Town of Union
Board of Appeals
County of Door

Bruce Alberts, Chairman

Shane Buhr
Ted Chaudoir
Ryan Chaudoir, Alternate

Rodney Everard
Brian Renard
Joe Delveaux, Alternate

May 15, 2024
Town of Union Community Center
905 County DK
Brussels, WI 54204

Call to order:
Bruce Alberts called the town plan commission meeting to order at 6:00 pm.

Establish a Quorum/Members Present:
BOA members present: Bruce Alberts, Shane Buhr, Ted Chaudoir, Rodney Everard, and Brian Renard. Also present: Beth Hanson-Clerk, and public: April Delebreau, Marvin Denny, Jeff Jeaquart, Tony Lischka and April Delebreau

Approval of Agenda:
Buhr made a motion, seconded by Chaudoir, to approve the agenda. Motion carried.

Variance Request Application:
Application for a Variance to Sec. 3.02 (3) District Setback Requirements.

April Marie Delebreau is requesting a variance at 10210 County Road D to allow construction of a shed with a proposed side lot setback of 15 feet. Parcel Number 0260024262323C with 1.5 ac. in GA zoning district.

Tina Jadin and Tony Lishka III are request a variance at 1571 Tru Way Rd to allow construction of a shed with a proposed side lot setback of 15 feet. Parcel Number 0260012262321A4 with 3 ac. in GA zoning district.

Public Hearing
April Delebreau and Marvin Denny provided a description of the structure they intend to build. Jeff Jeanquart explained the building would be 12' off side lot line and stated adjacent property owner does not have a problem with the placement of the shed.

Tony Lishka provided a description of the structure they intend to build and the hardship of a septic system location in the lot.

Consideration of:
Application for a Variance to Sec. 3.02 (3) District Setback Requirements.

Renard made a motion, seconded by Buhr, to deny the variance request based Board of Appeals decision-making worksheet (attached). Motion carried.

Chaudior made a motion, seconded by Renard to deny the variance request based on Board of Appeals decision-making worksheet (attached). Motion carried.

Adjourn:
Buhr made a motion, seconded by Chaudoir, to adjourn the meeting at 7:00 pm. Motion carried.

Respectfully submitted: Beth Hanson - Clerk

TOWN OF UNION
BOARD OF APPEALS

VARIANCE DETERMINATION

Applicant Information

Name April Marie Delebreau

Mailing Address 10210 Cty Rd D

City Luxemburg State WI Zip 54217

Email _____ Phone # 920-559-2201

Property of Variance Request

Address 10210 Cty Rd D Parcel # 0260024262323C

Variance Request Sec. 3.02(3) District Requirement for General Agriculture zoning district requires 50' side setback for accessory structure. The application proposes to build a new storage building next to existing storage building, with only 10' side lot lot setback.

Board of Appeals Review

Date of Meeting May 15, 2024

Approved _____ Denied X

Approved for _____

Reason of Denial The requested variance does not meet criteria set forth in Chapter 7 Town of Union Zoning Ordinance for variance.

Board of Appeals Chair Bruce Alberts

cc: Brett Guilette

TOWN OF UNION BOARD OF APPEALS
DECISION-MAKING WORKSHEET

APPLICANT(S) NAME(S): April Marie Delebreau
PROPERTY ADDRESSES / PIN: 10210 Cty Rd D, 0260024262323C
HEARING DATE: May 15, 2024
DECISION DATE: May 15, 2024

DESCRIPTION OF VARIANCE REQUESTED
April Marie Delebreau petitions for a variance from Section 3.02 (3) District Requirements which requires structures to be located at least 50' from the side lot line. The applicant proposes to build a new storage building next to an existing storage building, with only 15' from the side lot line.

To grant a variance, all standards listed below must be met. In addressing each standard, express the reasons for the decision, i.e., why the facts did or did not satisfy the standard. The burden of proof at all times remains with the applicant to establish that the proposed variance meets the following standards.

1. UNIQUE PHYSICAL PROPERTY LIMITATIONS

Are there unique physical property limitations such as steep slopes, wetlands, or parcel shape that prevent compliance with the ordinance? Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance. The variance is not warranted if the physical character of the property allows a landowner to develop or build in compliance with the zoning ordinance.

In order for a variance to satisfy the unique physical property limitation test, the question below must be answered affirmatively.

A. Does this property contain unique physical property limitations (e.g., wetland presence, parcel shape, steep slope, etc.) that would prevent compliance with the ordinance?
YES _____ **No** **X**

EXPLAIN: The property has no wetlands or steep slopes.

