

## BOARD OF ADJUSTMENT PUBLIC HEARING

Monday, December 19, 2011  
Administrative Center – County Board Room  
6:00 p.m. – 6:40 p.m.

**MEMBERS PRESENT:** Howard Raymer, Jr., Dave Eilertson, Terry Houlihan  
**MEMBERS EXCUSED:** None  
**MEMBERS ABSENT:** None  
**OTHERS PRESENT:** Nathan Sampson, Jonathan Kaatz (minutes)

### CALL TO ORDER

Howard Raymer, Jr., Committee Chair, called the meeting to order at 6:00 p.m. Let the record show that this meeting is called in full compliance with the requirements of Wisconsin Open Meetings Law.

**APPEAL NO. 2011-52** Bradley P. Foss, W7583 St. Croix Ave, Holmen, WI 54636, acting on behalf of La Crosse County, 400 4th St N, La Crosse, WI 54601. Permit denied to construct a kiosk that will lie within the required 75-ft setback from the ordinary high-water mark of Lake Neshonoc. The property is described as: Part of the NW/SE, Section 35, T17N, R6W. Tax parcel: 7-1244-0. Town of Hamilton.

**Appearing in favor:** Bradley P. Foss, W7583 St. Croix Ave, Holmen, WI 54636.

REMARK Foss: I'm here representing Muskies Inc. and La Crosse County for that proposal. Basically if there's any question on your part, I'll take questions on it.

QUESTION Raymer: What is this kiosk for?

ANSWER Foss: It's an informational kiosk. We're going to put fishing regulations, a lake map, there'll be information on invasive species, things of that nature.

QUESTION Raymer: And you want it that close, just because that's where the landing is?

ANSWER Foss: Right. In relationship to the parking lot, it's really the only spot where it can sit down there and have good access to public.

QUESTION Eilertson: How's it going to be constructed?

ANSWER Foss: We're going to use four by fours, twelve footers, that will be sunk into the ground. It will be 'V' shaped and it will be two four by six panels and then a roof over it. The more permanent material will have Plexiglass over it.

REMARK Raymer: So it will be four feet wide and six feet high.

REMARK Foss: There will be two four by six panels so it will be 'V' shaped. It will be roughly, probably seven foot wide.

**Appearing in favor:** Mary Kaufmann, S6648 County Road K, Stoddard WI 54658.

REMARK Kaufmann: I'm here representing La Crosse County Facilities Department. We've been working with Brad and his group with this donation. La Crosse County Facilities Department supports it and is looking forward to the kiosk. We feel it will provide a valuable resource to the users at the landing. Any questions? We're certainly here to answer them.

**Appearing in opposition:** None.

**Correspondence:** 1) Letter dated November 27, 2011 and received on November 29, 2011 from Sara Schultz, Town of Hamilton Clerk. Letter states that the variance was approved at the November 8, 2011 board meeting of the Town of Hamilton.

2) Email dated and received on December 19, 2011 from Michael Wenholz, Regional Shoreland Specialist, Department of Natural Resources. Email states that as long as the kiosk is built as proposed and remains above the ordinary high-water mark, the department has no objections but recommends that an approval include a condition that the kiosk be used only for dissemination of public information, and that for-profit advertising not be allowed.

**Discussion:** None.

**Motion Houlihan/Eilertson to approve with the condition that the kiosk be used only for dissemination of public information, and that for-profit advertising not be allowed.**

**3 Aye, 0 No. Motion carried unanimously.**

**APPEAL NO. 2011-55** John B and Susan C Kellogg, W4433 Gills Coulee Rd, West Salem, WI 54669. Permit denied to retain a previously constructed 12-ft x 48-ft addition to an existing 48-ft x 50-ft detached accessory building that exceeds the 1,500 sq. ft. area limit for such buildings on this 5.00 acre lot. The property is described as: Lot 2 of Certified Survey Map, Volume 5, Page 64. Property address: W4433 Gills Coulee Rd. Tax parcel: 7-1120-3. Town of Hamilton.

