

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
January 19, 2015

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Rooms 1 & 2, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Edward Szachnit, Marj Bachhuber, and James Garbe (Alternate). Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department. Others present included David Hickethier, Portage County Deputy Corporation Counsel.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

Jerison and Heather Woyak, Owners, John Woyak, Agent (P15-01)

The Jerison and Heather Woyak, owners, John Woyak, agent, special exception request from the provisions of the Portage County Zoning Ordinance to allow one non-farm residence on greater than 35 acres, in the A1 Exclusive Agricultural Zoning District, Town of Sharon, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated the Woyaks own 51.5 acres of land which is zoned A1, Exclusive Agricultural. The landowners are non-farmers; however the land will continue to be farmed. The ordinance states they must make their livelihood off the farm; a majority of the income has to be earned off the farm. The Woyaks do not meet this criteria, and the ordinance has a provision where a non-farmer can petition BOA to build one single-family, non-farm residence on this land.

Jazdzewski swore in Jerison Woyak and Heather Woyak and asked them to explain their request. Heather Woyak stated when they originally bought this land, it was in two separate parcels; they were unaware of this at that time. Heather stated the front parcel is 34.75 acres zoned A1, and the back parcel is 16.75 acres zoned A4. Woyak stated they want to build on the front parcel due to the proximity of the road. When they started the building process, they found out they needed a special exception because they were at 34.75 acres and they needed a 35 acre parcel. Since that time, the two separate parcels have been combined; however, there are still two separate zoning classifications.

Szachnit asked if the land was surveyed when originally purchased, and Heather answered no. Szachnit asked if this is why they did not realize the buildable portion of the property was located in the back. Heather stated they did not look into it because it was a 51 acre parcel; they never thought there would be any issues with building or zoning.

Jazdzewski asked if they intend to rent out or lease the land, and Heather replied they will farm the land, most likely by themselves. Heather stated the land was rented out this year, but they plan on doing it themselves in the future. Szachnit asked if they have some other source of income, and Heather answered yes.

There being no further questions from BOA, Jerison and Heather Woyak were excused. Jazdzewski asked if any other members of the public wanted to speak on this matter.

Ron Hensler, Town of Sharon Plan Commission Chair, was sworn in. Hensler stated the Town of Sharon approved the consolidation of the two parcels to allow the Woyaks to do what they need to do. Hensler

explained when the 40 acre parcel was split, a parcel was taken off the front for a residence and they were left with a 34.75 acre parcel; adding surveys today are more accurate. Hensler stated they have to jump through hoops to get all the necessary things done. Jazdzewski stated if this parcel matched the zoning on what used to be the zoning on the back parcel, it would not be an issue.

Bachhuber asked the Woyaks why they did not ask for a variance on the 34.75 acres, and Hensler stated he believes there was instruction from staff that suggested how the Woyaks should proceed.

Pelky stated the correct wording is not that if they had 35 acres they could do it; it is the fact that they are non-farmers. They are unable to build on A1 land if they are a non-farmer, unless the acreage is below 20 acres. If they are below 20 acres, they can build on it. Due to the fact it is larger than that, the ordinance states they would need to go through BOA to build on it. Pelky added the Woyaks wanted to go through this process. The Town of Sharon has said they could rezone the property; however that process can take three to four months. Pelky stated the Woyaks want to get going on building soon, adding they can build once they get all the necessary permits. Pelky reiterated this property could be rezoned out of this district into a category they could just build outright; this is just a faster process than the rezoning.

Bachhuber asked why he did not ask for a rezoning, and Hensler replied they are in the process, once the County goes through and determines what they are going to do for Farmland Preservation. There is a series of A1 40's or smaller parcels, and possibly under the Wisconsin Working Lands Initiative, those smaller parcels probably shouldn't be kept. Hensler stated maybe they would rezone everything that is odd at that time, and this is when they would catch up on this.

Jazdzewski stated his assumption would be that the A1 is probably more uniform with the neighborhood than the A4. Hensler stated this is one of those odd spots; adding on the other hand, that land is good land as far as the Town of Sharon goes.

There being no further questions from BOA, Hensler was excused.

Jazdzewski read the following into the record:

- Excerpts from the Town of Sharon Board Meeting Minutes from January 13, 2015, stating they approved the special exception request to build a non-farm residence, as recommended by the Plan Commission.
- Excerpts from the Town of Sharon Plan Commission Minutes from January 6, 2015, stating they approve the request for a non-farm residence.

Jazdzewski asked if there were any other members of the public wanting to speak on this matter; it was noted there were none. Jazdzewski closed testimony and opened deliberations.

Bachhuber stated the parcel number is listed as 032-25-0934-05.06, adding on the map that shows where the house is, the parcel number is listed as 34-05.04. Jazdzewski explained the combined parcel becomes the new description, stating this is the map that showed the two separate parcels. On the back side of that map is another one showing the combined parcel, 34-05.06. Pelky stated the map Bachhuber is referencing was provided by the applicant before they combined the parcels, and it shows the house location. The back map actually shows the parcel after being combined.

Bachhuber read from page 2 of the packet, stating BOA is required to evaluate and/or find the following in order to approve the petition:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Approve the Appeal

- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
Bachhuber stated there has been no other residential development. Jazdzewski stated the foreseeable future development should be addressed in the motion.
- (l) The availability of alternative locations;
This is where the Woyaks want to build.
- (n) Such other factors as are relevant to the purposes of this ordinance.
Nothing added.

The Board is Required to Find All of the Following Conditions Under 7.1.6.5(D)(2)(c) in Order to Approve the Appeal

- (1) The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
Jazdzewski stated he feels this fits this requirement.
- (2) The use would be consistent with surrounding uses and the neighborhood would not be injured thereby.
There were no objections noted.

Bachhuber stated she understands the difficulty of having the two parcels, and she listened to the time table presented. Bachhuber stated it wouldn't seem to her that the Woyaks could start to build right now anyway, and this is just an expedited way to get something done. Bachhuber stated the proper way to do this is with a rezoning, and if they wanted a non-farm residence on this much acreage, they should have done a rezoning. Bachhuber stated she believes this is an improper action to get this accomplished.

Jazdzewski stated he believes in working with his township and the ongoing A1 issues, right now they are in limbo until the County moves forward with what their plans and expectations are. In addition, the fact that they are wishing to construct a non-farm residence is based on the fact that the majority of their income is not derived from the farm. Jazdzewski stated they still are farming it; either someone else will farm it or they will continue to farm it in the future. Jazdzewski stated the County Ordinance simply states that to build a residence on 35 acres, you have to get a special exception, and that is what they are here addressing. Jazdzewski stated he can understand the urge to rezone, but at this point they have two parcels that were combined; one zoned A4 and one zoned A1. They really do not know which would be the right way to classify the new parcel. The Town Plan Commission is unsure where the County is heading. Jazdzewski stated he believes that is why they are here; they are not trying to sneak around something.

Pelky stated the Town of Sharon has had a chance to comment on this; they feel comfortable enough moving forward with this request. Staff believes it is allowed through the plan to rezone it. Pelky stated there is no objection to rezoning the property; the area out there is not intensive farm area. Pelky stated the landowners were looking for guidance, and staff tends to leave it up to the Township. If the Town of Sharon looked at this and they want to preserve this land in A1, they have the ability to do this. The landowners were explained the two options and they had to make the decision which way to go; rezoning or BOA. Pelky stated they support the request and that this is a use they feel comfortable with. The Town of Sharon feels comfortable with it also.

Szachnit asked when parcels of land are combined, who decides what the zoning changes to, and Pelky replied the zoning would stay the same. Jazdzewski stated while the parcel is combined in description, the zoning remains the same.

There being no further discussion, Jazdzewski asked for a motion.

Motion by Soik to approve the request for a special exception as submitted.

Jazdzewski asked Soik if he wanted to include any conditions suggested by staff, and Soik responded he does not feel it is necessary if this will go through rezoning. Jazdzewski stated basically anything that would come in the future would need that anyway; Soik agreed.

Jazdzewski asked for a second. Bachhuber moved to amend the motion, and was informed they need a second to the motion first. Motion to approve seconded by Szachnit.

Motion by Bachhuber to amend the motion to add the condition:

1. Any future construction for a second home will require a rezoning to a zoning district that will allow this activity.

Bachhuber stated she feels this is vitally important because you don't know when this rezoning by the Town will take place. Motion to amend seconded by Meis. Motion to amend passed 4-1 by roll call vote, with Soik voting nay.

Jazdzewski asked for a vote on the original motion as amended. Motion to approve, as amended, passed 5-0 by roll call vote.

Donald and Irene Gagag, Owners, Clifford Gagag, Agent (P15-02)

The Donald and Irene Gagag, owners, Clifford Gagag, agent, variance request from the provisions of the Portage County Zoning Ordinance to construct a feed room addition to a barn within the road setbacks, in the A1 Exclusive Agricultural Zoning District, Town of Sharon, was opened by Jazdzewski, who read the public hearing notice.

Pelky explained this request is for a 16'x17' feed room addition onto an existing barn. Pelky added a lot of this construction happened before zoning, and where the addition is going is too close to the road. The setback requirement is 63' from road centerline, and the closest part of this addition is 47' away from centerline. There is a letter in the packet from the Town of Sharon Plan Commission.

Jazdzewski swore in Clifford Gagag and asked him to explain the request. Gagag stated this addition is needed to make more space in the feed room. In addition, the space will double up as an animal holding facility to make it easier to load the cattle out and bring cattle in. They have been having a lot of difficulty with that with the current situation. Gagag stated the 16'x17' is probably a foot or two larger than they will actually build; they want to make sure they have enough room because they know they cannot build bigger. Gagag stated in 1998 they received a variance to put feed bunks which are 15' closer to the road than this feed room addition, and that has not posed any problems whatsoever to anyone. Gagag feels this new addition should not pose any problem.

Bachhuber asked the circumstances of the variance in 1998, and Gagag explained they were revamping their feedlot and yard for the cattle; they used to be a dairy operation and converted to beef. Gagag stated they wanted to put drive-by bunks for feeding and in order to get relatively decent yard space, they needed to put these bunks in the road setback. Gagag stated they left enough room for a driveway. Bachhuber asked if they have a permanent structure there, and Gagag stated the bunks are movable but there are steel posts with concrete and a fence behind them. Gagag added this has never been a problem to the township for plowing or anything. Gagag stated it is a dead-end road with one neighbor. Bachhuber asked what would happen if the town ever decides they need to widen the road, and Gagag stated he supposed they would have to be moved; however, he does not foresee a need or reason to widen the road.

Jazdzewski stated the variance granted in 1998 got them way out to the road; the addition requested now is within that. Jazdzewski stated if the feed room is going to be the problem, the feed bunk will really be a problem. Gagag stated the feed bunks are 15' closer to the center of the road. Gagag stated this is a dead-end road which goes into a swamp; he believes nobody will build beyond that.

Szachnit asked if the neighbor was to the east, and Gagag stated the neighbor is to the west. Szachnit asked if this is swampland, and Gagag stated the road goes right into the Jordan Swamp.

There being no further questions from BOA, Gagag was excused. Jazdzewski asked if there were any members of the public wanting to speak on this matter.

Pat Wanserski, Town of Sharon Chairman, was sworn in. Wanserski stated the owner has primary control of the parcels of land nearby, as well as owning the two residences on Cattle Lane. Wanserski stated that area is a piece of land that the Town fought really hard to keep in A1; they are going to keep that attitude going forward as long as he is Chairman. Wanserski added this is some of the best land for growing that they have in the Town of Sharon. Wanserski added he does not think there will be with a problem with what Gagag wants to do on that parcel. One reason is because the road is a chip-seal road; if they have to repair it, they would not do the entire road, just a section. Another reason is Wanserski believes there will not be any more development in that area; what is going on now is probably what is going to happen for a long time. Wanserski stated they watch this area closely because they have seen what can happen with development.

Bachhuber asked if there is any possibility that they would decide the road would need to go through, and Wanserski stated there would be so much DNR red tape and one of the two landowners would be the cause; therefore, they would need to be responsible for the cost of improvements. Wanserski stated the Town's Road Ordinance and Subdivision Ordinance are written where if a landowner causes a major subdivision, they will be given a bill from the Township and be in charge of major improvements.

Bachhuber asked what the Town would do if someone decided to put in a subdivision and a road was needed. Wanserski stated that would fall back on the owner because they caused the action to happen, as written in the Town's Subdivision and Road Ordinances.

Jazdzewski asked if a variance is granted to build within the road right-of-way, which is technically something that is supposed to be maintained, who would be responsible or liable if for some reason the road did have to be widened? Would they have to surrender land? Mrdutt explained it depends on what is being used; eminent domain or something else. Mrdutt stated that would be a case of physically buying out property, and at that time if the setback is of concern, whoever is buying it would have to remove said structures. Mrdutt stated the proposed addition is not protruding into the right-of-way; it is protruding into the setback from the right-of-way. The Town still has the ability to do what they want in that scenario or development to improve in the right-of-way.

Gagas stated if there would be an issue; that is why there is vacant land across the road that belongs to the family that could be utilized.

The being no other members of the public wanting to speak, Jazdzewski closed testimony and opened deliberation.

