

ROCK COUNTY BOARD OF ADJUSTMENT
October 24th, 2017
CONFERENCE ROOM N-1
FIFTH FLOOR, ROCK COUNTY COURTHOUSE
JANESVILLE, WISCONSIN

MINUTES

Vice Chair Lengjak called the October 24th, 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: JP Lengjak, Rich Plywacz and Michael Saunders. Quorum Present.

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

Others in attendance: Jack and Carol Brey, Andy Rye, Tom and Susanne Simoneau, Eric J. Gorman, Jennifer Potts, and Ron Combs.

Adoption of Agenda:

Motion by Mike Saunders to adopt the agenda, **Seconded** by Rich Plywacz. Adopted (3-0)

Reading and Approval of the Minutes –July 26th, 2017:

Motion was made by Rich Plywacz to approve the minutes, **Seconded** by Mike Saunders.
Minutes approved. (3-0).

Reading and Approval of Findings of Fact from previous meeting:

Vice Chair Lengjak read the findings of fact from the previous July 26th, 2017 meeting. **Motion** by Rich Plywacz to approve the findings of fact from last meeting, **Seconded** by Mike Saunders. The members voted unanimously to approve.

Announcement of Decision from Last Meeting

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

Communications:

Andrew Baker read the voting procedures of a 3 member quorum to the committee as per the Board of Adjustment Rules and Procedures found in Chapter 4.12 Rock County Code of Ordinances.

Reports of Committees: None

Deliberation of Cases:

a. John and Carol Brey Case

The Legal Notice and application information were displayed and read to all in attendance. The applicant is requesting an after-the-fact variance from the 75 foot shoreland setback for a deck already constructed within approximately 55 feet from the ordinary high water mark.

John and Carol Brey were sworn in by Vice-Chair Lengjak. Mr. Brey explained the project details and reasoning behind his variance request. Mr. Brey presented a document (Exhibit A) that explained his rationale and opinion on the 3 criteria needing to be met. Photos were displayed that accompanied Mr. Brey's application. Discussion followed.

A Motion was made by Rich Plywacz to go into public hearing, Seconded by Mike Saunders, Time in: 6:30 p.m. Carol Brey spoke and added additional testimony. No one else spoke. A Motion to go out of Public Hearing was made by Rich Plywacz, Seconded by Mike Saunders. Time out: 6:33.

The site location was viewed on the Rock County GIS. Air photography of the project site was viewed by the Board and all in attendance to observe the characteristics of the new deck as compare to the deck that was replaced. Slopes and distances to the Rock River were displayed as well. A portion of the applicant's argument was that the slope to the River allowed very little use of the property between the house and the water.

The applicant stated he assumed he could demolish and rebuild a larger deck on his property as long as it was not any closer than what existed. It was noted that this was an after the fact request and that no building permits were obtained from either the Town of Fulton or Rock County prior to constructing the deck. Colin Byrnes; Director of Planning and Development added that the office had been in communication with Mr. Brey in previous years regarding placement of another structure and Mr. Brey was informed at that time that 75 foot setback is a requirement for all structures with few exceptions.

Discussion and additional questions followed.

A motion was made by Mike Saunders to deny the variance, Seconded by J.P Lengjak.

On a vote of (2-1) the motion was approved and therefore the variance was denied.

FINDINGS OF FACT

1. Unnecessary Hardship

In this particular case, the Board's decision reflects that the unnecessary hardship standard is not met. The Board considered whether or not the limitations created by the slope of the property and setback requirements are unnecessarily burdensome to the applicant. The Board agreed that variances should include only the minimum relief necessary to allow reasonable use of the property and not be issued solely for a matter

of convenience for the applicant. In this case, the applicant could have replaced the existing deck in the same footprint by ordinance without the need for a variance.

2. Hardship due to Unique Property Limitation

The Board felt that there are limitations to this property because the original residential 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. The issue of slope toward the River indicated by the applicant is again another limitation not unique to properties along the Rock River. The applicant referenced a deck which existed prior to the building of the new deck, which is visible in air photos prior to 2016. This deck likely could have been replaced in the same location, even within the setback, had it not been expanded based on current Shoreland Zoning Ordinance standards. It was the Board's opinion that constructing a larger deck within the setback area on this property is not a necessity associated with, nor caused by, a unique property limitation.

3. Protection of the Public Interest

It was the Board's decision that the purpose and intent of the Shoreland Zoning Ordinance would be undermined based on the proposal. Setback standards are in place to regulate the density and 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.

b. Tom and Susanne Simoneau Case

The Legal Notice and application information were displayed and read to all in attendance.

