

16-VA-3880
Anne Lerch
3636 Shangri-La Point Rd

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE SESSION
DATE December 1, 2016

TOWN AND/OR AGENCY'S COMMENTS:

Town of Oshkosh Board of Appeals approved.

CRITERIA AND ADVISORY FINDINGS

23.7-234 "Basis of decision" (required for all 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) for Approval:** Floodplain fill requirements of 15ft on all sides would leave a maximum buildable width of 30ft, which is unreasonably narrow for a single family dwelling.
 - b. **Finding(s) for Denial:** When retaining walls are utilized, meeting the floodplain fill requirement of 15ft around the home still allows for a 30ft wide home. Reduced street and shore yard setbacks allow approximately 72ft in lot depth, creating a buildable footprint of 2,160 sq. ft.
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) for Approval:** The lot is substandard in width compared to current standards. The lot is also located within the floodplain, which has greater requirements than the side yard setback requirements.
 - b. **Finding(s) for Denial:** Though the lot is substandard and within the floodplain, the fill requirement could be met and still allow for a reasonably sized home.
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) for Approval:** Drainage concerns are addressed through erosion control permitting. Having less fill will not negatively impact neighboring properties.
 - b. **Finding(s) for Denial:** Meeting the floodplain fill requirement or allowing a reduction in floodplain fill will not harm the public interest.

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

4. **Criteria:** The variance is consistent with the purpose of the Floodplain Zoning Code s. 26.1-5.
 - a. **Finding(s) for Approval:** The request still allows for 5'8" and 10' of floodplain fill on the sides of the structure. The full 15ft of fill will be met on the street and shore sides of the structure.
 - b. **Finding(s) for Denial:** The reductions in floodplain fill will not offer as much protection as the full 15ft would. As neighboring properties are upgraded, they will be brought into compliance with floodplain fill regulations as well.

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, Article 6, Section 26.6-7 of the Floodplain Zoning Code have (have not) been met.

ADVISORY CONDITIONS:

1. Require separation between retaining walls and side lot lines?

16-VA-3870
Austin Doehling
6095 Lake Poygan Rd

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE SESSION
Thursday, December 1, 2016

TOWN AND/OR AGENCY'S COMMENTS: Town of Poygan recommends approval.

CRITERIA AND ADVISORY FINDINGS

23.7-234 "Basis of decision" (required for all 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) for granting:** Having a garage in Wisconsin is seen more as a necessity than a desire. A variance is required in order to place a garage on the property.
 - b. **Finding(s) for denying:** It is likely that a less-desirably sized and located garage could be placed on the property without a variance.
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) for granting:** The property is a corner lot with 2 street yard setbacks and a more restrictive shore yard setback. The required setbacks and location of the existing septic system make it difficult to place a reasonably sized garage on the property while being in compliance with setbacks.
 - b. **Finding(s) for denying:** It is likely that a less-desirably sized and located garage could be placed on the property without a variance.
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) for granting:** The proposed garage is far enough from the road and intersection that it will not cause any harm to the public interest.
 - b. **Finding(s) for denying:** Though the garage would be outside of a vision clearance triangle, it may still have negative impacts on the safety of the intersection of Lake Poygan Road and Jacquis Road.

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.

16-VA-3920
Dan Mayer
6455 Paulson Rd

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE SESSION
Thursday, December 1, 2016

TOWN AND/OR AGENCY'S COMMENTS: No response from the Town of Winneconne.

CRITERIA AND ADVISORY FINDINGS

Floodplain Fill Variance (4ft requested / 15ft required)

23.7-234 "Basis of decision" (required for all 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) for granting:** Without the issuance of a variance, the home could not be added to in-line with the existing structure. It would need to be significantly off-set and the addition would be much smaller in order to meet the fill requirements.
 - b. **Finding(s) for denial:** There is already reasonable use of the property. Vertical expansion is a possibility or a smaller addition could be made if it were off-set from the north wall of the existing structure without the need for a variance.
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) for granting:** The lot is only 60ft wide. This substandard width makes it difficult to meet floodplain fill requirements while having a reasonably sized home in the floodplain.
 - b. **Finding(s) for denial:** A vertical expansion could be made with no floodplain fill requirement applicable. Smaller, off-set lateral expansions are also possible while meeting floodplain fill requirements
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) for granting:** Having a reduction in the amount of floodplain fill will not be contrary to or harm the public interest.
 - b. **Finding(s) for denial:** The variance is not contrary to the public interest.

