

NOTICE FOR PUBLIC HEARING

A public hearing as required by the General Code of Ordinances for Marathon County Chapter 17 Zoning Code will be held by the **Marathon County Board of Adjustment** at **9:00 a.m., Thursday, March 28, 2024**, at 500 Forest Street, Wausau WI 54403.

Persons wishing to attend the meeting by phone may call into the telephone conference beginning fifteen (15) minutes prior to the start time indicated above using the following number:

Phone Number: 1-408-418-9388

Access Code/Meeting Number: 2482 290 3069



PLEASE NOTE: If you are prompted to provide an “Attendee Identification Number” enter the # sign. No other number is required to participate in the telephone conference.

When you enter the telephone conference, **PLEASE PUT YOUR PHONE ON MUTE!**

1. Approval of the February 22, 2024 minutes.
2. The appeal of Tyler Seehafer (through Seehafer Farms LLC) alleging an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the Marathon County General Code of Ordinances Chapter 17 General Zoning Ordinance. The property currently zoned in the Farmland Preservation zoning district and is located in part of the Southeast ¼ of the Northeast ¼, Section 23, Township 28 North, Range 6 East, Town of Marathon; Pin # 054.2806.231.0996.
3. Board Reappointments
4. Announcements and Requests
5. Adjourn

All interested persons will be provided the opportunity to provide testimony at the public hearing. Those planning to attend this meeting who need some type of special accommodation in order to participate should call the County Clerk’s Office at 715-261-1500. Please call at least one business day in advance of the meeting.

In the event you are unable to attend the public hearing and wish to provide written testimony, please contact the Conservation, Planning and Zoning Department at 715-261-6000 for assistance.

 Pat Schreiner, Chairman Board of Adjustment
 Laurie Miskimins, Director
Conservation Planning and Zoning Department

Publish: March 11th and March 18th, 2024
E-mailed to Wausau Daily Herald on March 7th, 2024, at 10:15 a.m. / nd

February 22, 2024
9:00 a.m.

500 Forest St, Wausau WI

MINUTES

MARATHON COUNTY BOARD OF ADJUSTMENT

Members present in person: Pat Schreiner, Richard Lawson, Carolyn Opitz, Kerry Brimmer, Tom Seubert

Members present via WebEx / phone: **None**

Members not present: Jim Servi

Also present remotely via phone / WEBEX or in person: Shad Harvey, Garrett Pagel, Teal Fyksen, Nicole Delonay, Brittanie Schulz, Conservation, Planning & Zoning;

Called to order at 9:00 a.m., 210 River Drive, Wausau by Chair Pat Schreiner, who explained the **rules of the hearing** and the reason for the establishment of the Board of Adjustment.

1. **Approve November 16, 2023, minutes** – **Motion** / second by Brimmer/Seubert to approve the November 16, 2023, minutes as distributed. Motion **carried** by voice vote, no dissent.
2. **The application** of Dan Schallock for a conditional use permit per section 17.401 of the General Zoning Code of Ordinances under Marathon County Chapter 17-Zoning Code to construct an accessory building prior to a principal structure (for personal/private use and or accessory to the principal use of the lot) in the Rural Residential zoning district, located in part of the Southeast ¼ of the Southeast ¼, Section 26, Township 28 North, Range 3 East, Town of Frankfort; Pin # 026.2803.264.0990.

Harvey was sworn in and asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Harvey reviewed the staff report and discussed Ordinance Section 17.401.01 for the purpose of constructing an accessory building prior to a principal structure (For personal/private use and/or accessory to the principal use of the lot) in the Rural Residential District. Harvey reviewed the sections of Chapter 17 that apply to this request and the information shared by the applicant to address the questions that apply. Harvey stated the Town of Frankfort gave their approval to the petition at their January 15th, 2024, meeting.

Dan Schallock – 241410 Staadt Ave - was sworn in and indicated he plans to build the garage to store his personal belonging prior to constructing a single-family home. Schallock hopes to have both structures built within two years.

There was no additional testimony in favor, opposed, or as interest may appear via in person, or virtually. Testimony portion of the hearing closed at 9:14 am.

Motion/second by Lawson/ Seubert to **grant** the conditional use permit with conditions for Dan Schallock as requested. The conditions are as follows:

Project The Board deliberated and completed the *Conclusion of Law and Decision Sheet*.

Motion **carried** 5 yes, 0 no, 0 abstain. Roll call vote.

3. **The application** of Earth Inc on behalf of Dennis & Krisan Stroetz for a conditional use permit per section 17.204.54 of the General Zoning Code of Ordinances under Marathon County Chapter 17 Zoning Code to operate a for the purpose of continuing an existing nonmetallic mine site (the previous conditional use permit will be expiring). The nonmetallic mine is located on property currently owned by Dennis W Stroetz & Krisan M Stroetz Joint Revocable Trust located in the F-P Farmland Preservation Zoning district on properties described as part of the S ½ of the NW ¼ (PIN # 056.2603.102.0993) and part of the N ½ of the SW 1/4 (PIN # 056.2603.103.0981), Section 10, T26N, R3E, Town of McMillan with a property address of 207601 Galvin Ave, Marshfield, WI 54449.

Teal Fyksen was sworn in and asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Fyksen reviewed the staff report and discussed Ordinance Section 17.204.54 for the continuing an existing nonmetallic mine site (the previous conditional use permit will be expiring). The nonmetallic mine is located on property currently owned by Dennis W Stroetz & Krisan M Stroetz Joint Revocable Trust located in the F-P Farmland Preservation Zoning district. Fyksen reviewed the sections of Chapter 17 that apply to this request and the information shared by the applicant to address the questions that apply. Fyksen stated the Town of McMillan gave their approval to the petition at their February 12, 2024, meeting. Fyksen read a letter of support submitted by James Griesbach the Marathon County Highway commissioner (Exhibit 1) and noted the Town of McMillan minutes that were provided by the town. (Exhibit 2)

Brimmer questioned where the closest pit to this location is. Fyksen stated the closest pit, with similar material, is believed to be in the town of Brighton, roughly 20 miles away.

Lawson asked for clarification on the hour change proposed by the Town of McMillan.

Opitz asked for clarification regarding exhibit 1, and questioned why the County Commissioners mentioned placing an asphalt plant within the quarry boundaries when the original permit did not allow for that. Fyksen shared that a conditional use permit was approved in 2015 for an asphalt batch plant. Harvey noted it was a separate conditional use that was approved.

The following people were sworn in and gave testimony in favor to the Earth Inc. Conditional Use Permit request:

Dan De Boer – Provided the history of the Stroetz Mine which was started in 1999 and indicated that Earth Inc has been operating the mine since 2010. De Boer explained that this mine was brought forth to the Board of Adjustments in 2019. De Boer explained their compliance with the 2019 standards that were set by the BOA. De Boer explained that in 2019 the hours of operation got changed to 7am to 530pm Monday through Friday, and the operation had to be closed January 1- April 15th. De Boer also gave a summary of what the mix of asphalt contains and why the town of McMillan proposed a change in hours. He stated that it is not feasible to operate an asphalt plant with the 7am-5:30pm M-F hours. De Boer explained why the hours recommended by the town of McMillan are necessary and explained why this pit is an important staple to the surrounding community.

Opitz questioned the approximate 60ft depth of the current pit and which De Boer stated it is possible that the pit be at that depth in one corner. De Boer confirmed the total acreage of the mine.

Opitz questioned the water quality concerns, and De Boer provides a summary of how granite is extracted.

De Boer stated that well water test have been completed on neighbors properties as required since 2019 and the results have come back in compliance.

Opitz also questioned why tankers are running the roads.

De Boer stated that the company used the north driveway and the tankers at questions may be used for other agricultural purposes.

Dan Stroetz – was sworn in and noted that Mullins Farms has been using the farm road to spread sludge on his farmland.

Opitz questioned the agreement between Earth Inc and Stroetz's.

Schreiner questioned how Earth Inc gets notified of complaints and how they handle the situations that arise.

De Boer explained how the company handles all the situations that have arose.

