

SAUK COUNTY BOARD OF ADJUSTMENT
January 25, 2018 Session of the Board

PRESENT: Linda White, Chair
Dan Kettner, Vice Chair
David Allen
Henry Netzinger

ABSENT: Jim Mercier

STAFF PRESENT: Lisa Wilson
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 Netzinger, seconded by Allen. **Motion carried, 4-0.**

The Board adopted the amended agenda for the January 25, 2018 session of the Board on a motion by Kettner, seconded by Netzinger. **Motion carried, 4-0.**

The Board adopted the minutes from the December 28, 2017 Board of Adjustment meeting on a motion by Kettner, seconded by Netzinger. **Motion carried 3-0, with White abstaining.**

COMMUNICATIONS:

None.

APPEALS:

A. Nelson Yoder, (SP-01-18), a variance to authorize the location of an existing accessory building within the minimum sideyard setback. The property is described as; E4105 Rocky Circle Rd., part of the NW ¼, NW ¼, section 2, Town of Bear Creek

Lisa Wilson, Conservation, Planning and Zoning Director, provided a history and background of the request, referred to Exhibit IV.5, which depicted the portion of the building constructed by a previous owner as well as construction completed by the existing owner. She reviewed photos of the property. Dave Lorenz showed a video of the property and concluded with conditions to be placed on the appeal if it is to be granted.

White asked if the applicant received permits for his additions. Wilson stated he did not, however, she understand that at one point in time permits for agricultural structures were not required. Wilson noted that the original structure would have fallen under the old provisions. But even though permits were not required, structures still needed to meet setbacks.

White asked what the distance was from the lot line to the original building. Wilson stated that was not provided to staff in the survey. She did state as you move back it does start to come into compliance and believe the addition in the back is at 10 feet.

Kettner asked about a yellow line on the aerial photo, referring to Exhibit II.4 and IV.4 the property line in yellow, the parking lot for the neighboring property extends over that line and if that property is owned by the same person or if owned by a different person. Wilson stated she believes it is owned by the applicant.

Kettner, referring to the same exhibits, asked about a triangle piece of property in red. Wilson spoke of a csm that was completed to remove a lot line and worked with an adjacent owner to address access points. Wilson stated that the applicant could discuss the triangle piece.

White asked about an original purchase and adding to a larger piece. Wilson stated that she was under the understanding that he had purchased both at the same time, but requested that the applicant address that question .

Dave Lorenz, Conservation, Planning and Zoning, reviewed the video.

Kettner asked if the original building was in compliance. Lorenz stated that it wasn't, however it was constructed by a previous owner and as an ag building, which not need a permit at that time.

Netzinger, referring to VI,2 shows the building going across 2 parcels of land. White stated that is where a new csm was required to remove that lot line. Lorenz confirmed the only issue will be the northwest corner of the building.

Nelson Yoder, appearing in favor of the request, spoke of the measurement from the existing building to the lot line, but confirmed that the existing building does meet the setbacks.

White asked how long the original structure is. Yoder stated it is 50 feet long. He also addressed the small triangle from the other exhibit.

White asked who the property owner is on the triangle. Yoder explained he is the owner of the triangle.

White asked how the issue came about. Yoder explained and verified he did receive township permits.

Kettner asked if the property was surveyed when it was purchased. Yoder stated they pulled up the old csm and went by that.

White asked why the Board should allow the building to be closer and why they should allow the addition to remain. Yoder explained the hardship is due to having to destroy the building, the location of the parking lot and the septic system. The building also was located prior to him purchasing the property. He did not construct the building, but purchased the property this way.

White asked if the additions were constructed by him and his friends. Yoder stated that was correct.

White asked how this will not change the character of the neighborhood. Yoder explained it will not change the character of the neighborhood, due to the building already being located on the property for years. They also met with the neighbor and received his approval, as well as being nearly 200 yards or so from the public roadway.

White asked who the property was purchased from. Yoder stated it was a Mr. Riedel.

White stated she struggles with this because she doesn't feel it meets the requirements and understands the building being there before he purchased it.

