

SAUK COUNTY BOARD OF ADJUSTMENT
May 26, 2011 Session of the Board

PRESENT: Richard Vogt, Chair
Linda White, Vice Chair
Robert Roloff, Secretary
David Allen
Henry Netzinger

ABSENT: None

STAFF PRESENT: Dave Lorenz
Gina Templin

OTHERS PRESENT: See Registration slips

Chair Vogt 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 White. **Motion carried, 5-0.**

The Board adopted the agenda for the May 26, 2011 session of the Board on a motion by Allen, seconded by Netzinger. **Motion carried, 5-0.**

Motion by White, seconded by Allen to adopt the March, 2011 minutes. **Motion carried, 4-0 with Vogt abstaining.**

COMMUNICATIONS: None.

APPEALS:

A. Brad Peck (SP-08-11) requesting special exception permits to bring into compliance an existing farm market and amusement park with ponds within 110 feet of a property line and variances to authorize the location of an existing flagpole within the side yard and road setbacks.

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.

Roloff referred to the photos and if it showed the flagpole that was in question. Lorenz confirmed.

Roloff asked about the location of the ponds. Lorenz explained and referred to the applicant for more detail.

White asked about the list of things that needed to be brought into compliance and how it was missed in 2005. Lorenz explained in 2005 what was existing was considered legal non-conforming and the previous BOA was granted for the ag-related business and many of these uses have been added since.

White asked about the zoning change. Lorenz explained.

Vogt asked that because of the activities the zoning had to change to Rec-Commercial and now they are applying for a Special Exception permit to have the certain activities, and the structures that were built without permits have been rectified other than the flagpole. Lorenz stated that everything has been brought into compliance other than the existing flagpole.

Netzinger asked about the non-motorized vehicles. Lorenz explained that was a condition requested by the Planning, Zoning Committee.

Brad Peck, applicant, appearing in favor of the request, stated that staff covered the request very well and it is an existing family business and has grown over the years.

Vogt asked about the Town Board and Plan Commission. Peck stated they have approved his request.

Vogt asked about the survey maps submitted by Driftless Area (Exhibit IV,7) and showing structures on other's property. Peck stated that has been corrected and that the fence is now on the correct property line and the structure is now on their property, just not meeting the setback.

The Board verified that Exhibit IV,4 is the accurate map. Peck confirmed it.

Vogt determined that the special exception and variance will be addressed separately.

White asked about the neighbors and having a problem with the flagpole. Peck stated they are ok with it.

White asked if it is the intention to have motorized vehicles on the track. Peck stated they do not, it is a tri-cycle track and have no intention of motorized track.

Seeing as no one else wished to speak about the special exception request, Chair Vogt closed the public portion of the hearing on the SEP.

The Board discussed the growth of the business and the rezoning.

Motion by Roloff, seconded by White, to grant the special exception permits to bring the property into compliance with a farm market, amusement park and ponds within 110 feet, with the conditions listed by Planning and Zoning. **Motion carried 5-0.**

Chair Vogt then opened the public portion of the meeting to discuss the variance request for Mr. Peck.

Peck reappeared.

Vogt explained the three criteria necessary for the Board to grant a variance. Peck spoke of the unique property limitations the highway right of way is larger than others in that area, as well as overhead power lines and congested with the buildings and traffic and feels this is the only spot for the flagpole that is not close to the highline or the traffic patterns. Peck stated his hardship would be the expense to move it. He also stated that he does not feel it would be any type of hazard to public interest.

Vogt asked how far it is from the right of way. Peck stated it is about 6 feet.

Vogt referred to Exhibit IV,5, showing that there is 2.5 feet from the property line and it is required to be 10 feet from the side yard. He stated the setback for the right of way is 50 feet.

Roloff asked what the speed limit on USH 14 is. Peck stated it is 55 mph. Peck spoke of a flag pole in the Village of Loganville. Roloff stated that the regulations are different for villages and cities.

White asked about any accidents in the area. Peck stated he does not.

