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Cooperative Extension



Mr. Alan Shute, Land Development Director
Green Lake County Courthouse
492 Hill Street
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May 25, 2010

Dear Director Shute,

On Friday May 22, 2010 I observed the Green Lake County Zoning Board of Adjustment (BOA) as part of a group of counties that have expressed interest in such audits. As a UW-Extension Land Use Specialist I have led Board of Adjustment workshops for the last eight years with around 400 participants per year. I have also co-authored two editions of the *Zoning Board Handbook: For Wisconsin Zoning Boards of Adjustment and Appeals* available at www.uwsp.edu/cnr/landcenter/Publications/BOA2006/BOA2006.pdf

At the May 22nd meeting the BOA heard and decided upon a variance request by [REDACTED] to construct a new residence within the required 75' shoreyard setback and within the required 40' frontyard setback. I provide the following observations and recommendations:

- Many attendees at BOA hearings are not familiar with the BOA and have not attended their meetings before. Thus, they likely do not know what to expect. The BOA Chair gave a short explanation of the procedures that would be followed at the meeting including testimony, deliberation and a decision and the appeal process, which was useful. I recommend that the Chair also read the following paragraph at the beginning of BOA hearings to explain the "Role of the Board" from page 63 of the *Zoning Board Handbook*. In particular, it is important for attendees to understand that the role of the BOA is to act like a court and apply the appropriate legal standards in each decision.

Role of the Board

The county board of adjustment is an appellate board required by state law in any municipality that has adopted a zoning ordinance. The board does not have authority to amend or repeal any provision of the zoning ordinance. Its authority is limited to appeals regarding interpretations of ordinance provisions, consideration of variances, and (if assigned by ordinance) consideration of conditional use permits. The board functions like a court. Its purpose is to give a full and fair hearing to any person whose property interests are affected by these matters. Its job is to apply the zoning ordinance and appropriate legal standards to the facts of each case. The board meeting and public hearings are open to the public. A taped recording is being made of the proceedings (or a court reporter is recording the proceedings).

- Given that the [REDACTED] applied for a variance, the role of the BOA is to decide whether they have met the three legal standards set out in Wisconsin Statutes and further defined by Wisconsin case law. The three standards are:
 - Unnecessary hardship
 - Unique property limitations
 - No harm to public interests

While the BOA chair seemed familiar with these standards, neither he nor the other BOA members discussed the standards in any way before deciding to grant the variance. The variance standards should be the basis of whether a variance is granted or denied. During the BOA's deliberation, discussion should focus specifically on whether the applicant has provided sufficient evidence demonstrating that the standards have been met. Each of the BOA members should explain why they believe the variance standards have or have not been met by the applicant prior to voting on the variance request.

- The BOA spent considerable time during the testimony and deliberation discussing the design of the current house and the proposed house. It is not the job of the BOA to design/redesign the house, nor to determine whether the proposal would be an "improvement" over the existing structure. Rather the BOA should focus on the zoning requirements such as setbacks and the variance standards.
- When the BOA chair did address the variance standards after the BOA had voted to grant the variance, he noted the slope of the lot near the road and associated driveway issues. Could changing the drainage and/or grading of the current driveway resolve the driveway issues? The BOA should have discussed this topic and/or asked for an opinion from the County Land Conservation Department to determine whether there was a viable alternative to the owner even applying for a variance.
- The BOA correctly noted that the [REDACTED] applied for an area variance. Wisconsin case law provides that for area variances, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions "unnecessarily burdensome." To determine whether this standard is met, the BOA should consider the purpose of the zoning ordinance in question, in this case the shoreland zoning ordinance. I recommend that the BOA look at the purposes of the Green Lake County shoreland ordinance (338-3) and explain during their deliberation whether unnecessary hardship is present in light of these purposes.
- On the variance application, the applicant stated the unnecessary hardship was that they would be unable to build a sufficiently sized house for their needs without variances. During the hearing, the owner stated the variance was needed because "we need more room." As described on page 98 of the *Zoning Board Handbook*, the Wisconsin Supreme Court found in *Snyder v. Waukesha County Zoning Bd. of Adjustment* that circumstances of an applicant are not

a factor in deciding variances, and therefore should not be used as rationale for granting a variance.

- The extent of impervious surfaces on a lot plays a key factor in determining the impact of shoreland development on the lake because of runoff from impervious surfaces affects water quality and because portions of the lot which are impervious surfaces cannot serve as wildlife habitat. The BOA and others spent multiple periods of time at the hearing estimating impervious surfaces on the lot under consideration. Substantial differences in these estimates were not resolved prior to a decision being made. Therefore, I recommend requiring applicants to include in their BOA applications the footprint of the buildings being proposed and all other impervious surfaces on the lot.

Thank you for the opportunity to observe your BOA on May 22, 2010. In summary, the points above describe a number of topics for the Green Lake County BOA to work on in order to comply with state law. I hope that you find my comments helpful. Please contact me with any questions you may have about my comments or future BOA matters.

Sincerely,

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