

SAUK COUNTY BOARD OF ADJUSTMENT

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

December 15, 2011

DECISION
SAUK COUNTY BOARD OF ADJUSTMENT
Appeal Application No. SP-29-11

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Todd Taylor
N2372 Rausch Rd.
Lodi, WI. 53555

James Abbey
120 Carriage Tr.
Barrington, IL. 60010

Dear Sirs:

On December 15, 2011, the Sauk County Board of Adjustment considered your application for a special exception permit, pursuant to Sauk Co. Code § 8.08(3)(a) and a variance pursuant to 8.06(2). Based upon the applicable records, evidence and testimony presented at the hearing, the Board of Adjustment makes the following:

FINDINGS OF FACT

Todd Taylor and James Abbey, hereinafter referred to as "Applicant", applied for a special exception permit pursuant to Sauk Co. Code § 8.08(3)(a), to authorize filling and grading within 300 feet of Lake Wisconsin and a variance for a proposed deck within the minimum shoreline setback. The properties are located in Section 36 of the Town of Merrimac and subject to Chapter 8, the Sauk County Shoreland Protection Ordinance.

The surrounding area is a residential subdivision.

CONCLUSIONS OF LAW

The Sauk County Board of Adjustment may not grant a special exception permit for filling and grading unless all of the conditions listed in Sauk Co. Code §8.08(3), 8.14(3)(b) and 8.14(3)(c), are met. As part of its review, the Board must determine whether the proposed project is consistent with the intent of the ordinance and whether the work 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 § 8.08(3). 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 project is consistent with the purpose and intent of the Shoreland Protection Ordinance. The board made this decision based on the following testimony and information provided:

The Board determined that the proposed filling and grading will improve stormwater management in this location and help to prevent erosion into the lake.

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, for a special exception permit to authorize the filling and grading.

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 within one year of the hearing date. County permits required for this approval include land use permits for filling & grading.
- B. No work shall be commenced prior to receiving the Board of Adjustment decision letter and securing the required permits.
- C. Erosion control shall be installed and maintained until the site is stabilized/revegetated per the plans submitted at the time of application.
- D. This project shall not increase stormwater runoff onto neighboring properties.
- E. Sauk County Conservation, 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 Conservation, 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.
- F. 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 Conservation, 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 not demonstrate that the necessary requirements under Sauk Co. Code s. 8.14(4)(a)5 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 any hardship was self created by the fact that the residence could have been designed to accommodate a deck within the required setbacks and the applicant still has reasonable use of the of the property without a variance.

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

Based upon a review of the information provided, the Board felt that the property could not be considered unique due to the fact that the minimum setbacks are the same for any lot in the shoreland district.

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

The Board was of the opinion that the minimum setbacks imposed in the shoreland district are in effect to protect the public interest.

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


Linda White, Chair

Filed on this date: 12/15/11

COPY TO:

Ms. Linda White, S3175 White Road, Reedsburg, WI. 53959
Mr. Henry Netzing, E11085 Sauk Prairie Road, Prairie Du Sac, WI. 53578
Mr. David Allen, S3951 Grote Hill Road, Reedsburg, WI. 53959
Mr. Daniel Kettner, E4717 Rolling Ridge Road, Spring Green, WI. 53588
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