

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
AUGUST 16, 2021

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included John Jazdzewski, Don Rusch, Dennis Meis, James Garbe, James Hopp and Mike Pagel (Alternate). Staff present included Dan Bowers, Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department. Also present: David Ray - Portage County Corporation Counsel

Others present: Attorney Gary Dreier, Rodney & Cheryl Breit, and Priscilla Garbe.

Pledge Allegiance to the Flag

Garbe led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the function of the Portage County Board of Adjustment.

Business Meeting

Members of the public who wish to address the Committee on specific agenda items (other than item 2) must register their request at this time, with such comments subject to the reasonable control of the Committee Chair as set forth in Robert's Rules of Order. The Board will not receive public comment on agenda item 2 because the manner and scope of the Board's proceedings related to that agenda item are specified in a court order issued in a lawsuit that is still pending.

Discussion/Possible Action-Continuation of the Board's decision conference held on August 17, 2020, in P20-08, Voelker Revocable Trust, Owners, pursuant to the directions in the Portage County Circuit Court's Order for Remand in Portage County Case Nos. 20CV225 and 20CV218, entitled respectively, Voelker Revocable Trust, et al. v. Portage County Board of Adjustment and Rodney R. Breit, et al. v. Portage County Board of Adjustment (copy of court's order attached).

(Verbatim begins)

JAZDZEWSKI: Okay, this ah, this meeting is a little different because it has been remanded by Circuit Court that we revisit that meeting. As I said it was held August 17, 2020. So, ah, there are some rules and regulations we have to follow. One of those is number one; members of the public who wish the, to address the Committee or specific agenda items, other than item two, must register their request at this time, with such comments subject to the reasonable control of the Committee Chair as set forth in Robert's Rules of Order. The Board will not recede, receive public comment on agenda item two because the matter and scope of the Board's proceedings related to that agenda item are specified in a Court order issued in a lawsuit that is still pending. And then Ray's over here and we have no further hearings on the agenda. Number two is discussion possible action continuation of the Board's decision conference held on August 17, 2020 in P20-08, Voelker Revocable Trust, Owners, pursuant to the directions in the Portage County Circuit's Court Order for Remand in Portage County case numbers 20CV225 and 20CV218, entitled respectively, Voelker Revocable Trust et al vs Portage County Board of Adjustment, and Rodney R. Breit, et al, vs Portage County Board of Adjustment. And there's a copy attached to the packet for those that have received it. So, ah, just a question to Mr. Ray who is Corporate Counsel and representing us, ah, what can happen, won't happen, where do we have to start, ah, do we go, do we ask staff questions like we normally would?

(voice speaking on-line, not relevant to meeting topic)

RAY: Okay, um, the, like the Court indicates in the Order for Remand, ah, which the Chair indicated is attached to the agenda. What the Court directs the Board to do...

(voice speaking online, not relevant to meeting topic)

MRDUTT: I think they were having problems hearing this room though.

RAY: Yea.

MRDUTT: Well, that's fine.

RAY: Um, the Court indicated that the Board of Adjustment needs to review ah, factors that are listed in the Portage County Zoning Ordinance, um, and according to that section in the Ordinance, those seven factors that apply in this particular case, um, all those needed to be found in the affirmative. Meaning that the Board would answer yes to all of those factors in order to be able to grant the variance. And what the Court's decision ah, was when the, the parties appeal, and both the Breits and the Voelkers appealed this Board's decision to the Court. Um, but the Court specifically found that those seven factors, even though the Board, the Board of Adjustment should have considered those at its decision conference last August of 2020, um, that the Board neglected to do that. So, the Judge agreed to send the case back to the Board to conduct that review and analysis of those factors ah, in the Ordinance. So, it's up to the Chair, obviously, how the, how the Board wants to go about doing that. But um, my, my suggestion would be that um, regardless of what the decision ends up being in the end, it would be helpful I think to everybody, ah, in the long run, for the Board to evaluate all seven of the factors that are listed in the Ordinance. And then after, after the Board's done that, um, you know, then you can move forward with whatever kind of motion the Board deems is appropriate as to whether or not to, you know, affirm the decision of before, which was ah, it was not a unanimous vote as I recall but it was to grant the variance. So, if the Board changes its mind now today after applying the factors, um, that's up, you know, the Board can exercise its discretion ah, to do that.

JAZDZEWSKI: Okay, so realistically, because we can't take any input from the public, ah, and we have all the minutes and, and the material from that August 2020 meeting, we can actually start with the deliberation phase where we discuss everything between the members. If we have questions, we can consult with staff, but that's as far as it goes, along with yourself?

RAY: Yea. Whatever, whatever the Board would do in a normal decision conference, I think the Board is able to do here. Um, and, and essentially, you know, that's what the Judge, the Judge and the Court has instructed the Board to do is to

JAZDZEWSKI: Okay.

RAY: Reconvene, reopen its decision conference which would be the deliberation part of the hearing and, I mean, the Court's order also indicates that um, the Board, let me find it here.

JAZDZEWSKI: Would that be number four on page two of two, document 59?

RAY: Right. Yea, where the, where the Court specifically instructs the Board to review ah, the existing record um, in the case, which the Court also has the opportunity to review. And then to determine whether or not the conditions that are listed in the Ordinance ah, are satisfied based on the evidence that's, that's in the record already. You know, before the Board, that was first put in, into evidence back at the public hearing on August 17 of 2020.

JAZDZEWSKI: Thank you. Um, would it be the consensus of the Board members that we actually proceed with what would act as the deliberation phase where we can ah, you know, pick and go through it and anybody has ah, notes made as to yes or no as far as application.

RUSCH: That, that

JAZDZEWSKI: Does anybody object to that?

RUSCH: I'm good with that.

