



# Dane County Planning & Development

## Division of Zoning

Appeal No. \_\_\_\_\_

Date Received \_\_\_\_\_

Date of Public Hearing \_\_\_\_\_

### VARIANCE APPLICATION:

**Owner:** Thomas P. and Kimberly P. Walz

Mailing Address: 3071 Sunnyside St  
Stoughton WI 53589

Phone Number(s): (608) 279-2944

Email Address: tpwalz@gmail.com

**Assigned Agent:** None.

Mailing Address: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Email Address: \_\_\_\_\_

*To the Dane County Board of Adjustment:*

*Please take notice that the undersigned was refused a permit by the Dane County Zoning Division, Department of Planning and Development, for lands described below for the reason that the application failed to comply with provisions of the Dane County Code of Ordinances: Chapters 10 – Zoning, 11 – Shoreland, Shoreland-Wetland & Inland-Wetland, 17 – Floodplain Zoning, and/or 76 – Airport Height Regulations. The owner or assigned agent herewith appeals said refusal and seeks a variance.*

Parcel Number: 0611-183-6237-8 Zoning District: SFR-08 Acreage: 0.174

Town: Pleasant Springs Section: \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 \_\_\_\_\_

Property Address: 3071 Sunnyside St Stoughton WI 53589

CSM: \_\_\_\_\_ Lot: 7 / Subdivision: Addition to Lees Park Block/Lot(s): 2 Lot 7

Shoreland: Y/N / Floodplain: Y/N / Wetland: Y/N / Water Body Lake Kegonsa

Sanitary Service: Public Private (Septic System)

Current Use: See Attachment

Proposal: See Attachment

**NOTE:** You are encouraged to provide a complete and detailed description of the existing use and your proposed project on an attached sheet.

### REQUIRED BY ORDINANCE

Section	Description	Required	Proposed or Actual	Variance Needed
	<u>See Attachment</u>			

## PRESENTING YOUR CASE TO THE BOARD OF ADJUSTMENT:

An Area Variance may be authorized by the Dane County Board of Adjustment to vary one or more of the dimensional or physical requirements of the applicable ordinance in connection with some proposed construction.

The burden will be on you, as property owner or authorized agent, to provide information upon which the board may base its decision. At the hearing, any party may appear in person or may be represented by an agent or attorney. You or your agent must convince the zoning board to make a ruling in your favor. The board must make its decision based only on the evidence submitted to it at the time of the hearing, including the staff report. Unless you or your agent is present, the board may not have sufficient evidence to rule in your favor and may then deny your application.

Please answer the four questions below. You are encouraged to attach a separate sheet, labeling the answers (1) through (4), to provide enough detail to support your appeal:

(1) Describe alternatives to your proposal such as other locations, designs and construction techniques. Attach a site map showing alternatives you considered in each category below:

(A) Alternatives you considered that comply with existing standards: If you find such an alternative, you can move forward with this option with a regular permit. If you reject compliant alternatives, provide the reasons you rejected them.

*see Attachment*

(B) Alternatives you considered that require a lesser variance: If you reject such alternatives, provide the reasons you rejected them.

*see Attachment*

(2) Will there be an unnecessary hardship to the property owner to strictly comply with the ordinance?

*Unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome.*

*An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home or claiming that they need more outbuilding space than that permitted to store personal belongings). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.*

*see Attachment*

- (3) Do unique physical characteristics of your property prevent compliance with the ordinance? If yes, please explain. The required Site Plan and/or Survey submitted with your application must show these features.

*Unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with the ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances, or lack of objections from neighbors do not provide a basis for granting a variance.*

*see Attachment*

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- (4) What would be the effect on this property, the community or neighborhood, and the general public interest if the variance were granted? Describe how negative impacts would be mitigated. The required Site Plan and/or Survey submitted with your application must show any proposed mitigation features.

