

WINNEBAGO COUNTY BOARD OF ADJUSTMENT

Wednesday November 16, 2016 – 5:00 p.m.

County Administrative Building Room 408, Oshkosh, Wisconsin

PUBLIC HEARING

Present: Board Members: Arden Schroeder, Greg Kargus, Tom Verstegen, Susan Drexler, and Thomas Tuschl

Excused: None

Also present: Candace Bauer, Zoning Department; Karen Fredrick, court reporter; and guests.

Meeting was called to order at 5:00 p.m. Board members and staff introduced themselves and C. Bauer read the appeals process.

Anne Lerch – Town of Oshkosh – Variance

Applicant is requesting a variance for a reduced amount of floodplain fill around a home.

The applicant wasn't immediately present.

Gerald (Jerry) Frey, Town of Oshkosh Supervisor and Board of Appeals Chair, approached the Board and was sworn in. He started by saying that the Board of Appeals approved the request as proposed with a 5-0 vote. Mr. Frey noted that the Board was concerned about the 44' x 72' footprint and that it seemed rather large. He added that their concerns were diminished when the applicant explained that this footprint will include a walkway alongside the home and an attached garage. With this information, Mr. Frey mentioned that the footprint did not seem too large.

Mr. Frey explained that the Board's second concern was with regard to the retaining wall and how much fill would need to be brought in. It was noted that the County had a new Erosion Control Technician and that they would work with the Town to mind drainage and that the eaves/downspouts would be directed towards the water. Staff explained that current ground elevations were not available, but because the property is within/below the 100 year floodplain, that it was known that at least 1ft of fill would be necessary.

It was clarified that the sidewalk was proposed to be within the 44ft footprint width and that the footprint would be used for the whole building and structure footprint because of impervious surface limitations.

The applicants arrived. Gary Lerch was sworn in and further explained that the sidewalk would be approximately 2.5-3ft wide and likely on the south side and that at least a 24ft x 24ft attached garage would be likely – all within the proposed footprint.

Board members inquired why they were proposing to be 5ft off the south lot line. Mr. Lerch answered that the neighbor to the north was closer to the lot line than the neighbor to the

south. Mr. Lerch added that there was a similar situation 2 lots to the north, but only 1 side had a retaining wall. He noted that there were no erosion control or drainage issues there.

A. Schroeder inquired if the proposal was for a 2 story home? Mr. Lerch answered that it was likely but there wasn't a design at this point. They wanted to have an answer on the variance before planning too much.

There was discussion regarding floodplain fill requirements and how the property owner would know how much fill needs to be brought in. C. Bauer explained that a floodplain construction agreement is signed by the property owner so that they must acknowledge the requirements. It was noted that an elevation certificate is required after completion, which verifies the fill elevations and extents. The floodplain construction agreement explains this elevation certificate requirement.

John and Terri Kowalchuk approached the Board and were sworn in. They are the property owners to the south, at 3571 Shangri-La Point Rd. Mr. and Mrs. Kowalchuk stated that they are the smallest house and property and feel that they are being encroached upon. Mr. and Mrs. Kowalchuk voiced their concerns for the retaining wall that was proposed to be on the lot line. They noted that they have several trees along the lot line that would be impacted and that their boathouse was very close to the lot line as well. They also inquired about what would happen if they desired to build a fence on the lot line. The Board noted that it would become a civil matter.

The Board inquired about their home. They answered that it was 480 sq. ft. and currently seasonal. Mr. and Mrs. Kowalchuk stated that if the proposed home is 2 stories, then it will be 4,000 – 5,000 sq. ft. in size, which is more than reasonably sized. Lastly, Mr. and Mrs. Kowalchuk commented about their concerns for drainage and that pipes to the lake would freeze and that they would no longer have a view to the north if the variance were granted.

Linda and Jerome Mueller, property owners to the north at 3640 Shangri-La Point Rd, approached the Board and were sworn in. They noted that the neighbor to their north, previously mentioned, has about 18 to 21 inches and fill and estimates that the proposal will have more. Mr. and Mrs. Mueller voiced their concerns regarding the placement of the proposed retaining wall because their well is very close to that lot line. They noted that they will not have easy access to it in the event that there is a problem.

Gary Lerch again approached the Board to address the concerns that surfaced. Mr. Lerch noted that the property would be seasonal at first but that they are proposing it to be their full time residence in the future. The home will not be rented. Mr. Lerch acknowledged the drainage concerns and added that they would have a professional plan to address these concerns. With regard to the trees on the lot lines, Mr. Lerch said that they would be looked at later down the line.

Mr. Lerch finished by stating that development in this area was very close together and that they are only requesting what is already present in the area. It was clarified that the Board's concern was not for the placement of the retaining wall (with regard to setbacks) but that the location of the retaining wall would have an impact on the amount of floodplain fill allowed and therefore the variance requested.

