

SAUK COUNTY BOARD OF ADJUSTMENT
April 25, 2013 Session of the Board

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

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. She 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 Netzinger. **Motion carried, 5-0.**

The Board adopted the agenda for the April 25, 2013 session of the Board on a motion by Netzinger, seconded by Kettner. **Motion carried, 5-0.**

Motion by Netzinger, seconded by Kettner to approve the minutes from the March 28, 2013 hearing. **Motion carried, 3-0 with White and Allen abstaining.**

COMMUNICATIONS: None.

APPEALS:

- A. Sherman Raschein (SP-05-13) requesting a special exception permit to authorize the location of a pond (as built) within 110 feet of a property line and road.

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

Kettner asked for existing pond size, depth and when it was excavated. Lorenz spoke of plans in the packet, referring to Exhibit II,3, showing the size of the pond. Kettner asked if that was the proposed pond or the existing pond. Lorenz explained this is the pond as it is built and this is an "after the fact" permit.

White asked how this came to the knowledge of the department. Lorenz deferred to Sorenson.

White verified this is a hind sight permit. Lorenz confirmed. White then spoke of the difference from one side of the pond to the other that it makes it look like there had possibly been work done much prior.

White asked if the pond wasn't in the setback of the road whether they would need a permit. Lorenz explained they would need a permit for the pond, however, the setback to the road requires the special exception permit.

White asked if it meets the requirement of a pond permit. Lorenz explained further work would need to be done, but it is representative of paperwork sent to request a permit.

Kettner, referring to Exhibit II,3, asked about the drainage area running between the road and the pond and what it looks like. Lorenz explained it looks like a natural swale and nothing really constructed.

Kettner verified it is not a natural stream. Lorenz explained it is not a navigable waterway, but a natural grassed swale.

Kettner asked about the area between the pond and drainage area. Lorenz explained that it looks as if the spoils of the pond were spread around that area, but deferred to the applicant.

White asked if the pond is spring fed or if it is a natural low area. Lorenz was unsure.

Sherman Raschein, applicant, appearing in favor of the request, stated that there was an old barn and grainery and the property is used for hunting and built a pond to increase wildlife. He also stated it is a natural swale that goes down and simply improved the swale.

Kettner asked about the slope that runs towards the swale. Raschein stated he seeded and planted everything last year and built a shed on the property so some of the extra spoils was put there.

White asked if the shed was permitted. Raschein stated it was.

White asked about the pond being built without a permit. Raschein stated he had someone there with a loader, so he asked him to put the pond in.

Kettner asked what brought him in. Raschein stated he believes someone called in to report the pond and he was contacted by Steve Sorenson.

White asked about the depth of the pond. Raschein stated it is approximately 10 feet to the top of the berm.

White confirmed it is spring fed and he simply dug down until he hit a spring. Raschein stated that was correct.

Ladas asked about the Town of Honey Creek. Raschein stated the Town has approved it.

White asked what the month of construction was. Raschein believes early July.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 9:20 a.m.

The Board discussed the setbacks from the road and property line.

Motion by Netzinger, seconded by Allen, to approve the special exception permit request for the construction of a pond (as built) within 110 feet of a road and property line. **Motion carried 5-0.**

- B. Donovan Labansky, Nick McCann (applicant) (SP-06-13) requesting a special exception permit to authorize the location and operation of an arcade and amusement park and a variance to allow inflatable structures within the minimum highway setback.

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

Kettner asked about the play equipment that is located currently on the property. Lorenz referred the applicant.

White asked about the sign and the setback line as shown in the exhibit, as well as the right of way line. Lorenz explained.

Kettner asked about the proposed fence and the requirements for the setback of a fence. Lorenz explained the difference in setbacks for a solid fence versus a fence of a maximum of 6 feet high and only 50% solid.

White asked which condition the 5 year is under. Lorenz explained that the 5 year condition goes with the Special Exception permit.

White explained the two requests and that each request should be discussed separately. White stated the variance request is an area variance. She reviewed the 3 qualifications to the board members that the variance request needs to be met to be approved.

Netzinger asked about the current holding tank. Lorenz stated the size of the holding tank has been sent to the state to verify if the holding is adequate, however, we have not received a final determination.