JAZDZEWSKI: Okay, if not, um, the Board will discuss the petition specifics and clarify any outstanding points. Ah, we have all the actual minutes that ah, Circuit Court was provided. We have all the representation of the petition, photos, documents, testimony. So um, I guess what we'll do is ah, we'll just open up the floor to the Board members and if you have something that, you know, just doesn't quite make sense, feel free to

RUSCH: Might, might I suggest what, what we just start with ah, what is required. Ah

JAZDZEWSKI: Just start going through one by one?

RUSCH: Yea. Just start with number one.

MEIS: Yea, I agree.

JAZDZEWSKI: Okay. Sounds good. That's what we'll.

MEIS: I mean that's what we're

JAZDZEWSKI: That's what we're, that's what we're charged to do. Okay, we have a, a form that, that listed the seven, actually it lists a few more but ah, seven that we have to consider. And ah, number one is if the requested variance is granted, is the proposed use of the property consistent with and does it promote the public interest, State law, or Administrative code? And is it, or is the spirit of the Ordinance observed and substantial justice done? Um, Jim Garbe, you want to start on that one? Your position?

GARBE: Um, position is yes. Do I need, are you?

JAZDZEWSKI: Only if, only if you feel that there is a arbitrary reas, reason to state yes. Otherwise, you can move on to Don.

GARBE: Cause I do have um, not reasons, but if you want to go through and.

JAZDZEWSKI: Okay.

GARBE: Happy to

JAZDZEWSKI: Go around and then, sounds good. Don, go ahead. Your position?

RUSCH: Well, my suggestion might be that Jim would state his position on it and his rationale for that and then we'd go down that way.

JAZDZEWSKI: That would be fine. We're new to this.

RUSCH: I don't, make sense?

JAZDZEWSKI: Okay, go ahead Jim.

GARBE: I put together a um, kind of a statement of my position and ah, referencing various parts of the testimony and the record. And so, my statement is kind of a summary of what took place, from my perspective. So, our decision is, or the issue is if the requested variance is granted, is the proposed use of the property consistent with and does it promote the public interest, state law or administrative code and is the spirit of the Ordinance observed and substantial justice done? And I'm saying yes and I am relying on this, this property, the adjoining properties, and most other properties on this section of the river, both upstream and downstream from this location, are residential in their use. The purpose and thus the spirit of R1, which is Rural Urban Fringe Zoning District, is a required, is to require a minimum of two acres in size for any lot that is created. And this new lot is more than double the R1 size requirement. The residual portion of the original, the parent lot, is more than triple the two-acre minimum lot size requirement. This variance offers no special privileges or changes to the existing development pattern along the river in this section of the Town of Plover. Furthermore, the proposed new parcel conforms with the minimum requirements of Shoreland Zoning, which required a minimum width of 100 feet and 20,000 square feet area. Um, based on um, I used evidence on different pages, I don't know if you'd like to go through and review those.

JAZDZEWSKI: If you feel it's necessary.

GARBE: Um, let's start with the page five, BOA Voelker record, 005. So, on the variance criteria that Mr. Voelker had to submit as part of his application, um, item number three, I guess gets right to the heart of the thing. How will granting the variance not be contrary to the public interest as expressed by the objectives of the ordinance. And the variance will not substantially harm the public interest, health, safety, or welfare and the proposed lots are consistent with the existing and proposed development. Also, I own the lot to the east. Um, therefore, I would own the lots on both sides of the proposed new lot. And um, this shoreline property, this is shoreline property but the proposed lots easily meet all the requirements in the Shoreland Zoning Ordinance. The new lots are way, the new, newly created lots are way larger than required in R1 Zoning. So, I see no problem with houses and density, groundwater protection, etcetera. So that's.

JAZDZEWSKI: Okay. Thank you. Don?

RUSCH: Okay, on point, ah, first point here, I answered yes to that, on, in that it ah, is the proposed use of the property consistent with and does it promote the public interest, State law, or administrative code. And is the, in the spirit of the ordinance observed. I, I answered, my, my conclusion was yes, um, use of the property certainly is for residential, R1 residential. Ah, certainly meets that requirement. The new proposed east lot ah, would be a buildable lot. Um, certainly sizing um, size limitation would fit for R1 residency. Um, as supported by um, it was intended to be utilized in the future by a family member. Ah, that's referenced on page 044. The west lot is to be, intended to be sold as a residential lot and that is referenced also on page 044. Um, so in the, ah, in the, in the ah, interest of answering does that meet um, that variance area, I indicated yes. The only question I had um, is and, is the spirit of the ordinance observed. And um, a question might arise there a little bit, um, because I don't know what more is in the spirit of the ordinance to be honest. Um, we, we measured the ah, intangible ah, parts of the request but in the spirit of the ordinance leaves, in my opinion, ah, something of a, of a question of what really is the intent there.

JAZDZEWSKI: Okay. Um, my, my answer to that one is also yes. My ah, reasoning parallels both of the statements previously made. So, with that, we will move on to Dennis.

MEIS: Um, mine was also yes. Ah, I guess I took a little different approach. Ah, I just wrote page numbers down as to where I ah, felt that it ah, made me say yes, I guess. And ah, not to repeat what the previous one's ah, um, had already said. I ah, also agree with those. But then also on page 11, I see that it says ah, depth and width, width, it says in general. And ah, with ah, with him owning so much land and ah, being able to, to divide it and ah, made so many lots, um, could end up doing it anyways. Ah, I think that maybe why in general was put there for a reason. And so, ah, I had also marked that one yea.

HOPP: I also, I also said yes for a couple main reasons. Same as lots coinciding down the road. Also, it was allowed in that zoning. And I think that we already stated.

JAZDZEWSKI: Okay. Um, number two. Is the use proposed permitted by the zoning district or overlay zoning district? Start with you Jim Hopp, ah, go back this way.

HOPP: It is permitted, again, yes, in that area. It coincides with some of the existing lots (inaudible) and it does go into the zoning and the fact to be able to do that. Yes.

JAZDZEWSKI: Dennis?

MEIS: Yea, yea, I guess there ain't much to decide there. Ah, I also put yes.

JAZDZEWSKI: Okay. Ah, I concur, yes. Don?

