

**BOARD OF ADJUSTMENT MINUTES**  
**APRIL 13, 2016**

PRESENT: Norm Wills, William Gretzinger, Bernard Spink, Helen McDonald-Rawson (1<sup>st</sup> alternate), Alan Kaltenberg (1<sup>st</sup> alternate)

EXCUSED ABSENT: Roger Wetzel

STAFF: Randy Thompson – Planning & Zoning Administrator  
Renee Pulver – Land Use Specialist  
Susan Runnion – Office Administrator  
John Bluemke – Director of Planning & Zoning

**1:00 PM**

1. View Sites

**3:00 PM**

2. Norm Wills called the meeting to order
3. Certification of Open Meeting Law
4. Roll Call was taken and a quorum declared present
5. Approval of Agenda
6. Public Hearing

**Item I Variance Consideration – Height Limit for Boathouse, Frederick C. Teitgen and Debra J. Byars, Owners and Applicants – Town of Dekorra**

Randy Thompson reviews the Staff Report. He explains the property currently contains a boathouse with a roof elevation of 21 feet above the ordinary high water mark with living quarters above. This pre-existing boathouse is nonconforming because the peak exceeds the 12 foot height limitation for boathouses of the Columbia County Shoreland Ordinance. The structure is believed to have been constructed prior to zoning. The applicant seeks to construct a 120 square foot addition which would extend the same roof elevation from the existing boathouse which is 300 sq ft. A boathouse shall not exceed six hundred square feet in floor area. This addition would bring the footprint to 71% of allowable square footage for boat related storage.

Norm Wills asks if the Petitioner has anything to add.

Fred Teitgen distributes a scaled drawing of the boathouse. He explains the boathouse was built in the 1940's and the cottage in 1980's. He retired in 2002 and decided to move closer to the water. Three years ago, it was decided they would tear down the cottage and build a new house. He points out the outline of the old cottage on his drawing. Act 55 would have allowed

them to move the house closer to the shoreline than the old cottage. They averaged with the neighbor's setbacks. The POWTS is a mound in a box. He explains they could have chopped into the hillside. He points out the 75 foot water setback and explains the lot is oddly shaped which creates a hardship. He is protecting the view of the water.

Attorney Clark representing Fred Teitgen states that staff has approached the situation the way we have been presenting it. "Balance of interest" is in favor of granting the variance. Discussion and conclusions indicate there is no unnecessary hardship, but I think there is. We are dealing with an "area" variance which is different than a "use" variance. He quotes a 2004 case which reconfirms the discretion you have for standards of unnecessary hardship which is not defined in the statutes. They don't tell you what the words "mean". The words are defined by the courts and the court's decision. When considering an "area" variance, it is best explained that it would keep the owner from using the property for the permitted purpose. Such restrictions, such as the uniqueness of the lot, doesn't allow for a footprint to place an accessory building within the 75 foot setback. This creates the "unnecessary burden".

All four considerations support the variance. Limiting the height of the boathouse would impact neighboring properties and protects natural scenic beauty. The DNR regulations are geared to this. Regulation is uniquely justified and the public interested is the water. He distributes flow chart which illustrates "Public Interest/Private Interest Balance / Continuum of Natural Scenic Beauty Standards". He explains the flow chart in details and the riparian has full discretion. We try to balance the two extremes; that is the standard we are trying to develop along the water. Location and color, once the addition is complete and nobody will ever notice. This means the "Public Interest Standard" has been met. Impact on the neighbor, this is the best location for this sort of thing. Is there a way to build without the variance? If we follow the law, it would have more impact.

He reviews another case study involving a library. The City did not demonstrate a hardship.

Fred Teitgen – (Owner and Applicant) was present and sworn in.  
N3635 Tipperary Road  
Poynette, WI

Attorney Jeffrey Clark – (Representative) was present and sworn in.  
Boardman & Clark LLP  
213 N. Main Street  
Poynette, WI

Attorney Jeffrey Clark reaffirms his statement under oath.

Norm Wills asks if any further questions.

Norm Wills asks if anyone is in favor of petition.

Fred Teitgen submits note from his neighbor (to the south) in support of the petition.

Letter received from:

Russell Hellendbrand  
N3627 Tipperary Road  
Poynette, WI

Norm Wills asks if anyone is in favor of petition. (no comments)

Norm Wills asks if anyone is against the petition. (no comments)

Town Board is represented by Roxann Brue – Town Supervisor.

