

Eau Claire County
Board of Land Use Appeals
721 Oxford Avenue, Room 1277 • Eau Claire, Wisconsin
Monday, November 14, 2016 • 5:30 p.m.

AGENDA

1. Call to order
2. A variance request to grade on 30% and greater slopes to install an access drive in the AP District (Town of Washington) VAR-0005-16 / Discussion – Action **p. 2 - 12**
3. Review / Approval of Minutes from August 29, 2016 / Discussion – Action **p. 13 - 14**
4. Adjournment

Post: 11/10/2016

- Media, Committee members, Rod Eslinger

Please note: upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language, interpreters or other auxiliary aids. For additional information or to request the service, contact the County ADA Coordinator at 715/839-4710 (FAX) 715/839-1669 or (TDD) 715/839-4735 or by writing to the ADA coordinator, Human Resources Department, Eau Claire County Courthouse, 721 Oxford Ave., Eau Claire Wisconsin 54703.

EAU CLAIRE COUNTY BOARD OF LAND USE APPEALS
STAFF ANALYSIS AND RECOMMENDATION - VAR-0005-16

DATE PREPARED: November 7, 2016

PUBLIC HEARING DATE: November 14, 2016

PROPERTY OWNER: Donald & Diane Brott, 7590 Siewert Road, Eau Claire, WI 54701

PETITIONER: Same as owner.

PROPERTY DESCRIPTION: **Parcel #1:**
PRT NW-NE COM NW COR SD 40 TN E 40 RDS, TN SWLY TO PT ON W LN SD 40 25 RDS S OF NW COR TN N TO POB. (EX I-94 V.260 P.547 CONT .47 AC M/L) SEC. 7 T26N R8W

Parcel #2:
PRT NW-NE THAT PRT OF 40 LYG SW OF I-94. EX BG NW COR 40, E 40 RDS, SWLY TO PT ON W LN 25RDS S OF NW COR, N TO BG SEC. 7 T26N R8W

PARCEL SIZE: **Parcel #1:** 2.53 ac
Parcel #2: 25.36 ac

ZONING DISTRICT: A-P, Agricultural Preservation

EXHIBITS

1. Staff report
2. Variance Application
3. PowerPoint

REQUEST AND BACKGROUND

The applicants are requesting an after-the-fact variance from the Board of Land Use Appeals (BLUA) for an access road that was constructed on slopes in excess of 30 %. County Code Chapter 17.05.080 A. prohibits land development or land disturbing activities on 30% slopes and greater. The approval of the variance is necessary to allow the road and land disturbance to remain. The landowners are requesting approval for a variance from the BLUA to keep and maintain an access road that was recently constructed on slopes in excess of 30% (actual grade of slopes between 48% and 58%).

The Land Conservation Division (LCD) of the Department on Planning & Development was notified via complaints from several citizens that a road was being built across a dry run of Otter Creek on steep slopes.

Staff investigated violation and confirmed the project was constructed on slopes in excess of 30% without an erosion control permit.

The landowners own 56 acres of woods (parcel #2) that historically was accessed via a perpetual easement from the South. According to landowners, this easement was not carried over onto a new deed when that parcel of land transferred ownership and consequently a garage was also constructed over a part of that easement by the neighbor. The landowners then bought parcel #1 which gave them the opportunity to gain access to their land from the north. The only issue with access via parcel #1 is that they needed to construct an access road across a large ravine that drains into Otter Creek. The landowners hired a private excavator to

construct the access road following the acquisition of the property and constructed the crossing prior to LCD involvement. Staff has been onsite and is working with the landowners to help define the immediate, but temporary, stabilization procedures prior to any form of permit approval or BLUA decision.

ADJACENT LAND USE AND ZONING:

The adjacent parcels are predominantly agricultural land comprised of woodlands. Interstate 94 runs parallel along the east boundary of both parcels 1 & 2 and Otter Creek lies to the west of the parcels. Surrounding properties are designated as either A-P, A-1 or A-2.

