

MINUTES
PORTAGE COUNTY BOARD OF ADJUSTMENT
MARCH 20, 2023

Call to Order

Chairman Jazdzewski called the Portage County Board of Adjustment (BOA) to order at 4:00 pm in Conference Room 5, County Annex, Stevens Point, Wisconsin.

Roll Call

Stewart called the roll. Members present included John Jazdzewski, Dennis Meis, James Garbe, James Hopp, and Jason Pingel (Alternate). Members excused were Rick Duerr and Mike Pagel (Alternate).

Staff present included Chris Mrdutt, Tim Reed, and Gayle Stewart, Planning and Zoning Department.

James Judge present via online video.

Pledge Allegiance to the Flag

Garbe led the Pledge.

Board of Adjustment Procedures

Jazdzewski explained the meeting was properly advertised by a class 2 notice in the local newspaper and explained the functions of the BOA by reading the Portage County BOA Function Introduction. Jazdzewski stated testimony and questions should be addressed during the public hearing portion of the meeting and anyone wanting to speak should sign in at this time.

Public Hearings

Petition No. PET-2022-017, 2854 Biron Drive East LLC, Owners, Stephanie Judge, Agent,

The 2854 Biron Drive East LLC, owners, Stephanie Judge, agent, variance request from the provisions of Portage County Zoning Ordinance section 7.1.6.6(3)(b) to expand and construct a 15 foot by 23 foot attached garage 7 feet from the road right-of-way along Biron Drive East, where the required setback is 30 feet from the right-of-way, and variance request from Portage County Shoreland Ordinance section 7.7.10.3(B) to enlarge/construct the attached garage as a "one time" lateral expansion where the existing principal structure does not meet the required 35 foot setback from the Ordinary High Water Mark of the Wisconsin River, in the R2 Single Family Residential Zoning District, Town of Plover, parcel #030230730:07.19, was opened by Jazdzewski.

At this time, Garbe explained per the standards for BOA, there are certain situations where a person on the Board needs to recuse themselves from deliberation; mainly for a conflict of interest. Garbe said he does not have a conflict of interest; however, in the process of bringing this request through the Town of Plover, he has had numerous conversations with both Stephanie Judge and James Judge, owners. In light of fairness and impartiality, Garbe said he will recuse himself from this hearing, citing his numerous conversations.

Mrdutt explained the various aspects of the requests. Mrdutt explained the circumstances of the Shoreland Ordinance variance adding this is not a setback variance. This is a provision that allows a one-time 200' lateral addition. Jazdzewski said the Board will discuss both variance requests at the same time.

James Judge, appearing via video, was sworn in by Jazdzewski and explained his request. The following was noted by Judge:

- He emphasized the property is extremely shallow.
- The property has a uniqueness to its shape.
- There is no garage, basement or other enclosed storage beyond the boathouse.
- A lean-to will be removed so there is no unsightly storage.
- They have been working on stormwater/mitigation.
- They will have storage for five vehicles; however, it will be rare to have more than two or three.
- They will improve the look of the property.

Discussion amongst Judge and the Board. The following was noted:

- There is a concern from neighbors the property will become a short-term rental. Judge explained the goal is to make this a second home with no additional parking. He is not opposed to renting the property in the winter. If they rent the house out they will work with Human Services.

- Discussion on snow removal in the winter. Judge said the issue is the same as for the other neighbors and they will direct snow to the side of the boathouse using a snowblower.
- There will be no parking on the road; they may occasionally utilize the grass area for parking. It was noted other neighbors do occasionally park on the road.

James Judge was excused. Stephanie Judge was sworn in and added the following:

- The structure will sit within the existing pocket.
- Stormwater criteria was discussed.
- Snow removal was discussed.
- She has never heard of any concerns regarding cars being parked on the road.

