

I. Meeting was called to Order at Polk Town Hall, 4735 Fontana Beach Road by Chairman Patrick Fehring at 6:30PM.

A. Secretary Groth read the Meeting Notification. The meeting was posted at Polk Town Hall, Roskopf RV Center, and Cedar Lake Hills bulletin boards. Notice copied to Hartford Times Press, Milwaukee Journal, West Bend News, WBKV; and Interested Parties were notified.

B. Roll Call: Present were Chairman Patrick Fehring. Members Karen Reiter, Marilyn Mayer, Mary Franz, Rodney Bartlow; Alternate Robert Anderson.

C. Approval of Agenda: Marilyn Mayer moved to approve the Agenda. Mary Franz seconded the motion. All voted in favor and the motion carried.

D. Approval of Minutes of the August 25, 2016 hearing: A minor typographical error was noted. Mary Franz moved to approve the Minutes as presented. Rodney Bartlow seconded the motion. All voted in favor and the motion carried.

E. Announcement of Proceedings was read by Chairman Fehring.

II. A. Public Hearing:

Consider variances to Sections 2.05 (2) (B) USE RESTRICTIONS and 2.06 (A) SITE RESTRICTIONS of the Zoning Ordinance, Title X of the Municipal Code of the Town of Polk to allow the construction of a 30' X 48' X 12' pole shed accessory building on a parcel of land where no primary structure exists, and where the parcel does not abut a duly dedicated or established public or private road. Property described as the SW ¼ of the SW ¼ of Section 31, Town 10, Range 19, Town of Polk, Washington County, Wisconsin; and also as described per attached Exhibit A (Parcel 2). Tax Key(s) T9-0936, T9-0940-00X Zoned A-1 General Agricultural District. Burhop Trust - Jim and Lynn Burhop, Property Owners.

B. Consideration of Request:

Chairman Schulteis invited the applicant to present to the Board of Zoning Appeals. Jim Burhop explained the reasons for his request. Burhop noted that he and his wife had owned abutting property to the south and met the criteria of having a primary structure. They have since sold the parcel which included the primary structure and a barn used for storage. The Burhop's relocated to Pewaukee, Wisconsin. He still uses the 53 acres and recreational equipment including a tractor. Burhop proposes to build on a small area of the parcel not located in the floodland conservancy. Burhop stated his "neighbors have them [accessory buildings]; we own our property free and clear; and feel it is my right as a land owner to build as long as it does not interfere with my neighbors."

Dave Seils with Washington County Land Use was contacted for comments regarding the variance. [See attached email Exhibit C]. Secretary Groth shared those comments from Seils. Should the applicant build on the site indicated with the variance application, Land Use would want the area surveyed to delineate the flood plain area.

Secretary Groth read a letter into the record from an abutting property owner, Dwight Zimmerman. Zimmerman owns the property easement to the Burhop parcels. Zimmerman was not in favor of the variance. See letter attached as Exhibit B.

Burhop commented with regard to the letter from Zimmerman. Burhop stated that he had a legal document describing the access easement to the property[submitted with variance application]; and that access was allowed to his property via the easement without regard to whether or not he put a building on the property. Burhop further stated access to the land doesn't change. Zimmerman knew before he bought his property that the easement existed. Burhop has also talked with Charles Held about obtaining access to his 52 acres from County Road CC via an existing farm lane owned by

MINUTES

TOWN OF POLK, WASHINGTON COUNTY

BOARD OF ZONING APPEALS

THURSDAY, September 22, 2016 6:30PM

Held. This would not be a legal deeded access but rather an agreement with Held. Burhop stated that he made an offer to buy the “strip of land, but Held interested in selling”. There was discussion as to how Burhop would use the building. Burhop would use the building to store ATV vehicles, hunting gear, deer stands, tractor and other equipment used to plant food plots on the property. Rodney Bartlow commented that the size of building seemed large for the intended use.

Marilyn Mayer asked why Burhop did not secure access to the 52 acre parcel before he sold the abutting property in the Village of Richfield.

Burhop commented, “That would not have worked out to keep a strip. We had a long driveway that connected our property to County Road CC. “

Karen Reiter commented, “You knew the 80 acres were landlocked when you bought it.”

