

**ROCK COUNTY BOARD OF ADJUSTMENT  
APRIL 26, 2017  
COURTHOUSE CONFERENCE CENTER  
SECOND FLOOR, ROCK COUNTY COURTHOUSE  
JANESVILLE, WISCONSIN**

**MINUTES**

Chair Jones called the April 26th, 2017 meeting of the Rock County Board of Adjustment to order at 6:00 p.m. at Courthouse Conference Center

Board of Adjustment members in attendance at roll call: Mike Saunders, JP Lengjak, Harry O'Leary, Jo Miller and Chairman Don Jones. Rich Plywatz was excused.

Development staff in attendance: Andrew Baker (Senior Planner/Zoning Administrator), and Kurt Wheeler (Planner III /Acting Secretary), and for a portion of the meeting Colin Byrnes (Planning and Development Director).

Others in attendance: Mike Murphy, Lucille Murphy, John Borgwardt, Paul Williams, Theoni Leventis and Son.

**Adoption of Agenda:**

**Motion** by Harry O'Leary to adopt the amended agenda, **Seconded** by J. P. Lengjak  
Adopted (5-0)

**Reading and Approval of the Minutes –March 28, 2017:**

**Motion** was made by Mike Saunders to approve the minutes, **Seconded** by Jo Miller.  
Minutes approved. (5-0).

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

Chair Jones read the findings of fact from the previous March 28, 2017 meeting. **Motion** by Jo Miller to approve the findings of fact from last meeting, **Seconded** by J.P. Lengjak. The members voted unanimously to approve.

**Announcement of Decision from Last Meeting**

Chair Jones read the decisions from the last meeting to all.

**Communications:**

Mr. Wheeler stated that he and Mr. Baker attended the spring conference of the Wisconsin County Code Administrators Association in March and distributed a Wetlands brochure to the Board for their reading.

**Reports of Committees:** There were no reports of committees at this time.

## **Deliberation of Cases:**

### **a. John Borgwardt**

Board member J.P. Lengjak read Mr. Borgwardt's variance application to all present. Mr. Borgwardt was sworn in by Chairman Don Jones. Mr. Borgwardt is requesting a new driveway on an Access Controlled Hwy which does not meet the required separation distance between existing driveways for the purposes of creating a new buildable lot. Mr. Borgwardt referenced page 11 of the agenda packet describing the purpose of his variance request and the obstacles involved in his securing a permit for a new driveway location on an access controlled highway.

Discussion followed. Mr. Borgwardt distributed 5 packets (Exhibits 1-5) to the Board containing photos of the site along with a preliminary map of the proposed land division of his property.

The committee asked Mr. Borgwardt several questions pertaining to the location of the current driveway, septic system, and possibilities of using a joint driveway situation in which to offer access to N. CTH M. Discussion followed.

Paul Williams spoke on behalf of Mr. Borgwardt stating that he was here to support Mr. Borgwardt's request.

Mr. Baker explained the application and clarified the specific request being made to the Board. The key points are that the applicant is requesting a new driveway to allow for the division of a new buildable lot from an existing parcel which already has an access point on the Highway. The standard that would be varied is the 600 foot required separation distance between access points. This standard is applicable regardless of whether or not there is adequate/safe site distance.

After final questions and discussion, Board member Lengjak made a motion to deny the variance request, Seconded by Mike Saunders. The vote was unanimous to deny the variance (5-0).

### **Findings of Fact:**

#### **1. Unnecessary Hardship**

In this particular case, the Board felt it was difficult to meet the unnecessary hardship standard because the existing parcel is already developed with an approved access onto the Access Controlled Highway. The current owner's desire to subdivide the property and create a second, new, buildable lot would generally fall into the category of self-imposed or financial hardship. The applicant also has the ability to pursue obtaining a joint/share driveway to serve a potential new lot.

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

This standard is based on the physical characteristics of the property. In this case, the applicant is requesting that required separation or spacing between driveways be varied. The Board felt the fact that the owner desires to create a new buildable lot does not constitute a unique property limitation which prevents full compliance with the Ordinance.

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

It was the Board's opinion that the purpose and intent of the Ordinance may be undermined based on the proposal. Approving a large variance (67% reduction in this case) is questionable in most cases and would not be considered the minimum relief necessary in the case. Also, approving an additional

access for a property (or an access for a new property) that does not meet ordinance standards directly conflicts with the purpose and intent of the Ordinance.

**b. Michael Murphy**

Mr. Murphy's variance application was read to the committee by member Lengjak. Mr. Murphy was sworn in by Chair Jones. Mr. Murphy is requesting a variance of the road set back requirement along a County Highway as it relates to building a new house on an existing farmstead. Mr. Murphy presented details of the request to the committee, referencing page 18 of the agenda packet and discussion followed regarding the existing conditions and proposed layout of the new house. Mr. Baker explained the right of way issues associated with the request and the fact that setbacks are measured 75 feet from the right of way or 115 from the centerline from the road, whichever is greater.

Committee members asked several questions pertaining to the locations of the proposed structures of the project, topography of the site, and physical characteristics of the land. Discussion followed.

Mr. Baker summarized his staff report for the Board. He explained that the applicant can meet the 115 foot setback from the centerline, but is short approximately 17 feet on the setback from the right of way due to the larger than normal right of way in this location.

After further discussion a motion to approve the variance request with conditions was made by Jo Miller, Seconded by Harry O'Leary with a friendly amendment to increase the time frame of condition #2 to 9 months to assure completion of the project within a reasonable timeframe.

