

## MINUTES MARATHON COUNTY BOARD OF ADJUSTMENT

Members present: Richard Lawson, Roger Zimmerman, Karen Piel, Carolyn Opitz, and Gerald Hoffman

Members not present: Jim Servi, Arnold Schlei

Also present: Lane Loveland, Teal Fyksen, Dominique Swangstu, Diane Hanson, Rebecca Frisch, Paul Daigle, Matt Repking, Robert Hoffman, Cindy Fricke, Sue Bender, Dean Bender, Pam Wolf, Bud Wolf, Mary Pflieger, Gene Pflieger, Pat Tischendorf, Tim Rusch, Cindy Fricke, and Eric D. Clark.

**Called to order** at 9:00 a.m., 210 River Drive, Wausau by Chair Lawson, who explained the **rules of the hearing** and the reason for the establishment of the Board of Adjustment. Chair Lawson appointed Roger Zimmerman acting secretary for today's meeting due to Secretary Schlei's absence.

**1. Approve July 26, 2018 minutes – Motion** / second by Piel/Opitz to approve July 26, 2018 minutes as distributed. Motion **carried** by voice vote, no dissent.

**2. The application** of Dean and Sue Bender for a variance from the terms of Chapter 17.202.03 (F) of the Marathon County General Code of Ordinances for a variance to the setback requirement to the town road to construct a detached accessory building in the G-A General Agricultural District. The parcel is described as: the S ½, NW ¼, EX W 53 1/3 RODS, **Section 9**, T29N, R2E, **Town of Holton**, further described as, PIN# 042.2902.092.0996 and parcel address of: 5830 Reynolds Avenue, Dorchester, WI 54425.

Teal Fyksen was sworn in for this case and all additional cases, asked the Board to use the distributed determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Holton has adopted county zoning. The property is located within shoreland zoning, mapped wetlands, and located in a floodplain. There is a current violation on the property (shed built too close to the Right of Way). Loveland was sworn in and reviewed the following exhibits. Exhibit 2 – Proposed application site plan. Exhibit 3 – Zoning permit. Exhibit 4 -As-built calf barn location. Exhibit 5 – Bender timeline of events. Fyksen then presented the following exhibits. Exhibit 6 – Petition for Variance. Exhibit 7 – Location within Township. Exhibit 8 – Town of Holton future land use. Exhibit 9 – Aerial Photo (Wetland & Floodplain). Exhibit 10– Aerial Photo (Surrounding Parcels). Exhibit 11–Bender calf barn photo (facing South). Exhibit 12 – Floodplain and drainage impediment (2017 aerial photo). Exhibit 13 – Application Answers. Exhibit 14 – Conservation Staff Letter. Exhibit 15 – Clark- Marathon Veterinary Service LLC. Exhibit 16 – Survey Illustrating Barn Location and ROW Setback. Exhibit 17 – Required vs Proposed. Exhibit 18 – Additional Information. Exhibit 19 – Town of Holton Resolution. Exhibit 19a – Town of Holton Resolution Attachment. Exhibit 20 – Letter from Montana Kohl dated September 20, 2018.

The Board questioned if the violation on the property was solely related to the calf barn or if there was another violation. Staff responded that the location of the calf barn is the only violation on this property. The dimensions of the calf barn were questioned.

Lawson then swore in Dean and Sue Bender. Benders stated that the calf barn is 37 feet by 144 feet as was stated on the permit. The Benders felt that this situation involved miscommunications and misunderstandings. Their intention was to always put the barn in the location that it has now been built. Upon issuance of the permit, Benders handed the permit to their contractor and were not involved in any setback stakings for the building. The contractor is now deceased. The permit was issued in May of 2017 and excavation and filling for the barn foundation began in June. The Benders thought they were compliant and it never dawned on them that the setback or building location was non-compliant.

Loveland provided some historical background on other permits that Benders have obtained in the past (as most recent as 2015), that they have been very good at getting all necessary permits, and that since they used the same contractor for this building that there is a possibility that the contractor was looking at previous permits in regard to the road setback. He reiterated that the road setback had changed with the new county zoning ordinance in 2016.

