

## Walworth County Board of Adjustment

### MINUTES

August 10, 2022 - Hearing – 9:00 AM

August 11, 2022 – Meeting – 9:00 AM

County Board Room 114

Government Center – Elkhorn, Wisconsin

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A hearing and decision meeting of the Walworth County Board of Adjustment was held on August 10, 2022, and August 11, 2022, in the County Board Room of the Government Center in Elkhorn, Wisconsin. Those present on August 10, 2022, were Vice-Chair Elizabeth Sukala, Secretary Barbara A. Fischer and Alternate David Held. Lindsey Smith, Code Enforcement Officer, Nick Sigmund, Senior Zoning Officer and Wendy Boettcher, recording secretary were in attendance. Those present on August 11, 2022, were Vice-Chair Elizabeth Sukala, Secretary Barbara A. Fischer and Alternate David Held. Darren Schwanke, Code Enforcement Officer and Wendy Boettcher, recording secretary were in attendance. “Sign-in” sheets listing attendees on August 10, 2022, and August 11, 2022, are kept on file as a matter of record.

The August 10, 2022, hearing was called to order by Acting 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. **Barbara Fischer motioned to approve the agenda as presented. Seconded by David Held. Motion carried. 3-favor, 0-oppose. Barbara Fischer motioned to approve the July 13 & 14, 2022, Minutes and dispense with the reading. Seconded by David Held. Motion carried. 3-favor 0-oppose. After testimony of all cases, Barbara Fischer motioned to recess until 9:00 A.M. on Thursday, August 11, 2022. Seconded by David Held. Motion carried. 3-favor, 0-oppose.** The August 10, 2022, hearing went into recess at approximately 11:12 A.M.

On August 11, 2022, at 9:00 A.M., Acting Chair Elizabeth Sukala called the decision meeting to order. Wendy Boettcher conducted roll call and verified that there was a quorum. Those present were same as listed above. **Barbara Fischer motioned to approve the agenda as presented. Seconded by David Held. Motion carried. 3-favor, 0-oppose. After the decisions were completed, David Held motioned to adjourn until the September 14, 2022, hearing at 9:00 A.M. Seconded by Barbara Fischer. Motion carried. 3-favor, 0-oppose.** The August 11, 2022, decision meeting adjourned at approximately 9:25 A.M.

Three variance hearings and one appeal were scheduled and details of the August 10, 2022, hearings and the August 11, 2022, decisions are digitally recorded and available to the public upon request / video to view on our website: / Agendas & Minutes / Board of Adjustment / Media.

**Old Business - none**

**New Business – Variance Petitions**

Hearing – Count #9:03:09 – 9:09:13 / Decision – Count #9:01:15 – 9:03:23

The First Hearing was Walworth County - Highway, owner / Todd Neumann, applicant – Section(s) 23 – Darien Township

Applicants are requesting a variance from Section(s) 64-35 / 74-92 of Walworth County's Code of Ordinances – Telecommunication Ordinance – Zoning to construct a new communication tower.

**REQUIRED BY ORDINANCE:** The Ordinance requires a 25 foot road setback and 50 lot line setback.

**VARIANCE REQUEST:** The applicants are requesting an approximate 17.9 foot road setback and an approximate 25.3 foot setback from the north property line. The request is a variance from Section(s) 64-35 / 74-92 / of Walworth County's Code of Ordinances – Telecommunication Ordinance - Zoning to construct a new telecommunication tower.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of August 10 & 11, 2022, for the petition of Walworth County - Highway, owner / Todd Neumann, applicant, voted to APPROVE the request for an approximate 17.9 foot road setback and an approximate 25.3foot setback from the north property line.

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

**BOARD OF ADJUSTMENT FINDINGS:** The Board found the odd shape of the property to be a unique circumstance. The Board found the parcel is owned by Walworth County and will never have another non-public use. The Board found to deny the variance request would cause unnecessary hardship as the new public system radio program would have to be remodeled as this site is a piece of the larger system. The Board found to approve the variance request would benefit public interests and public safety as the system will be used by the County Sheriff's Department, County Public Works, Fire Departments and Emergency Service personnel. There was a letter in support from the Town of Darien. There was no opposition.

