

**VILLAGE OF PLEASANT PRAIRIE  
ZONING BOARD OF APPEALS  
Tuesday, October 23, 2007  
5:00 PM**

Members Present: Christine Genthner, Chairperson; Bill Morris, Secretary; Mark Riley; Jennie Holman; Tom Glassman; David Hildreth; and Sheryl Berner.

Also Present: Peggy Herrick, Assistant Village Planner and Zoning Administrator; Tom Shircel, Assistant Planner and Zoning Administrator; and Jan Petrovic, Executive Secretary.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CORRESPONDENCE.**
- 4. CITIZEN COMMENTS.**

Christine Genthner:

This is an opportunity for any citizens to come forward at this time. If you're here for a particular matter that's on the agenda you can wait and we'll open it for a public hearing there. Saying that, anybody else who wants to address the Board?

- 5. CONSIDER THE MINUTES OF THE AUGUST 15, 2006 BOARD OF APPEALS MEETING.**

Bill Morris:

Move to approve.

Jennie Holman:

I'll second.

Christine Genthner:

I have a second by Ms. Holman. I just need a voice vote. All in favor say aye.

Voices:

Aye.

Christine Genthner:

Anybody opposed? It passes.

6. NEW BUSINESS

A. **PUBLIC HEARING AND CONSIDERATION OF A VARIANCE:** The request of Ronald Mohr, owner, for a variance from Sections 420-31 and 420-108 E. (2) of the Village Zoning Ordinance related to lot frontage and to the minimum lot frontage requirement for single-family dwellings in the R-4, Urban Single-Family Residential Zoning District. Specifically, the petitioner is requesting a 90 foot variance from the required minimum 90 foot lot frontage requirement to construct a new single-family dwelling on a 39 acre parcel, which has no frontage on a dedicated public street. The new dwelling would replace a dwelling that was destroyed by fire on April 26, 2007.

The subject property is located at 11231 22nd Avenue, in a part of the Southwest One Quarter of U.S. Public Land Survey Section 30, Township 1 North, Range 23 East of the Fourth Principal Meridian in the Village of Pleasant Prairie, County of Kenosha, State of Wisconsin and is further identified as Tax Parcel Number 93-4-123-303-0150.

Christine Genthner:

Do we have an application by staff?

Tom Shircel:

Yes.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Tom Shircel:

I do.

Christine Genthner:

Please proceed.

Tom Shircel:

For the record, I'm Tom Shircel, Assistant Planner with the Village. These are the findings of fact for this case.

1. This is a request from Ronald Mohr, owner, for a variance from Sections 420-31 and 420-108 E. (2) of the Village Zoning Ordinance related to lot frontage and to the minimum lot frontage requirement for single family dwellings in the R-4 Zoning District.
2. The 39 acre subject property is located in a part of the Southwest One Quarter of U.S.

Public Land Survey Section 30, Township 1 North, Range 23 East of the Fourth Principal Meridian in the Village of Pleasant Prairie, County of Kenosha, State of Wisconsin and is further identified further identified as Tax Parcel Number 93-4-123-303-0150.

3. The property is zoned R-4 (AGO), Urban Single Family Residential District with a General Agricultural Overlay District.
4. The AGO District is used where land is expected to experience further urban or suburban development in accordance with the underlying zoning district. The overlay district will allow existing uses to continue or expand as noted in the Ordinance. The AGO District is intended to provide for, maintain, preserve, and enhance agricultural lands historically utilized for crop production.
5. Section 420-31 of the Village Zoning Ordinance requires that: "Prior to the issuance of a zoning permit for a structure on a lot, said lot shall have the frontage required for said zoning district". Additionally, Section 420-108 E. (2) of the Ordinance, which is the R-4 District regulations, requires that "All lots shall be not less than 90 feet in width unless located on a cul-de-sac or curve, in which case the lot frontage may be reduced to 45 feet of frontage, provided that there is at least 90 feet of width at the required building setback line".
6. The Zoning ordinance defines frontage as: "The distance of actual contiguity between a lot and a single street, measured along the lateral street right-of-way line, including, without limitation, the lateral street right-of-way line of a cul-de-sac. Note: The portion of a lot that abuts a right-of-way line, for example, the right-of-way line associated with the stub end of a street, is not considered as frontage". In this case, the stub end of 110th Street as it stubs into the Mohr property from the Tobin Creek North Subdivision, is not considered frontage for the Mohr property. If you look at the slide that's up on the screen right now, I points out where that stub street, 110<sup>th</sup> Street stubs into the east line of the 39 acre Mohr property so that cannot be considered as frontage pursuant to the definition of frontage in the Zoning Ordinance.
7. The Zoning ordinance defines street as "The area within the right-of-way lines of a public street, as distinguished from the paved roadway of a street".
8. Given the definitions of frontage and street, it can be concluded that the Mohr property has no public street frontage.
9. Therefore, the petitioner is specifically requesting a 90 foot variance from the required minimum 90 foot lot frontage requirement to construct a new single-family dwelling on the 39 acre property, which has no frontage on a dedicated public street. If you can look at the slide that Peggy has on the screen right now, you can see where 22<sup>nd</sup> Avenue terminates, then above there in the red shaded box there's an easement which I'll be getting to shortly.
10. The property was improved with an 840 square foot single-family dwelling, constructed in 1910, that was destroyed by fire on April 26, 2007. The fire-damaged single-family dwelling was no longer fit for human habitation. The property is also improved with a