Burhop answered in the affirmative.

Reiter stated that a bypass through the property was a possibility back when the parcel was divided, but now that bypass is unlikely. Reiter read Title X Zoning Ordinance 2.05 (2).

Burhop commented that he understood the ordinance and that he does not comply with the ordinance – “That’s why I have applied for a variance to that ordinance.”

Patrick Fehring stated that he does not find an unusual circumstance to support a variance to building an accessory structure on vacant land. The lack of road access does not apply to building an accessory structure. The legal hurdle is what makes the property so exceptional that one could demonstrate extraordinary circumstance. Burhop commented that he understands that he will never be allowed to put a main structure on the property, but should still be able to use it [property]. The best reason is that the parcel is land locked, and that he uses the land for recreation.

Fehring stated that most applicants requesting a variance “are seeking equity with their neighbors. But what you are asking for is in addition to what other people have the right to have. You are asking for privilege rather than equity”.

Burhop stated, “I can’t put a primary building on the property, which makes my situation unusual”.

Mary Franz commented, “Without the prerequisite [in Section 2.05(2)] people would be encouraged to use accessory structures for weekend retreats, storage or living quarters. The parcel itself is not conducive for a building site”.

Burhop replied, “According to the maps, there is sufficient area to build. I don’t know why the community cares whether not I build a building.”

Franz stated, “We have a zoning code system. When you divided that land, the [Town Board] Minutes reflected there was no possibility for a primary structure [to be built on the parcel]. You sold your adjoining land where there could have been access. You created a scenario that prohibits a building on that site.”

Town Building Inspector, John Frey, commented that he would address comments or concerns of the Board. He felt that Board’s comments and questions made sense so far. “We can’t have a bunch of vacant parcels with structures on them owned by absentee property owners. The Town has enforced the ordinance [2.05(b)] rigidly and consistently. He would need to acquire a 66 foot strip off County CC and build a private road to the property.”

Preservation of Intent: The variance request is not consistent with the purpose and intent of the regulations for the district in which the development is located, and has the effect of permitting a use in any district that is not a stated permitted use in that particular district. While accessory structures are a permitted use in the particular district, the regulations in the district do not allow for accessory structures on vacant parcels without the presence of a principal structure. The intent of the regulations is to also protect environmentally sensitive areas and secure safety from fire, flooding and other dangers.

Exceptional Circumstances: Exceptional, extraordinary, or unusual circumstances or Conditions do not apply to the lot or parcel, structure, or use or intended use which apply generally to other properties or uses in the same district because while the subject parcel is unusual because it is landlocked, that circumstance does not support the applicant’s request for an exception to Section 2.05 (2)(b).

MINUTES
TOWN OF POLK, WASHINGTON COUNTY
BOARD OF ZONING APPEALS
THURSDAY, September 22, 2016 6:30PM

Economic Hardship and Self-Imposed Hardship Not Grounds for Variance: The hardship is self-imposed because the applicant sold their adjoining property with the principal structure. The applicant did not resolve access concerns to the subject property before selling their abutting property.

Preservation of Property Rights: A variance is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because other property owners in the district are not permitted to build accessory structures on a parcel without the presence of a principal structure. Equipment can be trailered in via the easement.

Absence of Detriment: The variance request will create substantial detriment to adjacent property, and will be contrary to public interest, and purpose and spirit of Title X because the proposed structure would not be easily accessible via the driveway easement which traverses through environmentally sensitive areas (wetlands, flood land) and limits accessibility for emergency service vehicles; the neighboring property owner providing easement to the subject property has concerns regarding traffic damage on the dirt driveway easement. An alternate access to the property has not been formally secured from neighboring property owners.

Mary Franz moved to deny the variance request. Rodney Bartlow seconded the motion.
Voting aye: Chairman Patrick Fehring; Karen Reiter, Mary Franz, Rodney Bartlow, Marilyn Mayer. Voting nay: None.

III. Adjournment:

Marilyn Mayer moved to adjourn the hearing. Mary Franz seconded the motion. All voted in favor and the motion carried. The meeting adjourned at 7:05PM.

Respectfully submitted,

Tracy Groth
Zoning Secretary