

SAUK COUNTY BOARD OF ADJUSTMENT
October 27, 2011 Session of the Board

PRESENT: Linda White, Chair
Dan Kettner, Vice Chair
Robert Roloff, Secretary
David Allen
Henry Netzing

ABSENT: None

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

The Board adopted the agenda for the October 27, 2011 session of the Board on a motion by Allen, seconded by Netzing. **Motion carried, 5-0.**

Motion by Roloff, seconded by White, to adopt the September 2011 minutes. **Motion carried, 5-0**

COMMUNICATIONS: None.

APPEALS:

A. David Roscoe (SP-25-11) requesting special exception permit to authorize filling and grading on slopes of more than 20% to gain access to the shoreline during the installation of rip-rap.

Dave Lorenz, Environmental Zoning Technician, appeared and gave a brief history and background of the property, permitting and rezoning, as well as photos and a video of the site. He then recommended conditions to be placed on the appeal if the request were approved.

White asked how many trees would be removed. Lorenz stated he didn't count, however it is heavily vegetated all the way down the steep slope and the path was about 10 feet wide.

Kettner, referring to the map, questioned the steepest part of the slope being at the bottom. Lorenz stated that where the cross hatching starts, is where it drops off and is extremely steep all the way to the bottom.

White asked about the DNR permits. Lorenz stated the DNR would only permit the riprap itself.

Craig Meister, agent for the applicant, stated that the DNR permit has been applied for and received and are looking for access to get to the lake. He stated that the steepest part is where the treeline is shown, approximately the last 15-20 feet. He also stated that the only trees to be removed would be in the access area and then the smaller trees right on the shoreline. He stated that the only bank disturbance would be just the access and will grade at 2:1 slope with topsoil, native plant plugs and matting and 6 feet up from the ordinary highwater mark will not be disturbed at all. He concluded that the work that they will be doing should stop the slope from sliding down further.

White asked when the project will be done. Meister stated that they will probably wait until next spring.

Kettner asked if the riprap will be delivered to the shoreline by trucks. Meister stated they will be dumping the riprap in the driveway and be brought down by skidster. He also spoke of the septic system and drywell that is located on the property and the discussion he had with the neighbor to the north and he is ok with the project.

Kettner spoke of the detail of disturbance of topsoil and the slope and asked what is put in place until the new vegetation takes hold. Meister stated they will put down a temporary seed, but nothing more than that.

White asked how the roadway will be stabilized. Meister stated that topsoil and mat will be put down on the road. He spoke of the erosion control to be used such as the silt fence along the neighbors property, as well as silt-fence along the path, as well as stone over the weekend.

Allen asked how many yards of riprap will be brought in. Meister stated about 160 ton total of different types of stone and the riprap will be done in layers, which will come to about 22 ton on each load.

Seeing as no one else wished to speak about the special exception request, Chair White closed the public portion of the hearing on the SEP at approximately 9:20 a.m.

Motion by Roloff, seconded by Allen, to grant the special exception permit to authorize filling and grading on slopes of more than 20% to gain access the riprap project, with the conditions listed by Conservation, Planning, and Zoning. **Motion carried 5-0.**

B. Matthew Palmer (SP-26-11) requesting a variance from the minimum side and rear yard setbacks to authorize the construction of a detached garage on a substandard sized lot.

Lorenz appeared and gave the history and background of the request as well as reviewing photos and a video of the site. He then provided recommendations on the appeal if the request were to be approved.

Roloff asked about the stakes shown in photos 1 and 2 and if that is the location of the lot line. Lorenz explained the photo.

White asked where the field to the septic is located. Lorenz stated it goes towards the rear yard.

White asked if there are wetlands located in this area. Lorenz stated there are some, but not on this lot.

Matthew Palmer, applicant, appearing in favor of the request, stated they are replacing an old existing garage that was built in approximately 1927 when the house was built, and the structure was falling apart and had to be taken down due to it being a hazard. He also spoke of the house location, the septic tank and due to that, he can not rebuild and meet all the setbacks. He stated that the septic is a holding tank and there is no drainfield on the system, as well as the Town of Troy and Plan Commission approving his request.