RUSCH: Ah, I have yes as well. Ah, the property zoning is R1 with minimum two-acre lot size and the requested variance will continue to meet the R1 zoning minimum acreage requirements.

JAZDZEWSKI: Jim?

GARBE: I also said yes and a much briefer statement is the same. Current zoning is R1 which is Rural and Urban Fringe zoning district. Proposed future use as indicated by the landowner conforms to the requirements of R1 zoning, both density and residential.

JAZDZEWSKI: Okay. Number three. Is the hardship due to special conditions unique to the property rather than considerations personal to the property owner? Um, Jim Garbe, we'll start with you.

GARBE: Um, yea, I found quite a few references throughout the record. Um, I could list them all but I'm going to read my statement. The hardship is a, is a direct result of the location of the public road. As a result of the road location, the average depth of the property is 1275 feet. And that's the average depth. The western um, depth of the property is less and ah, eastern end is considerably more than 1275 feet. This distance makes it very difficult to strictly comply with various provisions of the County ordinances. This hardship is not unique to this landlord, land owner, but is shared by all the land owners in this area.

JAZDZEWSKI: Okay, Don?

RUSCH: I ah, in regard to hardship due to special conditions unique to the property, my answer is yes as well. Um, the ah, the, the land lot is a one-fourth of a forty-acre track really. And ah, and so it's a quarter mile long in length and I don't know if the road, location of the road was, was there before the property or the property there before the road, who knows I guess. But it, it is what it is. It's a, it's a basically a 40 long, you know, it's a full 1300, roughly 1300 feet long and, and ah, 350 feet in width. So um, it makes it difficult, and certainly it's unique to the property, the shape. Ah, so it doesn't meet the, does not meet the ratios for zoning ah, requirements, therefore, the variance request. Um, so.

JAZDZEWSKI: Okay. I also um, went yes on that one. It's special conditions unique to the property. Ah, and the property owner is not looking at doing multiple ah, lot splits. He's looking at realistically doing two, which ah, with a little creative ah, planning um, allows for adequate lot line ah, description. Ah, he's not looking at making more than that. If his, if his lot was 20 percent of that depth, ah, his ratios would be more, more correct. But ah, that's, that's not the case and that's, that's just the way it is. So, yea, I vote yes on that one. Dennis?

MEIS: I also voted yes on that one. I'm looking here to see if I've got anything other than what the three of you just said. And I don't. I guess I concur with each of them.

JAZDZEWSKI: Jim?

HOPP: Same thing here. I said, checked yes, complying with what everybody said already.

JAZDZEWSKI: Okay. Moving on to number four.

RAY: Mr. Chair?

JAZDZEWSKI: Yes.

RAY: If I could, just, just for the Board's benefit and by ah, pointing your attention to this ah, item in the record. Ah, I only do it for sake of completeness. But on page 40 in that BOA Voelker record, which again, for our record here is the document filed with the Court. Toward the bottom of that page, there's a really long paragraph where Mr. Voelker is testifying and right about in the middle of that paragraph, a couple of words in, there's a sentence that reads like this, where he said I would prefer to make a more desirable lot that extends to the water. And it's obvious it would be more desirable. And then he says so we're debating the shape of the new lot. So, for what it's worth, that arguably could present the flip side on this issue. But I just, I pointed out to the Board because it is in the record and it's, it's the opposite kind of evidence that has been identified here by the Board. Now, at the end of the day, the Board has to, as the chair indicated, you know, you're essentially acting like a Court. And judges have to do that sort of thing all the time where they get evidence that goes on both sides of an issue and then you have to kind of balance it out and say, you know, what's the, what's the greater weight of the evidence ah, in, in any particular case, so.

JAZDZEWSKI: Okay. Just thinking on, on that one, going out of order, I would say that we're not looking to, to have a variance on the size, just the ratio. Ah, we're still more than adequate of the, of two plus acres. That's all I, if anybody else has anything on that one, interject.

RUSCH: My um, I guess my thought on that was my understanding on that was the petitioner ah, the petitioner in that wording was suggesting that rather than having a flag, flag lot shape on that one lot design, it would've been a straight line of some sort. And ah, that's why I understood in that case there. Um, but that simply is ah, what my interpretation of that. And that was not, it was, it was, my understanding, agreed to go to the ah, flag lot design to accommodate the width for a building project.

JAZDZEWSKI: Okay. Anyone else? Seeing none, we'll move on to number four. If the requested variance is granted, is it true that the results are not detrimental to future landowners? Jim Hopp, you want to go first.

HOPP: I checked yes on that one. They're very consistent with the lots going down that whole road.

JAZDZEWSKI: Dennis?

MEIS: Yes. I also checked yes and I ah, also wrote that he has ah, lots on ah, both sides.

JAZDZEWSKI: Okay. And I also agreed with yes and ah, as far as ah, detrimental to surrounding land owners, ah, adequate setbacks can be achieved with the, the lot descriptions as presented. Don't?

RUSCH: I indicated on that ah, point, yes as well. Um, again, the land owners ah, short term, will hold properties on each side of the, ah, on each side of the east lot and certainly the west lot is um, of ah, appropriate sizing so the area in question more was the east lot. So, the landowner requesting the variance holds ownership on properties ah, adjacent to the lot, east lot and, and certainly the west lot speaks for itself. Now, that being said, the landowner indicated in the record that the intent would be ah, the intent down the road would be to sell the west lot. Which, which may be a, a cause for some concern on a new buyer, but that's certainly the point of buyer beware at that point. Um, so, that's, my answer is yes.

JAZDZEWSKI: Jim?