AUTHORITY

Chapter 17.05.010

This ordinance is adopted by the county board under the authority granted by Wis. Stat. §§ 59.693, 92.07(6) and 92.07(15) and Wis. Stat. ch 236. (Ord. 158-26, 2015; Ord. 156-002, Sec. 4, 2012; Ord. 150-36, 2006)

ORDINANCE REQUIREMENTS AND VARIANCE ANALYSIS:

Section 17.05.030 Purpose.

- A. The general purpose of this ordinance is to establish regulatory requirements for land disturbing activities aimed to minimize the threats to public health, safety, welfare, and the natural resources of Eau Claire County from construction site erosion. Specific purposes are to:
1. Further the maintenance of safe and healthful conditions.
 2. Prevent and control the adverse effects of soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; establish erosion control standards for building sites, placement of structures and land uses; and preserve ground cover and scenic beauty.
 3. Reduce sedimentation in existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger property.
 - a. Through this erosion control permit process, this ordinance is intended to meet the current construction site erosion control regulatory requirements of Wis. Admin. Code ch. NR 151 on the effective date of this ordinance. Nothing in this ordinance prevents the Wisconsin Department of Natural Resources (WDNR) from adopting or enforcing more stringent soil erosion or storm water management requirements in future revisions of Wis. Admin. Code.
 - b. Provisions have also been incorporated to coordinate the erosion control permit requirements of this ordinance with other county and town zoning and land division regulations. (Ord. 158-26, 2015; Ord. 150-36, 2006)

Section 17.05.070. Applicability and Exemptions

- B. Uniform Statewide Standards. Unless otherwise exempted under 17.05.070 D., an erosion control permit shall be required and all erosion control provisions of this ordinance shall apply to all proposed land disturbing activity that meet the requirements of 17.05.070 A and any of the following:
1. Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more; or
 2. Involves excavation or filling, or a combination of excavation and filling, which affects 400 cubic yards or more of soil, sand or other excavation or fill material; or
 3. Involves street, highway, road, access lane or bridge construction, enlargement, relocation or reconstruction.
 4. Involves the laying, repairing, replacing, or enlarging of an underground pipe, line or facility for a distance of 300 feet or more; or

5. Requires a subdivision plat approval or a certified survey.
6. Is a land disturbing activity, regardless of size, that is likely to cause an adverse impact to an environmentally sensitive area or other property.

Section 17.05.080 Prohibited Activities.

- A. Land disturbance activities on 30% slopes and greater, unless:
 1. exempted in 17.05.070. D.; or
 2. for activities that require public improvements; or
 3. to correct a preexisting erosion problem.
- B. No activity permitted under this ordinance shall cause contamination resulting in a public health hazard or other violation under Title 8. (Ord. 158-26, 2015; Ord. 156-002, Sec. 16 & 17, 2012; Ord. 153-27, Sec.'s 7 & 8, 2010; Ord. 151-36, Sec. 1, 2007; Ord. 150-36, 2006)

Section 17.05.060. Definitions

14. "Environmentally sensitive area" means any area that, due to the natural resources present or the lack of filtering capacity, is more susceptible to the adverse impacts of sediment and other pollutants associated with erosion and urban runoff. Examples include environmental corridors, slopes of 20% and greater, direct hydrologic connections to lakes, streams, wetlands, groundwater or other water resources, or very coarse or shallow soils above groundwater or bedrock.

VARIANCE STANDARDS

17.05.150.C.3. Variances

Upon appeal, the BLUA may authorize variances from the provisions of this ordinance which are not contrary to the public interest or the purposes of this ordinance, and where owing to special conditions beyond the control of the applicant, a literal enforcement of this ordinance will result in unnecessary hardship.

STAFF RECOMMENDATION:

In evaluating the variance application, the BLUA must consider the County Code's prohibited activities for granting a variance. An approval or denial requires that the board state its reasoning why an application did or did not meet the statutory criteria.