2,592 square foot farm building that was constructed in 1988 along with a few minor outbuildings.

11. A razing permit to demolish the fire-damaged dwelling was issued by the Village on June 20, 2007. At this time, the structure has been completely removed, including the foundation and the foundation excavation has been filled-in. The sanitary sewer has been capped and the private well remains.
12. It is Mr. Mohr's desire to re-build a new single-family dwelling, a permitted use, in relatively the same location on the 39 acre parcel; the extreme southwest corner of the property.
13. Since the fire, Mr. Mohr is without a home and has been residing at his son's residence in Pleasant Prairie.
14. Although this lot is nonconforming it is a lot of record on which a new single-family dwelling could be reconstructed if the appropriate variance for lot frontage is granted by the Board of Appeals.
15. There are no wetland or 100-year floodplain areas on the subject property. Portions of the property are located within shoreland jurisdictional areas due to adjacent, off-site navigable waterways. However, the required 75 foot structure setback will not negatively affect a reconstruction of the dwelling on this property.
16. Upon Mr. Mohr's informal inquiry of building a new dwelling on this property, the Village staff began performing a review of the property. A deed was discovered that revealed that Richard Stiles of Stiles Farms, Inc., the owner of the 40 acre property to the immediate west, which you see on the screen, granted an easement to Mr. Mohr and to the Gallaghers, or to their predecessors in title, over an approximate 49.5' x 82.5' area at the northern terminus of 22nd Avenue. Again, if you look on the wall, the screen, you can see that red, shaded easement area which is directly north of the terminus of the 22<sup>nd</sup> Avenue right of way.
17. While the easement was granted to Mr. Mohr, according to the Village Public Works Department the Village of Pleasant Prairie has actually been using and maintaining the roadway, which is located within this easement, for at least 22 years, particularly for snow removal purposes. And, in addition, the Village installed an 8-inch sanitary sewer main, manhole and paved roadway in about 1989 or 1990 within the easement area to service the property owned by Mr. Mohr and the adjacent property to the south, owned by Steven & Cristi Gallagher at 11239 22nd Avenue, Tax Parcel Number 93-4-123-303-0125. Again, you can see this configuration on the wall where you have the 22<sup>nd</sup> Avenue right of way. You see again the red rectangle is the easement and the Gallagher property and the Mohr property to the north of the Gallagher property.
18. According to the Village's legal counsel, the Wisconsin Statutes Section 893.28 generally requires continuous adverse use of an easement for at least 20 years in order to obtain a prescriptive right. Knowing this, the Village may be entitled to a prescriptive easement over this 49.5' x 82.5' easement area in that the Village has been maintaining the roadway

area for over 22 years.

19. As information, a prescriptive easement is an implied easement upon another's real property acquired by a continued open, clearly observable, continuous, without interruption for the number of years required by state law and hostile without the landowner's consent use of property. A prescriptive easement is not the same as adverse possession, which allows a party to acquire title to real property by asserting possession over it for the statutory period.
20. However, even though there is an easement that serves the Mohr property, an easement is not considered a public road, thus this property is void of lot frontage/width.
21. Given the R-4 (AGO) zoning of the property and the requested R-4 related frontage variance request, the street front, side and rear setbacks requirements for a new single-family dwelling on this property are 30 feet, 10 feet and 25 feet, respectively. Also, the new dwelling needs to meet all requirements of the R-4 District, including, but not limited to, the single-family design standards, for example, new homes in the R-4 District need to meet that 1,400 square foot floor area requirement.
22. Given the size of this parcel, 39 acres, the placement of a new, compliant, single-family dwelling on this property should not be an issue.
23. According to the variance application, the petitioner states the following special site conditions and unnecessary hardships or practical difficulties that pertain to this property:
  - "My single-family house, which was built in the year 1910, was destroyed by fire earlier this year (on April 26, 2007). Apparently, my 39 acre property does not have any frontage on a public road right-of-way, which pursuant to Village Ordinances, prohibits me from constructing a new house on my property. Without the variances pertaining to road frontage, I cannot reconstruct a new single-family dwelling on this R-4 zoned property. Therefore, without the variances, this lot is unbuildable at this time."
  - "Without the variances, the lack of road frontage for this 39 acre property presents a practical difficulty or hardship that would prevent a single-family dwelling from being constructed, thus leaving me without a home."
24. It is important for the applicant to understand that if the requested variance is granted by the BOA, that all other requirements for the construction of a new single-family dwelling on this property must be compliant with the Village Municipal Code, which includes the Zoning Ordinance. Additionally, if the requested variance is granted by the BOA, this subject parcel will still have no frontage on a public roadway, but the variance will allow a new dwelling to be built on the property.
25. Under State of Wisconsin Supreme Court case law pertaining to granting of variances, a variance may be granted only if the applicant can show that the standards set forth in the Statutes and interpretive case law for granting variances will be met. The Statutes provide that a variance may be allowed when it will not be contrary to the public interest;

