

## Walworth County Board of Adjustment

### MINUTES

September 9, 2020 - Hearing – 9:00 AM

September 10, 2020 – Meeting – 9:00 AM

County Board Room

Government Center – Elkhorn, Wisconsin

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A hearing and decision meeting of the Walworth County Board of Adjustment was held on September 9, 2020, and September 10, 2020, in the County Board Room of the Government Center in Elkhorn, Wisconsin. Those present on September 9, 2020, were Vice-Chair Elizabeth Sukala, Secretary Ann Seaver and 2<sup>nd</sup> Alternate Barbara A. Fischer. Nicholas Sigmund, Senior Zoning Officer and Wendy Boettcher, recording secretary were in attendance. Those present on September 10, 2020, were Vice-Chair Elizabeth Sukala, Secretary Ann Seaver and 2<sup>nd</sup> Alternate Barbara A. Fischer. Fay Amerson, Sr. Urban Conservation Specialist, Nicholas Sigmund, Senior Zoning Officer and Sheril Oldenburg, recording secretary were in attendance. “Sign-in” sheets listing attendees on September 9, 2020, and September 10, 2020, are kept on file as a matter of record.

The September 9, 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 presented. Seconded by Barbara Fischer. Motion carried. 3-favor, 0-oppose. Ann Seaver motioned to approve the July 8 & 9, 2020, Minutes and dispense with the reading. Seconded by Barbara Fischer. Motion carried. 3-favor 0-oppose. After testimony of all cases, Barbara Fischer motioned to recess until 9:00 A.M. on Thursday, September 10, 2020. Seconded by Ann Seaver. Motion carried. 3-favor, 0-oppose.** The September 9, 2020, hearing went into recess at approximately 11:59 A.M.

On September 10, 2020, at 9:00 A.M., Vice-Chair Elizabeth Sukala called the decision meeting to order. Sheril Oldenburg 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 presented. Seconded by Barb Fischer. Motion carried. 3-favor, 0-oppose. After the decisions were completed, Barb Fischer motioned to adjourn until the October 14, 2020, hearing at 9:00 A.M. Seconded by Ann Seaver. Motion carried. 3-favor, 0-oppose.** The September 10, 2020, decision meeting adjourned at approximately 10:06 A.M.

Three variance hearings were scheduled and details of the September 9, 2020, hearings and the September 10, 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 – Petition for Appeal

Hearing – Count #9:02:54 – 9:38:49 / Decision – Count #9:01:59 – 9:16:15

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 of September 9 & 10, 2020, which was the continuation of the meeting of May 13 & 14 2020, voted to deny the appeal of the applicant and voted to uphold the decision of the Walworth County Land Conservation Division.

**A motion was made by Barbara Fischer to uphold the County's decision and deny the appeal. Seconded by Ann Seaver. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found that the proposed drive is a structure. The Board found the drive is not a structure exempted from shoreland zoning requirements by Wis. Stat. § 59.692(1n)(d). The Board found that the Delavan Lake Sanitary District can use other methods or designs for accessing the site and facilitating maintenance. The Board found that the Wisconsin Department of Natural Resources approval and Army Corp of Engineers approval both cited the possibility of local approvals being required. The Board found the county provided the Delavan Lake Sanitary District with the process necessary to obtain approvals for the drive as proposed. The Board found that the applicant failed to pursue that process.

### **Old Business – Petition for Special Exception**

Hearing – Count # N/A / Decision – Count #9:16:18 – 9:22:10

Degrave Properties LLC, owner / Attorney Matthew J. Hills, DeWitt LLP, applicant – Section(s) 19 – Lafayette Township

Applicants are requesting a special exception in accordance with Section(s) 74-240 of the Walworth County Code of Ordinances – Shoreland Zoning and Wisconsin Statute 59.69(15)(br)1 to establish an adult family home within 2,500 feet of another adult family home.

**REQUIRED BY ORDINANCE:** The Ordinance and Wisconsin Statute 59.69(15)(br)1 prohibit the establishment of an adult family home within 2,500 feet of another adult family home.

**VARIANCE REQUEST:** The applicants are requesting a special exception to permit an adult family home approximately 360 feet from the existing. The request is a special exception per Section(s) 74-240 of Walworth County's Code of Ordinances – Shoreland Zoning and Wisconsin

Statute 59.69(15)(br)1 to establish an adult family home within 2,500 feet of another adult family home.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of September 10, 2020, which was the continuation of the meeting of July 8 & 9 2020, for the petition of Degrove Properties LLC, owner / Attorney Matthew J. Hills, DeWitt LLP, applicant, voted to APPROVE the request for a special exception to permit an adult family home approximately 360 feet from the existing.

**A motion was made by Ann Seaver to approve the special exception. Seconded by Elizabeth Sukala for purposes of discussion. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found the applicants did due diligence to provide the information requested by the Board at the July 8 & 9, 2020, hearing. The Board found the applicant had worked with staff. The Board found the applicant had addressed their concerns about parking and had adequate space to operate outside of the road right-of-way. There was a letter of support from the Town of Lafayette. There was a letter of opposition from a Lafayette Township property owner.