Bachhuber read from the Variance Facts and the following was noted:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Grant the Variance. The pertinent subsections are as follows:

- (a) The maintenance of safe and healthful conditions;
There is currently a feed lot there and the property is zoned A1, Exclusive Agricultural. There are no safety issues and they are not encroaching on the right-of-way.
- (b) The prevention and control of water pollution including sedimentation;
Gagas stated the roof pitch will be away from the feedlot into a vacant yard. There are no water issues.
- (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
Jazdzewski stated this is not an issue. Gagas added the roof pitch will stay the same as the feed room has now, and everything will move away from the yard.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
Jazdzewski stated all this property is zoned A1, Exclusive Agricultural. There is no issue.
- (l) The availability of alternative locations;
There are no alternative locations.
- (n) Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) in Order to Grant the Variance

- (1) Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
Yes.
- (2) The use is permitted in the District;
Yes.
- (3) Exceptional circumstances apply to the use that does not generally apply to other landowners;
This deals with the placement; they are limited in where they can go. Landowner currently has a variance for the feed bunks, which would also include the feed yard.
- (4) Granting the variance would not be detrimental to surrounding landowners;
This is not an issue.
- (5) Hardship is not caused by any person having interest in the property.
No.

Jazdzewski stated there are feed bunks, and the extension of the building Gagas wants to build would probably not go past the steel post cemented in the ground. Gagas stated the extension will be 15' less than the feed bunks. Jazdzewski stated it is a safety issue, and this addition will help with loading of the cattle; thus reducing the risk to family members and employees. Jazdzewski added there will not be a trailer partly on the road trying to load cattle. Jazdzewski stated he does not like the fact it is encroaching on the setbacks; but the barn existed prior to zoning and they will not move the entire barn.

Jazdzewski asked for a motion to approve, deny, or postpone the variance request.

Motion by Meis to approve the variance request as submitted with the following conditions as listed in the staff memo:

1. Obtain a Portage County Zoning Permit.
2. A complete set of building plans must be on file.

Motion to approve seconded by Szachnit. Motion to approve passed 5-0 by roll call vote.

Stephen and Kathleen Welter, Owners (P15-03)

The Stephen and Kathleen Welter, owners, variance request from the provisions of the Portage County Zoning Ordinance to construct a garage addition within the road setbacks, in the R2 Single Family Residential Zoning District, Town of Eau Pleine, was opened by Jazdzewski, who read the public hearing notice.

Mrduitt stated the owners want to put a 14'x24' addition onto the garage so they are able to rearrange some internal rooms. The property is zoned R2; the setback off the right-of-way would be 63' and the proposed addition encroaches into the setback by 4.5'. Mrduitt added this is a shoreland property also, and all shoreland setbacks are met. When looking at Shoreland Ordinance language and talking about impervious surfaces, where this addition is proposed is already on impervious surface. They are not increasing impervious surface with this addition.

Jazdzewski swore in Stephen Welter and asked him to explain the request. Welter stated they recently acquired the property and are looking to try to put a laundry room on the main floor; currently it is in the basement. Welter stated this is a multi-level house and it is three half-flights down to the basement. They would like to make it more user-friendly, as well as incorporate a mudroom. Welter explained they are trying to utilize a corner of the garage to create the mud/laundry room. They want to maintain full stall depth for the vehicles; they would like to go 14' straight out from the garage.

Szachnit asked if he extends the garage out for better utilization, will that allow for room for the cars, trucks, and utility vehicles. Welter replied that by bumping it out, there will be a space and they will use a corner of the existing garage. By bumping out, there should be enough depth for the vehicles.

Bachhuber asked Welter if they have looked at alternative locations for what they want to accomplish, and Welter replied they did. In looking at the site to the south of the garage, the septic and drainfield is located there. To the west of the garage, towards the lake, there is currently a deck. That does not create the entrance ability to put the mudroom in and still get the vehicle in. To the north is not possible because that is where the house is located. Towards the road to the east is the only option, to allow access and not interfere with existing structures. Bachhuber asked where the pedestrian door is located, and Welter stated the front door is between the garage and the main house. They will create a walkway to the front door. Jazdzewski stated he had the opportunity to walk to the back and did not look at the roofline, and asked if there is a gable or does the roofline from the center portion of the house come straight through. Welter responded the gable goes all the way to the back. Jazdzewski stated it is possible structurally to go out the back way with an addition. Welter stated it is possible, but the additional depth would not be usable because they would be going through the mudroom to get to it. Bachhuber asked why he could not move the door, and Welter stated the hallway in the middle where the front door comes in is only so large. There is a hallway between the house and the garage. It would take an addition on the hallway towards the lake as well to accomplish that.

There being no further questions from BOA, Welter was excused. Jazdzewski asked if there were any members of the public wanting to speak on this matter. It was noted there was none.

Jazdzewski read the following into the record:

- A letter from the Town of Eau Pleine stating they voted to approve the setback of 5' for the variance request.
- An email from Michael Wenzholz, WI-DNR, stating the DNR does not believe the applicant can demonstrate meeting the three criteria required to be granted a variance.
- A letter from Kathy Egan and Gary Egan stating they support the petition.

Bachhuber stated it appears there is enough room in back of the garage for an addition, and asked staff if there is the same size addition in the back would it comply with the Shoreland Zoning Ordinance. Mrduitt stated if it can meet the 100' setback; however, staff likes this option better because if they are building in the back they will increase impervious area in a shoreland area. Staff feels this is a better alternative than an addition

anywhere else on the property. Bachhuber asked if this was staff's suggestion, and Mrdutt answered no. Jazdzewski stated given the options, it was the preference of staff.

Bachhuber read and discussed the following:

- A letter to Lynn Markham, University of Wisconsin Stevens Point, from a former BOA Chairman dated 2009, relating to granting only the minimum variance needed.
- Excerpts from a Supreme Court Decision - Schneider Variance Request.

Mrdutt stated these letters are adequate cases when you look at them in the scope of what they were asked; however those were for shoreland variances. Mrdutt stated the request before BOA today is not a shoreland variance; so the burdensome test does not apply. That test for weighing the variance in regards to burdensome is for shoreland variances, not for setbacks from roads or property lines. Bachhuber asked about only giving the least amount of relief, and Mrdutt replied that case is for shoreland setbacks. Mrdutt stated he is not aware of any cases for property lines or other variances that have gone through asking that question in the scope of setback from a road. Mrdutt stated this is a shoreland property; however, they are not seeking a variance through the Shoreland Ordinance.

Jazdzewski stated that helps in the judgment of what is a self-imposed hardship when it comes to looking at those issues; but that would be if they were building off the back side. This specifically is for a variance in the road setback.

Soik asked if Wenzholz from the DNR actually visited this property and conducted a separate on-site, and Mrdutt answered no.

Jazdzewski closed testimony and opened deliberations.

Bachhuber read from the Variance Facts and the following was noted:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Grant the Variance. The pertinent subsections are as follows:

- (a) The maintenance of safe and healthful conditions;
This is not a problem.
- (b) The prevention and control of water pollution including sedimentation;
The proposed addition will be on impervious surface. Bachhuber stated if an addition is done behind the home, they would be increasing impervious surface.
- (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
Jazdzewski stated he sees no issue; however the staff memo states the petitioner would have to obtain a Portage County Stormwater Permit.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
Jazdzewski stated this is basically a bedroom community; a lot of seasonal dwellers. Mrdutt added this property is located on a dead-end; there are two properties that could be developed in the future.
- (l) The availability of alternative locations;
There was previous discussion on building off the back side of the home.
- (n) Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) in Order to Grant the Variance

- (1) Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
Jazdzewski stated this would not harm anyone.
- (2) The use is permitted in the District;
Yes.
- (3) Exceptional circumstances apply to the use that does not generally apply to other landowners;
Jazdzewski stated they purchased a house previously built, and the landowners are not responsible for the placement of the house. They are addressing their options at this time. Bachhuber stated she believes they should have asked about the possibility of adding onto the home prior to purchasing it.

Soik stated it appears other lots in the area are deeper and have more available space to do projects. Placement of the home was discussed. Soik stated they are talking about 4½' of a 14' addition and if the house were set closer to the water by 4½', they would not have to go through this process. Mrdutt stated that is correct. Soik stated they are talking about 4½' and if they can or cannot build from the road setback.

- (4) Granting the variance would not be detrimental to surrounding landowners;
- (5) Hardship is not caused by any person having interest in the property.

Bachhuber stated there is a certain amount of personal responsibility about buying property and then finding out later that you cannot do what you thought you could do. This is a responsibility you should take into consideration before buying a property. Bachhuber stated in this case if they had done their due diligence in buying the property, they would not be here today. Jazdzewski asked what inside length they are allowing for their vehicles from the garage door wall to the mudroom wall, and Welter stated the garage is currently 22' deep. They want to use about 14' of that 22' so they are trying to maintain that depth and bump out and utilize the back corner. They want to keep 22' of finished garage. Regarding looking at the house and understanding what they can and cannot do, Welter stated they spent two years looking for a residence on DuBay. They had a number of residences they were interested in, but when they came up for sale and they got around to looking at them, they had already been bought. Welter stated this house fit their basic needs and there was not a lot of timeline to do a lot of anything else; they had to take what they could get after two years of looking. Soik reminded BOA again they are looking at 4½' on a road that is a dead end. Soik stated they could go ahead and do this if the house was positioned 4½' closer to the water. Soik wants people to think about that before they make up their minds.

There being no further discussion, Jazdzewski asked for a motion to approve, deny, or postpone the request.

Motion by Szachnit to approve the variance request as submitted with the following conditions as listed in the staff memo:

1. Obtain a Portage County Zoning Permit.
2. Obtain a Portage County Stormwater Permit prior to a Zoning Permit.

Motion to approve seconded by Soik. Soik stated he believes in local control; the Township voted to approve the request and he is asking BOA to respect the Town's wishes when voting. Motion to approve passed 4-1 by roll call vote, with Bachhuber voting nay.

Jazdzewski called for a 5 minute recess at 5:21 pm. Meeting called back to order at 5:26

Gerald and Debra Lazarski, Owners, Dave Steinle, Agent (P15-04)

The Gerald and Debra Lazarski, owners, Dave Steinle, agent, special exception and variance request from the provisions of the Portage County Zoning Ordinance to construct a detached garage exceeding the 2,800 square feet total accessory building space within the road right-of-way setbacks, in the R1 Rural and Urban Fringe Residence Zoning District, Town of Linwood, was opened by Jazdzewski, who read the public hearing notice.

Pelky stated the ordinance requires 30' setback from the road right-of-way and the landowner is proposing his garage at 10'; which is 20' too close. The special exception request is because the ordinance in R1 states a maximum of 2,800 square feet total accessory building space. Pelky stated including the proposed 40'x60' structure, the total accessory building space would be 4,224 square feet. Pelky stated BOA may want to address the special exception first to determine if the garage size is allowed, and then move on to the variance.

Jazdzewski reiterated the special exception request is to exceed 2,800 square feet and BOA should act on this part first, and then proceed with the variance. The testimony can be given at one time; however, they will consider the requests in two motions if so agreed upon by BOA.

Jazdzewski swore in Gerald and Debra Lazarski, and asked them to explain the request. Gerald stated they want to build a 40'x60' garage which would have a concrete floor, be made of steel, with two-tone being coloring to match the existing buildings. Gerald stated at the on-site they noticed tall spruce trees along the driveway and one large maple tree; they would like to keep these trees. Gerald stated a lot of the neighborhood has lost Elm trees and adjacent trees and there are not many trees left from when they first moved to this location. Gerald stated the lot had to be cleared; they had a lot of red pine that became diseased and had to be cut. Gerald stated they are the only house on Teal Court, which is a dead end road. At the end of Teal Court,

Lazarski owns five acres of woods. Gerald stated the neighbors, Steve and Eileen Hessel, own the rest of the land around them, and they are in agreement with the request to build the garage. Gerald stated the first pole shed they built was not big enough; there are three residents at Teal Court, and they each have a vehicle, in addition to boats and snowmobiles. This is the reason for another storage building; to supplement their existing garage. Gerald stated his son currently utilizes a temporary storage shed to store his vehicle. They want to get rid of that and put in a permanent structure that looks nicer than what they have.

Jazdzewski noted there is another parcel owned by Gerald W. and K. Frystak, and asked if they are landlocked or do they have access to their property some other way. Gerald stated they have access off the other side of the property off of Woodduck.

Bachhuber asked why they need a building this large, and Gerald stated his son lives with them and will continue to live with them. They each have jobs and drive so that is three vehicles, in addition to an extra truck. They do not like the temporary structure they have now; their son wants to be able to drive in. Debra stated she would like a space within it as well to do woodwork. Bachhuber asked if it will be heated, and Gerald stated only with a space heater and only in the one room Debra will do woodworking in.

Szachnit asked what caused the surrounding trees in the area to be cut down, and Gerald replied Dutch Elm Disease. Soik stated this is a recurring problem throughout the Town of Linwood.

Jazdzewski referenced page two of the application where it references access from Teal Court, and asked if they are also looking at a driveway. Gerald replied no, adding the main access is going to be on the other end of the building, behind the house. Gerald stated if they ever need to pull something through the garage at night it would be nice to have a door there, but they do not plan on putting a driveway in. Jazdzewski stated a lot of townships have limited or one access per parcel or per so many feet. Jazdzewski stated there is not a lot of room to the road in that area.

Bachhuber asked if they are dealing solely at this time with the special exception, and Jazdzewski stated the testimony is for the entire request. If it gets to the variance, the trees may be an issue. When dealing with increasing the square footage, the trees are not an issue.

There being no further questions, Jazdzewski excused Gerald and Debra Lazarski. Jazdzewski asked if there were any other members of the public wanting to speak on this matter. Carl Karcheski, Linwood Town Chairman, was sworn in. Karcheski stated he is here to affirm that the Town of Linwood supports both of the requests for Lazarski. Karcheski stated regarding exceeding the square footage, Mrdutt can attest that they have residents in their town that have tons of junk in their yard that is all out in the open. They are trying to get people to put buildings up to house their junk so that it is out of sight; adding if they can exceed the square footage, the town is in favor. Karcheski stated the Road Superintendent went out and measured the right-of-way, which is 66' on Teal Court. Karcheski stated they have no problem with the proposed building affecting anything on their road. Karcheski reiterated the Town of Linwood is in favor of approval for both of the requests.