Damon Stichert – Representing Dennis & Kris Stroetz: Stichert explained the family history of the farm and the goal of the aquaculture pond for trout that would be 21 acres in size. Stichert noted they are not looking to change the original requested depth or size of the pond. Stichert presented the following exhibits for the record in favor:

Exhibit 3 - Adjacent Properties

Exhibit 4 - Quarry to County Highway C

Exhibit 5 - Berms & Trees

Exhibit 6 - Berms & Trees 2

Stichert explained that the Stroetz have taken great strides to make this property harmonious with neighbors and indicated there have been 0 complaints from the town of McMillan against the quarry. He indicated that the quarry has not affected property values within the area and the blasting is not affecting the surrounding area as they do blasts that are smaller than the state law standard and significantly less blasting than most quarries. (blasting reports provided in the petition packet) Stichert noted that the Niehaus's received paid for construction work from Earth Inc due to allegations that the blasting had caused the Niehaus's well to crack and drywall to crack within their home. Earth Inc paid for testing to verify if the blasting could have caused the possible cracking, and it came back that the vibration levels caused by blasting could not have caused the cracking. Stichert also gave a summary of the well report over the course of a few years and the costs that the Niehaus's received. Stichert noted that the deposits are getting more dense and closer to the surface. Stichert indicated that the Stroetz support the 10-year extension of the mine.

Seubert questioned who controls the reclamation fee.

Heidi Peskie owns property near the mine and are long term residence of the area. Her concerns include: The proposed hour changes, including Saturday operations; dust control; berm height and being driven on; water quality,

back up sensors and gate entrance safety. Peskie noted that the Town of McMillan did not allow public comment. It was reported that the Town of McMillan did not host a public hearing, but this application went through the Planning Commission and then was forwarded to the Town Board.

Exhibit 7 -Peskie also read a letter written by Kimberly Niehaus pertaining to her concerns with the mine.

Robert Peskie was sworn in and shared his concern for the proposed longer hours, Saturday operation hours and berm travel.

Russel L Kollmansberger was sworn in and indicated he is a neutral party. Kollmansberger asked that the hours recommended by the town of McMillan be reconsidered and consider the original permit hours requested.

Stichert presented the well reports that were provided in the staff packet.

De Boer gave a summary of how trucks move about the property and explained the alarms on the trucks are code. De Boer also clarified that the town wanted the extended out and it would benefit Earth Inc and benefit the community. Harvey clarified that alarms on machinery are required per MSHA but there are white noise alarms available that are MSHA compliant.

Robert Peskie shared photos of the trees and berm to the committee. (Exhibit 8-12)

There was no additional testimony in favor, opposed, or as interest may appear via in person, or virtually. Testimony portion of the hearing closed at 11:30 am.

The board discussed what conditions should be considered for the permit. Items discussed were back up beepers used, berm vegetation, dust control, hours of operation and length of permit.

Motion/second by Brimmer/Seubert to **grant** the conditional use permit with conditions for Earth Inc as requested.

Amended Motion/ Brimmer/ Seubert to **grant** the conditional use permit with conditions for Earth Inc as requested and the conditions are as follows:

1. Haul route - All haul trucks, loaded or empty, exiting or entering the Stroetz Quarry shall use the north driveway onto Galvin Avenue to/from the north connecting to County Road C.
2. Safety – In the event the quarry excavation (pit) is within 100ft. of a residential property line, a berm, fencing and signage will be installed.
3. Expiration of permit - Conditional Use Permit is valid for 10-years beginning February 22nd, 2024.
4. All other required Federal, state, and local permits and approvals shall be obtained and followed.
5. Alternative back up beeper equipment shall be installed on all equipment that's primary function is to be used and support operations within the boundaries of the approved non-metallic mine.
6. On the western berm, beginning from the forested area extending along the length of the berm going south shall be graveled to prevent dust.
7. Hours of operation shall be from 7:00 AM to 6:30 PM, Monday through Friday, with no operations on Saturdays or Federal Holidays.

The Board deliberated and completed the *Conclusion of Law and Decision Sheet*.

Motion **carried** 5 yes, 0 no, no abstain. Roll call vote.

4. **Board Reappointments** – None

5. **Board education and training as needed** – -Administrative Appeals

6. **Announcements and Requests** - None

7. **Next meeting date** – March 28, 2024, at 9:00 a.m., 500 Forest Street, Wausau, WI 54403

8. **Meeting adjourned** – **Motion/second** by Seubert/ Brimmer to adjourn the meeting at 12:28 a.m.

Motion **carried**.

by voice vote, no dissent.

Respectfully submitted,

Carolyn Opitz, Secretary

Marathon County Board of Adjustment

cc: Board of Adjustment (6), County Clerk, Town Clerk

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APPEAL to MARATHON COUNTY BOARD of ADJUSTMENT

As authorized by Sections 59.694 (4) and (7)(a) Wis. Stats and Section 17.804 of the Marathon County Zoning Ordinance.

Name of Appellant Tyler Seehafer (through Seehafer Farms LLC)

Mailing Address 223370 Midpoint Road, Marathon WI 54448

Telephone: 715551-3375 -

E-mail Address: T.seehafer@yahoo.com

Owner Name (if different) _____

Mailing Address _____

Telephone _____

PARCEL INFORMATION

Parcel ID # (PIN) 054 -286-231-09 0

(If more than one parcel is included in this application, list all parcel numbers & legal

descriptions) Parcel Address: 223510 HOLLYWOOD RD MARATHON 54448

Legal Description: Government _____ or SE 1/4 NE 1/4, and SW 1/4 of NE 1/4
Lot Section 23, T 28 N, R 6 E, Town of Marathon
Lot _____ Block _____ Subdivision _____

Parcel size: 75.18 Acres or _____ Sq. Ft. Zoning District: Farmland Preservation

I hereby petition the Marathon County Board of Adjustment to hear and decide this appeal. I allege there is an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the Marathon County General Code of Ordinances Chapter 17 General Zoning Ordinance.

I request the Board render a decision based on the following facts as attached to this application. (Explain your request using a separate sheet(s) of paper. Attach any supporting documents or photographs. A survey is required for some applications involving boundary disputes.)

I understand that I or my duly authorized representative must appear at the hearing, or the Board may deny the application without prejudice.

Applicant Signature (Required) _____ Date _____

Owner Signature (Required) _____ Date 1-16-24

A Fee of \$ 600.00 Payable to "Marathon County" must be submitted with this **original** appeal to:

Board of Adjustment, Marathon County CPZ Department, 210 River Drive, Wausau, WI 54403-5449
Telephone: 715/261-6000 Fax: 715/261-6016

↓↓↓↓↓ For Office Use ↓↓↓↓↓↓ For Office Use ↓↓↓↓↓↓
Amount Received: \$ 600.00 Date Received: _____

NOTE: Any person aggrieved by a decision made by the Board of Adjustment (BOA) may, within 30 days after the filing of the decision in the Conservation, Planning & Zoning Department, commence an action seeking the remedy available by certiorari. For information on filing a BOA decision appeal and who may file an appeal please reference Sections 59.694 (10), 68.13, and 227.42 Wis. Stats.

To: Marathon County WI Board of Adjustment

Subject: Appeal of Zoning Administrator's decision on Seehafer Farm Consolidation:

Parcel PIN: 054-2806-231-0996

Date: January 23, 2024

This appeal is being filed in regard to the Zoning Administrator's determination regarding Farm Consolidation Eligibility on this parcel. On January 8th, 2024, the Marathon County Zoning Administrator sent me a letter which stated he has determined that this parcel is not eligible for a Farm Consolidation under Section 17.204.2 Marathon County General Code of Ordinances Chapter 17-Zoning Code. I am appealing his decision under Section 17.804.02, Appeal Matters.

The Zoning Administrator has determined that the property address listed above does not meet the eligibility requirements criteria for farm consolidation listed in Section 17.204.2. More specifically the primary residence structure relocation does not align with the prerequisite found in Section 17.204.23 "Farm residences constructed prior to January 1, 2014, and farm structures may be separated from the farm plot. .. This is due to the structure being relocated post January 1, 2014."

I will provide information that demonstrates that the farm residence should be treated as an existing structure under the provisions of the zoning code stated above.

