

**WINNEBAGO COUNTY
BOARD OF ADJUSTMENT**

Thursday, May 5, 2016 – 7:30 a.m.

Planning & Zoning Conference Room, County Administration Building,
Oshkosh, Wisconsin

DELIBERATIVE SESSION

Members Present: Arden Schroeder, Tom Verstegen, Greg Kargus, Sue Drexler, and Tom Tuschl.

Excused: None.

Also Present: Eric Rasmussen, Zoning Office and Lynn Egan, court reporter.

Meeting was called to order at 7:30 a.m.

The following items were acted on:

I. Approval of Minutes

G. Kargus made a motion to approve the minutes of November 18, 2015; December 3, 2015; December 10, 2015; January 27, 2016; February 4, 2016; February 11, 2016; and April 27, 2016. T. Verstegen seconded. Motion carried by unanimous voice vote.

II. Mona Gresenz – Town of Winneconne

A variance was requested to be allowed to construct a residential additional with substandard floodplain fill.

The committee discussed the reasoning for the fill standards, the fact that a previous variance had been granted for this project, and the site conditions on the property.

A motion was made by T. Verstegen to approve the variance as requested.

Motion seconded by G. Kargus.

The findings used to approve the variance have been made in accordance with section 23.7-234,

CRITERIA AND FINDINGS

- 1) **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.**

The substandard lot was created prior to the subdivision ordinance and is only 60 ft. wide. The location and size of development on the lot is greatly restricted due to zoning, shoreland, and floodplain regulations.

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

The narrowness of the lot makes it difficult to meet the floodplain fill requirement while maintaining drainage. Requiring the full 15 ft. of floodplain fill would compromise the existing detached garage.

- 3) **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.**

The granting of the variance would allow the property owners to keep the addition and follow the existing fill pattern on the property. The variance would also allow the drainage on the property to be maintained.

26.6-7(a) "Review criteria" (required for all Ch. 26 Floodplain Zoning Code variances)

1. Criteria: The variance is consistent with the purpose of the Floodplain Zoning Code s. 26.1-5.

a. Finding(s): With the granting of the variance, there will still be 5 to 6 horizontal feet of fill around the structure to protect it from flood water effects. The addition will be required to meet all other floodproofing regulations.

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 been met.

Vote on the Motion: G. Kargus, aye; T. Tuschl, aye; S. Drexler, aye; T. Verstegen, aye; A. Schroeder, nay.

Motion carried by a 4-1 vote. **Variance granted as requested.**

III. Mark Wachal – Town of Winneconne

A variance was requested to be allowed to keep a concrete pad adjacent to a boathouse with a substandard shore yard setback.

The committee discussed the hardship being self-created and the allowances for boat ramps and shoreline work. They also discussed boathouse sizing, landings for entrance, and the neighboring properties.

A motion was made by T. Verstegen to deny the variance.

Motion seconded by S. Drexler.

The findings used to approve the variance have been made in accordance with section 23.7-234,

CRITERIA AND FINDINGS

1) 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.

The definition of a boathouse from NR115 is a permanent structure used for the storage of watercraft and associated materials. A boathouse does not need to necessitate the launching of watercraft from it and therefore the apron is not necessary to use the boathouse as intended.

2) The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question.

A boathouse is one of the few structures that is allowed within the 75 ft shore yard setback from the ordinary high water mark. The unique physical characteristic of the property is also the reason that the boathouse is allowed.

3) 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.

The maximum allowed size of a boathouse is 500 sq. ft. through the Zoning Code. By allowing the apron to remain, the area of boathouse and boathouse appurtenances exceeds the 500 sq. ft. maximum.

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.

a. Finding(s): The apron encourages the encroachment of structures within the shore yard setback. The apron will have a closer proximity to the shoreline than any other structure and is not consistent with the purposes of the Shoreland Zoning Code with relation to preserving natural shorelines.

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 not been met.

Vote on the Motion: A. Schroeder, aye G. Kargus, aye; T. Tuschl, aye; S. Drexler, aye; T. Verstegen, aye.

Motion carried by a 5-0 vote. **Variance denied.**

IV. Gerald Winiecki – Town of Winneconne

PATIO

The committee discussed the frontage and width of the lot and the location at which the shore yard setback was measured from.

A motion was made by G. Kargus to deny the variance.

Motion seconded by S. Drexler.

The findings used to deny the variance have been made in accordance with section 23.7-234,

CRITERIA AND FINDINGS

1) **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.**

The property has reasonable use as a residence and the denial of the variance does not prevent the property owner from continuing to use the property as such. A patio is not considered a necessity to a residential use. The applicant's reasoning for the patio is to allow an outdoor living space when the indoor living space is limited. The proposed patio is greatly excessive to supplement the 912 sq. ft. residence. Minimum size of a single family dwelling is 1,000 sq. ft. per the Zoning Code.

2) **The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question.**

Further new development on the property is prevented by the required shore yard setbacks; however, the property is sufficiently developed with a residence, boathouse, and garage already present.

3) **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.**

The patio is unnecessary to live at the property. It harms the public interest by being inconsistent with the purposes of the Shoreland Zoning Code.

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.

a. Finding(s):

The patio is very large in size, which adds a great expanse of impervious surface to the already occupied property. Impervious surfaces cause runoff which carries pollutants to the water bodies. The patio also highly encourages shoreline encroachment by structures.

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 not been met.