Jean Berlin, appearing as interest may appear, stated that Mr. Yoder has a very neat place, but feels this is unfortunate, but ignorance is unacceptable. She also noticed these buildings were there for a long time and understands that a different classification of zoning comes into play. She feels an allowance should be made for him.

Stan Komendowski, appearing in opposition, feels no one should be forced to tear their building down to comply for a few feet. This building was constructed a long time ago when buildings were not required to get a permit for an ag building, but if the variance is approved, they should require it be used for ag use only. White explained that they could not condition the use of the building on a variance request.

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 verified they cannot make a statement on what the building can be used for, they cannot put that stipulation on it.

White verified this is an area variance, and as that, while they understand at the time it was built, it was an ag building, they cannot say now that it can only be used for certain uses.

Allen verified where the issue is. White spoke of the non-compliant structure issue and adding onto a building without knowing where your property lines are.

Kettner stated he feels there is nothing unique about property limitations and it is the owners responsibility to know where the property lines are.

Netzinger feels the original building should be given a variance, however the addition should be brought into compliance.

Kettner asked if the original building was not compliant to begin with, can any kind of addition be placed on a non-compliant structure and does the other addition need to be removed as well. White stated that is a question that they would need to ask legal.

Kettner asked if there is some other type of hardship to bring the building into compliance.

White asked if, as a group, there is no issue with public interest.

White asked about the hardship issue. They spoke of removing part of the front of the building to bring the structure into compliance.

White asked staff if the roof overhang can be allowed in the setback. Lorenz explained the ordinance. He also explained putting an addition onto a non-comforming structure.

White asked about the hardship requirement. Netzinger feels the original building meets the hardship requirement, but the addition doesn't and feels the applicant should have pulled a permit and should be brought into compliance.

Allen spoke of the hardship criteria and feels that smaller addition needs to be brought into compliance and meet setbacks. The original building does meet the hardship criteria and should be granted a variance.

Kettner stated he agrees with what has previously been stated, however he has a problem with granting a variance for the existing building. White asked if he feels a hardship has been met. He stated the hardship is the costs, and that cannot be considered, so no.

White stated she struggles with this and the hardship goes back to purchasing a property without knowing the lot lines, negligence of a buyer and feels he must have known they were close. But she has a low tolerance for people that don't get permits. She does feel there is a hardship for the original building, but nothing on the addition.

Netzinger feels it is unique because the original building was built by another property owner. He also spoke of not knowing where your property lines are, but he purchased it in good faith that it was legal.

Allen spoke of a previous case where they purchased a property and thought the property line existed in one spot, but after a survey was done it was realized the property line was not where they were told.

Kettner stated they keep getting told that unless it meets all 3 of the conditions they are not supposed to grant the variance, but on the other hand, it is the responsibility of the property owner to know exactly where that line is. He can go along with the original building, however the addition on the front is out of compliance and feels it should be modified to meet the original building.

White spoke of the "intent" of the ordinance and zoning, but then you have to go with the legal stuff and she has been told that they can go outside of that by legal counsel, as long as they justify it. She feels that if it met the qualifiers at one time or another, such as not needing a permit when it was built, if the government didn't do its job by making sure that building met setbacks, then that is an issue. However, the addition should have received permits. She also addressed the Township doing a better job.

Allen asked to have the applicant return for questions.

Motion by White, seconded by Netzinger, to reopen the public portion of the meeting. Motion carried 4-0.

Allen asked about the attempt to purchase the neighboring property. Yoder stated they had the survey done and measured the triangular piece of property and how much was needed to make the building compliant so that the property could be swapped. But, the neighbor did not want to do that. Yoder also offered to pay all the costs and the neighbor just didn't want to do anything with his property line.

The Board closed public testimony.

Motion by White, seconded by Allen, to approve a variance for the original building, but additions on either end would have to come into compliance with setbacks, due to government failure causing the hardship on the original building, but not meeting the requirements for a variance on the addition.

Motion carried, 4-0.

Motion by Allen, seconded by Netzinger, to adjourn at 10:05 p.m. **Motion carried, 4-0.**

Respectfully submitted,

Henry Netzinger, Secretary