The determination is treating the farm residence as newly constructed and not an existing farm residence. I will provide information to the Board, counter to this determination, and in doing so ask the Board to consider reversing the determination of the Zoning Administrator and determine that my farm consolidation request be treated as an existing farm residence under the stated zoning sections. This would allow me to complete a Farm Consolidation under the Zoning Code.

Background: On July 8th, 2022, I was issued a zoning permit from Marathon County to relocate a farm residence from one location on the listed parcel, specifically from the west side of the property to the northeast corner of the same parcel (see map). This was done to remove the farm road and farm residence from prime farmland on this parcel, make the parcel easier to farm, and reduce the potential conflict between the farm residents and the farming operation. It was my intent to rent or sell this farm residence after it was relocated and renovated. In addition, relocating the structure enabled me to increase the tillable acreage of farmland on the parcel, allow me to create a larger field, and move the farm residence out of conflict with my farming operations. These are all consistent with the purpose of Farmland Preservation Zoning, stated in the code.

Marathon County issued me a permit for a relocation of a structure rather than treating it as a new structure. The State of Wisconsin also classifies a relocated structure as an existing structure, per SPS 320.04 (attached). I believe the relocation of the farm residence built on my parcel in 1898 should also be considered an existing farm residence by this section of the zoning code. I will provide additional maps and other support material the day of the hearing.

Thank you for considering my appeal.

Tyler Seehafer
2230370 Midpoint Road
Marathon WI 54448



SPS 320.04 Applications.

(1) NEW DWELLINGS.

(a) This code applies to all dwellings, dwelling units and foundations for dwelling units, for which the building permit application was made or construction commenced on or after the effective date of this code.

(b) All dwellings covered under par. (a) shall meet the requirements of ch. SPS 321.

(c)

1. The installation of heating, air conditioning, plumbing or electrical systems is not required.

2. If any of the systems under subd. 1. are installed, the systems and their installation shall comply with this code.

3. If a heating or air conditioning system is installed, the dwelling shall comply with ch. SPS 322.

(2) ADDITIONS AND ALTERATIONS. Additions and alterations to dwellings covered by this code shall comply with all provisions of this code at the time of permit application or the beginning of the project, if no permit is required.

(3) BED AND BREAKFAST ESTABLISHMENTS. The following portions of a bed and breakfast establishment shall comply with the provisions of this code:

(a) The third floor when used for other than storage.

(b) A structural addition, for which no use other than as a bed and breakfast establishment is proposed.

(4) CHANGE OF USE. A building previously used for another purpose, such as a barn or garage, shall comply with this code upon conversion to residential use.

(5) REUSE OF A DWELLING OR FOUNDATION.

(a) *Existing dwelling or manufactured home placed on a different foundation.* Where an existing dwelling or manufactured home is placed on a different foundation, the new foundation is considered an addition or alteration to the existing dwelling or manufactured home.

Note: The applicability of this code to an addition or alteration to an existing dwelling or manufactured home is determined by the original date of construction of the dwelling or manufactured home and is not altered by any movement of the structure.

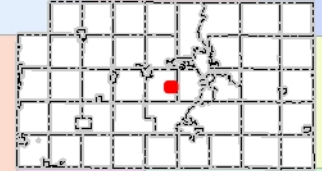
(b) *New dwelling or manufactured home.* A new dwelling or manufactured home placed on a new or existing foundation shall meet the permitting, construction and inspection requirements of a new dwelling or manufactured home.



Land Information Mapping System

TAYLOR

LINCOLN



WOOD

PORTAGE



Legend

- Road Names
- Parcels
- Parcel Lot Lines
- Land Hooks
- Section Lines/Numbers
- Right Of Ways
- Named Places
- Municipalities
- 2020 Orthos Countywide
 - Red: Band_1
 - Green: Band_2
 - Blue: Band_3

348.44 0 348.44 Feet



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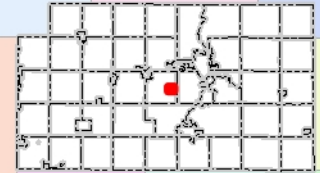
Notes