Nick McCann, agent/applicant, appearing in favor of the request, stated that he runs a unique business and runs an outdoor inflatable structure business and now wants to expand by allowing indoor inflatable structures, arcade and snack bar for birthday parties and such.

White asked how many people would visit. McCann stated he could get 50, but on an average, there may be 1 to 2 families during the week and on weekends there would be 3 to 4 families.

White asked about the arcade and the things that will be outside if they will be for advertising or for use. McCann stated that the inflatable structures would be placed outside for use and play when the weather permits. He also stated he needs to place the inflatables outside to clean and maintain them.

White asked about something set up now and if it is being used at this point. McCann stated they are currently operating indoors.

Ladas asked if he will be able to put some inflatables outside now without the variance. McCann stated they can, however, they would like to use the better part of the yard out front. Ladas confirmed that one can be placed out now, however, to place more he would need a variance.

Ladas asked if the fence will tie into the bluff. McCann stated he plans to fence the side, the front and the other side and a separate entrance to monitor who is out there. He also spoke of gates to enter into the property.

White asked how many structures maximum out there to play on. McCann stated they would like 2 or 3 out there at a time, maximum.

White explained the 3 provisions required for a variance to be approved and asked the applicant to review for the Board.

McCann stated if they fence the yard as planned that would address public safety, he also stated there is not a lot of ample flat ground due to the bluff, the road and the building.

White asked about the hardship. McCann stated he can't offer a unique business if they can't show them off or set them up within the hardship area.

Kettner stated he wants to set them up for display but also for use and to fence them in. He then reviewed the map provided showing the layout. He asked where the fence will go and how close to the highway it will be.

McCann stated they want to run the fence along the front of the existing sign which is within the highway right of way.

Kettner verified that children will be playing within the fenced area and asked how close to the road the fenced area will be. McCann stated he believes it is approximately 60 feet.

Returning the video, White asked McCann to show exactly where the fence will be located.

Kettner asked if the bluff is part of the rental property. McCann stated it is part of the rental property.

Richard Fish, representing the Town of LaValle, appearing in favor of the request, stated that the Town Planning Commission and Town Board have been working with the applicant once it became known he was operating, supported the rezoning of the property and support the request for the special exception permit. He then spoke of the fence and one of the conditions of approval was that the area outside the building be secured and the applicant agreed to put up a fence. He also stated another concern was access to the property and the interface of the pedestrian and the vehicles and the concern with the neighboring landscaping business. He stated that the Town supports the request, as long as the fence is in place, the final access be reviewed with the Town and implemented before any inflatables are allowed.

White asked about the process the Town has. Fish explained.

Kettner asked about the variance request allowing inflatables going into the road setback. Fish stated he believes the town is in favor due to the grey area of what is or isn't a structure.

Kettner stated using the area to display is ok, but what about the use of the area as a playground. Fish stated he looks at it as the same.

Steve Sorenson, Sauk County, appearing as interest may appear, stated that he has met with the applicant last summer to begin the process of coming into compliance with the use. He stated he is receiving complaints due to the children being outside of the property being too close to the road and the shared driveway with the neighboring landscaping business. He also received complaints of kids playing on the neighbors landscaping property.

White asked where the main entrance is for this towards the back parking lot or if they have to walk around to the front. Sorenson referred the question to the applicant.

Netzinger stated he is concerned about granting a variance because it stays within the property and the property is owned by someone else. Sorenson stated the office reviews the inflatables as a structure and a structure is a structure, and will allow any structure in the setback in the future.

Ladas spoke of the concern that there are going to be children in the area and it is an attractive nuisance in the right of way. Sorenson spoke of the fence only being 3.5 feet maximum height because of the vision.

Kettner stated the maximum height of the fence is 3.5 feet in the front yard. Sorenson confirmed.

Jason Sammons, appearing as interest may appear, stated that he is the owner of the landscaping business next door and his main concern is the safety issue, he stated there is nothing definite about a fence. He talked about the size of the vehicles and equipment that comes through the driveway, as well as his customers parking in front of his business. He then presented Exhibit VIII, which are photos of people parking in front of his business going next door, as well as Exhibit IX, photos of equipment that is accessing and leaving the property. He spoke of plans for miniature golf and other parking issues. The owner of the property has been gone for 3 seasons, but it was vacant for just a short time before McCann came into the building and no one ever spoke to him about the use, especially with a shared driveway and the difference in uses. He stated he has been there for 8 years and has seen vehicles in that area and would not allow his child to be in that area.