The Board questioned the road traffic and if the building created any intrusion. The traffic on the road is minimal and the building does not obstruct the view. The Board also discussed that the original site location (Exhibit 2) and the setbacks of other structures at this locations. The location proposed in Exhibit 2 was impossible due to the expansion of the free stall barn that was completed in 2015 and no exact distances from the right of way were measured for the other structures but the setbacks are similar to this new calf barn.

Chair Lawson asked for any additional testimony.

Pat Tischendorf was sworn in. He is a neighbor and stated that the new building is very nice looking and complements the farmstead. Tischendorf discussed the letter received by town that the building was too close to the road and that Benders initially asked the Town to move the right of way, which the Town did not support. The Town did support the county giving Benders a variance for this project. Tischendorf stated that he is neutral in regard to this request because he has

**MINUTES  
MARATHON COUNTY BOARD OF ADJUSTMENT**

heard from residents on both sides of this issue. He also stated that Montana Kohl is a resident that lives near the Bender's and that she handed him her letter this morning. Tischendorf stated that if it was him in this situation, he would have avoided this situation but that it is not practical for them to remove the building, no neighbors are complaining about the building and that Benders own the land on both sides of the road.

Paul Daigle, Land and Water Program Director for CPZ, was sworn in. Daigle clarified that site plans have been drawn by staff or the applicant but that the applicant signs the application verifying that everything on the application is true and factual. He stated that he became aware of the December, 2017 inspection in April, 2018. While this is not the preferred method of notification of an issue, Corporation Counsel has stated that CPZ does not have a legal obligation to notify permittees of findings but for good customer service it is preferred that staff notify the permittee. That being said, it does not relieve the Benders of the violation. If modifications are needed a permit site plan can be revised.

The Board questioned who is responsible to determine any fines or penalties. Daigle clarified that the BOA does not have any responsibility related to issuance of fines or penalties.

There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 10:08 a.m.

**Motion** / second by Hoffman /Zimmerman to **grant** the variance request.

The Board deliberated and completed the Conclusion of Law and Decision Sheet.

Motion **carried** 4 yes, 1 no, roll call vote.

Lawson called for a 5 minute recess at 10:20 AM. The Board reconvened at 10:25 AM.

**3. The application** of Eric Clark for a variance from the terms of Chapter 17.202.03 (F) of the Marathon County General Code of Ordinances for a variance to the setback requirement to the town road to construct a detached accessory building in the G-A General Agricultural District. The parcel is described as: the E ½, SW ¼, SE ¼, **Section 36**, T29N, R10E, EX PCL DESD IN VOL 437 of DDS PG 140-HWY, **Town of Plover**, further described as, PIN# 062.2910.364.0997 and parcel address of: 185298 County Road N, Birnamwood, WI 54414.

Teal Fyksen asked the Board to use the distributed determination worksheet in their decisions, and cited the provisions of law which apply.

**Exhibit 1** – Staff report: Town of Plover has adopted county zoning. Part of the property is located within shoreland zoning, a floodplain and in a wetland. There are no current violations on the property. **Exhibit 1** Staff report: Town of Plover has adopted county zoning. The property is located within shoreland zoning, mapped wetlands, and located in a floodplain. There are no current violations on the property. **Exhibit 2** – Petition for Variance. **Exhibit 3** – Location within the town. **Exhibit 4** – Town of Plover Future Land Use Map. **Exhibit 5** – Aerial photo (wide angle). **Exhibit 6** – Aerial photo approximate location of proposed structure. **Exhibit 7** – Proposed site plan #1. **Exhibit 8** – Proposed site plan #2. **Exhibit 9** – Plat of Survey (revised). **Exhibit 10** – Required vs proposed standards. **Exhibit 11** –Town of Plover Town resolution recommending approval.

Frisch was sworn in and stated that she drove by this site this morning on the way to work and she described her observations from the road. Exhibit 9 is a very true representation of the existing site. Board members asked about the possibility of moving the building back and staff stated that this would require adding fill close to the wetland areas.

