

BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, January 18, 2011

Administrative Center – County Board Room

6:00 p.m. – 8:10 p.m.

MEMBERS PRESENT: Terry Houlihan (Acting Chairman), Barbara Frank
MEMBERS EXCUSED: None
MEMBERS ABSENT: Howard Raymer, Jr.
OTHERS PRESENT: Nathan Sampson, Jonathan Kaatz (minutes)

CALL TO ORDER

Howard Raymer, Jr., Committee Chair, called the meeting to order at 7:00 p.m. Let the record show that this meeting is called in full compliance with the requirements of Wisconsin Open Meetings Law.

APPEAL NO. 2011-1 Ernest M and Joan M Padgett, 1711 Lakeshore Dr, La Crosse, WI 54603. After-the-fact permit denied to retain and maintain an existing detached deck, pergola, attached concrete slab, addition to the residence, privacy fence, wooden retaining wall, established landscaping through filling and driveway on the north side of the home at 1711 Lakeshore Dr, that lie within the Shoreland District and within the 75-ft required setback of the ordinary high-water mark of French Slough, and partially lie within the Floodway District, on land described as: Part of Gov't Lot 9 in Section 19, T16N, R7W described in tax parcel 4-716-0. Town of Campbell.

Appearing in favor: Roger Imes, 3465 Ebner Coulee, La Crosse, WI 54601.

REMARK Imes: My question is you may also want to swear Mr. Padgett at this point.

REMARK Houlihan: One person at a time. I can only swear in one person at a time.

REMARK Imes: That's fine. I'm just not sure if you might have questions for him at some point along the way.

REMARK Houlihan: He can speak after you speak.

REMARK Imes: That's fine. Let me assure you the Padgett's are not renegades who built something and then hoped no one would notice and they could get away with it and there wouldn't be a problem. The history, and I'm not sure what paperwork you were furnished prior to this evening, but there's a written narrative that sums up most of this. In about 1904 (2004), Mr. Padgett went to the Town of Campbell building inspector outlining in general the project he had in mind and asked what permits or if any permits were necessary and advised that none were. And so he went ahead with the addition to the house, the fencing and the deck and a couple of the other things that were mentioned. But this was only after having the inquiry. Let me say that nobody disputes that. Nobody's saying that he's made this up just for the heck of it. Apparently whoever was the building inspector at that time, apparently gave erroneous advice to a number of different folks and a number of different issues of various kinds because of that have come up subsequent actions folks have taken based on that advice. But that's particularly what happened here. So Mr. Padgett went ahead with the plans that he had outlined. This isn't all that difficult that's he's asked me to be here. For him of the situation because of the series of events is so upsetting frankly that he doesn't trust himself to speak and the heart medication he's on as a result of this, hardly don't seem like a good idea. It's not an issue of hiring a lawyer to think, 'Gee I need someone who can do this for me.'

(Referring to map and aerial on overhead)

The project was done in 2004, 2005. In about 2006, the adjacent that you see just to the north of the lot with the house, which Padgett's also own, was a gully. And they went through the appropriate paperwork to fill that. You can see on the lot next to theirs now that's level and full. And the point is, at the time he asked for that permission to do that, did all the paperwork, took care of that, everything you see around the house was done. Nobody said boo. In 2007 and 2008, he applied for conditional use permit to put a good sized storage building on what would be that lot to the north. And whoever does whatever to check on those things came out. Ultimately that request was denied and not pursued any further. But again nobody said boo about any of the work done to the house or behind the house. In the spring of 2009, he again applied for a conditional use permit to be able to use his driveway, at that point particularly, in assistance with a couple of small businesses that he operates and that's the first time when somebody said, 'Oh, gee, wait a minute, we've got some things that were supposed to have permits and they don't.'

So he applied for the conditional use permit for the business purposes. The conditional use permit was granted subject to several conditions. And one of the conditions was that he apply for the variance to get the after the fact permit to allow the work that he had previously done to stand. So that's what brings him here this evening. He tried to do the right thing. He made the proper requests to the proper person. Acted according to that advice. And proceeding accordingly and for whatever reason when a number of folks, who I would have thought, would have known to look at that and say, 'Oops, what's this?' Nobody did till the third or fourth time around. So I give you that background to explain why he asked somebody else to speak for him rather than to go through this himself. The Town of Campbell Plan Commission unanimously approved this request. The town board unanimously approved this request. Since receiving the notice, Mr. Padgett tells me that the neighbors have come to him and said it's fine. They don't have any issues with any of this and it works for them, no problem. With the specifics, the garage and small building you see behind the garage, predate Padgett's buying this. That's been there. The house in some part as you can see from the map demarking the 75 foot setback, a good part of the house was in that setback at the time of this purchase. The addition to the house protrudes then a little bit further into the 75 foot setback. Can we go back to the previous, I don't want to say slide? Between the garage and the house there's a small patio that I think was added by Mr. Padgett and that's one of the things they're talking about. The fences on both sides were added. I don't know that they interfere with anything. The landscaping makes me jealous. But it's quite attractive and quite a lot of work by Mrs. Padgett primarily I believe. There is something in the paperwork indicating there's an issue with the front porch being within the 50 foot setback from the county highway. The front porch existed when Padgett's bought the house. Mr. Padgett did put an overlay on an existing concrete stoop to make it a deck of sorts and more attractive. But it's an overlay on what previously existed. It's not a new structure where there was nothing at the time of the purchase. I think the primary issue is the deck. And I do have a couple of pictures. I assume you got the pictures that came with the application. I do have two additional pictures. Do you have these, Mr. Sampson?

REMARK Sampson: Yes.