White asked when the existing garage was taken down. Palmer stated it was removed in the fall of 2009.

White asked about the holding tank replacement. Palmer stated that the people they purchased the home from replaced the holding tank.

White spoke of the 3 criteria that needs to be met for a variance to be granted and asked the applicant to specifically address those three issues. Palmer stated that the hardship is the small lot dimensions and the location of the house and the holding tank the garage can't be located with the setbacks being met. He stated the uniqueness of the lot is the dimensions of the lot being substandard and the house being built in 1927, and changing the character of the neighborhood won't be affected as the garage will be placed in the same location of the other garage.

White asked if the septic tank was not where it is located now, would a garage be able to be built and meet the setbacks. Palmer stated he isn't sure where the tank could be moved on the property and is unsure where it could be move, or if it can even be moved. He also spoke looking into moving the tank with Demars Plumber and there is no change of saving the tank, so a new one would have to be purchased.

White asked about the setbacks from the property line and if he has spoke to the neighbors about the location. Palmer stated he has spoke to the neighbor to the east owns the property to the east and the south of his property and he is ok with garage.

White asked about the location being within 2 feet on both side and if the location proposed is for the driveway and getting into the garage. Palmer talked about moving it over and the septic being located by the driveway.

Allen asked if he has tried to purchase land from the neighbor. Palmer stated he has been approaching the neighbor since 2001 when the originally purchased the house and he does not want to sell any property.

The Board discussed the setback requirements.

Kettner asked what side the original garage was. Palmer stated it was a 2 car garage but unsure of the exact dimensions, but thinks it was probably 24x24. Kettner asked where that was located. Palmer stated it was about 2 feet off of the rear lot line and on the lot line to the east.

Kettner asked if they were to move the garage to the west, it would make it too inconvenient, too difficult or impossible. Palmer stated that due to the location of the septic tank there would not be enough room to navigate a vehicle without hitting the tank.

White stated it appears there is nothing on the lot that would prevent the moving of the septic tank. Palmer stated that there is a large elder maple tree on the lot that would obstruct from moving the tank to the west.

White asked about moving it to the south. Palmer stated moving it to the south and away from the house, there will be a problem with the pitch of the drainline and is unsure of that is possible.

Kettner, referring to the photos, asked where the previous garage was located. Palmer, referring to photo 1, stated the garage was located where the first wooden stake is to the back stake. The shorter stake in the middle is the back stake to the property line. Kettner confirmed the garage was on where the gravel pad is located now. Palmer stated that is correct.

White asked about the size and location of the garage, referring to Exhibit II,2.

Netzinger stated it is a large garage consuming the lot.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 9:45 a.m.

White read from a memo provided to the Board in regards to a variance, previous court cases and the criteria that must be met for a variance to be approved. She also asked each member to state how this meets or doesn't meet each criteria.

Roloff stated that he feels the property has limitations and the ordinance constraints what kind of structure can be built. He also feels that there are no safety issues or problems to public interest. He does have concern with unnecessary hardship and if a garage can be built and still meet the setbacks, such as looking into moving the holding tank. He spoke of all 3 of the criteria needing to be met.

Allen asked if the old garage was still there could he replace it. White stated that if you spend more than 50% of the value on a nonconforming structure, you can't rebuild, because the intent of the ordinance is that once the nonconforming structure is gone, it can't be rebuilt. Allen stated he feels that his request does not meet the 3 criteria to be met.

Netzinger stated that this lot is difficult to get a garage in and in the spirit of the neighborhood, having a garage is deemed necessary and to store your vehicles out of sight is necessary. He

spoke of the lot being substandard in size, there is a new code put over the old lot sizes which creates a hardship to the property, especially seeing as how the neighbor will not sell any property.

