

**SAUK COUNTY BOARD OF ADJUSTMENT**  
**July 22, 2010 Session of the Board**

**PRESENT:** Richard Vogt, Chair  
Robert Roloff  
David Allen  
Henry Netzinger  
David Wernecke, Alternate

**ABSENT:** Linda White

**STAFF PRESENT:** Gina Templin  
Dave Lorenz  
Mark Steward

**OTHERS PRESENT:** See individual appeal files for registration appearance slips.

Chair Vogt called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:05 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. Certification accepted on a motion by Roloff, seconded by Netzinger. **Motion carried 5-0.**

Motion by Netzinger, seconded by Wernecke to adopt the agenda for the July 22<sup>nd</sup> meeting. **Motion carried 5-0.**

Motion by Netzinger, seconded by Wernecke to adopt the minutes from the June meeting. **Motion carried 4-0 with Roloff abstaining.**

**COMMUNICATIONS:**

None to report.

**APPEALS:**

- A. Donald Fluette (SP-14-10) requesting a variance to authorize the replacement of the foundation of an existing garage within the minimum road setback.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request as well as photos and a video of site.

Wernecke asked in the application the zoning ordinance that is sited why is the nonconforming uses section of the ordinance are not referenced. Lorenz stated he felt that the setback from the road was the issue, although it is a nonconforming use.

Wernecke asked that it would be useful that address the nonconforming uses that are present. Lorenz agreed.

Vogt then determined that the request is an area variance and reviewed statutory requirements for a variance.

Donald Fluette, applicant, appearing in favor of the request, stated that he would like to repair the building, not building a new one and the stairs are pushing the blocks in and will be removed.

Vogt asked the applicant to address the 3 criteria. Fluette stated he doesn't know if it is a hardship or not, but he lost his wife last fall and he doesn't need any more burden on his health and all he wants to do is repair it.

Vogt asked if he is planning on repair the wall that is unsound or will there be a new foundation. Fluette stated he will repair wall and remove steps to deal with the water drainage.

Vogt asked if there is a basement under the garage. Fluette stated that the garage is 3 levels. Basement, the garage where the car is parked and then the top level where there is storage.

Vogt asked how much of the wall is being replaced. Fluette stated the one next to the steps will be replaced and the windows will be removed and replaced with wall.

Vogt asked if anyone has addressed if he doesn't do the repairs. Fluette stated if the repairs aren't done, then it will most like fall down and be removed.

Vogt asked if he considered building a new garage. Fluette said he does not.

Vogt asked for unique property limitations. Fluette said he cannot think of any.

Vogt asked about harm to public interest. Fluette stated he has 3 neighbors here and they are ok with it.

Netzinger asked if he is changing the size. Fluette stated he is not, but merely replacing the wall and the steps.

Vogt asked if there are beams. Fluette stated there is a wall going down the center of the floor and the garage floor is a poured slab.

Vogt asked if they will need to jack up the garage. Fluette stated they may and put a poured wall versus block wall.

Vogt asked if you could put a block wall in without jacking up the structure. Fluette stated he is unsure.

Wernecke asked if any repairs were done to the building in the past. Fluette stated he put a new roof on it.

Wernecke asked if there are accidents in the area. Fluette didn't address accident, but spoke of storage use of the building.

Wernecke asked again about accidents around the intersections. Fluette stated he is unaware of any.

Roloff asked about the requirement of unnecessary hardship and explained what the applicant needed to address and asked how not getting this variance would make it impossible to use the property. Fluette stated he doesn't know how long the garage will stand without the repairs.

Netzinger asked how much of a difference in there between the house and the garage. Fluette stated he isn't sure.

Mark Steward, Planning and Zoning Director, appearing, provided the Board with a staff opinion on a variance of this nature. He addressed the 3 criteria of a variance as it relates to this request.

Wernecke asked about the nonconforming building and in the staff report, there is nothing referred to in that section of the ordinance, that allows owners to maintain it in its existing location without any change in use and why it was not used pertaining to this issue. Steward stated the ordinance addresses nonconforming uses, not

nonconforming structures. In this case it is not a nonconforming use and explained the interpretation of the ordinance.