(Referring to pictures on overhead)

REMARK Imes: The picture at the top of the sheet is the corner of the fence. I'm going to describe it as the northwest corner of the backyard. I added this picture because in discussing this situation with Mr. Sampson this morning, I'm not entirely sure so I don't want to speak for him. There's a question to whether or not that fence encroaches on the 100 foot flood mark elevation. And I don't believe it does. When we asked the engineer to make some measurements, which you've got from Paragon as part of this material, I didn't know that was an issue so I didn't ask them to give us that particular elevation. That sits at the top of the hill. In other words, the fence doesn't protrude over the edge of the hill and part way down the bank. The fence ends at the top of the hill and then comes across the top of the hill to the edge of the deck. The reason that this fence is a little low in that corner is that when Padgett's filled that adjoining land to the north, the county at the same time did a supposed drainage improvement project with the road in front. That's caused some continuing erosion problems, which will be addressed at another issue. And that corner is sunk a little bit because of that erosion. So that's why that looks a little bit lower right in the corner. There's something about a wood retaining wall I think mentioned in one of the documents. My understanding is what that is referring to is that when that corner sank with the erosion, that fence separated a little bit there and to keep the dogs in the yard, Padgett's put some plywood between those two sections of the fence. And at least to the best of our knowledge that's what may be referred to as the wood retaining wall. So it's not and it's not intended as such and when the erosion issue gets resolved the fence will be back up level with the top of the property where it belongs. So I hope that's not really a serious issue and if anybody thinks so, why please feel free to ask me about that. I think the most concerning issue is the deck. The east side of the deck sits on top of the backyard and I don't think anybody contends, as I understand it, that's in the 100 year flood mark. The floodway, floodfringe aerial that you've got shows that, appears to show as you look at it, the upper right hand corner of the deck, that maybe some how the deck itself lower than the 100 year flood mark. I'm not sure the 100 year is the right designation after talking with Mr. Sampson. I think it clearly is not. The posts that you see in the lower picture and some of the pictures previously submitted. Those are posts along the front edge of the deck, to the left as you look at the picture. They are under the piece of the deck, about a third of the deck that protrudes over the edge of that hill and you have the elevation marks of where those posts enter the ground. My view of the 100 year flood mark is that those are about two feet above the 100 year flood mark. I understand Mr. Sampson's view after discussing it with him is that those posts where they enter the ground are about two feet lower than the 100 year flood mark. And

frankly I would defer to his expertise in how to interpret what I found to be very confusing data from several sources. But in any case, the upper of the deck that shows in light blue is well above that two feet above where the posts enter the ground, assuming that Mr. Sampson's calculations are correct. So I don't think, it's clearly at least in our mind a foot above what would be Mr. Sampson's mark and maybe two feet above that. So the deck itself and the supports for the deck, not the supporting posts, but the support for the deck boards themselves, I think are in fact above any interpretation of the 100 year flood mark. There is an interpretation that the posts enter the ground below that. You have the information from Mr. Padgett as to the concrete piers that he set those on, the fact that he encased those posts in cement. It's our view that those posts aren't going any place even if the water should rise above those. Previously the pictures that we furnished because of the ground cover are a little hard to tell but back in late September when there was so much rain the river stage, and this is part of my confusion, was recorded as 13.7. I understood flood stage to be 12 feet at least some place. And at 13.7, those pictures are taken on that day and they show that water still considerably below where those posts go into the ground. So I think the county has a perfectly legitimate concern, that even though Padgett's may have a perfectly good point that they thought they were fine when they put it in, they were told it was not an issue, it maybe an issue the county still has a point that they don't want something there that's going to wash away at the first heavy rain or routine flood and end up down the waterway. I think this is solid enough and put in under circumstances where it's not likely to be an issue or concern. I know there are the three tests that you are to consider in determining whether you grant this variance or not. I believe the overall circumstances here do meet those three tests and that this would be an appropriate variance to grant. I'd be happy to answer any questions. If you have any questions that are particular to Mr. Padgett, why I will ask that you swear him and he can answer those.

QUESTION Frank: I'm sorry we weren't given this sooner. You just brought these now?

ANSWER Imes: No those were mailed over two months ago when the application was filed.

REMARK Sampson: We had copies and provided that to the board tonight. They weren't mailed.

REMARK Frank: Yeah, just tonight. I'm sorry we didn't see them sooner. It's hard to read this quickly.

REMARK Imes: I think my cover letter is dated November 12th but I'm not entirely sure.

REMARK Sampson: Yes.

REMARK Imes: Is that right? Okay.

REMARK Frank: Well it seems unfortunate again, how or from whom they were given notice that no permit was needed.

REMARK Imes: From the building inspector for the Town of Campbell. And as I mentioned, nobody really disputes that that happened. They didn't make that up for purposes of trying to put one over on you.

QUESTION Frank: And that was in 2004?

ANSWER Imes: Correct.

QUESTION Frank: And at the time of the conditional use permit in June of last year, what was Mr. Padgett told? That an additional permit needed to be secured?

ANSWER Imes: That he needed to get an after the fact permit and there were several conditions of that. This being one. As I understand it, if you grant the variance then he'll be issued the after the fact permit.

REMARK Frank: I guess I would like to know a little longer history of flooding in that area. Not just the last 10 years.

REMARK Imes: I guess the one thing I can tell you this was, and I'm going to get my terms mixed up, but that FEMA took this out of the floodway and put it in whatever the next category down is about two years ago. And that the Padgett's flood insurance premium dropped from about \$1,600 a year to \$350 a year. So whatever it had previously been determined to be, apparently there was a very substantial change at that point in time.

REMARK Frank: Those posts are two foot lower than that 100 year mark.

REMARK Imes: Where they enter the ground. That's Mr. Sampson's contention. I'm not personally clear on that. I don't personally think so but he knows this material.

QUESTION Frank: I suppose other than safety to the people using the property, what other obstructions? Is that concern?

REMARK Sampson: If I could clarify a little bit on the flood elevations, the base flood elevations for this particular property. Mr. Imes is referring to flood stage and that's a gauge of when flood damages occur and at what points you can expect damages to occur. Flood stage is considered 12 at the gauging station at Isle La Plume. That's when damages occur to the lowest lying areas. They may be minimal damages but it's when it begins. As that number increases, the amount of damages or severity of damages to be expected increases. We start doing what are called substantial damage assessments for damages to areas within the floodplain at about 14 feet. Now the eight foot river stage is considered to be the ordinary high-water mark at this particular point and that's roughly 634 feet. 633.8 feet but we round it

off to 634. The 12 foot river stage at that point would be four feet higher than that or 638 feet. The regulatory base flood elevation as taken from the National Flood Insurance Rate Map, which I have a copy here of a FIRMette and a copy of the flood study, and that elevation is 645.1. That 645.1, you can compare that number to the elevation of the ground where the posts for the deck enter. It will give you an idea where those stand in relation to the regulatory flood elevation.

