

**Town of Saukville
BOARD OF APPEALS
3762 Lakeland Rd., Saukville, WI**

Minutes

September 26, 2017 at 7:00 p.m.

Mike Denzien, Chair
Terie Leicht, Member

Todd Korb, Member
Jeff Walczyk, Member

Pam Smith, Member
Naomi Bruecker, Clerk

- 1. Call to order/Attendance.** The meeting was called to order at 7:00 p.m. by Chairman Denzien. Also in attendance were Atty. Luke Chiarelli (attorney for applicant), Reed Horton (applicant), Merlin Gerner, Scott Hembel, Don Hamm, Kevin Kimmes, Barb Jobs, Walt Grotelueschen, Kate Smallish and Atty. John DeStefanis.
- 2. Roll call/Confirmation of Quorum.** Ms. Bruecker took roll call. Chairman Denzien confirmed there was a quorum.
- 3. Pledge of Allegiance.** The Pledge was recited by all.
- 4. Public Notice.** Chairman Denzien acknowledged the public notice.
- 5. Open Hearing.** Chairman Denzien opened the meeting at 7:02 p.m. and introduced the cases; two petitions for variance and one appeal.
- 6. Petition for variance as to Section 2.0212 and 3.0503 relating to the use and occupancy of the ostensible garage structure located at 3150 Highview Road, Tax key #08-006-04-002.00, zoned A-1, owned by Reed Horton of S12274 Liegel Ct., Spring Green, WI.** Atty. De Stefanis shared he had held a pre-hearing conference with Mr. Horton's attorney, Luke Chiarelli. Attorney Chiarelli stated that Mr. Horton does not intend to pursue the appeal alleging error in the Orders of the Building Inspector/Zoning Administrator relating to the use and occupancy of the garage. He does not dispute the Building Inspector's determinations and orders relating to the garage, and therefore, Mr. Horton withdraws the allegation that Mr. Grotelueshen committed an error. Mr. Horton will proceed with his Application for Variance.
 - a. Presentation by Applicant.** Atty. Chiarelli explained Mr. Horton's property had been deteriorating for many years. He shared a packet of before-and-after pictures. Atty. Chiarelli claimed this property is unique for the following reasons. A well needed to be moved outside of the garage, there was a large amount of carpenter ant damage to all buildings, and there is a very overgrown yard. Mr. Horton had obtained building permits to replace windows and doors to repair some of the damage to his house. There are no neighbors living close to this property and it lies at the end of Highview Road. Atty. Chiarelli stated these considerations or amenities violate the Town Code, and Mr. Horton should have come to the Town first before making additional changes to the new dwelling.

Mr. Horton explained his wife desired to use the upper level of the second dwelling for her job and to have an area to meet and work with other fabric designers. Atty. DeStefanis clarified what the hardships were that were being explained. Hardships mentioned were 1) having a long driveway; 2) having a secluded residence, and 3) it was impossible to use this property without having these amenities – a second dwelling. Mr. Horton was asked if he used the garage for parking vehicles. Mr. Horton said the doors were not wide enough to store a vehicle in the garage. Atty. DeStefanis explained our Town Code does not prevent widening of garage doors. The Town of Saukville Town Code was initially written in 1957. Mr. Horton shared a brief history of the property that was once owned by his parents, sold to several other parties and eventually he purchased this parcel in 2014. Chairman Denzien confirmed that there were bedrooms, a bathroom, closets and a kitchen in the garage which meets the Town Code’s definition of a dwelling. Since the primary residence has bedrooms, a bathroom and a kitchen, this garage is viewed as a second dwelling. Atty. De Stefanis interjected that Section 8.0207 of the Town Code requires the Board members to use defined terms, like dwelling, and Section 9.0100 supplies the definitions the Town uses. Atty. Chiarelli said they were requesting a one-time exception to the Town Code. At this point, anyone present intending to testify was sworn in by Chairman Denzien.

- b. Presentation by Building Inspector/Zoning Administrator.** Mr. Grotelueschen testified that the ostensible garage structure meets the Town Code’s definition of a dwelling. Mr. Horton’s building plans were changed to include more than what was presented at the Town of Saukville Plan Commission meetings for approval on September 8 and October 13, 2015.
- c. Response from applicant.** Mr. Horton’s remarks are included in 6.a above.
- d. Hear testimony from any member of the public.** Scott Hembel, neighbor, explained the property on Highview Road had not been cared for by previous owners. Mr. Horton has made improvements and cleaned up the property. He has no objections to the changes Mr. Horton made since it looks better than before. Kevin Kimmes, Plan Commission member, stated it is great and commendable to improve a debilitated property; however, allowing two dwellings on one property would set a precedent for the town. Two dwelling are not allowed. If a roofed breezeway were added to connect the two buildings, perhaps they could be viewed as one building. This does not appear to be a hardship for Mr. Horton. Barb Jobs, former Town Chairperson, said allowing a second dwelling would be setting a precedent and should not be allowed. The size of the septic system also comes into play with the burden of additional bedrooms and bathrooms. Two separate households should not be allowed for the Town of Saukville. Kate Smallish explained she had been instrumental in writing the Town Code as a former Town Supervisor. “It is a slippery slope to change the Town Code and allow two dwelling on one parcel.

