

MINUTES
VILLAGE OF CALEDONIA ZONING BOARD OF APPEALS PUBLIC HEARING
East Side Community Center – 6156 Douglas Avenue, Racine, Wisconsin
Tuesday, June 28, 2011 – 9:00 A.M.

1. Roll Call

Chairman Fitch called the meeting to order at 9:01 a.m. and explained the meeting process.

Board Members in attendance were: Lisa Bell, Steve Rubinson, Tom Spieker, Everett Fitch, Roseanne Kuemmel. Judy Tomachek was excused.

Present: Village Administrator Tom Lebak

Staff present: David Mundigler of Racine County Code Administration to assist the Board on regulations and requirements.

2. Review and Possible Approval of Minutes from July 27, 2010.

Fitch asked for a motion to approve the minutes. Bell made a motion to approve the minutes from the July 27, 2010 meeting. Seconded by Rubinson. Voice vote. **Motion carried unanimously.**

3. Public Hearing.

A. David & Kristie Zahn Trust 5438 Short Road Racine, WI 53402 104-04-22-23-059-002	Proposed small wind energy facility is not allowed in a residential area
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Dave Mundigler read the public hearing notice.

Present and sworn in was David Zahn, 5438 Short Road, Racine, WI 53402, Applicant.

Zahn explained he would like a wind turbine and is requesting a variance because he was rejected at Zoning. Spieker asked how easy would it be to take down, because if it was permanent, someday the neighborhood might be built up. Zahn stated anything can be taken down. Spieker asked if people don't like it because it is too large, could it be smaller. Zahn stated it is a little short now, 60 feet is what wind turbine people recommend. His property is surrounded by tall trees on 4 sides, except for the driveway. Bell stated she visited the site and thought there would be a potential for flicker and a number of properties back-up to his trees. Discussion followed regarding shorter turbines, height of the trees, flicker towards the south and southwest and noise from the turbine.

Rubinson asked Mundigler about the last time there was a petition for wind mill, there was a mention of a State Law for turbines under one megawatt and it governed what a municipality could do. Mundigler stated that was addressed by Caledonia Zoning Administrator Julie Anderson's memo dated June 23, 2011, and read the Memo to answer that question:

“Staff does not object to this variance request. The proposed wind energy system consists of one single pole/wind turbine with an overall height of about 54 feet, which is allowed by code. The rated power is one kilowatt, which is very small. The three blades for this turbine are about 3 feet long, with a blade sweep measuring a bit over 6 feet. The setbacks to property

boundaries for the wind turbine meet the ordinance standards, and the variance is only needed because the site is zoned residential. The site is of more than sufficient size to accommodate this wind energy facility and the fall-down area is entirely on this property, and not near any other buildings. While the proposed wind turbine will be located in a clearing, there is a considerable wooded area to the west and south, and a tree line bordering the north lot line, which will obscure visibility of the tower. Lands to the east of this site are zoned agricultural, which allow wind turbines, and lots immediately to the north, west and south of this site are residential but are developed as mostly large-lot residential/agricultural uses. The proposed color of the wind turbine is gray and it should not be easily discernable on the landscape from passersby, since it will be set back off of the centerline of Short Road approximately 300 feet.

Wisconsin Act 40 (published on October 4, 2009) creates a framework to allow limited and generally uniform local regulation of the siting and operation of wind energy systems. It directs the Public Service Commission (PSC) to promulgate rules specifying the maximum regulations a municipality may impose on wind energy systems. The PSC adopted Modified Final Rules on December 29, 2010, and the rules were to take effect on March 1, 2011; however, the Legislature's Joint Committee for the Review of Administrative Rules suspended the rules and requires the PSC to submit proposed rules pursuant to the current law provisions to the legislative council staff no later than approximately six months after the bill's effective date. At this time, staff finds that Act 40 does not provide absolute guidance for this wind energy system. Once the PCS promulgates rules, it is likely that local ordinance updates will be needed, and it is conceivable that political subdivisions may need to allow wind energy systems on residentially zoned properties if they have a nominal capacity of less than one megawatt, as long as proper setbacks are met and there is reasonable protection from any health effects, including those from noise and shadow flicker.