Roxann Brue – (Town Representative) was present and sworn in.  
N3646 Stebbins Road  
Poynette, WI

Roxann Brue explains the Town decision to deny. This is already a nonconforming structure and there are other areas where he could place the storage shed. For “use” variances and unnecessary hardship, there is no feasible “use” of the land. We feel he has “use” of the land. We don’t know if there will be a door coming in/out. He could place storage on another part of the land. This does not create a hardship and a self-created hardship doesn’t qualify. We would like this board to uphold the Town’s decision to deny.

Attorney Clark as noted in the Minutes and Staff Report, the Plan Commission was in favor with conditions and the Town Board denied. The Town Board was focused on a situation that there was an “existing” use and that’s just not the existing standard. He has “use” of the property and the request for variance was “self-made” because of the type of addition. That fails to do balancing that the court requests and he has a permitted “use”. This provides a much better result which is scenic beauty.

Fred Teitgen states that it’s interesting because Roxann Brue made a motion to approve the proposal with conditions at the Town Board meeting.

Norm Wills asks if the Plan Commission approved it unanimously.

Roxann Brue reports that it was a 6-1 vote. Board Member Gary Leatherberry descended.

Fred Teitgen states that Gary Leatherberry privately said he was in favor.

Norm Wills explains that town board members take lots of outside pressure and are expected to do what the law tells you to do and try not to be affected.

Roxann Brue has a letter dated August, 2015 from the Planning and Zoning Department and a list of Boathouse Guidelines which state they “prohibit habitation”. He could place the stuff he wants to store in a storage shed.

Norm Wills asks if that is the reason the Board reached its opinion?

Roxann Brue responds “yes” and it was not an unnecessary hardship and he could place the shed elsewhere on the property.

Helen McDonald-Rawson asks if this a list of items that would be going into the structure.

Roxann Brue states that he did not present the list to us.

Fred Teitgen confirms the list contains items to be stored in the boathouse. It includes a kayak, canoe, etc., so they will be out of sight.

Attorney Clark explains the non-conforming use isn't the issue. We are not dealing with the house or residence. There is no connection between the house and the proposed storage. There will be a fixed wall with no opening and this is a condition that we agreed to. The 21 foot high structure was built prior to the Zoning Code. There isn't a feasible location to place the addition and meet the ordinance. Variance procedure was created for public interest and zoning can be balanced with the property owner. The literal application of the ordinance is burden to force compliance and that would not make sense.

Norm Wills asks if any further questions.

Helen McDonald-Rawson confirms this is the list of item you are placing in the storage building.

Fred Teitgen explains there is a single level with one door to get stuff in on the side away from the lake.

Helen McDonald-Rawson inquires about wood floor.

Fred Teitgen states that he is not creating more impervious surface and water could flow underneath.

William Gretzinger confirms he has no questions.

Norm Wills asks if there were living quarters when the property was purchased.

Fred Teitgen confirms that there were.

Norm Wills asks if there is a sink, toilet, and shower.

Fred Teitgen confirms that it is a small apartment.

Norm Wills asks if a solid wall divides the living quarters from the storage area.

Fred Teitgen explains there is an existing window that he would like to remain for light. He states there would not be a door between the storage and living quarters.

Bernie Spink asks if the area above the first floor gets used.

Fred Teitgen replies "yes", when friends and kids come they use it about ½ dozen times per year. He wants to preserve the use of the space and it's unique and special.

Helen McDonald-Rawson asks if the deck was recently placed.

Fred Teitgen explains he had some wrought iron furniture and some old deck boards. He placed the items on the boards during construction.

Helen McDonald-Rawson clarifies the railed deck.

Fred Teitgen states it has been there for many years and it was there when they purchased. He shares a story about a teacher who lived there years ago.

Norm Wills asks what type of POWTS system.

Fred Teitgen responds that it is a tank and field.

Norm Wills states he noticed concrete block construction. Were there upgrades? The support pillars seems brand new.

Fred Teitgen verifies the cement foundation is original.

Bernie Spink comments that it is used a secondary housing.

Fred Teitgen points out it has been that way since the 1940's.

Alan Kaltenberg clarifies that the only variance proposed is for the height of the boathouse which has nothing to do with non-conforming structure. The height will be used to add on storage.

Attorney Clark and Randy Thompson confirm.

Helen McDonald-Rawson should like repeated because she didn't hear.

Alan Kaltenberg clarifies that the only variance proposed is for the height of the boathouse which has nothing to do with non-conforming structure. The height will be used to add on storage.

William Gretzinger comments there was no living quarters in the 1940's.

Fred Teitgen explains it was probably built and used in the 1940's. A retired school teacher was living there in the 1950's.