REMARK Imes: Which, if I'm correct, is about a two foot differential.

REMARK Sampson: Yes.

REMARK Houlihan: If I remember correctly, flood station in La Crosse in 1965 was exceeded by nine feet. I believe it was 21 feet. Which would put water above that area.

REMARK Imes: Lots of house. Lots of garages. Lots of everything else there. I suspect you're correct about that.

REMARK Houlihan: One of the things that board has to look at is what could possibly be done by damage if one of these decks or the fence were to wash down the river and hit someone else's property and create a bigger problem.

REMARK Imes: And I don't disagree with that. And I doubt that you disagree with me that if that happened there'd be a whole lot of things going down the river from a whole lot of places that are already there.

REMARK Houlihan: That's true but this would just be one more.

REMARK Imes: I wouldn't argue with that so then I'd go back to the circumstances on how it all arose.

REMARK Houlihan: That's what we have to look at.

REMARK Imes: I certainly agree that's one of the things to look at. No argument.

REMARK Imes: I guess would note that Mr. Padgett is certainly in favor of it but does not wish to speak unless you have specific questions.

REMARK Houlihan: Okay.

Appearing in opposition: None.

Correspondence: 1) Fax from Scott Johnson, Town of Campbell Chairman, dated and received on January 12, 2011. Fax states the Campbell Town Board had no objections to this.

2) Email from Carrie Olson, Water Management Specialist with the DNR, received on January 14, 2011. Email says, "The Department has reviewed the plans provided in the notice and has concerns because of the lack of evidence in the application that the conditions specified in the county shoreland ordinance will be met. Unless the ordinance conditions can be met, the department would not be in favor of the appeal. Mitigation could be an option to off-set some of the structures that do not encroach into the setback line or structures that are designed to minimize impacts."

Discussion:

QUESTION Houlihan: Where does this leave us?

QUESTION Frank: What would the conditions be?

ANSWER Sampson: The Department can provide testimony to a Board of Adjustment appeal just like any other party. In cases that involve variances to county mandated shoreland regulations or floodplain regulations, the zoning departments are required by statute to notify the area Water Management Specialist or the floodplain engineer. Their opportunity is to weigh in on this like any other party. They also have the same rights as any aggrieved party where they can appeal a Board of Adjustment's decision by filing a writ of certiorari within 30 days of the filing board's decision.

QUESTION Houlihan: Should have there been some communication between Mr. Padgett and the DNR before hand on this?

QUESTION Imes: May I comment on that?

ANSWER Houlihan: Yes.

REMARK Imes: I understand I'm still under oath. This process started this past summer. I called Ms. Olson and specifically discussed this situation with her. She was aware of it. She told me she had no objections to this. I first heard about this this morning when I got a copy of this from Mr. Sampson. I immediately called Ms. Olson's office, got a machine, left word, had not heard by 5:30 this evening. One, I don't particularly understand the last sentence or two.

REMARK Houlihan: I'm afraid I don't either.

REMARK Imes: Two, it's absolutely contrary to what we talked about. My interpretation of it is that if there's a violation of the Shoreland Ordinance, that if it's not cured by a variance, then they object to it. And apparently if they don't think the variance is an appropriate cure then they have their own remedy.

QUESTION Frank: Who's the person you spoke with?

ANSWER Imes: Ms. Carrie Olson. Same person who wrote that.

REMARK Frank: Same one who wrote the letter.

REMARK Imes: Yes.

REMARK Houlihan: Now she's going a total different direction.

REMARK Imes: This is absolutely 180 degrees than what she told me last, probably August when I talked to her.

QUESTION Frank: When was the letter dated?

ANSWER Sampson: This was received last Friday.

REMARK Imes: I would add for what it's worth category, Dave Pericak with the DNR has been on this property. Has personally observed the situation as you see it now and had no comments about it.

QUESTION Frank: Can we hold this in abeyance for more questions?

QUESTION Houlihan: Can we hold this over, Nate? I need some kind of a direction here because I don't understand what she said.

ANSWER Sampson: I think, and again I can't speak for her because I can't read anything in to what her email states. Mitigation is usually some type of restoration or remedial effort to minimize the impacts of the structures that are too close to the water. In some cases it may be armoring the rip rap with topsoil and seeding that down with vegetation so the vegetation gets foothold. Could be any one of a number of things. These are actually standards that the board may be faced with in the future because it's going to be part of the new mandated Shoreland Zoning Ordinance that we're mandated to adopt by February of 2012. A number of counties in the North have done this already, the lake counties. And to answer your first question, it's certainly in the board's authority to do that. The issue is the cost associated with holding that hearing. The county will end up paying for the publication costs. If you don't have enough information, that's really a decision you have to make.

QUESTION Frank: A decision to what? Pursue this? Or to?

ANSWER Sampson: Or to hold it over. Typically the county does not pay for publication on these if they are held over.

QUESTION Houlihan: So Mr. Padgett would be charged for?

ANSWER Sampson: Originally he was charged for an after the fact fee for the variance. That would not be the case.

QUESTION Imes: May I?

ANSWER Houlihan: Yes.

REMARK Imes: I certainly don't want to discourage legitimate concern. This has been difficult for the Padgett's. I wasn't kidding earlier when I commented on Mr. Padgett's health.

REMARK Houlihan: I'm sure it is.

REMARK Imes: Forgetting the blank, blank attorney's fee, the county's fees are substantial and I'm not sure if Mr. Sampson's indicating there yet might be another fee. I don't want to say that's a problem because it's a few hundred bucks. It's not going to break the bank but it's certainly not easy in light of the totality of the circumstances. If you think you can reach a favorable decision to the Padgett's, I would encourage you to do so. If it's an issue you think I really can't do without something else, than that's the way to go.

REMARK Houlihan: I personally cannot because the DNR has a very, how would you say? What they say to us means a lot.

