

**MINUTES
PUBLIC HEARING BEFORE THE
SAWYER COUNTY BOARD OF APPEAL
January 15, 2019**

Board of Appeals

Al Gerber, Chairman
Laura Rusk
Mark Olson
Steve Kelsey

Zoning Administration

Dale Olson, Zoning & Conservation Administrator
Kathy, Deputy Zoning & Conservation Administrator
Ward Winton, Counsel for Board of Appeals

PRELIMINARY MATTERS

- 1) Call to Order and Roll Call
Gerber called the Public Hearing before the Sawyer County Zoning Board of Appeals to order at 6:04 P.M. in the Sawyer County Courthouse, 10610 Main St., Hayward, Wisconsin. Roll is called finding present: Gerber, Olson, Rusk and Kelsey. Dobilas is absent. Ward Winton Council for Board of Appeals. Olson and Marks were present from the zoning office.
- 2) Statement of Board and Hearing Procedures.
Those wishing to speak will be afforded the opportunity provided they identify themselves. Gerber gave order of submitting files to BOA, taking testimony, and making a decision. He requests orderly procedure and gives appeal deadline.
- 3) Statement of Hearing Notice.
The Public Hearing Notice was published as a Class 2 Notice in accordance with Chapter 985 of the Wisconsin Statutes in the Sawyer County Record and Sawyer County Gazette.

Olson discusses Staff Reports with the Board and the Board decides that there should be a staff report with each case but show no recommendations by staff.

VARIANCE APPLICATIONS

1) Town of Bass Lake - #19-001 – John & Pamela Buss. Rockford Beach Lots 24 & 25 Block 6; Rockford Beach Lot 26 Block 6; S30, T40N R08W; Parcel #002-169-06-2400 and #002-169-06-2600; .828 Total Acres; Zoned Residential/Recreational Two (RR-2). Application is for: The construction of a 30' x 50' (with eaves) accessory building on a vacant lot. The proposed structure would meet all other setback requirements for an accessory building. Variance requested as: Section 4.26 (1) Sawyer County Zoning Ordinance would require prior granting of variance for any accessory structure on vacant property where the property owner did not want to obtain a conditional use permit to build a principal dwelling within the 3 year time frame. Dale Olson reads application, Town approval with conditions and opinion letters. Steve Kelsey, Board of appeals member recused himself from the case. Michael Kelsey, Attorney and agent for John & Pamela Buss speaks in approval of the application. Discussion by Committee and Dale Olson. Rebecca Roeker, Legal counsel for Sawyer County speaks of the previous zoning committee meeting that heard the conditional use application for Buss, clarifying her statements and that this should have been a variance all along. Committee discussion continues with Michael Kelsey, attorney for Buss. Dale Olson reads Town conditions again for clarification. Al Gerber asks Michael Kelsey, attorney for Buss if his clients agree with these conditions. Michael Kelsey, Attorney replies "Yes". Motion by Al Gerber to approve the application

with the conditions that Town proposed, second by Laura Rusk. Discussion by Board held. Marks Olson disagrees. Al Gerber states that the Town addressed the 3-step process. Dale Olson reads the 3-step process from the Township. Conditions of Township: 1. Maximum 16' height. 2. All buildings (cabin & privy) removed prior to building. 3. All setbacks met. 4. All parcels (Tax ID 1581, 1582 & 1665) tied together by deed. 5. May not be used as habitable living space. 6. Maximum of 1,500 sq. ft. garage including eaves. Two (2) to One (1) in favor. Motion carried. Findings of Fact: The variance would not be contrary to the public interest and would be in compliance with the spirit of the zoning ordinance because: 1. There would be no change in the use in the zone district. 2. It would not be damaging to the rights of others or property values.

APPEAL

1) Town of Hayward - #19-001 – Ryan & Ryan, Keith & Linda Ryan. Part of the NW1/4 of the SE1/4; S33, T41N, R09W; Parcel #010-941-33-4203; 3.69 Total Acres; Zoned Commercial One. Purpose of request is to have a Used Car Sales establishment. Denied at Zoning Committee on November 16, 2018. Dale Olson reads the Appeal and states that the packet has all information from previous CUP #18-022. Dale Olson plays the audio from the Ryan and Ryan case #18-022 from the Zoning Committee meeting.

8:03pm Break. Meeting called back to order at 8:08pm.

