

## PIERCE COUNTY, WISCONSIN

### DEPARTMENT OF LAND MANAGEMENT & RECORDS

Pierce County Courthouse

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#### MINUTES-Pierce County Board of Adjustment Meeting, Thursday, September 22, 2022

Present: (Board of Adjustment Committee) Lee Wright, Ross Christopherson, Kenneth Peterson, Barry Barringer, Walter Betzel and (Staff) Andy Pichotta, Emily Lund & Anna Anderson

Chairperson Wright called the Board of Adjustment meeting to order on Thursday, September 22, 2022 at 7:00 pm in the Pierce County Courthouse, Lower Level – County Board Room, in Ellsworth, Wisconsin.

Future meeting dates are set for October 27, November 17, and December 22, 2022.

Accept Future Meeting Dates: **Peterson made a motion to accept dates. Christopherson seconded. All in favor.**

**Motion Carried.**

Approve Minutes: **Christopherson made a motion to approve the July 28, 2022 BOA minutes. Peterson seconded. All in favor. Motion Carried.**

Wright read the role of the Board.

Wright swore in Emily Lund and Andy Pichotta.

Lund read the notice of Public Hearing: **Public notice is hereby given to all persons in Pierce County, Wisconsin, that a public hearing will be held before the Board of Adjustment on the 22<sup>nd</sup> day of September, 2022 at 7:00 pm in the County Board Room, Pierce County Courthouse, Ellsworth, Wisconsin, to consider and take action on a request for a Variance pursuant to Chapter §240-27B & C of the Pierce County Code, to the required structure setback on a Town and/or County Highway, on property zoned Rural Residential-20, by Mark Herrmann owner on property described as Lot 4, Meyer Addition, being part of Section 33, T25N, R18W, Town of Trenton in Pierce County, WI.**

Wright swore in Mark Herrmann.

**Project Presentation – Herrmann:** Herrmann stated that he wants to build a house on the property, it would make the neighborhood look a lot nicer and there are multiple properties on County Rd K and the road behind that property that are a lot closer to the centerline of the roads than what he is requesting.

**Questions of Applicant – Board Members:** Betzel asked if the driveway was going to access 871<sup>st</sup> St or County Rd K.

Herrmann stated it will access off of County Rd K. Barringer asked what the town boards recommendation was.

Pichotta stated in instances where a variance is requested a town board does not make a recommendation as that only occurs for Conditional Use Permits and Rezones. Christopherson asked when you talk about the relief because of the averaging neighboring properties with County Rd K on one side and the town road on the other, does the applicant get relief from both sides at the same time, or can you only get relief from one side. Pichotta stated that you can have it from both sides. Betzel stated that in the application Herrmann said he wasn't sure exactly how much he needed for relief. Herrmann stated that Adam Adank (staff) came out to the property a couple weeks ago and we measured and the numbers given is what he will stay within. Wright asked about the 20' relief from the town road, and until the drain field is established you may need 10' of relief from the county road. Herrmann stated that we originally were just going to be the 100' from the county road and we just wanted to be able to move it a little just in case we needed to. Lund referred to the maps that were presented, showing the buffer of where the setbacks are on the lot and actual buildable area. Its just a little triangle area in the center. It also shows the proposed house location and this still proposes that he can meet the 100' setback; he is asking for that 10' relief if you think he needs that additional buffer or not from the drain field. The other map is from the soil tester and septic designer, showing the well and it shows where the drain field and driveway is. The last map shows the plat from 1959 with this lot highlighted in yellow. Wright asked if the property line actually goes to the center of the town road and county road. Lund said that it is platted and on the plat it

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was an easement that was created. The lot line goes to the right-of-way of both the town and county road.

**Wright opened the public hearing. No comments. Wright closed the public hearing.**

**Board of Adjustment discussion:** Wright stated the 5 standards that the County requires and justification behind each one is needed.

1. Unnecessary Hardship. Peterson stated he believes it meets that definition the plot is smaller than an ordinary lot due to the location of the roads, without easements it would be very difficult to build any substantial dwelling on this building and it would be a burden to the owner and also a unique situation with its pie shaped lot. Barringer stated that this is an unbuildable lot and it's a half acre, and a buildable lot is generally an acre. Peterson stated that he assumes all the lots in that subdivision are half acre lots or something in that area. Wright stated that it is some of the earliest platted land in that area. Wright addressed the issue of case law, the case of Ziervogel V. Washington County, the Supreme Court said for an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Board must consider the purpose of the zoning restrictions, the zoning restrictions effect on the neighborhood and the community and on the public interest.

2. Unique Conditions. Betzel stated it is an odd shaped lot and even more so than the other lots in that area. Christopherson said that its bordered by two roads. Very few lots have roads on both sides. One is a county road and that makes it even harder with the greater setback.

