinion versus a fact.

Seeing as no one else wished to appear, Chair White closed the public portion of the hearing at 10:49 a.m. and the board went into deliberation.

White read information from the Wisconsin State Bar regarding Conditional Use permits in regards to proceedings. She stated that they should not simply approve something because they "shouldn't go against what the Town wants", but needs to look at the operation and the compatibility of the request. She stated she did not see how they deliberated on how it will affect the area, the community, the specifics of the operation and the long term planning of the Township. White stated that there was not any evidence of that discussion justifying the decision.

Kettner stated they are not here to determine the right or wrong of the project, but only to determine whether or not the previous committee did their due diligence. He also felt the Town Board have been more thorough. He believes the CPZ committee come up with a better description of what it was they were approving – yes, and even though they acted in good faith, they lacked the documentation of what needed to be done. The application to this petition has a point.

White reviewed the ordinance standards from the Wisconsin State Bar Association relating to public interest standards and the fact that the CPZ committee did not discuss any of that.

Kettner stated the CPZ committee did not discuss any of the reasons why they voted to approve the conditional use permit.

Allen asked what recourse do the people have that invested money. White stated that is not up to the Board to decide. She stated they have every right to put up a building on their property, but they need to have the property permits for the use. She also noted there were foundations built prior to the use.

Mercier stated the owner of the truss plant skipped a process at the town level and depending on the outcome of this meeting, they will need to start at the beginning.

Wernecke stated that he reviewed the video and all documents submitted as well as the ordinance. Wernecke stated that certain members of the committee were avoiding taking on responsibility due to

the Town approving it and property rights. Wernecke stated they ignored the ordinance all together. He referred to testimony at the hearing from Town residents about the Town comprehensive plan and that the Committee did not address that at all. He feels there was plenty of information available for the committee to make a decision, but believes they did not meet the conditional use standards, and they had the opportunity to turn it back to the Town and they did not do that.

White referred to the Board of Adjustment guide and standards of approval and she feels they would have had to address those standards of approval. She also spoke of continued use and does not see that they looked at the criteria they should have.

Motion by White, seconded by Wernecke, to change the decision by the Conservation, Planning and Zoning to grant a conditional use permit for a wood fabrication facility on May 23, 2017, based on the fact that the findings for each of the standards for a Conditional Use Permit in making the decision to grant were not met; thus remanding it back to the CPZ committee. The request can also go back to the Town to be heard appropriately as well. **Motion carried, 4-1 with Allen in opposition.**

Kettner clarified what the owner of property can do with the buildings. White stated that the buildings can still be used as a personal shed, however, they cannot be used as a wood fabrication facility until they receive the proper permits from the County, which includes an appropriately granted Conditional Use permit.

Motion by Allen, seconded by Kettner, to adjourn at 11:05 p.m. **Motion carried, 5-0.**

Respectfully submitted,

Linda White, Chair
(in place of Henry Netzing, Secretary- absent)