

SAUK COUNTY BOARD OF ADJUSTMENT  
January 24, 2019 Session of the Board

PRESENT: Linda White, Chair  
Dan Kettner, Vice Chair  
David Allen, Secretary  
David Wernecke  
Valerie McAuliffe

ABSENT: Jim Mercier

STAFF PRESENT: Gina Templin  
Will Christensen  
Brian Simmert

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 Kettner, seconded by Allen. **Motion carried, 5-0.**

The Board adopted the agenda for the January 24, 2019 session of the Board on a motion by Allen, seconded by Wernecke. **Motion carried, 5-0.**

The Board adopted the minutes from the October 25, 2018 Board of Adjustment meeting on a motion by McAuliffe, seconded by Kettner. **Motion carried 5-0.**

COMMUNICATIONS:

White stated she received communication from the applicant in the first case and also Ray Zobel about the availability of sand in count.

The board discussed the review and possible adoption of the 2019 public hearing dates. Motion by White, seconded by McAuliffe. **Motion carried 5-0.**

APPEALS:

- A. Ralph Anzivino (SP-18-18), requesting a variance pursuant to s. 8.006(2) to authorize the proposed construction and placement of a bridge in the shoreland setback of 75 feet from the ordinary high water mark of a navigable body of water. This property is located in the Agriculture zoning district, on real estate described as; part of the NW ¼, NW ¼ and SW ¼, NW ¼, section 6, T13N, R3E, Town of La Valle, tax parcel 024-0134-00000.

Will Christensen, Conservation, Planning and Zoning, appeared and provided a background and history of the request, reviewed the photos of the site and concluded with the recommended conditions should the board chose to approve the request. He verified the Town of LaValle reviewed the requested and did not oppose it and provided Exhibit VIII, 1 and 2, letters from adjacent landowners.

Kettner asked if the revised location is acceptable to the DNR and the Department. Christensen stated it is.

White asked if the ordinance allows for any other structures. Christensen stated “non-habitable” structures.

White asked if the property is landlocked to the other side. Christensen stated he believes it is land locked.

White asked about the photos and if the bridge is for ATV traffic. Christensen stated he believes it is for walking and possibly snowmobile.

Wernecke asked if he reviewed the DNR information and how the clearance was determined between the bridge and the Baraboo River. Christensen stated he did review it a while ago and spoke of an H&H study that will need to be done with a land use permit.

Wernecke asked about the Public Trust doctrine and the public having the ability to use the river and the height issue with the bridge. Christensen stated he believes the clearance is at 5 feet. Wernecke asked at what point that is determined.

Kettner stated the letter states the “bridge will maintain a 5’ clearance at all times” and that is rather optimistic.

Wernecke spoke again about the public waterway and the Baraboo River becoming an economic driver and putting a possible obstruction.

White asked if there is a public right of way. Christensen stated he cannot answer that. Wernecke stated that there is not and it is considered trespassing.

Ralph Anzivinio, applicant, appearing in favor of the request, presented Exhibit IX, 1, a copy of “Relevant Zoning Statutes”, provided a background of the property, and referred to the large photo exhibits. He purchased the property in the spring of 2017 and use for recreational purposes only.

Kettner asked what the primary purpose of the use is. Anzivino stated it is for the family and invitees recreational use only.

White asked about housing being stated in the packet. Anzivino stated they have no intention of building on parcel A (as referenced on Exhibit II.), but someone may be able to build on that parcel.

Kettner asked about total acreage. Anzivino explained, and he also verified that the bridge is for the purpose of ATV/Snowmobile access. The bridge is 60’ long and an additional 15’ ramps on each side, for a total length of the 90’, versus 200+ feet if he complies with the statute if it were placed in the same spot. He also stated that he feels a bridge does not meet the definition of a structure per Chapter 8. He also feels building a longer bridge would be cost prohibitive.

Anzivino then reviewed the requirements for a variance. He stated his project would not be contrary to public interest because the DNR has approved the placement of the bridge, the neighbors have recommended approval as well as the Town of LaValle. He feels there are special conditions associated with the property that include 3 boundaries being the Baraboo River. Unnecessary hardship is met due to not being able to use the property for a permitted use, as if the bridge is not allowed, the only access to the property is by crossing the river when it is frozen or by boat; he also does not feel a bridge could be built complying with the ordinance, which would qualify him for the hardship standards. He also feels the hardship is based on the conditions of the property and has nothing to do with the property owner. He spoke of the bridge, as proposed, does not impact the wetlands, but the bridge, if following the ordinance, would impact the wetlands.

Allen asked when the property was purchased, if he knew there was not access to the other side. Anzivino stated he did know there was not access to the other side.

