

ROCK COUNTY BOARD OF ADJUSTMENT
June 29, 2016
COURTHOUSE CONFERENCE CENTER
SECOND FLOOR, ROCK COUNTY COURTHOUSE
JANESVILLE, WISCONSIN

MINUTES

Chair Jones called the June 29th, 2016 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: Francette Hamilton, Jo Miller, JP Lengjak, Chairman Don Jones.

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

Others in attendance: Randy McClure, Katherine Wintlend, John Sheck, Wes Millar, Jeremy Bilhorn, Sam Bilhorn, Becky Fjelstad, Jim Raymond, Dick Towns, Robin Roberts, Jim Salimes, Terry Bruner, Lori Williams (Rock County Parks Director).

Due to the sudden death of Board of Adjustment member Henry (Hank) Stockwell last month. A moment of silence and remembrance was called for by the Chair Don Jones. All in attendance gave a moment of remembrance to "Hank".

Adoption of Agenda: Motion by Francette Hamilton, **Seconded** by JP Lengjak to adopt the agenda, Motion approved 4-0

Reading and Approval of the Minutes – May 25, 2016: Motion by JP Lengjak to approve the minutes, **Seconded** by Francette Hamilton. Minutes approved 4-0.

Reading and Findings of Fact from previous meeting: Phillip Monk, and Janice and John Lack.

Chair Jones read the decision and findings of fact from the last meeting (Phillip Monk, and Janice and John Lack with conditions) to all in attendance. **Motion** to approve by JP Lengjak, **Seconded** by Francette Hamilton. Approved (4-0).

Communications: None

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

Deliberation of Cases:

A. Katherine Wintlend

General Description: The applicant is requesting a variance of the setback requirement from a local road, which would result in a front yard setback of ten feet rather than the required twenty-five (or a variance of fifteen feet). The applicant is also requesting that a minor variance to the seventy-five foot shoreland setback be considered if deemed necessary at the meeting based on review by the BOA and/or other permitting entities. As proposed, a shoreland setback variance is not necessary if the front yard setback is approved. Approval of the variance(s) would allow the agency to permit the construction of a single car detached garage in this location. These standards are found in Section 4.205 and 4.206 of the Rock County Shoreland Zoning Ordinance.

Location: Part of the SE 1/4 of Section 5, Milton Township, Lot 1 CSM Vol 36, pp 198-201, Parcel 6-13-1558.

Current Zoning/Land Use: R1 (Residential District One) Town of Milton

Chair Jones read the application information, correspondence, and portions of the staff report concerning the case. Katherine Wintlend was sworn in and provided an overview of the project. She explained that she originally planned to construct a new porch and two car attached garage, but that plan was minimized to the single car garage presented tonight after learning of the ordinance restrictions.

Discussion followed. The Board specifically discussed whether it would be better to move the garage closer to the Lake (into the Shoreland Setback) and away from the road. The proposed location would be on a generally flat piece of the property. Also discussed was the potential impact of snow plowing on a garage if placed too close to the road.

A graphic was presented as Exhibit #1 showing the project site.

Mr. Baker made reference to the staff report and recommendation included in the agenda packet and highlighted the main points of consideration.

Discussion followed again regarding the options for locating the structure.

No member of the public spoke in regard to the project.

Motion to approve the variance as presented (approximately a 10 ft setback from the road and no variance of the 75 ft Shoreland Setback) with conditions made by Francette Hamilton, Seconded by JP Lengjak. Approved (4-0).

The board considered three standards for granting a variance and utilized the staff report as a basis for Findings of Fact as follows:

1. Unnecessary Hardship

It was the Board's opinion that strict conformity to the ordinance would prohibit the building of the garage on this parcel due to the combination of the Shoreland setback and the front yard setback requirement along with the placement of the existing house on the uniquely shaped parcel. The included sketch on the 2015 air photo provides a visual. This property was originally developed prior to the adoption of the Shoreland Zoning Ordinance on two plus lots of a subdivision. The lots were combined into one CSM lot in July 2014 to make the property more conforming as a whole.

2. Unique Property Limitation

It was the Board's opinion that as noted above, the proposed garage location is on a relatively level portion of the property. Placing the garage at a greater distance from the front lot line would require that it be built in a slope that is approximately 10%. This is not necessary "steep" relative to other areas, but building this area would generate more land disturbance and likely require fill to level the garage foundation.

3. 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 affected with the less than standard setback from the road. Doing so will allow the garage to be built at the standard setback from the shoreline. 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 road than the current standard. Considering the applicant is requesting a single car garage, this request can be considered the minimum relief necessary to permit a garage on the property.

Conditions of Approval:

1. 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 six months of the date of the decision.

Deliberation of Cases:

B. Randy and Joan McClure

GENERAL DESCRIPTION

Description of Request: The applicant is requesting a variance of the setback requirement from a local road, which would result in a front yard setback of approximately five feet rather than the required fifty feet (or a variance of forty-five feet). Approval of the variance(s) would allow the landowner to reconstruct an existing detached garage in the current location. The existing garage is located entirely within the setback area. This standard is found in Section 4.205 of the Rock County Shoreland Zoning Ordinance.

