



# Dane County

## Minutes

### Board of Adjustment

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Thursday, May 26, 2016

6:30 PM

Room 357 City-County Building Madison WI

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#### Room 357 City-County Building Madison WI

#### A. Call To Order

*The Chair called the meeting to order at 6:30 PM and made a statement regarding the rules and procedures of the Board.*

*Also present: Hans Hilbert, Assistant Zoning Administrator*

**Present** 5 - Chair STEVEN SCHULZ, Vice Chair SUE STUDZ, ROBERT PULVERMACHER, AL LONG, and EDMOND MINIHAN

#### B. Public Comment for any Item not listed on the Agenda

*No public comments were made.*

#### C. Consideration of Minutes

1. Minutes of the March 17, 2016 Public Hearing  
**LONG/STUDZ to approve the minutes. Motion carried.**  
**Ayes:** 5 - SCHULZ, STUDZ, PULVERMACHER, LONG and MINIHAN
2. Minutes of the April 14, 2016 Site Inspection Meeting  
**LONG/STUDZ to approve the minutes. Motion carried.**  
**Ayes:** 5 - SCHULZ, STUDZ, PULVERMACHER, LONG and MINIHAN
3. Minutes of the May 12, 2016 Site Inspection meeting  
**LONG/STUDZ to approve the minutes. Motion carried.**  
**Ayes:** 5 - SCHULZ, STUDZ, PULVERMACHER, LONG and MINIHAN

#### D. Public Hearing for Appeals

1. Appeal 3675. Appeal by West Dane Conservancy LLC (Kristine Euclide & Doug Steege) for a variance from minimum required setback to a wetland as provided by Section 11.06(5)(a), Dane County Code of Ordinances, to permit proposed residential addition at 4987 Reeve Road being a parcel of land in the NW ¼ of the NW ¼ Section 31, Town of Black Earth.

*Assistant Zoning Administrator (AZA) Hilbert presented a Staff Report reporting facts of the case.*

*IN FAVOR: Kristine Euclide and Doug Steege, owners, spoke in favor of the variance request.*

*ZONING ADMINISTRATOR'S COMMENTS: No comments from the ZA were made.*

*OPPOSED: [None. The Chair stated no rebuttal was needed.]*

*Finding of Fact:*

*Existing:*

- *Existing use of property consists of a single family residence and barn, portions of property are located in a conservation easement.*

*Proposed*

- *Applicants propose to remodel a portion of the existing residence, including a second story, and a small expansion of the existing footprint opposite the mapped wetland. Applicants also propose to enclose the existing barn foundation.*

*Zoning Notes:*

- *2005 – 2016 History of appeals of wetland setback is attached.*
- *Chapter 11 requires all structures to be setback at least 75 feet from a wetland boundary.*

*History*

- *Existing house was remodeled and the porch facing the wetlands was enlarged in 1980.*
- *In 2009 the current owners obtained a permit to use the existing barn foundation to construct a storage building. At the time the barn foundation was entirely outside of the required 75 foot setback to wetlands as mapped in the Wisconsin Wetland Inventory.*
- *In 2011 the current owners met with zoning staff to discuss a possible addition to the residence. At the time the ordinance allowed existing residences located within 75 feet of a wetland boundary a one-time increase up to 150% of the existing foundation as long as the addition did not encroach any further towards the wetlands. The applicants did not obtain a permit at this time.*
- *In 2012 Chapter 11 was amended significantly to incorporate changes in NR115 of the Wisconsin Administrative Code. After the change, structures within 75 feet of a wetland boundary were no longer grandfathered and the 150% provision was removed.*
- *In 2013 the Wisconsin Wetland Inventory was remapped to include additional lands on the applicants property.*
- *Violation History: No zoning violation history found.*

*COMMUNICATIONS:*

*Town of Black Earth: 2/22/2016; Acknowledgement and acceptance that Town will not take any position on the request.*

*WDNR, request for comment sent April 8, 2016. No comment back.*

*Conclusions:*

- 1) *Unnecessary Hardship: Applicants are requesting the minimum amount of relief to allow them the continued use of their property as a residential site. Strict compliance*

*with the ordinance would result in the restriction of use of their property.*

*2) Unique Limitations of the Property: The existing residence and shed are located on the high ground surrounded by limiting environmental features. Alternative locations would require additional crossing of wetlands for access to a location that could meet the required setbacks. Alternative locations are also held in a preexisting conservation easement.*

*3) No Harm to Public Interests: The proposed development will not intensify the existing use of the property. The ability to house the equipment necessary to maintain conservancy lands added a public benefit to the development.*

**Studz/Long to grant variance of 38 feet for residence and 41feet for shed to the required setback from a wetland boundary to permit a residential addition and shed enclosure as proposed.**

**Ayes:** 5 - SCHULZ, STUDZ, PULVERMACHER, LONG and MINIHAN

2. Appeal 3676. Appeal by Jeff & Nancy Ballmer (Robert Feller, agent) for a variance from minimum required setback to an ordinary high-water mark as provided by Section 11.03(2)(a)1., Dane County Code of Ordinances, to permit proposed residential addition at 9661 Howerly Road being a parcel of land in the NE ¼ of the NW ¼, Section 24, Town of Vermont.

