The Ledgeview Zoning Board of Appeals held a meeting on **Tuesday, October 29, 2018 at 5:00 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 5:00 p.m.

ROLL CALL
Present were Chairman Schlag, Town Board Member Mark Danen, 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
Staff confirmed the meeting was originally scheduled to take place on October 23rd, 2019 in which case **the** Notice of Zoning Board of Appeals was published in the October 7th and 14th editions 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 October 7th, 2019. Out of respect for the unexpected death of a Board Member, the meeting was delayed a week. Thus, the Notice was re-posted on October 22nd, and re-published October 23rd, 2019 in the Green Bay Press Gazette.

APPROVAL OF MINUTES: February 13, 2019 Meeting.
There was discussion on a minor correction to the vote of the motion on Appeal 02-2019.

MOTION by Corrigan, seconded by M. Danen to approve the minute with the correction as discussed. No further discussion. Motion carried in a voice vote, 4-0.

NEW BUSINESS:

1. **APPEAL #03-2019**

   Discuss and act on Appeal request from Bryan Pfeffer, Robert E Lee & Associates on behalf of petitioner Elaine LeDuc, at 2440 Oak Ridge Circle (Parcel No. D-489-1) to allow for the existing five (5) accessory structures totaling 8,070 SF of be allowed to remain on the property in conjunction with a Certified Survey Map to create a 4.0 acre parcel. Per Section 135-11(G)(2) of the Zoning Ordinance, accessory structures are limited on the R-R, Rural-Residential property to two (2) in number and in aggregate area to 2.0% of the total parcel area to a maximum of 4,000 square feet.

   Overview:
   The petitioner is requesting a variance from Section 135-11(G)(2) of the Zoning Ordinance that specifies accessory structures are limited on R-R, Rural Residential properties to two (2) in number and in aggregate area to 2.0% of the total parcel area to a maximum of 4,000 square feet.

   Petitioner:
   Michael Strochein of Bellin Properties/Unity Hospice explained that years ago Ms. Elaine LeDuc gifted the land to Unity Hospice to build the existing campus. Ms. Le Duc has kept 16 acres zoned R-R in which the accessory structures were allowed.

   Now Ms. Le Duc would like to sell approximately 12.27 acres to Unity Hospice, and keep the remaining 4.0 acres for herself along with all the accessory structures. Ms. Storchein does not know what the buildings

are used for, just that Ms. Le Duc would like to keep them as they have sentimental value to her. Hence the Certified Survey Map (CSM) and variance.

Zoning Administrator:
At the initiation of the property owner, a two (2) lot CSM was requested to subdivide the residence and five (5) accessory buildings from the remaining vacant lands. Proposed Lot 1, which contains all the structures, will measure 4.00 acres while Lot 2, which will remain vacant, will measure 12.27 acres.

The CSM was requested by the petitioner knowing full-well the impact this would have on their accessory structures, specifically the number and amount (aggregate square footage) of accessory buildings permitted on R-R zoned parcels. The Zoning & Planning Commission specified the petitioner had the following options:

1. Not subdivide the property
2. Raze accessory structures to comply with the number and square footage requirements.
3. Petition the Board of Appeals for a variance to the accessory structure size and number requirements.

The petitioner is requesting to keep three (3) existing farm structures totaling 5,904 SF on the site following the land division. The initial submitted Indicated five (5) structures were present totaling 8,070 SF, but two have been removed since the Zoning & Planning Commission meeting.

Per Section 135-11(G)(2), the amount (area) of land impacts the size and number of accessory structures allowed. For parcels 1.50 or more acres, 2.0% of the total parcel area is allowed for accessory structures up to a maximum of 4,000 square feet, totaling two (2) structures.

The petitioner's land division would allow two (2) accessory structures up to 3,485 SF. To comply with the request of the petitioner, nearly 3.5% of the lot area would be needed for the 5,904 SF of accessory structures, more than double the percentage currently permitted by code (2%). A variance of 2,419 SF would be needed for the 4.00-acre parcel as proposed. An exception from the Code would also be needed to allow the three (3) accessory structures, one (1) more than allowed.

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. Allowing three accessory structures, totaling 5,904 SF is significantly more than what code permits (2 structures totaling no more than 3,485SF). Further, two of the accessory structures at 2,400 SF and 2,764 SF are larger than the existing residence (principal structure) and several of the homes surrounding the property. Allowing this variance does not benefit 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.*
   This petition 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 subdivide the

property; benefiting monetarily from the sale of the lands. To gain financially, the trade-off is the loss of the buildings or reduction in their sizes.