Land Information Mapping System

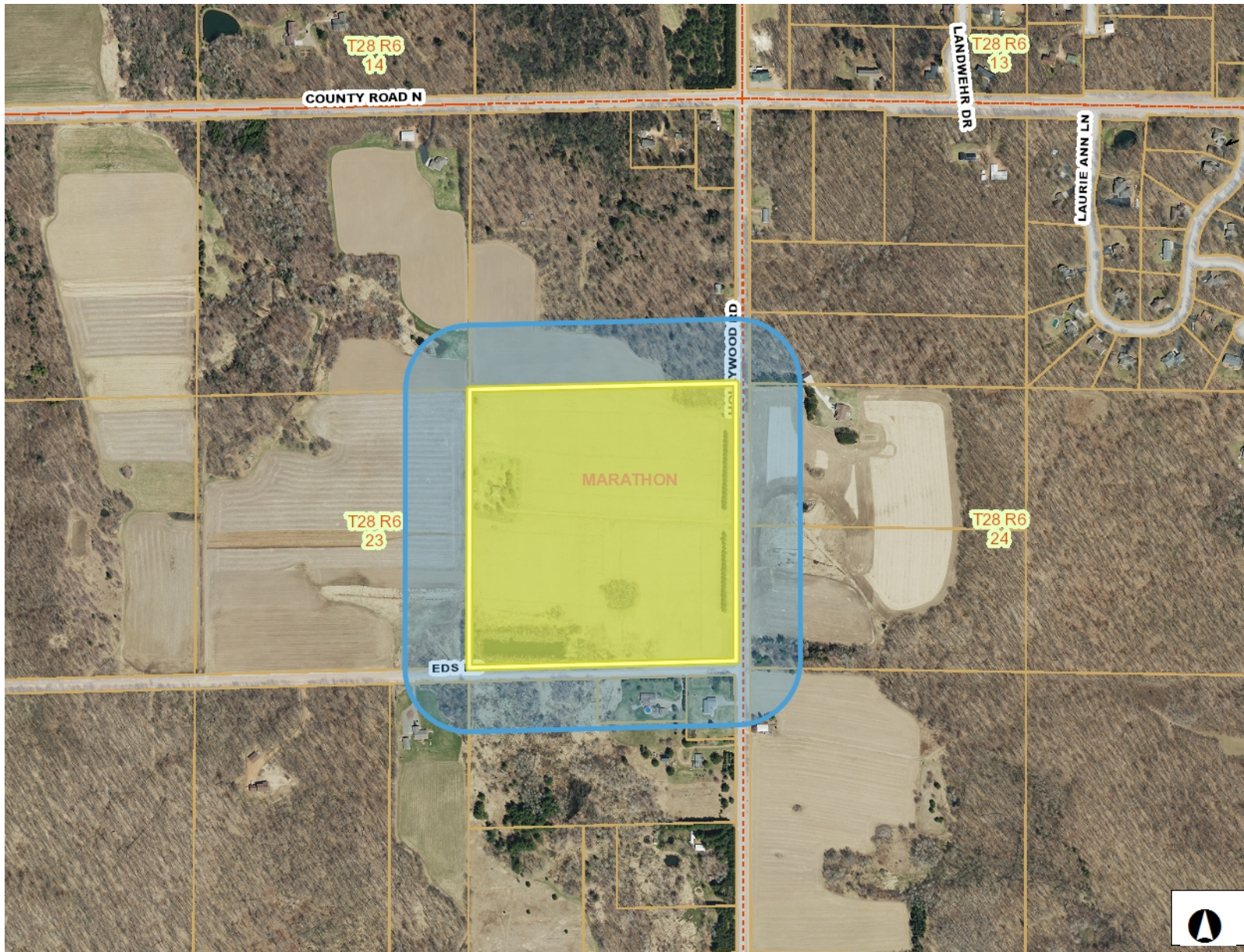
TAYLOR

LINCOLN



WOOD

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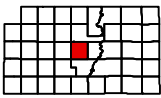
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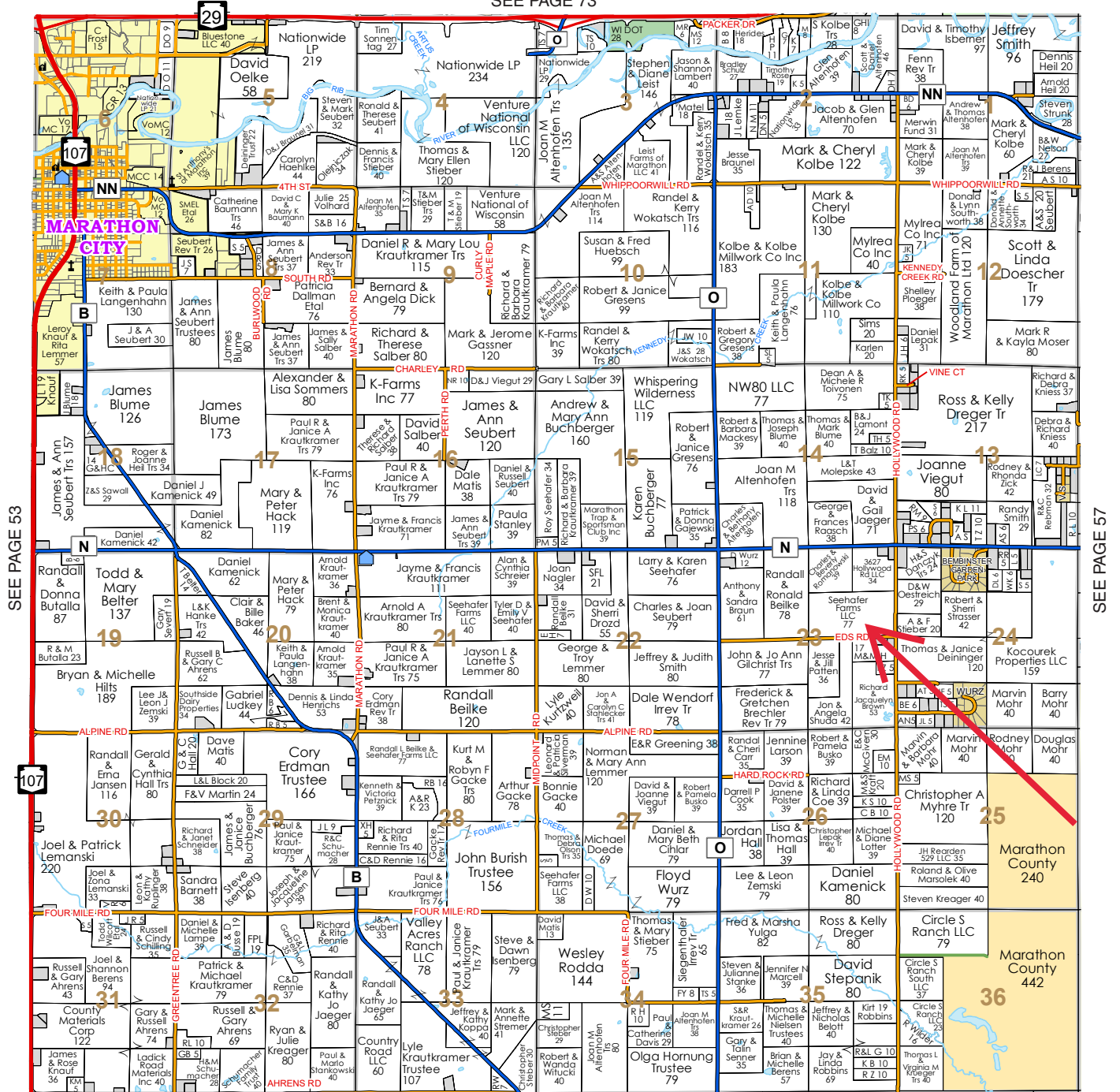
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Notes





SEE PAGE 73



SEE PAGE 37



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Town of Marathon Planning and Zoning Committee minutes

March 5, 2024

7PM call to order members present: Mark Kolbe, Fred Yulga, Chuck Seubert, Francis Martin, and Andy Altenhofen

Considering a rezone submitted by Vreeland Associates on behalf of Diane Leist

The purpose of the rezone is to put Memories Ballroom on the same parcel as its septic system.

Motion by Chuck Seubert to recommend approval of the rezone, second by Fred Yulga

Motion passed unanimously.

Tyler Seehafer special exception; all board members signed a letter produced by Mark Kolbe supporting Marathon County Zoning on their position of new construction on Tyler's property.

Storage containers (shipping containers)

Fred Yulga made a motion to recommend keeping current Marathon County zoning language Sec 17-401

Seconded by Francis Martin

Motion passed unanimously.

Motion to adjourn By Fred Yulga

Seconded by Chuck Seubert

Motion passed unanimously

Date: 3/05/2024

FROM: Town of Marathon
Town of Marathon Planning Commission
225310 County Road B
Marathon, WI 54448

TO: Marathon County Board of Adjustments
500 Forest Street
Wausau, WI 54403

Board of Adjustments:

Regarding the request for appeal by Tyler Seehafer: The Town of Marathon has determined that the Town's previous hearing outcome (Recommendation to Deny. Dated 12/29/2023) is applicable.

The Town of Marathon's Planning Commission takes great pride in preserving the Town as outlined in the Comprehensive Land Use Plan. This plan has been followed and updated along the way for nineteen (19) years, additionally, the Town of Marathon has been enrolled in Farmland Preservation Exclusive Ag zoning for forty (40) years. Together, these plans and programs have guided the Town Officials in their decision-making process for decades.

The main point of concern in this case is not how a building arrives at its build site but rather what is the proper zoning. In this case, Town of Marathon Exclusive Ag Zoning applies to the site in question. The site, according to the Town's zoning (pages 46-47 Land Use Plan), requires thirty-five (35) acres for one (1) home. This is common in the Town. The property owner, Tyler Seehafer, previously applied for a rezone on this same site, which was denied based on the Town's Zoning, opposition from surrounding landowners, and certain specific land use goals, policies, and objectives. These are the very goals, policies, and objectives that have preserved the land so it can be farmed today.

The site in question has:

1. New site and/or Address
2. New Well
3. New Septic
4. New Foundation
5. New Driveway
6. New Electrical Service
7. New Building Footprint (size, shape, addition of attached garage)

The Town of Marathon stands firm in its decision and asks that the Marathon County Board of Adjustments deny the application and support Marathon County's Zoning Office's previous determination that this is considered a "New" construction.

Thank you,

Town of Marathon Planning Commission

Mark Kellie 3-5-24
Mark Kellie

Francis Martin *Chuck Seibert* *Fred Yulga* *Andrew Altenhofen*
 Francis Martin Chuck Seibert Fred Yulga Andrew Altenhofen

Town Of Marathon Town Board

Keith Langenbach *David Krautkramer* *Bernie Dick* *Kelley S Blume*
 Keith Langenbach David Krautkramer Bernie Dick Kelley S. Blume



Tyler Seehafer (Seehafer Farms LLC)
Appeal to Marathon County Board of Adjustment
Staff Report, March 28th, 2024
Marathon County Board of Adjustment

APPELLANT:

Tyler Seehafer (Seehafer Farms LLC) – 223370 Midpoint Road, Marathon, WI 54448

PROPERTY OWNERS:

Tyler Seehafer (Seehafer Farms LLC) – 223370 Midpoint Road, Marathon, WI 54448

REQUEST:

The appeal of Tyler Seehafer (through Seehafer Farms LLC) alleging an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the Marathon County General Code of Ordinances Chapter 17 General Zoning Ordinance. The property currently zoned in the Farmland Preservation zoning district and is located in part of the Southeast ¼ of the Northeast ¼, Section 23, Township 28 North, Range 6 East, Town of Marathon; Pin # 054.2806.231.0996.

