Dane County Board of Adjustment Minutes
November 20, 2008

NOTE: These minutes reflect the notes of the recorder and are subject to correction and approval at a subsequent meeting of the Committee.

DANE COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE NOVEMBER 20, 2008 MEETING

MEMBERS PRESENT: Carlton Hamre, Al Long, Steven Schulz, Sue Studz.  
Board Member Glenn Reynolds was excused.

OTHERS PRESENT: Assistant Zoning Administrator Kris Schutte, Zoning Administrator Roger Lane

I. CALL TO ORDER:  
Chair Schulz called the meeting to order at 6:32 p.m. in Room 309 of the City-County Building and made an announcement regarding rules and procedures followed by the Board.

II. APPROVAL OF MINUTES
Motion by Schulz/Hamre to approve the Minutes of the October 9, 2008 Site Inspections of the Dane County Board of Adjustment as amended to show Hamre and Schulz attending. Long confirmed he did not attend. Motion carried, 3 – 1 to approve the Minutes as amended. Studz abstained, stating she was not present at the October 9, 2008 meeting.

Motion by Hamre/Long to approve the Minutes of the October 23, 2008 Public Hearing of the Dane County Board of Adjustment. Motion carried, 3 – 1. Studz abstained, stating she was not present at the October 23, 2008 meeting.

Motion by Studz/Hamre to approve the Minutes of the November 13, 2008 Site Inspections of the Dane County Board of Adjustment as submitted. Motion carried, 3 – 1. Long abstained, stating he was not present at the November 13, 2008 meeting.

III. PUBLIC HEARING FOR NOVEMBER 20, 2008 APPEALS
1. Appeal 3549. Appeal by Madison High Crossing Lodging Invest II LLC (Paul Bartleson, Kraemer Brothers LLC, agent) for a variance from maximum allowable height of a structure permitted within the Dane County Regional Airport Height Limitation Zone as provided by Section 78.03, Dane County Code of Ordinances, to allow temporary construction crane for proposed hotel construction at 2702 Crossroads Drive, Section 27, T08N R10E, City of Madison.

COMMUNICATIONS:
10/16/2008 Email forwarded by Bartleson from George Hank, Director, Building Inspection Division, City of Madison, dated 10/15/2008 explaining that the City does “not issue permits or approvals for cranes,” with copy of City of Madison Building Permit for “New Fairfield Inn and Suites” dated 08/19/2008. At Schulz’s request, Schutte read the email into the Record.
11/18/2008 Federal Aviation Administration (FAA) “Temporary Determination of No Hazard to Air Navigation” approval. Schutte passed this document to the Board members present for their review. 11/19/2008 Letter to Schutte from John Robinson, Director of Operations and Public Safety, Dane County Regional Airport, including seven (7) “conditions the Airport requests the Board of Adjustment establish for issuance of the requested temporary variance for the construction crane…” for the Fairfield Inn project. At Schulz’s request, Schutte read the email into the Record.

VARIANCE REQUESTED: Purpose: To allow temporary construction crane for proposed hotel construction.
Maximum allowable height of structure as per Dane County Regional Airport Height Limitation Zoning Map: 1076 feet Above Mean Sea Level (AMSL)
Proposed overall height of temporary construction crane at Fairfield Inn hotel site: 1104 feet AMSL, amended to 1119 AMSL feet based on added fill at site.

NEEDS VARIANCE: Originally 28 feet, amended to 43 feet.
IN FAVOR:  Paul Bartleson, Senior Safety Director, Kraemer Brothers LLC, Plain, WI (personal address Verona, WI)

OPPOSED:  None

ZONING ADMINISTRATOR’S COMMENT:  None

Motion:  Hamre/Long to grant variance of 43 feet from maximum 1076 feet Above Mean Sea Level (AMSL) to permit 150 feet tall temporary construction crane as existing and proposed, with maximum elevation of 1119 feet Above Mean Sea Level, with all Conditions of 11/18/2008 FAA letter and 11/19/2008 Dane County Regional Airport letter.

