

SAUK COUNTY BOARD OF ADJUSTMENT
June 27, 2013 Session of the Board

PRESENT: Linda White, Chair
Dan Kettner, Vice Chair
Nicholas Ladas
Henry Netzing
Ron Lestikow, Alternate

ABSENT: David Allen

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

The Board adopted the agenda for the June 24, 2013, 2013 session of the Board on a motion by Netzing, seconded by Kettner. **Motion carried, 5-0.**

Motion by White, seconded by Netzing to approve the minutes from the April, 2013 hearing. **Motion carried 5-0.**

COMMUNICATIONS: None.

APPEALS:

- A. Brandon & Megan Bateman (SP-08-13) requesting a special exception permit to authorize filling and grading within 300 feet of Wilson Creek during the construction of a driveway for a new residence.

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 if the applicant plans to cross the creek. Lorenz stated they did however there are no specific plans submitted for the house or septic.

White verified that this request is prior to getting a permit to build a house. Lorenz stated that was correct.

White asked about a driveway ordinance for Spring Green and if it meets any ordinance they may have. Lorenz stated he is uncertain if Spring Green has a driveway ordinance.

Kettner asked about the reference to a DNR permit. Lorenz stated DNR gets involved because it is a shoreland issue and DNR specifically requested that the County does not issue a permit until the DNR issues a permit for the work.

Lestikow asked why this is being heard if the DNR makes a decision. Lorenz stated that these are both steps in the process and both will need to be secured prior to starting any construction and suggested the possibly table their decision until a decision has come from the DNR.

White spoke of making a condition of approval being that a DNR permit is received.

Lestikow also questioned whether the Town Board approves of the permit. Kettner read the statement submitted from the Town.

Ed Lilla, agent for the applicant, appearing in favor, stated he is with Jewell and Associates and is the engineer on the project. He spoke of site inspections by the County, DNR, and Army Corps, and at that time it was determined that the creek is navigable. He spoke of the plan preparation, spoke of the Town driveway ordinance, and plan approval from the Town in early May. He also stated they will be requesting a Chapter 30 permit from the DNR and tested the driveway for emergency access. He spoke of access from a neighbor was sold to the Nature Conservancy and lost that access.

Kettner questioned the size of the culvert and being able to handle the “worst case scenario” and asked about the construction. Lilla stated that was correct and suggested that the construction of the culvert be reinforced concrete or corrugated metal.

Kettner asked about expected life. Lilla stated the metal would be about 50+ years and the concrete even longer if maintained.

White asked about the creek. Lilla explained.

Brandon Bateman, applicant, appearing in favor of the request, stated that the property was purchased 7 years ago with the intent of leaving Illinois and raising a family. He spoke of coordinating with neighbors to access the property, but the property has changed hands on two separate occasions and is no longer available for access. He commented on the creek crossing and leaving it in its natural state.

Kettner asked about the field between the road and Wilson Creek is owned by the applicant. Bateman stated it was owned by them.

Kettner asked how much the level of the drive will be raised above the creek. Bateman deferred that question to the engineer (Lilla). He also spoke of a low spot prior to the creek.

Kettner asked if it will look like an earthen dam. Bateman stated he does not believe it will look like a dam.

White asked about accessing through a cornfield where no driveway exists. Bateman felt the access will be off to the left of the tree shown on the exhibits. He reviewed the photo to explain the boundaries of the property and where they are looking to place the house.

White confirmed that they are landlocked on both sides. Bateman stated that was correct.

Lilla reappearing stated that the profile of the driveway will be as close to the original ground and on average it will be just above 2 feet. He also stated that at the roadway, the driveway will need to be built up and will be closer to 6 feet. The access site selected will need the least amount of fill and has the best visibility to access the roadway.

Ladas asked about a 15 foot drop from County W. Lilla explained that they would build up to that location and would go no higher than 6 feet and on average 2 feet.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 9:35 a.m.

White spoke of an engineering plan that is complete.

Netzinger felt the plan was put together well.

Lestikow spoke of the transaction of the Nature Conservancy.