Al Gerber asks Ward Winton, attorney to refresh the Board on how the process should proceed. Discussion with Board and Ward Winton, attorney continues. Ward Winton, attorney reads the 8.4 section and part of 8.5 section from the Sawyer County BOA Bylaws per Mark Olson's request. Discussion continues. Al Gerber stated that no additional statements will be taken. Rebecca Roeker, legal Counsel for Sawyer County objects to Al Gerber's statement and that they should be heard with rebuttal and comment. Al Gerber says that he misstated and he will have no new testimony. Discussion continues with Board and Ward Winton, attorney. Rebecca Roeker, Counsel for Sawyer County speaks defending the Zoning Committee's decision and Act 67. Discussion held with Board and Roeker. Appellant Linda Ryan, owner speaks in favor of overturning the decision of the Zoning Committee. Ward Winton, attorney objects to statements that Linda Ryan has made of new information. Roeker has no rebuttal and encourages the Board to look at what is in front of them and which should represent what was in front of the Zoning Committee when they made their decision. Discussion continues with Board. Motion by Mark Olson that the decision to deny by the Zoning Committee be reversed and the CUP be approved with conditions for the following reasons: The Zoning Committee's action was arbitrary, oppressive, or unreasonable and represented its will not its judgement. The Zoning Committee improperly drew conclusions without "Substantial Evidence" for denial and accepted the personal preferences and speculations from: "Opinion Letters" read, testimony, and Committee members own speculation & personal preferences without consideration of Applicants testimony or Ordinance intent. The evidence shows the "Motion to Deny" with its Findings of Fact & Conclusions of Law was based on personal preference & speculation:

1. Damaging to the rights of others and property values.
 - a. Speculation: No substantial evidence presented to reach this conclusion only speculation...1.e. no evidence by appraiser comparables that this would reduce property values and no substantial evidence that it would damage the rights of others that have built near C-1 property where it, under ACT 67, is compatible with surrounding uses (i.e. build next to an airport can't complain about plane noise).
2. Cars from 8 room hotel means 8 vehicles, how many cars come in to be repaired in shop, the number of trucks & trailers from U-Haul seen 1 or 2 up to a lot more. If you add more cars for a used car lot, I think pretty obvious would be congested and eye sore.
 - a. Speculation: No substantial evidence presented. Although, numerous concerns raised were due to conditions of currently authorized uses (motel, car repair, U-Haul rental) and speculation that other things would get worse. Applicant denied all but having 4 tires he gave to someone

- who hasn't picked up. Current State law allows sale of 6 (12 with spouse) or 5 (10 with spouse) autos without a permit & is currently being done.
3. Highway or traffic access problems a possibility.
 - a. Speculation: No substantial evidence presented to support. There is a turn lane on Hwy 27 from both directions and in evidence neighboring business in the past supported gas station traffic.
 4. Certain it would create an objectionable view.
 - a. Speculation: No substantial evidence presented to support. Although, numerous concerns raised were due to conditions of currently authorized uses (motel, car repair, U-Haul rental) and speculation that other things would get worse. Applicant denied all but having 4 tires he gave to someone who hasn't picked up. Current State law allows sale of 6 (12 with spouse) or 5 (10 with spouse) autos without a permit & currently being done.
 5. Would not be compatible with surrounding uses in area.
 - a. Speculation: No substantial evidence presented to support. The strip along Hwy 27 is zoned "C-1", Current Act 67 denotes that if listed as a conditional use it is compatible with surrounding uses.
 6. All letters against in one fashion or another & the Town Board has denied – but don't know reason why.
 - a. Speculation: No substantial evidence presented to support. Are relying on neighbor's opposition. Neighbor's opposition without substantial evidence is not basis for denial.

And that the CUP be approved with the following Conditions:

1. CUP only valid for current applicant, non-transferrable.
2. The total number of vehicles owned but not licensed to Applicant limited to six vehicles at one time.
3. The total number of vehicles placed along Hwy 27 frontage for sale is limited to three at one time.
4. The placement of vehicles for sale placed along Hwy 27 frontage must comply with all road setbacks & roadway visual triangle.
5. Hours of operation Monday through Saturday 9am-5pm.
6. Signage must comply with sign ordinances.
7. No additional lighting.
8. Storage of all related accessory items (old tires, fluids, parts, etc.) be stored under roof (indoor).
9. Applicant must comply with all laws applicable to a used car establishment.

Finding of Fact:

1. The applicant is requesting a CUP for a "used car" establishment.
2. The "used car" establishment is a use authorized by conditional use in C-1.
3. The property is zoned C-1.
4. The property is currently being used as commercial and has for numerous years.
5. The property has adequate access to public roads: Hwy 27 and Park Road. Additionally, Hwy 27 has turn lanes both directions.

Conclusions of Law:

The BOAS finds & concludes the following regarding the Standards of Review for Conditional Use Permit. The BOA shall consider the effect of such grant on the health, general welfare, safety, and economic prosperity of the town and of the immediate area in which such use would be located.

