



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?

Thursday, July 25, 2019

6:30 PM Room 357, City-County Building, 210 Martin Luther King
Jr. Blvd, Madison, WI

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A. Call To Order

At 6:32 PM Chair Schulz called the meeting to order and made a statement regarding the rules and procedures of the Board.

Also Present: Assistant Zoning Administrator, Hans Hilbert.

Present 4 - Chair STEVEN SCHULZ, SUE STUDZ, Vice Chair AL LONG, and EDMOND
MINIHAN

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

No public comments were made.

C. Consideration of Minutes

1. Minutes of the June 27, 2019 Public Hearing
STUDZ/LONG to approve the minutes. Motion carried.
2. Minutes of the July 11, 2019 Site Inspection
STUDZ/LONG to approve the minutes. Motion carried.

D. Public Hearing for Appeals

1. Appeal 3700 by Bryan and Mary McMillan (Cory Horton, RA Smith, Agent) for variance from minimum required setback to a wetland as provided by Section 11.03(2)(a)2., Dane County Code of Ordinances, to permit the construction of a single family residence at a property on Exchange Street being a lot in the NW ¼ of the NW ¼, Section 10, Town of Dunn.

IN FAVOR: Cory Horton, agent for owner, spoke in favor of the variance request. Ken Brost, neighboring property owner, spoke in favor of the request.

Assistant Zoning Administrator (AZA) Hilbert presented a Staff Report reporting facts of the case.

ZONING ADMINISTRATOR'S COMMENTS: Hilbert relayed that the Zoning Administrator stated after reviewing the application it appeared to be a self-imposed and economically driven hardship and that alternatives not requiring a variance from the County had not been exhausted.

OPPOSED: [None. The Chair stated no rebuttal was needed.]

Finding of Fact:

Existing:

- Property is located within 300 feet of the Yahara River and is included in the shoreland zoning district.*
- Property contains an abandoned structure that the current owner began reconstruction on without zoning permits. Abandoned structures do not have non-conforming status.*
- At the request of the owner, the parcel was determined to be a legally created parcel.*

Proposed

- Owner proposes to construct a single family residence located partially on the foundation of the abandoned structure. This foundation does not meet the required setback to boundary of a delineated wetland.*

Zoning Notes:

Under shoreland zoning, Dane County requires a 75 foot setback to the boundary of any wetland greater than 2 acres.

History

3/16/2016: Violation notice issued by Dane County Zoning to property owners due to land disturbing activities, residential uses, and floodplain development without necessary permits, as well as the storage of junk and filling of wetlands. The property owner was instructed to obtain a wetland delineation, and remove the junk and camping trailing from the property.

The 2016 violation was ultimately resolved by the owner submitting a wetland delineation, obtaining after-the-fact permits for land disturbance and removing junk and the camping trailer from the property. The following photos show the condition of the property during the time of this violation:

6/25/2018: A stop work order was issued by the jurisdictional inspector for failure to obtain permits prior to erecting a structure.

6/27/2018: A violation notice was issued to the property owners directing them to remove

the camping trailer from the property and remove the trusses from the structure.

August, 2018: RA Smith, agent for owner, submitted documentation that the structure was less than 75 feet from the wetland boundary as delineated in 2016.

8/21/2018: A final notice of violation was issued to the property owner. This notice included a determination that the previous structure is determined to be abandoned by the Zoning Administrator and is not afforded non-conforming status. The property owner was directed to remove the structure, in its entirety, from the property.

9/18/2018: A routine inspection of the property found that the trusses had been removed from the top of the block and were still stored on the property.

September 2018: The property owner requested additional time to explore options to developing a single family residence on the property. The Zoning Administrator granted this request as long as progress was being made, however the order that this structure, in its entirety, must be removed from the property still stands as an active violation order.

COMMUNICATIONS:

Town of Dunn: 6/18/2019 Town Board action recommending approval

Conclusions:

- 1) Unnecessary Hardship: The board discussed viewing this request without considering that a violation or existing structure existed. While it is unfortunate that zoning regulations create a burden for the property owners, the board found that even with the limitations constrained by the regulations, the property owner is afforded use of the property owner without a variance.*
- 2) Unique Limitations of the Property: The building envelope of the property is bound by the required setbacks from the property lines as well as the required setback from the wetland boundary, however this is not unique to this property and would apply to any property in such a setting.*
- 3) No Harm to Public Interests: Granting a variance would result in a new structure located nearer a wetland than allowed by the ordinance and is contrary to the purpose of shoreland zoning regulations.*
- 4) Alternatives: A building envelope exists on the property in which relief from the ordinance would not be required.*

LONG/SCHULZ to deny the variance request. Motion Carried.

Ayes: 4 - SCHULZ, STUDZ, LONG and MINIHAN

2. Appeal 3701 by Peter Weeks for variance from minimum average lot width and minimum lot area in the shoreland zoning district as provided by Section 11.03(1)b, Dane County Code of Ordinances, and Section 5.2, Wisconsin Model Shoreland Zoning Ordinance, to permit consolidation of land to construct a single family residence on County Highway AB described as Lot 13 Colladay Park, Section 2, Town of Dunn.

Assistant Zoning Administrator (AZA) Hilbert presented a Staff Report reporting facts of the case.

IN FAVOR: Peter Weeks, owner, spoke in favor of the variance.

ZONING ADMINISTRATOR'S COMMENTS: Hilbert relayed that the Zoning Administrator stated that he agreed with the Town and DNR and the request was inline with the purpose of the shoreland zoning ordinance.

OPPOSED: [None. The Chair stated no rebuttal was needed.]

Finding of Fact:

Existing:

- *Vacant lakefront property is included in the shoreland zoning district. Various land subdivision, and reconfiguration of highway right-of-way has left fragments of land in common ownership.*

Proposed

- *Owner proposes to consolidate fragments into single riparian lot for the future use as a residential lot.*
- *Owner also wishes to correct an illegal land division that occurred in the past on the adjacent property where he currently resides.*
- *If a variance is granted a 2 lot CSM will be recorded to bring the entire ownership boundary into compliance with land division regulations.*

Zoning Notes:

Under shoreland zoning, lots are required to have an average lot width of 65 feet. Lots that existed prior to the adoption of shoreland zoning are typically grandfathered in, however previous land divisions rendered this exception null for this property, so to be used as a building site this lot requires a variance.

COMMUNICATIONS:

Town of Dunn: 6/18/2019 Town Board action recommending approval

Conclusions:

- 1) *Unnecessary Hardship: Without the granting of a variance the property could not be used as it was intended to be used when originally platted and allowed by shoreland zoning regulations.*
- 2) *Unique Limitations of the Property: The property was originally platted prior to the creation of the zoning ordinance and thence replatted. These lands were also subject to highway vacations and dedications that resulted in fragmented parcels.*
- 3) *No Harm to Public Interests: Future development will meet all zoning regulations. A variance will result in legal lots of record.*
- 4) *Alternatives: No alternatives exist that would not require a variance.*

STUDZ/MINIHAN to approve a variance of 5.1 feet from required minimum average lot width to permit the creation and recording of a two lot certified survey map. Motion carried.

Ayes: 4 - SCHULZ, STUDZ, LONG and MINIHAN

E. Appeals from Previous Meetings

1. Written decision of Appeal 3699 related to Yahara Materials Hoepker Quarry

SCHULZ/STUDZ to approve the written decision. Motion carried.

Ayes: 4 - SCHULZ, STUDZ, LONG and MINIHAN

F. Reports to Committee

G. Other Business Authorized by Law

H. Adjournment

The Board Adjourned by consensus at 7:54 PM