

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 14, 2012**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2011AP2224**

**Cir. Ct. No. 2010CV323**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**QUIN R. FEUERSTEIN AND SUSAN S. FEUERSTEIN,**

**PETITIONERS-APPELLANTS,**

**v.**

**SAWYER COUNTY BOARD OF APPEALS,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Sawyer County:  
GERALD L. WRIGHT, Judge. *Affirmed.*

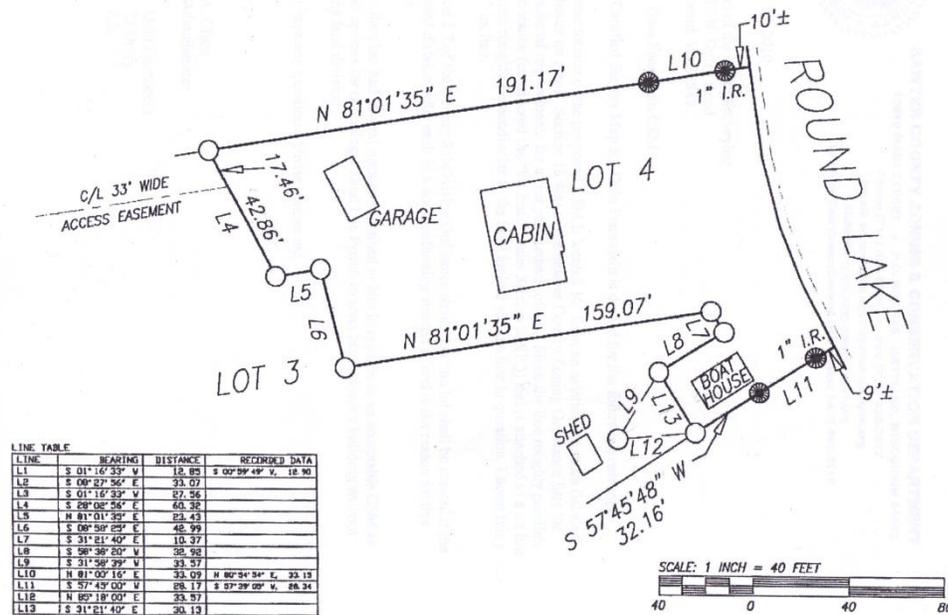
Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Quin and Susan Feuerstein appeal an order affirming a decision of the Sawyer County Board of Appeals. The Board refused to record the Feuersteins' proposed survey map because a boat house on the lot was only ten feet from what the Board determined was a rear lot line requiring a

forty-foot setback. The Feuersteins argue the zoning ordinances are ambiguous and must be construed in favor of the free use of private property. They also assert the Board could not reasonably conclude that the lot line behind the boat house was a rear lot line. We affirm.

### BACKGROUND

¶2 The Feuersteins own four contiguous lots in Sawyer County. Lot 4, the easternmost lot, lies just to the west of Round Lake. A boat house was erected on the southern portion of lot 4, as shown below:



Lines L9 and L12, depicted on the drawing, are the current lot lines behind the boat house.

¶3 In early 2008, the Feuersteins presented a new certified survey map (CSM) for approval. The Feuersteins proposed to replace lot lines L9 and L12 with a single lot line, depicted as L13 on the drawing above. This change would

eliminate the point formed by L9 and L12, which the Feuersteins believed would allow them to move the shed behind the boat house closer to the shoreline.

¶4 The proposed CSM was denied by the Sawyer County zoning administrator. The administrator deemed L13 a rear lot line because it roughly paralleled the shoreline, which the ordinance defines as the “lot front.” *See* SAWYER COUNTY, WI, ZONING ORDINANCE § 2.1(53).<sup>1</sup> Citing § 18.4(a) of the Sawyer County zoning ordinance, the administrator concluded a forty-foot setback was required to the rear of the boat house, whereas the Feuersteins’ proposed CSM provided only a ten-foot setback.

¶5 The Feuersteins sought Board review of the administrator’s decision, claiming that L13 was a side lot line subject to only a ten-foot setback. The Board upheld the administrator’s decision following a hearing. The circuit court affirmed on certiorari review.

## DISCUSSION

¶6 Under statutory certiorari, a court may review only four matters: (1) whether the Board acted within its jurisdiction; (2) whether the Board proceeded on the correct theory of law; (3) whether the Board’s action was arbitrary, oppressive, or unreasonable, representing its will rather than its judgment; and (4) whether the Board might reasonably reach the conclusion it did

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<sup>1</sup> The record does not include a complete copy of the Sawyer County zoning ordinance, and only a portion of section 2.1 is included. It is the appellant’s responsibility to ensure that the record on appeal is complete. *State v. Marks*, 2010 WI App 172, ¶20, 330 Wis. 2d 693, 794 N.W.2d 547, *review denied*, 2011 WI 15, 331 Wis. 2d 48, 794 N.W.2d 901. We have filled the gaps with the ordinance currently posted on the Sawyer County website. All references to the Sawyer County zoning ordinance are therefore to the October 20, 2011 version.

based on the evidence before it. *Block v. Waupaca Cnty. Bd. of Zoning Adjustment*, 2007 WI App 199, ¶4, 305 Wis. 2d 325, 738 N.W.2d 132. A court on certiorari review “‘must accord a presumption of correctness and validity to a board of adjustment’s decision’ and ‘may not substitute its discretion for that of the board.’” *Id.* (quoting *State ex rel. Ziervogel v. Washington Cnty. Bd. of Adjustment*, 2004 WI 23, ¶13, 269 Wis. 2d 549, 676 N.W.2d 401).

