

## **WINNEBAGO COUNTY BOARD OF ADJUSTMENT -- DELIBERATIVE SESSION**

Thursday, October 24, 2013 – 7:30 a.m.

3rd Floor Conference Room, County Administration Building

112 Otter Ave, Oshkosh, Wisconsin

**Members Present:** Arden Schroeder, Dan Mingus, Tom Verstegen, and Greg Kargus

**Excused:** David Weiss (alternate to cover J. Forbes)

**Absent:** James Forbes

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

The meeting was called to order at approximately 7:30 a.m.

### **Approval of Minutes**

Motion by G. Kargus, second by T. Verstegen, to approve meeting minutes for June 25, 2013 and July 9, 2013. Motion to approve carried by unanimous voice vote.

Decisions were made on the following requests:

### **Joseph Zelinski – Town of Oshkosh – Variance**

D. Mingus inquired if all buildings were planning on being removed. G. Kargus answered that they could make it a requirement of granting the variance.

G. Kargus reiterated their thought to extend the retaining wall on the west side to 40ft (from the ordinary high water mark – OHWM). A. Schroeder specified that when they viewed the property a tree was a reference point for this mark. He added that water would still get around the retaining wall if it was at the proposed 60ft setback. There was further discussion regarding the proposed placement of the retaining wall.

G. Kargus inquired if 15ft of fill was required on all sides. C. Zeinert answered “Yes.”. T. Verstegen pointed out that the neighbors to the east are already at the required fill elevations and inquired if that could be used to meet the 15ft. C. Zeinert replied that all development (including the fill) needs to be on that specific property; the neighbor’s fill cannot be used to meet their own requirement.

There was discussion regarding drainage on the east side. The application states “The drainage will be inside the retaining wall and have a swale to the lake and the road ditch.”. T. Verstegen inquired about the west side – was a swale on the house side of the retaining wall with drain tile proposed. Other members agreed and stated that this side was the Town’s primary concern.

There was additional discussion regarding the other buildings (possibly to remain) on the property. Discussion continued on ways to maintain drainage and the Erosion Control Technician’s involvement. Board members were in agreement that requiring drain tile on the west side would help drainage.

G. Kargus made a motion to approve the variance as requested with the following conditions (as clarified by Board members):

1. the west side retaining wall must be extended out to be 40ft from the ordinary high water mark;
2. there must be a swale and drain tile on the west side;
3. all drainage must be directed to the lake with no drainage to the neighbor; and
4. all utility buildings on the property must be removed.

Vote on the motion: A. Schroeder, aye; T. Verstegen, aye; D. Mingus, aye. G. Kargus, aye. Motion passed by a 4-0-1 vote (Forbes). **Motion approved; variance granted.**

Findings for granting:

1. Without the granting of a variance the owner could not construct the proposed home on the property.
2. The parcel is a narrow waterfront property with additional floodplain fill regulations needing to be met.
3. The reduction in fill has no affect on the surrounding properties. The retaining wall will be used to protect the neighboring property from water runoff and erosion of the fill onto the neighboring property.
4. The reduced floodplain fill will still serve its purpose, and is therefore consistent with the purpose of the Floodplain Zoning Code.
5. The retaining wall will act as part of the landscape and will protect the shoreland area from eroding fill problems on the non-sloped side.

**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, and Article 6, Section 27.6-8 of the Shoreland Zoning Code have been met.

### **John Chavlovich – Town of Wolf River – Variance**

A. Schroeder put it on record that Board members received a letter from the McHughs but that it came in after the hearing so it needs to be disregarded.

G. Kargus inquired about moving the home to meet requirements. C. Zeinert explained the limitations of the Floodplain Zoning Code that would make that impossible. D. Mingus inquired if the addition would be keeping within the existing footprint – yes.

G. Kargus inquired if the property owners would be required to submit anything from an engineer stating that the first floor can support a second story. C. Zeinert answered that the construction feasibility of it would be regulated by the Town Building Inspector.

A. Schroeder repeated part of the application stating that the addition would not affect the neighboring property to the south because of existing large trees already blocking the view; therefore the view was a non issue. C. Zeinert explained the Shoreland Zoning Code's intentions of a viewing corridor and that 30ft in any 100 ft is a viewing corridor and allowed to be clear cut. T. Verstegen voiced his concern with calling it a "non-issue" because the view is one of the reasons for the shore yard setback. He added that he had a problem with only allowing a 2ft side yard setback. He mentioned that there was reasonable use of the property, even though 900 sq ft is fairly small.

The Board discussed the benefits of requiring the full 7ft side yard setback to be met. A. Schroeder pointed out that it was proposed to be a porch anyways. There was further discussion regarding structural components, costs, and their affect on the side yard setback.

T. Verstegen inquired what the actual setbacks should be because the detached garage only has a 5ft side yard setback. C. Zeinert and D. Mingus answered that a principal structure has 7ft and 10ft side yard setback requirements while a detached accessory building has a 3ft side yard setback requirement.

A. Schroeder revisited the impact of the new regulations (removal of Shallow-Depth Long-Duration Floodway exceptions). C. Zeinert explained the limitations and obstacles to building elsewhere on the property.

The Board inquired about adding living space to the detached garage. C. Zeinert explained that there is only one principal structure allowed per property. If the detached garage had living space added to it, it would be seen as another residence, which would not be allowed. G. Kargus inquired if having the house being less than 1,000 sq ft (minimum size for single family residences) was a problem. C. Zeinert explained that the structure is legal nonconforming for that reason, along with the other reasons (floodway and setbacks). It has no impact on using the home as it currently is and has no bearing on granting additional permits.

G. Kargus pointed out that there is no hardship. D. Mingus added other than the fact that the property is low and in the floodplain. The Board discussed how the situation was self inflicted and it was a want to have a larger home.

T. Verstegen made a motion, G. Kargus seconded, to deny the request.

Vote on the motion: A. Schroeder, aye; T. Verstegen, aye; D. Mingus, aye. G. Kargus, aye. Motion passed by a 4-0-1 vote (Forbes). **Motion approved; variance denied.**

Findings for denial:

1. The property owners still have reasonable use of the property for a permitted purpose as a residence without the granting of a variance.
2. The property is already developed with a residence and detached garage; therefore not granting the variance does not prevent the property from being developed. The buildings can still be used for their intended purpose without the need for a variance.
3. The Variance would not meet these requirements [of the criteria]
4. Granting the variance would allow construction substantially within the shore yard setback, which is established to help development meet the purposes of the Shoreland Zoning Code. Granting such a large variance would be inconsistent with the purposes of the Shoreland 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 27.6-8 of the Shoreland Zoning Code have not been met.

### **Approval of 2014 Schedule**

G. Kargus made a motion to approve the schedule as proposed; seconded by D. Mingus. Motion to approve carried by unanimous voice vote.

Upon conclusion of the agenda items, the meeting was adjourned at 8:25 a.m.

Respectfully submitted,

*Candace M. Zeinert*

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Recording Secretary