

CARY A ROWE  
Zoning Administrator



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Winnebago County  
Zoning Department

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The Wave of the Future

**VARIANCE # 2019-VA-4900**

Owner: JUEDES TST, WALTER J ; LAST TST, SUSANNA K  
1041 MT VERNON ST  
OSHKOSH, WI 54901

Agent: YATES, WILLIAM S  
1899 COTTONTAIL DR  
OSHKOSH, WI 54904

Location: 4606 ISLAND VIEW DR  
OSHKOSH, WI 54901

Tax Parcel No: 018-2228, 018-2227

Legal: Being a part of the plat of Fairview Beach, Lots 24 and 25, located in Government Lot 2, Section 30, Township 19 North, Range 17 East, Town of Oshkosh, Winnebago County, Wisconsin.

On 8/8/2019, a variance was APPROVED with Conditions for Applicant's request for

1. a 35' setback to a navigable waterway where 75' is required (to the navigable ditch south of the proposed house).
2. 7' of fill for floodproofing on the north side of a new home construction proposal where 15' is required. (Along with a small retaining wall)

**Conditions:**

Town:

Must maintain the existing 35' vegetative buffer along both shorelines.  
Lots will need to be combined before any permits are to be issued.

County:

**JUEDES TST, WALTER J ; LAST TST, SUSANNA K *must sign and return this letter to the Winnebago County Zoning Dept, 112 Otter Ave, Oshkosh WI 54901, within 45 days of 8/8/2019. Their signature states that they are in agreement with the conditions that have been placed on the Variance. Failure to sign and return the decision notice within 45 days of the committee's decision shall void the approval. The decision notice shall become effective upon the property's owner signature.***

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JUEDES TST, WALTER J

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LAST TST, SUSANNA K

The findings used to grant the variance have been made in accordance with Section 23.7-234 and are as follows:

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.**

Findings for Approval: The property owner has been unable to find buyers willing to purchase without a variance while the "navigable" stream was created on the neighboring property as a "drainage ditch" by the Town of Oshkosh without this property owner's input.

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

Findings for Approval: Since the Town of Oshkosh created the "navigable" stream with the intention of creating a drainage ditch without this property owner's input, no reasonable home can be built without some variance.

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.**

Findings for Approval: Construction can be done in such a way as to direct water away from the stream. Other property owners would not be affected.

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

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

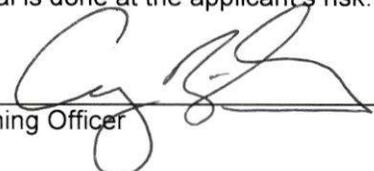
**APPLICANTS RIGHTS:**

23.7-239(a)

- (7) The applicant may appeal the decision to a court of competent jurisdiction.
- (8) An aggrieved person, other than the applicant, may appeal the decision to a court of competent jurisdiction and that any work done by the applicant as authorized by the approval is done at the applicant's risk.

8/8/2019

Date

  
Zoning Officer

**NOTES:**

1. Variance granted by the Board of Adjustment **shall expire within twelve (12) months** unless substantial work has commenced pursuant to such grant. Board of Adjustment may with cause grant a one-time extension not to exceed 6 months.
2. Approval of your variance application does not exclude the need to obtain the required building or zoning permits. **Please make application for these permits through your town building inspector and zoning department.**

# Winnebago County Planning and Zoning Department

## NOTICE OF PUBLIC HEARING BOARD OF ADJUSTMENT 7/30/2019

### TO WHOM IT MAY CONCERN:

The applicant(s) listed below has requested a variance which is regulated by one or more of the following ordinances: Chapter 23, the Town/County Zoning Code, Chapter 26, the Floodplain Zoning Code, and Chapter 27, the Shoreland Zoning Code. You are receiving this notice because this application or petition for action: 1. affects area in the immediate vicinity of property which you own; 2. requires your agency to be notified; 3. requires your Town to be notified; or 4. requires you, as the applicant, to be notified.

The Winnebago County Board of Adjustment will be holding a public hearing on 7/30/2019 at 5:30 p.m. in Conference Room 120 of the County Administration Building located at 112 Otter Ave, Oshkosh, WI.

All interested persons wishing to be heard at the public hearing are invited to be present. For further detailed information concerning this notice, contact the Town Clerk or the Winnebago County Zoning Office, where the application is available for viewing.

### INFORMATION ON VARIANCE REQUEST

**Applicant:**

JUEDES TST, WALTER J  
LAST TST, SUSANNA K

**Agent:**

YATES, WILLIAM S

**File Number:**

2019-VA-4900

**Location of Premises:**

4606 ISLAND VIEW DR  
OSHKOSH, WI 54901

**Tax Parcel No.:**

018-2228  
018-2227

**Legal Description:**

Being a part of the plat of Fairview Beach, Lots 24 and 25, located in Government Lot 2, Section 30, Township 19 North, Range 17 East, Town of Oshkosh, Winnebago County, Wisconsin.

**Description of Proposed Project:**

Applicant is requesting a variance for a reduced setback to navigable water and reduction in the amount of fill to floodproof a new home proposed for construction within the 100 year floodplain.

