



ROCK COUNTY BOARD OF ADJUSTMENT
Wednesday – January 27, 2021 – 6:00 PM
HELD VIA ZOOM
(Log in information found on next page)

ORDER OF PRESENTATION FOR GENERAL HEARING

1. State nature of the case by the Chair.
2. Applicant presents case.
3. Questions by Board Members to applicant.
4. Zoning Administrator/Corporation Counsel rebuttal.
5. Questions by Board Members to Zoning Administrator/Corporation Counsel.
6. Statements verbal or written by interested parties.
7. Questions by Board Members to interested parties in attendance.
8. Applicants rebuttal to Zoning Administrator/Corporation Counsel and/or interested parties in attendance.
9. Zoning Administrator/Corporation Counsel rebuttal to applicant and/or interested parties in attendance.

Attention BOA Members: *If you are unable to attend this meeting, please inform the Planning and Development Agency as soon as possible. Please also inform the Agency if a particular case or cases on the agenda may constitute a conflict of interest for you.*

Section 4.1208(3) of the Rock County Code of Ordinances (The Board of Adjustment Rules and Procedures) states, in part, that a member having a personal interest in the subject of the hearing which may affect his/her ability to act impartially shall not participate. Furthermore, any member or other person who believes a conflict exists shall bring the question to the attention of the Chair prior to commencement of the hearing. The Chair shall make the final ruling on whether a conflict exists.

BOA Members are encouraged to visit and view the site subject to an application at his/her discretion. However, as per the Rules of Evidence (4.1208(4)(F)), members shall base any decision in a matter coming before the Board solely on those facts established in the record during the public hearing and shall refrain from communications of any sort with any interested party regarding a pending case. If a site visit results in information not presented in the application or at the hearing or if communication is had prior to the hearing, members are encouraged to inform the Board so that a determination can be made as to whether the information should be considered formal evidence in the case.



ROCK COUNTY BOARD OF ADJUSTMENT
Wednesday – January 27, 2021 - 6:00 PM
HELD VIA ZOOM
AGENDA

Join Zoom Meeting

<https://us02web.zoom.us/j/83321628443?pwd=QkxPV1dmdjRjRVJvbnhNMNxBNT1VQQT09>

Meeting ID: 833 2162 8443

Passcode: 334469

One tap mobile

+13126266799,,83321628443#,,,,*334469# US (Chicago)

Dial by your location

+1 312 626 6799 US (Chicago)

Meeting ID: 833 2162 8443

Passcode: 334469

1. Roll Call
2. Adoption of the Agenda
3. Reading and Approval of Minutes of Board of Adjustment meeting held October 30th, 2019.
4. Reading and Approval of Findings of Fact from Last Meeting
 - a. Tim Gensler
5. Announcement of Decision from Last Meeting
 - a. Tim Gensler
6. Communications
7. Reports of Committees
8. Deliberation of Cases
 - a. Johnson Ag Land, LLC
9. Unfinished Business
10. New Business
11. Adjournment

Rock County Board of Adjustment Standards for Evaluating Variances

The variance procedure allows the dimensional standards in an ordinance to be varied in response to unusual circumstances, which constitute unnecessary hardship. Variances are not to be granted routinely. **The applicant for a variance must clearly show the Board of Adjustment/Appeals that three statutory standards that govern the granting of a variance will be met.** These three standards require the existence of unnecessary hardship, the presence of a unique property limitation, and the protection of the public interest.

1. Unnecessary Hardship

Unnecessary hardship is a situation where, in the absence of a variance, an owner can make no feasible use of a property, or strict conformity is unnecessarily burdensome. Board members must judge what is feasible use for a particular parcel as a whole. A variance is not warranted if the physical character of the property allows a landowner to build or develop in compliance with the zoning ordinance.

