

**PLAN COMMISSION MEETING**  
**Wednesday, April 5, 2017**

Members present: T. Oberhaus, L. Krause, E. Kranick, C. Dundon, K. Fitzgerald, P. Kanter

Member absent: G. Reich

Also present: T. Barbeau, *Town Engineer*, E. Larson, *Town Attorney*, P. Van Horn, *Supervisor*, B. Cooley, *Supervisor*, 9 citizens

**Public Hearing:**

Prior to the start of the scheduled Plan Commission meeting there was a public hearing in front of the Town Board and a quorum of the Plan Commission to solicit public input on a request from Ronald Bartsch, S12W29085 Summit Avenue, Waukesha, WI 53188 to amend the zoning map on his property from A-1 Agricultural to A-2 Rural Home District, to allow for the rebuilding of an accessory building.

Mr. Oberhaus called the Public Hearing to order at 7 p.m. The Clerk read the public hearing notice.

Engineer Barbeau explained that Mr. Bartsch is requesting a zoning amendment for two reasons. First, it will bring his land into conformance with the zoning district requested. The property is currently legal non-conforming due to his lot size of 6.71 acres being less than the required 40 acres of the A-1 district. Secondly, he would like to replace an accessory building that recently burned down. Due to the A-1 requirement of 95% open space, he is unable to rebuild the building. The amendment to the A-2 district has an 85% open space requirement which provides him the necessary hard surface for him to build the accessory building. Zoning on adjacent lands to the east and west, and on the north side of Summit Avenue is A-1 (lots also being legal, non-conforming), to the south is the Town of Genesee. Although the land would allow two 3-acre parcels on it, his frontage of 335 feet would not allow 2 lots to be created with frontage along Summit Avenue (A-2 requires 200 foot lot width - there is always the possibility of creating a 3-acre lot that does not abut a public road). The request is in conformance with the land use plan that allows 3 acre density in this area.

Mr. Bartsch was not present for the public hearing.

Scott Schroeder, S12W29512 Summit Ave.

Mr. Schroeder lives next to Mr. Bartsch on the south side of Hwy. 18. He has the same situation with the approximately 7 acres of land which he owns. He has been told he will need to rezone to A-2 in order to put in an accessory building. He has no problem with tonight's request. He wanted to see how the process works to change from A-1 to A-2.

**THE PUBLIC HEARING WAS CLOSED AT 7:06 P.M.**

**First order of business:** Call to Order and Pledge of Allegiance

Chairman Oberhaus called the meeting to order at 7:06 p.m. and led all in the Pledge of Allegiance.

**Second order of business:** Approval of the minutes of March 7, 2017.

**MOTION BY MR. KRAUSE, SECONDED BY MS. DUNDON, TO APPROVE THE MINUTES OF THE MARCH 7, 2017 MEETING.  
MOTION CARRIED.**

**Third order of business:** Communications (for discussion and possible action):

A. None

**Fourth Order of business:** Unfinished Business:

A. Town of Delafield Plan Commission,  
Re: Consideration and recommendation to the Town Board regarding amendments to Chapter 17.08 Signs of the Town Zoning Code (tabled 3/7/17).

**MOTION BY MS. DUNDON, SECONDED BY MR. KRAUSE, TO REMOVE THIS ITEM FROM THE TABLE.  
MR. KRANICK VOTED "NO".  
MOTION CARRIED.**

Attorney Larson stated he has made the requested changes, as well as one additional change on page 1 to make it more clear which signs need to comply with the chapter that do not need a permit. He explained the changes noted in the revised document. A definition of "double-faced" sign will be added on page 3.

Political signs are regulated by State Statute 12.04 and are addressed at the top of page 2. The Town will enforce the State Statutes.

**MOTION BY MR. KANTER, SECONDED BY MS. DUNDON, TO RECOMMEND TO THE TOWN BOARD THAT A PUBLIC HEARING BE SET FOR THE PURPOSE OF THE ADOPTION OF THE SIGN CODE AS DISCUSSED TONIGHT WITH THE ADDITION OF A DEFINITION OF A DOUBLE-FACED SIGN.  
MOTION CARRIED.**

**Fifth order of business:**

New Business:

- A. Dale Bergman, Hawks Haven, LLC., W300 N3317 Maple Avenue  
Re: Consideration and possible action on a request for Final Plat approval for Hawks Haven subdivision located at W300 N3317 Maple Avenue and W300 N3371 Maple Avenue.

