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**MINUTES – Pierce County Board of Adjustment Meeting
October 19, 2006**

Members Present: Lee Wright, Ed Hanson Corliss Hendrickson, Arby Linder and Kenneth Peterson.

Others Present: Jim Kleinhans, Emily Lund, Carol Denninger, Mark Anderson, Lori Anderson, Verne E. Jacobsen, Phyllis A. Jacobsen, Brad Bohlen, Jim Sieben & Betty Hanson

Vice Chairperson, Lee Wright called the Board of Adjustment meeting to order at 7:00 p.m. in the Pierce County Boardroom, Ellsworth, Wisconsin.

Approve Minutes: Ed Hanson made the motion to approve the minutes of July 27, 2006 as written and Arby Linder second the motion. All approved. Motion carried.

Next meeting dates: November 16th, December 14th, 2006

Lee Wright (LW) We are here this evening to discuss and take action on an application to request a setback variance from the required 75 feet to 64 feet to allow for a greenhouse on property owned by Mark A. & Lori Lee A. Anderson located in the NW ¼ of the NE ¼, Sec. 2, T27N, R17W, Town of Martell (W5415 890th Ave.), Pierce County, Wisconsin. The second request will be to discuss and take action for a conditional use permit for a proposed 3 lot land division in the St. Croix River way, on property owned by Verne & Phyllis Jacobsen on a parcel of land located on Government Lot 1, of Sec. 34 and the NW ¼ of the NW ¼ of Sec. 35, T27N, R20W, in the Town of Clifton (N6799 County Rd. F), Prescott, WI, Pierce County. Jim, have both of these applications been published in the paper.

Jim Kleinhans (JK) Stated, yes, they were both published on October 4th and October 11th, 2006.

(LW) Each one of the public hearings will be read prior to testimony. I want to give you people in attendance this evening a little information in regard to the role of the Board of Adjustment. The Pierce County BOA is an appellate board required by state law and any municipality that has adopted a county ordinance. The board does not have the authority to amend or repeal provisions of the zoning ordinance. Its authority is limited to appeals regarding the interpretations of the ordinance provisions, consideration of variances and considerations of conditional use permits. The board functions like the court. Its purpose is to give a full and fair hearing to any person

whose property interests are affected by these matters. Its job is to apply the zoning ordinance appropriately with standard to the facts of each case. Board meetings and public hearings are open to the public. A tape recording is being made of these proceedings. Anyone who wishes to speak this evening will be given an opportunity to do so. We will request that we receive their name and address where they live and then they will be sworn in. Any permission to develop granted by a decision of the board must be authorized by obtaining the necessary building, zoning or other permits required. A decision of the board may be appealed by commencing an action in circuit court for this county within 30 days after the date of the filing of the decision in the office of the board. Jim, I think we are going to start with the order you have published. Jim, would you read the notice that was in the Pierce County Herald for the Anderson greenhouse setback variance.

(JK) Jim read the public hearing.

(LW) Are the Anderson's in attendance this evening? Okay, would one of you like to step forward this evening and present your case to us?

(MA) Mark Anderson came forward and was seated, stated his name and address and was sworn in by Vice Chairman, Lee Wright. We built the greenhouse in 1994 and that was 12 years ago. When we built it, we built it all in one among our other buildings and we weren't aware of a setback.

We couldn't see through the woods to look where the road was or measure properly and we didn't think it was an issue at all because it is a dead end road. We are basically the only ones out there and it wasn't even what we thought was an issue. It just came up now with all the other current things going on as an issue. That's why we asked for the variance.

(LW) Does anyone else wish to speak on behalf of the Andersons? Okay. With no other testimony, would the members of the board have any questions?

(EH) Ed Hanson – Were all these buildings put up at one time?

(MA) No. It was 1989 when we first moved out there and those buildings were put up in 1994 and we put some up in between.

(EH) When was this last building put up?

(MA) The building in question was put up in 1994. The one that is 11 feet within the setback.

(EH) Did you receive a permit to put it up?

(MA) No, we didn't need a building permit at the time. We don't need building permits.

(EH) Did they need a permit at that time or not?

(JK) Yes, any structure that is 6 inches above pre construction grade would require a permit at that time and greenhouses are permitted land uses.

(EH) So a permit was required?

(MA) I wasn't aware of that because I didn't have to get permits for the other ones. So I just wasn't aware that a permit was required. The building that we put up recently for the retail; a building permit wasn't required for my pole shed.

(EH) According to our background it says a land use permit was issued in 1989 to Mark Anderson for 4 metal frame plastic covering greenhouses.