Jazdzewski stated this is a dead end road, not a cul-de-sac, and drivers either do a series of Y turns or back up to the driveway to turn around. Karcheski stated he has personally plowed this road and Lazarski is the only resident on the road. Karcheski explained how they plow the road where the Lazarski's driveway is, adding the snow goes up and away from his property.

Bachhuber asked if for some reason the land sold to someone else, is there any likelihood the road would need to go through. Karcheski replied no, none at all, because there is nowhere for the road to go. Karcheski reiterated the Town Superintendent measured where the building would be and the Town Board has no issues with the requests.

Soik asked Karcheski if he could clarify if the Town of Linwood has a driveway ordinance in place at this time, so in the future if that becomes an issue with the door facing the road, that would be covered at the Town level. Karcheski replied the Town of Linwood Road Ordinance has a 200' separation between driveways. If for some reason in the future Lazarski would want a driveway from the door, they would have to close another driveway. Karcheski read excerpts from the Town of Linwood Road Ordinance.

Soik asked if the Land Use Plan for the Town of Linwood states that existing dead end roads have to remain dead end roads, and Karcheski answered no.

Bachhuber asked if the building had a different orientation, could they have a driveway off of their current driveway, and Karcheski answered yes.

There being no further questions for Karcheski, he was excused.

Jazdzewski read the following into the record:

- An email from Michael Wenholz, WI-DNR, stating the DNR does not believe the applicant can demonstrate meeting the three criteria required to be granted a variance.

Jazdzewski closed testimony relating to the special exception, and added they can reopen testimony if they need to when they discuss the variance.

Bachhuber read from the Special Exception Facts and the following was noted:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Approve the Petition

- (a) The maintenance of safe and healthful conditions;
This is not an issue.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
There are no problems with this.
- (k) The importance of the services provided by the proposed facility to the community;
The Township prefers the junk be under cover.
- (l) The availability of alternative locations;
This is not relative to the size of the building.
- (n) Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(2)(c) in Order to Approve the Petition

- (1) The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
This is true.
- (2) The use would be consistent with surrounding uses and the neighborhood would not be injured thereby;
This is not an issue.
- (3) The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.
There is no conflict.

Jazdzewski asked for a motion to approve, deny, or postpone the special exception request to exceed the maximum accessory building space.

Bachhuber stated the staff memo lists five conditions; she suggests they not take up the existing trees for screening at this time as it may be part of the variance.

Motion by Bachhuber to approve the request for a special exception for a detached garage, to increase the total accessory building space on the property, not to exceed 4,224 square feet with the addition of this building, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. A complete set of building plans must be on file.
3. Color/siding of the proposed garage must complement the house.
4. Use of the garage must be for private use only, no commercial activity.

Bachhuber asked staff if they care whether there is heat or water in the building. Pelky replied heat and water, for plumbing purposes, would require a septic, and in that instance they would care. Jazdzewski stated there is no request for it.

Bachhuber continued, adding the following condition:

5. Any plumbing or water use in this building would require further consultation with the staff and a separate permit.

Pelky stated staff would evaluate that, based on if there are any plumbing type fixtures or running water which would trigger a septic. Mrdutt stated that would happen regardless of BOA's conditions.

Bachhuber stated if that would happen without needing anything she would withdraw condition #5.

Jazdzewski clarified the motion by stating it is to approve the special exception to allow total accessory building space on the property not to exceed 4,224 square feet, and to include conditions 1, 2, 3, and 4 as listed in the staff memo.

Motion to approve seconded by Soik. Motion to approve the special exception passed 5-0 by roll call vote.

Jazdzewski stated at this time they will go back into deliberation to address the variance request. Pelky reminded BOA they are proposing to build the garage 10' from the right-of-way.

Bachhuber stated Lazarski could turn the building and reorient it so they can come off their driveway into the new garage. Bachhuber agreed they would have to cut down some of the trees on the right side of the driveway as you head toward the house. Bachhuber stated when someone buys a piece of property with trees on it, and they want to build on it, they will have to cut down trees where they want to put the house. Bachhuber does not see the difference; she likes the trees and understands the screening, but she is not sure what they are screening from. Bachhuber stated if they reoriented the building and came in off their driveway, they would not need a variance. Jazdzewski stated realistically they are coming in off their driveway because they are entering the building primarily from the north end. This is where the most usable door will be and also the enclosed portion. Jazdzewski stated he was questioning the south door and that is why he brought up the driveway ordinance. Jazdzewski stated with the building the way it is, they can get in and out of both ends on their property. The only thing that puts that building where it is, is the one maple tree on the northeast corner. If that tree was not there and they were going to remove the temporary structure, they could shift the whole building to the northeast and they would not need a variance.

Soik stated the simple fact is they are on a dead end road and they have the Town Chairman and Town Board saying it is not an issue; therefore, with what is going on and the fact the Town Board does not have an issue, he does not see a problem with letting them put their building where they want to put it. If the Town had said absolutely not and they don't want the building, Soik would be in complete agreement with Bachhuber stating they should reorient the building to make it fit.

Bachhuber stated they are dealing with the law, and unless they meet the criteria for the variance, it should not be granted. Bachhuber reiterated that in this case, it is possible to reorient the building where they won't even need a variance. Bachhuber stated she is surprised the Town Board did not take a look at that.

There was discussion amongst BOA regarding the laws, who writes them, that the people writing the laws do not live in the communities where these decisions are being made, and the fact the DNR offered an opinion without even looking at the property. Soik believes this takes away local control.

Karcheski commented on Bachhuber's statement that the Town of Linwood did not take a look at the issue with the trees. Karcheski stated they did look at that and he has been to plenty of BOA meetings where BOA said someone has to plant trees to confine a building, or they don't want people to see it. Karcheski stated they looked at that and said leave the trees where they are.

Gerald stated they are sensitive to the tree issue because eight years ago they came before BOA to replace a 60 year old cottage with a new cottage and they were chastised for cutting down any trees at all. Gerald and Debra stated they were told by BOA they slaughtered their trees. Gerald stated they have been educated to do everything they can to protect every tree, including digging trees from their lot and putting them in their garden so they can be replanted in spring to screen off part of the building. Jazdzewski stated he can sympathize with them. Jazdzewski added they can remove the maple tree and slide the building ahead probably just enough to get out of the setback. Jazdzewski understands they could not move it too much because of their son having a big truck, but it would work; however, on the other hand he can understand where they're coming from.

Szachnit asked when Bachhuber was talking about reorienting the building, was she talking about rotating it 90 degrees, making the entrance against the pine trees? Bachhuber replied just moving it, and they may have to take down a couple of the trees. If they did it sideways or if they took down the maple tree, they could just push the building down and then they do not need a variance. Bachhuber stated she does not believe in giving a variance if a variance is not needed or if they can do something else. Bachhuber believes in this case, they have an easy fix so they do not need a variance.

Jazdzewski closed testimony and opened deliberations on the variance request.

Bachhuber read from the Variance Facts and the following was noted:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Grant the Variance. The pertinent subsections are as follows:

- (a) The maintenance of safe and healthful conditions;
No issue.
- (b) The prevention and control of water pollution including sedimentation;
No issue.
- (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
No issue.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
No issue.
- (l) The availability of alternative locations;
Alternative locations discussed previously, open to debate.
- (n) Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) in Order to Grant the Variance

- (1) Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
Jazdzewski stated government bodies involved in this are okay with the request. Bachhuber stated BOA must look at what the law is; adding one government body is okay with this. Bachhuber added you do not grant a variance if you do not need a variance.
- (2) The use is permitted in the District;
Yes.
- (3) Exceptional circumstances apply to the use that does not generally apply to other landowners;
Jazdzewski stated this is not relevant.
- (4) Granting the variance would not be detrimental to surrounding landowners;
Jazdzewski stated this would not be detrimental.
- (5) Hardship is not caused by any person having interest in the property.
Bachhuber believes it does.

Soik stated anyone that is aggrieved by the decision has 30 days to appeal and take it into Portage County Court. Soik added if anyone feels BOA has made a mistake, they can take BOA to court and state that; there is recourse if anyone believes a mistake was made. Jazdzewski stated he has fought in the past to save a tree. He can see both sides of this issue. Soik asked if just coming into the driveway, is there enough room to maneuver if the shed is moved back. Soik believes there is more than enough room where it is located now. Bachhuber stated she looked and believes there is enough room. Jazdzewski stated based on the description with the trees, it is possible to move the structure enough to not encroach.

Jazdzewski asked for a motion to approve, deny, or postpone the request for a variance.

Motion by Soik to approve the request for a variance, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. A complete set of building plans must be on file.
3. Color/siding of the proposed garage must complement the house.
4. Use of the garage must be for private use only, no commercial activity.

Jazdzewski asked about screening needing to be maintained, and Soik answered no, adding trees get sick, trees need to come down, and new trees need to be planted. Soik believes they can leave that to the owners' discretion.

Motion to approve seconded by Szachnit. Motion to approve the variance request passed 3-2 by roll call vote, with Bachhuber and Jazdzewski voting nay.

Approval of Minutes from November 17, 2014 and December 15, 2014 meetings

Szachnit moved to approve the minutes of November 17, 2014, Soik seconded.

Brief discussion amongst BOA relating to the tower discussion at the previous meeting. Stewart stated the minutes are not the Order of the Court; they are a summary of what was said at the meeting. These are based on what was said at the meeting, not what was meant; this is Stewart's summary based on listening to the recording.

Meis' concern is in the future if the tower falls in the wrong direction, the conditions say it must be a collapsible tower. Mrdutt stated they look at the Ordinance, and if they want to reduce the setback from the road or water body, then it has to have the collapse point. If the tower can meet the setback and the ordinance requirement where if it falls over it will fall on their own property, that provision would not be required.

Stewart added the minutes they are approving today are not from the meeting where the tower was discussed. These minutes are from the last meeting where there was a long discussion under the minute section.

There being no further discussion on the minutes, motion to approve passed 5-0 by voice vote.

Szachnit pointed out a typo in the minutes from December 15, 2014 on page 6, paragraph 2; the word "now" should read "not."

Bachhuber moved to approve the minutes of December 15, 2014, Szachnit seconded. Motion to approve, with the correction noted above, passed 5-0 by voice vote.

Correspondence/Updates

Jazdzewski introduced Jim Garbe, new BOA member.

Brief discussion amongst BOA and Garbe.

Next meeting is tentatively scheduled for February 16, 2015, with an inclement weather date of February 17, 2015.

Adjournment

Motion to adjourn by Szachnit, second by Meis. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 6:20 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
March 23, 2015

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 3:00 pm in Conference Rooms 1 & 2, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, John Jazdzewski, Edward Szachnit, Marj Bachhuber, and James Garbe (Alternate). Member excused was Scott Soik. Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

Richard and Rebecca Culton, Owners (P15-05)

The Richard and Rebecca Culton, owners, Special Exception request from the provisions of the Portage County Zoning Ordinance to operate a water well drilling company as a contractor storage yard, in the A2 Agricultural Transition Zoning District, Town of Lanark, was opened by Jazdzewski, who read the public hearing notice.

Pelky explained the request is for a contractor storage yard.

Richard Culton was sworn in and gave testimony. This is a water well drilling and pump service. These types of companies typically do not have a storefront so there will not be people coming to the property, except for the occasional delivery which may be a 2-ton truck. Culton explained the market will determine the speed of the business and he anticipates having one employee within the first year. Culton explained where the contractor storage yard will be located and where equipment will be stored.

There was nothing additional to be read into the record and no members of the public in attendance wanting to testify. Testimony closed and deliberations opened.

Property is zoned agricultural and tractors, wagons, etc., pertaining to agricultural use, are permitted. Page 25 of the packet lists equipment, inventory storage, and employee parking; vehicles and equipment related to the contractor storage yard were discussed. Culton stated he would probably have a maximum of five vehicles associated with the business; Pelky added staff is good with this number.

Special Exception facts were discussed and the following was noted by consensus of BOA members:

- Is this proposed use contrary to the Zoning Ordinance, State Law, or Administrative Code?
No.
- If approved, can safe and healthful conditions be maintained?
Yes.
- Will this use affect existing or future roads and development?
No. Weight limits may be in effect at certain times, but those affect everybody. Relating to future development – if there is future development and there are a lot of things sitting in the yard, there will be complaints.
- Will the surrounding neighborhood be adversely affected by this proposed project (particularly dust and noise)?
No. Hours of operation are listed and seem reasonable. Most work is done at other locations.

- Are there alternative sites that would be better suited for this Project?
No. Culton is recycling/using old buildings.
- Does this site have a more preferred use?
No.
- Is this proposed project located in a floodway or flood plain?
It does not appear to be and there has been no information received to the contrary.
- Are topographical features affected by this project?
No.
- Are drainage features affected by this project?
No.
- Will waste be generated by this project?
Yes.
- How will this waste be disposed of?
Staff memo states all hazardous waste must be contained inside 150% containment, and located inside an enclosed building. Culton stated he must have containment on the fuel tanks at 200% and waste oil is 166% containment. Jazdzewski noted the waste oil is stored outside, but he is assuming with the containment structure, it will not be an issue because it is either double-walled or roofed. There should not be environmental contamination. This is covered in the business plan submitted by Culton.
- Is on-site vegetation adversely affected by this project?
No. It was determined there is no need for screening.
- How important is this project to the community?
No way of knowing.
- Is this use consistent with the current Town and County Land Use Plans?
Yes. The Town of Lanark has approved the request.

