

MINUTES

Eau Claire County

• BOARD OF LAND USE APPEALS •

Date: Wednesday, October 23, 2019

Time: 5:30 p.m.

Location: *Eau Claire County Courthouse, 721 Oxford Ave, Room 1277, Eau Claire, Wisconsin 54703*

Members Present: Patrick Schaffer, Gary Eslinger, Randall Stutzman, Judith Bechard, Karen Meier-Tomesh

Members Absent: Darrin Schwab

Staff Present: Rod Eslinger, Jared Grande, Liz Fagen, Sam Simmons

1. Call to Order and confirmation of meeting notice

Chairman Stutzman called the meeting to order at 5:30 p.m. and confirmed the public meeting notice.

2. Public Comment **(15 minute maximum)**

None.

3. Public Hearings

- a. A variance request for a 30-foot variance to the 50-foot setback for highly susceptible wetlands and a 50-foot yard setback off of a class B highway for a proposed plat, lots 34 and 35.
(Town of Washington) / Discussion – Action

Chairman Stutzman swore in Elizabeth Fagen, Environmental Engineer for the Eau Claire County Land Conservation Division. The first presentation was for the 30-foot variance request to the 50-foot setback for highly susceptible wetlands. Ms. Fagen described wetlands limitations for the access road in Talmadge road near the ongoing Trilogy subdivision project. DNR completed an inspection on August 17th. Fagen showed a parcel map that outlined several wetlands on site. She also showed a development map that showed two access points. Fagen described slope concerns within the town of Washington. Fagen walked through the highly susceptible wetland requirements in the county code. The limitation is 50-feet, but the request is to reduce the setback to 30 feet to allow the Trilogy project to move forward in regards to lots 34 & 35. Fagen showed a site video and photos that showed flags with wetland areas. Eau Claire County Land Conservation Division recommends approval of the variance request due to all options for allowing the road being exhausted, and all requirements in Title 17 of the County Code being met. Approval will be with conditions outlined in the staff report. Ms. Fagen concluded by mentioning a letter from the Town of Washington recommending approval.

Rod Eslinger asked Fagen what led them to the conclusions that the land was highly susceptible. Fagen walked through species that could degrade the land.

Chairman Stutzman asked Fagen when the on-site visit was. The visit was on August 26th with Jared Grande, Chad Berge, Liz Fagen, Dean Roth, the Town of Washington, and the Highway department.

No further questions were asked of Ms. Fagen.

Chairman Stutzman swore in Jared Grande, Land Use Manager for Eau Claire County Planning & Development. Mr. Grande outlined where the two lots (34 & 35) are on the Trilogy map. Mr. Grande walked through the history of the variance request and the location of the lots in relation to Highway 93. There is a 100-foot setback requirement to the highway that is unable to be waived by the Planning & Development department. Mr. Grande outlined buildable areas on a map and described differences between the 100-foot setback and the proposed 50-foot setback. Mr. Grande mentioned that there must be an unnecessary hardship to have the request approved. There is no floodplain in the area and it is not a concern for the two lots being discussed. Mr. Grande stated that the staff feels that there is not an unnecessary hardship present, as the 100-foot setback does to impede the overall project. He concluded by outlining reasonings for approval or denial outlined in the staff report. Mr. Grande wanted to mention that the County is undergoing a comprehensive zoning update, that addresses highway setbacks, that will be complete around April 2020.

Karen Meier-Tomesh asked Mr. Grande why County setbacks are more restrictive than DOT setbacks. Rod Eslinger answered and explained that the County setbacks are primarily based on standards that were in place when the current regulations were adopted in the 1980's.

Karen Meier-Tomesh also wanted clarification on why a 118-foot setback are on some lots and not others. Mr. Grande answered that the setbacks for the subdivision were set by the surveyor, not the county.

Chairman Stutzman asked Mr. Grande why lots 34 & 35 are unbuildable. Mr. Grande answered that maps provided to the department were not drawn accurately enough to reflect the setback conflict.

No further questions were asked of Mr. Grande.

Chairman Stutzman swore in Jeremy Scout, with Real Land Surveying. Mr. Scout spoke in favor of the request and explained that the area needs to be expanded in order to make the two lots buildable.

Chairman Stutzman swore in Cody Filipzack with Southside EC Properties. Mr. Filipzack spoke in favor of the request and stated that this issue is something that arose after the draft plat was drawn and noted that the 100-foot setback conflict could have been missed in an error. He acknowledged his concerns with the two lots and the setbacks and understood the Board's concerns.