Engineer Barbeau explained that in November of 2015, the Town Plan Commission approved the lot allocation and preliminary plat, and reviewed the deed restrictions for the development of 11 single family residential lots known as Hawks Haven. Mr. Bergman has now submitted the final plat for the Town's approval. The Town Code allows Mr. Bergman to gain approval of the final plat, but the Town will not record it until he either completes the public improvements or provides a letter of credit for 200% of the improvements. The plat has also been submitted to the State, County, and the Village of Hartland.

Plans have been submitted for the public improvements and Mr. Bergman anticipates constructing them as soon as possible in the spring. The Town Board will require approval of the Developer's Agreement and Letter of Credit prior to any construction starting on site. The subdivision will be served with public sanitary sewer through Hartland as part of the border agreement. Homes will be served by private wells. Stormwater will be treated on site and directed to the Village of Hartland Storm Sewer system.

The final plat is in substantial conformance to the preliminary plat. Technical comments from the reviewing agencies are pending. At this time, the Village of Hartland has not provided their extra-territorial plat approval since they are working out an agreement between the Town and Developer regarding a process for charging stormwater fees.

Engineer Barbeau recommended approval of the final plat as submitted (dated January 31, 2017) subject to:

1. Incorporation of any additional comments by the Plan Commission or Town Board
2. The developer satisfying all comments, conditions and concerns of the Town Engineer and all reviewing, objecting and approving bodies, which may include but not be limited to the State of Wisconsin Department of Administration per chapter 236, Wisconsin Statutes; the Waukesha County Parks and Land Use Department, and the Village of Hartland.
3. The Developer submitting to the Town Clerk and receiving approval as to form from the Town Attorney and as to the amount from the Town Engineer, a letter of credit or cash and subject to the Developer submitting to and receiving from the Town Board, Town Attorney and Town Engineer, approval of a Developer's Agreement for the improvements (including all public, private and site improvements), prior to commencing construction of any improvement, whether public or private, or site development or approval of the final Land Division.
4. The Developer submitting and receiving from the Town Attorney and Town Engineer, approval of the final draft of the deed restrictions, prior to commencing construction of any improvement, whether public or private, or site development, or approval of the final Land Division, whichever is earlier.
5. The Developer reimbursing the Town for all costs and expenses of any type that the Town incurs in connection with this development, including the cost for professional services incurred by the Town (including engineering, legal, planning and other consulting fees) for the review and preparation of required

documents or attendance at meetings or other related professional services for this application, as well as to enforce the conditions in this conditional approval due to violation of the conditions.

6. Any unpaid bills owed to the Town by the property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed the Town; shall be placed upon the tax roll for the subject property if not paid within thirty (30) days of billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Town, including possible cause for termination of the conditional approval.

Engineer Barbeau stated that comments are still needed from the County. The Village of Hartland has asked for an extension to work out how the Hawks Haven residents will be charged for stormwater services (similar to Foxwood). Any delinquency in payment will be added to the property tax bill. There is not yet an approval of the extraterritorial plat. In addition, Outlot 2 abuts a public right-of-way and extends into the cul-de-sac. The Outlot is to be private and maintained by the homeowners. There is no public access to Maple Ave. or any plan for a public pedestrian walkway along Maple Ave. or in this subdivision. Mowed paths may be included similar to what has been done in other subdivisions.

Mr. Bergman agreed to an extension to April 12, 2017 for approval of the plat by the Town Board and sent an email regarding the extension to Engineer Barbeau. The previous deadline was April 9, 2017. Mr. Bergman had no additional comments.

Engineer Barbeau stated that there are no issues with the deed restrictions. They are in conformance with the code. Hawks Haven will not allow poultry or fences. The homeowners will be responsible for policing that restriction.

