

**WINNEBAGO COUNTY
BOARD OF ADJUSTMENT**

Thursday, December 5, 2013 – 4:05 p.m.
Planning & Zoning Conference Room, County Administration Building,
Oshkosh, Wisconsin

DELIBERATIVE SESSION

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

Absent: James Forbes

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

Meeting was called to order at 4:38 p.m. G. Kargus made a motion to approve the minutes of October 11, 2013; October 16, 2013; October 24, 2013; November 15, 2013; and November 19, 2013. Motion seconded by T. Vestegen and carried by unanimous voice vote.

The following variances were acted on:

I. Tom Lehouillier – Town of Oshkosh

A variance was requested to construct a new single family dwelling and retaining wall. Variance requests included substandard setbacks to the right-of-way, OHWM of a navigable stream, and a surface water drainage district; as well as a request for substandard floodplain fill. The Town of Oshkosh has approved the variance as requested.

The committee discussed the shoreyard setbacks, FP fill, and the size of the home. There was also discussion regarding the necessity of the variance request to Nickels Dr, and how the floodplain fill/retaining wall will effect drainage on the property and on neighboring properties.

A motion was made by D, Mingus to approve the variance requests with conditions as follows:

- | | |
|---|------|
| 1. Reduced Floodplain fill for a residential structure (East) | 6' |
| 2. Reduced Floodplain fill for a residential structure (West) | 7' |
| 3. Reduced Shore yard setback for a residential structure (East) | 9.5' |
| 4. Reduced setback from the Ordinary High Water Mark of a navigable stream (SWDD) for a residential structure | 9.5' |
| 5. Reduced street yard setback for a residential structure – Fox St | 7' |
| 6. Reduced shore yard setback for a retaining wall to include a railing that meets state and local building codes | 2.5' |
| 7. Reduced setback from the Ordinary High Water Mark of a navigable stream (SWDD) for a retaining wall to include a railing that meets state and local building codes | 2.5' |

Conditions:

County:

1. Retaining wall shall be engineered to withstand stormwater and flooding forces.
2. Access to home shall be from Nickels Dr only.
3. All drainage on Fox St to be approved by local authority.

The motion also included the denial of a variance request for a substandard street yard setback to Nickels Dr.

Motion seconded by G. Kargus.

The findings used to approve the variance have been made in accordance with section 23.7-234, 26.6-7, and 27.6-8 and are as follows:

CRITERIA AND FINDINGS

23.7-234

- 1) **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.** Without the granting of variances there is no compliant building location on this property for a single family residence.
- 2) **The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question.** The property has a navigable stream with a 75' required shore yard setback on the east side and a fire lane with a required 30' street yard setback on the west side. Without a variance there is no compliant location on the property for a residence.
- 3) **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.** The existing residence on the property is not in compliance with setback regulations. The setback to the navigable stream and surface water drainage district will increase for the residence. The proposed home will be moved closer to Fox Street which is strictly used as a fire lane. The setback from the ordinary high water mark of the lake will remain the same. Submitted stormwater modeling shows very negligible change in the surface water drainage districts ability to handle the estimated flow from a 100 year storm event.

26.6-7

- 1) **The variance is consistent with the purpose of the Floodplain Zoning Code in s. 26.1-5.** The lot is 60' wide. There is no compliant location for a residence while complying with the floodplain fill requirements.

27.6-8

- 1) **The variance is consistent with the purpose of the Shoreland Zoning Code in s. 27.1-5.** The required shore yard setback from the navigable stream covers the entire property. There is no compliant location on the property based on this shore yard setback. The shore yard setback from the lake will be met.

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, Section 26.6-7, Floodplain Zoning Code, and Article 6, Section 27.6-8 of the Shoreland Zoning Code have been met.

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

Motion carried by a 4-0-1 (absent Forbes) vote. **Variance granted with conditions not as requested. A variance for a substandard setback to Nickels Dr was denied.**

I. Brett Gelbach – Town of Oshkosh

A variance was requested to construct a residential addition with a substandard shore yard setback and substandard floodplain fill. A variance was also requested to construct a detached garage with

substandard street and shore yard setbacks. The Town of Oshkosh has approved the variance as requested.

The committee discussed the stair project and the necessity for an enclosed entrance to the second story of the home. They also discussed the depth of the garage being requested.

A motion was made by D. Mingus to approve the variance with a condition not as requested as follows:

- | | |
|---|------|
| 1. Reduced Floodplain fill for a residential structure | 5.5' |
| 2. Reduced Shore yard setback for a residential structure | 66' |
| 3. Reduced Shore yard setback for a detached garage | 66' |
| 4. Reduced street yard setback for a detached garage | 15' |

Conditions:

County:

1. Drainage water may not go onto neighboring property.

Motion seconded by D. Mingus.

The findings used to approve the variance have been made in accordance with section 23.7-234, 26.6-7, and 27.6-8 and are as follows:

CRITERIA AND FINDINGS

The findings used to grant the variance have been made in accordance with section 23.7-234, 26.6-7(a), & 27.6-8 and are as follows:

23.7-234

- 1) **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.**

Residential Addition: The placement and construction of the existing home would not allow an enclosed second story access to the home using the existing doors without a variance to floodplain fill and the shore yard setback.

Detached Garage: The required street and shore yard setbacks do not allow for a reasonably sized detached garage on the property without a variance. Setback averaging is not available to allow a reduced setback.

- 2) **The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question.**

Residential Addition: The required shore yard setback as well as the placement of the existing home make an enclosed entrance to the second story impossible without a variance. The placement of the current home and the location of the existing doors make the proposed construction impossible without a variance to floodplain fill.

Detached Garage: The lot does not have the necessary depth to comply with the street and shore yard setbacks while allowing room for a reasonable sized garage.

- 3) **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.**

Residential Addition: The request will be in the same location as an existing deck and stairs. The proposal will enclose this area to provide interior access to the second story.

Detached Garage: Many homes on the street are currently closer to the road right-of-way than is being requested by the variance.

26.6-7

- 1) **The variance is consistent with the purpose of the Floodplain Zoning Code in s. 26.1-5.**

The placement of the current home and the location of the existing doors make the proposed construction impossible without a variance to floodplain fill.

27.6-8

1) **The variance is consistent with the purpose of the Shoreland Zoning Code in s. 27.1-5.**

Residential Addition: The shore yard setback being requested is the same as the current deck and stairs on the property.

Detached Garage: The setback requirements of the property (street and shore yard) do not allow a reasonably sized garage on the property without a variance.

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, Section 26.6-7, Floodplain Zoning Code, and Article 6, Section 27.6-8 of the Shoreland Zoning Code have been met.

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

Motion carried by a 4-0-1 (absent Forbes) vote. **Variance granted with a condition not as requested.**

There being no other business, the meeting was adjourned at 5:37 p.m.

Respectfully submitted,

Eric Rasmussen

Eric Rasmussen, Recording Secretary