Staff recommends denial of the variance due to lack of evidence that the project meets the general purpose of Chapter 17.05. The general purpose of the ordinance is to establish regulatory requirements for land disturbing activities aimed to minimize the threats to public health, safety, welfare, and the natural resources of Eau Claire County from construction site erosion. Specific purposes are:

1. Further the maintenance of safe and healthful conditions.
2. Prevent and control the adverse effects of soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; establish erosion control standards for building sites, placement of structures and land uses; and preserve ground cover and scenic beauty.
3. Reduce sedimentation in existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger property.

The applicant has not stated why the literal enforcement of the ordinance resulted in grading on slopes in excess of 30% percent. The result of disturbing steep slopes has led to an increase in channel erosion, loss of fish and aquatic habitat and destroyed existing ground cover.

If the Board does approve this variance request, the approval should only be granted with the understanding that this project will be reviewed and properly designed by a certified and licensed Professional Engineer (PE). The role of the PE is to assure that the crossing is structurally sound, recommend proper stabilization methods, ensure the culverts are sized accordingly to handle the flow, and will not create any hazards during high water conditions. It will be the responsibility of the landowner to submit an application that satisfies the Erosion Control Ordinance requirements within County Code Chapter 17.05.

FINDINGS:

If the Board denies the variance request, the Board may incorporate any or all of the following findings in its decision:

- The project is in violation of Chapter 17.05 Erosion Control due to significant soil erosion. Sedimentation degrades aquatic habitat and poses human health risks due to nutrient loading.
- The applicant has not proven that the structure does not pose a hazard to downstream property owners. The access road is restricting drainage which could lead to failure.
- The applicant stated that there is access to the land via a perpetual easement. This easement provides safe access to the land and does not pose a threat to the public.

If the Board approves the variance request, the Board may incorporate any or all of the following findings in its decision:

- An unnecessary hardship is present because compliance with the strict letter of the restrictions governing steep slopes would render conforming to such restriction unnecessary burdensome.
- The variance will maintain the spirit and intent of the Erosion Control Ordinance by upholding the Code's purpose statements.
- A licensed Engineer will need to provide documentation that the access road meets the requirements of Chapter 17.05 Erosion Control and is not a hazard to the public.
- The design will minimize all cut and fill areas and such areas will be sloped no steeper than 3:1, covered with a minimum 4 inches of topsoil, and properly stabilized via erosion control blankets. 2:1 slopes will be allowed as long as there is proof that the slope can be properly stabilized.
- Title 18 of County Code will continue to govern potential uses, current and future, on the property.
- The erosion control plan will follow all applicable Natural Resources Conservation Service and Wisconsin Department of Natural Resources Best Management Practice design standards.

District 6 - Forsythe

Eau Claire County
Department of Planning and Development
Eau Claire County Courthouse
721 Oxford Avenue, Room 3344
Eau Claire, Wisconsin 54703
(715) 839-4741

| | |
|-------------------------|--------------|
| Application Accepted: | 10/24/2016 |
| Accepted By: | Rod Eslinger |
| Receipt Number: | 49135 |
| Town Hearing Date: | |
| Scheduled Hearing Date: | |
| Application No: | VAR-0005-16 |
| Appl Status: | Pending |