White asked if there is a problem with a fence behind the building. Sammons stated the problem is people going to the back of the property to park. He had issues with getting access to his property on the weekend when there is 20 vehicles there. He has issues with people parking in front of his business blocking his access to the business, children running across the parking lot.

White asked about the common driveway and the property line. Sammons confirmed that the driveway access off the highway is shared, however, McCann only owns 11 feet off of the building.

White spoke of some conditions that can put on for a special exception permit. Sammons stated there has been talk of a fence, but there are no main plans that he has seen.

Kettner asked if the shared driveway is paved and how far it goes. Sammons stated it is paved and it goes back to where the existing fence is now.

White asked where the parking is for his business. Sammons stated the parking is in front.

White asked if there was labeling "no parking" if it would inhibit his business. Sammons stated he wishes for his customers to park in front as well.

Allen asked if the shared driveway is split with the property. Sammons stated the shared driveway is on his property, as the property line is 11 feet off of McCanns building.

Netzinger spoke of concern with children running around on the driveway and asked about putting a fence on the property line so it forces them to put everything on their side of the property. He said a fence would help him as well, as he could put a gate that would prevent people from getting on his property.

White asked if they could come up with a spot on the property for a fence that would work for everyone. Sammons stated he would discuss it.

Kettner stated he feels the Board's responsibility is to mitigate impacts and doesn't want neighboring business owners to suffer.

Sammons verified that McCann is renting the property, he does not own it, nor has he gone to any meetings. He stated the fence is in disrepair, falling over and needs to be addressed and has concern that the owner of the property has not been involved what-so-ever.

McCann, reappearing.

White asked about objections to the front parking being labeled with pick up or handicap only. McCann stated that during the week they are slow and doesn't want people to park in the back, when they can park up front and have to walk along the building.

White asked if there was entrance available to the back of the building. McCann stated the entrance to the back is for emergency use only and the pay counter is up front.

White asked if a walkway could be set up to send them up front. McCann stated that wouldn't allow for enough space of his inflatables. He stated they would have to rearrange the entire building.

White asked if there could be a walkway along the bluff side of the building and put in a door on the bluff side of the building. McCann stated they would have to move plumbing and such. He also stated he wants to make a temporary fence to see if it will work before putting anything solid into the blacktop.

Kettner stated he feels attempting something temporary for fencing is ok. He also asked about a number of vehicles parked haphazardly and other things set around the back and suggests making that look like a parking lot and organized a bit. McCann stated that their vehicles are parked back there and then some people will follow. He stated the snow piles are back there as well.

White confirmed the parking lot is gravel behind the building. McCann stated that is correct.

White asked if they plan to purchase the property. McCann stated he hopes to purchase the property, but stated he is willing to make changes and fix things while he is renting the property.

White asked how many stalls are on the front of the building. McCann stated there is only room for 4 stalls near the entrance. He stated Sorenson told him he could add 4 more stalls near the road entrance.

White spoke of the number of people coming for the events. McCann stated that sometimes they have a lot more cars than people, and they allow walk ins as well.

White asked if they are required to have handicapped labeled parking, being a walk in business. McCann stated he hasn't looked into and most likely has to, but no one ever brought it up, but he would be willing to put them in.

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

White spoke of dealing with the special exception permit first.

Ladas stated he has no issues with the special exception permit to allow the business.

White stated that there some issues that need to be spelled out in the special exception permit. She asked for parking in front labeled as special parking and everyone parking back, a clearly labeled walkway from the back to the front, no parking signs put on the side of the building, distinguished parking stalls, as much fencing between properties as possible, fencing no more than 12" off the ground.

Netzinger stated he would like McCann and Sammons to get together and come back with the plan to address the issues and doesn't feel the Board should solve these details. He also feels there needs to be some separation for a walkway so that kids are not walking into the shared driveway. He felt the decision needs to be delayed until the problems are worked out.

Ladas agrees.

White stated they can make this decision contingent on the plans that Planning and Zoning has to monitor.

Kettner stated he doesn't see a problem with the use, but the problem is with the neighbors, and recommends handicapped parking at the front of the building.

The Board opened the meeting up for more public comment.

