

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
DECEMBER 20, 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, and James Hopp. Member excused was Mike Pagel (Alternate).

Staff present included Dan Bowers, Chris Mrdutt, Tracy Pelky, and Gayle Stewart, Planning and Zoning Department.

Others Present: David Ray-Portage County Corporation Counsel, Jim Jermain-AT&T, Attorney Jonathan Luljak, Attorney Kevin Pollard, Richard Pingel-Town of Plover, Mat Elmhurst-Heartland Custom Homes, Michael Doran-Harmoni Towers, Michael Witte, Patricia & Kristopher Henning, Lynn Isherwood, and Justin Isherwood.

Pledge Allegiance to the Flag

Garbe led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

Public Hearing and Decision

Ronald and Kristopher Yach, Owners, Heartland Custom Homes (Mat), Agent (PET-2021-010)

The Ronald and Kristopher Yach, Owners, Heartland Custom Homes (Mat), Agent, Variance request from the Portage County Zoning Ordinance to construct a 2nd story onto an existing first floor that is proposed to be constructed at 3½' from the required 25' property line building setback in the Conservancy District and the required 10' property line building setback in the R2 Single Family Residence District; and Special Exception request from the Portage County Zoning Ordinance to enlarge a nonconforming use within the Conservancy District per 7.1.6.1(A)(6)(a) of the Portage County Zoning Ordinance, in the R2 Single Family Residence and Conservancy Zoning Districts, Town of Carson, Parcel #012240725:02.20, was opened by Jazdzewski.

Mrdutt explained the request in detail, noting this is a Variance and Special Exception request.

Hopp recused himself from this hearing as he could possibly be involved in some work on this project; he left the table.

Mat Elmhurst, Heartland Custom Homes, was sworn in and explained the request as agent for the property owners. Lengthy discussion amongst Elmhurst and the Board. Elmhurst was excused.

Jazdzewski asked if any members of the public wanted to speak on this matter; there were none. It was noted no additional correspondence was received. Jazdzewski closed testimony and opened deliberations. Garbe read the Variance Standards; additional comments noted below:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Grant the Variance. The pertinent subsections are as follows:

- (a) The maintenance of safe and healthful conditions;
- (b) The prevention and control of water pollution including sedimentation;
- (c) Existing topographic and drainage features and vegetative cover on the site;
- (d) The location of the site with respect to floodplains and floodways of rivers or streams;
- (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
- (g) The need of the proposed use for a shoreland location;

- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The amount of liquid wastes to be generated and the adequacy of the proposed disposal system;
- (l) The availability of alternative locations;
- (m) The heights, velocity, duration, rate of rise and sedimentation transport of the flood waters at the site;
- (n) Such other factors as are relevant to the purposes of this Ordinance.

Nothing additional added at this time.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) in Order to Grant the Variance

- (1) Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
- (2) The use is permitted in the District;
- (3) The hardship is due to special conditions unique to the property, rather than considerations personal to the property owner;
- (4) Granting the variance would not be detrimental to surrounding landowners;
- (5) Hardship is not created by any person having interest in the property;
- (6) A property owner bears the burden of proving unnecessary hardship by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome;
- (7) The request represents the minimum relief necessary to relieve unnecessary burdens.

Rusch noted the property use has been primarily part-time housing/vacation home and the owners want to now utilize the property as a year-round home. Jazdzewski believes the intended purpose in the past was originally a year-round homestead. Owners have stated these changes are necessary to allow this property to meet their intended need of full-time residency. Owners are not increasing living space; they are utilizing the opportunity to build vertically. Rusch believes the tradeoff of going to full-time housing would be putting changes in place that better protects the adjoining waterway and management of that resource. Rusch feels the burden has been offset by improving the situation of water quality and risk to the adjoining river system. Jazdzewski said the Department of Natural Resources (DNR) has been involved in the process of determining what would be the suitable method of filling and changing the site. Jazdzewski said he has not heard of any complaints at the town level from surrounding neighbors.