*These interests may be listed as objectives in the purpose statement of an ordinance and may include: Promoting and maintaining public health, safety and welfare; protecting fish and wildlife habitat; maintaining scenic beauty; minimizing property damages; ensuring provision of efficient public facilities and utilities; requiring eventual compliance for nonconforming uses, structures and lots; drainage; visual impact; fire safety and building code requirements; and any other public interest issues.*

*see Attachment*

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## **REQUIRED PLANS AND SPECIFICATIONS:**

In addition to providing the information required above, you must submit:

1. **Site Plan:** Complete and detailed plans of your lot or lots, drawn to a standard and easily readable scale. In most cases, a survey by a Registered Land Surveyor is needed. The Site Plan/Survey should include the following, as applicable, as well as any unique existing features of the lot and any proposed mitigation features, as described above:
  - ☐ Scale and North arrow
  - ☐ Road names and right-of-way widths
  - ☐ All lot dimensions
  - ☐ Existing buildings, wells, septic systems and physical features such as driveways, utility easements, sewer mains and the like, including neighboring properties and structures.
  - ☐ Proposed new construction, additions or structural alterations.
  - ☐ For property near lakes, rivers or streams:
    - ☐ Location of Ordinary High Water Mark (OHWM) Elevation
    - ☐ Location of Floodplain Elevation
  - ☐ For property near Wetlands, a Wetland Boundary determination by a qualified professional consultant may be required.
  - ☐ Topographic survey information may be desirable or necessary.
  - ☐ Setbacks from any existing or proposed structures (building) to lot lines, right-of-way lines, Ordinary High Water Mark, and/or Wetland Boundary, as applicable.
  - ☐ For setback from Ordinary High Water Mark Variance Appeals, the setbacks of the two neighboring structures from the OHWM may be required.

**2. Floor Plans and Elevations:** Professionally-prepared plans and elevations are not required, but the plans submitted must be drawn to a standard and easily readable scale, must show each story of the building or structure, and must include all parts of existing and proposed structures, including any balconies, porches, decks, stoops, fireplaces and chimneys. Exterior dimensions must be included. Show all exit door locations, including sliding doors, and any windows or other features that are pertinent to your appeal. The plans may be a preliminary version, but are expected to represent your actual proposal for the use of your lot.

Please consult with the Assistant Zoning Administrator regarding required plans for non-conventional structures such as signs, construction cranes, etc.

**3. Town Acknowledgment:** Obtain a signed, dated memo or letter from the Town Clerk or Administrator of the Town where the variance is needed, acknowledging that you have informed them of your intention to apply for the variance(s). You probably will need to appear before the Town Board and/or Plan Commission, which will provide advisory input requested by the Board of Adjustment.

**APPLICANT SIGNATURE:**

*The undersigned hereby attests that all information provided is true and accurate, and further gives permission to Planning & Development staff and Board of Adjustment members to view the premises, in relation to the Appeal request made herein, during reasonable daylight hours.*

Signature Required: Thomas P. Walz Kimberly P. Walz Date: 12-8-20

Print Name: Thomas P. Walz Kimberly P. Walz

Specify Owner or Agent: Owners

**STAFF INFORMATION:**

Date Zoning Division Refused Permit (if different from filing date)

Filing Date

Filing Materials Required:

Site Plan

Floor Plans

Elevations

Fee \_\_\_\_\_ Receipt No. \_\_\_\_\_

Town Acknowledgement Date

Notices Mailed Date

Class II Notices Published Dates

Site Visit Date

Town Action Received Date:

Public Hearing Date

Action by B.O.A. \_\_\_\_\_

by: \_\_\_\_\_ Date: \_\_\_\_\_

Director, Division of Planning Operations, Department of Planning and Development

## **Attachment to Variance Application**

Parcel No. 0611-183-6237-8

Thomas P. and Kimberly P. Walz – 3071 Sunnyside Street

Legal Description: Lot 7 and the Northwesterly 5 feet in width of Lot 8, Block 2, Addition to Lee's Park, in the Township of Pleasant Springs, Dane County, Wisconsin.

### Current Use:

Our lot is zoned SFR-08 and is approximately 55 feet wide. There is a two-bedroom house on the lot with approximately 1,250 sq. ft. of finished space on the first floor. The house was constructed in 1989. The reason we are applying for a variance is because, when the house was built, the concrete foundation of the house failed to meet the 15-foot aggregate side setback requirement by one-tenth of a foot, and there is no certificate of compliance in the file that would show how this potential zoning violation was resolved. A summary of the situation is below.

On May 19, 1989, the former owner of the lot, Charles Burch, obtained a zoning permit for a new house on the lot. Charles Burch was listed on the permit as both the owner and the contractor. The notations on the zoning permit stated (among other things) that the combined total of the side yards must equal 15 feet, and that a location survey "may" be required to verify locational compliance. On May 30, 1989, Charles Burch obtained a building permit from the Town of Pleasant Springs for the house. Handwritten notes on the building permit called for six inspections of the house, including inspections of the footings and the foundation.

