**Minutes**

**Town of Oshkosh**

**Board of Appeals Meeting –Dec 8 2020 mod 1**

**BOA Meeting at Town Hall**

**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 Jim Merten, Jr, Beth Erdman; and Chair Tom Gabert; alternate member Rebecca Wright attended via phone-in; and Recording Secretary, MaryAnn Monteith. There was an audience of five.

Motion to accept agenda with attendees in person and by phone: Beth Erdman, second Jim Merten Jr, Carried unanimously.

**Agenda item: Variance request from** **Applicant Nicolas D. Cowling and Stephanie A.**

**Applicant requests a variance for a substandard shore yard setback at the premises immediately north of 5210 Chesapeake Ct. Oshkosh, WI 54901, Tax Parcel 018-3029. (**hereafter referred to as “the parcel”). Represented by Jim Sehloff.

1. All BOA members previously received a copy of the latest nine page variance requestincluding coversheet and notification list **(Enclosure 1).**
2. **Chairman Gabert** opened the hearing for questions, comments and discussion. **Jim Sehloff** of Davel Engineering reviewed the request for the variance and provided the history of the lot and premise of the request, as follows. When the lots were created in the ‘60’s, the setback was 50 feet. In 1998, a 50 foot setback was granted and planned for as identified in the plat. In 2016, a permit was issued (in error) to the property next door for a setback of 50 feet, as identified in the plat. The setback (Shoreland) was actually 75 feet at the time. The site plan and building for the property in this request were done according to the plat and is consistent with the other houses on this side of the road. Since the house on lot 6 was allowed a 52 foot setback from the OHWM, the applicant property, lot 5, is allowed a 63.5 foot setback based on setback averaging of the neighboring properties. This changes the proposed building and presents an undue hardship for the applicant. The plans were done in good faith, the shoreline has already been prepared in accordance with DNR standards. **Applicant is requesting a variance from the 63.5 foot OHWM setback, to a 52.2 foot setback to be consistent with other homes in the neighborhood. This variance is consistent with the neighboring homes.**
3. **Beth Erdman** noted that the setback averaging meets the law, and there is still room for a “reduced” home. For Winnebago County, hardship will need to be shown. **Jim Sehloff** responded that due diligence was done with the property as shown on the plat, and consistent with the house next door and others in the neighborhood. In preparation for the building, only Cary Rowe remembered the aforementioned variance error. The plat has not been corrected.
4. **Steve Banda**, 5265 Chesapeake Ct asked a “process question”, regarding the sequence of shore work and placing riprap and pier. **Jim Erdman**, 2492 Hickory Lane, (Town of Oshkosh Chairman) spoke for the variance. When the channel lots were planned, the law was for a 50 foot setback. These lots were planned and created in compliance with a 50 foot setback. When the state passed Shoreland that setback changed to 75 feet, these lots became substandard. These lots were designed for the law at the time, 50 foot setback. There is no scenic issue with this variance, as it is consistent with other homes in the neighborhood. This is a reasonable request that averts an undue hardship on the applicant due to state law changes after the fact. The property, riprap, and seawall are maintained IAW DNR standards, and done appropriately. This is a reasonable request.
5. **Rebecca Wright,** Board member, asked if there was any grandfather clause for the change in law? **Beth Erdman** responded no, and for each of the lots in this plat, we will likely see similar requests for variance. **Jim Sehloff** stated that Cary Rowe sees everyone in this plat requesting a similar variance for substandard lots.
6. **Glen Dorner**, 5245 Chesapeake Ct. stated concern that without the variance, the remaining lots would not be buildable for nicer homes consistent with the neighborhood, and could lead to, for example, trailers on the lots.
7. **Bill Demler**, 4625 Plummer Point Rd asked if a lot with two sides on the water would require two variances. (Consensus, yes).
8. **Beth Erdman** stated that the house *could perhaps* be redesigned, but it is an undue hardship for the owner, and each vacant lot down the road, as the OHWM average setback with get worse and the lots become unbuildable.
9. **Beth Erdman made a motion to recommend approval of the variance request, due to the undue hardship related to the change from 50 foot setback at the time of lot/plat creation that is still on the plat, to the current 75 foot setback. Second, Jim Merten, Jr.** Discussion. **Rebecca** asked if there was precedent in this issue created by the previous variance, or created by this variance.  **Beth** replied there is no precedence in these cases. **Jim Erdman s**uggested that members take a walk to see the area and the other homes that are built there. This design is consistent with the neighborhood. Members noted the drainage plan that was submitted as part of the plan

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**There being no further discussion, a role call vote on the motion to recommend approval to the Town of Oshkosh Town Board was taken: B. Erdman, aye; J. Merten, Jr, aye; T. Gabert, aye; R. Wright, aye. Motion carried.**

**Motion to adjourn, Jim Merten Jr, Second, Beth Erdman, Carried unanimously. Chairman Gabert closed the public hearing at 6:35 pm.**

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MaryAnn Monteith

Secretary for Board of Appeals