

## Walworth County Board of Adjustment

### MINUTES

May 13, 2020 - Hearing – 9:00 AM

May 14, 2020 – 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 May 13, 2020, and May 14, 2020, in the County Board Room of the Government Center in Elkhorn, Wisconsin. Those present on May 13, 2020, were Vice-Chair Elizabeth Sukala, Secretary Ann Seaver and 2<sup>nd</sup> Alternate Barbara A. Fischer. Fay Amerson, Senior Urban Conservation Specialist, Josie Hanrahan, Conservation Technician, Nicholas Sigmund, Senior Zoning Officer and Wendy Boettcher, recording secretary were in attendance. Those present on May 14, 2020, were Vice-Chair Elizabeth Sukala, Secretary Ann Seaver and 2<sup>nd</sup> Alternate Barbara A. Fischer. Fay Amerson, Senior Urban Conservation Specialist, Nicholas Sigmund, Senior Zoning Officer and Wendy Boettcher, recording secretary were in attendance. “Sign-in” sheets listing attendees on May 13, 2020, and May 14, 2020, are kept on file as a matter of record.

The May 13, 2020, hearing was called to order by Vice-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 #3) James D. & Nancy G. Bell / Linn Township and hearing #5) Donald T. Kuta Trust / Geneva Township and hearing #6) Michael J. Rabe Trust / Linn Township. Seconded by Barb Fischer. Motion carried. 3-favor, 0-oppose. Elizabeth Sukala motioned to approve the March 11 & 12, 2020, Minutes and dispense with the reading. Seconded by Ann Seaver. Motion carried. 2-favor, 1-abstain (Barb Fischer), 0-oppose. After testimony of all cases, Ann Seaver motioned to recess until 9:00 A.M. on Thursday, May 14, 2020. Seconded by Barb Fischer. Motion carried. 3-favor, 0-oppose.** The May 13, 2020, hearing went into recess at approximately 1:41 P.M.

On May 14, 2020, at 9:00 A.M., Vice-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. **Ann Seaver motioned to approve the agenda as amended to postpone hearing #3) James D. & Nancy G. Bell / Linn Township and hearing #5) Donald T. Kuta Trust / Geneva Township and hearing #6) Michael J. Rabe Trust / Linn Township. Seconded by Barb Fischer. Motion carried. 3-favor, 0-oppose. After the decisions were completed, Barb Fischer motioned to adjourn until the June 10, 2020, hearing at 9:00 A.M. Seconded by Ann Seaver. Motion carried. 3-favor, 0-oppose.** The May 14, 2020, decision meeting adjourned at approximately 9:51 A.M.

Five variance hearings and one appeal was scheduled and details of the May 13, 2020, hearings and the May 14, 2020, decisions are digitally recorded and available to the public upon request / video to view on our website: [www.co.walworth.wi.us](http://www.co.walworth.wi.us).

**Old Business – None**

**New Business – Variance / Appeal Petitions**

Hearing – Count #9:05:05 – 10:45:37/ Decision – Count #9:00:42 – 9:11:36

**The First Hearing was Delavan Lakeview Crest Corp, owner / Stanley Riffle, Municipal Law & Litigation Group SC, applicant – Section(s) 31 – Delavan Township**

Applicants are appealing the interpretation and decision of the Walworth County Land Conservation Division to deny the Delavan Lake Sanitary District's application for a construction site erosion and sediment control permit for the installation of a gravel drive based on Section(s) 26-58(b)(1)(m) and 26-65(a)(12) of the Walworth County Code of Ordinances (Environment) and 74-174 of the Walworth County Code of Ordinances (Shoreland Zoning).

**APPLICANT(S) APPEAL:** The applicants are appealing the interpretation and decision of the Walworth County Land Conservation Division to deny the Delavan Lake Sanitary District's application for a construction site erosion and sediment control permit for the installation of a gravel drive based on Section(s) 26-58(b)(1)(m) and 26-65(a)(12) of the Walworth County Code of Ordinances (Environment) and 74-174 of the Walworth County Code of Ordinances (Shoreland Zoning). The applicants' interpretation is that the denial is contrary to the law and in violation of the County's ordinances and violates Wisconsin statutes, Administrative Code provisions and Wisconsin case law.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting on May 13 & 14, 2020, did not vote on the appeal.

