

The Ledgeview Zoning Board of Appeals held a meeting on **Wednesday, February 13, 2019 at 6:00 p.m.** at the Municipal Building located at 3700 Dickinson Road, De Pere, WI 54115.

CALL TO ORDER

The meeting was called to order by Chairman Schlag at 5:02 p.m.

ROLL CALL

Present were Chairman Andy Schlag, Members Mark M. Danen and John Fiddelke, and Alternates Steve Corrigan and Steve Rohr, making a legal quorum of the Board.

Staff present were Planner Dustin Wolff and Clerk Charlotte Nagel.

STATEMENT OF PUBLIC NOTICE

It was confirmed that the Notice of Zoning Board of Appeals was published in the February and 15th, 2018 edition of the Green Bay Press Gazette, the Town's official newspaper. It was also confirmed that the Notice of Zoning Board of Appeals was posted in the three required posting locations on January 9th.

APPROVAL OF MINUTES: April 11, 2018 Meeting.

MOTION by Steve Corrigan, seconded by John Fiddelke to approve the April 11, 2018 Zoning Board of Appeals Minutes as written. No further discussion. Motion carried in a voice vote, 4-0.

NEW BUSINESS:

1. APPEAL #01-2019

Discuss and act on an appeal request from petitioner Steven Bieda of Mau & Associates, agent for Robert and Gail Cuene, owner of the property located at 3550 Wayne Lane, Parcel D-450 for the following:

- A. Request for variance from Chapter 135-26(c) which requires an accessory building to not exceed 900 square feet in size. Requesting a variance to allow an existing accessory building of 1800 square feet to remain on the property.**

John Fiddelke stated that as the parcel currently sits, it is compliant with all codes and a variance is not needed. Should the property owner decide to do something with the parcel in the future, then a variance may be needed depending on the wishes of the property owner. However, for right now, a variance is not required for this application. Fiddelke cited ordinance 135-11(G)(2).

There was discussion that this parcel is part of a larger development plan and will get subdivided again this year. It was mentioned, if that so happens, then at that time, a variance would be necessary, but a variance is not needed at this time. The Board can't issue a variance with one isn't warranted.

There was discussion on opening the meeting up for public comment so that the petitioner could address the Board directly.

MOTION by John Fiddelke, seconded by Steve Corrigan to open the meeting for public comment. No further discussion. Motion carried in a voice vote, 5-0. The meeting was opened for public comment.

Ron Van Straten, 3551 Wayne Lane, property owner addressed the board. The petitioners are proposing to keep the accessory buildings and the homestead, but develop the fifty-six (56) acres around them. The final configuration of the plat has not been determined.

Staff advised the items came to the Zoning Board of Appeals as a preemptive action because should the lot 1 final configuration be below 2.7 acres, then the farm accessory buildings will either have to be razed or a variance would need to be obtained. If the variance was obtained now, then the petitioner wouldn't have to come back to the Zoning Board of Appeals at a later date. The petitioner is also looking for Board feedback in order to determine what the final configuration will be.

There was discussion on whether or not the Board could legally grant a variance without one being required. However, the Board does understand that the petitioner is looking for confirmation that if a variance is required for the final configuration that one would be granted. For now, the Board cannot statutorily grant a variance where one is not needed. The petitioner will need to have the plat in final format, final reconfiguration, and at that time, come to the Board of Appeals for a variance on the final configuration. At the time of final configuration, if the parcel acreage is less than 2.7 acres, then the petitioner can either raze the shed or ask for a variance. The Town is not going to sign any land documentation until one of those two action items are completed.

MOTION by Fiddelke/M. Danen that item 1, Appeal 01-2019 is tabled due to the fact that a variance is not required at this time. No further discussion. Motion carried in a voice vote, 5-0.