- (A) The hardship or difficulty must be peculiar to the zoning parcel in question and different from that of the other parcels, not one that affects all parcels similarly. Hardship arises because of some unique property limitation of a parcel, or because the property was created before the passage of the zoning ordinance. If either circumstance renders the parcel unsuitable for any use permitted under the existing ordinance – if all area, yard and setback requirements are observed – the parcel may qualify for a hardship.
- (B) Loss of profit or pecuniary (financial) hardship is not and of itself grounds for a variance.
- (C) Self imposed hardship is not grounds for a variance. Reductions resulting from a sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, deed restrictions imposed by the owner's predecessor in title, and improvements that were made in violation of the ordinance are generally considered to be self-imposed hardships.
- (D) The hardship cannot be one that would have existed in absence of a zoning ordinance. Sometimes, a legitimate hardship results from the interaction of the provision of the zoning ordinance with other actions or regulations adopted by public authorities.

Notes:

2. Unique Property Limitation

Unique Property Limitations where unique physical characteristics of the property, not the desires of or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. These features may be wetland, soil type, parcel shape, or a steep slope that limits the reasonable use of the property.

Notes:

3. Protection of the Public Interest

Protection of the Public Interest is where granting a variance must neither harm the public interest nor undermine the purpose of the ordinance. The Board actions should be consistent with the “Purpose” and “Intent” sections stated in this Ordinance. The public interest includes the interests of the public at large, not just that of nearby property owners. Lack of opposition does not in itself mean that a variance will not harm the public interest.

Notes:

General considerations

- (A) In granting variances the Board may impose special conditions to ensure that the public welfare is not damaged. The conditions must relate reasonably to the purpose and intent established in this ordinance.
- (B) A variance should include only the minimum relief necessary to relieve zoning regulations deemed to be unnecessarily burdensome on the property.
- (C) Violations by or variances granted to neighboring owners do not justify variance.
- (D) Variances are attached to the property as a permanent right. Once a variance has been granted, it is permanently attached to the property. A new owner of the property may make use of the variance that was granted to the previous owner if all the conditions that are attached to the variance are met.

ROCK COUNTY BOARD OF ADJUSTMENT
October 30th, 2019
COURTHOUSE CONFERENCE ROOM 2nd Floor
ROCK COUNTY COURTHOUSE
JANESVILLE, WISCONSIN

MINUTES

Vice Chair Lengjak called the October 30th, 2019 meeting of the Rock County Board of Adjustment to order at 6:00 p.m. at Courthouse Conference Center Second Floor.

Board of Adjustment members in attendance at roll call: JP Lengjak, Michael Saunders, David Diestler and Chris Munz-Pritchard. Quorum Present.

Development staff in attendance: Andrew Baker (Rock County Zoning Administrator), Kurt Wheeler (Planner III and Acting Secretary).

Others in attendance: Tim Gensler; applicant, Lon Coplien, Bruce Schneider, and Greg Gensler.

Adoption of Agenda:

Motion by Mike Saunders to adopt the agenda, **Seconded** by Chris Munz-Pritchard. Adopted (4-0).

Reading and Approval of the Minutes – March 26th, 2019:

Motion was made by Dave Diestler to approve the minutes, **Seconded** by Mike Saunders. Minutes approved. (4-0).

Reading and Approval of Findings of Fact from previous meeting:

Vice Chair Lengjak read the findings of fact from the June 25th, 2019 meeting. The members voted unanimously to approve. (4-0)

Announcement of Decision from Last Meeting

Vice Chair Lengjak read the decision from the last meeting.

Communications: None

Reports of Committees: None

Deliberation of Cases: Tim Gensler

Chair Lengjak read the Legal Notice to all in attendance.

Description of Request: The property owner/applicant (Tim Gensler) is requesting a variance from the standard fifty-foot front yard setback to allow the garage to be placed effectively at the property line (which is approximately thirty-three feet from the centerline of the road). A variance of approximately fifteen feet is also required from the standard seventy-five foot setback from the Rock River (to allow the closest point of the garage to be approximately sixty feet from the River).

Public hearing was opened and the applicant Tim Gensler was sworn in and described his request for a variance. He stated that the building inspector for the Town of Janesville, issued a building permit for both the construction of the house and the garage. He thought the issuance of that permit was all that he needed for the garage. The County approved a permit for the elevation and remodeling of the house in November 2018, but the construction of the garage was specifically excluded from the permit due to the setback requirements. That exclusion on the permit was not noticed until now when he reviewed the paperwork prior to construction.