Motion by Bachhuber to approve the request for a Special Exception as submitted with the following conditions:

1. You are to obtain a Portage County Zoning Permit.
2. The sign must be located outside of the road right-of-way.
3. All hazardous waste must be contained inside 150% containment and located under a structure.
4. The equipment listed on page 25 of the packet will be stored as noted.
5. No recycling shall take place on the premises.
6. Not more than five commercial pieces of equipment associated with the business shall be allowed on the property at any one time.

Meis asked Bachhuber if she would reconsider the recycling condition as Culton stated he was going to have waste oil. Bachhuber explained her reasoning for this condition and there was a discussion on what is considered collecting and recycling on the premises. Bachhuber stated she will strike the condition regarding recycling taking place on the premises.

Motion to approve seconded by Szachnit. Motion clarified by Jazdzewski and Stewart. Motion to approve passed 5-0 by roll call vote.

Edward B. Lein, Owner (P15-06)

The Edward B. Lein, owner, variance request from the provisions of the Portage County Zoning Ordinance to allow a 60 foot by 170 foot calf barn within the road setbacks of 15th Road, in the A3 Low Density Agricultural Zoning District, Town of Belmont, was opened by Jazdzewski, who read the public hearing notice.

Mrduitt explained the request for the variance; the owner constructed a 60'x170' calf barn, which after being measured by staff was determined to be located 9' within the setback. Mrduitt added this portion of the building is located outside the road right-of-way.

Edward B. Lein was sworn in and gave testimony. Lein explained when excavating, he asked the excavator to come back 10'; however, the excavator did not do that. Lein stated he had the building located up that far because of the irrigation pivot location. Lein stated he did receive a zoning permit from the Town of Belmont in

August. Lein added he was unaware he had to get a permit from Planning and Zoning; he didn't think he had to because the building was for livestock. Lein stated the discrepancy was found when he realized he had to get a Zoning Permit from the County; staff was on-site and measured. Mrdutt does not know how/why the Town of Belmont issued a zoning permit; adding staff would have worked with the builder to properly place the structure.

Discussion relating to how the violation was discovered, is this an unnecessary hardship, and did Town of Belmont take ownership of activity by issuing Zoning Permit.

It was noted there were no members of the public in attendance to testify.

Jazdzewski read the following into the record:

- A letter addressed to the Planning and Zoning Committee from five adjacent landowners stating they have no issues or concerns with the variance and building.

Testimony closed and deliberations opened. Variance facts were discussed and the following was noted by consensus of BOA members:

- Is the proposal contrary to State Law or Administrative Code?
The structure is not contrary; however, the location is contrary.
- Is the proposal permitted in this Zoning District?
Yes.
- Are there any alternatives to the variance request?
Jazdzewski stated not at this time. If the structure would have been built in the proper place, there would have been no issues; Meis agreed. Garbe stated one alternative would be to petition the Town to vacate the road. Jazdzewski stated not vacate, but relocate the road, which would get the structure out of the right-of-way. Mrdutt clarified the structure is not in the right-of way.
- Would this variance be detrimental to nearby property owners?
Not at this time; but possibly to future property owners. Lein stated in the future the road may be closed; adding in the past he had to fight to keep the road open.
- Can the "spirit of the Ordinance" be maintained?
Yes.
- Will substantial justice be done by granting this variance?
Yes. Jazdzewski stated they are dealing with something that has already happened; he believes some justice will be done because the Town of Belmont and the County will get to the bottom of who is issuing permits and why. Bachhuber stated they may have felt differently about this had the town not already issued the permit.
- Determine if all the following variance criteria are met: (All three must be met)
- Is this request contrary to the public interest?
No.
- What are the "unique property limitations" and are these limitations adequate to satisfy the requirements for a variance?
Bachhuber stated this is closer to the right-of-way and the structure is already built. The only way to keep the structure up is for the variance to be granted.
- Does this request meet the "unnecessary hardship" test? What are the practical difficulties that make this proposal unnecessarily burdensome and hard to obtain strict compliance with the Ordinance?
Garbe stated Lein obviously went through what he thought was the process to get proper permitting, and received bad advice from the wrong source; adding he does not believe Lein is trying to hide what he did. Garbe stated the Town of Belmont did not exercise their responsibility as part of issuing the permit by not making sure the structure was cited properly. Jazdzewski stated according to the material in the packet, Lein has been cooperative.
- Does this request meet the "minimum variance needed for reasonable use" test?
Bachhuber stated they need to give the minimum variance needed; in this case 9'.

Motion by Meis to approve the request for a variance as submitted with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. A complete set of buildings plans is to be on file.

Motion to approve seconded by Garbe.

Motion by Garbe to amend that the obtaining of a Portage County Zoning Permit be at standard rates and not the penalty fine, so Lein is not fined for getting a permit after the building was erected.

The Zoning Ordinance states the fine can be doubled or in the case of the fee schedule, tripled. Garbe does not feel it is fair that Lein is charged the penalty portion. Pelky stated this situation has come up in the past and he does not think BOA has the right to do that. In the past BOA has been very adamant about an applicant not being penalized enough for building prior to getting a permit. Pelky stated Corporation Counsel in the past has said setting fees or penalties is not part of BOA's duties.

Garbe stated since they feel he does not have jurisdiction to make this portion of the motion, he will withdraw his motion to amend.

Motion to approve as originally stated passed 5-0 by roll call vote.

Approval of Minutes from January 19, 2015 meeting

Szachnit moved to approve the minutes of January 19, 2015, Bachhuber seconded. There being no discussion on the minutes, motion to approve passed 5-0 by voice vote.

Correspondence/Updates

Next meeting is tentatively scheduled for April 20, 2015.

Adjournment

Motion to adjourn by Meis, second by Garbe. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 4:28 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
July 20, 2015

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Rooms 1 & 2, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, John Jazdzewski, Edward Szachnit, Marj Bachhuber, and James Garbe (Alternate). Member excused was Scott Soik. Staff present included Chris Mrdutt, Dan Bowers, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

PUBLIC HEARINGS

James Murphy, Owner (P15-07)

The James Murphy, owner, Variance request from the provisions of the Portage County Zoning Ordinance to replace a deck, porch and basement entrance within the road setbacks of Lakeview Road, in the A4 General Agricultural Zoning District, Town of Alban, was opened by Jazdzewski, who read the public hearing notice.

Mrdutt explained the request for the variance; petitioner wants to replace the porch and steps area of the house. Property is zoned A4 General Agricultural, so the use is permitted; however, the location of the porch and steps are why petitioner is seeking a variance. The measurement from the outside of the stairs is 47 feet from the road centerline; the required building setback is 63 feet. The difference requires the variance.

James Murphy was sworn in and gave testimony. Murphy stated he wants to replace the old porch and deck and entrance to the basement. They are not going any bigger; they're just replacing the existing with brand new. The porch currently does not have a foundation underneath; it's dirt. They plan to put a block foundation underneath the porch. The entrance to the basement already has a foundation under it; they're just replacing the structure on top of it.

Discussion relating to what would be done if the request is not approved and the contingency plan if further damage is found to the house. Murphy stated they would still have to tear down the current structures as they are ready to fall down. If damage is found, Murphy would have the contractor repair the damage. The porch will not be extended any higher and the roofline will remain the same. There being no further questions from BOA, Murphy was excused by Jazdzewski.

Jazdzewski asked if any members of the public wanted to speak on this matter. Ray Oksuita, resident on Lake Helen Heights and Town of Alban Chairman, was sworn in. Oksuita stated the footprint of the house will not change, Murphy keeps his property well maintained, and he believes if the request is denied it will create a hardship for Murphy because the building structure itself and the integrity of it is falling apart; something must be done one way or another. Oksuita stated he is speaking for the Town of Alban and he fully supports the request. There being no further questions, Oksuita was excused by Jazdzewski.

Jazdzewski asked if any other members of the public wanted to speak on this matter; it was noted there was none.

Mrdutt clarified that any interior remodeling would not require a Zoning Permit. If square footage is increased, a Zoning Permit would be required. As long as setbacks are met, Murphy would not need to come to BOA again. Mrdutt stated BOA has the authority to address the issue of repairs within the setback during deliberation and

with conditions; adding he would not want to rebuild the porch and deck and attach it to something that does not meet building code.

Testimony closed and deliberations opened. Variance facts were discussed and the following was noted by consensus of BOA members:

- Is the proposal contrary to State Law or Administrative Code?
No. The use is allowed.
- Is the proposal permitted in this Zoning District?
Yes.
- Are there any alternatives to the variance request?
Murphy could allow the front porch to decay and tear it off; but that is not what they necessarily want him to do. Other than rebuilding the new house and moving it back, this is the only option. This is the only viable alternative.
- Can the “spirit of the Ordinance” be maintained?
Yes.
- Will substantial justice be done by granting this variance?
Yes.
- Determine if all the following variance criteria are met: (All three must be met)
- Is this request contrary to the public interest?
No. Structure is located out of the right-of-way; however, is located within the setback which is a safety factor. The location of the building does not appear to be a safety factor. For a vehicle to hit the structure, it would have to go through trees.
- What are the “unique property limitations” and are these limitations adequate to satisfy the requirements for a variance?
This is an existing home. Landowner has no control over this issue.
- Does this request meet the “unnecessary hardship” test? What are the practical difficulties that make this proposal unnecessarily burdensome and hard to obtain strict compliance with the Ordinance?
Yes. It would be a definite hardship if they had to tear off the front porch and the structure decayed and they could not do anything to it. The owner is maintaining the integrity of the home itself, as well as improving on the home and safety. The owner is not creating a hardship for themselves or anyone else.
- Does this request meet the “minimum variance needed for reasonable use” test?
Yes.
- The hardship is due to physical limitations of the property, rather than the circumstances of the appellant.
- The variance will not harm the public interest because it is out of the right-of-way; it is a factor of setbacks. Because it is an existing structure, there has been no harm to anyone and there is no reason for any harm to anyone now.

The following facts were stated by Garbe:

- The Town of Alban Chairman is in attendance and approves of the request.
- There is a letter of support from the Alban Town Board in the file.
- There have been no objections, either in writing or in person.
- Owner is not encroaching further into the setback and is not expanding the size of the footprint.
- Owner is only requesting to fix the current structure.

Motion by Meis to approve the request for a variance as submitted with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. A complete set of buildings plans is to be on file.
3. If any damage is found on the wall of the existing house after the porch has been torn off, that may also be fixed without coming back to the Board of Adjustment.

Motion to approve seconded by Garbe. Motion to approve passed 5-0 by roll call vote.

Approval of Minutes from March 23, 2015 meeting

Bachhuber moved to approve the minutes of March 23, 2015, Szachnit seconded. There being no discussion on the minutes, motion to approve passed 5-0 by voice vote.

Election of Officers

Dan Bowers, Assistant Director of Planning and Zoning, was introduced by Jazdzewski.

Jazdzewski turned the meeting over to Bowers who called for nominations for Chairman.

Motion by Szachnit to nominate Jazdzewski as Chairman; motion seconded by Garbe. Bowers called for nominations three times. There being no further nominations for Chairman, nominations were closed. Motion for Jazdzewski as Chairman passed unanimously by voice vote.

Jazdzewski called for nominations for Vice-Chairman.

Motion by Jazdzewski to nominate Szachnit as Vice-Chairman; motion seconded by Meis. Jazdzewski called for nominations three times. There being no further nominations for Vice-Chairman, Jazdzewski closed nominations. Motion for Szachnit as Vice-Chairman passed unanimously by voice vote.

Jazdzewski called for nominations for Secretary.

Motion by Meis to nominate Bachhuber as Secretary; motion seconded by Garbe. Jazdzewski called for nominations three times. There being no further nominations for Secretary, Jazdzewski closed nominations. Motion for Bachhuber as Secretary passed unanimously by voice vote.

Correspondence/Updates

Next meeting is tentatively scheduled for August 17, 2015.

Brief discussion related to proposed text changes to the Zoning Ordinance and the role of BOA to use ordinance currently enacted; not to make or suggest changes.

Adjournment

Motion to adjourn by Szachnit, second by Garbe. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 4:39 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
August 17, 2015

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 1, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Edward Szachnit, Marj Bachhuber, and James Garbe (Alternate). Staff present included Chris Mrdutt, Dan Bowers, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

RECONSIDERATION

Robert and Mary Berard, Owners, David A Ray - First Law Group, Agent (Petition P11-07)

The Robert and Mary Berard, owners, request to reconsider Board of Adjustment Decision P11-07, dated 4/25/11, which states, "Based on evidence presented at the hearing of this case, it has been determined your request to rescind condition #7 from the February 17, 2003 Board of Adjustment Decision, which states, "A Deed Restriction should be placed on the site not allowing anymore accessory buildings" is denied. This action effectively prevented consideration of the additional items included in the petition," was opened by Jazdzewski, who read the reconsideration request.

