DODGE COUNTY BOARD OF ADJUSTMENT MINUTES October 19, 2017

The Dodge County Board of Adjustment met on this 19th day of October at 7:00 p.m., on the 1st Floor of the Administration Building, in Rooms 1H and 1I, located at 127 East Oak Street, Juneau, Wisconsin.

Chairman William Nass called the meeting of the Dodge County Board of Adjustment to order.

Roll Call was taken.

Members present were as follows: Larry Dogs, Harold Hicks, William Nass, Jon Schoenike and Sharon Schumann. Members excused were Edward Premo (Alternate 1).

Chairman Nass noted that a quorum is present.

Joe Giebel of the Land Resources and Parks Department was in attendance at the request of the chairman:

The Chairman asked the staff to confirm compliance with the open meeting law and public hearing notice requirements for the hearings before the Board.

Mr. Giebel indicated that the meeting was properly noticed in accord with the open meeting law and noted that each of the public hearings listed on the agenda received a class two notice and the mailing notices were sent in accord with the statute and code requirements.

The agenda was reviewed by the Board.

The minutes from the October 12, 2017 meeting were reviewed by the Board.

Motion by Jon Schoenike to approve the minutes as written.

Second by Sharon Schumann Vote: 5-0 Motion carried.

The staff explained the hearing procedures to those in attendance;

PUBLIC HEARING

Dennis Robus - Request for a variance to the terms of the Sanitary Ordinance to allow the installation of a holding tank on this site where there are other types of private sewage systems that can be utilized on this property. The site is located in part of the NW ¼ of the NE ¼, Section 27, Town of Lebanon, the site address being W3801 County Road O.

Motion by Jon Schoenike to allow the installation of a holding tank on this site where there are other types of private sewage systems that can be utilized on this property subject to the following conditions:

- 1. The owner shall contract with a licensed plumber to design and obtain the required sanitary permit approvals for the proposed holding tank prior to the installation of the holding tank.
- 2. The owner shall, pursuant to s. SPS 383.54(2) have a water meter installed. The water meter shall be installed by a plumber authorized by the State to conduct such installations, with said installation complying with State regulations and manufacturers specifications. The owner shall be financially responsible for the purchase, installation, maintenance and

- repair of the water meter, and agrees to allow the County to enter the above described property, as needed, to read and/or inspect the water meter.
- 3. The owner, except as provided by s. 281.48 (d), Stats, shall contract with a person who is licensed under Ch. NR 113, Wis. Adm. Code, to have the holding tank serviced and to file a copy of the contract or the owner's registration with the County. The owner further shall file a copy of any changes to the servicing contract, or a copy of a new servicing contract, with the County within 10 days from the date of change to the servicing contract.
- 4. The owner shall contract with a person licensed under Ch. NR 113, Wis. Adm. Code, who shall submit to the County on a semiannual basis a report in accordance with SPS 383.55 Wis. Adm. Code, for the servicing of the holding tank. In the case of licensing under s. 281.48(d) Stats, the owner shall submit the report to the County. The County may enter upon the property to investigate the condition of the holding tank when pumping reports and/or meter readings may indicate that the holding tank is not being properly maintained.
- 5. These conditions shall remain in effect until the County certifies that the property is served by either a municipal sewer or a POWTS system that complies with SPS 383, Wis. Adm. Code.

Second by Sharon Schumann Vote: 5-0 Motion carried.

PUBLIC HEARING

Krieser Construction, agent for Mike and Stacy Akin - Request for a variance to the terms of the highway setback provisions of the Dodge County Land Use Code to allow the construction of a new residence on this site where said residence will be located approximately 34 feet within the required setback from Del Bern Acres. The site is located in part of the SE ½ of the NE ¼, Section 14, T13N, R13E, Town of Fox Lake, the site address being W10187 Del Bern Acres.

Motion by Harold Hicks to approve the variance request to allow the construction of a new residence on this site where said residence will be located approximately 34 feet within the required setback from Del Bern Acres (11 feet from road right-of-way) as proposed.

Second by Sharon Schumann	Vote:	5-0	Motion carried.	
Motion by Larry Dogs to adjourn the	meetin	g.		
Second by Jon Schoenike				
Motion carried. 7:45 PM				
Respectfully submitted,				
Larry Dogs, Secretary				

Disclaimer: The above minutes may be approved, amended or corrected at the next committee meeting.

