

December 18, 2017

Minutes of the Board of Adjustment meeting and Public Hearing with site inspection conducted on December 13, 2017 at 5187 Keyes Lake Drive in the Town of Commonwealth, Florence County, WI.

Chairperson Lindow called the meeting to order and took roll call.

Members present: Mike Bednarski, Gary Lindow, Dennis Christian

Members absent: None

Present at site visit: Van Stanley, Brian Erdmann, Rich Wolosyn - Zoning Administrator, Trish Kelly - Assistant Zoning Administrator

Present at Public Hearing: Van Stanley, Brian Erdmann, Steven Garbowicz - Corporation Counsel, Rich Wolosyn - Zoning Administrator, Trish Kelly - Assistant Zoning

Chairperson Gary Lindow asked for a motion to approve the agenda, **motion by Mike Bednarski to approve the agenda, second by Dennis Christian, vote taken all ayes, motion carried.**

Site inspection of property was conducted at 5187 Keyes Lake Drive in the Town of Commonwealth.

**Motion by Dennis Christian to adjourn site inspection at 5187 Keyes Lake Drive in the Town of Commonwealth, and reconvene to the Florence County Courthouse to render the finding of facts and decision, second by Mike Bednarski, vote taken all ayes, motion carried.**

Chairperson Gary Lindow called the meeting back into session and asked for a motion to approve the minutes of the meeting and public hearing conducted on November 29, 2017. **Motion by Dennis Christian to approve the minutes of the meeting and public hearing conducted on November 29, 2017, second by Mike Bednarski, vote taken all ayes, motion carried.**

There was no one in attendance that wished to address the committee on zoning concerns.

Chairperson Gary Lindow announced Public Hearing VAR-20170005, request an After-The-Fact Variance to retain the accessory structures that are placed in the 35 foot setback area from the Ordinary High-Water Mark of Keyes Lake. Florence County Shoreland Wetland Zoning Ordinance Chapter 10, Subchapter 2. Property is N 65' of Lot 12 of Elmer Bourdeau Plat of Keyes Lake, Section 31, Township 40 North, Range 18 East, Town of Commonwealth, Florence County, WI. Property address is 5187 Keyes Lake Drive. Request submitted by Brian Erdmann.

Correspondence was read from Tom Harrison who was in favor of the request. Letter from the Wisconsin Department of Natural Resources was also read, reminding the Board as they review the request that all of the statutory variance criteria must be satisfied in order to grant a variance. (Letters on file in zoning office). An anonymous written statement was received. Corporation Counsel reviewed the paper and because it was not signed, was not read into the minutes of the meeting.

The applicant, Brian Erdmann explained there is an issue with accessibility and reasonable use of his property as he has a small lot and there is very little use of the side of his property. If he cares to use his property at all, with the steep slope, he had to terrace the shoreland and put the deck in so there was room to sit without sliding down to the water.

There were old timbers that were tucked along the bank, and under the bank of the shore from the late 1940's or 1950's that had decayed. In the spring of this year due to the erosion and the constant saturation of the higher water mark on the property, Mr. Erdmann could reach underneath the bank of the shore, and grab the roots of his fifty foot tall maple trees that are on the shore. If the shore was left as is, those trees would eventually fall into the water. The riprap alone is not going to keep the hill or trees from sliding into the lake. He feels he now has reasonable use of his property with the retaining walls in place.

Chairperson Gary Lindow explained to the applicant that the board of adjustment has three criteria they must review in order to make a decision. Mr. Erdmann said he was not aware of the process. Chairperson Lindow went on to explain the criteria which are, unnecessary hardship, unique physical property limitations, and no harm to public interest that is specific to your property. A variance was granted in 2000 to build a home on the property that allowed reasonable use at that time. Mr. Erdmann stated the lot was in the plat book as a buildable lot and he didn't know why a variance was required at that time. Corporation Counsel said the question is not the substandard lot. The question here today is the retaining walls that were built in an area where the previous variance said there could not be any improvements. One factor the committee did not point out, is that the conditions that exist cannot be self created.

Zoning Administrator, Rich Wolosyn went over the history of the property which dated back to 2000 when he went to the property when the Erdmann's were trying to remodel an existing structure. At that time, Wolosyn explained to them that being reasonable with the size of a home they could apply for a variance to build a new home rather than trying to remodel the almost dilapidated building that was on the property. Wolosyn worked with the Erdmann's on that variance. During that time period in 2000, Mr. Erdmann felt that reasonable use of the property was the second level deck and a small walkway on the bottom level coming out of the patio door. Now, there is an additional 11 by 24 foot deck built in 2016 and the retaining wall placed on the shoreland this past year. None of this has been permitted or reviewed by the zoning office. So to say you are ignorant to the law now, when the zoning office worked with you throughout the process in 2000. Wolosyn went on to explain the cost-share program through the Land Conservation Department that possibly could meet the requirements on your lot for a shoreland restoration project at a 70/30 cost-share and encouraged the applicant to look into the program.

The finding of facts and three step criteria was reviewed by committee members. *Unnecessary hardship* does not exist as there is a flat level area outside of the patio door for sitting purposes without the lower level deck and reasonable use of the shore without the retaining walls. Also, the variance issued in 2000 gave reasonable use of the property without the deck and retaining walls. *Unique property limitations* do not exist as there are many properties on the lake that have steep slope to the water and erosion issues. *Harm to public interest* does exist as far as the Wisconsin Department of Natural Resources has numerous studies indicating that building structures within the 35 foot setback is detrimental to the lake. **Motion by Chairperson Gary Lindow to deny After-The-Fact Variance request VAR-20170005 to retain the accessory structures that are placed in the 35 foot setback area from the Ordinary High Water Mark of Keyes Lake, second by Dennis Christian, vote taken all ayes, motion carried.**

An official letter addressed to the Wisconsin Department of Natural Resources requesting they provide an opinion on difficult cases to the Board of Adjustment was presented for the Chairperson's signature. At the November 15, 2017 Board of Adjustment meeting the motion was made and passed to request an opinion from the department on difficult cases. (Letter is attached).

**Motion by Mike Bednarski to adjourn, second by Dennis Christian, vote taken all ayes, motion carried.**

Respectfully submitted,

Rich Wolosyn,  
Zoning Administrator  
RW/tk