**MOTION BY MR. FITZGERALD, SECONDED BY MR. KANTER, TO RECOMMEND TO THE TOWN BOARD THE APPROVAL OF THE FINAL PLAT FOR HAWKS HAVEN DATED JANUARY 31, 2017 SUBJECT TO THE CONDITIONS OUTLINED IN THE MEMO FROM THE TOWN ENGINEER.**  
**MOTION CARRIED.**

- B. Michael & Donna Southard, W302N898 Maple Avenue  
Re: Consideration and possible action on the approval of a Certified Survey Map to split their land into two (2) lots located at the southwest corner of Maple Avenue and Bryn Drive.

Engineer Barbeau stated that Mr. Southard is in the process of splitting property he owns south of Maple Avenue and west of Bryn Drive into two lots, one being the existing farmhouse along Maple Avenue and the other being the open lands southwest of the corner of Maple and Bryn. The purpose of the split is to allow his son to build a new home on the new lot. The land is zoned A-3 and requires a minimum of 2 acres. The existing farmhouse lot will be 2.07 acres and the larger lot will be 10.74 acres. Access to the new property will be off of Bryn Drive between the 90 degree turn in Bryn Drive and the intersection with Maple Avenue.

He is imposing an access restriction along Maple Ave. and partially along Bryn Dr. SEWRPC will be re-delineating the wetland boundary this spring and the new boundary and 75 ft. setback will be shown on the CSM.

He recommended approval of the Certified Survey Map subject to the following:

1. Resolution of any outstanding technical comments by the Town Engineer
2. Incorporating the updated wetland delineation onto the CSM and notation of a 75 foot setback.
3. Incorporation of any technical comments from the other reviewing agencies (City of Delafield, Waukesha County)
4. Applicant shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this CSM, including the cost of professional services for the review and preparation of required documents or attendance at meetings, as well as to enforce the conditions in this conditional approval due to a violation of these conditions.

Engineer Barbeau required that there be no access along Maple Ave. except for the existing driveway next to the existing farmhouse. During discussions in the mid-2000's about how all the lands may develop, a corridor was identified for a potential easement allowing access for potential additional lots south of Maple Ave. Because of the

location of the new home, access for those lots could not be to Bryn Dr. Therefore, Mr. Southard does not want to be restricted for future access to the south.

Mr. Southard explained the initial land split which he said was done 5-7 years ago. He stated that the 66 ft. easement was approved at that time. He will put the access easement on the CSM. It will only be used if there is a land split in the future. He agreed that the farm driveway could be added to that easement in the future, as well. He has no plans to do any driveway on that easement at this time.

Plan Commission members agreed that if the easement is used for access, the farmhouse driveway must be shifted to be part of that access. A deed restriction relating to this easement was discussed stating that if, in the future, a driveway gets put in along the property line, Lot 2 must connect their driveway to that new driveway within "x" months. Mr. Southard stated he will work with his Attorney on this subject.

It was noted that the lot numbers and related information on the CSM proposal are incorrect on page 1 under Notes. The zoning information also needs to be corrected.

**MOTION MADE BY MS. DUNDON, SECONDED BY MR. KANTER, TO TABLE THIS ITEM.**  
**MOTION CARRIED.**

- C. Ronald Bartsch, S12W29085 Summit Avenue  
Re: Consideration and possible action on a request for a zoning amendment on his 6.71 acre property located at S12 W29085 Summit Avenue from A-1 Agricultural to A-2 Rural Home District.

Mr. Bartsch arrived at the meeting.

Subject to comments at the public hearing, Engineer Barbeau recommended that the Plan Commission make a favorable recommendation to the Town Board to approve the requested zoning amendment for the reasons stated at the beginning of the Public Hearing.

**MOTION BY MR. KRAUSE, SECONDED BY MS. DUNDON, TO RECOMMEND TO THE TOWN BOARD THE APPROVAL OF THE REQUEST TO REZONE THE PROPERTY AT S12W29085 SUMMIT AVE. FROM A-1 TO A-2.**  
**MOTION CARRIED.**

- D. David and Kathy Boettcher, W329 S610 CTH C  
Re: Consideration and possible action on a request for a height increase for an accessory building to be built on the property at W329S610 CTH C.