Land Resources and Parks Department Staff Report

County Variance Application / Petition # 2017-0801 County Minor Land Division Application # 2017-0799

Filing Date: October 3, 2017 Hearing Date: November 9, 2017

Applicant / Owner:

Ken and Donna Zimmerman N9481 Spring Road Fox Lake, WI 53933

Location:

The appellant is the owner of the following described property which is the subject of the appeal:

PIN# 018-1213-0241-000

Property Location: Part of the E ½ of the SE ¼ and part of the SW ¼ of the SE ¼, Section 2, T12N, R14E, Town of Fox Lake, the site address being N9481 Spring Road.

County Jurisdiction

The County has land division jurisdiction over this site as the subdivision provisions of the County Land Use Code apply to all land divisions in Dodge County except those lands within the incorporated municipalities.

Review Criteria

Subsections 2.3.12.A through 2.3.12.G of the Dodge County Land Use Code details procedural matters and the approval criteria for the variance process. The Board shall hold a public hearing on each variance application, and following the public hearing, act to approve, approve with conditions, or deny the variance based upon the approval criteria of Section 2.3.12.E.

Appellants Request

An application for a County Minor Land Division Letter of Intent was submitted with a request to create an approximate 8-acre lot and an approximate 56.25-acre lot from an existing approximate 64.25-acre lot. The proposed 8-acre lot will contain an existing residence and farm buildings which are intended for residential and agricultural use. The remaining 56+acre lot is intended for residential and agricultural use.

This application was denied by the County Land Use Administrator for the following reason:

Section 7.3.5 of the County Code requires all lots to front or abut on a public street for a distance of at least 20 feet. Based on the information submitted with the application, the proposed lots contain land along the west side of the Wisconsin & Southern Railroad which does not abut a public road, and therefore is prohibited by the Code.

The appellant is requesting an area variance to Section 7.3.5 of the code;

Features

The features of the proposed construction and property that relate to the granting or denial of the appeal are as follows:

The County has Zoning Jurisdiction over this site as the Town of Fox Lake has adopted the County's Land Use Code. The site is located within the A-2 General Agricultural Zoning District.

The proposed 8-acre lot is not located within the v	Vetiand or Floodplain Districts.
The topography of the site is rolling with slopes ra	anging from 0 to 6%;
Land Use, Site: Residential and agricultural.	
Land Use, Area: Agricultural and residential.	
Designated Archaeological Site: Yes	No 🗵

The proposal conforms to the County Density Standards.

- The parent parcel contains 64.25 acres;
- 2 additional lots would be allowed from the parent parcel under the County Code;

The appellant's lot is considered by the County as a legal existing, nonconforming lot as the appellant's property contains land located along the west side of the Wisconsin and Southern Railroad which does not abut a public road. The lot located along the west side of the railroad was created prior to the adoption of the Subdivision provisions of the Code by the County. Access to the land along the west side of the railroad is gained by a driveway which is located on property owned by the appellant along the east side of the railroad which has access onto Spring Road. The appellant has submitted a copy of a license agreement between the appellant and the Wisconsin & Southern Railroad (#389004E) that allows the use of a private grade crossing across the railroad's property to allow access to Spring Road for the existing and proposed lots.

Purpose Statement

The purpose of the subdivision provisions of the Land Use Code is to regulate and control the division of land in Dodge County in order to promote the public health, safety, morals, prosperity, aesthetics and general welfare of the County. It is the specific intent of this subdivision provisions to regulate the division of land so as to obtain the wise use, conservation, protection, and proper development of the County's soil, water, wetland, woodland, and wildlife resources and attain a proper adjustment of land use and development to the supporting and sustaining natural resource base.

Town of Fox Lake Recommendation

• The Town Board unanimously approved a motion to support the proposed land division and to support the issuance of a variance to permit the use of one driveway for both parcels.

Staff Advisory:

This staff advisory is only advice to the Dodge County Board of Adjustment. The Board may or may not consider the advice of the staff and decision making authority is vested in the Board only.