**Appearing in favor:** John B Kellogg, W4433 Gills Coulee Rd, West Salem, WI 54669.

QUESTION Raymer: You had been here in '94, was it, for a variance?

ANSWER Kellogg: In '94 was when we built out there. We bought the property in '91. We built in '94. The variance that was in '94 was because of height. Which at that time, I don't know how much has changed since then, but at that time you had something you referred to as a 12 foot rule. It was the height of the sidewalls plus the height from the bottom of the rafter to the top of the rafter at the highest point and then divided it in half or something. A little beyond my expertise I guess. Anyhow, if it added up to more than 12 feet they didn't allow it or something, or you had to have variance I should say.

QUESTION Raymer: So what happened here that you didn't get a permit before you went ahead with this?

ANSWER Kellogg: (*Appellant submitted packet of information relating to the appeal.*) First off, maybe it's easier if I can just hand you this and if I can kind of go through. Top right hand corner of every page, I numbered every page just to simplify. The first page is obviously the application or the notice rather. Second page is the plan I guess of the layout of the building. Third page is just the date of the meeting and so on. I'll go on to, I received a letter from Chad VandenLangenberg from La Crosse County Zoning stating that I needed to apply for an after-the-fact permit for an addition that their aerial photographs showed on a photo in 2010 that did not show up on a photo in 2007. I sent Chad a letter on tenth month, 31<sup>st</sup> day of '11 via fax. And then I met with him the following day, November 1, 2011. Basically page five is the letter Chad had sent to me stating during their routine work activities staff from the department noticed a discrepancy.

QUESTION Raymer: Let me just interrupt you. I don't think we really need to hear all that. Why was there not a permit pulled in the first place?

REMARK Kellogg: Pardon me.

QUESTION Raymer: You knew back in '91 when you built that shed you needed a permit. Why did you not get a permit?

ANSWER Kellogg: Well I got a permit for height.

QUESTION Raymer: Do you have the '91 one?

ANSWER Kellogg: Do I have a copy of the '91 permit? No.

QUESTION Raymer: When were you granted the variance, in '94?

ANSWER Kellogg: Hang on a second. It's in his letter here someplace.

REMARK Sampson: If I could interject.

REMARK Raymer: Yes Nate. Please.

REMARK Sampson: We have an original permit issued for the home and attached garage. It was Zoning/Occupancy Permit number 15826 issued June 28<sup>th</sup> of '94. On July 25<sup>th</sup> of 1994, Zoning/Occupancy Permit number 15885 was issued for the detached accessory building, a 50 by 48 foot structure. That was authorized by variance number 1994-57 which was approved July 18<sup>th</sup>.

QUESTION Raymer: So that 2,400 square feet wasn't more than what was allowed. That was just the height then?

ANSWER Sampson: Correct.

QUESTION Raymer: You went through the process at that point but at this point you added on to this without going through the process. I guess that's the question I have, is why? Why somebody didn't come in and pull a permit for this.

ANSWER Kellogg: To be honest, it never even entered into my mind. And if I can explain to you what took place during this. I'll go back to page six here if I can. In my letter to Chad, I'll just use his first name if that's allowable in that I have a hard time with his complete name. But anyhow, it just says I am writing in response to your letter stating that I need to obtain the after-the-fact permit for the addition that was added to the building in late 2008 or early 2009. This building suffered 70-75 mile per hour straight line wind damage in about October of '08. That caused all of the steel, or not all of it but a large

