

JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT

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

PUBLIC HEARING BEGINS AT **1:00 P.M.** ON THURSDAY, FEBRUARY 9,
2017 IN ROOM 205, JEFFERSON COUNTY COURTHOUSE

CALL TO ORDER FOR BOARD MEMBERS IS AT 10:15 A.M. IN
COURTHOUSE ROOM 203, PRIOR TO THE HEARING

SITE INSPECTION FOR BOARD MEMBERS LEAVES AT 10:30 A.M.
FROM COURTHOUSE ROOM 203, PRIOR TO THE HEARING

1. Call to Order-Room 203 at 10:15 a.m.

Meeting called to order @ 10:15 a.m. by Weis

2. Roll Call (Establish a Quorum)

Members present: Carroll, Hoeft, Weis

Members absent: ---

Staff: Matt Zangl, Laurie Miller, Rob Klotz

3. Certification of Compliance with Open Meetings Law Requirements

Klotz acknowledged publication. Staff also presented proof of publication.

4. Approval of the Agenda

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

5. Approval of December 8, 2016 Meeting Minutes

Weis made motion, seconded by Hoeft, motion carried 3-0 (voice vote) to approve the meeting minutes.

6. Communications and Public Comment - NONE

There was a discussion with Klotz and Board regarding Floodplain/Flood Storage regulations.

7. **Site Inspections – Beginning at 10:30 a.m. and Leaving from Room 203**
V1593-17 – Jim O'Donnell, N425 Oxbow Bend, Town of Koshkonong
V1594-17 – James & Viola Behm, County Road A, Town of Oakland

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

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

Members present: Carroll, Hoeft, Weis

Members absent: ---

Staff: Matt Zangl, Laurie Miller, Rob Klotz

9. **Explanation of Process by Board of Adjustment Chair**

The following was read into the record by Weis:

***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 9, 2017 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:

V1593-17 – James & Peggy O'Donnell: Variance from Sec. 14:6.3 of the Jefferson County Floodplain Ordinance to allow an attached garage at less than two feet above the 100-year flood elevation and from Sec. 14:5.2 for flood storage requirements as they may pertain to this request. The site is at **N425 Oxbow Bend** in the Town of Koshkonong, on PIN 016-0513-3412-019 (0.35 Acre) and is zoned Residential R-2.

Conor Nelan from Cold Spring Design (222 S Main Street, Fort Atkinson) presented the petition. Also present was James O'Donnell (N425 Oxbow Bend). The garage is attached to the house and has been raised to the elevation of the living area. The garage portion is what needs the variance. To raise it 4 feet would require a ramp without taking out dirt from the flood storage area. This would be for the inside of the garage with a plan for a concrete floor. When he talked with Robert Davis from the DNR, anything inside does not count. The living portion needs to be above the 4 foot elevation. The hardship would be a significant financial hit, and is not logical. It would be taking away from the flood storage volume. Regarding the physical limitations, the house is now out of the flood plain. It would not be contrary to public interest because what they are taking out, they would be putting in.

There were no questions or comments in favor or opposition of the petition. There was a decision from the town in the file approving the petition which was read into the record by Weis. Weis also read a response from Robert Davis, DNR, in to the record which was also in the file.

Klotz commented on the DNR being noticed and their requirements for flood storage. There have been multiple conversations regarding this issue between the petitioner, DNR and the Zoning office. Robert Davis from the DNR has no opposition to the request, and has accepted the engineering work done by Conor. The hardship would be that if they were required elevate the floor of the garage at the 200 year flood, they could not meet the flood storage requirements. The floodplain and watershed has many square miles in this area. With what they have submitted, they can meet the flood storage compensation. The petitioner stated that if they could not do this, they would have to build a ramp. Klotz stated that it would be unnecessarily burdensome. If it was a detached garage, it can be at the 100 year floodplain elevation. If it is attached, it needs to be 2 feet above the floodplain elevation. It is a reasonable request. Klotz asked the Board to consider a condition that they follow the flood storage plan as approved by DNR, and that the electric be at 2 feet above the floodplain elevation. Rob Davis and Zoning have no issue with this. The petitioner further explained.

Weis asked for clarification of the elevation of the garage. The petitioner stated that it would be 2 inches above. Carroll noted that they were at the site, and asked the petitioner to explain how the space beneath the house was ventilated. Conor explained there is flood venting. Klotz explained that was required as part of the permit. Conor further explained.

V1594-17 – James & Viola Behm: Variance from Sec. 11.03(d)1 of the Jefferson County Zoning Ordinance to allow the development of a nine acre Natural Resource zone to be served by a 16.5-foot easement. The proposed Natural Resource zone is near **County Road A**, part of PIN 022-0613-2831-002 (50.65 Acres) owned by the Behms, with the easement to be on that PIN as well as on 022-0613-2831-000 (18.31 Acres) owned by Gregg and Jody Peter. These Town Oakland properties are currently zoned A-1, Exclusive Agricultural.

