

Meeting: **ZONING BOARD OF APPEALS**
Members: Brent Montague {chair}, Don Skare, Jim Langkamp, Gil Holcomb, Richard Crump, Greg Falkowski {Alternate 1}, and Nick Hemauer {Alternate 2}
Location: Weston Municipal Center (5500 Schofield Ave); Board Room
Date/Time: **Wednesday, April 15, 2015 @ 5:00 P.M.**

MINUTES

1. Call to order Zoning Board of Appeals.

Chairman Montague, Langkamp, Holcomb, Skare, Crump, Falkowski, and Hemauer were present. Director of Planning & Development Higgins, Building Inspector Tatro, Assistant Planner Wehner, and Recording Secretary Parker were present. Town Supervisor Arnie Baumann was present along with 10 audience members.

2. Certification of Compliance with Open Meetings Law Requirements.

Higgins stated we have met all the requirements.

3. Approve previous meeting minutes from 10/14/2015.

**M/S/P Holcomb/Skare: to approve minutes from 10/14/2014.*

4. Public Hearings

4.1 VARI-2-15-1500 – Donald & Cheryl Wild: Variance to reduce the Principal Other Side Yard Setback (east side property line) in a RR Rural Residential zoning district. The site is located at 9040 Kersten Road in the Town of Weston, PIN 082-2808-013-0985

Montague opened the hearing and invited Don Wild to come forward and explain his request.

Don Wild, 5002 River Bend Road, was present in support. He presented the Board with a handout for this meeting. Wild explained how this all started when he purchased the property back in January of 2012, with the intention of building a garage for the purpose of housing a boat, cars, and a few other things. He contacted Tatro, who then explained to Wild how he needs to build a primary structure on the property along with a garage (secondary structure). He stated he was also explained that he was required to build a primary structure with the secondary structure being no more than 60% square footage of the primary structure, and the two structures would be required to have the same exterior finish. He stated that since their planned garage was going to be over 2,000 square feet, he would be required to build a 3,000+ square foot house. He stated that he read through Weston's zoning regulations, and the only place he could find the requirements on the secondary structure maximum size, based on the primary structure, was within the R1 zoning district. He then made the assumption that this property was zoned R1. He explained he then came in and paid for a building permit, along with paying an additional fee to encourage them to make sure they build the primary structure. He then explained they built the secondary structure, then started the process on the primary structure. Wild explained that at that time Tatro e-mailed him and informed him he would not need to build the primary structure at the size originally planned. Wild stated that since they already had the building plans they did not change anything. He stated they started

the structure this past fall (2014) and at that time Tatro contacted him to see if he should come out for an inspection, but Wild informed him he was not ready at that time. After Tatro was notified that they were in the process of building, he came out to inspect and then notified Wild that the building foundation was too close to the lot line. Wild stated assuming that the R1 zoning district principal other side yard setback was 10 feet, and then finding out it was 12 feet, thinking they had 2 feet more than the minimum that they had plenty of room. He stated how Tatro informed him then that the property is zoned RR, not R1, and the minimum setback was actually 20 feet. Wild stated he started to make plans to offer to purchase some lands from the neighbor to give them the extra distance they needed, but the neighbors were not interested in selling. He said that they then investigated with the builder to determine what they could do to change or move the building, and during this process they came to their own realization if they move to the east from where they are, they will be very close to encroaching on the floodplain. He pointed out a few 2005 survey maps which show the location of the floodplain on the property. He explained they do have a septic system installed which runs in front of the east side of the house, which he feels will be in the way if the house is moved further west. Also if they move the house further west they will be touching the floodplain area; if they move the house to the south, they will be putting it in a place where water drains across property to the east. In summary he is requesting the variance of 8.5 feet to allow them to leave their house where it is at. He said that their lot line is about 96 feet to the west side of their building. He feels the location of his foundation (11 feet) plus the 96 feet gives a substantial amount of space where he feels he is not encroaching on their space. The neighbor's house only one lower level window that would face his property, so he feels no visual hardship. He stated there was a misunderstanding on what the zoning was, which is where all the problems arose, and it was not intentional. He said there are 6 acres of land here, and if they could have placed the house somewhere else safely, he would have done that.

Montague explained there are three criteria to consider prior to granting a variance. The first is there is no unnecessary hardship, second is there are unique property limitations, and the third is there is no harm to public interests.

Wild stated he feels there is no harm to the public, with the Allen's house being over 100 feet away; he can't understand what the hardship to the neighbors and the Town would be; and as far as the use to this property, there is only one area available on the lot for him to build due to wetlands and the septic system.

Wehner presented the true definition of unnecessary hardship on the screen for everyone to see.

Montague pointed out the letter of opposition and petition (attached).