REMARK Imes: I wouldn't argue or discourage that. Mr. Sampson can correct if I'm wrong but I thought he said if you were to approve the variance and they thought that was a significant enough of a problem to them, they have their own individual remedy.

REMARK Sampson: Which would be that the county paying the defense of an appeal of a variance granted, if that appeal was made in circuit court.

REMARK Houlihan: It means quite a bit of expense to the county.

REMARK Imes: Well, I'll take your word for it. I don't know why the county pays for DNR's appeal.

REMARK Houlihan: No because the county has to go in and state why this decision was made the way it was.

REMARK Imes: I wouldn't have any argument with that. That's not a big deal to show up and say what happened here. And again I'm not denigrating that but that's not huge.

QUESTION Frank: And you have been working with Dave Paricak?

ANSWER Imes: No. I don't know. I know he was at the property according to Mr. Padgett. That he was there. I don't know whether it was in conjunction with the project on the lot to the north. But he saw all of the landscaping, the fence, the deck. Commented on how attractive it was and how nice it was. Made no issue about it; anything having to do with this whole flood issue.

REMARK Houlihan: If you wish to speak you'll have to be sworn in. That's not a problem. That's right, I'm sorry. He can't speak.

REMARK Imes: Not an issue. I guess I bring that up in part just to kind of indicate citizen frustration with dealing with a bureaucracy. You get caught up in this and you do what you think you were supposed to do. And you do it right. And so many others, so many other times, see it and nobody says boo. And then bam! You get clobbered. It doesn't sit well.

REMARK Houlihan: Again, they're all different departments. One department doesn't overlook the other one and say, 'Well this is being done wrong.'

REMARK Imes: Well some of these were the same folks with the conditional use permit application a couple of years ago for the building next door and so on. I appreciate the point but...

REMARK Sampson: Again, the appeal being heard tonight is this appeal so that's what we're concentrating on.

REMARK Kaatz: If I can just remind the board, there's actually six violations they're reacting to. With the deck and the fence and the two additions.

REMARK Sampson: The shed and the garage are actually; there is a statute of limitations on shoreland violations that have been in existence for ten years or longer. And that's why the garage and shed in the back are not listed on the map.

REMARK Imes: Let's also make it clear. Padgett's didn't build that. Those were there when they bought this property.

REMARK Sampson: Correct.

REMARK Frank: You're saying that's not an issue.

QUESTION Frank: Can we hold it in abeyance for now and talk about it after the meeting?

ANSWER Houlihan: No we have to make a decision. We have to make a decision.

REMARK Sampson: Variances can be conditionally granted also. The board might wish to consider that as one of the options you would have.

QUESTION Frank: Subject to what?

REMARK Sampson: As an example. We have additions to the home that were within the required setback. It's really at the board's discretion. Those items may be allowed. There may be items that you would rather see not permitted. It's entirely at your discretion.

REMARK Houlihan: (Referring to Notice of Appeal map) Okay. I will make a motion that items four (front addition to residence), five (front deck), six (concrete slab), and three (rear addition to residence) be approved. And items one (detached deck and pergola) and two (fences and retaining walls) be approved with stipulation that they meet all specifications of the DNR. Can we do that?

REMARK Sampson: I'd like to advise the board also that the DNR has come out in opposition to this.

REMARK Houlihan: It is in opposition but they have...

REMARK Sampson: Mitigation.

REMARK Frank: But if we did this as he's moved, the DNR still could...

REMARK Sampson: Correct. They have the opportunity to appeal any decision.

REMARK Houlihan: I didn't hear what Barb said.

REMARK Frank: I'm just saying if we went ahead and did this the DNR still could raise the points they're concerned about or what conditions they would require. Is that correct?

REMARK Sampson: The DNR would have the option of appealing the board's decision in circuit court. They can't prescribe mitigation standards after the decision is made. The variance can be granted in its entirety, it can be denied in its entirety, it can be conditionally granted provided the applicant does certain things. That's really at the discretion of the board.

QUESTION Frank: Do we even know what the conditions are that the DNR is requesting?

ANSWER Sampson: No, they just stated that and I can read that email again, "Mitigation could be an option to off-set some of the structures that do not encroach into the setback line or structures that are designed to minimize impacts." My read on that is that she's recommending some kind of mitigation to be enacted such as, you know, armoring the rip rap, making sure runoff doesn't go off from the back part of the lot into the waterway. I can't read anymore than that to what she's stated.

QUESTION Frank: If we made an approval subject to working out or meeting conditions required by the DNR, can we do something like that?

QUESTION Houlihan: Can we do that?

ANSWER Sampson: You can do that, I don't know how the DNR is going to react to it, if they'd even supply any mitigation standards. It's really up to you. Whether or not they'll recommend any, I can't say with any certainty.

REMARK Frank: I guess I'm still not clear. If we do authorize it substantially as you've indicated in your motion and the DNR opposes.

REMARK Sampson: The mitigation doesn't mean anything. The recommendation of mitigation means nothing. Their appeal would be in circuit court. They would sue the board in circuit court and file suit, writ of certiorari. They have to do that within 30 days of the filing of the board's findings and conclusions. The county would hire legal counsel to defend the board if they commence that action.

REMARK Frank: Well I guess I'm kind of naive here but the motion as you've made it and if it stands.

QUESTION Houlihan: Can I actually do that?

REMARK Frank: Approve three, four and five, but not one and two.

ANSWER Sampson: It can be approved in total or in part correct.

QUESTION Houlihan: But can we put a stipulation that it meet the requirements that the DNR would be forth coming with?

QUESTION Sampson: With a recommended plan of mitigation. And you're saying retain one and two?

ANSWER Frank: No not.

ANSWER Houlihan: If they meet the requirements set down by the DNR.

REMARK Sampson: I really can't speak to that Terry. I don't know how the DNR would react to that. You can certainly make that motion.

REMARK Houlihan: Well we could try. The motion would be then that items one and two meet any requirements laid down by the DNR.

REMARK Frank: And approve three, four and five.

REMARK Houlihan: Yes, approve three, four and five and six.

REMARK Frank: I will second that.