Finding of Fact:
1.  Kraemer Brothers LLC is the contractor for a new four-story Fairfield Inn hotel located approximately two miles east of the Dane County Regional Airport in the Airport Height Limitation Zone and in the City of Madison.  Construction of the hotel requires a 150 foot tall AGL (above ground level) temporary construction crane.  Construction is under way.
2.  Dane County Zoning staff observed the crane in operation in the Airport Height Limitation Zone (AHLZ) in October 2008.  A Stop Work Order was issued to Kraemer Brothers LLC, the crane operator and contractor for the hotel project.
3.  A Public Hearing Notice for the 10/23/2008 Board of Adjustment Public Hearing included Appeal 3549, but had incomplete and incorrect descriptions of the property owner, location and proposed temporary crane use.  No one appeared in favor of or in opposition to Appeal 3549; the Board took no action on the appeal at the 10/23/2008 Public Hearing.  Schutte notified Bartleson that a new Public Hearing for Appeal 3549 would be held on November 20, 2008 after the corrected, legal Public Hearing Notice was published.
4.  Schutte showed the current Airport Height Limitation Zone (AHLZ) map to the Board members.
5.  Bartleson provided a letter from Ryan Wilgreen, Registered Land Surveyor, Excel Engineering, Fond du Lac, WI, verifying the required conversion between the City of Madison Vertical Datum and the North American Vertical Datum 1988 (NAVD88) of the AHLZ Map.
6.  Bartleson provided an Elevation Verification map showing the existing heights above sea level of buildings near the proposed Fairfield Inn construction site, and showed the Board members the locations on the Fairfield Inn site of the temporary construction crane.  Since the site was filled when the area was developed, the maximum elevation above mean sea level of the proposed temporary crane was found to be higher than originally shown on the appeal application.
7.  Bartleson explained that Kraemer Brothers LLC has cooperated with Dane County Regional Airport officials by continuing work with the crane at elevations below the Airport Height Limitation Zone maximum height.  He told the Board members present that Kraemer Brothers understands and is willing to comply with Conditions suggested by the Airport and FAA.

Conclusions:
1)  Unnecessary Hardship:  Compliance with Ordinance requirements would be unnecessarily burdensome for a use permitted in the City of Madison, subject to the Airport Conditions.
2)  Unique Limitations of the Property:  The property is located in the Dane County Regional Airport Height Limitation Zone.
3)  No Harm to Public Interests:  All required permits have been obtained, and the applicant is willing to abide by the requested Conditions of the Dane County Regional Airport and FAA.

Motion carried:  4 –0.

2.  Appeal 3550.  Appeal by Kotlowski Living Trust (Michael Ziehr, Calkins Engineering LLC, agent) for a variance from minimum required lot area in the Shoreland District as provided by Sections 11.03(1) and 10.05(4), Dane County Code of Ordinances, to permit combining existing parcels by Certified Survey Map for single-family residential use as proposed, on property located across from 3070 Shadyside Drive, being West 1/2 Lot 1, West 1/2 Lot 2, East 1/2 Lot 9, and East 1/2 Lot 10, all in Block 2, Quam’s Addition to Shadyside Park, Section 30, Town of Pleasant Springs.
COMMUNICATIONS: Town of Pleasant Springs -- 10/29/2008 Acknowledgement; 11/13/2008 Call to Schutte from Town Clerk -- Town action will not be complete until 12/17/2008.
11/18-19/2008 -- Received from Brody Richter, attorney for Kotlowski:
• Floor plans, elevations, more detailed site plan, lot coverage calculations and statement;
• Statements from neighbors Eugene K. Wick, Bill Lehman, and William H. Schiel, declining to sell any land to Kotlowski. (Staff Note: Schiel land, under ownership as Pleasant Springs Development Corp., is Lot 16, Country Club estates, and is not contiguous to the Kotlowski parcels.)

VARIANCE REQUESTED: Purpose: To permit combining existing parcels by Certified Survey Map for single-family residential use, as proposed:

Lot Area Variance:
Minimum lot area required: 15,000 square feet (SF)
Actual lot area: 13,087 SF
VARIANCE NEEDED: 1,913 SF

Zoning Administrator Roger Lane left the meeting at approximately 7:05 p.m. to attend the Dane County Board of Supervisors meeting.

IN FAVOR:
Brody C. Richter, attorney, DeWitt Ross & Stevens, S.C., Madison, WI, representing the Kotlowskis
Dean Harding, Dean Thomas Homes, Stoughton, WI (recommended approval)

OPPOSED: None

ZONING ADMINISTRATOR’S COMMENT: No objection and no recommendation, as reported by Schutte. AZA Schutte reiterated the concern of the Town of Pleasant Springs Clerk that the Town be given an opportunity to consider this appeal before Board of Adjustment action.

