



**ROCK COUNTY BOARD OF ADJUSTMENT**  
**Tuesday – June 25, 2019 - 6:00 PM**  
**COURTHOUSE CONFERENCE CENTER, SECOND FLOOR**  
**ROCK COUNTY COURT HOUSE**  
**JANESVILLE, WI**

**AGENDA**

1. Roll Call
2. Adoption of the Agenda
3. Reading and Approval of Minutes of Board of Adjustment meeting held March 26th, 2019.
4. Reading and Approval of Findings of Fact from Last Meeting
  - a. John and Carol Brey
5. Announcement of Decision from Last Meeting
  - a. John and Carol Brey
6. Communications
7. Reports of Committees
8. Deliberation of Cases
  - a. David Mastos
9. Unfinished Business
10. New Business
11. Adjournment



ROCK COUNTY BOARD OF ADJUSTMENT  
Tuesday – June 25, 2019 – 6:00 PM

ORDER OF PRESENTATION FOR GENERAL HEARING

1. State nature of the case by the Chair.
2. Applicant presents case.
3. Questions by Board Members to applicant.
4. Zoning Administrator/Corporation Counsel rebuttal.
5. Questions by Board Members to Zoning Administrator/Corporation Counsel.
6. Statements verbal or written by interested parties.
7. Questions by Board Members to interested parties in attendance.
8. Applicants rebuttal to Zoning Administrator/Corporation Counsel and/or interested parties in attendance.
9. Zoning Administrator/Corporation Counsel rebuttal to applicant and/or interested parties in attendance.

**Attention BOA Members:** *If you are unable to attend this meeting, please inform the Planning and Development Agency as soon as possible. Please also inform the Agency if a particular case or cases on the agenda may constitute a conflict of interest for you.*

*Section 4.1208(3) of the Rock County Code of Ordinances (The Board of Adjustment Rules and Procedures) states, in part, that a member having a personal interest in the subject of the hearing which may affect his/her ability to act impartially shall not participate. Furthermore, any member or other person who believes a conflict exists shall bring the question to the attention of the Chair prior to commencement of the hearing. The Chair shall make the final ruling on whether a conflict exists.*

*BOA Members are encouraged to visit and view the site subject to an application at his/her discretion. However, as per the Rules of Evidence (4.1208(4)(F)), members shall base any decision in a matter coming before the Board solely on those facts established in the record during the public hearing and shall refrain from communications of any sort with any interested party regarding a pending case. If a site visit results in information not presented in the application or at the hearing or if communication is had prior to the hearing, members are encouraged to inform the Board so that a determination can be made as to whether the information should be considered formal evidence in the case.*

# Rock County Board of Adjustment

## Standards for Evaluating Variances

The variance procedure allows the dimensional standards in an ordinance to be varied in response to unusual circumstances, which constitute unnecessary hardship. Variances are not to be granted routinely. **The applicant for a variance must clearly show the Board of Adjustment/Appeals that three statutory standards that govern the granting of a variance will be met.** These three standards require the existence of unnecessary hardship, the presence of a unique property limitation, and the protection of the public interest.

### 1. Unnecessary Hardship

Unnecessary hardship is a situation where, in the absence of a variance, an owner can make no feasible use of a property, or strict conformity is unnecessarily burdensome. Board members must judge what is feasible use for a particular parcel as a whole. A variance is not warranted if the physical character of the property allows a landowner to build or develop in compliance with the zoning ordinance.

- (A) The hardship or difficulty must be peculiar to the zoning parcel in question and different from that of the other parcels, not one that affects all parcels similarly. Hardship arises because of some unique property limitation of a parcel, or because the property was created before the passage of the zoning ordinance. If either circumstance renders the parcel unsuitable for any use permitted under the existing ordinance – if all area, yard and setback requirements are observed – the parcel may qualify for a hardship.
- (B) Loss of profit or pecuniary (financial) hardship is not and of itself grounds for a variance.
- (C) Self imposed hardship is not grounds for a variance. Reductions resulting from a sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, deed restrictions imposed by the owner's predecessor in title, and improvements that were made in violation of the ordinance are generally considered to be self-imposed hardships.
- (D) The hardship cannot be one that would have existed in absence of a zoning ordinance. Sometimes, a legitimate hardship results from the interaction of the provision of the zoning ordinance with other actions or regulations adopted by public authorities.