REMARK Houlihan: Motion has been made and seconded to approve items three, four, five, six, and one and two will have to meet DNR specifications.

REMARK Frank: DNR mitigation.

REMARK Sampson: I would recommend that if you're advising to implement mitigation practices that you have the county work with the appellant on that.

QUESTION Frank: Can we put that in the motion?

ANSWER Sampson: Yes.

REMARK Houlihan: I don't want to approve this and have this come back bite us all the way through. I'd rather have the greater share of this thing straightened out. I would honestly like to see them give us a better understanding of what they're saying.

Motion Houlihan/Frank to approve the existing addition and deck on the front of the residence, the existing addition on the rear of the residence and the existing concrete slabs with no conditions. And to approve the existing detached deck and fences with the condition that a mitigation plan acceptable to the La Crosse County Zoning Department is completed.
2 Aye, 0 No. Motion carried unanimously.

APPEAL NO. 2011-2 John C & Jean E Nash Revocable Trust, 2261 Coulee Dr, La Crosse, WI 54601. Permit denied to construct a proposed single family home with deck on the lakeside, attached garage and covered entry that will lie within the Shoreland District and partially lie within the required 75-ft setback from the ordinary high-water mark of Lake Onalaska at W7407 County Road Z, on land described as: Lot 13 of the Amended Plat of Ma Gipeeaska Washonee Day Cho Chake Subdivision. Town of Onalaska.

Appearing in favor: John C Nash, 2261 Coulee Dr, La Crosse, WI 54601.

(Referring to maps on overhead)

REMARK Nash: What you see up there is not what I'm asking for at this time. And the reason being, I went to the planning and commission meeting in the Town of Onalaska and we had a discussion about it. They wanted the house back at the 75 foot mark and we came to an agreement that the house would be at the 75 foot high-water mark and that the deck would be 12 feet in. This is an open deck which is nine feet in the air on the main floor. Like I say, I'm not asking for this anymore, I've backed off. Their recommendation went to the town board and I got the approval from them for that. I also have written letters from neighbors on both sides of this property. They are perfectly fine with having the open ended deck at 12 feet in the 75 foot mark with the actual house at the 75 foot mark. I personally went in both homes and we looked at line of sight and they had no objections to it. In fact I have an actual map. I have several of them if you just want to pass them out. You can see where the existing house is. I've gotten a demolition permit for that and the house is now vacated and inhabitable. In the spring I'm going to take that house down as soon as the snow is gone. My expectations are to build a new home there.

The neighbors to the west and the east, especially to the west with the larger home, he prefers the house be forward and I totally agree with that because the front of those towards the lake, his is all glass, mine is going to be all glass, we can look into each other's houses. And also if we're sitting on our decks, we can just look at everybody. With the house just a little forward, that all disappears. And by moving the house even further back creates other issues as far as having retaining walls and so on because of the landscape of that lot. To be honest with you, there is no real hardship. It's just the aesthetics of it. You know the privacy. And also as Mr. Sampson pointed out earlier in appeal there, the DNR has enacted new rulings February 1, 2010, which the county has up to February 1, 2010 to adopt. Well this is the whole thing but it's quite a bit. If I can just read a little bit of it. "Replacement or relocation of nonconforming principal structure. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under paragraph (b) may be replaced or relocated on the property provided all the following requirements are met." And the ones that pertain are, "The use of the structure has not been discontinued for a period of 12 months or more." It became uninhabitable as of January 1st of this year. "The existing principal structure is at least 35 feet from the ordinary high-water mark." What I'm proposing, I'd actually be at the 75 foot mark and the deck would be 12 feet in. This house is approximately 35 feet from the high-water mark. Maybe 40 feet. The third was, "No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure." So that's basically what I'm asking for. I have other drawings and I have the letters from the neighbors.

REMARK Houlihan: What you read into the record, we'll need that. He has a copy.

QUESTION Houlihan: Where's the septic system and the well?

ANSWER Nash: The well was a sand point inside the house. I had that capped off and filled with concrete by Lysacker Well Drilling. The septic is not adequate for the new home, which it would also be in the way. So that's going to be taken out and I do have new plans drawn up by Mark Palmer of Blair which have been approved. That would go up into the northwest corner of the property, up by the road. That would be the drain field. The tank would be down, over in the proximity of the west side of the house where you can get gravity to feed into it and then it would be pumped up into the drain field. If you want to look at a copy of the drawings of that, I have that also.

REMARK Houlihan: No, that's fine. Thank you.

REMARK Nash: And the well. I would have a new well drilled. Lysacker said it would probably 65 to 70 feet. This sand point was 25 feet. So everything will be to what it's supposed to be. This house is pretty much nonconforming. It was kind of an add-on thing over the years.

REMARK Houlihan: Cabin.

REMARK Nash: Yeah, it was a cabin to start with.

QUESTION Houlihan: Anything else?

ANSWER Nash: No.

REMARK Nash: That yellow dotted line is the 75 foot high-water mark or you won't see yellow on there.

REMARK Sampson: If I could clarify on some of these setback issues that we're dealing with here tonight. Our current Shoreland Ordinance requires the 75 foot setback if a structure is destroyed by an act of God or fire, whatever may be. If it cost more than 50% of the fair market value to replace it, it can't be replaced. But since the adoption of that ordinance there has been state statute amendment that does allow for reconstruction of a nonconforming structure that is destroyed by fire or some other natural act. It's basically required that you build within that footprint of that destroyed structure or larger if it's required by some kind of construction code that you need a minimum square footage in which case you can exceed that. Now under the proposed shoreland rules there are some additional stipulations that would allow replacement of a nonconforming structure. Mr. Nash had stated three. The fourth item states that, "The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement per section 6.1," which is the required 75 foot setback. We have a map depicted on the screen that shows the footprint, or approximate footprint, of the existing structure. We have a building envelope of approximately 95 feet average in width, I'm sorry a width of about 80 feet and a depth of about 120 feet. That's all between the required setback lines.

QUESTION Nash: This stuff that you have, do I get any of that back?

ANSWER Sampson: I have the original. That'll I'll have to keep for the record. I can make a copy and have those available for you.

Appearing in opposition: None.