Further, the Wisconsin State Statutes Ch 66.0401(1m) states in part that no political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system unless the restriction satisfies one of the following conditions: (a) Serves to preserve or protect the public health or safety; (b) Does not significantly increase the cost of the system or significantly decrease its efficiency; (c) Allows for an alternative system of comparable cost and efficiency. Wind turbines provide a renewable, non-polluting way to generate power, can lower our dependence on fossil fuel imports, and can assist with lowering greenhouse emissions. As such, and with proper setbacks and reasonable protection from health effects, this variance should be granted, as it will not create substantial detriment to adjacent property and it will not materially impair or be contrary to the purpose and spirit of the zoning ordinance or the public interest.

If approved, the applicant shall obtain Site Plan Review approval prior to the issuance of the zoning permit. It is suggested that the Site Plan Review process looks at and enforces that no other outside interests place devices such as antennas, satellite dishes, cell communication devices, advertisements, etc. on the tower. In addition, the review should take into consideration that existing vegetation located before the installation of the wind energy system on abutting properties should not be required to be trimmed, unless the wind energy system owner incurs the cost of such, and it is agreeable to the landowner on which the vegetation is located. The cost of a zoning permit is \$500.00."

Mundigler reminded the Board they do not have the authority to approve with conditions, i.e. noise, vegetation, etc. That would take place through a site review process. A site review process may have conditions. The Board's main concern is whether a turbine can be allowed in a residentially zoned property. Each case must be reviewed individually.

Discussion followed on State and Federal incentives to encourage alternate energy sources and payback periods.

Mr. Zahn was dismissed.

Fitch asked if anyone was present in opposition of the petition.

Present in opposition was:

John Schoenwaelder, 3815 Partridge Terrace, Racine, WI 53404, Agent for Johnson Trust, was sworn in.

Schoenwaelder stated he has been a Caledonia resident for 37 years and was present as a citizen and a Realtor. His client is Johnson Trust. Johnson Trust has four properties for sale near Zahn. They had an accepted offer at 5508 Short Road, but once it was disclosed a wind turbine was going up, the closing date has been delayed and offer amended regarding the outcome of the hearing. Also a Buyer of the 3 ½ acre parcel south of and adjacent to the corner property located at 5438 Short Road has withdrawn his offer pending outcome of the hearing. By not being able to sell these parcels, his client is impacted negatively. Schoenwaelder read his statement on why communities should proceed forward in a managed comprehensive way so all citizens are considered.

Spieker asked if the Board approved the wind turbine, did he think people would not buy the land because of that.

Schoenwaelder stated this shows the impact one variance has created for his client, both parcels were going to move forward and build significant homes. Once a realtor learns of a material adverse fact, they must disclose it to the Buyer. When he disclosed the wind turbine to the Buyers, they both put their closings on hold pending outcome of this hearing. With a 10 year supply of lots on the market, his client may have to wait 10 more years to make a sale.

Mundigler asked if they were put on hold, but not stopped. Schoenwaelder said one has been put on hold and one has withdrawn. They were concerned about noise and flicker. Mundigler asked if a condition was placed in the site plan that the noise be below a certain range, would that satisfy them. He didn't know.

Fitch asked if anyone else was present in opposition of the petition.

Jon Frederickson, 5510 S. Nicolet Drive, New Berlin, WI. was sworn in.

Frederickson wants to buy the 18 acre parcel at 5508 Short Road, but not if a wind turbine is going up next door. Does not want to live in a community that is so lax they will allow wind mills next to subdivisions. He felt a community that was tight on zoning maintained property values and by allowing windmills he sees a community not thinking long-term. He was wondering how Caledonia was going to regulate the decibel levels? He felt property value had the potential to go down 10%.

