

## **WINNEBAGO COUNTY BOARD OF ADJUSTMENT**

Tuesday, August 26, 2014 – 5:30 p.m.

Lounge Room, Courthouse, Oshkosh, Wisconsin

### **PUBLIC HEARING**

**Present:** Board Members: Arden Schroeder, Greg Kargus, Tom Verstegen, Susan Drexler, and David Weiss

**Absent:** James Forbes

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

Meeting was called to order at 5:30 p.m. Board members and staff introduced themselves and C. Zeinert read the appeal process.

### **Decker-Rusch Development, Inc – Town of Menasha**

G. Kargus read the legal description and requested variance for the agenda item.

Gordon H. Decker was sworn in and explained that he needed the variance to make the lots saleable. They were previously sold, but had to be bought back because the prospective buyers/builders could not get permits.

John Davel, President of Davel Engineering was sworn in. He added that this all began in 2005 with the creation of the Jacobsen Meadows subdivision. A navigability determination was requested for and conducted by the Wisconsin DNR. On May 10, 2005 the subject water body at the edge of these lots was determined non-navigable. The lots were created without regard to the stream setback.

Mr. Davel continued to explain that another DNR navigability determination was done in 2007 which determined the water body to be navigable and it applied to the whole area. The DNR was requested to clarify their determination this year and it was confirmed to be navigable. Mr. Davel added that their attorney tried to negotiate with the DNR to honor their 2005 determination but to no avail and that they recommended the variance route. The variance was requesting a 50ft shore yard setback instead of a 75ft shore yard setback when a rear yard setback is ordinarily only 25ft. Mr. Davel pointed out that the extra 25ft is enough to make the lots buildable and saleable.

Mr. Davel explained that the lots were currently “virtually unbuildable” and that the covenants of the subdivision could not be met. A. Schroeder inquired what the covenants required. Mr. Gordon Decker answered that the homes have to have 2,000 sq ft.

The applicants noted that there is room to build something but not enough room to build something typical of this subdivision. There was added discussion regarding the covenants of the subdivision.

G. Kargus inquired of the applicants if they are not opposed to the 50ft setback. Mr. Davel answered that they are not opposed and that it states in the application that a 50ft setback is in line with new regulations (shore yard setback required for incorporated areas).

George Dearborn of the Town of Menasha was sworn in. Mr. Dearborn mentioned that the Town Board is recommending approval. He added that there was an email sent to him from a concerned Town citizen questioning the justification for the variance, voicing her concern for wildlife and large yards. Mr. Dearborn was submitting the email from the concerned citizen for the record, but would be emailing a clean copy over to C. Zeinert.

Mr. Dearborn added that he was at the meetings when the subdivision was starting up and that there was no talk of it being navigable. He said he disagrees with the DNRs interpretation. Mr. Dearborn read the findings of the Town's recommendation as follows:

1. Exceptional Circumstances – this subdivision was platted with the understanding that the adjacent stream was not navigable. The Department of Natural Resources (DNR) has since declared the stream navigable. This is not a circumstance that could have been predicted nor planned;
2. Undue Hardship – with the 75' setback, the property owner would lose the use of 50% of the lot; this would not allow a house to be built that is of comparable size and value with the rest of the houses in the subdivision;
3. No Harm to the Public Interest – the DNR does not believe that reducing the setback to 50' will have a negative impact on the stream or the surrounding properties.

C. Zeinert submitted for the record on behalf of the Zoning Administrator a published opinion from the State of Wisconsin regarding an appeal decision of a similar situation. Each Board member was given a copy to read prior to the deliberative.

C. Zeinert specified that there was nothing additional from the DNR; there was an email submitted with the application as "Exhibit E" that explained that the DNR "would not object to or challenge a variance to allow a 50-foot setback from the ordinary high water mark."

D. Weiss inquired if combining the 2 lots would make for enough buildable area.

Mr. Davel explained that they discussed moving lot lines but any scenario discussed resulted in the loss of a lot.

Mr. Dearborn stepped forward and added that there would be a 50ft shore yard setback applicable if the area was incorporated. He also said that there is a hardship for development because not granting the variance is removing buildability on the lots.

There being no other business, Arden Schroeder adjourned the meeting at 5:53 p.m.

Respectfully submitted,

***Candace M. Zeinert***

Recording Secretary