Vogt stated to bring the flagpole into compliance would bring them near the warehouse. Peck stated that was correct. He also spoke of the traffic pattern and the semi loading and unloading.

Vogt asked how tall the flagpole is. Peck stated it is 68 feet.

Vogt confirmed that the applicant's hardship is the expense of moving the flagpole, the unique property limitations is the depth of the right of way and the power lines. Peck stated that was correct.

White asked about the road setbacks being changed on the highway. Lorenz stated he does not know when the right of way lines were established along there, but it is not unusual for there to be varying widths to county and state highways depending on the location.

Vogt referred to Exhibit IV,10 a map of the highway. The date of the map is June 14, 1965.

The Board reviewed when the zoning ordinance was established.

Peck reappeared. Vogt asked when the flagpole was built. Peck stated it was put in the mid 1970's, but he does not know exactly when.

White stated the Board could add to the hardship, and believes there is no harm to public interest.

Allen asked how long something needs to be in place to be considered grandfathered. Vogt stated that there is no such things as grandfathered but if a structure was built before the ordinance, it can be considered legal non-conforming.

Roloff asked if the Board grants a variance and adds a condition that if the Department was able to determine that this was a legal non-conforming structure based on the timing of the flagpole being built and the ordinance. Lorenz explained that the Department would have to establish whether the setbacks were in place when the structure was put up and whether or not it required a permit at that time. He stated if the board feels it meets the 3 criteria, you can grant the variance, or if there are questions the Board needs answered, they can postpone the decision and can be done at a later date after research has been done.

Vogt asked about needing a permit and meeting setbacks. Lorenz explained.

Netzinger stated this should have been checked out before it even came to the Board.

White stated that even if it is determined there is no permit required, you still need to meet setbacks.

Roloff stated there are too many unknowns for him to be able to make a decision on the variance. He also doesn't feel there is an unnecessary hardship, and feels there may be another place on the property that the flagpole can exist and still meet the setbacks. He also stated that financial issues moving the structure is not a hardship.

White feels that researching the history would be difficult and moving the structure to another part of the property would be difficult and the fact that it has been there for so many years, and it is important to have a flag flown.

Netzinger stated that anyone should be allowed to fly a flag and if you move it to meet setbacks it should be visible to the road and needs to be patriotic. He also doesn't feel that this type of structure is not a problem and the property presents a unique limitation for traffic to get around and feels moving the flagpole would create a hardship on his business.

Allen agrees with everything that was said and feels if it has been there that long, you should leave it. He also feels there are too many unknowns and feels spending the money to move it is considered a hardship.

Vogt stated that an unnecessary hardship and the expense is not something that legally can be considered. He also feels the structure is a minor structure and not a building and the right of way is significant. He stated there are places on the west side of the property where it could be moved to and still visible. He doesn't feel the request is contrary to public interest. He feels it doesn't meet all 3 requirements.

Motion by White, seconded by Netzinger, to grant the variance for the flagpole structure to remain in the side lot and right of way setback, as the applicant can't show one way or another that permits were needed, is unsure on whether the department was a part of that and feels the property is unique because of the larger right of way and the hardship is that the right of way is so large and overhead lines are existing, which is not in control of the applicant. **Motion carried 3-2 with Vogt and Roloff objecting.**

B. Amber Giddings (SP-09-11) requesting a special exception permit to authorize the serving of alcoholic beverages and night lighting for an existing restaurant.

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.

Vogt asked about the location of the old motel, other residences and the location of Hooty's and the Farm Kitchen. Lorenz explained.

Vogt asked if everything out there is as is. Lorenz stated that is correct and spoke of the zoning that the Town of Baraboo has.

Amber Giddings, applicant, appearing in favor of the request, stated that Lorenz covered the request and when meeting with the Town of Baraboo to discuss expansion of the business, it was determined that if she planned to expand, the zoning needed to be changed and a special exception needed to be granted so that the business can be expanded, outdoor services on the deck for food and beverage and outdoor music.