Alan Kaltenberg asks if a map is available showing the water setback.

Randy Thompson illustrates the Ordinary High Water Mark (OHWM) on a map.

Fred Teitgen states that the alternate location would harm two mature oak trees.

Norm Wills points out the reduced map doesn't have the OHWM setbacks.

Attorney Clark provides a map which indicates the OHWM.

Norm Wills asks if any further questions.

Roxanne Brue questions the 75 foot setback. It looks like the house in the 75 foot setback.

Fred Teitgen explains that you can average the setback.

**Motion by Alan Kaltenberg to approve the variance for "Height Limit for Boathouse" as presented including the findings of fact, conclusions, decisions and conditions of the staff report including no residential habitation/storage only.**

**Seconded by Norm Wills.**

**Motion carried, unanimously.**

**Alan Kaltenberg – Yes, Norm Wills – Yes, William Gretzinger – Yes, Helen McDonald-Rawson – Yes,**

Bernie Spink asks what the purpose of the window is.

Fred Teitgen explains the window is existing. He may have double doors which would allow light in the living space. It wouldn't allow entry into the space.

**Bernie Spink - Yes**

**Item II Variance Consideration – Side Yard Setback, Jack J. Harkins and Michelle Harkins, Owners and Applicants– Town of Caledonia**

Jack Harkins and Michelle (Owners and Applicants) were present and sworn in.  
2644 Pine Ridge Court  
Portage, WI

Corey Anderson-General Engineering was present and sworn in.  
916 Silver Lake Drive  
Portage, WI

Dennis Harkins was present and sworn in.  
540 Winnebago  
Portage, WI

Renee Pulver reviews the Staff Report. The property currently contains a detached garage, dwelling, and boathouse. The kitchen of the existing house currently sits above the boathouse. This area is approximately 14'x 22' in size. There is no interior access from the dwelling to the boathouse. Photos and dimensions of the existing structures can be viewed in Exhibit A. The boathouse and that portion of the dwelling above the boathouse currently sit across the northeast side property line by approximately 1 foot, and the boathouse and dwelling are approximately 10 feet from the ordinary high-water mark. The applicants have proposed a sale and exchange with the neighboring property owner that would place the existing boathouse and dwelling entirely on their property. After the sale and exchange, the dwelling would be 10 feet from the side property line, with the exception of the portion above the boathouse. This area would only be 1.5 feet from the northeast side yard property line. Both the existing and proposed lot lines can be seen on Exhibit B. The minimum required interior side yard setback is 10 feet. The applicants seek to rebuild the existing dwelling and expand it vertically, after the sale and exchange is complete.

Renee Pulver explains that vertical expansion is allowed in Act 55. The general Zoning Code has a 10 foot setback and less than ½ of it cannot be altered, expanded or structure repairs unless it is damaged by violent wind, vandalism, fire, ice, snow, etc. If they were to remove the kitchen, they could build without a variance because it wouldn't be non-conforming.

Norm Wills asks the petitioner if they have any additional information.



Corey Anderson (General Engineering) explains they attached a cover letter to their application which explains part of their position and reasoning. He is not sure if the Board of Adjustment members have receipt of that letter. They had an encroachment and discussed with staff a number of different scenarios. This was unique because they are encroaching. They approached Dennis to obtain the additional property. It would be a land swap of equal area. He prepared options with the boathouse meeting the 10 foot setback and he would lose some frontage. Staff recommended vacating Oak Street and they approached the Town and were denied because it is being used as a right-of-way for drainage.

This is our variance request and the main structure would meet setbacks. Jack and Shelly feel this is a reasonable compromise. They understand the requirement and 10 foot setback between buildings due to fire, etc. Averaging setback would allow him to build 50 feet back. The Harkins feel they are improving their property and value to the area. They are keeping under the 35 feet.

Jack Harkins states you were ok with what we were doing before to tear down the existing structure.

Renee Pulver explains that if you were to take down the portion of the house above the boathouse, they could do the vertical expansion without the need for a variance. The sale and exchange would allow for vertical expansion. We can't look at the setback to the water because of changes in state legislation. After talking with Corey, they didn't want to remove this portion. Dennis is losing waterfront and this is the route they decided.

Jack Harkins states that everyone was ok with 10 feet or demolish.

Renee Pulver explains that it would be acceptable under zoning standards.

Randy Thompson explains there have been a lot of changes with ACT 55 and NR 115. You could do expansion up to 50%. If you chose to tear it down and build its okay. 10 feet would bring whole structure into setback and allow them to do the job. It's a balancing act.