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

4. **Criteria:** The variance is consistent with the purpose of the Floodplain Zoning Code s. 26.1-5.
 - a. **Finding(s) for granting:** 4-5ft of fill will still be present on the north side of the structure. The full 15ft of fill will be met on the other sides of the addition.
 - b. **Finding(s) for denial:** Approving the variance would allow an addition onto an existing nonconforming structure that would more than double the size of the building. This is inconsistent with the floodplain zoning code which limits additions onto nonconforming structures. Though the applicant's submittal and a reassessed value of the home indicates the addition will be below the 50% limitation for improvements, the proposal indicates the addition will cost only about \$24/ sq. ft.. The Residential Cost Handbook by Marshall and Swift indicate that a 1,000 sq. ft., low quality residential area costs about \$70/sq. ft., not taking into account any adjustments for special roofing, insulation or foundation materials due to the extreme climate.

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, Article 6, Section 26.6-7 of the Floodplain Zoning Code have (have not) been met.

Street Yard Setback Variance (17.4ft requested / 23.25ft required)

23.7-234 "Basis of decision" (required for all 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) for granting:** The existing structure is substandard in size (less than 1,000 sq. ft.). When taking into consideration the location of the existing home, expansions are significantly limited by setbacks due to lot size.
 - b. **Finding(s) for denial:** There is already reasonable use of the property. Sizable additions could be made to the home while being in compliance with street yard setback requirements.
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) for granting:** Restrictive street and shore yard setbacks make it difficult to develop the property, especially an addition, while meeting setbacks. Though there is a shed on an adjacent property much closer to the road, it cannot be used for conducting setback averaging.
 - b. **Finding(s) for denial:** Setback averaging allows for a reduced street yard setback of 23.25ft, rather than the typical 30ft requirement. A sizable addition could still be made to the home while meeting this reduced street yard 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) for granting:** Many other neighboring structures are within the standard 30ft street yard setback. The addition would be in keeping with an existing development pattern.
 - b. **Finding(s) for denial:** Though the addition would be a sizable distance from the actual pavement edge, the street yard setback is measured from the right-of-way because that whole right-of-way can be used for road purposes. Setback averaging already allows a reduced street yard setback.

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

4. **Criteria:** The variance is consistent with the purpose of the Floodplain Zoning Code s. 26.1-5.
 - a. **Finding(s) for granting:** An addition that does not meet a street yard setback could meet all requirements and purposes of the Floodplain Zoning Code.
 - b. **Finding(s) for denial:** Approving the variance would allow an addition onto an existing nonconforming structure that would more than double the size of the building. This is inconsistent with the floodplain zoning code which limits additions onto nonconforming structures. Though the applicant's submittal and a reassessed value of the home indicates the addition will be below the 50% limitation for improvements, the proposal indicates the addition will cost only about \$24/ sq. ft.. The Residential Cost Handbook by Marshall and Swift indicate that a 1,000 sq. ft., low quality residential area costs about \$70/sq. ft., not taking into account any adjustments for special roofing, insulation or foundation materials due to the extreme climate

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, Article 6, Section 26.6-7 of the Floodplain Zoning Code have (have not) been met.

ADVISORY CONDITIONS:

1. An erosion control permit is required if the area of fill and addition is more than or equal to 1,000 sq. ft.
2. (if approve street yard variance) addition is limited to that footprint indicated on the site plan where the street yard varies from 17.4ft on the south side to 25.3ft on the north side.

16-VA-3850
John Kish
7708 Cut-Off Ln

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE SESSION
DATE December 1, 2016

TOWN AND/OR AGENCY'S COMMENTS:

No comment from the Town of Wolf River.

