

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

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

PUBLIC HEARING BEGINS AT **1:00 P.M.** ON FEBRUARY 11, 2016 IN ROOM 205, JEFFERSON COUNTY COURTHOUSE

CALL TO ORDER FOR BOARD MEMBERS IS AT 10:45 A.M. IN COURTHOUSE ROOM 203, PRIOR TO THE HEARING

SITE INSPECTION FOR BOARD MEMBERS LEAVES AT 11:00 A.M. FROM COURTHOUSE ROOM 203, PRIOR TO THE HEARING

1. Call to Order-Room 203 at 10:45 a.m.

Meeting called to order @ 10:45 a.m. by Weis

2. Roll Call (Establish a Quorum)

Members present: Weiss, Carroll, Hoeft

Members absent: -----

Staff: Laurie Miller, Michelle Staff

3. Certification of Compliance with Open Meetings Law Requirements

Hoeft acknowledged publication. Staff also presented proof of publication.

4. Approval of the Agenda

Hoeft made motion, seconded by Carroll, motion carried 3-0 on a voice vote to approve the agenda.

5. Approval of December 10, 2015 Meeting Minutes

Weis made motion, seconded by Hoeft, motion carried 2-0 on a voice vote to approve the December 10, 2015 meeting minutes.

NOTE: Carroll was not present at the December 10, 2015 meeting and, therefore, did not vote.

6. Communications and Public Comment - None

7. Site Inspections – Beginning at 11:00 a.m. and Leaving from Room 203

V1480-16 – Glen F Jr & Wendy Proeber, **N6462 Shorewood Hills Rd**, Town of Lake Mills

V1481-16 – Philip J Knell, **N4560 Warne Avenue**, Town of Oakland

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

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

Members present: Weis, Carroll, Hoeft

Members absent: -----

Staff: Laurie Miller, Michelle Staff

9. Explanation of Process by Board of Adjustment Chair

The following was read into the record by Hoeft:

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, February 11, 2016 in Room 205 of the Jefferson County Courthouse, Jefferson, Wisconsin. Matters to be heard are applications 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 site inspections prior to public hearing which any interested parties may attend; discussion and possible action shall be occur after public hearing on the following:

V1480-16 – Glen F Jr & Wendy L Proeber: Variance from Sec 11.09 of the Jefferson County Zoning Ordinance to allow alterations in excess of 50% of the structural members and allow expansion of the footprint in excess of 50% for the residence at N6462 Shorewood Hills Rd, Town of Lake Mills. Variance from Sec. 11.10(5)(d) to sanction an existing porch closer than 75 feet from the ordinary high water mark, and for expansion of that porch, all on PIN 018-0713-1521-025 (0.354 Acre) in a Residential R-1 zone.

Glen Proeber presented his petition. He handed the Board a written explanation of his petition which was also in the file. He noted that he met with the Town Plan Commission on January 5, 2016 and the Town Board on January 12, 2016, and they approved his petition. Mr. Proeber read his handout into the record. He explained his family medical situations and the need for a third bedroom so they will be able to provide care for his family.

Staff gave staff report. She stated the house was built in 1971 at 952 square feet. Somewhere between 1971 and 2001, porch was then added at some point without a permit. This property fronts on a direct channel into Rock Lake. There is a 75' setback requirement to the channel. Setback averaging cannot be used for this property because the property to the west had a variance granted, and the property to the east has a 1975 permit indicating it would be setback 75', but it is not.

The permit was approved in 1971, and the current ordinance was established in 1975, so this would be legal, non-conforming. There is a question as to when the porch was constructed, because there is no permit for the porch. A legal, non-conforming structure is allowed less than 50% of the existing footprint. They are proposing a 756 square foot, second story addition, and a 275 square foot first story addition with a basement of the same footprint. This appears to be a 100% expansion when added all up. Staff also noted that the Land and Water Conservation Department provided photos of the property, and are in the file.

Hoelt asked Staff to explain the 75' setback. Staff explained the house does not meet the 75' setback. Weis noted there was a survey in the file showing the setbacks, and that there was no way of knowing if the porch was constructed before the 1975 ordinance. Staff stated that in 1971 there was a permit so a permit would have been needed for the porch. Before 1975, they did require permits. In 1975, there was a major overhaul of the ordinance. Staff stated that they are new owners and were unaware of this until today. It was constructed before they bought it. The variance has two parts. One is to allow the porch at less than the 75' from the OHWM, and the second would be to allow an expansion of the structure in excess of 50% of the footprint.