#### **New Business – Variance Petitions**

Hearing – Count #9:38:50 – 11:27:16 / Decision – Count #9:22:20 – 9:37:02

**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 on parcel G SC 900004 approximately 100 feet from a portion of parcel G SC 900005 to the west. The applicants are requesting to mine on G SC 900004 and G SC 900004A 130 feet from all other exterior property lines. Mining is proposed 0’ from the shared lot line between the applicant’s two subject parcels. Grading is proposed 0 feet from all lot lines. Soil stock piles are proposed 30 feet from the south and west 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 September 9 & 10, 2020, for the petition of J H G K L LLC, owner / Super Aggregates, Jack Pease, applicant, voted to DENY the request to mine on parcel G SC 900004 approximately 100 feet from a portion of parcel G SC 900005 to the west, to mine on G SC 900004 and G SC 900004A 130 feet from all other exterior property lines, mining 0’ from the shared lot line between the applicant’s two subject parcels, grading 0 feet from all lot lines, and soil stock piles 30 feet from the south and west lot lines.

**A motion was made by Barbara Fischer to approve the variance request for discussion.**

**Seconded by Ann Seaver for discussion**

**Barbara Fischer withdrew her motion.**

**Barbara Fischer made a motion to deny the variance. Seconded by Ann Seaver. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found no unique property limitations. The Board found the proposal to encroach on the setbacks to create gentler slopes is a desire of the applicant. The Board found that 3:1 slopes are normal or standard for this type of activity. The Board found that the requests were a large increment of relief. The Board found the idea of grading activity taking place right up to the lot line for many years during reclamation to be a harm to the public interests. The Board found that such grading could create issues with unstable soil conditions such as erosion. The Board found the request did not meet any of the criteria required for approval. There was a letter of support from the Town of Sugar Creek. There was a letter of opposition from a neighboring property owner.

Hearing – Count #11:27:17 – 11:40:40 / Decision – Count #9:37:20 – 9:50:00

**The Second Hearing** was Donald T. Kuta Trust, owner / Michael Smith, applicant – Section(s) 28 – Geneva 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 / deck structure with a fire pit and stairs.

**REQUIRED BY ORDINANCE:** The Ordinance requires a maximum of 41.25% impervious surface and a 46.6 foot setback from the ordinary high water mark of Lake Como.

**VARIANCE REQUEST:** The applicants are requesting a patio / deck structure with fire pit and stairs as close as 33.1 feet to the ordinary high water mark, and a total of 46.72% impervious surface on the lot. 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 / deck structure with a fire pit and stairs.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of September 9 & 10, 2020, for the petition of Donald T. Kuta Trust, owner / Michael Smith, applicant, voted to DENY the request for a patio / deck structure with fire pit and stairs as close as 33.1 feet to the ordinary high water mark, and a total of 46.72% impervious surface on the lot.

**A motion was made by Ann Seaver to deny the variance request with modification to allow applicant to take part of patio out. Seconded by Barbara Fischer.**

**Ann Seaver made a motion to deny the patio as presented on page 2-5 of the packet. Seconded by Barbara Fischer. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found no unique property limitations not generally found on other neighboring properties. The Board found to deny the variance

request would cause no unnecessary hardship. The owner does have conforming outdoor living space as well as access to the lake without approval of the request. The Board found the owner does have adequate ingress / egress without variance approval. The Board found to approve the variance would not protect the public's interest in navigable waters and would allow too much impervious surface. There was a letter of support from the Town of Geneva. There was no opposition.

Hearing – Count #11:40:54 – 11:58:19 / Decision – Count #9:50:01 – 9:55:35

**The Third Hearing was Anthony J. McCallion, owner / Anthony J. McCallion, applicant – Section(s) 25 – La Grange Township**

Applicant is requesting a variance from Section(s) 74-182 / 74-189 of Walworth County's Code of Ordinances – Shoreland Zoning to construct a deck on a camping unit.

**REQUIRED BY ORDINANCE:** The Ordinance prohibits the structures added to a camping unit from exceeding the size of the camping unit

**VARIANCE REQUEST:** The applicant is requesting this deck in combination with existing structure(s) totaling approximately 420 square feet of additions on a 400 square foot camping unit. The request is a variance from Section(s) 74-182 / 74-189 of Walworth County's Code of Ordinances – Shoreland Zoning to construct a deck on a camping unit.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of September 9 & 10, 2020, for the petition of Anthony J. McCallion, owner / Anthony J. McCallion, applicant, voted to APPROVE the request for a deck in combination with existing structure(s) totaling approximately 420 square feet of additions on a 400 square foot camping unit..

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

**BOARD OF ADJUSTMENT FINDINGS:** The Board found the small lot size to be a unique property limitation. The Board found to approve the variance request would permit the second ingress / egress required by building code for safety. The Board found to approve the request would cause no harm to public interests as the deck will be reduced to the minimum size required by code. The Board found to approve the variance request would not harm the public's interest in navigable waters. There was an e-mail of comment from the Town Building Inspector. There was a letter of support from the Town of La Grange. There was no opposition.

### **Other**

- A. Discussion / possible action on Township correspondence – none
- B. Discussion / possible action on creating a procedure for the Board of Adjustment election of officers  
At the July 9, 2020, Board of Adjustment meeting, the Board discussed options for rules concerning election of officers.

At the September 10, 2020, Board of Adjustment meeting, Board members Elizabeth Sukala, Ann Seaver and Barbara Fischer were presented with, and signed, the final draft of the rule concerning election of officers.

### **Staff Reports**

- A. Court cases update - none
- B. Distribution of reports, handouts and correspondence
  - 1. Board members were advised of a webinar available to learn about different types of variances, legal standards for granting a variance and how to create a complete record for the courts.

### **Proposed discussion for next agenda**

The following items were requested to be put on the October 2020 agenda, if applicable:

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

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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.