

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

*Janet Sayre Hoeft, Chair; Dale Weis, Vice-Chair; Don Carroll, Secretary;
Paul Hynek, First Alternate; Lloyd Zastron, Second Alternate*

PUBLIC HEARING BEGINS AT **1:00 P.M.** ON APRIL 10, 2014 IN ROOM 205,
JEFFERSON COUNTY COURTHOUSE

CALL TO ORDER FOR BOARD MEMBERS IS AT 11:15 A.M. IN
COURTHOUSE ROOM 203, PRIOR TO THE HEARING

SITE INSPECTION FOR BOARD MEMBERS LEAVES AT 11:30 A.M.
FROM COURTHOUSE ROOM 203, PRIOR TO THE HEARING

1. Call to Order-Room 203 at 11:15 a.m.

Meeting called to order @ 11:15 a.m. by Hoeft

2. Roll Call

Members present: Hoeft, Carroll

Members absent: Weis

Staff: Laurie Miller, Michelle Staff

3. Certification of Compliance with Open Meetings Law Requirements

Hoeft acknowledged publication. Staff also presented proof of publication.

4. Review of Agenda

Carroll made motion, seconded by Hoeft, motion carried 2-0 to approve the agenda.

5. Approval of March 13, 2014 Meeting Minutes

Weis present @ 11:18 a.m.

Weis made motion, seconded by Carroll, motion carried 3-0 to approve the March 13, 2014 meeting minutes.

6. Communications - None

7. Site Inspections – Beginning at 11:30 a.m. and Leaving from Room 203

8. Public Hearing – Beginning at 1:00 p.m. in Room 205

Meeting called to order @ 1:00 p.m. by Hoeft

Members present: Hoeft, Carroll, Weis

Members absent: ---

Staff: Laurie Miller, Michelle Staff

9. Explanation of Process by Board of Adjustment Chair

The following was read into the record by Carroll:

***NOTICE OF PUBLIC HEARING
JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT***

NOTICE IS HEREBY GIVEN that the Jefferson County Zoning Board of Adjustment will conduct a public hearing at 1:00 p.m. on Thursday, April 10, 2014 in Room 205 of the Jefferson County Courthouse, Jefferson, Wisconsin. The matter to be heard is an application for variance from terms of the Jefferson County Zoning Ordinance. No variance may be granted which would have the effect of allowing in any district a use not permitted in that district. No variance may be granted which would have the effect of allowing a use of land or property which would violate state laws or administrative rules. Subject to the above limitations, variances may be granted where strict enforcement of the terms of the ordinance results in an unnecessary hardship and where a variance in the standards will allow the spirit of the ordinance to be observed, substantial justice to be accomplished and the public interest not violated. Based upon the findings of fact, the Board of Adjustment must conclude that: 1) Unnecessary hardship is present in that a literal enforcement of the terms of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; 2) The hardship is due to unique physical limitations of the property rather than circumstances of the applicant; 3) The variance will not be contrary to the public interest as expressed by the purpose and intent of the zoning ordinance. **PETITIONERS, OR THEIR REPRESENTATIVES, SHALL BE PRESENT.** There may be a site inspection prior to public hearing which any interested parties may attend; a decision shall be rendered after public hearing on the following:

V1416-14 – Thomas & Jill Jensen: Variances from Sec. 11.04(a)1.a. of the Jefferson County Zoning Ordinance to reduce yard setbacks required in an R-1 zone and from 11.07(d) to reduce the minimum road setback for reconstruction of the residence and to allow the addition of the current detached garage to the residence. Variances from Section 11.04(a)1.a. for R-1 setbacks, 11.07(d) for the road setback, 11.10(e) 5.a. and 11.10(e)5.b. for shoreland buffer requirements and 11.10(d) for 75-foot setback to navigable water for reconstruction of the residence within its existing footprint, and from 11.09 to reconstruct the entire residence with attached garage.

Tom Jensen stated that Scott Moran would present the petition. Moran submitted a packet of information to the Board and asked them to look at the map. He explained the history of the project including obtaining permits for rehabilitation. Carroll questioned Moran if the project was started before the permits. Moran stated no. Moran explained that the first plan was to use the existing footprint and build up on the same footprint which did not need a variance, and later add a second phase and add a second story to the garage which then would have needed a variance because of setbacks to the road. Once they started getting into the first phase, they had problems with the foundation and it was not as suitable from an engineering standpoint. They could make it suitable and rebuild everything to bring it up to code; however, to do this right, he would rather stop and see what options there are. At this time, in order to do it right, they would now like to build a new foundation underneath which the structural integrity would be much better. The second part, that as long as they were doing this to build new, they would include the garage portion as well. The plan with the garage was to leave the existing garage there, add a second story, and connect them with a vestibule.

