

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE SESSION
DATE 2/27/2018 3:47:00 AM

Town and/or agency's comments: The Town Board was unable to come to a majority vote to make a recommendation.

The WIDNR was unable to comment at this time.

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.**
 - a. Finding(s): a. Findings for Approval: Based on prior infrastructure created the structures and site were designed based on a non-navigable stream.
 - b. Findings for Denial: There is other space on the property that could be developed for the same size proposed work that is not being utilized.
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.**
 - a. Finding(s): a. Findings for Approval: It is believed the site was designed prior to the stream being determined navigable.
 - b. Findings for Denial: There are other places the structures could be placed to meet compliance with regulations.
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.**
 - a. Finding(s): a. Findings for Approval: Some portions of public interest will be protected because future stormwater ponds will capture runoff and prevent some direct pollution. Other commercial development nearby does not meet the shoreland setbacks.
 - b. Findings for Denial: Shoreland setbacks are in place to maintain safe and healthful conditions, prevent and control water pollution, protect spawning grounds, fish and aquatic life, and reserve shore cover and natural beauty. Other commercial development nearby does abide by the shoreland setbacks.

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): a. Findings for Approval: The request still leaves some buffer between the ordinary high water mark and the structure.

Findings for Denial: The reduction in the shoreland setback will not offer as much protection as required by the ordinance for the watershed and to public interest.

Based upon the above findings, it is the opinion of the Board that all criteria of , Article 6, Section 27.6-8 of the Shoreland Zoning Code have (have not) been met.

STAFF RECOMMENDATION

Approval

Approval with conditions

Approval not as requested

Approval not as requested with conditions

Denial

X

ADVISORY CONDITIONS:

1. If this is approved, it should not be allowed to be constructed until storm water ponds are approved and implemented.

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Town and/or agency's comments: Town recommends Denial.

WIDNR recommends Denial. They believe the patio is a self-created hardship, is not an exempt structure, and within the 75 ft. shoreland setback.

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.**
 - a. Finding(s): a. Findings for Approval: A patio is a structure expected by lake lot property owners.
 - b. Findings for Denial: There have been other places on the property that a patio could be placed and either they have not been used or land has been dedicated to a different use. Owners have reasonable residential use of the property without a patio. The land is overall level and provides them a place to enjoy the lake front side of the home.
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.**
 - a. Finding(s): a. Findings for Approval: The subject property would not be allowed a patio of this size on the lake side of the home by the ordinance without a variance or mitigation.
 - b. Findings for Denial: There are ways to be allowed a patio on the shoreland side of the home such as utilizing the gazebo rule. There are also other places on the property that a patio could be placed meeting the 75 ft shoreland setback.
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.**
 - a. Finding(s): a. Findings for Approval: The subject patio is similar to existing non-conforming structures in the area.
 - b. Findings for Denial: Granting this variance would go against public interest. The ordinance specifically prohibits most development in the shoreland setback, already making exemptions for safety and enjoyment purposes. Shoreland setbacks are in place to prevent and control water pollution, protect spawning grounds, protect fish and aquatic life, maintain safe and healthful conditions, and protect natural scenic beauty. Other residents in the area have requested similar structures and have not been allowed to place them.

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): a. Findings for Approval: The requested setback still leaves some buffer between the ordinary high water mark and the patio.

Findings for Denial: There are ways a patio could be placed based on the ordinance such as utilizing the gazebo rule or placing it outside the 75 ft. shoreland setback. The reduction of the shoreland setback will not offer as much protection to the watershed or for public interests as if they placed it outside the setback.

Based upon the above findings, it is the opinion of the Board that all criteria of , Article 6, Section 27.6-8 of the Shoreland Zoning Code have (have not) been met.

STAFF RECOMMENDATION

Approval

Approval with conditions

Approval not as requested

Approval not as requested with conditions

Denial

X

ADVISORY CONDITIONS:

1.