



# 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, March 21, 2024

6:30 PM

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

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See below for additional instructions on how to attend the meeting and provide public testimony.

#### A. Call To Order

*Chair Long called the meeting to order at 6:35 pm, introduced the members of the Board and made a statement regarding the rules and procedures that would be followed for the hearing.*

*Also Present: Staff: Hans Hilbert, Assistant Zoning Administrator*

**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 were made.*

#### C. Consideration of Minutes

1. Minutes of the July 18, 2023 Meeting

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

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

**Abstain:** 1 - LEESER

2. Minutes of the March 14, 2024 Site Inspection Meeting

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

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

**Abstain:** 1 - LEESER

#### D. Public Hearing for Appeals

1. Appeal 3725. Appeal by Amy Miles & John Silbernagel (Bill Montelbano, architect, agent) for a variance from minimum required front setback to Aalseth Ln as provided by Section 10.102(9)(b)1., Dane County Code of Ordinances, to permit an addition to a single family residence at 3194 Aalseth Ln being Lot 15 & 16 Camp Dewey Plat, Section 25, Town of Dunn.

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

*IN FAVOR: Bill Montelbano, agent for owner, spoke in favor of the variance request.*

*Montelbano, Amy Miles & John Silbernagel answers questions of the board.*

*ZONING ADMINISTRATOR'S COMMENTS: Hilbert relayed that the Zoning Administrator had no comments related to the appeal.*

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

*COMMUNICATIONS: Town of Dunn: 01/2/2024; Acknowledgement; 3/20/2024 Town Board action recommending approval.*

*Finding of Fact:*

*Existing:*

- The property ownership boundary is made up of lots 15 & 16 of the Camp Dewey Plat.*
- Lot 15, 3194 Aalseth Ln, contains a single family residence, boathouse, and rear deck area.*
- Lot 16, 3190 Aalseth Ln, contains a single family residence and boathouse.*

*Proposed*

- Owners propose to combine lots 15 & 16 into a single certified survey map lot.*
- The residence and boathouse on lot 15 will be removed.*
- An addition to the residence on lot 16 is proposed to extend into the lot 15 area and encroach into the required setback to Aalseth Lane.*

*Zoning Notes:*

- The Camp Dewey plat was recorded in 1898.*
- The plat did not dedicate any right-of-way for access.*
- Aalseth Ln is located on the platted lots, however is a public road contained within a public easement and maintained by the Town of Dunn.*
- The Town will require dedication of right-of-way as part of the new certified survey map.*
- Currently zoning regulations require a front setback "from the road", we interpret this to be measured from the easement line, which will also be the newly created CSM right-of-way line or front property line.*
- Property is located within the shoreland zoning district.*

*History on file:*

*Lot 16, 3190 Aalseth Ln*

- 1968: ZP 18288 issued for a boat house.*
- 1975: ZP 24433 issued for new single family residence*
- 1982: ZP 34229 issued for deck addition*
- 1992: DCPZP-1992-01200 issued for new deck, wall and floor replacement*
- 1998: DCPZP-1998-01678 issued for a residential addition*
- 1997: Appeal 2841 variance granted for relief from front setback and minimum side*

yard for residential addition, approved, but null and void after 1 year failure to obtain zoning permit

- 1998: Appeal 2967 variance granted for relief from front setback
- 1998: DCPZP-1998-01920 issued for a garage addition at 3190 Aalseth Ln.
- 2016: Current owners purchase property

Lot 15, 3194 Aalseth Ln

- 1990: DCPZP-1990-01083 issued for boathouse at 3194 Aalseth Ln.
- 1998: DCPZP-1998-01167 issued for new residence at 3194 Aalseth Ln.
- 2019: Current owners purchase property