Stephanie Judge was excused. Jazdzewski asked if any members of the public wanted to speak on this matter; it was noted there were none and there was no additional correspondence to be read into the record. Jazdzewski closed testimony and opened deliberations. Jason Pingel read the Variance Standards:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.1.6.5(D)(2)(b)(1) & 7.7.12(3)(D)(2)(a)(1) in Order to Grant the Variance. The pertinent subsections are as follows:

- (a) The maintenance of safe and healthful conditions;
- (b) The prevention and control of water pollution including sedimentation;
- (c) Existing topographic and drainage features and vegetative cover on the site;
- (d) The location of the site with respect to floodplains and floodways of rivers or streams;
- (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
- (g) The need of the proposed use for a shoreland location;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The amount of liquid wastes to be generated and the adequacy of the proposed disposal system;
- (l) The availability of alternative locations;
- (m) The heights, velocity, duration, rate of rise and sedimentation transport of the flood waters at the site;
- (n) Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.1.6.5(D)(3)(c) & 7.7.12(3)(D)(3)(c) in Order to Grant the Variance

- (1) Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
- (2) The use is permitted in the District;
- (3) The hardship is due to special conditions unique to the property, rather than considerations personal to the property owner;
- (4) Granting the variance would not be detrimental to surrounding landowners;
- (5) Hardship is not created by any person having interest in the property;
- (6) A property owner bears the burden of proving unnecessary hardship by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome;
- (7) The request represents the minimum relief necessary to relieve unnecessary burdens.

The Board May Attach Any of the Following Conditions Under 7.1.6.5(E)(2) & 7.7.12(3)(E)(2) in Order to Further the Purposes of this Ordinance.

- (a) Type of shore cover.
- (b) Increased setbacks and yards.
- (c) Specified sewage disposal and water supply facilities.
- (d) Landscaping and planting screens.
- (h) Deed restrictions.
- (l) Location of piers, docks, parking and signs.

Jazdzewski said the packet is very detailed and the septic system is rated at four bedrooms which will affect the capacity that would be allowable.

Mrdutt explained the reason there is no request for a stormwater permit in the proposed conditions is because using the one-time 200 square foot option requires mitigation. In order to get mitigation points, a stormwater management plan will already be a requirement.

Jazdzewski closed deliberations and asked for a motion to approve, deny, or postpone the variance requests.

Motion by Meis to approve the request for both variances as submitted, with the following conditions:

1. A Portage County Zoning Permit must be obtained.
2. The proposed 200 square foot garage addition cannot be any closer than the existing eastern portion of the house to the Biron Drive East right-of-way.

Motion to approve seconded by Hopp. Motion to approve passed 4-0 by voice vote.

Petition No. PET-2023-001, Wisconsin Lions Foundation Inc., Owners, Ross Rettler–Rettler Corp, Agent
The Wisconsin Lions Foundation Inc., owners, Ross Rettler–Rettler Corp, agent, variance request from the provisions of Portage County Shoreland Ordinance section 7.7.4.1(A)(1) to construct a pavilion and patio/firepit (1,045 sq.ft) approximately 20 feet from the Ordinary High Water Mark of Lions Lake, where the required building setback is 75 feet, in the Recreational Zoning District, Town of Alban, parcel #002251016-04, was opened by Jazdzewski.

Mrdutt explained the request and added this property is already highly utilized by the Lions Camp. The proposed project is requested to be within 20' of the shoreline.

Jazdzewski swore in Ross Rettler–Rettler Corp, agent for owner, and asked him to explain the request. Rettler noted the following:

- Rettler has been working with the Wisconsin Lions Foundation Camp on comprehensive planning for their facility. This is phase two of the work.
- They want to construct an open-air, prefabricated metal pavilion building with a standing sheet metal roof. Under that will be a concrete slab that will also encompass the fire-pit area.
- The biggest challenge with the location is the steep grade coming down from the kitchen area. They want to support campers in a safe area on the site. The bottom of the hill provides a direct connection and opportunity for ADA access onto a flat space. This is why the structure itself is located at the bottom of the hill.
- They are taking into account grading that will be necessary and erosion control measures that will be necessary to ensure they are meeting the State DNR standards as well.
- There will be a small swale on the topside of the pavilion structure to divert water to keep it from washing across the structure.
- The firepit is modular and will be above-grade to keep campers from going down into the firepit.
- The programming the camp provides is for children with varying levels of disabilities. They wanted the opportunity to get kids out of the sun and into the shade.
- As part of this large-scale project, they will be working directly with the DNR and the Portage County Land and Water Conservation Division and submitting stormwater management plans to make sure all standards are met.