John and Terri Kowalchuk again approached the Board and stated that they were against the request if it would negatively effect the trees. They then stated that the DNR had regulations for the removal of trees. C. Bauer clarified that these regulations only applied to trees within 35ft of the shoreline.

Austin Doehling – Town of Poygan – Variance

Applicant is requesting a reduced street yard setback for a detached garage.

Austin Doehling approached the Board and was sworn in. He stated that he was proposing to move and turn the orientation of the current garage, which impedes on a stream. This will allow it to meet a shore yard setback; however, a reduced street yard setback is being requested because of the location of the existing drainfield and septic tank.

Mr. Doehling explained that the proposal compared to the drawing (pictures) submitted would be for the garage to be closer to the home. He was initially attempting to utilize the driveway but found that this was not far enough from the stream. He will now be approximately 118ft from the stream.

It was clarified that the measurements for the street yard setback were from the right-of-way and not the road edge.

C. Bauer read the Town Board's recommendation for approval of the variance.

Dan Mayer – Town of Winneconne – Variance

Applicant is requesting a reduced street yard setback and a reduced amount of floodplain fill on the north side for a residential addition.

Dan Mayer, Mark Mayer and Jay Olson approached the Board and were sworn in. Jay Olson, builder for the proposal, stating what the request was and noted that the street yard setback requirement was keeping the property owner from doing what they wanted to do.

A. Schroeder inquired how far the addition would be from the actual road pavement. The applicant stated that they did not know the exact measurement. C. Bauer directed the Board and guests to the survey that was submitted with the request, which indicated a pavement edge line, which could be generally compared to the lot line/ right-of-way line.

Jay Olson added that their proposal would conform to other structures in the area.

G. Kargus inquired if they would be utilizing the neighbor's retaining wall to the north. Mr. Olson added that they would be uses their own retaining wall for the floodplain fill.

T. Tuschl inquired if the road was a dead-end road. It was confirmed. There was then discussion regarding the two street yard setbacks indicated on the site plan – one being 17.4ft and the other being 25.3ft. C. Bauer explained that the lesser of the two is indicated on the request and that the Board would likely address this in their variance approval, likely requiring

the approval to stay with the footprint proposed (rather than granting a 17.4ft setback for the whole addition).

John Kish – Town of Wolf River – Variance

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

John Kish approached the Board and was sworn in. He explained that he was looking to rebuild on the lot and that a fill variance was needed on both sides. The Board inquired about the size of the lot and Mr. Kish answered that it was about 200ft by 50ft wide.

Mr. Kish explained that he will be bringing the grade to the same elevation as the neighboring property on the northwest side. On the southwest side he is proposing a retaining wall that is 4ft from the house.

The Board noted that the holding tanks appear to be close to the area where he will be rebuilding. Mr. Kish answered that he will not need to redo the holding tank system.

Board members commented that 9.5ft was not a lot of room to access the garage. The applicant explained that this is the same setback that is currently there. There was discussion regarding the shore yard setback proposed – 75ft.

A. Schroeder inquired if the property was on a private road and if the proposal was for a 2 story home. Mr. Kish confirmed that Cut-Off Ln is a private road and that he believes it will be a 2 story home but explained that the plans are not definite yet.

The Board inquired if it will be ok to match elevations to the property to the north. C. Bauer explained that it should be sufficient and that there is generally a shared swale for maintaining drainage. It was noted that drainage generally goes to the back of the property.

Westin Land Holdings LLC – Town of Clayton – Variance

Applicant is requesting reduced shore yard setbacks for variance structures associated with the bar and outdoor recreation/entertainment uses on the property.

Ben Hamblin of McMahon Group and agent for the property owner, was sworn in. He explained that the request was for several structures already present such as fences, sidewalks, and lights. Mr. Hamblin added that this request was going alongside a conditional use request. Both items are coming about because of a noise complaint received from Clayton Avenue. At the time of the complaint the property was looked at more in-depth and it was determined that the use of the property and structures needed approval.

A. Schroeder inquired if there were changes to the stream. Mr. Hamblin answered that between 1995 and 2000 the waterway was rerouted to the east to allow for a golf driving range.

It was explained that the first approved conditional use came in 1995 and then in 2000 for a golf course. The first baseball diamond was installed in 2005 and the latest ball diamond was installed in 2010.

The Board inquired if there were any lighting concerns. Mr. Hamblin explained that only the southern field was lit.

Mr. Hamblin explained that the DNR was not concerned about the culvert crossings and that they were approximately 30-36 inches in size. It was noted that the primary flow of the stream comes from the stormwater pond to the west. Mr. Hamblin added that there were no floodplain/stormwater concerns.