Viola Behm presented her petition. She stated a farmer want to buy the tillable land, and is not interested in the Natural Resources area. They need the variance to get approval for the Natural Resource Zone. There is already 17 acres zoned Natural Resources, and they are planning on rezoning another 9 acres. The farmer would not be interested in all the land and would not purchase the land if he had to buy it all. It was approved at the town, and she talked to the Peters who had no objection.

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.

Zangl gave staff report. He noted that there is an existing Natural Resource there. They want to section off the rest of the Natural Resource area. They are on the February's Planning & Zoning Committee public hearing. But first they have to get the access to it. The ordinance requires access for the parcel. They are asking for a 16.5 foot access strip. Behm noted there is a field driveway that goes directly south. Weis noted there was a drawing in the file and clarified what currently exists and what is being proposed. Zangl also noted there was an air photo in the file which showed what access is there. There was further discussion on the access.

Hoefst asked how the Peters' were involved. The petitioner stated that they share a driveway with them and they have no objections with this request. Klotz clarified that there is already a shared easement and driveway for the existing Natural Resource zone. Klotz explained the Zoning Ordinance requirements for access and added that they are adding to an existing access and existing Natural Resource zone. Klotz further explained that it cannot be built on. There are some allowable structures within the zone, but no residential structures are allowed.

Carroll questioned the drainage ditch within the access. Klotz further explained the access requirement, and that could mean that it can be accessed by foot.

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

11. **Adjourn**

Hoeft made motion, seconded by Weis, motion carried 3-0 (voice vote) to adjourn @ 1:58 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.

Additional information on Zoning can be found at www.jeffersoncountywi.gov

Secretary

Date

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

FINDINGS OF FACT

PETITION NO.: 2017 V1593
HEARING DATE: 02-09-2017

APPLICANT: Jim O'Donnell

PROPERTY OWNER: James W. & Peggy O'Donnell

PARCEL (PIN #): 016-0513-3412-019

TOWNSHIP: Koshkonong

INTENT OF PETITIONER: Allow an attached garage at the 100-year (1%) Regional Floodplain Elevation at N425 Oxbow Bend

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 14:6.3 & 14:5.2 OF THE JEFFERSON COUNTY **FLOODPLAIN** ORDINANCE.

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

- Permit #61606 issued 1-6-17 for utilities
- Permit #61349 issued 7-11-16 to raise the existing house to the flood protection elevation and add an addition of 416 sq. ft.
- Permit #58257 issued 4-26-10 for flood damage
- Floodplain Ordinance is applicable, variance from 14.6.3
- Property is in the Flood Fringe and Flood Storage areas
- 14.7.3 BOA, 14.7.3(4) BOA Variance from Floodplain 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.

BASED ON THE FINDINGS OF FACT, THE BOARD CONCLUDES THAT WITH THE TWO SECTIONS OF THE FLOODPLAIN ORDINANCE AS SPECIFIED IN THE HEARING NOTICE 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 this is not a livable area. Everyone is entitled to a garage. This is for access. Anything other than what has been proposed would be unnecessarily burdensome.
- 2. THE HARDSHIP **IS** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE there are two conflicting ordinances with regards to the floor height/ elevation. The lot is too small to provide an area for storage. The ordinance has evolved.
- 3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE the engineer stated what dirt would be removed and what would be put back. The DNR has no objection and accepts the engineering work done by the petitioner's engineer who appeared at today's hearing. The proposal they have best meets the two referenced ordinance sections.

A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET

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

MOTION: Carroll

SECOND: Hoeft

VOTE: 3-0 (voice vote)

CONDITIONS OF APPROVAL: **The electrical outlets to be placed 2' above the flood elevation. They must adhere to the engineering plan as submitted.**

SIGNED: _____ **DATE:** 02-09-2017

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.: 2017 V1594
HEARING DATE: 02-09-2017

APPLICANT: James V & Viola O Behm

PROPERTY OWNER: SAME

PARCEL (PIN #): 022-0613-2831-002 & 022-0613-2831-000

TOWNSHIP: Oakland

INTENT OF PETITIONER: Access a Natural Resource zone by a 16.5 foot wide access strip/easement

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.03(d)1 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:

- Existing 16.93 acre Natural Resource Zone created from petition 2009 R3405A, approved 6-11-2009
- Propose to add 9 acres to existing N Zone
- Propose 16.5 foot wide access strip following the property line to County Road A
- Rezone is on February's Agenda

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

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

