

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

PRESENT: Linda White, Chair  
Dan Kettner, Vice Chair  
David Allen  
Nicholas Ladas  
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. 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 July 25, 2013, 2013 session of the Board on a motion by Netzing, seconded by Kettner. **Motion carried, 5-0.**

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

COMMUNICATIONS: None.

APPEALS:

- A. Adin Yutzy (SP-12-13) requesting a special exception permit to authorize location and operation of a private school.

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 access to the property would be off of County Highway G. Lorenz stated that was correct.

White asked about whether this is a new school or a move of a school. Lorenz stated they are moving a building from another site onto this location and operate the school out of that.

Adin Yutzy, applicant, appearing in favor, stated they have a school on Larue Road and would like to move the school this the proposed property and the building was put on beams so that they could move it.

White confirmed that they have a driveway permit and septic permits in place for the move of the new school. Yutzy stated they do.

White asked if there will be more children traveling on County Road G. Yutzy stated most of them will have a shorter distance to travel.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 9:12 a.m.

Allen stated the Town Board supported it.

White spoke of the move being more convenient for them.

Motion by Netzinger, seconded by Allen, to approve the special exception permit request to authorize the location and operation of a private school with the conditions recommended by Conservation, Planning and Zoning. **Motion carried 5-0.**

- B. Alan Albers (SP-14-13) requesting a special exception permit to authorize the clear cutting of the shoreline of the north branch of Honey Creek.

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 to Leland. Lorenz confirmed.

White asked about the photos and whether it is representative of what the property looked like prior to the clear cutting that took place.

White asked why there were no citations and if there is a possible citation that can be issued. Lorenz explained due to Mr. Albers working with the Department it was decided that he would not receive citations.

White asked if while onsite there was any old fencing seen, as the applicant stated they were replacing old fencing. Lorenz stated he did not see any.

White asked if the work that had been done looked as if they could extend the tillable land closer to the creek. Lorenz stated that in some areas it did appear that way.

White asked Lorenz to point out a Bur Oak tree in the video. Lorenz stated he did not see any, however thought there may have been some near the north end by Highway PF.

White, referring to Exhibit II,3, asked Lorenz to circle on the photo where the length of the creek pertains to. She also confirmed it was both sides of the road and asked him to confirm if it is the length of an 80. Lorenz confirmed it is approximately ½ mile.

Ladas asked about the package of material that was received from people opposed to the request, and asked if the clear cutting that had already been done if it created more erosion. Lorenz stated the

material that was removed was primarily wooded material and the banks themselves were mostly undisturbed.

Kettner asked about the area that has already been cut, is there any fences that exist between the crop land, pasture land and the creek. Lorenz was not able to answer.

White asked about the disturbance that has been done and asked if it is their intent to continue cutting or if what has been done is what is being requested. Lorenz referred the question to the applicant.

White asked about the line of tillable land. Lorenz explained.

Alan Albers, applicant, appearing in favor of the request, stated that he wants permission to cut trees along the creek on his property. He spoke of the request to stop cutting and gave a background and history of the property along the creek. He then addressed statements made in a letter to the Board regarding the flooding in June, the trout stream, as there is not any designated trout stream below the Leland mill pond, and the destruction of wood duck habitat. He stated they did not cut the trees to increase the tillable land and will not till more land than has been historically done.

White asked about using the property for pasture. Albers stated it was used for pasture for many years and would like to see cattle down there, but it isn't an absolute requirement and he would have to build quite a bit of fencing.

Kettner asked if there was any pasturing of cattle in this area that is cut, would they have access to the creek or would they be kept by fencing from the creek. Albers stated they would have access to the creek.

Kettner stated when livestock have access to a creek does that add to the erosion area of a creek bed from the traffic. Albers stated only in a few places, but it doesn't cause as much erosion problems as the trees on the bank.

White also stated it depends on how heavy the traffic is.

White, referring to Exhibit IV, 6, a map showing the north side of the road, asked Albers to confirm the map is from prior to the clear cutting and asked him to draw a circle on where the property is already cut. Albers did so. She also asked him to circle where it is his intention to cut in the future. White confirmed it is the full length of the creek.

White also asked if the intent would be to cut on both sides of the Highway. Albers stated he intends to cut on the south side of the highway.

White stated she has been at the stream and asked him to confirm that where the cutting has taken place there are no trees left from the clear cutting. Albers stated that is correct.

White then reviewed the Exhibit IV, 3 with the rest of the Board members showing the circles that Mr. Albers drew on the map.

Kettner asked about the trees along the stream going north towards Leland, the trees that are beyond that point, he intends to cut them. Albers stated that is correct. Kettner stated some of those trees look

to be 50-60 feet tall and asked him to verify those trees are only 35 years old. Albers stated that is correct.

Kettner asked if the trees are destructive to the stream bank rather than holding it in. Albers stated that is correct and the trees are mostly Box Elder trees.

White, referring to Exhibit V,1, showing the length of the stream bank and if that was typical of what was there prior to the cutting. Albers stated that was correct and he intends to make it as bare as it the recent cutting is now.

Jeff Albers, appearing in favor of the request, stated he is the applicant's son and currently living on the homestead. He provided a background of the property and provided Exhibit VIII, 1 and 2, showing bare root erosion from an existing tree and stated that the canopy of the trees is not allowing the grass to grow on the banks and verified that they did not remove any of the stumps.

White/Kettner asked if they are cultivating fields near the stream. Albers stated they are losing fields as they are choosing to move farther away from the creek. He then provided Exhibit IX, 1 - 9 showing photos of the creek and spoke of clear cutting they did in the early 1970's. He stated that they would only put 6-8 head of cattle maximum in the area.

