

WINNEBAGO COUNTY BOARD OF ADJUSTMENT -- DELIBERATIVE SESSION

Thursday, December 1, 2016 – 4:10 p.m.
3rd Floor Conference Room, County Administration Building
112 Otter Ave, Oshkosh, Wisconsin

Members Present: Arden Schroeder, Greg Kargus, Susan Drexler, Tom Verstegen, and Tom Tuschl
Also Present: Candace Bauer, Zoning; Laura Rogers, Court Reporter
Excused: None

The meeting was called to order at approximately 4:22 p.m.

Motion by S. Drexler, seconded by G. Kargus to move item #6 (Westin Land Holdings LLC) to #1. Motion carried 5-0.

Westin Land Holdings LLC – Town of Clayton - Variance

Applicant is requesting variances to the shore yard setback for several structures associated with the bar and outdoor recreation / entertainment uses on the property.

A. Schroeder began by noting that there were concerns received regarding noise but that this was not a factor for the Board of Adjustments to consider.

S. Drexler pointed out that the biggest concern for her was the area east of the building. She inquired if there was sufficient screening around that area. C. Bauer drew the Board's attention to the advisory conditions and noted that #1 recommended the installation of a vegetative buffer along the ditch. She noted that the Shoreland Zoning Code has specific standards for vegetative buffers because they are required for things like the "gazebo rule" (allowing structures within the shore yard setback) or for mitigation when dealing with impervious surfaces. It was noted that viewing and access corridors were allowed and the total width would be 35% of the ditch length.

Board members inquired about condition #2 which limited the vertical expansion of the outdoor recreational and dining area. There was discussion regarding allowing temporary tents for events and was decided that the advisory condition should be amended to allow temporary structures for a time period no longer than 10 days.

C. Bauer pointed out that the entire north ball diamond (including the perimeter fencing) was a part of this request and that the request, if approved would basically approve all that is in place today.

Motion by G. Kargus, seconded by S. Drexler, to approve the request as presented with conditions. Vote on motion: T. Tuschl, Aye; A. Schroeder, Aye; G. Kargus, Aye; T. Verstegen, Aye; S. Drexler, Aye. Motion carried 5-0.

Findings for approval:

1. 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.
2. 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.
3. 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.

4. 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.

Conditions:

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 existing outdoor recreational and dining area may not be vertically expanded. Vertical expansion does not include at-grade dining, any temporary structures (for a maximum of 10 days), and 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.

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 been met.

Approval of Minutes

Minutes were not included in the Board members' deliberative packets.

Motion by S. Drexler, seconded by G. Kargus to approve the missing minutes at the next meeting. Motion carried 5-0.

Anne Lerch – Town of Oshkosh - Variance

Applicant is requesting a variance for reduced amounts of floodplain fill of 5'8" and 10' around a structure.

Board members discussed the concerns that were raised at the public hearing. The property owner to the south had concerns for the maintenance of the retaining walls, trees along the lot line, and the proposal to build higher. It was noted that neighboring properties will always build higher and that it will only be a matter of time until the neighboring lot is filled also.

The neighbor to the north was concerned about accessing their well. Board member's determined that this was more of a civil matter rather than a matter than needs to be considered for the variance.

A. Schroeder voiced his concern for the size of the home on the small lot. There was discussion regarding centering the home and side yard setback requirements. C. Bauer explained that 5ft would be the minimum side yard setback requirement for the south side. A. Schroeder inquired if the County will regulate lot coverage. C. Bauer explained that there are not really maximums except for the new impervious surface regulations in place within the Shoreland Zoning Code. It was point out that the change in regulations is why there were so many applications this month. Residential lots are generally allowed 15% or 30% of lot coverage depending on where it is located.

Motion by S. Drexler, seconded by T. Verstegen, to approve the request as presented with conditions. Vote on motion: T. Tuschl, Aye; A. Schroeder, Aye; G. Kargus, Aye; T. Verstegen, Aye; S. Drexler, Aye. Motion carried 5-0.

Findings for granting:

1. 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.
2. 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.
3. Drainage concerns are addressed through erosion control permitting. Having less fill will not negatively impact neighboring properties.
4. 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.

Conditions:

1. Drainage and erosion control plan is approved.
2. Floodplain construction agreement with Elevation Certificate is obtained.

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 been met.

Austin Doehling – Town of Poygan - Variance

Applicant is requesting a variance to the street yard setback to be allowed to construct a detached garage.

G. Kargus noted that the applicant is requesting to move the existing garage from near the navigable stream and that the septic system does not allow him to meet the shore yard setback requirement. A. Schroeder pointed out that there will still be sufficient room to park vehicles on the driveway without being in the right-of-way.

A. Schroeder inquired if the applicant still planned on doing a residential addition to the home. Staff could not confirm. A. Schroeder asked that staff ensure he is aware of where the garage will go in the event that he is looking to do an addition as well. There was discussion regarding the difference between the pictures submitted and the site plan submitted. Staff believes the pictures are inaccurate and that the drawn site plan is what is proposed.

Motion by T. Tuschl, seconded by S. Drexler to approve the variance as proposed.

G. Kargus inquired about allowing the proposed depth of garage. He pointed out that if the garage was shrunk to 24ft deep that a variance would not be necessary. Board members did not agree with requiring the garage to be modified.

Vote on motion: T. Tuschl, Aye; A. Schroeder, Aye; G. Kargus, Aye; T. Verstegen, Aye; S. Drexler, Aye. Motion carried 5-0; variance granted.

Findings for approval:

1. 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.

2. 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.
3. The proposed garage is far enough from the road and intersection that it will not cause any harm to the public interest.

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.