GARBE: Um, I took a whole different fact. Um, any determination by us on whether a surrounding landowner would be impacted would be speculation on our part. There has been no testimony provided by any of the adjoining landowners that could tell us whether they would be harmed or not. So, since, so my answer is yes to that and it's because we were not provided any testimony by any surrounding landowner that they may be harmed. So, um, even though it, I'm gonna read my statement again. Even though adjoining landowners were notified, no conflicting testimony was given, therefore, one can only conclude that a variance is not detrimental to surrounding landowners. And I would like to document this part of that reference on Voelker page 33, is the published meeting notice, class two notice was published twice. And then on page 34 is the um, letter sent out to um, town board as well as county board representative and the surrounding property owners. They were given notice that this was up so they did not come in to testify. So, any speculation on whether they'd be harmed, we had no capability of knowing.

JAZDZEWSKI: So as not only by memory, but by documented information provided in the packet.

GARBE: Correct.

JAZDZEWSKI: That is spelled out.

RAY: Mr. Chair?

JAZDZEWSKI: Yes.

RAY: If I could, again, just for the sake of complete, completeness, I've got a couple other references um, for the record, which I'll give the specific pages for, for the Board's consideration. Um, first of all, on page 13 in the record, that was ah, the hearing minutes from the Town of Plover Plan Commission. And I think it indicates there that there was an adjacent landowner, landowner, Andrea Leibert, or Liebert, ah, who said she does not have a problem with the lot split, but she did have ah, concerns regarding ah, drainage and septic issues. Then on page 36 in the record, this Board's initial decision, with respect to septic issues as we, one of the conditions that the Board did include was ah, specific setback with respect to the septic. Which would tend to indicate, ah, or would tend to serve to protect concerns that the adjacent land owners had, or might have. And then ah, two other points in the record. At page 40, um, Mr. Voelker's testimony, which I think is indicated in the petition itself too, that the newly proposed lot, and possible future house that he talked about building on it for a family member, was at least at this time, in between two lots that Voelker himself already owns. He had testified to that. And then similarly, at page 45 in the record, um, Mr. Voelker had written a letter to the Board and then that letter was read into the record, which just confirms the same information. That he owned the lot to the east of the subject property, which was going to be the vacant one, if the variance were granted, and the lot split happened. Thank you.

JAZDZEWSKI: Okay. Thank you. And just to be clear, that five-foot setback is a standing ah, setback on record in Planning and Zoning.

MRDUTT: For septic.

JAZDZEWSKI: Yes. Yes.

PELKY: It's part of the SPS383 code.

JAZDZEWSKI: Okay. Thank you. Number five, will the requested variance overcome a hardship that was not created by any person having an interest in the property. Start with you Jim.

GARBE: Um, I could go through a whole litany of page numbers. And, again I summarize the findings that I um, glean from all those different page numbers and I came up with this statement. I vote yes on that as well. This location of the road and the excessive depth of the lot are the contributing factors to this hardship. The land, landowner was not involved in the creation of either of these factors. A variance will provide this landowner the ability to create an additional lot in residential use within the spirit of the Zoning Ordinance in the current R1 zoning classification of this property. The new lot would, the new lot would conform to the historical development pattern present within this area.

JAZDZEWSKI: Thank you. Don?

RUSCH: I ah, noted yes on that ah, point as well. Um, in addition to some of the points that Jim had there, I would add that the owner could, in fact, get around the ah, variance issues by creating multiple lots, additional lots, and it would be a great more costly to, to get there ah, in accessing those lots but there is a way of getting there. Um, but it ah, this, in fact, would overcome the hardship with the length of that lot and the narrowness of that lot, um, for this particular, this variance, would.

JAZDZEWSKI: Thank you. Ah, I also gave that a yes for similar conditions, none withstanding that were worth noting, so. Dennis?

MEIS: I also gave it a yes. Um, same reasons. Ah, I guess I would add again, on page 11, where it says in general.

JAZDZEWSKI: Yep.

HOPP: I also said yes for the same reasons that were already stated.

JAZDZEWSKI: Okay. Number six. Did the property owner demonstrate that strict compliance with the Zoning Ordinance causes unnecessary hardship that would unreasonably prevent the property owner from using the property owner's property for a permitted purpose but would render conformity with the Zoning Ordinance unnecessarily burdensome. We'll start with you, Jim.

HOPP: I checked yes on that one also. It fits in with the zoning laws in the County. And it is similar to the neighboring lots.

JAZDZEWSKI: Dennis?

MEIS: I checked yes as well. I guess ah, same thing, it ah, it's the same as the neighboring lots. I don't see where it would be a detriment to, at all.

JAZDZEWSKI: Okay. I also agree with that with a yes. Don?

RUSCH: I checked no. Ah, and reasoning would go to ah, page 43, 043, Mr. ah, Voelker testified that ah, reading on down ah, lower part of the page, it's Mr. Voelker, can I address, in other words, ah, there was discussion going on about additional lots and ah, Mr. Voelker said can I address that. There was something that was brought up in the town meeting. Somebody suggested why don't you split into four lots and sell two of them at a time so you 've got one here, one there and one there and one there. But to me that's just a silly way to do what I'm doing. Isn't that just being abstruse in the purpose of getting around the ordinance. Ah, and then also on page 052, get to that. Um, again, it's referenced that there are, there are options. Ah, down, basically you start with ah, Mr. Bowers' statement on top and read on all the way down to Mr. Voelker's. Ah, so we're, we're talking about the upper two-thirds of the page and it goes on discussion about the option of creating additional lots and the ability to create those lots and, and to be in conformance with zoning regs. And so, my, my answer to that is no because the property owner actually has other options he could pursue, other than the variance as requested on the, on the table at this time.

JAZDZEWSKI: Okay. I gave it a yes. Um, for kind of the same, but I'm looking at the fact that it, it doesn't put as big of a burden on, on the land, as far as ah, septic system and usage. And ah, yes, you are taking away ah,

the ability to have water frontage if you go with the four-lot, which would be totally legal. But, in that area, I feel that that's the draw of the property. Dennis?

MEIS: Yea, I agree. I agree totally with what you just said John. I, I don't know, I don't know what more to add to it.

RUSCH: They, they, the definition

MEIS: It's the whole reason

RUSCH: The definition of hardship is um, I think the crux of the issue. I don't think you've got Jim's ah, Jim's vote.