Vote on the Motion: A. Schroeder, nay G. Kargus, nay; T. Tuschl, nay; S. Drexler, nay; T. Verstegen, nay.

Motion failed by a 5-0 vote.

A motion was made by S. Drexler to approve the patio in a perpendicular line of the existing patio between the boathouse and the cottage approximately 50' from the shoreline of the lake and 37' from the Ordinary High Water Mark on the Creekside.

Motion seconded by G. Kargus.

The findings used to approve the variance have been made in accordance with section 23.7-234,

CRITERIA AND FINDINGS

- 1) **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.**

The existing residence is only 912 sq. ft. in size, which is below the 1,000 sq. ft. minimum size for new residences. The existing residence cannot be further expanded without bringing the structure into full compliance with floodplain regulations and without a variance for reduced setbacks. The granting of a variance as amended would allow an outdoor living area to supplement the substandard home size. An effort was made to comply with required standards; however, through a miscommunication with the Zoning Department, the patio was built illegally. The circumstances are not to be considered self-created.

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

The lot is very small and has two separate shore yard setbacks as well as an ingress egress easement which severely limits the buildable area on the lot. Any structure near the existing dwelling would require a variance. The home is located within the floodplain. Further alterations or additions to the structure are not allowed unless the structure is brought into full compliance with floodplain regulations.

- 3) **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.**

The patio area is not very visible from Bluebill Ln as it sits between the home, boathouse, and detached garage. As part of approval, a vegetation plan will be installed, which will further shield the patio from surrounding properties.

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.**

a. Finding(s):

The modified patio will meet a shore yard setback that is perpendicular between the boathouse and house that is approximately 50' from the shoreline. Several changes have occurred to the Shoreland Code since the violation took place. Although a 35ft shore yard setback for this patio can only be approved with a variance, a 35ft shore yard setback is a common setback allowed when utilizing the "gazebo rule" and when conducting setback averaging for principal structures. As part of approval, a vegetation plan will be installed, which will encourage natural scenic beauty and vegetation.

Based upon the above findings, it is the opinion of the Board that all criteria of, Article 6, Section 26.6-7 of the Floodplain Zoning Code have been met.

Vote on the Motion: G. Kargus, aye; T. Tuschl, aye; S. Drexler, aye; A. Schroeder, aye; T. Versteegen, aye.

Motion carried by a 5-0 vote. Variance **Granted not as requested.**

SIDEWALK

The committee discussed the need for safe access to the home. They also discussed the feasibility of entering the residence through a garage in an emergency.

A motion was made by T. Versteegen to approve the sidewalk as requested.

Motion seconded by G. Kargus.

The findings used to approve the variance have been made in accordance with section 23.7-234,

CRITERIA AND FINDINGS

- 1) **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.**
A safe walkway between the driveway and the main entrance of the home would benefit the use of the structure as a residence during winter.
- 2) **The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question.**
The lot is very small with two separate shore yard setbacks and an ingress egress easement which severely limits the buildable area on the lot.
- 3) **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.**
The sidewalk size is very minimal and does not harm the public interest.

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.

a. Finding(s):

The sidewalk size is minimal and will be no closer to the creek than the home. The sidewalk will meet a shore yard setback from the lake. A bridge over the creek and a clothes line were already removed from the shore yard setback area. As part of approval, a vegetation plan will be installed.

Based upon the above findings, it is the opinion of the Board that all criteria of, Article 6, Section 26.6-7 of the Floodplain Zoning Code have been met.

Vote on the Motion: S. Drexler, aye; T. Tuschl, aye; G. Kargus, aye; A. Schroeder, aye; T. Verstegen, aye.

Motion carried by a 5-0 vote. Variance **Granted**.

DECK

The committee discussed the ability of the property owner to rebuild the decks that had existed, the option of landings for ingress and egress and the size of the decks compared to what existed previously.

A motion was made by S. Drexler to approve the deck as requested in Exhibit 3 as submitted at the hearing with the setbacks in red.

Motion seconded by T. Tuschl.

The findings used to approve the variance have been made in accordance with section 23.7-234,

CRITERIA AND FINDINGS

- 1) **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.**
Safe ingress and egress from the home's doorways are necessary. The proposal in exhibit 3 reduces the total amount of deck and stair structures that are within the shore yard setback.
- 2) **The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question.**
The lot is very small with two separate shore yard setbacks and an ingress egress easement which severely limits the buildable area on the lot.

- 3) **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.**
The overall size of decking and stairs in exhibit 3 will be reduced under the current proposal, compared to what is present and what previously existed.

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.

a. Finding(s):

The proposed deck in exhibit 3 will be further from both the lake and the creek compared to the original decks that were present. The proposal also eliminates overall structure space within the shoreyard setbacks compared to the original decks. When approved, a vegetation plan will be installed that will encourage the purposes of the Shoreland Zoning Code.

Based upon the above findings, it is the opinion of the Board that all criteria of, Article 6, Section 26.6-7 of the Floodplain Zoning Code have been met.

Vote on the Motion: T. Tuschl, aye; S. Drexler, aye; T. Verstegen, aye; A. Schroeder, aye; G. Kargus, nay.

Motion carried by a 4-1 vote. Variance **Granted as requested at hearing in Exhibit 3.**

There being no other business, the meeting was adjourned at 8:52 a.m.

Respectfully submitted,

Eric Rasmussen

Eric Rasmussen, Recording Secretary