Kettner verified there are driveways on the Nature Conservancy land. Lestikow stated there are 2 driveways on the Nature Conservancy land.

White stated the Town Board did not object.

Motion by Netzinger, seconded by Ladas, to approve the special exception permit request to authorize filling and grading within 300 feet of Wilson Creek for the construction of a driveway and residence, with the conditions recommended by Conservation, Planning and Zoning and the added condition that a DNR permit be issued prior to the Department issuing permits for construction. **Motion carried 5-0.**

- B. Dale Clark (SP-10-13) requesting a special exception to authorize the location and operation of mineral extraction site.

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. He also reviewed conditions recommended by the Town of Spring Green, listed in Exhibit II,5 and II,6 and the Town Chair had contacted the Department stating the applicant had agreed to the conditions.

White asked about the permit under 2010 and why he is back again. Lorenz stated he is back because there were significant changes in the operation and it was felt that they should come back before the BOA for the changes that are proposed.

White asked if they changed the reclamation plan. Lorenz was unsure.

White stated the prior permit was to take the hills to field level and not to dig into the ground or go deeper, as the intent is the level the field out. Lorenz was unsure.

Lestikow asked if in Exhibit IV,1 if that is what Spring Green would like. White stated IV is the conditions from the prior special exception permit and that the new requirements from Spring Green are located in Exhibit V.

White reviewed the new conditions.

Ed Lilla, agent for the applicant, appearing in favor, stated that the Town requested that Jewell & Assoc, worked with the applicant due to the flood work and drainage ditch in the Township. He stated that they met with the Department staff, they felt that a new request should be made through the Board of Adjustment. He also stated that the applicant was looking at placing a stockpile next to County Road G. He explained there would be stock piles throughout the operation, an area would be taken out of production and stockpiles placed to work from. He then reviewed Exhibit VIII, a map showing the proposed activity and discussed the engineering plans.

White asked about the berm he spoke of. Lilla stated it was in a previous plan, but since the channel was requested to go a different route, the berm is unneeded.

Kettner stated the entire property is approximately 190 acres and there is going to be separate little mining sites rather than one large operation/site. He asked what the use for the sand will be. Lilla stated recently they have had a lot of inquiries on whether this will be used for frac sand, but his understanding is that the technology isn't there and after his research isn't able to use for frac sand and at this time it will be used for bedding and fill sand.

Kettner confirmed there will be no washing facilities on this site. Lilla stated there will be no high capacity well on site, however they may do screening for stone, but referred the question to the owner/applicant. He stated at this point, he doesn't believe the intent is there for frac sand and the purpose is for field leveling.

Kettner asked if the purpose for the use changes, will different permits be required at that time. Lilla stated it wouldn't be operated any differently, it would merely be a change in customer. If there were going to be screening or trucking, he would have to come back in.

Kettner verified that the permit they approve today were for certain processes and if that changes, he would like the Board to be able to consider the change. Lilla felt that the operation wouldn't change, the potential customer would change.

Kettner asked about the depth of the mine, Spring Green suggested that the depth shall be no closer than 4 feet of groundwater and questioned "what year". Lilla stated they didn't state, but the discussion was from 2009, the water was at 721/719 and the bottom of the ditch area will be about 6 feet above the bottom of the ditch and feels that won't be an issue for him. He stated the only real issue will be on parcel 1 would need to be monitored.

White asked in the three parcels how many acres total will be involved in this operation. Lilla stated that all the parcels are over 100 acres total, but each spot would be anywhere from 1-5 acres at each time.

White asked how many yards over the life of the project. Lilla stated about 1 million cubic yards and unless the demand changes greatly, it will take a lot of time to pull that much material out.

Kettner asked Lilla to explain what a vision triangle is. Lilla explained.

White asked how many yards would be taken out in the 5 years the permit would be issued for. Lilla stated he is uncertain and referred to the applicant.

Lilla continued to review Exhibit VIII, showing parcel 2 will remain as originally proposed in 2009 and parcel 3, which is north of County Road G, stated they eliminated the stockpile near the road, put in an access point to the site, and is working with the Town to develop a letter of credit so that Clark will be responsible for fixing any road damage.