Elmer and Amy Allen, 9160 Kersten Road, were present in opposition.

Tatro gave an overview of his side of what happened (see attached history letter). Tatro then explained how it appears there to be enough space for Wild to move his house 8.5 feet to the west, away from the property line. Wild explained moving the house would cause issues with the existing septic. Tatro stated the piping from the septic can be changed.

Wild questioned if it is creating a precedence by allowing a variance for this error; is there some detriment by their placing the house where the foundation currently is. He feels there is no safety violation. Wild

stated they want to build a home, as they promised, as the primary structure. Wild questioned if there truly is an unnecessary hardship, which for him would be in a waste of building. He stated if they have to, they will make it work to build it 8 feet farther to the west.

Montague stated there is no hardship being created to the Town, but a direct violation of the previous and current setback requirements. Montague stated, though, he does not see this creating a precedent.

Higgins rebutted that an approval of this variance request would most certainly create a precedent, and by approving this particular variance request would be like scrapping the zoning code. She pointed out how they continued to pour concrete even after Tatro issued them a verbal stop work order, where staff did not even have a chance to remedy the situation. Tatro explained how Wild told him they would try to purchase additional land from the neighbors to correct this, that he told Wild until that takes place he needed to stop work.

Wild clarified the house was already poured, that they were just continuing with the pouring of the attached garage. Wild confirmed that Tatro did advise him that if Wild continued the work, and if they could not purchase additional land, they would be required to tear it out.

Holcomb commented how the definitions relate to the hardship as to the zoning and the property owners and requirements. He does not see how the zoning created the hardship.

Higgins and Tatro explained how Wild only needs to be 2 ft away and 2 ft above the floodplain, and how his survey map does not give any dimensions or setbacks to the property lines. Tatro advised Wild to hire a surveyor who can accurately delineate the floodplain and wetlands.

Holcomb feels the variance request should have been requested prior to the foundation being poured. He feels Wild stepped out on his own by starting the construction without verifying the true regulations first. Holcomb feels this does not meet the hardship as defined, and creates a precedent where the next landowner who sees this will request the same privilege.

Falkowski feels Wild should have stopped when told. Wild stated he felt he had a good relationship with the Allen's and thought they would be willing to sell. Wild stated he truly felt they were in full compliance with the setback. He truly thought they were zoned R1, even though he wrote RR zoning on the application.

Amy Allen feels any good builder would check on the setbacks prior to constructing a building.

Wild stated at the time he wanted to build the garage, he needed to provide some type of a principal building plan to prove they had a commitment with a builder, which was not the building he really planned to be constructed. He feels the reason for a variance is to correct a problem, and avenue as the ZBA has a right to correct a problem with the use of a property.

Higgins stated Wild needs to meet all three criteria in order to be granted a variance, and she feels he does not meet the unnecessary hardship. She pointed out how Wild, in his testimony, stated he could move the house further west.

Langkamp stated we can't allow people to simply start work and come back later begging for forgiveness. Langkamp stated that he, himself, would never have started digging without talking to the Village first. He feels these actions are precedent setting.

There was further discussion on the three criteria to be met. Higgins clarified the hardship has to be made by the ordinance, not self-induced by the owner, which is what happened in this case.

Montague stated it appears there is a remedy for this situation without the variance, which is to move the house.

Holcomb stated Wild will have to hire a surveyor to determine exactly whether the house can be and if it will encroach on wetland if moved the necessary distance. If there is no other way to move the house, than the owner can come back to request a variance. Holcomb does not feel comfortable taking action on this without all the information.

Higgins stated the Board needs to make a decision based on what evidence is supplied tonight by Mr. Wild to support his request. Mr. Wild can always reapply with further information later.

Brian Christiansen, 2504 Lester Street, present in opposition, stated he had to get a variance in order to put a cabin on his property up north, Wild should have to follow the same procedures.

5. Discussion and Action on Application VARI-2-15-1500

Higgins pointed out the draft findings of fact document for the Board's review and consideration, and/or changes how they see fit. She explained that staff feels this request does not meet the test to grant a variance.

Montague stated it appears there are other options available than getting a variance. Langkamp feels if Wild would have slowed up and checked with staff on the proper regulations, this could have been prevented. He feels Wild created his own problem.

Montague accepts the Decision of the Zoning Board of Appeals document and as is written by staff.

****M/S/P Holcomb/Skare: to deny Application VARI-2-15-1500.***

Roll Call Vote: Crump - aye, Skare - aye, Holcomb - aye, Langkamp - aye, and Montague - aye. Variance denied.