HOPP: We're going backwards.

MEIS: Yea.

JAZDZEWSKI: Oh, I'm sorry.

MEIS: Yea, you jumped back, but that's fine.

JAZDZEWSKI: It makes you do it again. I just want to be sure. I'm sorry Jim, go ahead.

GARBE: No problem. Um, I guess the crux of number six is understanding

STEWART: Wait, may I interrupt here? Are we on five or six?

RUSCH: Six.

STEWART: He didn't, I didn't get his for number five. Did you say, they didn't ask you about number five yet. We went to Don Rusch and then you went back that way. So, you still need to say what you think.

RUSCH: No, that's on number six.

GARBE: No, I did. What happened is they skipped.

STEWART: Oh, I apologize.

GARBE: I, you're fine.

STEWART: Got it, thank you. I apologize.

GARBE: Um, the crux of number six question, besides being a mouthful to say. Every time I have to read requirements, I always stumbled on this one to read it. There's two parts to it. One is dealing with the strict compliance of the Zoning Ordinance. The fact that um, the Zoning Ordinance can cause to satisfy the requirements of the Zoning Ordinance can cause hardship in itself. Where relief, relief through a variance would be less of a hardship than trying to conform to the Zoning Ordinance. And the second half of that, there are two parts to this question. Um, would um, render the prop, okay, using the property owner's property for a permitted purpose or would render conformity with the Zoning Ordinance unnecessarily burdensome. We went through ah, um, quite a lengthy determination of what options were. And what was thrown out is here's the variance, here's another options that, that's multiple variance, two variances. There's another option that would substitute one variance for another variance. And then we explored um, the option to, did Mr. Voelker have other options to divide up the land, other than going through a variance. And there was quite a few options thrown out. Including um, probably the most important one was testimony by Mr. Bowers on page 52. After we evaluated all the various different options, um, he even said, based on the lot acreage, which is quite extensive, you could probably get a number of lots, possibly even up to four or five, depending on how you configure it. I'm not sure how you get five lots without some sort of possible variance as well. But it implies you could get four lots if you have a sharp pencil and a good surveyor, you might get four lots out of it. And, it's the process of going through the legal means to create four lots, and the legal process by itself could be um, a burden to go through that process creating four lots. And then um, where a simple variance to create

one lot, and create two lots out of one versus creating four lots out of one. And then you get into the issues of potential issues with um, septic systems, nitrate loading, density, and is the smartest way to approve one lot versus end up with four lots. So, I again have a prepared statement for this. I kind of went around about on that, but. The landowner's desire is to build one new waterfront home on this property. The landowner has the option to create multiple lots, up to four new lots, on this property without seeking a variance. However, to do so would create a burden of both time and money to create a county plat to dedicate and to construct a road. Because you know, you throw in too many lots and you're going to need road access and you start talking about needing a cul-de-sac. In addition to all the administrative steps that would be required for the process, including County and Town approvals, it is an, it is an unnecessary hardship and burden to require him to create something he has no desire to create just to achieve the goal of building one new home. This requested variance allows him to use his property for this desired purpose. Granting the variance would elim, would effective, effectively eliminate the option for further subdividing the lot in the future.

JAZDZEWSKI: Okay, thank you. Um, move on to number seven. Does the variance requested represent the minimum relief necessary to relieve unnecessary burden on the use of the property? Hey Jim, we'll go right back to you.

GARBE: Let me gets my thoughts. I was hoping I'd have a. So, when they, I interpret minimum relief as if we're presented with a person asking for a variance. But it really turns out to be two variances. In the course of discovery and debate, we could allow one variance, one variance is a um, minimum relief versus, compared two variances or multiple variances. Um, again, I'll, I'll read, I'm sometimes better off just reading my statement. In the course of hearing evidence and questioning of the Planning and Zoning staff, the Committee explored numerous other options. Other options could require multiple variances. It was also established that the landowner has numerous options to divide the land into multiple lots without a variance through normal conformity of the various Zoning Ordinance provisions. Granting the variance of length-to-width ratio found in the County's Subdivision Ordinance, is the minimum relief required to eliminate the landowner's burden for his intended use to create a single-family dwelling on a waterfront lot. And again, I have quite a few, or a bunch of references and page numbers ready.

JAZDZEWSKI: Okay. Don?

RUSCH: Ah, I indicated yes to that area. Um, it does, in fact, represent the ah, minimum relief necessary ah, to accomplish what the petitioner is requesting. Um, it ah, in creating the two lots and, and allowing for water access to both lots. Um, and then also ah, with the 200-foot buildable line, um, building line in there, as it's, as it's designed with that side lot. Um, so, the answer is yes, this is the minimum. Other thing, other, as I go back to the previous question, you know, he has other options, but this, this variance provides the ah, best relief at minimal cost.

JAZDZEWSKI: Okay. I went twice last time so I'll just say yes. Dennis?

MEIS: Ah, I also said yes. And ah, I can, again I reference page 5, 11, in ah, which I read those earlier. But ah, I also had page 50 in there where Mr. Voelker says, yea, again the ordinance did not say 200 feet wide at the building site, it says 200 feet at the building line. (inaudible)

JAZDZEWSKI: Okay. Jim?

HOPP: I also said yes for the same reasons.

JAZDZEWSKI: Um.

RAY: Mr. Chair?

JAZDZEWSKI: Yes, Mr. Ray.

