

**Minutes
Town of Oshkosh
Board of Appeals Meeting –13 October 2022**

BOA Meeting at Town of Oshkosh Town Hall

Chair Tom 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.

PRESENT at the BOA Public Hearing, Town of Oshkosh Town Hall:
BOA Chair Tom Gabert, Beth (Erdman) McCormick, Rebecca Wright, Jim Merten Jr, Fred Boss, and Recording Secretary, MaryAnn Monteith. There was an audience of seven.

Draft minutes of 21 October 2022 were previously sent to members electronically.

Motion to approve draft minutes of 21 October 2021: Beth McCormick, Second, Jim Merten Jr. Discussed addition of Cary Rowe's title, (Zoning Administrator Winnebago County) for clarity. Motion to approve minutes adding Cary Rowe's title on page 2, carried unanimously.

Single agenda item (ENCL 1): Variance request by applicants Dean and Jodene Giacomini for a sub-standard floodplain fill requirement.

1. All BOA members previously received a copy of the variance request including coversheet, agenda and notification list (**Enclosure 2**). Jim Merten Jr provided copies of a just received amended variance request (**Enclosure 3**).
2. Chair Tom Gabert opened the meeting for questions, comments and discussion.

Dean and Jodene Giacomini 3061 Bellaire Lane, Oshkosh 54904, described the original variance request for a sub-standard floodplain fill requirement on the north and south sides of the house from 15 feet of horizontal fill in each direction, to 7 feet (on the north side) and 6.17 feet (on the south side) with appropriate retaining walls as the result of the property being a 50ft wide substandard lot.

They also provided the reason for the second, amended request. Summary: The second revised plan was submitted after they were told that the original plan using a highwater setback average (67.2 feet) would not be acceptable. The revised plan used the 75 foot setback under shoreland zoning. This amended request shifted the entire preliminary site plan including the proposed house footprint and retaining walls 7.8 feet east to achieve the 75 foot setback from the lake and made the proposed house design unbuildable on the substandard lot, as the result of the location of the house not meeting the appropriate setback requirement from the utilities and created hardship for not only the applicants, but the

neighbors and utility companies including but may not be limited to Wisconsin Public Service, Spectrum and AT&T.

Beth McCormick clarified with applicants that the revised plan created an unreasonable burden preventing building on the subject property, and that the original plan used appropriate setback averaging and was not contrary to public interest.

Motion to approve the original plan by Beth McCormick, Second, Jim Merten Jr. Chair Tom Gabert invited discussion.

Tom Kromm 200 Prospector Court 54130, speaking (with mom at his side) and for the neighboring property 3057 Bellaire Lane, Oshkosh, 54904. Question- can't the 75 foot setback be for the house rather than the retaining wall if retaining wall is 67.2 feet setback?

Beth McCormick noted that this neighboring property (3057 Bellaire Lane, Oshkosh, 54904) already has a retaining wall and that there appears a swale to the lake on the applicant's property. A swale is not in the design to date for the subject property. However any design needs to address water movement to lake to not affect the adjacent neighbors. The height of the retaining wall will be a minimum of 18 inches on both sides. Beth also noted that Shoreland Zoning identifies 75 foot setback for any structure, but that setback averaging has been historically allowed as a routine practice for lots located in the Town of Oshkosh, therefore, should be applicable for this property.

Jim Erdman, 2492 Hickory Ln, Oshkosh, Town of Oshkosh Chairman stated that the DNR can make recommendation, but Winnebago County Planning and Zoning Department Board of Adjustment has the final determination granting the variance in Shoreland Zone areas.

Jodene Giacomini described the many burdensome issues created by the recommendation of 75 foot setback on this substandard lot. Hardships include undue restriction of the house design (they would be unable to build, as the house would interfere with current power lines); changing of the location and height of the power poles and lines (WPS, Spectrum and ATT) with the associated cost to applicant and impacts to the neighbors as the result of having to modify the present location of the power lines. All neighbors would need to agree with utility changes and accept costs for modifications to the utilities on their properties if they were required to use the 75 ft setback. Jodene has spoken to each of the utilities. They were not encouraging about any changes to the utilities, AND she noted that all neighbors would need to agree to share their part of the expense (~\$10,000 each lot).

Tom Gabert asked if there would be issues with the well regardless?

Dean Giacomini responded he thought they would need a new well.

Tom Gabert noted that the floor elevation was not well specified in the Site Plan design and there should be a cross section thru the lot for clarity. Also, the retaining wall would need to be 6 inches off the property line, AND the resulting interspace needs to be maintained.

Jim Erdman stated that the 67.2 inch setback recommendation would go to the aforementioned County for decision.

Beth McCormick reviewed that the revised setback to 75 feet would also affect at least seven neighbor addresses, creating additional utility hardship for the neighbors.

Dean Giacomini stated there was a 6 foot 2 inch overhang on the entry.

James Rescheske 3151 Bellaire Lane, Oshkosh, 54904 stated that the overhang did not count. He also noted that the applicant property power pole is inconveniently in the middle of the applicant lot. He stated that the neighbors had pushed for the power poles to be moved to the street- at no expense to the residents with no action taken to date as the utilities indicated they would have to accept the cost to move the poles. (No action)

Jodene Giancomini stated that she had engaged in extensive conversations with WPS to move their power pole/line to the east, to the street to meet the OSHA requirement that the lines be 10 foot higher than the roof. WPS described movement would cost minimum \$10,000 per resident lot and they were not encouraging.

Beth McCormick reviewed: The revised plan for 75 foot setback creates undue hardship to the applicants, and potentially neighbors with regard to the power line location modifications.

Beth McCormick & Tom Gabert discussion of retaining wall. Consider creation of a swale for water drainage to the lake- there already appears to be a swale on the current applicant's property. Neighbors could consider legal agreements for the boundary that would make mowing and maintenance easier for applicant and neighbors, considering the applicants' substandard lot.

Tom Kromm Are there easements for the power pole? Unknown.

Tom Gabert- It is to utilities advantage to have the power poles on the lot line.

Lively discussion of utilities subsidy of underground lines. Summary- can't be done because of secondary effects on other neighbors in the area.

Given all of this discussion, Beth McCormick amended and clarified her motion: to approve the original plan variance application for a sub-standard floodplain fill requirement with a 67.2 foot setback as originally setback averaged. The original plan does not create the undue hardship to applicant, utilities or neighbors that are presented by the revised plan. Second by Tom Gabert.

Roll call vote: Gabert, yes; Merten, yes; McCormick, yes; Wright, yes; Boss, yes. Carried unanimously, 5/0.

3. State reason(s) for findings. Including details of any stipulations or conditions:

Recommend approval of the original variance plan received 20 September 2022.

The property is on a substandard lot with unique physical characteristics that unduly limit residential building design.

Original design and variance request is consistent with the surrounding properties and neighborhood.

Setback averaging has always been acceptable and is precedent.

Failure to approve creates undue hardships not only for the applicant as described, but also for utilities and neighbors to include the moving and expense of the utility poles and wires.

4. There was no further business-- Motion to adjourn, Beth McCormick; Second, Jim Merten Jr. Carried unanimously. Chair Tom Gabert adjourned the meeting at 7:00 pm.

MaryAnn Monteith
Secretary for Board of Appeals

DRAFT