PUBLIC HEARINGS/MEETINGS:

- Town of Marathon Town Board Meeting: March 5th, 2024
- Marathon County Board of Adjustment Meeting: March 28th, 2024; 9AM

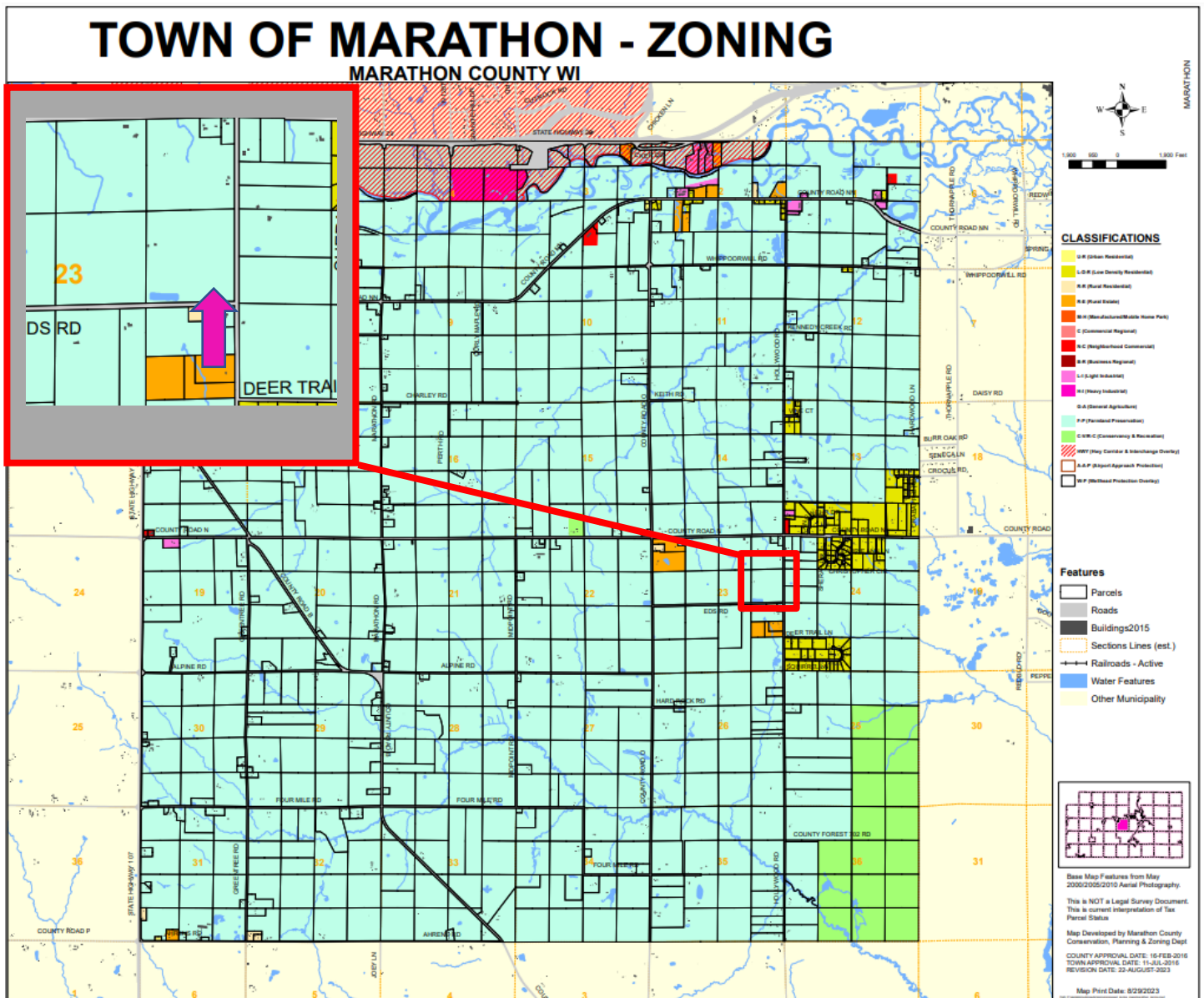
Legal Notification:

A legal advertisement was published in the *Wausau Daily Herald*. Notice of the Appeal was also sent by regular mail to adjacent property owners within 300 feet of the subject property.

EXISTING ZONING DISTRICT:

F-P Farmland Preservation Zoning. The intent of this district is to maintain highly productive agricultural lands in food and fiber production by effectively limiting encroachment of non-agricultural development and minimizing land use conflicts among incompatible uses. This district is not intended to accommodate non-agricultural growth.

Town of Marathon Zoning Map: The parcel is currently zoned Farmland Preservation



Parcel Acreage: 38 acres

SPECIFIC PARCEL LIMITATIONS OR NATURAL FEATURES:

- The parcel:
 - Is **not** located within mapped floodplain.
 - **Does** have I DNR mapped wetlands (but not in project area)
 - Is **not** located within the shoreland overlay district.

VIOLATIONS

There are no known violations on the property.

Aerial Photo

↑ -approximate location of home



Determination Being Appealed



January 8th, 2024

Tyler Seehafer (Seehafer Farms LLC)
223510 Hollywood RD
Marathon, WI 54448

Determination Regarding Farm Consolidation Eligibility

Property Address: 223510 HOLLYWOOD RD MARATHON, WI 54448

Parcel PIN: 054-2806-231-0996

Dear Tyler Seehafer (Seehafer Farms LLC),

I am writing to officially communicate the determination of the Department following the careful consideration and thorough review regarding the eligibility of the property listed above for a farm consolidation under Section 17.204.2 *Marathon County General Code of Ordinances Chapter 17-Zoning Code*.

After a comprehensive review with Marathon County Conservation, Planning, and Zoning (CPZ), Marathon County Corporation Counsel and the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP), it has been determined that the property address listed above does not meet the eligibility requirements criteria for farm consolidation listed in Section 17.204.2. More specifically the primary residence structure relocation does not align with the prerequisite found in Section 17.204.23 "Farm residences constructed prior to January 1, 2014, and farm structures may be separated from the farm plot..." This is due to the structure being relocated post January 1, 2014.

We understand the importance and implications of this decision. To assist in some possible next steps please see below some possible routes that are available to you.

1. Appeal to the Board of Adjustments (Application Included)

Applications for appeal shall be filed with the Zoning Administrator or designee within 30 business days after making of the decision or interpretation being appealed.

- a. Application must be submitted by **(February 19th, 2024)**.

2. Rezone proposed lot out of the Farm Preservation Zoning District

- a. Continue to pursue a rezone for the proposed lot under the current application.
- b. Revise current rezone request and resubmit application.
 - i. It is recommended to discuss rezoning request with the town prior to submitting to Marathon County.

NOTE: Please notify Marathon County CPZ if you intend to officially withdraw your current rezone request.

3. Petition for an amendment to the text of the *Marathon County Code of Ordinance-Chapter 17- Zoning Code (Petition Included)*

Petition for a zoning code text amendment should be submitted to the Zoning Administrator.

NOTE: The amendment would need to be approved by DATCP, The Environmental Resources Committee, and the County Board.

Should you have any questions please feel free to contact our department.

The Marathon County Conservation, Planning and Zoning (CPZ) Department's mission is to protect our community's land and environment. We promote thoughtful and deliberate use of resources to ensure that Marathon County has healthy people, a healthy economy and a healthy environment, today and tomorrow.

Thank you for your cooperation and understanding regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Shad Harvey", with a long, sweeping horizontal stroke extending to the right.

Shad Harvey
Land Resources Manager
Marathon County Conservation Planning and Zoning
Office Phone: 715-261-6030
Email: Shad.Harvey@co.marathon.wi.us

cc: Michael Puerner, Marathon County Corporation Counsel

Chapter 17 Sections that apply to this Appeal

Table 3. Uses Permitted by District

USE	Key: P Permitted Use C Conditional Use (Blank) Use Not Permitted												
	Residential Districts				Agricultural Districts			Nonresidential Districts					Development Standards
	U-R	L-D-R	R-R	R-E	F-P	G-A	C-V/R-C	N-C	C	B-R	L-I	H-I	
Roadside/Produce Stand				P	P	P	P	P	P				Section 17.204.12
Slaughterhouse					C	C						C	Section 17.204.13
Stable, public (riding academies)				C	P	P	C						Section 17.204.14
Stable, Private				P	P	P	P						Section 17.204.14
Stock water Ponds					P	P							Section 17.204.15
Winery						P		P	P				
RESIDENTIAL USES													
Mixed Residential Development Option	C	C	C										Section 17.204.16
Manufactured Home and Mobile Home	P	P	P	P	P	P							Section 17.204.22
Manufactured Mobile Home Park (existing areas only)	C	C											Chapter 17.302
Mixed Use Building – Residential with Non-residential								C					Section 17.204.17
Multi-Family Dwelling	C	C	C										Section 17.204.18
Conservation Development Option	P	P	P	P									Section 17.204.19
Single-Family Dwelling, Detached	P	P	P	P	P	P		C	C				Section 17.204.20
Two-Family Dwelling	P	P	P	P	P	P							Section 17.204.21
Farm Residence (Farmland Preservation District)					P								Section 17.301.06
Farm Consolidation (2 acres – 4.99 acres)					P	P							Section 17.204.23

Section 17.204.23 FARM CONSOLIDATION

Farm residences constructed prior to January 1, 2014, and farm structures may be separated from the farm plot, and not be required to be rezoned, provided that the parcel created conforms to all the following regulations:

- A. **Permitted Use.**
 1. Conforms to all regulations forth in the Rural Residential district (parcel dimensions and uses)
 2. Lot size not to exceed 4.99 acres, and meets the requirements of the General Code of Ordinances for Marathon County Chapter 18, Land Division and Survey Regulations.
- B. Residences constructed after January 1, 2014 would be required to rezone from the Farmland Preservation or General Agricultural Zoning.