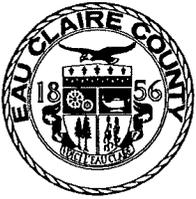
Eau Claire County Variance Application

| | | |
|--|--|--|
| Owner/Applicant Name(s): Diane K Brott Donald L Brott Donald L & Diane K Brott | Address: (ow) 7590 SIEWERT RD EAU CLAIRE (ow) 7590 SIEWERT RD EAU CLAIRE (ow) 7590 SIEWERT RD EAU CLAIRE | Telephone: 715-577-3041(C) 715-832-7507(H) |
| Agents Name: | | |
| Site Address(es): 6915 OTTER CREEK RD FALL CREEK | | |
| Zoning District(s): AP AP | Code Section(s): 17.05.080 A. | |
| Property Description: Sec 07 Twn 26 Rge 08 | Town of Washington | Lot Area: 2.530 ACRES 25.360 ACRES |
| Overlay District: Check Applicable | <input type="checkbox"/> Shoreland | <input type="checkbox"/> Flood Plain |
| | <input type="checkbox"/> Airport | <input type="checkbox"/> Wellhead Protection |
| | | <input type="checkbox"/> Non-Metallic Mining |
| PIN | Alternate No | Parcel No |
| 1802422608071200002 | 024101205000 | 26.8.7.1-2-B |
| 1802422608071200003 | 024101206000 | 26.8.7.1-2-C |
| | | Legal (partial) |
| | | PRT NW-NE COM NW COR SD 40 TN E 40 RDS, TN SWLY TO P |
| | | PRT NW-NE THAT PRT OF 40 LYG SW OF I-94. EX BG NW COR |
| General Description: TO GRADE ON 30% AND GREATER SLOPES TO INSTALL AN ACCESS DRIVE | | |
| Code Description: 17.05.080 A.; LAND DISTURBANCE ON 30% SLOPES AND GREATER | | |

I certify by my signature that all the information presented herein is true and correct to the best of my knowledge. I give permission for the staff of the Eau Claire County Department of Planning and Development to enter my property for the purpose of collecting information to be used as part of the public hearing process. I further agree to withdraw this application if substantive false or incorrect information has been included.

Owner/Agent Signature Donald L. Brott Diane Brott Date 10/24/16
Check if DATCAP must be notified _____ Check if DNR to Receive Copy _____

At the public hearing, the applicant may appear in person or through an agent or an attorney of his/her choice. The applicant/agent/attorney may present testimony, evidence and arguments in support of the application. All site plans, pictures, etc. become the property of the Department, and will remain in the file.



Eau Claire County
Department of Planning and Development
 Eau Claire County Courthouse
 721 Oxford Avenue, Room 3344
 Eau Claire, Wisconsin 54703
 (715) 839-4741

| | |
|-------------------------|--|
| Application Accepted: | |
| Accepted By: | |
| Receipt Number: | |
| Town Hearing Date: | |
| Scheduled Hearing Date: | |

VARIANCE APPLICATION

| | |
|--|----------------------------|
| Property Owner Name: <u>Donald & Diane Brott</u> | Phone# <u>715-832-7507</u> |
| Mailing Address: <u>7590 Siewert Rd, Eau Claire WI 54701</u> | |
| Email Address: <u>dikbrott@aol.com</u> | |

| | |
|------------------|--------|
| Agent Name: | Phone# |
| Mailing Address: | |
| Email Address: | |

SITE INFORMATION

| | |
|---|---|
| Site Address: <u>6915 Otter Creek Rd, Fall Creek, WI 54742</u> | |
| Property Description: <u>NW 1/4 NE 1/4 Sec. 7, T.26 N, R. 8 W, Town of Washington</u> | |
| Zoning District: <u>AP</u> | Code Section(s): <u>17.05.080 A.</u> |
| Overlay District: Check Applicable | <input type="checkbox"/> Shoreland <input type="checkbox"/> Floodplain <input type="checkbox"/> Airport <input type="checkbox"/> Wellhead Protection <input type="checkbox"/> Non-Metallic Mining |
| Computer #(s): | <u>024 - 1012 - 05 - 000</u> <u>024 - 1012 - 06 - 000</u> |

GENERAL APPLICATION REQUIREMENTS

- Applications will not be accepted until the applicant has met with department staff to review the application and determine if all necessary information has been provided. All information from the checklist must be included.
- A detailed written statement that specifically identifies what is being requested.
 - Written argument that justifies the need for the variance and addresses the variance standards. It is the applicant's responsibility to prove that an "unnecessary hardship" exists and that a variance can be granted. (See reverse for additional information.)
 - The applicant must flag/stake the property/project corners and label them accordingly (e.g. NE Lot corner, NE building corner).
 - A scaled site plan of the site and surrounding area for a distance of 100 feet, including buildings and other structures. Also, include the proposed addition/structure/location of septic system, well, driveway, property lines, navigable water ways, wetlands, floodplains, slopes in excess of 20%, and any other unique limiting condition of the property. All maps and engineering data to be no larger than 11" x 17".
 - Provide a \$500.00 application fee (non-refundable), payable to the Eau Claire County Treasurer.

