

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

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

PUBLIC HEARING BEGINS AT **1:00 P.M.** ON May 9, 2019 IN ROOM 205, JEFFERSON COUNTY COURTHOUSE

CALL TO ORDER FOR BOARD MEMBERS ONLY IS AT 10:30 A.M. IN COURTHOUSE ROOM 203, PRIOR TO THE HEARING

SITE INSPECTION FOR BOARD MEMBERS ONLY LEAVES AT 10:40 A.M. FROM COURTHOUSE ROOM 203, PRIOR TO THE HEARING

1. Call to Order-Room 203 at 10:30 a.m.

Meeting called to order @ 10:30 a.m. by Weis

2. Roll Call (Establish a Quorum)

Members present: Hoeft, Roberts, Weis

Members absent: ----

Staff: Matt Zangl, Laurie Miller, Lindsey Schreiner, Sarah Higgins

3. Certification of Compliance with Open Meetings Law

Hoeft acknowledge publication. Staff also presented email to the newspaper verifying that publication of notice was sent.

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 March 14, 2019 Meeting Minutes

Weis made motion. Hoeft requested that Mr. John Lemke's address should include Janesville and be added to the minutes. Motion was seconded by Roberts, motion carried 3-0 on a voice vote to approve the meeting minutes.

6. Communications

Zangl noted that staff member, Sharon Ehrhardt, is retiring.

Hoefl asked staff about permits issued for structural alterations. Zangl explained. Hoefl also noted she was not aware that permits were required for razing structures. Zangl explain the purpose of the razing permits.

7. Public Comment - None

8. Site Inspections – Beginning at 10:40 a.m. and Leaving from Room 203

V1644-19 – Corby & Dana Bergmann, Town of Jefferson

V1645-19 – Sara Manzke & Joshua Pernat, Town of Ixonia

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

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

Members present: Hoefl, Weis, Roberts

Members absent: -----

Staff: Matt Zangl, Laurie Miller, Sarah Higgins, Lindsey Schreiner

10. Explanation of Process 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, May 9, 2019 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 may occur after public hearing on the following:

V1644-19 – Corby & Dana Bergmann: Variance from Sec. 11.04(f)8 of the Jefferson County Zoning Ordinance to allow for the reduced side yard setbacks for a garage addition. The site is located at **N4690 County Road Q**, Town of Jefferson, in an A-3 zone on PIN 014-0614-0541-001 (1.00 Ac).

Corby Bergmann, N4960 County Road Q, presented his petition. He stated he was asking for a reduced side setback for a garage. The lot has a unique shape due to a driveway easement that is on file. He felt this was his best option for additional storage. He is looking to construct the garage for additional vehicle parking.

Weis made note that there was also a written statement from the petitioner in the file.

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

Hoelt noted that though we solicit information from the township, the Board is not obliged to their recommendations, but it is helpful.

Zangl gave staff report. The property was rezoned to A-3 in 2004, and in 2006, the permit was issued for the home and garage. He referenced Sec. 11.04(f)8 which requires yard setbacks to be 20' from the property line. They are requesting a setback of 10' from the side lot line.

Hoelt stated they were out there and did not see any agricultural impact. They also saw the garage, and couldn't really find other places on the property where such an expansion could go. The petitioner stated it could possibly be put behind the garage that is there, but they would have to put in another driveway. Roberts stated they could expand out the back for addition storage. The petitioner stated they needed a three-car garage for himself, wife & son in college. Roberts asked how big the existing garage was now. The petitioner stated it was 24'x48'. Weis noted the setbacks are measured from the overhang, not the foundation. He asked if the 10' proposed was to the foundation or roofline. The petitioner stated he could make it 10' from the roofline. Weis commented on the location of the septic/mound. Roberts noted they could go out about another 25' in the back. Weis also noted the well was in the front. There was further discussion on the setback and existing driveway or putting in a new driveway.

Zangl stated they have a little room in the back questioning where a new driveway would go and the location of the existing septic, pool and well. Roberts stated they could do a 5' addition to the front of the building and have a three-car garage, and they could have storage in the back. Weis noted that they should be considering the request as stated.

Attorney Blair Ward was present.

V1645-19 – Sara Manzke & Joshua Pernat: Variance from Sec. 11.04(f)9 of the Jefferson County Zoning Ordinance to allow for the raising/keeping of farm animals on a parcel less than

2.00 acres in size. The site is located at **N8263 County Road E**, Town of Ixonia, in a Community zone on PIN 012-0816-1931-009 (0.910 Ac).

