

**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**