Tom and Susanne Simoneau were sworn in by Vice-Chair Lengjak. Mr. Simoneau explained the project details and reasoning behind his variance request. The applicants are requesting a variance from the 25 foot front yard setback in order to permit a residential addition to within approximately 13 feet of the right of way. Discussion followed.

Mr. Baker explained the associated technical details regarding the construction of an addition or other modifications to a structure in a floodplain district and the detailed topography survey that was completed on the site by the applicant. However, this variance request relates to the setback requirements of the Shoreland Zoning Ordinance, not the Floodplain Zoning Ordinance. It was reiterated to the Board that the only decision they had before them was related to the setback from the road and that the Floodplain Zoning Ordinance standards are administered by Staff.

A Motion was made by Rich Plywacz to go into public hearing, Seconded by Mike Saunders, Time in: 7:23 p.m. Mrs. Simoneau spoke and added additional testimony. No one else spoke. A Motion to go out of Public Hearing was made by Rich Plywacz, Seconded by Mike Saunders. Time out: 7:23.

The site location was viewed on the Rock County GIS. Air Photography of the project site was viewed by the committee and all in attendance. Slopes, floodplain boundaries and distances were displayed as well.

Various issues were discussed including parking, public safety related to lesser setbacks from the road, snowplowing and soil conditions in terms of using the lawn area on the southern portion of the property as off street parking. Most of the southern portion of the property is located within in the Floodway, therefore no fill material may be brought into create parking area for all weather

conditions. Generally, these concerns stemmed from the fact that the proposed addition would be placed over the existing driveway and would eliminate access to the existing garage.

A letter of non-support from a neighborhood resident was read and entered as Exhibit I.

Discussion and additional questions followed.

A motion to Deny the variance was made by Rich Plywacz, Seconded by Mike Saunders.

On a vote of (2-1) the motion was approved and therefore variance was denied.

FINDINGS OF FACT

1. Unnecessary Hardship

In this particular case, the Board felt it was not possible to meet the unnecessary hardship standard. The Board considered whether or not the limitations created by the ordinance setback requirements were unnecessarily burdensome to the applicant. Keeping in mind, variances should include only the minimum relief necessary to allow reasonable use of the property and not be issued solely for a matter of convenience for the applicant. In this case a smaller addition could be made to the home without requiring a variance.

2. Hardship due to Unique Property Limitation

The Board felt that there are limitations to this property because the original residential 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. The issue of the front yard setback is again another limitation not unique to properties along the Rock River and this property is already fully developed. It was the Board's opinion that constructing an addition to this structure within the setback area on this property is not a necessity associated with, nor caused by, a unique property limitation.

3. Protection of the Public Interest

It was the Board's opinion that the purpose and intent of the Shoreland Zoning Ordinance may be undermined based on the proposal. Setback standards are in place to regulate the density and size of the structural improvements on the land. Furthermore, the Shoreland front and side yard setback are specific standards 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.

c. Jennifer Potts Case

The Legal Notice and application information were displayed and read to all in attendance.

Ms. Potts and Ron Combs were sworn in by Vice-Chair Lengjak. Mr. Combs explained the project details and reasoning behind his variance request. The applicant would like to combine two exiting lots (including one which is a portion of the original platted subdivision lot) into one buildable lot. A variance is necessary because the combined area of the lots is less than the minimum required by the Shoreland Zoning District (10,000 square feet). In this case, the combination of the lots would result in a new lot of 9,388 square feet. Discussion followed.

Mr. Baker explained details of the site and the requirements of Code of Ordinances relating to this variance request. Effectively, in order to build across a lot line within the boundaries of multiple lots, the lots must be combined via a Certified Survey Map. The resulting new lot must meet minimum dimensional and area standards found in the Shoreland Zoning Ordinance.

A Motion was made by Rich Plywacz to go into public hearing, Seconded by Mike Saunders, Time in: 7:53 p.m. No one spoke and added additional testimony. A Motion to go out of Public Hearing was made by Rich Plywacz, Seconded by Mike Saunders. Time out: 7:54.

The site location was viewed on the Rock County GIS. Air Photography of the project site was viewed by the committee and all in attendance. Distances and parcel attributes were displayed as well.

A letter of non-support from a neighborhood resident was read and entered as Exhibit 1.

A Motion to approve the variance as presented was made by Rich Plywacz, Seconded by Mike Saunders.