**A motion was made by Ann Seaver to postpone the appeal hearing. Seconded by Barb Fischer. Motion carried. 3-favor 0-oppose**

**A motion was made by Elizabeth Sukala to postpone the appeal hearing to the Board of Adjustment September 9, 2020, meeting to give Delavan Lakeview Crest Corp opportunity to meet. Seconded by Barb Fischer. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found to POSTPONE the proceedings to the September 9, 2020, Board of Adjustment agenda. The Board found that 2 copies of a 3-ring binder of material were provided to the Board members by the applicant at the hearing and the information was too much to review at the hearing. The Board found the material contained information that was not discussed at the hearing. The Board found there was testimony from a property owner stating the gravel drive in question was planned to be used by the applicants as ingress / egress for weed-harvesting equipment and information in the applicant's binder material supported that claim. The Board found that Walworth County had advised the applicants that a variance, rezone and conditional use permit were needed as part of the County permitting process. The Board found a conditional use permit application in the applicant's binder of information that didn't appear to have been submitted. The Board found the Delavan Lakeview Crest Association would have to be involved with an application to rezone the property, as they are the owners of the property in question. The Board found they would like to hear from the property owners, Lakeview Crest Association. The Board found that a postponement to the Board of Adjustment's September 9<sup>th</sup> meeting date would give time to review the binder material and give the Delavan Lakeview Crest Association time to meet.

Hearing – Count #10:46:40 – 11:14:46 / Decision – Count #9:11:47 – 9:14:30

The Second Hearing was Daniel G. Watts, owner / Daniel G. Watts, applicant – Section(s) 28 – Delavan Township

Applicant is requesting a variance from Section(s) 74-165 of Walworth County’s Code of Ordinances – Shoreland Zoning to construct a shed with solar panels.

**REQUIRED BY ORDINANCE:** The Ordinance requires a principal structure to be present or under construction prior to an accessory structure.

**VARIANCE REQUEST:** The applicant is requesting an accessory structure on a parcel with no principal structure. The request is a variance from Section(s) 74-165 of Walworth County’s Code of Ordinances – Shoreland Zoning to construct a shed with solar panels.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of May 13 & 14, 2020, for the petition of Daniel G. Watts, owner / Daniel G. Watts, applicant, voted to DENY the request to allow an accessory structure on a parcel with no principal structure.

**A motion was made by Ann Seaver to deny the variance request. Seconded by Barb Fischer. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found no unique property limitations. The Board found no unnecessary hardship. The Board found that planting and restoration work can be done without the proposed shed. The Board found a shed does exist on the property to provide storage space. The Board found to approve the variance request would not be consistent with the purpose and intent of the ordinance. The Board found that the owner had no principal structure on or even adjacent to this parcel. The Board found that approving a variance such as this would be a poor precedent. There were two e-mails in support from neighboring property owners. There was a letter of opposition from a neighboring property owner.

Hearing – Count #11:15:46 – 12:13:34 / Decision – Count #9:14:35 – 9:23:56

The Third Hearing was Robert A. Balfour, owner / Robert & Robin Balfour, applicants – Section(s) 26 – La Grange Township

Applicants are requesting a variance from Section(s) 74-174 / 74-181 / 74-221 of Walworth County’s Code of Ordinances – Shoreland Zoning to permit the location of a patio, screen porch and decks.

**REQUIRED BY ORDINANCE:** The Ordinance requires a 59.8 foot shore yard setback.

**VARIANCE REQUEST:** The applicants are requesting a 48.5 foot setback for a patio, a 49.6 foot setback for a screen porch, a 49.7 foot setback for a deck, and a 59.75 foot setback for a deck. The request is a variance from Section(s) 74-174 / 74-181 / 74-221 of Walworth County’s Code of Ordinances – Shoreland Zoning to permit the location of a patio, screen porch, and decks.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of May 13 & 14, 2020, for the petition of Robert A. Balfour, owner / Robert & Robin Balfour, applicants, voted to DENY with a Condition the request for a 48.5 foot setback for a patio, a 49.6 foot setback for a screen porch, a 49.7 foot setback for a deck, and a 59.75 foot setback for a deck.

