

**WAUPACA COUNTY BOARD OF ADJUSTMENT MEETING
MINUTES –OCTOBER 29, 2015**

ON-SITE INSPECTIONS: The Board made on-site inspections starting at 8:00 a.m. on the Zion Evangelical Lutheran Church property, Town of Caledonia and the Steven Andrysczyk property, Town of Dayton.

Chair Craig called the meeting to order at 9:30 a.m. Roll call was taken with the following members present: P. Craig, A. Richardson, P. Leder, J. Beyer and D. Johnson, all present.

D. Johnson moved and A. Richardson seconded the motion to approve the agenda as presented. The motion was carried.

J. Beyer moved and A. Richardson seconded the motion to approve the minutes from the July 24 and August 13, 2015 meeting. The motion was carried.

PUBLIC HEARINGS:

The first public hearing was called to order at 9:32 a.m. by Chair Craig to hear the Petition for Grant of Variance for **Zion Evangelical Lutheran Church**: Located in part of the SE ¼ of the SW ¼ of Sec. 23, Town of Caledonia, lying along County Highway W, Fire Number N985, Waupaca County, Wisconsin; for a Petition for Grant of Variance for an addition to an existing nonconforming structure with less than the required road setback in an RR (Rural Residential) District on approximately 3.5 acres. Roll call was taken with the following members present: P. Craig, A. Richardson, P. Leder, J. Beyer and D. Johnson, all present. Deb Giuffre read the names of persons notified of the hearing. Chair Craig declared the hearing legal and gave the general procedure.

Curt Steinbach, Agent, Attorney Chuck Koehler and Allan Birschbach, Architect, were sworn in to testify. Mr. Birschbach went through the three criteria. Mr. Steinbach said he is a counsel, secretary and a member of the church Mr. Steinbach said the existing church does not meet the current purpose or needs of the church. Koehler quoted a Supreme Court case Ziervogel vs. Washington County Board of Adjustment for a denial of a request for a Zoning Variance.

Three criteria: **1) Unique physical limitations;** Exhibit “1A” a) The current church building was constructed in the early 1990’s prior to the Zoning Ordinance going into effect. The Zoning Ordinance created a unique property limitation making the current building too close to the highway. b) The current church building setback is nonconforming as are the 45 other properties with this unincorporated municipality. This is a common rural church scenario where buildings were built in the era of the horse and buggy prior to the establishment of current road right-of-ways and setback requirements. c) The addition is proposed for the east side of the existing church building. The west side of the building has 189 grave sites within the 75 feet of the road right-of-way line. Exhibit “1B” a) It is not feasible to put the addition at any other location on the church property without severely compromising the existing building layout, structure, and historical character. b) The site topography falls off rapidly to the west. A carport and addition behind the 75 foot setback with a corridor running along the east to the south would need to be at a lower elevation requiring a ramp in the corridor to the existing nave floor. A narrow corridor and ramp would be unnecessarily burdensome to the church occupants. **2) No harm to the public interests;** Exhibit “2” a) This addition would improve the health, safety and welfare of the public who use the facility and bring the church into compliance with ADA and the 2009 IBC International Building Code. b) The current speed limit is 35 miles per hour on this

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section of the highway. There are currently 45 or 67 properties (69%) within a 1,400 foot radius of the intersection of Old Highway 10 and County Highway W that are nonconforming. See the attached drawing CO.O. There are no records of these 45 properties causing harm to the public interests. c) The proposed building addition actually improves the present situation by providing a 2’5” setback from the property line. The present setback to the existing outside handicap ramp is 0”. The addition eliminates the entrance/exit doors from the road side of the building and moves them around the east side of the building. The proposed new canopy is approximately 8 feet further from the property line than the existing canopy. **3) Unnecessary hardship;** Exhibit “3” a) The hardship is created by Waupaca County, not the church b) The hardship is due to the physical limitations of the property rather than the circumstances of the applicant because the church was built in the early 1900’s prior to the Zoning Ordinance going into effect which created a unique property limitation with it, that being too close to the highway. c) The 75 foot setback in this “municipal” setting is unnecessarily burdensome and serves no public interest. d) Putting the addition at any other location to the church is not feasible without severely compromising the existing building layout, structure, and historical character of the existing building

Chair Craig called three times for any testimony in favor of the application.

Peter Kesting was sworn in to testify. Mr. Kesting said he is the Pastor for the Zion Lutheran church and expressed the community need for the proposed addition.

Chair Craig called three times for any testimony in opposition to the application. There was none.

Deb Giuffre read two (2) letters, one (1) from the Waupaca County Highway Department with recommendations and one (1) from Davel Engineering & Environmental regarding the proposed Variance request not presenting a hazard or harm to the general public.

Jason Snyder, Deputy Zoning Administrator, gave a staff report of the Variance Permit application for an addition to an existing nonconforming structure with less than the required road setback. Mr. Snyder said the Planning and Zoning Office recommends denial of the application because the hardship is not based on unique physical limitations of the property. Harm to public interest exists. Options exist to expand beyond the required setback.