The staff believes that the appellant is requesting an area variance to Section 7.3.5 of the code of the code;

The staff points out that the Board does not have summary power to ignore ordinance provisions or objectives. The burden also falls on the appellant to convincingly demonstrate to this Board that a literal enforcement of the Land Use Code regulations would result in an unnecessary hardship, that the hardship is due to special conditions unique to the property and if granted, the variance would not be contrary to the public interest.

The staff points out that the parcel was created prior to the adoption of the County subdivision provisions of the Code and the appellant has limited options to create a lot at this location that would abut a public road unless the railroad is abandoned. The staff also points out that the appellant has provided a copy of an agreement with the Wisconsin & Southern Railroad to allow a private grade crossing at this location which provides access onto Spring Road for the proposed lots. It is the staff's position that the Code may be unnecessarily burdensome in this case and creates a hardship on the appellant because the existing road access issue limits the ability of the appellant to subdivide his property.

The staff has concerns that emergency vehicles will not have access to the residences or the parcel if the railroad blocks the driveway which could result in harm to the public and to the owners/occupants of the residences along the west side of the railroad. The creation of a second lot at this location along the west side of the railroad has the potential to increase the potential harm to the public and to the appellants if they construct a second home on the 56+acre lot.

If the Board can make the findings necessary in order to grant a variance in this case, the staff recommends the following conditions of approval and waivers:

- 1. A 1-lot certified survey map is submitted and approved for the 8-acre lot;
- 2. An access easement/agreement from the Wisconsin & Southern Railroad to allow a private grade crossing for these lots shall be obtained prior to the approval of the CSM;
- 3. Approval is obtained from the Town of Fox Lake prior to the approval of the CSM;
- 4. The following highway/road setback line shall be shown on the certified survey map;
 - Town Road: 75 feet from the centerline or 42 feet from the road right-of-way, whichever distance is greater:
- 5. The lands located on the west side of the railroad tracks shall not be sold separately from the land along the east side of the railroad tracks.
- 6. Soil tests are required for the 54+acre lot and the lot shall contain sufficient soil to accommodate an approved method of sanitary sewage disposal other than a holding tank in accord with Subsection 7.7.2.A.1;
- 7. The site address (if one is already assigned to the lot) shall be shown on the certified survey map;

Waivers:

- Lot line angle requirements for both lots.
- Soil tests for the 8-acre lot.
- Surveying of the 54+acre lot.

Dodge County Board of Adjustment Decision

County Variance Application / Petition # 2017-0801 County Minor Land Division Application # 2017-0799

Filing Date: October 3, 2017 Hearing Date: November 9, 2017

Applicant / Owner:

Ken and Donna Zimmerman N9481 Spring Road Fox Lake, WI 53933

Location:

The appellant is the owner of the following described property which is the subject of the appeal:

PIN# 018-1213-0241-000

Property Location: Part of the E ½ of the SE ¼ and part of the SW ¼ of the SE ¼, Section 2, T12N, R14E, Town of Fox Lake, the site address being N9481 Spring Road.

County Jurisdiction

The County has land division jurisdiction over this site as the subdivision provisions of the County Land Use Code apply to all land divisions in Dodge County except those lands within the incorporated municipalities.

Appellants Request

An application for a County Minor Land Division Letter of Intent was submitted with a request to create an approximate 8-acre lot and an approximate 56.25-acre lot from an existing approximate 64.25-acre lot. The proposed 8-acre lot will contain an existing residence and farm buildings which are intended for residential and agricultural use. The remaining 56+acre lot is intended for residential and agricultural use.

This application was denied by the County Land Use Administrator for the following reason:

Section 7.3.5 of the County Code requires all lots to front or abut on a public street for a distance of at least 20 feet. Based on the information submitted with the application, the proposed lots contain land along the west side of the Wisconsin & Southern Railroad which does not abut a public road, and therefore is prohibited by the Code.