Chapter 17 Farm Residence Definition:

Farm Residence. Means any of the following structures that is located on a farm: A single-family or duplex residence that is the only residential structure on the farm or is occupied by any of the following:

1. An owner or operator of the farm.
2. A parent or child of an owner or operator of the farm.
3. An individual who earns more than 50 percent of his or her gross income from the farm.

Farm residences within the Farmland Preservation Zoning District are subject to all standards and requirements of Section [17.301.06](#).

Background

- Seehafer Farms (Tyler Seehafer) came to our department looking to move the farm residence to a new location on the same parcel.
- On July 8th, 2022, The review of this project was complete, and a zoning permit was issued to relocate the home to a different area on the parcel. This project was required to conform to zoning requirements that are currently in place and Farm preservation standards set forth in Chapter 17 Zoning code.
- This move required the home to have a new foundation in a compliant location.

Reason For Denial of Farm Consolidation.

Section 17.204.23 FARM CONSOLIDATION

Farm residences constructed prior to January 1, 2014, and farm structures may be separated from the farm plot, and not be required to be rezoned, provided that the parcel created conforms to all the following regulations:

- It was determined that the movement of this structure disqualified this structure from being considered "Constructed" prior to January 1, 2014, as the structure was not constructed in its present location prior to the date listed above. Much like a structure being moved from one property to another, it would not be allowed to be considered for a farm consolidation and would need to follow the rezone process as stated in Section 17.204.23(B), and 17.301.06(D) to be split off from the farm plot.

Supporting Information:

New Foundation:

- The foundation for the new location meets the definition of a Structure in Chapter 17.
 - o **Structure.** Anything constructed, placed, or erected, including a building, the use of which requires location on, above, or below the ground and/or is attached to something having a location on, above, or below the ground.

Since the foundation for this home is not within the previous existing footprint it would not be considered preexisting, rather it is considered a new structure and would not be considered “constructed” prior to January 1, 2014.

Purpose of the Farm Preservation Zoning District

Chapter 17.301 FP FARMLAND PRESERVATION ZONING DISTRICT

Section 17.301.01 PURPOSE

The intent of this district is to maintain highly productive agricultural lands in food and fiber production, preserve productive farms by effectively limiting encroachment of non-agricultural development and minimizing land use conflicts among incompatible uses, control public service costs, and maintain a viable agricultural base to support agricultural processing and service industries. The Farmland Preservation zoning district is an area planned primarily for agricultural use, agricultural-related use, or both, and that is identified as an agricultural preservation area or in a farmland preservation plan described in 91.12(1) Wis. Stats., or identified under 91.10(1)(d) in a farmland preservation plan described in the 91.12(2) Wis. Stats., This district is not intended to accommodate or facilitate nonagricultural growth.

Eligible landowners in compliance with the provisions of the Farmland Preservation Law are eligible to receive tax credits under Wis. Stats., 71.57-61.

- The structure being moved did in fact make that make the farm property more farmable by eliminating the driveway and the home location from the center of the field. This move was aligned with the purpose and intent of the Farm Preservation Zoning District. However, that was accomplished without a farm consolidation and does not have a bearing on whether the structure meets the standards for a farm consolidation.

Guidance from Department of Trade and Consumer Protection (DATCP)

[EXTERNAL] RE: Marathon County Farm Consolidation



Smith, Katy A – DATCP <Katy.Smith@wisconsin.gov>

To: Shad Harvey

Cc: Jackson, Timothy R - DATCP

**CAUTION: This email originated from outside the organization.
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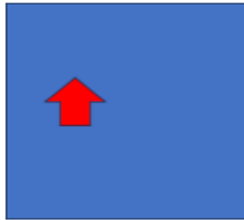
Hi Katy,

I just wanted to follow up on our conversation regarding the Farm consolidation scenario we spoke of today. Below I have a diagram of the scenario (I just want to make sure I understand it correctly).

Scenario 1:

Original residence built prior to January 1, 2014

- This would be considered an existing residence, correct?



Scenario 2:

Same home was moved to a different location on the same parcel after January 1, 2014.

- This would not be considered an existing residence because it did not exist in that location prior to January 1, 2014, correct?



Just for further clarification:

- In Scenario 2 the original home from Scenario 1 above was picked up and moved to a different location on the same parcel of land. Since it was moved it would not be considered an existing residence according to ATCP 49.22(1) because the home did not exist in that location prior to January 1, 2014. Is that correct?

I really appreciate your input.

Best,



Shad Harvey

Land Resources Manager

Department of Conservation, Planning & Zoning

Phone 715-261-6030

Email shad.harvey@co.marathon.wi.us

210 River Drive, Wausau WI 54403

[EXTERNAL] RE: Marathon County Farm Consolidation



Smith, Katy A – DATCP <Katy.Smith@wisconsin.gov>
To: Shad Harvey
Cc: Jackson, Timothy R - DATCP



Mon 12/11/2023 10:20 AM

Subject: [EXTERNAL] RE: Marathon County Farm Consolidation

Hi Shad,

Thanks for talking today. The scenario that we're talking about is not explicitly discussed statute or rule. Please note, I am not an attorney, nor is this assessment to be construed as legal advice. You may wish to consult with counsel on the legal merits of both options under scenario 2.

Under your scenario 1 below, you asked if a residence built prior to January 1, 2014 would be considered an existing residence. ATCP 49.22 says residences, regardless of occupancy, existing as of January 1, 2014, or an earlier date specified by the ordinance, may be permitted uses within a farmland preservation zoning district. The note in this section clarifies this to indicate that residences, which may or may not be associated with a farm, that are constructed as of a date specified in the zoning ordinance text may be allowed as permitted uses in the district. These residences need not receive a conditional use permit unless the local government decides to require it and they need not follow the prior nonconforming use provisions found under s. 59.69 (10), 60.61 (5), or 62.23 (7) (h), Stats., unless mandated by the local government. Under ATCP 49.22 a residence built prior to January 1, 2014) could be considered an existing residence (unless an earlier date for existing residences is specified by ordinance).

Under scenario 2, you asked if a residence built prior to January 1, 2014 and then later moved to a different location after January 1, 2014 on the same parcel would be considered an existing residence. What ATCP 49.22 says is that "residences", regardless of occupancy, existing as of January 1, 2014, or an earlier date specified by the ordinance, may be permitted uses within a farmland preservation zoning district. Chapter 91 does not define "residence" independently of "farm residence" and "nonfarm residence". Absent of a definition by rule or statute for residence, we would defer to the commonly held meaning for "existing" and "residence". Oxford Languages (google's dictionary) indicates that one of the commonly held meanings of the word exist is to "be found, especially in a particular place or situation". Oxford Languages indicates that one of the commonly held meanings of the word residence is "the fact of living in a particular place." Given the commonly held meanings of the terms "existing" and "residence", a structure constructed prior to January 1, 2014 and then moved to a different location is not inherently found in the same particular place or situation once moved. In our discussion, you mentioned that the residence required a new foundation and POWTs system to accommodate the relocation- that further reinforces the notion that the structure/residence in its current state/location did not (lawfully) exist prior to January 1, 2014.