White asked if he sees where the garage could be built. Netzinger stated that if you move the garage forward, you can't build a decent sized garage. To turn the garage, would you be able to use it easily, he feels it wouldn't work. He feels that with it being an old lot, that is the hardship on the property.

Kettner spoke of hardship and can see how this can be done by moving the septic tank and feels the hardship would be economic and would that be considered. White spoke of previous court cases, economic and financial hardship is not to be considered.

White stated that she questions the septic tank and that is an economic decision, it is also a very large garage that is being proposed and a smaller garage could be considered. Personal convenience or personal desire to have a larger garage is not a hardship. She stated the lot is smaller, but it does have enough space if you move things around, and feels due to these issues, it does not meet the criteria.

Allen spoke of the holding tank being accessible for service and disagrees that the garage is a large garage by today's standards.

Netzinger feels moving the septic would still require a variance. White asked how a variance would be needed. Netzinger stated you won't meet the rear setback.

Kettner asked if they can grant a variance to make adjustments on the sizes. Roloff stated he would have trouble allowing one setback but not the other.

Motion by Roloff, seconded by White, to deny the variance request for the construction of a detached garage within the minimum side and rear yard setback on a substandard lot, due to not meeting all 3 criteria for granting of a variance. **Motion fails 2-3 with Allen, Netzinger and Kettner in opposition.**

Kettner reviewed the lot and estimated where 25 feet would be from the rear lot line, feels that there is no room at all for any kind of structure to fit within the setbacks required and feels that it is more important to meet the side yard setbacks over the rear yard setbacks.

Motion by Netzinger, seconded by Allen, to approve the variance request for the construction of a detached garage within the minimum side and rear yard setback, due to the hardship being met due to the new ordinance being placed over the lot, which is also the uniqueness of the lot, and feels that public interest is met by having a garage to put vehicles in is in the best interest of the neighborhood.

Netzinger and Allen have both withdrawn their motion to approve the variance.

Allen would like to hear from the Town and the neighboring land owner.

Motion by Netzing, seconded by Allen, to postpone the decision, pending more information to include other possibilities to meet one of the two setbacks, information on the septic tank relocation, a letter from the neighbor and information from the Town of Troy. **Motion carried 3-2 with White and Roloff in opposition.**

C. James & Shelly Cronin (SP-27-11) requesting a variance from the shoreland setback to authorize the structural repair and addition to a residence within the minimum shoreland setback of Lake Redstone.

Dave Lorenz, Environmental Zoning Technician, appeared and gave a brief history and background of the property, permitting and rezoning, as well as photos and a video of the site. He then recommended conditions to be placed on the appeal if the request were approved.

White asked how many feet from the shore is the structure located. Lorenz stated that he believes it is approximately 75 feet, but there is no survey information to show that.

Roloff asked if the setback distance is at the point of the concrete pillar, and not the edge of the deck, which is within 75 feet of the lake. Lorenz stated that was correct.

Roloff asked about photo 3 and the concrete and pillar shown, the structure itself is within 75 feet. Lorenz stated that the current foundation is 75 feet back, but the structure itself is within the 75 feet.

White asked how many square feet the residence currently is. Lorenz stated he is unsure.

White asked if the request is to build out to the edge of the deck or where the post are located. Lorenz stated he is unsure but feels it is to the edge of the deck.

Roloff asked about the total living area not exceeding 1,650 sq. ft. and where that requirement came from. Lorenz explained where the ordinance regulates nonconforming structures.

White, referring to Section 8.09(1)(j) and spoke of the increase over the life of the structure. Lorenz stated he has not made that calculation, but that would be required.

White stated if they expand the structure they will be within the 51-75 foot setback. Lorenz stated that is correct.

Shelly Cronin, applicant, appearing favor the request, stated that they are not really trying to increase the footprint. They purchased in 2005 and since have had problems with the structure leaning and even splitting, there is a crawl space underneath and there is mold and animals even getting into the crawl space. The intent is to put a regular foundation under what currently exists and not trying to get closer to the lake, but trying to just keep what already exists.

