

TOWN OF FULTON
2738 W Fulton Center Dr.
Edgerton, WI 53534

**BOARD OF ADJUSTMENT
January 28, 2008 @ 6:00 pm**

Minutes

1. **Call to Order** by Andy Walton at 6:00. Present were, Andy Walton, Duane Murwin, Carl Lichtfuss, Ken Veitch, Bob Rippberger, Carol Kent, Harold Schrank, and Clerk Zimmerman
2. **Confirmation of Meeting Notice** – Zimmerman confirmed the meeting notice was posted in three public places and published in the Edgerton Reporter.
3. **Approval of Agenda - Motion** (Rippberger, Veitch) to approve agenda. Carried.
4. **Approval of Minutes of June 11, 2007 – Motion** (Rippberger, Lichtfuss) to approve minutes. Carried.
5. **Request from Aimee Sund/Sund LLC for a variance for a lesser setback for all gasoline pumps, storage tanks, and accessory equipment.** Walton briefly explained in his research he found the ordinance for which the variance is being requested for refers to “street line”, which is not defined. He indicated the ordinance refers to either center line or right of way line. Walton advised he contacted Steve Schrafenagel of Rock County to see if they had any definitions of street line or if that term is used in any of their ordinances and it is not. Walton also advised he spoke to our attorney about this, and he advised if Harold looks at this and agrees the interpretation would be the center line vs. the edge of the pavement line, then there wouldn't be a need for a variance; however, if Harold maintains that it is the edge of the pavement line, then the request for the variance would continue. Walton advised we would only rule on the request for the variance, not the interpretation. Walton advised if Harold stays with his interpretation of the edge of the road, and this board cannot find a reason to grant a variance, then Aimee Sund/Sund LLC would have the right to challenge the interpretation to the Planning & Zoning Board. Walton asked Harold if he had a chance to look at this. Harold advised he hasn't really looked at it thoroughly; however his interpretation is the edge of the pavement. Walton asked Harold on what basis. Harold explained the remainder of that would be a road right of way, and wouldn't be a street line. He explained in our ordinance, it calls for front yard set back, and front yard set back is your property line, or the road right of way, however, the ordinance says street line, so his interpretation would be that it would go to the edge of the pavement.

Statement/explanation from applicant –

- A. Carl Korte stated in the language for the CHI district it uses the center of the road as their guidelines when they measure for setbacks, although not in regards to the gas stations, but in regards to other measurements in the CHI district. He explained if the roads were ever widened, that would be a problem. David Powell stated this is in ordinance 425-36D (17) where it refers to 425-76 for definitions of a front yard set back. He indicated that the center line is the point of reference in the industry standard, as far as

the DOT goes, because it is more clearly defined. He said if it is the right of way, they are 60+ feet back where it only needs to be 50'. He advised the Dept. of Commerce dictates petroleum standards and requires 3 feet from the property line to be built upon, and as long as the tanks are underground it doesn't dictate, it is based on the property line. He advised the dispenser setback is 10' under the guidelines where as long as the vehicle being fueled maintains on the owners property. Powell stated, "To say the pumps would be 100' away from the road or property line is always dictated off of the right of way, the property line, or the center line but not the road edge because the road edge is too much of a floating number." Lichtfuss said he thought at one time this town had discussion on why it was determined that we use centerlines. Walton advised everything he found was either referencing the center line or the right of way line, and this is the only place it doesn't clearly say one way or the other. Rippberger stated as far as all other ordinances written in our zoning book everything is by the right of way from the property. Harold said if you read the ordinance for the set back for this, it says "street line". Rippberger asked what street line was. Walton advised that is what we are trying to determine because it is not clearly defined. Walton advised that Harold has the authority to make that interpretation of the codes. He advised if anyone here wants to challenge Harold's interpretation, then it would go then it would go to P&Z. Harold said it is clear that the code refers to center line, and thinks in this particular situation, the center line should be used as the guideline or starting point. He agreed with Carl Lichtfuss that the town has spoken previously about using the center line. Harold advised the code book indicates the center of the road, and based on that, he said it would be the center line of the road because it is not spelled out differently.

B. **Public Participation** - no other public participation.

C. **Deliberation of Board** – Walton advised if Harold basis his measurements off of the center line, then we need to verify that it is in excess of 100'. Walton asked if we would like to make a motion to table our decision, that way we could have Harold verify that it is more than 100'. Walton said if it meets the 100' then the board doesn't have to make a decision because no variance would be needed; however, if it is less than 100' then we would have to open up a new case again. Zimmerman advised the proper posting would then need to be done again. Walton advised this will all be measured tomorrow and we will know tomorrow if we have to reschedule.

D. **Motion** - (Veitch, Kent) for no action on this variance request. Roll call vote: Rippberger – aye, Veitch – aye, Lichtfuss – aye, Kent – aye, Walton – aye. Carried.

6. **Adjourn – Motion** (Kent, Rippberger) to adjourn at 6:45 pm. Carried.

****Note:** These minutes are not official until approved by the BOA.**

Submitted by,

Connie Zimmerman
Clerk/Treasurer