There was discussion regarding the impervious area in the south east corner. Mr. Hamblin explained that it has always been impervious, since it was used for mini golf. The uses will vary from outdoor seating (used all summer long) to concerts, benefit events, and other events.

Duane Fox of Warehouse Specialists was sworn in. He explained that he had a 1995 site plan of what was previously approved. He added that since then, only incidental small things have been added. Mr. Fox is to submit the original site plan to the Board.

Richard Knapinski, Town Plan Commission Chair and property owner at 8605 Clayton Ave approached the Board and was sworn in. Mr. Knapinski noted that the Town approved the variance request and that Mr. Hamblin's comments are correct. Mr. Knapinski stated that the Town's concerns are with regard to straightening out the property's file. It was noted that the speakers were moved and that they are no longer an issue. The lighting is blocked by trees and shrubs.

C. Bauer read Dale Rezabek of the DNR's comments and recommendation for denial. The Board inquired about what would happen if the variance was denied. C. Bauer answered that the noncompliant structures would need to be removed.

Ben Hamblin approached the Board again. He stated that he had Sarah Adkins from the DNR onsite and he noted that Sarah Adkins mentioned that there were no negative impacts from the structures. Mr. Hamblin continued by saying that the requests were minor compared to other uses such as agriculture. It was inquired if Sarah Adkins would be able to give her testimony on the matter. It was noted that this portion of the public hearing could be left open for her testimony.

Duane Fox addressed the Board again. He noted that the detention basin handles 50 acres of industrial development. The culvert of the stream will be upgraded per Town requirements. Mr. Fox pointed out that the use of the property is similar to a municipal park.

A. Schroder inquired about the hardship that is present. It was noted that the navigable stream splits the property and that the ball diamond would not be possible.

T. Tuschl inquired about the tubing at the base of the chain link fencing and whether or not this would impede water flow. Mr. Hamblin explained that this was likely so that balls do not go

beneath the fence and added that it shouldn't have much of an impact. It was noted that this could be removed.

Board members inquired about the storage of items on the property, such as boats, that were visible in photographs. Mr. Hamblin explained that these were being removed and cleaned up per the Town's requirement.

Tom Kiesow, property owner at 8673 Clayton Ave approached the Board and was sworn in. He explained that he has submitted several complaints about noise and lights and that they haven't been addressed yet. Mr. Kiesow added that the noise had stopped but is now going again and that baseball was an all-day event. Board members inquired if there were other neighbors against this. Mr. Kiesow stated that there were.

Tom Spierowski – Town Building Inspector, was sworn in after approaching the Board. He noted that he and Richard Johnston, Town Administrator Clerk, have addressed Mr. Kiesow's concerns. Mr. Spierowski stated that the surrounding properties of industrial and commercial uses appear to be more of an issue than the basement. It was noted that the speakers were turned towards the building, rather than towards Clayton Avenue.

Mr. Kiesow again approached the Board and inquired about what would happen if the property owner proposed grand stands and/or had daily concerts. He added that approving this would open up the doors for many more items. Mr. Kiesow finished by stating that he didn't have any issues with the items being requested variances and that only the speakers are the issue.

Walter Juedes Tst – Town of Oshkosh – Variance

Applicant is requesting a variance for a reduced shore yard setback in order to build a house.

Walter (Wally) Juedes approached the Board. He noted that the request was now for taking into consideration the combination of both lots, because that is what the prospective buyer wanted. The retaining wall request from the previous variance is not a part of the request. Mr. Juedes explained that the applicant is looking to build a 2,600 sq. ft. house within the proposed footprint but would like to have flexibility in the placement of the home in order to maximize the view of the water and reduce the amount of tree removal. The current proposal will be about half of the impervious surface ratio (ISR) allowance of 30%.

Jerry Tribbey, applicant, approached the Board and was sworn in. He explained that he did not have a floor plan yet but the proposed 2,600 sq. ft. would include the 1st floor, garage, patio, and sunroom. Mr. Tribbey explained that a recent change to the property considered the stream on the south side to be navigable, therefore requiring a shore yard setback. Mr. Tribbey added that the proposed home will be within the building footprint but not necessarily that entire size.

There was discussion regarding this proposal not including a floodplain fill variance request, like the previous application. Staff explained that this means the home will need to be at least 15ft off the side lot lines. The stream is about 10ft from the lot line, therefore the closest the home could be to the stream would be 25ft.

Jerry Frey approached the Board again. Mr. Frey noted that the Town Board of Appeals unanimously approved the request because it makes more sense to combine the two lots and build on both together than separate. Meeting minutes from the Town meeting were submitted.

C. Bauer read the portion of Dale Rezabek's letter that pertained to the request. The letter referenced a portion of the Zoning Board Handbook that was also read aloud.

There being no other business, Chairman Schroeder adjourned the meeting at 6:47 p.m.

Respectfully submitted,

Candace M. Bauer

Recording Secretary