

Walworth County Board of Adjustment

MINUTES

January 9, 2019 - Hearing – 9:00 AM

January 10, 2019 – Meeting – 9:00 AM

County Board Room

Government Center – Elkhorn, Wisconsin

A hearing and decision meeting of the Walworth County Board of Adjustment was held on January 9 & 10, 2019, in the County Board Room of the Government Center in Elkhorn, Wisconsin. Those present on January 9, 2019, were Vice-Chair Elizabeth Sukala, Secretary Ann Seaver and Alternate Joseph J. Pappa. Nicholas Sigmund, Senior Zoning Officer, Heather Marquardt, Code Enforcement Officer and Wendy Boettcher, recording secretary were in attendance. Those present on January 10, 2019, were Vice-Chair Elizabeth Sukala, Secretary Ann Seaver and Alternate Joseph J. Pappa. Nicholas Sigmund, Senior Zoning Officer, Heather Marquardt, Code Enforcement Officer and Wendy Boettcher, recording secretary were in attendance. “Sign-in” sheets listing attendees on January 9, 2019, and January 10, 2019, are kept on file as a matter of record.

The January 9, 2019, hearing was called to order by Acting Chair Elizabeth Sukala at 9:00 A.M. Wendy Boettcher conducted roll call and verified that there was a quorum. Those present were same as listed above. **Ann Seaver motioned to approve the agenda as amended to postpone hearing #1. JHGKL LLC, owners / Sugar Creek Township to the February meeting. Seconded by Joseph Pappa. Motion carried. 3-favor, 0-oppose. Elizabeth Sukala motioned to approve the December 12 & 13, 2018, Minutes and dispense with the reading. Seconded by Ann Seaver. Motion carried. 2-favor, 1-recuse, 0-oppose. After testimony of all cases, Ann Seaver motioned to recess until 9:00 A.M. on Thursday, January 10, 2019. Seconded by Joseph Pappa. Motion carried. 3-favor, 0-oppose.** The January 9, 2019, hearing went into recess at approximately 10:06 A.M.

On January 10, 2019, at 9:00 A.M., Acting Chair Elizabeth Sukala called the decision meeting to order. Wendy Boettcher conducted roll call and verified that there was a quorum. Those present were same as listed above. **Joseph Pappa motioned to approve the agenda as amended to postpone hearing #1. JHGKL LLC, owners / Sugar Creek Township. Seconded by Ann Seaver. Motion carried. 3-favor, 0-oppose. After the decisions were completed, Ann Seaver motioned to adjourn until the February 13, 2019, hearing at 9:00 A.M. Seconded by Joseph Pappa. Motion carried. 3-favor, 0-oppose.** The January 10, 2019, decision meeting adjourned at approximately 10:26 A.M.

Four variance hearings were scheduled and details of the January 9, 2019, hearings and the January 10, 2019, decisions are digitally recorded and available to the public upon request / video to view on our website: www.co.walworth.wi.us.

Old Business – None

New Business – Variance Petitions

Hearing – Count #N/A / Decision – Count #N/A

The First Hearing was J H G K L LLC, owner / Super Aggregates, Jack Pease, applicant – Section(s) 9 – Sugar Creek Township

Applicants are requesting a variance from Section(s) 74-56 of Walworth County’s Code of Ordinances – Zoning to amend their mineral extraction and reclamation plan.

REQUIRED BY ORDINANCE: The Ordinance requires all excavations to be 200 feet from all property lines and soil stock piles to be 100 feet from property lines.

VARIANCE REQUEST: The applicants are requesting to mine 100 feet from some lot lines and approximately 5 feet from another. Grading is proposed 0 feet from the lot lines. Soil stock piles are proposed 10 feet and 50 feet from lot lines. The request is a variance from Section(s) 74-56 of Walworth County’s Code of Ordinances – Zoning to amend their mineral extraction and reclamation plan.

BOARD OF ADJUSTMENT DECISION: The Walworth County Board of Adjustment, during the meeting of January 9 & 10, 2019, did not vote on the petition of J H G K L LLC, owner / Super Aggregates, Jack Pease, applicant.

BOARD OF ADJUSTMENT FINDINGS: The Board found this hearing has been **POSTPONED** at the applicant’s request.