3. Conditions not self-created. Wright said this lot was platted in 1959 by someone else. Betzel stated that the variance he is requesting is for a pretty small house. Christopherson asked what was there when the parcel was purchased. Herrmann said there was an old trailer house and old garage. Christopherson asked if he could have improved that existing structure. Herrmann stated no it was rough, no one had lived there for 10-15 years and the garage was rough too. Christopherson asked the size of the structure. Herrmann stated the garage was 25'x25' and it was connected to the trailer house and the trailer wasn't a double wide and it was from the 1960's. Christopherson asked if the it could have been re-build that exact foot print without any variance. Pichotta stated typically if you have a non-conforming structure that your seeking to rebuild, you would have to leave part of the structure intact, this is a trailer house that would not have been something that would have worked. Barringer noted that the applicant purchased the property without looking into it further.

4. Public Interest. Peterson stated that this is on a light traveled road on one side, and any type of relief given to that would only be affecting the person across the street because this is on a dead-end street. The new structure is better than an old run-down trailer house. Christopherson agreed with Peterson. Peterson stated no thru traffic, nor any neighbors of any great number that would be affected at all.

5. Effect on Uses. Peterson stated this is a residential area. This is not changing the use of this lot to anything that is not common to that whole area.

**Staff Report – Lund:** The variance from Pierce County Zoning Code §240-27B & C. County and/or Town Road setbacks. The applicant purchased Lot 4 of Meyer's Addition in 2019. At that time, the property had an abandoned mobile home, accessory buildings, a well, and a septic system. The applicant removed the mobile home due to the unhealthy conditions of the structure and now proposes to build a new home, an attached garage, and install a new septic system. Structure setbacks from County Road K and 871<sup>st</sup> Street limit the developable area of the property. The applicant and staff staked out the approximate location of the proposed home and attached garage (58'x26'). Based on the stakes, the applicant felt they could meet the 100' setback from County Rd K but would encroach approximately 20' onto the 75' Town Rd setback area (55' from the centerline of 871<sup>st</sup> Street). However, the proposed dwelling and attached garage may need to be relocated slightly closer to County Rd K depending on the exact placement of the proposed septic system drain field and the required drain field setback (10' to a structure) as shown on the site plan. If adjustments to the location of the proposed house are necessary, the applicant would also need to encroach on the County Rd K structure setback. Therefore, the applicant is requesting a variance to encroach up to a maximum of 10' onto the County Rd K setback and a maximum of 20' onto the Town Rd setback. This would allow a development area approximately 36' wide. The footprint of the structure would be no greater than 26' wide within this area. Any future expansion requests would require additional permitting. The parcel is located in Lot 4 Meyer's Addition being part of the NE ¼ of the NW ¼ of Section 33, T25N, R18W in the Town of Trenton. This parcel is zoned Rural Residential-20. The address is N2034 County Rd K. The application was filed on 9/2/2022. Meyer's Addition is a platted subdivision that was created in 1959. This subdivision was created prior to many standards, including the County's current 1-acre minimum

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lot size. The property is ±0.5 acres. The proposed single-family dwelling and attached garage is 58'x26'. The side yard setback is 10'. The existing shed that is on the property will be removed. Town Rd 871<sup>st</sup> Street dead ends near the north side of Lot 4. Also, Town Rd 871<sup>st</sup> Street has a platted right-of-way that is 30' wide, and not the typical 33' wide right-of-way. The setback from Town Rd 871<sup>st</sup> Street is 75' from the centerline of the road or 42' from the right-of-way, whichever is greater. The right-of-way in this area is 30', so each setback (from the centerline or right-of-way) is not the same. The setback from County Rd K is 100' from the centerline of the road or 67' from the right-of-way, whichever is greater. The right-of-way in this area is 33', so each setback (from the centerline of the right-of-way) is the same. Compliance with the required road setbacks would limit the size of any proposed structure to ±11' in width. A principal structure on the neighboring property to the southeast is ±70' from the centerline of Town Rd 871<sup>st</sup> Street and ±92' from the centerline of County Rd K. Setback averaging using the neighboring structure as allowed by PCC § 240-27E would provide an additional 4' of relief from the County Road K and an additional 2.5' of relief from 871<sup>st</sup> St. Setback averaging would allow the applicant to construct a home ±17.5' wide without a variance. The applicant is hoping that he can construct the dwelling as close to the 100' County Road K setback as possible in order to avoid cutting down the existing pine trees on the property. However, the requested 10' of relief from County Road K would give the applicant some setback flexibility with final house location if necessary. The applicants did not consider alternative locations for construction on the site because there is no compliant location on the site for the proposed structure.