portion of it, of the steel on the east side of the building, the ventilated ridge caps, the overhead garage doors, the soffit venting on the south side all had to be replaced due to the wind getting inside the building after it collapsed the doors. And obviously it had to try to find a way out. Anyhow, I contacted the insurance company. They told me to get a hold of somebody. I got a hold of Brickls. I had them come out. They estimated the repairs at \$13,500. During the time that Brickl's men were there doing the repairs, they asked me the question, where did all the nice windows stored inside your building come from? And I told them they had come out of my house because we had changed all the windows out of the home. Later in that day they commented that between the windows and the useable steel that had come off the east side of the building... The steel that came off the east side of the building could not be matched in color so they said they'd have to take it all off. So anyhow between all the windows and the useable steel that I had, they just made the comment that they thought that I had most of the materials that I could improve the aesthetics of the south side of the building which looked rather bad. I suppose it's kind of a typical backside of a building. But pretty soon things get piled up and things look pretty crummy. Anyhow, it would allow me to store different things in there that had obviously been stored outdoors. My wife is a Master Gardener with the Bluff Country Master Gardeners. We have supplied many plants to the different community projects like International Friendship Garden in Riverside Park, landscaping plants to be used at House of Humanity homes and the plantings around Lakeview Healthcare Center in West Salem. Anyhow, at that point and time after thinking that over, I thought you know this makes better sense than throwing all the windows in the landfill and filling up the landfill. Anyhow with that being said, basically the building was apart and Brickls made mention that they would custom make the rafters at their facility so that the building was in the proper, whatever you call it, shape, requirements. Anyhow from there I just proceeded. Brickls gave me a price on it. I could not afford to do it. Between friends and family and myself, I did it myself.

QUESTION Raymer: So Brickls didn't do the work then?

ANSWER Kellogg: No. I mean they did the repairs.

REMARK Raymer: They didn't do this addition.

REMARK Kellogg: No.

REMARK Raymer: Because a contractor would have known they needed a permit. That's what I was trying to get at. If Brickls did this for you and didn't come and get a permit...

REMARK Kellogg: No they did not do the work.

QUESTION Raymer: So they did not do the work? Anything else John?

ANSWER Kellogg: I guess that's pretty much what I have other than the information that Chad gave me when I talked with him that day. I guess it's a variance standards information. In which case, I guess I can address those questions if you want me to. I know that one part of it was to contact any neighbors and I did that. I have no complaints from any of the neighbors. Looking around the room I don't think there was anybody here. In talking with neighbors, I actually had numerous people that said I think this is a better alternative than having multiple little tiny buildings that crop up on everybody's property from time to time. Then public interest... Do you want me to go through these things or no?

REMARK Eilertson: What we'd like to hear John is, why is this a hardship? And I haven't heard anything yet that's close to being a hardship.

REMARK Kellogg: Well, okay. I guess going back...let me find what I wrote down. Well how about I just continue so I don't lose track of where I'm at. Is that agreeable or no?

REMARK Raymer: Well, stick to the subject then. You under the current ordinance are only allowed 1,500 square feet. Although you got that variance before and had a 2,400 square foot building, had you come in and applied for a variance to put that addition on, you probably wouldn't have got it because you were already over the square footage. The problem we have with people that just go ahead and do it is then did they do that with the understanding that it's going to be harder for us to say, well no now you got to tear it off. Or is it easier for us to say, no you can't build it in the first place.

REMARK Kellogg: I guess that I really don't have the answer to. What I do know is that, with all the damage that occurred to the building, I had a lot of stress there. Obviously the rest of the world doesn't care what else happens in my life. But anyhow I had numerous other pretty important things on my mind and the thought of having to have a permit to do this I guess really never entered into my mind. Do you want the answer to your hardship or no?

REMARK Eilertson: Yeah, I'd like to have that.

REMARK Kellogg: When most lots were originally established... I forget the gentlemen's name. He used to be the chair or something at that time. He lives over on 16.

QUESTION Raymer: What's the hardship?

ANSWER Kellogg: Anyhow, they insisted that these lots consist of five acres. The reasoning, the way I understood it was that they were not to ever be subdivided. They were intended for larger homes and larger outbuildings, where people wanted to have a horse or whatever. I guess that being said, I don't know if you classify that as a hardship. To me, to have the land and not be able to do anything with it, when obviously we have a lot of green space and we're not allowed to subdivide or anything. The hardship to me would be, well I don't really know if that's a hardship. I can't see where it infringes on anybody's...

REMARK Eilertson: It infringes on the zoning rule.

REMARK Kellogg: Okay, alright, I guess you're correct there.