Questions and discussion followed. Two (County) photographs were viewed as Exhibit A that showed the project site. Staff informed the Board as to the history of the project to date, the site limitations and the statutory language which allows for the rebuilding of non-conforming structures within the same footprint. The applicant could have replaced the original garage on the property, though it would have been smaller than preferred. Some of the original garage area was utilized for the entry-way to the remodeled house.

Bruce Schneider, Town of Janesville Chairman, spoke to the board and stated that he was in support of the variance approval and that many lots along N. River Rd. have less than required front yard setbacks and are small in size.

Lon Coplien, Town Board member, then spoke to the Board adding that Mr. Gensler has done everything correctly so far from the Town's perspective and construction standards and was in favor of granting Mr. Gensler approval.

Discussion followed on the topography of the site, FEMA Floodway, and other safety factors of the site.

Findings of Fact:

1. Unnecessary Hardship/Unnecessarily Burdensome (Denied (4-0))

The Board felt that the limitations created by the front and rear yard setback requirements are not unnecessarily burdensome to the applicant in light of the

purpose and intent of the Ordinance and location of the property. The applicant could have rebuilt the original garage on the property without a variance, but personal preference was to have a larger, two-car, garage.

2. Hardship due to Unique Property Limitation (Affirmed 3-1)

The majority of the Board felt that there are limitations to this property because the lots were platted prior to the Ordinance, and the presence of limitations due to topography, FEMA floodplains, and a small non-conforming lot.

3. Protection of the Public Interest (Denied (4-0))

The purpose and intent of the Ordinance cannot be met and public welfare will be negatively affected due to the close proximity to the Rock River and N. River Road. A smaller garage could be built on the property based on current Ordinances and recent State Legislation regarding existing non-conforming structures.

After lengthy discussion, Dave Diestler made a **Motion** to Deny the variance request based on the Findings of Fact. **Seconded** By Mike Saunders.
All in Favor, Variance Denied (4-0).

Unfinished Business:

None

New Business:

Mr. Baker mentioned that we are still looking for additional members to join the Board of Adjustment. He also mentioned that the election of Officers may take place next meeting.

Motion to Adjourn made by Mike Saunders, **Seconded** by Chris Munz-Pritchard.
All in Favor. **Time: 7:10 pm.**

Respectfully Submitted,
Kurt Wheeler, Acting Secretary Rock County Board of Adjustment

These Minutes are not official until approved by The Rock County Board of Adjustment



January 12, 2021

LEGAL NOTICE

Notice is hereby given that the Rock County Board of Adjustment will hear a request for variances of the Rock County Land Division and Management Ordinance Section 4.116(2) related to lot standards. The property owner/applicant (Johnson Ag Land LLC) is requesting a variance of the one hundred foot lot width and two hundred fifty foot maximum length (or depth) requirements for "flag lots" found in Section 4.116(2)(e). A flag lot is defined as a lot whose width at the building site far exceeds its street frontage, containing both a "pole," a long, narrow strip of land utilized solely to provide vehicular access to the building site, and a "flag," containing the building site. The variance requests are the first step in the process to divide the existing farmstead from the remaining land. If approved as requested, the pole of the proposed new flag lot would be reduced to thirty-five feet for the entire length, which is approximately twelve hundred twenty five feet.

The property is located in part of the NE1/4 and SE1/4 of the NE1/4 Section 21, Clinton Township, Parcel 6-5-212, 10600 E County Rd P, Clinton, WI. The landowners address is 4837 Twelve Oaks Dr, Milton, WI.

The Public Hearing will be held virtually at 6:00 PM on Wednesday, January 27th, 2021. Interested parties are may Contact Andrew Baker at the Rock County Planning & Development Agency at 608-757-5587 to offer comments in advance of the meeting and/or request the information to attend the meeting via zoom.

