

**TOWN OF RHINE BOARD OF APPEALS
PUBLIC HEARING AND GENERAL MEETING
Wednesday, March 23, 2016**

Call to Order: The Town of Rhine Board of Appeals Public Hearing was called to order by Chairman Jon Rost at 7:00 PM on Wednesday, March 23, 2016, in the Rhine Town Hall, W5250 CTH FF, Elkhart Lake, WI. A quorum was present which consisted of the following:

Chairman:	Jon Rost
Members:	Brad Roberts, Paul Booher, and Christa Johanson
Legal Counsel:	Paul Dirkse
Clerk/Treasurer:	Lexann Hoogstra

Determination of compliance with Open Meeting Law. The meeting was published on March 8th and March 15th, 2016. The meeting and agenda were posted on March 19, and 21, 2016.

Minutes of October 28, 2015. A motion to approve the minutes as written was made by Booher, second by Roberts. Discussion: None. Motion carried with no nay votes.

Chairman Rost explained the procedure for the meeting.

Discuss and review variance application. *David and Joanne Otte of W4698 County Road MM, Elkhart Lake, WI for a variance to build a storage building on their property in the A 1 District. Town Zoning Code Section 4.05(2)(c)2 requires a Rear Yard setback of one-hundred feet (100') for accessory structures in an Agricultural District. The proposed structure would be located only five feet (5') from the rear lot line. A point of correction was made by Jon Rost. He mentioned that after reviewing the plans with legal counsel, Paul Dirske, it appears that the proposed building location would be on a side lot, not rear. The setback requirements would be 20 feet, not 100 feet.*

Public Comments on Otte Request: Mr. Otte expressed his concerns regarding one of the Board members not being able to attend the meeting tonight with no advance notice, and he expressed concerns that this might make getting a variance approval more difficult. Approval will require a simple majority. We have 4 present so there is a quorum. Otte wants to know if he should table his request until all 5 members are here. Paul Dirkse said this is ok if it is ok with the chairman. He explained the options available if the homeowner wants to wait and when he could be heard by the Board of Appeals again.

Paul Booher made comments regarding a previous applicant who asked for a review hearing, not an entire new Board of Appeals. There was a brief explanation on what the previous case history was about by Jon Rost. It was a different circumstance than what Mr. Otte's situation is.

Dave Otte then presented his request for a variance to the Board. (Dave Otte, W 4698 County Rd. MM) . He is here on behalf of himself and wife. As per Chairman Rost, the variance is really from 20 feet to 5 feet, not 100 feet. Out of 9 neighbors who were notified, only one came to look at the property. Dave stated that he will never have animals in the building. He only farms crops. The closest house to the lot line NOW is about 1500 feet away. One of the reasons for the request is because the property is very uneven and has drops. There is no other place to put the building in relative proximity to the house.

The hardship is that he cannot reasonably put a building on the land if the variance is not granted. Some of the land is low, with lots of water runoff and there is too much wet, soft land on the rest of his property and is not suitable for building.

Dave Otte stated that if the parcel were zoned C2, it is upland with some lowland, then the setback would only be 3 feet and there would be no problem. He wants to keep it zoned A1. It is prime A1 property and he would prefer not to rezone it. So he is requesting the variance from 20 feet to 5 feet. Jon Rost and Brad Roberts did look at the property and could tell where the building would be according to the drawings.

There were no other public comments or questions at this point. The public hearing portion is closed. The committee began its deliberation. Johanson had a question about the intended use of the proposed building. Mr. Otte said the intended use is for storage and a workshop. He further explained that the reason the building has to be 42 feet deep is the need to pull in tractors, etc. and to work on them inside the building. From a practical standpoint, he thinks it would be preferential to be able to pull the tractor and equipment into the building to work on them together. He can't make the building longer to the south because of land drop-offs. Brad Roberts asked how many acres he tills. Otte says it varies year to year. He tries to till 30 acres a year. He can't till the woods and wetlands, but he is tilling as much as he can. Paul Booher had one question on the height of the building. Otte responds it is less than 30 feet. There was a question on what kind of crops Otte grows and where does he keep his equipment now. He responded that he plants mostly grains/corn. Some of his equipment is not kept at home now, and he needs to have it there.

Action on Request: Booher thanked the homeowner for the additional information regarding the hardship. He agrees this is the most practical spot to put the building, and he does not have a problem with Otte's proposal.

Dirkse again recommends we look at this as a side yard setback and not a rear yard setback. Rost said at first he wondered why if there are 30 acres why there isn't another place to put the building. What might the next owners do with the building in the future? Can we stipulate that the building would not be used for livestock? Dirkse said the variance can be granted with conditions that there would never be any livestock in the building. The condition could be recorded on the property so it would prevent future owners from turning the building into a livestock building.