Chuck Koehler came back for rebuttal. Mr. Koehler quoted the Ziervogel vs. Washington case regarding hardship and that the hardship is pre-existing and the conditions are unique. Mr. Koehler said that the road right-of-way is a hazard and safety issue to the members as it exists and would be greatly improved with the proposed Variance.

A. Richardson, Board of Adjustment member and Allan Birschbach, Architect discussed alternatives that were presented.

Curt Steinbach, Agent said the alternatives would create other issues.

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D. Johnson moved and P. Leder seconded the motion to **GRANT** the Petition for Grant of Variance due to the following: The hardship is due to the slope that exists on the property. The proposed addition is going to be no closer to the road right-of-way. Also, by removing the front doors that go directly out to County Highway W, it is making the property safer. With the following conditions: The applicant **MUST** have the existing sanitary system evaluated to make sure that it is code compliant, sized and sited properly. The applicant **MUST** obtain a Land Use Permit from the Planning & Zoning Office prior to construction of the addition. The applicant **MUST** obtain a Building Permit from the Building Inspector prior to construction of the addition. Roll call vote was taken: P. Craig—yes; P. Leder —yes; A. Richardson—no; J. Beyer —no and D. Johnson —yes, three (3) to two (2) vote to **GRANT** the Variance request. J. Beyer moved and A. Richardson seconded the motion to close the hearing at 11:03 a.m. The motion was carried.

The second public hearing was called to order at 11:04 a.m. by Chair Craig to hear the Petition for Grant of Variance for **Steven Andrysczyk**: Located on Lot 42 of Lake Solitude Subdivision in Sec. 12, Town of Dayton, lying along Virginia Drive, Fire Number N2081, Waupaca County, Wisconsin; for an after the fact Petition for Grant of Variance for the construction of a retaining wall with less than the required wetland setback in an RR (Rural Residential) District. Roll call was taken with the following members present: P. Craig, A. Richardson, P. Leder, J. Beyer and D. Johnson, all present. Deb Giuffre read the names of persons notified of the hearing. Chair Craig declared the hearing legal and gave the general procedure.

Todd Lemmens was sworn in to testify. Mr. Lemmens said he is leasing the property with the option to purchase. Mr. Lemmens said he has problems with erosion and put up a retaining wall to stabilize the slope. Mr. Lemmens said he was unaware that he needed a permit to stabilize the erosion.

Three criteria: **1) Unique physical limitations;** There is a paved pathway less than 8 feet from a severe hill. **2) No harm to the public interests;** This project would absolutely have no impact on anyone and only help to preserve the shoreland and its natural beauty. **3) Unnecessary hardship;** I have purchased this property four summers ago and Lake Solitude has frozen solid twice in the last five years, once being two years ago. We had thousands of dead fish that all ended up in my corner. I removed as much silt, dead fish and settlement from the lake due to health and safety factors. The smell was unbearable. I installed a retaining wall to prevent erosion from running back into Lake Solitude.

Deb Giuffre read one (1) letter from a neighbor in favor of the Variance request.

Jeff Henneman, Land Use/Code Enforcement Specialist, gave a staff report of the Variance Permit application for the construction of a retaining wall with less than the required wetland setback. Mr. Henneman said the Planning and Zoning Office recommends denial of the application because the unnecessary burdens expressed are due to circumstances created by the landowner of the property rather than the unique physical characteristics of the property. The applicant has reasonable use of the property without the retaining walls and viable options to control erosion in an ordinance compliant manner exist.

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Chair Craig called three times for any testimony in favor of the application. There was none.

Chair Craig called three times for any testimony in opposition to the application. There was none.

Todd Lemmens came back for rebuttal. Mr. Lemmens said he built the retaining wall to help with the erosion. Mr. Lemmens said he will do what is needed and would like to continue with the wall.

J. Beyer moved and D. Johnson seconded the motion to **DENY** the Petition for Grant of Variance due to the following: This is a self created hardship by the applicant. It would undermine the components of the purpose statement of the Waupaca County Shoreland Zoning Ordinance. By bringing the property into compliance, does not prevent the applicant reasonable use of his property. With the following conditions: The wood and rock retaining walls **MUST** be removed from the property by June 30, 2016. The applicant **MUST** make sure that the 3 to 1 sloping is met with the correct plantings/materials in cooperation with the Land & Water Conservation Department. Roll call vote was taken: P. Craig—yes; P. Leder —yes; A. Richardson—yes; J. Beyer —yes and D. Johnson —yes, unanimous vote to **DENY** the Variance request. J. Beyer moved and A. Richardson seconded the motion to close the hearing at 11:44 a.m. The motion was carried.

DISCUSSION & POSSIBLE ACTION:

A letter to the Department of Natural Resources regarding the issuance of opinions for shoreland zoning variance requests was discussed. J. Beyer moved and A. Richardson seconded the motion to approve the letter to the Department of Natural Resources. The motion was carried.

A. Richardson moved and D. Johnson seconded the motion to adjourn the meeting at 11:55 a.m. The motion was carried. The Board adjourned.

Debra Giuffre
Recording Secretary

cc: County Clerk