Regarding the shoreland buffer, the problems the owners have concerns with is that they wouldn't be able to utilize some of the beautiful structure in the back yard that this lot has and the view of the lake. This lot has a shoreline seawall rather than the traditional shoreline so it's a fairly steep drop. When you measure that, with the exception of their view premium, it comes very close to the sidewalk in back of the house taking up the bulk of the yard. As proposed on the map, they are proposing the same type of plantings as they would in a buffer strip with prairie type plantings, keep all the trees, and add a rain garden. Moran explained that there was a lot of slope coming off the road, and the water comes right up to the house and ultimately drains into the lake. He felt that instead of putting in an extensive buffer with a lot of plants in back, they could do a better job by doing some lake protection by actually adding in some permeable pavers and catching some of that runoff allowing it to soak in, put in a rain garden that could be planted very heavily, as well as do some of the buffer but just not straight across the front but not in the traditional sense of what is required because of the size of the lot. They would not be expanding the footprint on the house. The only thing that changes is the vestibule. Moran went on to further explain the pictures from the packet and the proposed project.

Sharon Erickson (Forestead Rd.) stated she was happy with the improvements. There were no questions or comments in opposition of the petition.

Staff explained that there was miscommunication of when the town board met. The Plan Commission has met, and the Town Board meets next week, so the town has not acted on this. There was a discussion regarding the Lake Management District between Hoeft and Staff, and whether their opinion can be considered in the decision. Staff commented Mr. Dearlove has left, but that there was a note in the file stating they did not have any objection, but also had no comment. Carroll read a letter from the DNR into the record which was in the file. Carroll questioned the petitioner if they had a copy of the DNR letter. Moran stated that this was the first he was aware of a letter from the DNR. Moran commented that they have already received permits and questioned whether DNR understood the project. He stated that this was a situation where the petitioner wanted to do it right and that's why they stopped, but once they got into the project, there were problems they did not anticipate. Carroll commented about the number of variations that were being requested. Moran stated that he was aware of two. Carroll stated that they were all read. Hoeft commented that the road and lake were where they were.

Staff gave staff report. She explained the setback requirements to the lot line, lake and road. The house currently meets the road setback, but once they connect it to the detached garage, the garage becomes part of the structure and would have to meet the road setback. It is an unusual lot in the aspect in that it is a conforming lot and meets the lot requirements. However, the location of the road does not fall within the platted R.O.W. Staff questioned the petitioner if they were intending on starting over. Moran explained they would keep all the same walls with the garage and would still keep the same footprint, but would have a new foundation under it. Staff asked for clarification on the walls. Moran stated the house would get new walls. Staff explained the Shoreland Ordinance in that if you go past the 50% requirement of the fair market value in improvements, the Ordinance has a shoreland buffer requirement. The shoreland buffer would also be applicable if constructing new within in 75' and is required to be 35' from OHWM. They are also allowed a 30' viewing and access corridor with a lot width of 100'.

Weis questioned Staff on DNR issues, ordinances or codes that are in question. Staff explained the NR115 provisions which have been revised and have been adopted by state legislation. The counties are not required to adopt that until 2016. However, the counties must adopt a mitigation which needs to be approved by DNR. Staff stated in 2005, Jefferson County adopted a 35' shoreland buffer requirement. Weis commented about DNR bringing up issues that the Board needs to be aware of. Staff further explained. Carroll commented that this was a unique property with the sanitary easement directly behind it, and that if approved, the Board can put certain

conditions or requirements on that approval. Hoeft commented that 35' is practically inside the house.

Hoeft questioned how wide the buffer beds were and what they consist of. Moran stated they were consistent with requirements for buffer beds which are prairie plants which have a fairly deep root system with a number of plantings which actually pull the water up which would be the same for the rain garden. They have a list of plantings put out by the DNR and County as to what's suitable and what is not. They do not have the beds specifically designed at this time. If it gets approved, then they would go to the next phase of planning the beds. Hoeft questioned the viewing access corridor. Moran stated it would be 50'. He explained that, not including the trees, 25-27% of the lot would be covered with plantings as well as using the permeable pavers. Hoeft questioned Moran on who they would work with to come up with the plan for what is planted in the buffer beds. Staff commented that Moran has worked with a landscaper specializing in natural plantings. Moran stated they would be using primarily native plantings. Hoeft explained the reasons for the regulations. Moran stated he thought this would be a big improvement and that their proposal would be a logical approach.

Staff commented that when NR115 is adopted, they will also be dealing with impervious surfaces. Weis questioned if a permit was granted, and then NR115 regulations were passed, and if they are not completely done with the project, would the project be grandfathered in. Staff stated that if a permit is issued, the permit is valid for 2 years which they would have to complete the project. If they need to renew the permit or propose a new project, then the newly adopted regulations will be enforced. Weis questioned the sanitary easement. Staff believed the Sanitary District would only be concerned about structures.