Attorney Erin Strohbahn, Gimbel, Reilly, Guerin & Brown, 330 E Kilbourn Avenue, Suite 1170, Milwaukee 53202, presented the petition. She stated her clients are not making a stand or request from the Board today because there is no other way to ask for what Ms. Manske needs which is accommodation for her disability. They have come to the Board and will be coming to the Planning & Zoning Committee for a Conditional Use Permit. Land use and zoning regulations are traditionally a matter for the state or local government. But when those zoning requirements conflict with federal law, the federal law supersedes – the federal must be applied. The Fair Housing Act prohibits discrimination on the basis of many protected characteristics, one of which protects the disabled. Our government states that if you are disabled, you cannot be discriminated against. Ms. Manske is a young lady with a chronic illness who has discovered that her illness gets better, and she is offered some amount respite by use of the emotional support animals.

They were asking Ms. Manske to be allowed four miniature goats and two geese on her property. She lives on the property which is just shy of one acre in the Community Zone which allows for mixed uses. Ms. Manzke lives in a broad section of the county and the Town of Ixonia. She wants to be able keep her animals. Submissions have been made with an affidavit and complaints and some litigation that happened before being here today. The doctor has given prescriptions to Ms. Manzke for these emotional support animals.

What they are asking the Board to do today is to grant the variance. What she could not tell the Board is that Ms. Manske and Mr. Pernat meet all of the reasons that the Board would grant a variance. The reason is because it is not a variance they want. They want reasonable accommodation, and Jefferson County does not have a board that gives reasonable accommodation. The best they can do is to come to the boards that deal with variances and conditional uses and ask that Ms. Manske be allowed to keep her animals. They are here because of complaints from one specific landowner. This matter was heard by the Town of Ixonia a year ago, and there were numerous people supporting her. Ms. Manske has severe anxiety and that is why she was not here.

Attorney Strohbahn wanted to share what Department of Justice and the Department of Housing and Urban Development say about the Fair House Act and how it applies to zoning ordinances. What they say is if a person with a disability that substantially limits their activities that normal people would do, and the government knows about it or reasonably should know about it, and that person comes to the government to ask for reasonable accommodation, and that reasonable accommodation would afford that person the right to remain in their home and the equal right to use their property the way people without that disability would use their property, then the Board should grant reasonable accommodation. And, the Department of Justice and HUD say that if the Board does not agree with that, you are bumping up on a violation of the Fair Housing Act. Her clients did not want to bring litigation that they brought previously and they don't want to bring litigation again. But if they cannot keep the emotional support animals, they would have to sell their home. All the neighbors support her, all but one. She is asking for something that is not unreasonable for the community which is to have some small animals on the property. Asking the

Board if they were out there today, Attorney Strohhahn presumed they did not see the animals because they are mainly kept inside as she understood. Based on the submissions made and based on seeing the property, the Fair Housing Act does apply in this situation. And, the only means which Ms. Manske can have the Fair Housing Act protect her is to come to the Board to ask to grant something they wouldn't normally grant. They are not asking for a variance, but that is the only way to appear before the Board is to ask for a variance. She stated her client needs reasonable accommodation because she is disabled, and that is what she is asking for. For that reason, she asked the Board to grant the variance as a means by which the reasonable accommodation can be formally granted so she does not have to get rid of her goats, sell her property, and move away from home that she has made.

Weis noted they were not asking for a variance, but they really were. He stated their job today would be to look at whether the Board would grant a variance to make them exempt from the two acre minimum, and then they would go for a conditional use. Attorney Strohhahn noted they were scheduled for public hearing with the Planning & Zoning Committee next Thursday.

There were no questions or comments in favor of the petition. Opposed was Martine Koeppel, N8260 County Road E, Watertown. She presented a packet of information to the Board.

Ms. Koeppel stated that she lives directly across the street from the Manzke property, and is opposed to allowing farm animals in a residential/community zoned area. She asked the Board to deny this request for variance to allow farm animals on the Manzke property. She purchased her property 30 years ago, a residential/community zoned area, with the expectations according to Jefferson County Zoning laws, that there would not be a flock of geese and a herd of goats outside her bedroom window which she hears day and night. When there is movement on or near the Manske property, or when the geese are being fed, the geese honk and scream hysterically. Not only has Manske brought these farm animals onto her property illegally, she has refused to remove them even after Jefferson County Zoning has repeatedly asked her to do so. She continues to ignore the law by adding ducks to the property as recently as one month ago.