Finding of Fact:
1. The Kotlowskis own two tax parcels, each consisting of two halves of platted lots in Quam’s Addition to Shadyside Park (platted 1928). Both parcels are zoned R-3 Residential, served by public sewer, and located in the Shoreland district of Lake Kegonsa, being within 1000 feet of the lake, which is located across Shadyside Drive to the north. The current uses of these parcels include an existing 2-stall garage, trampoline and boat storage.
2. Schutte provided a map showing the Kotlowski parcel and the location of neighbors’ parcels.
3. Kotlowski originally proposed only to combine the two tax parcels by Certified Survey Map (CSM) to eliminate the existing “interior” lot lines. Each of the tax parcels is 66 feet wide by 100 feet deep as platted. The total lot width of the proposed CSM is 132 feet platted/131.97 feet surveyed with total lot area of 13,087 square feet (SF).
4. At the Board of Adjustment Site Visit on 11/13/2008, it was learned that Mr. Kotlowski plans to build a new single-family residence for his mother, with an in-ground pool and 10’x13’ accessory building near the pool as accessory structures. The existing garage would be removed. The new home and accessory uses would meet all required setbacks, lot coverage and height requirements of the Zoning Ordinance.
5. Although the proposed CSM lot meets the minimum 100 feet of lot width at the building setback line required for a sewered lot in the Shoreland district, it does not meet the minimum 15,000 SF of required lot area. A variance is needed to complete the CSM review, approval and recording, and for a Zoning Permit for the proposed new home.

Motion: Studz/Long to abey the appeal to the December 2008 Board meeting to allow action by the Town of Pleasant Springs.
Motion carried: 4 – 0.

3. Appeal 3551. Appeal by Mildred Krause (Dean Harding, Dean Thomas Homes, agent) for variances from minimum required lot width and minimum required lot area for an existing substandard platted lot in the Shoreland District as provided by Sections 11.03(1) and 10.05(4), Dane County Code
of Ordinances, to permit removal and replacement of existing single-family residence as proposed, at 3143 Sunnyside Street, being Lot 10, Lee’s Park, Section 18, Town of Pleasant Springs.

COMMUNICATIONS:
10/10/2008 Dane County Shoreland Erosion Control Permit SE2008-0281 issued.
11/18/2008 Email from Quam Engineering LLC with 09/25/2008 Floodplain Elevation Certificate and 09/18/2008 Grading and Erosion Control Plan showing 100-Year Flood Elevation line (845.0 Above Mean Sea Level) at shoreline.

VARIANCES REQUESTED: Purpose: To permit removal and replacement of existing single-family residence as proposed
Lot Area Variance:
Minimum lot area required: 15,000 square feet (SF)
Actual lot area: 6,950 more or less SF
VARIANCE NEEDED: 8,050 more or less SF

Lot Width Variance
Minimum lot width at building setback line required: 100 feet.
Actual lot width: 50.00 feet at building setback line.
VARIANCE NEEDED: 50.00 feet at building setback line.

IN FAVOR: Dean Harding, Dean Thomas Homes, Stoughton, WI, agent and builder
Mildred Krause, Stoughton, WI, owner

OPPOSED: None

REGISTERING AS “AVAILABLE FOR INFORMATION ONLY:
Tom Castree, Stoughton, WI, neighbor, 3141 Sunnyside Street, abutting Mrs. Krause’s lot on the west
Pat Castree, Stoughton, WI, neighbor

ZONING ADMINISTRATOR’S COMMENT: No objection/no recommendation reported by Schutte.

Motion: Hamre/Schulz to grant a variance of 8,050 more or less square feet (SF) from the minimum 15,000 (SF) required lot area and a variance of 50.00 feet from the minimum 100 feet required lot width at the building setback line in the Shoreland district to permit removal and replacement of existing single-family residence as proposed, without conditions, but with the suggestion that the owner work toward reducing and controlling runoff.