The variance was approved by a unanimous vote of (3-0)

FINDINGS OF FACT

1. Unnecessary Hardship

The Board's decision was that strict conformity to the ordinance would require the building of a house on the one existing lot on this property and also meet the necessary side yard setbacks. In this case, the total required between the two side yard setbacks would be twenty feet, leaving a thirty foot wide building area on the lot. This property was originally developed prior to the adoption of the Shoreland Zoning Ordinance, and likely any local zoning (platted in 1930). It was primarily intended for cottages or seasonal dwellings only. It was also more common at the time to simply build across lot lines if a larger house was built, which is part of the reason why this property consists of one and a half total lots. In absence of the variance approval, the existing full lot could be built on, but building a modern house on a thirty foot wide building footprint would greatly limit the owner's design options, which was viewed as overly burdensome.

2. Hardship due to Unique Property Limitation

It was the Board's opinion that there are limitations to this property because the lots were platted prior to the Ordinance. The relatively small overall parcel size, combined with setback requirements, limits the amount of developable area, but this is a similar characteristic to many substandard lots in the County and not necessarily unique to this property. However, revisions to state law and County Ordinance in the last couple years (reducing the minimum lot size requirements from 15,000 to 10,000 square feet) make the lot area variance requested in this case acceptable to the Board.

3. Protection of the Public Interest

It was the Board's decision that the purpose and intent of the Ordinance is met and public welfare will generally not be affected. The character of the neighborhood will not be changed as long as the other Ordinance standards are maintained. Considering all the factors involved, this request can be considered the minimum relief necessary to have reasonable use of the property and is a low percentage variance request.

d. Andrew Rye Case.

The Legal Notice and application information were displayed and read to all in attendance.

Mr. Rye was sworn in by Vice-Chair Lengjak. Mr. Rye explained the project details and reasoning behind his variance request. The applicant is requesting variances from the Land Division regulations related to minimum lot width and "flag pole" length in order to divide an existing farmstead from the farm land. Discussion followed.

Mr. Baker explained details of the site and the requirements of code of ordinances relating to this variance request.

The site location was viewed on the Rock County GIS. Air Photography of the project site was viewed by the committee and all in attendance. Distances and parcel configuration and attributes were displayed as well.

Discussion and questions followed regarding the existing conditions and landowners intentions for the property.

A Motion to approve the variance was made by Mike Saunders, Seconded by Rich Plywacz.

The variance was approved with Conditions by a unanimous vote of (3-0)

FINDINGS OF FACT

1. Unnecessary Hardship

It was the Board's decision that the standards were considered unnecessarily burdensome in light of the fact that this is an existing, established, building site, not a new development. The land division as proposed, namely in the driveway area, was delineate based on field boundaries that appear to have been in place for decades based on past air photos. While creating a new lot with a minimum of one hundred feet of width does not mean that the historic field boundaries cannot be maintained, doing so in this scenario may not be necessary to maintain the purposes and intent of this provision of the Ordinance.

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 minimum lot width be reduced and maximum allowed length of the flag lot be extended to generally conform to an existing building site. While not ideal, this scenario is clearly different than a proposal to create a flag lot from an existing undeveloped property. Designing a new lot boundary around an existing driveway and building site is a unique property limitation in the Board's opinion.

3. Protection of the Public Interest

It was the Board's decision that the purpose and intent of the Land Division Ordinance can be maintained based on the proposal. Approving a large variance (65% reduction of the lot with requirement in this case) is questionable in most cases and should come only with careful consideration. The minimum lot width requirement is partially intended to limit the number of flag lots that can be developed in a certain amount of area. In this case, the proposal by the landowner to deed restrict the remaining land to not allow future building will minimize or eliminate the concerns that future

development could make the current proposed layout less acceptable in terms of meeting the purpose and intent of the Ordinance.

Conditions of Approval:

1. All necessary approvals are obtained from the Town of LaPrairie for the land division.
2. A deed restriction be recorded and on the face of the final CSM, as approved by the Town of LaPrairie and Rock County which state the remaining “undeveloped” land be restricted to no future building on the property.
3. The applicant completes the preliminary Certified Survey Map approval process within six months of the date of the decision unless the Board approves otherwise.

Unfinished Business:

None.

New Business:

None

Motion to Adjourn made by Mike Saunders, **Seconded** by Rich Plywacz.
All in Favor. **Time: 8:25 pm.**

Respectfully Submitted, by Kurt Wheeler, Acting Secretary

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