White asked which areas will be mined on parcel 3. Lilla explained that there will be no mining of the bluffs and will be at least 50 south of the tree line.

Dale Clark, applicant, appearing in favor of the request, reviewed the history of the site and issues he had with the flood of 2008 and the lack of crops in the following years. He stated the plan is to take off the sand deposits and sand hills. He explained there is no topsoil on the sand knob, but there is good topsoil underneath and will be better for irrigation. He referred to parcel 2 and the hill is in the middle of the field and not in a corner and the problem is unequal application of fertilizer and water. He addressed parcel 3 where the largest mining will be, the potato producers can't harvest the potatoes with the machines they are using and the irrigation system had pump problems addressing the hill. He then spoke of his previous request and not being able to work with the previous operator, concerns from the Township on the original permit. He reiterated that this is a field leveling plan, not a mining plan, and would like to get to the reclamation process as fast as he can. His plans for parcel 2 will be sold for fill sand, due to it being unsuitable for dairy sand and all of his fields have fingernail sized pebbles and would need to be screened out. His intentions are minimal screening and he has never been contacted by anyone in the frac sand industry and is not interested or intending on making it a frac sand operation. He is looking at expanding from dairy sand or fill sand to having sand for asphalt or concrete.

White verified that he has eliminated a centralized pad, but will have minimal containment and feels it will be more of a "winter" thing and on parcel 2, it will have to be dug up before it freezes to address the barn sand for the winter. He stated if something big came up, he would have a change to bid on sand for local bid projects, which would be a big operation, but for a short duration. Stockpiles are always intended to be minimal, but smaller than the plan he submitted in 2010. He also stated only 1 area would be opened up at a time.

White asked about dry processing and there would be no washing. Clark stated he is in within 10,000 feet of the Tri County airport and can't make a pond due to that location, so it rules out all of the wet processing.

White verified he will be screening sand, not washing sand. Clark stated that was correct.

White spoke of a condition on the permit that he would have to return if he changed the processing. Clark agreed.

Pat Nash, appearing as interest may appear, stated she was told that this just had to do with a farmer that wanted to move a small pile of sand, but it doesn't sound like this request is just that. She feels the proposal will not address flooding and the intent is to sell sand.

White explained the levels and depth. She also spoke of the definition of a mining operation and explained how it relates to this request.

Joyce Schulte, appearing as interest may appear, asked about the reclamation. White explained.

Schulte also asked about a condition requiring a new hearing if there are substantial changes. White explained the permit term and how that will affect the operation. She also explained that the applicant is held to the testimony he provided today.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 10:40 a.m.

White reviewed the testimony and the previous request from 2009/2010.

Netzinger stated he likes that it is a smaller operation and not one large operation and feels the removal of the stockpile near Highway G is a benefit. He also feels this will lead to better farmland down the road.

Lestikow stated he agrees with Netzinger.

Ladas stated he feels the project is well thought out.

White feels that the applicant working with Spring Green is a good thing and likes the effort they provided with their plan and the recommendations they requested. She also commented on the fact that the decision will require the applicant to follow his testimony and only proceed as his testimony provided.

Kettner agreed with the work done with the Township. He also stated he wanted to get the process on the record so if things did change, they could come back and be addressed.

Motion by White, seconded by Kettner, to approve the special exception permit with the conditions recommended by Conservation, Planning and Zoning, the conditions provided by the Town of Spring Green, contained in Exhibit II,5 – decision letter needs a full description of all parcels. **Motion carried 5-0.**

C. Stevens Family Trust (SP-10-13) requesting a variance to permit the construction of a concrete foundation under an existing home within the minimum setback of Lake Redstone.

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 if there is a permit for the deck and is that considered a new deck or structural repair. Lorenz stated it would need a permit and require a variance.

Kettner asked about the septic system type. Lorenz stated they have a holding tank.

Lestikow verified that they will lift the structure, replace the foundation and put back in its existing location. Lorenz stated that is his understanding.

White asked if there is a plan to raise the house. Lorenz stated no plans have been submitted.