Finding of Fact:
1. Mrs. Krause owns a 50 foot x 139 foot more or less lot in Lee’s Park, platted in 1921. It is served by public sewer, zoned R-3 Residential, and is in the Shoreland district, on the shore of Lake Kegonsa. Mrs. Krause resides in the existing one-story house with attached one-car garage on this lot. She also owns a similar-sized, unplatted lot on the north side of Sunnyside Street, where her 2-1/2 stall detached garage is located.
2. At 50.00 feet at the building setback line and 6,950 + SF, the lot does not meet the minimum 100 feet lot width at the building setback line or the minimum 15,000 SF lot area required for building a new home in the Shoreland district.
3. Mrs. Krause proposes to remove the existing house, which is deteriorating due to substandard construction and possible mold issues, according to Harding. She would build a new 2-story, 2-bedroom house with an attached 3-stall garage, meeting all setbacks, maximum 30% lot coverage, and maximum height requirements. The new house would be located farther from the Ordinary High Water Mark of Lake Kegonsa than the existing home, but would have a similar “footprint” or lot coverage area to the existing house, according to Harding.
4. In response to questions from Board members, Harding said that his contract did not include landscaping, but the existing concrete driveway would be replaced with a new concrete driveway. He also said some existing trees on the Krause lot may be diseased or dying, but would be
protected during construction.

5. In response to Board members’ questions about how run-off toward the west would be handled, Harding noted that there is a ‘crown’ that causes some runoff from Krause’s lot to flow toward the lake and some toward the road. It protected Mrs. Krause’s house from damage in the June 2006 flooding, but does direct natural run-off toward the west. Harding said the redevelopment of the lot would not have appreciably more impervious surface. Schutte noted that Wetlands are located beyond the parcels across Sunnyside Street.

6. The Castrees stated they had no objection to Mrs. Krause’s new house, but they expressed concern that drainage from both the Krause property and the ditch along the Town road currently affects their property adversely. They showed photos showing standing water near both houses. They suggested that Harding and Krause should be asked to control the overland runoff that drains toward the west by re-directing downspouts and/or constructing a drain or swale along the property line.

7. In rebuttal, Harding stated the redevelopment of many Sunnyside street lots has affected drainage. He said Mrs. Krause’s new house would be raised to the flood protection elevation for insurance purposes, and then downspouts would be directed toward the road rather than the lake, which may improve the situation. Schulz shared the Castrees’ photos with Harding for informational purposes. Harding observed that the Castrees’ house may be lower than the Town road, exacerbating drainage problems. Other methods to improve drainage were discussed, including rain gardens and pervious pavers, but Harding said soil permeability, flat contours and a high water table would make these ineffective.

Conclusions:

1. Unnecessary Hardship: The variance would allow the property to continue to be used for its permitted residential purpose; denying the variances would be unnecessarily burdensome. The variance provides Chapter 10 - Zoning property rights while supporting the purposes of Chapter 11 - Shoreland zoning.

2. Unique Limitations of the Property: The lot was platted in 1921, before the Zoning or Shoreland Ordinances were enacted. No additional abutting land is available to increase lot width or area.

3. No Harm to Public Interests: No additional variances are needed, minimizing the relief requested. The proposed house will be father from the lake than the existing house. The record reflects that the builder (Harding) stated the Dane County Shoreland Erosion Control Permit requirements and his intention to direct new downspouts toward the north (lake) and south (road) will not cause more runoff to flow directly toward the Castrees’ house.

Motion carried: 4 – 0.

Zoning Administrator Roger Lane returned to the meeting at 8:24 p.m.

IV. OTHER BUSINESS

1. **2009 Meeting Schedule**: Schutte did not distribute a draft 2009 Board of Adjustment meeting schedule. She reported there were conflicts that eliminated every evening other than the fourth Thursday of each month from consideration. Instead, she conferred with County staff for the Capital Area Regional Planning Commission (CARPC), and learned that CARPC will meet only once a month during 2009, usually on the second Thursday of the month. The Board members present agreed by consensus to continue with the current schedule (Site Visit on the second Thursday and Public Hearing on the fourth Thursday of each month). Schutte will prepare a schedule for Board approval. No action was taken by the Board.

2. **Proposed changes to Dane County Board of Adjustment “Rules and Procedures”**: Schutte asked that Chair Schulz and Zoning Administrator Lane meet with her before the December Board meeting to review her draft copy showing proposed changes to the “Rules and Procedures.” No action was taken by the Board.
3. Zoning Administrator’s and Assistant Zoning Administrator’s Reports, including distribution of materials, if any, discussion, and possible action regarding the following topics:

A. Flood Insurance Rate Maps: Lane reported that the County Board of Supervisors has approved new Flood Insurance Rate Maps and adopted, which are being used for zoning administration purposes, but not for insurance purposes. The effective date of the maps for flood insurance purposes will be January 3, 2009. No action was taken by the Board.