Wernecke read from 7.13(1)(f)4 and stated that in the past, he has looked at the use rather than the building itself and use the 50% standard on whether the building could be repaired. Steward stated again this is not a nonconforming use, but is a setback variance. Wernecke stated the ordinance implies that it is allowed. Steward stated the building can meet all the setbacks and be a nonconforming use. Steward continued to explain.

Roloff spoke of Chapter 8 addressing nonconforming structures. Steward agreed and that Chapter 8 does address them, while Chapter 7 doesn't address nonconforming structures, but uses.

Vogt explained the uses and structures and how the variances are applied between area variance and a use variance.

Wernecke spoke of no structural alteration, but this case is a maintenance issue, referring to nonconforming uses and read from the ordinance again. Steward addressed the difference between the use and the structure and the request that is being made.

Vogt stated that this has always been people trying to find what is the 50% rule in Chapter 8, the difference between use and area, and is somewhat of a grey area.

Netzinger asked for an explanation of what is a repair versus an alteration. Steward stated that a repair is filling in a crack or sometimes addressing water damage to seal a crack, etc., but removing a foundation to replace or add a partial foundation is a structural repair.

Roloff stated that they have to make a judgment call and need to hear from the contractor to find out the extent of the repair/replacement.

Wernecke spoke of the nonconforming use in the ordinance, the total structural repairs or alteration on a structure that is a nonconforming use. Steward read the definition of a nonconforming use and explained how the issue of nonconforming use is different than a nonconforming structure.

Wernecke asked about the interpretation of 7.13(c) – where is speak of being enlarged or structurally altered, and is confused on whether they are talking about a repair or an alteration. Steward read the front yard definition from the ordinance and how it applies to this case. He then read the definition of a structural alteration from the ordinance.

Vogt explained the difference between a change/repair and an alteration. Wernecke confirmed that if they repair the blocks that are there, there would be no issue, but if they replace the supporting structure, then there is an issue.

Lorenz reappeared and provided conditions to be followed if the variance is approved.

Bruce Wallace, appearing in favor of the request.

Vogt asked if the vehicles are parked in front of the garage is there an issue. Wallace stated there is no problem how he parks because he is not into the road, and has created no problems.

Harry Zastrow, appearing in favor of the request, stated that he feels they shouldn't be here and a lot of time and money wasted here and stated that the wall is the only thing that will be changed and feels it is strictly maintenance.

Vogt confirmed he is the contractor and asked if the wall can be fixed without replacing it. Zastrow stated that is not doing the job right and you need to put a new wall in place and will be about 30 feet of wall on one end, but does not have exact measurements.

Vogt confirmed the steps are removed and the entire wall will be replaced that is adjacent to the steps. Zastrow stated that is correct, his wall replace all the blocks.

Roloff asked if a new north wall, west wall, east wall and south wall. Zastrow stated they will jack up half the garage on the north side and the blocks will be replaced with a new poured wall and will pour part of the west wall and maybe even part of the east wall.

Wernecke asked what led to the wall failing. Zastrow stated that the Township keeps building the road up and water comes in and should have been addressed by the Town.

Marianne Powers, appearing in favor of the request and she has lived there 50+ years and there has never been a problem with traffic. Vogt confirmed the intersection has never been an issue. Powers agreed.

Vogt asked if she feels it would be in the best interest to grant the variance. Powers agreed.

Robert Stafford, appearing in favor of the request, stated he can see why the man can't fix his garage and he has never seen a problem with the corner.

Vogt asked what his opinion would be if he wanted to tear it down and build a whole new garage.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 10:00 a.m.

Vogt asked each member to address unnecessary hardship. He spoke of the nonconforming issues and spoke of eliminating a nonconforming structure. He feels in this case there is a hardship, but is using his heart instead of his head where the hardship is concerned.

Vogt then spoke of unique property limitations and feels there are no unique property limitations. He then spoke of public interest and feels at this point in time the public interest is not an issue. His concern is that what he wants to do is whether or not a variance is even required due to alterations versus repairs.

