



# Dane County

## Minutes

### Board of Adjustment

---

Thursday, September 28, 2017

6:30 PM

Room 357 City-County Building Madison WI

---

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

#### A. Call To Order

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

*Also Present: Staff: Roger Lane, Zoning Administrator; Hans Hilbert, Assistant Zoning Administrator.*

**Present** 5 - Chair STEVEN SCHULZ, SUE STUDZ, Secretary ROBERT PULVERMACHER, Vice Chair 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 August 24, 2017 Public Hearing

*The minutes were approved subject to a grammatical correction in the motion of appeal 3684.*

**STUDZ/LONG to approve the minutes with correction. The motion carried.**

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

2. Minutes of the September 14, 2017 Site Inspections

**STUDZ/LONG to approve the minutes. The motion carried.**

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

#### D. Public Hearing for Appeals

1. Appeal 3685. Appeal by Wisconsin Fuel LLC, owner; Golden Green Properties LLC, owner; and Dave Uttech, Keller, Inc, agent, for a variance from minimum required setback to a wetland as provided by Section 11.06(5), Dane County Code of Ordinances, to permit proposed gas station with convenience store and fast food restaurant with drive-thru; auto repair and sales at 2741 & 2763 County Highway N being Lot 1 CSM 11192 & additional lands in the NE 1/4 of the SW 1/4, Section 9, Town of Pleasant Springs.

*VARIANCES REQUESTED: 73 Feet.*

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

*IN FAVOR: Eric Drazkowski & Kave Uttech made testimony to the Board and spoke in favor of the appeal and stated that the stormwater management plan would provide better water to the wetlands than current conditions. Ted Gement, owner, spoke in favor of the appeal. David Pfeiffer, Town of Pleasant Springs Chair, spoke in favor of the appeal.*

*ZONING ADMINISTRATOR'S COMMENTS: Zoning Administrator, Roger Lane, stated that the setback is intended to create a buffer between development and sensitive environmental features and the developer presented a plan that has not taken into account the required setback.*

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

*Finding of Fact:*

*Existing:*

- The proposed development is contained by two existing parcels of land located in the southwest quadrant of the Interstate 39 and County Highway N interchange.*
- The northern parcel includes an automobile fueling station and fast food restaurant with a drive thru window; the south parcel has been used for automotive sales, service, and truck repair.*
- The Wisconsin Wetland inventory indicates the presence of wetlands on both parcels.*
- As part of the I-39/90 Expansion Project, WisDOT is almost complete in reconstructing the I-39/90 and County N interchange into a diamond interchange with three roundabouts. From 2012 to 2015 during the design stage of this project, a delineation of the wetlands in the southwest quadrant of the interchange was conducted to facilitate WisDOT in obtaining federal permits to deposit fill materials within the wetland. The conditions of the ACOE permit required mitigation in the form of credits from the World Dairy Wetland Mitigation Bank.*
- The aforementioned wetland delineation was submitted by the applicants as part of the variance request.*

*Proposed*

- The applicant proposes to rezone the C-1 portion of the development to C-2 and combine the parcels into a single certified survey map lot for the propose of redevelopment.*
- The redevelopment will include an auto/truck fueling station, truck scale, convenience store, food service, restrooms and showers, and a fast food restaurant with a drive thru window.*
- The development proposes locating heavy duty asphalt and concrete, a fuel canopy, a truck scale, concrete curb, and retaining wall within 75 feet of the delineated wetland boundary.*