RAY: Ah, thank you again. Ah, again for sake of completeness, and the other side of the coin would be what ah, Tracy Pelky pointed out to the Board in his memo that's in the record. Um, which is at pages 9 and 10. Um, his August 7, 2020 memo. Last bullet point on the bottom of the first page which his page 9 in the record. It reads the owner could create a legal lot for this property and meet all Portage County Zoning Ordinances. A northern lot could be created using the exis, existing driveway and a southern lot could be created with a new access off of Biron Drive. And then he attached a, an air photo which I believe is page 17 ah, in the record. So, that would, that would be the other, again, flip side of the position on this issue in terms

of minimum relief. There it was ah, staff's opinion, as I understood it. Um, and then the conclusion in that memo even is that the petition for the variance didn't meet the standards for granting a variance and this example that Mr. Pelky gave in his memo is at least one illustration of another way to create a second lot, granted it wouldn't be a waterfront lot. Um, however, I can tell you from a legal perspective, um, financial considerations in terms of what kind of a lot has more value, is not supposed to enter into the equation when you're looking at hardships. So, um, you know, you've got, you've got both sides of the coin. And again, that happens a lot. But I just wanted to make sure the Board knew that um, in the, in the sake for the interest of completeness, in our discussion.

RUSCH: Mr. Chairman?

JAZDZEWSKI: Yes Don.

RUSCH: Ah, and that's when, I want to go back to that point, number six, on hardship. Because that really bares out ah, the thought process I was utilizing as well. Ah, there are other options here. Um, and ah, other than the petition as requested to. And, as suggested by ah, Mr. Pelky as well as the lot diagram, and that's why I, I believe the petitioner has not um, ah, has not satisfied the unnecessary hardship in point number six.

JAZDZEWSKI: Okay.

GARBE: Mr. Chairman, I have a clarification question for Mr. Ray. What pages were that on? I'm struggling to catch up.

RAY: Oh, for Mr. Pelky's memo?

RUSCH: Nine and ten.

GARBE: Nine and ten?

RAY: Nine and ten.

GARBE: And which, when you read verbatim his

RAY: It was the last bullet point on the first page of his memo. So that would be page nine in the record.

JAZDZEWSKI: You wish to comment on those, Jim? Or should we move?

GARBE: Um. I interpreted a lot of the staff's objection based on the definition of the ratio of width-to-length and the definition and the statute in our ordinance pretty much says, in general, the ratio of um, lot length to lot width should not exceed three to one. In several places of the um, testimony, especially the initial testimony from Mr. Voelker, he was led to believe there was a four to one ratio. I interpret that, that staff has the ability and the flexibility to consider various scenarios and make an exception at the staff level. Since the ordinance does not say shall, it says in general should, that they have the ability to make um, a judgment call. At some point, their judgment call gets too big, and that's why they recommend it comes for a, ah, variance. There was an awful, awful lot of testimony around the definition of the lot width. A lot of confusion of what the lot width. Um, it was points that I agreed with Mr. Voelker and there was also points I did not agree with Mr. Voelker. There was also points that staff had that I don't know how they derived that interpretation for just simply reading the requirements of the Zoning Ordinance that says um, the width of a lot shall be 200 feet at the building setback line. Now, so many times they're saying that the lot width must be 200 feet the entire length of the lot. The, the Ordinance says shall be 200 feet at the building. If they wanted the lot to be completely 200 feet through the entire length of the lot, the Ordinance should read the width of the lot shall be 200 feet.

JAZDZEWSKI: Period. And that would totally eliminate flag lots.

GARBE: And it would eliminate um, lots on cul-de-sacs, pie shaped lots, you've got um, curved roads and the outside curve would be pie shaped, diverging lines, the inside corner would be the reverse pie shape, diverging lines. I think the whole intent and the spirit of that um, statement that ah, lots shall be 200 feet, as

determined um, I should see if I'm gonna refer to that. Refer to it right out of the Ordinance so I state it correctly. Lot width. Minimum lot width shall be 200 feet at the building line.

JAZDZEWSKI: That says building line, not setback.

GARBE: Not setback. And um, I interpret building line to be synonymous with building site. And there was a lot of stuff being read and what is the building line. And our decision was to grant relief from the ratio of lot width to lot length, but not grant a variance from allowing him to build a house, a structure, in an area of the lot that was less than 200 feet.

JAZDZEWSKI: As is evident on page 056 and 057 in the document.

GARBE: Correct. Now this, I don't know if, I'm gonna ask Mr. Ray. Um, this is not evidence in the record but it is something that is in our Zoning Ordinance. Is that, am I capable of being able to site my additional reason, reasoning for, is that permissible? It's not in the record.

RAY: Yes. Because if I'm understanding you and if I'm hearing you correctly, you're suggesting that there is language within the County's Zoning Ordinance that either explains or, you know, is ah, lends support to the conclusion that you're reaching.

GARBE: Ah, to a certain extent, yes.

RAY: The other, the other thing I can point out, um, to the Board, is that in, in the Court's first decision that it made back in April of 2021, so this Spring, a little bit earlier this year, um, there had been some argument in the case as to whether or not the notion of a lot width at a building line, or at the building line could not be enforceable because there was no definition of that phrase, building line, in our Ordinance. And the Court addressed that and disagreed with that conclusion. The Court said, just because there's no definition, doesn't mean that the Board and staff can't interpret our own ordinance. And, and the same, the Judge reads the same conclusion with respect to the lot depth to width. The ratio idea which Supervisor Garbe, or Mister Garbe, just alluded to, of the use of the word, the words in general, and um, the rest of the language in that section of the ordinance. So, I can tell the Board that the Court has already addressed both of those issues and arguments related to those two sections in the ordinance. And the Court reached the conclusion that on their face, both of those sections in the ordinance are valid. And the Court wasn't going to strike them down on the grounds that they were ah, vague or ambiguous.

GARBE: Um, the point I was going to make is the definition of lot width in R1 Zoning is consistent throughout our Zoning Ordinance. Under R2 Zoning, which is half-acre lots, that requirement says lot width, minimum lot width shall be 100 feet at the building line. In the case of R4 Multi-Family Zoning, that same verbiage is used. That is um, lot width, the minimum lot width shall be 100 feet at the building line. And in the case of R3, which is One and Two-Family Residential Zoning, that same definition exists. The minimum lot width shall be 100 feet at the building line. The one exception, which is interesting, is R5 Zoning, which is Waterfront Residential District. Lot width also reads, the minimum lot, okay, and in case of the R5 Resid, Waterfront Residential Zoning, requires a minimum of one acre, not half-acre, one acre. So, with that, they recognize that the lot is bigger and lot requirement is bigger. So, the lot width, minimum lot width shall be 150 feet at the building line. This is an extra, put in there, provided no lot may be less than 100 feet wide at the ordinary high-water mark. So, this implies that the building lot width does not have to be 150 feet consistent all the way through the lot. It allows some wiggle room and creative designing of lots.