The appellant is requesting an area variance to Section 7.3.5 of the code;

CONCLUSIONS OF LAW

Based on the facts presented in the application and at the public hearing the Board concludes that:

The appellants	ne appellants request to Subsection 7.3.5 of the Code is an "area" variance.		
(Yes / No)_			
-			

(. 55 / 140		
the lot ac	ccess provisions of the Code unnecessarily burdensome in this case, the	ereby creati
l ship? (Yes / No		
(165/140	Explain:	
	t harmful in any way to the public's interests? (Yes/No)	
Explai		
s the Boa		
es the Boa		
es the Boa	ard have sufficient information to make a decision on this request? (Yes/No)	
es the Boa	ard have sufficient information to make a decision on this request? (Yes/No)	
	ard have sufficient information to make a decision on this request? (Yes/No) ard believe that the variance request meets all of the criteria in Section 2	
es the Boa Code?	ard have sufficient information to make a decision on this request? (Yes/No) ard believe that the variance request meets all of the criteria in Section 2	
es the Boa Code?	ard have sufficient information to make a decision on this request? (Yes/No) ard believe that the variance request meets all of the criteria in Section 2	
es the Boa Code?	ard have sufficient information to make a decision on this request? (Yes/No) ard believe that the variance request meets all of the criteria in Section 2	

Is there a physical limitation that is unique to this property that prevents the appellant from complying

If the Board can make the findings necessary in order to grant the variance request in this case, are any conditions of approval necessary in this case to mitigate any potential adverse impacts that result from this proposed development project?

- 1. A 1-lot certified survey map is submitted and approved for the 8-acre lot;
- 2. An access easement/agreement from the Wisconsin & Southern Railroad to allow a private grade crossing for these lots shall be obtained prior to the approval of the CSM;
- 3. Approval is obtained from the Town of Fox Lake prior to the approval of the CSM;
- 4. The following highway/road setback line shall be shown on the certified survey map;
 - Town Road: 75 feet from the centerline or 42 feet from the road right-of-way, whichever distance is greater;

- 5. The lands located on the west side of the railroad tracks shall not be sold separately from the land along the east side of the railroad tracks.
- 6. Soil tests are required for the 54+acre lot and the lot shall contain sufficient soil to accommodate an approved method of sanitary sewage disposal other than a holding tank in accord with Subsection 7.7.2.A.1;
- 7. The site address (if one is already assigned to the lot) shall be shown on the certified survey map;

Waivers:

Board.

any of the conditions imposed.

- Lot line angle requirements for both lots.
- Soil tests for the 8-acre lot.
- Surveying of the 54+acre lot.

Motion byto (approve / deny) the variance requested based upon the previously mentioned findings and conditions.
Motion second
Vote Harold Hicks Yes No Abstain Not Present Jon Schoenike Yes No Abstain Not Present Sharon Schumann Yes No Abstain Not Present Larry Dogs Yes No Abstain Not Present Ed Premo (1st Alternate) Yes No Abstain Not Present Vacant (2nd Alternate) Yes No Abstain Not Present William Nass Yes No Abstain Not Present
Motion (Carried / Denied)
ORDER AND DETERMINATION On the basis of the above findings of fact, conclusions of law and the record in this matter the board
Granted the variance request as proposed;
Granted the variance request by the appellant subject to the conditions listed above;
Denied the variance request as proposed;
The Land Use Administrator is directed to issue a land use permit incorporating the decision o this Board.
Expiration of Approval Any order issued by the Board requiring a Zoning official to issue a permit shall become void after one year unless the applicant or appellant shall have filed an application for such permit

with the Zoning official within such time, provided, that the time may be extended when so specified by the

Revocation. This order may be revoked by the Board after notice and opportunity to be heard for violation of

<u>Appeals</u>. This decision may be appealed by a person aggrieved by this decision or by any officer, department, board or bureau of the municipality by filing an action in certiorari in the circuit court for this county within 30 days after the date of filing of this decision. The municipality assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

Signed		Attest		
	Chairperson	/oo	Secretary	
Dated:		 2.		
Filed:				

