

JANUARY 28, 2021 BOA PUBLIC HEARING STAFF REPORT

1. Appeal 3707. Appeal by Thomas and Kimberly Walz for a variance from minimum required aggregate side yards as provided by Section 10.251(5)(b)(3)a., Dane County Code of Ordinances, to permit proposed additions to a single family residence at 3071 Sunnyside St being Lot 7, Block 2, Addition to Lee's Park Plat, Section 18, Town of Pleasant Springs.

OWNER: Thomas and Kimberly Walz

LOCATION: 3071 Sunnyside St

ZONING DISTRICT: SFR-08 Single Family Residential

COMMUNICATIONS: Town of Pleasant Springs: 9/29/2020 acknowledgement and 10/20/2020 Town Board action, minutes enclosed.

Facts of the Case:

Existing:

- Lot 7 and the northwesterly 5 feet of Lot 8, Block 2, Addition to Lee's Park is a legal lot of record with a lot width of approximately 55 feet.
- A single family residence was built in 1989 by Charles Burch.
- A freestanding deck and stairway for access to the lake was permitted in 2012.
- The property was purchased by Walz Farm LLC June 13, 2019.
- The property was purchased by the current owners, Thomas and Kimberly Walz, on May 1, 2020.

Proposed

- Owners propose four structural alterations to the existing residence resulting in an expansion to the existing garage, and expansion to an existing bedroom, a dining room addition, and a lake entry addition.
- The garage, bedroom, and lake entry additions fail to meet the minimum required side yard.
- The lake entry addition falls within the existing building envelope, while the other three alterations extend beyond the existing building envelope.

Zoning Notes:

- The SFR-08 District requires, for lots 50 feet or more in width but less than 60 feet, the minimum aggregate side yards of at least 15 feet with no single side yard less than 5 feet.
- If the bedroom addition was removed from the plan, or the northern wall was shifted 0.4 feet (4.8 inches) to the south the garage addition would be in compliance with aggregate side yard setback requirements.
- The property is entirely within 300 feet of Lake Kegonsa and therefore subject to shoreland zoning requirements including a 75 foot setback to the ordinary high water mark of the lake and limitations on placement of impervious surfaces.
- Existing development has exceeded a 15% impervious surface ratio, any additional impervious surface will be required to be mitigated.
- Excerpts from the Zoning Board Handout regarding 'specific relief granted' and 'Are multiple variances allowed?' are included in the meeting packet.

History

- **May 19, 1989:** Zoning permit DCPZP-1989-01356 issued to Charles Burch for a new single family residence. The permit contained a condition that the combined total of the side yards must equal 15 feet and neither side yard shall be less than 5 feet.
- **September 25, 1989:** Zoning Administrator notified Mr. Burch that a zoning inspection could not be completed due to a measurement of side yards less than 15 feet. The Zoning Administrator required a survey be submitted by October 7, 1989.
- **October 26, 1989:** Mr. Burch made application for a special exception permit to allow the excavation, fill, and grading to place a retaining wall in the shoreland area.

- **December 1, 1989:** Survey submitted by Roland Sarko showing a northern side yard setback of 6.7 feet and southerly side yard setbacks of 7.8, 7.9, and 13.8 feet from front to rear of the residence.
- **December 21, 1989:** The special exception permit was granted for the retaining wall.
- **Late 1989 to early 1990:** Mr. Burch applies for a variance from required side yards as provided by 10.16(5)(a)1. to permit the residence as constructed. The application was assigned appeal #1958.
- **March 22, 1990:** Dane County Board of Adjustment granted a variance of 0.5 ft, more or less, from the required total combined side yards for appeal 1958.
- **July 30, 1991:** Certificate of compliance issued for zoning permit DCPZP-1989-01356.
- **October 23, 2012:** Dane County Zoning received a written complaint of a deck being built without a permit at 3071 Sunnyside St. Owner, Linda Shanley, was notified of violation.
- **September 1, 2012:** Revisions to DCCO Chapter 11, Shoreland Zoning, became effective. Dane County begins regulating impervious surface limits in the shoreland district.
- **November 8, 2012:** Zoning Permit DCPZP-2012-00787 issued for deck and stairs for access to lake.
- **October 11, 2019:** Mr. Walz submits application for a shoreland zoning permit to add two additions to the existing residence. A shoreland review letter is issued with further actions needed to obtain the permit including obtaining a shoreland erosion control permit.
- **November 24, 2020:** A revised shoreland zoning permit review letter is issued based on a revision to the site plan to alter and include two other additions. The review letter now states that in addition to the shoreland erosion control permit, a shoreland mitigation permit is also required. The review letter also notes that a variance would be required before a general zoning permit could be issued based on the revised site plan and structures not meeting the minimum required side yard.
- **December 8, 2020:** Mr. Walz submits variance application.
- **December 21, 2020:** Mr. Walz submits a revised site plan for the shoreland zoning permit application.
- **January 4, 2021:** Mr. Walz submits a revised site plan for the shoreland zoning permit application.
- **January 12, 2021:** Mr. Walz submits a revised site plan for the shoreland zoning permit application.
- **January 19, 2021:** A revised shoreland zoning permit review letter is issued to Mr. Walz (included in meeting packet).
- **Violation History:** 1989, failure to meet side yard requirement; 2012, failure to obtain permit.