Dan Mayer – Town of Winneconne - Variance

Applicant is requesting a variance for a reduced amount of floodplain fill of 4' on the north side of an addition and a variance for a reduced street yard setback of 17.4' for an addition.

C. Bauer explained that the post staff report broke both of the requests up into separate reports because the findings may be different.

Board members discussed the proposed retaining walls and confirmed that the applicant was not proposing to use the neighbor's retaining wall to the north because it was off the lot line. It was added that retaining walls that are used for the purpose of floodplain fill are no longer considered structures and therefore do not need to meet a shore yard setback.

It was clarified that the required street yard setback is 23.25ft, not the indicated 30ft on the public hearing notice. C. Bauer explained that setback averaging is applicable.

T. Tuschl inquired if the finding for denial for criteria #4 would be considered testimony and therefore shouldn't be considered at the deliberative. C. Bauer explained that this would be similar to staff informing the Board of required side yard setbacks with regard to their floodplain fill requests.

The 50% rule for floodplain nonconforming structures was discussed. If the proposal would exceed 50% of the equalized assessed value of the current structure, then the whole structure would need to be brought into compliance with floodplain regulations – meaning elevating it and filling around it. If the Board used the low estimate of an addition costing \$70/square foot, then the addition would be about 425 sq. ft. in size at the current assessed value. C. Bauer said the reason this information was included in the findings was because there was such a drastic discrepancy between the proposal and what standard estimates would normally allow.

There was discussion about denying the street yard setback, which would shrink the addition, and approving the floodplain fill request. Board members felt it would be best to deny both requests and have the applicant come forward again with a more reasonable request.

Motion by T. Tuschl, seconded by G. Kargus, to deny the request. Vote on motion: T. Tuschl, Aye; A. Schroeder, Aye; G. Kargus, Aye; T. Versteegen, Aye; S. Drexler, Aye. Motion carried 5-0; variance denied.

Findings for denial:

1. 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. A vertical expansion could be made with no floodplain fill requirement applicable. Smaller, off-set lateral expansion are also possible while meeting floodplain fill requirements.

3. The variance is not contrary to the public interest.
4. Setback averaging allows for 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.
5. 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 the whole right-of-way can be used for road purposes. Setback averaging already allows a reduced street yard setback.
6. 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.

John Kish – Town of Wolf River – Variance

Applicant is requesting a reduced amount of floodplain fill of 9.5' and 4' in order to construct a home in the floodplain.

Board members discussed how the applicant was going to access the garage. It was noted that the applicant would be able to pass through 9.5ft between the home and the lot line. The Board also discussed the septic system and how it appeared to be in the way of the rebuild but that the applicant said it would not be moving.

Board members inquired about the shore yard setback. C. Bauer noted that the existing structure is only 72ft from the ordinary high water mark and that the new structure would need to be 3ft further back. Board members inquired if that should be placed upon the variance as a condition. C. Bauer pointed out that the site plan already indicated the proposed home to be offset from the existing home.

Board members noted that the retaining wall on the south side would be 1ft from the lot line. It was again discussed that retaining walls for floodplain fill are no longer required to meet shore yard setbacks.

Motion by S. Drexler, seconded by T. Tuschl, to approve the request as proposed. Vote on motion: T. Tuschl, Aye; A. Schroeder, Aye; G. Kargus, Aye; T. Versteegen, Aye; S. Drexler, Aye. Motion carried 5-0; variance granted.

Findings for granting:

1. 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.
2. 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.
3. 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.
4. 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.

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 been met.

Walter Juedes Tst – Town of Oshkosh – Variance

Applicant is requesting a reduced shore yard setback from a navigable waterway in order to build a home on the property.

There was discussion regarding the size of the footprint and how a general footprint was requested. C. Bauer pointed out that floodplain fill requirements of 15ft around the structure would still need to be met. This requirement would make the house a minimum of 25ft from the ordinary high water mark of the stream (the stream is 10ft from the lot line and then 15ft of floodplain fill would be required).

Board members discussed required setbacks and a proposed setback for granting. C. Bauer drew an example diagram for visualization. It was determined that requiring a 50ft shore yard setback would still allow a building footprint width of 45ft.

There was discussion regarding the original variance that was granted. If this variance is approved but not acted upon, the applicant could utilize the first variance granted for the home on one of the 50ft wide lots. Appropriate conditions would be placed upon this variance to ensure that only one variance would be usable.

Board members also discussed whether the existing shed and cottage should be required to be removed. It was determined that the applicant put in their application that the shed would be removed. C. Bauer stated that the cottage may not be planned to be removed in case it would be converted to a storage building. It was noted that 2 houses could not take place on the one lot.

S. Drexler inquired about the advisory condition not allowing any structures within the required shore yard setback and whether a boathouse would not be allowed. C. Bauer explained that the condition was intended to mean those structures not ordinarily allowed in a shore yard setback such as sidewalks, patios, etc.. A boathouse is an allowed use and may be within 75ft of the ordinary high water mark.

Motion by S. Drexler, seconded by T. Tuschl, to approve not as requested and with conditions for a shore line setback of 50ft. Vote on motion: T. Tuschl, Aye; A. Schroeder, Aye; G. Kargus, Aye; T. Versteegen, Aye; S. Drexler, Aye. Motion carried 5-0; variance granted.

Findings for granting:

1. A reasonably sized home could not be built on the property while meeting floodplain fill and shore yard setback requirements.
2. 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.
3. 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.
4. 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.

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. Lot 24 and lot 25 must be combined on a certified survey map (CSM).

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 been met.

Upon conclusion of the agenda items, the meeting was adjourned at 6:30 p.m.

Respectfully submitted,
Candace M. Bauer
Recording Secretary