"Original Request: Petition No. P11-07 Robert and Mary Berard, owners, Mark Sommers, agent of property lying east of the State Highway 66 and Plover Heights Road intersection, being part of the SW¼ of the NW¼ and the SE¼ of the NE¼, Section 13, T24N, R8E, Parcel #020-24-0813-07.02, located in the Town of Hull, wherein a special exception from the Portage County Zoning Ordinance is requested to exceed 2,800 square feet total accessory storage space, two to one building width ratio, and rescind condition #7 from the February 17, 2003 Board of Adjustment Decision which states, "A Deed Restriction should be placed on the site not allowing anymore accessory buildings," in the R2 Single Family Zoning District." *No public input will be taken at this meeting. The Board of Adjustment will be deliberating whether or not to consider the request. If the request for reconsideration is granted, it will be scheduled for public input, discussion, and official action at the next Board of Adjustment meeting. All surrounding property owners will be notified.*"

Mrdutt explained the original request, and stated it was to exceed what is now 2,800 square feet of accessory building, which would require rescinding a condition a previous Board of Adjustment placed on the property. That condition was a deed restriction which stated no more accessory building space could be allowed. Mrdutt stated staff's opinion is they do not agree with deed restrictions prohibiting a landowner from asking for more accessory building space. Staff believes everyone has the right to come before BOA and ask to exceed more than allowed; it is up to BOA to take everything on a case by case basis. Mrdutt stated staff feels that preventing someone the ability to come and ask for more is not the correct way to go about it.

Bachhuber stated none of the current members were on the BOA at the time the deed restriction was placed; adding this was reviewed in 2011 and a motion to reconsider was denied at that time. Bachhuber explained to BOA the University of Wisconsin Steven Point Land Use and Zoning advocates the use of deed restrictions.

Jazdzewski asked for a motion to either approve or deny the request to reconsider.

Motion by Soik to reconsider, as long as an on-site is conducted at the time of reconsideration; motion seconded by Meis. Motion to reconsider passed 5-0 by roll call vote. This request will be placed on the agenda for the next regularly scheduled meeting.

PUBLIC HEARINGS

Patricia H. Luessenhop Trust, Owner, Daniel Luessenhop, Agent (P15-08)

The Patricia H. Luessenhop Trust, owner, Daniel Luessenhop, agent, Special Exception request from the provisions of the Portage County Zoning Ordinance to exceed 2,800 square feet accessory building space, exceed 12' sidewall height, and exceed 20' maximum building height, in the R5 Waterfront Residence District, Town of Eau Pleine, was opened by Jazdzewski, who read the public hearing notice.

Mrduitt explained the request and the need for a special exception. During the on-site, BOA was shown where on the property the petitioners are looking to construct the building. Additional information was provided prior to the meeting that shows setbacks, a reduced building size, and rearrangement of the positioning of the structure.

Daniel Luessenhop was sworn in and explained the request. Luessenhop stated the home was built four years ago and is located on a slab because the water table is 2½ feet below ground. Because they do not have a basement, they are missing two important things; storage space and a safe place to go in bad weather. Because this is wooded lake property, they do not have enough space to store various trailers and equipment. They wish to keep the property looking good. Luessenhop explained to BOA how the building would be constructed, what the appearance would look like, and what would be located on the interior of the shed. Luessenhop said the area is heavily wooded and the shed would easily blend into the surrounding area.

Luessenhop stated after meeting with one of the surrounding neighbors, they realized they needed to reduce the size of the shed so it could meet setback requirements. The shed would include 12' high garage doors to allow their pontoon and other future boats to be easily stored. Because of the 12' high doors, they are requesting a 14' high ceiling.

Luessenhop said this will become their only home, and eventually their retirement home, in 12 to 18 months. They have a lot of antiques at their other home and have no room to put them at this home because they have no basement. This building will not be used as living space; they put an addition on to their house last fall and they have no need for additional living space.

Luessenhop stated the proposed shed has been unanimously approved by both the Town of Eau Pleine Plan Commission and Town Board. Luessenhop stated this has been discussed with the adjoining property owner, Joe Pagliara, and he and his wife both support the request for the dimension and height requests. Neighbors on the other side also support the request. (Emails given to Jazdzewski to read into the record.)

Luessenhop was asked about insulation of the building and he stated this is for winter. They have leather in their boat and they want to control the temperature.

There being no further questions from BOA, Luessenhop was excused.

Jazdzewski read the following into the record:

- An email from Joe Pagliara, surrounding property owner, stating he has no objection.
- An email from T. Cowlin, surrounding property owner, stating he has no objection.

Jazdzewski asked if there were any members of the public wanting to speak on this matter.

Jack Kawleski, Town of Eau Pleine Chairman, stated he agrees with the request 100%. Kawleski said they are getting a lot of the oversized requests from his township, and asked if there is anyway the Ordinance can be changed. Jazdzewski explained what has been done in the past to change the Ordinance as it relates to ponds. Mrduitt explained this is something that should be addressed with the Planning and Zoning Committee.

Jazdzewski told Luessenhop he needs to be aware of lighting issues and suggested he not have interior or exterior lights shining out.

Jerry Schlinsog, owner of property across the lake, asked if this structure will be seen from water, and Luessenhop replied because the building will be dark green, it will blend in. In addition, it will be at least 100' from the water and there are a lot of trees surrounding the structure.

There being no other members of the public wanting to testify, Jazdzewski closed testimony and opened deliberations. Special Exception facts were discussed and the following was noted by consensus of BOA members:

- The maintenance of safe and healthful conditions;
Nothing to indicate unsafe conditions.
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
Nothing noted.
- The importance of the services provided by the proposed facility to the community;
This is a personal benefit; the structure will eliminate items left in the yard.
- The availability of alternative locations;
None noted.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(2)(c) in Order to Approve the Petition

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
The use is not harmful and is not contrary.
- The use would be consistent with surrounding uses and the neighborhood would not be injured thereby;
The use is consistent.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.
The use is consistent.

Motion by Bachhuber to approve the request as described in the packet and supplemental information, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. A complete set of building plans must be on file.
3. The owner is to obtain a Portage County Stormwater Permit with approved plan from the Portage County Land Conservation Division.
4. The owner is to maintain the natural screening that already exists to the north side of the proposed garage.
5. The owner is to work with Planning and Zoning staff regarding the heating of this building.
6. The use of the building must be for private use only and not for any commercial purpose.

Motion to approve seconded by Szachnit. Motion to approve passed 5-0 by roll call vote.

Thomas & Cheryl Meyer, Owners (P15-09)

The Thomas & Cheryl Meyer, owners, Special Exception request from the provisions of the Portage County Zoning Ordinance to exceed 2,800 square feet accessory building space, in the R1 Rural & Urban Fringe Residence Zoning District, Town of Stockton, was opened by Jazdzewski, who read the public hearing notice.

Mrdutt explained the request to exceed 2,800 square feet of maximum accessory building space, and added this lot is greater than one acre.

Jazdzewski swore in Thomas Meyer and asked him to explain the request. Meyer explained they want to put up a 40' x 80' pole building for personal storage. The building will have a sand floor, an outlet for the electric garage door opener and a service door. There will be no windows or drains. This building will be located in the pine trees, south of the existing garage. Meyer explained he is building a new garage, as opposed to adding on to the existing garage, because of the costs. Meyer added he likes to tinker with his motorcycles and he will be able to do that in this structure.

There was discussion about a hoop structure currently located on the property. The Town of Stockton has requested that hoop structure be removed when the new structure is completed; Meyer agreed this will be done.

Jazdzewski read the following into the record:

- A letter from Ernest & Sharon Salibi, surrounding property owners, stating they support the request.

Jazdzewski asked if there were any members of the public wanting to testify on this matter; it was noted there were none. Jazdzewski closed testimony and opened deliberation.

Special Exception facts were discussed and the following was noted by consensus of BOA members:

- The maintenance of safe and healthful conditions;
BOA agrees this is done.
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
BOA believes this is compatible.
- The importance of the services provided by the proposed facility to the community;
The use is personal and BOA believes it will help keep the property neat and tidy.
- The availability of alternative locations.
The proposed location is the best place in the yard because it will hide the structure.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(2)(c) in Order to Approve the Petition

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
The use is not contrary.
- The use would be consistent with surrounding uses and the neighborhood would not be injured thereby;
The use is consistent.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.
The Town of Stockton Board and Plan Commission have both approved the request, per documentation in the file.

Motion by Meis to approve the request for a special exception as requested with the following conditions:

1. The hoop storage building located on the property must be removed within one month of the completion of the pole building.
2. Obtain a Portage County Zoning Permit.
3. A complete set of building plans must be on file.
4. The use of the building must be for private use only, and not for commercial use.

Motion to approve seconded by Soik. Motion to approve passed 5-0 by roll call vote.

Keith & JoAnn Bauer, Owners (P15-10)

The Keith & JoAnn Bauer, owners, Special Exception request from the provisions of the Portage County Zoning Ordinance to exceed 2,800 square feet of accessory building space, exceed 12' sidewall height, and exceed 20' maximum building height, in the R2 Single Family and R1 Rural & Urban Fringe Residence Zoning Districts, Town of Eau Pleine, was opened by Jazdzewski, who read the public hearing notice.

Mrduitt stated the Bauers recently purchased two lots in this area that have two zoning districts. The front portion that adjoins Lake DuBay is zoned R2. As you get further back, it goes to R1. Mrduitt addressed the diagram on page seven of the packet and explained the attached garage, along with the detached garage, is how they come up with the total square footage. In addition, what looks like a structure located to the southwest of the house is not a structure; that is the location for the proposed drainfield. Mrduitt stated the landowners are working with surveyors to move the property line over to give the lot that they want to build the new house on more frontage. Mrduitt added that staff will make sure that everything meets setbacks from the property lines.

Jazdzewski swore in JoAnn Bauer and asked her to explain the request. Bauer stated the following:

- They want a taller building to accommodate their motorhome.
- They want a longer building because her husband has antique vehicles that they want stored indoors. They want to keep everything indoors to keep the property looking neat.
- They want to have concrete floors with drains.
- The electricity would be for lights and garage door openers.
- There will be no plumbing; the drains will be for melting snow.
- There will be no work on vehicles in the structure.

- They spoke with surrounding neighbors, the Laszewskis, who wanted them to move the building away from the lot line. The Bauers have agreed to place the structure 20 feet from the lot line and a little to the north.
- There is an existing structure two lots to the east that is similar to the proposed structure.

Discussion relating to surrounding properties, placement and appearance of the proposed structures, and access point to the property.

There being no further questions from BOA, Bauer was excused. Jazdzewski asked if there were any members of the public wanting to speak on this matter. Alvin Laszewski, surrounding property owner, was sworn in by Jazdzewski. Laszewski stated he had a good meeting with the Bauers and they came up with a compromise on the setback; adding the Bauers were very willing to move the structure. Laszewski stated they have no other issues with the building project. Laszewski asked if there were any alternate locations for the proposed mound system. Mrdutt stated the unique part of this property is when you get to the north side it gets a lot shallower, and there is also a high line. Mrdutt added there are limitations to what can be placed under those lines. If you go further off the lines, there are lower depressions that would probably not be suitable, even for a mound. Mrdutt stated a majority of the time they like to see the systems as far away from the lake as possible. Mrdutt added the limitations on the north side of the driveway may not allow the proper utilization of a septic in that location. Laszewski was excused. Diane Laszewski asked if the 20' setback could be entered into the record, and Jazdzewski stated it will be in the record of the meeting, but he is not sure if they will put it on as a condition. Mrdutt stated this could be entered as a condition in the motion.

Jazdzewski read the following into the record:

- An email from the Town of Eau Pleine Clerk, stating the Town of Eau Pleine Plan Commission and Town Board both voted to approve the request.

Jazdzewski closed testimony and opened deliberations. Special Exception facts were discussed and the following was noted by consensus of BOA members:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Approve the Petition

- The maintenance of safe and healthful conditions;
This can be met.
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
It seems everyone is developing. There is an additional road coming in that will be beneficial for the entire area.
- The importance of the services provided by the proposed facility to the community;
The structures will allow for items to be stored inside.
- The availability of alternative locations;
Owners are already adjusting location and setbacks.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(2)(c) in Order to Approve the Petition

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
This use would not be contrary.
- The use would be consistent with surrounding uses and the neighborhood would not be injured thereby;
This use would be consistent, and adjustments have been made for the neighbors.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.
This use is consistent.

Additional discussion relating to lighting/window issues. Setbacks were discussed. Soik cautioned BOA on establishing a 20' setback as he feels all parties are being neighborly. Establishing a 20' setback as a condition in the motion could cause issues with the septic/soils.

Motion by Szachnit to approve the request for a special exception as submitted, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. Proposed building locations shall have the wetlands delineated to insure all buildings are constructed out of wetlands prior to the issuance of a Zoning Permit.
3. A complete set of building plans must be on file.
4. Owners to obtain a Stormwater Permit with approved plan from the Portage County Land Conservation Division.
5. Owner to maintain screening of trees on the west side of proposed garage.

Szachnit stated they will not make any provision for moving of the building.

Motion to approve seconded by Meis. There was no further discussion on the motion. Motion to approve passed 5-0 by roll call vote.

Sunset 1089 LLC, Owner, Gerald M. O'Brien, Agent (P15-11)

The Sunset 1089 LLC, owner, Gerald M. O'Brien, agent, Variance request from the provisions of the Portage County Shoreland Zoning Ordinance to construct a residential addition within shoreland zoning setbacks of Sunset Lake in the R2 Single Family Residence District, Town of New Hope, was opened by Jazdzewski, who read the public hearing notice.

Mrduitt explained the request; the property is in the Shoreland District adjacent to Sunset Lake. Owner is looking to do a residential addition 14' off the west side of the cottage. The addition will not be located any closer to the lake than the current structure. Owner wants to replace a deck.

Mrduitt stated the Wisconsin Department of Natural Resources (WI-DNR) was sent the packet for this petition, however, to date there has been no response. Mrduitt informed BOA even though there have been recent changes to the Shoreland regulations, BOA will be using the Portage County Shoreland Zoning Ordinance as currently written. The changes do not affect this petition.

