

**BOARD OF ADJUSTMENT MINUTES**  
**September 8, 2021**

PRESENT: Al Kaltenberg, Craig Robson, Emmett O’Neill, Ralph Hemling, Pat Beghin

STAFF: Kurt Calkins – Director of Planning & Zoning, Andy O’Brion – Zoning & Sanitary Specialist, Lauren Ramirez – Office Administrator

**2:00 PM**

1. Al Kaltenberg calls the meeting to order
2. Certification of Open Meeting Law
3. A roll call was taken and a quorum was declared present
4. View Site(s)
5. Recess

**3:00 PM**

6. Al Kaltenberg reconvened the meeting at 3:00
7. Confirmation of Certification of Open Meeting Law
8. Approval of Agenda

**Motion by Pat Beghin to approve Agenda of September 8, 2021 Board of Adjustment Regular Meeting & Public Hearing.**  
**Seconded by Emmett O’Neill.**  
**Motion carried unanimously.**

9. Minutes

**Motion by Ralph Hemling to approve Minutes of August 11, 2021 Board of Adjustment Regular Meeting.**  
**Seconded by Craig Robson.**  
**Motion carried unanimously.**

10. Public Hearing

Pat Beghin reads in the Public Hearing Notice.

**Item I Variance Consideration – Minimum Required Setback Interior Side Yards and Structural Modification or Repair to Nonconforming Structures, and Structural Modification or Repair to Nonconforming Uses; Petitioners: TCRW Trust dated 12-5-2017 – Town of Dekorra**

Andy O’Brion reviews the Staff Report. He explains the subject property is 8,895 sq. ft. in size and zoned R-1 Single Family Residential. He states the property owners were issued a permit in 2021 for a single-family residence with 258 sq. ft. porch and steps to the main entry door, while meeting all required setbacks. The reduced side yard setbacks used to allow this structure

are found in Section 12.140.03(12). With an average width of 40.68', this lot is allowed an aggregate side yard setback of 13.56' with no single side yard being less than 5.42'. He states that the owners are proposing to build a deck and detached garage. The proposed side yard setback for the deck near the Northeast property line is 2.76'. The proposed side yard setbacks for the garage are 3.5' and 2.9'. The proposed center line and right-of-way setbacks are 47.5' and 19.5'. The required center line setback to a Town road is 63'. The required right-of-way setback for a Town road is 30'. The proposed building lot coverage is 20.57%. The allowed building lot coverage for an R-1 zoned lot is 20%. He explains that in 1996, the previous owners applied for a variance to side yard setbacks for a proposed attached garage. The variance was denied on the grounds that there was no evidence to support an unnecessary hardship and that feasible use of the property existed.

He explains the subject property fronts on Tipperary Road and Saddle Road, and has approximately 122 feet of shoreline on Lake Wisconsin. The parcel is zoned R-1 Single-Family Residence and has mapped floodplain located on the shoreline side of the parcel, however the property owners have completed the process to revise the boundary by adding fill. In doing so, the structure referenced in this request has been removed from the mapped floodplain. There are no wetlands located on this parcel.

Andy O'Brion states that currently there are three single-family residences located on the property and one boathouse accessory structure. Currently, two of the residences are occupied as primary residences, and the other is vacant. The residence in this request is located 47 feet from the centerline and 22 feet from the right-of-way of Tipperary Road, 115.5 feet from the centerline or 88 feet from the right-of-way of Saddle Road (southwest side property line), 3 feet from the northeast side property line at its closest point (5' from where the proposed variance request is), and approximately 100' from the ordinary-high water mark of Lake Wisconsin. The existing building lot coverage is 3,990 sq. ft. or 19.85% of the property. The existing impervious surface coverage is 37.2%.

In efforts to control the water run-off and ponding at the driveway, and flooding of the lower level of this structure, the property owners are proposing to install a curb and gutter along the northeast property line, and replace their driveway with pervious pavers. Waterproofing wrapping will be added to the lower level when the surface is exposed for the driveway work. They have also removed the concrete walkway that was located in the area that was filled for the FEMA map revision. The removal of these two pervious surfaces will result in a net loss of 330 square feet. In accordance with Section 12.535.06(1)(c), property owners are allowed to relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the County shoreland ordinance, and the impervious surface meets the applicable setback requirements in Section 12.525.

He states that the property owners are proposing to enlarge the area of their existing deck as the exchange for the impervious surface removed. The existing deck is 11'x32' and the proposed deck is 18'x32' for an overall increase of 224 square feet. This is well below the 330 square feet that is being removed. The existing deck is located 5' from the northeast side property line and approximately 89' from the ordinary-high water mark of Lake Wisconsin

In reviewing the request, Andy O'Brion explains that though this is zoning R-1 Single Family Residence, with three dwellings located on this parcel, the use is considered to be multi-family. The R-1 Single-Family district only allows for one single-family dwelling per lot which means the current use of the property is considered to be a legal non-conforming use. In addition, each of these dwellings encroach on minimum required setbacks which makes them legal non-conforming structures as well.

In 2012, Columbia County adopted a Building Coverage Standard that states that the maximum building coverage (the percentage of lot covered by all buildings) cannot exceed 20% or 8,712 sq. ft., whichever is less. The purpose of setting a building lot coverage within the zoning ordinance was to allow for adequate storm water infiltration, groundwater recharge and to minimize potential flooding in areas. The building coverage includes the percent of lot covered by the footprint of the principal structure and accessory buildings. This would not include the footprint of a deck as it is not enclosed; therefore, the building lot coverage would not be impacted by this proposal request.

