

SAUK COUNTY BOARD OF ADJUSTMENT

*SAUK COUNTY WEST SQUARE BUILDING
505 BROADWAY
BARABOO, WI 53913
Telephone: (608) 355-3285*

July 22, 2010

DECISION
SAUK COUNTY BOARD OF ADJUSTMENT
Appeal Application No. SP-14-10

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald Fluette
S5505 Old Lake Rd.
Baraboo, WI. 53913

Dear Mr. Fluette,

On July 22, 2010, the Sauk County Board of Adjustment considered your application for a variance pursuant to sections 7.13(5)(c) and 7.18(3)(b) of the Sauk County Code of Ordinances. Based upon the applicable records, evidence and testimony presented at the hearing the Board of Adjustment makes the following:

FINDINGS OF FACT

Donald Fluette, hereinafter referred to as "Applicant" applied for an area variance pursuant to Sauk Co. Code s. 7.13(5)(c) and 7.18(3)(b) to authorize the structural rebuilding of the foundation of a detached garage within the minimum road setback.

Sauk Co. Code s. 7.13(5)(c) provides that: No part of any building which has a setback less than is required by this ordinance shall be enlarged or structurally altered within the front yard established by the setback required by this ordinance for the district in which such building is located.

Sauk Co. Code s. 7.18(3)(b) provides that: For all class C highways setback lines are hereby established, parallel to and a distance of 63 feet from the centerline of such highway or 30 feet from the right-of-way line, whichever is greater.

The existing garage is approximately 39 feet from the centerline of Old Lake Road.

This property is located in the Town of Baraboo, in the Agricultural zoning district and is owned by Donald Fluette. The property is subject to Chapter 7 of the Sauk County Code of Ordinances.

CONCLUSIONS OF LAW

The Sauk County Board of Adjustment may not grant a variance unless all of the following three elements are found: 1) a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, 2) the special conditions creating the unnecessary hardship are unique to the property rather than considerations personal to the property owner, and 3) the issuance of the variance would not be contrary to the public interest. Wis. Stat. 59.694 (7)(c). It is the burden of the Applicant to prove the three elements. State ex rel. Ziervogel v. Wash. County Bd. of Adjustment, 2004 WI 23, P7, 269 Wis. 2d 549, 676 N.W.2d 401, State v. Waushara County Bd. Of Adjustment, 2004 WI 56, P2, 271 Wis. 2d 547, 679 N.W.2d 514.

An unnecessary hardship cannot be self created. When considering unnecessary hardship in area variance cases the determination is whether compliance with the strict letter of the restriction would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. State ex. Rel. Ziervogel at P24. In order to determine whether this standard is met, the Board must consider the purpose of the zoning restriction in question, its effect on the property and the effect on the neighborhood and greater public interest. *Id.* At P&

Upon reviewing the testimony and information provided at the public hearing, the Board found that the Applicant did demonstrate that the necessary requirements under Sauk Co. Code s. 7.17(4)(c) for the Board approval of a variance. The Board addresses each of the factors for consideration for an area variance as follows:

1) Whether strict compliance with the ordinance would create an unnecessary hardship for applicants?

The Board determined that the current owner had nothing to do with the creation of this situation. The ongoing problem of water and ice damage to the foundation was not caused by the owner and to deny the variance would unreasonably burden the owner from using the garage. The highway setback is for safety purposes and adjoining property owners testified that no safety issues had been observed.

2) Whether the property had unique characteristics which prevented the applicant from complying with the ordinance?

The garage was built prior to Sauk County adopting the Zoning Ordinance. The building came to be in a nonconforming location when the County adopted the Highway Setback provisions of the Zoning Ordinance.

3) Whether granting the area variance would be contrary to the public interest?

The public interest will not be compromised by granting the requested area variance. The location of the detached garage does not present a safety issue to the public on Old Lake or Gall Road.

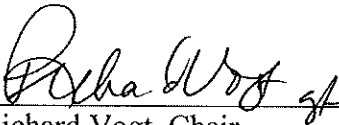
DECISION

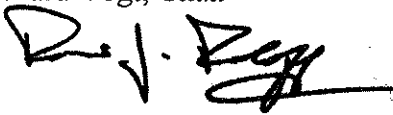
Based upon the evidence, testimony, exhibits and legal authority, the Sauk County Board of Adjustment, by a vote of four to one, grants your request for variances to authorize the location of the replacement of your garage foundation.

APPEAL RIGHTS

A complete record of the entire hearing and the decision of the Board is available for inspection at the Sauk County West Square Building. Please note that advance arrangements may be necessary to inspect such records. This decision will become final unless a written appeal is filed with the Sauk County Circuit Court within 30 days of the decision being filed in the Sauk County Planning and Zoning Office. Copies of the record may be secured upon written request and upon payment of the transcription fees.

Very truly yours,
SAUK COUNTY BOARD OF ADJUSTMENT


Richard Vogt, Chair


Robert Roloff, Secretary

Filed on this date 7-27-10

COPY TO:

Mr. Robert Roloff, S1661 Fox Court, LaValle, WI. 53941
Mr. Richard Vogt, S10284, Dead End Road, Plain, WI. 53577
Ms. Linda White, S3175 White Road, Reedsburg, WI. 53959
Mr. David Allen, S3951 Grote Hill Road, Reedsburg, WI. 53959
Mr. Henry Netzing, E11085 Sauk Prairie Road, Prairie du Sac, WI. 53578
Mr. Ron Lestikow, S6463 Devils Delight Road, Merrimac, WI. 53561
Mr. David Wernecke, E13119 State Road 33, Baraboo, WI. 53913
Sauk County Planning and Zoning Office
Town Clerk
District Supervisor