All this being said, relocating a residence from the center of a 40 acre parcel to an edge lot may help to better promote the principles of agricultural use and preservation even in the residence may not be able to stay in the district due to the construction of zoning law.

Please let me know if you need any clarification on any of these comments.

Thank you,
Katy Smith
608-224-4621
Katy.Smith@wisconsin.gov

Please fill out our [customer survey](#) to help us improve. Thank you!

ATCP 49.22 Permitted uses. In addition to the uses listed under s. 91.44 (1), Stats., the following uses may be allowed as permitted uses in a certified district:

(1) Existing residences. Residences, regardless of occupancy, existing as of January 1, 2014, or an earlier date specified by the ordinance, may be permitted.

Note: Residences, which may or may not be associated with a farm, that are constructed as of a date specified in the zoning ordinance text may be allowed as permitted uses in the district. These residences need not receive a conditional use permit unless the local government decides to require it and they need not follow the prior nonconforming use provisions found under s. 59.69 (10), 60.61 (5), or 62.23 (7) (h), Stats., unless mandated by the local government.

Town Input:

Date: 3/05/2024

FROM: Town of Marathon
Town of Marathon Planning Commission
225310 County Road B
Marathon, WI 54448

TO: Marathon County Board of Adjustments
500 Forest Street
Wausau, WI 54403

Board of Adjustments:

Regarding the request for appeal by Tyler Seehafer: The Town of Marathon has determined that the Town's previous hearing outcome (Recommendation to Deny. Dated 12/29/2023) is applicable.

The Town of Marathon's Planning Commission takes great pride in preserving the Town as outlined in the Comprehensive Land Use Plan. This plan has been followed and updated along the way for nineteen (19) years, additionally, the Town of Marathon has been enrolled in Farmland Preservation Exclusive Ag zoning for forty (40) years. Together, these plans and programs have guided the Town Officials in their decision-making process for decades.

The main point of concern in this case is not how a building arrives at its build site but rather what is the proper zoning. In this case, Town of Marathon Exclusive Ag Zoning applies to the site in question. The site, according to the Town's zoning (pages 46-47 Land Use Plan), requires thirty-five (35) acres for one (1) home. This is common in the Town. The property owner, Tyler Seehafer, previously applied for a rezone on this same site, which was denied based on the Town's Zoning, opposition from surrounding landowners, and certain specific land use goals, policies, and objectives. These are the very goals, policies, and objectives that have preserved the land so it can be farmed today.

The site in question has:

1. New site and/or Address
2. New Well
3. New Septic
4. New Foundation
5. New Driveway
6. New Electrical Service
7. New Building Footprint (size, shape, addition of attached garage)

The Town of Marathon stands firm in its decision and asks that the Marathon County Board of Adjustments deny the application and support Marathon County's Zoning Office's previous determination that this is considered a "New" construction.

Thank you,

Town of Marathon Planning Commission

Mark Koller 3-5-24
Mark Koller
Francis Martin *Chuck Seibert* *Fred Yulga* *Andrew Altenhofen*
Francis Martin *Chuck Seibert* *Fred Yulga* *Andrew Altenhofen*

Town Of Marathon Town Board

Keith Langenbach *David Kraatkramer* *Bernie Dick* *Kelley S Blume*
Keith Langenbach *David Kraatkramer* *Bernie Dick* *Kelley S. Blume*

Section 17.804.01 PURPOSE

- A. **Purpose.** The purpose of this chapter is to provide guidelines and standards to be followed by the Board of Adjustment in considering requests for variances and appeals, where the jurisdiction of the Board of Adjustment has been established by Section [17.801.03](#).
- B. **Purpose of Variances and Appeals.**
1. **Variances.** Variances are waivers in the terms of this chapter. In a variance case, the terms of this chapter are not in dispute. An applicant for a variance acknowledges that this chapter forbids the development for which approval is sought. Two avenues of relief can be pursued in such a case. One is for the applicant to seek an amendment to this chapter. The second possible avenue of relief, one that is available only under strictly defined circumstances, is to seek a variance. Variances are an available form of relief only where the use in question is allowed in the zoning district, but the dimensional standards (setbacks, minimum lot area, building height, etc.), block or hinder the desired form of development. Where dimensional standards create a hardship which can be relieved by modifying the standards for that parcel of land without destroying the basic intent of this chapter, a variance is the appropriate means of granting the relief. The variance procedure allows the impact of general rules to be varied in response to unusual circumstances without involving the County Board in amendment procedures for each such localized situation. The Board of Adjustment may authorize in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where owing to special conditions affecting a particular property a literal enforcement of the provisions of this chapter would result in unnecessary hardship.
 2. **Appeals Matters.**
 - a. Decisions by the Zoning Administrator which consists of interpretations of the terms of this chapter, and which are made in the course of determining whether a permit of approval will be issued by such Administrator are appealable to the Board of Adjustment as administrative appeals.
 - b. Decisions by the Zoning Administrator to issue an enforcement demand or to commence other chapter enforcement activities, where the Administrator has determined that violation of this chapter exists, is appealable to the Board of Adjustment as an administrative appeal.
 - c. Decisions by the Committee which consists of interpretations of the terms of this chapter and which are made in the course of determining whether a permit or approval will be issued by the Zoning Administrator are appealable to the Board of Adjustment as administrative appeals. An appeal must be filed within 30 days of issuance of the applicable written decision, and such appeal shall be made on forms made available by the Zoning Administrator.

Section 17.804.02 APPLICATION PROCEDURES

Completed applications for variances and appeals shall be submitted to the Zoning Administrator and accompanied by the appropriate fee as specified by the Department fee schedule. Applications for variances and appeals shall be on forms provided by the Zoning Administrator.

Any application for a variance or appeal under this zoning ordinance shall be submitted in accordance with the following procedures:

- A. **Application.** Any application for a variance or appeal shall be submitted to the Board of Adjustment on forms provided by the Zoning Administrator. Each application shall be accompanied by the payment of a fee as specified by the Department fee schedule. The application may include single parcels of land or groupings of parcels, contiguous or noncontiguous. In addition, the Board of Adjustment, where appropriate, may refer an application to qualified consultants for study and a report if it deems necessary. The cost of such study and report shall be at the expense of the applicant and the report shall be completed as soon as is practicable.
- B. **Applicant Eligibility.**
 1. The application for a variance shall be submitted by the owner of an interest in land for which variance is sought, or by the owner's designated agent. The applicant or a designated representative should be present at all scheduled review meetings and/or public hearings or consideration of the proposal may be delayed.
 2. The application for an appeal may be initiated by any person aggrieved by the decision or interpretation being appealed or by any officer, department, board or committee of the County government. An aggrieved appellant must have a legally recognizable interest which is or will be affected by the action of the zoning authority in question. The applicant or a designated representative should be present at all scheduled review meetings and/or public hearings or consideration of the proposal may be delayed.
- C. **Information Required with Application.**
 1. Form. Forms provided by Zoning Administrator to be completed by the applicant. Applications involving a request for a variance shall specify the section number(s) containing the standards from which a variance is sought and the nature and extent of such variance.
 2. Variance Site Plan. Site plan or plot plan that complies with the site plan submittal requirements of Section [17.802.02 E](#). A site plan which does not meet the stipulated requirements shall be considered incomplete and shall therefore not be subject to formal review or placed on the Board of Adjustment agenda.
 3. Grounds for Appeal: An appeal shall be commenced by filing a notice of appeal specifying the decision appealed from, the grounds for appeal, and the relief requested.
 4. Fee. A fee as specified in the Department fee schedule.
 5. General Standards. A statement supported by substantiating evidence regarding the requirements enumerated in Section [17.803.03 B](#).
- D. **Timeframe.**
 1. Variances. Variance applications must be submitted to the Zoning Administrator or designee at least 45 days prior to the Board of Adjustment meeting.
 2. Appeal. Applications for appeal shall be filed with the Zoning Administrator or designee within 30 business days after making of the decision or interpretation being appealed.
- E. **Complete.** Variance and appeal applications must be complete before they will be accepted and processed.