On September 21, 2016 the County adopted the new NR 115 Shoreland Standards, which now has established limits on the percent of impervious surfaces. The maximum impervious surface percentage for a riparian lot or parcel or a non-riparian lot or parcel located entirely within 300 feet of the ordinary high-water mark of any navigable waterway shall be 15%. A property may exceed the impervious surface standard under Section 12.535.03 up to 30% impervious surface, provided a permit is issued for development with a mitigation plan that meets the standards of Section 12.555.

Section 12.535.06 of the Code of Ordinances states that with existing impervious surfaces that were lawfully placed when constructed, but do not comply with the impervious surface standards as noted above, the property owner may do any of the following:

- (a) Maintain and repair the existing impervious surfaces;
- (b) Replace existing impervious surfaces with similar surfaces within the existing footprint;
- (c) Relocate or modify an existing impervious surface(s) with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the County Shoreland Ordinance, and the impervious surface meets the applicable setback requirements in Section 12.525.

Andy O’Brion explains Planning & Zoning Staff calculated the existing building coverage to be at 19.85% and the Roth Professional Services calculated the total impervious surfaces to be at 37.2%. The property owners are choosing to replace portions of the existing concrete path and concrete driveway with pervious materials, and add the percentage of impervious surface to a deck addition off the lake side of the structure instead. This swap would result in a net decrease in impervious surfaces of 106 square feet or 0.5%. The existing deck, where the addition is proposed, is 5’ from the side property line, and 89’ from the ordinary-high water mark of Lake Wisconsin. Section 12.110.03(1) requires the minimum interior side yard setback to be 10’, and the minimum setback to the ordinary-high water mark to be 75’. The location of the existing structure requires a variance for an addition if the proposal wants to follow the same plane of the existing structures on the northeast side. This request would require a variance to the language set forth in Section 12.135.03(3) Structural Modifications or Repairs to Non-Conforming Structures and Section 12.135.04(1)(c) Expansion and Repairs of Non-Conforming Structures.

Finally, he states it should be noted that a smaller deck that would meet the side yard setback, or a deck the same footprint as the existing structure on this property could be built to meet the minimum side yard setbacks.

Andy O’Brion then reviews the Town of Dekorra’s recommendation of approval for the variance, and reviews the 3 Standards for Review. He states that for Unnecessary Hardship, the location of the existing non-conforming primary structure would not allow for the addition to the deck without a variance approval. A smaller deck or a deck the same size as the existing structure could replace the deck the property owners are looking to expand. The Board of Adjustment is to determine if this fits the definition of an unnecessary hardship.

For Unique Property Limitation, he states With this small lot having three legal non-conforming structures on this property, minimum setbacks are encroached on in multiple locations on this lot. Additions that meet setbacks are allowed on structure that are ½ the required minimum setback however this primary structure is located 3’ from the side property line at it’s closest point and therefore does not meet this requirement.

For Protection of the Public Interest, he states the request would not have an impact on public safety.

Petitioner Todd Weisensel was present via zoom, and sworn in.

Todd Weisensel states he is trying to create water barrier, so they could put drain tile in. He explains that they already tried with the basement and put drain tile in there to mitigate the water in there.

Al Kaltenberg asks if there are any additional questions.

Al Kaltenberg asks if anyone is in favor of the request. (no comments)

Al Kaltenberg asks if anyone is against the request. (no comments)

Al Kaltenberg asks if there is anyone else wishing to speak.

Al Kaltenberg closes the public hearing and opens discussion and deliberation for the board of adjustment members.

Al Kaltenberg states he doesn't believe there is a hardship. He states that they could put a deck on that's the same size.

Craig Robson asked if the variance is just for the deck, and not the curb on the side.

Andrew O'Brion confirmed that the curb is incorporated with the Impervious Surfaces.

Al Kaltenberg adds that although there's no hardship, he does think they are making up this in other ways by increasing the pervious surfaces.

Pat Beghin adds that they are gaining pervious surfaces and putting in work to benefit the fill. He states request is not putting them closer to the property line than what they are starting with, and it's not encroaching into the floodplain.

**Motion by Pat Beghin to approve variance for "Minimum Required Setback Interior Side Yards and Structural Modification or Repair to Nonconforming Structures, and Structural Modification or Repair to Nonconforming Uses" as presented, including findings of fact, conclusions, decisions and conditions of the Staff Report.**

**Seconded by Emmett O'Neill.**

**Motion carried, not unanimously.**

**Pat Beghin – Yes, Craig Robson – Yes, Al Kaltenberg – No, Emmett O'Neill – Yes, Ralph Hemling – Yes**

#### 11. Adjourn Meeting

**Motion by Ralph Hemling to adjourn meeting.**

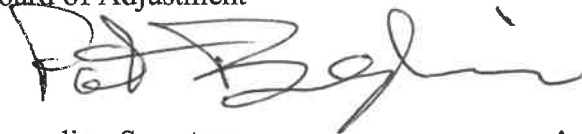
**Seconded by Craig Robson.**

**Motion carried unanimously.**

Meeting adjourned at 4:27 PM.

Respectfully submitted,

Board of Adjustment



Recording Secretary  
Lauren Ramirez, Office Administrator



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