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 structures were constructed many years ago, it was the petitioner's decision to subdivide the property.

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

4. *The variance is not requested because of a self-imposed hardship.*
   The variances requested is a self-imposed hardship. The land division is a willful decision of the property owner. The owner has subdivided lands for the benefit of a sale. The accessory structures are the sole issue associated with the variance requests. Removal or reduction of the structures would not require a variance.

Recommendation:
Based upon the foregoing, the staff recommends denial of the appeal.

Board Discussion:
The Board understands the request, but must make a decision based on the findings of fact, not situational information. The Board agreed with the petitioner in this was not a self-imposed hardship because detached garages were the building standard at the time.

There was long discussion about the raising of the barn and what impact, if any, it would have the community. The majority of The Board felt the barn adds character and has a historical value to the community and have ruled to that effect in past similar situations.

Some members also felt that ordinances were created to establish a standard on which the growth of the Town was to be built upon. Issuing this variance would be going against that standard.

There was also considerable discussion on future subdivision of the 4 acre parcel. It was determined that should subdivision of the remaining 4-acre parcel take place in the future, that the building would have to taken down and the subdivided parcels would have to come into compliance with current zoning codes.

Further discussion was had on should 50% of the assessed value of the accessory structures be damaged or destroyed they could not be rebuilt or repaired. They would have to come down.

MOTION by Corrigan, seconded by Rohr to grant the variance to allow for the property to retain the three buildings and to enable accessory structures to occupy 3.4% of the property. If a further land division of development of the property is proposed, buildings would need to removed to comply with the zoning code requirements. If the structures are destroyed more than 50% of their assessed value they cannot be rebuilt or repaired. Roll call vote: Schlag – Aye, Corrigan – Aye, Rohr – Aye, M. Danen – Nay. MOTION carried in a roll call vote, 3-1.

2. APPEAL #04-2019

Discuss and act on Appeal request from James Smits, at 3449 Shadow Court (Parcel No. D-132-2) to allow for the construction of a 1,728 SF metal accessory structure on the property. Per Section 135-11(G)(2) of the Zoning Ordinance, accessory structures are limited on the 1.38 acre R-R, Rural-Residential property to one (1) in number and in size to a maximum of 1,200 square feet. Section 135-11(G)(2)(b) of the Zoning Ordinance specifies that the accessory building shall be constructed of materials which are substantially similar to those used in the principal structure with respect to texture, color and general appearance. Section 135-11(G)(2)(c) of the Zoning Ordinance specifies that the accessory building shall not exceed the height of the principal structure and sidewalls may not exceed 14 feet in height.

Overview:

The petitioner is requesting three variances.

1. The petitioner is requesting a variance from Section 135-11(G)(2) of the Zoning Ordinance that specifies accessory structures are limited on R-R, Rural Residential properties in size to 1,200 square feet.

2. The petitioner is requesting a variance from Section 135-11(G)(2)(b) of the Zoning Ordinance that specifies accessory structures shall be constructed of materials which are substantially similar to those used in the principal structure with respect to texture, color, and general appearance.

3. The petitioner is requesting a variance from Section 135-11(G)(2)(c) of the Zoning Ordinance that specifies accessory structures shall not exceed the height of the principal structure and side wall height cannot exceed 14 feet.

   The existing parcel is 1.38 acres and contains a residence and existing accessory garage which is detached from the residence. The existing garage is 32 feet by 46 feet (1,472 SF) and appears to have received several minor additions over time to reach its current size. The existing garage is a legal nonconforming use as at 272 SF over code (1,200 SF maximum).

   The existing garage is made out of wood and has three typical metal garage doors facing Shadow Ct. The roof is asphalt shingle and substantially matches the roof of the primary structure. The garage materials are different than the existing residence which is buff colored brick with an asphalt shingle roof. The overall garage height is estimated at 12 feet.

Petitioner:

James Smits was in attendance and explained that his intentions are to replace the existing structure with something more Aesthetically pleasing than the existing one. The existing structure is quite run down and needs to be replaced because repairing it just wouldn't pay. However, Mr. Smits would like the new building to be large enough to store all the recreational vehicles owned by Mr. Smits. The existing building is not adequate for storage and he rents other areas for overflow storage. The proposed building would be an all-in-one for Mr. Smits therefore providing a financial impact.