Notes:

## **2. Unique Property Limitation**

Unique Property Limitations where unique physical characteristics of the property, not the desires of or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. These features may be wetland, soil type, parcel shape, or a steep slope that limits the reasonable use of the property.

Notes:

## **3. Protection of the Public Interest**

Protection of the Public Interest is where granting a variance must neither harm the public interest nor undermine the purpose of the ordinance. The Board actions should be consistent with the "Purpose" and "Intent" sections stated in this Ordinance. The public interest includes the interests of the public at large, not just that of nearby property owners. Lack of opposition does not in itself mean that a variance will not harm the public interest.

Notes:

### **General considerations**

- (A) In granting variances the Board may impose special conditions to ensure that the public welfare is not damaged. The conditions must relate reasonably to the purpose and intent established in this ordinance.
- (B) A variance should include only the minimum relief necessary to relieve zoning regulations deemed to be unnecessarily burdensome on the property.
- (C) Violations by or variances granted to neighboring owners do not justify variance.
- (D) Variances are attached to the property as a permanent right. Once a variance has been granted, it is permanently attached to the property. A new owner of the property may make use of the variance that was granted to the previous owner if all the conditions that are attached to the variance are met.

**ROCK COUNTY BOARD OF ADJUSTMENT  
MARCH 26<sup>TH</sup>, 2019  
COURTHOUSE CONFERENCE ROOM 2<sup>ND</sup> FLOOR  
ROCK COUNTY COURTHOUSE  
JANESVILLE, WISCONSIN**

**MINUTES**

Vice Chair Lengjak called the March 26th 2019 meeting of the Rock County Board of Adjustment to order at 6:00 p.m. at Courthouse Conference Center Second Floor.

Board of Adjustment members in attendance at roll call: JP Lengjak, Rich Plywacz, David Diestler and Michael Saunders. Quorum Present.

Development staff in attendance: Colin Byrnes (Planning Agency Director), Andrew Baker (Rock County Zoning Administrator), Kurt Wheeler (Planner III /Acting Secretary), and Corporation Counsel Richard Greenlee.

Others in attendance: John and Carol Brey, Attorney Matt Fleming.

**Adoption of Agenda:**

**Motion** by Rich Plywacz to adopt the agenda, **Seconded** by David Diestler. Adopted (4-0)

**Reading and Approval of the Minutes –April, 2018:**

**Motion** was made by Mike Saunders to approve the minutes, **Seconded** by Rich Plywacz.  
Minutes approved. (4-0).

**Reading and Approval of Findings of Fact from previous meeting:**

Vice Chair Lengjak read the findings of fact from the July 24<sup>th</sup>, 2018. The members voted unanimously to approve. (4-0)

**Announcement of Decision from Last Meeting**

Vice Chair Lengjak read the decision from the last meeting to all in attendance.

**Communications:**

None

**Reports of Committees:** None

## **Deliberation of Cases: John and Carol Brey**

Chair Lengjak read the Legal Notice to all in attendance.

Mr. Wheeler read the three Standards for Evaluating Variances Criteria and Purpose and Intent of the Ordinance (4.201) to all in attendance.

### **GENERAL DESCRIPTION**

**Description of Request:** The applicant is requesting an after-the-fact variance of the seventy-five foot Shoreland setback requirements found in Section 4.206 of the Rock County Shoreland Zoning Ordinance. The applicant has completed the construction of a deck on the property without first obtaining the necessary permit(s). The new deck extends to within approximately fifty-five feet from the River at the closest point, which would require a variance of twenty feet. Department staff noticed the deck while reviewing air photos in the area for another project and made contact with the owner/applicant regarding the ordinance standards. In this case, since the deck cannot be permitted as-is due to the setback from the water, it must be removed. The owner decided to apply for an after-the-fact variance as the first step in the appeal process.

The Board previously made a decision to deny this request in October of 2017. That decision was appealed by the owner to Circuit Court. The Court decided in October of 2018 to reverse and remand that decision back to the Board for reconsideration.

**Location:** 10427 N. Ellendale Rd.  
Part of Section 11, Fulton Township, Parcel 6-6-843  
Lots 41, 42, 43 Ellendale Subdivision

**Current Zoning/Land Use:** RL (Residential Low Density) Town of Fulton

A **Motion** to go into Public Hearing was made by Mike Saunders, **Seconded** by Rich Plywacz. Time In: 6:10 pm.