I certify by my signature that all information presented herein is true and correct to the best of my knowledge. I give permission for the staff of the Eau Claire County Department of Planning and Development to enter my property for the purpose of collecting information to be used as part of the public hearing process. I further agree to withdraw this application if substantive false or incorrect information has been included.

Owner/Agent Signature Donald L. Brott
Diane Brott

Date 10-24-16

At the public hearing, the applicant may appear in person or through an agent or an attorney of his/her choice. The applicant/agent/attorney may present testimony, evidence and arguments in support of the application. All site plans, pictures, etc. become the property of the Department, and will remain in the file.

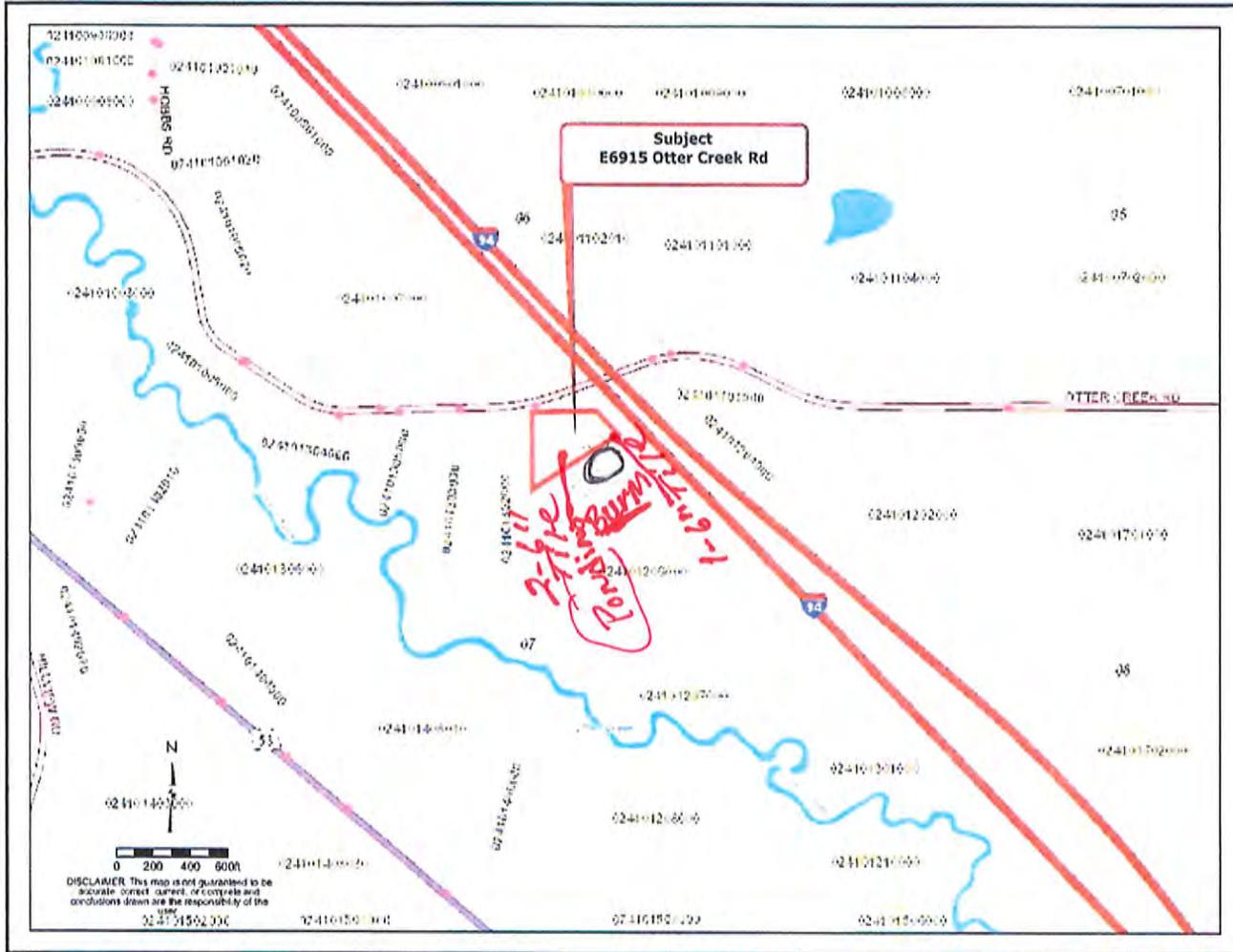
Request for a Variance to obtain access to our land:

We purchased 56 acres in 1982 between I-94 and Otter Creek. There was a perpetual easement allowing access from Highway 53. We discovered several years later that the one sentence stating this easement was left off our deed, and the people who purchased the property through which the easement went refused to reinstate it, first by putting a satellite dish on the easement and then building a garage over the easement. With no access, our land has been land locked ever since.

Robert Schauer's property on Otter Creek Road was the only way we could possibly obtain access to our land, and when Bob's daughter let us know in early 2016 that she was selling it (both parents had passed away 3 years before) we purchased the property in May, 2016.

There was a dry ravine between the two properties and this is the only way to get to our land. A farm field road was started to get through the ravine to get to the land for farm purposes and to get timber out. Two 50 foot culverts were put in and an additional 20 feet is planned so the slope is not so steep. We will redo the slopes, seed down and add top soil. Also plan to divert water with a berm and drain tile.

Map



Form SCNLTR - "TOTAL" appraisal software by a la mode, inc. - 1-800-ALAMOC



| CLU | Acres | HEL | Crop |
|-----|-------|------|------|
| 1 | 57.91 | UHEL | NC |

Page Cropland Total: 0 acres

Map Created September 09, 2016

- Common Land Unit**
- Non-Cropland
 - Tract Boundary
 - PLSS

- NAIP Imagery 2015
Wetland Determination Identifiers
- Restricted Use
 - Limited Restrictions
 - Exempt from Conservation
 - Compliance Provisions

USDA FSA maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or the NAIP imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. The USDA Farm Service Agency assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact NRCS.

VAR-0005-16 BROTT

| Parcel Id | NAME | ADDRESS | CITY | STATE | ZIP |
|---------------------|------------------------------------|-----------------------|-------------|--------------|------------|
| 1802422608071300002 | BENNETT (ESTATE), HELEN A | 6330 US HIGHWAY 53 | EAU CLAIRE | WI | 54701-8834 |
| 1802422608063400001 | BROWN, JOHN R & MARIAN R | 6750 OTTER CREEK RD | FALL CREEK | WI | 54742 |
| 1802422608064300002 | DEHNKE, MARY B | 114 WELLINGTON ST | WATERLOO | IA | 50701 |
| 1802422608072109000 | HARZ, JAMIE R & JEANNE M | 6849 OTTER CREEK RD | FALL CREEK | WI | 54742-9312 |
| 1802422608071100001 | PROCK, DAVID A & LINDA L | 7391 OTTER CREEK RD | FALL CREEK | WI | 54742 |
| 1802422608064300003 | SCHUMACHER, WALTER L | 6411 W LOWES CREEK RD | EAU CLAIRE | WI | 54701 |
| 1802422608072100003 | SEDAHL FAMILY TRUST, ROBERT & BETH | 6797 OTTER CREEK RD | FALL CREEK | WI | 54742 |
| 1802422608072400002 | SIMET, STEVEN A & DEBRA L | 5811 US HIGHWAY 53 | EAU CLAIRE | WI | 54701-8836 |
| 1802422608071200002 | STUTTGEN, LINDA | 3615 SUNWOOD TRL | EAGAN | MN | 55123-2416 |
| 1802422608064300001 | WHITE, SUSAN M | 7120 OTTER CREEK RD | FALL CREEK | WI | 54742 |
| 1802422608072400005 | ZIMMERMAN, ALLEN E & CAROLYN M | 5747 US HIGHWAY 53 | EAU CLAIRE | WI | 54701 |
| 1802422608072200001 | ZIMMERMAN, JERRE D & SUSAN M | 5619 US HIGHWAY 53 | EAU CLAIRE | WI | 54701-8836 |
| 1802422608072109001 | ZIMMERMAN, NANCY E | 6799 OTTER CREEK RD | FALL CREEK | WI | 54742-9378 |