2. APPEAL #02-2019

Discuss and act on an appeal request from petitioner Steven Bieda of Mau & Associates, agent for Ron Van Straten, owner of the property located at 3551 Wayne Lane, Parcel D-449-1 for the following:

- A. Request for variance from Chapter 135-26(c) which requires an accessory building to not exceed 900 square feet in size. Requesting a variance to allow an existing accessory building of 4800 square feet to remain on the property.**
- B. Request for variance from Chapter 135-27(b) which allows for only one accessory structure to be located on a lot. Requesting a variance to allow more than one existing structure to remain on the property.**

Overview:

At the initiation of the property owner, property in question was rezoned from R-R, Rural Residential to R-1, Single-Family Residential to allow for a CSM to be approved as a part of Grande Ridges Estates Phase II.

The CSM will result in a 2.54-acre property as illustrated in Figure 1. However, this is an interim configuration, as the parcel will be subdivided again to be integrated in the Grande Ridges Estates Phase II subdivision. See Figure 2. The final lot size is not known at this time, but will likely be around 1-acre in area.

The parcel is located in the center of the future Van Straten Farms Area Development Plan (ADP) and is proposed for future subdivision to accommodate additional single-family residential development under R-1 zoning. The change in zoning (from R-R to R-1) was requested by the petitioner knowing full-well the impact this would have on their accessory structure, specifically the amount (aggregate square footage) of accessory buildings permitted on RR zoned parcels. The ZPC specified the petitioner had the following options:

- 1. Not rezone or subdivide the property.
- 2. Raze or remove portions of the accessory structure.

Approved at the October 29, 2019 Zoning Board of Appeals Meeting.

Approved at the November 4, 2019 Town Board Meeting.

3. Go to the Board of Appeals for a variance to the accessory structure size requirements.

Findings of Fact:

The Zoning Ordinance and Zoning Board of Appeals rules of procedure include the following criteria, all of which must be satisfied for a variance to be granted.

1. *The variance request is not contrary to public interest, is consistent with the intent of the ordinance and will not compromise public safety and welfare.*
The requested variances are contrary to the public interest. The R-1 District has a limit to the size of accessory structures so as to not overbuild the lots. This is especially important in subdivision. The final lot size for the Van Straten property will be about 1.25 acres. A 4,800 SF barn is not contextually appropriate in a subdivision setting where most of the lots will be around 12,000 SF in area. Moreover, two (2) large accessory structures in a subdivision setting is equally unnecessary. Allowing this variance does not benefit the welfare or well-being of the general public, only the petitioner. There are no public safety issues/concerns with the variance requests.
2. *The proposed variance will not serve as a special privilege and is not justified based on special conditions of the property, which are not shared by other properties in the same locality or district.*
The petitioner would be a special privilege because there are no unique or special conditions or circumstances to the property. The petitioner has made a conscientious decision to rezone and subdivide the property; benefiting monetarily from the sale of the lands. To gain financially, the trade-off is the loss of the building or its reduction in size.
3. *A strict and literal interpretation of the ordinance will result in a practical difficulty and unnecessary hardship on the property owner.*
A strict and literal interpretation of the ordinance in regards the accessory structure will NOT result in practical difficulty or unnecessary hardship on the property owner. While the accessory structure was constructed many years ago, it was the petitioner's decision rezone and subdivide the property.

A strict and literal interpretation of the ordinance would require the owner to raze the existing barn in order to comply with the code. The petitioner determined the subdividing their lands for financial gain was more important than the accessory structure.

4. *The variance is not requested because of a self-imposed hardship.*
The variance is a self-imposed hardship. The land division is a willful decision of the property owner, and the property owner was the one who developed the property. Again, the property owner could readily convert existing gravel or asphalt areas to grass to comply with the zoning ordinance.

Recommendation:

Denial of Appeal # 02-2019 for a 4,540 square foot variance to Section 135-26(C) and a variance to Section 135-27(B) to allow for an existing 4,800 SF accessory structure to remain on the property along with the ~740 square foot second garage; citing that the requested variance is contrary to the public interest, the literal enforcement of the provisions of the ordinance will not result in unnecessary hardship to the property, and the hardship is self-imposed.

Board Discussion:

The Board understands the request, but must make a decision based on the findings of fact, not situational information. The Board discussed preservation of the barn for historical reasons. The barn was built at the turn of the century and has been maintained very well.

Approved at the October 29, 2019 Zoning Board of Appeals Meeting.

Approved at the November 4, 2019 Town Board Meeting.