Jazdzewski swore in Gerald O'Brien and asked him to explain the request. O'Brien stated the following:

- The cottage was built in 1965. The only location to build was the current location.
- The property was originally used only on weekends.
- They now live there approximately six months of the year.
- They intend on transferring cottage ownership to their children.
- They are currently doing work on the interior of the cottage and thought this would be a good time to add 14' on to the west end of the structure.
- They will remove the 10' deck and are only planning to add 4' on to that.
- There is no other location to build because of the hills on the property.
- The Town of New Hope has agreed to the request.
- There are only 14 cottages located on the lake.
- The proposed addition would blend in with the current structure.
- Neighbors have indicated to O'Brien they have no objections.
- He has no problem with a Shoreline Vegetation Plan and Stormwater Management Plan, and will do whatever is necessary.
- There are gutters on the front and back of the cottage, and they will be placed on the addition as well.
- They are requesting to take off the deck and add the addition.
- In speaking with the contractor, it was determined it would not be worth the expense to go any smaller on an addition that would not need a variance.
- He will comply with all requests made by the Planning and Zoning Department.
- The new changes to the Shoreland regulations do not affect anything involved with this request. The new requirements state a County Shoreland Zoning Ordinance may not require a person to establish a new vegetation area if there is already one there.
- There will be the expansion only, no deck.

It was noted steps will extend past the house. Mrduitt explained there is an allowance for 40 sq. ft. of ingress/egress into a setback.

There was discussion as to why O'Brien would not build up instead of going out. O'Brien stated they have a cathedral ceiling and it would be very difficult. Further discussion on the expansion and how it will not be going closer to the lake.

During discussion the following was also noted:

- The total of the addition is approximately 314 sq. ft.
- The existing driveway will not be relocated.
- The septic is 50 years old. They have an estimate on putting in a new septic system, and will do that if the request is approved.
- The accessory building on the property is used for storage only.
- There are no plans to put plumbing in the accessory building.

There being no further questions from BOA, O'Brien was excused. Jazdzewski asked if there were any members of the public wanting to speak on this matter. Phillip Hacker was sworn in. Hacker stated he has been the property owner to the west for 28 years; adding he has no objections at all to the request. Hacker was excused.

Mrduitt stated the following:

- BOA should require a septic evaluation be conducted prior to issuance of any Zoning Permit.
- Prior to Act 55, NR115 had a provision that allowed a one-time 200 sq. ft. addition, as long as it was laterally or to the rear of a structure. This addition is 114 sq. ft. over that, but he would like BOA to mention and incorporate this one-time provision for an addition to a shoreland property into the motion.

Jazdzewski closed testimony and opened deliberations.

Discussion on the legal standards for an area variance. Mrduitt noted variance standards have not changed. Bowers stated he and Pelky conducted an on-site and they measured the setback to the Ordinary High Water Mark (OHWM) at 44'.

Variance facts were discussed.

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Grant the Variance. The pertinent subsections are as follows:

- The maintenance of safe and healthful conditions;
- The prevention and control of water pollution including sedimentation;
- The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- The availability of alternative locations;
- Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) in Order to Grant the Variance

- Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
- The use is permitted in the District;
- Exceptional circumstances apply to the use that does not generally apply to other landowners;
- Granting the variance would not be detrimental to surrounding landowners;
- Hardship is not caused by any person having interest in the property.

Jazdzewski said they could add 200' without needing a variance; this is 114' more. Location is an issue; the structure is located between a hill and wetlands. When the structure was built, it was a legal structure. It became non-compliant when regulations came in effect after that. Jazdzewski stated he would prefer they build up, but it does not work in this situation because of the type of structure. They are not contributing to anymore pollution; if anything they may mitigate some by slowing or diverting the downward flow from the road.

Motion by Meis to approve the request for a variance as submitted, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. A Shoreland Revegetation Plan must be approved before obtaining a Portage County Zoning Permit.
3. A Stormwater Management Plan must be approved and issued before obtaining a Portage County Zoning Permit.
4. A septic evaluation is to be done before a Portage County Zoning Permit is issued.
5. This approval will incorporate the one-time addition of 200 square feet per NR115.

Motion to approve seconded by Soik.

Discussion amongst BOA regarding:

- The size of the bathroom facilities and if they're adequate.
- There is an allowance for 40 sq. ft. for ingress/egress.
- Bachhuber believes the hardship is created by the owner. This is a good idea but it goes beyond the least amount of relief allowed in the variance.
- Soik asked with the new laws being put out, why doesn't the State say there should be no new construction. When something is dilapidated to the point it cannot be rebuilt, it reverts back to its natural state. Soik believes the DNR needs to say no new construction whatsoever instead of being so restrictive with the laws.
- Jazdzewski stated he would rather see the addition go up.
- Jazdzewski stated there needs to be a septic evaluation and it should be updated if needed. This would be a benefit to the public.
- Discussion relating to the possibility of contaminants in the wells in the area. It was noted that nobody is saying there are contaminants in the area.
- Jazdzewski stated this is an opportunity to make improvements.

Motion to approve passed 4-1 by roll call vote, with Bachhuber voting nay.

Jazdzewski called for a five minute break at 6:00 pm. Meeting called back to order at 6:05 pm.

Approval of Minutes from July 20, 2015 meeting

Bachhuber stated she believes there is a word missing on page 2, bullet point number 7. Jazdzewski asked for a motion and second so they can discuss the minutes.

Motion by Szachnit to approve the minutes, second by Meis.

Discussion on the minutes. Bachhuber believes there is a correction needed in the minutes. Motion by Bachhuber to amend the minutes to add the word "it" on page 2, bullet point number 7, where it states "... Structure is located out of the right-of-way; however..." Motion to amend seconded by Szachnit. Motion to amend failed 2-3 with Meis, Soik, and Jazdzewski voting nay.

Original motion to approve passed 3-1-1 by voice vote, with Bachhuber voting nay and Soik abstaining.

Correspondence/Updates

Next meeting is tentatively scheduled for September 21, 2015.

Discussion regarding emailing of preliminary decisions to Board members for approval. Board agrees email of preliminary decisions is sufficient.

Adjournment

Motion to adjourn by Szachnit, second by Jazdzewski. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 6:13 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
September 21, 2015

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Rooms 1 & 2, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Edward Szachnit, and James Garbe (Alternate). Member Bachhuber was excused. Staff present included Chris Mrdutt, Dan Bowers, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Soik led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

RECONSIDERATION

Robert and Mary Berard, Owners, David A Ray - First Law Group, Agent (Petition A03-06)

The Robert and Mary Berard, owners, David A. Ray - First Law Group, and Mark Sommers, agents, request to reconsider condition #7 from Board of Adjustment Decision A03-06, dated 2/21/03, which states, "A deed restriction should be placed on the site not allowing any more accessory buildings," was opened by Jazdzewski, who read the public hearing notice.

Original Request: Appeal No. A03-06 Robert & Mary Berard, owners/Mark Sommers, EB Sommers Inc, agent of property lying south of STH 66 and east of Plover Heights Road being part of the SW¼ of the NW¼ of Section 13, T24N, R8E, parcel #020-24-0813-07.02, located in the Town of Hull, wherein a special exception from the provisions of the Portage County Zoning Ordinance is requested to construct a 28 foot by 38 foot by 10 foot detached garage exceeding 2,000 square feet total accessory building space in the R2 Single Family Zoning District.

Jazdzewski stated BOA voted at the 8/17/15 meeting to reconsider the request to remove condition #7. Pelky stated Berard is only looking to remove condition #7 at this time; he does not wish to apply to build additional structures at this time. It was noted the deed restriction was put on in 2003.

Jazdzewski swore in Attorney David Ray and asked him to explain the request.

Ray explained Berard's position and stated the following:

- When the deed restriction was placed on the property in 2003, everything else in the original request was approved.
- The deed restriction literally hand-ties the Berards in terms of their future ability to do anything on the property. This would apply to anybody that would purchase the property in the future.
- The Planning and Zoning Department's position is consistent with that of Berard and Ray; they believe deed restrictions in general are not a good idea. Ray believes this is because once a restriction is placed on a deed, it is permanent, unless removed.
- It makes sense to remove the restriction because it does not change the applicability of the Zoning Ordinance to this property. Whatever interest was being promoted by putting the restriction on the property is already in place and protected by the Zoning Ordinance itself.
- The zoning on this parcel is R2; however, it is not a typical residential property because it is a 30 acre parcel.
- The Zoning Ordinance is designed to address exception situations, so anything that might happen in the future with the current or any subsequent property owner, would back before BOA, even if the deed restriction is removed.

- From a legal perspective, by putting the condition in place, it is almost like doing a condemnation or a taking because you are limiting the property owner's right to use their property to the extent of the restriction that is now on their deed. This takes away the rights and due process under the Statute.
- The result as it applies to this property, without a good rational basis, sets this property apart from any similarly situated residentially zoned parcel that is larger than normal.
- The only request before the BOA today is to remove the deed restriction.

Soik asked why Berard is coming before BOA now asking for the condition to be removed. Ray replied now is as good a time as any; adding there is no particular reason. He does not know what the future holds, but if Berard were ever to sell this property or even while he owns it, he cannot do anything with respect to accessory buildings, despite the fact it is a 30 acre parcel. Soik asked why it was agreed upon at the time when condition #7 was put in place, and Ray stated he is unsure. Berard stated he did not understand at that time that a deed restriction was that serious of a thing. Ray stated he was surprised when he read through the decision in 2003 that the request for construction the building was approved and the only item that was a restriction and limitation was the deed restriction. Ray believes it was an all or nothing thing.

Garbe asked Ray if it was his opinion that if the property is sold to someone else, the deed restriction stays with the property, and Ray replied that is his opinion. Garbe stated if the zoning is changed, the deed restriction would stay with the property; Ray agreed. Discussion relating to splitting the parcel and how the deed restriction could affect the process and also affect the other properties created from splitting the lot. Garbe asked Ray if he believed Berard did not understand the ramifications from his standpoint in 2003, and Berard stated he did not have legal counsel at that meeting. Ray did not want to speculate, but added the minutes appear to indicate nobody from his firm was at that meeting. Garbe stated Berard could have walked away from the decision at that time if he thought it was too restrictive; Berard did have other options available.

There being no further questions for Ray, he was excused. Jazdzewski asked if there were any other members of the public wanting to speak on this matter. Berard stated one-quarter mile from him is Kyle Kluck's home and he has a 40 x 100 shed; adding he can build whatever he wants because he is zoned agricultural. Berard stated it is a monster building, an eye sore, and BOA has seen how Berard takes care of his property.

Jazdzewski noted there were no other members of the public in attendance. Jazdzewski closed testimony and opened deliberation.

Jazdzewski stated even if the zoning was different, the deed restriction would stay with the property. Even if zoning were changed by Berard's or the Town's request, the deed restriction would still be in place and no other accessory buildings could be built. Jazdzewski stated it seemed liked BOA at that time was almost penalizing Berard for some other actions he took, or however they perceived the situation. Jazdzewski added this does not give Berard carte blanche to build more accessory buildings as he has used up the square footage allotted.

Soik believes there may have been talk of rezoning the property and asked if that has been addressed with the Town. Pelky evaluated that with the builder, Mark Sommers. Pelky stated the Town Land Use Plan has the property as residential and he did mention the option of rezoning, however, he is unsure if the Town was ever approached to amend the Land Use Plan to Agricultural. Pelky stated if the property was rezoned to agricultural, he is unsure if the deed restriction would still be prohibitive. Berard stated he never approached the Town to rezone the property.

Soik believes this is an unintended consequence of BOA's past actions in this case, and now this BOA is trying to clean it up. Soik asked if staff could go into further detail on the tone of the previous meetings and why exactly BOA felt a deed restriction was needed. Pelky replied he was at the hearing but he cannot recall why BOA put the deed restriction on. If you look at the wording, it states "should put a deed restriction" instead of "shall" and Pelky believes this could be a legal opinion as to whether it is even required at all. Pelky believes the language was poorly worded by BOA at that time. Pelky stated they tend to discourage BOA from making deed restrictions because of the consequences.

Pelky stated staff supports removing the deed restriction. The proper way to protect the property from having anymore buildings is to go through the normal request process which can be denied. Each case needs to be taken on its own merit. BOA should not take away the applicant's right to apply, which is what the deed restriction does.

Mrdutt stated it is within BOA's power to put on deed restrictions, and there may be times when it is appropriate. It is Mrdutt's opinion a deed restriction needs to be appropriate, and not allowing someone the ability to come back in front of BOA to request something is not appropriate. Mrdutt gave examples of when a deed restriction may be appropriate.

Szachnit believes the deed restriction does prevent Berard from coming back before BOA, however, he believes BOA in 2003 felt they needed this restriction to make sure Berard did not exceed the maximum square footage allowance more than he already had.

Garbe stated in reading the minutes from 2003 where the deed restriction was imposed, there was no rationale listed as to why BOA put the deed restriction on. Garbe asked if this was common practice back then to use deed restrictions. Pelky replied it was not done that often. Pelky stated this is why staff emphasizes if BOA makes a decision related to something specific like this, they need to state the rationale. Pelky stated he does not want to guess why they did what they did, and asked Berard if he came to BOA after the fact of building something without a permit. Pelky stated BOA sometimes did not like after the fact requests, and maybe BOA did this as a punishment.

Garbe stated a deed restriction literally freezes the property in time, and since the original request there have been changes to how accessory space is calculated and the maximum accessory building space allowed. Pelky explained the changes to the ordinance over the years as it relates to accessory building space.

Motion by Szachnit to approve the removal of condition #7 from the BOA decision dated 2/21/03. Motion to approve seconded by Meis. Motion to approve passed unanimously by roll call vote.