The Board May Attach Any of the Following Conditions Under 7.1.6.5(E)(2) in Order to Further the Purposes of this Ordinance

- (a) Type of shore cover.
- (b) Increased setbacks and yards.
- (c) Specified sewage disposal and water supply facilities.
- (d) Landscaping and planting screens.
- (e) Period of operation.
- (f) Operation control.
- (g) Sureties.
- (h) Deed restrictions.
- (i) Location of piers, docks, parking, and signs.
- (l) The following shoreland protection measures and conservation standards may be required without limitation because of specific enumeration.
 - (1) The smallest amount of bare ground be exposed for as short a time as feasible;
 - (2) Temporary ground cover such as mulch be used and permanent cover such as sod be planted;
 - (3) Diversions, silting basins, terrace, and other methods to trap sediment be used;
 - (4) Lagooning be conducted in such a manner as to avoid creation of fish trap conditions;
 - (5) Fill is stabilized according to accepted engineering standards;
 - (6) Fill will not restrict a floodway or destroy the storage capacity of a floodplain;
 - (7) Sides of channels or artificial watercourses be stabilized to prevent slumping;

- (8) Sides of channels or artificial watercourses be constructed with side slopes of three units horizontal distance to one unit vertical or flatter unless bulkheads or riprapping are provided.

Nothing additional added at this time. Garbe read the Variance Standards; additional comments noted below:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Approve the Petition

- (a) The maintenance of safe and healthful conditions;
- (b) The prevention and control of water pollution including sedimentation;
- (c) Existing topographic and drainage features and vegetative cover on the site;
- (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The amount of liquid waste to be generated and the adequacy of the proposed disposal system;
- (l) The availability of alternative locations;
- (m) The heights, velocity, duration, rate of rise and sedimentation transport of the flood waters at the site;
- (n) Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(2)(c) in Order to Approve the Petition

- (1) The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
- (2) The use would be consistent with surrounding uses and the neighborhood would not be injured thereby;
- (3) The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.

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- (b) Increased setbacks and yards.
- (c) Specified sewage disposal and water supply facilities.
- (d) Landscaping and planting screens.
- (e) Period of operation.
- (f) Operation control.
- (g) Sureties.
- (h) Deed restrictions.
- (i) Location of piers, docks, parking, and signs.
- (l) The following shoreland protection measures and conservation standards may be required without limitation because of specific enumeration.
 - (1) The smallest amount of bare ground be exposed for as short a time as feasible;
 - (2) Temporary ground cover such as mulch be used and permanent cover such as sod be planted;
 - (3) Diversions, silting basins, terrace, and other methods to trap sediment be used;
 - (4) Lagooning be conducted in such a manner as to avoid creation of fish trap conditions;
 - (5) Fill is stabilized according to accepted engineering standards;
 - (6) Fill will not restrict a floodway or destroy the storage capacity of a floodplain;
 - (7) Sides of channels or artificial watercourses be stabilized to prevent slumping;
 - (8) Sides of channels or artificial watercourses be constructed with side slopes of three units horizontal distance to one unit vertical or flatter unless bulkheads or riprapping are provided.

Jazdzewski discussed the 35' setback and Conservancy Zoning and unintended consequences, explaining the Town's past position on these types of issues.

Garbe verified that this parcel was zoned R2, Single Family Residence, when the zoning permit was applied for in April. At that time, all structures were conforming. Due to the Town of Carson updating its Comprehensive Plan which included identification of the floodplain and a partial rezoning to Conservancy Zoning, the structure is now a legal non-conforming structure. Mrdutt explained the timing of the request and how based on current language in the Ordinance and Statutes, and because the official BOA application and payment were not received prior to the

rezoning, the owners are not grandfathered in and this necessitated the need for the special exception and variance. Discussion amongst BOA Members regarding the timing of the requests at the Town and County level.

Rusch said he would emphasize protection of the water and 35' setback area.

There being no further discussion, Jazdzewski closed deliberations and asked for a motion to approve, deny, or postpone the variance and special exception requests. Jazdzewski asked if there was anyone attending the meeting online that wished to speak. Bowers explained the technical issue with the audio and said he was not aware of anyone wanting to speak.

Motion by Rusch to approve the request for a Variance and Special Exception, with the following conditions:

1. The lagoon must be filled in and the wet boathouse must be razed. The owner must obtain a Portage County Zoning Permit for shoreland soil disturbance and rip rap prior to the razing of the wet boat house and lagoon filling.
2. A LOMA and/or LOMR indicating the removal of the dwelling from the floodplain must be on file at the Portage County Planning and Zoning Department prior to the issuance of Portage County Zoning Permit to construct the second story.
3. Obtain a Portage County Stormwater Permit to treat all the impervious surfaces. This permit must be approved by the Portage County Land and Water Conservation Division prior to the issuance of a Zoning Permit for the second story addition.
4. The shoreland vegetated buffer must be restored to a depth of 35' in compliance with Shoreland Zoning Buffer restoration standards and approved by the Portage County Land and Water Conservation Division.
5. Obtain a Portage County Zoning Permit to construct the second story.