(MA) That is when we first moved up there and we initially built.

(LW) Okay, any other questions from the Board of Adjustment members?

(EH) I think part of our problem is the standards that we have to go by.

(MA) As far as the building being moved, I can't move it over because there is just 10 feet between that one and the other one. We have to have room to be able to get through there anyway with a tractor to plow snow. We have really no other land left on the property to move it to. There is still a tree line between the road, the greenhouse, and a fence line.

(LW) Any other questions?

(AL) Arby Linder - It doesn't break the visibility where the shed is to the corner. We had the township of Martell clean those ditches out and made them wider. When I went out there and looked, I looked down at Art Schaller's place, he is actually closer to the road than Mark is with this building on that dead end road. Both the garage, the house and the shed down there, and we are coming behind the scene again, 14 years later. The greenhouse has been there 14 years.

Corliss Hendrickson (CH) Those buildings were built way prior to this.

(AL) That shed that Art has was built 4 years ago

(CH) And that is still allowed?

(AL) It is not much of a building, but it is still a building that he keeps material in.

(LW) Arby, for clarification that was on 540th St.?

(AL) Yes.

(LW) Now in relationship to the town road that goes down there, how does it sit in relationship to the town road?

(AL) How close is it?

(LW) Yes.

(AL) I didn't measure it, but you can tell just by looking at it that it is too close.

(AL) We go beyond Art's place. There is a couple back in the woods. The last one in the woods is not actually on the town road, he goes into his own private. There are 3 places on that road.

(LW) That is on 540th St.?

(AL) Yes. Jim, we weren't too close to 890th Ave., were we, it is 540th street that they are too close to, right?

(JK) That's correct.

(LW) 540th street is a dead end road.

(MA) We are right on the corner of 540th street and 890th Ave.

(LW) It is a little out of line in relationship to the road. One end of the structure is closer to the centerline than the other. Jim is there any setback averaging based on structures that are within the setbacks on 540th street? Are there other structures on 540th street within the setback ?

(JK) They would have to be within 200 feet of this building and that doesn't help us in this case. We always consider that before we send somebody to you folks for a variance.

(CH) The thing we are running into here is if we give you a variance, and anybody else comes along and we don't adhere to the law, then what do we do? We have to adhere to the law.

(EH) Would property limitations come into play? Would that fit in here ?

(LW) The property is being utilized. Mr. Anderson, just for clarification, the greenhouse that we are discussing this evening, when was that built?

(MA) In 1994.

(LW) So that was approximately 12 years ago.

(AL) If somebody was building a building and asked for a variance of 11 feet, I'd understand. They would have to meet the hardship limitations and everything else, but it has been there 12 years and that's a long time and everything is set with his business there and if he has to move it the cost would create a hardship.

(LW) I think a hardship in the area that we can review is dealt with whether the individual has use of the property or not. Is it correct Jim, that in Pierce County there is no Statute of Limitations?

(JK) Not that I am aware of.

(LW) Is there any other testimony that we have yet to hear this evening? Anybody have any comments? Any other comments or questions from the board?

(EH) Is there some place else on that property that you could move that building to?

(MA) No. It's either parking lot or it has all been built on. We need the growing space.

(LW) Unless there is any other questions, I would entertain a motion.

(EH) I can see where you are coming from and it is not a problem that you enjoy it. Our problem is that we write this up and we have to justify why we are giving you this variance. I realize where you are at. Is there room enough to move it if you have to have that certain space between them.

(MA) We only have 10 feet between that building and the next one, so if we have to move it 11 feet or 5 feet we couldn't get through there at all and we would worry about snow caving in a building if we had only 3 feet between them.

(LW) I think without a statute of limitations that the fact that it was built 12 years ago is irrelevant whether it is one week or 12 years. The issue is the issue.

(AL) Could you take part of that building down?

(MA) No, because if the roof trusses were running perpendicular you could shorten it, but they are running length wise and it would be like cutting your house down length wise you would have to cut all your roof trusses down and cut it right in half.

(LW) Any other comments? Again I will ask for a motion either in favor of requesting the setback variance or denying the setback variance.

(EH) Is there anyway you could consider that a hardship because there is no where else on the property to move it?

(LW) I think we should refer to staff. It is my understanding that as long as they have use of the property, obviously they can run a nursery whether that greenhouse is there or not.

(JK) At the time they built this greenhouse, there was plenty of room on the property to build it in compliance. I was able to walk through the woods and measure the setback and that doesn't mean that it is impossible to do that. I just ran a tape line right through there. I noticed this when I was doing an inspection for the renewal of their conditional use permit for the retail greenhouse. It just appeared close to me so that is why I pulled a tape on it.

