

**ROCK COUNTY BOARD OF ADJUSTMENT MINUTES
WEDNESDAY – OCTOBER 28, 2009
COURTHOUSE CONFERENCE CENTER, SECOND FLOOR
ROCK COUNTY COURTHOUSE
JANESVILLE, WISCONSIN**

Chair Jones called the October 28, 2009 meeting of the Rock County Board of Adjustment to order at 6:00 p.m. in the Courthouse Conference Center, Second Floor of the Rock County Courthouse. Board of Adjustment members in attendance at roll call: Larry Clift, Francette Hamilton, Henry Stockwell, Jo Miller, and Chair Don Jones. Not in attendance was Harry O’Leary.

Planning and Development Agency Staff in attendance: Colin Byrnes, Zoning Administrator, Andrew Baker, Planner II, and Steve Schraufnagel, Acting Secretary.

Citizens in attendance: Jim Osborne, Dawn Pope, Attorney Peter Conrad, Chico Pope, Sandra Kraft, Beth Oswald, Don Oswald and Alan Sweeney.

Adoption of Agenda: Larry Clift made a motion to adopt the agenda. Francette Hamilton seconded the motion. Motion approved 5-0.

Reading and Approval of Minutes – August 26, 2009: Francette made a motion to adopt the minutes as presented. Henry Stockwell seconded the motion. Motion approved 5-0.

Reading and Approval of the Findings of Fact – August 26, 2009: Henry Stockwell made a motion to approve the findings for the Julie Cifuentes case. Larry Clift seconded the motion. Motion approved 5-0. Larry Clift made a motion to approve the findings for the Rock County Parks variance case. Francette Hamilton seconded the motion. Motion approved 5-0.

Announcements of Decisions – August 26, 2009: The Cifuentes variance request was approved 5-0 and the Rock County Parks Division variance was approved 5-0.

Communications: There were no communications at this time.

Reports of Committees: Chair Jones stated that last month he attended a Board of Adjustment workshop in Slinger. It was so well attended that the venue had to be changed to a larger facility. Emphasis at the workshop centered upon the 3 tests needed to approve a variance.

Charles Pope Variance Request: Chair Jones read into the minutes the legal notice and application concerning the Pope variance request. The applicant is seeking an after-the-fact variance for a retaining wall that was constructed without the necessary shoreland permit. The retaining wall is approximately 50 feet from the normal high water mark.

The applicant has previously received a shoreland permit to repair 2008 flood damage to the shoreline. The applicant added the retaining wall later to prevent erosion that was continuing because of the slope off the rear of the restaurant.

Charles Pope proceeded to present his case to the Board. He passed around a set of six colored photos that will be labeled as Exhibit A. These photos depicted the restaurant site and other examples of areas along the river that have constructed retaining walls. He summarized how the 2008 flood affected his property. Mr. Pope has spent nearly \$50,000 on the current rehab of the shoreline. He felt the area behind his restaurant needed to be leveled off for safety purposes and that's why the retaining wall was constructed. He admitted that he made a mistake by erecting the wall without first conferring with the planning staff. He mentioned the other properties in the area that have constructed walls that are allowed to remain. He has not yet landscaped and is waiting until this issue with the retaining wall is resolved. He stated that he is willing to meet with the planning agency staff to work out a mitigation plan in order to keep the wall.

Chair Jones reviewed the three tests that need to be met when reviewing a variance request. He also stated that he received a call from Rock County Board member Marv Wopat stating that he would be in favor of the variance being approved.

Colin Byrnes referred the Board to page 23 of the agenda. The map depicts the approximate distance the retaining wall is from the water line (50') and the length of the wall (31'). The wall is also about 7.5' high. Colin passed out to the Board a photo in landscape format depicting the area between the retaining wall and restaurant. This photo was labeled as Exhibit B.

Mr. Pope handed out two colored photos depicting the area in question as it was being utilized during a social function this pass summer. These photos were labeled as Exhibit C and D.

Attorney Conrad spoke describing the flat area behind the retaining wall and passed around colored versions of the photos submitted in the agenda packed depicting the shoreline area. These photos are labeled as Exhibit E. Attorney Conrad reiterated that his client would be willing to do a shoreland restoration plan to help mitigate the retaining wall.

Board member Henry Stockwell stated that the 75-foot setback for all structures must be enforced consistently to maintain the integrity of the Rock County Shoreland Ordinance.

Colin Byrnes reviewed the application with the Board. Staff feels this is a self-created hardship. It was built without a permit. The Shoreland Ordinance tries to prevent the look of an "armored" landscape along all navigable streams. Staff is recommending denial of this variance request.

Don Oswald spoke in favor of the variance. He is a neighbor and the wall does not intrude upon his ability to enjoy his property.

Sandra Kraft, County Board Supervisor from District 3, spoke in favor of supporting the granting of the variance. She asked for a compromise that would allow the retaining wall to remain and still maintain the integrity of the County Shoreland Ordinance.

