



"In the Spirit of Town Government"

**TOWN OF BUCHANAN, OUTAGAMIE COUNTY, WI
MINUTES OF BOARD OF APPEALS MEETING
WEDNESDAY, JULY 22, 2020 AT 6:00 P.M.
BUCHANAN TOWN HALL, N178 COUNTY RD N, APPLETON, WI 54915**

- 1) **CALL MEETING TO ORDER:** Meeting was called to order by Van Lanen at 6:00 p.m.
- 2) **PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was recited.
- 3) **ROLL CALL & VERIFY PUBLIC NOTICE:** Public notice verified. Board members present: Ebben, Jensema, Van Lanen, Walsh and Rottier. Also present was Town Administrator Gitter and Town Clerk Sieracki.
- 4) **APPROVE PREVIOUS MINUTES:**
 - a) July 22, 2019 Board of Adjustment Meeting Minutes.

Motion by Rottier/Ebben to approve the minutes from July 22, 2019. Motion passed unanimously by voice vote 5 to 0.

5) PUBLIC HEARING:

- a) Application for a Variance to Sec. Sec. 525-34A(4) – Accessory buildings or structures shall not be located closer to the front lot line than the principal structure. Applicant Dylan & Jenna Milis is requesting the variance for Parcel ID number 030 028504, W440 County Rd KK, Kaukauna. (#2020-01).

Van Lanen opened the public hearing at 6:02 p.m.

Van Lanen called for comments favoring application for Variance #2020-01 to Sec. 525-34A(4) – Accessory buildings or structures shall not be located closer to the front lot line than the principal structure. Applicant Dylan & Jenna Milis is requesting the variance for Parcel ID number 030 028504, W440 County Rd KK, Kaukauna. The following spoke favoring the Application for Variance:

- Dylan Milis, W440 County Rd KK, Kaukauna stated he would like to make a few comments on the plans they have going forward. The accessory structure will look identical to the house with stone in front and the same type of roof. He stated it needs to be in front of the house because of the grade of the land in the back of the house.

Van Lanen called for comments opposing application for Variance #2020-01 to Sec. 525-34A(4) – Accessory buildings or structures shall not be located closer to the front lot line than the principal structure. Applicant Dylan & Jenna Milis is requesting the variance for Parcel ID number 030 028504, W440 County Rd KK, Kaukauna. The following spoke opposing the Application for Variance:

- Marvin Biese, 7016 County D, Greenleaf asked if the structure would be in the front of the home since he owns the field behind the parcel.

Motion by Walsh/Ebben to close the public hearing at 6:05 p.m. Motion passed 5 to 0 by voice vote.

- b) Application for a Variance to Sec. 525-34C(3)(a) – Detached buildings or structures shall meet the following side and rear setbacks, AGD zoning: 25 feet. Applicant Craig Nushart, is requesting the variance for Parcel ID number 030 008806, N1045 Woodyly Rd, Kaukauna. (#2020-02).

Van Lanen opened the public hearing at 6:06 p.m.

Van Lanen called for comments favoring application for Variance #2020-02 to Sec. Sec. 525-34C(3)(a) – Detached buildings or structures shall meet the following side and rear setbacks, AGD zoning: 25 feet. Applicant Craig Nushart, is requesting the variance for Parcel ID number 030 008806, N1045 Woodyly Rd, Kaukauna. The following spoke favoring the Application for Variance:

- Craig Nushart, N1045 Woodyly Rd, Kaukauna stated the variance is for a garage they want to build on the back side of the property. He stated there was miscommunication on his part, 25' is needed and he has 18'. Would like consideration to go ahead with his garage.
- Ray Mankovecky, N1037 Woodyly Rd, Kaukauna stated he lives next door and has no opposition to the structure.

Van Lanen called for comments opposing application for Variance #2020-02 to Sec. Sec. 525-34C(3)(a) – Detached buildings or structures shall meet the following side and rear setbacks, AGD zoning: 25 feet. Applicant Craig Nushart, is requesting the variance for Parcel ID number 030 008806, N1045 Woodyly Rd, Kaukauna. No one spoke opposing the Application for Variance.

Motion by Walsh/Jensema to close the public hearing at 6:08 p.m. Motion passed 5 to 0 by voice vote.

6) APPLICATIONS FOR APPROVAL OR DENIAL:

- a) Application for a Variance to Sec. Sec. 525-34A(4) – Accessory buildings or structures shall not be located closer to the front lot line than the principal structure. Applicant Dylan & Jenna Milis is requesting the variance to add a 1500 square foot accessory structure for Parcel ID number 030 028504, W440 County Rd KK, Kaukauna. – For Approval/Denial.

The Board discussed the application and asked the applicant questions.

Van Lanen asked about the placement of the home and the well.

Van Lanen also had several questions about the site plan. The site plan submitted with the application showed a width of 155', the one submitted with the drainage plan showed 270' and the CSM showed 276'. Mr. Milis did agree that it is at least 270'.