Staff noted that she had received a call from a neighbor that asked about the project. Hoeft read a handwritten note found in the file into the record that stated, in part, that when Paul Dearlove left the lake district, that the district was not opposed to this request, but would not endorse it either.

Carroll questioned the height of the building. Moran stated it would be the same that had already been approved by Zoning. Staff stated the requirement is 35'. Carroll also questioned the line of vision to the adjacent properties. Moran stated that the only one it might affect was on the other side of the road on the hill, and that he has talked to them. Carroll stated he had a concern about the adjacent property owner. Moran stated he was not aware of any concerns with this property owner, but has talked to them. Carroll questioned the total ground cover including the additions. Moran stated, including the hard surface, it was the same. Carroll questioned Moran if he understood why there were so many variations. Moran stated that he did. Carroll commented that he was still concerned about the buffer.

Weis questioned the 1.5' side yard setback and encroachment on the property line, and commented that this doesn't give much room for backfill. Moran stated that he talked to the property owner and that they would do any repair that would be needed, and that it was close to the lot line, not the house. Hoeft questioned the green markings on the property. Moran stated he and Paul Dearlove were spraying different lines looking for different options.

10. Decision on Above Petition (see following pages & file)

11. Adjourn

Weis made motion, seconded by Carroll, motion carried 3-0 to adjourn @ 2:34 p.m.

If you have questions regarding these variances, please contact the Zoning Department at 920-674-7113 or 920-674-8638. Variance files referenced on this hearing notice may be viewed in Courthouse Room 201 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, excluding holidays. Materials covering other agenda items can be found at www.jeffersoncountywi.gov.

The Board may discuss and/or take action on any item specifically listed on the agenda.

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

Individuals requiring special accommodations for attendance at the meeting should contact the County Administrator at 920-674-7101 at least 24 hours prior to the meeting so appropriate arrangements can be made.

A digital recording of the meeting will be available in the Zoning Department upon request.

Secretary

Date

DECISION OF THE ZONING BOARD OF ADJUSTMENT
JEFFERSON COUNTY, WISCONSIN

FINDINGS OF FACT

PETITION NO.: 2014 V1416

HEARING DATE: 04-10-2014

APPLICANT: Thomas C. & Jill S. Jensen

PROPERTY OWNER: SAME

PARCEL (PIN #): 022-0613-0712-000

TOWNSHIP: Oakland

INTENT OF PETITIONER: To reconstruct an existing residence and attached garage in the same footprint as the existing structures. In addition, the petitioner is asking to reduce the required 35 foot shoreland buffer requirement.

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.10(e), 11.10(e)5, 11.10(a)4, 11.10(e)5, 11.10(b)1, 11.07(d)2 OF THE JEFFERSON COUNTY ZONING ORDINANCE.

THE FEATURES OF THE PROPOSED CONSTRUCTION AND PROPERTY WHICH RELATE TO THE GRANT OR DENIAL OF THE VARIANCE APPLICATION ARE:

The petitioner is proposing to replace the existing residence and garage with a new residence with attached garage in the existing footprint of the current residence and garage. Currently, the residence is 1.1 feet from the west lot line whereas the required setback is 10 feet. The residence is approximately 50 feet from the OHWM of Lake Ripley, whereas the required setback is 75 feet. The garage is 35 feet from the centerline of Ripley Road, whereas the required setback is 63 feet. The garage is 30 feet from the right-of-way of Ripley Road whereas the required setback is 35 feet. In addition, the petitioner is proposing a shoreland buffer less than the required 35 feet. The lot is a conforming lot and 21, 780 sq. ft., but with the location of the road and the lake, a new residence could not be built without variances.

FACTS OR OBSERVATIONS BASED ON SITE INSPECTIONS: Site inspections conducted. Observed property layout & location.

FACTS PRESENTED AT PUBLIC HEARING: See tape, minutes & file.

DECISION STANDARDS

- A. NO VARIANCE MAY BE GRANTED WHICH WOULD HAVE THE EFFECT OF ALLOWING IN ANY DISTRICT A USE NOT PERMITTED IN THAT DISTRICT _____

- B. NO VARIANCE MAY BE GRANTED WHICH WOULD HAVE THE EFFECT OF ALLOWING A USE OF LAND OR PROPERTY WHICH WOULD VIOLATE STATE LAWS OR ADMINISTRATIVE RULES: _____

- C. SUBJECT TO THE ABOVE LIMITATIONS, VARIANCES MAY BE GRANTED WHERE STRICT ENFORCEMENT OF THE TERMS OF THE ORDINANCE RESULTS IN AN UNNECESSARY HARDSHIP & WHERE A VARIANCE IN THE STANDARDS WILL ALLOW THE SPIRIT OF THE ORDINANCE TO BE OBSERVED, SUBSTANTIAL JUSTICE TO BE ACCOMPLISHED, & THE PUBLIC INTEREST NOT VIOLATED.

