

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

Dale Weis, Chair; Aari Roberts, Vice-Chair; Janet Sayre Hoeft, Secretary

THE BOARD OF ADJUSTMENT WILL MEET AT 10:00 A.M. IN ROOM 205 ON THURSDAY, JANUARY 14, 2021. Members of the public may attend Via Zoom Videoconference or in Room 205, Jefferson County Courthouse, 311 S. Center Ave., Jefferson, WI

THE BOARD OF ADJUSTMENT WILL LEAVE FOR SITE INSPECTIONS AT 11:00 A.M. OR AS SOON AS THE BOARD OF ADJUSTMENT CONCLUDES ITS CLOSED SESSION, AND CONVENE THE PUBLIC HEARING AT 1:00 P.M.

PETITIONERS OR MEMBERS OF THE PUBLIC MAY ATTEND THE MEETING VIRTUALLY BY FOLLOWING THESE INSTRUCTIONS IF THEY CHOOSE NOT TO ATTEND IN PERSON:

Join Zoom Meeting

Register in advance for this meeting:

<https://zoom.us/meeting/register/tJARfuupjgoHdUgOIsHGajYmve78eXYMrta>

After registering, you will receive a confirmation email containing information about joining the meeting.

PETITIONERS OR THEIR REPRESENTATIVES MUST PARTICIPATE IN THE PUBLIC HEARING AT 1:00 P.M. BY USING THE ZOOM MEETING OPTION DESCRIBED ABOVE OR BY ATTENDING IN PERSON.

1. Call to Order

Meeting called to order @ 10:00 a.m. by Weis

2. Roll Call (Establish a Quorum)

Members present: Hoeft, Roberts, Weis

Members absent: ---

Staff: Matt Zangl, Laurie Miller, Brett Scherer

Other: Attorney Blair Ward, Attorney Steven Zach

3. Certification of Compliance with Open Meetings Law

Staff presented proof of publication.

4. Approval of the Agenda

Hoeft made motion, seconded by Roberts, motion carried 3-0 on a voice vote to approve the agenda.

5. Approval of October 8, 2020 Meeting Minutes

Hoeft made motion, seconded by Roberts, motion carried 3-0 on a voice vote to approve the meeting minutes.

6. Communications - None

7. Public Comment – There were 3 people on zoom. No comments or statements made.

8. Convene into closed session pursuant to Wisconsin State Statute section 19.85 (1)(g), “Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved” for the purpose of discussing an appeal of a Conditional Use Permit granted to We Energies by the Planning and Zoning Committee.

Hoeft made motion, seconded by Roberts, motion carried 3-0 on a voice vote to convene into closed session @ 10:03 a.m.

9. Reconvene into open session

Hoeft made motion, seconded by Weis, motion carried 3-0 on a voice vote to return to open session @ 11:03 a.m.

10. Site Inspections –Leaving from Courthouse Room 205, Driving to the Following Sites:

V1675-20 – Don and Natalya Kuptz Property, W9370 US Highway 12, Town of Oakland, PIN 022-0613-1811-034

11. Public Hearing – Beginning at 1:00 p.m. in Room 205 – Petitioners, or their representatives, must be present

Meeting called to order @ 1:00 p.m. by Weis

Members present: Weis, Hoeft, Roberts

Members absent: ----

Staff: Matt Zangl, Laurie Miller, Brett Scherer

12. Explanation of Public Hearing Procedure by Board of Adjustment Chair

The following was read into the record by Weis:

***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, January 14, 2021 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. An AREA VARIANCE is a modification to a dimensional, physical, locational requirement such as the setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of adjustment. A USE VARIANCE is an authorization by the board of adjustment to allow the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance. 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, a petitioner for an AREA VARIANCE bears the burden of proving "unnecessary hardship," by demonstrating that 1) strict compliance with the zoning ordinance would unreasonably prevent the petitioner from using the property for a permitted purpose, or 2) would render conformity with the zoning ordinance unnecessarily burdensome. A petitioner for a USE VARIANCE bears the burden of proving that 3) strict compliance with the zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. Variances may be granted to allow the spirit of the ordinance to be observed, substantial justice to be accomplished and the public interest not violated. **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 may occur after public hearing on the following:

V1675-21 – Don and Natalya Kuptz: Variance from Sec. 11.04(f)1 of the Jefferson County Zoning Ordinance for a reduced setback from the road centerline to a proposed new home in an R-1 zone. The site is at **W9370 US Highway 12** on PIN 022-0613-1811-034 (5.820 Ac) in the Town of Oakland.