Booher motions to grant the request with the condition of adding a “no animal stipulation.” Seconded by Johanson. There was a comment that the concern is to protect the building being misused by future owners. This variance with stipulation should be recorded with the deed of records.

Otte paid \$30 for the recording. Paul Dirkse’s office will record it. Roll call vote. Yes: Booher and Johanson, Roberts as long as there is a no livestock stipulation added. Chair votes yes as well. Variance will be granted with a “no livestock stipulation” to be recorded.

Discuss and review variance application. *John and Kris Esch of 3406 N. 6th Street, Sheboygan, WI for a variance to [tear down a seasonal cottage and] build a new year-round residence at W 6554 E Shoreland Road, Elkhart Lake, WI 53020 in the R-1 District. Town Zoning Code Section 4.06(1)(e)2 requires a combined side yard setback of 30 feet with a minimum of 12 feet on each side. The proposed residence would be located only 6.75 feet from one side lot line and 18 feet from the other lot line, for a total of only 24.75 feet. Town Zoning Code Section 4.06(1)(f) requires that in order to erect a structure on a lot with lake frontage, the area must be at least 150% of the normal area requirement for such lot.*

The Property is sewerred and located in the R-1 district, so the area requirement is 12,000 sq. ft. (8,000 sq. ft. x 150%). The Property has a total area of only 9,221 sq. ft. NOTE: Property is NOT sewerred; it has a septic system. This was a mistake. To be addressed by attorney.

Public Comments: Property is not sewerred, it is septic. Paul Dirkse explained that he recommended we keep this wording as part of the variance request so that it got published on time.

Jon Rost mentioned there has been a lot of concern on how ACT 55 affects us . There has been much legislation on shoreland zoning recently. ACT 55 amended WI statutes so it restricts the ability of local municipalities to control shoreland issues if they are also regulated by the county. The town has seen several properties face issues like this. Because of changes to state laws the town may have to modify its ordinances also. State shoreland zoning laws are still subject to change. He feels it is up to the land owner now as how they want to proceed due to changing laws. He feels the town needs to yield to state regulations. Rost said we should base our decision on side lots not lot size.

The meeting is now open for public comments:

John Esch (John and Kris Esch of 3406 N. 6th Street, Sheboygan, WI) , addressed the committee. He passed out a written appeal to board members and expressed his thanks for the board’s time.

There were no other public comments on this request. The public comments section of the hearing is now closed.

Questions from Board:

There was a question asked if this will be a total remodel and rebuild. Mr. Esch explained that the basement floor will be leveled, and the 2nd floor will be completely removed and replaced. There will be all new plumbing and electrical, and the roof line will be smoothed out. There was a question if there would be a better set of drawings for the permit. The current structure is 31.5 feet tall and the new renovations will be 34 feet tall. There is a suggestion that the motion come with a 35 foot tall maximum height on the new renovated structure. Booher made a motion to accept the request with the addition of a height restriction of 35 feet.

Paul Booher wanted to know if the footprint will basically remain the same. Kris Esch explained that it would, but it was extended a bit to the east because there was more land there. Part of the kitchen area was cut out, thinking they would be in compliance with the setbacks. Basically the front and sides are the same, just extended to the road a bit. Rost mentioned that basically they have 30 feet total. Rost has inspected the property. He said the house is in poor condition, and he feels that this would be a good solution to the property owner's problems, and it would be a much more attractive property. Booher has no opposition to the Esch request at all. He expressed appreciation for their efforts in maintaining the integrity of the lot.

There was a discussion regarding the lot size. The request is for a lot size and setback variance. Rost explained the difference in requirements between sewer and non sewer lots.

Dirkse explained the current provision in the town code regarding sewer vs. non-sewer lots and suggested the ordinance should be revisited. When the variance request was published in the paper the information we had was that it was a sewer lot. But it is not a sewer lot, so the requirements are different. He suggests that the town's jurisdiction is limited. He also added that given the current state of shoreland zoning there are different thoughts. Rost said the state wants statewide shoreland zoning, and the county or towns can't be more restrictive than the state is.

With no further discussion by the Board of Appeals, a vote was called for. Roll call vote: The following committee members voted yes: Jon Rost, Brad Roberts, Paul Booher, and Christa Johanson. There were no nay votes. Variance Request was approved for Jon and Kris Esch.

Mr. Esch expressed appreciation for the Board's work and said that they care deeply about the area and Elkhart Lake.

A request was made that in the future the packets be sent out sooner to the committee members and to be sure the plans had elevations on them.

Next Meeting –April 27, 2016

Adjournment – At 8:03 P.M., a motion to adjourn was made by Booher, seconded by Christa Johanson. Discussion: None. Motion carried with no nay votes.

Respectfully submitted,

Lexann Hoogstra, Clerk/Treasurer