(LW) I think that maybe we are at the point where we should ask for a staff report.

(JK) Read over the staff report for the Andersons. Mr. Anderson has to show the board that he meets all the standards for granting the variance. It is up to the applicant to prove that. Then, if the board agrees then the variance may be warranted. If not, it is hard to fill out the finding, facts and conclusion unless we meet the test of all 4 standards that are being addressed. I think that is where my recommendation was going. I said the variance should not be granted if the Andersons can not demonstrate that the variance standards were met. If the committee does decide to grant the variance consider the minimum amount of relief necessary and still meet the intent of the ordinance. I think the fact that the committee should recognize that Mr. Anderson did receive permits in the past. For some reason he didn't get a permit for this structure that we are talking about tonight. The zoning committee permitted a commercial operation and part of the requirement for the conditional use permit was to obtain a land use permit for the new structure that was put up there and that took us quite a while to get that resolved. The conditional use was permitted in 2004 and we finally got that new greenhouse permitted this spring. I don't know if a tract record has any effect on your decision, but I think the fact that people need to understand that they need permits when they are putting up structures. If they build them where we don't allow structures, this committee has to deal with it after the fact, which is not always easy.

(LW) Unless there is any other questions, I will entertain a motion.

(EH) I believe I would have to vote to deny the request.

(CH) I will second the motion and I think that we have to follow the law. That he didn't come in for a permit when he built the last building. When people put up buildings they need to get permits.

(LW) A motion has been made by Ed Hanson to deny the request for the variance and seconded by Corliss Hendrickson. The vote was 3 yes to 1 no. Motion carried and approved.

(AL) Mark, you've seen the 4 limitations, haven't you.

(MA) Yes.

(AL) Do you have any answers on any of them, that would help us?

(MA) I thought when I got the original Land use permit that, that was my permit. The building permit was the building permit for that. I don't know how long they are good for and I didn't think that was going to be an issue being that it was a wooded situation. There was a lot more wood there when I put that building up. I know that the township has cleaned on the other side of the ditch. I had to clean out on my side. This certainly wasn't anything intentional and it was basically something that I needed the space and that was what I needed to put in there. The buildings are as close together as they have to be and as close as I want them to be to utilize the space best. We can't move the building and set it up in any other property being its dimension. We don't have the room left without sticking it into somebody else's land. We need this growing space just to continue growing the plant material that we have.

(LW) A motion has been made and seconded. All those in favor of the motion signifying by saying eye. Arby, were you an eye?

(AL) No.

(LW) This was a vote of 3 to 1. Motion carries the request that the setback variance has been denied. You do have 30 days in which to appeal this decision in our circuit court. If you wish to pursue that you should start with Jim. He will tell you the appropriate way to go about it. The first hearing this evening is over. We are down to the second hearing this evening. Jim, has the second public hearing been published in the paper?

(JK) Yes, it was published in the Herald on the 4th and the 11th of October and also in the Prescott Journal for 1 week. Read public hearing for the Jacobsens.

(LW) Are the Jacobsens or representatives here this evening?

(VJ) Yes.

(LW) If one of you would care to step forward and obviously we will give any number of you an opportunity to speak.

(VJ) Verne Jacobsen came forward, was seated, stating his name and address and was sworn in by Vice Chair, Lee Wright. We started the process because we have been there for about 20 years and we are getting to the age where we thought it was better to move someplace so we didn't have the long driveway, so we purchased another home and looking at our property, so we subdivided it into (3) 15+ acre parcels. We were in the middle of the process so we have been working with the town board and the planning commission to try to comply with everything that has been required. I think we are close to that with the exception that our attorney didn't have time to draft the agreement for the driveway or the partial use of the driveway, but other than that I think we are pretty well done with everything. We have chose to go with the larger parcels because we would like to preserve the land.

(LW) Does anyone else wish to speak on behalf of Mr. Jacobsen?

(Brad) I am Brad Bohlen with Bohlen Land Surveying. Brad was seated, stated his name and address and was sworn in by Vice Chair, Lee Wright. When we did this originally, the 15+ acre parcels are outside in typical cases of the zoning control. In this case, because it is the riverway we are greater than 15 acres in all of these parcels, but because of the riverway they review anything that is 20 acres or less. That's where all of this kind of comes to play. We have done our best to meet all of the requirements and all of the recommendations that are shown on the sheet here from Land Management as well for the surveying. Requirements are shown on here and the only thing that the road maintenance and easement agreement have not yet been created, but they will be to the Land Management sometime next week.