*Zoning Notes:*

- *Under DCCO 11.06(5)(a) the minimum setback for all buildings and structures from wetlands greater than 2 acres is 75 feet (as described in 11.03(2)).*
- *As adopted by the Dane County Board, for the purposes of shoreland and wetland zoning regulations, the definition of a structure is “anything constructed or erected, the use of which requires permanent or temporary location on the ground, or attached to something having a permanent or temporary location on the ground, including but not limited to any building dwelling, manufactured building, manufactured home, mobile home, house trailer, recreational vehicle, boathouse, boat shelter, advertising sign, deck, patios, driveways, fences retaining walls, or other improvements or any part of such structure. A structure includes any permanent or temporary appurtenance attached thereto.*
- *Wisconsin Statutes, for the propose of shoreland regulation, define a structure to mean a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, walkway, patio, deck, retaining wall, porch, or firepit.*
- *Dane County Zoning requires a 75 foot setback from the boundary of a wetland to driveways and parking lots.*
- *When development is proposed in, around, or near wetlands or on sites where wetland indicators are present Dane County Zoning requires the wetland to be delineated. For the purpose of permitting, wetland delineations that meet the following are accepted:*
  - o *Delineation was conducted within the past 5 years.*
  - o *Delineation was performed by a Wisconsin DNR assured wetland delineator—OR—if not conducted by an assured delineator, was submitted to the Wisconsin DNR for review and concurrence.*
- *After a site visit and review of the 2015 delineation, it appears that a portion of the site that may contain wetlands was not within the area of review as indicated on Exhibit #35 of the study. Without further investigation it is unknown if the development proposes the filling of wetlands or would require greater relief than what is being requested. If the Board finds that a legal hardship exists and relief is warranted, staff recommend deferring approval until such a time that a delineation of the entire development site is complete.*
  - o *After the above staff recommendation was provided to the applicant, the applicant provided staff with additional information, in particular photographs that showed the installation of straw bales in a ditch as part of erosion control for the highway project. Wisconsin DOT Project Manager, Craig Pringle, confirmed via e-mail that the ponding was a result of the erosion control practice. Since the bales have been in place for several months during a wet summer there had been some standing water and vegetation growth in the sediment. The WisDOT project will be removing the bales, excavating the trapped sediment, and restoring the ditchline to the preconstruction condition the week of October 11th.*
- *Chapter 11 DCCO defines wetland as those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions. The ordinance does not differentiate between natural, artificial, or man-made wetlands.*
- *Given the additional information, staff recommend that the Board first focus on determining if the proposed development and site qualifies for a variance as requested based on the applicant satisfying the criteria necessary for relief, then if needed, the Board discuss the wetland status of the lands not included in the delineation.*
- *The purpose of wetland regulations in Chapter 11 is to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty, to conserve inland-wetland areas occurring throughout the unincorporated areas of Dane County, and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon*

*the wetland.*

*History*

- *Pending Rezone: DCPREZ-2017-11194*
- *Pending CUP: DCPCUP-2017-02389*
- *Violation History: No violation history found on properties.*

*COMMUNICATIONS:*

- *Town of Pleasant Springs: 7/17/2017 acknowledgement. 8/15/2017 action, minutes included in meeting packet.*
- *WI DNR: Request for comment sent 8/14/2017*
- *WI DNR: Wetland delineation concurrence status requested, DNR defaults to ACOE concurrence, ACOE determination provided with application materials.*

*Conclusions:*

- 1) *Unnecessary Hardship: The applicant provided evidence to the Board that the proposed development would adhere to the purpose of wetland regulations by improving water quality draining from the site to the wetlands. If required to meet a 75 foot setback to the wetland the development would not be viable as trucks require a large turning radius. If the site is left as is stormwater from County Highway N and the Interstate will pass through the existing development with no additional treatment.*
- 2) *Unique Limitations of the Property: The highway project has resulted in the loss of access to the site which requires redevelopment.*
- 3) *No Harm to Public Interests: Stormwater leaving the site will be treated prior to entering the wetlands, potentially improving the health of the environment. Also, the Town is environmentally conscious and is in support of the variance.*

**STUDZ/MINIHAN to grant 73 feet of relief from the required setback to a wetland to allow the development as proposed. Motion carried.**

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

2. Appeal 3686. Appeal by Pastor Mark Bartels, Holy Cross Lutheran Church, for a variance from maximum allowed height in the DCRA airport height limitation zone as provided by Section 78.05, Dane County Code of Ordinances, to permit church addition at 734 Holy Cross Way being Lot 10 Eagle Crest Subdivision, City of Madison.

*VARIANCES REQUESTED: 13 Feet.*

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

*IN FAVOR: Pastor Mark Bartels & Mike Wahnke gave a brief history of the church and spoke in favor of the appeal.*

*ZONING ADMINISTRATOR'S COMMENTS: Zoning Administrator, Roger Lane, deferred his comments to DCRA staff David Jensen & Michael Stephens. Airport staff stated that the purpose of the AHLZ is not only to provide protection for today, but to protect air space in the future as the airport continues to develop. They felt a variance for this property could be a hazard to future airport development.*

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

*Finding of Fact:*

*Existing:*

- *Property is currently used for religious uses.*

*Proposed*

- *The applicant proposes a church addition and expansion including a steeple.*

*Zoning Notes:*

- *Dane County Zoning enforces a height limitation zone for the Dane County Regional Airport as required in DCCO Chapter 78.*