VARIANCES REQUESTED: 0.6 feet (requested by applicant) Purpose: Residential additions

Minimum aggregate side yard required: 15 feet.

Proposed aggregate side yard setback: 14.6 feet. (As calculated based on applicant's plat of survey showing dimensions from lot line to finished vertical plane of wall)

VARIANCE NEEDED: 0.4 feet.

- **Variance to meet code.** Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts.¹⁵⁹

Are there any limits on granting a variance?

Minimum variance allowed

The board may grant only the minimum variance needed.¹⁶⁰ For a use variance, the minimum variance would allow reasonable use, whereas for an area variance, the minimum variance would relieve unnecessary burdens. For example, if a petitioner requests a variance of 30 feet from setback requirements, but the zoning board finds that a 10-foot setback reduction would not be unnecessarily burdensome, the board should only authorize a variance for the 10-foot setback reduction.

Conditions on development

The board may impose conditions on development (mitigation measures) to eliminate or substantially reduce adverse impacts of a project under consideration for a variance. Conditions may relate to project design, construction activities, or operation of a facility¹⁶¹ and must address and be commensurate with project impacts (*review the essential nexus and rough proportionality tests in Chapter 14*).

Specific relief granted

A variance grants only the specific relief requested (as described in the application and plans for the project) and as modified by any conditions imposed by the zoning board. The variance applies only for the current project and not for any subsequent construction on the lot. Referring to Figure 26 on the next page, if the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.

Variances do not create nonconforming structures

If a variance is granted to build or expand a structure, it does not give that structure nonconforming structure status. This relates to the previous point that variances only provide specific relief. In

Nonconforming Structure – A building or other structure, lawfully existing prior to the passage of a zoning ordinance or ordinance amendment, which fails to comply with current dimensional standards of the ordinances.

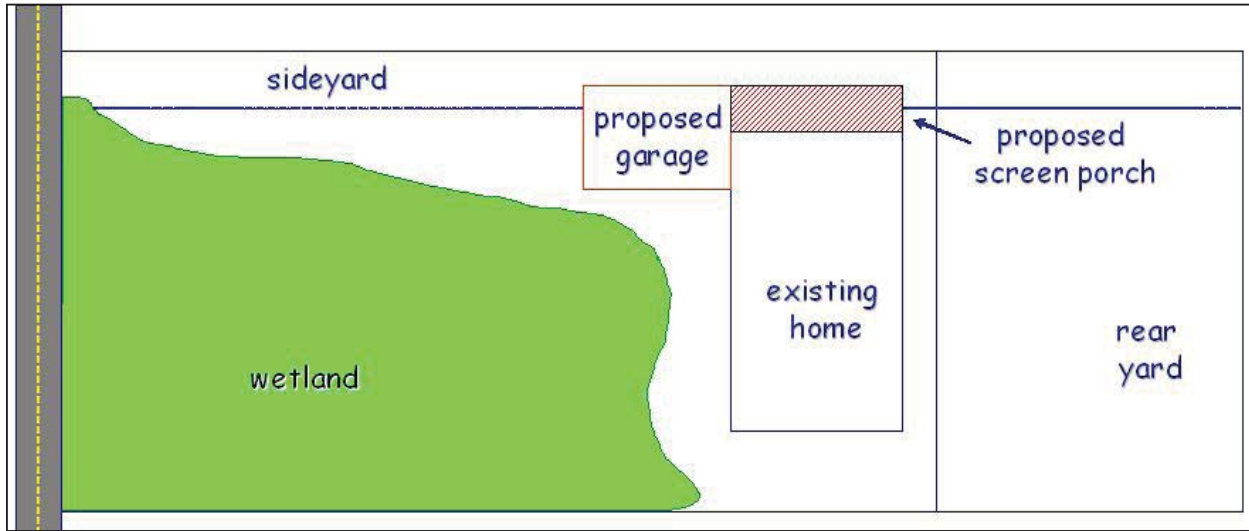
¹⁵⁹ *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); see also *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998).

¹⁶⁰ Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, s. 20.86, pp. 624-5

¹⁶¹ Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, ss. 2070 and 20.71, pp. 587-95

Figure 26: A Variance Grants Specific Relief

If the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.



contrast, nonconforming structures may be assured a limited extent of future expansion in some ordinances.

Variance transfers with the property

Because a property rather than its owner must qualify for a variance to be granted (unique property limitations test), a variance transfers with the property to subsequent owners.¹⁶²

Are multiple variances allowed?