**Appearing in opposition:** None.

**Correspondence:** 1) Letter dated November 28, 2011 and received on November 29, 2011 from Sara Schultz, Town of Hamilton Clerk. Letter states that the variance was approved at the November 8, 2011 board meeting of the Town of Hamilton.

**Discussion:** REMARK Eilertson: He's not encroaching on the lot line. That's one thing I saw.

REMARK Houlihan: Originally the building was in conformance.

REMARK Raymer: Apparently the zoning rules in '94 allowed that 2,400 square feet before the detached accessory thing was changed. But now it doesn't change the fact that now he added on to it without one and doubled the size of what's now allowed. I mean that's kind of the issue. The whole lot is surrounded with pine trees so it doesn't affect anything that way. None of the neighbors objected apparently. This all came up because we were at Schuppel's right next door last spring and he got a variance. I'm sure that's when they saw that.

REMARK Eilertson: I'll make a motion to approve. I don't want him to tear it off at this point because that would truly be a hardship.

**Motion Eilertson/Houlihan to approve.**

**3 Aye, 0 No. Motion carried unanimously.**

**APPEAL NO. 2011-56** Adam F Woolley & Jennifer N Pickering, N1262 Breidel Coulee Rd, La Crosse, WI 54601. Permit denied to construct a 9-ft x 45-ft addition to an existing 39-ft x 45-ft detached accessory building that together with an existing 10-ft x 12-ft detached accessory building will exceed the 750 sq. ft. area limit for such buildings on this 0.86 acre lot and said addition will lie within the required 3-ft side yard. The property is described as: The east 137.00' of Lot 1 of Certified Survey Map, Volume 7, Page 15. Property address: N1262 Breidel Coulee Rd. Tax parcel: 11-84-3. Town of Shelby.

**Appearing in favor:** Adam F Woolley, N1262 Breidel Coulee Rd, La Crosse, WI 54601.

QUESTION Eilertson: How is this a hardship Adam?

ANSWER Woolley: I don't see it as a hardship.

REMARK Eilertson: Pardon me.

REMARK Woolley: I don't think it is a hardship. Or you mean for me?

REMARK Eilertson: No, a hardship is unique to this property, nothing to do with you personally. It has to be unique to this property.

REMARK Woolley: I don't see any hardship for that property. I think it would fit in nicely. We bought the extra land kind of anticipating expansion.

REMARK Eilertson: Tell me what you just said.

REMARK Woolley: That second lot, kind of bought that so it wouldn't encroach on the ten foot setback from the property line. That .48 acres was just purchased two years ago. That wasn't part of the original lot.

REMARK Eilertson: With the parcel to the north, you own 1.34 acres now. If you were going to put this size building on with this addition you'd need about ten acres.

REMARK Raymer: You'd need ten acres or more.

REMARK Eilertson: Or more.

REMARK Raymer: The maximum allowable up to ten acres is 1,500 and you're already at 1,875.

REMARK Eilertson: You'd need 8.66 acres more plus to build this.

REMARK Woolley: Which I don't have and can't afford. I'm operating a small mushroom farm and this is in response to a barn I was renting down the street being torn down last year. Zoned Ag 'A'. I'm operating like I said the mushroom farm. This is kind of what I need to continue.

REMARK Raymer: Right now with that 1,875 that's two and half times what's allowed on site that size.

REMARK Eilertson: You know we got two problems. We go the size limitation and we got the encroachment. Even though you own that other lot, it's still encroaching on it. The setback of it.

REMARK Woolley: I heard talk of being able to combine those two into one tax parcel.

REMARK Eilertson: You'd still be 8.66 acres short.

REMARK Woolley: Correct. But it wouldn't be within the setback.

REMARK Raymer: That would alleviate the setback part of it. It wouldn't change the square footage allowed.

REMARK Houlihan: I just asked Nate this question. He would be allowed to build another building on that separate parcel.

REMARK Raymer: That's true.

QUESTION Woolley: Does that mean I should do another detached building?

ANSWER Houlihan: Well it's a separate piece of land.

ANSWER Raymer: It's a separate parcel so you could build up to 750 square feet. Right?

