

WINNEBAGO COUNTY BOARD OF ADJUSTMENT -- DELIBERATIVE SESSION

Thursday, December 6, 2012 – 7:30 a.m.
3rd Floor Conference Room, County Administration Building
112 Otter Ave, Oshkosh, Wisconsin

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

Excused: None

Absent: James Forbes

Also Present: Candace Zeinert, zoning and Holly Ford, court reporter

The meeting was called to order at approximately 7:35 a.m.

Approval of Minutes

Motion by G. Kargus, second by T. Verstegen, to approve meeting minutes for October 12, 17, and 25 and November 9 and 14 of 2012. Motion to approve carried by unanimous voice vote.

A decision was made on the following requests:

Eric Hoffmann & Barbara Salemi – Town of Winneconne – Variance

Board members agreed that allowing the reduced amount of fill was not the problem, but that water problems for the neighbors was a major concern.

C. Zeinert explained differences between different floodplain construction scenarios. She also mentioned that there will be a County Code Administrator's meeting next Friday with a guest speaker from the DNR and she plans to bring up and discuss how other County's handle these types of request. A meeting will then be held between Zoning staff, the Erosion Control Technician, and the Board.

A. Schroeder stated that there needs to be drain tile or some other type of drain system. G. Kargus mentioned that these types of requests and additional floodplain fill will be an issue until neighbors build up their properties as well. T. Verstegen pointed out that the property owner was proposing a swale, not drain tile.

G. Kargus asked if there was enough room to do a swale on the east side of the home; drain tile may be needed instead. A. Schroeder contributed that drain tile does not work too well in the winter with rain waters.

G. Kargus inquired if a retaining wall for the fill should be required. D. Mingus added that 16-18 inches of fill is required to meet elevations. C. Zeinert added that if a retaining wall is required, an additional variance would need to be granted to allow the structure within the shore yard setback. She also added that the fill has to have room to slope to match neighboring elevations. T. Verstegen added that he thought the property owner was going to have a retaining wall at 5ft beyond the house (on the east side) and then have a swale the remaining 2 ft.

G. Kargus mentioned that they should require that the downspouts of the structure go to the lake. C. Zeinert added that the erosion control permit looks at that and that it is highly recommended because it takes care of a lot of the drainage issues.

G. Kargus offered that there should be drain tile parallel to the foundation drain tile and that there should be side drain tile draining to the lake. The Board discussed the possibility of having a swale on the west side where there is ample room and a small swale on the east side. The Board also agreed that the downspouts will take care of a lot of the drainage issue.

A. Schroeder inquired about what size tile should be required; if that should be a condition of the approval. G. Kargus replied that 4 inches was generally the minimum. A. Schroeder asked if there would be any freezing issues with the drain tile. G. Kargus answered that he has drain tile and has never had an issue with freezing.

A. Schroeder commented that the swale should be within the fill area. He also mentioned that the house needs to match what the owner can do with the property; the structure may need to be downsized.

C. Zeinert drew on the marker board a side view of the request with illustrations showing slope, swales, and required fill elevations. With the drawing she pointed out that the Board may need to require a retaining wall to be used or grant more of a variance to properly slope the sides. There were further discussions regarding required slopes and fill levels.

G. Kargus motioned, seconded by T. Verstegen to grant the variance for floodplain fill 4ft on the east side and 7ft on the west side with the requirement of a 3ft swale on each side with a minimum depth of 4 inches and downspouts and gutters are required on the structure and downspouts tiled to the lake.

Vote on the motion: G. Kargus, aye; A. Schroeder, aye; T. Verstegen, aye; D. Mingus, aye. Motion passed by a 4-0-1 vote (Forbes). **Variance granted, not as requested with conditions (stated in motion).**

Conditions:

1. 3ft swales on each side with a minimum depth of 4 inches.
2. Downspouts and gutters are required on the structure.
3. Downspouts are tiled to the lake.

Findings for granting:

1. A reasonably sized home could not be placed on the property without the granting of a variance.
2. The property has water frontage with a large shore yard setback, is pie shaped, and is required to meet additional floodplain regulations.
3. A reduced amount of fill around the structure will not be contrary to or harm the public interest.
4. The reduced amount of fill will still offer stability to the structure and fill required.

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 Section 26.6-7 of the Floodplain Zoning Code, have been met.

Donna McCarthy – Town of Menasha – Variance

C. Zeinert clarified Act 170, which had been used on a previous variance, but is not applicable in this situation because it is not a nonconforming structure due to a shore yard setback. Act 170 does not apply and therefore the structure would not be allowed to be rebuilt, contrary to what was stated during the public hearing.

The Board discussed what is existing (16' x 12' deck) and what is proposed (10'9" addition). The Board inquired what would be allowed. C. Zeinert replied that very limited repairs would be allowed to be done, such as replacing a deck board here or there, but all new construction would need to meet setbacks. The ordinance does allow for stairs and uncovered porches to extend within a street yard by 8ft.

A. Schroeder inquired when the Town of Menasha would be adopting their own ordinance. C. Zeinert replied that it would be in the upcoming months but that is not a factor in this situation because the property is in the shoreland district and is automatically under County zoning jurisdiction.

G. Kargus stated that he didn't feel the application meets the requirements for granting; it is a want.

D. Mingus made a motion to deny the request; seconded by G. Kargus.

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

Findings for denial:

1. If the variance request is denied, the owner will still have reasonable use of the property. The current zoning ordinance allows steps and uncovered porches to extend 8ft into a street yard setback without the use of a variance.

2. The property can be used and developed while still meeting all necessary requirements.

3. Construction of an allowed uncovered porch instead of the proposed addition will extend less into the setback and will serve the same purpose.

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 have not been met.

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