B. Accessory Building Fact Sheet: Lane reported on Zoning Division efforts to create an Accessory Building Fact Sheet to simplify administration and permitting for residential, agricultural and farm accessory buildings. He also mentioned that he has suggested adding “purposes” for each zoning district to the Task Force for the Prioritized Revisions of Chapter 10 (Zoning), and that the work of the Task Force has been extended. No action was taken by the Board.

C. Temporary Structures in the Airport Height Limitation Zone (AHLZ): Schutte reported she has identified all variances granted for temporary structures in the AHLZ from 1998 to date. Lane has asked her to draft proposed Ordinance Amendment language. Schutte and Lane will ask Dane County Regional Airport officials to help sponsor needed ordinance changes. No action was taken by the Board.

D. Lawsuit filed against Board of Adjustment: Schutte received and signed (on 11/06/2008) a summons for a lawsuit by “Roger Lane, Dane County Zoning Administrator v. Dane County Board of Adjustment and Viking Village Campground & Resort, Inc. (Case No. 08CV5010, Case Type 30607, Administrative Agency Review) in Circuit Court Branch 10. “ Schutte distributed copies of the Summons and Admission of Service to members of the Board present. She reported that Planning and Development Department Director Todd Violante and Chair Schulz met with and agreed to retain the services of Attorney Teague Devitt to represent the Board in this matter. Devitt has drafted a Response to the Summons. There was no discussion, and no action was taken by the Board.

E. Zoning Board of Appeals and Adjustment Workshop: Basic – Schutte distributed a brochure and letter from the Center for Land Use Education for a Board of Adjustment workshop to be held Monday, 12/08/2008, 6:00-8:30 p.m., Beloit, WI. No action was taken by the Board.

4. Distribution of materials, discussion, and possible action regarding agendas for the December 11, 2008 Site Inspections and the December 18, 2008 Public Hearing of the Dane County Board of Adjustment: Schutte reported there is only one application for the December 18, 2008 Board of Adjustment Public Hearing:

Appeal 3552. Administrative Appeal by Laura Wierzbicki & Greg Griswold appealing the Zoning Administrator’s decision as described in a Violation Notice dated May 21, 2007 and in an electronic mail notice dated November 3, 2008, regarding “Storage of, repair to and sales of used boats” on property located at 3488 County Highway J in the SE 1/4 SW 1/4 Section 25, Town of Cross Plains.

She also noted there would be one returning item from the 11/20/2008 PH: Appeal 3550, Kotlowski, Pleasant Springs. Roger Lane reminded the Board members present that no discussion of the Administrative Appeal could take place, since no Public Hearing had been noticed. The Board considered scheduling for Appeal 3552 and Appeal 3550. The Board took no action, but Chair Schulz directed Schutte to place Appeal 3552 on the Public Hearing Agenda for 12/18/2008, rather than on a special meeting agenda. Chair Schulz stated he might consider allowing Appeal 3550 to be considered before Appeal 3552 on the 12/18/2008 Agenda, as allowed by the Board’s adopted Rules and Procedures. Schulz directed Schutte to inform all parties that briefs must be submitted by 4:30 p.m. on Monday December 8, 2008 (two full days before the site visits). Schulz, Long, Hamre and Studz said they planned to attend the 12/11/2008 Site Visits and 12/18/2008 Public Hearing, so a quorum would be present.

V. ADJOURNMENT:

Motion: Hamre/Schulz to adjourn. Motion carried: 4 – 0 at 8:52 p.m.
MINUTES FILED WITH THE COUNTY CLERK: December 4, 2008.

MINUTES FILED IN THE OFFICE OF December __, 2008.

SIGNED BY: Roger W. Lane, III
Dane County Zoning Administrator

THE MINUTES OF THE NOVEMBER 20, 2008 BOARD OF ADJUSTMENT MEETING
WERE APPROVED BY THE BOARD OF ADJUSTMENT ON _______________
AS PRESENTED. / AS AMENDED TO INCLUDE THE FOLLOWING:

SIGNED BY: Steven Schulz
Chair, Dane County Board of Adjustment