Zoning Code Section 17.03 6. A. indicates that no permits shall be issued for any accessory building with an overall height greater than 20 feet, except as provided for in that section. Section 17.03 6. D. Increase Permitted, allows the maximum height of any building or structure to be increased by not more than 10 feet with the approval of the Plan Commission. The code requires that the building setback and offset be increased 1 foot for every foot that the building is over the overall height requirement. In the A-2 district, the setback requirement is 50 feet; the offset requirement is 30 feet. The structure will meet the required eave height.

The proposed accessory structure meets the Town Code in terms of size and setbacks/offsets. The code does not provide any specific criteria for approving height increase requests, so the Plan Commission should consider the overall purposes of the zoning code which includes protecting the public health, safety, morals, comfort, convenience and general welfare of the Town. Engineer Barbeau stated that the proposed height increase on this 8.19 acre parcel of land does not compromise the stated purposes and therefore, he is not opposed to the requested increase.

Mr. Boettcher explained that they moved into the home on the property last April. They provided the grading and building plans for tonight's meeting. He said the loft on the second level of the accessory building is intended for lumber storage. They thought the porch would be a nice place to sit and look at wildlife. It is not a livable space.

**MOTION BY MR. KANTER, SECONDED BY MS. DUNDON, TO APPROVE THE REQUEST FOR A HEIGHT INCREASE TO 28 FT. FOR AN ACCESSORY BUILDING TO BE BUILT AT W329S610 CTH C.**  
**MOTION CARRIED.**

- E. Doug and Betsy McColl, 388 River Bluff Circle, Oconomowoc, WI 53066  
Re: Consideration and possible action on a request for an exception to allow less than 20-foot separation between principal structures for a proposed house at N20 W28432 Beach Road.

Engineer Barbeau explained that the McColl's recently purchased the former Sindic property on Beach Road. Earlier this year one of the two residences on the property was removed by the Town since it was burned out and uninhabitable. The McColl's removed the other residence and a garage on the property resulting in a vacant lot. The floor plan for a new house on the lot was included in the information provided by the owner and showed a house width in the front (lake side) of 40 feet. The lot is 1.04 acres and has frontage on Beach Road of 100 feet and shore frontage of 55 feet. There are existing homes on the east and west side of their property. The land is located in the Waukesha County Shoreland Zoning district and is zoned R-3 residential. The land is also covered by the Delafield Shoreland Overlay District. As part of the updates to the County Shoreland Zoning ordinance, the County incorporated the Town's building separation requirements which requires that:

*"No Principal Building shall be hereafter erected, converted, relocated, enlarged, structurally altered or moved from one location to another so that the Building is closer than twenty (20) feet to any other Building on an adjoining Lot measured from the outward-most points of the two Buildings."*

Furthermore, the County Code states that, "the separation requirements shall be met unless excepted or modified by the Plan Commission per procedures and standards adopted by the Town of Delafield" (emphasis added).

Previously, the lot separation requirements were administered by the Town Board which has heard and acted on approximately five requests over the past two years and has granted the exception in all cases. The Plan Commission now has the responsibility to decide exceptions or modifications. Town Board decisions were based on three criteria which Engineer Barbeau used to prepare a decision sheet to assist in the evaluation of this request. For each criteria, the question is asked whether the request meets the criteria. If it meets all the criteria, then the request can be approved.

Regarding this property, Engineer Barbeau said that the lot width at the shore setback allowed by Waukesha County is approximately 60 ft. Since the buildings have been removed from this property, this is the first time the Town has been presented with a "clean slate" when being asked for an exception. The McColls plan to meet the required 10 ft. offset on the west side of the building. Based on a 40 ft. house with a 1 ft. overhang (leaving a 9 ft. offset from the east lot line), that results in a lot separation to the east of 13 ft. rather than the 20 ft. requirement. (The neighbor's building to the east is 5.5 ft. from the lot line but has a 1.5 ft. overhang.)