6. Remarks from Zoning Board of Appeals Committee.

7. Adjourn.

****M/S/P Skare/Crump: to adjourn at 5:49 p.m.***

Wild questioned who he needs to talk to in granting the changes that they make in order for them to proceed. Higgins explained Wild needs to revise his plans and come back in to staff to show us where he is going to place the house. It was explained again that Wild only has to be 2 feet from and 2 feet above the floodplain.

Respectfully Submitted,

Valerie Parker

Valerie Parker

Recording Secretary

Formal Letter of Opposition for the Variance Request at 9040 Kersten Rd.

We bought our property in the Town of Weston knowing that it was zoned Rural Residential, at the time, the builder/developer sized the lots to conform to Weston's requirements. As noted on the Township of Weston's zoning maps, these properties are clearly defined as such and note the 20' minimum setbacks, floodways and wetlands.

When we built we were provided with the required building plot that showed the setbacks, well location, septic, structure and wetlands. Every other home owner along Kersten Road has followed these requirements, and has been conforming.

When we initially met with Mr. & Mrs. Wild they told us what and where they would be building. We informed the Wild's of the water situation of the surrounding properties and the large amount of water run-off during heavy rains and frost out. At that time we were excited to have neighbors.

Since our initial meeting, the Wild's have superseded the zoning ordinance. On Monday, October 27th we noticed building had been halted on their property; later we learned this was due to a verbal "stop work" order given by the local building inspector due to the setback violation. Mr. Wild contacted us on Thursday, October 30th to inform us that he would like to meet and discuss his building plans.

I (Elmer Allen) met with Mr. Wild for lunch on Oct 31st where he informed me about his setback violation and if we could work out a deal of some sort. He had a plan drawn up showing the offer to purchase some of our property directly off of his foundation so he could continue to build. Mr. Wild continued to explain that our rural lots have to be a minimum of 3 acres to be in compliance with the Town of Weston lot size. Mr. Wild then offered to swap land: taking a rectangle slice of our property right next to our house (dry year round), and then giving us a piece of his property at the front of his lot right off of Kersten Rd (wet approx. ½ the year).

Mr. Wild had some other paperwork to show me (Elmer) about this offer. He had our neighbor's tax document for the Agriculture land to our East. Mr. Wild explained that if this land is ever sold to a company that planned to build more residential lots that it would benefit them to not have to use their land for a road, and that the new builder could ask the Town of Weston to put the blacktop road right on our lot line. It was also explained that this would be a road placed half on the new builders land and the other half of the road would be placed on our property. Mr. Wild proceeded to explain that this would make our lot noncompliant with the Town of Weston's minimum 3 acre lot and our minimum footage on Kersten Rd. would also now be less than what is required. So now Mr. Wild's issue has suddenly turned into our issue, where our property would not be compliant if our neighbor decided to sell his land to a potential developer who is going to turn it into residential property.

I told Mr. Wild that I would need some time to discuss this with my wife and other professional parties before considering any type of an agreement.

Right after we met on that Friday, we noticed that the builders started to setup molds for additional foundation to be poured (all while a verbal “stop work” order was in place). During the weekend, the builders continued setting the molds and started to pour the foundation.

On Monday, the builders showed up with more workers than previously had been on onsite and poured the remaining foundation.

That evening my wife (Amy) and I made the decision that there would be no agreement made with the Wild’s. Since work had started up after our initial meeting (Oct. 31st), we decided it was time to file an official complaint with the Town and Village of Weston. Our zoning violation email went out Monday evening and Amy (my wife) proceeded to call the Town and Village official Tuesday morning.

This should have never become our problem in the first place. The Wild’s should be building within the guide lines that all of us have had to follow... NO EXCEPTIONS!! We are asking that the same zoning ordinances that we were required to follow back when we built, are still being enforced today.

We have attached a petition from our surrounding neighbors that also are opposed to the variance.

Respectfully,

Elmer & Amy Allen
9160 Kersten Road
(Neighbors to the Property 9040 Kersten Road)

RECEIVED

By Valerie Parker at 3:38 pm, Apr 13, 2015

Petition to Oppose the Variance Request at 9040 Kersten Rd.

Petition summary and background:	Neighbors located at 9040 Kersten Rd. are requesting a variance as they have not complied with the Rural Residential zoning setback codes (20 ft.). Currently the foundation is 11.7 feet off of the property line of the neighboring lot. As local residences near or surrounding this property (9040 Kersten Rd.), we are asking that the same ordinance that we were required to follow are still being enforced today.
Action petitioned for:	We, the undersigned, are concerned citizens who urge our leaders to act now to Oppose the Variance Request