**A motion was made by Ann Seaver to deny the variance request. Seconded by Barb Fischer. Motion carried. 3-favor 0-oppose**

**An amended motion was made by Ann Seaver to deny the variance request with the condition the Board has no objection to the owners getting an occupancy permit while zoning issues are resolved. Seconded by Barb Fischer. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found no unique property limitations not generally found on neighboring properties. The Board found to deny the variance request would cause no unnecessary hardship. The Board found that outdoor living space would exist without these structures. The Board found that while the owners are unintended victims, a variance cannot be granted just to save the owners from having to remove the structures and save the owners the expense of removing the structures. The Board found the owners may have recourse with the various contractors that were involved with the errors that lead to this situation. The Board found to approve the variance request would cause harm to public interests and set a poor precedent. The Board found that the lot is not deep enough to support the size of the home and these additional structures. The Board found the variance request to be a large increment of relief. The Board added a condition to their denial that the occupancy permit from the Town need not be withheld based solely on these County zoning issues needing to be resolved. There was a copy of a text in support from a neighboring property owner. There was a letter of comment from the Town of La Grange. There was a letter of opposition from the Walworth County Land Conservation Division.

Hearing – Count #12:13:35 – 12:24:48 / Decision – Count #9:24:05 – 9:27:12

**The Fourth Hearing was David & Regina Duxbury, owners / Dave & Gina Duxbury, applicants – Section(s) 25 – La Grange Township**

Applicants are requesting a variance from Section(s) 74-165 / 74-174 / 74-181 of Walworth County's Code of Ordinances – Shoreland Zoning to replace an accessory structure (shed).

**REQUIRED BY ORDINANCE:** The Ordinance requires a 25 foot street yard setback, 15 foot side yard setback and 75 foot shore yard setback. The Ordinance also requires a principal structure to present or under construction before an accessory structure can be constructed.

**VARIANCE REQUEST:** The applicants are requesting to locate an accessory structure on a parcel with no principal structure and a 6.11 foot street yard setback, 1.45 foot side yard setback and 7.49 foot shore yard setback. The request is a variance from Section(s) 74-165 / 74-174 / 74-181 of Walworth County's Code of Ordinances – Shoreland Zoning to replace an accessory structure (shed).

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of May 13 & 14, 2020, for the petition of David & Regina Duxbury, owners / Dave & Gina Duxbury, applicants, voted to APPROVE the request to locate an accessory structure on a parcel with no principal structure and a 6.11 foot street yard setback, 1.45 foot side yard setback and 7.49 foot shore yard setback.

**A motion was made by Ann Seaver to approve the variance request. Seconded by Elizabeth Sukala. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found a unique property limitation in the small and narrow piece of land divided by a road from the larger parcel. The Board found there would be a hardship if the owner was not allowed to replace the existing shed that is in disrepair. The Board found that the request meets the intent of the ordinance and would not cause a harm to the public interest. The Board found the principal structure exists across the street from the shed and the two parcels are tied together in that the septic system for the house is also on the parcel with the shed. The Board found that the parcel is located in a gated neighborhood. The Board found that the new shed will be located in the same footprint as the existing shed. There was a letter in support from the Town of La Grange. There was no opposition.

Hearing – Count #12:25:40 – 12:42:12 / Decision – Count #9:27:13 – 9:31:23

**The Fifth Hearing** was Graham S. Adsit & Carla M. Galler, owners / Carla Galler, applicant – **Section(s) 20 – Troy Township**

Applicants are requesting a variance from Section(s) 74-38 / 74-51 of Walworth County’s Code of Ordinances – Zoning to create a land division.

**REQUIRED BY ORDINANCE:** The Ordinance requires structures to have a 100 foot rear lot line setback and a 25 foot front lot line setback. The Ordinance also limits accessory structures to 2,150 square feet on an approximate 1.17 acre parcel.