Matt Fleming; Attorney for John and Carol Brey, gave opening remarks regarding the history and current status of the project as well as case law that historically has addressed similar cases. Several air photos that were part of the agenda packet were viewed by all in attendance.

John Brey spoke next. A March 2015 Air photo was viewed, as well as a photo taken by staff (Exhibit A). Mr. Brey explained to the Board many of the structures located on the lot and their use as well as approximate time of construction. Questions and discussion followed.

With no additional questions, a discussion and individual votes on the 3 criteria and reasoning on Findings of Fact took place. The votes were as follows:

- 1). Does this case meet the unnecessary hardship test?  
3-No, 1 Yes
- 2). Does this case meet the unique property limitation test?  
3-Yes, 1 No
- 3). Does this case meet the protection of public interest test?  
3-No, 1 Yes.

A **Motion** to go out of Public Hearing was made by Mike Saunders, **Seconded** by Rich Plywacz. Time Out: 6:57 pm.

A **Motion** to Deny and reduce the deck back to the original size was made by Mike Saunders. **Seconded** by Dave Diestler. Questions and discussion followed. A vote of the members produced a (2-2) tie vote. **Motion failed.**

Mike Saunders then made a **Motion** of straight denial, **Seconded** by Chair Lengjak. A vote of the members on this motion produced another tie vote (2-2). **Motion Failed.**

After extensive discussion, Dave Diestler made a **Motion** to approve the variance with the condition that the deck be reconfigured to be no further toward the Rock River than the three season porch and no further north than the current newly built deck. This reconfiguration to a smaller deck was in an effort to provide relief to the applicant while limiting the impervious surface and visual impact of the structure. Rich Plywacz **Seconded**. After the vote, the **variance was approved (3-1).**

### **Findings of Fact:**

#### **1. Unnecessary Hardship/Unnecessarily Burdensome**

The Board considered and discussed whether or not the limitations created by the setback requirements are unnecessarily burdensome to the applicant. In this particular case, after considering the proposed use of the deck, safety issues associated to the terrain and useable area for recreation, the board did consider this unnecessarily burdensome. Approving a deck that extends no closer to the River than the existing porch, rather than the size proposed by the applicant, reflects the minimum relief necessary to relieve said burdens.

#### **2. Hardship due to Unique Property Limitation**

The Board carefully considered whether property limitations are unique as applied to the specific request. It was the opinion of the Board that the Brey's property did have unique property limitations based on the slope, the location of the existing residence and lot configuration that adjoining lots in the immediate area did not.

#### **3. Protection of the Public Interest**

The Board considered and discussed whether or not granting the variance as described in the motion of a reduced size would still meet the "Protection of the Public Interest" criteria. Based on the discussion and information supplied by

the applicant, the Board felt the approval of variance to allow a smaller deck than that proposed by the applicant (that would no further encroach the Shoreland setback farther than the existing primary residence's screened in porch) would not harm the Public Interest in this particular case.

**Unfinished Business:**

Mr. Baker informed the Board that two members term of service will be expiring in June 2019.

**New Business:**

None

**Motion** to Adjourn made by Mike Saunders, **Seconded** by Rich Plywacz.  
All in Favor. **Time: 7:58 pm.**

Respectfully Submitted,  
Kurt Wheeler, Acting Secretary Rock County Board of Adjustment

**These Minutes are not official until approved by The Rock County Board of Adjustment**





June 12, 2019

## LEGAL NOTICE

Notice is hereby given that the Rock County Board of Adjustment will hear a request for a variance of the Rock County Shoreland Overlay Zoning Ordinance Section 4.205 related to minimum lot size in an unsewered area. The property owner/applicant (David Mastos) is requesting a variance from the standard 20,000 square foot minimum lot size to combine two and a half existing lots via a Certified Survey Map totaling 19,665 square feet.

The property is located in part of Section 11, Fulton Township, Parcel 6-6-1327. The address for the project (also the owner's primary address) is 10623 N Watts Springs Park Rd, Edgerton.

The Public Hearing will take place in Courthouse Conference Center, Room 250, Second Floor, the Rock County Courthouse, 51 S. Main Street, Janesville, WI at 6:00 PM on Tuesday, June 25th, 2019. Interested parties are encouraged to attend.

Please contact the Rock County Planning & Development Agency with any questions or comments at 608-757-5587.

Andrew Baker  
Senior Planner – Rock County Planning, Economic & Community Development