

**TOWN OF RHINE
BOARD OF APPEALS MINUTES
Wednesday, January 25, 2017**

- 1. Call to Order:** The Town of Rhine Board of Appeals Public Hearing was called to order by Chairman Jon Rost at 7:05 PM on Wednesday, January 25, 2017, in the Rhine Town Hall, W5250 CTH FF, Elkhart Lake, WI. Members present are listed below:

Chairman: Jon Rost
Members: Mark Pfaller, Christa Johanson, and Paul Boocher

Legal Counsel: Paul Dirkse

Clerk/Treasurer: Lexann Hoogstra

- 2. Compliance with Open Meeting Law:** Published January 10 and January 17, 2017. Notice was posted in 3 places including the town's website on January 17, 2017.
- 3. Minutes of October 26, 2016:** Motion to approve by Paul Boocher. Second by Christa Johansson All in favor. Approved as distributed.
- 4. To hear public comment and consider the request of** Gene and Bonnie Feldmann of W6404 County Road EH, Elkhart Lake, WI 53020, for a variance to build a 30' x 60' shop-storage-garage building on their property.

Town Zoning Code Section 4.04(2)(d)3 states, "Accessory buildings which are not a part of the main building shall not occupy more than twenty percent (20%) of the area of the **required rear yard**, shall not be more than seventeen and one-half feet (17-1/2') high and shall not be nearer than three feet (3') to any lot line. When an accessory building is a part of the main building or within ten feet (10') of the main building, the side yard and rear yard regulations applicable to the main building shall be applied to the accessory building. "

The proposed building is in the front yard of the property.

- 5. Public Comments on Feldmann Request:**

Gene Feldmann spoke. He feels that his request as presented should explain the need for the variance.

There were no other public comments.

6. **Deliberation and Action on Feldmann Request:**

Paul Booher inquired of Mr. Feldmann which is north, east, south, west on his drawings, as the directions are not clearly indicated. He made a comment that when he visited the property, he noticed the stakes were not laid out exactly as they show on the drawing. The surveyor may need to redraw the location of the house to indicate its real intended location. Paul said he has walked to the back yard and realizes it is not possible to put the garage in the back yard. He does not have a problem with the request.

Jon Rost has also inspected the property. There are already two legal non-conforming garages on the property. He asked Mr. Feldmann if he would consider razing those and moving the new larger structure closer to where those two are currently situated. He feels that would make a much more attractive situation.

Mark Pfaller does not think that is necessary. He would rather have the survey corrected than to have the other buildings removed. He did say he likes having the garage in the front because it takes advantage of the existing driveway.

Christa Johansson explained that the Board is required to have a hardship in order to grant a variance. She asked the applicant about his need to have additional garage space. Feldmann explained he does not have heat in the existing buildings and he can't work in them during the winter. Also, there is not enough space in the older buildings. She mentioned that she does have concerns regarding section 4.1 (1) (6) (c) of the Town's ordinances. She believes he might need to obtain a CUP in order to run an auto use or repair shop on a residential lot. She noted the ordinance does not differentiate between personal, hobby, or business use.

She is also concerned about 1800 square feet of additional garage use under these circumstances. She is concerned that the Board might be allowing or giving the illusion of allowing a conditional use business on a parcel where it is not allowed.

Mark Pfaller commented that Christa has made a good observation. Perhaps it is not "off base". He read about a home occupation definition in the ordinances. He asked if Mr. Feldmann's activities in restoring vehicles are an occupation or a hobby? Feldmann states he wants to build an accessory building in order to have a place for his personal items. He mentioned that there is no sign in the yard indicating this is a business. He feels this is a hobby.

Christa asked legal counsel if he has an opinion on this. Paul Dirkse said that frequently a use of property is not "black or white". In this case, he feels that the applicant's intended use of the property is for a hobby, not a commercial business. He feels if no one else is working there and if he is not restoring vehicles for pay, then it appears to be a hobby and for his own use. Based on this, he does not feel this would fall under a commercial zone use.

Feldmann said that the property used to be a commercial property in the 60's and 70's. His intended use is just for his own personal use.

Booher re-iterated that his only issue is to have the surveyor correct the survey to show the correct placement of the building in relationship to his house. Christa asked if we would require the survey to be modified in order to grant the variance.

Motion to approve the request provided the applicant provides an updated survey to reflect that the building will be rotated to match the house.

Mark Pfaller noted the plat of survey has to be re-dated when the correction is made.

No further discussion on this.

7. **Roll call vote:** Yes: Mark Pfaller, Paul Booher, Jon Rost. No: Christa Johanson...
8. **Old Business:** Paul Booher stated at a previous the BOA wanted to clarify its authority to enforce ordinances. He would like this to be put on the next TB meeting agenda.
9. **New Business:** None
10. **Correspondence:** None
11. **Next meeting:** February 22, 2017 - if needed.
12. **Adjournment:** A motion to adjourn was made by Paul Booher at 7:43 pm. Second by Christa Johanson. All in favor. No nays.

Note: After the meeting Mr. Feldmann expressed his opinion on the process of obtaining a variance. It costs a lot of money prior to a decision, and if the applicant is denied, they are out a lot of money. Perhaps the Town Board should also address this. Rost explained the need for a certified survey is quite real. Booher said he thinks the proper place for this to be addressed is at the Town Board. He could ask to be put on the agenda for a town board meeting.

Respectfully submitted,
Lexann Hoogstra, Clerk/Treasurer

Board of Appeals, January 25, 2017