Mundigler asked if he realized the property next to 5508 Short Road was zoned AG, wind turbines are allowed and there is a possibility of wind turbines being placed there legally in this same area. If this petition is denied by the Board, the Owner can appeal to the Public Service Commission which can overturn this Board. PSC is still creating the rules and its possible the rules may force municipalities to allow wind turbines if they can satisfy certain criteria regardless of zoning. Right now there is a rule in place to deny wind turbines if they are over a certain megawatt standard, but this wind turbine is below that. Spieker asked if he would look to

purchase somewhere else in Caledonia? Frederickson stated probably not, it would show him what direction Caledonia is going. He felt there is a large group of people against windmills.

Fitch asked if anyone else was present in opposition of the petition.

Ronald Cassidente, J.D., Trust Fiduciary Officer at Johnson Bank, 555 Main St., Racine, WI 53403 representing Trustee that owns 5508 Short Road, was sworn in.

Cassidente was there representing the wishes of the Trustee of 5508 Short Road that this petition not be approved. He wasn't going to repeat everything that has already been said, but had a prepared statement on legal rights of current owners, and obligations the Board has when considering undertaking exceptions to zoning regulations (copy attached). He asked the Board consider the effects by allowing this governing body to undertake these kinds of decisions. The issues of State law have been delayed, and would ask that this Board deny this application, waiting both for State and Caledonia governing body to look at long term effects.

Fitch asked if anyone else was present in opposition of the petition.

Linda Flashinski, 5508 River Hills Road, Racine, WI 53402 was sworn in.

Flashinski explained her reaction to the proposed wind turbine. She was in favor of wind turbines, but felt Caledonia had a well thought out Land Use Plan that had restrictions on wind turbines in certain areas. She felt wind turbines would create a whole different ambiance to the community and would affect the quality of life. She was grateful for people who served on committees.

Rubinson asked Mundigler how the Land Use Plan relates to the duties of the Board of Appeals.

Mundigler stated the Land Use Plan in this area is residential in nature with some properties to the east as Agricultural. Subdivision to the south is Residential Zoning. Asked Lebak what the 20 year plan was and if there are any proposed changes. Lebak stated there are possible changes at 4 Mile and Hwy 31, which the Village Board agreed to look at locations that there are a better fit or category for. The group has met once, identifying areas that might change. He did not recall this area as being addressed, but Caledonia was looking for more commercial/industrial changes in terms of density and it could take several months for changes in the Land Use Plan.

Discussion followed on Land Use Plan, the Zahn petition, Public Service Commission and what conditions the Board needs to consider for making a decision.

Rubinson asked if Zahn had considered other alternate energy sources. Fitch called Zahn forward and asked if he had looked into other sources. He said he had and wind was the way to go.

Schoenwaelder came forward and stated: 1. He had read all the material about the Dunkelow Road wind turbine and this applicant and there was no opposition on Dunkelow because it does not back up to residential; 2. Mr. Zahn will not be adversely affected and neighboring properties will; and 3. not all State and Federal regulations and incentives bear good fruit and it is the obligation of our community representatives to have beneficial long term results.

Mundigler read the Village Engineer's memo, the Village Engineer had no recommendations and no objections, Julie Anderson's memo was already read. Discussion followed on FAA regulations pertaining to Zahn and Alexander's turbines, information from the manufacturer regarding color, steel, wind gusts and length of blades was discussed.

No one was present in favor of the petition.

No one was present for information only.

**B. James Kruse
9404 Caddy Ln.
Caledonia, WI 53108
104-04-22-04-111-000**

Existing detached garage (not constructed per 1976 zoning permit) has an insufficient side yard setback.

Dave Mundigler read the public hearing notice.

Present and sworn in was James Kruse, 9404 Caddy Ln., Caledonia, WI 53108, Applicant

Kruse stated he was applying for a variance because when he purchased the property in 1997 he was told everything was legal on the Offer to Purchase and when the neighbor put up the new fence, he found out he was too close to the lot line. Discussion followed on location of garage/shed/fence and cost of moving or replacing structures.