Karen Meier-Tomesh asked Filipzack if he could speak about the 118-foot setback. Filipzack answered it is mainly to provide enough room for homes on the lot and appearance purposes.

Gary Eslinger asked Filipzack why the road curves towards the wetland. Liz Fagen answered to maximize the buildable area on other lots, the road had to curve due to road safety concerns from the Town of Washington.

No further questions were asked of Mr. Filipzack.

Nobody else spoke in favor of the request.

None spoke in opposition of the request.

The Board entered deliberations at 6:10p.m.

During deliberations, there were questions for staff as to why the DNR did not issue a report for the wetland setback conflict. Rod Eslinger and Liz Fagen clarified that the DNR does not have a setback requirement as long as wetlands are not being disturbed. Ms. Fagen showed the Board a hard copy of a DNR report of the area from 2017.

The Board was also concerned that approving the variance request would set a precedent for similar requests in the future.

The Board exited deliberations at 6:51p.m.

ACTION: Motion by Gary Eslinger, seconded by Karen Meier-Tomesh, to approve the variance request for a 30-foot variance to the 50-foot setback for highly susceptible wetlands as presented based on findings for approval in the staff report and that there is no unnecessary hardship present. Motion defeated, 2-2-1. The variance request was denied due to a tie vote.

ACTION: Motion by Randall Stutzman, seconded by Patrick Schaffer, to deny the variance request for a 50-foot yard setback off of a class B highway for a proposed plat, lots 34 and 35 as presented based on all findings for denial in the staff report. Motion carried, 5-0-0.

- b. A variance request for an 83-foot front yard setback off of a class B highway for an existing commercial structure. (Town of Clear Creek) / Discussion – Action

Chairman Stutzman swore in Jared Grande, Land Use Manager for Eau Claire County Planning & Development. Mr. Grande outlined the site location and provided an aerial photo. He also provided a brief history of the facility (Foster Bar). Mr. Grande outlined commercial building zoning requirements in the county code. The variance request is to make a proposed addition to the structure in compliance with setback requirements in the county code. Everyday Surveying has measured the current structure as 17 feet off the highway, which is why the variance request is for 83 feet. The request would include the demolishing of a current

creamery structure and building an addition to the south of Foster Bar. The creamery is not currently in operation. The variance would make the entire structure in compliance with setback requirements. A site plan, building elevations, and a site video were presented. The property is currently zoned C-2, which has a 100-foot highway setback requirement. A Letter of Map Amendment (LOMA) was completed for the property by the Federal Emergency Management Agency (FEMA). A LOMA can remove a property from the floodplain to make it buildable. Staff has noted that a hardship is not present in this variance request. Mr. Grande concluded by outlining reasons for approval and denial in the staff report.

There were no questions for Mr. Grande.

Chairman Stutzman swore in Toby Begal of Dell Construction. Mr. Begal spoke in favor of the request and outlined the history of the structure. He noted that the roof of the creamery structure is pitched, not flat. Mr. Begal approached the town chair of Clear Creek, who was in the favor of the request and the DNR. He was unable to produce the LOMA to the Board. Mr. Begal met with several individuals at Eau Claire County, and all interested parties are in favor of the request. This variance request allows the building to become handicap accessible and able to become in compliance with codes.

There were no questions for Mr. Begal.

Jared Grande noted that minutes from a recent town of Clear Creek meeting reflected approval of the variance.

The Board entered deliberations at 7:23p.m.

The Board exited deliberations at 7:33p.m.

ACTION: Motion by Karen Meier-Tomesh, seconded by Judith Bechard, to approve the variance request as presented based on findings of point "B" in the variance standards and conditions outlined in the staff report. Motion carried, 5-0-0.

Mr. Begal spoke and thanked the Board, Jared Grande and Rod Eslinger for their assistance in the process.

4. Review/Approval of September 04, 2019 Meeting Minutes / Discussion – Action

The Board reviewed the minutes.

ACTION: Motion by Patrick Schaffer, seconded by Karen Meier-Tomesh, to approve the September 04, 2019 minutes as presented. Motion carried, 5-0-0.

5. Adjourn

ACTION: Motion by Randall Stutzman, seconded by Gary Eslinger, to adjourn the meeting. Motion carried, 5-0-0. Meeting adjourned at 7:36p.m.

Respectfully submitted,



Samuel Simmons
Clerk, Board of Land Use Appeals