White asked about the type of music that is expected. Giddings stated that she is customized more to her crowd which is more jazz and blues, such as a banjo or harmonica and the size and who the bands are have changed. 6-10 Thursday, Friday, Saturday nights and all the music would be done by 10 p.m. or moved inside and then on Sunday afternoon. She did speak to the residential neighbors and they are ok, as long as the music is done by 10.

Vogt asked if there is a document showing any conditions the Town wanted on the request. Giddings stated that the conditions that the Town will enforce is that music is only allowed Thursday, Friday, Saturday nights and Sunday afternoons, as well as the 3 large holidays in the summer.

White asked about the night lighting. Giddings stated she has a parking lot light outside and that is considered night lighting.

Roloff stated to change condition B from 5 years to 10 years and then the special exception permit being non-transferable.

Vogt asked about the Town's requirements of the music being shut down by 10 p.m. Roloff stated they can add a condition showing the hours, days, etc.

White confirmed what the special exception permits are for. Lorenz stated that it is for the sale of alcohol and night lighting. White confirmed they have no say on the music and the Board agreed that is between the applicant and the Town.

White asked about the night-lighting. Giddings stated that the lighting is for the parking lot.

Vogt confirmed there is no auxiliary lighting for the deck or so on. Giddings stated that any lighting on the deck will be candles, or lighting that can be taken down at the end of the day.

Roloff asked how long the existing light has been there. Giddings was not sure, but she confirmed it was there prior to her owning the property.

Vogt asked if any sports field or volleyball is planned. Giddings stated she does not plan on it.

White asked if there is a problem if a condition was placed to keep the night lighting to what is existing. Giddings stated she is ok.

Linda Johnson, appearing in opposition, stated that she owns the Willowood Inn, northwest of the property and is concerned that the music be expanded and the night lighting be expanded, but feels after hearing the testimony, they are not opposed to that. She spoke of the quietness of their business and their guest expect a quiet area. She has a problem with music happening on the deck outside and feels that affects her business. She stated they feel anything allowing outdoor music should not allow drums, amplifiers, or any type of equipment and feels the Sauk County Sheriff's Department should be equipped with the proper equipment.

Vogt explained what the request was for, the lighting and the services of alcoholic beverages and the music aspect is not part of the zoning ordinance. Johnson stated they have no issues with the night lighting and has an objection to the alcohol being served outside.

Vogt asked where her property is located. She showed where her property is located.

White explained what the Board's role is for this request.

Steve Kerns, appearing as interest may appear, stated that there is other recreational commercial land out in that area and stated that his concern is an unfenced deck, and if service is outside, the deck should be enclosed area so kids can't get in. He stated that zoning doesn't enforce their own ordinances and feels that no matter what is decided they won't enforce it anyway.

Roloff spoke of condition A requiring all permits for Town, County, State and Federal permits and those type of issues would be addressed in that. Kerns stated that Sorenson assured them that they would be kept in the loop.

Giddings, reappearing, stated that the first summer she was in business, she had larger bands and trying to get through the process and work with the Town. She spoke of being able to use the deck after 10 p.m. for service and people going outside.

Vogt asked about contact with the Sheriff or the Township. Giddings stated that Sauk County would come out and witness the issues and she was told that what she was doing was not unreasonable and allowed her to continue. She also spoke about other businesses having bands in the area. She stated that Willowoods quiet time is at 10 p.m. and matched up the ending time.

White asked about a bar outside for sales. Giddings stated she has no problem with the bar sales inside, with customers being allowed to eat and drink outside.

Roloff asked if there will be a server carrying drinks outside to people sitting on the deck. Giddings stated she would.

White stated she feels there it should be 5 year permit versus 10. Vogt stated the county can issue citations and revoke the permit if need be.

Seeing as no one else wished to appear, Chair Vogt closed the public portion of the meeting at approximately .

Motion by Vogt, seconded by White, to approve the special exception permit for alcoholic sales and night lighting (as is as of date of the permit) with the conditions recommended by Planning and Zoning, with the permit being 10 years and add the condition that the permit shall not be transferrable. **Motion carried 5-0.**

Meeting adjourned at 10:55 a.m.

Respectfully submitted,

Robert Roloff, Secretary