Mundigler stated the on the actual survey received the garage is about 2.23 feet from lot line on one end and about 2 feet on the other end, the requirement is 3 feet. Kruse was willing to move the shed to be in compliance

Mudigler read the Village Engineer's memo, the Village Engineer had no objections. He read Julie Anderson's memo:

“Staff does not object to this variance request. The current owner purchased the property in 1997 and inherited the problem with the detached garage that was not built in accordance to the zoning permit issued to a previous owner in 1976. It is anyone's guess as to why it was built too close to a lot line, and it is unfortunate that this error was not caught during the construction phase. The current owner was unaware that the garage did not comply with the code at the time of purchase, and there was nothing on the Appraisal Report or the Residential Offer to Purchase to lead him to believe there was a problem. The garage has existed for 35 years with no one noticing that there was an insufficient side yard setback, and it would be a hardship to the current owner to make him move the garage less than one foot to comply with the Zoning Ordinance. To comply with the Ordinance would render conformity with such restrictions as unnecessarily burdensome. The owner is willing to obtain the necessary permits to move the more mobile pre-existing metal storage shed, which did not have a zoning permit and is located too close to the property line, to a code-compliant location on the property to bring it into compliance with the code. If the Board approves the variance, this should be a condition of approval, and be accomplished within 30 days of the decision letter. There is no basement for storage in the existing residence, and it is not unreasonable to have a garage of this size to protect the owner's belongings from the effects of the outdoor environment. The variance does not appear to be contrary to the purpose and spirit of the Ordinance as the garage was erected by a previous owner, has existed without creating a problem for 35 years, and is consistent with existing development in this area, as can be seen by looking at aerial photographs that show other structures quite close to lot lines. While an abutting neighbor has recently complained about the garage location after obtaining a survey, this owner's survey shows that his detached garage also does not comply with the code, with an insufficient setback to the dwelling. While it is not known if this is a violation or existing nonconforming condition, it does show that the complainant's structure also does not meet current code requirements. If approved, within 30

days of the decision letter, the owner must take steps to revise the 1976 detached garage zoning permit so that it reflects the current configuration, at a cost of \$15.00.”

Everette asked if anyone was present in opposition.

Greg Riendeau, 6922 S. 35th street, Franklin, WI 53132, was sworn in.

Reindeau stated he was the owner of the property next door, that it is a rental and he owns 5 rental properties in Caledonia. The property at 9404 Caddy Lane used to be his father’s house, and his father had put up the original fence. He stated the shed at 9404 Caddy Lane is not the metal shed, but was replaced by a vinyl shed. The reason he put up the new fence was because Kruse was cutting grass over the property line and has racks of wood in his yard with junk on top. He stated the surveyor he used was the same surveyor Kruse used, Peter Bailey.

Fitch said the Board was not there to decide grievances, just a variance. Discussion followed on location of garage and shed.

Everette asked if anyone was present in favor of the petition.

Margarette Cunningham, 9323 Johnathan Court, Caledonia, WI 53108 was sworn in.

Cunningham stated she lives behind Kruse. She said she has no problem with the wood pile, it is very difficult to find room with everything all crooked and sideways and doesn’t feel it is a big issue.

Riendeau distributed pictures to the Board of Kruse’s backyard. Spieker asked Kruse to verify the photographs and he said they were of his backyard.

No one was present for information only.

Fitch called for a motion to close the public portion of the meeting. Kuemmel moved to close the public hearing portion of the meeting, seconded by Bell. Voice vote. **Motion carried unanimously.**

Public hearing closed at 11:02 a.m. Board did not take a break.