CRITERIA AND ADVISORY FINDINGS

23.7-234 "Basis of decision" (required for all 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) for Approval:** Floodplain fill requirements of 15ft on all sides would leave a maximum buildable width of 20ft, which is unreasonably narrow for a single family dwelling.
 - b. **Finding(s) for Denial:** When retaining walls are utilized, meeting the floodplain fill requirement of 15ft around the home still allows for a 20ft wide home, which is the minimum width requirement for single family dwellings.
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) for Approval:** The lot is significantly substandard in width compared to current standards. The lot is also located within the floodplain, which has greater requirements than the side yard setback requirements.
 - b. **Finding(s) for Denial:** Though the lot is substandard and within the floodplain, the fill requirement could be met and still allow for a home that meets minimum size and width requirements.
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) for Approval:** Drainage concerns are addressed through erosion control permitting. Fill will match the elevation of the neighboring property, allowing for drainage to be more easily managed. Having less fill will not negatively impact neighboring properties.
 - b. **Finding(s) for Denial:** Meeting the floodplain fill requirement or allowing a reduction in floodplain fill will not harm the public interest.

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

4. **Criteria:** The variance is consistent with the purpose of the Floodplain Zoning Code s. 26.1-5.
 - a. **Finding(s) for Approval:** The request still allows for some floodplain fill on the sides of the structure. The full 15ft of fill will be met on the other sides of the structure.
 - b. **Finding(s) for Denial:** The reductions in floodplain fill will not offer as much protection as the full 15ft would. As neighboring properties are upgraded, they will be brought into compliance with floodplain fill regulations as well.

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, Article 6, Section 26.6-7 of the Floodplain Zoning Code have (have not) been met.

16-VA-3890
Westin Land Holdings
2590 County Rd II

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE SESSION
Thursday, December 1, 2016

TOWN AND/OR AGENCY'S COMMENTS:

Town of Clayton Planning Commission recommends approval.

Dale Rezabek, Regional Shoreland Specialist, on behalf of the Wisconsin Department of Natural Resources recommends denial.

CRITERIA AND ADVISORY FINDINGS

23.7-234 "Basis of decision" (required for all 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) for granting:** A very large portion of these commercial properties would not be able to be developed due to shore yard setback requirements. The continued use of the property as ball diamonds requires a lot of room.
 - b. **Finding(s) for denial:** There was reasonable use of the property, even prior to the ball diamonds being erected illegally. The property could be developed with the same, similar, or different commercial uses without the use of a variance, or with a lesser variance being necessary.
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) for granting:** A navigable waterway with a 75ft shore yard setback runs through the properties, making it difficult to fully utilize the properties without a variance being granted.
 - b. **Finding(s) for denial:** The navigable stream was already re-routed to accommodate the properties. There is substantial room to develop the properties with the same, similar, or different commercial uses without the use of a variance, or with a lesser variance being necessary.
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) for granting:** This portion of the navigable ditch is only fed by the subject properties and an adjacent detention pond. These structures will not harm the public interest.
 - b. **Finding(s) for denial:** The ditch is navigable and therefore a public body of water. The areas adjacent to the ditch are highly developed and unprotected, which is contrary to the public interest.

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

4. **Criteria:** The variance is consistent with the purpose of the Shoreland Zoning Code.
 - a. **Finding(s) for granting:** The individual fences, light posts, etc. will have little impact on the navigable ditch. This portion of the ditch only serves the subject properties and the adjacent detention pond.
 - b. **Finding(s) for denial:** The development significantly and negatively impacts the water body. Development within 5ft of the navigable ditch eliminates any possibility for natural scenic beauty. The ditch is unprotected due to lack of vegetation along the banks and shoreline. By allowing these structures within this proximity of the waterway, it will encourage further use and degradation of the area surrounding the body of water. The accumulative impact of all of the structures and their associated uses are not consistent with 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 27.6-8 of the Shoreland Zoning Code have (have not) been met.

ADVISORY CONDITIONS IF APPROVED:

1. A recreational vegetative buffer (15ft wide) must be installed per the Shoreland Zoning Code along the entire navigable ditch and on both sides when still located on the subject properties. Viewing and access corridors are allowed per the Shoreland Zoning Code and shall be utilized to encompass the culvert/ditch crossings.
2. The outdoor recreational and dining area may not be vertically expanded. Vertical expansion does not include at-grade dining, the installation of sports-related equipment such as basketball hoops, volleyball nets, and tennis nets.
3. A zoning permit shall be obtained for the structures approved.
4. This variance does not cover any additional structures within the shore yard setback. A separate variance for any additional structures would be required.

