

**ROCK COUNTY BOARD OF ADJUSTMENT
FEBRUARY 22, 2017
COURTHOUSE CONFERENCE CENTER
SECOND FLOOR, ROCK COUNTY COURTHOUSE
JANESVILLE, WISCONSIN**

MINUTES

Chair Jones called the February 22, 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, Richard Plywacz, JP Lengjak, Harry O’Leary and Chairman Don Jones. Jo Miller was absent.

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

Others in attendance: Parker Pickens, Bruce Schumacher, Balbazar Giles, Juan Rodriguez, Jake Hoffman, Deanna Enmann, Werner Last, Rose Last.

Adoption of Agenda: Motion by Harry O’Leary, **Seconded** by Mike Saunders to adopt the agenda. Adopted (5-0)

Reading and Approval of the Minutes –November 30, 2016:

Motion was made by JP Lengjak to adopt minutes, **Seconded** by Harry O’Leary. Minutes approved. (5-0).

Reading and Approval of Findings of Fact from previous meeting:

Chair Jones read the findings of fact from the previous meeting. **Motion** by Harry O’Leary to approve the findings of fact from last meeting, **Seconded** by Rich Plywacz. The members voted unanimously to approve.

Announcement of Decision from Last Meeting

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

Communications:

None.

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

Deliberation of Cases:

- a. Eric Zagorski

Description of Request: The applicant is proposing a project which requires a variance from The Rock County Shoreland Zoning Ordinance (Ordinance). The property owner/applicant (Eric Zagorski) is requesting a variance of the standard for minimum lot size in an unsewered area (20,000 square feet) in order to combine two existing lots consisting of 12,448 square feet total. The request is being made as the first step in the process to permit the owner's proposed plan to demolish the existing residence and build a new residence in the same footprint. The minimum lot size standard is found in Section 4.205 of the Rock County Shoreland Zoning Ordinance.

Location: Part of the SE ¼ of the NW 1/4 of Section 14, Fulton Township, Lots 18 and 19, Badger Heights, Parcel 6-6-650.

Current Zoning/Land Use: RR-S (Rural Residential Small) Town of Fulton

Planning staff has reviewed the petition for issues in accordance with the Rock County Shoreland Zoning Ordinance.

The owner intends to tear down the existing house and build a new house in the same footprint. The existing house is considered legal nonconforming because it is less than 75 feet from the ordinary high water mark. The term nonconforming means that it was lawfully constructed when placed on the property but does not meet current regulations. For Shoreland Zoning purposes, that generally means built prior to 1971 (the date of the first Shoreland Zoning permits on file). In most cases, however, under current state law and county ordinance, a nonconforming structure can be rebuilt without any approvals from the County even if the location is nonconforming to current setback regulations. The key is that it was constructed prior to the ordinance adoption. In other words, something constructed after 1971 which does not meet the shoreland setback would not be considered legal nonconforming, but rather generally illegal nonconforming and would not be allowed to be rebuilt.

Provided that the structure on this property meets the test to be considered legal nonconforming, it may be rebuilt and, therefore, the Board is not asked to act on a variance for setback standards. This parcel, however, consists of two land lots, therefore staff is requiring that the lots be combined via a Certified Survey Map before a new house is built over the lots lines. The applicant has already contracted for the survey work to be done and the preliminary CSM is included in the packet.

For zoning, setback and permitting purposes the lot lines exist until combined via a Certified Survey Map. Therefore, it is commonly required that lots be legally combined when projects such as this are proposed. Doing so will not only resolve regulatory concerns when working with two lots but will also be beneficial to the landowner in the future. When existing lots are combined, in order to be approved the total must meet the minimum lot size for a new lot, which in this case is 20,000 square feet because it is an

unsewered lot. The owner's two existing lots total less than the standard, so the variance being requested is from 20,000 to 12,488 square feet.

This reduction from the standard lots size is a 7,512 square feet (or 38%) variance from the standard. This minimum lot size standard was recently reduced from 40,000 to 20,000 square feet based on changes required in State Law. The Health Department had offered comments regarding the fact that this smaller lot size will make septic system approval difficult. In this case, the applicant discusses in the application how redeveloping this property will include a new septic system, which will be an improvement over what is currently on site.

The owner proposes to remove some of the concrete structures along the waterfront and replace it with native vegetation, which is a highly recommended project in all shoreland areas.

Mr. Zagorski was sworn in by the chair and explained the project details and plans to the committee. He explained that due to the fact that the current house was a combination of various additions and modifications over the years, it would be more economical to tear it down and build new rather than renovate the current structure.

The following exhibits were introduced:

- Exhibit #1 County photo #2
- Exhibit #2 Photo distributed by Mr. Zagorski
- Exhibit #3 Main Floor Plan
- Exhibit #4 Upper Floor Plan
- Exhibit #5 Site Plan
- Exhibit #6 Soil Test
- Exhibit #7 Email letter in favor of variance approval from neighbor, Michael Atkocaitis.

The following citizens were sworn in and spoke in favor of the variance approval:

Parker Pickens
Deanna Enmann
Bruce Schumacher

With no other speakers, board discussion followed.

Mr. Saunders raised some concerns and addressed Mr. Zagorski as to erosion control, boathouse reconstruction, and shoreland restoration. The Board generally discussed the sequencing of work to limit the potential for negative impact on the River. In review of the Staff report, the Board was reminded that the only action that they had to act on was the lot size variance.

Motion made by Harry O’Leary to approve based on findings and conditions as recommended by Staff in the Staff report and to extend the timeline for completion to 9 months, with emphasis on erosion control during construction. **Seconded** by JP Lengjak.

Roll Call Vote on Findings of Fact: Unanimously Approved (5-0) with the following conditions:

1. A new private onsite wastewater treatment system (POWTS) is approved for the property by the Rock County Health Department.
2. The footprint of the existing house shall be documented with P&D Agency staff prior to demolition.
3. The applicant completes a restoration of a portion of the shoreline with native vegetation as discussed in variance application materials.
4. The height of the new structure shall not exceed 35 feet above the lowest adjacent grade, as per the Shoreland Zoning Ordinance.
5. The applicant completes the Certified Survey Map approval process.
6. 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 **nine** months of the date of the decision unless the Board approves otherwise.

Findings of FACT

1. Unnecessary Hardship

Strict conformity to the ordinance would prohibit the rebuilding of a house on this parcel (on one or both of the existing lots) due to the combination of minimum lots sizes and setback requirements. This property was originally developed prior to the adoption of the Shoreland Zoning Ordinance on two lots of a subdivision (platted in 1935). Recent changes to state law dictate, generally, that a property owner should be able to replace a legal nonconforming structure. The circumstance of the structure being on two lots can be considered a hardship when attempting to implement this provision.

2. Hardship due to Unique Property Limitation

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 unique to this property. However, revisions to state law and County Ordinance in the past year make the lot area variance requested in this case generally more reasonable for the Board to consider. In absence of the variance approval, each individual lot could not be built on considering current setback standards for the side yard (at a minimum).

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 provided that a properly designed and installed septic system is put in place. 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.

Unfinished Business:

Mr. Baker distributed the recently approved update to the Rock County Shoreland Ordinance to the committee.

New Business:

The Board decided to set the March meeting date as Tuesday the 28th rather than the last Wednesday of the month as normal because Staff will be out of town at a conference on the 29th.

Motion to Adjourn made by Harry O'Leary, **Seconded** by JP Lengjak..
All in Favor. **Time: 6:58 pm.**

Respectfully Submitted, by Kurt Wheeler, Acting Secretary

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