Dodge County Board of Adjustment



DODGE COUNTY LAND RESOURCES

AND PARKS DEPARTMENT

127 E. Oak Street • Juneau, WI 53039

PHONE: (920) 386-3700 • FAX: (920) 386-3979

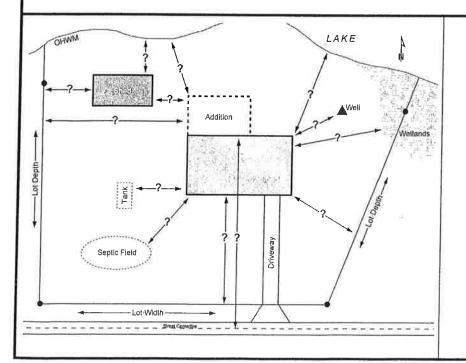
E-MAIL: landresources@co.dodge.wi.us

τ This Area For Office Use Only τ		
Activity No.	Issue Date:	
170801		
Application Date:	Receipt # 738	

Variance Application Application Fee: \$450 (After the Fact Application Fee: \$900)

Application Fee. \$450 (After the Fact Application Fee: \$900)	
Names and Mailing Addresses	Property Description
Applicant (Agent)	Parcel Identification Number (PIN)
Ren and Donna Zimmer mas	018-1213-0241-000
Wangl spring Road	FOX LAKE
City • State • Zip Code	1/4 1/4 Section T N R E
Fox Lake W.1 58933	
Property Owner (If different from applicant)	Subdivision or CSM#
Street Address	Site Address
City • State • Zip Code	N9481 Sfring Road ForLake WI 53933 Is this property connected to public sewer? ☐ Yes ☑ No
ony - orace - zip oode	is this property connected to public sewer: res no
Present property use:	
Farm	
List any prior variances that have been granted or denied for this pro	pperty:
None	
16	
Describe all nonconforming structures and uses on this property:	
Йоня	
List the terms of the Land Use Code for which you are requesting a	variance (section # and code provision requirements):
Sections 12 DEFINITIONS LOT	No Public Roan
	70 0700, 4 740, 400
Variance Requested:	
TO CREATE A PARCOL WALLA D	ons Ner Haur Pusce
RUAS FRONTAGE.	
AND THE PROPERTY OF THE PROPER	
Address the following variance criteria described in the applicat	
What unnecessary hardship is present that prohibits your complian	
Rallroad tracks Consta N	EN PARCIE WITH NO OPTICAL
TO ODITALA ROMA FRONTAGE	

4						
		nis property prevent you				
RAIL	Lina	GRAZHATES	Proparty	Unidar	Commens	Ow HAR -
Will denial of unnecessaril	of the variance ly burdensome?	request prevent you fro ? Why?	om using this property	for a permitted pur	rpose or render confor	mity with the Code
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Ann	<u>ل</u> دون سا	MAPHELD	To Work	12 x 1 5 7 1 N G	FARA AL	14
Dwa	CINC		- 11. 380		6	#
		e public or neighbors be a				
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on more of the later			CERTIFICAT	Electric Market No. 16.		The state of the state of
submitted her Land Resourd property for p	reto are true an ces and Parks I	owner and/or authorize ad correct to the best of a Department and member aining information pertination pertination (420)	my knowledge and bel ers of the Dodge Count cont to my application/o	ief and I hereby auth ty Board of Adjustme	horize members of the ent to enter the above	Dodge County described
Daytime Cor	itact Number	(470) /03				
		SITE PI	LANS AND BUIL	DING PLANS	Company of the Compan	
All applic	cations must be	accompanied by a site	plan. Figure 1 below i	s an example of an	acceptable plan	



Site plans must be drawn to scale and/or all dimensions given, such as:
Location and dimensions of the project
Location and dimensions of existing structures
Dimensions of the property
Location and names of abutting roads, lakes &
Streams
North arrow

Distances must be shown from the project to:

Owner's name

- Lot lines
- Road right-of-ways & centerline
- Water bodies Ordinary High Water Mark (O.H.W.M.)
- Septic & holding tanks
- Soil absorption systems
- Nearby structures (within 50 feet)



Dodge County Land Resources and Parks Department

127 East Oak Street · Juneau, WI 53039-1329 PHONE: (920) 386-3700 · FAX: (920) 386-3979 EMAIL: landresources@co.dodge.wi.us

October 9, 2017

Ken and Donna Zimmerman N9481 Spring Road Fox Lake, WI 53933

RE: Minor Land Division Letter of Intent

PIN# 018-1213-0241-000

Property Location: Part of the E ½ of the SE ¼ and part of the SW ¼ of the SE ¼, Section 2, T12N, R14E, Town of Fox Lake, the site address being N9481 Spring Road.