16-VA-3630
Wally Juedes
4606 Island View Drive

WINNEBAGO COUNTY BOARD OF ADJUSTMENT
DELIBERATIVE SESSION
Thursday, December 1, 2016

TOWN AND/OR AGENCY'S COMMENTS: Town of Oshkosh Board of Appeals recommends approval.

CRITERIA AND ADVISORY FINDINGS

23.7-234 "Basis of decision" (required for all 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) for granting:** A reasonably sized home could not be built on the property while meeting floodplain fill and shore yard setback requirements.
 - b. **Finding(s) for denying:** If granted as requested, a structure could be as close as 20ft to the navigable ditch, where there is sufficient room on the property to build a reasonably sized home with a much greater shore yard setback. The request is too extreme.
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) for granting:** The man-made ditch adjacent to the subject properties was recently deemed navigable, requiring a 75ft shore yard setback from it for all applicable structures. The ditch runs the entire length of the properties and would make it impossible to build a reasonably sized home on the lot without a variance.
 - b. **Finding(s) for denying:** Though the property has 2 shore yard setback requirements, the variance request is too extreme as it could result in a structure being only 20ft from the navigable ditch.
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) for granting:** The ditch was man-made, likely with no intentions on making it a navigable body of water. The residential development will not be contrary to or harm the public interest.
 - b. **Finding(s) for denying:** The granting of the variance could result in a structure being only 20ft from the ditch, a navigable and public body of water. Such a close proximity to the ditch could harm the public interest by encroaching on that space.

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

4. **Criteria:** The variance is consistent with the purpose of the Shoreland Zoning Code.
 - a. **Finding(s) for granting:** There is already development on the opposite side of the ditch; therefore, this proposal will be similar to surrounding development.
 - b. **Finding(s) for granting (not as requested):** A sizable buffer between the new structure(s) and the navigable ditch is being required. A nonconforming shed will be removed as part of the approval of this variance.
 - c. **Finding(s) for denying:** The variance request is extreme. Granting the variance as requested would allow a structure within 20ft of the navigable ditch, which would impede on natural scenic beauty and encourage the encroachment of structures towards the body of water. These would be in conflict with the purposes of the Shoreland Zoning Code.

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 and Article 6, Section 27.6-8 of the Shoreland Zoning Code have (have not) been met.

STAFF RECOMMENDATION

Approval not as requested with conditions

ADVISORY CONDITIONS:

1. If acted upon, this variance, #2016-VA-3860, supersedes variance #16-VA-3630 granted 7/7/16 for a home on one 50ft wide lot.
2. No new structure may be any closer than ___ ft to the ordinary high water mark of the navigable ditch.