The Board agreed and voted unanimously to approve the variance request with the following conditions:

1. The structure is located no closer than one hundred and fifteen feet from the centerline of Hwy N.
2. The applicant obtains any and all necessary approval and/or permits from other entities with jurisdiction including the Town of Milton within ninety days and substantially completes the project within nine months of the date of the decision.

**Findings of Fact:**

**Unnecessary Hardship**

The Board felt that strict conformity to the ordinance would not prohibit the building of a residence on this parcel, though doing so would require it to be located generally in an area with physical or environmental constraints as outlined in the Staff recommendation. This includes utilizing the existing driveway, kettle topography on the western portion of the property which results in wet soils, and the layout of existing buildings on site.

**Unique Property Limitation**

As noted above, the Board felt, the property had unique property limitations. This limitation narrows the possible building area to roughly one acre, which is already partially developed with existing buildings. Additionally, there is a substantially wider road right of way in this location than is normally found along County Highways. In

many instances in rural areas, there is no dedicated right-of-way and therefore setbacks are measured solely from the road centerline. In this case, the proposed location meets the required setback from the centerline, but the additional right-of-way width requires that the residence be moved further back than typically would be required.

### **Protection of the Public Interest**

It was the Board's opinion that the purpose and intent of the Ordinance can be met and public welfare will generally not be effected with the less than standard setback from the Highway. The character of the neighborhood will not be changed as long as the other Ordinance standards are maintained because there are many properties developed closer to the Highway. The Board also stated that it was an improvement to have the new house set back further than the former house on the property.

### **c. Theoni Leventis**

Ms. Leventis' application was read to the Board, and Chair Jones swore in Ms. Leventis. Ms. Leventis is requesting an after-the-fact variance to allow the construction of a deck the property to be completed. The deck extends ten feet from the house to within 55 feet of the Rock River and the setback required is 75 feet.

Ms. Leventis described the history of the structure, patios and retaining walls on site and events leading up to the construction of the non-conforming deck project at the site. A previous owner constructed a series of retaining walls and other structures down the slope to the river, which are now falling apart. This includes the steps leading from the house to the patio adjacent the house. By constructing the deck she is attempting to address safety concerns walking out of the house and intends to address the old patios and retaining wall structures one step at a time down the slope. Ms. Leventis entered two letters of support sent by neighbors into evidence as exhibits 1 and 2. Discussion followed.

Ms. Leventis' Son was sworn in and offered additional facts and information about the deck and site to the Board based on two County Photos (E and A) on the computer screen. Ms. Leventis Son also submitted 5 packets of photos of the site labeled Exhibits 1-5.

After lengthy discussion from Board members Saunders, O'Leary, and Lengjak, Mr. Baker was asked to provide Staff's position on the variance request. Staff was made aware of this deck under construction simply by driving by and noticing it from the road. The applicant was very responsive to letters and chose to request the after-the-fact variance rather than remove the deck. Mr. Baker explained that the deck cannot be permitted as built because it is within the 75 foot setback area. Mr. Baker explained that he and Mr. Byrnes had been out to the site a number of years ago to view the existing structures and relayed to Ms. Leventis at the time the limitations to doing construction or earthwork along the shoreline. Mr. Baker reiterated that the Board should consider this request as if the deck was not already nearly completed. Staff also recommended that the Board consider whether this request was the minimum relief necessary. The Board discussed how this case was similar (and different) to a recent request in which they voted to approve a deck within the setback area but it was reduced in size compared to that applicant's request.

After discussion, a motion to approve was made by Harry O'Leary to approve, Seconded by Jo Miller. Discussion in support of the motion included that the deck was being placed over an existing patio, it was not the closest structure to the water in the neighborhood, the variance request was only approximately a 27% reduction of the standards and the structure is high above the elevation of the River therefore not as much of an impact.

Board members speaking in opposition to the approval of the variance stated that they should adhere to strict enforcement of the required setback and approve only minimal variances when determined to be appropriate relief through the application of the three standards. In this regard, Board members made reference to the points made by Staff in the report.

The vote to approve failed on a (3 No) - (2 Yes) vote. Variance Denied.

**Findings of Fact:**

**1. Unnecessary Hardship**

In this particular case, the Board felt that the applicant was unable to meet the unnecessary hardship standard. The Board considered whether or not the limitations created by the setback requirements are unnecessarily burdensome to the applicant. It was not considered a hardship or unnecessarily burdensome to not build a deck within the setback area

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

The property is already improved with a residential structure, garage and patio area. It was the Board's opinion that there are other options to mitigate the safety concerns in the area rather than building the large deck.

**3. Protection of the Public Interest**

It was the Board's opinion that the purpose and intent of the Shoreland Zoning Ordinance would be undermined based on the proposal. The Shoreland setback is specific standard intended to regulate development adjacent to the waters of the state. Approving a variance that does not meet all three tests would undermine the purpose and intent of the Ordinance.

**Unfinished Business:**

Board of Adjustment training opportunities were discussed with Staff and Board members.

**New Business:**

Mr. Byrnes communicated to the Board that Chair Jones' and Mr. O'Leary's terms were set to expire in June, and that he was looking for potential candidates to fill their seats based on the desire of the County Board Chair to periodically have turn over in all appointed committees.

**Motion** to Adjourn made by Harry O'Leary, **Seconded** by J.P. Lengjak.  
All in Favor. **Time: 8:03 pm.**

**Respectfully Submitted, by Kurt Wheeler, Acting Secretary**

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