The applicant's justification to meet for the criteria for a variance:

1. Unique property Limitation: The property is sandwiched in-between County Rd K and 871<sup>st</sup> St that reduces the lot usable building width to 11'. Limiting the property to a 11' wide structure is an unnecessary hardship.
2. Unique Condition: The property has a variety of unique property limitations:
  - The parcel is approximately 0.5 acres and is smaller than the current 1-acre minimum lot size standard.
  - The trapezoid shaped lot is ±175' x ±140' at its widest dimensions on the southeast end of the lot and narrows to the northwest side of the lot.
  - The parcel is subject to structure setbacks from two separate roads and makes the existing parcel almost unbuildable.
  - Town Rd 871<sup>st</sup> Street dead ends near the north side of Lot 4 that makes the parcel unique.
3. Conditions Not Self-Created:
  - The development limitations were not created by the land owner or agent.
  - This parcel was created when the platted subdivision called Meyer's Addition was recorded on 8/4/1959 per document # 205929.
  - The rights-of-way were determined by the Town and County at the time the plat was created.
4. Public Interest:
  - No harm in issuing the variance. Other houses along County Rd K and Town Rd 871<sup>st</sup> Street in that neighborhood do not meet the structure setbacks to the road centerline or to the right-of-way.
5. Effect on Uses:
  - Single-Family Residence is a permitted use in the Rural Residential-20 district. The proposed variance will not have an effect on uses.

Ordinance Requirements: Listed in the staff report is the purpose of the Pierce County Zoning Code (PCC) §240-4 (A-O) and the purpose for the Rural Residential-20 district. The Board of Adjustment has authority to make decisions on applications for Variances per PCC §240-78 B&C. There are minimum requirements and dimensional requirements listed for side yard setbacks of 10'. Single-family residences are a permitted use in the Rural-Residential-20 district. There are other standards that talk about the set-backs for County Roads and Town Roads and the set-back reduction mechanism. Also listed in the staff report, are a variety of definitions for Principal Structure, Single-Family Residence, Single-Family Dwelling Unit, Setback, Variance, Yard, Front Yard, Rear Yard and Side Yard.

Variance Standards: The five variance standards are listed and defined in the staff report. State Statutes were defined with the three variance standards listed also.

Relevant Case Law: Three are listed in the staff report that the State Supreme Court has had.

Staff Analysis:

- The proposed structure is 58'x26' and would meet all necessary setbacks, other than the structure setback to County Rd K and Town Rd 871<sup>st</sup> Street.
- Single-Family Residences are a permitted structure/use in the Rural-Residential-20 District.

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- A ±17.5' wide structure could meet all of the required set-backs.
- The property is entirely bordered by residential housing.
- The proposed location of the building is not in the floodplain, shoreland, or wetland areas.
- The proposed structure cannot be located on the property in compliance with all necessary set-backs.
- To grant the Variance, the Board of Adjustment must determine that the request meets the five criteria of PCC §240-78C:
  1. Unnecessary hardship
  2. Unique condition
  3. Conditions not self-created
  4. Public interest.
  5. Effect on uses.

Site Visit Information is listed in the staff report.

**Recommendation:** Staff recommends the Board of Adjustment review the proposal and approve or deny the Variance request. The Board should state the specific facts and reasons that are the basis of the Board of Adjustment's determination. Any decision shall state how the request is consistent or inconsistent with the established Variance standards regarding unnecessary hardship, presence of unique property limitations, conditions not self-created, protection of the public interest, and no effect on uses. If the Variance is granted, staff recommends that conditions be established regarding:

1. Timeframe for commencing and completing the project
2. Establish the extent of relief granted.

Wright stated that this was platted in 1959, and asked what the Department of Land Management opinion and County's opinion regarding the development of undersized lots. Pichotta stated that any lot that was a legal building site when it is created, continues to be a legal building site, this is a legal site, that is intended for a house, and it is up to this Board to determine how much relief is necessary in order to grant a reasonable use of this property. This property basically can't be developed without a variance.

**Peterson made a motion to approve the Variance, the hardship standard is met because the lot has extremely limited use without a variance, in fact would be almost non-buildable. The land itself, in its triangle shape and having roads on both sides is a unique condition, and the purchaser has not created the condition, the fact that there are two roads again created the condition. He doesn't believe the public interest would be violated by granting this Variance, since there is very little traffic on 871<sup>st</sup> St, and still maintaining a good distance from County Rd K. The land was platted as a housing development when it was platted in 1959, so its not changing the use from that which it was originally platted for. Betzel seconded.**

Christopherson stated that he would like to see the relief mostly or all on the Town Road side. Betzel stated that the sanitary/drain field may have an effect on which side you could do that. Pichotta suggested that you could state the principal structure should be located as close as is possible to the Town Road and that would give them the direction to make sure that the majority of the relief is from the Town Road set-back rather than the County Road. Wright asked Christopherson if that verbiage would satisfy his concern. Christopherson stated yes. Wright asked Peterson to amend this motion.

**Peterson amended the motion to add the condition that minimum relief would be given on the County Road K side and the maximum relief be given on the 871<sup>st</sup> Street side. The second condition would be that the construction be completed within one year of the date of issuance of the Land Use Permit. Betzel seconded. All in favor. Motion carried.**

Wright asked about future agenda items. Pichotta stated there are three potential Riverway issues coming, but nothing finalized or submitted yet.

**Motion to adjourn at 8:04 p.m. by Betzel and seconded by Ross Christopherson.  
Respectfully submitted by A. Anderson**