

Minutes
Town of Oshkosh
Board of Appeals Meeting –July 18, 2019
Public Hearing and
BOA Meeting at Town Hall

PRESENT for an onsite inspection at 5:00 pm on the parcel at 2717 Edgewood Lane, Oshkosh, WI 54904 (Applicant, Michael Kowalske); followed by onsite inspection on the parcel south of 4606 Island View Dr, Oshkosh, WI (Applicant Walter Juedes): BOA Chairman Tom Gabert, BOA Members Stan Kellenberger, Jim Merten, Jr., Beth Erdman and John Thiel; BOA recording secretary MaryAnn Monteith; applicants and community members. No evidence was presented.

Public Hearing at the Town Hall followed site inspections. Chairman Gabert called the Public Hearing to order at 6:00 pm at the Town of Oshkosh Town Hall. This meeting was duly posted as class 2 Public Notice by the Town of Oshkosh Clerk. The last notice was more than 7 days ago. Summary of the Happenings is Enclosure 1.

PRESENT at the BOA Public Hearing, Town of Oshkosh Town Hall: BOA Members John Thiel, Stan Kellenberger, Jim Merten, Jr, Beth Erdman; and Chair Tom Gabert; alternate member Rebecca Wright; and Recording Secretary, MaryAnn Monteith. There was an audience of thirteen.

Agenda item: Variance request from Michael Kowalske, property at 2717 Edgewood Ln, Oshkosh WI, 54904. All members received a copy of the variance request (**Enclosure 2**) and a copy of the memo from town Clerk Jeannette Merten recording a message from Edgewood neighbor Jim Killinger, supporting the variance (**Enclosure 3**). **Mike Kowalske** briefly summarized his request for a variance to reduce street yard setback (to 15 feet) for an accessory structure (detached 2 car garage) with the R-2 Residential zoning district. **Jim Merten Jr** asked for detail on the reason for the request, as there was adequate space to meet the legal setback. **Mike Kowalske** replied the variance would allow for better clearance from the well head, and allow for movement between the house and the garage, especially in case of any needed well access. Also, it would allow better movement to the front side of the house. **Lee McCann** asked “what is the purpose of the R-2 zoning, 30 foot setback from the road?” **Tom Gabert** replied the zoning setbacks are to enhance safety distance from the roadway. **Lee McCann** stated that the proposed building would not add to the appearance of the house, and would detract from the neighborhood. **Beth Erdman** stated that decisions were based on codes, regulations and considering hardships. **Tom Gabert** noted that the County has the final say in granting variances, that the Board of Appeals is advisory. Marian McCann stated that the building would negatively affect neighbors view to the road, that neighbors would see only the building. **Mike Kowalske** replied that currently there are trees there along the property that remain, and the building wouldn’t change the view of the road.

There being no further comment, **Chairman Gabert** moved on to the next agenda item.

Agenda item: This is the fourth Shoreland variance request for the parcel south of 4606 Island View Dr, Oshkosh, WI, 54901 (hereafter referred to as “the parcel”). Applicant: Walter Juedes TST and Susanna Last, TST. Applicant is requesting a variance for a reduced setback to navigable water (ditch) and reduction in the amount of fill to floodproof a new home proposed for construction within the 100 year flood plain. The sale of this property is contingent upon this variance. (The referenced “ditch” is the town’s created ditch on a residential parcel previously donated to the town.)