Motion to approve seconded by Garbe. Garbe expressed he is glad an on-site was conducted as it helped understand elevation changes and added there is a lot going on with this property but there are a lot of positives to helping protect the environment. Motion to approve passed 4-0 by roll call vote.

Hopp returned to the meeting at this time.

Kristopher & Patricia Henning, Owners (PET-2021-012)

The Kristopher & Patricia Henning, Owners, request to reconsider condition numbers 5 & 6 from Board of Adjustment Decision A98-53, dated 11/19/98, which states, "5. The existing deck and gazebo may be repaired but may not have any additions or improvements made to them. 6. Any other additions to the structure must be a minimum of 100 feet from the ordinary high-water mark (OHWM) of the Wisconsin River," was opened by Jazdzewski.

Mrdutt explained the details of the request; adding in 2015-2016 Portage County updated the Shoreland Ordinance where the setbacks to navigable bodies of water are now 75'. The lots surrounding this property do not have a development pattern that would keep the development on this site at 100'; if this were a vacant lot, it could be built to a 75' setback. He added this project would actually improve the property and all required permits would be handled by staff as all current standards are met for development of the shoreland.

Jazdzewski swore in Chris Henning and asked him to explain the request. Henning explained the repairs and improvements he wants to make to the property. There were no questions from BOA members.

Henning was excused. Jazdzewski asked if any members of the public wanted to speak on this matter and it was noted there were none. There was no additional correspondence to be read-in.

Jazdzewski closed testimony and opened deliberations. It was noted because this is a reconsideration request, there are no standards to be read. Rusch clarified the request is to remove two conditions. Garbe believes there is good cause to change the past Board of Adjustment decision as there has been a change in State Law and reiterated if this was vacant land, they could build what they have now where they have it. Jazdzewski asked for a motion to approve, deny, or postpone the request to remove the two conditions.

Motion by Meis to remove conditions 5 & 6 from Board of Adjustment Decision A98-53, dated 11/19/98; motion to approve seconded by Rusch. Motion to remove conditions 5 & 6 passed 5-0 by voice vote.

Isherwood Farms LLC, Owner, Harmoni Towers LLC, (Michael Doran), Agent (PET-2021-013)

The Isherwood Farms LLC, Owner, Harmoni Towers LLC, (Michael Doran), Agent, Special Exception request from 7.3.9 A.2.a) of the Portage County Wireless Telecommunication Facility Ordinance to construct a 267 foot self-support tower in the A1, Exclusive Agricultural District, Town of Plover, Parcel #030-22-0814-04, was opened by Jazdzewski.

Pelky explained the request is to construct a 267' self-support tower located about 1,500' from the nearest tower in the area. Pelky explained the intent of the ordinance is to co-locate and added it is the responsibility of the applicants to demonstrate why they need a tower at the proposed location. Pelky said the Board cannot require a tower to be under 200' and said the Town of Plover approved the request with no added conditions.

Jazdzewski swore in Jim Jermain, Regional Vice-President at AT&T in Madison, and asked him to explain the request. Jermain explained the situation with the current tower owner, SBA, and also provided a video presentation. Discussion amongst Jermain and BOA members. Jermain was excused by Jazdzewski.

Jazdzewski swore in Jonathan Luljak, Attorney representing Harmoni Towers. Luljak explained the legal framework for this decision citing State Statutes and County Ordinances. Discussion amongst Luljak and BOA Members.

Jazdzewski swore in Michael Doran, agent for Harmoni Towers, who explained the reasoning for the proposed tower location. Lengthy discussion amongst Jermain, Doran, and BOA Members. Doran was excused.

Jazdzewski swore in Kevin Pollard, Attorney representing SBA Communications, owner of the existing tower. Pollard explained SBA's legal objections to the proposed tower location and distributed/discussed four handouts (see file for handouts). Discussion amongst Pollard and BOA Members.

Attorney David Ray, Portage County Corporation Counsel, appeared via video and stated his opinion is the request meets the criteria under County Ordinance and State Statutes. Ray reiterated BOA has the authority and responsibility to act on these types of requests.

There was lengthy discussion amongst parties in attendance related to the economic aspects and functionality of the request. Richard Pingel, Town of Plover Plan Commission Chair, said the Town of Plover approved the request.

Jazdzewski asked if there were any other members of the public wanting to speak on this matter. It was noted there were none. Jazdzewski closed testimony and opened deliberations. Garbe read the special exception standards; additional discussion noted below.