White asked if the height is an issue. Lorenz stated they will have to look at the flood zone information and how it pertains to the structure.

Bill Palda, applicant, spoke of the request for the house and the variance for the foundation, but did the deck work in the meantime. He also provided photos of the decking in Exhibit VIII and feels that it is maintenance.

White suggested that the applicant come back due to the work that has been done with the deck, he will need a variance, bring back a full plan and have a variance hearing for both the deck and the house.

Netzinger also stated they need to know where the floodplain is, as that will affect the building and agrees plans need to be submitted. He also spoke of the hardship issue and to grant something today without knowing what the full plan is, is an issue.

Palda stated he believes they will only be able to dig a foot or so, and then add a 4 foot foundation, unless they need to.

Kettner asked about Exhibit II,3, a site plan, which refers to two places of elevation and asked what the slope of the lot is. Palda stated the elevation is a misprint, and have an elevation of approximately 93 feet at the lake and near the road it is near 100 feet.

White asked the actual distance from the edge of the lake to the edge of the structure. Palda stated the lake to the deck is 42 feet and feels because the beam structure of the residence extends from the deck to the back edge of the house, he views it as the same structure.

Netzinger asked if it could be moved back. Palda stated the challenge with moving it back would require moving the holding tank.

White asked why the house can't be moved back the other side. Palda was unsure and felt that they would be close to side yard setbacks.

White stated the holding tank can be moved. She also addressed the hardship requirement.

Kettner asked what is behind the septic. Palda stated that stockpile of soil is located for the dirt dug out for the construction of the foundation.

Ladas asked about the properties on each side and how close they are to the lake. Palda stated the home to the east is even with applicants and there is a vacant lot in between, the property to the west meets setbacks, as it is a newer property.

Ladas asked about new construction and lifting it to put a foundation in the same footprint. Palda stated that is correct.

Bev Vaillancourt, appearing in favor, stated she is the Town Chair, stated they did question the new construction on the deck and felt that the beams make it one structure. She also spoke of a variance request that was before the Board. She spoke of conditions from the Town, the house not coming closer than 57 feet, the deck not coming closer than 41 feet from the lake and that the house be put back into its original footprint and not expanded.

Jeff Stevens, applicant, appearing in favor of the request, stated that the septic system was installed per the requirements for elevations above high water marks, referring to V,1, the top of the septic tank is 2 feet above the high water mark, stated that is an elevation for construction. He stated the height of the house will be at that height or above.

White asked if a licensed contractor will be doing the work and an engineering plan. Stevens stated there would be.

White asked about the deck being part of the structure, could it be maintenance of the structure. Lorenz stated it is possible.

White asked about other variances requested, was anyone required to move anything and can this use averaging. Lorenz stated averaging would allow them to get closer than 75, but it would not allow them to get the building setback in the original footprint without the variance.

Ladas asked if a sanitary permit was issued in 2009 for the holding tank and it has to be 2 feet above the flood zone, can the Board assume that it is correct. Lorenz stated it would have been a requirement on the holding tank, but he would have to pull the permit to see if there was an elevation shot at that time to verify it meets the flood elevation.

Kettner asked if this was an original family structure, did they purchase, did they build themselves. Lorenz stated it's been in the family for 50+ years which would predate the ordinance.

White asked if a lot of these will be coming in the future. Lorenz stated he does not see a lot of homes that are built on piers.

Palda, reappearing, stated that the site plan that was submitted with the septic in 2009, as presented in Exhibit IX,1, does show that everything was permitted and went through the processing. White verified the plan does not show where the floodplain is located.

Stevens, reappearing, stated that the building was purchased and erected by Fish building supply.

Kettner asked how close did the water line come to the building with the 2008 flood. Stevens stated it was up to the front of the building.

Kettner asked if the building got wet. Stevens stated it has never had water damage.

Seeing as no one else wished to appear, Chair Kettner closed the public portion of the meeting at approximately 11:25 p.m.

Lestikow stated he doesn't feel there is a question of a hardship in this case and doesn't feel they should require him to pick it up and move it. He feels they built the house as required by code when they did it. He feels the deck is a non issue and merely put the boards down so they could have a deck and sees no reason why the variance shouldn't be approved.