Mrdutt said the Lions Foundation owns all the property around this body of water and it is a very well-done, prestigious shoreline. In looking at the specifics of this request, they look at ways to make sure they can ensure at least the 35' buffer is kept as natural as possible. This will be addressed in the suggested conditions. Mrdutt added they have a lot of kids/campers utilizing the existing/developed access points on the lake and they want to make sure in the future the natural buffer is kept in place. Rettler said the structure will be located in existing green space and no trees will be cleared as part of this process. The existing green space will be maintained and upgraded with the pavilion structure itself.

Discussion amongst the Members; the following was discussed:

- There are three different projects going on at the same time. There is a project at the top of the hill, the pavilion and firepit, and a project near the swimming beach. Elevations and distances from the water were discussed. Mrdutt explained the shade structure by the beach is going on to a retaining wall and there are provisions in the Shoreland Ordinance that have allowances for ADA structures that allow staff to outright permit that where it does not require a variance.
- The project at the top of the hill is outside of the setback and is general permitting.

- The other projects are more grading and require a DNR permit and working with the Land and Water Conservation Division staff.
- Rettler clarified the dimensions of the pavilion are 20'x20' and it is a prefabricated metal structure.
- Mrdutt explained they look at the footprint of the concrete.
- There was discussion about the flow of smoke from the firepit area. Rettler explained the firepit will be located further away from the structure and the ventilation concept will be open-air flow.

Rettler was excused. Jazdzewski asked if any members of the public wanted to speak on this matter; there were none at this time. Jazdzewski read the following into the record:

- An email from Dale Rezabek, DNR. (Email placed in file)

Ray Oksuita, Town of Alban Chairman, was sworn in by Jazdzewski and stated the following:

- This is a unique property that is owned by the Lions Camp Foundation and utilized for handicapped people.
- If the proposed location was to be moved back further to meet setbacks, it would be located further in the hillside which would do more damage than good in the terrain. It would create runoff with soil that would get into the lake. When the property is disturbed, more runoff is created.
- The Town of Alban is in full support of the request and anything they can do for positive improvement in the town is always fully supported.
- He, individually, is also in full support of the request.

Oksuita was excused. It was noted there were no other members of the public wanting to speak on this matter. Jazdzewski closed testimony and opened deliberations. Jazdzewski noted they were able to view conditions during the on-site and see the different elevations plans. Garbe read the variance standards:

The Board is Required to Evaluate the Effect of the Proposed Use Under 7.7.12.3(D)(2)(a) in Order to Grant the Variance. The pertinent subsections are as follows:

- (a) The maintenance of safe and healthful conditions;
- (b) The prevention and control of water pollution including sedimentation;
- (c) Existing topographic and drainage features and vegetative cover on the site;
- (d) The location of the site with respect to floodplains and floodways of rivers or streams;
- (e) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover;
- (g) The need of the proposed use for a shoreland location;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The amount of liquid wastes to be generated and the adequacy of the proposed disposal system;
- (l) The availability of alternative locations;
- (m) The heights, velocity, duration, rate of rise and sedimentation transport of the flood waters at the site;
- (n) Such other factors as are relevant to the purposes of this Ordinance.

The Board is Required to Find All of the Following Conditions under 7.7.12.3(D)(3)(c) in Order to Grant the Variance

- (1) Granting the variance would not be contrary to the public interest, State Law or Administrative Code, the spirit of the Ordinance would be observed and substantial justice done;
- (2) The use is permitted in the District;
- (3) The hardship is due to special conditions unique to the property, rather than considerations personal to the property owner;
- (4) Granting the variance would not be detrimental to surrounding landowners;
- (5) Hardship is not created by any person having interest in the property;
- (6) A property owner bears the burden of proving unnecessary hardship by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome;
- (7) The request represents the minimum relief necessary to relieve unnecessary burdens.