1. All BOA members previously received a copy of the latest variance request (**Enclosure 4**).
2. Chairman Gabert opened the hearing for questions, comments and discussion. **Mark Bigger** provided the color design of the proposed home (**Enclosure 5**). The design meets three of the four side setbacks. The design beautifies the two lots into one, does no harm to neighbors, and provides good reason for a nice property to have a decent home on it. **Tom Gabert** asked how they arrived at the stake marking 75 feet setback from the lake? **Mark Bigger** noted he had measured it last night, had been working with Carey Rowe, and designed a plan that will fit with these variances. **Beth Erdman** noted that there was more than enough room in the road setback to still meet the setback from the highwater mark, if the lake setback was 10 feet short as she thought. There was discussion between John Thiel, Mark Biggers and Wally Juedes regarding how the construction would meet the requirements related to the flood plain. **LeRoy Zacker**, 4470 Island View Dr, Oshkosh, 54901 spoke in support of the variance for building the home. **Toby Vanden Huevel** 4610 Island View Drive, Oshkosh, WI, 54901 stated he and his wife support the variance. He requested more information of the 7 foot variance for drainage. **Beth Erdman, Mark Bigger and Matt Merten** (Town Board member), discussed the drainage plan that is required for construction. **Beth Erdman** noted that there would be underground drainage to the lake and the ditch, and the 7 foot variance would be handling superficial water. **Matt Merten** suggested a retaining wall; **Beth Erdman** noted any retaining wall, if done, would only be needed for a short space, as the rest of the home met the setback drainage requirements. **Mark Bigger** noted that the plans were designed to create enough drainage to lake and ditch, so that neighbors would not be affected. The Town of Oshkosh Chairman **Jim Erdman**, (present in audience) stated he supported the variance. He recounted the long history of the three other requests, noting that the sale of the property is contingent upon the variance, and that the County will require an erosion control plan prior to construction, so that drainage will be managed. **Jim Erdman** noted that the adjacent ditch was dug by the Town on what was formerly a residential lot, and that there was still a residual well casing, and septic tank still obvious there. **Jim Erdman** stated that later, the DNR declared the ditch navigable, well after the ditch was dug, and the Shoreline regulations have changed several times since then. **Jim Erdman** also summarized the history and evolution of the regulatory guidelines governing the Shoreland zoning, and these particular lots. None of these events were executed by **Mr. Juedes**, and all of which create an obvious and demonstrable hardship, not of the Juedes’ making. **Mr Juedes** stated that the current request is made so that a new home can be constructed on these residential properties, and that the sale of the properties, and the combining of the two properties is contingent upon this variance. Board members discussed the extensive history of the lot and the previous variance requests that have come before the Town of Oshkosh BOA to date. The previous requests were all supported by the Town of Oshkosh BOA, and the Town of Oshkosh Town Board.

There being no further discussion, John Thiel moved to close the public hearing. Second, Tom Gabert. Role call vote: Erdman, aye; Thiel, aye; Kellenberger, aye; Merten, Jr, aye; Gabert, aye;. Motion carried. Chairman Gabert closed the public hearing at 6:34 pm.

Chairman Gabert opened the Board of Appeals deliberation meeting immediately following the public hearing.

First item: Variance request from Michael Kowalske, property at 2717 Edgewood Ln, Oshkosh WI, 54904.

Beth Erdman stated that she doesn't see a way to approve this variance within the responsibilities of the board. The garage could be built within the setback requirements, as there is adequate space between the proposed building and the well head. **For this reason, she makes a motion to deny the request.** **Jim Merten Jr** seconded the motion to deny, specifying that the building could be done within the legal setbacks. He noted that we did not identify the sewer main/ line. **Mike Kowalske** again stated his concern that any possible needed well work could not access the well head using the legal setbacks, and this was the reason for the variance request. **Beth Erdman** stated that it would be feasible with the distance allowed. There was no further discussion.

Role call vote: Erdman, aye; Thiel, aye; Kellenberger, aye; Merten, Jr, aye; Gabert, aye. Motion carried.

At this time, John Thiel made a motion that the board of appeals NOT report any recommendation to the Town Board or Winnebago County. Second, Tom Gabert.

Role call vote: Erdman, aye; Thiel, aye; Kellenberger, aye; Merten, Jr, aye; Gabert, aye. Motion carried.

Second item: Shoreland variance request for the combined parcel south of 4606 Island View Dr, Oshkosh, WI, 54901.

- 1. John Thiel made a motion to recommend approval of the variance request for the following reasons:**
 - a. The variance meets all legal standards.**
 - b. The variance is necessary, as the requirements in question would unreasonably prevent the owner from using the property for a permitted purpose (building a home on the residential property).**
 - c. The circumstance is not self-created- the Town put in the ditch. The variance is not harmful. The 75 foot setback from the lake is maintained.**
 - d. The requested variance does not cause harm to any public interest and in fact will enhance the area by allowing the property to be used as it is zoned- residential- and in a manner similar to the neighboring homes.**

Second- Beth Erdman.

Role call vote: Erdman, aye; Thiel, aye; Kellenberger, aye; Merten, Jr, aye; Gabert, aye. Motion carried.

Agenda Item: Approval of the minutes from Board of Appeals workshop, June 25, 2018.

1. All members previously received electronic or paper copies of the minutes.
2. **Motion to approve: Tom Gabert; Second, John Thiel.**

Role call vote: Erdman, aye; Thiel, aye; Kellenberger, aye; Merten, Jr, aye; Gabert, aye. Motion carried.

There was no further business on the agenda. Motion to Adjourn: Tom Gabert; Second: John Thiel. Motion carried unanimously. Meeting adjourned at 6:45 pm.

MaryAnn Monteith
Secretary for Board of Appeals