Andrew Baker
Senior Planner – Rock County Planning, Economic & Community Development

BOARD OF ADJUSTMENT APPLICATION

mtg 1/27/2021
Via Zoom

FOR OFFICE USE ONLY	
Appeal No. <u>BoA 2020 601</u>	Date Hearing Advertised _____
Date <u>1/8/2021</u>	Fee <u>\$775,00</u>

Name or Owner/Agent Johnson Ag Land, LLC (Leo Johnson)/R.H. Batterman & Co., Inc. (Kristin Belongia)
 Address 10600 E. County Road P, Clinton WI (Site)

Hereby appeal to the Board of Adjustment for:

Appeal relating to: _____

A variance relating to: Flag lots ("pole" length & width)

The description of the property involved in this application is as follows:

Location/Subdivision:

Lot: 1 Lot Size: 7.5 +/- AC Present Use: Single Family Residential

Present improvements upon land: Single family residence, outbuildings, gravel drive, well, septic system

Proposed Use: Single Family Residential (no change)

Note: Those property owners within 500 feet of the subject property (when located within an urban or rural development area as shown on the County Development Plan) or within 1,000 feet of said property (when located in an agricultural area as shown on the County Development Plan) shall be notified by mail by the County.

This appeal to the Board of Adjustment from the decision of the _____

whereby they denied application to: _____

VARIANCE of the following section of the Land Division and Development

Ordinance is requested: 4.116(2)(e)

(a) Strict application of the regulations would produce UNDUE HARDSHIP because _____

See attached narrative.

(b) The hardship created is UNIQUE and not shared by all properties alike in the neighborhood because _____

See attached narrative.

(c) The variance would not change the CHARACTER OF THE NEIGHBORHOOD because _____

See attached narrative.

DATE FILED 1/6/2021 SIGNED _____, Member

Leo Johnson
(Applicant or Agent)

Members of the Board of Adjustment shall base any decision in a matter coming before the Board solely on those facts established in the record during the public hearing(s) held by the Board of Adjustment, and members shall refrain from communications of any sort with any interested party regarding a matter then pending before the Board.

From Applicant

Narrative for Variance Request

This request involves a proposed land division of the separation of an existing residential site and access driveway from existing farmlands located at 10600 E. County Road P, Clinton, WI 53525 (Town of Clinton) and is owned by Johnson Ag Land, LLC. More specifically, a request for a flag lot including extended "pole" length and reduced "pole" width. See enclosed Preliminary Certified Survey Map for proposed lot configuration. The three statutory standards that govern the granting of a variance are outlined below.

1. Unnecessary Hardship

Strict conformity with the existing ordinance would unnecessarily burden the existing farmland surrounding the proposed residential lot. Mainly, the width of the existing access driveway corridor is about 35' from the property line to the existing edge of crop, and the length is about 1,200' (also see attached pictures for reference). The existing structures appear to have been built in the 1950's or 1960's. Adherence to the existing ordinance would result in the proposed residential lot encroaching on the farm operations in both length and width of the "pole" portion of the flag lot.

