

# ***JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT***

*Dale Weis, Chair; Don Carroll, Vice-Chair; Janet Sayre Hoeft, Secretary  
Paul Hynek, First Alternate; Aari Roberts, Second Alternate*

**PUBLIC HEARING** BEGINS AT **1:00 P.M.** ON JULY 14, 2016 IN ROOM 205,  
JEFFERSON COUNTY COURTHOUSE

**CALL TO ORDER FOR BOARD MEMBERS** IS AT 10:00 A.M. IN  
COURTHOUSE ROOM 203, PRIOR TO THE HEARING

**SITE INSPECTION FOR BOARD MEMBERS** LEAVES AT 10:15 A.M.  
FROM COURTHOUSE ROOM 203, PRIOR TO THE HEARING

## **1. Call to Order-Room 203 at 10:00 a.m.**

Meeting called to order @ 10:01 a.m. by Weis

## **2. Roll Call (Establish a Quorum)**

Members present: Carroll, Weis, Hoeft

Members absent: ---

Staff: Matt Zangl, Laurie Miller

## **3. Certification of Compliance with Open Meetings Law Requirements**

Hoeft acknowledged publication. Staff also presented proof of  
publication.

## **4. Election of Officers**

Hoeft made motion, seconded by Carroll, motion carried 3-0 by voice vote to  
elect Weis as Chair.

Hoeft made motion, seconded by Carroll, motion carried 3-0 by voice vote to  
elect Hoeft as Vice-Chair.

Weus made motion, seconded by Hoeft, motion carried 3-0 by voice vote to  
elect Carroll as Secretary.

## **5. Approval of the Agenda**

Hoelt made motion, seconded by Carroll, motion carried 3-0 by voice vote to approve the agenda.

## **6. Approval of June 9, 2016 Meeting Minutes**

Hoelt made motion, seconded by Carroll, motion carried 2-0 by voice vote to approve the meeting minutes.

NOTE: Weis was not present at the June 9, 2016 hearing, and therefore abstained from vote.

## **7. Communications and Public Comment - NONE**

Janet noted that she will not be here for the BOA meeting on October 13, 2016.

## **8. Site Inspections – Beginning at 10:15 a.m. and Leaving from Room 203**

V1586-16 – David & Cindy Bernard, N9213 Ash Road, Town of Watertown

V1587-16 – Gary Kincaid/Dean Kincaid Inc & Dean Kincaid Enterprises, near STH 106 and Island Road, Town of Palmyra

## **9. Public Hearing – Beginning at 1:00 p.m. in Room 205**

Meeting called to order @ 1:00 p.m. by Weis. All Board members were present at the time, as were Rob Klotz, Matt Zangl and Deb Magritz of the Zoning Department.

## **10. Explanation of Process by Board of Adjustment**

The following was read into the record by Carroll:

### ***NOTICE OF PUBLIC HEARING JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT***

**NOTICE IS HEREBY GIVEN** that the Jefferson County Zoning Board of Adjustment will conduct a public hearing at 1:00 p.m. on Thursday, July 14, 2016 in Room 205 of the Jefferson County Courthouse, Jefferson, Wisconsin. Matters to be heard are applications for variance from terms of the Jefferson County Zoning Ordinance. No variance may be granted which would have the effect of allowing in any district a use not permitted in that district. No variance may be granted which would have the effect of allowing a use of land or property which would violate state

laws or administrative rules. Subject to the above limitations, variances may be granted where strict enforcement of the terms of the ordinance results in an unnecessary hardship and where a variance in the standards will allow the spirit of the ordinance to be observed, substantial justice to be accomplished and the public interest not violated. Based upon the findings of fact, the Board of Adjustment must conclude that: 1) Unnecessary hardship is present in that a literal enforcement of the terms of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; 2) The hardship is due to unique physical limitations of the property rather than circumstances of the applicant; 3) The variance will not be contrary to the public interest as expressed by the purpose and intent of the zoning ordinance. **PETITIONERS, OR THEIR REPRESENTATIVES, SHALL BE PRESENT.** There may be site inspections prior to public hearing which any interested parties may attend; discussion and possible action shall be occur after public hearing on the following:

**V1587-16 – Gary Kincaid/Dean Kincaid Inc & Dean Kincaid Enterprises**

**Properties:** Variance to sanction a proposed 11.567-acre Natural Resource zone south of the Scuppernong River from PINs 024-0516-1622-000 (40 Acres) and 024-0516-1621-000 (28.6 Acres) without 66 feet of frontage on and access to a public road per Section 11.03(d)1 of the Jefferson County Zoning Ordinance and 15.04(c) of the Land Division/Subdivision Ordinance. The proposal is near **State Road 106 and Island Road** in the Town of Palmyra.

**Petitioner** (or representative): Gary Kincaid of W1581 Island Road spoke. He said that the land proposed for a Natural Resource zone adjoins his house lot across the river. It is not farmable, and is not useful to his prospective purchaser. Kincaid mows trails through this area and plants trees, and would like to keep it as a wildlife preserve, with access from it to his house by existing bridges over the river.

**In favor:** None

**Opposed:** None

**Town Response:** In favor on June 13, 2016 and now on file.

**Staff report:** Given by Klotz and in the file. Klotz reported that this is slightly different from other access variances that the Board has considered, in that Kincaid owns land divided only by the Scuppernong. Klotz explained contiguity as defined by the Jefferson County Zoning Ordinance, but also noted that surveying rules and deeding say that a property goes to the thread of the stream. Klotz noted that there may not be a need for an easement as long as Kincaid owns the land immediately across the Scuppernong, but suggested that if the Board is inclined to approve this, an

easement for access could be required in the event that Kincaid ever wanted to sell the Natural Resource zone separately from his house lot. The Board could also say that Kincaid could not sell the Natural Resource zone separately.

### **Board questions:**

Weis initially asked for clarification that the proposed Natural Resource zone is not useable as farmland, so Kincaid would like to keep it with his home? Kincaid responded affirmatively. Weis also said he questioned that because a Natural Resource zone can be titled to a separate individual, why would an easement not be required, but understood that if acted upon as requested, it would always be married to the house lot. Carroll thought it would be more prudent to establish an easement now, but Weis was concerned that requiring an easement would be modifying the petitioner's request.

**V1586-16 – David & Cindy Bernard:** Variance from Section 11.07(d)2 of the Jefferson County Zoning Ordinance to sanction replacement of a fire-razed shed at 20 feet from the road right-of way at **N9213 Ash Road**. The site is in the Town of Watertown, on PIN 032-0815-1222-001 (1.262 Acre) and is zoned A-3, Agricultural/Rural Residential.

Petitioner (or representative): John Kannard, Southwest Surveying represented the petitioners and reported that a previous survey showed the road right-of-way running down the old shed's roof. That shed was destroyed by fire this past spring, and the petitioners would like to replace it and move it back twenty feet from the right-of-way. Farther west than that, the land begins to slope down. County ordinances would allow replacement of the shed in its former location, but that doesn't seem like a good option. And going back beyond that twenty feet from the right-of-way would require a lot of fill, grading and more driveway. Kannard summed his testimony up by saying that this is a better option for the Town, moving the building out of its right-of-way.

**In favor:** None

**Opposed:** None

**Town Response:** Tabled on June 13, 2016-approval presumably granted at a later date.

**Staff report:** Klotz explained the legal right to replace the shed, in the same size, same shape in the same footprint if it had been destroyed by an act of God. When he explained that to the Town, the Town responded that they would rather have the structure twenty feet out of the right-of-way. Within the confines of the new law, this variance makes for a safer condition.