BASED ON THE FINDINGS OF FACT, THE BOARD CONCLUDES THAT:

11.04(a)1.a. Yard Setbacks:

1. UNNECESSARY HARDSHIP **IS** PRESENT IN THAT A LITERAL ENFORCEMENT OF THE TERMS OF THE ZONING ORDINANCE **WOULD** UNREASONABLY PREVENT THE OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE OR WOULD RENDER CONFORMITY WITH SUCH RESTRICTIONS UNNECESSARILY BURDENSOME BECAUSE there is no material change to the footprint. To meet the setbacks would adversely affect the structure & existing property. It would be burdensome & a hardship to the owners.

2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE the structure existed before any current ordinances were in effect.

3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE it has no adverse affect on the public

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

DECISION: THE REQUESTED VARIANCE IS **GRANTED.**

MOTION: Carroll

SECOND: Weis

VOTE: 3-0

11.07(d) Road Setbacks

1. UNNECESSARY HARDSHIP **IS** PRESENT IN THAT A LITERAL ENFORCEMENT OF THE TERMS OF THE ZONING ORDINANCE **WOULD** UNREASONABLY PREVENT THE OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE OR WOULD RENDER CONFORMITY WITH SUCH RESTRICTIONS UNNECESSARILY BURDENSOME BECAUSE the basic structure placement is not changing.

2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE this is a unique situation. When the garage is attached, new rules apply.
The road encroaches on the structure rather than the structure encroaching on the road.
3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE the structure is not changing and will not affect public interest

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

DECISION: THE REQUESTED VARIANCE IS **GRANTED.**

MOTION: Weis **SECOND:** Carroll **VOTE:** 3-0

11.09 Reconstruct Entire Residence with Attached Garage

1. UNNECESSARY HARDSHIP **IS** PRESENT IN THAT A LITERAL ENFORCEMENT OF THE TERMS OF THE ZONING ORDINANCE **WOULD** UNREASONABLY PREVENT THE OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE OR WOULD RENDER CONFORMITY WITH SUCH RESTRICTIONS UNNECESSARILY BURDENSOME BECAUSE it would deny them the ability to exercise their right to expand the structure.
2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE of the setback limits, the only way to expand is vertical.
3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE the footage of the structure does not change so it does not affect public interest.

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

DECISION: THE REQUESTED VARIANCE IS **GRANTED.**

MOTION: Weis **SECOND:** Hoefft **VOTE:** 3-0

11.10(d) 75' Requirement to Navigatable Water

1. UNNECESSARY HARDSHIP **IS** PRESENT IN THAT A LITERAL ENFORCEMENT OF THE TERMS OF THE ZONING ORDINANCE **WOULD** UNREASONABLY PREVENT THE OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE OR WOULD RENDER CONFORMITY WITH SUCH RESTRICTIONS UNNECESSARILY BURDENSOME BECAUSE there is no other way to construct or rebuild & meet all the setbacks.
2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE the structure was present prior to the 75' setback requirement.

3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE it is an improvement for the public in the retention of the restoration area.

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

DECISION: THE REQUESTED VARIANCE IS **GRANTED.**

MOTION: Weis **SECOND:** Hoefft **VOTE:** 3-0

11.10(e) 5.a. & 11.10(e) 5.b. Shoreland Buffer Requirement of 35'

1. UNNECESSARY HARDSHIP **IS** PRESENT IN THAT A LITERAL ENFORCEMENT OF THE TERMS OF THE ZONING ORDINANCE **WOULD** UNREASONABLY PREVENT THE OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE OR WOULD RENDER CONFORMITY WITH SUCH RESTRICTIONS UNNECESSARILY BURDENSOME BECAUSE it is a hardship to enforce total restoration due to placement of the house & sanitary easement.
2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE it's due to the close proximity of the home to the lake.
3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE there is an improvement for the public in the retention of restoration area.

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

DECISION: THE REQUESTED VARIANCE IS **GRANTED WITH CONDITIONS.**

MOTION: Weis **SECOND:** Carroll **VOTE:** 3-0

CONDITIONS OF APPROVAL: The property is limited to a 30' access to shoreland as per ordinance. The shoreland restoration is reduced to 25' from the seawall. The 10' remnant must remain permeable.

SIGNED: _____ DATE: 04-10-2014
CHAIRPERSON

BOARD DECISIONS MAY BE APPEALED TO CIRCUIT COURT. AUDIO RECORD OF THESE PROCEEDINGS IS AVAILABLE UPON REQUEST.