2. Unique Property Limitation

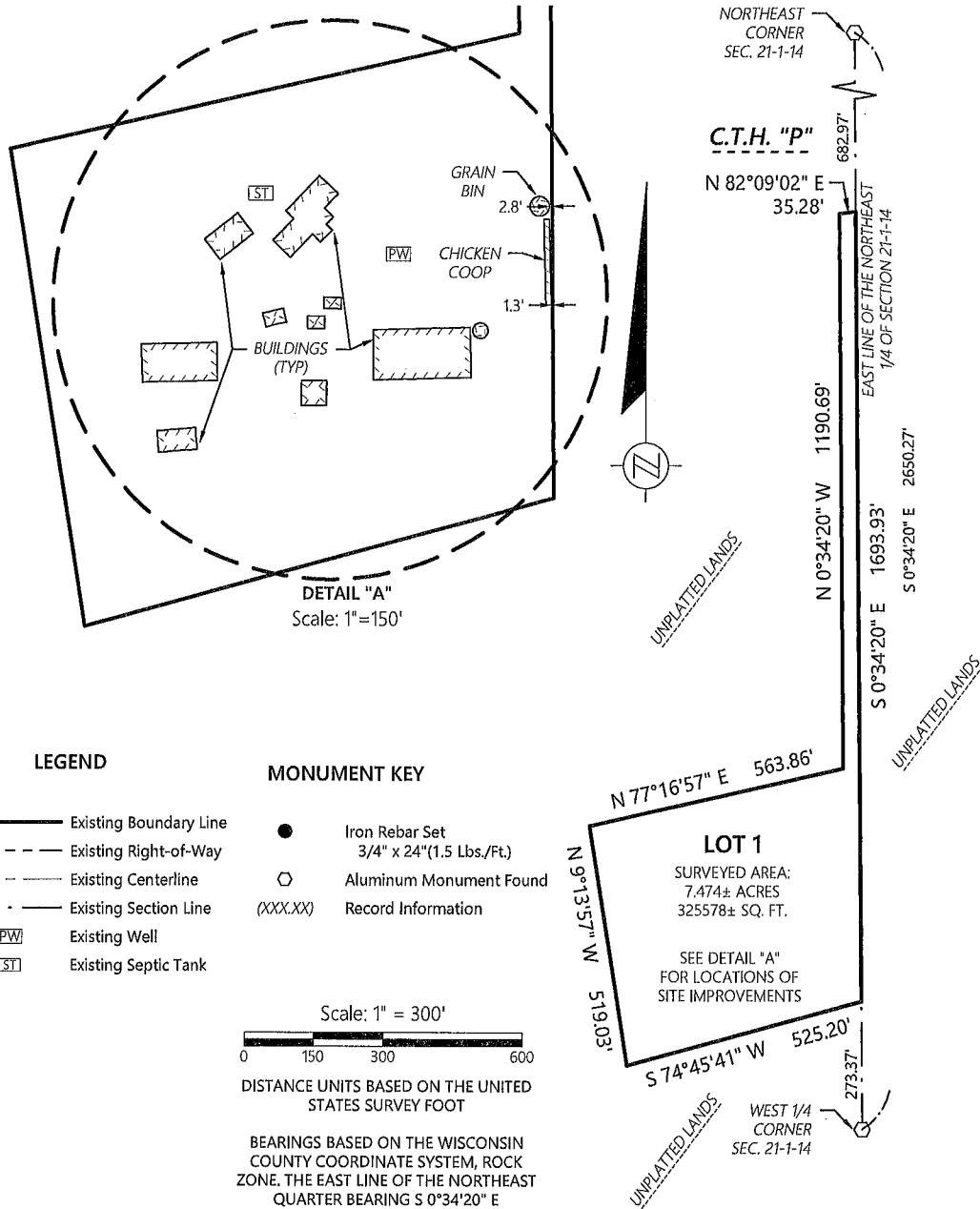
The unique property limitation that prevents the applicant from dividing the residential lot from the farmland in compliance with the ordinance would be existence of productive agricultural operations that closely surround the residential lot. Imposing compliance with the ordinance would limit the reasonable use and preservation of the remaining farmland lot.

3. Protection of the Public Interest

Public interest would be protected because no additional development is proposed with this variance request, which includes no overcrowding of land, no additional use of water supply or sewerage treatment or increase in road traffic. The preservation of productive farmland would be maintained and deed restricted to not allow for any building in the future. Furthermore, the resulting land division would provide uniform, consistent and accurate monumenting and mapping of the lots.

PRELIMINARY CERTIFIED SURVEY MAP

OF PART OF THE NE 1/4 AND SE 1/4 OF THE NE 1/4 OF
SECTION 21, T. 1 N., R. 14 E., OF THE 4TH P.M.,
TOWN OF CLINTON, ROCK COUNTY, WISCONSIN.



<p>ORDER NO: 33792</p> <p>FIELD CREW: DJE DRAWN BY: DJE SHEET 1 OF 3</p>	<p>FOR THE EXCLUSIVE USE OF:</p> <p>Leo Johnson 4837 Twelve Oaks Dr. Milton, WI 53563</p>	<p>Batterman engineers surveyors planners</p> <p>2857 Bartells Drive Beloit, Wisconsin 53511 608.365.4464 www.rhbatterman.com</p>	
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On County Trunk Highway P at the beginning of the access driveway facing south towards residential lot.