Hearing – Count #9:09:23 – 9:56:06 / Decision – Count #9:03:40 – 9:07:00

The Second Hearing was Toni L. Hochhalter Trust, owner / Toni & Keith Hochhalter, applicants – Section(s) 34 – Whitewater Township

Applicants are appealing the interpretation and decision of the zoning administrator that a principal structure exists on an adjacent lot in only one direction along the shoreline and therefor shore yard averaging should be calculated as per Section 74-174B).2.b. based on Section 74-174 of the Walworth County Code of Ordinances – Shoreland Zoning.

**APPLICANT'S APPEAL:** The applicants are appealing the interpretation and decision of the zoning administrator that a principal structure exists on an adjacent lot in only one direction along the shoreline and therefor shore yard averaging should be calculated as per Section 74-174B).2b. based on Section 74-174 of the Walworth County Code of Ordinances – Shoreland Zoning. The applicant's interpretation is that a principal structure does exist on an adjacent lot in both directions along the shoreline and therefor shore yard averaging should be calculated as per Section 74-174B).2.a.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of August 10 & 11, 2022, voted to DENY the applicants appeal and to agree with the interpretation and decision of the Walworth County Zoning Administrator.

**A motion was made by Barb Fischer to deny the applicant’s appeal and agree with the interpretation of the Walworth County Zoning Administrator. Seconded by Elizabeth Sukala. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found in support of the interpretation and decision of the Walworth County Zoning Administrator that a principal structure exists on an adjacent lot in only one direction along the shoreline and therefor shore yard averaging should be calculated as per Section 74-174B).2.b. of the Walworth County Code of Ordinances – Shoreland Zoning.

The Board found the Wisconsin Department of Natural Resources upholds the County’s interpretation of the word “adjacent” and the DNR technical training provided to the County is to not skip over a public road for averaging setbacks. The Board found Walworth County correspondence from Lindsey Smith, Code Enforcement Officer, discussed Merriam-Webster’s definition of adjacent using “adjacent lots” as an example; and does concur with DNR guidance for the implementation of shore yard averaging. The Board found the applicant stated the Ordinance is to protect views of the lake. The Board found the purpose of the Ordinance to be much more than that. The Board found correspondence from Lindsey Smith, Code Enforcement Officer states the purpose of the Shoreland Zoning Ordinance is to maintain safe and healthful conditions, prevent and control water pollution, protect spawning grounds, fish and aquatic life, control building sites and placement of structures and land uses, and to preserve shore natural beauty.

A neighboring property owner spoke in support of the applicant’s appeal. There was a letter from the WI Department of Natural Resources in opposition to the applicant’s appeal.

Hearing – Count #9:56:15 – 10:22:48 / Decision – Count #9:07:06 – 9:18:35

**The Third Hearing was Mark W. Sonnenborn & Beth D. Lewis, owners / Stebnitz Builders Inc., applicant – Section(s) 26 – Whitewater Township**

Applicants are requesting a variance from Section(s) 74-165 / 74-174 / 74-181 / 74-219 / 74-221 / 74-232 / 74-234 of Walworth County’s Code of Ordinances – Shoreland Zoning to construct a driveway with associated grade changes and retaining walls. Also a deck addition and an addition to the residence.

**REQUIRED BY ORDINANCE:** The Ordinance requires a 75 foot shore yard setback for the driveway, retaining walls and grade changes, a 35.7 foot shore yard setback for the deck, a 20.75 foot street yard setback for the addition and a 2 foot street yard setback for the retaining walls.

**VARIANCE REQUEST:** The applicants are requesting a driveway, retaining walls and grade changes approximately 66.6 feet from the ordinary high water mark, a 35.5 foot shore yard setback for the deck, a 13.7 street yard setback for the addition and a 0 foot street yard setback for the retaining walls. The request is a variance from Section(s) 74-165 / 74-174 / 74-181 / 74-219 / 74-221 / 74-232 / 74-/234 of Walworth County’s Code of Ordinances – Shoreland Zoning to construct a driveway with associated grade changes and retaining walls. Also a deck addition and an addition to the residence.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of August 10 & 11, 2022, for the petition of Mark W. Sonnenborn & Beth D. Lewis, owners / Stebnitz Builders Inc., applicant, voted to APPROVE the request for a driveway, retaining walls and grade changes approximately 66.6 feet from the ordinary high water mark, a 35.5 foot shore yard setback for the deck, a 13.7 street yard setback for the addition and a 0 foot street yard setback for the retaining walls.