White asked how many square feet of living space the house has now. Cronin stated approximately 768 feet, but unsure, and doesn't feel that the 1,650 feet limit should not be an

issue. She said that when the foundation is put underneath, there will not be living space in the entire lower level.

White asked about the area under the deck. Cronin stated that the deck that is there now would stay, so the foundation would come out as far as the deck, and what would be underneath there would be a screen porch and access to the lake from the lower level.

White asked about the actual living space. Cronin confirmed that the foundation will come out to the edge of the deck. White asked once the foundation is located what will be there for living space. Cronin stated there will be living space in the lower level as well as a mechanical room.

Roloff confirmed that the request is to repair an existing nonconforming structure and from the plans that have been given, he is uncertain with the scope of the project.

Al Ribbke, contractor for the applicant, appearing in favor, stated that the house is currently built on cement block and underneath is poured concrete to hold in place, which is failing. The project will have a new foundation put into place and the additional square footage of living space will be approximately 190 sq. ft. He also address room for a mechanical room. A basement will be added under the portion of the structure that has no support and then also fixing the foundation. He spoke of removing portions of a nonconforming structure and the proposal to build the foundation wall out to the edge of the deck.

White asked about the foundation and the concrete walls that will enclose. Ribbke stated that the concrete wall will be fully around the entire project, versus just footers sitting on top of rock. He explained the construction part of the project to support the house and the deck.

White asked how tall the walls will be. Ribbke stated it will be about 7-8 feet on the front face.

White asked if it will be confined space under the deck. Ribbke stated they will maintain an 8 foot ceiling under the deck and under the house.

Roloff asked that what they are considering is repairing an existing nonconforming structure. White stated they are also expanding the nonconforming structure.

Roloff asked that there is an 8 foot cantilever of the house itself and asked if it is physically moving. Ribbke stated that the owner has expressed concerns that the house is moving and there is a lot of erosion and much of the ground under the house is eroding out.

White asked about II, 13. Ribbke stated that is a concept plan by the owner, not necessarily what will be done.

Roloff stated that the owner called him at his home about the project and referred the owner to go to Planning and Zoning to discuss the project.

Kettner confirmed the house sticking out further than the concrete pillars below, approximately 8 feet and the deck sticks out another 8 feet. Ribbke confirmed this and stated the foundation wall will be brought out 16 feet from the existing foundation walls.

White asked about the ability to exit from the lower level. Ribbke explained that there would be access to get into the mechanical room and/or basement but no access to the lake and will have a solid wall.

Netzinger asked how big the existing house is. Ribbke stated it is approximately 24x32 feet. Netzinger, referring to II,15, with a drawing of the foundation, asked if a pier would be taken out. Ribbke stated that II,15 just shows the foundation and the 16 foot is a proposed mechanical area, but they may not be able to go back that far. The first 16 feet is the deck area and then the additional 8 feet back. That exhibit just show the top of the foundation wall and doesn't reference the living area.

White asked if there is anything under the house. Ribbke stated there is a spot under the house, but water runs right through the house foundation and under the house foundation.

White asked about disrupting the surrounding area. Ribbke stated that there will be very limited disruption of the land around the house. He explained the process of removing and saving the rocks for use in the project and how the rest of the work will be done.

White asked about erosion on the sides of the house. Ribbke stated there will be no disturbance along the side of the house.

White spoke of the 3 criteria to be met for a variance.

Ribbke stated the house is moving and needs to be repaired, it's a safety hazard, the ground below it is the soils below the house is eroded out. The uniqueness of the property is that the house was built poorly and the slope and rocks located on the site is unique. He addressed the public interest and spoke of the house falling down the slope and into the lake.

Bev Vaillancourt, Town Chair of LaValle, speaking in favor of the request, stated that the project was brought to the Plan Commission and the Town Board and they unanimously approved the request. She spoke of the building inspection program and asked that this project complies with all building inspection provisions of the Town of LaValle. She also spoke of the mitigation of water that comes down the hill. She also spoke of this house not being unique as many of the homes that were built during this time were similar and on stilts. She spoke of the health concern of the mold that is located under the home and if mitigation processes are not put into place the house will be lost. The Board feels this project is in the public interest and will help their own health and welfare.

