

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
PUBLIC HEARING

October 25th, 2022

5:30 P.M.

First Floor Conference Room (120) – County Administration Building

PUBLIC HEARING HELD VIA ZOOM

PRESENT

Greg Kargus, Tom Tuschl, Sue Drexler, Tom Verstegen (alternate),
Larry Kriescher (excused)

Daniel Lefebvre -Code Enforcement Officer & Karen Fredrick -Court Reporter

The meeting was called to order by Greg Kargus, Chairman at 5:30 P.M. Board members introduced themselves and Daniel Lefebvre, Code Enforcement Officer explained review by court of record procedure. He stated that petitions shall be presented to the court within 30 days after the filing of the decision in the County Planning and Zoning Office.

**GARY RATHSACK – 164 RICKERS BAY RD, TOWN OF NEENAH –
VARIANCE**

Applicant is requesting a variance for a substandard floodplain fill requirement. The property owner, Gary Rathsack, was sworn in. Mr. Rathsack explained the variance and property limitations, as well as described his plans to meet the neighbors existing yard grade.

The Board discussed the variance request with the owners.

Daniel Lefebvre read the Town correspondence into the record.

**DEAN GIACOMINI ET AL – 3061 BELLAIRE LN, TOWN OF OSHKOSH –
VARIANCE**

Applicant is requesting a variance for a substandard floodplain fill requirement. The property owners, Dean & Jody Giacomini, were sworn in. Mr. Giacomini explained the variance and property limitations, as well as described the issues with the existing structure.

T. Tuschl lead the Board in discussion on what qualifies as a hardship, and asked the owner(s) about the exiting structure's disrepair.

Multiple neighboring property owners and a Town official, Jim Erdman, expressed support for the variance.

The Board discussed the variance request with the owners and neighbors expressing support. Discussion included utility concerns with overhead electrical lines, and the disrepair of the existing dwelling.

Daniel Lefebvre read the Town/WDNR correspondence into the record.

ADJOURNMENT

MOTION made by S. Drexler to adjourn the meeting. Seconded by T. Verstegen. Motion carried 4-0. Meeting adjourned at 6:05 P.M.

Respectfully submitted,

Daniel R. Lefebvre
Code Enforcement Officer

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE MEETING

November 3rd, 2022

7:30 A.M.

Third Floor Conference Room – County Administration Building

DELIBERATIVE MEETING HELD VIA ZOOM

PRESENT

Greg Kargus, Tom Tuschl, Sue Drexler, Tom Verstegen (alternate),
Larry Kriescher (excused)

Daniel Lefebvre -Code Enforcement Officer & Karen Fredrick -Court Reporter

The meeting was called to order by Greg Kargus at 7:30 A.M.

GENERAL

MOTION to approve the July 26, (Public Hearing), August 4, (Deliberative), and
October 20 (Viewing) meeting minutes by T. Tuschl, seconded by S. Drexler.
MOTION carried 4-0.

The Board reviewed findings and criteria in order to act on the variance & appeal.

**GARY RATHSACK – 164 RICKERS BAY RD, TOWN OF NEENAH –
VARIANCE**

The Board discussed floodplain fill requirements, fill placement, and drainage.

MOTION by T. Tuschl, seconded by T. Verstegen, to approve the variance as proposed
with all county conditions. The Board noted the importance of meeting all criteria for a
variance request to be approved. T. Tuschl read the findings for approval. The Board
determined the variance has met the variance criteria based off the findings.
MOTION carried 4-0.

**DEAN GIACOMINI ET AL – 3061 BELLAIRE LN, TOWN OF OSHKOSH –
VARIANCE**

The Board discussed floodplain fill requirements, fill placement, the overhead utility
lines, drainage, disrepair of the existing structure, and retaining wall(s).

MOTION by S. Drexler, seconded by T. Verstegen, to approve the variance as proposed with all county conditions. The Board noted the importance of meeting all criteria for a variance request to be approved. S. Drexler read the findings for approval. The Board determined the variance has met the variance criteria based off the findings.
MOTION carried 4-0.

REVIEW/ACTION ON THE 2023 MEETING SCHEDULE

MOTION made by T. Verstegen to approve the 2023 meeting schedule. Seconded by T. Tuschl. Motion carried 4-0.

ADJOURNMENT

MOTION made by T. Verstegen to adjourn the meeting. Seconded by S. Drexler.
Motion carried 4-0. Meeting adjourned at 7:46 A.M.

Respectfully submitted,

Daniel R. Lefebvre
Code Enforcement Officer

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
VIEWING

November 10th, 2022

8:00 A.M.

County Administration Building

PRESENT

Greg Kargus, Sue Drexler, Tom Verstegen (alternate)
Larry Kriescher (excused), Tom Tuschl (excused)

Daniel Lefebvre -Code Enforcement Officer

ITEMS

The Board met at 8:00 A.M. at the County Administration Building, then departed to view the following properties:

1. Bruce Quella – 7826 Haase Rd, Town of Wolf River – Variance

ADJOURNMENT

Meeting adjourned at 9:30 A.M.

Respectfully submitted,

Daniel R. Lefebvre
Code Enforcement Officer

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE SESSION
POST STAFF REPORT

Town and/or agency's comments:

1. The WDNR recommended the Board consider all variance criteria when making a decision. The WDNR stated, for a variance to be approved the proposal must meet all three statutory variance criteria.