2. UNNECESSARY HARDSHIP

Unnecessary hardship exists when a literal enforcement of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or when conformity with ordinance standards would be unnecessarily burdensome. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not factors in deciding variances.

Considerations:

- Unnecessary hardship should be determined in light of the purpose and intent of the zoning ordinance in question. (See page 3.) The facts of the case should be analyzed in light of these purposes. Only after considering the purpose(s) of the ordinance, and the nature of the specific restriction(s) at issue, may a decision be made as to whether or not failure to grant a variance will cause an unnecessary hardship.
- Unnecessary hardship may arise due to a unique property limitation of a parcel (see #1 above). A variance is not warranted if the physical character of the property allows a landowner to develop or build in compliance with the zoning ordinance.
- Unnecessary hardship does not include considerations personal to the property owner (e.g., personal preference, desire to maximize the economic value of the property, or financial hardship caused by ordinance compliance.)

- Any self-created hardship in question are not proper grounds upon which to grant a variance.

In order for a variance to satisfy the unnecessary hardship test, one of the questions below (A or B) must be answered affirmatively.

A. Does denial of the variance – i.e., requiring compliance with the strict letter of the ordinance provision(s) in question (e.g., setbacks, height limitations, etc.) – unreasonably prevent the owner from using the property for a permitted purpose?
YES _____ No __X_____

EXPLAIN: Building could be placed elsewhere on the property to meet the setbacks.

OR

B. Is conformity with the regulation(s) unnecessarily burdensome?
YES _____ No _____

EXPLAIN: _____

3. PUBLIC INTEREST

A variance may not be granted which results in harm to public interests, nor thwarts the spirit and intent of the ordinance. In applying this test, the board should review the purpose statements of the ordinance in order to identify public interests. (See page 3.) The short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the community, and even the state, should be considered. Review should focus on the general public interest, rather than just the narrow interests or impacts on neighbors, patrons, or residents in the vicinity of the project.

A variance is not a popularity contest, the mere fact of public support or opposition is not, in and of itself, determinative of whether or not a variance is contrary to the public interest.

In order for a variance to satisfy the public interest test, the question below must be answered negatively.

Does the granting of the variance result in harm to the public interest?
YES _____ No _X_____

EXPLAIN: Does not harm neighbors or other public.

Has the applicant seeking a variance demonstrated that each of the three standards has been satisfied in this case? YES _____ No __X__. If yes, then substantial justice will be done by granting the variance.

If the applicant has met all three tests, the BOA may apply conditions to the variance to ensure the public interests are not harmed.

Conditions that apply to this variance:

Chapter 7 - Town of Union Zoning Ordinance Purpose Statements

1.04 Purpose: The purpose of this Ordinance is to promote and protect public health, safety, aesthetics, and other aspects of the general welfare. Further purposes of this Ordinance are to:

(1.) Aid in implementing the Town of Union comprehensive plan.
(2.) Promote planned and orderly land use development.
(3.) Protect property values and the property tax base.
(4.) Fix reasonable dimensional requirements to which buildings, structures, and lots shall conform.
(5.) Prevent overcrowding of the land.
(6.) Advance uses of land in accordance with its character and suitability.
(7.) Provide property with access to adequate sunlight and clean air.
(8.) Aid in protection of groundwater and surface water.
(9.) Preserve wetlands.
(10.) Protect the beauty of landscapes.
(11.) Conserve flora and fauna habitats.
(12.) Preserve and enhance the town's rural characteristics.
(13.) Protect vegetative shore cover.
(14.) Promote safety and efficiency in the town's road transportation system.
(15.) Define the duties and powers of administrative bodies in administering this Ordinance.
(16.) Prescribe penalties for violation of this Ordinance.

Guiding Principles to Grant a Variance

There is ample case law concerning variances that provide the following guiding principles that a BOA should rely on in their decision whether to grant a variance.

Parcel-as-a-whole. The entire parcel, not just a portion of a parcel, must be considered when applying the unnecessary hardship test. *State v. Winnebago County,* 196 Wis.2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. app. 1995)

Self-imposed hardship. An applicant may not claim hardship because of conditions created by his/her actions. *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee,* 27 Wis. 2d 468, 479, 247 N.W.2d 98 (1976)

Circumstances of applicant. Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances. *Snyder v.Waukesha County Zoning Bd. of Adjustment,* 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

Financial hardship. Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property or be the least expensive option for the applicant. *State v. Winnebago County,* 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment,* 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989)

Uniqueness of the property. Where the hardship imposed upon an applicant's property is no greater than that suffered by nearby lands, the BOA may not grant a variance to relieve it. To grant such relief would be unfair to owners who remain subject to the general restrictions of the zoning ordinance, and it would endanger the community plan by piecemeal exemption. *Arndorfer v. Sauk County Bd. Of Adjustment*, 162 Wis. 2d 246, 469 N.W.2d 831 (1991).