Eau Claire County
Board of Land Use Appeals - MINUTES

721 Oxford Avenue, Room 1277 • Eau Claire, Wisconsin
Monday, August 29, 2016 • 5:30 p.m.

Members present: Randall Stutzman, Judy Bechard, Pat Schaffer, Gary Eslinger

Members absent: Karen Meier-Tomesh

Staff present: Rod Eslinger, Jeanna Allen

1. Call to order

Chairman Stutzman called the meeting to order at 5:30 p.m., and verified that the meeting was properly noticed. Mr. Stutzman reviewed the order of proceedings for the applicant.

2. A request for a 30-foot variance for the required 50-foot minimum front yard setback for a structure from a Class B highway in the AR District (Town of Brunswick) VAR-0004-16 / Discussion – Action

Rod Eslinger, Land Use Manager for Eau Claire County, was sworn in by the chair. Mr. Eslinger briefly reviewed the request for the variance; discussing the staff report and displaying an aerial view of the property. He also presented a video of the property for the review of the members.

The home was constructed prior to the adoption of county zoning, and is considered a legal nonconforming structure. The applicant seeks to remove the existing attached garage (600 square feet), and is requesting to replace it with an 840 square foot structure that would also be attached to the existing home. The structure meets all other county setback requirements.

Douglas Port, property owner, was sworn in by the chair and spoke in favor of the request. Mr. Port noted that the new construction would not extend any closer to Highway 85 than the existing home. He also outlined the various structural issues that exist in the current structure. Mr. Port submitted several photos to the Board for their review (Exhibit 3). Additionally, Mr. Port outlined the various reasons that the structure could not be moved; specifically the location of the septic system and gas lines.

No one else spoke in favor of the variance request.

No one spoke in opposition of the variance request.

Mr. Eslinger presented the staff summary and reviewed the standards the Board must adhere to during deliberations.

The Board entered deliberations at 5:59 p.m.

The Board ended deliberations at 6:15 p.m.

ACTION: Motion by Pat Schaffer, 2nd by Judy Bechard, to approve the variance request based on the following findings:

- Single family structures are a permitted use in the AR district.
- The home was constructed (per 1983 aerials the home existed at that time) prior to the Town of Brunswick adopting county zoning (March 12, 1983).
- The home and proposed construction conform to all other zoning setbacks.
- The requested additional square footage would be justified by building up to current building codes.

Motion carried, 4-0-0.

3. Review / Approval of Minutes from May 16, 2016 / Discussion – Action

ACTION: Motion by Pat Schaffer, 2nd by Gary Eslinger, to approve the minutes as submitted. Motion carried, 4-0-0.

4. Adjournment

ACTION: Motion by Judy Bechard, 2nd Pat Schaffer, to adjourn at 6:20 p.m. Motion carried, 4-0-0.

Respectfully submitted,

Jeanna Allen
Clerk, Board of Land Use Appeals