Eric Clark and Tim Rusch were sworn in. Rusch clarified the right of way information on this stretch of County Highway N and the information related to the right of way stating that the property deed, highway plat and other information do not all match. The current highway right of way is wider than typical highway right of way which makes the proposed shed closer to the right of way than initially thought.

Fyksen informed the Board that Jim Greisbach, Marathon County Highway Commissioner is in favor of granting the variance.

The Board discussed the current use of the right of way and if there were any alternative locations on the property that this building could be built. The current right of way is used for normal highway maintenance and is heavily wooded. In regard to alternative locations, the site has limitations due to slopes, wetlands and the location of sanitary facilities.

Testimony portion of the hearing closed at 10:48 a.m.

**Motion** / second by Zimmerman/Hoffman to **grant** the variance request with the following conditions: The 48 foot by 60 foot shed must be setback a minimum of 16 feet from the road right of way and the 16 foot road right of way setback must be delineated and marked by a professional land surveyor. These markings are to remain visible from the start of construction through the final County site inspection. The Board deliberated and completed the Conclusion of Law and Decision Sheet.

Motion **carried** unanimous roll call vote.

**MINUTES  
MARATHON COUNTY BOARD OF ADJUSTMENT**

Lawson was excused at 10:54 am. Piel assumed the Chair.

**4. The application** of Eugene and Mary Ellen Pflieger for the purpose to construct a detached accessory structure for personal use with floor area and components differing from the standards listed in Section 17.401.02 (E), on property described as: part of the NE ¼ NW ¼ **Section 13**, Township 27N, Range 09 E, **Town of Reid**, zoned L-D-R Low Density Residential further described as PIN# 064-2709-132-0997 with a property address of: 175422 Plover River Road, Hatley WI 54440.

Teal Fyksen asked the Board to use the distributed determination worksheet in their decisions, and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Reid has adopted county zoning. The property is not located within shoreland zoning, a floodplain or in a wetland. There are no current violations on this site. Exhibit 2 – Petition for Conditional Use Permit application. Exhibit 3 – Location within the town. Exhibit 4– Future Land Use Map. Exhibit 5 – Aerial photo (wide angle). Exhibit 6 – Surrounding zoning map. Exhibit 7 – Aerial photo of approximate location of proposed structure. Exhibit 8 – Proposed site plan. Exhibit 9 – Buildable area calculations. Exhibit 10 – Required vs proposed standards. Exhibit 11 – Town resolution recommending approval.

Eugene Pflieger was sworn in. The Board asked Pflieger why a bigger than allowed building was needed. He stated that he is purchasing a standard size Cleary Building and that if he went smaller, it would be a custom built building which would increase the cost.

All other setbacks and standards are compliant for this project.

There was no additional testimony in favor, or opposed, or as interest may appear. Testimony portion of the hearing closed at 11:05 AM.

**Motion** / second by Hoffman/Zimmerman to **grant** the conditional use request as proposed with the condition that the shed location would be staked and delineated and a preliminary inspection performed in order to verify setback distances.

The Board deliberated and completed the Conclusion of Law and Decision Sheet. Motion carried all ayes.

**5. Board education and training** –Fyksen reviewed the October 18<sup>th</sup> training opportunity for BOA members in Wisconsin Rapids.

**6. Announcements and Requests** –Fyksen reviewed the proposed 2019 Board of Adjustment meeting dates.

Motion/second by Zimmerman/Opitz to approve the 2019 meeting dates. Motion **carried** unanimously. Piel informed the Board that the Haas case from last month is being appealed. A Writ of Certiorari has been filed.

**Next meeting date** – November 15, 2018 at 9:00 a.m., 210 River Drive, Wausau.

**7. Meeting adjourned** – **Motion** / second by Opitz/Zimmerman to adjourn at 11:17 am. Motion **carried** by voice vote, no dissent.

Respectfully submitted,  
Roger Zimmerman, Acting Secretary  
Marathon County Board of Adjustment

RZ/dh

cc: Board of Adjustment (7), County Clerk, Town Clerk

O:\CPZ\ZONING\BOA\MEETINGS\2018\9\_27\_18\Minutes\BOAD\_20180927\_Minutes.doc