White read the conditions that need to be met.

Lestikow states it a hardship because the house will fall in. It meets public interest because no one is here complaining. He stated it is unique because it would be financially unreasonable to ask them to move the house or the septic.

Netzinger feels the code has changed so you can't do anything with the building and the hardship is created because the code changed.

White read variance standards from 2010 for an area variance.

Netzinger stated this is a problem that he sees being a building inspector. He feels the government coming through and making changes creates a hardship for people and feels they meet the hardship due to the code change. He also suggested moving back would allow them to do something more to the building and where it's at, it stays at it is.

Kettner feels if they took the opportunity to move it back, it would allow future expansions. But feel the hardship was created by the changing of the ordinance and not by the property owner or the property itself and feels it was not self imposed but imposed by the Government.

White asked how this is unique property limitation that will keep them from meeting the ordinance.

Lestikow stated that the foundation is unique. White asked if that was a property limitation, such as a cliff or a road. She stated there is a relatively flat area and they could meet compliance.

Netzinger moves that we delay the decision until they have floodplain information.

White stated not having a complete plan to table.

Motion by Netzinger, seconded by White, to postpone the decision until floodplain information can be provided and a plan and bring back to the Board in July 25, 2013. **Motion carried 5-0.**

Netzinger asked if the building and septic can be moved, would it be in compliance with the other setbacks.

D. David Leatherberry (SP-11-13) requesting a special exception permit to authorize the location and continued operation of a mineral extraction site.

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 home shown in photo 5. Lorenz stated that is owned by the applicant.

White asked if there have been any complaints. Lorenz stated there were complaints in 2010 but doesn't believe there have been any since then.

Dave Leatherberry, applicant, appearing in favor of the requests, stated that he is requesting changes such as a 5 year to a 10 year permit, he would also like to operate from 6 a.m. to 6 p.m. on Saturdays for just the screening plant and stated it does not make any noise and stated this is a grandfathered permit and the fact that you can't go within 600 feet of a residence.

White asked how that would affect today's permit. Leatherberry stated it does not affect today's request with the changes he is asking for in the time and hours of operation.

Kettner asked about the large stockpiles and asked if that is typical or seasonal. Leatherberry stated that pile will eventually go back into the pit and will be worked away from the house and filled back into the pit area.

Kettner verified that large stockpile is saleable material. Leatherberry stated it is saleable material, but will be put back into the pit for reclamation.

Kettner asked about crushing and screening 6 a.m. to 9 p.m. M-F and if he starts that early. Leatherberry stated he doesn't start that early.

Kettner asked again about the stockpile. Leatherberry explained that it is for sale.

Ladas stated there have been several complaints about hours of operation and working on Sunday. Leatherberry stated the complaints were due to maintenance on the machines. He confirmed there has never been any operation on Sundays.

White asked if there have been any problems with road maintenance with the Town of Baraboo. Leatherberry stated there have been no issues.

Seeing that no one wished to appear closed at 12 p.m.

White spoke of the conditions from the prior permit.

Ladas stated that the Town of Baraboo put some stipulations they would like included, shown in Exhibit XII,3.

The Board reopened the public portion of the hearing.

Lorenz reappeared.

White spoke of the conditions from the Town of Baraboo and reviewed with the Board.

Netzinger feels they should stay with the 5 year permit.

Kettner stated he feels also that the permit should be good for 5 years only.

Ladas feels the 5 year requirement is suitable due to the complaints from the past.

Lestikow agrees with the 5 year.

Motion by White, seconded by Netzinger, to grant the request for the mine, with the conditions from Planning and Zoning, the conditions from 2008, changing the operating hours to included: screening hours allowed from 6 a.m. to 6 p.m. on Saturdays and the recommendations of the Town of Baraboo.
Motion carried 5-0.

Motion by Kettner, seconded by Ladas to adjourn. **Motion carried 5-0.**
Meeting adjourned at 12:15 p.m.

Respectfully submitted,

Henry Netzinger, Secretary