If that is what you want, you should go elsewhere where it is allowed.” At this point, Atty. Chiarelli asked if they could conduct a Straw Poll of how Board of Zoning Appeal members intended to vote. Chairman Denzien denied the request and continued to follow the agenda. Atty. DeStefanis explained the Town Code states after the meeting closes, the Board members will have 30 days to provide their written findings which will be published by the Town Clerk in the Ozaukee Press. Mr. Horton said if the findings are not in his favor he intends to appeal to the Circuit Court.

e. Questions from Board members. Terie Leicht asked the Building Inspector if the new dwelling was safe in all aspects for habitation. At the time of final inspection the house was not found to be safe according to Mr. Grotelueschen. The dwelling did not have fire rated doors separating the garage from the home. Mr. Horton said he has replaced the doors. Mr. Grotelueschen was questioned about the difference in fire doors. Mr. Grotelueschen said further research would be required to give a complete answer. Jeff Walczyk inquired about the condition of the first home. Mr. Horton described the home as a 3-season cottage built in 1926. It has three bedrooms and a small kitchen. It is usable as a dwelling. Mr. Walczyk inquired if Mr. Horton considered simply adding on to the existing home. Ms. Leicht asked if the Ozaukee County Sanitary violation was resolved. Mr. Horton explained the Mound System is rated for 4 bedrooms, and the violation was now corrected. Chairman Denzien asked for more detail on the hardship of needing a second home. Mr. Horton agreed the first home was usable and is also used during visits. Pam Smith asked Mr. Horton how he didn't know a second dwelling was not allowed. Mr. Horton apologized for his mistake. Mr. Horton said he has put \$46,000.00 of improvements into his property which should provide additional tax revenue for the Town.

f. Summary statements of Appellant and Building Inspector/Zoning Administrator. Atty. Chiarelli asked the Town to make a one-time exception for Mr. Horton's large family of 16 plus relatives who enjoy gathering at this property. He described their hardship as not being able to use the property as they prefer to. Relatives travel from beyond Madison, WI to Saukville to join the family. Atty. DeStefanis reminded Board members according to Section 8.0209 of the Town Code, no variance to the provisions of the Town Code shall be granted by the Zoning Board of Appeals unless it finds beyond a reasonable doubt that all facts and conditions exist. No variance shall permit a use not allowed unless exceptional and extraordinary hardship is proven. Economic and self-imposed hardship cannot be considered. Atty. De Stefanis also identified legal two cases supporting this (State of Wis. v Washara County Board of Adjustment and State of Wis. v Washington County Board of Adjustment).

g. Deliberation and decision. Todd Korb stated the burden is on the applicant, and what was presented does not meet conditions for a variance. This would cause harm to the public interest due to setting a precedent. Pam Smith stated a large family is not a reason to build a second dwelling.

Jeff Walczyk stated the original building plan was not followed, it was not what was submitted to the Plan Commission for approval. Terie Leicht stated this is a self-imposed hardship. The first home could have been renovated instead. Mike Denzien said this would set a precedent in the Town. Other alternatives were available. Mr. Horton deliberately misled the Plan Commission with his inaccurate building plans. Todd Korb made a motion to deny the variance. The motion was seconded by Terie Leicht.

VOTE:

Mike Denzien, Chair	Yea to deny the variance
Todd Korb	Yea to deny the variance
Terie Leicht	Yea to deny the variance
Pam Smith	Yea to deny the variance
Jeff Walczyk	Yea to deny the variance

The motion passed unanimously. Board of Zoning Appeals members voted concurrently. Atty. De Stefanis stated written findings of the Board will be prepared within 30 days of this meeting. A date was set for October 10, 2017 at 6:30 p.m. at the town hall prior to the Plan Commission meeting.

9. Adjournment. Todd Korb made a motion to adjourn the meeting. The motion was seconded by Terie Leicht. The motion passed unanimously. The meeting adjourned at 8:12 p.m.

Respectfully submitted,

Naomi Bruecker, Clerk

Town of Saukville