where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.

26. All of the abutting and adjacent property owners within 100 feet of the subject property were notified via regular U.S. Mail on October 9, 2007. The Board of Appeals agenda was published in the *Kenosha News* on October 9, 2006.

With that I'll turn it back to the Chairperson to continue the public hearing.

Christine Genthner:

Thank you, Mr. Shircel. Is there anybody else who would like to come forward at this time to address the Board? Seeing nobody, are there any questions from the Board to the staff before we proceed with staff recommendations? Seeing none, staff do you have a recommendation?

Tom Shircel:

Yes, we do.

Christine Genthner:

And what is that?

Tom Shircel:

Based on the Finding of Facts, the variance application filed, and the circumstances and hardships or practical difficulties which are presented in this case, the Village staff's opinion is that the application meets the requirements for the granting of the requested variance from Sections 420-31 and 420-108 E. (2) of the Village Zoning Ordinance related to lot frontage and to the minimum lot frontage requirement for single-family dwellings in the R-4, Urban Single-Family Residential Zoning District for the following variance: a 90 foot variance from the required minimum 90 foot lot frontage requirement, to construct a new single-family dwelling on a 39 acre parcel, which has no frontage on a dedicated public street.

If the Board does vote to grant this variance, it is recommended that the four conditions listed in the staff memo be applied to that approval as well.

Christine Genthner:

Thank you. Any questions for staff before I close the public hearing? Seeing none I close the public hearing. Any motions? Any discussion?

Mark Riley:

What is the intent of 22<sup>nd</sup> Avenue? Will that ever go through there?

Tom Shircel:

The Village does do neighborhood planning. It would be extended to the north should that property owner opt to develop their land sometime in the future.

Mark Riley:

So at some point when they subdivide the 39 acres . . . .

Tom Shircel:

Correct. Or, in this case, as you can see if 22<sup>nd</sup> Avenue went directly north it would be on the Stiles' property east of the applicant's property. But it would run along the Mohr property, correct.

Mark Riley:

And then you had stated that where that easement is probably further than that, to the old house that burned down, that the Village was plowing the snow so there was access for fire and police and whatnot?

Tom Shircel:

You are correct, yes.

Mark Riley:

And they're obligated to do that?

Tom Shircel:

The Village is?

Mark Riley:

Yes. If we grant this variance are they obligated to plow that?

Tom Shircel:

They've been doing this now for 22 plus years, the Village has, to give Mr. Mohr and the Gallagher's proper access to their property. So they have been removing the snow for well over 22 years.

Mark Riley:

I guess there's really no obligation for the Village to do that?

Tom Shircel:

I would think from a safety standpoint I would say yes there is an obligation.

Christine Genthner:

Any other questions? Any motions?

Jennie Holman:

I make a motion to approve the variance.

Christine Genthner:

There's a motion by Ms. Holman to approve the variance subject to the four conditions set forth in the recommendations?

Jennie Holman:

Yes.

Christine Genthner:

Do I have a second?

Bill Morris:

I will second.

Christine Genthner:

Mr. Morris seconds. With that do you want to take a roll call? I support.

Bill Morris:

Support.

Mark Riley:

Support.

Jennie Holman:

I support.

Tom Glassman:

Support.



Sheryl Berner:

Support.

David Hildreth:

Support.

Christine Genthner:

With that the variance has been approved.

**7. SUCH OTHER MATTERS AS AUTHORIZED BY LAW.**

**8. ADJOURNMENT.**

Bill Morris:

So moved.

Tom Glassman:

Second.

Christine Genthner:

All in favor?

Voices:

Aye.