



Dane County Planning & Development Division of Zoning

Appeal No. _____
Date Received _____
Date of Public Hearing _____

VARIANCE APPLICATION:

Owner: Daniel P. Sears Sr. and Jill Sears
Mailing Address: 216 Thomson Lane
Oregon, WI 53575
Phone Number(s): 702-556-9911 / 608-209-4139
Email Address: npboy100@gmail.com, npgirl100@gmail.com

Assigned Agent: None
Mailing Address: _____
Phone Number(s): _____
Email Address: _____

To the Dane County Board of Adjustment:

Please take notice that the undersigned was refused a permit by the Dane County Zoning Division, Department of Planning and Development, for lands described below for the reason that the application failed to comply with provisions of the Dane County Code of Ordinances: Chapters 10 – Zoning, 11 – Shoreland, Shoreland-Wetland & Inland-Wetland, 17 – Floodplain Zoning, and/or 76 – Airport Height Regulations. The owner or assigned agent herewith appeals said refusal and seeks a variance.

Parcel Number: 0510-081-9100-0 Zoning District: RH-3 Acreage: 11.531
Town: Rutland Section: 8 1/4 1/4
Property Address: _____
CSM: 11985 Lot: 1 / Subdivision: None Block/Lot(s): Lot 1
Shoreland: Y / (N) / Floodplain: Y / (N) / Wetland: Y / (N) / Water Body None
Sanitary Service: Public / (Private) (Septic System)

Current Use: Vacant Land

Proposal: Build single family home.

NOTE: You are encouraged to provide a complete and detailed description of the existing use and your proposed project on an attached sheet.

REQUIRED BY ORDINANCE

Section	Description	Required	Proposed or Actual	Variance Needed
14.46	Applicability of requirement for stormwater control	Yes		Yes
14.50	Erosion Control Plan	Yes		Yes
14.51	Stormwater Management Plan	Yes		Yes

PRESENTING YOUR CASE TO THE BOARD OF ADJUSTMENT:

An Area Variance may be authorized by the Dane County Board of Adjustment to vary one or more of the dimensional or physical requirements of the applicable ordinance in connection with some proposed construction.

The burden will be on you, as property owner or authorized agent, to provide information upon which the board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. You or your agent must convince the zoning board to make a ruling in your favor. The board must make its decision based only on the evidence submitted to it at the time of the hearing, including the staff report. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and may then deny your application.

Please answer the four questions below. You are encouraged to attach a separate sheet, labeling the answers (1) through (4), to provide enough detail to support your appeal:

(1) Describe alternatives to your proposal such as other locations, designs and construction techniques. Attach a site map showing alternatives you considered in each category below:

(A) Alternatives you considered that comply with existing standards: If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them.

See Attached

(B) Alternatives you considered that require a lesser variance: If you reject such alternatives, provide the reasons you rejected them.

See Attached

(2) Will there be an unnecessary hardship to the property owner to strictly comply with the ordinance?

Unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome.

An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home or claiming that they need more outbuilding space than that permitted to store personal belongings). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

See Attached

- (3) Do unique physical characteristics of your property prevent compliance with the ordinance? If yes, please explain. The required Site Plan and/or Survey submitted with your application must show these features.

Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with the ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances, or lack of objections from neighbors do not provide a basis for granting a variance.

See Attached

- (4) What would be the effect on this property, the community or neighborhood, and the general public interest if the variance were granted? Describe how negative impacts would be mitigated. The required Site Plan and/or Survey submitted with your application must show any proposed mitigation features.

These interests may be listed as objectives in the purpose statement of an ordinance and may include: Promoting and maintaining public health, safety and welfare; protecting fish and wildlife habitat; maintaining scenic beauty; minimizing property damages; ensuring provision of efficient public facilities and utilities; requiring eventual compliance for nonconforming uses, structures and lots; drainage; visual impact; fire safety and building code requirements; and any other public interest issues.

See Attached

REQUIRED PLANS AND SPECIFICATIONS:

In addition to providing the information required above, you must submit:

1. **Site Plan:** Complete and detailed plans of your lot or lots, drawn to a standard and easily readable scale. In most cases, a survey by a Registered Land Surveyor is needed. The Site Plan/Survey should include the following, as applicable, as well as any unique existing features of the lot and any proposed mitigation features, as described above:
 - Scale and North arrow
 - Road names and right-of-way widths
 - All lot dimensions
 - Existing buildings, wells, septic systems and physical features such as driveways, utility easements, sewer mains and the like, including neighboring properties and structures.
 - Proposed new construction, additions or structural alterations.
 - For property near lakes, rivers or streams:
 - Location of Ordinary High Water Mark (OHWM) Elevation
 - Location of Floodplain Elevation
 - For property near Wetlands, a Wetland Boundary determination by a qualified professional consultant may be required.
 - Topographic survey information may be desirable or necessary.
 - Setbacks from any existing or proposed structures (building) to lot lines, right-of-way lines, Ordinary High Water Mark, and/or Wetland Boundary, as applicable.
 - For setback from Ordinary High Water Mark Variance Appeals, the setbacks of the two neighboring structures from the OHWM may be required.

