



# Dane County

## Minutes

### Board of Adjustment

*Consider:*

*Who benefits? Who is burdened?*

*Who does not have a voice at the table?*

*How can policymakers mitigate unintended consequences?*

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Thursday, December 29, 2022

6:30 PM

Hybrid Meeting: Attend in person at the City County Building in Room 357; attend virtually via Zoom.

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#### A. Call To Order

*Chair Long called the meeting to order at 6:30 pm, introduced the Board and made a statement regarding the rules and procedures.*

*Also Present: Staff: Roger Lane, Zoning Administrator; Hans Hilbert, Assistant Zoning Administrator.*

*Members Leeser and Studz attended virtually.*

**Present** 5 - Chair AL LONG, Vice Chair TRAVIS LEESER, ARLAN KAY, Secretary SUE STUDZ, and GEORGE CORRIGAN

#### B. Public Comment for any Item not listed on the Agenda

*No public comments.*

#### C. Consideration of Minutes

1. Minutes of the November 10, 2022 Special Meeting

**LEESER/CORRIGAN to approve the minutes. Motion carried.**

**Ayes:** 5 - LONG, LEESER, KAY, STUDZ and CORRIGAN

2. Minutes of the December 8, 2022 Site Inspection

**KAY/STUDZ to approve the minutes. Motion carried.**

**Ayes:** 4 - LONG, KAY, STUDZ and CORRIGAN

**Abstain:** 1 - LEESER

#### D. Public Hearing for Appeals

1. Appeal 3722. Appeal by Dan Holty (Keith Phelps, Heartland Ecological Group, agent) for variance from the required setback of 75 feet from the boundary of a wetland greater than 2 acres to all structures and buildings as provided by 11.03(2)(a)2., Dane County Code of Ordinances, to permit development of a storage shed near 136 Lake Drive Rd in the SW ¼ of the NE ¼, Section 36, Town of Albion.

*Hilbert presented a staff report and answered questions of the Board.\**

*IN FAVOR: Dan Holty, owner, spoke in favor of the variance request and answered questions of the Board. Buck Sweeney, counsel for the owner, also addressed the Board and answered questions.*

*ZONING ADMINISTRATOR'S COMMENTS: The Zoning Administrator stated that the site contains environmentally sensitive features that are prohibitive of development and the owner was aware that permits for development are required. The Zoning Administrator didn't find that relief was warranted. The Zoning Administrator answered questions of the Board.*

*Holty and Sweeney were both given an opportunity for a rebuttal.*

*The Chair closed the public hearing and the Board deliberated.*

*Finding of Fact:*

*Existing:*

- A partially constructed shed exists on a new concrete slab located within 75 feet of a wetland and within the mapped floodplain and flood storage district. A stop work order was issued by Dane County Zoning on August 12, 2021 for failure to obtain a zoning permit prior to starting development of a building.*
- No other buildings are located on the parcel.*

*Proposed*

- Applicant seeks to complete the partially constructed shed for use as a seasonal recreational storage shed accessory building.*

*Zoning Notes:*

- The location of the partially constructed shed is entirely within the shoreland zoning district as it is within 300 feet of Lake Koshkonong. It is also entirely within the wetland setback as it is within 75 feet of a delineated property.*
- DCCO Chapter 11 requires a 75 foot setback to all structures and buildings from the boundary of a wetland greater than 2 acres.*
- DCCO Chapter 10.102(2)(a)2. provides, "Except for agricultural accessory buildings, or for property management sheds specifically authorized by conditional use permit, a principal building must exist or be under construction prior to the construction of an accessory building."*
- A zoning permit will not be issued for the proposed shed until such a time that a principal building exists or be under construction, or the proposed location is combined with additional lands containing a principal building. The mechanism for the latter is a certified survey map.*

*History*

- January 6, 2021, zoning permit DCPZP-2021-00006 issued for a new house on an*

adjacent legal lot of record in common ownership with the parcel that is the subject of this appeal.

- On August 12, 2021 a routine inspection of DCPZP-2021-00006 was made. The inspector noticed the construction of the shed on the adjacent property and confirmed that no permit existed for the structure and issued a stop work order.
- A notice of violation, dated August 16, 2021 was provided to Daniel Holty. This notice is included the appeal packet.
- In October of 2021, Dan Holty applied for a shoreland zoning permit to permit a detached garage on the subject parcel of this appeal. The permit was denied and a letter dated October 25, 2021 was provided to the applicant explaining the proposed plan failed to comply with the required wetland setback.
- The stop work order and notice of violation remains active and open.

**COMMUNICATIONS:**

Town of Albion: 10/18/2022 Acknowledgement. Action: 12/6/22 Town Board recommending denial of request  
 WDNR: No comment on matters not regulated by statute.

**Conclusions:**

- 1)Unnecessary Hardship: The appellant created a self-imposed hardship that has led to a financial hardship of needing to remove or relocate a building that does not meet required setbacks. Self-imposed and financial hardships do not meet the criteria used to warrant relief.
- 2)Unique Limitations of the Property: The building site in encompassed by both the shoreland setback and wetland setback and is also located within a regulatory floodplain.
- 3)No Harm to Public Interests: Granting a variance may establish a precedent that undermines the purpose of shoreland and wetland regulations.
- 4)Alternatives: The property owner has alternative locations that would allow for accessory development that is not constrained by environmental areas.

*\*During this presentation the meeting room disconnected from the Zoom meeting various times. When the connection was reestablished the Board stated that they had a physical quorum present and if the virtual meeting failed they would continue.*

**KAY/CORRIGAN to deny appeal 3722. Motion Carried.**

**Ayes:** 5 - LONG, LEESER, KAY, STUDZ and CORRIGAN

**E. Appeals from Previous Meetings**

**F. Reports to Committee**

1. Upcoming meetings and meeting format

*The Board discussed future meeting formats and agreed to continue with a hybrid meeting approach.*

**G. Other Business Authorized by Law**

*Hilbert updated on the Board on the need for January meetings.*

**LEESER/STUDZ to adjourn. The Board adjourned at 8:50 pm.**

**H. Adjournment**