**Board questions:**

Hoelt asked if, because the property is zoned A-3, the petitioner could have all the outbuildings, to which Klotz reported that they could, while meeting other setbacks. Carroll asked if the petitioner would be meeting all other setbacks, and Klotz responded that they would. Hardship is really created by how the law was passed, Klotz noted. Weis asked the petitioner to introduce himself and give his address. David Bernard of N9213 Ash Road introduced himself. Weis, having plowed that road for years, noted that a bottleneck occurs during snow plowing, almost a wind tunnel, and said that he would feel better if the petitioner, for safety's sake, would go to the standards that are required for subdivisions, that being 30 feet from the right-of-way. He appealed to the petitioner to consider a 30-foot setback. Carroll asked what made Bernard choose 20 feet as his setback? Kannard responded that it was the slope of the land and the need for fill, and that they were working around a phone pad and underground wires.

Klotz asked for the speed limit at that location, and was told that it is 55 mph.

David Bernard stated that he preferred not to go to a 30-foot right-of-way setback.

There being no further evidence, the Board adjourned to go into decision-making.

**11. Discussion and Possible Action on Above Petitions (See files and following pages)**

**12. Adjourn**

A motion was made by Hoelt, seconded by Carroll to adjourn the meeting.  
The  
motion carried on a voice vote and the meeting adjourned at 2:00 p.m.

**If you have questions regarding these variances, please contact the Zoning Department at 920-674-7113 or 920-674-8638. Variance files referenced on this hearing notice may be viewed in Courthouse Room 201 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, excluding holidays. Materials covering other agenda items can be found at [www.jeffersoncountywi.gov](http://www.jeffersoncountywi.gov).**

## JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

*A quorum of any Jefferson County Committee, Board, Commission or other body, including the Jefferson County Board of Supervisors, may be present at this meeting.*

Individuals requiring special accommodations for attendance at the meeting should contact the County Administrator at 920-674-7101 at least 24 hours prior to the meeting so appropriate arrangements can be made.

*A digital recording of the meeting will be available in the Zoning Department upon request.*

Additional information on Zoning can be found at [www.jeffersoncountywi.gov](http://www.jeffersoncountywi.gov)

---

Secretary

---

Date

**DECISION OF THE ZONING BOARD OF ADJUSTMENT  
JEFFERSON COUNTY, WISCONSIN**

**FINDINGS OF FACT**

PETITION NO.: 2016 V1587

HEARING DATE: 07-14-2016

APPLICANT: Gary Kincaid

PROPERTY OWNER: Dean Kincaid Enterprises/Dean Kincaid, Inc.

PARCEL (PIN #): 024-0516-1621-000 & 024-0516-1622-000

TOWNSHIP: Palmyra

INTENT OF PETITIONER: Variance to sanction a proposed Natural Resources  
Zone without 66' frontage on and access to a public road.

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.03(d)1 & 15.04(c)  
OF THE JEFFERSON COUNTY ZONING ORDINANCE.

THE FEATURES OF THE PROPOSED CONSTRUCTION AND PROPERTY WHICH  
RELATE TO THE GRANT OR DENIAL OF THE VARIANCE APPLICATION ARE:

Natural Resources Zone proposed

No building site proposed or allowed.

Easement description? Location width?

FACTS OR OBSERVATIONS BASED ON SITE INSPECTIONS: Site inspections  
conducted. Observed property layout & location.

FACTS PRESENTED AT PUBLIC HEARING: See tape, minutes & file.

**DECISION STANDARDS**

- A. NO VARIANCE MAY BE GRANTED WHICH WOULD HAVE THE EFFECT OF ALLOWING IN ANY DISTRICT A USE NOT PERMITTED IN THAT DISTRICT \_\_\_\_\_  
-----
- B. NO VARIANCE MAY BE GRANTED WHICH WOULD HAVE THE EFFECT OF ALLOWING A USE OF LAND OR PROPERTY WHICH WOULD VIOLATE STATE LAWS OR ADMINISTRATIVE RULES: \_\_\_\_\_  
-----
- C. SUBJECT TO THE ABOVE LIMITATIONS, VARIANCES MAY BE GRANTED WHERE STRICT ENFORCEMENT OF THE TERMS OF THE ORDINANCE RESULTS IN AN UNNECESSARY HARDSHIP & WHERE A VARIANCE IN THE STANDARDS WILL ALLOW THE SPIRIT OF THE ORDINANCE TO BE OBSERVED, SUBSTANTIAL JUSTICE TO BE ACCOMPLISHED, & THE PUBLIC INTEREST NOT VIOLATED.