White asked if condition 1 will address the town's requirement for building inspection. Vaillancourt feels that would meet their requirement and explained their permitting and inspection process.

Roloff asked if the Board took action on the request. Vaillancourt stated that the request was approved, and explained the Town's process.

Kettner asked about the 75 foot setback from the highwater mark and that was determined by the State and the request is new construction coming forward, rather than just a repair and the new construction is not grandfathered in. Vaillancourt stated that yes it is new construction, however the house was built in a different era and in order to save the structure, it needs to be secured, as well as addressing the water that is coming through and under the home.

Roloff stated that there is new construction encroaching into the setback, however the reason for the new construction is to hold up the old construction.

Sherry Atkinson, appearing in favor of the request, stated that they own the property 2 lots west of the applicant and can verify that the odor from the mold and mildew is incredible and the house is tipping and can feel that the floor is leaning forward in different areas of the home.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 10:45 a.m.

White read from the ordinance about the expansion of living space.

Netzinger stated that the square footage of the house with the project done will be 1,560 square feet, well within the requirement of the ordinance.

White ruled this is an area variance, versus a use variance.

Kettner addressed the criteria and feels the hardship is that the house is falling down, and feels it looks like the original builder was stretching limit of what could be done at the time. He is unsure of the uniqueness and the public interest would be the house falling down the hill. He stated he would like to see the building repaired, however, he would like to keep the structure of it below the house itself and not going under the deck. The footings under the deck to hold up the deck, but not the actual structure of the house going out the full distance to the edge of the deck. The area under the deck should remain open and feels a screened in porch is living space.

Netzinger feels the hardship is that the house is falling in, the uniqueness of the structure is that the house was not built properly and the rock outcropping and the public interest needs to be protected from the mold and if the house is gone, the tax money that the community receives is harm to public interest. He also stated he would not be opposed to the screen porch.

Allen stated that the hardship is the house falling down, the lot is unique and it meets public interest.

Roloff feels that the hardship is the house falling down, the public interest needs to be protected by the house not falling into the lake.

White stated the hardship is mother nature has affected this house, the uniqueness is the rock outcropping on the lot, and the public interest to be protected by addressing the house from falling into the lake.

Motion by White, seconded by Roloff, to approve the variance for the repair and small addition to the residence with the conditions by conservation, planning and zoning. **Motion carried 5-0.**

Motion by Netzinger, seconded by Allen to bring back the hearing for Rosenau from the previous postponement.

D. Paul Rosenau, Olson Toon Landscaping (SP-24-11) requesting a special exception permit for tree cutting and replanting within 35 feet of Lake Wisconsin. This request was postponed from the previous month.

Paul Bickett, agent for applicant, appearing in favor, spoke of the plan revision, adding 2 trees versus 1 tree, maintaining the existing vegetation rain garden.

White asked what size the trees will be when planted. Bickett stated it will be approximately 12 feet tall.

Netzinger asked about the likelihood of the tree dying. Bickett stated that they will replace it if it dies, as that is part of their sales, however these are hardy trees.

Kettner asked about the trees at mature size and the proximity of the water harming the tree. Bickett stated that it will not harm it and it will be similar to the existing trees there.

Netzinger stated he likes to see the Ash trees be removed and wondered if the trees should be moved back from the riprap.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 11:00 a.m..

Motion by White, seconded by White, to approve the special exception permit for clearing and tree cutting, adding a condition that the plan that is submitted will be maintained and if any damage happens to the vegetation, they will maintain and replace it, along with the conditions specified by Conservation, Planning and Zoning. **Motion carried 4-1 with Roloff in opposition.**

Meeting adjourned at 11:01 a.m.

Respectfully submitted,

Robert Roloff, Secretary