Approval of Minutes from August 17, 2015 meeting

Soik moved to approve the minutes of August 17, 2015, Szachnit seconded. There being no discussion on the minutes, motion to approve passed 5-0 by voice vote.

Correspondence/Updates

Next meeting is scheduled for October 19, 2015.

Adjournment

Motion to adjourn by Szachnit, second by Meis. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 4:42 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
October 19, 2015

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 1, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Edward Szachnit, and Marj Bachhuber. Staff present included Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

Public Hearings

Daniel and Jessie Glodowski, Owners (P15-12)

The Daniel and Jessie Glodowski, owners, Special Exception request from the provisions of the Portage County Zoning Ordinance to operate a barbering/cosmetology business as a home occupation in the A1 Exclusive Agricultural District, Town of New Hope, was opened by Jazdzewski, who read the public hearing notice.

Pelky explained the petition and stated the business would be conducted out of an existing shed. A 15'x35' portion of the building would be converted to the business; this makes it a home occupation done outside of the home, which triggers the Special Exception.

Jazdzewski swore in Jessie Glodowski and asked her to explain the request. Glodowski stated she is a licensed cosmetologist and also has a manager's license. In order to practice out of her home, she needs a licensed establishment for safety, health and sanitation. If she were to operate out of her basement, she would not have handicap access. Glodowski looked to other areas to operate from, such as Nelsonville, but it would not be cost effective. She wants to convert part of her shed into a shop to provide licensed cosmetology services. Glodowski stated she is not looking to do tanning or nails and does not want any other employees.

Jazdzewski stated the purpose of the special exception is to allow the business in the out-building on the property. Glodowski will be licensed by the State.

Discussion relating to the size of the space requested for the shop; the following was noted:

- Glodowski will not have other employees, however, space is needed for a bathroom, utility room, and waiting room.
- The only sign Glodowski may consider having is on her door. She does not want to make the space look commercial.
- Glodowski has an established clientele and will be available by appointment only.
- The structure is plumbed for heating.
- The Cosmetology Board does not require any special sizing; she needs to comply with all building codes and have the proper ventilation van. She has all of this set up already.

There being no further questions from BOA, Glodowski was excused.

Jazdzewski read the following into the record:

- A letter dated October 9, 2015 from Ernest and Annette Glodowski, surrounding property owners, stating they are in favor of the petition.

Jazdzewski asked if there were any members of the public wanting to speak on this matter; it was noted there was none.

There being no members of the public wanting to testify, Jazdzewski closed testimony and opened deliberations. Special Exception facts were discussed and the following was noted by consensus of BOA members:

- The maintenance of safe and healthful conditions;
Glodowski has done her work.
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
The use is compatible.
- The amount of liquid wastes to be generated and the adequacy of the proposed disposal system;
There is an existing septic system. There will be no hazardous waste generated.
- The importance of the services provided by the proposed facility to the community;
Glodowski has a large clientele and this is a good use for the property.
- The availability of alternative locations;
Previously discussed; structure is already built.
- Such other factors as are relevant to the purposes of this Ordinance.
None.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(2)(c) in Order to Approve the Petition:

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
The use is not harmful and is not contrary.
- The use would be consistent with surrounding uses and the neighborhood would not be injured thereby;
There has been no testimony against the petition.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.
The use is consistent.

Jazdzewski added this business will not generate much traffic.

Motion by Soik to approve the special exception request as submitted in the packet, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. Any hazardous waste is to be properly disposed of.
3. No customer parking is allowed on County Road MM.

Motion to approve seconded by Szachnit. Motion to approve passed 5-0 by voice vote.

Mark Pliska, Owner, Eron Construction LLC, Agent (P15-13)

The Mark Pliska, owner, Eron Construction LLC, agent, Variance request from the Portage County Zoning Ordinance to construct an addition to the north side of an existing building, within the setbacks to County Road E, in the C3 Commercial District, Town of Linwood, was opened by Jazdzewski, who read the public hearing notice.

Pelky explained the variance request is to construct a 7'x18'6" addition onto the north side of a non-conforming, pre-existing before zoning was in effect, structure. The tavern sits very close to the road right-of-way. The closest part of the addition will actually be a little farther away; approximately 5" from the right-of-way. The structure will be located out of the right-of-way, but requires a variance.

Jazdzewski swore in Dennis Eron and asked him to explain the request. Eron stated they are requesting a variance because the northwest side of the bar is within three inches of the right-of-way, as of right now. The addition they want to put on will go to the north on County Road E. If they go further north, they will cross over the right-of way. By pulling the proposed addition back six inches, they will be five inches from the right-of-way. They are requesting to have more storage off the kitchen. The kitchen is established, has only two sinks, and the Health Department is requesting that the owner get more sinks. Building the addition will allow them to

move the dry storage from the kitchen area to the cold storage area. Sinks can be added to meet the Health Department's requirements, as well as create an adequate kitchen for storage and prep of foods.

Jazdzewski stated realistically they are not expanding the business operation, they are working to be compliant with codes and regulations.

Meis asked if it matters if the eave hangs over the right-of-way. Eron stated there is a six inch eave over the bar, but it will not encroach into the right-of-way. Mrdutt said they allow up to 30" overhang into a setback. Discussion on where the addition will be placed.

Eron stated he has not received any formal correspondence from the Highway Department because the person he needs to hear from is out of town until today. Eron stated they need to be located out of the road right-of-way and they are required to have a survey conducted to have locations marked. Based on the survey, they moved the location of the addition 6" so they will not encroach on the right-of-way. In addition, they will be required to submit plans. Pelky stated these things are being done to make sure the structure is not built on property they do not own.

Jazdzewski asked if there were any members of the public wanting to speak on this matter. Carl Karcheski, Town of Linwood Chairman, was sworn in. Karcheski stated the Town of Linwood Plan Commission and Town of Linwood Board both voted to unanimously approve the request. Karcheski was excused.

Jazdzewski read the following into the record:

- A letter from the Town of Linwood stating the Town of Linwood Board and Town of Linwood Plan Commission both voted to approve the request for an addition.

Jazdzewski again asked if there were any members of the public wanting to speak on this matter; it was noted there was none. There being no members of the public wanting to testify, Jazdzewski closed testimony and opened deliberations. Variance facts were discussed and the following was noted by consensus of BOA members:

- The maintenance of safe and healthful conditions;
This will certainly improve the healthful conditions.
- The prevention and control of water pollution including sedimentation;
This is a non-issue; this is for storage only.
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
This is an addition to a currently operating facility that has been there for a long time.
- The availability of alternative locations;
There are no alternatives; this is the best location.
- Such other factors as are relevant to the purposes of this Ordinance.
None noted.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) in Order to Grant the Variance

- Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
Granting the variance allows the building to be compliant with codes.
- The use is permitted in the District;
The use is permitted.
- Exceptional circumstances apply to the use that does not generally apply to other landowners;
This is an existing business. Due to the placement of the structure, and because the road has gotten bigger over the years, it appears the road is almost encroaching on the structure.
- Granting the variance would not be detrimental to surrounding landowners;
Granting would not be detrimental.
- Hardship is not caused by any person having interest in the property.
This is correct.

Jazdzewski stated the footprint of where the expansion will be located is almost totally occupied by a concrete slab now that has not caused any problems in the past. Eron stated they will remove the slab. Discussion on the roofline and how the new roof will be finished so as to not create a hodge-podge of rooflines that will be

inaccessible. Eron stated the roof will be tied into the second story of the main building. The structural aspects of the facility, inside and outside, will eventually be cleaned up.

Motion by Szachnit to approve the variance request as submitted in the packet, and based on the testimony given today, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. A copy of Safety and Professional Services approval must be on file with the Portage County Planning and Zoning Department.

Motion to approve seconded by Meis. Motion to approve passed 5-0 by voice vote.

David Ladick/Duane Polum, owners (P15-14)

The David Ladick/Duane Polum, owners, Special Exception and Variance requests from the provisions of the Portage County Zoning Ordinance to expand a clay pit as a nonmetallic mining site and excavate across the property line, in the A4 General Agricultural District, Town of Linwood, was opened by Jazdzewski, who read the public hearing notice. This hearing will provide the public a chance to discuss the reclamation plan for this project as per NR135 and the Portage County Nonmetallic Mining Reclamation Ordinance.

Pelky stated this petition is for a continuation of a mining site. The site was approved in 2003 for clay. The market didn't materialize so the approval lapsed. The site was re-approved in 2009 and clay was excavated. They did not get the quantity of clay that was needed, so petitioners are looking to expand across the neighbor's property line; about 10 acres. The request is for a special exception for non-metallic mining to get the clay off the site. The fact they want to cross the property line would require a variance. BOA will need to act on the special exception request first. If that is approved, BOA will then act on the variance.

Pelky stated another element to address is that because this is non-metallic mining, the general public is permitted to give comments on the reclamation plan for the project.

Jazdzewski swore in David Ladick and asked him to explain the request. Ladick stated the following:

- The material is dedicated for Wisconsin Public Service. They are developing a landfill in Knowlton.
- The site was originally engineered in 1994. They were permitted in 2003.
- Both parcels were permitted in 2003. The market was so slow and they were not seeing a lot of places they could go with the material. When Ladick permitted in 2009, he only permitted the part he owned, without getting the neighbor's property involved. He was not sure if they would ever be able to use it.
- They are now able to start digging; the landfill is being developed in phases and they should be able to get everything removed from both properties in the first two phases of the project.
- They want to dig across property lines so they do not have a 3:1 slope going up and another 3:1 slope going back down.
- The same farmer, Duane Polum, will be farming his property as well as Ladick's as Ladick rents his property to Polum. Ladick wants to make sure everything is continuous and farmable.
- They have additional fill on-site that Portage County Highway hauled in off the Highway M project. If they dig a little deeper hole, they will be able to fill it in to make sure they do not have any wet areas.
- The fill and spoils brought in by the Portage County Highway Department does not have any contaminants. Ladick has a letter from the Portage County Highway Department stating there will not be anything that had any contamination.
- There was discussion on the reason for the request to mine across property lines. Setbacks must be met, and following them would create a percentage of land that could not be mined. In addition, it would be a stumbling block when dealing with contours when they want to restore the farmland.
- There was discussion on the ownership history of the property. Somers was the original owner and Ladick was his agent. Ladick purchased the property in 2013.
- Acreage is just over ten acres.
- Clay depth varies; some can be at 1 foot, most is at 2-3 feet, and some is at 4 feet. This is a very thin layer that runs through the area.
- Ladick is hoping after the clay is removed that the property is more farmable. There were some times where they couldn't get the tractor through.
- Ladick is hoping the project can be completed by the end of summer 2016.
- Once the project is completed, the topsoil will be rolled back. This will hopefully be completed a few weeks after the project. Ladick explained the reclamation process.
- Topsoil will be stored on-site. There will be a silt fence.

- A reclamation plan has already been submitted, reviewed, approved, and is on file.

There being no further questions for Ladick, he was excused by Jazdzewski. Jazdzewski asked if there were any members of the public present wanting to speak on this matter.

Town of Linwood Chairman, Carl Karcheski, stated the Town of Linwood Board and Plan Commission both reviewed the request. The recommendation of the Plan Commission was approval. The Town Board unanimously voted to recommend approval of the request. Karcheski added that if the permit had not been allowed to lapse, this matter would not be before BOA today.

Jazdzewski read the following in to the record:

- A letter from the Town of Linwood Clerk stating the Town of Linwood Board and Plan Commission both voted to recommend approval of the request.

Karcheski was excused by Jazdzewski. Jazdzewski asked if any other members of the public wanted to speak on this request; it was noted there were none. Jazdzewski closed testimony and opened deliberations. Special Exception facts were discussed and the following was noted by consensus of BOA members:

- The maintenance of safe and healthful conditions;
This is not a problem.
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
This has been going on since 2009.
- The amount of liquid waste to be generated and the adequacy of the proposed disposal system;
A retention pond is already located on-site.
- The importance of the services provided by the proposed facility to the community;
This is needed for clay.
- The availability of alternative locations;
This is a continuation of an on-going site.
- Such other factors as are relevant to the purposes of this Ordinance.
Nothing noted.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) in Order to Approve the Petition

- The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
The use is not contrary.
- The use would be consistent with surrounding uses and the neighborhood would not be injured thereby;
The use is consistent; it is an on-going site.
- The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.
The use is consistent.

Jazdzewski stated there was a concern with the driveway at the on-site, and asked if Ladick would be maintaining the existing access points. Ladick agreed and stated he would maintain the existing access points. The Highway Department is involved and there is bonding in place. Jazdzewski stated the operation is moving down the road and there is another permitted access point. Ladick stated it would be good public relations to continue to use the driveway they have been using, without using the farm field access across the road. Jazdzewski noted this would also reduce the amount of cleanup that would have to be done.

Motion by Bachhuber to approve the special exception request as submitted in the packet, with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. You are to obtain any necessary permits from the DNR and copies of the DNR permits are to be on file with the Portage County Planning and Zoning Department.
3. All hazardous waste is to be stored in 100% containment containers and be properly disposed of.
4. A Stormwater Management Plan must be approved by the Portage County Land and Water Conservation Division, and it must be filed in the Portage County Zoning Office.