BASED ON THE FINDINGS OF FACT, THE BOARD CONCLUDES THAT:

- 1. UNNECESSARY HARDSHIP **IS** PRESENT IN THAT A LITERAL ENFORCEMENT OF THE TERMS OF THE ZONING ORDINANCE **WOULD** UNREASONABLY PREVENT THE OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE OR WOULD RENDER CONFORMITY WITH SUCH RESTRICTIONS UNNECESSARILY BURDENSOME BECAUSE THIS WILL STAY ONE PROPERTY & WILL ALLOW PROTECTION FOR FUTURE OWNERSHIP CHANGE. HARDSHIP IS CREATED BY AN ORDINANCE WHICH PROHIBITS AN OTHERWISE LEGAL SPLIT. IF THE REZONING IS APPROVED, THIS WILL NOT NEED ROAD ACCESS WITH THE GRANTING OF THIS VARIANCE.
- 2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE IF THE PROPOSED NATURAL RESOURCE (N) ZONE WERE TO BE SOLD SEPARATELY, THERE WOULD BE NO PROVISION FOR ACCESS TO THE PROPERTY WITHOUT VARIANCE. THE COUNTY ORDINANCE DEFINES THE SCUPPERNONG AS A BOUNDARY, CONFLICTING WITH THE SURVEYING DEFINITION OF A BOUNDARY.
- 3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE IT IS A POSITIVE SINCE NOTHING WILL CHANGE BUT WILL PROVIDE FUTURE ACCESS IF REQUIRED. AT THIS TIME, NO OWNERSHIP CHANGE IS PROPOSED, BUT WITH ADDITION OF A CONDITION ALLOWING FOR AN EASEMENT IT BECOMES CONSISTENT WITH OTHER N ZONE SPLITS. THIS LAND PROPOSED FOR THE N ZONE IS DEEMED UNFARMABLE; THIS IS A GOOD USE OF THE LAND, LIKE AN EXTENSION OF MR KINCAID'S LAWN.

\*A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET\*

**DECISION:** THE REQUESTED VARIANCE IS **GRANTED** .

**MOTION:** Don Carroll **SECOND:** Janet Sayre Hoeft **VOTE:** Voice vote, no objection.

**CONDITIONS OF APPROVAL/DENIAL:** An access easement shall be created when/if the property shall be sold separately from the land immediately north of the Scuppernong. This easement shall be reviewed and approved by the Zoning Department.

SIGNED: \_\_\_\_\_ DATE: 07-14-2016

CHAIRPERSON

BOARD DECISIONS MAY BE APPEALED TO CIRCUIT COURT. AUDIO RECORD OF THESE PROCEEDINGS IS AVAILABLE UPON REQUEST.



**DECISION OF THE ZONING BOARD OF ADJUSTMENT  
JEFFERSON COUNTY, WISCONSIN**

**FINDINGS OF FACT**

PETITION NO.: 2016 V1586  
HEARING DATE: 07-14-2016

APPLICANT: David L & Cindy Bernard

PROPERTY OWNER: SAME

PARCEL (PIN #): 032-0815-1222-001

TOWNSHIP: Watertown

INTENT OF PETITIONER: Variance to sanction placement of a fire-razed shed at  
20' from a town road ROW.

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.07(d)2 OF  
THE JEFFERSON COUNTY ZONING ORDINANCE.