The plans for the house called for a concrete foundation that was 40 feet wide, leaving exactly 15 feet for the side yards. However, the foundation that was poured (as recently measured across the front of the house) is 40.1 feet wide, leaving only 14.9 feet for the side yards. It is not clear whether the foundation was inspected for locational compliance before the rest of the house was built, but construction continued. Consistent with the building plans, 2 x 4 walls were built along the exterior of the 8" wide concrete foundation walls. The builder then attached foam insulation and cedar siding and trim on the house walls, and plywood and cedar siding and trim on the garage walls. With typical variations, the finished walls of the house extend an additional 1-3 inches outward from the foundation walls.

In December of 1989, after the house was completed, a surveyor (Roland Sarko) prepared a plat of survey showing the location of the house. A copy of this survey was provided to us by Dane County Zoning Inspector Scott Schroeckenthaler when we started working on our remodel plans. A stamp on the survey indicates that it was filed with Dane County on March 28, 1991. There is not a copy of the survey in the building permit file for this property at the Town of Pleasant Springs. However, there is a copy of a different survey in the building permit file that was prepared by Mark Gerhardt in 1997. Both surveys indicate that the aggregate distances from side lot lines to the finished exterior walls (as opposed to the concrete foundation) total 14.5 feet. We do not know why these two surveys were prepared, or how they were used.

The house has been occupied as a single-family residence for over 30 years, and has been sold at least four times. We purchased the house in 2019 with the intention to remodel the house. When

we purchased the house, we had no idea that the foundation of the house might be one-tenth of a foot too wide.

When we started working on our remodel plans, we learned that we may not be able to extend the exterior walls on a straight line without a variance. More recently, while preparing this variance application, we came across Section 10.101(5)(a), which requires a certificate of compliance for every building, and states that “Every certificate of compliance shall state the use and occupancy and the location of the building or buildings and indicate that the use of land complies with all of the provisions of this ordinance.” On November 30, 2020, we checked the building permit file at the Town of Pleasant Springs to see whether the certificate of compliance for our house would shed any light on our side setback issue. Unfortunately, there is no certificate of compliance in the file. We do not know whether a certificate was never issued, or if it has been misplaced.

#### Proposal:

We would like to construct additions to our house, as shown on the attached site plan and building plans. However, the potential side setback violation has created two problems for our remodel project, as follows.

The first problem is that a literal application of the zoning ordinance apparently would mean that we cannot make any improvements to our house unless we tear down an entire sidewall of the house. Section 10.101(1)(c) states that the zoning administrator “shall not” issue a zoning permit for any property upon which there are “unresolved violations” of the zoning ordinance. We understand that “non-conforming” conditions are “grandfathered in” and are not considered current violations. However, if our house was built too close to the side lot lines in 1989, it does not meet the definition of a “non-conforming structure” in Section 10.1004(108) because it was not built prior to adoption of the zoning ordinance.

If a certificate of compliance had been issued for our house, that may have cured any potential zoning violations. However, as noted above, there is no certificate in the Town’s building permit file, and Dane County apparently does not have a file. We are concerned that, without a variance, the only way to cure the apparent setback violation would be to tear down an entire sidewall of the house and rebuild it farther from the lot line.

To be clear, our zoning administrator has not cited our potential “unresolved violation” as a basis to deny any permit whatsoever for our remodel project, but we are reluctant to start a major remodel project knowing that we have a potential technical violation that would be impossible to cure. The uncertainty about the current status of our house and the potential inability to make any improvements to our house without tearing down an entire side wall constitutes an “unnecessary hardship” for us, as that phrase is used in the zoning ordinance. The only way that we know to resolve this situation is to obtain a limited variance. We therefore believe that a limited variance is necessary and appropriate to resolve this potential “unresolved violation” of the zoning code.

The second problem we have is that if we do not receive a variance, we apparently will need to recess or “inset” portions of the new exterior walls 2-6 inches, depending upon whether the

setbacks for the new walls are measured to the foundation, or to the new finished walls, and depending upon how much of a cushion our builder needs. The walls that would need to be recessed are shown on the attached drawing in red.