Location: SW 1/4 of Section 16, Fulton Township, Lot 93 Arrowhead Shores Estates, Parcel 6-6-539.

Current Zoning/Land Use: RRS (Rural Residential Small) Town of Fulton

The applicant, Randy McClure, was sworn in and presented his case. The existing garage is physically falling down. There is no electrical service and it is not insurable. He would like to rebuild in the same location. He pointed out to the Board that his property is located on a dead end road with little traffic and there are other properties in the immediate vicinity with garages near to the road.

No members of the public spoke in regard to the project.

Mr. Baker made reference to the staff report and recommendation included in the agenda packet and highlighted the main points of consideration.

Photos from pages 27, 31, and 25 of the application packet were entered as Exhibits 2, 3, and 4 respectively.

Discussion followed.

Motion to approve with conditions made by JP Lengjak, **Seconded** by Francette Hamilton. Discussion followed. After further discussion, the motion was amended to state a maximum size of garage to 24 ft. x 24 ft. Approved (4-0)

The Board considered three standards for granting a variance and utilized the staff report as a basis for Findings of Fact as follows:

1. Unnecessary Hardship

It was the Board's opinion that strict conformity to the ordinance would prohibit the building of the replacement garage on this parcel due to the combination of the front yard setback requirement and location of the septic system field (see sketch provided by applicant in the packet for the location relative to the garage area). The septic system was upgraded in the last ten years by the previous owner. This property was originally developed prior to the adoption of the Shoreland Zoning Ordinance. The applicant was able to provide additional information as to why denial of the variance would be unnecessarily burdensome in this case.

2. Unique Property Limitation

It was the Board's opinion that as noted above, constructing a replacement garage in the current location is essentially the only area on the lot that is available and/or accessible for this type of structure. If the septic system was located in a different area, the location of the garage could be moved back in compliance with the setback requirement, but that is not possible now.

3. Protection of the Public Interest

It was the Board's opinion that the purpose and intent of the Ordinance could be met and public welfare would generally not be affected with the less than standard setback from the road. 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 road than the current standard. Considering the applicant is requesting to replace generally what is already on site, this request can be considered the minimum relief necessary to permit the garage on the property.

Conditions of Approval:

1. The applicant obtains any and all necessary approval and/or permits (based on the plans submitted at this hearing) within ninety days. In addition, the applicant must obtain the approvals and permits from other entities with jurisdiction including the Town of Fulton building inspector and substantially completes the project within six months of the date of the decision.

2. Maximum size of garage to 24 ft. x 24 ft.

Deliberation of Cases:

C. Rosati's Pizza Pub

GENERAL DESCRIPTION

Description of Request: The applicant is requesting a variance of the seventy-five foot Shoreland setback requirements found in Section 4.206 of the Rock County Shoreland Zoning Ordinance. The applicant is proposing to construct a permanent roof over a portion of the existing deck. The proposed roof (approximately fifteen by thirty feet in size) would extend to approximately sixty-eight feet from the Rock River, which results in a variance request of seven feet.

Location: NE¼ of Section 12, Fulton Township, Parcel 6-6-113.2

Current Zoning/Land Use: CH (Commercial Hwy Interchange) Town of Fulton

Rosati's General Manager; John Sheck gave an overview and rationale regarding the project and stated that many customers have asked for a covered seating area outside on the deck. He stated that they have tried temporary umbrellas and awnings, but they do not hold up well in the wind.

Staff presented photos (Pages 35, 37, 39, 38) included as Exhibits 1, 2, 3, and 4) respectively. In addition the applicant provided two additional photos labeled as Exhibits (5 and 6) respectively for project illustration purposes. The applicant stated that it would be a pergola style construction, but with a permanent roof that is tied to the existing roof lines.

Mr. Baker made reference to the staff report and recommendation included in the agenda packet and highlighted the main points of consideration.

Discussion followed regarding the fact that the previous owner received a variance to construct the portion of the deck in the Shoreland Setback area. The applicant stated that this request should be considered a modification to the previous approval and pointed out that they were only requesting to cover a portion of the deck. Board members also inquired as to how the roof would be attached to the existing structure and whether or not a foundation would be required. The applicant had not yet confirmed those details with the local building inspector. The applicant also clarified that this area would remain open with no sides.

Motion to approve with conditions by Jo Miller, **No Second**, Motion Failed.

Motion to Deny was made by JP Lengjak, **Seconded** by Francette Hamilton. Motion passed to Deny (3-1).

The board considered three standards for granting a variance and utilized the staff report as a basis for Findings of Fact as follows:

- 1. Unnecessary Hardship**

It was the Board's opinion that in this particular case, it is difficult to meet the unnecessary hardship standard. The subject property is already completely developed, partially the result of a past variance approval. The Board determined that the limitations created by the setback requirements are not unnecessarily burdensome to the applicant. In the particular case, a previous owner received a variance from the Shoreland setback and that should be considered the minimum relief necessary for development of the property. Since variances are tied to land and not the particular landowner, each subsequent landowner is not entitled to have additional variance(s) approved for the same standard based on their personal plans for the property.