Roloff stated that he has changed his mind since he heard the testimony versus reading on paper and once he heard the extent of the project he feels it is maintenance and repair and not alteration because the footprint does not change and they are not replacing all of the walls, but only 3 of the 4 walls and feels a variance is not even needed. He feels the Board is stuck with an imperfect ordinance and the maintenance, alteration and repair are poorly defined in the ordinance.

Netzinger stated that if a variance is required, the Township was a bad neighbor and feels that is the hardship because they caused the problem not the property owner and feels he is repairing it not structurally altering it. He agrees that the garage is too close but the house is nonconforming also. Feels this needs to be closely looked at in the new ordinance.

Vogt stated that eventually this garage will be replaced and the problem with this is structural versus repair.

Netzinger asked if there is a large window in a living room and need to alter the header, do you want to require them to get a variance. Netzinger stated he feels this should not be a variance and is cutting straws in interpreting the code and does not agree how the ordinance is being interpreted.

Allen stated that whether you repair a structure, a roof or anything, it doesn't matter. He also stated that he doesn't know the financial state of the applicant but feels it is a hardship to require him to put more money into it.

Wernecke stated if they look at this as a variance, he doesn't believe it meets any of the 3 criteria. However, he is looking at the ordinance under the nonconforming use versus the structure. Now looking at the setbacks as pertained in the ordinance, if reading the ordinance, in his experience, setbacks have always been strictly interpreted and in 7.18 section 7, provides the Board some leeway, but also points out that setbacks for structures within setback lines shall not be altered or enlarged in any way that increase the size or prolong the life of the nonconforming structure. He also spoke that it can be allowed by the Board of adjustment to allow a nonconforming building to continue in its use. He stated that he doesn't see a big issue with keeping it where it is. It's been there 40-50 years and feels it is fine where it is at and based on the variance, he would have to vote it

Wernecke stated he is focused on nonconforming down, but on section 7.18, he could allow the repair. As presented to the Board, he cannot grant the variance, but looking at the ordinance there is another way it can be done.

Vogt stated that in the variance or in Chapter 7, they do not talk about area, they talk about uses and the way the courts have defined it, since the ordinance was written, you can refer to chapter 8 and say this is in an alteration, however it would be allowed if it is less than 50% and the county would track the amount of money and construction on the building and after that it goes away. Uses and not nonconforming structures referred to section 7.18 again and the language there refers to structure not use.

Wernecke stated he has a structure that is in the setback and would like to be able to maintain that, and this would affect him as well on his own property.

Roloff stated if the variance is denied, where does this leave the property owner.

Wernecke stated they are supposed to decide on a variance and that is what is put in front of them.

Roloff stated in 2004 the courts granted the Board more discretion in determining what is an unnecessary hardship, the unique property limitations and no harm to public interest and have more discretion than they used to, so he believes the board can grant the variance.

Vogt stated that he agrees with Roloff and the board has some latitude.

Motion by Vogt, seconded by Roloff, to grant the variance given the facts of the case and by denying it will cause hardship to the applicant, being that the situation caused by an act of nature and the Town and not the applicant and over time has deteriorated the structure and is in need of repair. **Motion carried 4-1 with Wernecke in opposition.**

- B. Verizon Wireless (SP-15-10) requesting a special exception permit to authorize the location of a new telecommunications tower.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request as well as photos and a video of site. He then provided recommendations by staff if the request is approved.

Peter Schau, appearing as agent for the applicant and Verizon Wireless, in favor, stated that they wish to place 180 foot freestanding structure, the lightning rod will add 8 feet. He spoke of current sites and the coverage gap near highway 12 and throughout the Town of Sumpter. They have researched using an existing tower which will

be done, but an additional tower is still needed to provide coverage in that area. He addressed the performance standards set forth in the ordinance and the least amount of impact on the surrounding properties.

Roloff asked about the propagation maps, Exhibit II,28, the maps reference blue, green and brown and the map is in black and white and asked for an explanation of the map. Schau explained.

Roloff asked about Exhibit II,31, the tabular inventory of Verizon sites in Sauk County and asked if that is current. Schau stated that is current. Roloff asked about the site in La Valle. Schau stated that is pending construction and is going on the US Cellular tower and have already received a land use permit from the County, it just has not been added to the existing tower.