Hearing – Count #9:08:07 – 9:34:39 / Decision – Count #9:06:16 – 9:18:08

The Second Hearing was North Shore Drive Corp, owner / Stephen K. Rush, applicant – Section(s) 21 – Delavan Township

Applicants are requesting a variance from Section(s) 74-181 / 74-219 of Walworth County’s Code of Ordinances – Shoreland Zoning to construct a residence in a planned residential development (PRD).

REQUIRED BY ORDINANCE: The Ordinance requires a 5 foot side yard setback for the residence and requires the PRD to have 20% open space with no single area being less than one half acre and the areas least dimension more than one fourth its length.

VARIANCE REQUEST: The applicants are requesting a residence 2.4 feet from the side lot line. Five open space areas are requested. Four of those areas are less than one half acre, .111, .141, .029, .080 acres. Four areas do not have their least dimension exceeding one fourth their length. The request is a variance from Section(s) 74-181 / 74-219 of Walworth County’s Code of Ordinances – Shoreland Zoning to construct a residence in a planned residential development (PRD).

BOARD OF ADJUSTMENT DECISION: The Walworth County Board of Adjustment, during the meeting of January 9 & 10, 2019, for the petition of North Shore Drive Corp, owner / Stephen K. Rush, applicant, voted to **APPROVE** the request to vary the open space sizes and dimensions and voted to **DENY** the request for a residence 2.4 feet from the side lot line.

A motion was made by Joseph Pappa to approve construction with the limited open space. Seconded by Ann Seaver. Motion carried. 3-favor 0-oppose

A motion was made by Jospheh Pappa to deny the variance request for setbacks for a residence. Seconded by Ann Seaver. Motion carried. 3-favor 0-oppose

BOARD OF ADJUSTMENT FINDINGS: Approval of variance from 20% open space requirement: The Board found the corporation-owned property with 27 homes to be a unique situation. The Board found that the open space exists as it was at the time that it was originally approved. The Board found the only way to create the open space needed would require houses and driveway improvements to be removed creating an unnecessary hardship. The Board found to approve the request would cause no harm to public interests as most of the nearby residents are the community members themselves that own the property. The Board found the owner has the support of the Town of Delavan and of the North Shore Drive Corporation. The Board found to approve the request would not harm the public's interest in navigable waters.

Denial of the side yard setback request: The Board found that any attempts to preserve sightlines are a want rather than a need. The Board found to deny the request would not cause unnecessary hardship. The Board found that the existing house is being removed and replaced. The Board found the new house could be located in a compliant location. The Board found that although the corporation owns the adjacent lots, those lots are not part of this parcel. The Board found that with 27 homes on this parcel, decisions could be precedent setting when other property owners want to replace their homes as well.

There were letters in support from a neighboring property owner, the North Shore Drive Corporation and the Town of Delavan. There was no opposition.

Hearing – Count #9:34:48 – 9:57:02 / Decision – Count #9:18:15 – 9:28:52

The Third Hearing was North Shore Drive Corp, owner / Gary & Jeanne Horacek, applicants – Section(s) 21 – Delavan Township

Applicants are requesting a variance from Section(s) 74-181 of Walworth County's Code of Ordinances – Shoreland Zoning to construct a residence in a planned residential development (PRD).

REQUIRED BY ORDINANCE: The Ordinance requires a 10 foot side yard setback for the residence and requires the PRD to have 20% open space with no single area being less than one half acre and the areas least dimension more than one fourth its length.

VARIANCE REQUEST: The applicants are requesting a residence 8.8 feet from the side lot line. Five open spaces are requested. Four of those areas are less than one half acre, .111, .141, .029, .080 acres. Four areas do not have their least dimension exceeding one fourth their length. The request is a variance from Section(s) 74-181 of Walworth County's Code of Ordinances – Shoreland Zoning to construct a residence in a planned residential development (PRD).

BOARD OF ADJUSTMENT DECISION: The Walworth County Board of Adjustment, during the meeting of January 9 & 10, 2019, for the petition of North Shore Drive Corp, owner / Gary & Jeanne Horacek, applicants, voted to **APPROVE** the request for the five open space sizes and configurations and to **DENY** the request for a residence 8.8 feet from the side lot line.