On access driveway at the beginning of the residential lot facing north towards County Trunk Highway P.



On the access driveway at the beginning of the residential lot facing south.

fifteen thousand (15,000) square feet. The minimum lot width at the front yard building setback line for these lots, in accordance with applicable Town and County building setback lines, or (g) of this Sub-sec., shall be fifty (50) feet.

- (c) Commercial, industrial, and other non-residential lots shall be of adequate size, dimension, configuration, and orientation to provide for off-street parking and loading facilities required for the type of proposed use.
- (d) Lot configuration shall recognize topography and other natural landscape conditions. Lot lines shall abut at right angles or radial to streets, when feasible. Lot frontage on a public street shall be at least one hundred (100) feet for all lots without access to a connection to a public sanitary sewer system and at least fifty (50) feet for all lots with access to a connection to said system or fronting a cul-de-sac. Double frontage lots shall be avoided except for corner lots where they may be required to separate residential land uses from arterial streets or in order to overcome topography, other landscape conditions, or orientation disadvantages. Dimensions of corner lots shall adhere to front yard building setback lines, in accordance with Town building setback lines or (g) of this Sub-sec., from both streets that bound the lot.
- (e) Flag lots shall be allowed only in special circumstances when various factors render creation of a more proportionate lot, in length and width, unachievable. The “pole” of a flag lot shall not exceed two hundred fifty (250) feet in length unless additional length is needed to either avoid significant degradation or depletion of ESA, cultural resources, productive agricultural soils, and/or woodlands, or disruption of efficient agricultural operations. The “pole” shall be used exclusively for vehicular access with specified improvements including landscaping, fencing, utilities, mailboxes, and signs also permitted on the “pole”. The “pole” shall maintain a minimum width of one hundred (100) feet for all lots without access to a connection to a public sanitary sewer system, and fifty (50) feet for all lots with access to a connection to said system, for the entire length of the “pole”. No “pole” shall be located within two hundred (200) feet of another on the same side of the street unless said “poles” utilize a joint driveway.
- (f) Lot orientation shall be in a manner so as to obtain maximum solar access and energy conservation, with the lot length being north to south and block length being east to west when feasible.
- (g) Front yard building setback lines as stated in this paragraph (g) shall be applicable only on those lots adjacent to a Rock County road and not within the Rock County Shoreland Overlay Zoning District. Front yard building setback lines from arterial and collector streets shall be one hundred and fifteen (115) feet from the street centerline or seventy five (75) feet from the right-of-way, whichever is greater. Front yard building setback lines from local streets shall be fifty (50) feet from the right-of-way for those lots without access to a connection to a public sanitary sewer system and twenty five (25) feet from the right-of-way

MEMO

TO: Rock County Board of Adjustment

FROM: Rock County Planning & Development Agency

MEETING DATE: January 27, 2021

APPLICANT: Johnson Ag Land LLC / C/O R.H. Batterman & Co Inc

Property Address: 10600 E County Rd P, Clinton, WI (Clinton Township)

GENERAL DESCRIPTION

Description of Request: The applicant is requesting a variance of the one hundred foot lot width and two hundred fifty foot maximum length (or depth) requirements for “flag lots” found in Section 4.116(2)(e) of the Rock County Land Division and Management Ordinance. A flag lot is defined as a lot whose width at the building site far exceeds its street frontage, containing both a “pole,” a long, narrow strip of land utilized solely to provide vehicular access to the building site, and a “flag,” containing the building site. The property owners/applicants are requesting the variances as the first step in the process to divide the existing farmstead from the remaining land. If approved as requested, the pole of the proposed new flag lot would be reduced to thirty-five feet for the entire length, which is approximately twelve hundred twenty five feet.

