

WINNEBAGO COUNTY BOARD OF ADJUSTMENT  
DELIBERATIVE SESSION  
DATE 08/03/17

Town and/or agency's comments: 1) Town of Oshkosh approved with the following findings:

- a) The variance is necessary, as the requirement in question would unreasonably prevent the owner from using the property for a permitted purpose (building a home on the residential property).
- b) The circumstance is not self-created - the Town put in the ditch. The variance is not harmful. The 75 foot setback from the lake is maintained. The variance is for the Town created ditch.
- c) The requested variance does not cause harm to any public interest and in fact will enhance the area by allowing the property to be used as it is zoned - residential - and in a manner similar to neighboring homes.

**CRITERIA AND ADVISORY 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): Findings for approval: The property owner is proposing to combine two fifty foot lots for a building site. The imposition of a 75-ft setback from the navigable ditch clearly denies the owner any reasonable use of the lot abutting the channel lot. The circumstances were not self-created.
  - b. Findings for denial: The property owner was previously granted two variances for the lot(s) so it has been shown the owner can acquire reasonable use of 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): Findings for approval: A drainage ditch was constructed by the Town in the past adjacent to the property and was subsequently determined to be navigable which imposes a 75-ft setback requirement on a proposed 100-ft wide lot.
  - b. Findings for denial: There is sufficient buildable area on the proposed lot that would meet the setback requirements. The amount of buildable area desired is a personal preference of the property owner.
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): Findings for approval: Approval of the variance would not be contrary to or harm public interest since two individual building sites are being combined into one.
  - b. Findings for denial: Approval of the variance would be contrary to the purpose of shoreland zoning regulations.

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): Findings for approval: Approval of a 35-ft setback from the navigable ditch and eliminating one building site by requiring lots to be combined would meet the purpose and intent of the Shoreland Zoning Code.

**Based upon the above findings**, it is the opinion of the Board that all criteria of , Article 6, Section 27.6-8 of the Shoreland Zoning Code have (have not) been met.

**STAFF RECOMMENDATION**

Approval

Approval with conditions

Approval not as requested

Approval not as requested with conditions X

Denial

**ADVISORY CONDITIONS:**

1. Lots shall be combined by a certified survey map.
2. A 35-ft setback shall be maintained from the navigable ditch.
3. All impervious surface standards of the Winnebago County Shoreland Zoning Code shall be met.

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Town and/or agency's comments: 1. The FAA provided a "Determination of No Hazard to Air Navigation" to the owner.  
2. The EAA determined the structure height maintained plenty of clearance for aircraft approaching the runway.

**CRITERIA AND ADVISORY 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): Findings for approval: The proposed structure height is necessary for continued operation of the grain elevator with the infrastructure that is already in place and there is no other compliant location on the property for the grain tower.
  - b. Findings for denial: The height limitation has not prevented the property owner from acquiring reasonable use of the property to date.
  
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): Findings for approval: There is no other place on the property to locate the grain tower that will meet the height limitation imposed by the Wittman Regional Airport Zoning Code. Additionally, the critical infrastructure is already in place for the grain elevator operation.
  - b. Findings for denial: There are no unique physical characteristics that exist on the property that prevent the owner from operating the existing grain elevator.
  
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): Findings for approval: Granting of the variance will not harm public interest given the fact that the FAA concluded there would be no hazard to air navigation.
  - b. Findings for denial: Granting of the variance will be contrary to the purpose of the Wittman Regional Airport 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 have (have not) been met.

**STAFF RECOMMENDATION**

Approval

Approval with conditions X

Approval not as requested

Approval not as requested with conditions

Denial

**ADVISORY CONDITIONS:**

1. Lighting shall be provided at the top of the structure.
2. The proposed 190-ft structure shall include the height of the lighting apparatus.

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Town and/or agency's comments: 1. The Town of Wolf River approved with the following findings:  
a) No objection from neighbors.  
b) In line with variances granted to neighbors.  
c) Positively influence tax base.

**CRITERIA AND ADVISORY 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): Findings for approval: There is no compliant location to locate a garage that will meet both of the 75-ft shoreyard setbacks and a 30-ft setback from the road. However, the 10-ft setback requirement between structures could be met.
  - b. Findings for denial: A smaller garage could be designed to meet three of the four setback requirements without the need for 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): Findings for approval: The subject property is bordered by a lake and a channel creating setback requirements that exceed the total lot depth in some places.
  - b. Findings for denial: Property is already developed and the existing non-conforming structures are protected by the County's Shoreland Zoning Code.
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): Findings for approval: The proposed garage location is similar to the existing pattern of development in the area so public interest will not be harmed.
  - b. Findings for denial: Granting of the variance would be contrary to the general purposes of shoreland zoning regulations.

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): Findings for Approval: The proposed location of the garage would meet the purpose and intent of the Winnebago County Shoreland Zoning Code and the structure would still have to meet impervious surface standards contained in the code. However, the proposed location of the garage will a substandard setback between structures would not meet the purpose and intent of the Winnebago County Town/County 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, Article 6, Section 27.6-8 of the Shoreland Zoning Code have (have not) been met.

**STAFF RECOMMENDATION**

Approval

Approval with conditions

Approval not as requested X

Approval not as requested with conditions

Denial

**ADVISORY CONDITIONS:**

1. Structure shall not exceed impervious surface standards found in the Winnebago County Shoreland Zoning Code.
2. Structure shall be built in accordance with flood plain regulations.