Vogt asked about being away from residences and other buildings, and with a tower of this size, how far are you required to be away from other buildings. Schau spoke of the ordinance being set back 2 times the height of the tower and 500 feet from the nearest residence, other than the one on the same site. He stated the closest setback they have from the parent parcel line is 450 feet and they are about 1200 feet from the nearest off site residence.

Vogt confirmed that there is a potential of 3 other users on this tower. Schau stated they did design the tower to hold 3 other carriers, similar to what is happening at La Valle.

Vogt asked if Sauk County Emergency Gov't could use the site. Schau stated it is available to them to use.

Wernecke asked about other sites where there is rental on other towers. Schau explained. Wernecke asked about properties along Highway 12. Schau stated they were looked at intensely and the lands along Highway 12 have restricted easements as well as land protected by Devils Lake and such, which is some reason why the location was selected, rather than something along Highway 12. He also spoke of the restriction of setbacks being double the height of the tower.

Wernecke asked about the materials to be used in the construction of the tower. Schau explained.

Wernecke spoke of bird migratory and asked if the company has done any research into towers affecting birds. Schau stated they do a full report on bird migratory and get recommendation from the study. He continued to explain the research. He then spoke of the Town Board requesting lighting because of medical helicopters coming out of Devils Lake.

Wernecke spoke of a letter from the Nature Conservancy request on the light. Schau stated what they don't want is a strobe light, which they are not. He also said if it is possible, Verizon will change the color of the light, but he is unsure if that will violate any FAA requirements. He then presented Exhibit VIII,2 and VIII, 3, which is the Town recommendation and a revised map showing the lighting as the Town has requested.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 10:55 a.m.

Roloff asked about the condition by the Nature Conservancy on the construction equipment being clean of invasive species, shown in Exhibit VIII,1.

Wernecke asked if a condition be provided that the lighting be a white light, long flash, if it meets all FAA requirements.

Motion by Vogt, seconded by Netzing, to approve the special exception permit for the tower siting with the conditions provided by Planning & Zoning, and adding the conditions that all construction equipment be clean of invasive species to prevent spreading and the lighting be modified as requested by the Nature Conservancy, as long as it complies with all FAA standards. **Motion carried 5-0**

C. Ken & Robin Meier (SP-16-10) requesting a special exception permit to authorize the location of a cottage industry, dog grooming.

Dave Lorenz, Environmental and Zoning Specialist, appeared and provided the history and background of the request as well as photos and a video of site. He then provided recommendations by staff if the request is approved.

Roloff asked about the conditions and don't they make them nontransferable. Lorenz stated they do.

Diana Meier, applicant, appearing in favor, stated they are proposing to open a pet grooming business, no boarding, no kenneling, no overnight stays. She is the only one employed and expects to be there no more than 2 years and this is the only business that will be located there.

Vogt asked if this will be temporary. Meier stated they will open here as a test, because the owners living in Madison and intend to move back into the area, which then they will expand to a different permanent location.

Allen asked if the business is proposed or already there. Meier stated it is currently in operation and was started in mid April and the Town Board said it was ok, but they didn't know about the County rules.

Netzinger stated the Town Board did approve the request.

Tim Colby, representing the Town of Sumpter, appearing in favor of the request, stated that he is the Chair for Sumpter and the planning commission and town board support it. He stated he is also the adjacent land owner to the south and west and has no problem with the cottage industry there.

Judy Ashford, appearing in favor of the request, stated that she was one of the first customers of the business and is glad to see there is a small business opening in the area that provides a service that is hard to find and they did a great job with the animals and charges a reasonable price and intends to continue to use the services.

Seeing as no one else wished to speak, Chair Vogt closed the meeting at 10:50.

Motion by Roloff, seconded by Wernecke, to approve the special exception permit for a cottage industry permit for dog grooming, with the conditions supplied by Planning and Zoning, with the added conditions that the permit is good for 5 years and is not transferrable. **Motion carried 5-0**

Motion by Wernecke, seconded Netzinger to adjourn.

Respectfully submitted,

Robert Roloff