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) in Order to Approve the Petition

- (a) The maintenance of safe and healthful conditions;
- (c) Existing topographic and drainage features and vegetative cover on the site;
- (d) The location of the site with respect to floodplains and floodways of rivers or streams;
- (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
- (f) The location of the site with respect to existing or future access roads;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (k) The importance of the services provided by the proposed facility to the community;
- (l) The availability of alternative locations;
- (n) Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(2)(c) in Order to Approve the Petition

- (1) The use would not substantially harm the public health, safety, and general welfare, and would not be contrary to State Law or Administrative Code;
- (2) The use would be consistent with surrounding uses and the neighborhood would not be injured thereby;
- (3) The use is consistent with this Ordinance and any County or municipal plan which is based on historic, geographic, and socio-economic facts.

The Board May Attach Any of the Following Conditions Under 7.1.6.5(E)(2) in Order to Further the Purposes of this Ordinance

- (b) Increased setbacks and yards.
- (d) Landscaping and planting screens.
- (e) Period of operation.
- (f) Operation control.
- (g) Sureties.
- (h) Deed restrictions.

Discussion; the following was noted:

- Garbe said that prior to State law, different zoning jurisdictions had different tower regulations and they were not consistent. The State standardized regulations but did not want a proliferation of cell towers. The State wanted fewer cell towers and required co-location. Garbe said an exit clause was created and may include functionality, coverage, capacity, and economic factors.
- Garbe said they need to consider same mobile service functionality and whether it is economically burdensome. There was testimony and a sworn statement provided by AT&T on the technical and economic factors; however, SBC has not provided anything related to their lease arrangements. Garbe added State law does not provide for a third-party independent evaluation of both technical and financial information. Because of this, they need to fall back on State law when making a decision.
- Garbe said he heard testimony on the economic factors as well as being able to stay relevant and current with technology and equipment.
- Ray agreed that Garbe's comments were on point and there is rationale that can be argued under and is consistent with the existing State statute.
- Hopp asked if this new tower would help with communications for first responders. Jermain explained there are capabilities for a dedicated frequency for first responders; however, this is an optional service.
- Rusch believes the petition meets the requirements, but he is uncomfortable moving forward at this point with a decision.
- Jazdzewski noted the Planning and Zoning Department has suggested conditions in the staff memo. Also noted in the petition is the tower is designed specifically for AT&T's location but has space noted for three additional co-locaters.
- Jazdzewski noted that granting approval for this request does not nullify the ability for the parties to come together and negotiate.
- Meis believes there is the availability of an alternate location; they can stay where they are currently located.

Jazdzewski asked for a motion to approve, deny, or postpone the request. Meis asked if Corporation Counsel should review the additional information received during the meeting before reaching a decision. Rusch does not believe that any of the new information is germane to reversing their action. There was no new economic information provided but there is a noted deviation in coverage. Rusch believes the letter of the State Statute and County Ordinance would suggest they can go ahead and make a decision with the information presented by the petitioner. Jazdzewski again called for a motion to approve, deny, or postpone.

Motion by Rusch to approve the special exception request with the following conditions:

1. Obtain a Portage County Zoning Permit.
2. Notify aerial applicators about tower position and height and lighting prior to construction.
3. A letter of approval from the FAA and FCC is to be on file with the Planning and Zoning Department before issuance of the Zoning Permit.
4. A detailed set of construction plans is to be on file with the Planning and Zoning Department.
5. Tower to be designed to have a minimum of three users.
6. Obtain a Stormwater and Construction Site Erosion Control Permit from the Portage County Land and Water Conservation Division.
7. Failure to follow these attached conditions could lead to forfeiture and/or revocation of this approval.

Motion to approve seconded by Garbe. Motion to approve passed 4-1 by roll call vote; Meis voted no.

Approval of Minutes from September 20, 2021

Meis moved to approve the minutes of September 20, 2021; Rusch seconded. There being no discussion, motion to approve passed 5-0 by voice vote.

Approval of Minutes from October 18, 2021

Garbe moved to approve the minutes of October 18, 2021; Hopp seconded. There being no discussion, motion to approve passed 5-0 by voice vote.

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

Nothing additional to report.

Discussion/observation by Meis regarding timing of on-sites and meetings.

Next Meeting Date

Tentatively set for January 17, 2022.

Adjournment

Motion to adjourn by Hopp, second by Rusch. Motion to adjourn passed by voice vote. Meeting adjourned at 6:35 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

James Garbe, BOA Secretary

Date of Approval