Jack Harkins states we have to follow what is in our ordinance. Purchasing the property or removal of non-conformity would be second option and third option to rebuild and move back to average setback.

Norm Wills asks if any further questions.

Helen McDonald-Rawson asks to return to her later.

William Gretzinger states that if the yellow part is purchased they wouldn't have to take the boathouse down.



Norm Wills clarifies that the sunroom is part of the house. He asks if the intent is to take the existing house down or remodel.

Michelle Harkins replies they are keeping the same footprint and going up.

Norm Wills confirms one story. He asks how many square feet.

Jack Harkins replies 1450 square feet.

Bernie Spink states he has no further questions.

Alan Kaltenberg confirms that the boathouse has about one foot hanging over and that problem was created years ago.

Helen McDonald Rawson asks if the POWTS is accessible.

Jack Harkins responds the holding tank are in southwest area.

Alan Kaltenberg comments that it's a nice sized lot.

Jack Harkins states that he wishes the original owners hadn't built there. This space is part of the reason we purchased the house.

Norm Wills acknowledges their reluctance to remove it.

Michelle Harkins points out there is cost involved to remove it. We are keeping the footprint so we don't disturb the land and soil. There is also a drop off and a retaining wall up against the patio.

Norm Wills states that the cost you incur will make your property more valuable.

Jack Harkins replies we have three options; do nothing, substantial remodeling which would raise tax base or major remodel to keep the room over the boathouse or purchase ten feet from the neighbor that he doesn't want to give up. I think this is fair compromise, land exchange, and we don't want ten feet of his water front.

Michelle Harkins understands the reason for the ten foot setback, there will never be anything in this area. This is a unique lot.

Renee Pulver states she has nothing to add.

Norm Wills states he recognizes your reluctance.

Norm Wills asks if anyone is in favor of petition.

Dennis Harkins states he was hesitant because he is a neighbor and owner of one foot. Sort of confusing. He had lot surveyed when he purchased the property and the boathouse was on the lot line. We bought knowing it was on the line. I have been paying their property tax. I love what they are going to do and want it to happen as a neighbor, but we have been paying the tax, the retaining walls and we don't want to give it up. No one is going to know who owns that ten feet. I don't want to give it up and this appeals to the common sense of the situation. None of us had a part of this. This would be best for all of the family members and it would be within their lines and we have the same river front.

Norm Wills asks if anyone is in favor of petition. (no comments)

Norm Wills asks if anyone is against the petition. (no comments)

Norm Wills states he understands that you were caught up in something prior to you. The problem is, did you listen to Attorney Clark's appeals. That's what an Attorney does is go back over all the preempted rules and regulations. I feel your concerns and appreciate what you are saying and put it up to the board to make a decision.

**Motion by Norm Wills to deny the variance for "Side Yard Setback" as presented including the findings of fact, conclusions, decisions and conditions of the staff report.**

**Seconded by Alan Kaltenberg.**

**Motion carried, but not unanimously.**

**Alan Kaltenberg – Yes, Bernie Spink – Yes, Norm Wills – Yes, William Gretzinger – No, Helen McDonald-Rawson - Yes**

Norm Wills states that the variance request is denied. There are times that we have to make a decision that is not popular. The bottom line is that we have to continue with uniformity and application of the law.

Dennis Harkins states that the burden falls on the neighbor, we can work it out.

Norm Wills points out that if you knew the boathouse was on the property line you could have looked at it more carefully. It should be contained on their property. The boathouse is fine, the upper structure is not fine. I don't want to come between brothers, but this is my job as a Board of Adjustment member.

7. Close Public Hearing

**Motion by Alan Kaltenberg to close public hearing.**

**Seconded by Bernie Spink.**

**Motion carried unanimously.**

Approval of Minutes

**Motion by Helen McDonald-Rawson to approve Minutes of January 13, 2016  
Board of Adjustment Regular Meeting & Public Hearing.**

**Seconded by William Gretzinger.**

**Motion carried unanimously.**

8. Adjourn

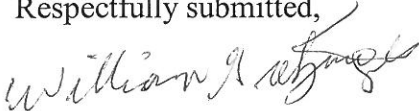
**Motion by Bernie Spink to adjourn meeting.**

**Seconded by Helen McDonald Rawson.**

**Motion carried unanimously.**

Meeting adjourned at 4:53 pm.

Respectfully submitted,



William Gretzinger, Secretary  
Board of Adjustment



Recording Secretary  
Susan Runnion, Office Administrator

cc: Board of Adjustment Members  
County Clerk  
Vern Gove, County Board Chair  
Mary Cupery, County Board Vice Chair