Printed name	Signature	Address	Comment	Date
Brian Kuehl	Brian J Kuehl	9611 Kersten Rd	oppose Variance	4-11-2015
Randy Christiansen	Randy Chuta	2203 Lester St	oppose	4-11-15
Linda Christiansen	Linda Christiansen	2203 Lester St	oppose	4-11-15
Ryan Christiansen	Ryan Christiansen	9204 Kersten Rd	oppose	4-11-15
Jenny Augustina	Jenny Augustina	9303 Kersten Rd	OPPOSE	4-11-15
Brend Augustina	Brend Augustina	9303 Kersten Rd	oppose	4-11-15
Vikki Christiansen	Vikki Christiansen	2504 hester st	oppose	4-12-15
Scott Bendicks	Scott Bendicks	9603 Kersten Rd	oppose	4-12-15
Brian Chuta	Brian Chuta	2504 WESTERST	oppose	4-12-15
Judy Johnson	Judy Johnson	2615 Loster St.	OPPOSE	4-12-15
Michael Johnson	Michael Johnson	2615 Loster St.	OPPOSE	4-12-15
Elmer Allen	Elmer Allen	9160 Kersten Rd.	OPPOSE	4-12-15
Amy Allen	Amy Allen	9160 Kersten Rd	OPPOSE	4-12-15

History of the Don Wild Building permit issuance for both his new detached garage and home.

On September 25, 2013, Mr. Don Wild applied for a building permit to build a large garage on his property at 9040 Kersten Road, in the Town of Weston. At this time I informed him that he could not build an accessory use structure without a primary use structure on the property (meaning a home). I also told him the regulations required that the garage could only be 60% of the foot print of his home. If it architecturally matches the principal building in his RR (Rural Residential) zoning district, it could be as large as 150% of the home.

He told me they were going to build the home but he was in a hurry to build the garage first, as he needed to store his boat for the winter, which he had over in Lake Michigan. So we agreed that if he were to apply for the house building permit along with the garage permit, he would be able to build the garage first then the home would be built first thing in the spring.

On September 30, 2013, I issued a permit (TAADB-11-13-4921) for the detached garage with the understanding that Mr. Wild would be building his new home the following spring. He would supply preliminary drawings and an application for the new home permit before the garage would be built. On November 19, 2013, Mr. Wild was issued the permit for his new home with the submission of his preliminary plans and applications.

Though his site plan submitted did not have dimensions of the distances for lot lines, his Wisconsin Uniform Building Permit Application that he submitted indicated what the setback of the home was going to be at. Mr. Wild was well aware of both the setbacks required as well as the zoning district that his property was in. We had discussed this when he came in for the building permit for the detached garage. With this preliminary plan and application he paid for the building permit and it was issued. He was given the permit as well as the permit card that clearly stated on it the setbacks of the home. That fall the garage was built and we did not hear from Mr. Wild about the actual house plans all winter or the next spring of 2014.

On July 2, 2014, I sent Mr. Wild an email asking him what the status of his new home was. He replied "we are heavy into the planning stages" he also stated "their plans are to finish the project by snowfall this year".

On August 4, 2014, I sent Mr. Wild yet another email, per the request of Town Chairman Milt Olson, asking the status of the house building project. Mr. Wild's response was they had "met two weeks ago again with his architect and made changes to the plans". He again stated they "intended to be underway and enclosed before cold weather"

On Friday, October 24, 2014, at 3:16 p.m., Mr. Wild's architect sent an email to me with the final drawings and heat loss calculations. I was out of the office all day that day, and did not open the email until the following Monday, October 27, 2014. That morning I had several inspections to perform, one of them out on Kersten Road, just down from Mr. Wild's property. That is when I noticed they had already started the footings and some foundation walls; and it appeared they were close to the property line. I then went right back to the office and opened the plans that were sent to me, I saw the setback on the new plan was 12 feet from the east lot line. Knowing that this was wrong, I went out to Mr. Wild's building site and verified that they had set the house too close to the lot line. I then told the contractor of the error. After this, I went to my office at 12:06 p.m., I sent Mr. Wild an email informing him of this

issue, and that I was going back to the site to tell his contractors not to proceed any further until the structure was relocated.

I also emailed Mr. Wild's architect about this error, and he replied that "I was notified by Don that the site setback from the lot line was 10 feet". I then sent the architect a copy of the building permit application showing that Mr. Wild had indicated the house would be at the 20-foot setback.

Mr. Wild and I had talked about what could be done, he was informed that he would need to relocate the home. He told me he might be able to get additional property from his neighbors, that way it would meet the setback. Once again he was told that the home was too close to the line and work was to stop.

On Tuesday, November 4, 2014, Jennifer Higgins was notified by the Wild's neighbor that the contractors were still working on the footings & foundation. After this notification, I went to the site once again, and this time after telling the contractors to stop working, I then placed 2 violation notices on the site.

Respectfully,

Scott Tatro
Building inspector