

May 26, 2011

DECISION
SAUK COUNTY BOARD OF ADJUSTMENT
Appeal Application No. SP-08-11

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bradley Peck
S11752 Peck Rd.
Spring Green, WI. 53588

Dear Mr. Peck:

On May 26, 2011, the Sauk County Board of Adjustment considered your application for a special exception permit, pursuant to Sauk Co. Code § 7.08(2)(b)6, 10, 14 and 22 and variances per 7.08(3)c and 7.18(1)(b) Based upon the applicable records, evidence and testimony presented at the hearing, the Board of Adjustment makes the following:

FINDINGS OF FACT

Bradley Peck, hereinafter referred to as "Applicant", applied for special exception permits pursuant to Sauk Co. Code § 7.08(2)(b)6, 10, 14 and 22, to bring into compliance a farm market with an amusement park, miniature golf course, a tricycle race track and ponds within 110 feet of a road or property line and variances for a flagpole located within the side yard and road setbacks. The property is located in section 8 in the Town of Spring Green and subject to Chapter 7, of the Sauk County Zoning Ordinance.

Section 7.08(2)(b)6 of the Sauk County Zoning Ordinance provides that a special exception permit is required for amusement or recreational parks or services. Section 7.08(2)(b)10 provides that a special exception permit is required for golf driving ranges and miniature golf courses. Section 7.08(2)(b)14 provides that a special exception permit is required for go-kart or similar race tracks. Section 7.08(2)(b)22 provides that a special exception permit is required for ponds or lakes within 110 feet of a property line or road.

Section 7.08(3)c provides that there shall be a side yard on each side of a structure of at least ten feet in width. Section 7.18(1)(b) provides that the setback line for a class A highway shall be 110 feet from the centerline of the highway or 50 feet from the right-of-way line, whichever is greater.

The surrounding area contains agricultural properties with very few residential properties. A special exception permit was granted in 2005 for the expansion of an agricultural related business.

CONCLUSIONS OF LAW

The Sauk County Board of Adjustment may not grant a special exception permit for these activities unless all of the conditions listed in Sauk Co. Code §7.08(2)(b) and (4)(b), are met. As part of its review, the Board must determine whether the location of the site is consistent with the intent of the ordinance and whether the site will significantly injure the public health, safety or welfare. The applicant has the burden of showing that the permit meets the standards designated in Sauk Co. Code § 7.05(2)(1)10. Edward Kraemer & Sons, Inc. v. Sauk County Board of Adjustment, 183 Wis. 2d 1, 515 N.W.2d 256, 262 (1994).

Upon reviewing the evidence and testimony, the Board determined the requested uses are consistent with the purpose and intent of the Recreational-Commercial District. The board made this decision based on testimony and information provided at the hearing, and the following:

The Board determined that this site has been used for these activities for over forty years without Planning & Zoning receiving any complaints or issuing any citations. The Town of Spring Green also recommended that the Board of Adjustment grant the special exception permits for these uses as requested by the applicant.

DECISION

Based upon the evidence, testimony, exhibits and legal authority, the Sauk County Board of Adjustment, by a vote of five to none, approves your request, subject to conditions, to grant the special exception permits for these activities.

In issuing the special exception permit, the Board set forth the following conditions the Applicant shall comply with:

- A. All work on and use of the premises shall proceed with the plans and supplemental evidence presented at the hearing. It is the responsibility of the applicant to secure all required Town, State, Federal and County permits prior to commencing operations.
- B. No work shall be commenced prior to receiving the Board of Adjustment decision letter and securing the required permits.
- C. The race track shall be limited to non motorized vehicles only.
- D. Sauk County Planning and Zoning shall be granted permission to view the site to ensure compliance with these conditions and other relevant provisions of Sauk County Ordinances. The power to ensure compliance with these conditions is given to Sauk

County Planning and Zoning. If the department finds that any of these conditions have been violated, they are hereby authorized to take corrective action, either through suspension of the permit, citations or by any means of enforcement that is within their power.

E. Failure by the Applicant to follow all of the conditions set forth by the Sauk County Board of Adjustment is grounds for suspension or revocation of the special exception permit and possible enforcement action. In order to have the special exception permit reinstated after suspension, the applicant must comply with all conditions established by the Board of Adjustment, as determined by the Sauk County Planning & Zoning Director or appear in front of the Board of Adjustment. In order to have the special exception permit reinstated after revocation the applicant must appear in front of the Board of Adjustment for a new hearing and comply with all requirements as outlined in this letter.

CONCLUSIONS OF LAW

The Sauk County Board of Adjustment may not grant a variance unless all of the following three elements are found: 1) requiring the property owner to comply with the strict letter of the ordinance would cause unnecessary hardship, 2) the conditions creating the unnecessary hardship are unique to the owner's land and not self created, and 3) the issuance of the variance would not be contrary to the public interest. It is the burden of the Applicant to prove the unnecessary hardship. 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. The burden is on the applicant to show that all three required elements of a variance are met. Edward Kramer & sons, Inc. V. Sauk County Board of Adjustment, 183 Wis.2d 1, 16-17, 515 N.W. 2d 256, 262 (1994).

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 to move the flagpole to a compliant location would be an unnecessary hardship by restricting access to the existing warehouses by delivery trucks.

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

The Board determined that the property was unique due to the variable and wide right of way of highway 14 at this location and due to the location of the electric power lines.

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

The Board was of the opinion that public interest would not be compromised by granting the requested area variance. The location of flagpole does not present any safety issues to the public.

DECISION

Based upon the evidence, testimony, exhibits and legal authority, the Sauk County Board of Adjustment, by a vote of three to two, grants your request for variances to authorize the location of the existing flagpole.

APPEAL RIGHTS

A complete record of the 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: _____

COPY TO:

Mr. Richard Vogt, S10284 Dead End Road, Plain, WI. 53577

Ms. Linda White, S3175 White Road, Reedsburg, WI. 53959

Mr. Robert Roloff S1661 Fox Court, La Valle, WI. 53941

Mr. Henry Netzinger, E11085 Sauk Prairie Road, Prairie Du Sac, WI. 53578

Mr. David Allen, S3951 Grote Hill Road, Reedsburg, WI. 53959

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