The Board May Attach Any of the Following Conditions Under 7.7.12(3)(E)(2) in Order to Further the Purposes of this Ordinance

- (a) Type of shore cover.
- (b) Increased setbacks and yards.
- (c) Specified sewage disposal and water supply facilities.

- (d) Landscaping and planting screens.
- (g) Sureties.
- (h) Deed restrictions.
- (i) Location of piers, docks, parking and signs.

Discussion amongst BOA members; the following was noted:

- Jazdzewski discussed the contour behind the pavilion and before the slope which makes sense multiple ways. Runoff will go around the pavilion and be diverted properly.
- There is a recommended condition of a deed restriction that would prevent additional viewing areas from being developed. Even though everything was covered in snow, Jazdzewski could see there were only two open areas. One of these is an area where the docks and community area is located with all paths leading to it. He assumes there is a large use of wheelchairs in this area, and it is better than going up the slope. He feels this project totally makes sense. While this area is controlled by one entity now, it does not mean there won't be a change in the future. He also noted regulations could change in the future as well. He feels this is a win-win situation. While it is counter-intuitive to the Ordinance, it is an individual issue on this site. The developed portion of the property slopes away from the lake; this is the only area that is level to the lake. It was noted there is not a large fluctuation of the water level on the lake. It is not like the pavilion will be encroaching on the water in three or four years from now.
- Garbe noted the entire surrounding property is owned by the Wisconsin Lions Foundation which effectively makes Lions Lake a private lake.
- Surrounding properties are in their natural vegetative state.
- The DNR will be involved in the permitting process and the bar is held high by the DNR for the purposes of protecting this water resource. The fact that they control so much of the natural area around the lake should mitigate any concerns the DNR has in putting a small structure next to the water body.
- With major excavation they could possibly put the structure against the bank. With excavation of the bank and having a retaining wall, there is a hazard to the people that would use it as gravity takes hold.
- Garbe noted BOA typically avoids deed restrictions because of the long-term issues. He feels if this is a way to mitigate the DNR's concern by guaranteeing a natural vegetative buffer on the 35' shoreline, that has a big impact on any concerns the DNR has for the natural beauty and protection of the water resource.
- Jazdzewski agreed; adding he inquired, and it is a navigable waterway because there is an outflow ditch. He added it is public water and discussed setbacks of nearby bridge abutments to the stream.
- Jazdzewski said nobody is benefitting individually in this application; it is for the benefit of many, and he is supportive.
- It was noted the property is used year-round and is rented out to groups in the winter.

Jazdzewski closed deliberations and asked for a motion to approve, deny, or postpone the request.

Motion by Hopp to approve the request for a variance as submitted, with the following conditions:

1. A Portage County Zoning Permit must be obtained.
2. A Portage County Stormwater Permit must be obtained prior to the issuance of a Zoning Permit.
3. The proposed pavilion and patio cannot be any closer than 20 feet to Lions Lake ordinary high-water mark.
4. A deed restriction, approved by the Portage County Planning and Zoning Department, must be placed on all the properties around Lions Lake to prevent the creation of any new access or viewing corridors that would remove natural vegetation within the 35-foot primary shoreland buffer. The deed restriction must be recorded prior to zoning permit issuance and may only be released by the Portage County Planning and Zoning Department.

Motion to approve seconded by Garbe. Motion to approve passed 5-0 by voice vote.

Approval of Minutes from November 29, 2022 meeting.

Garbe moved to approve the minutes of November 29, 2022 as provided; Hopp seconded. There being no discussion, motion to approve passed 5-0 by voice vote.

Discussion/Possible Action Regarding Special Meetings (Portage County Ordinance 3.1.47 & 3.1.48)

- Request for Special Meeting Attendance - None
- Approval of Attendance of Special Meetings - None
- Special Meeting Attendance Reports - None

Correspondence/Updates from Staff

Nothing additional to report.

Next Meeting Date

Tentative, April 17, 2023.

Adjournment

Motion to adjourn by Hopp, second by Pingel. Motion to adjourn passed by voice vote. Meeting adjourned at 5:12 pm.

Respectfully submitted,

Gayle Stewart, Recording Secretary

James Garbe, BOA Secretary

Date of Approval