Section 17.804.03 APPLICATION REQUIREMENTS

At a minimum the applicant must supply the following information:

A. Variance Application.

1. Contents. In order to be complete, a variance application must contain the following information, where applicable:
 - a. A completed variance application form including property owner(s) signature.
 - b. A site plan and information as set forth in Section [17.802.02](#).
 - c. The name, address, phone number and signature of the person authorized by the owner(s) to be the representative.
 - d. A statement indicating the exact nature of the variance being requested and why the variance is necessary.
 - e. A statement demonstrating the variance requested is needed due to an unnecessary hardship, unique property limitations and that there will be no harm to public interests.
 - f. Any additional information required by the Zoning Administrator or the Board of Adjustment to make the determination requested herein.

B. Appeals Application.

1. Contents. In order to be complete, an appeals application must contain the following information;
 - a. The code section which was the subject of the determination, decision, and/or action.
 - b. The determination, decision, and/or action or part thereof that is being appealed.
 - c. A clear and concise statement of the decision the appellant wants the Board of Adjustment to make.
 - d. Reasons why the determination, decision, and/or action or part thereof was inappropriate.
 - e. Reasons indicating why the relief requested by the appellant in subsection c, above, are appropriate.

Section 17.804.04 PUBLIC HEARING BY THE BOARD OF ADJUSTMENT

- A. **Board of Adjustment Public Hearing.** After all application materials have been deemed complete, the application shall be transmitted by the Zoning Administrator to the Board of Adjustment and reviewed in accordance with following public hearing procedures:
 1. Acceptance for Processing. The application shall be placed on the agenda of the next available scheduled Board of Adjustment meeting.
 2. Notification. The Board of Adjustment shall hold a public hearing in accordance with the procedures specified in Section [17.801.03 D](#).
- B. **Board of Adjustment Consideration and Review.** The Board of Adjustment shall review the proposed variance or appeal, as presented on the submitted form and site plans and documentation, in terms of the standards established in this Zoning Ordinance.
 1. Process. The Board of Adjustment shall consider all documents simultaneously.
 2. Plan Revision. If the Board of Adjustment determines that revisions are necessary to bring the proposal into compliance with applicable standards and regulations, the applicant shall be given the opportunity to submit a revised application and site plan. Following submission of revised application materials, the proposal shall be placed on the agenda of the next available scheduled meeting of the Board of Adjustment for further review and possible action.
- C. **Hearing Continuation.** The Board of Adjustment members may recess such public hearing as necessary to gather additional information or evidence needed to make a decision. If the time and place of the continued hearing is publicly announced at the time of adjournment, no further notice shall be required.

Section 17.804.05 STANDARDS FOR VARIANCES AND APPEALS

Variations and appeals shall be granted only in accordance with and based on the findings set forth in this section. The burden of proof for variations and appeals shall be upon the applicant. The extent to which the following factors, standards, and criteria apply to a specific case shall be determined by the Board of Adjustment.

A. Area Variations.

1. No variation may be granted unless there is an unnecessary hardship present in that a literal enforcement of the terms of the zoning ordinance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or render conformity with such restrictions unnecessarily burdensome. The Board of Adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variation on the neighborhood, the community and on the public interests.
2. No variation may be granted unless there is a hardship due to the unique physical limitations of the property such as steep slopes or wetlands rather than the circumstances of the applicant.
3. No variation may be granted that is contrary to the public interest as expressed by the objectives of the ordinance.

B. Evidence Required.

The applicant shall show by a preponderance of the evidence that the variation is justified, as determined by the Board of Adjustment. A variation:

1. Shall be consistent with the spirit, intent and purpose of this chapter.
2. Shall not be granted because of conditions that are common to a group of adjacent lots or premises.
3. Shall not be granted unless it is shown that the variation will not be contrary to the public interest and will not be damaging to the rights of other persons or property values in the area.
4. Shall not be granted for actions which require an amendment to this chapter or the maps.
5. Shall not have the effect of granting or increasing a use of property which is prohibited in a particular zoning district.
6. Shall not be granted solely on the basis of economic gain or loss;
7. Shall not be granted for a self-created hardship;
8. Shall not damage the rights or property values of other persons in the area;
9. Shall not allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure;
10. Shall demonstrate whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variation; and/or
11. Shall not permit standards less restrictive than those required by the Wis. Stats., Wisconsin Administrative Code or the State Department of Natural Resources.

C. Variance Conditions.

1. Conditions shall be attached in writing to all approved variations where such conditions will achieve compliance with standards of this chapter.
2. Conditions may include, but are not limited to, specifications in Section [17.803.02](#).

D. Appeal to Board of Adjustment.

Applicant may file an appeal on determinations, decisions, and/or actions on matters relating to this ordinance where it is alleged that an error in any order, requirement, decision or interpretation has been made. The Board of Adjustment shall reverse a determination, decision, and/or action only if it finds that the determination, decision, and/or action appealed:

1. Was arbitrary or capricious; or
2. Was based on an erroneous finding of a material fact; or
3. Was based on erroneous interpretation of this Ordinance or zoning law; or
4. Constituted an abuse of discretion.

Section 17.804.06 ACTION BY THE BOARD OF ADJUSTMENT

Decisions by the Board of Adjustment. Following a public hearing and other investigation, the Board shall decide the matter based upon whether the decision, determination or interpretation being appealed was in error. The Board may reverse or affirm, wholly or partly, or may modify the decision, determination, or interpretation appealed from and may make such decision as ought to have been made, and to that end shall have all powers of the official from whom the appeal is taken. All decisions by the Board on administrative appeals shall be based upon the terms of this chapter and evidence as to legislative intent. With an affirmative decision, the Board of Adjustment may impose conditions.

Section 17.804.07 VARIANCE APPROVAL PERIOD

If construction has not commenced within 12 months after the Board of Adjustment grants a variance to permit the erection or alteration of a building, then the variance shall become null and void. The period of approval may be automatically extended by 12 months if the variance was sought in conjunction with a site plan for which approval has been extended by the Zoning Administrator and/or Board of Adjustment.

Section 17.804.08 STAY OF PROCEEDINGS

An appeal to the Board of Adjustment shall stay enforcement proceedings in furtherance of the appealed action, unless the Zoning Administrator and/or Corporation Counsel certifies to the Board of Adjustment, that by reason of the facts stated in the appeal, a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed other than by an injunction granted by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. A stay of enforcement proceedings shall not stay the County's authority to issue a stop work order on a project that may be in progress and being performed in a manner that is not in conformance with applicable ordinances and regulations. Also, it shall not stay a project when the appeal is brought by a third-party contesting the issuance of a permit.

Duties of the BOA

Decisions by the Board of Adjustment. Following a public hearing and other investigation, the Board shall decide the matter based upon whether the decision, determination or interpretation being appealed was in error. The Board may reverse or affirm, wholly or partly, or may modify the decision, determination, or interpretation appealed from and may make such decision as ought to have been made, and to that end shall have all powers of the official from whom the appeal is taken. All decisions by the Board on administrative appeals shall be based upon the terms of this chapter and evidence as to legislative intent. With an affirmative decision, the Board of Adjustment may impose conditions.

Appeal to Board of Adjustment. Applicant may file an appeal on determinations, decisions, and/or actions on matters relating to this ordinance where it is alleged that an error in any order, requirement, decision or interpretation has been made. The Board of Adjustment shall reverse a determination, decision, and/or action only if it finds that the determination, decision, and/or action appealed:

1. Was arbitrary or capricious; or
2. Was based on an erroneous finding of a material fact; or
3. Was based on erroneous interpretation of this Ordinance or zoning law; or
4. Constituted an abuse of discretion.

****Staff Note:** Please ensure the decision is well documented including reason(s) the determination was made related to the criteria listed above.

THE STAFF RESERVE THE RIGHT TO AMEND THIS REPORT BASED ON NEW EVIDENCE PRESENTED PRIOR TO AND/OR DURING THE PUBLIC HEARING.

DECISIONS OF THE BOARD ARE SUBJECT TO APPEAL AS PROVIDED IN SS.59.694(10) WIS. STATS.

RESPECTFULLY SUBMITTED:



SIGNATURE

DATE

3/14/2024