

**GREEN LAKE COUNTY
BOARD OF ADJUSTMENT
Meeting Minutes – May 21, 2010**

CALL TO ORDER

The meeting of the Board of Adjustment was called to order by Chair Ahonen at 9:00 a.m., in the County Board Room, Courthouse, Green Lake, WI. The requirements of the open meeting law were certified as being met.

Present: Don Ahonen, Jill Ladwig, Shirley Parker, Roger Ladwig (Alternate 2)
Absent: Charles Lepinski (Alternate 1)
Also present: Matt Kirkman, Code Enforcement Officer
Al Shute, County Surveyor/Land Development Director
Carole DeCramer, Board Secretary
Kate Worth, Court Reporter
Jeff Haase, Assistant Corporation Counsel

APPROVAL OF AGENDA

Motion by J. Ladwig/Parker, unanimously carried, to approve the agenda. Motion carried.

APPROVAL OF MINUTES

Motion by Parker/J. Ladwig, unanimously carried, to approve the February 19, 2010, minutes. Motion carried.

Audio tape is available for verbatim discussion.

RECESS FOR FIELD INSPECTION

Time: 9:02 a.m.

PUBLIC HEARING MATTERS

Board reconvened at 10:02 a.m.

Secretary DeCramer read the Rules of Order.

See Transcript of Proceedings for verbatim testimony:

Item I: Owner/Applicant: Thomas B & Linda J Kloosterboer **Address:** W2684 Oakwood Beach Rd, Parcel #006-01483-0000, Oakwood Beach Plat Lot 27, Section 12, T15N R12E, Town of Green Lake **Explanation:** The owners are requesting a variance from Sections 338-14.A. and 338-14.B. of the Shoreland Protection Ordinance to allow for the construction of a new residence within the required 75' shoreyard setback and within the required 40' frontyard setback.

- a. Public hearing for the first variance request.

Prior to public comment, Chair Ahonen questioned Code Enforcement Officer Kirkman as to why there was a discrepancy in the shoreyard setback. Ahonen stated that the 1991 variance granted a 69' setback from the ordinary high water mark as well as a 30' setback from the front lot line. The staff report states that the existing home is actually 65' from the ordinary high water mark.

Kirkman explained that, in 1991, the shoreyard setback measurement was taken from an incorrect point. It should have been measured from the closest point where the lake enters the boathouse. The house should have been moved back five feet.

Shawn Eisch, Water Management Specialist, Wisconsin Department of Natural Resources (WI-DNR)
– Spoke against the request.

Ahonen – Inquired as to when the State of Wisconsin shoreland zoning regulations will be mandated and would they apply to this request.

Eisch – Responded that the ordinance would be adopted in the future. His comments today are based on this particular application.

Parker – Asked if he was more concerned about the project construction or the finished project.

Eisch – Stated that he is concerned about the whole project. Any encroachment affects Green Lake.

Ahonen – Requested that Kirkman read into the record the WI-DNR letter that was written by Shawn Eisch and submitted to the Green Lake County Planning and Zoning Department. *Exhibit 1.*

Dr. Thomas Kloosterboer, W2684 Oakwood Beach Road – Spoke in favor of the request.

Stan Arnetveit, Design Specialty Builders – Spoke in favor of the request.

Dr. Kloosterboer submitted correspondence from Attorney Richard Lehmann, Boardman Law Firm, who rendered the opinion that the “build to” or setback lines were the only issue with the 1991 variance request and, once the lines were established, a new house respecting those lines should not need a new variance. *Exhibit 2.*

Ahonen – Asked Assistant Corporation Counsel Haase if the applicant, after tearing down the existing house, could rebuild on the same footprint.

Haase – Stated that, after reading the Sydney Goldberg v. City of Milwaukee Board of Zoning Appeals, 115 Wis2d 517 (1983) decision, as cited in Attorney Lehman’s letter, the facts in that case are distinguishable from the facts in this case. Haase’s interpretation is that the original variance is what is granted and stays with the land. If there are any modifications to that, the original variance doesn’t play a roll in this anymore.

Ahonen – Asked Haase if he agrees with Attorney Lehman’s opinion.

Haase – To some extent, but you would have to look and see what exactly was granted in the variance and base this on all the criteria of a new variance.

J. Ladwig – Stated that she thinks that the variance tends to go with the structure because once the building is gone, it's like a blank sheet again. Something can be built that is in compliance, and if not, apply for a variance.

Haase – The purpose is if someone is granted a variance and they want to sell their home, the new owner shouldn't have to re-apply for a variance. If there are changes to the property, then you are looking at something new.

Shute – What staff has been told by corporation counsel, prior to Attorney Haase, is some case law or policy states if a structure is built without a permit and not recognized by an enforcement agency for ten years, after that ten-year timeline expires, the agency can not go back to begin enforcement action to require a permit, or if it's built in a non-conforming setback location, to require them to move the structure. The 1991 Board of Adjustment decision is just like the decision that this Board makes today. It's a statement of your findings. It does not reflect what material the Board reviewed in coming up with their decision. The packet of information we provide the Board of Adjustment represents the information that tells people what the project is, what the configuration is, what the design is, that you are granting the variance for. That's all part of the Board of Adjustment request, so to take the findings or the statement of decision and call out some numbers, may not represent what the Board considered in making their decision. In researching and working with variances, we have information that says variances are specific to projects. A variance dimension can't be used to change the shape of a building from its original shape from the way it was granted in the variance. There are some conflicting things going on here, and I don't think that it is fair to present some dimensions as, that is all that went into that 1991 decision.