Other Aalseth Ln History

- Appeal 1376 variance for 3196 Aalseth Ln denied for relief from side yard minimum for deck.
- Appeal 1673 variance for 3188 Aalseth Ln granted for 4 feet from OHWM for a 4x4 stoop.
- Appeal 1727 variance for 3216 Aalseth Ln denied for new residence from OHWM and boathouse height.
- Appeal 2174 variance for 3220 granted for maximum boathouse height (3 feet)
- Appeal 2333 variance for 3226 withdrawn (after-the-fact deck)
- Appeal 2470 special exception permit granted for placement of fill/grading
- Appeal 2509 variance for 3232 Aalseth Ln granted for 2 ft from side yard for detached garage.
- In 2018 DCPZP-2018-00595 was issued for the adjacent residence at 3196 Aalseth Ln. This permit was issued prior to the comprehensive rewrite of Chapter 10. The ordinance at that time explicitly stated that the front yard setback is measured from the right-of-way line or front property line. Since a right-of-way line for Aalseth Lane does not exist, the front property line (located south of the road pavement) was used for measuring the setback.
- In 2021 DCPZP-00403 was issued for a new residence at 3198 Aalseth Ln. Although the new ordinance had taken effect the review of the permit used the prior methodology and the new residence was permitted with an 8.7 foot setback from the northern easement line.

VARIANCES REQUESTED: Purpose: Allow residential addition

Minimum required setback to public road: 20 feet

Proposed setback: 6 ft

VARIANCE NEEDED: 14 ft

Conclusions:

- 1) *Unnecessary Hardship:* Requiring the owners to satisfy a front setback that hasn't been consistent over the development history of the plat would be unnecessarily burdensome. Granting relief allows the applicants to better address other Chapter 10 and 11 regulations such as side yard setback and impervious surface limits.
- 2) *Unique Limitations of the Property:* Property was platted without the benefit of a dedicated right-of-way. Access is provided by a public easement located on the property. The property is constrained by Lake Kegonsa and the access easement.
- 3) *No Harm to Public Interests:* The redevelopment of two residential lots into a single residential lot will alleviate some development pressures in a constrained neighborhood. The Town of Dunn, who provides services and maintenance is in support of the variance request.

**CORRIGAN/STUDZ to grant 14' 2" of relief from required front setback to allow house addition as proposed.**

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

2. Appeal 3726. Appeal by Lindsey Schneider (Charles Sweeney, Attorney, Agent) for a variance from minimum required average lot width as provided by NR 115.05(1)(a)1., Wisconsin Administrative Rule, to allow substandard lot to be used as a building site, being Lot 10, Block 1, Second Ward Beach, Section 28, Town of Westport.

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

*IN FAVOR: Charles Sweeney, agent for owner, spoke in favor of the variance request. Sweeney, Lindsey Schneider & Eric Bennett answers questions of the board.*

*ZONING ADMINISTRATOR'S COMMENTS: Hilbert relayed that the Zoning Administrator had no comments related to the appeal.*

*OPPOSED:*

*Rhonda Arries spoke in opposition of the Board granting a variance prior to specific plans for the lot being presented.*

*Scott Christensen spoke in opposition with concerns that development will lead to additional flooding.*

*Sweeney was given the opportunity for a rebuttal and stated that the variance was the necessary first step to determine lot 10 was buildable and that it didn't make sense to produce full development plans until that was addressed. Sweeney acknowledged that permits and regulatory approvals would need to be obtained and satisfied prior to any development moving forward.*

*Finding of Fact:*

*COMMUNICATIONS: Town of Westport: 2/7/2024; Acknowledgement; Town Board no comments.*

*DNR: No Comments*

*Facts of the Case:*

*All lot references are to block 1 of Second Ward Beach*

*Existing:*

- The northeasterly ½ of lot 8 and all of lots 9 and 10 were in common ownership from at least 1945 until 2021 when lot 10 was sold independent of NE ½ lot 8 and all of lot 9.*
- While in common ownership the property was developed with a residence, possibly built between 1945 and 1955, and a detached garage permitted in 1965.*
- Surveys from 2015 and 2022 show the residence to be primarily located on lot 9, however a portion of the porch on the east side of the residence is located 3.22 feet on to lot 10.*
- The surveys also show that the detached garage to be primarily located on lot 9, however 1.22 feet of the northeast corner is located on lot 10.*
- Lot 10 is 50.22 feet wide and therefore a substandard shoreland lot.*
- Lindsey Schneider is also an owner of the northeastern ½ of lot 8 and all of lot 9.*

*Proposed*

- Owners propose to build a single family residence on lot 10.*

*Zoning Notes:*

- Property is located within the shoreland zoning district.*
- The Wisconsin Natural Resources Administrative Code (NR115) requires sewered riparian lots to have a minimum average lot width of 65 feet and a minimum area of 10,000 square feet.*