(LW) Anybody else have any testimony on behalf of the Jacobsens?

(JS) Jim Sieben stated he had some questions.

(LW) Would you please state your name and address?

(JS) Yes, Jim stated his name and address and was sworn in by Vice Chair, Lee Wright Just as

background we don't have a position on this. We are the down stream adjoining land. What is a conditional use permit and how does it differ from a variance? And why is a conditional use permit needed in this incidence?

(LW) I think I am going to turn that over to our staff just to make sure that a correct interpretation is given.

(JK) The conditional use permit is a use that is allowed under the St. Croix River Way as something that is not permitted just by staff. It takes committee action for land division, filling and grading, things that have more of an impact on a landscape. The variance is something where the Board of Adjustment has a chance to relax a setback standards established in the zoning codes, so they are two different kinds of hearings.

(JS) So a conditional use permit occurs any time there is a land division?

(JK) If it is 20 acres or less in the river way. The subdivision code is different criteria in the county, but because they proposed creating parcels less than 20 acres in the riverway, that is why we are here tonight.

(LW) Does anyone else have any questions, comments or testimony on the Jacobsens?.

(EH) What did your tax parcel show for acreage?

(VJ) 45 acres including the driveway.

(LW) So then there would be an easement that you are working out with the lawyers for these other parcels?

Brad Bohlen (BB) Right. That is why basically the maintenance and the roadway easement are in effect here for recommendations by staff.

(EH) That should not make any difference should it Jim? As far as we are concerned that's up to the new owners on how they work out the ownership of the roadway.

Brad Bohlen - This is how I would have interpreted, but that was not the recommendation from the staff.

(LW) Obviously, if this land is going to be divided and there is going to be individual parcels they will all have to have legal binding access. Those things have to be in place before anything can be finalized. Anybody on the board have any comments or questions?

(EH) What is the approximate size of the different lots?

Brad Bohlen - All of that is shown on the map.

(LW) Are there any other questions.

(EH) I have a question looking at this map here. You have a pipeline going through there right?

Brad Bohlen - Yes, there is a gas pipeline.

(EH) Is that to be a particular hazard to future owners?

Brad Bohlen - Not to my understanding. It is all underground with the exception of where there at the bend point here and there is an 80 foot easement which is shown on here that the gas company can maintain their line and you wouldn't be building anywhere near that.

(LW) We are ready for a staff report.

(EL) Emily Lund read the staff report for the Jacobsens. The staff recommends that the board of Adjustment approve this land division with the following conditions. I would like to strike # 1 and # 2 as they have been fulfilled. Number 3, 4 & 5 shall be completed at owners expense.

Brad Bohlen- I would like to make a note on # 5 that the address sign has been requested and Verne is ready to pick up and pay for the sign tonight. Also the stop sign and road number sign, we did contact the township to get them in place. I haven't heard anything back from them so that all is being taken care of.

(LW) Does that conclude the staff report?

(EL) That does conclude the staff report.

(EH) Jim can you have 3 residents on a private driveway?

(JK) The lots are in excess of 15 acres so they are not subject to our subdivision code. So that is a little bit of an issue, but again looking at Public Health, safety and welfare, it's a good idea to make that an avenue so that the address is accurate, instead of having the 3 addresses out on County Road F. As far as the planning aspect, it is a good idea to address this road.

(LW) So is there a limit to how many parcels can be off a private road if they are over 15 acres?

(EL) I was told that we do not have jurisdiction of telling people what they can do if they are over 15 acres. If it is under 15 acres, we have jurisdiction to tell them what they have to do under the subdivision code.

(AL) Do you have any problem with the agreement that the staff wrote up, 3 through 5.

(EH) Is there anything in here saying how well these driveways will be maintained? There is one that ends up and then branches 3 ways.

(LW) That is an agreement that would be amongst the three of them. It is a private driveway.

(JK) I think that all the owners on lots A, B. & C agree on what they are going to do to maintain the road access.

(KP) A motion was made by Ken Peterson and seconded by Arby Linder to approve the Land division on this conditional use permit.

(LW) Any more discussion? All those in favor signify by saying eye. Motion carries. Any other business Jim that needs to be attended to?

(JK) There is one more item that we would like to talk to you about. A recent training session that was presented by Bill Thiel. Emily has a copy of the power point presentation to hand out to you, just for your benefit. Emily was the only person from our county that attended.

A motion was made by Arby Linder and seconded by Ed Hanson to adjourn the meeting at 8:05 p. m. All approved. Motion carried.