**VARIANCE REQUEST:** The applicants are requesting to create a rear lot line 40 feet from a house, 44.7 feet from a shed, and 25 feet from a garage. A front lot line is proposed 10 feet from a barn / accessory structure. The applicants are also requesting to create an approximate 1.17 acre lot with 2,362.37 square feet of accessory structure. The request is a variance from Section(s) 74-38 / 74-51 of Walworth County’s Code of Ordinances – Zoning to create a land division.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of May 13 & 14, 2020, for the petition of Graham S. Adsit & Carla M. Galler, owners / Carla Galler, applicant, voted to APPROVE the request to create a rear lot line 40 feet from a house, 44.7 feet from a shed, and 25 feet from a garage, and a front lot line proposed 10 feet from a barn / accessory structure and to create an approximate 1.17 acre lot with 2,362.37 square feet of accessory structure.

**A motion was made by Ann Seaver to approve the variance request. Seconded by Barb Fischer. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found a unique situation in the generational family farm having to work around existing structures to complete a farm separation. The Board felt it would be an unnecessary hardship to have to include the two additional buildings with the farm separation parcel. The Board felt that the division as proposed meets the intent of the ordinance as it will keep the larger buildings in agricultural use and it will preserve more A-1 zoned land on the remnant parcel. The Board also found that the larger buildings are reaching the end of their life and the setback encroachment will eventually go away. The Board found that the larger buildings have their own access and are not dependent on the rest of the separated infrastructure. The Board found that the current plan would keep both properties in family ownership. There was a letter in support from the Town of Troy. There was no opposition.

Hearing – Count #12:42:35 – 1:40:36 / Decision – Count #9:31:35 – 9:38:17

The Sixth Hearing was Lucio & Jennifer M. Lagunas, owners / William R. Henry Archt PE, Kehoe-Henry & Assoc., Inc., Architects & Engineering, applicant – Section(s) 25 – La Grange Township

Applicants are requesting a variance from Section(s) 74-174 / 74-181 / 74-221 of Walworth County's Code of Ordinances – Shoreland Zoning to construct an addition to a residence.

**REQUIRED BY ORDINANCE:** The Ordinance requires a 75 foot shore yard setback.

**VARIANCE REQUEST:** The applicants are requesting a 54.1 foot shore yard setback. The request is a variance from Section(s) 74-174 / 74-181 / 74-221 of Walworth County's Code of Ordinances – Shoreland Zoning to construct an addition to a residence.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of May 13 & 14, 2020, for the petition of Lucio & Jennifer M. Lagunas, owners / William R. Henry Archt PE, Kehoe-Henry & Assoc Inc., Architecture & Engineering, applicant, voted to DENY the request for a 54.1 foot shore yard setback.

**A motion was made by Ann Seaver to deny the variance request for discussion. Seconded by Barb Fischer. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found no unique circumstances to the property not generally found on neighboring properties. The Board found no unnecessary hardship. The Board felt that safety concerns could be addressed by replacing the stairs or alteration to the home in a different fashion without the need for a variance. The Board also found that the owners recently bought the property knowing that access to the home required traversing the many stairs. The Board found the request to be more of a want than a need. The Board found that the variance would cause harm to the public interests and the shoreland as there is already a significant amount of development and impervious surface on this parcel and granting a variance such as this would be a poor precedent. There were letters in support from a neighboring property owner and from the Town of La Grange. There were letters of opposition from the Walworth County Land Conservation Division and from the Wisconsin Department of Natural Resources.

**Other**

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

**Staff Reports**

- A. Court cases update - none

- B. Distribution of reports, handouts and correspondence

Nick Sigmund advised the Board members a notice will be published to fill the vacancy created by the resignation of long-standing Board member John Roth, and the expiration of the terms of Ann Seaver and Franklin Jones. Citizen member applications were given to the Board members. Discussion regarding creating a policy for holding elections will be placed on the June 2020 agenda.

**Proposed discussion for next agenda**

The following items were requested to be put on the June 2020 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.