Wernecke asked about approaching adjacent land owners for access. Anzivino stated he approached the neighbor to the south stated he does not want others on his property, as they hunt as well.

Kettner asked if there will be regular inspections of the bridge and the supports and the connections to the shore. Anzivino stated the construction company will come back every year to do annual inspections. Kettner asked if anything will be done by the DNR. Anzivino stated he has no idea.

White asked if this will have permanent pillars. Anzivino stated it will sit on headers and then it will be connected into pilings on the bridge and the ramps, as well as steel cable to a tree.

White explained that the bridge is considered a structure by the Board. She also asked if the Board would put something in that allows the public 30 access onto his property to go around the bridge. Anzivino stated he would have no issue with that and understands that people would need to access the river or be able to remove anything that may get jammed on the bridge.

Wernecke asked about connection to the state bike trail. Anzivino stated that would be the adjacent neighbors land.

Wernecke asked if he spoke to the other neighbor about access. Anzivino stated he has spoke to him and they do not get along and there is not hope for access.

Wernecke again spoke of the Public Trust Doctrine and possibly a public access easement in addition to ensure the public have access to the river around this bridge.

Dennis Plantenberg, appearing in favor of the request, stated he is an adjacent landowner and he had sold the property to Anzivino, and he had access to the property at the time he owned it. He is also the nearest homeowner, and stated it would be nice to have access for emergency services.

Wernecke asked about having an easement to get around on the river. Plantenberg stated he doesn't know the statute, but does know there is some access around.

McAuliffe verified he is the neighbor and asked which direction. Plantenberg explained.

Simmert, appearing as interest may appear, spoke of an easement and the ability of the public to use private property to go past an obstruction.

Wernecke asked how many private bridges there are on the Baraboo River. Simmert stated he is unaware.

Sharon Laubscher, appearing as interest may appear, stated she was concerned about who would be using the property and the fact that they would be using ATVs through the wetlands.

White spoke of the change to wetland maps. Laubscher stated that they own a bridge and the issues they have with it changing a stream.

Kettner asked about the DNR inspecting the bridge. Laubscher explained.

Christensen, reappearing.

Kettner asked if this is approved what other responsibilities does the Department have, such as inspections, etc. Christensen stated there are no other conditions on inspections and are relying on the landowner to do the right thing, but it could be an addition.

Seeing as no one else wishes to speak, Chair White closed the public portion of the hearing at approximately 10:15 a.m. and the Board went into deliberation.

McAuliffe stated she sees nothing in the ordinance that would prohibit the variance.

Wernecke stated he is concerned with the public access and the height of the bridge.

Allen stated his concern is the clearance of the bridge and the public access as well as the maintenance of the bridge. He would like to see some type of inspection schedule put into place to verify that the maintenance is kept up on the bridge and the site itself.

Kettner agrees with Allen and wants to make sure there are some type of official inspections being done to make sure that the structure and the property is being kept up.

White stated she feels the property owner is denied access to the property without a variance. She does not feel there is an issue with public interest, as well as a unique property.

Motion by White, seconded by Allen to approve the area variance to authorize the proposed construction and placement of a bridge in the shoreland setback of 75 feet from the ordinary high water mark of a navigable body of water, with the conditions added (e) CPZ to conduct regular inspections by the department to verify the bridge and property are being maintained, and view the bridge within 2 weeks of a flood event, (f) regular maintenance to make sure the river is flowing freely, (g) and the public has access within 30 feet on each side of the bank around the bridge if needed, as well as those recommended by the Conservation, Planning and Zoning Department.

**Motion carried 5-0.**

- B. David and Deloris Leatherberry Living Trust (SP-01-19), requesting a Special Exception Permit pursuant to s.7.060 to authorize the continued operation of a non-metallic mining site, one acre or greater and a Non-Metallic Mining Reclamation Permit pursuant to s. 24.05. This property is located in the NE ¼ of the NW ¼ and SE ¼ of the SW ¼ of Section 26, T12N, R6E and including parcel 002-0779-00000 and 002-0784-00000.

Brian Simmert, Conservation, Planning and Zoning, appeared and provided a background and history of the request, reviewed the photos of the site, verified corrections to the map on parcel numbers, and consents from neighboring landowners from the 600' setback. He verified that the reclamation plan is short from having contours, a stormwater plan and adequate financial assurance. He then concluded with the recommended conditions should the board chose to approve the request.

White asked how long this mining permit has been in existence. Simmert stated since about 1992.

Simmert provided Exhibit F, a fax from the Town of Baraboo stating that they have not approved the request, but suggested that it be "moved on" and requested that certain stipulations/conditions be met.

Kettner asked about the berms in place and standards for berms. Simmert stated there are no standards for berms in Sauk County code. Kettner asked if that is up to this board to make that determination. Simmert stated the board could make a request, but it should be based on an engineered plan.

