

**ROCK COUNTY BOARD OF ADJUSTMENT**  
**May 27th, 2015**  
**COURTHOUSE CONFERENCE CENTER**  
**SECOND FLOOR, ROCK COUNTY COURTHOUSE**  
**JANESVILLE, WISCONSIN**

**MINUTES**

Chair Jones called the May 27th meeting of the Rock County Board of Adjustment to order at 5:00 p.m. in the Courthouse Conference Center (CCC), 2<sup>ND</sup> Floor, Rock County Courthouse. Board of Adjustment members in attendance at roll call: Henry Stockwell, Francette Hamilton, and Jo Miller. Harry O'Leary and J.P. Lengjak were absent.

Development staff in attendance: Colin Byrnes (Acting Planning Director/Zoning Administrator), and Kurt Wheeler (Acting Secretary).

Others in attendance: Alan Sweeney, Bryan Meyer, Jeff Kuglitch, Sara Zimmerman, Scott Traynor, Mark Schattschneider, Michael McConnell, Karen Pominville, Bob Pominville, James Hanlon, Melody Erdman, Julie Watson, Scott White, Heather White, Brian Cross, Debra Cross, Mike Ettner, Matt Fleming, Sandra Kraft, Linda Schalk, Sandy Caley, Jace Vegter, Jan Hovland, Steve Uulich, Brandon Crandall, Alex Corkley, Rebecca Kanable, Linda Puhl, Allen Puhl, David Keber, Nancy Paske, and Quentin Carpenter.

**Adoption of Agenda:** Motion by Henry Stockwell to adopt the agenda, Seconded by Francette Hamilton. Motion approved 4-0

**Reading and Approval of the Minutes – April 29, 2015:** Motion by Francette Hamilton to approve the minutes, Henry Stockwell seconded the motion. Minutes approved 4-0.

**Reading and Approval of the Findings of Fact – April 29, 2015:** Motion by Henry Stockwell to approve the Findings of Fact. Francette Hamilton seconded the motion. Approved 4-0.

**Announcements of Decisions – April 29, 2015:** Decision of Don Snyder variance request from April 29, 2015 read by Chair Jones to all in attendance.

**Communications:** Mr. Byrnes announced that Jo Miller has been re-appointed to the Board of Adjustment for another term per the Rock County Board of Supervisors at the last County Board meeting.

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

**Discuss Procedure for Upcoming Hearing:** Andrew Phillips (von Briesen & Roper, s.c.) discussed procedures for this evening's Board of Adjustment appeals case for Item 9.C Matthew J. Fleming.

At 5:39 pm a motion to recess was made by Henry Stockwell, Seconded by Francette Hamilton.

The meeting was resumed at 6:00 pm.

**Mark Schattschneider Variance Request:**

Chair Jones read into the minutes the public hearing notice and application. The applicant is requesting a variance to construct a garage addition to an existing single family residential structure with lesser front yard setbacks than a Shoreland Substandard Lot served by Private Sewer. Section 4.205 of the Rock County Shoreland Zoning Ordinance needs to be varied to allow for the construction of the garage.

Applicant, Mark Schattschneider described the rationale for the variance request. Mr. Byrnes elaborated on the lot configuration and ordinance affecting the lot and location area.

The committee asked various questions regarding flood proofing and the configuration, orientation, and dimensions of the proposed garage.

**STAFF REVIEW COMMENTS**

Planning staff has reviewed the petition for issues in accordance with the Rock County Shoreland Zoning District and has the following comments:

The applicant is proposing to construct a garage along N. River Rd. that will not meet the front yard setback of 50' for a privately sewered lot in the Shoreland Zoning District. The Applicant is also proposing to flood proof the existing residential structure and as a result is losing use of the current attached garage.

Additionally, the Applicant has submitted a Lot Combination request to create a single lot from Parcels 6-8-99.2A (residence) and 6-8-402 (vacant). This was done to eliminate side yard setback issues for the proposed garage. The combined lot size is 40,097 square feet which is a legal lot but, if there is a ½ road right of way dedication to the Town Of Janesville (local road jurisdiction) the lot is only 34,500 square feet.

At this time the Applicant has applied to and received a Shoreland Conditional Use Permit for Flood proofing from the Rock County Planning & Development Committee. This entails raising the residence which causes structural issues and reconfiguring of habitable space. Therefore, in order to recreate garage space the proposal to the north of the house will be closer than the 50' front yard setback.

### Findings of Fact

1. **Unnecessary Hardship:** It is the Staff's opinion that hardship exists due to the combination of circumstances concerning lot size, setbacks, road frontage, the date of subdivision platting and finally, the date the Shoreland Ordinance was adopted. The structure is limited in expansion due to these factors.
2. **Hardship due to Unique Property Limitation:** It is Staff's opinion that there is a unique property limitation in this case. Although the Lot Combination will create a legal lot the Floodplain and topography of the lot preclude the Applicant from building the garage any further from N. River Rd.
3. **Protection of the Public Interest:** It is Staff's opinion that the intent of the Shoreland Zoning Ordinance in this case can be maintained. The relief in front yard setback is reasonable given the intent to flood proof the existing structure. As more structures are flood proofed the impact on the public in terms of resources expended to remediate flood damage is lessened.

### Conditions of Approval

Considering all the facts in this case, the purpose and intent of the Shoreland Zoning Ordinance, Staff recommends approval of the variance with the following conditions:

1. The Applicant completes the Lot Combination process.
2. The Applicant completes the flood proofing project according to FEMA regulations.

Motion to Approve with Conditions by Henry Stockwell, seconded by Francette Hamilton. Approved 4-0.