5. Approval is granted for three years. If work is not completed within three years, an extension may be applied for with the permanent staff of the Portage County Planning and Zoning Department.
6. Work is to commence on or about the end of October, 2015 and operations shall cease at the end of October, 2016.
7. Hours of operation are 6:00 am to 8:00 pm, Monday through Friday. If work is needed on the weekend, the Portage County Planning and Zoning Department or the Town Chairman must be notified in advance.
8. Any driveway should be located by the Portage County Highway Department's recommendation for visual safety.
9. The proposed excavation must be a minimum of 75 feet from the centerline and sit 42 feet from the right-of-way of County Road II, whichever is greater.
10. The final approved design for the proposed excavation must be on file in the Portage County Planning and Zoning Department prior to issuance of a Portage County Zoning Permit.
11. You are to obtain a \$100,000.00 bond if requested by the Portage County Highway Department for construction season to cover damage, if any, to County Road II.
12. You are to log County Road II with the Portage County Highway Department prior to the start of hauling to determine the condition of County Road II. The condition of the road should be determined and documented with the Portage County Highway Department prior to the start of hauling.
13. The haul road must be cleaned of clay and other debris and material daily.
14. You are to stack the pile of overburden and topsoil on the site. Upon completion of the project, the overburden and topsoil must be spread, seeded and contoured.
15. Allow yearly inspection by the Portage County Planning and Zoning permanent staff to document conditions of the site.
16. You are to complete a Reclamation Plan and it must be on file in the Portage County Planning and Zoning Department prior to issuance of a Portage County Zoning Permit.
17. No blasting is allowed.

Motion to approve seconded by Meis.

Jazdzewski suggested just including condition number 4 from the staff memo, which included all the previous decision's conditions. Bachhuber stated it is important because of the history and to bring it up to date.

Soik said condition #3 relating to storage of hazardous waste states 100% containment; Jazdzewski agreed that is what was said. Soik stated it needs to be 150% containment, and suggested the motion be amended.

Motion by Soik to amend condition #3 to state 150% containment, striking the 100% previously stated. Motion to amend seconded by Meis. Motion to amend condition #3 passed 5-0 by voice vote.

Motion to approve the special exception request, as amended, passed 4-1 by voice vote, with Soik voting nay.

Jazdzewski opened deliberations on the request for a variance. Variance facts were discussed and the following was noted by consensus of BOA members:

- The maintenance of safe and healthful conditions;
Yes.
- The prevention and control of water pollution including sedimentation;
A plan is in place; the purpose of the variance will help with reclamation.
- The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
This is a continual clay pit.
- The availability of alternative locations;
The purpose of the variance is to include and as a continual property.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) in Order to Grant the Variance

- Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
This would not be contrary.
- The use is permitted in the District;
The use is permitted.

- Exceptional circumstances apply to the use that does not generally apply to other landowners; These are adjacent properties used for continual clay extraction.
- Granting the variance would not be detrimental to surrounding landowners; Not detrimental.
- Hardship is not caused by any person having interest in the property. It is not.

Motion by Soik to approve the request for a variance as submitted in the packet, with the five conditions suggested in the staff memo. (For clarification, they are as listed below.)

1. Obtain a Portage County Zoning Permit.
2. Copies of any DNR permits are to be on file with the Portage County Planning and Zoning Department.
3. All hazardous waste is to be stored in 150% containment containers and be properly disposed of.
4. Consider including the conditions of the previous decision, A09-29, dated August 3, 2009.
5. Stormwater Management Plan must be approved by the Portage County Land Conservation Section.

Motion to approve seconded by Szachnit.

Bachhuber said that by saying 1-5, it says consider including the conditions of the previous decision dated August 3, 2009, and some of those she doesn't want to include now; this is a variance. Bachhuber asked staff in order for this variance, do they have to get a separate Zoning Permit for the variance? Pelky answered no, it will all be on one permit. Pelky stated there may not even need to be conditions on the variance; it would be to approve crossing property lines. There was discussion on wording for the motion and the possibility of including conditions not intended or needed.

Motion by Soik to amend his motion to strike conditions 1 through 5 from the variance. Motion seconded by Bachhuber. Motion to amend passed 5-0 by voice vote.

Motion to approve the request for a variance, as amended, passed 5-0 by voice vote.

Pelky informed BOA that on the procedure for nonmetallic mining, Jazdzewski should reiterate to the general public that now would be the time to comment on the reclamation plan. Jazdzewski asked if there was anyone in the public curious about the reclamation plan. It was noted there was nobody in attending wanting to comment.

Soik commented from what he saw during the on-site, the reclamation looks fabulous. Jazdzewski stated it looks good at this time, and Ladick added it will look even better when they're done.

Approval of Minutes from August 17, 2015 meeting

Szachnit moved to approve the minutes of September 21, 2015, Meis seconded. There being no discussion on the minutes, motion to approve passed 5-0 by voice vote.

Correspondence/Updates

Next meeting is tentatively scheduled for November 16, 2015. No petitions have been received yet.

Mrdutt and Pelky explained the nonmetallic mining permit and reclamation process.

Adjournment

Motion to adjourn by Szachnit, second by Meis. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 5:20 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
December 21, 2015

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:02 pm in Conference Room 1, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included Dennis Meis, Scott Soik, John Jazdzewski, Edward Szachnit, Marj Bachhuber, and James Garbe (Alternate). Staff present included Dan Bowers, Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Pledge Allegiance to the Flag

Bachhuber led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

Public Hearing

Robert and Traci Carlson, Owners (P15-15)

The Robert and Traci Carlson, owners, Special Exception request from the provisions of the Portage County Zoning Ordinance to operate a commercial stable and riding arena in the A3 Low Density Agricultural District, Town of Buena Vista, was opened by Jazdzewski, who read the public hearing notice.

Pelky explained the request, stating the applicant wants to have a total of up to 10 commercial horses. The Zoning Ordinance states a landowner can board up to four horses legally; five or more triggers a Special Exception request in front of the BOA. The specific request is to approve an indoor riding arena and stable. Pelky explained the difference between how many horses a landowner can own privately, compared to how many can be boarded commercially.

Jazdzewski swore in Robert Carlson and asked him to explain the request. Carlson stated he owns 20 acres, of which 8-10 are open field. There is a dairy barn as well as miscellaneous outbuildings located on the property. Carlson's daughters have had horses their entire lives and are now referred to as "eventers" which means they have three days of pure horseback riding in different phases. For the girls to keep up their skills, as well as those of their horses, they need to ride year round; rain, snow, or shine. For this reason, they wanted to build an indoor riding arena. This structure will be 16 feet tall, 128 feet long by 63 feet wide.

Carlson stated he has friends that are into the same thing and would like to be a part of this and be able ride in the winter as well. They are also interested in boarding horses. Carlson wants to use this as a way to help pay for the building and make it more economically feasible. Carlson stated he calculated he should be able to do this by having four year-round boarders, in addition to a fifth horse in the winter. He would like to have a few extra horses to try to make this a little more profitable. Carlson explained this is why he worked with Pelky to bring his request before the BOA.

Meis asked if the request is for a total of 14 horses, and Carlson replied he does not want to go more than that. One reason for this is the manure that must be handled. He wants to be able to do this without any issues.

Pelky explained the request is for a total of 14 horses; up to ten to be commercially housed. Pelky explained the landowner can have any many horses that are privately owned by his family. Carlson explained his reasoning and stated he considered a limit of 14 horses based on a great deal of research on horse-to-acre ratios and with respect to nutrient spreading. Carlson added he interacted with a few local people who were interested in using the manure produced on his property for spreading on their property. Carlson has letters from two people interested in doing this. Carlson added there are a few beef farmers located on Oak Road who he could interact with relating to nutrient spreading.

Discussion amongst Carlson and BOA; the following was noted:

- There will be no employees; family members only.

- It will be the responsibility of Carlson and his family to take care of the horses.
- The intention is to keep the stable clean; for fly control for the animals; and for the health and wellbeing of the area because they do not want issues with manure building up in certain areas.
- Carlson explained what areas will possibly be used for manure storage.
- Carlson explained where the structure will be located, and where there are turnout areas.
- Each horse will have its own space.
- Carlson explained the boarder will get to determine if they want their horse turned out by themselves, or if they want them to be turned out with other animals.
- There are currently eight stalls in the barn.
- Carlson is looking at options for outdoor boarders. The boarder will choose whether they want to pay for an indoor stall or to keep their horses outside.
- Carlson will be responsible for providing hay and water. Anything above that will be the responsibility of the boarder.
- If a horse owner needs a bathroom, Carlson will let them utilize one in his residence.
- The structure will have electricity. There will be no heat or plumbing.
- There may be one outside light at the main entrance of the building.
- The structure will be more or less open; they will not have a lock on the stable. This is mainly for the safety of the horses.
- There is ample parking near the dairy barn, near the riding area, in addition to other areas around the property.
- There was discussion relating to where manure will be spread; noting it must be at least 50 feet away from any wells and 300 feet from streams, lakes, and ponds. In addition, there must be no standing water. Carlson stated there is no standing water. Carlson stated he is considering going to the north end of the barn and building a backdrop to push up against.
- Carlson is unsure at this time, but he will continue to work with the Land and Water Conservation Section to establish a manure management plan.

Jazdzewski reiterated to the BOA the purpose of this Special Exception request; it is a special exception for the commercial operation aspect. There being no further questions from BOA, Jazdzewski excused Carlson.

Jazdzewski asked if there were any members of the public wanting to speak on this matter. Joan Entzminger, surrounding property owner, stated she owns five acres to the south of the Carlson property. Entzminger stated their side property lines butt up against the back of her property. She asked if there will be an electric fence around the property to contain the horses. Carlson replied there will be an electric fence and he will eventually double-up the fence to create a riding area around the property, in addition to doubling up the protection. The electric fences would each be on different power grids.

Stuart Geiger, property owner to the east, expressed concern over the horses ruining what he described as a 10 acre art project resembling a 9-hole golf course that he has been working on for years. Geiger would like assurance that the horses will not be running across his art project. Other than that, he sees no complications what so ever. Geiger added he feels the manure should be pushed to the south. Entzminger added she does not want the manure pushed to the south. Jazdzewski stated he hopes the neighbors can all work together on this.

Entzminger asked if the horses will be riding on the entire 20 acre parcel. Jazdzewski stated it is Carlson's property and if he chooses to ride horses on the entire property that is allowed.

Kimberly Lepak stated she does not actually have property out there; her father's property is located directly to the north of Carlson's property. Lepak expressed concern if Carlson goes commercial, how much traffic will be generated. In addition, Lepak asked if the business continues to get bigger, will there be more traffic. Lepak is concerned if there will be shows. Carlson stated he has no intention to have events. This will be just for his girls and the boarders. Regarding when people would be at the property, Carlson stated usually people come after work and for the entire day on the weekends. Carlson stated he does not anticipate a lot of traffic and currently he expects only two vehicles at a time.

Jason Duellman, property owner to the west, asked for clarification to make sure this is not a rezoning request. Jazdzewski explained this is a request to have the ability to board greater than four horses commercially.

Jazdzewski stated if Carlson wanted to exceed boarding of 10 horses commercially, he would have to come back before BOA with another request.

Jazdzewski read the following into the record:

- A letter dated December 14, 2015 from the Town of Buena Vista, stating the Town Board recommended approving the petition with the following restrictions:
 - No manure be stored outside of the buildings
 - Maximum of 15 stabled animals
- A memo from Dan O'Connell, Land and Water Conservation Division, stating staff will need to approve a detailed animal waste management plan, and providing requirements are met, up to 14 horses may be allowed on this parcel.

Geiger questioned not storing manure outside of a building, adding it does not make sense.

Pelky stated he asked the Town Board Chairman for clarification. The Town Board Chairman indicated they did not want to see piles or mounds of manure; they need to keep it under control. Meis stated if they are spreading twice a year, he believes they should be handling it well. Pelky stated Carlson will work with Dan O'Connell.

There being no further questions, Jazdzewski closed testimony and opened deliberations. Special Exception Standards were read; there was nothing additional noted.

Jazdzewski stated they need to make sure manure issues are addressed with the Land and Water Conservation Division. He feels if designs are satisfactory with them, they will be satisfactory to the County and community. Jazdzewski stated Carlson will be boarding his own animals first, and if they are not treated properly, Carlson won't have additional boarders. Jazdzewski reiterated BOA needs to only deal with the commercial aspect of this request.

Discussion amongst BOA members and staff relating to guidelines for number of animals allowed per acre. Pelky stated these guidelines will be reviewed and applied accordingly. Pelky reiterated all rules and regulations will have to be followed.

Motion by Soik to approve the request for a Special Exception as submitted, with conditions 1 – 3 as outlined in the staff memo. Motion to approve seconded by Meis. Motion to approve passed 5-0 by roll call vote.

For clarification, Jazdzewski stated the conditions are:

1. You are to obtain a Portage County Zoning Permit.
2. An animal waste management plan should be approved by the Portage County Land and Water Conservation Division.
3. The Board considered having a limit on the number of horses the property can support. The petition, which was approved as submitted, requested up to 14 horses. Therefore, it is determined up to 14 horses are permitted; 10 horses maximum for commercial boarding purposes.

Approval of Minutes from October 19, 2015 meeting

Soik moved to approve the minutes of October 19, 2015, Bachhuber seconded. Stewart noted there was a typo that was brought to her attention earlier. On page 3, first line of the bottom paragraph that reads "... footprint of with the expansion..." should read "...footprint of where the expansion..." That correction has already been made in the original document. There being no additional discussion on the minutes, motion to approve passed 5-0 by voice vote.

Correspondence/Updates

Next meeting is tentatively scheduled for January 18, 2016. No petitions have been received yet.

Jazdzewski stated we should begin posting the "Inclement Weather Notice" in the agenda to make sure we have an alternate date if there is bad weather.

Adjournment

Motion to adjourn by Meis, second by Soik. Motion to adjourn passed by voice vote. Meeting adjourned by Jazdzewski at 4:52 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

Marjorie Bachhuber, BOA Secretary

Date of Approval