A motion was made by Joseph Pappa to approve the variance request for the open spaces. Seconded by Ann Seaver. Motion carried. 3-favor 0-oppose

A motion was made by Ann Seaver to approve the variance request for the side yard setback for the residence. Seconded by Joseph Pappa. 0-favor 3-oppose

A motion was made by Joseph Pappa to deny the variance request for the side yard setback for the residence. Seconded by Ann Seaver. 3-favor 0-oppose

BOARD OF ADJUSTMENT FINDINGS: Approval of the variance from the 20% open space requirement: The Board found the corporately owned 5 acre parcel with 27 homes to be a unique situation. The Board found the open space is existing from when originally approved. The Board found to require houses and improvements to be removed to create more space would cause unnecessary hardship. The Board found the neighbors are the 27 homes so to approve the request would cause no harm to public interests. The Board found the owner has the support of neighboring property owners, the North Shore Drive Corporation and the Town. The Board found to approve the request will not harm the public's interest in navigable waters.

Denial of setback request: The Board found the consideration of sightline not to be a unique property limitation. The Board found the subdivision to be self-contained with no public roads so proximity to the interior roadway was not considered a unique property limitation or a potential harm to public interests. The Board found the owner intends to tear down the existing structure and rebuild with the ability to be code compliant without any unnecessary hardship. The Board found the variance request to be a want rather than a need.

There were letters in support from a neighboring property owner, Villa del Aire, North Shore Drive Corporation and the Town of Delavan. There was no opposition.

Hearing – Count #9:57:18 – 10:05:46 / Decision – Count #9:29:05 – 9:35:22

The Fourth Hearing was Jerome M. & June E. Rogosienski, owners / Jerome Rogosienski, applicant – Section(s) 7 – East Troy Township

Applicants are requesting a variance from Section(s) 74-38 / 74-52 of Walworth County's Code of Ordinances – Zoning to allow the location of an in-ground pool.

REQUIRED BY ORDINANCE: The Ordinance requires a 100 foot rear lot line setback in the C-2 zone district.

VARIANCE REQUEST: The applicants are requesting an approximate 94 foot setback. The request is a variance from Section(s) 74-38 / 74-52 of Walworth County's Code of Ordinances – Zoning to allow the location of an in-ground pool.

BOARD OF ADJUSTMENT DECISION: The Walworth County Board of Adjustment, during the meeting of January 9 & 10, 2019, for the petition of Jerome M. & June E. Rogosienski, owners / Jerome Rogosienski, applicant, voted to **APPROVE** the request for an approximate 94 foot setback.

A motion was made by Elizabeth Sukala to approve the variance request for the pool with the 94' setback. Seconded by Ann Seaver. Motion carried. 3-favor 0-oppose

BOARD OF ADJUSTMENT FINDINGS: The Board found the pool is existing and at the time of construction the pool did meet the setback requirements. The Board found the rezone will create a standard sized C-2 zoned parcel and eliminate a substandard sized A-1 zoned parcel. The Board found the proposed change to the C-2 zoning district will change setback requirements for the existing pool. The Board found to deny the variance request and require removal of an in-ground pool would cause unnecessary hardship. The Board found to approve the variance request would cause no harm to public interests. The Board found the variance request to be a small increment of relief. The Board found there are no nearby neighbors. There was a letter in support from the Town Plan Commission. There was no opposition.

Other

- A. Discussion / possible action on Township correspondence – none

Staff Reports

- A. Court cases update
Nielsen v. Board of Adjustment – Peter Navis, Assistant Corporation Counsel
An update was given by Peter Navis, Assistant Corporation Counsel, re: the applicants' appeal of the decision made by the Board of Adjustment at the March 15, 2018, Walworth County Board of Adjustment meeting. Peter Navis represented Walworth County Board of Adjustment in court.
- B. Training – Decision making and creating a clear record – Peter Navis, Assistant Corporation Counsel represented Walworth County
Peter Navis talked to the Board of Adjustment members about the value of taking evidence and testimony at the hearing, deciding what is credible / relevant to base a decision on, and apply that to applicable law. The Board members should articulate what evidence led to / supports their decisions to create a clear record.
- C. Distribution of reports, handouts and correspondence

Proposed discussion for next agenda

The following items were requested to be put on the February 2019 agenda, if applicable:

- A. Discussion / possible action on Township correspondence
- B. Court cases update
- C. Distribution of reports, handouts and correspondence

ANN SEAVER
WALWORTH COUNTY BOARD OF ADJUSTMENT

These minutes are not final until approved by the Board of Adjustment at the next scheduled hearing date.