ANSWER Sampson: The limitation would be 750 square feet because that is a separate tax parcel. The only concern, if I could clarify, both of these tax parcels are zoned Exclusive Ag, not Ag 'A'.

REMARK Eilertson: So you need 35 acres to build a house.

REMARK Sampson: To establish a residence, correct. We do issue permits. Non-residential accessory structure permits. If the use of a building it entirely devoted to an ag use we will issue a permit for that. It just can't be used for residential purposes in that Exclusive Ag district.

QUESTION Raymer: So if he wanted to build a building on there for only this mushroom business he couldn't have anything else in it?

ANSWER Sampson: Correct, it would have to be devoted to an agricultural use.

QUESTION Raymer: Are mushrooms considered agricultural?

ANSWER Sampson: I would consider it to be.

REMARK Woolley: I don't know if you have a copy of my drawing of the layout of the building. I have it here if you want to take a look at it.

REMARK Sampson: I have that.

REMARK Woolley: (*Referring to sketch with building design.*) This kind of designs the use of it. You can see it's entirely devoted to the mushroom farm.

QUESTION Raymer: Alright, do you have anything else to add then?

ANSWER Woolley: No I do not.

**Appearing in opposition:** None.

**Correspondence:** 1) Town of Shelby board meeting and public hearing minutes dated December 12, 2011 and received on December 17, 2011 via email. The minutes state the variance was approved.

**Discussion:** REMARK Houlihan: I guess he really does have a hardship with respect that he lost the building he was renting. Does it make more sense to deny it and have him build a separate building?

REMARK Raymer: If he has two and half times what's allowed now I don't know how we can justify saying well now he's going to add on more to it.

REMARK Houlihan: Well, you're going to end up with a building sitting in there then, or possibly.

REMARK Raymer: That's entirely up to him if that's what he wants to do. You know adding to this square footage situation.

REMARK Eilertson: He testified under oath that there is no hardship. I have a problem with that.

REMARK Raymer: It might be a hardship that he lost a building some place but that hardship isn't to this particular property.

REMARK Woolley: I guess I don't understand what the actual definition of a hardship is.

REMARK Raymer: When you got your packet from Zoning, as far as appearing here, there was a list of things you should have read. And one of them is, can you show... Do you have that right there Nate?

REMARK Sampson: This sheet of paper right here that was signed by the appellant, correct, asks what hardship is created by the application of the Zoning Ordinance of this property, is there a reasonable use of the property without a variance? In other words, is there an alternative plan that would comply with the ordinance? Is there a unique physical characteristic of the property which prevents development and

compliance? Would granting of the variance harm the public interest in any way? And goes on. There is also an additional handout sheet that is part of the packet each appellant receives.

REMARK Eilertson: The decision this board makes Adam is scrutinized. We have to do things according to the law and it's supposed to be predicated on hardships unique to this property. Nothing to this personally. It's unique to this property. We typically deny these things unless people can support a hardship or if there's no other alternative.

REMARK Woolley: The hardship I guess would be this is a farm. I have to earn money.

REMARK Raymer: He really should have to come back up.

REMARK Houlihan: Come back up here.

REMARK Raymer: And you're still under oath. A hardship for example could be that you had to put that addition on because there was a septic system on the other side or a well head or something, a deep ravine that you could not absolutely build in. That would be a hardship and why we would consider letting that go where it is.

REMARK Woolley: Okay.

REMARK Raymer: But a hardship for us, when you're already over the square footage as much as you are that's allowable, for us then to allow you to build even more, that's the problem we have.

REMARK Woolley: Yeah, that's why we're here.

REMARK Raymer: Now that's it's been mentioned and brought up that you could actually put another building on the other parcel that you own, that is an alternative way of getting around not having us grant this variance.

REMARK Woolley: Which would be at an extra expense to me I guess.

REMARK Raymer: But an expense isn't a hardship. That isn't what we consider a hardship.

**Motion Eilertson/Raymer to deny.**

**3 Aye, 0 No. Motion carried unanimously.**

**Motion Eilertson/Houlihan to adjourn at 6:40.**

**3 Aye, 0 No. Motion carried unanimously.**