- Is the proposed use permitted in the zone by conditional use permit?
Conclusion: The proposed use is permitted in the Commercial One (C-1) zone district by conditional use permit.
Findings: Sawyer County Zoning Ordinance 17.6(B) (2) provides opportunity for the proposed use as a conditional use permit: New and used cars sales establishments.
- What is the nature of the request? The applicant is requesting a conditional use permit for a used car sales establishment.
- Will the proposed use be injurious to other property in the immediate vicinity, negatively change the establishment character & quality of the area, cause possible hazardous, harmful, noxious, offensive, or nuisance effect resulting from noise, dust, smoke, odor, and other factors?

Conclusion: the proposed use will not be injurious to other property in the immediate vicinity and will not negatively change the establishment character & quality of the area, and will not cause possible hazardous, harmful, noxious, offensive, or nuisance effect resulting from noise, dust, smoke, odor, and other factors.

Findings: The BOA finds a used car sales establishment in this location with the conditions proposed would not be injurious to other properties in the vicinity nor will it negatively change the essential character of the area. The primary use of the surrounding properties along Hwy 27 is commercial and the proposed use is authorized and therefore, under Act 67, the use is compatible with the district.

- Will the proposed use negatively impact its physical attractiveness, existing topography, drainage features, erosion potential, vegetative cover, the prevention and control of water pollution, the location with respect to floodplains and floodways?

Conclusion: the proposed use will not negatively impact its physical attractiveness, existing topography, drainage features, erosion potential, vegetative cover, the prevention and control of water pollution, the location with respect to floodplains and floodways.

Findings: The BOA finds that with the conditions proposed there will not be issues with the proposed used car sales establishment in regards to its physical attractiveness, existing topography, drainage features, erosion potential, vegetative cover, the prevention and control of water pollution, the location with respect to floodplains and floodways.

- Does legal access to the subject property for the development exist or will it exist at the time of final plat?

Conclusion: Legal access exists for the subject property of Hwy 27 and Park Road.

Findings: Access exists to the current residence on the subject property. Additionally, Hwy 27 has turn lanes in both directions.

- Will essential services be provided to accommodate the use including, but not limited to, school facilities, police and fire protection, emergency medical services, irrigation facilities, and will the services be negatively impacted by such use or require additional public funding in order to meet the needs created by the requested use?

Conclusion: Essential services will not be provided and this application will not negatively impact existing services or require public funding.

Findings: The request for a used car sales establishment will not significantly affect essential services nor will it negatively impact them.

- Are the conditions imposed related to the purpose of the ordinance and based on substantial evidence, reasonable and to the extent practicable, measureable and may include conditions such as permit's duration, transfer, or renewal?

Conclusion: The conditions imposed are related to the purpose of the ordinance and based on substantial evidence, reasonable and to the extent practicable, measurable and may include conditions such as permit's duration, transfer, or renewal.

Findings: the conditions are based on the following substantial evidence:

- Current law allows limitation of CUP to applicant. #1
- Applicant is currently allowed to sell 6 vehicles (12 with spouse) under current State law without a CUP, and is doing so. Therefore limiting Applicant, due to property considerations (such as size, structures, other uses, etc.) after site visit, it would be appropriate to limit the: 1. Amount of autos owned but not titled to applicant on site and 2. Amount of and location of autos placed for sale. #2,3,4.
- Current law for auto sales establishment limits days of operations therefore would be appropriate to limit hours of operations to normal business hours. #5
- Current ordinance addresses signage, therefore would be appropriate to limit signage. #6
- Based on site visit, the site has adequate lighting for proposed use and therefore would be appropriate to limit lighting to the current two lights. #7

- Based on site visit, locations of neighbors, & location of storage areas the limiting of auto accessory items (tires, parts, etc.) to be under roof (indoor) would be appropriate as areas for storage and would be in sight line of neighbors. #8
- There are numerous laws and ordinances that are applicable to auto sales, therefore would be appropriate to make applicant subject to. #9

Roeker asks Mark Olson if he prepared the Findings & Conclusions all on his own. Mark Olson responded yes he did. Al Gerber stated that there is a Motion on the floor. Al Gerber questions the under roof condition with Board. Mark Olson modifies his motion to add, after under roof, or add a visual barrier 6'tall. Al Gerber seconds the Motion. Discussion held. Mark Olson speaks of the Zoning Committee cutting off the Applicant. All the speculations and no evidence. Al Gerber agrees with that and that very early on the Zoning Committee lost sight of the goal of the application. Mark Olson states that the owner will have to agree with the 9 conditions. Al Gerber: All those in favor of the Motion to reverse the decision of the Sawyer County Zoning Committee and to approve a conditional use permit with conditions presented. All in favor 4 to 0. Motion carried.

NEW BUSINESS

No new business.

ADJOURNMENT

Motion to adjourn by Rusk, second by Olson, all in favor. Motion carried.

Minutes prepared by Kathy Marks, Deputy Zoning & Conservation Administrator

For more information please see our website at sawycercountygov.org, meetings, Zoning BOA Audio.