There were no questions or comments in favor or opposition of the petition. There was a town response in the file approving the petition which was read into the record

by Weis. There was also a letter in the file from the Land & Water Conservation Department. DNR was noticed.

Hoelt read the letter from the Land & Water Conservation Department into the record, and in short, recommended denial the porch, but approve the vertical addition over the house, but not over the porch, and not any greater than 35' in height. It was also recommended that there be a shoreland restoration for a total of 35' by 67' required if the variance to keep the porch is granted.

Weis clarified with the petitioner their request. The petitioner noted that the height would be 34', and that the porch is close or closer than other properties. His architect looked at the property, and they would be trying to stay within the existing footprint. He felt that what they were asking for was reasonable.

Hoelt noted that Board is not bound by a town decision, but it is helpful to have. Wendy Proeber stated that they never thought that they couldn't add a third bedroom. The only cost effective way to add on is to go up, and they cannot add on to either side. Staff noted that the basement had sliding glass doors. The 75' setback is for everything including decks, patios, etc... Just so the petitioners understand, a patio was not allowed.

Carroll stated that he understood their personal situation, but the Board is bound by the land. He asked what about the land? Are there alternatives? Do they have options to go elsewhere? The Board is dealing with the land and the three criteria for variance which are based on the decisions made. So once again, what about the land and its limitations? Do you have options to go elsewhere? First of all, the porch itself needs a variance. Decisions are not based on personal circumstances or personal desire, but rather by the property and its effect on other properties. Mr. Proeber stated that no one on that side of the channel meets the setback. Weis noted there was the physical feature of the channel for access to the lake.

V1581-16 – Philip J Knell: Variance from Sec 11.09 of the Jefferson County Zoning Ordinance to allow alterations in excess of 50% of the structural members and allow expansion of the footprint by more than 50% for the residence at N4560 Warne Avenue. Also variance from Sec 11.09 to allow a reduction in highway setback requirements, all on PIN 022-0613-0533-025 (0.181 Acre) in an R-1 zone in the Town of Oakland.

Philip Knell, 1925 Delores Dr., Madison, presented his petition. He explained how he met the three criteria needed for variance. The existing porch in its condition should be condemned.

Hoelt asked about ADA allowances. Staff explained it is just for the person that is living there, and that a permit could be issued if that was the case. But once that

person leaves, it would have to be removed. This does not qualify under the ADA regulations.

Michelle Nagersen, 1925 Delores Dr., Madison, was in favor. She stated that she would be living there and further explained their proposal. Mr. Knell stated that they just purchased the property this year. It is a small house for today's standards. There is an old oak tree in the back that they don't want to cut down. There were no questions or comments in opposition of the petition.

Staff report was given by Staff. She stated the existing was 885 square feet, and the addition was 390 square feet. The addition will be going over the existing deck, and they would be replacing some of the foundation and roofing to match the existing roofline. She went on to explain the required setbacks and the setbacks being proposed. The lot is a non-conforming lot where there are already reduced setbacks. The addition is 390 square feet, but with the foundation repair and roofline modification, it comes to roughly 77% so it puts it over 50%. The house was built before the current ordinance, and has permits. Setback averaging cannot be used which Staff further explained.

Weis questioned the location of the well. The petitioner stated it was under the house.

There was a response from the town in the file approving the petition with the condition that the addition would be no closer than the existing deck which was read into the record by Weis. The petitioner explained it would be no closer. Weis noted that it would be closer because of the angle of the house placement to the road. There was a discussion at the table regarding the setbacks. Staff noted that the road is not paved down the center of the ROW.

There was a brief break @ 1:53 p.m. Back in session for decisions @ 1:55 p.m

10. Discussion and Possible Action on Above Petitions (See following pages and files)

11. Adjourn

Carroll made motion, seconded by Hoeft, motion carried 3-0 on a voice vote to adjourn @ 2:33 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.

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

A quorum of any Jefferson County Committee, Board, Commission or other body, including the Jefferson County Board of Supervisors, may be present at this meeting.

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.: 2016 V1480

HEARING DATE: 02-11-2016

APPLICANT: Glen & Wendy Proeber

PROPERTY OWNER: SAME

PARCEL (PIN #): 018-0713-1521-025

TOWNSHIP: Lake Mills

INTENT OF PETITIONER: To add a second story to an existing residence, and to structurally modify an existing structure over 50% of the footprint. In addition, an 8' x 28.2' porch was added to the structure without permits. The petitioners would like to remove this existing porch and add 2 stories with added living space.