*Assistant Zoning Administrator (AZA) Hilbert presented a Staff Report reporting facts of the case.*

*IN FAVOR: Bob Feller, agent, & Jeff Ballmer, owner, spoke in favor of the variance request.*

*ZONING ADMINISTRATOR'S COMMENTS: Hilbert relayed that Roger Lane stated the area between the existing structure and the waterway was already developed with impervious surface, and the ordinance allows for those impervious areas to be maintained as such. The proposed development would allow water to be treated prior to entering the waterway.*

*OPPOSED: [None. The Chair stated no rebuttal was needed.]*

*Finding of Fact:*

*Facts of the Case:*

*Existing:*

- *Existing use of property consists of a single family residence adjacent to a state highway and town road. The majority of the property is a densely forested steep slope.*

*Proposed*

- *Applicants propose to construct an addition on to the existing residence.*

*Zoning Notes:*

- *Chapter 11 requires all structures to be setback at least 75 feet from a navigable body of water.*
- *Existing residence is a non-conforming structure due to its legal encroachment in to the required shoreland setback.*

*History*

- *Historically the Town highway ran between the residence and the pond as it exists today, however State highway expansion and intersection reconfiguration moved the highway to the northwest, and damming was created to form the pond.*
- *In 2016 the Wisconsin DNR conducted a navigability determination of the pond and found that it had a hydrologic history and was navigable.*
- *In 2009 a permit for a shed and a deck addition to the residence was issued.*
- *Violation History: No zoning violation history found.*

*COMMUNICATIONS:*

*Town of Vermont, April 8, 2016 acknowledgement; April 26, 2016 Town Plan Commission—no objection.*

*WDNR, request for comment sent May 6, 2016.*

*Conclusions:*

- 1) *Unnecessary Hardship: Applicants would be unnecessarily burdened to not be allowed a slight expansion of their residential use of the property. The impact on the shoreland of this propose is minimal because the area is already developed with a driveway.*
- 2) *Unique Limitations of the Property: The majority of the property is steep slopes.*

*The existing residence is located on the portion of flat land that is outside of the mapped floodplain. The existence of the waterway is the result of a highway improvement project.*

3) *No Harm to Public Interests: The proposed development will allow for stormwater to be directed away from the waterbody and be treated rather than running directly over the existing driveway and entering the waterway.*

**Minihan/Studz to grant variance of 36.8 feet to the required setback from an ordinary high water mark to permit a residential addition as proposed.**

**Ayes:** 5 - SCHULZ, STUDZ, PULVERMACHER, LONG and MINIHAN

3. Appeal 3677. Appeal by Tom Bobek for a variance from minimum required setback from a Class C Highway as provided by Section 10.17(3)(b) , Dane County Code of Ordinances, to permit proposed deck addition to existing building at 6925 Elder Ln being Lot 1, CSM 9796, Section 22, Town of Bristol.

*Assistant Zoning Administrator (AZA) Hilbert presented a Staff Report reporting facts of the case.*

*IN FAVOR: Tom Bobek, owner, spoke in favor of the variance request.*

*ZONING ADMINISTRATOR'S COMMENTS: Hilbert relayed that Roger Lane stated he had worked with Mr. Bobek to propose alternatives to obtaining a variance but an agreement could not be reached.*

*OPPOSED: [None. The Chair stated no rebuttal was needed.]*

*Finding of Fact:*

*Existing:*

- *Property and existing structure is currently under construction to be repurposed as a supper club.*

*Proposed*

- *Applicant requests a variance to allow the construction of an open air deck on the southwest corner of the supper club building.*

*Zoning Notes:*

- *Chapter 10 requires a 30 ft setback from a Class C Highway to any structure. Section 10.16 allows exceptions, with limitations, to front setback requires only for the purpose of entry to buildings.*

*History*

- *11/11/1977 Garage addition and additional storage zoning permit issued with variance relief from required highway setback.*
- *10/01/1979 Tavern entry way addition zoning permit issued with variance relief from required highway setback.*
- *09/30/1986 Enclosed entry way and garage/basement addition zoning permit issued with variance from required highway setback.*
- *05/04/1990 Covered Entry and uncovered handicap ramp addition zoning permit issued.*
- *1990 Zoning permit for game room and 2nd floor entry issued. Permit file lost.*
- *2008-2009 Violations for illegal storage of junk vehicles on shared parking area for tavern.*
- *2014 Application for rezone and conditional use permit approved to allow for tavern use.*
- *October 2014, variance granted with conditions to allow addition to existing tavern building within the required setback to a Class C Highway.*
- *September 2015, variance extension granted to allow the owner additional time to obtain a zoning permit for the approved addition.*
- *December 2015, zoning permit DCPZP-2015-00952 issued for an addition to a supper club.*
- *April 2016, Stop Work Order placed on property for non-compliance with the conditions of variance approval. After the violation was corrected the Stop Work Order was removed.*
- *Construction related to permit DCPZP-2015-00952 is currently on-going.*

**COMMUNICATIONS:**

*Requested acknowledgement from the Town of Bristol April 21, 2016. E-mail from Town clerk stating that the Town is aware of the request and has no objection to the deck, May 6, 2016.*

**Conclusions:**

- 1) *Unnecessary Hardship: It is reasonable for a supper club to expect to be able to provide an outdoor seating area with the ability to serve alcohol in such a location.*
- 2) *Unique Limitations of the Property: The existing structure predates the zoning ordinance, other portions of the property are being used to meet parking and sanitation requirements of the zoning ordinance.*
- 3) *No Harm to Public Interests: The proposed deck will not be located any closer to the highway than the existing structure. The deck will allow the service of alcohol to remain in a controlled area.*

**Motion: Schulz/Pulvermacher to grant variance of 28.1 feet to the required setback from a Class C Highway to permit a commercial deck addition as proposed.**

**Ayes:** 3 - SCHULZ, PULVERMACHER and MINIHAN

**Noes:** 2 - STUDZ and LONG

**H. Adjournment**

*The board adjourned at 8:02 PM*

**Studz/Long to adjourn. Motion carried.**

**Ayes:** 5 - SCHULZ, STUDZ, PULVERMACHER, LONG and MINIHAN