4. Board Meeting.

A. Decision on preceding petition.

Fitch called for discussion. Spieker had no problem with possible noise level, it was more of he said, she said, and we don’t know if it will be a problem or not. Fitch stated with the rules and regulations in limbo, did not think it would be an undue burden on anybody to put a 6 month hold on the petition to see what the Public Service Commission decides. Kuemmel agreed with Fitch and did not think it make sense to rule without seeing what the legislature was going to do. Rubinson asked if there was an Ordinance on noise and who in the Village enforced it. Lebak will find out. Bell felt the wind from a turbine made little noise but the high pitched squeal was nonstop. Rubinson stated other factors were involved, such as undeveloped lots and contributing to the tax base and noise. There is a need to see both sides, but it comes down to what does the law allow or require. Mundigler said it might be about 6 months before the Public Service Commission rules, today was needed either a motion to deny or a motion to approve, or adjourn to a date specific until PSC adopts rules. If Board denies Petitioner can appeal to the PSC or Circuit Court. Discussion followed.

Rubinson moved to set aside action on this petition until PSC rules and if a 6 month time period is required, Bpard could move to delay decision for 6 months pending clarification of PSC, if they act sooner, that would be great.

Fitch stated there was a motion of the floor to postpone or delay for 6 months, until Dec. 28, 2011, so the Board has the Public Service Commission rules on wind turbines. Spieker second. Voice vote. In favor Spieker, Rubinson, opposed Bell, Kuemmel, Fitch. Nays have it 3-2. Motion overruled.

Bell stated if it is denied he could go before the PSC before 6 months, so if a motion is made to deny he could go forward. Mudigler stated the Board needs a specific reason for denial such as:

- Petition is inconsistent with the purpose and intent of the regulations for the district in which the project is located and the proposed wind turbine is inconsistent with such as it would be located in a residential district which is not allowed by code. In addition, there was not specific evidence given to show noise levels would be low enough to not affect neighbors.
- There were no exceptional, extraordinary, or unusual circumstances or conditions that apply to this parcel to allow for the granting of a variance.
- No variance shall be granted for a self-imposed hardship and in this case the Board finds that the hardship was self-imposed because the applicants do not need the variance approval for reasonable use of the property, the applicants have other options available that will comply with the zoning ordinance, and there are other alternative systems of comparable cost and efficiency that could be utilized.
- No variance shall be granted that would create a substantial detriment to the adjacent property, and an area property owner, representatives of area owners, and a prospective owner indicated an objection to and reasons to deny this variance request. Adverse impacts mentioned included shadow flicker, noise, bird strikes, economic stress, and safety.

Fitch asked for a Maker and Second for a motion to agree what Mundigler said.

Bell made a motion to deny based on what Mundigler said, Kuemmel second. Voice vote. Spieker – nay. Bell, Kuemmel, Fitch, Rubinson –aye. Petition is denied.

B. Decision on preceding petition.

Fitch called for a discussion. Kuemmel was in favor of granting a variance primarily because the garage was there when Kruse bought the home and Kruse was led to believe that it was legal. It would be of considerable financial hardship to move, and Kruse did agree to move the shed. Spieker, Fitch and Rubinson agreed. Bell asked if Board was allowed to place conditions on the approval. Mudigler stated it was not going to be an issue being Kruse has agreed to move the shed, if it was something that fits within the petition the Board has latitude. Bell would like to see what Kruse could do to mitigate grievance as far as storage. Kuemmel asked if the condition of the wood pile being 3 feet from the fence could be added. Mudigler stated there was no code on wood piles, only structures.

Mudigler read conditions for approval:

- The Village Engineer had no objections to this request.
- The Racine County Planning staff, who is contracted by the Village to review zoning matters, had no objection for this request per content contained in the memorandum dated June 23, 2011.