McCann, reappearing, asked if he will be allowed to operate or do anything outside and he already has some things that could take place between May and June.

Sorenson, reappearing.

White asked if the Board allowed the applicant to operate until the first of July while the decision is tabled. Sorenson felt he could work with the applicant and town with a permit now. He also spoke of complaints and concerns with children, if he gets 1 complaint, that the office will shut them down. He wants something specific put in the conditions that says if they receive one complaint, he would be shut down and brought back to the board of adjustment. An agreement needs to be met by the Town, the neighbors, the applicant/owner and the Department.

Ladas confirmed that if it is approved, he could operate, with the conditions placed by the Board.

John Lusczak, appearing as interest may appear, stated he drives past the place every day and spoke of the fence by the sign and there will be children present, right next to the highway and is concerned for the safety of the children.

White spoke of protecting the public interest.

Richard Fish, reappearing, stated he would support approving the special exception permit with the condition of the Town getting with all involved in addressing the details.

White closed this portion at 11:00 a.m.

Motion by White, seconded by Ladas, to approve the special exception permit with the conditions recommended by Conservation, Planning and Zoning and adding the following conditions: g plan for fencing and safety agreed to by the Town, agent, owner, and the neighboring business, reviewed and approved by planning and zoning, h – parking in front clearly labeled as pick up and handicapped only and to minimize the number of stalls available, I – clearly label the walkway from the back to the front, j – no parking allowed on the entire side of the building and marked/restricted as such, k – marking to clearly distinguish the parking stalls in the back, l – fencing between the two properties agreed upon by the owner, applicant, neighboring business owner and Township, m – fencing between the rear parking lot and the neighbors property no more than 12” off of the ground. **Motion carried 5-0.**

The Board discussed the variance and White reviewed the standards to be met for a variance to be approved.

White stated she believes the business is good for the public interest, good for the tax base and brings people into LaValle. She doesn't believe by approving the variance, it won't create an unnecessary risk to the public, the unique property limitations is the fact that the bluff is there, the driveway is shared. She believes the hardship is rendering conformity with the strict letter of the law is unnecessarily burdensome and feels that if you are not putting something solid in the roadway, not being able to do it is unnecessarily burdensome. The variance is for inflatable structures only and the property must be fenced.

Kettner stated he agrees with everything White stated and feels that they can limit how far into the setback the inflatable structures can be and that they stay as close to the building as possible.

Allen stated he agrees with White and that due to it being inflatable structures, he has no issues and feels the request meets all 3 of the criteria.

Netzinger stated that he feels the property has unique limitations due to the bluff and the shared driveway and feels if he doesn't get the variance it is a hardship to his business and feels the variance will only be limited to inflatable structures.

Ladas feels he is all for the business, but he has a problem with unnecessary hardship, as there is place to put up the inflatables in the building and the side of the building and doesn't feel they should be placed closer to the road due to the safety of the children using them. He also feels having them by the road it is an attractive nuisance.

White confirmed that a variance goes with the property. Lorenz stated that is correct, however the Board has the ability to put conditions on a variance.

Alene Bolin, Corporation Counsel, appearing.

White asked about the variance request, being inflatable structures for his business going into the road setback, being an area variance, and the Board is looking at allowing the variance only for inflatable structures.

Bolin stated that the Board can state that the variance is only for inflatable structures.

White talked about the ability to combine with running a business with the variance for inflatable structures. Bolin spoke of it being unique to the property and not self created. White talked about the concern of a new owner/business down the road.

Bolin spoke of the variance addressing the inflatable structures, but can not be tied to a business.

Lorenz reappearing, suggested that the Board set a parameter as to how far the variance goes into the road setback, which will make enforcement easier.

Ladas stated the applicant has testified and written that he is asking for 20 feet into the setback for the variance.

Motion by White, seconded by Kettner, to approve the variance request with condition a, b, and e from the list of conditions recommended by Conservation, Planning and Zoning, and the additional conditions of 1 – the variance being for temporary inflatable structures only; 2 – the variance is allowed for no more than 20 feet into the road setback. **Motion carried 3-2 with Ladas and Netzinger in opposition.**

C. John Luszczyk (SP-07-13) requesting a special exception permit to authorize the location of a pond (as built) within 110 feet of a road or property line and filling and grading within 300 feet of a stream.

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

White asked about the location of the pond and the plot plan provided.