Multiple variances for a single project

In some cases, a single project may require more than one variance to provide reasonable use of a property. The 3-step test should be applied to each variance request in determining whether relief can be granted by the zoning board.

Sequential variances

In other cases, original development of a property may have been authorized by variance(s). The owner later requests an additional variance. Generally, the later request should be denied since, in granting the original variance, the zoning board was required to determine that a variance was essential to provide reasonable use of the property or that not granting the (area) variance would have been unreasonably burdensome in light of the ordinance purpose. The board cannot subsequently find the opposite unless there

¹⁶² *Goldberg v. Milwaukee Bd. of Zoning Appeals*, 115 Wis. 2d 517, 523-24, 340 N.W.2d 558 (Ct. App. 1983)

have been significant changes on the property or on neighboring properties. A later variance could also be granted if the written purpose of the zoning designation for which an area variance was sought significantly changed, thereby allowing the variance to qualify under the unreasonably burdensome standard.

What is the process for appealing a variance decision?

A variance decision may be appealed to circuit court by any aggrieved person, taxpayer, officer or body of the municipality within 30 days of filing of the decision in the office of the board.¹⁶³ (See Chapter 17 *Judicial Appeal of Zoning Board Decisions*.)

Why are the standards for area variances different from those of use variances?

The law treats area and use variances differently because they “serve distinct purposes,” “affect property rights in distinct ways,” and “affect public and private interests differently.” According to the *Ziervogel* decision, the adverse impacts of an area variance are thought to be less than those of a use variance. Furthermore, the “no reasonable use” standard associated with use variances leaves zoning boards “with almost no flexibility” and eliminates the statutory discretion of zoning boards to decide variances.

Figure 27: Land Division Variances... Creatures of a Different Color

So far our discussion has focused only on zoning variances. As zoning boards may be asked to decide land division variances (including subdivision ordinances), here are a few salient points:

- Subdivision variances are not the same as zoning variances.
- There is no Wisconsin law addressing land division variances.
- A local unit of government may allow variances to locally-determined land division standards. In this case they must determine the process and standards, and should include them in the land division or subdivision ordinance.
- Local units of government may choose to not allow land division variances.
- A local unit of government is not allowed to provide a variance to a state-mandated standard.
- Due process, including a hearing with public notice is required for land division variances.

¹⁶³ Wis. Stat. § 59.694 (10)



Dane County Planning & Development Zoning Division

January 19, 2021

Tomas & Kimberly Walz
3071 Sunnyside St
Stoughton WI 53589

RE: Shoreland Zoning Permit: Additions to SFR and removal of existing impervious surface
Pending shoreland permit: DCPSHL-2019-00092
Parcel #: 0611-183-6237-8

This review replaces a previously review dated November 24, 2020 based on a revised site plan. Thank you for submitting your application for a shoreland zoning permit to add four additions to an existing residence within 300 feet of Lake Kegonsa. After reviewing the application materials I have determined that a shoreland erosion control permit is needed prior to the issuance of a shoreland zoning permit. This permit may be obtained from Dane County Land and Water Resources.

This determination was based on a lot of 9,405 square feet, within 300 feet of the lake. The existing impervious surface ratio of the property is 36.93% or 3,473 square feet. The proposed development will result in a slight decrease of impervious surface for a post-development impervious surface ratio of 36.91% or 3,471 square feet.

Your plan identifies various areas of existing impervious surfaces being restored to pervious areas. These areas must be vegetated and capable of infiltrating stormwater. Your shoreland erosion control permit should address accomplishing this. Deep tilling and other best management practices for uncompacting the soil shall be used.

Any land disturbing activity within 300 feet of a navigable body of water requires shoreland erosion control.

Prior to a shoreland zoning permit being issued the following condition(s) must be satisfied:

1. Obtain a shoreland erosion control permit from Dane County Land and Water Resources.

Once the above conditions have been satisfied your shoreland zoning permit will be issued with the following conditions and you may proceed to obtain a general zoning permit from this department. Please note that based on the current site plan a general zoning permit will be denied unless granted a variance from the Dane County Board of Adjustment for relief from the required side yard setback.

1. No disturbance of the vegetative buffer zone is permitted in this permit.
2. The site plan identifies that an existing retaining wall will be relocated within 5 feet of a property line. Shoreland zoning regulations do not allow change of topography within 5 feet of a property line unless written permission is received by the Director of Land and Water Resources. Unless such permission is granted, the relocation of the retaining wall will not be permitted.
3. An "as-built" survey will be required to demonstrate that the post-development impervious surface ratio does not exceed 36.93% or 3,473 square feet.

Please let me know if you have any questions.

Sincerely,

Hans Hilbert
Assistant Zoning Administrator

County of Dane
608-266-4993
hilbert.hans@countyofdane.com

CC: Dane County Land and Water Resources