Correspondence: 1) Email from Sue Schultz, Town of Onalaska Clerk, received on January 10, 2011. Email states the motion 'to recommend to the County Board of Adjustment to allow Nash's request' passed 3-2.

2) Email from Carrie Olson, Water Management Specialist with the DNR, received on January 14, 2011. Email says, "The Department has reviewed the plans provided in the notice and has concerns because of the lack of evidence in the application that the conditions specified in the county shoreland ordinance will be met. The location of the proposed house with deck, garage within the setback area and the fact that the vegetated buffer area is reduced is contrary to the shoreland zoning ordinance. This impervious area increases stormwater runoff into the river. Unless the ordinance conditions are met, the department would not be in favor of the project."

3) Letters from Lawrence and Barbara Leis (W7411 County Road Z) and Jim Berzinski (W7403 County Road Z) dated December 27, 2010 and received on January 18, 2011. Letters state that the owners are in agreement with the house being built at the 75 foot high water mark with the deck extending 12 feet inside that high water mark.

REMARK Nash: I'd like to make two comments. One is on the last with the neighbors. Even if I was granted what I originally started I would not build there because I would not do that to my future neighbors that I already made an agreement with. The second thing is on the DNR there, they were probably commenting on that part of it, not what we're actually talking about today. So I don't know where they would be at on that. Would you have any idea?

REMARK Sampson: I can't read anything in to what she's said for comments.

QUESTION Nash: Do you know she was commenting on this?

ANSWER Sampson: She was commenting on the notice that was applied for and is depicted up on the screen.

REMARK Nash: That's what I figured.

REMARK Kaatz: Mr. Sampson, correct me if I'm wrong, but he'd have to withdraw his application and make a new application is the DNR wanted to react to something else and pay the fee again.

REMARK Sampson: That's correct. What they were reacting to was this application.

REMARK Kaatz: You could certainly withdraw your application and pay the 270 again and then the DNR could react to a new plan.

REMARK Nash: I did have conversation with Mr. Raymer. Unfortunately he isn't here, I wish he was. Because I asked him about this and he said that it's, and I'm not quoting him, but he said that the board here makes the decisions and you could vote that everything be in or everything be all the way back or somewhere in between. It's your decision. And if the DNR has a problem, he didn't say this part, but if the DNR has a problem with that, I guess they could react after words. Kind of like the previous appeal that you had. That way I don't have to go through this whole thing again and pay another \$270.

REMARK Houlihan: Thank you.

Discussion:

REMARK Houlihan: Can we do that? This notice has been sent to all of the neighbors and this is what they're...

REMARK Frank: ...looking at.

REMARK Sampson: That's correct. That's what you're reacting on, is the application you've received and the variance appeal has been mailed out to everyone. That's correct. They're reacting on what was mailed out and what was published.

REMARK Houlihan: And that's everyone within 300 feet. Correct?

REMARK Sampson: 150.

REMARK Houlihan: 150 feet.

REMARK Sampson: Correct.

QUESTION Houlihan: So if there's a change, we should actually only be dealing with this correct?

ANSWER Sampson: That's correct.

REMARK Houlihan: I realize you've made changes along the way but that's not what was given out to everyone else!

REMARK Nash: Okay, well I made the changes per two previous meetings and because of their recommendation I went with them and agreed to that. And no one told me that I had to change this. And that's why after the fact when I got this letter that I talked to Mr. Raymer about it and he said, "Well you just go to the meeting and you make the decision, all in, all out, or somewhere in between." And I'm not quoting him on that.

REMARK Houlihan: Well the thing is Bud is not here. And the other part of that is Bud has no idea what was written in there by the DNR.

REMARK Nash: No he does not. But I will say that I was asking for a lot more than what I'm asking for tonight and there was no opposition.

QUESTION Houlihan: My question to you is; do you wish to withdraw this and redo this?

QUESTION Nash: Let me ask you this. Would I have to pay \$270 again?

ANSWER Houlihan: Yes you would.

QUESTION Nash: Do I have to go through the planning commission meeting and the board meeting again?

ANSWER Houlihan: You've already gone through their part and gotten permission to what you said.

REMARK Nash: Correct. Or would you like to hold off on your ruling on that?

REMARK Houlihan: This all has to be republished again. One of the biggest expenses in this whole thing is putting this through the paperwork. It has to go back in the paper. It all has to be done according to law.

REMARK Nash: But then I have to wait another month again too.

REMARK Houlihan: That's true.

REMARK Nash: So am I wrong in saying that Mr. Raymer was telling me wrong.

REMARK Houlihan: Mr. Raymer is not here!

REMARK Nash: Correct.

REMARK Houlihan: I have to make a decision on what I'm hearing here now, as does Barb.

REMARK Nash: Alright. You can see my side. I hate to go through the whole thing again. Pay again for the same thing that we're here tonight for.

REMARK Houlihan: I understand but you have to realize that, as you stated, there is no hardship.

REMARK Nash: That's correct. I'm being perfectly honest. There's no hardship. It will cost me more money if the house is moved back further, which I guess you could say is a hardship, but I'm not pursuing that.

REMARK Houlihan: It's what we have to make our decision; one of the major things that we have to make our decision on is that hardship.

QUESTION Nash: I understand. So let me ask you this. If I go through this whole process again, and it's the way we're talking tonight, am I more in favor of getting a yes vote?

REMARK Sampson: You can't contractually make that. The public hearing portion is closed.

REMARK Kaatz: We have to move along here. He can't be discussing deliberation with you.

QUESTION Nash: Can I make that decision, let's say tomorrow or something?

ANSWER Houlihan: That's up to you.

QUESTION Nash: Or does it make a difference tonight?

ANSWER Houlihan: It won't make any difference because one way or the other you'll end up paying it.

REMARK Nash: Okay. I will make my decision tomorrow.

REMARK Houlihan: We will make a decision here and because of the lack of a hardship among other things, my motion would be to deny.

Motion Houlihan/Frank to deny Appeal No. 2011-2 as presented.