Ladas asked about the navigable water. Lorenz explained.

White asked if this is a spring fed pond or a groundwater scrap. Lorenz referred to the land owner.

Kettner asked about fixing a leak and if he witnessed anything of that nature. Lorenz stated he did not see any evidence of that.

Kettner asked if the Board did not approve the special exception permit. Lorenz stated an order to restore the earth to the original condition.

White asked if that was the original condition of the pond or the original condition of the land prior to a pond.

John Luszczak, appearing in favor of the request, stated that he is applying for a permit to continue what has been done on the site and stated he wanted to make an access road to the top of the hill to get to the working land as well as all of his property. He stated the contractor already started digging and making the pond larger. He made the pond deeper, which comes from a spring on the side of the hill. He spoke of receiving a letter from Planning and Zoning due to not having a permit.

White asked if the dirt from the pond was used to creating the road. Luszczak stated the road has nothing to do with the pond, and the pond has a tube that takes the overflow of the pond and spoke briefly of the leak.

White asked if there needs to be plans for the pond since there is a leak and is hitting rock now. Luszczak stated that the plans are what is here now and that he intends to clean up brush up to the property line, fix the leak and such.

White asked how far the pond is from County Road G. Luszczak stated the pond is about 40-50 feet from the road.

Earnest Frank, appearing in opposition, stated he lives across from the property. He has a problem with the owner proceeding to build his pond and then come ask for forgiveness and that the pond has not been built or even follows any of the rules and regulations to build the pond. He stated it is very close to a creek to flows into plum creek, the birm on the north side of the pond is very steep and doesn't measure up to pond building, there is no rock overflow areas without eroding the birm and feels the DNR should be involved.

White asked how long the pond closest to the road has been there. Frank stated he has lived there since 2008 and he does not recall any water/pond being located there.

Steve Sorenson, Planning and Zoning, reappearing, stated he spoke to the owner late last summer on a follow up of complaint, order him to stop construction and go through the process. He stated the land use permit would require 3:1 slopes, emergency spillway, DNR would be involved if it is located within 300 feet of a navigable stream.

White asked how old the original pond was. Sorenson stated there was a pool of water there, old photography from 10 years ago did show something there, but he tripled or quadrupled the size of the original pond.

Ladas asked about being within 300 feet of the ordinary highwater mark, that DNR should have been advised. Sorenson stated DNR will require a permit if he is within 500 feet of navigable stream.

Kettner asked if there are any consequences by an excavator or property owner if procedures are violated. Sorenson stated that land use permits being after the fact, the land use fees will be tripled. Both ponds heard today will have their land use fees tripled. He stated he did not issue a citation immediately because he didn't see the pond as being built viciously.

White asked if he will have to have a design of the spillway. Sorenson stated the plan for the permit should include the spill way, the slopes, etc.

Kettner asked about the order of procedure. Sorenson stated the owner will request a pond, based on location, an onsite would be done with Planning and Zoning and DNR, then a permit would be taken out after that.

White stated that even if the special exception is provided, he still can't continue until he has all permits in hand.

Ladas confirmed that even if they approve the special exception permit, if the DNR says no, he can't do his pond. Sorenson confirmed that is correct.

White confirmed the Department will require the plans for the spill way, erosion control, design and slopes. Sorenson confirmed that will take place at the Department level.

Seeing as no one else wished to appear, Chair Kettner closed the public portion of the meeting at approximately 12:00 p.m.

White stated she would like to see that the contractors get fined/penalized immediately when this happens.

The Board spoke of the contractors being penalized in this case and suggested to Sorenson that he cite the contractors immediately when they start without permits.

Kettner asked that it does include that it must fulfill all permit first.

Motion by Allen, seconded by Netzing, to approve the special exception permit for the construction of a pond and filling and grading within 300 feet of a navigable waterway, with the conditions provided by Conservation, Planning and Zoning. **Motion carried 5-0.**

Kettner spoke of the training session he attended in Green Bay and requested that someone come here to train the board members, as well as including the committee.

Ladas spoke of the boards that go out and specifically look at the sights and gave Kudos to county staff for the video and photography.

Motion by Netzing, seconded by Allen to adjourn. **Motion carried 4-0.**

Meeting adjourned at 12:15 p.m.

Respectfully submitted,

Henry Netzing, Secretary