*History*

- *No history found on property.*

*COMMUNICATIONS:*

- *City of Madison design review submitted with application materials.*
- *DCRA: Request for comment sent 8/15/2017*
- *FAA: 5/12/2017 Determination of No Hazard to Air Navigation*

*Conclusions:*

- 1) *Sufficient evidence was not provided for the Board to find that this variance would not result in a hazard to air navigation.*

**MINIHAN/LONG to deny the variance appeal. Motion carried.**

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

3. Appeal 3687. Appeal by Dalby Farm LLC, owner; David Dinkel, agent, for a variance from minimum required setback to a wetland as provided by Section 11.06(5), Dane County Code of Ordinances, to permit proposed driveway access to two residential lots on Graffin Lane being described as Lots 1 & 2 of CSM 13253 located in Section 27, Town of Deerfield.

*VARIANCES REQUESTED: 73 Feet.*

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

*IN FAVOR: David Dinkel, agent, presented a case to the Board stating that this site had been approved by both the Town and County for residential development prior to a change in ordinance that required a setback for a driveway.*

*ZONING ADMINISTRATOR'S COMMENTS: Zoning Administrator, Roger Lane, stated that this variance appeal was for the minimum amount of relief to allow a development previous approved by both the Town and County and staff had no objections.*

*OPPOSED: Tami Graffin, adjacent property owner, spoke in opposition to the variance stating that allowing the variance will result in the flooding of her property. David Dinkel was allowed 3 minutes for rebuttal.*

*Finding of Fact:*

*Existing:*

*Facts of the Case:*

*Existing:*

- *Land was rezoned to RH-2 Rural Homes in 2009 to allow for residential development and two CSM lots were created.*
- *Both lots have been intended to be accessed by a shared driveway for which a shared driveway easement exists.*
- *A wetland delineation has been conducted by Stantec on 8/7/2017 and the results of the delineation were recorded on a plat of survey by Wisconsin Mapping, LLC. A full delineation report has been received and reviewed by Dane County Zoning.*

*Proposed*

- *The applicant proposes to develop driveway access to the building sites to allow for future residential development.*

*Zoning Notes:*

- *Under DCCO 11.06(5)(a) the minimum setback for all buildings and structures from wetlands greater than 2 acres is 75 feet (as described in 11.03(2)).*
- *As adopted by the Dane County Board, for the purposes of shoreland and wetland zoning regulations, the definition of a structure is "anything constructed or erected, the use of which requires permanent or temporary location on the ground, or attached to something having a permanent or temporary location on the ground, including but not limited to any building dwelling, manufactured building, manufactured home, mobile home, house trailer, recreational vehicle, boathouse, boat shelter, advertising sign, deck, patios, driveways, fences retaining walls, or other improvements or any part of such structure. A structure includes any permanent or temporary appurtenance attached thereto.*
- *Wisconsin Statutes, for the propose of shoreland regulation, define a structure to mean a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, walkway, patio, deck, retaining wall, porch, or firepit.*
- *Dane County Zoning requires a 75 foot setback from the boundary of a wetland to*

*driveways and parking lots.*

*History*

- *Rezone DCPREZ-2009-10172*

*COMMUNICATIONS:*

- *Town of Deerfield: Acknowledgement and 8/25/17 Board action in support of granting of variance.*
- *WI DNR 8/15/2017 Request for comment sent.*
- *Supervisor Bob Salov, Dane County Board letter dated 9/27/2017*

*Conclusions:*

- 1) *Unnecessary Hardship: It would be unreasonable to deny the use of land previously approved by the Town and County for residential development because the required wetland setback does not allow for a driveway as required by Town ordinance. The approvals for development were granted prior to the establishment of a driveway requiring a setback to the wetland.*
- 2) *Unique Limitations of the Property: The property is surrounded by wetland and floodplain to the east and west, and bordered by a bike path to the north. The existing field road is the only means of access to the two residential sites.*
- 3) *No Harm to Public Interests: Converting the field road to a driveway will not result in any harm to the public or wetlands that does not already exist.*

**PULVERMACHER/STUDZ to grant variance of 73 feet from required setback to a wetland to allow for the proposed driveway. Motion carried.**

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

**E. Appeals from Previous Meetings**

1. Written decision of appeal 3684

*The Board deferred action to allow staff to reformat the document.*

**F. Reports to Committee**

**G. Other Business Authorized by Law**

**H. Adjournment**

*The Board adjourned at 9:05 PM.*

**STUDZ/SCHULZ to adjourn. Motion carried.**

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