2 Aye, 0 No. Motion carried unanimously.

APPEAL NO. 2011-3 Ruth Groth, W5448 E Helke Rd, La Crosse, WI 54601. After-the-fact permit denied to retain four (4) existing detached accessory buildings on a 0.75 acre parcel. Said buildings exceed the maximum allowable size limit and the total number of buildings allowed, some of which lie within the required 3-ft side yard setback and required 50-ft front yard setback at W5448 E Helke Rd, on land described as: Part of the NW-SE of Section 26, T15N, R7W described in tax parcel 11-2015-0. Town of Shelby.

Appearing in favor: Ruth Groth, W5448 E Helke Rd, La Crosse, WI 54601.

REMARK Groth, Ruth: I guess I'll start out with just a little bit of history. We bought our land in '69 where our house was built, my husband and I. So I've lived there over 42 years. We were like 20 and 21. We bought land from the neighbor. It was all farm which is incorporated now by the Helke's. We've grown up with that family. We called Michele's mother, Grandma Lori. Earl and my husband are both deceased. My husband deceased four years. So I was not able to go back to him and talk about any kind of permits and that. What I did in research, I found where the survey was done for the pole shed. And I always thought there was some papers in the pole shed in the wall that maybe it was permit. I went out

there and I found blueprints. I found Brickl Brother materials. I have all those here. On the side of the pole shed there was a strip of land which was shared by us. It's Helke's property but we were able to use that just to drive back to our woodshed which has been removed now. Because we burned wood and we had the little woodshed back there on that property. So that is one that we have moved in the front that you'll probably see. You'll see the shed close to the road there. And that's just a temporary thing. We just did that December 2nd. And the very back left hand corner, way towards the back corner, that's just a little shed that I use. I've got straw in there for my dog. I bring it down to the pen in the winter time. And there's pots on the other side for my garden. There's a dirt floor, it really isn't anything either, which could be tore down. I am and I believe the Helke's also are having a little bit of a disagreement with the road in front. When we applied for our garage permit and our house permit is reading different than the diagram you're looking at here. The road actually is straighter in front of my house. It doesn't have that curve. But there is a little section there that is belonging to the Helke's Corporation, which I believed when we applied for our permit. And the way it reads in my descriptions, that it was the intent that is would go all the way to the centerline of the road. And I've talked to the Helke's and we're going to try to work out like a variance or something like that. They don't have a problem with that land at this time, the little section. I believe it goes from eight to ten foot. The whole thing I guess started November 19th. I came in to talk to Nathan Sampson here and I found that all the things with the shed and everything I was tore apart. I kept up around the property line. I kept that up as far as you know, mowing. The easement we always kept mowed. You know plowed snow. Kept the gravel in front so we could drive back to the woodshed. Like I said that's even gone now. The power lines, those are gone too. They had removed those last year. I don't know what else to say. The pole shed has been up at least 21 years. We've never heard any complaints from anyone about it. It's maintained. It's not like it's a shed that's in the back 40 that grass is growing up and there's things leaning against it. It is a well kept building. It is full of my boat. I got my dad's motor home in there just to store it for him. And my boat. It would be a hardship if I did have to remove it or downsize it. I don't know what I would do with that. I think it's an asset to have this pole shed if allowed. (Referring to aerial on overhead) You see one little area that's the dog pen. The house is the green roof. That was just put on in '06. But I guess just everything came to a head on November 19th. I've got pictures showing that it's been kept up. And I guess I'm asking for a variance on the pole shed.

REMARK Houlihan: Well we're dealing with more than one thing.

REMARK Groth, Ruth: I do have a letter from one of the neighbors down below that has stated that he's known us, my husband and me, since '76. He's got things he said. We've always kept up everything. I don't know if you care to read that. I've got some pictures showing that it is kept up.

QUESTION Frank: Did you say the small building way at the back of the property would be removed or could be removed?

ANSWER Groth, Ruth: It definitely could be moved. It's not that important. There's not that much things in there. Like I said I just got pots in there when I have flowers, gardens. Just something that I kept out of the garage. It was handy to have straw bales for the dog.

QUESTION Frank: That little shed in front, you said was just a temporary?

ANSWER Groth, Ruth: The woodshed is what got moved down. That is moved down to the front. That's what they're saying now is too close to the road. It was just in winter time we did this, December. And we got a lot more snow after that.

REMARK Houlihan: Thank you.

REMARK Groth, Ruth: Like I said. I got all my permits. My zoning. Everything else right here. The originals.

Appearing in favor: Michele Robertson, W5460 E Helke Rd, La Crosse, WI 54601.

REMARK Robertson: I just wanted to say that the buildings have been there and we've not had any issues with those buildings at all. We're the neighbors on the other side. I'm also part of the corporation. I'm actually the president of the corporation. It's just my family paying the bills when we took the property over. That property in the front ended up coming up that way because when Shelby, or whoever it was, actually surveyed that road years and years ago, somehow that survey incorrect. The road, actually we thought we've had fixed it twice now. Obviously we haven't. That's what Ruth was talking about. Her and I, the family we need to talk a little more because there's never been an intention that she wouldn't own the land to the road. So we need to figure that out.

Appearing in favor: Tracy Groth, S334 Korthals Ln, Chaseburg, WI 54621.