In order to recess the wall in the area circled in yellow, we would have to tear down part of the existing garage wall, modify the foundation, and rebuild the wall slightly farther from the side lot line. In the area circled in green, there is an existing wood deck with a railing, so the proposed addition would be entirely within the area that currently is occupied by the deck. We are proposing that the new exterior walls line up with the existing exterior walls, rather than be inset, as shown on the site plan.

We believe that a strictly limited variance would resolve all of the above issues without violating the spirit of the setback ordinance. We therefore are requesting a variance under Section 10.251(5)(b)3.a. of the Dane County Ordinances reducing the minimum aggregate side yard under that section from 15 feet to 14.4 feet, with the condition that the new concrete foundations be built on a straight line with the existing concrete foundation.

<u>Section</u>	<u>Description</u>	<u>Required</u>	<u>Proposed</u>	<u>Variance Needed</u>
10.251(5)(b)3.a	SFR-08 aggregate side yard setback	15 feet	14.4 feet	.6 feet

## 1. Alternatives

### A. Alternatives that comply with existing standards:

1. With respect to the existing house, we are not aware of any alternative to re-building an entire side wall that would resolve the potential side setback violation.
2. With respect to the proposed additions, we could tear down part of the existing garage and “inset” a section of the new garage wall away from the side lot line, as shown on the attached drawing. We have rejected this alternative because it would be wasteful to tear down part of our existing garage, and would result in an odd-looking new garage wall. The small corners created by the jogs in the walls would be difficult to construct, would collect moisture, bugs and debris and would be maintenance items.

### B. Alternatives that require a lesser variance:

We are not aware of any.

## 2. Unnecessary Hardship?

- A. With respect to the existing house, it would be an unnecessary hardship if we are not able to proceed with our remodel project because we purchased the house with the intention to remodel the house, and we had no idea that there might be an outstanding violation that would prevent us from obtaining a zoning permit.

B. With respect to the additions, the burden of having a house with exterior walls that don't line up and an unsightly "inset" in the garage wall is an "unnecessary" hardship because new exterior walls that line up with the existing walls would not reduce the distance between our house and our neighbor's house, and would have no impact on the quality of our neighborhood, property values, public health or safety, or the provision of public services.

### 3. Unique Physical Characteristics?

Our property is unique because the existing 30-year old concrete foundation is exactly one-tenth of a foot too wide – the bare minimum required to create a technical violation of a setback ordinance, but not enough to have any meaningful negative effect on the surrounding neighborhood.

### 4. Negative Impacts?

We don't think there will be any negative impacts if the variance is granted. As shown on the attached plat of the Addition to Lee's Park, our neighborhood was platted with 50-foot wide lots. Under current zoning, the lots have setbacks of 5 feet on either side, so houses on our block are often set back only 5 feet from the side lot lines. Our side setbacks are more (an aggregate of 15 feet) because our lot includes an additional five feet from the adjacent lot.

The proposed variance would not reduce the minimum distance between our house and the houses on either side. As shown on the attached Site Survey of our neighbor's house at 3069 Sunnyside, their house is set back 10.3 feet from our common lot line, so the distance between our houses currently is 18 feet. If our new concrete foundations line up with the existing foundation, the distance between our house and our neighbor's house will remain at 18 feet. The distance between our house and our neighbor's house at 3073 Sunnyside would not be affected by the variance. The exterior walls on that side of our house would be approximately 24 feet from our neighbor's house, more than enough to maintain property values, public health and fire safety.

The Town of Pleasant Springs provided notice by mail to surrounding property owners, and no one appeared at the public hearings before the Plan Commission and the Town Board. The Plan Commission and the Town Board unanimously recommended that the variance be approved by the Board of Adjustments.

We have discussed our remodel plans with our neighbors on both sides (Jim Danielsen on one side, and Scott Haumersen and Jessica Ace on the other side). They have seen our remodel plans, and have submitted statements confirming that they have no objection to the variance.

### Attachments:

1. 1989 Zoning Permit
2. 1989 Building Permit
3. 1989 Foundation Plan



4. 1989 Plat of Survey (Sarko)
5. 1997 Plat of Survey (Gerhardt)
6. Site Plan (measured to finished walls)
7. Site Plan (measured to foundation)
8. Drawing of inset walls
9. Building plans and elevations
10. Plat – Addition to Lee's Park
11. Site Survey of adjacent house (3169 Sunnyside)
12. Letter from Town Clerk
13. Statements from Neighbors