Don Kuptz, N4260 Sleepy Hollow Rd presented his petition. Even though this is a 5.82 acre parcel, the only buildable site on the property is very small due to all the setbacks. He could build on the site, but house would have to be small. There are other houses in the area that are closer to the road with the furthest back from the highway being at 184'. He noted the setbacks to the other homes in the area. Right next to this lot is a house set back at 175'. The next one is 90' from the road and then 111' and 115'. Most of them range around 115'-180'. He is just asking for the 20' so he can be closer like the other houses in the area and not be set back behind everybody. By allowing the proposed setback, it would allow them to build a larger home.

Natalya Kuptz, N4260 Sleepy Hollow Rd, was in favor. There were no questions or comments in opposition of the petition.

Roberts asked the petitioner if this was on public sewer or if it would have a private septic system. The petitioner stated it is on public sewer and further explained. Weis asked if it was a private well. The petitioner stated yes. Weis asked for the location of the well. The petitioner explained and showed the location on the map. Weis asked about the location of the flags set on the lot. The petitioner stated this marked the area where they could build now without the variance. Hoeft asked the petitioner to point out the proposed location of the house on the map. The petitioner showed the location on the map.

There was a decision from the town in the file approving the petition which was read into the record by Roberts.

Roberts asked the petitioner if he had any measurements for the properties going the northwest. The petitioner stated he did not do the measurements for those homes. Roberts wondered about the setbacks for the homes on the other side of the road. The petitioner stated there are currently not many houses on that side, maybe 2 or 3. He did not measure those setbacks.

Staff report was given by Zangl. He stated that there is a required setback of 75' to the OHWM, 200' to the centerline of the road, and 100' to the ROW. There is a 25' rear setback and a 10' side setback requirement. What the petitioner was asking was to be 20' closer to the road than required setback at 180' to the centerline. The petitioner stated that was correct.

Roberts questioned the road setback. Zangl stated that the setback is regulated by the DOT and the county follows those standards. The ROW varies substantially in this area. Roberts questioned the ROW setback. Zangl asked the petitioner if he knew what the ROW setback would be. The petitioner stated he did not. Weis asked Zangl if there was response from the DOT. Zangl stated there was no response. The petitioner noted that he had contacted the DOT and was informed that it was 100% up to the county.

There was a discussion on the setbacks from the overhang. Weis asked the petitioner if he would be getting a surveyor to set the location of the house. The petitioner stated yes, the surveyor would be out there once the footings and everything is set.

Roberts made comment about the setback proposed. Zangl stated they still meet the ROW and all other setbacks.

V1674-20 – Sherry L Stern: Variance from Sec. 11.04(f)6 of the Jefferson County Zoning Ordinance for a reduced setback of 0.5' from the rear lot line to an existing structure in an A-1 zone. The site is at **W9226 London Rd** on PIN 018-0713-3223-001 (0.76 Ac) in the Town of Lake Mills.

Appearing by Zoom was Selina Franklin, Cole Stern and Sherry Stern to present the petition. Ms. Franklin stated that it would be a very considerable, undue burden to Sherry if they had to remove the

structure. Zangl noted that this was originally tabled due to the uncertainty of how the petitioners wanted to proceed. They were here today to find a solution to the violation and address the problem at hand.

Cole Stern stated there was a miscalculation based on the 2017 survey that was done. There a couple of overlays of the different maps showing different setbacks. He further explained. The lot line on that survey is not a true lot line. Zangl asked if they have contacted the surveyor or another surveyor to take a look at this. Cole Stern stated that original surveyor would not come out. They have not been able to get a surveyor to come out and take a look at it. The one surveyor that stated they would come out indicated they would have to survey the whole property which is not financially feasible.

Weis asked when the property was originally bought from the neighboring farm. Cole Stern stated the original survey was done around 1969. The 1988 survey he believed was just a resurvey of the original survey done in 1969. He contacted the contractor who originally poured the concrete slab, and he has since passed away. He stated they had pictures showing the old building that was standing and the concrete slab that was in place. Zangl asked them to show the Board what pictures they had. Zangl noted that it appears that it is turning into an argument between two landowners over where the property line is which the Board does not have in their purview in making their decision

Ms. Franklin presented the pictures and explained. Zangl asked if they could also send the pictures over so they could be included in the file. Ms. Franklin explained what was there before and then after. She noted that they had offered to purchase additional lands in 2019 from the adjoining lot owner to rectify the situation, and they got no response. Ms. Franklin noted the property behind the building is not being used or maintained. Cole Stern stated they plan on removing the overhang on that side of the building no matter what the outcome is regarding the determination of the location of the lot line. Ms. Franklin further explained the pictures presented and the discrepancies in the surveys.