THE FEATURES OF THE PROPOSED CONSTRUCTION AND PROPERTY WHICH  
RELATE TO THE GRANT OR DENIAL OF THE VARIANCE APPLICATION ARE:

Town road minimum setbacks – 85' centerline, 50' ROW

Shed previously existed in ROW

Proposed moving it back 20' only due to slope

Could build in the same location under the law

FACTS OR OBSERVATIONS BASED ON SITE INSPECTIONS: Site inspections  
conducted. Observed property layout & location.

FACTS PRESENTED AT PUBLIC HEARING: See tape, minutes & file.

**DECISION STANDARDS**

- A. NO VARIANCE MAY BE GRANTED WHICH WOULD HAVE THE EFFECT OF ALLOWING IN ANY DISTRICT A USE NOT PERMITTED IN THAT DISTRICT \_\_\_\_\_  
-----
- B. NO VARIANCE MAY BE GRANTED WHICH WOULD HAVE THE EFFECT OF ALLOWING A USE OF LAND OR PROPERTY WHICH WOULD VIOLATE STATE LAWS OR ADMINISTRATIVE RULES: \_\_\_\_\_  
-----
- C. SUBJECT TO THE ABOVE LIMITATIONS, VARIANCES MAY BE GRANTED WHERE STRICT ENFORCEMENT OF THE TERMS OF THE ORDINANCE RESULTS IN AN UNNECESSARY HARDSHIP & WHERE A VARIANCE IN THE STANDARDS WILL ALLOW THE SPIRIT OF THE ORDINANCE TO BE OBSERVED, SUBSTANTIAL JUSTICE TO BE ACCOMPLISHED, & THE PUBLIC INTEREST NOT VIOLATED.

BASED ON THE FINDINGS OF FACT, THE BOARD CONCLUDES THAT:

- 1. UNNECESSARY HARDSHIP **IS** PRESENT IN THAT A LITERAL ENFORCEMENT OF THE TERMS OF THE ZONING ORDINANCE **WOULD** UNREASONABLY PREVENT THE OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE OR WOULD RENDER CONFORMITY WITH SUCH RESTRICTIONS UNNECESSARILY BURDENSOME BECAUSE THE SHED IN THE LOCATION THE PETITIONER PROPOSED IS BETTER THAN HAVING IT IN THE ROAD RIGHT-OF-WAY (R.O.W) THOUGH THE PETITIONER COULD HAVE LEGALLY REPLACED THE SHED IN ITS POSITION CLOSE TO THE ROAD, HE FOUND A SOLUTION TO MOVE IT 20 FT OFF THE R.O.W. IN A CONGESTED AREA.
- 2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE STATE STATUTES ALLOW REPLACEMENT OF THE FIRE-RAZED SHED IN ITS ORIGINAL LOCATION, BUT 20 FEET FROM THE R.O.W. IS THE BEST POSITION THAT COULD BE NEGOTIATED WITH THE PETITIONER.
- 3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE THE 20-FT SETBACK FROM R.O.W. IS BETTER THAN WHAT EXISTED. THE BOARD REALIZED THAT THEY COULD ONLY SANCTION REPLACING THE SHED & MOVING IT BACK FARTHER.

\*A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET\*

**DECISION:** THE REQUESTED VARIANCE IS **GRANTED.**

**MOTION:** Dale Weis    **SECOND:** Janet Sayre Hoeft    **VOTE:** Weis & Sayre Hoeft in favor,  
Carroll abstaining

**CONDITIONS OF APPROVAL/DENIAL:** Minimum 20 ft setback from road right of way (R.O.W) is approved, but with a strong recommendation to build at 30 ft from R.O.W.

**SIGNED:** \_\_\_\_\_ **DATE:** 07-14-2016  
CHAIRPERSON

BOARD DECISIONS MAY BE APPEALED TO CIRCUIT COURT. AUDIO RECORD OF THESE PROCEEDINGS IS AVAILABLE UPON REQUEST.