**A motion was made by Barbara Fischer to approve the variance for discussion. Seconded by David Held. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found the angle of the property and the layout of the road right-of-way to be a unique property limitation. The Board found the location of the existing septic system and the topography limits the location options on the property. The Board found to approve the variance request would cause no harm to public interests. The Board found to approve the request for the retaining walls would improve stability on the shore. The Board found to approve the setback for the deck addition is a small increment of relief and there is currently concrete below where the deck would go. The Board found the driveway would replace an existing horseshoe driveway with two access points on the road and would be a better situation than paving the existing driveway. There was a letter of support from the Town of Whitewater and an e-mail in support from a neighboring property owner. There was no opposition.

Hearing – Count #10:22:55 – 11:11:38 / Decision – Count #9:18:40 – 9:25:01

The Fourth Hearing was Jill E. Carnegie Life Estate & James L. Tomasi Life Estate, owners / Jill Carnegie, Valley of the Kings, applicant – Section(s) 24 – Sharon Township

Applicants are requesting a variance from Section(s) 74-44 / 74-52 / 74-119 of Walworth County’s Code of Ordinances – Zoning to permit the location of 12 structures and the replacement of one.

**REQUIRED BY ORDINANCE:** The Ordinance requires 100 foot side yard setbacks and a 50 foot street yard setback for structures that house animals.

**VARIANCE REQUEST:** The applicants are requesting eleven buildings with side yards of 37, 24.1, 35.6, 69.9, 12.9, 9, 9.1, 10, 58.7, 20.7 and 7.2 feet. One building is being requested with a 70.9 foot side yard and a 22.8 foot street yard. One building is being requested with a 6.4 foot street yard. The request is a variance from Section(s) 74-44 / 74-52 / 74-119 of Walworth County’s Code of Ordinances – Zoning to permit the location of 12 structures and the replacement of one.

**BOARD OF ADJUSTMENT DECISION:** The Walworth County Board of Adjustment, during the meeting of August 10 & 11, 2022, for the petition of Jill W. Carnegie Life Estate & James L. Tomasi Life Estate, owners / Jill Carnegie, Valley of the Kings, applicant, voted to APPROVE the request for eleven buildings with side yards of 37, 24.1, 35.6, 69.9, 12.9, 9, 9.1, 10, 58.7, 20.7 and 7.2 feet; one building with a 70.9 foot side yard and a 22.8 foot street yard; and one building with a 6.4 foot street yard.

**A motion was made by Elizabeth Sukala to approve the variance. Seconded by David Held. Motion carried. 3-favor 0-oppose**

**BOARD OF ADJUSTMENT FINDINGS:** The Board found the east side of the property has trees that provide shelter and shade for the animals as well as provide screening. The Board found the property is bordered to the east and south and west by cornfields. The Board found the operation has existed without complaint from neighbors. The Board found the barn collapsed under the weight of a heavy snow. The Board found the barn will be replaced in the same footprint. The Board found to approve the variance request will allow the owner to eliminate the temporary storage trailers. The Board found many of the structures to be well enclosed by fencing and to be small, non-permanent type structures. The Board found to deny the variance request and require enclosures to be relocated would cause unnecessary hardship by causing animals who are predators / prey to live closer together within a smaller area. The Board found the intent of the 100 foot animal setback is being met as odors and other nuisances caused by animals do not apply in this situation with the continued agricultural use surrounding the property. There was a letter of support from the Town and four additional letters of support. Two people spoke in support. There was no opposition.

### **Other**

- A. Discussion / possible action on Township correspondence – none

### **Staff Reports**

- A. Court cases update – none
- B. Distribution of reports, handouts and correspondence - none

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

The following items were requested to be put on the September 2022 agenda, if applicable:

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

These minutes are not final until approved by the Board of Adjustment at the next scheduled hearing date.