¶7 The Feuersteins first assert that the Board proceeded on an incorrect theory of law and acted arbitrarily, oppressively, and unreasonably. They cite the same reasons for reaching these conclusions: namely, that the ordinance is ambiguous and the Board failed to acknowledge that restrictions on land use must be interpreted narrowly under *Bur v. Schwarten*, 83 Wis. 2d 1, 8, 264 N.W.2d 721 (1978).

¶8 We first examine the text of the applicable Sawyer County zoning ordinance. Section 4.26 governs accessory structures and states that a permanent, roofed structure not attached to the principal building “shall conform to the setback and any other dimensional requirements of the district within which it is located.” SAWYER COUNTY, WI, ZONING ORDINANCE § 4.26(1). Section 18 sets forth, in table form, the dimensional requirements for each zoning district. Forty feet of yard is required to the rear of any building in areas zoned RR-1, which is where the Feuersteins’ parcel is located. *See* SAWYER COUNTY, WI, ZONING ORDINANCE § 18.4(a).

¶9 The Feuersteins contend the ordinance is ambiguous. “The rules for the construction of statutes and municipal ordinances are the same.” *Bruno v. Milwaukee Cnty.*, 2003 WI 28, ¶6, 260 Wis. 2d 633, 660 N.W.2d 656. If the meaning of the ordinance is clear, a court should simply apply that meaning to the

facts before it. *Id.*, ¶7. Ambiguity exists when the ordinance is capable of being understood by reasonably well-informed persons in two or more ways. *Id.*, ¶19.

¶10 Here, the Feuersteins consider the ordinance ambiguous because it does not define a “rear lot line.” A “rear yard” is defined as an “open[,] unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.” SAWYER COUNTY, WI, ZONING ORDINANCE § 2.1(106). The Feuersteins contend that § 2.1(106)’s reference to a singular building, when coupled with the ordinance’s failure to define “rear lot line,” suggests that a forty-foot setback is required behind only the principal building on the lot, not every building. They contend their proposed CSM complies with the ordinance because their cabin is sufficiently distant from the lot line to the rear of that building.

¶11 We are not persuaded. The ordinance unambiguously requires a forty-foot setback for each building on the property, including the boat house. This is the plain meaning of § 4.26(1). Each building must comply with the setback “and any other dimensional requirements.” SAWYER COUNTY, WI, ZONING ORDINANCE § 4.26(1). Not only does § 4.26(1) clearly indicate that a setback is necessary for each building on the parcel, it informs the reader that the required setback distance will be found among the dimensional requirements listed in the table in section 18. Section 2.1(106)’s reference to a building in the singular is immaterial because the ordinance specifically states that “words in the singular number include the plural number.” *See* SAWYER COUNTY, WI, ZONING ORDINANCE § 2.1.

¶12 The Feuersteins also argue § 18.4(a) is ambiguous because it identifies the setback requirements using the phrase “yard required” instead of the

word “setback.” We reject this reasoning. When read as a whole, the ordinance is clear that any accessory structure must be set back from the rear lot line at least forty feet. Indeed, a footnote to § 18.4(b), which specifies reduced yard requirements for principal buildings in certain circumstances, explicitly states that the yard requirements are “setbacks.” The Feuersteins have not proposed a reasonable alternative interpretation of the requirements in § 18.4(a).

¶13 The Feuersteins also contend the *Bur* case is dispositive. There, our supreme court held that a municipality reasonably concluded that an L-shaped building was required to meet the standard for only one rear setback. *See Bur*, 83 Wis. 2d at 8-9. That ordinance was silent regarding the treatment of L-shaped buildings, and, consequently, the court cited the principle that “the interpretation allowing for the greater use of the land must be followed since zoning ordinances are in derogation of common law and are to be construed in favor of the free use of private property. *Id.* at 8. However, the ordinance here is clear; each building is subject to the setback requirements. In addition, the *Bur* court stated that a municipality is entitled to deference when interpreting its own zoning ordinance. *Id.* at 8-9. Here, the Board concluded the ordinance required a forty-foot setback from the Feuersteins’ boat house.

¶14 Lastly, the Feuersteins argue the Board could not reasonably conclude L13 was a rear lot line. We do not agree. As we have stated, the shoreline is the front of the lot. The Board cited several other ordinance definitions generally suggesting that lines perpendicular to the front are side lot lines, with rear lot lines running parallel to the front of the lot. L13 runs roughly parallel to the front of the lot, not perpendicular. The Board could reasonably conclude that L13 was a rear lot line.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)5.