Haase – My interpretation is, what Al (Shute) is saying is correct. You would have to look at the original packet that the variance was granted for and see exactly what was granted because it states here that Goldberg is entitled to the original variances granted to the other owners. You have to look at the original variance. There is sparse case law in this area so this is something that the Board can consider. If the original variance was for a seasonal home and now we're looking at a year-round home, does that now make it a difference variance? There does not seem to be case law to help you out in this area. You may be treading on new ground that may be tested.

Tom Zick, Town of Green Lake Supervisor – Expressed concerns that the Town of Green Lake has regarding parking and water runoff. He stated that the Green Lake County Land Conservation Department would like to see the culvert out and the area between the two lot lines sodded.

Ann Kotelman, W2697 Oakwood Beach Road – Expressed concerns about guest parking.

Mary Kotelman, W2697 Oakwood Beach Road – Spoke against the request.

Kirkman read the following correspondence into the record:

Beth Durik – Email speaking against the request. *Exhibit 3.*

Ray and Pat Mrazek – Email speaking against the request. *Exhibit 4.*

James Fox, Town of Green Lake Chairman – Letter speaking against the request. *Exhibit 5.*

Walter D. and Joslyn Anderson – Letter speaking against the request. *Exhibit 6.*

Tom Koch, W2660 Oakwood Beach Road – Spoke in favor of the request.

Public hearing closed.

- b. Board discussion and deliberation for the first variance request.

Ahonen to Attorney Haase – Is it your opinion, with the variance that was granted with the 69’ setback and the 30’ from roadside, that the applicant already has the 69’ setback?

Haase – The Board must decide if this is a new variance or if the applicant is asking for the original variance again. If it is the same variance, then what was granted remains, and then decide on the garage. Is this a new variance or request of the old variance?

The Board agreed that this is the same variance. The applicant has the 69’ from the 1991 variance and is now requesting 20’ for the frontyard setback rather than the 30’ that was granted in 1991.

Motion by J. Ladwig/Parker, unanimously carried on roll call (3-eyes, 0-nays) to approve the variance request to allow for the construction of a new residence having a 20’ minimum front-yard setback. The variance is approved with the following conditions:

- 1) That the site be staked out by a Registered Land Surveyor.
- 2) That a shoreland restoration plan be designed by an RSVP certified professional (in accordance with NRCS Interim Standard #643A, Shoreland Habitat and Wisconsin Biology Technical Note 1: Shoreland Habitat), be evaluated and approved by the Land Use Planning & Zoning Office prior to Land Use Permit issuance, and be installed within one year of land use permit issuance.
- 3) The shoreland restoration project shall be maintained via the Shoreland Vegetative Buffer Agreement that shall be recorded in the County’s Register of Deeds Office.
- 4) That the owner/applicant consults with the Land Conservation Department to:
 - a. Determine through the scope of the proposed project the need for a stormwater management plan or a stormwater drainage plan, if any.
 - b. Create, if deemed necessary by the Land Conservation Department, a stormwater management plan or a stormwater drainage plan that will address the stormwater issues identified in a. above.
 - c. Execute the stormwater plan pursuant to standards developed by the Land Conservation Department.

Findings:

Ahonen – We found the unnecessary hardship was a steep slope for that driveway ingress and egress. It's not useable. In addition, the town road is not pitched properly and that's causing additional icing and makes it unsafe, plus, where it's located, it doesn't leave any parking space. The unique property limitation is, again, the lot being narrow and a steep slope at the south part of the lot, heading north towards the lake. We found there is no harm to public interest in that the applicant has restrictions where he'll be utilizing Land Conservation to maximize the impervious areas. This is area is also a sewered area.

Haase – For the record, the 69' setback from the ordinary high water mark, the Board has determined that it has a variance that was already granted and runs with the land.

Board – Yes.

Haase – So then the 20' setback, do you want to put any limitations on that as to relating only to a garage or can they build anything up to the 20' setback?

J. Ladwig – It was in reference to the driveway.

Ahonen – It was limited to the driveway.

Shute – We don't require permits for driveways.

Ahonen – They can build up to the 20' setback.

Haase – Is that the garage or can the house come up that far also?

Ahonen – We're basing this on the plan submitted that the garage would be adjacent to that 20' setback. It is specific to this submittal.

CORRESPONDENCE

Shute – Jill Ladwig has notified us that she is not interested in another term on the Board of Adjustment. If any of you have ideas for new board members, contact either me. The County thanks her for serving on this Board.

BOARD DISCUSSION – None

NEXT MEETING DATE

June 18, 2010

ADJOURN

On a motion by J. Ladwig/Parker, unanimously carried, the meeting was adjourned. Motion carried.

Time: 12:20 p.m.

Recorded by,
Carole DeCramer
Board of Adjustment Secretary

APPROVED ON:
June 18, 2010