- Submitted documentation and public hearing testimony established that there is no basement for storage in the existing residence, and it is not unreasonable to have a detached garage of this existing size to protect the owner's belongings from the effects of the outdoor environment, and to preserve the substantial property rights of the owner that are also enjoyed by others in the area.
- The variance does not appear to be contrary to the purpose and spirit of the Ordinance as the current owner purchased the property in 1997 and inherited the problem with the detached garage, the owner was unaware that the garage did not comply with the code at the time of purchase, the garage has existed for 35 years with an insufficient side yard setback without complaints, and it would be a hardship to the current owner to make him move the garage less than one foot to comply with the Zoning Ordinance. To comply with the Ordinance would render conformity with such restrictions as unnecessarily burdensome.
- The garage location appears to be reasonably consistent with existing development in this area, as can be seen by looking at aerial photographs that show other structures quite close to lot lines.
- The owner is willing to obtain the necessary permits to move a more mobile small shed, which was existing on the lot without a permit at time of purchase, and locate it in a code-compliance location to help mitigate the negative effects of multiple structures located too close to the same lot line.
- The request does not appear to create substantial detriment to adjacent property, and while an abutting neighbor has recently complained about the garage location after obtaining a survey, this neighbor's same survey shows that his detached garage also does not conform to the code, with an insufficient setback to the dwelling. There was no other opposition shown at the public hearing, and the public interest does not appear to be negatively impacted by this request.

Fitch called for a motion on the Kruse petition as read by Mundigler. Rubinson made a motion to approve conditions as read, Kuemmel second. Voice vote. **Motion carried unanimously.**

The Board granted approval subject to the following conditions:

1. The detached garage shall be sized as it presently exists and located as shown on the submitted survey dated September 13, 2010.
2. Within 30 days of this decision letter, the owner must go to the Racine County Code Administration office to revise the 1976 detached garage zoning permit for this parcel, so that it reflects the current configuration, at a cost of \$15.00.
3. Within 30 days of this decision letter, the owner must go to the Racine County Code Administration office to obtain a zoning permit to locate the pre-existing small storage shed in a code-compliance location at a double permit fee of \$160.00. A local building permit may also be required. Within 60 days of this decision letter, the shed must be moved to the approved location. In lieu of obtaining permits and moving the shed, it must be removed from the property within 30 days of this decision letter.
4. The applicant must allow full and unlimited access to the project site at a reasonable time to any Racine County Planning and Development Department or Village employee who is investigating the project's construction, operation, or maintenance.
5. **To comply with this approval, the applicant must obtain a zoning permit card(s) from the Racine County Code Administration office after paying the required fee(s) as indicated above, and a building permit card(s) from the Village of Caledonia after paying the required fee(s).** These cards must be displayed in a prominent location at the project site. Also, a copy of these conditions must be kept at the project site at all times until the project has been completed.
6. This variance approval will expire six months from the date of the approval letter, unless Conditions No. 2 and 3 are satisfied. An extension, if needed, must be requested in writing and granted in writing by the Village of Caledonia Board of Appeals.

7. The applicant is responsible for obtaining all necessary federal, state, and local permits, approvals, and licenses and for abiding by all applicable codes and regulations.

8. No additions, deletions, or changes may be made to these conditions without the prior approval of the Village of Caledonia Board of Appeals.

9. Failure to comply with the terms and conditions stated herein may result in the issuance of citation(s) and/or revocation of this approval/permit.

10. Your accepting this variance approval and beginning the project means that you have read, understand, and agree to follow all conditions of this approval. Therefore, James Kruse, his heirs, successors, and assigns are responsible for full compliance with the above conditions. It is the property owner's responsibility to inform any subsequent owner or operator of these conditions.

C. Other business as authorized by law.

Fitch called for a motion on the Alexander petition. Rubinson made a motion to approve a 6 month extension on the Alexander petition. Spieker second. Voice vote. **Motion carried unanimously**

D. Adjourn

Kuettel made a motion to adjourn the meeting. Rubinson seconded. Voice vote. **Motion carried unanimously.** The meeting was adjourned at 11:48 a.m.

Respectfully submitted,
Mary Jo Schmidt
Eng./Bldg. Adm. Asst. II
Village of Caledonia