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.09 & 11.10(5)(d) 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:

In 1971, the original 952 sq. ft. structure was constructed, and in between 1971 and 2001, a porch was added on the basement level of the structure without permits. The structure is 58.8 feet from the OHWM of Rock Lake whereas the required setback is 75 feet. The petitioner is proposing an approximate 2nd story addition of 756 sq ft. and removing all of the existing windows. The windows would be relocated and/or resized. The porch would become living space and expanded 2 stories, which would expand the first floor another 226 sq. ft. The total floor area expansion would be 982 sq. ft., in addition to the other structural modifications which would be over 50% of the existing footprint (approximately 100%). Photos are attached of the existing residence and porch. The petitioner does not meet setback averaging provisions of the ordinance.

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.
 - A. Allow porch to remain @<75' to the OHWM
 - B. Allow structure modifications in excess of 50%

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

- 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 A) removing the addition portion of the structure would create a hardship B) Not allowing the remodel would be a hardship. Placement of the existing precludes an alternative.
A) Carroll felt there was no valid requirement for its existence.
- 2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE A) the channel that lies to the rear of the house creates the 75' setback situation. B) the channel makes the structure non-conforming. Limited placement requires location in setback regulation.
A) Carroll stated it's not a permitted structure.
- 3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE A) it has existed with no problems & should not create new problems. Improvements would make the structure safer. B) the alterations are intended to make the structure safer & code-compliant. It enhances the general area.
A) Carroll noted it allows a precedent.

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

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

Carroll-motion to DENY allowing the porch to remain @<75' to OHWM did not receive a second.

A)MOTION: Hoeft **SECOND:** Weis **VOTE:** 2-1 **B)MOTION:** Weis **SECOND:** Carroll **VOTE:** 3-0

(Motions made on a voice vote)

CONDITIONS OF APPROVAL: There shall be a native shoreland restoration of 35'x67' as recommended by Patricia Cicero, LWCD, per her letter dated 2/4/2016. (See letter attached). No other structures are allowed between the existing porch & water.

SIGNED: _____ DATE: 02-11-2016

CHAIRPERSON

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

**DECISION OF THE ZONING BOARD OF ADJUSTMENT
JEFFERSON COUNTY, WISCONSIN**

FINDINGS OF FACT

PETITION NO.: 2016 V1481

HEARING DATE: 02-11-2016

APPLICANT: Philip Knell

PROPERTY OWNER: SAME

PARCEL (PIN #): 022-0613-0533-025

TOWNSHIP: Oakland

INTENT OF PETITIONER: To add a 390 sq. ft. addition onto an existing residence. The addition would be closer to the yard-street setback than the existing structure. In addition, the petitioner is proposing to replace some of the existing foundation and add to the existing roof line with the new addition.

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.09 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:

Currently, the existing residence is 885 sq. ft., and the petitioner would like to add an addition of 390 sq. ft. There would also be a small addition over the existing deck. In addition, the petitioner would like to replace some of the foundation and match existing roofline. The lot is non-conforming which allows for reduced setbacks. The current residence is 23 feet from the right-of-way of Warne Avenue, and the new addition would be approximately 10 feet from the right-of-way whereas the required setback is 25 feet from the right-of-way. The existing deck does not have permits and patio blocks/concrete are not used for setbacks. The petitioner does not meet setback averaging provisions of the ordinance. The proposed improvements would be approximately 77% with the added structural repairs of the existing cottage and the additional square footage percentage.

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:

- 4. UNNECESSARY HARDSHIP **IS NOT** 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 be _____ a hardship not to allow the addition & use the house as a full time residence. The _____ general area & road situation will be consistent with the existing area construction. _____
- 5. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE _____ this is an older plat & the roadways are very narrow, but it is consistent _____ within the vicinity. It does limit optional development. _____
- 6. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE _____ there are structures in the immediate area that are even closer. It improves _____ the structural condition and is in concurrence with the subdivision structures. _____

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

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

MOTION: Carroll

SECOND: Hoeft

VOTE: 3-0 on a voice vote

CONDITIONS OF APPROVAL/DENIAL:

SIGNED: _____ **DATE:** 02-11-2016
CHAIRPERSON

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