Nearby violations. Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance. *Von Elm v. Bd. of Appeals of Hempstead,* 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Dev. 1940)

Previous variance requests. Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOA.

Objections from neighbors. The lack of objections from neighbors does not provide a basis for granting a variance. *Arndorfer v. Sauk County Bd. of Adjustment,* 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

Variance to meet code. Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts. *Thalhofer v. Patri,* 240 Wis. 404, 3 N.W.2d 761 (1942); *State v. Kenosha County Bd. of Adjustment,* 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998)

TOWN OF UNION
BOARD OF APPEALS

VARIANCE DETERMINATION

Applicant Information

Name Tina Jadin & Tony Lishka III

Mailing Address 1571 Tru Way Rd

City Brussels State WI Zip 54204

Email _____ Phone # 920-362-2272 & 920-639-7142

Property of Variance Request

Address 1571 Tru Way Road Parcel # 0260012262321A4

Variance Request Sec. 3.02(3) District Requirement for General Agriculture zoning district requires 50' side setback for accessory structure. The application proposes to build a new storage building next to existing storage building, with only 15' side lot lot setback.

Board of Appeals Review

Date of Meeting May 15, 2024

Approved _____ Denied X

Approved for _____

Reason of Denial The requested variance does not meet criteria set forth in Chapter 7 Town of Union Zoning Ordinance for variance.

Board of Appeals Chair Bruce Alberts

cc: Brett Guilette

TOWN OF UNION BOARD OF APPEALS
DECISION-MAKING WORKSHEET

APPLICANT(S) NAME(S): Tina Jadin & Tony Lishka III
PROPERTY ADDRESSES / PIN: 1571 Tru Way Rd, 0260012262321A4
HEARING DATE: May 15, 2024
DECISION DATE: May 15, 2024

DESCRIPTION OF VARIANCE REQUESTED
Tina Jadin & Tonly Lishka III petitions for a variance from Section 3.02 (3) District Requirements which requires structures to be located at least 50' from the side lot line. The applicants propose to build a new storage building with only 15' from the side lot line.

To grant a variance, all standards listed below must be met. In addressing each standard, express the reasons for the decision, i.e., why the facts did or did not satisfy the standard. The burden of proof at all times remains with the applicant to establish that the proposed variance meets the following standards.

1. UNIQUE PHYSICAL PROPERTY LIMITATIONS

Are there unique physical property limitations such as steep slopes, wetlands, or parcel shape that prevent compliance with the ordinance? Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance. The variance is not warranted if the physical character of the property allows a landowner to develop or build in compliance with the zoning ordinance.

In order for a variance to satisfy the unique physical property limitation test, the question below must be answered affirmatively.

A. Does this property contain unique physical property limitations (e.g., wetland presence, parcel shape, steep slope, etc.) that would prevent compliance with the ordinance?
YES _____ **No** _X_____

EXPLAIN: No wetlands or steep slopes present.

2. UNNECESSARY HARDSHIP

Unnecessary hardship exists when a literal enforcement of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or when conformity with ordinance standards would be unnecessarily burdensome. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not factors in deciding variances.

Considerations:

- Unnecessary hardship should be determined in light of the purpose and intent of the zoning ordinance in question. (See page 3.) The facts of the case should be analyzed in light of these purposes. Only after considering the purpose(s) of the ordinance, and the nature of the specific restriction(s) at issue, may a decision be made as to whether or not failure to grant a variance will cause an unnecessary hardship.
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- Unnecessary hardship does not include considerations personal to the property owner (e.g., personal preference, desire to maximize the economic value of the property, or financial hardship caused by ordinance compliance.)
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In order for a variance to satisfy the unnecessary hardship test, one of the questions below (A or B) must be answered affirmatively.

A. Does denial of the variance – i.e., requiring compliance with the strict letter of the ordinance provision(s) in question (e.g., setbacks, height limitations, etc.) – unreasonably prevent the owner from using the property for a permitted purpose?
YES _____ No _____

EXPLAIN: _____

_____

OR

B. Is conformity with the regulation(s) unnecessarily burdensome?
YES __X__ No _____

EXPLAIN: Would have to move a mound system. _____

_____

3. <u>PUBLIC INTEREST</u>

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YES _____ No __X__

EXPLAIN: _____

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Has the applicant seeking a variance demonstrated that each of the three standards has been satisfied in this case? YES _____ No __X__. If yes, then substantial justice will be done by granting the variance.

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Conditions that apply to this variance:

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