

NOVEMBER 21, 2024 BOA PUBLIC HEARING STAFF REPORT

Appeal 3730. Appeal by Jason & Amy Zembroski requesting a variance from floodplain development standards and required side yard to permit the removal and replacement of a residence at 362 Lake Shore Drive being lot 13 & 14 Edgerton Beach Park, Section 25, Town of Albion.

OWNER: Jason & Amy Zembroski
LOCATION: 362 Lake Shore Drive
ZONING DISTRICT: SFR-08 Single Family Residential

COMMUNICATIONS:

Town of Albion: 09/24/2024 acknowledgement; Action: No response as of 11/18

WI DNR- Comments from Regional Floodplain Engineer, Will Disser and Floodplain Management Policy Coordinator, Sarah Rafajko.

Facts of the Case:

Existing:

- In August of 2008 Lake Koshkonong experienced significant flooding and a number of residences in the Edgerton Beach Park subdivision were inundated with floodwater.
- The residence on the property at that time was determined to be substantially damaged.
- The replacement of substantially damaged structures is required to comply with current floodplain development standards.
- In 2008 the effective flood insurance rate maps for the area were adopted in 2003.
- In November of 2008 floodplain and zoning permits were issued for the removal of the damaged structure and the rebuilding of a new residence, however these permits expired in 2009 because construction had not begun.
- The property was then sold to a new owner who obtained permits in February 2010 to lift and rehabilitate the existing residence.
- In 2009 FEMA updated the rate maps, however there was no change in the base flood elevation of Lake Koshkonong at 784.4 feet, the same as the 2003 maps.
- In 2011, Dane County Zoning issued a certificate of compliance stating that the new residence on the property conformed to the floodplain regulations in effect at the time.
- In 2014, FEMA and the Wisconsin Department of Natural Resources restudied the flood sources in the area and once again revised the flood insurance rate maps. These maps increased the base flood elevation of Lake Kegonsa by ½ foot to 784.9 feet above mean sea level.
- The adoption of the new base flood elevation resulted in the replacement residence becoming non-conforming as it was no longer in compliance with floodplain development standards.
- Based on the 2011 elevation certificate used to determine floodplain development standards, the existing residence:
 - Has a first floor elevation of 788.2 ft amsl, this is still in compliance.
 - Has lowest adjacent grades (of soil outside of structure) of 784.4 ft amsl, this is out of compliance.
 - Has a crawlspace floor elevation of 784.0 ft amsl, this is out of compliance.
 - The existing structure does not have contiguous dryland access due to the elevation of Lake Shore Drive below the base flood elevation.
- Zembroski purchased the property in 2017.

Proposed

- The property owner proposed to remove the existing single story residence from the foundation and build a two story residence on the remaining foundation.
- Developments exceeding 50% of the equalized assessed value must comply with current floodplain development standards.
- As proposed the new residence fails to comply with floodplain development standards as well as the required side yard setback.

- Proposed floodplain development standards:
 - Elevation of lowest floor: Required: 786.9 ft; Proposed: 788.2 ft
 - Foundation on Fill at 785.9 ft: Required: 15 ft; Proposed: 0 ft
 - Basement or crawlway: Required: 784.9 ft; Proposed: 784.9 ft
 - Contiguous dryland access Required: N/A; Proposed: N/A;

Zoning Notes:

- For residences in the floodplain to be compliant with floodplain development standards they need to:
 - Have the elevation of the lowest floor at or above the flood protection elevation (Two feet above the base flood elevation, or 786.9 ft amsl)
 - Have fill, at least one foot or more above the base flood elevation (785.9 ft amsl) extending at least 15 feet beyond the limits of the structure.
 - Have any basement or crawlway at or above the base flood elevation (784.9 ft amsl).
 - Have contiguous dryland access must be provided from the residence to land outside of the floodplain unless where existing street or sewer line elevations make compliance with this requirement impractical.
- Rebuilding on the existing foundation for compliance with current floodplain development standards would require:
 - At least 0.9 feet of fill added to the floor of the crawlspace to bring it to at least 784.9 ft amsl
 - Fill added from the foundation, 15 feet out in all directions, to an elevation of 785.9 ft above mean sea level.
- As of 2014, the Wisconsin DNR created a flood storage district associated with the Lake Koshkonong basin. The ability to add fill within the flood storage district requires the creation of compensatory flood water storage within the same basin. Any storage provided must be above the groundwater table elevation.
- In addition to floodplain development standards, any new development will need to conform to the requirements of the SFR-08 zoning district which the property is zoned. The district requires side yard setbacks of 10 feet on each side.
- The property is also located within the shoreland zoning district. The proposed development satisfies shoreland setback and impervious surface limits. Any ground disturbing activity will require a shoreland erosion control permit from Dane County Land and Water Resources.
- Under 10.102(11) Dane County Zoning regulates changes to topography within 5 feet of a property line, however 10.102(11)(c)2. Exempts development in floodplain districts requiring fill to comply with those regulations.

History

- 08/2008 Residence floods and is determined to be substantially damaged
- 11/17/2008 DCPZP-2008-00889 issued for replacement of existing single family residence
- 11/17/2009 DCPZP-2008-00889 expires
- 02/18/2010 DCPZP-2010-00033 issued to lift existing house on raised foundation.
- 11/18/2010 permit amended to include attached deck
- 05/20/2011 Elevation certificate provided by Quam Engineering
- 05/23/2011 Letter of compliance issued for DCPZP-2010-00033.
- 01/27/2015 FEMA issues letter of map revision based on fill (LOMR-F) (15-05-1929A) removing the residence from the flood hazard area. The LOMR-F stated the BFE to be 784.2 ft.
- 08/05/2024 Dane County Zoning requested FEMA to review the issuance of of the LOMR-F based on the incorrect BFE.
- 08/22/2024 FEMA issued LOMR-F 24-05-2420X with the correct BFE of 784.9 ft and stated the existing structure is not removed from the flood hazard area.
- Violation History: No violation history was found on the property.

Floodplain Zoning Variance Requirements

Applicant shall convincingly demonstrate that:

- a. Literal enforcement of the ordinance will cause unnecessary hardship;
- b. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
- c. The variance is not contrary to the public interest; and
- d. The variance is consistent with the purpose of this ordinance.

FEMA requires that the following criteria be met:

- a. The variance shall not cause any increase in the regional flood elevation;
- b. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE; and
- c. Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.

A variance shall not:

- a. Grant, extend or increase any use prohibited in the zoning district;
- b. Be granted for a hardship based solely on an economic gain or loss;
- c. Be granted for a hardship which is self-created;
- d. Damage the rights or property values of other persons in the area;
- e. Allow actions without the amendments to this ordinance or map(s) required in s. 17.13 Amendments; and
- f. Allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

When a floodplain variance is granted the Board of Adjustment shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 of coverage.

VARIANCES REQUESTED: Purpose: Remove and replace residence

Required side yard:

Minimum setback from lot line required: 10 feet.

Actual Setback: From front lot line: 4.3 feet.

VARIANCE NEEDED: 5.7 feet.

Floodplain Development Standards:

Fill one foot or ore above the regional flood elevation extending at least 15 feet beyond the limits of the structure:

Minimum fill required: 15 feet

Proposed: 0 feet

VARIANCE NEEDED: 15 feet.