

WINNEBAGO COUNTY BOARD OF ADJUSTMENT -- DELIBERATIVE SESSION

Thursday, September 4, 2014 – 7:30 a.m.
3rd Floor Conference Room, County Administration Building
112 Otter Ave, Oshkosh, Wisconsin

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

Absent: James Forbes

Also Present: Candace Zeinert, zoning, Karen Fredrick, court reporter

The meeting was called to order at approximately 7:37 a.m.

Approval of Minutes

There was no old business.

Decker-Rusch Development, Inc – Town of Menasha – Variance

Applicant is requesting a variance to allow future development on existing lots in a subdivision with substandard 50ft shore yard setbacks. The request also included to have up to three years to build on the lots.

D. Weiss inquired about the 2,000 sq. ft. living space covenant. A. Schroeder replied that the Board is not governed by covenants and they have no bearing in the decision.

G. Kargus added that the weird configuration of the lots/house was a burden on the owners. A. Schroeder concurred and added that with the pie-shaped lots, 4,000 sq ft of buildable area was not big enough. G. Kargus specified that the issue was not self-created either. Also that it would have been nice to hear from the DNR on why the navigability determination changed.

T. Verstegen inquired if the whole 50ft setback was necessary, but added that he was unsure where to draw the line. S. Drexler added that 50ft seemed to be the next “standard” for shore yard setbacks. A. Schroeder pointed out that the navigable stream only appeared to be navigable in the spring.

There was discussion regarding the neighbor’s letter objecting to the variance. It was some of the members’ opinion that the neighbors were enjoying the woods on other peoples’ properties, which is similar to the argument of someone saying that their view is being taken away by development.

D. Weiss inquired if a precedence would be set by granting a variance in this case. A Schroeder answered that each request is looked at separately.

A. Schroeder inquired how much buildable area a 60ft setback would give them.

Board members inquired of staff why their recommendation was for denial and why Corporation Counsel John Bodnar was supposed to attend the meeting. C. Zeinert answered that staff felt the request did not meet all of the criteria necessary for granting the variance and also explained that Attorney Bodnar was to help make sure that the Board did not make a similar mistake that surfaced a few years ago with the example that was submitted into record.

S. Drexler inquired about the DNR’s mapping and points of navigable VS. non-navigable. C. Zeinert said she could not explain why the DNR made the interpretation that they did.

G. Kargus, after doing some rough measuring, determined that a 60ft shore yard setback would grant approximately 6,000 sq. ft. of buildable area on one of the lots, slightly less on the other.

T. Verstegen mentioned that the lots can be developed, but that they just can't fit the houses they thought they could fit when the plat was initial done. There was further discussion regarding setbacks.

There was discussion regarding the example court case supplied at the public hearing by staff and comparing it to the current request. Board members specified that although there were similarities, in the old case, the plat or land division was not yet created when the rules changed that affected developed. Conversely, the plat was complete in this case when a non-navigable determination was made.

G. Kargus added that the applicant didn't do anything wrong. S. Drexler inquired if the DNR should be kept out of it to keep them from future lawsuits. A. Schroeder answered that their testimony is like any other testimony received at the public hearing.

Motion by D. Weiss, seconded by G. Kargus to grant not as requested, instead a 60ft shore yard setback from the ordinary high water mark.

There was a question on the motion asking for confirmation of the 60ft setback versus the 50ft setback which was requested. D. Weiss answered that the 60ft setback was in keeping with house sizes equivalent to neighboring homes and in keeping with shoreland zoning with the navigable stream. S. Drexler added that the 60ft setback was to be a relief of the building envelope.

Vote on the motion: A. Schroeder, aye; S. Drexler, aye; D. Weiss, aye; G. Kargus, aye; and T. Verstegen, aye. Motion passed by a 5-0-1 (Forbes) vote. **Motion approved; variance granted not as requested.**

Findings for approval:

1. The subject property was developed based on a 2005 non-navigable determination. The 2007 determination of navigable presents an undue hardship that was not self-created.
2. A single family dwelling, which meets all setback requirements, could still be built on the property without the granting of a variance; however, the pie-shaped lots of lots 31 and 32 create an undue hardship for future design and construction of a single family dwelling.
3. The granting of a variance would not be contrary to or harm the public interest in consideration of zoning regulations.
4. The granting of the variance would allow development that would help to preserve and restore shoreland vegetation as it would not encourage shoreline encroachment by structures.

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 8:37 a.m.

Respectfully submitted,
Candace M. Zeinert
Recording Secretary