Before the Board gives the unprecedented variance and serious consideration, imagine having geese and goats and now ducks living outside your bedroom window, and then being met with hostility every time a reasonable complaint is made against them. If the Board grants this variance, she asked if she would be able to come to the Board with her complaints of the noise and smells of these farm animals, and could she contact the Board each day and night when this occurs. She also asked if Jefferson County would take the responsibility to ensure that the manure from these farm animals is taken off the property and there are no noise issues at any time day or night. She also asked how Jefferson County would regulate the number of farm animals on this less than one acre Manske property given that Manske continues to add more farm animals without permission consciously choosing to ignore the law. Who is going to want to purchase a home located next to an obnoxiously loud and smelly goat, geese and duck confinement area? There are potentially thousands of community-zoned, less than one acre lots located in Jefferson County like the Manskes. Are you now going to grant variances for farm animals to all these property owners who claim to have health issues simply because they ask for a variance? How will you deny them their variance if you allow Manske hers? If the Board grants this variance, you are changing the

Jefferson County Zoning Ordinances forever regarding farm animals on community-zoned land. Since a variance goes with the land, you will be creating spot zoning throughout Jefferson County.

To grant a variance in this situation, it must be proven that unnecessary hardship is present due the unique physical limitations of the property, and not due to the circumstances of the applicant. No one prevented Manske from researching the Zoning Ordinances on this property before she purchased it to find out whether farm animals are permitted on the property or not, and no one forced Manske to purchase a home in a residential/community zoned area where it is illegal to have farm animals. No one is stopping Manske from owning a farm or a home in an agricultural zoned area where it is legal to own farm animals. Therefore, there is no unnecessary hardship, and any claim that there is, this hardship is created by Manske herself. It is not due to the property. Manske is not being discriminated against. She is being asked to comply with the same zoning ordinances as everyone else.

In March 2018, the Town of Ixonia unanimously denied the variance request from Manske to allow farm animals on her property. In October 2018, the federal district court denied Manske her claim as well.

Ms. Koeppel read a statement from the presiding judge of the federal district court, Judge Crabb, which she made in her ruling to deny Manske an injunction against Jefferson County who was fining Manske \$10,000 for violating Jefferson County Zoning Ordinances. Judge Crabb states the evidence that Manske has submitted is insufficient to show that the accommodation she seeks is necessary for her to remain on her property. Manske has submitted letters from her doctor and therapist who both state the opinion that she benefits from owning and caring for goats and geese. Neither provider gives any particular detail or analysis about how the farm animals benefit Manske's specific disability, nor provides any reason why Manske's support animals must be farm animals rather than domesticated animals such as dogs and cats which are allow in her zoning classification. Judge Crabb continued that in fact, that Manske's doctors do not discuss her need for goats and geese in particular until March 30, 2018 after the Town of Ixonia voted to recommend denial of Manske's variance request.

Manske currently owns two dogs and two cats in addition to her many farm animals. In her opinion (Ms. Koeppel), the petitioner's request for a variance is simply a landowner realizing it was an ill-informed land purchase, and now wants to rewrite Jefferson County Zoning laws for her benefit at the expense of the surrounding landowners.

Ms. Koeppel ask the Board to please deny this request for variance, uphold Jefferson County Zoning laws, and return the surrounding landowner's right to quietly enjoy their property.

There was a town response in the file in which the Town Plan Commission and the Town Board denied the petitioner's request, and was read into the record by Weis. There has been no action taken on their conditional use permit request.

Attorney Strohbahn stated that Ms. Koeppel read statements from Judge Crabb. What occurred was a request for an injunction. Ms. Manske was asking that Jefferson County hold off on having

her animals removed. The court said the injunction was not appropriate at that time. In a later decision, the court said they needed to go back to Jefferson County for the relief she seeks before coming back. Attorney Strohbahn believed that Ms. Koeppel's statements that Ms. Manske was denied, was not ~~in~~correct nor is it the case that she is being fined \$10,000.

What she also wanted to also speak to is that there is the idea that somehow Ms. Manske was mistaken when she selected this property or that she is a landowner having second thoughts. When Ms. Manske purchased this property, she did not know the animals were going to help her. When she bought the property, and after she had been there, she found that the animals helped her. It is true that no one forced her to purchase this property. But, she also did not purchase the property with the intent to house farm animals. She found that the goats and geese helped her after she already lived there. Ignorance of the law is no excuse, and she should have looked to see what her options were before the animals were brought onto the property. This is not a circumstance where she intended to break the law or she intended to have a flock of geese or a herd of goats. The complaints of noise, smell and manure and hysterical honking from the geese is coming from one person with complaint. They are not asking to change the zoning laws. This is not a situation where there are thousands of lots zoned Community that will have herds of goats. This is a case where one person with a disability is asking for reasonable accommodation. The Board was at the property, and there is not a terrible smell of manure, or hysterically honking geese, but there is a young lady who needs help from her animals living not in a highly dense populated residential area asking to be allowed to keep the animals.