JAZDZEWSKI: Okay, um, Mr. Ray had mentioned ah, that per Mr. Pelky's ah, possibility of developing two lots with one main access off a side road, or another road, and not having water frontage, that ah, consideration to ah, the value of the lot should not be considered a burden or whatever. And ah, I guess I, I'm all for that but what I would argue is that in this area, all the lots that are apparent, all road access and water frontage. I mean that's kind of the standard for the lots there. Ah, is it a burden, economic challenge? I don't know. But I would think that would be an arguable fact ah, as to saying why the, both lots should be considered to have access to the water. I mean, your opinion on that Mr. Ray.

RAY: Well, we're looking, we're looking at factor number seven I think.

JAZDZEWSKI: Yes.

RAY: Um, so, the question is as, as our ordinance indicates, does the variance request represent the minimum relief, or the minimum amount of relief necessary to relieve the unnecessary burdens on the use of the property. Um, so again when we analyze that, in, in Mr. Pelky's hypothetical, and not even hypothetical, he's, he drew it out where the two-acre lot on page 17 in the record, is right up against the road. As is the other lot that would still remain. So, both lots have access, if I understood the memo. They both have access off of the existing public road and that is one possible scenario that the property owner could have gone through by applying for a lot split to Planning and Zoning. And if I understand the memo again, that lot would have been allowed without any kind of a variance at all. So that's, that's why I'm suggesting that one could make a case that the scenario in Mr. Pelky's memo is less relief because it doesn't require any variance at all. In opposed to this situation, the property owner, and make no bones about it, he's clearly asking for two lots so that he can have two waterfront lots. And you know, then you get into on, on all of the hardship questions, you know, is it, is it exclusively because of some condition of the land or is it a desire or a preference that the property owner is expressing. Sure, and, and granted, we can, a case can be made that two of the boundaries on these lots have nothing to do with anything that anybody did. The road is there and the river is there. You know, we, we can't change those. Um, if those were the only factors, we might come to one conclusion. But we've also got, again, by his own admission, the property owner is saying I don't like the suggestion or the alternative that the Planning and Zoning staff made me aware of. I'd rather have my two waterfront lots. And so, as, as I read number seven, what staff suggested is something that's a lesser amount of relief that the property owner could still accomplish. Do a lot split, get two lots, and not even have to go through the variance process in front of the Board.

JAZDZEWSKI: Point well made.

RUSCH: Ah, I'd add one point to Mr. Ray's comments there. Ah, that would also back to point number six on hardship. That would actually join in that same ah, thought process that there are options ah, that are less burdensome but ah, so therefore, it, in my thinking, I guess, ah, point number six, there are other options. It's, it's um, has not proven in this request unnecessary hardship.

JAZDZEWSKI: Okay. Anyone else, in the arbitrary stage of this process? Seeing none, what we will do is close deliberation. And I guess ah, we'll move on to decision on the petition. A reminder that you all have your worksheets. There are no wrong answers. They're your answers. That's what you determine your ah, your position on the vote by. Ah, we also were provided with ah, three recommended conditions. Those are on BOA Voelker record 010. And they were, they were included in the original decision. Ah, through our discussion here, we've ah, determined that they are all legitimate. Certified survey map, detailed septic evaluation, and also that 200-foot width at the building line, which we all feel is represented by the ordinance. So those, those were the three conditions that, that ah, Plan Commission, or Zoning ah, Commission, Department asked for. So ah, at this time, I will ask for a motion to approve, deny, or, forbid us postpone, ah, the motion. I will also ask that the person that makes that ah, motion, include those conditions if they so choose. Ah, let's be definite. Yes, Mr. Ray?

RAY: Go ahead and finish and then I'll (inaudible).

JAZDZEWSKI: We've definitely gone through the finding of facts. That's what we spent the last hour and 12 minutes doing. Um, we did it last time but we did it somewhat differently. Ah, this should leave ah, a text that is readable and understandable. So, with that, ah, we'll see what Mr. Ray has to say and then we'll open the floor with that motion, if possible.

RAY: Thank you Mr. Chair. Um, again, as I, the reminder I gave us all at the beginning is that what the Court has instructed the Board to do is to apply all those factors under our ordinance and as the Board is aware, the ordinance indicates that all factors, you have to find yes to. So, if there's a no to any of them, that would indicate that it's not appropriate to grant the petition for the variance.

JAZDZEWSKI: As per individual member.

RAY: Correct. Yep. Yep.

JAZDZEWSKI: With that said, is there a motion?

RUSCH: I'll bring a motion to the floor to deny Petition P20-08, on, on the basis that ah, unnecessary

RAY: Why don't you, why don't you make your motion, then you can have discussion.

RUSCH: Okay.

JAZDZEWSKI: There's a motion to deny. Is there a second? I ask again for a second. Seeing none, that motion is dead. Ah, the floor is now open for any further motions. The Chair will make a motion to approve the petition for a variance, P20-08, with the conditions one, two and three. Certified survey map must be completed for the two-lot. A note on the survey map that no building or structures will be allowed where the lot is less than 200 feet in width. And a detailed septic evaluation showing the five-foot setback can be met from the edge of the drainfield to all property lines. A reminder that each individual gets to vote on this. If it is seconded and stays on the floor. Is there a second for that motion?

GARBE: I'll second that.

JAZDZEWSKI: It has been moved and seconded. Any discussion on the motion as presented? Seeing none.

RUSCH: I feel, I feel that point number six still bears out as not approving ah, unnecessary hardship.

JAZDZEWSKI: Okay.