<b>DESCRIPTION:</b>	<b>CODE REFERENCE:</b>	<b>REQUIRED:</b>	<b>PROPOSED:</b>
Applicant is seeking a 35' setback to a navigable waterway where 75' is required (to the navigable ditch south of the proposed house) Applicant is also seeking 7' of fill for floodproofing on the north side of a new home construction proposal where 15' is required. (Along with a small retaining wall)	Chapter 27, Article 6.1 of the Shoreland Zoning Code Chapter 26, Section 26.5-23(b)	75' 15'	35' 7'

**INITIAL STAFF REPORT**

**Sanitation:**

Existing System  
Private System

**Overlays:**

Floodplain  
Shoreland

**Current or Proposed Zoning:**

R-1 Rural Residential

**Code Reference:**

Chapter 27, Article 6.1 of the Shoreland Zoning Code  
Chapter 26, Section 26.5-23(b)

**Description of Proposed Use:**

Applicant is requesting a variance for a reduced setback to navigable water and reduction in the amount of fill to floodproof a new home proposed for construction within the 100 year floodplain.

**Surrounding Zoning:**

**North:** R-2

**South:** R-2

**East:** Lake Winnebago

**West:** City of Oshkosh

**THE FOLLOWING INFORMATION HAS BEEN PROVIDED BY THE OWNER / APPLICANT**

**Describe your project, include the proposed dimensions and setbacks:**

To sell lot for a residential single family house. Setback of 75' from the lake, 30' setback from the road, 15' side setback from southern lot line, and 15' setback from the northern lot line for building site. I also need a variance for retaining wall on north and southern borders. The proposed building drawings are attached. Please see attached proposed home footprint.

To sell lots for residential, single family house. The minimum required 15 feet Flood Plane fill cannot be maintained for proposed structure. Infringement will only take place on the north side of the lot.

**Describe how compliance with the requirement in question unreasonably prevents or restricts development of a permitted use on the property:**

There is a small man-made swale to south that is now a navigable stream. That was the original location of a house that was torn down by the county for use as a drainage swale. Without a variance, the property will have little or no value and the property owner will not be able to sell it. If the current setback of 75 feet is in place, no buyer will be able to build a suitable residence.

Compliance with requirements will impede on size and design of proposed home on north side. All other flood plane requirements will be maintained on the remaining three sides.

**Describe the unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question:**

DNR had determined Lot 23 is now navigable stream, and FEMA has determined that Lots 24 and 25 are in flood plane. The current setback would leave no area to build a residence.

Due to an additional navigable waterway setback variance, the proposed home is placed northward on the lots which creates the flood plane infringement.

**Describe how the granting of the requested variance will not harm the public interest or have adverse affects on surrounding properties:**

This is the only lot that is buildable left on the beach. All other properties have been developed. This was a private lot for over 75 years and in our family for 50 years. It is not close to any neighbors, and the town owns the lot to the south with the ditch on it. In, 1934, it was platted, and we have owned it since 1967. The proposed residence will be similar in style and setback locations to other properties to the north and south of it, and it will not look out of place pursuant to the attached drawings.

Granting of the Flood plane fill variance will not impede on adjoining properties. Proper drainage practices will be adhered to as to not infringe additional drainage from proposed house or land onto adjoining private, public or county properties. Ref. Ch. 26 S. 23(1) Provided

## SECTION REFERENCE AND BASIS OF DECISION

### Town/County Zoning Code

#### **23.7-234 Basis of decision**

When making its decision, the Board of Adjustment shall consider each of the following standards:

- (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.
- (2) The subject property has unique physical characteristics or limitations that prevent the property from being developed in compliance with the requirement in question.
- (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 board shall grant a variance only if the board can make an affirmative finding for all of the criteria listed in this section.

### **Floodplain Zoning Code**

#### **26.6-7 Variances**

(a) **Review criteria.** The Board of Adjustment may, upon appeal, grant a variance from the standards of this chapter if an applicant convincingly demonstrates that (1) literal enforcement of this chapter will cause unnecessary hardship; (2) the hardship is due to adoption of the floodplain chapter and unique property conditions, not common to adjacent lots or premises—in such case the chapter or map must be amended—; (3) the variance is not contrary to the public interest; and (4) the variance is consistent with the purpose of this chapter in s. 26.1-5.

(b) **Additional criteria.** In addition to the criteria in subsection (a), to qualify for a variance under FEMA regulations, the following criteria must be met:

- (1) The variance shall not cause any increase in the regional flood elevation;
- (2) Variances can only be granted for lots that are less than 0.5 acres and are contiguous to existing structures constructed below the regional flood elevation;
- (3) Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts, and shall not be contrary to the purpose of the chapter.

(c) **Limitations.** A variance shall not (1) grant, extend, or increase any use prohibited in the zoning district; (2) be granted for a hardship based solely on an economic gain or loss; (3) be granted for a hardship which is self-created; (4) damage the rights or property values of other persons in the area; (5) allow actions without the amendments to this chapter or map(s) required in s. 26.6-4; or (6) allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

### **Shoreland Zoning Code**

#### **27.6 -8 Variances**

(a) **Generally.** The Board of Adjustment may, upon appeal, grant a variance from the standards of this chapter if an applicant convincingly demonstrates that (1) literal enforcement of this chapter will cause unnecessary hardship; (2) the hardship is due to unique property conditions, not common to adjacent lots or premises; (3) the variance is not contrary to the public interest; and (4) the variance is consistent with the purpose of this chapter.