Van Lanen stated there are several discrepancies between the CAD drawing and the scaled drawing. Van Lanen stated there is enough room to get a driveway between the well and the structure to place a driveway to put the accessory structure in the back. Mr. Milis stated that the grade in the back is the issue. Van Lanen stated he was at the site and feels the grade is relatively flat.

Van Lanen stated that there is ample room to build the accessory structure behind the principal structure. Mr. Milis disagreed and felt the only spot to place the accessory structure was in the front yard.

Mr. Milis stated that the hardship is that the Ordinance isn't allowing him to place the accessory structure where he wants to place it.

Walsh stated that there is enough room and the building could go in the back and he doesn't see the hardship.

Motion by Walsh/Van Lanen to deny a variance for Dylan and Jenna Milis, located at W440 County Rd KK, Kaukauna, the accessory structure could be built to code with the accessory structure being place behind the primary structure, no hardship is shown with this variance.

Motion carried 5 to 0 by voice vote.

- b) Application for a Variance to 525-34C(3)(a) – Detached buildings or structures shall meet the following side and rear setbacks, AGD zoning: 25 feet. Applicant Craig Nushart, is requesting the variance for Parcel ID number 030 008806, N1045 Woodyly Rd, Kaukauna. – For Approval/Denial.

Craig Nushart, N1045 Woodyly Rd, Kaukauna, WI 54130, is requesting a variance to add a 936 square foot accessory structure to parcel #03008806. The variance, as requested by the applicant, is to allow for the placement of the accessory structure to be located closer than the 25-foot required setback than what the current parcel's zoning allows.

Ebben asked if the 2018 driveway permit had been issued through the Town of Buchanan. Van Lanen stated it was.

Mr. Nushart stated that Cedar approved the culvert and driveway permit. He was told that he did not need a permit for the concrete and he didn't plan on building a structure right away. Mr. Nushart stated that he did apply for the building permit. Staff stated that he started building without approval. The building inspector stopped by and left a notice to stop building.

Van Lanen stated that the culvert permit was approved on May 1, 2018 and asked Mr. Nushart when he poured the slab. Mr. Nushart stated it wasn't until the fall of 2018. He stated several times that he was told if he puts in just a slab he doesn't need a permit but as soon as he starts to build he would need a permit.

Van Lanen stated he has a problem with someone starting a project without a building permit. Van Lanen asked Mr. Nushart's neighbor Ray about the positioning on the garage. Ray stated that since it has been resurveyed it has now caused him a hardship with access.

Mr. Nushart was asked if he considered adding 7' of concrete to the other side of the slab. The concrete is fine, the structure just needs to be 25' off the lot line. Mr. Nushart stated they did consider it, however it really drops off on the right side and there is a LP tank that creates an issue.

Walsh suggested adjusting the lot line in the area of the slab to make the problem go away.

Mr. Nushart stated he was unaware of the permits that he needed.

Jensema asked what state the project was in. Mr. Nushart stated the driveway was in and the four walls are up.

Van Lanen stated that he has concerns about setting precedent for someone needing a variance.

Rottier stated he doesn't have a problem with the variance, he stated the precedent is important but it isn't the law.

Van Lanen stated that he somewhat agrees with Rottier however something needs to be imposed. Van Lanen asked Mr. Nushart if he would agree to pay double the fee as a penalty if the variance was approved. Mr. Nushart agreed.

Walsh stated that in some ways he doesn't have a problem with this, however if the process would have been followed they would not be here. Walsh stated that he cannot approve the variance.

Ebben stated that the burden of proof and responsibility needs to fall on the applicant. When you make an application for a building permit you need to know the setbacks. Then to start the project before the permit is approved just compounds the problem. He feels bad that there are four walls standing but that doesn't excuse the fact that the building permit wasn't issued. Had the process been followed this would have been identified ahead of time.

The Board of Appeals continued to discuss the Ordinance, the setbacks, the driveway/culvert permit. and Cedar Corp.

Motion by Rottier/Jensema to approve the variance for Craig Nushart provide the Town impose a double fee penalty. This is concession by the applicant that he did start without a permit.

Before the vote Walsh asked "what is the hardship?" Chairperson Van Lanen reviewed the charge of the Board of Appeals. Walsh stated "this is self-imposed."

Ebben – Nay, Rottier – Aye, Van Lanen – Aye, Jensema – Aye, Walsh – Nay.

Motion carried 3 to 2 by roll call vote.

7) NEW BUSINESS: NONE

8) OLD BUSINESS: NONE

9) ADJOURN: *Motion by Ebben/Rottier to adjourn at 7:14 p.m. Motion carried 5 to 0 by voice vote.*

Cynthia Sieracki, Clerk
Drafted: July 24, 2020

Motion to approve: Ebben/Jensema Date: 09/16/2020 Carried: 5 to 0.

7/22/2020 Board of Appeals Minutes