The petitioner addressed the Board indicating that the barn is very important to him, that he will own it one day, and that he will continue to maintain and keep up the barn so it doesn't become an eyesore. The petitioner assured the Board that if the barn becomes an eyesore and not useful anymore, the petitioner will take the barn down.

If the variance is granted tonight it becomes the developer's problem. The Board agreed with barn preservation. The variance runs with the parcel, not the building. So if there's variance is granted for barn preservation, then the variance should be tied to the barn in the motion. So that if the barn comes down, that another building the size of the barn can't be built on the property.

There was also the discussion on the fact that once the determination was made to sell the property and rezone the property started the process of developing the property. Therefore, whether there's emotion attachment to the barn or whether the barn has historical value is irrelevant because the decision to develop the parcel was already made, and therefore the barn should be razed because it doesn't fit what's happening with the parcel anymore.

Point of clarification: A variance would be required for any accessory building or combination of accessory buildings over 4,000 square feet in an R-1 (Residential) zoning district.

The parcel rezoning is contingent upon approval of the CSM. The CSM is approved contingent upon a variance being granted. If the variance is not granted, the CSM is denied, and the subsequent rezone is denied.

MOTION by Fiddelke, seconded Corrigan on appeal 02-2019 to allow the existing accessory buildings of 5540 square feet to remain on the property be granted a variance for the structures only, should the accessory buildings be destroyed up to 50% of the assessed value, the building will not be able to be repaired or replaced and the property will need to become compliant with current town ordinances. This motion is based on the following findings of fact:

1. The variance is not contrary to public interest because it has historical value and is on the tax roll
2. The variance does not serve as special privilege and it not justified based on special conditions because not everyone has a barn on their property.
3. A strict and literal interpretation of the ordinance would result in a practical difficulty and unnecessary hardship on the property owner.
4. The variance is not requested because of a self-imposed hardship a century old barn in which the current owner did not build it.

Roll call vote: Corrigan – Aye, Fiddelke – Aye, Schlag – Aye, M. Danen – No, Rohr – aye. No further discussion. Motion carried in a roll call vote. 4-1.

MOTION by Fiddelke, seconded by Schlag, to close public comment. No further discussion. Motion carried in a voice vote, 5-0.

MISCELLANEOUS BUSINESS

Fiddelke made comments about some Zoning Board of Appeals procedures. Although Fiddelke likes the staff memo, he would prefer it not have a recommendation as the Board is a quasi-judicial body. Fiddelke would rather the staff give an overview and allow the Board members the liberty of comparing the case to the ordinances in order to make their own determination. The concern is that it's all too easy to take the staff's recommendation. Fiddelke would rather not have a recommendation.

Approved at the October 29, 2019 Zoning Board of Appeals Meeting.
Approved at the November 4, 2019 Town Board Meeting.

Fiddelke would like to see all materials into the hands of everyone at least a week in advance of the meeting. Other members chimed in stating it's not always possible; sometimes all the information isn't readily available a week prior to the meeting, but appreciates receiving the materials as soon as possible. Fiddelke would also like to see the applicant sent the overview as a way of leveling the playing field.

Fiddelke would also like the Board to use the form in Appendix D of the Zoning Board Handbook to be used on every case as a matter of a voting record.

Fiddelke inquired as to how much help or guidance the applicant receives from staff. Staff replied as much help/guidance as the applicant wants is afforded to them.

Fiddelke has an issue with a Town Board Member being on the Zoning Board of Appeals, he doesn't think it right that the Town Board Member is voting on variances because they take an oath to uphold them. Being a member of the Zoning Board of Appeals contradicts the oath that is taken. Staff advised that authority to appoint members of the Board of Appeals lies with the Town Chair.

Fiddelke would also like included in the Board of Appeals packet the notice and voting outcome of the Zoning & Planning Commission.

No action could be taken on these items due to lack of proper public notice.

ADJOURNMENT

MOTION by Schlag, seconded by M. Danen to adjourn. No further discussion. Motion carried in a voice vote, 5-0. Meeting adjourned at 6:46 PM.

Respectfully submitted,

Charlotte K. Nagel, Clerk
Town of Ledgeview, Brown County, WI