Zangl referenced Sec. 11.04(f)9, allowed uses in the Community Zone. Through a Conditional Use Permit, they can have farm animals with a parcel size of two acres in size not exceeding one animal unit per acre. The Manske property is .91 acre which is less than the two acre minimum requirement of which they are asking to keep some farm animals. Their options are to remove the animals or obtain the Variance to allow the animals on the parcel of less than two acres, and obtain a Conditional Use Permit. As Attorney Strohbahn stated, the Conditional Use Permit would be slated for the Planning & Zoning Committee this month if the variance is approved by the Board.

The surrounding land uses are Community Zoned with one to two lots being zoned A-3 with some farmland on the outskirts. The township denied them in 2018. Zangl asked Attorney Strohbahn what the request was for, was it for four goats and 2 geese. Attorney Strohbahn stated it was, but Ms. Manske would get rid of the geese. She has a prescription for the goats. If it meant she could keep her property, she would keep her four goats and would not add anymore. Zangl explained animal unit requirement breakdown. Roberts asked Zangl to clarify they could have an animal unit per acre. Zangl stated that was correct, and further explained.

Attorney Blair Ward, Jefferson County Corporation Counsel, spoke on behalf of the Jefferson County Zoning Department. He has had the opportunity to review the file and it is his opinion that the type of variance request appears to be a use variance. The fact sheet that the Board has which recites state law and county ordinances says that use variances may be granted where strict enforcement of the Zoning Ordinance would leave the property owner with no reasonable use of the property in the absence of the variance and will allow the spirit of the ordinance to be observed, substantial justice to be accomplished, and the public interest not violated. The

testimony today along with the record does not support a use variance being granted. It is difficult to say that Ms. Manske and Mr. Pernat do not have all reasonable use of their property unless they are allowed to have four goats and two geese. Based on that, he asked the Board to deny the variance request.

Weis noted it was his interpretation they were here to waiver from the two acre minimum required, and the Conditional Use was to be considered by a different committee. He asked Attorney Ward about the HUD requirements and how or if it applies. Attorney Ward stated it was through County Board. Weis noted that it should not be something that would enter into their decision today. Attorney Ward stated it should only be relevant in the context only if it can satisfy the requirements of state statutes in granting a variance. He stated that he does not see that as the case here today. Hoeft noted that it appears it should be handled above the Board and not be a factor in their decision. Attorney Ward agreed.

Attorney Strohhahn stated that she did not disagree with the Board's reaction for other people to decide, but stated they can decide and recognize federal law. The Fair Housing Act is important, it is there for a reason, and it supersedes state law and county ordinances. She asked the Board to consider the Fair Housing Act when deciding the variance.

Weis note that they are obligated to make their decision off the three tests, and asked Attorney Strohhahn to give input on how they meet those parameters. Attorney Strohhahn stated they cannot meet all of those because it is not a variance. They are not asking for a variance, but she was asking that they recognize federal law.

Roberts made note that there is a conflict with the number animals as stated in the hearing and in the file. Because the animals make her happy, she could consider some other place that would allow the animals and move. Attorney Strohhahn said that was the point, she shouldn't have to move. Roberts further commented.

Weis stated that it was important to note that the variance goes with the property, not the property owner.

There was a break before decisions 1:54-1:57 p.m.

11. Discussion and Possible Action on Above Petitions (see files & following pages)

12. Adjourn

Hoeft made motion, seconded by Roberts, motion carried 3-0 on a voice vote to adjourn @ 2:29 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.

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

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

FINDINGS OF FACT

PETITION NO.: 2019 V1644

HEARING DATE: 05-09-2019

APPLICANT: Corby Bergmann

PROPERTY OWNER: Corby D & Dana E Bergmann

PARCEL (PIN) #: 014-0614-0541-001 (N4690 County Road Q)

TOWNSHIP: Jefferson

INTENT OF PETITIONER: To allow for a reduced side yard setback (10 ft) in an A-3 zone

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.04(f)8 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:

-Rezoned to A-3 in 2004 (R2963A)

- Land Use Permit for new construction – home and detached garage in 2006 (Permit # 55866 & 55867)

-Sanitary permit #11851

-11.04 (f)8- Minimum Yards. Front – Section 11.07(d)2. Rear – 20 feet. Side – 20 feet each.