White asked what is the biggest concern with those that are here in opposition. Albers stated he feels their issues are personal.

White asked how far back from the stream would be a safe distance for a tree to be. Albers stated it depends on the topography of the land and feels maybe 15 feet and they did not cut further away from the creek than about 15 feet.

White spoke of the qualifier for replanting. Albers spoke of the working between the fields and the stream and the placement of the trees. White stated working with a planting plan from conservation that would address those issues.

Kettner stated that it is in the nature of a stream like this to continuously change and the fact that it does that naturally.

White asked what their intention is for maintenance on this cutting plan in the future. Albers stated they will be putting things on the roots to kill the roots and then he plans to take a brush cutter down and finish cutting the shrubs. The intent is to maintain and keep it in only grass.

Leroy Schell, appearing in favor of the request, stated he has property in the area and spoke of the flooding they have in the area to get the water out of Leland and get downstream and need to have the creek cleaned up.

White asked if he has land that needs to have cutting done. Schell stated he does not and only owns property in Leland and doesn't have flooding issues on his own property, but feels it's important for the community.

Malenna Smith, appearing in opposition, spoke of the flooding in the area and standard knowledge of trees slowing down the water. She also stated that the issues that were spoke of that are personal are the White Deer issues that have nothing to do with the clear cutting. She then referred to the letter sent

to the Board regarding the proposal to clear cut and also reviewed the Shoreland Protection Ordinance. She also stated that they were not allowed to express or provide any input by the local land owners during the Town Board hearings and a decision was made without local input. She spoke of the property that has been cut being south of the bridge and it being clear cut and nothing left along the creek where there was a tree lined corridor. She addressed the fact that they are asking for a permit for something that has already been done without any penalty and asked the Board to look forward for a better vision of the creek rather than looking back at what may have happened over 30 years ago, as farm practices have changed since then. She then referred to the Shoreland Ordinance as it pertains to shore cover and natural beauty, as well as flooding and pollution.

White asked about testimony regarding natural structure and trees with good root structure. Smith stated that Box Elder are considered a weedy species and are not the best wood and referred to comments made by some DNR staff.

White referred to the ordinance that allows for cutting with a plan and read from the ordinance itself.

Smith talked about setting precedent and to do it and know there will not be consequences.

Amy Sprecher, appearing in opposition, stated they have a wetland marsh that abuts the applicant's property and they are upstream from the cutting. She then provided Exhibit X, 1 and 2, maps that show the floodplain and wetlands of the area. She also stated she met with Jean Unmuth, and with the wetlands mapping, both are very concerned that this is a wetlands area. She spoke of the creek being classified as a medium priority due to the silt, as well as the trout stream classification, and not enough buffer area between Honey Creek and the cropping.

Jeff Albers, reappearing in favor, stated that many area farmers along Honey Creek do this all the time, never get a permit and no one ever turns them in and the Department does nothing about it. He also feels that the Board addressing scenic beauty is in the eye of the beholder and one persons' opinion.

Netzinger asked if there is a plan for continued cutting. Albers stated there is not.

Alan Albers, reappearing in favor, spoke of flooding issues and feels the trees blocking the stream creates more flooding of agricultural land.

Seeing as no one else wished to appear, Chair White closed the public portion of the meeting at approximately 10:50 a.m.

White read from the ordinance regarding clear cutting and feels the applicant should have to come up with a plan that meets the ordinance.

Netzinger feels there needs to be a plan as well.

White stated they could require them to have a plan that is enforceable by Planning and Zoning.

Netzinger does feel that Box Elders can be removed but should be replaced with something else.

Motion by White, seconded by Ladas, to approve the special exception permit with the conditions recommended by Conservation, Planning and Zoning, and add Condition E, that the applicant shall work with Conservation, Planning and Zoning staff to create a revegetation plan that meets the

standards of the Shoreland Protection Ordinance and no work shall continue until such plan has been submitted and approved by Conservation, Planning and Zoning, which shall be monitored throughout the project for compliance with the Vegetation Plan and the Shoreland Protection Ordinance.

**Motion carried 5-0.**

Discussion and possible action on an appeal postpone from June 27, 2013. White stated she has asked Corporation Counsel to come in and provide some guidance on the variance standards and the ordinance.

A. 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.

Alene Bolin, Sauk County Corporation Counsel, appearing, provided options the Board has regarding the appeal. Option 1: is the proposed foundation maintenance and repair – if this is the decision, no variance is needed, as it is needed to be allowed for non-conforming structures. Option 2: replacement or relocation of a nonconforming principal structure. Use hasn't been discontinued for 12 months or more, at least 35 feet from the high-water mark, the county determines that no other location on the property exists for the same size of a structure.

White asked for verification of being replaced in the footprint now or within the 75 feet. Bolin explained it can be in the same place it is now, but it has to be determined that there is no other location on the property to place the same size structure.

White asked if this determination should be decided in the office. Bolin stated it should be decided in the office, however, if it doesn't meet either of these two then a variance could be requested. She also stated if the building can be moved, then a variance should not be granted.

Ladas confirmed that if they are doing repair work, Zoning could issue a permit.

White feels the request is maintenance and the footprint will not change, no rooms will be added they are simply building a foundation.

Ladas agrees that this is maintenance.

Motion by White, seconded by Ladas, that due to testimony and exhibits provided, the Board determines that the work to be done shall be considered maintenance on the non-conforming structure and shall not need a variance request. Applicants shall apply to Planning and Zoning for a land use permit. **Motion carried 5-0.**

Motion by Allen, seconded by Netzinger to adjourn. **Motion carried 5-0.**

Meeting adjourned at 11:18 p.m.

Respectfully submitted,

Henry Netzinger, Secretary