Zangl asked the petitioners for a brief recap. Cole Stern showed pictures and explained the original building which was torn down. They re-built on the existing foundation in its original location which included adding concrete to an area that wasn't there in addition to an extension to northeast corner. The building was where it was before on the existing concrete and now it's showing it's over the lot line on that side. He thought it would only be over with the overhang or the new addition, but the area in question is on the northwest corner. Zangl summarized the circumstances of the building and noted that the northeast portion is over the lot line and does not meet the setback. The petitioner made further comment regarding the portion of the building that was over and/or encroaching the lot line.

Weis asked when the lot was originally established and if a survey was done. Zangl stated that would have been the 1988 survey. The petitioners stated they believed that would have been the 1969 survey. The petitioners further explained. Weis was asking for clarification as to when the line was originally established. The petitioners did not know. Weis stated that it seems that they used the back of the building as the rear property line. It seems now that it is becoming a legal

matter between the two adjoining property owners. No matter what the Board does, they cannot approve a variance for a building that goes over the property line. Weis asked if there was a part of the building over the lot line. Zangl explained the 1988 survey where it isn't over the lot line and the 2017 that show that it is. Weis also had concerns about the request for a 0' lot line setback which doesn't come close to the required 20' setback, and there was no way the Board could issue a variance for something over the property line.

Zangl stated that he would discuss it with County's Corporation Counsel on what options the Board may have in moving forward.

There was further discussion on options, setbacks, surveys and location of the lot line.

Roberts stated that he felt the building has been there long enough make the assumption that at least a portion of the building was constructed legally, and the Board is trying to fix something from the past as best as they can. He made further comment on how to proceed with approving a 0' setback and let the property owners determine where the property line is. They would have to remove a portion of the building, but it would be up to them to figure out where the lot line is and how much they would have to remove. Weis stated they cannot condone that the building is over the property line. Roberts stated they would have to prove what is over the property line and remove it. Weis stated it appears there is a dispute on the location of the property line which is a legal matter between the two owners to determine what is over the lot line. Weis was unsure where the Board was at to approve a 0' setback at this time which isn't even close to the county's requirement of 20'. But, there is a reason for the setback to avoid conflict with the neighbors, as this already has that history.

Zangl noted that part of the problem was that there was not permit pulled for rebuilding the structure. Weis noted that most of the situation is beyond the scope of what the Board can address. Roberts stated they could address as much as they can to bring it into compliance. Weis noted that until the property line issue is resolved, it is still not in compliance.

There was further discussion on the option to proceed with a 0' setback and leave the location of the property line up to the property owners to figure out. Hoefl asked if they were currently being fined. Zangl stated no, they are currently working through this.

Roberts noted that with the cost of a new survey and possible legal fees, they could move the building for about the same cost. Cole Stern stated that due to the location of the septic, they cannot move the building forward so if the Board decided it had to be moved to 20', the building would have to come down. There was further comment/discussion. Roberts asked staff if the neighbor had filed a complaint and if they are the ones who wanted this taken care of. Zangl stated yes and noted it did speak a little bit that there was no one here at the hearing that showed up in opposition.

There was a town decision in the file approving the petition which was read into the record by Roberts. Don and Natalya Kuptz were in favor of the petition. There were no questions or comments in opposition of the petition.

The Board took a 5-minute break at 1:54 before decisions. Zangl spoke with Corporation Counsel during the break, and he noted that it would be entirely up to the Board on how they wanted to proceed.

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

14. Adjourn

Weis made motion, seconded by Roberts, motion carried 3-0 on a voice vote to adjourn @ 2:27 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 in this hearing notice may be viewed at the Jefferson County Courthouse in 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.

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



Secretary



Date

DECISION OF THE ZONING BOARD OF ADJUSTMENT
JEFFERSON COUNTY, WISCONSIN

COPY

FINDINGS OF FACT

PETITION NO.: 2021 V1675
HEARING DATE: 01-14-2021

APPLICANT: Don Kuptz

PROPERTY OWNER: Don & Natalya Kuptz

PARCEL (PIN) #: 022-0613-1811-034 W9370 US Highway 12

TOWNSHIP: Oakland

INTENT OF PETITIONER: Build a new single family home at less than the required setback

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.04 (f)1 - setbacks 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:

- Required setbacks:
 - 75' from Ordinary High Water Mark
 - 200' from Centerline of US Highway 12
 - 100' from Road Right of Way
 - 25' from rear property line
 - 10' from side property line
- Plat of Survey completed showing the required setbacks
- Owner request to build at less than the required setbacks
- Town approved with "no issues"

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

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

DECISION OF THE ZONING BOARD OF ADJUSTMENT
JEFFERSON COUNTY, WISCONSIN

COPY

FINDINGS OF FACT

PETITION NO.: 2020 V1674
HEARING DATE: 01-14-2021

APPLICANT: Sherry L Stern

PROPERTY OWNER: SAME

PARCEL (PIN) #: 018-0713-3223-001 (W9226 London Road)

TOWNSHIP: Lake Mills

INTENT OF PETITIONER: To allow for a reduced setback of 0.5 ft from the rear lot line to an existing structure in an A-1 zone at W9226 London Rd, PIN 018-0713-3223-001.

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.04(f)6 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:

-Property zoned A-1, Exclusive Agricultural (0.76 Ac)

-Setback from rear lot line in an A-1 zone = 20 ft

-Proposed setback is 0.5 ft from rear lot line

-CSM from 1988 shows existing foundation = 0.5 ft from rear lot line

-CSM from 2017 shows current shed has a corner located 0.7 ft over lot line and an overhang that is located 3.1 ft over lot line

-Stern is proposing that overhang and corner be removed and setback be what it was for the original foundation at 0.5 ft

-Shed was built legally prior to 1988 – around 2000, the building was added onto without a permit to its current setbacks (VIO070 - 2019)

-Addition to shed was built using the existing slab of concrete from the old farm building

-Current owner sent a letter on 3/11/20 to neighboring landowner asking for purchase of surrounding land in order to add onto lot and meet setbacks

-No response was received from neighboring landowner

-LU permit #10814 from 1980 for detached garage – plot plan shows part of existing shed/foundation on property

-Sanitary permit #2527 from 1974 shows location of septic on property

-Town approved on 9/9/2020

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

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

COPY

DECISION STANDARDS

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: _____

- B. SUBJECT TO THE ABOVE LIMITATIONS, AREA VARIANCES MAY BE GRANTED WHERE STRICT COMPLIANCE WITH THE ZONING ORDINANCE RESULTS IN AN UNNECESSARY HARDSHIP WHICH WOULD UNREASONABLY PREVENT THE PETITIONER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE, OR WOULD RENDER CONFORMITY WITH THE ZONING ORDINANCE UNNECESSARILY BURDENSOME, AND WILL ALLOW THE SPIRIT OF THE ORDINANCE TO BE OBSERVED, SUBSTANTIAL JUSTICE TO BE ACCOMPLISHED, AND THE PUBLIC INTEREST NOT VIOLATED.
- C. SUBJECT TO THE ABOVE LIMITATIONS, USE VARIANCES MAY BE GRANTED WHERE STRICT COMPLIANCE WITH THE ZONING ORDINANCE WOULD LEAVE THE PROPERTY OWNER WITH NO REASONABLE USE OF THE PROPERTY IN THE ABSENCE OF A VARIANCE AND WILL ALLOW THE SPIRIT OF THE ORDINANCE TO BE OBSERVED, SUBSTANTIAL JUSTICE TO BE ACCOMPLISHED, AND 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 (AREA VARIANCE) OR STRICT COMPLIANCE WITH THE ZONING ORDINANCE WOULD LEAVE THE PROPERTY OWNER WITH NO REASONABLE USE OF THE PROPERTY (USE VARIANCE) BECAUSE Roberts: because the property owner would have to remove the building. There is no other place on the property to relocate the building. Weis: there is a hardship because even with the overhang being removed from the building, there would have to be a variance or the building would have to be removed or relocated.
2. THE HARDSHIP OR NO REASONABLE USE **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE Roberts: the back property line should have been set back further. Weis: this issue originated in a 1969 sale which a survey was generated presumably to include the building in question.
3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE Roberts: all of the building will be on the owner's property. Weis: there will be no change to the impact to the public, but legal issues may need to be resolved between the property owners.
Hoeft: opposed because she could not accept the concept of a 0' or less setback

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

DECISION: THE REQUESTED VARIANCE IS GRANTED:

MOTION: Weis **SECOND:** Roberts **VOTE:** 2-1

CONDITIONS OF APPROVAL: Approved at a 0' setback with the removal of the overhang. The location of the property line to be resolved by the property owners.

SIGNED: Dale Weis (Sm) DATE: 01-14-2021
CHAIRPERSON

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