- NR115.05(1)(a)3 provides that a legally created lot or parcel that emt minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:
  - o (1) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.
  - o (2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
  - o (3) The substandard lot or parcel is developed to comply with all other ordinance requirements.
- The Wisconsin DNR provides a note that “lots that have a legal description for each substandard lot on record with the Register of Deeds but have one tax parcel number assigned by the Real Property Lister or Assessor for taxing/assessing purposes should be considered separate building sites and should not be considered consolidated.”
- NR115 states that for substandard lots that do not meet the above requirements, a variance must be granted by the Board of Adjustment prior to permits being issued for improvements.

*Property History:*

- 1909: Plat of Second Ward Beach is recorded containing 20 lots.
- 1945: Lorenz owns lots 6, 7, 8, 9, and 10
- 1946: Henry Reynolds purchased from Lorenz the northeasterly ½ of lot 8 and all of lots 9 and 10.
- 1965: Zoning Permit 14369 issued for a 22 x 24 foot garage on lots 9 & 10 & NE ½ of 8. Building is described to have 53 feet of right side yard and 50 feet of left side yard.
- 1986: Helen Reynolds received ownership of the deceased Henry Reynolds northeasterly ½ of lot 8 and all of lots 9 and 10 among other lands.
- 1996: Helen Reynolds conveyed to North Shore Bay Limited Partnership:
  - o Parcel 1: an island in Lake Mendota;
  - o Parcel 2: the northeasterly ½ of lot 8 and all of lot 9 and lot 10;
  - o Parcel 3: Lot 11, 12, 13;
  - o Parcel 4: lot 14;
  - o Parcel 5-10: additional lands in the vicinity of Second Ward Beach
- 2015: North Shore Bay Limited Partnership conveyed to James Caulkins:
  - o Parcel A: The northeast ½ of lot 8 and all of lot 9;
  - o Parcel B: Lot 10
- 2018: Town of Westport opts out of Dane County general zoning
- 2020: Caulkins applies for shoreland zoning and floodplain development permit, more information needed, project not pursued, permits not issued.
- 2021: James Caulkins conveys lot 10 to Pacific Premier Trust.

*Other related/nearby variances:*

- Appeal 900 placing fill, 5170 Reynolds Ave
- Appeal 3629 Minimum lot width and area, 5180 Reynolds Ave
- Appeal 3650 minimum lot width and area for shoreland lot on Lake Kegonsa
- Appeal 3651 substandard lot, lot line adjustment on Lake Waubesa
- Appeal 3701 relief for substandard lot reconfiguration on Lake Kegonsa
- Appeal 3709 Floodplain Development Standards, 5162 Reynolds Ave
- Appeal 3715 Floodplain Development Standards, 5098 Reynolds Ave

*Conclusions:*

- 1) *Unnecessary Hardship:* The board concluded that the encroachments of the detached garage and porch on lot 9 did not constitute development on lot 10. State law allows for development on substandard lots.

2) *Unique Limitations of the Property: Property was platted prior to zoning and shoreland zoning standards. Many homes have developed on the original platted lots which are the same width but contain less land.*

3) *No Harm to Public Interests: Development proposed on lot 10 is required to satisfy the requirements of shoreland and floodplain zoning. These standards are designed to uphold the purpose of shoreland and floodplain zoning and prevent harm to public interests.*

**CORRIGAN/KAY to grant 14.78' of relief to required minimum average lot to allow lot 10 to be used as a building site. Approval is contingent on the removal of porch on lot 9 between the northeastern property line and residence, and either removal of the garage on lot 9, or bringing the garage on lot 9 into compliance with the required side yard setback required by the Town of Westport.**

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

### **E. Appeals from Previous Meetings**

### **F. Reports to Committee**

- 1. Current BOA Appointments and Terms  
Current BOA Appointments and Terms

*Hilbert provided members with an updated member roster reflecting current term dates. No action was taken.*

### **G. Other Business Authorized by Law**

### **H. Adjournment**

**LEESER/STUDZ to adjourn. The board adjourned by voice vote at 9:00 PM.**