2. Floor Plans and Elevations: Professionally-prepared plans and elevations are not required, but the plans submitted must be drawn to a standard and easily readable scale, must show each story of the building or structure, and must include all parts of existing and proposed structures, including any balconies, porches, decks, stoops, fireplaces and chimneys. Exterior dimensions must be included. Show all exit door locations, including sliding doors, and any windows or other features that are pertinent to your appeal. The plans may be a preliminary version, but are expected to represent your actual proposal for the use of your lot.

Please consult with the Assistant Zoning Administrator regarding required plans for non-conventional structures such as signs, construction cranes, etc.

3. Town Acknowledgment: Obtain a signed, dated memo or letter from the Town Clerk or Administrator of the Town where the variance is needed, acknowledging that you have informed them of your intention to apply for the variance(s). You probably will need to appear before the Town Board and/or Plan Commission, which will provide advisory input requested by the Board of Adjustment.

APPLICANT SIGNATURE:

The undersigned hereby attests that all information provided is true and accurate, and further gives permission to Planning & Development staff and Board of Adjustment members to view the premises, in relation to the Appeal request made herein, during reasonable daylight hours.

Signature Required: *Daniel P. Sears Sr* *Jill Sears* Date: 5-25-15
Print Name: Daniel P. Sears, Sr. and Jill Sears

Specify Owner or Agent: Owner
Agent must provide written permission from the property owner

STAFF INFORMATION:

Date Zoning Division Refused Permit (if different from filing date)

Filing Date

Filing Materials Required:

Site Plan

Floor Plans

Elevations

Fee _____ Receipt No. _____

Town Acknowledgement Date

Notices Mailed Date

Class II Notices Published Dates

Site Visit Date

Town Action Received Date:

Public Hearing Date

Action by B.O.A. _____

Approved by: _____ Date: _____
Director, Division of Planning Operations, Department of Planning and Development

Prepared on: June 8, 2015

By:

Dan & Jill Sears
216 Thomson Lane
Oregon, WI 53575

Property ID: 051008191000

CSM: 11985

Lot: 1

0 Hwy 138, Oregon, WI

We plan to build a single family home of approximately 2,000 square feet on the property for our family of four. Our plans are to connect to the existing shared driveway that was present on the property when we purchased it. The new driveway will be approximately 850 feet in length and will connect our home with the existing driveway. Our builder worked with Wyse Engineering and the Dane County Department of Erosion Control and Stormwater Management, Josh Harder, in the design of the driveway and controls as per the attached (Exhibit A) drawings/ site plan. While the cost of this was not in our budget we liquidated our retirement fund to be able to pay the added costs and move forward. Upon applying for a permit Josh informed us via our builder that we would have to install additional controls along the existing driveway all the way back to highway 138. These costs are estimated at approximately \$50,000 additional which we do not have which is currently prohibiting us for using the land as intended.

We are asking for a variance to 14.46(1) "Any development(s) after August 22, 2001 that result(s) in the cumulative addition of 20,000 square feet of impervious surface to the site" and section 14.51 "Stormwater Management Plan Requirements" as it applies to the site (site defined as the entire property) for the existing driveway. Our proposed construction of a single family home and driveway (less than 19,000 square feet additional) to connect down slope from the existing driveway previously owned by the Stokstad Brothers who planned, and had approved by the county (Permit# EC20070094), and built in 2007 (Exhibit B). As found in exhibit B the county inspected the project on 10/26/2007 and noted 'Entire site established, great grass take, looks good'. This plan details the controls in place including an east-west culvert between the north and south bump-outs at the low spot for cross as evident on page 5 of exhibit B on the certified survey map dated 10/31/2006.

The county reviewed and approved our neighbors, Brad and Deanna Rogowski, permit application (Exhibit C, Permit# EC-2010-0310) to extend the existing driveway to the building site of their single family home which is up slope of the Stockstad Brothers driveway. The permit was approved on 10/6/2010 by James at the county (full name not legible). Exhibit C shows where the Rogowski driveway resulted in the addition of the impervious driveway on the Stockstad property as evident on page 5 to the existing property. In speaking with Josh Harder he indicated the county did not have knowledge of this impervious addition to the Stockstad property even though it is shown in the application. The records I acquired do not include the post work site inspection pages and sign off. This plan details the controls in place including an east-west culvert

between the north and south bump-outs at the low spot for cross drainage as evident on page 8 on the certified survey map dated 10/31/2006. This permit expired in April 2011 as evident in exhibit D page 10.

Rogowski applied and was approved for another permit (Exhibit D, Permit# EC2011-0039) on 1/4/2011 by Jess Starks at the county to build their single family home. Note exhibit D is in the order as provided by the county and not in chronological order. Emails in exhibit D show evidence the county, Jess Starks, visited the site on numerous occasions in 2011 which included a driveway inspection. There is no evidence noted by Jess Starks or the county regarding the Rogowski adding impervious driveway to the existing driveway on the Stockstad property.