Colin stated that rip-rap permits come from the DNR.

Larry Clift inquired whether there is any chance of a compromise in this case? Is the County willing to try to work something out with the applicant?

The applicant stated that the total length of his shoreline is 300-feet.

At this time a motion was made by Henry Stockwell to deny the variance. Francette Hamilton seconded the motion.

Some discussion followed concerning alternate strategies in solving this issue.

The motion to deny was approved 5-0.

The findings of fact to support the denial are as follows:

1. This is a self-imposed hardship. The retaining wall was built without a permit from the Rock County Planning Agency.
2. The continuation of the Buckhorn Supper Club as a viable business was not contingent upon the granting of the variance. A financial hardship alone (relating to the removal of the wall) does not justify a variance without meeting the three necessary criteria. In this case, the applicant did not prove the three criteria were met.

James Osborne Variance Request: Chair Jones read into the minutes the legal notice and application for the above variance request. The applicant is adding a second story and front deck to an existing structure that is located in the shoreland district.

Mr. Osborne stated that this residence was constructed in 1925 and does not have a basement. There are a number of repairs needed to make the house more livable, in his opinion. One is to raise the second floor by using a knee wall and adding a bathroom. The contractors have already reinforced the structure with concrete pillars.

The lots are not combined. One lot has the house and the other has the garage. Colin Byrnes stated that the Rock County Land Division ordinance has been amended to allow the combining of lots in the Mallwood area if the total final square footage of the new lot is at least 12,000 sq. ft. The Osborne parcel will be about 2,000 sq. ft. short of 10,000 sq. ft.

The house is located on a private 20-foot wide road.

Staff recommends approval of the variance request with the following conditions:

1. Lots 11 & 12 of the Maple Beach 2nd Subdivision are combined via a Certified Survey Map (CSM)
2. As part of the CSM process the front yard setback shall be determined and the front porch addition shall not extend any closer.

Larry Clift made a motion to conditionally approve the variance. Jo Miller seconded the motion. Motion approved 5-0.

Findings of Fact to support the approval are as follows:

1. The combining of lots will improve the density in the neighborhood
2. The neighborhood is unique with all the lots fronting on the private road and being approximately the same size.

Unfinished Business: There was no unfinished business.

New Business: There was no unfinished business.

Adjournment: Larry Clift made a motion to adjourn the meeting. Henry Stockwell seconded the motion. Motion to adjourn the meeting approved 5-0. Meeting adjourned at 7:51 p.m.

Respectfully Submitted,

Steve Schraufnagel
Acting Secretary

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

FINDINGS OF FACT

Applicant:

Charles Pope
11802 N. Charley Bluff Road
Milton WI 53563

Nature of Case:

Mr. Pope is seeking a variance to section 16.34(5)(D) of the Rock County Shoreland Zoning Ordinance. He constructed a retaining wall without a permit within 75 feet of the normal high water mark of Lake Koshkonong. The wall is approximately 50 feet from the shoreline. The applicant had previously received a permit to repair shoreline damaged from the 2008 flood. Mr. Pope admitted that he constructed the retaining wall without a permit because he felt time was of the essence in order to prevent further erosion from occurring. He also felt that the safety of his guests was a priority as this is an outdoor dining area.

Henry Stockwell made a motion to deny the variance request. Francette Hamilton seconded the motion. Motion to deny approved 5-0.

Findings of Fact:

1. This is a self-imposed hardship. The retaining wall was built without a permit from the Rock County Planning Agency.
2. The continuation of the Buckhorn Supper Club as a viable business was not contingent upon the granting of the variance. A financial hardship alone (relating to the removal of the wall) does not justify a variance without meeting the three necessary criteria. In this case, the applicant did not prove the three criteria were met.

FINDINGS OF FACT

Applicant:

James Osborne
6220 Brighton Lane
Lakewood, IL

Nature of Case:

Mr. Osborne is seeking a variance to section 16.34(5)(C) 3 of the Rock County Shoreland Zoning Ordinance. He is proposing to add a second story and covered porch to an existing residential structure. The structure sits on a substandard sized lot (5,000 sq.ft.) If this were a vacant lot no building would be allowed. The applicant owns an adjacent lot, also 5,000 sq.ft. in size. If he joins the lots together he will have a 10,000 sq.ft. lot. A two thousand square foot variance will be needed to allow the newly combined lot. Also, the newly constructed porch should not encroach any closer than the current porch.

Larry Clift made a motion to approve the variance with the conditions: 1) Lots 11 & 12 of the Maple Beach 2nd Subdivision are combined via a Certified Survey Map (CSM); and 2) As part of the CSM process the front yard setback shall be determined and the front porch addition shall not extend any closer. Jo Miller seconded the motion. Motion approved 5-0 with conditions.

Findings of Fact:

- 1) The combining of the lots will reduce the density in this neighborhood.

- 2) The neighborhood is unique with all lots fronting on the private road and being similar in size.