REMARK Groth, Tracy: I guess I'm kind of half way in this on what all the different buildings on the property that are in question. What I got to say to the setback with the garage and even looks like part of the house and the existing building in the lower right hand corner, that's all because the road isn't really where it is. Like we mentioned there's an eight to ten foot variance down through there. I don't know if you have this one in color but it shows a highlighted area versus where the real road is. (Referring to aerial on overhead) If he can pan out a little more, it may show that more clearly I don't know. That's Google Earth. I don't even know where this one came from honestly but you can see how it's different. You know what I'm saying. So all these years this road was originally a cow path. And I remember Grandpa Helke telling me we used to come here and you couldn't get up here with your Model T because mud was this deep. So obviously over time the centerline of the road isn't where it was. From cow path it's been developed. Getting back to the building in the corner, I have this picture here. That's actually our woodshed. It's not a permanent structure. It's on skids. When it was questioned that it was off our property, under agreement, we moved it and I have a picture of what it is. That is going to be removed but because of winter time it was just brought down into the lower yard. It's on skids. It can be moved easily. In fact we got people that wanted it already but since it's mom just down there right now. So that's obviously in the way as of right now but it is being removed. The other buildings, in the upper left, garden sheds, literally nothing, it's just a standing building. It's convenient for her. It'd be nice to leave it there for her but if it's under terms to get rid of it, no problem. The other problem what I understand is the size of the shed, not even the size but the closeness, or proximity to the property line. Like I said, we've maintained that and mowed it and everything and nobody was under the impression were it really was was a problem until just recently. Obviously the way the trusses run on it, it would be ridiculous to even consider reducing its size in any way because, if you're with construction, the way the purlins are and the truss package, you can't narrow a building this way. So we've proposed, and I've not been involved with it much, but my mom has talked with the Helke Incorporated about getting whatever requirement you guys would need for setback and purchase some land. Or make a quick deed of some sort. Sounds like they're in favor of that so to satisfy that. Is there any other things as far as addressing? Is there like three strikes against us? Four strikes? Like I said, you got buildings and setbacks. And that's about the best explanation I can give you unless you have other questions.

REMARK Houlihan: No, I have none.

REMARK Groth, Tracy: And we are pursuing with the Helke's in favor of doing whatever is required and I don't think it's going to be much of a problem. This is a copy of the deed, the date of it is...well I was in high school so it was about '85, '86. Somewhere in there. Where they purchased the land specifically to add the shed. Bought land from the Helke's to put the shed on, excuse me. And I believe you have that, and if you don't, here's something you can make a copy of for a later date. (Referring to map) This is the original property where the house is located. This is the strip where the shed is currently. So they bought that with intentions and all this was an easement, a right of way, that the Helke's said we still want access. The placement of the shed in error, I don't know. They put pins in the ground here and here. It's quite a distance, 200 some feet with terrain changing. We assumed that we were far enough back. It's currently two feet from the line. Is three feet required? It's not a substantial amount. And as you can see it runs parallel to the building so we'd have to try to negotiate or whatever to get a enough just to be safe and whatever would make you guys happy.

Appearing in opposition: None.

Correspondence: 1) Town of Shelby Board meeting minutes (draft) dated January 10, 2010 (2011) and received on January 14, 2011. Draft minutes state no recommendation was made to retain the four existing detached accessory buildings which exceed the maximum allowable size limit and total number buildings allowed. Draft minutes state to recommend approval for the existing house and garage that lie within the required 50-ft front yard setback.

2) Letter from Dennis Subera, 4117 Riverview Dr, La Crosse, WI 54601, received on January 18, 2011. Letter states Mr. Subera does not have a problem with the location of the pole shed.

REMARK Sampson: To clarify, the required setback from the town road is not 50 feet for the residence. The greater setback from front property boundary is for all detached accessory buildings. The residence actually meets the required setback.

Discussion:

QUESTION Frank: What should this side distance be?

ANSWER Sampson: Required setback on a side yard is three feet on a lot this size.

Motion Houlihan/Frank to approve with the condition that the 12-ft x 20-ft shed located in the southeast corner of the lot be removed from the lot and the 10-ft x 18-ft shed located in the northwest corner of the lot is allowed to remain but cannot be replaced.

2 Aye, 0 No. Motion carried unanimously.

APPEAL NO. 2011-4 Carroll A Johnson, 1310 Caroline St, La Crosse, WI 54603. After-the-fact permit denied for a 5-ft x 22-ft enclosed porch and closet addition that lie within the required 60-ft setback from the centerline of Caroline St at 1310 Caroline St, on land described as: Lot 18, Block 2 of Boucher's Addition. Town of Campbell.

Appearing in favor: Carroll A Johnson, 1310 Caroline St, La Crosse, WI 54603.

REMARK Johnson, Carroll: One thing I've been very proud of is the 30 years that I've been there, 22 of them since my divorce; I have expanded that house from the outside. The siding, making the house look as beautiful as it could possibly be. A room at a time so that I could get around with my wheelchair. And then also the front room where it would drop down, I would tear my toes up all the time with my wheelchair. The living room finally got done. And then what happened is I saw the interest rates were low and I thought I would call the bank and then I found they were almost a point lower. So it was the last time I was going to have an opportunity to have my son's room raised up so it was level. And then also the porch I have never gotten to use the porch because it has always sat down and then the paneling always rots. Then you got a northwest wind plus with the cold wind, rain, and snow. My kids actually suggested the closet inside because there's not enough room in there. And it was a good idea that we did that. We had somewhere to put stuff because the closet he had was absolutely a little thing filled to the top. This is seven by five feet closet on the porch. The porch was 22 feet, so we just took 7 feet away from it. That property has got the best roof on it. On block. It's got the nicest siding. I'm real proud of it. The value of the property has exceeded massively from 23,000 to 86,000 in value in the 30 years. So I'm real proud of it. All I have is my property and my used car. I spent \$7,000 on the porch and I spent 18,000 for everything. I appreciate the appeal. Thank you.

Appearing in favor: Adam Johnson, 2218 Charles St, La Crosse, WI 54603.

REMARK Johnson, Adam: Obviously my dad has spent a lot of time and money making his house even just livable for his conditions. It's gone from a slum to a lap of luxury for him. He didn't understand the...he thought he was just closing in the front porch and didn't understand all the things that he had to do. And he was not given the right things, people telling him what he needed to do. So he did make some mistakes. He really didn't add on anything to it. He just closed in the front porch. Other than that it's just fixtures. None of the posts were changed on the front porch. It's all the original settings. None of the structure was changed.

Appearing in opposition: None.

Correspondence: None.

Discussion:

REMARK Sampson: I would like to comment on making accommodations under the ADA act. It requires local government to make reasonable accommodations if it ameliorates, or makes better, a person with a physical disability. The granting of a variance or permit makes that condition better. The local government is basically compelled to do that under case law and federal law.

Motion Houlihan/Frank to approve Appeal No. 2011-4 as presented.

2 Aye, 0 No. Motion carried unanimously.

Motion Houlihan/Frank to adjourn.

2 Aye, 0 No. Motion carried unanimously.