RUSCH: And ah, I, I think um, we too many times do not look and measure hardship properly. That it's, that hardship is difficult to measure. And, and so we I think sometimes trip over that rapidly and ah, ah, and, and un, unnecessary hardship means the individual cannot enjoy and utilize the property as a, as they choose. Ah, that's an unnecessary hardship. Mr. Voelker, the petitioner here, I should say the petitioner ah, the Trust, Voelker Revocable Trust, can in fact enjoy use of that property by pursuing one of the other options that are on the, on the table and been discussed. And so, it, based on that very point, I, I believe the ah, um, the ah, petition request should fail.

JAZDZEWSKI: Okay. The purpose of me putting the motion on the floor was to allow a vote on it by each of the five voting members. Um, is there any further discussion?

GARBE: Um, I'd like to comment on number six.

JAZDZEWSKI: Okay, Jim.

GARBE: Again, number six allows two tracts of thought. One is unnecessary hardship. And the other one is rendering conformity with the Zoning Ordinance, unnecessarily burdensome. The two can both exist at the same time or each can exist separately. I look on this as a less of a hardship as more of a necessary burden standpoint. To rebut your rebut.

JAZDZEWSKI: Okay, with that being said, any further discussion? Seeing none, I will ask ah, Gayle, to take a roll call vote on the decision on the motion. Which goes, for, go ahead.

STEWART: Garbe? Okay, Garbe?

GARBE: Aye.

STEWART: Rusch?

RUSCH: No.

STEWART: Jazdzewski?

JAZDZEWSKI: I vote nay as I did at the previous.

STEWART: Meis?

MEIS: Aye.

STEWART: Hopp?

HOPP: Aye.

JAZDZEWSKI: Okay, motion carries for approval on a vote of three to two, with the attached conditions. Where do we go from here?

RAY: Ah, we will prepare a decision like we did last time; a written decision.

JAZDZEWSKI: Okay.

RAY: And then ah, I've got to go back and look but I, the order from the Court indicates ah, what we'll need to do with the decision. So, I'll take care of that since the lawsuit is still pending.

JAZDZEWSKI: Okay. I thank you. Now, ah.

GARBE: I have a procedural question?

JAZDZEWSKI: Yes sir.

GARBE: For the Chairman or Corporate Counsel. I had prepared a series of statements. I can hand those to the recording secretary as a means to help her.

JAZDZEWSKI: I think ah, what Mr. Ray had said at a working session previous that all notes and stuff that is generated, will be given to him which he will store for his preparation.

GARBE: I understand. I have stuff that I read in open session, so it's part of the record.

JAZDZEWSKI: Okay.

GARBE: I will provide that. I also have a series of notes that I will hand you for my personal notes.

RAY: Correct. Mr. Chair, what, what you were referring to were ah, items that I had conferred with the Board about in closed session.

JAZDZEWSKI: Okay.

RAY: Ah, not in open session. Um, the one clarification I'd ask ah, for Mr. Garbe, is with your notes that you prepared, did you read them verbatim into the record today?

GARBE: Yes.

RAY: Okay. Then, then I think that's ah, it's fine to give those to the secretary, um, because my understanding ah, as to how Gayle Stewart typically prepares the transcript of these ah, matters, is uses the digital recording and does it verbatim from, from the recording.

STEWART: Mmm-hmm (indicating yes).

RAY: Um, so, she will be able to double check that the comments that you made during the decision conference today are, are consistent with the written notes that you're going to hand to her.

STEWART: But it won't change what I'm typing though since I'm doing it verbatim.

GARBE: Yep. The only thing that I, I referenced several times um, the Voelker record pages numbers, I did not do it on everything and a lot of them I had multiple page numbers. Some got read, some did not.

RAY: Sure.

GARBE: They're all on here.

RAY: What she's indicated she'll type up in the transcript, it will be exactly what you said, verbally today.

GARBE: Okay.

JAZDZEWSKI: Okay, with that said, um, like I said, the decision ah, passed to allow the variance. I might remind the Voelkers that you've got 30 days in case somebody wants to ah, petition the Court. Ah, so if you go ahead and do anything prior to that, ah, pending that outcome, ah could determine your fate. So ah, with that said, we will move on to the next item.

(End of verbatim)

Election of Officers

Mrdutt called for nominations for Chairman.

Motion by Garbe to nominate Jazdzewski as Chair; Meis seconded. Mrdutt called for nominations two more times. There being no further nominations for Chair, nominations were closed. There being no objections, motion for Jazdzewski as Chair passed by voice vote.

Jazdzewski called for nominations for Vice-Chair. Motion by Pagel to nominate Rusch as Vice-Chair; Hopp seconded. Jazdzewski called for nominations two more times. There being no further nominations for Vice-Chair, nominations were closed. There being no objections, motion for Rusch as Vice-Chair passed unanimously by consensus.

Jazdzewski called for nominations for Secretary. Motion by Meis to nominate Garbe as Secretary; Rusch seconded. Jazdzewski called for nominations two more times. There being no further nominations for Secretary, nominations were closed. There being no objections, motion for Garbe as Secretary passed unanimously by consensus.

Discussion/Possible Action Regarding Special Meetings (Portage County Ordinance 3.1.47 & 3.1.48)

- Request for Special Meeting Attendance - None
- Approval of Attendance of Special Meetings - None
- Special Meeting Attendance Reports - None

Correspondence/Updates from Staff

There may be a reconsideration request at the next meeting.

Next Meeting Date

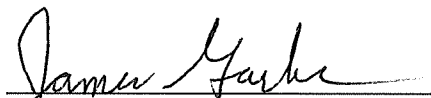
Next meeting tentatively scheduled for September 20, 2021.

Adjournment

Motion to adjourn by Rusch, second by Hopp. Motion to adjourn passed by voice vote. Meeting adjourned at 5:29 pm.

Respectfully submitted,


Gayle Stewart, Recording Secretary


James Garbe, BOA Secretary

20 Sept 2021
Date of Approval