

The Ledgeview Zoning Board of Appeals held a meeting on **Wednesday, December 11, 2019 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 5:02 p.m.

ROLL CALL

Present were Chairman Andy Schlag, Members Mark M. Danen, 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 November 27th and December 4th, 2019 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 November 9th, 2019.

APPROVAL OF MINUTES: October 29, 2019 Meeting.

MOTION by Steve Corrigan, seconded by Steve Rohr to approve the October 29, 2019 Zoning Board of Appeals Minutes as presented. No further discussion. Motion carried in a voice vote, 4-0.

NEW BUSINESS:

1. APPEAL #05-2019

Discuss and act on Appeal request from Richard Huxford, Huxford Surveyors, Inc. on behalf of petitioner Glen Vanderhei, at 3027 Dutchman Road (Parcel No. D-278) to allow for the existing accessory structure totaling ~3,700 SF be allowed to remain on the property in conjunction with Certified Survey Map to reduce the parent parcel with the accessory structure from 3.62 acres to 2.28 acres. The parcel will be rezoned from A-2, Agriculture District to R-R, Rural-Residential District. Per Section 135-11(G)(2) of the Zoning Ordinance, accessory structures are limited on the R-R, Rural-Residential property to 2.0% of the total parcel area to a maximum of 4,000 square feet. The petitioner is seeking a variance of 1,714 SF to allow for an accessory structure that is 3.73% of the parcel area.

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 aggregate area to 2.0% of the total parcel area to a maximum of 4,000 square feet.

Review

At the initiation of the property owner, a two (2) lot Certified Survey Map (CSM) was requested to subdivide the residence and existing accessory buildings from the remaining vacant land. Proposed Lot 1, which contains residence and accessory structures, will be reduced from 3.62 acres to 2.28 acre4s. The accessory structure on Lot 1 measures approximately 3,700 SF. Lot 2, a future home site, will measure 1.34 acres.

The CSM was required by the petitioner knowing full-well the impact this knowing have on the aggregate square footage of accessory structures 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 square footage requirements.
3. Petition the Board of Appeals for a variance to the accessory structure size and number requirements.

Approved at the April 15, 2020 Zoning Board of Appeals Meeting.

Approved at the April 21, 2020 Town Board Meeting.

The Board of Appeals is tasked with determining the terms of the ordinance will be contrary to the public interest, where, owing to special conditions or unique circumstance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. Staff's review is based upon these criteria.

The petitioner is requesting to keep the existing accessory building totaling ~3,700 SF on the site following the land division. Per Section 135-11(G)(2), the amount (area) of land impacts the size and number of accessory structures allowed.

The acreage of land needed to accommodate certain value (square footage) of accessory structures is 2.28 acres. The petitioner's land division would allow an accessory structure up to 1,986 SF. To comply with the request of the petitioner, nearly 3.75% of the lot area would be needed for the ~3,700 SF of accessory structures, nearly double the percentage currently permitted by code (2%). A variance of 1,714 SF and 1.75% would be needed for the 2.28-acre parcel as proposed.

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.*

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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.

Petitioner

Mr. Jamie Vande Hei was present to address the Board. Mr. Vande Hei sold his house in Bellevue and is looking to build a new home on this parcel 2 of the CSM within the year or two. The parcel is currently owned by Jamie's uncle, Glenn Vande Hei. Jamie's dad owns the parcel to the east, D-278-1. The family is trying to keep the land in the family's name.

Jamie looked in to other options with the accessory structure, such as:

- Trying to improve the curb appeal of the area, moot point considering the neighbor aesthetics
- Reduce the shed to comply with the ordinance, not cost effective
- Walk away from the opportunity if the variance doesn't go through

The building is currently used to store farm equipment owned and used by the family for farming purposes.

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.

There was Board discussion was focused on the fact that this is not a historical barn that was the premises of previously granted variances. However, the Board does recognize that parcel is located out far enough to where the curb appeal shouldn't necessarily make a difference in the current development of the town. It was discussed that this area of town more than likely won't develop for a long time.

There was also discussion on moving the lot line 100 feet to bring the parcel into compliance for the size of the accessory structure. This wouldn't be feasible due to where the mound system would need to be to service the new home.

Discussion was had on the fact that Zoning & Planning Commission is recommending approval of the rezone of the parcel from A-2, Agriculture to R-R, Rural Residential.

A compromise was reached with the Board viewing the accessory structure as an historical barn; meaning a variance would be granted to allow the existing accessory structure, with conditions. Those conditions are:

- 1.) If any further land division or development of said 2.28-acre parcel (lot 1 of CSM) is proposed, the accessory building needs to be removed to comply with current zoning code requirements.
- 2.) If the accessory structure is destroyed more than 50% of its assessed value, the building must be rebuilt in accordance with the current zoning code.

MOTION by Schlag, seconded Corrigan on appeal 05-2019 to allow the existing accessory building of approximately 3,700 SF on Lot 1 of the proposed CSM conditioned upon:

1. The rezone of the parcel from A-2, Agriculture to R-R, Rural Residential is approved by the Town Board
2. The CSM is approved by the Town Board
3. If any further land division or development of said 2.28-acre parcel (lot 1 of CSM) is proposed, the accessory building needs to be removed to comply with current zoning code requirements.

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4. If the accessory structure is destroyed more than 50% of its assessed value, the building must be rebuilt in accordance with the current zoning code.

Roll call vote: Corrigan – Aye, Schlag – Aye, Rohr – aye, M. Danen – Aye. No further discussion. Motion carried in a roll call vote. 4-0.

ADJOURNMENT

MOTION by Schlag, seconded by Corrigan to adjourn. No further discussion. Motion carried in a voice vote, 4-0. Meeting adjourned at 5:49 PM.

Respectfully submitted,

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