Dear Mr. and Mrs. Zimmerman:

Your application for a Minor Land Division to create an approximate 8-acre lot on the property described above is hereby denied for failure to comply with the following sections of the Dodge County Land Use Code:

Section 7.3.5 of the County Code requires all lots to front or abut on a public street for a distance of at least 20 feet. Based on the information submitted with the application, the proposed lots contain land along the west side of the Wisconsin & Southern Railroad which does not abut a public road, and therefore is prohibited by the Code.

Therefore, the County is unable to approve the land division application for this land split as requested unless a variance is granted to allow for the creation a lot not meeting the lot frontage requirements of the code or unless the proposed lot is altered to meet the minimum requirements of the code. According to our records, a variance request was filed on October 3, 2017 and has been forwarded to the Board of Adjustment for scheduling of an on-site inspection and a public hearing. If you have any questions, feel free to give me a call.

PLEASE NOTE:

The Town of Fox Lake has a Land Division Ordinance in effect in this area and it is my understanding that additional approvals are required at the Town level to create this lot. I recommend that you contact the Town as soon as possible to determine what additional approvals are needed for this proposal. Please forward a copy of the Town approval letters to our office as soon as you receive them so that we can complete the final review of your land division request.

PLEASE NOTE: A copy of the County Land Division Application has been forwarded to the Town Board for their review. It is the applicant's responsibility to contact the Town Board to determine if the applicant or owner is required to attend a Town meeting to discuss this proposal.

No further review of your land division application will be taken by the County until the above approvals have been obtained.

If you have any questions, feel free to give me a call.

Sincerely,

Joseph Giebel

pepl. Gubil

Manager - Code Administration



DODGE COUNTY LAND RESOURCES AND PARKS DEPARTMENT

127 E. OAK STREET • JUNEAU, WI 53039

PHONE: (920) 386-3700 • FAX: (920) 386-3979 E-MAIL: landresources@co.dodge.wi.us

Activity No.	Expiration Date		
170799			
Application Date:	Receipt #:		
10-3-17	900737		

MINOR LAND DIVISION LETTER OF INTENT FORM

Application Fee: \$75 (Non-Refundable) NAMES & MAILING ADDRESSES **PROPERTY DESCRIPTION** Parcel Identification Number (PIN) Applicant (Agent) Zimmerman Ken and Oonna City • State • ZipCode Section Acreage of Parent Parcel Proposed Lot(s) Subdivision (Name, lot and block) or CSM # (Volume/Page/Lot) Street Address Site Address Of Property (DO NOT Include City/State/ZipCode) N9481 SPISMY ROAD City • State • ZipCode Is this property connected to public sewer? ☐ Yes **CONTACT PERSON** Name and daytime phone number (include area code) of a person we can contact if we have any questions about your application. Daytime Phone (920) 763long 2 immermun CURRENT PROPERTY USE PROPOSED USE Single Family Residential Vacant Property ☐ Single Family Residential ☐ Duplex (Two-family Residential) ☐ Duplex (Two-Family Residential) ☐ Multi-Family Residential Number of residential units: Number of residential units: ☐ Agricultural Use Only – No residential structures Active Working Farm Operation Open Space Recreational / Wetlands - No residential structures ☐ Recreational / Wetlands / Wooded Parcel ☐ Business / Industrial / Commercial Use (Describe Below) Business / Industrial / Commercial Use (Describe Below) ☐ Other (Describe Below) ☐ Other (Describe Below) A SKETCH PLAN SHOWING THE PROPOSED LAND DIVISION IS REQUIRED TO BE SUBMITTED WITH THIS APPLICATION. CERTIFICATE I, the undersigned, hereby apply for Minor Land Division approval and certify that all the information both above and attached is true and correct to the best of my knowledge. I hereby authorize members of the Dodge County Land Resources and Parks Department to enter the above-described property for purposes of obtaining information pertinent to my request. Signature_ Daytime Contact Number (OFFICE USE ONLY ☐ CUP Required (App ☐ Restriction Release Required Notes: LAND RESOURCES AND PARKS DEPARTMENT **A**PPROVED DENIED \Box Date







KEN P ZIMMERMAN