

WINNEBAGO COUNTY BOARD OF ADJUSTMENT -- DELIBERATIVE SESSION

Thursday, September 3, 2015 – 7:30 a.m.
4th Floor Conference Room, County Administration Building
112 Otter Ave, Oshkosh, Wisconsin

Members Present: Arden Schroeder, Tom Verstegen, Greg Kargus, Susan Drexler, Tom Tuschl
Also Present: Candace Bauer, zoning; Karen Fredrick, court reporter; and guests

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

Approval of Minutes

G. Kargus made a motion, seconded by T. Verstegen, to approve the meeting minutes from July 28, 2015 and August 6th, 2015. Motion to approve carried by unanimous voice vote.

A decision was made on the following request:

Dan Domrzalski – Town of Wolf River – Variance

Applicant is requesting reduced shore yard setbacks for a tiki bar area, an elevated stage, and a cooler as well as a reduced setback between structures between the cooler and an existing shed.

The Board decided that they would discuss each item separately and then make a single motion.

First, the tiki bar area was discussed. Board members talked about the temporary nature of the awning portion of the area; however, it was noted that the support structure for the awning was bolted into the ground. There was discussion regarding the patio paver's impervious or pervious nature. C. Bauer clarified that this factor did not have any bearing on shore yard setback requirements.

G. Kargus pointed out that the area developed was no closer to the water than the existing bait shop. The Board contemplated approving the awning on a temporary basis, to which C. Bauer explained the difficulties of enforcement. It was decided that if approved, no timeframe would be specified as to when the awning could be placed on the property. C. Bauer also added that the Board should specify that the awning area cannot be enclosed because that will change the applicable floodplain regulations.

The stage was discussed next. S. Drexler pointed out that it was difficult to determine a hardship in order to allow the stage to remain. She added that there is an existing patio that a band could use.

A. Schroeder mentioned that he was ok with the request if it was moved back to a 50ft shore yard setback. T. Tuschl explained that there were other options to replace the stage, especially items that would not impede water flow. C. Bauer added that anything approved would be required to meet floodplain regulations, which in this case would require the electrical box to be elevated.

Board members discussed approval of an unenclosed accessory structure with a 50ft shore yard setback. T. Tuschl inquired about how the 50ft number was chosen. A. Schroeder explained that it was a number that was previously used for variances and that it was not typical for the Board to approve anything less. C. Bauer further explained that when setback averaging is applicable, a minimum of a 50ft shore yard setback is required. C. Bauer added that setback averaging did not apply in this case because there weren't similar structures on the adjacent lots.

T. Tuschl and T. Versteegen pointed out that there are other options from the stage and that the business was not dependent on the stage's approval. G. Kargus added that this request wasn't a cut and dry residential variance as they normally see and that no one was opposed to the variance at the public hearing.

Lastly, the cooler was discussed. There was discussion on where the electrical comes from to power it. The adjacent shed (to which a variance is being requested) provides the power. A. Schroeder pointed out that this was necessary for the business. T. Versteegen said that the 10ft setback rule was predominantly for fire code reasons and the members discussed fire hazards. T. Versteegen also mentioned that there wasn't a better location for it because it would be encroaching into another setback (street yard).

Board members and staff discussed the nonconforming status of the existing shed and side yard setbacks.

Motion by T. Versteegen, seconded by G. Kargus to approve a 26ft shore yard setback from the ordinary high water mark for the patio and awning; to approve a stage structure with a shore yard setback of 50ft from the ordinary high water mark; to approve the variance for the cooler as requested with the following conditions:

- 1. Awning over patio must remain unenclosed.**
- 2. Stage must remain unenclosed.**
- 3. Stage size not to exceed 16ft x 10ft.**
- 4. Stage must be floodproofed.**
- 5. Cooler must be floodproofed.**

Vote on the motion: G. Kargus, aye; S. Drexler, Aye; A. Schroeder, aye; T. Tuschl, nay; and T. Versteegen, aye. Motion passed by a 4-1 vote. **Motion approved; variance granted not as requested.**

Findings for approval:

1. No expansion of the business outside of the existing footprint could occur without the granting of a variance.
2. The subject lot is very narrow with a 75 ft shore yard setback from the ordinary high water mark and a 30 ft street yard setback from the road right-of-way. Although structures on adjacent lots are closer to the water and road than minimum setback requirements, setback averaging does not apply as they are not similar-type structures to the commercial structures.
3. A reduction in the setback between the cooler and shed is not contrary to and will not harm the public interest.
4. The nature and location of the property is largely dependent on its access and convenience to the water. The outdoor areas of the property are already being used for seating and congregation.

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.

Upon conclusion of the agenda items, the meeting was adjourned at 8:10 a.m.

Respectfully submitted,
Candace M. Bauer
Recording Secretary