Wernecke asked if there is an agreement to remove the 600' setback it is just for the specific parcels that signed off. Simmert confirmed.

Wernecke confirmed that the agreement expires at the end of 5 years. Simmert confirmed.

White asked if there is any buildable lots available within the 600'. Simmert stated there is not.

Kettner asked about the structures located on Crawford near the pit. Simmert, referred to Exhibit C. Kettner asked about a piece of property that is listed as "alternate site access". Simmert stated there is an old pit to the Southwest of the property but doesn't feel it would be used.

Simmert then provided Exhibit G, revised hours of operation.

Kettner asked about the hours of operation. Simmert explained. White asked for a copy of previous permits to be included in the packets for the board to review.

Wernecke asked about warning signs on Crawford and Goerks Rd and not being in the final recommendation. Simmert stated that was an error and asked that the board include that as an additional condition.

Richard Cross, Attorney for Dave Leatherberry, appearing in favor of the request, stated that his applicant approves with the staff report and will work with the Town on the damage to the roads.

Randy Puttkamer, Town of Baraboo, appearing as interest may appear, stated that they believed there were standards for the berm, and they have another contractor down the road that sets the standards very high and then another pit that doesn't and then receives feedback from citizens that wonder why one pit does things one way and then another site seems to get away with less quality standards. He spoke of a problem with reclamation in the Town of Baraboo and there is one on this property and they would like to see something done to it and they have concern that the Town/County/tax payers are going to be left holding the bag. The Town also recognizes the need for the material. He spoke of the requirement for stormwater plans, the location to the road and steepness of the banks is a huge concern, and the reclamation plan needs to be adhered to. He spoke to the agreement that is currently in place with the Town and they are not adhered to. He spoke of the concern they have that when a stop work order is issued by the Department, work needs to stop and it doesn't. This operator continues to operate. He spoke of the reclamation plan and where the material will come from to reclaim and what is being removed, how much material is left, as well as the concern for the variance for the homes and how close are they allowed to go.

White asked about the standards on other pits. Puttkamer stated they have gone above and beyond to change back up beepers and try to go out of their way, as well as simply just redoing the road, when they don't have to.

Simmert, reappearing, provided Exhibit H, correspondence from a neighbor in opposition.

Wernecke asked about the Town being concerned about the reclamation plan and whether there is enough material to reclaim the site. Simmert stated it should be measured to verify, but is unsure.

Allen asked about the stop work order that was not enforced. Simmert stated he posted a stop work order and then received a phone call from the Town that stated work had continued, but staff needs to witness work being done, but there was no time for them to go to the site. He did verify that Mr. Leatherberry cannot operate after today until he is issued a land use permit, if they find activity takes place, and it is witnessed, enforcement action will be taken.

Wernecke asked about high levels of dust and if there are other issues. Simmert stated this is the first he has heard of. Wernecke stated there are no conditions requiring dewatering, such as required from other pits.

Tim Cummings, appearing in opposition of the request, stated he is a neighbor of the site, but this operation has a history of non-compliance. He understands everyone needs sand, but everyone has to comply with permits and licenses. He would oppose the permit without at least one year of being in compliance. He disagrees with issuing a permit without the applicant even having all the paperwork necessary. This applicant has a problem with following through.

White spoke of reclamation plan changes and they can have the ability to say if he gets a violation he will need to come back to the Board of Adjustment. She spoke of truck routes and the possibility of notifying them in writing on what routes to take. Cummings stated he is asking for plans to approve rather than approving something and then having him promise to get plans, as this person never follows through.

Simmert reappearing, stated that the BOA is considering the special exception permit, not the reclamation plan, but the plan needs to be completed for him to get his land use permit to operate.

Puttkamer, reappearing, spoke of the haul routes and that other operators tells the drivers, that is the route you take or you don't drive for us and this quarry needs to have his drivers follow the haul routes and the Town will work on that.

Seeing as no one else wishes to speak, Chair White closed the public portion of this hearing.

The board spoke of the need for this applicant to be in compliance with the permit and conditions of the permit.

Motion by Wernecke, seconded by White to approve the special exception permit to authorize the continued operation of a non-metallic mining site, with the conditions added, as well as those recommended by the Conservation, Planning and Zoning Department, adding, section (e) to include warning signs on Crawford Street and Goerks Rd, and (f) to accept the existing hours of operation, replacing those in the staff report, and re-lettering (H) at the end to (N).. **Motion carried 5-0.**

Motion by Allen, seconded by McAliffe to adjourn at 11:35 a.m. **Motion carried, 5-0.**

Respectfully submitted,

David Allen, Secretary