

**WINNEBAGO COUNTY
BOARD OF ADJUSTMENT**

Thursday, February 7, 2013 - 7:15 a.m.

Planning & Zoning Conference Room, County Administration Building,
Oshkosh, Wisconsin

DELIBERATIVE SESSION

Members Present: Arden Schroeder, Dan Mingus, Tom Verstegen, David Weiss, and Greg Kargus.

Absent: James Forbes

Also Present: Eric Rasmussen and Karen Fredrick, court reporter.

Meeting was called to order at 7:25 a.m. G. Kargus made a motion to approve the minutes of December 14, 2012, December 19, 2012, and January 3, 2013 Motion seconded by D. Weiss and carried by unanimous voice vote.

The following variances were acted on:

I. Neufeld Enterprises LLC – Town of Menasha

A variance was requested to construct an on-premise sign that exceeds the maximum sign area and sign height allowed. The Town of Menasha has recommended denial.

There was discussion of what the marquee sign would be used for and whether flashing/changing signs were allowed.

A motion was made by G. Kargus to deny the variance. Motion seconded by D. Mingus.

The findings used to deny the variance have been made in accordance with section 17.32 and are as follows:

FINDINGS:

1. **Exceptional Circumstances:** None.
2. **Preservation of Property Rights:** The property is still allowed a sign of reasonable size and height without the granting of a variance.
3. **Absence of Detriment:** The granting of a variance will increase the sign square footage and height allowances set in the Zoning Ordinance. The applicant will still have reasonable use of the property and will still be allowed an advertising sign without the granting of a variance.

Based upon the above findings, it is the opinion of the Board that all criteria of Section 17.32 (7)(a), (b), and (c) have not been met.

Vote on the Motion: T. Verstegen, aye; A. Schroeder, aye; D. Weiss, aye; D. Mingus, aye; G. Kargus, aye

Motion carried by a 5-0 vote. **Variance denied.**

II. David Viaene – Town of Menasha

A variance was requested to construct a breezeway with a substandard shore yard setback. The Town of Menasha has recommended denial.

There was discussion regarding whether having a detached garage is a hardship, the after-the-fact nature of the request, and the applicability of setback averaging and the required setback.

A motion was made by T. Verstegen to deny the variance. Motion seconded by G. Kargus.

The findings used to deny the variance have been made in accordance with section 23.7-234 & 27.6-8 and are as follows:

CRITERIA AND 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): The property owner will still have reasonable use of the property without the granting of the variance. Having a detached garage instead of an attached garage is not unnecessarily burdensome.**
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): There are no unique physical characteristics of the property that prevent the owner from being able to develop the property in compliance with zoning and shoreland regulations. The lot is large enough to compensate for the shore yard setback that is required.**
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): The existing residence already resides entirely within the shore yard setback. The proposed addition would increase the amount of development within the shore yard setback.**

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): The additive effect of all near shore development can harm the public interest in water quality and aquatic habitat, especially when the existing development already resides so close to the water.**

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 not been met.

Vote on the Motion: A. Schroeder, aye; D. Weiss, aye; D. Mingus, aye; G. Kargus, aye; T. Verstegen, aye

Motion carried by a 5-0 vote. **Variance denied.**

III. Susan Dupont – Town of Winneconne

A variance was requested to construct a new single family home with a reduced amount of fill to meet floodplain fill requirements. There was no response from the Town of Winneconne.

There was discussion regarding drainage and fire protection concerns due to the reduced fill requirements. The committee discussed flipping the sides for the fill variance request.

A motion was made by G. Kargus to approve the variance with conditions. Motion seconded by T. Verstegen.

The findings used to deny the variance have been made in accordance with section 23.7-234 & 26.6-7 and are as follows:

CRITERIA AND 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)

5. 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): Without the granting of a variance the owner could not construct a home of reasonable size on the property.**
6. 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): The parcel is a narrow waterfront property with additional floodplain regulations needing to be met.**
7. 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): The reduction in fill will not affect the neighboring properties.**

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

8. Criteria: The variance is consistent with the purpose of the Floodplain Zoning Code in s. 26.1-5.
 - a. **Finding(s): The reduced floodplain fill will still serve its purpose, and is therefore consistent with the purpose of the Floodplain 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 26.6-7 of the Floodplain Zoning Code have been met.

CONDITIONS:

1. The north side of the home shall have fill 1’ above the 100 year floodplain extending 3.5’ from the structure sloping to a swale draining to the lake. The south side of the home shall have fill 1’ above the 100 year floodplain extending 7’ from the structure.

2. Drain tile, which shall drain the property to the lake, must be installed within both side yards.
3. Downspouts and sump pumps are required on the residence and must drain directly to the lake.

Vote on the Motion: D. Weiss, aye; D. Mingus, aye; G. Kargus, aye; T. Verstegen, aye; A. Schroeder, nay

Motion carried by a 4-1 vote. **Variance granted with conditions.**

IV. T & B Barr Real Estate – Town of Nekimi

A variance was requested to construct an on-premise sign that exceeds the maximum sign area. The Town of Nekimi has recommended approval.

There was discussion of what the use of the marquee sign would be the allowances for signs because of the multiple frontages.

A motion was made by T. Verstegen to approve the variance with a condition. Motion seconded by G. Kargus.

The findings used to approve the variance have been made in accordance with section 17.32 and are as follows:

FINDINGS:

1. **Exceptional Circumstances:** The parcel is nearly 80 acres in size with several different businesses occupying the property. Because the property is so large, the tenants cannot be readily seen from Planeview Drive or Nekimi Avenue.
2. **Preservation of Property Rights:** Signage is necessary to direct customers to businesses.
3. **Absence of Detriment:** The sign will not harm the surrounding area and is not intended to attract the attention of motorists on Hwy 41.

Based upon the above findings, it is the opinion of the Board that all criteria of Section 17.32 (7)(a), (b), and (c) have been met.

CONDITIONS: No additional signs shall be allowed on any other road frontage of this property.

Vote on the Motion:; D. Mingus, aye; G. Kargus, aye; T. Verstegen, aye; A. Schroeder, aye; D. Weiss, aye

Motion carried by a 5-0 vote. **Variance granted with a condition.**

There being no other business, the meeting was adjourned at 8:40 a.m.

Respectfully submitted,

Eric Rasmussen

Eric Rasmussen, Recording Secretary