

WINNEBAGO COUNTY BOARD OF ADJUSTMENT  
DELIBERATIVE SESSION  
POST STAFF REPORT  
June 4<sup>th</sup> 2021

Town and/or agency's comments:

1. The City of Oshkosh supports the approval for the variance as requested.
2. The Wittman Regional Airport supports the approval for the variance as requested.
3. The Federal Aviation Administration (FAA) confirmed the structure does not exceed obstruction standards and would not be a hazard to air navigation.

**CRITERIA AND ADVISORY FINDINGS**

23.7-234 "Basis of decision" (required for all Ch. 23 Town/County Zoning Code, Ch. 24 Wittman Reg. Airport, 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.**

Findings for Approval: The proposed silos will be the same height and size of the existing silos on the property.

Findings for Denial: The applicant already has reasonable use of the property.

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.**

Findings for Approval: The proposed silos are needed for manufacturing purposes in the proposed location as much of the available area has already been developed.

Findings for Denial: The property has no unique characteristics; the proposed silos could be built to the allowed maximum height.

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.**

Findings for Approval: The increase in silo size has no adverse effect to public interest.

Findings for Denial: The variance does not meet the Chapter 24 height requirements and may create a precedent if approved.

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 HAS/HAS NOT been met.

Staff Recommendation: APPROVAL

Advisory Conditions:

TOWN:

N/A

COUNTY:

N/A

VOTE: \_\_\_\_\_ to \_\_\_\_\_ \_\_\_\_\_

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Town and/or agency's comments: 1. Letter from the WDNR requesting the Board of Adjustment to closely consider all 3 variance criteria. 2. The Town of Poygan recommended approval per the site plan submitted.

**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): Findings for approval: Due to the existing compact development the floodplain fill requirement will create adverse drainage issues. Findings for denial: The property has adequate space for the 15 ft of fill requirement.
  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): Findings for approval: Due to the elevation difference of the applicants property, the floodplain fill requirement will adversely effect other structures on the property. Findings for denial: The property is large in area providing room to accommodate the 15 ft of floodplain fill requirement.
  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): Findings for approval: Due to the elevation difference of the applicants property, the floodplain fill requirement will adversely effect other structures on neighboring properties. Findings for denial: Meeting the 15 ft of floodplain fill requirement will not harm public interest.
- 26.6-7(a) "Review Criteria" (required for all Chapter 26 Floodplain Zoning Code variances)

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): Findings for approval: The flood proofing measures in place will keep the structure reasonably safe from flooding per the floodplain zoning code. Findings for denial: The reductions in floodplain fill will not offer as much protection as the complete 15 ft of fill, and the risk of potential uplift of the foundation would be greater.

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): Findings for approval: The retaining wall will allow shore-yard access from the street yard side of the property. Findings for denial: The property has enough area for floodplain fill between the ordinary high water mark and the single family dwelling without the need for a retaining wall.

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

**STAFF RECOMMENDATION**

Approval

X

Approval with conditions

Approval not as requested

Approval not as requested with conditions

Denial

**ADVISORY CONDITIONS:**

1.

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Town and/or agency's comments: 1. The Town of Wolf River recommended approval for the variance as presented.

**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): Findings for approval: There is no compliant location to locate a garage that will meet the structure separation and street yard setbacks. Findings for denial: The existing property has two existing storage sheds which can be used for storage.
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): Findings for approval: The applicants property is substandard in size and bordered by roadway on two sides. Findings for denial: The proposed structure is an off premise garage and not necessary for reasonable use of the principle property.
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): Findings for approval: The proposed garage is similar to the existing pattern of development in the surrounding area so public interest will not be harmed. Findings for denial: The location of the proposed garage may obstruct vision for motor vehicles using the 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.

**STAFF RECOMMENDATION**

Approval

Approval with conditions

X

Approval not as requested

Approval not as requested with conditions

Denial

**ADVISORY CONDITIONS:**

1. Any part of the proposed structure located less than 5 ft to a separate structure must not have openings (doors/windows). The proposed structure must have a firewall(s) due to the decreased structure separation setback. All floodplain requirements must be met.

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**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): Findings for approval: There is no compliant location to locate a single family dwelling that will meet the shore-yard, street, building separation, and side lot line setbacks, as well as floodplain fill requirements. Findings for denial: The proposed deck are self created hardships within the shore-yard setback and do not create reasonable use of the property.
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): Findings for approval: The applicants property has shore-yard, street, and side lot line setbacks that cover almost the entire property. Findings for denial: The proposed deck withing the shore-yard setback is unnecessary for development of the property.
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): Findings for approval: The proposed single family dwelling is similar to the existing pattern of development in the surrounding area so public interest will not be harmed. Findings for denial; The shoreland zoning code provides relief to property owners who own properties in existing development patterns without causing harm to public interest.

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): Findings for approval: The request still allows the single family dwelling to be elevated per floodplain requirements without adversely effecting neighboring nonconforming structures. Findings for denial: The request offers very minimal fill to the proposed structure to satisfy the 15 ft floodplain fill requirement.

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): Findings for approval: The request allows reasonable use of the property, and is similar to neighboring development. Findings for denial: The proposed deck located between the single family dwelling and ordinary high water mark is unnecessary for development of the property.

**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, 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 X

Denial

**ADVISORY CONDITIONS:**

1. Any part of the proposed structure located less than 5 ft to a separate structure must not have openings (doors/windows). The proposed structure must have firewall(s) due to the decreased structure setback requirement. All floodplain requirements must be met. Proposed deck may be no greater than 36 square feet (ingress/egress allowance).