Zoning Administrator:

The petitioner is proposing to replace his existing 12-foot tall, 1,472 SF, wood and asphalt shingle accessory garage with a new, 22-foot, 8-inch tall, 1,728 SF, metal accessory garage in approximately the same location.

The petitioner is requesting a variance to allow for a 528 SF exception to the Code for an accessory structure on lands zoned R-R. Per Section 135-11(G)(2), the parcel acreage impacts the size of accessory

structure allowed on lands zoned R-R, Rural Residential. Lands between 1 and 1.49 acres are permitted one (1) 1,200 SF accessory structure.

The petitioner is requesting a variance from Section 135-11(G)(2)(b) to allow materials which will be substantially different (metal with metal roof) than those used in the principal structure (brick with asphalt shingle roof).

The petitioner is requesting a variance from Section 135-11(G)(2)(c) Height, to allow for a proposed garage at approximately 23 feet to …(c)[1] exceed the height of the existing principal residential structure and …(c)[2] to have side walls exceeding 14 feet. This request would be approximately 11 feet taller than the existing 12-foot garage (nearly double) and approximately 7 feet taller than the existing residence (16 feet). Further, the proposed garage would have 16-foot side walls which would require a 2-foot variance from …(c)[2] which restricts side wall height to 14-feet

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-R District has a limit to the size of accessory structures so as to not overbuild the lots. This is especially important on smaller R-R lots. The existing lot at 1.38 acres is exactly the minimum lot size required in the R-R district. Allowing three variances to replace a legal nonconforming structure with a more substantial nonconforming structure is not within the Town's ordinances and 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.*
   This petition 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 let his existing garage deteriorate to a point of needing replacement. He has acquired possessions (vehicles, trailers, an RV, etc.) which he does not appear to have the ability to store inside his existing garage to a point of violation of the Code (Section 135-11(S). Outdoor Storage, Section 135-14 Front, side and rear yards).

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 is the petitioner's decision to replace it with a much larger structure rather than repair it or replace it in compliance with the current code (1,200SF maximum).

   A strict and literal interpretation of the ordinance would require the owner to repair or reduce the size of the existing accessory structure in order to comply with the code. The petitioner has indicated the cost of a new structure ($16,599 per application) is less than the cost to repair a structure he indicated has a section with roof missing and walls that are deteriorating but fixable. Construction of

a new structure that complies with the current code (1,200 SF) is a practical alternative for the property.

4. *The variance is not requested because of a self-imposed hardship.*
The variances requested is a self-imposed hardship. The replacement structure that does not comply with the current code is a willful decision of the property owner. It is, in part, intended to allow him to store his RV on his property, thus the height variance to exceed the height of the house. The accessory structure is the sole issue associated with the variance requests. Removal or reduction of the structure, or a smaller structure to replace the existing if deterioration is truly a concern would not require a variance. The RV can fit into a smaller structure.

Recommendation:
Based upon the foregoing, the staff recommends denial of the appeal.

Board Discussion:
The Board agreed that the existing structure is in poor condition and should be replaced. There wasn't much concern with the height of the proposed new structure as there was with the roof pitch. The Board wanted the roof pitch to be consistent with the house (primary structure). The Board understood the height of the new building was to accommodate the door height required for storage of the camper.

As far as building materials, Board members explained there were several building products on the market that would maybe not match the primary structure but would complement it to make the property as a whole aesthetically pleasing and better than the existing.

MOTION by Corrigan, seconded by Rohr to grant the variance allowing for a 1200 square foot building with 16-foot side walls, roof pitch should not exceed the roof pitch of the primary structure, and allow the petitioner to work with staff on the decorative metal panels. No further discussion. Roll call vote: M. Danen – Aye, Rohr – Aye, Schlage – Aye, Corrigan – Aye. Motion carried in a roll call vote, 4-0.

MISCELLANEOUS BUSINESS
This was a standing item on agenda at the request of a Board Member. No discussion took place.

ADJOURNMENT
MOTION by Rohr to adjourn, seconded by M. Danen. No further discussion. Motion carried in a voice vote, 4-0. Meeting adjourned at 6:07 PM.

Respectfully submitted,

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