

**WINNEBAGO COUNTY
BOARD OF ADJUSTMENT**

Thursday, April 9, 2015 – 7:30 a.m.

Planning & Zoning Conference Room, County Administration Building,
Oshkosh, Wisconsin

DELIBERATIVE SESSION

Members Present: Arden Schroeder, Tom Verstegen, David Weiss, and Sue Drexler.

Absent: James Forbes

Excused: Greg Kargus

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

Meeting was called to order at 7:30 a.m.

The following variances were acted on:

I. Patrick Kerrigan – Town of Winneconne

A variance was requested to construct an off-site residential garage with substandard street and shore yard setbacks.

The committee discussed the maximum size garage allowed on the property and the shore yard setback from the OHWM in the boathouse to the south.

A motion was made by T. Verstegen to grant a variance to allow a 900 sq ft garage with a 25' shore yard setback and a 15' street yard setback. A condition was included that no future boathouses be allowed on the property.

Motion seconded by D. Weiss.

The findings used to deny the variance have been made in accordance with section 23.7-234,

CRITERIA AND FINDINGS

23.7-234 "Basis of decision" (required for all Ch. 23 Town/County Zoning Code, Ch. 26 Floodplain Zoning Code, and Ch. 27 Shoreland Zoning Code variances)

- 1. Criteria: 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.**

- a. Finding(s): Without the granting of a variance there is no compliant building location on the property.
2. **Criteria: The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in questions.**
 - a. Finding(s): This property does not have sufficient depth to allow for construction in a compliant location.
3. **Criteria: 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.**
 - a. Finding(s): The request is to replace an existing garage. The setbacks in question will be increased from what currently exists.

27.6-8(a) "Generally" (required for all Ch. 27 Shoreland Zoning Code variances)

1. Criteria: The variance is consistent with the purpose of the Shoreland Zoning Code.

- a. Finding(s): The required shore yard setback does not allow for a compliant building location on the property. The shore yard setback will increase from what currently exists.

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 been met.

Vote on the Motion: A. Schroeder, aye; S. Drexler, aye; T. Verstegen, aye; D. Weiss, aye.

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

II. Joseph Hall – Town of Wolf River

A variance was requested to construct a stairs and patio with substandard shore yard setbacks.

The committee discussed the access allowance for a walkway from the Shoreland Zoning Code, approval of the piers by the DNR, access and safety concerns.

A motion was made by D. Weiss to deny the variance.

Motion seconded by T. Verstegen.

The findings used to deny the variance have been made in accordance with section 23.7-234, **CRITERIA AND FINDINGS**

23.7-234 "Basis of decision" (required for all Ch. 23 Town/County Zoning Code, Ch. 26 Floodplain Zoning Code, and Ch. 27 Shoreland Zoning Code variances)

1. **Criteria: 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.**
 - a. Finding(s): There is a permitted bait shop currently on the property. A landing for ingress and egress as well as a walkway to the water are allowed without a variance.
2. **Criteria: The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in questions.**
 - a. Finding(s): The property has very limited depth from the road right-of-way to the Ordinary High Water Mark. There is no compliant location on this property within the required setbacks.
3. **Criteria: 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.**
 - a. Finding(s): A landing for ingress and egress as well as a walkway to the water are allowed without a variance. Large steps or patios are not allowed within the shore yard setback on neighboring properties.

27.6-8(a) "Generally" (required for all Ch. 27 Shoreland Zoning Code variances)

Criteria: The variance is consistent with the purpose of the Shoreland Zoning Code.

- a. Finding(s): The request is not consistent with the Shoreland Zoning Code. The Code allows for a 4' walkway to the Ordinary High Water Mark. Other structures, such as patios, are required to meet the shoreyard setback.

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.

Vote on the Motion: T. Verstegen, aye; A. Schroeder, aye; S. Drexler, aye; D. Weiss, aye.

Motion carried by a 4-0-1-1 (absent Forbes, excused Kargus) vote. **Variance denied.**

III. Matthew Gettendorf – Town of Neenah

A variance was requested to allow substandard fill to bring a property into floodplain compliance as well as to construct retaining walls and a patio with substandard shore yard setbacks.

A motion was made by S. Drexler to grant the request for the substandard fill and retaining walls as requested but to deny the variance for the patio. The following conditions were recommended:

1. Downspouts shall be directed to the lake.
2. Swale and drain tile to be installed along the north and south sides of the home so that drainage from neighboring properties is not impacted.

Motion seconded by D. Weiss.

The findings used to deny the variance have been made in accordance with section 23.7-234,

CRITERIA AND FINDINGS

23.7-234 "Basis of decision" (required for all Ch. 23 Town/County Zoning Code, Ch. 26 Floodplain Zoning Code, and Ch. 27 Shoreland Zoning Code variances)

1. **Criteria: 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.**
 - a. Finding(s): Bringing the property into compliance with floodplain regulations is not possible without the granting of a variance to the floodplain fill requirements. The retaining walls allow

the fill elevation to be maintained a greater distance from the home than sloping to the property lines.

2. **Criteria: The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in questions.**
 - a. Finding(s): The property is very narrow. The placement of the existing home combined with the floodplain fill requirements do not allow for the structure to be brought into compliance with floodplain regulations without the granting of a variance.
3. **Criteria: 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.**
 - a. Finding(s): Fill and Retaining Walls - The variance requests will allow the property to be brought into compliance with floodplain regulations. The conditions will address drainage concerns from the property.
 - b. Patio - There are alternate locations on the property for a patio in compliance with required setbacks.

26.6-7(a) "Review criteria" (required for all Ch. 26 Floodplain Zoning Code variances)

Criteria: The variance is consistent with the purpose of the Floodplain Zoning Code s. 26.1-5.

- a. Finding(s): The variance will allow the property to be brought into compliance with floodplain regulations as established by the DNR and FEMA.

27.6-8(a) "Generally" (required for all Ch. 27 Shoreland Zoning Code variances)

Criteria: The variance is consistent with the purpose of the Shoreland Zoning Code.

- a. Finding(s): Retaining Walls - The retaining walls will not have adverse impact on the shore land area. They will simply serve as a means to retain floodplain fill.
Patio - There are alternative locations on the property the patio could be placed in compliance with required setbacks.

Based upon the above findings, it is the opinion of the Board that all criteria of , Article 6, Section 26.6-7 of the Floodplain Zoning Code, Article 6, Section 27.6-8 of the Shoreland Zoning Code have been met.

Vote on the Motion: T. Verstegen, aye; A. Schroeder, aye; S. Drexler, aye; D. Weiss, aye.

Motion carried by a 4-0-1-1 (absent Forbes, excused Kargus) vote. **Variance granted with conditions for the substandard fill and substandard shore yard setbacks for the retaining walls. A request for a patio with a substandard shore yard setback was denied.**

There being no other business, the meeting was adjourned at 8:25 a.m.

Respectfully submitted,

Eric Rasmussen

Eric Rasmussen, Recording Secretary