We have learned through this process and meeting with the Town of Rutland Planning Commission that it is a fairly common occurrence for property owners, particularly farms with acreage, to be authorized to split their land and sell sections for folks to build single family homes. The Rutland Planning Commission was already familiar with our property and some had previously visited the site. The Rutland Planning Commission and Town Board unanimously voted to approve a variance and provide us a letter of recommendation for which is attached as exhibit G. We also learned that our lot is not that unusual being flag shaped with a long shared driveway governed by an easement (Exhibit F) however the commission indicated to us that this was their first time hearing about challenges with the ordinance. We believe it is important they educate themselves with the ordinance and advise future property owners of the ordinance particularly 14.46 in effort to prevent future disputes.

We are asking for relief to the ordinance 14.46(1) as it applies to the site (site meaning the entire property as outlined in CSM 11985) requesting to exclude the existing driveway which appears to have been designed with the ordinance in mind as it follows the example of preserving the neighborhood or rural character, does not disturb any of the woods, crop lands, or vegetation (natural resources) to diminish threats to public health, safety, and property. This existing driveway follows the ideas, spirit, and recommendations by matching the landform and is shared with our neighbor and the farmer. There is approximately fifteen feet on either side of the existing driveway which does not have curbs with rolling swells and dips of grasses to absorb any runoff which creates a natural buffer to the neighbors land to the east and the farmers field to the west. The county has been on site numerous times for the Stokstad and Rogowski projects and have not indicated any issues with the controls for the existing driveway.

The contours and elevations of the property identified on topographical maps found in exhibits B and C for the site (CSM 11985) are such that the proposed Sears project is down slope of the existing driveway which eliminates the possibility of stormwater runoff reaching it. While Joshua Harder with the Dane County Department of Land and Water Resources understands and agrees with our assessment he has explained to us he has no leeway under the ordinance to exclude the existing driveway in stormwater and erosion control calculations. Josh is very familiar with the property and how it has evolved as he was the one who eventually approved the permit application by the Stokstad brothers and was involved with the Rogowski project as well.

Question 1A) We considered building our house right at the end of the driveway but we really don't want to have to cut down trees to make room for a house. One of the reasons we fell in love with the property was the existing woods, wildlife, and nature that it provides and the spectacular views from the proposed house

site. We could not build directly at the end of the existing driveway as we would be within the 66 foot shared easement agreement we have with the neighbor and the farmer.

We considered non-pervious construction methods for extending the driveway however using these methods on a slope would most likely result in washout of the driveway requiring frequent repairs. The use of non-pervious methods would still exceed the 20,000 square foot limit.

Question 1B) If we did remove trees and build at the end of the existing driveway it is still over the 20,000 square feet of impervious material requiring additional erosion and stormwater controls be applied to the existing driveway.

We could not consider building directly at the end of the existing driveway and not take out trees as we would be within the 66 foot shared easement agreement that came with the property with the neighbor and the farmer.

Question 2) Without relief from the ordinance requiring stormwater controls (14.50) on the existing driveway we cannot use the property for the reason purchased which was to build a single family home on the property as it is economically not possible for us.

Question 3) No. The property is shaped like a flag pole (see exhibit B page 5 for CSM 11985) with an existing driveway approximately 1,400 feet long that runs between other properties and is governed by a Declaration of Easements (Exhibit F) with two (2) other parcels of real estate. The ordinance requirements, as explained to us by Joshua Harder, controls are required such as drainage pipe the length of the driveway from County Hwy 138 on the North to the furthest point of the driveway on the south. The elevation at the southern point is much lower than the existing driveway making it cost prohibitive for us. We also feel this invasive construction would take more crop land from the farmer as well as degrade the neighbor to our east who rides their horses on our property.

Question 4) Being granted a variance from the ordinance for the existing driveway will result in little to no negative impact. As previously stated the existing driveway is up slope from the proposed new construction and will not see any additional stormwater runoff. As our family will be driving on the driveway we will continue to maintain it and the landscape in partnership with neighbors as dictated by the Declaration of Easements (Exhibit F). We will continue to share in the mowing and once moved in would share in the snow removal on the existing driveway. The proposed storm water and erosion controls for the new driveway and home site should be more than sufficient to contain runoff and as stewards of the land we will diligently plant, grow and maintain vegetation to ensure the soils around our land stay where they belong to maintain the scenic beauty of the land.

Prepared on: June 8, 2015

By:

**Dan & Jill Sears
216 Thomson Lane
Oregon, WI 53575**

Property ID: 051008191000

CSM: 11985

Lot: 1

0 Hwy 138, Oregon, WI

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|---------------------|---|
| 1. Exhibit A | Sears site plan and photos |
| 2. Exhibit B | Stokstad Permit Application – EC2007-0094 |
| 3. Exhibit C | Rogowski Permit Application – EC2010-0310 |
| 4. Exhibit D | Rogowski Permit Application – EC2011-0039 |
| 5. Exhibit F | Declaration of Easements – Doc# 4633964 |
| 6. Exhibit G | Town of Rutland Board & Planning Commission Recommendation |