-Proposing detached garage addition 10 feet from the side property line

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 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 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 a garage would be allowed. Not allowing it at a reduced setback would be a hardship. He needs 3 vehicles plus adequate storage. The addition is not feasible with the existing setbacks. Going in on the left side is the simplest way to expand the garage.
2. THE HARDSHIP OR NO REASONABLE USE IS DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE the placement of the structure relative to the lot lines makes the most viable option. An addition to the back of the garage will not remove hardship. The other option to extend further back is likely to present difficulties in servicing the septic/mound.
3. THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE it does not change the access or visibility on CTH Q. The intent of the law is to have some space between the building and lot line, which will be present with the addition. Access to septic will not change. Are assured there will still be room to service the mound in the future.

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

DECISION: THE REQUESTED VARIANCE IS GRANTED.

MOTION: Hoeft SECOND: Weis VOTE: 3-0 (voice vote)

CONDITIONS OF APPROVAL/DENIAL:

SIGNED: _____ DATE: 05-09-2019
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.: 2019 V1645
HEARING DATE: 05-09-2019

PETITIONER: Sara Manzke/Joshua Pernat

PROPERTY OWNER: SAME

PARCEL IDENTIFICATION NO. (PIN): 012-0816-1931-009 (N8263 County Road E)

TOWNSHIP: Town of Ixonia

INTENT OF PETITIONER: To have farm animals on a Community zoned parcel of property smaller than 2.0 acres.

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.04(f) 9 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:

-Petitioners' parcel is zoned Community and 0.91 acres in size;

- The Jefferson County Zoning Ordinance, Section 11.04(f) 9, Conditional Uses, allows as a conditional use, "Raising/Keeping of farm animals provided that parcels are at least 2.0 acres and provided that the number of animals will not exceed one animal unit per 1.0 acre;"

-Petitioners' options are to remove the farm animals or obtain a variance to allow the animals on a parcel less than 2.0 acres in size and obtain a Conditional Use Permit from the Planning and Zoning Committee to allow the animals as a conditional use;

-Surrounding land uses are zoned C- Community and A-3 Agricultural Rural Residential (Pipersville);

-Town Decision – Recommendation to Deny the variance petition on March 18, 2018 and reaffirmed recommendation received on April 22, 2019.

FACTS OR OBSERVATIONS BASED ON SITE INSPECTIONS AND PRESENTED AT PUBLIC HEARING: Site inspection conducted to observe property layout and location on May 9, 2019. See official record which includes an audio recording of the hearing, written minutes, and exhibits which were considered by the Board of Adjustment in making its decision.

DECISION STANDARDS

- A. 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. Not applicable to this Petition.
- 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. The Board of Adjustment determined that a Use Variance is the type of variance being requested.

BASED ON THE FINDINGS OF FACT, WHICH INCLUDES THE OFFICIAL RECORD, THE BOARD CONCLUDES THAT:

1. STRICT COMPLIANCE WITH THE ZONING ORDINANCE WOULD NOT LEAVE THE PROPERTY OWNERS WITH NO REASONABLE USE OF THE PROPERTY (USE VARIANCE) BECAUSE: Denial of this variance petition will still allow the owners to use the property for its permitted purpose. The owners may live on the property and have animals according to the zoning ordinance.
2. HAVING NO REASONABLE USE IS NOT DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE: Note: Because the conclusion in number 1 above is that the Petitioners would have reasonable use of their property without a variance, there is no need for further analysis. However, the Board concludes that the Petition and Record do not present sufficient evidence that this property meets the criteria set forth in Wisconsin Statutes and the Jefferson County Zoning Ordinance which would allow granting a variance. Specifically, the property is 0.91 acres which allows multiple permitted uses and has no unique physical limitations which would limit its use. The Petitioners have not presented sufficient evidence that their circumstances rise to the level of requiring a variance.
3. THE VARIANCE WILL BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE: Note: Because the conclusions in numbers 1 and 2 above are that the Petitioners would have reasonable use of their property without a variance, and there are no unique physical limitations of the property, there is no need for further analysis. However, the Board recognizes that the County Zoning Ordinance allows farm animals in a Community zoned parcel if the parcel is at least two acres. The Board has considered the public interest, public protection, the proximity of neighbors, the noise and smell of having farm animals on a 0.91 acre parcel of property and finds that the applicable Jefferson County Zoning ordinance prohibiting farm animals on a 0.91 parcel of property in a C-Community zoned district is in the public interest.

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

DECISION: THE REQUESTED VARIANCE IS DENIED. None of the conditions have been met.

MOTION: Hoefl **SECOND:** Roberts **VOTE:** 3-0 (voice vote) **Hoefl – Yes; Roberts – Yes; Weis – Yes.**

SIGNED: _____ DATE: 05-09-2019
DALE WEIS, CHAIRPERSON

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