ZONING BOARD HANDBOOK

**For Wisconsin Zoning Boards of Adjustment and Appeals
2nd Edition**

2006

Lynn Markham and Rebecca Roberts

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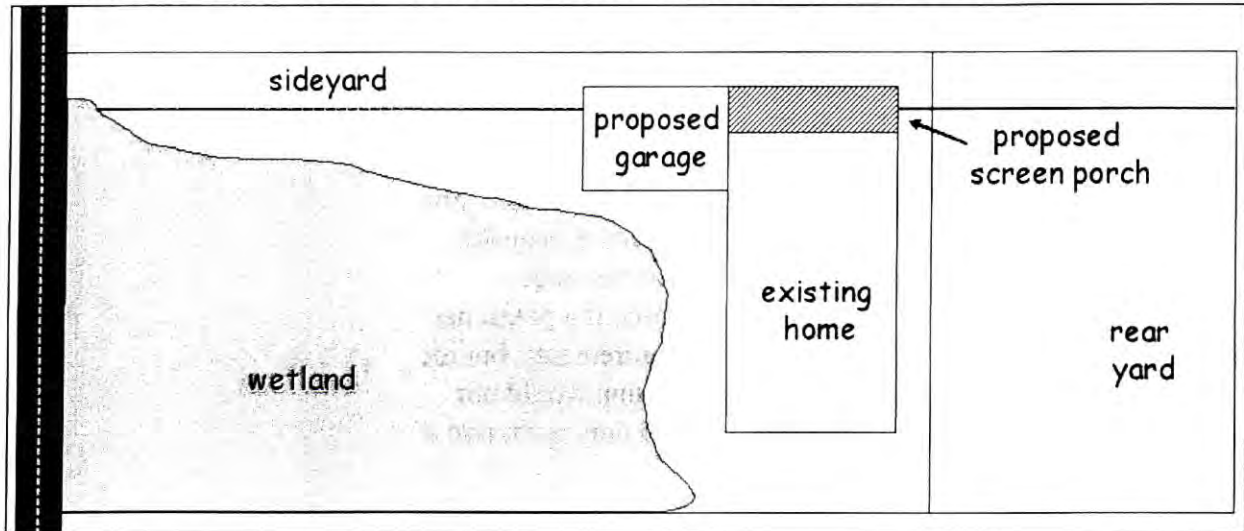
Top: Potential land use conflict between gravel pit and adjacent housing. *Photo © Regents of the University of Minnesota. Used with the permission of Metropolitan Design Center.*

Center: Waterfront home in Oneida County lacking shoreland buffer. *Photo courtesy of Robert Korth, UW-Extension Lakes Partnership.*

Bottom: Potential land use conflict between industrial and residential land uses. *Photo © Regents of the University of Minnesota. Used with the permission of Metropolitan Design Center.*

Figure 26: A Variance Grants Specific Relief

If the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.



contrast, nonconforming structures may be assured a limited extent of future expansion in some ordinances.

Variance transfers with the property

Because a property rather than its owner must qualify for a variance to be granted (unique property limitations test), a variance transfers with the property to subsequent owners.¹⁶²

Are multiple variances allowed?

Multiple variances for a single project

In some cases, a single project may require more than one variance to provide reasonable use of a property. The 3-step test should be applied to each variance request in determining whether relief can be granted by the zoning board.

Sequential variances

In other cases, original development of a property may have been authorized by variance(s). The owner later requests an additional variance. Generally, the later request should be denied since, in granting the original variance, the zoning board was required to determine that a variance was essential to provide reasonable use of the property or that not granting the (area) variance would have been unreasonably burdensome in light of the ordinance purpose. The board cannot subsequently find the opposite unless there

¹⁶² *Goldberg v. Milwaukee Bd. of Zoning Appeals*, 115 Wis. 2d 517, 523-24, 340 N.W.2d 558 (Ct. App. 1983)

have been significant changes on the property or on neighboring properties. A later variance could also be granted if the written purpose of the zoning designation for which an area variance was sought significantly changed, thereby allowing the variance to qualify under the unreasonably burdensome standard.

What is the process for appealing a variance decision?

A variance decision may be appealed to circuit court by any aggrieved person, taxpayer, officer or body of the municipality within 30 days of filing of the decision in the office of the board.¹⁶³ (See Chapter 17 *Judicial Appeal of Zoning Board Decisions*.)

Why are the standards for area variances different from those of use variances?

The law treats area and use variances differently because they “serve distinct purposes,” “affect property rights in distinct ways,” and “affect public and private interests differently.” According to the *Ziervogel* decision, the adverse impacts of an area variance are thought to be less than those of a use variance. Furthermore, the “no reasonable use” standard associated with use variances leaves zoning boards “with almost no flexibility” and eliminates the statutory discretion of zoning boards to decide variances.

Figure 27: Land Division Variances... Creatures of a Different Color

So far our discussion has focused only on zoning variances. As zoning boards may be asked to decide land division variances (including subdivision ordinances), here are a few salient points:

- Subdivision variances are not the same as zoning variances.
- There is no Wisconsin law addressing land division variances.
- A local unit of government may allow variances to locally-determined land division standards. In this case they must determine the process and standards, and should include them in the land division or subdivision ordinance.
- Local units of government may choose to not allow land division variances.
- A local unit of government is not allowed to provide a variance to a state-mandated standard.
- Due process, including a hearing with public notice is required for land division variances.

¹⁶³ Wis. Stat. § 59.694 (10)