2. Hardship due to Unique Property Limitation

It was the Board's opinion that there are limitations to this property because the original structure was likely built prior to the Shoreland Ordinance. However, that is the same for many in the County and not unique to this property. As mentioned above, the property is already improved with a commercial structure and land use.

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. Setback standards are in place to regulate density and limit the size of the structural improvements on the land. Furthermore, the Shoreland setback is specific standard intended to regulate development adjacent to the waters of the state.

Deliberation of Cases:

D. Fulton Congregational Church

GENERAL DESCRIPTION

Description of Request: The applicant is requesting a variance of the Shoreland, front and rear yard setback and height limitation requirements found in Section 4.205, 4.206 and 4.210 of the Rock County Shoreland Zoning Ordinance. The applicant is proposing to construct an addition to the existing Church.

Location: NE¼ of Section 18, Fulton Township, Parcel 6-6-993.1

Current Zoning/Land Use: RRS (Rural Residential Small) Town of Fulton.

The Board heard testimony from supporters of the church project as well as the contractor and associated engineer as to the cultural, historical, and technological aspects of the project.

Jim Raymond spoke in favor of the project and offered a historical perspective on the programs and uses of not only the current facilities, but the uses associated to the proposed project.

Tim Salimes, associated pastor of the church spoke in favor of the project.

Ron Combs; Surveyor provided some technical information on the historic platting of the Fulton area and church property.

Robin Roberts; Contractor explained the rationale behind the design characteristics of the project.

Project Engineer Sam Bilhorn spoke regarding the project options and later to the fact that there will be full-time supervision on site at all times.

Lori Williams; Rock County Parks Director spoke in opposition to the project based on environmental and recreational concerns that the project may create regarding the use of Murwin County Park located directly across from the project site.

Mr. Baker made reference to the staff report and recommendation included in the agenda packet and highlighted the main points of consideration. The main focus of the staff report was that the Church received a variance in the past for an addition that that should be considered the minimum relief necessary from the ordinance standards.

Elaborate discussion followed regarding the current proposal and the history of past building projects on the property and the need to protect the County Park to the west.

Motion to approve with conditions made by Jo Miller, **Seconded** by Francette Hamilton. Discussion followed. Approved (4-0)

In acting on this request, The Board discussed and determined that all three standards are met for each of the four requests based on evidence presented in the application and at the meeting. A decision as to the three standards was affirmed by developing findings of fact as follows:

1. Unnecessary Hardship

It was the Board's opinion that the limitations created by the Shoreland Zoning ordinance requirements are unnecessarily burdensome to the applicant.

It is well documented that this is a historic piece of property that was original built on long before any zoning ordinances were in place. It was the Board's opinion that fact does create a hardship. The required setbacks create a situation where this portion of the property is unbuildable for this type of land use. It was acknowledged by the Board that they considered the effort to accommodate the growing congregation on the historic property a contributing factor to the hardship.

2. Hardship due to Unique Property Limitation

It was the Board's opinion that there are limitations to this property because the original structures were built prior to the Shoreland Ordinance. The parcel is generally narrow when setback requirements are applied.

3. Protection of the Public Interest

It was the Board's opinion that the purpose and intent of the Shoreland Zoning Ordinance would not be undermined based on the proposal if care is taken during the construction process to limit impact on adjacent land.

Conditions of Approval:

1. The applicant obtains any and all necessary approval and/or permits from other entities with jurisdiction including the Town of Fulton within ninety days and substantially completes the project within six months of the date of the decision

unless alternative schedule is approved by the Board. For this case, the Board approved the project subject to a deadline of January 2017 for all permits and January 2018 to complete construction.

2. Considering the proposed addition will cross multiple lot lines, the applicant shall combine existing lots via a CSM.
3. The Shoreland Setback will be not less than 51 ft. to the river at the closest point.
4. Rear Yard Setback will not be less than the distance the main structure is at the present time (5.9 ft. rather than the 4.7 feet shown on the plans.)
5. Front Yard Setback will be as presented within the plan submitted at this meeting.
6. Overall Height of the building will be as presented at this meeting (37 ft. +/-).
7. A storm water management plan shall be developed and approved, including practices such as rain gardens. All downspouts shall be directed to these treatment areas.
8. Vegetative cover maintenance plan created to preserve vegetative cover over time as part of the project going forward to be developed in consultation with the County Parks Director.
9. No future variances allowed on the Fulton Congregational Church Site going forward in perpetuity.

Unfinished Business: None

New Business: Mr. Byrnes and Mr. Baker informed the committee that we have an applicant that has not come in for a permit within the designated timeline of the variance. Staff will make contact with that landowner to determine the status of the project.

Chair Jones recognized Francette Hamilton, whose last meeting as a Board of Adjustment member was this evening. Francette has served on the Board since 2002.

Motion to Adjourn made by JP Lengjak, **Seconded** by Francette Hamilton
All in Favor. **Time: 9:51 pm.**

Respectfully Submitted, by Kurt Wheeler, Acting Secretary

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