Location: Part of NE1/4 and SE1/4 of the NE1/4 Section 21, Clinton Township, Parcel 6-5-212

Use: A1 (Agricultural) Town of Clinton

STAFF REVIEW COMMENTS

Planning staff has reviewed the petition for issues in accordance with the Rock County Land Division and Management Ordinance (Ordinance) and has the following comments:

The owner/applicant is beginning the process to separate the existing farmstead area from the remaining land. Considering the distance from the building site to the road, the applicant desires to create a “flag lot” to limit the required width of the lot. The creation of flag lots are generally discouraged by Ordinance (per sec. 4.116(2)), but if they are approved they must meet specific standards (found in 4.116(2)(e)). That section of the Ordinance is included in the packet for reference. The proposed approximately 1,225 foot long “pole” will exceed the maximum of 250 feet in length allowed by Ordinance, thus requiring a variance of approximately 1,000 feet. In terms of the lot width, a reduction from 100 feet wide to 35 feet wide is a 65 foot variance, or 65% less than the standard.

As in any variance request, the applicant must prove that each of the three standards can be met. The applicant has provided a narrative with the application and will likely provide additional testimony at the hearing. **Staff has considered the facts of this case and provides the following in regard to each standards for the Board’s consideration:**

1. Unnecessary Hardship

The Board should consider whether or not the limitations created by the lot width and length requirements are unnecessarily burdensome to the applicant as related to the purpose and intent of the Ordinance. In this particular case, it is difficult to meet the strict unnecessary hardship standard because the applicant could create a conforming lot through the land division process without variances from the Ordinance or simply

maintain the property as it is. However, the standards could be considered unnecessarily burdensome in light of the fact that this is an existing, established, building site, not a new development. The land division as proposed, namely in the driveway area, was delineate based on field boundaries that appear to have been in place for decades based on past air photos. While creating a new lot with a minimum of one hundred feet of width does not mean that the historic field boundaries cannot be maintained, doing so in this scenario may not be necessary to maintain the purposes and intent of this provision of the Ordinance.

2. Hardship due to Unique Property Limitation

This standard is based on the physical characteristics of the property. In this case, the applicant is requesting that minimum lot width be reduced and maximum allow length of the flag lot be extend to generally conform to an existing building site. Flag lots are generally discouraged for a number of reasons in order to develop land in an orderly, efficient and environmentally sound manner while maintaining public health, safety and welfare. While not ideal, this scenario is clearly different than a proposal to create a flag lot from an existing undeveloped property. Designing a new lot boundary around an existing driveway and building site is a unique property limitation in Staff's opinion.

3. Protection of the Public Interest

It is Staff's opinion that the purpose and intent of the Land Division Ordinance can be maintained based on the proposal. Approving a large variance (65% reduction of the lot with requirement in this case) is questionable in most cases and should come only with careful consideration. The minimum lot width requirement is partially intended to limit the number of flag lots that can be developed in a certain amount of area. In this case, the proposal by the landowner to deed restrict the remaining land to not allow future building will minimize or eliminate the concerns that future development could make the current proposed layout less acceptable in terms of meeting the purpose and intent of the Ordinance.

STAFF RECOMMENDATION

An approval of the sixty five foot variance for lot width and approximately a one thousand foot "flag pole" length will allow the applicant to proceed by submitting a land division for review which does not meet all the Ordinance standards. However, an approval of this variance does not ensure that the land division will be approved by all reviewing agencies, in this case namely the Town of Clinton.

In acting on this request, The Board should discuss and determine that all three standards are met based on evidence presented in the application and at the meeting. A decision as to the three standards must be affirmed by developing proposed findings of fact during the motion, discussion and voting process. Keep in mind, the criteria or requirement to review the three standards are the same for every case that comes before the Board regardless of the land use. In other words, residential, commercial, industrial, governmental or non-profit land uses should all be acted upon based on the same standards for review.

Based on the evidence presented to date, Staff is recommending approval of the requested variance with the following conditions:

1. All necessary approvals are obtained from the Town of Clinton for the land division.
2. A deed restriction be recorded on the remaining "undeveloped" land, or a portion thereof, which allows no future building on the property.
3. The applicant completes the preliminary Certified Survey Map approval process within six months of the date of the decision unless the Board approves otherwise.