### Brian and Debra Cross Variance Request:

Chair Jones read into the minutes the public hearing notice and application. The applicant is requesting a variance to demolish and reconstruct a residence located in Mallwood Estates, Town of Milton

Applicant, Brian Cross described the rationale for the variance request. Mr. Byrnes elaborated on the lot configuration and ordinance affecting the lot and location area.

The committee asked various questions regarding the configuration, orientation, and dimensions of the lot and plans for reconstruction.

## STAFF REVIEW COMMENTS

Planning staff has reviewed the petition for issues in accordance with the Rock County Shoreland Zoning District and has the following comments:

The applicant is proposing to demolish an existing single family residential structure and build new on a Substandard Lot within the Shoreland Zoning District of Lake Koshkonong. Lot 3, Block 20 of Mallwood Estates Subdivision is approximately 8,890 square feet in area. This size does not meet the minimum 15,000 square foot Minimum Lot size required for publicly sewered lots.

Sec. 4.205(4)(A)3 requires any development of a Substandard Lot shall meet all Shoreland Zoning Ordinance provisions including setbacks. The Applicant has submitted a site plan indicating an overhead view of the proposed project. The proposed building does not meet the following Ordinance provisions:

1. Shoreland Setback 75' – Proposed is 63' to 65' for the building expansion to the east.
2. Side yard Setback 8' minimum & combined width of both side yards 20' – Proposed shows 16'
3. Impervious Surface 30% - If proposed driveway is not deemed permeable or not maintained the Impervious Surface ratio is approximately 37%. If permeable and maintained there is a 8.3% increase in hardscape.
4. Replacement or Relocation of a Nonconforming Principal Structure – The proposed residential structure is larger than the existing by approximately 801 square feet (2,434 square feet - new vs. 1,633 square feet - old) or 49%. The Ordinance allows replacement of a structure with one of comparable size.

The existing residential structure does not meet the following Ordinance provisions:

1. Shoreland Setback 75' – At the closest point the residence is 47' from the Ordinary Highwater Mark.
2. Side yard Setback 8' minimum & combined width of both sides 20' – The portions of the structure sits on land owned by the applicant. That property is owned by the Mallwood Estates Improvement Association.

In summary, the new structure is larger than before by some 801 square feet (49%). The 27' extension to the west from the existing structure location is further away from the shoreline than that which will be removed. Impervious increased by 9.2% if the permeable driveway is accepted.

### Findings of Fact

4. **Unnecessary Hardship:** It is the Staff's opinion that hardship exists due to the combination of circumstances concerning lot size, setbacks, the date of subdivision platting and finally, the date the Shoreland Ordinance was adopted. The structure is limited in expansion due to these factors.

5. **Hardship due to Unique Property Limitation:** It is Staff's opinion that there is a unique property limitation in this case. Mallwood Estates lots, all under the 15,000' square feet required today, were platted many years ago. Additionally, the land adjacent to the south is held by the Mallwood Estates Improvement Association precluding the ability to purchase additional land to address side yard setback problems.
6. **Protection of the Public Interest:** It is Staff's opinion that the intent of the Shoreland Zoning Ordinance as proposed in this case can be maintained. The relief in side yard setback, a larger structure (49%) is offset by the improvement in Shoreland setback. Additionally, since the area to the south of the lot will not be built upon, except potentially for a boathouse for the Mallwood Estates Improvement Association, one could consider it in a density calculation. Both lots, the Applicant's and Association's lot, would total 17,197 square feet. The impact is like a new residence on a legal lot.

But, given the desire to increase the size of the residential structure, Staff suggests moving the new structure back from the Ordinary Highwater Mark and granting a variance from front yard setback. What needs to be determined is an appropriate area in front of the new garage to park cars.

### **Conditions of Approval**

Considering all the facts in this case, the purpose and intent of the Shoreland Zoning Ordinance, Staff recommends approval of the variance with the following conditions:

1. A Stormwater Management Plan is submitted and approved by the Agency. Plan may include construction of rain gardens or catchment basins to handle the additional impervious surfaces. Also, approval of the permeable surface for the proposed new driveway. This will include a maintenance program that shall be recorded with the Rock County Register of Deeds
2. A Shoreland Restoration plan is submitted and approved by the Agency. Main focus will be the 35' vegetative buffer zone from the Ordinary Highwater Mark. Integral to this design is the submittal of elevation drawings of the proposed structure.
3. Move the new residence 5 feet towards E. Mound Drive to add additional distance to the Shoreland setback.

Motion to Approve with Conditions by Jo Miller, seconded by Henry Stockwell.  
Approved 4-0.

At this time, the Board recessed at 8:22pm and reconvened at 8:30pm.

**Mark J. Fleming (Traynor Gravel Pit CUP Decision) Variance Request:**

At this time, the case of Mark J. Fleming was called and the legal notice was read. Given the controversial nature of the case a Court Reporter took over the recordation of proceedings.

At this time, the Board recessed at 9:47pm and reconvened at 10:00pm.

Motion by Francette Hamilton to continue deliberations on the above variance request until the next regularly scheduled meeting on June 24, 2015 to allow the board members to consider the information presented for this case; second by Jo Miller. Roll Call Vote: All in Favor (4-0)

**Unfinished Business:** None at this time

**New Business:** None at this time.

**Adjournment:** Jo Miller made a motion to adjourn the May 27th, 2015 meeting of the BOA. Francette Hamilton seconded the motion. Meeting adjourned at 10:35 p.m.

Respectively Submitted,

Kurt J. Wheeler  
Acting Secretary

**THESE MINUTES ARE NOT OFFICIAL UNTIL APPROVED BY THE ROCK  
COUNTY BOARD OF ADJUSTMENT**