CRITERIA AND ADVISORY FINDINGS

23.7-234 "Basis of decision" (required for all Ch. 23 Town/County Zoning Code, Ch. 26 Floodplain Zoning Code, and Ch. 27 Shoreland Zoning Code variances)

- 1. **Criteria: The requirement in question would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with such requirement unnecessarily burdensome and such circumstances were not self-created.**

Findings for approval: The shore-yard setbacks limit the available buildable area for new development.

Findings for denial: The applicants property has an existing house, attached garage, and two boathouses/storage structures which allows for reasonable use of the property.

- 2. **Criteria: The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in questions.**

Findings for approval: Due to the multiple setbacks the applicant has minimal space to build an additional garage.

Findings for denial: The property is not unique from neighboring properties as they are subject to the same shore yard setback on two sides.

- 3. **Criteria: The granting of the variance will not be contrary to or harm the public interest given the general purposes of the zoning regulations and the specific purposes of the requirement in question.**

Findings for approval: The proposed garage is similar to the existing pattern of development in the surrounding area so public interest will not be harmed.

Findings for denial: The reduced shore yard setback may negatively impact water drainage, wildlife, and the preservation of natural scenic beauty in the surrounding area.

27.6-8(a) "Generally" (required for all Ch. 27 Shoreland Zoning Code variances)

- 1. **Criteria: The variance is consistent with the purpose of the Shoreland Zoning Code.**

Findings for approval: The proposed garage meets the purpose/intent of the shoreland zoning code.

Findings for denial: The purpose/intent of the shoreland zoning code is to promote the public health, safety, convenience and welfare, and promote and protect the public trust in navigable waters.

Based upon the above findings, it is the opinion of the Board that all criteria of Article 7, Division 12, Section 23.7-234, Town/County Zoning Code have have not been met.

Staff Recommendation: Denial

Advisory Conditions:

Town Conditions:

N/A

County Conditions:

N/A

VOTE: _____ to _____



November 14, 2022

Winnebago County Board of Adjustment
Winnebago County Courthouse
Lounge Room (Rm 60)
415 Jackson Street
Oshkosh, WI

Subject: Variance Request for Quella Property in the Town of Wolf River, Winnebago County

Dear Board Members,

The Department of Natural Resources has received the notice for a November 16, 2022 public hearing concerning the variance request submitted by Bruce Quella. The request is for a garage that is 45 feet from the ordinary high water mark of Lake Poygan. The Winnebago County Shoreland Zoning Ordinance requires a setback of 75' from the ordinary high water mark of Lake Poygan. As stated in the variance application, the property is located at 7526 Haase Road in the Town of Larsen. The department is writing in response to the county Board of Adjustment's request for an opinion from the department per Ch. 59.692(4)(b) Wis. Stat. as allowed by law. Please have this letter delivered to and read before the BOA at the hearing.

As the Board reviews these variance requests, please keep in mind that the applicant has the burden of proving that their request meets all of the statutory requirements for the granting of a variance for each variance request. That is, the applicant must prove that they will suffer unnecessary hardship if the provisions in the county's shoreland zoning ordinance are literally enforced. The Wisconsin Supreme Court has made it clear that proof of unnecessary hardship by itself does not entitle an applicant to a variance. All three statutory variance criteria must be satisfied in order to grant a variance. It may be possible that the applicant will provide additional evidence at the hearing which may change the conclusions listed below.

Unique physical limitations: The applicant must demonstrate that unique physical limitations (wetlands, steep slopes, streams, rock outcroppings) or special conditions of the property exist that prevent compliance with ordinance regulations. The physical limitations must be unique to the property in question and not generally shared by other properties in the area. The features of the lake and wetlands to the southwest and the channel to the northeast, with ordinary high water mark setbacks on two sides are shared by other properties in this area. If there is no compliant location on the property, the Board must evaluate whether minimal relief is warranted for the placement of an attached garage.

No harm to public interests: The applicant must demonstrate that variance will not result in harm or be contrary to public interests. The Board must consider the impacts of the proposed project as well as the cumulative impacts of similar projects on the interests of the neighbors, the community, and the general public. These interests are listed in the purpose statement of the ordinance and, for shoreland zoning, include protection of public health, safety and welfare, maintenance of clean water, protection of fish and wildlife habitat, and preservation of natural scenic beauty.

Unnecessary hardship: The applicant must demonstrate that if the variance is not granted, an unnecessary hardship exists. The applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, building a home in compliance and then subsequently constructing a deck without a permit). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the Board must consider the property as a whole, rather than just a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.

Please note that these comments are in regard to shoreland zoning regulations only, and do not reflect applicable erosion control, waterway permitting, floodplain zoning, or other department regulations.

It is the responsibility of the Board of Adjustment to assure that the statutory standards for the granting of a variance are met. The standards help to ensure protection of the public interest, including the preservation of water quality and fish and wildlife habitat along lakes and rivers. Wisconsin's navigable waterways are held in trust for all people to enjoy. The shoreland setback is important to protect the water quality, natural scenic beauty and the fish and wildlife habitat of Wisconsin's waterways. The Department appreciates your commitment to Winnebago County's water resources and protection of public interests for future generation.

Sincerely,

A handwritten signature in blue ink that reads "Dale Rezabek".

Dale Rezabek
Shoreland Specialist

cc: File