Mr. McColl explained the materials in the Plan Commission packet relating to his property and plans. He stated that they are trying to build a good home on the property which will benefit the property values in the area and be significantly better than the previous structures on the property. He said that the house that was taken down was out of compliance on the west whereas the proposed home is in compliance except regarding the overhang on the east. They would like the home to be situated on the lot at a similar distance from the lake as their neighbor's homes so that their view is of the lake rather than of their neighbor's homes in front of the lake. He said that if the property to the east was ever taken down, construction of a new home would be required by the Town to meet the 10 ft. offset requirement rather than being built where the current home is located.

Mr. Kanter stated that this is not a severe burden since a smaller home can be built or the desired house can be moved back on the property to meet the setback requirements. He believes this request should be denied since the McColls can build the home they want but not in the location on the lot where they want it to be built. He said that the previous building was substantially away from the neighboring building.

Mr. Fitzgerald said that if the neighbor's house was in compliance and, therefore, 10 ft. from the property line, the Plan Commission wouldn't be having this conversation. Engineer Barbeau clarified that if that were the case, the foundation could meet the distance requirement but the overhang wouldn't.

Plan Commission members were divided as to whether or not this qualifies as "exceptional circumstances". A vote regarding "Exceptional Circumstances" failed 3/3 with Mr. Fitzgerald, Mr. Krause and Mr. Kranick voting that it qualifies and Mr. Kanter, Ms. Dundon and Mr. Oberhaus voting that it does not qualify. Mr. Oberhaus explained that in the case of a tie, the vote fails. Since all three criteria must be met and the Plan Commission members decided this request did not meet the "Exceptional Circumstances" criteria, this request was denied.

Mr. Kranick stated he is disappointed since the precedent the Town Board has set is that similar exceptions have been granted in the past when an owner has taken a property in the Town and tried to better it. In his time on the Board and Plan Commission, he said the Town has never pushed to make people move their homes back and instead granted the exceptions when the owners were improving the property and the neighborhood.

Mr. Oberhaus explained that the McColls may come in with a new or revised proposal.

- F. RJ Manders, Lake Country Auto  
Re: Consideration and possible action on clarification the Plan of Operation/CUP to allow rental of U-Haul vehicles from the site.

Engineer Barbeau has been in contact with Mr. Manders since seeing that there are U-Haul trucks and trailers for rent at Lake Country Auto. Mr. Manders indicated that he would like to present his case that the rental of these vehicles is normal for an auto business such as his. The Conditional Use Permit does not specifically state that Mr. Manders is allowed to rent vehicles in his Plan of Operation. The Plan Commission can determine if a modification to the CUP is required to reflect the rental use on his site.

Mr. Manders explained his business and how the U-Haul business related, as well as the improvements he has made to the business location. He stated that the business is an automotive business and does not involve a lot of boats, ATVs, etc. He believes the CUP allows all of that, including trucks, and is sensitive to being in compliance and to being a good neighbor. A retired fire truck was purchased for marketing purposes for use in parades, safety events, etc. His plan is automotive business related. He was already selling, servicing and renting vehicles and thought U-Hauls would fit into the current Plan of Operation. He requested a copy of materials Plan Commission members referenced during their comments. He is concerned that his business meet the Town's expectations.

**MOTION BY MR. KANTER, SECONDED BY MR. KRANICK, TO TABLE THIS ITEM FOR ONE MONTH AND ASK MR. MANDERS TO RETURN WITH AN AMENDED PLAN OF OPERATION TO BE CONSIDERED AT THE NEXT PLAN COMMISSION MEETING.**  
**MOTION CARRIED.**

**Sixth order of business:** Discussion: None

**Seventh order of business:** Announcements and Planning Items:

- Next meeting - Tuesday, May 2, 2017
- Public hearing April 11 for the Reimer/Sheets property
- Annual meeting April 18

**Eighth order of business:** Adjournment

**MOTION BY MR. KRANICK, SECONDED BY MR. KRAUSE, TO ADJOURN AT 8:44 P.M. MOTION CARRIED.**

Respectfully submitted,

Lauren Beale  
Deputy Clerk/Treasurer

Minutes approved on: 5/2/2017