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 OCTOBER 22, 2009 MEETING**

**MEMBERS PRESENT:** Alan Colvin, Carlton Hamre, Al Long, Steven Schulz, Sue Studz.

**OTHERS PRESENT:** Assistant Zoning Administrator Kris Schutte

I. **CALL TO ORDER:**
Chair Schulz called the meeting to order at 6:33 p.m. in Room 309 of the City-County Building and made an announcement regarding rules and procedures followed by the Board.

II. **PUBLIC COMMENT**
Chair Schulz offered an opportunity for public comment on general items not included on the current agenda. There were no registrants for public comment.

III. **APPROVAL OF MINUTES**

1. **Motion** by Colvin/Schulz to approve the minutes of the September 24, 2009 Public Hearing of the Dane County Board of Adjustment and the Minutes of the October 8, 2009 Site Inspections of the Dane County Board of Adjustment with the following correction to the Minutes of the October 8, 2009 Site Inspections: Under Item IV. Other Business 1., the reference to the “Agenda for the September 24, 2009 Public Hearing” of the Board be corrected to read “Agenda for the October 22, 2009 Public Hearing.”

   Assistant Zoning Administrator (AZA) Schutte was recognized by Chair Schulz. She noted that a correction was needed for the September 24, 2009 Minutes on Page 6 of 8 under item IV. Other Business 1.a.1), in which the second line of the bulleted section should include the word “be”, not the letter “b.” Colvin and Schulz accepted Schutte’s additional correction as a friendly amendment.

   **Motion carried,** 5 – 0 as corrected for the September 24, 2009 Minutes and 4 – 0 – 1 as corrected for the October 8, 2009 Minutes, with Hamre abstaining, as he was not present at that meeting.

IV. **PUBLIC HEARING FOR OCTOBER 22, 2009 APPEALS**

1. **Appeal 3580.** Appeal by Dennis & Deborah Zeier (Steve Holzhauer, AIA, agent) for variances from minimum required lot area and minimum setback from Ordinary High Water Mark as provided by Sections 10.05(4), and 11.03(1) and (2), Dane County Code of Ordinances, to permit additions and alterations to an existing single-family residence on two existing substandard platted lots in the Shoreland District, at 2904 Waubesa Avenue, being Lots 25 and 26, Block 3, Waubesa Beach Second Addition, Sections 5 and 8, Town of Dunn.

   **COMMUNICATIONS:** Town of Dunn – 10/01/2009 Acknowledgment; 10/21/2009 Action: Town Board recommends approval “conditioned on prevention of stormwater runoff generated on this property from draining to neighbors’ properties and to the lake.” Also, neighbors at 2895 Waubesa Ave. “expressed concern about the proposed garage encroaching on their ten foot lake access easement along the south lot line, but “[t]he Zeiers confirmed that their construction would not encroach on the easement.”

   **VARIANCES REQUESTED:** Purpose: Rebuild single-family residence on existing foundation, with garage and deck additions and other alterations (including second story), on two substandard lots (to be combined by Deed Restriction) in the Shoreland district.

   **Lot Area Variance:**
   Minimum lot area required: 15,000 square feet (SF).
   Actual lot area: 14,462 more or less SF.
   **VARIANCE NEEDED:** 538 more or less SF

   **Setback from Ordinary High Water Mark (OHWM) Variance:**
   Minimum averaged setback from OHWM required: 63.8 feet
   Actual setback from OHWM: 54.0 feet from proposed steps extending to east from proposed deck
   **VARIANCE NEEDED:** 9.8 feet.
IN FAVOR:
Dennis Zeier, Madison, WI -- owner
Steve Holzhauer, Middleton, WI -- architect

ZONING ADMINISTRATOR’S COMMENTS: AZA Schutte reported that Zoning Administrator Lane recommended approval of the variances, including the request for the stairs extending to 54 feet from the OHWM. Mr. Lane suggested including a Condition that the existing “Shed” be removed, since it appears to be a non-conforming use and removal was a condition that was not met historically.

OPPOSED: None
OTHER: In response to a Board member’s question, Schutte reported she had not received any comment on this appeal from the Wisconsin Department of Natural Resources.

Board Member Long suggested bifurcation of the variance appeals for lot area and setback from Ordinary High Water Mark. Chair Schulz agreed.

Motion: Hamre moved to grant both variances to lot area and setback from Ordinary High Water Mark, with Town Conditions, since the applicants were replacing an existing house on the existing foundation; the proposed deck would be two feet farther from the lake than the neighbor’s deck; and the new construction was the best use of the property. In response to a question from the Chair, Hamre said he did not intend any Condition regarding the existing shed. Motion failed for lack of a second.

Board Member Colvin asked again for bifurcation of the variances.

Motion: Schulz/Long to grant a variance of 538 more or less square feet (SF) from the 15,000 SF minimum lot area required. Colvin suggested a friendly amendment to include the Town of Dunn’s CONDITION that stormwater runoff generated on this property be prevented from draining to neighbors’ properties and to the lake. Schulz and Colvin accepted the amendment.

Conclusions regarding the variance from minimum required lot area: 
1) Unnecessary Hardship: It would be unnecessarily burdensome to prevent the continued use of this property for its permitted residential use.
2) Unique Limitations of the Property: The two lots will continue to be used for one single-family residence. The lots were created in 1911, and the lot area cannot be increased.
3) No Harm to Public Interests: Re-using the existing foundation reduces the impact on Shoreland. At 538 SF, the need for a variance is minimal.
Motion carried: 5 – 0 with CONDITION.

Motion: Hamre moved to grant a variance of 9.8 feet from the required minimum averaged setback of 63.8 feet the Ordinary High Water Mark, including the Zoning Administrator’s recommendation that the shed be removed and with the Town of Dunn’s CONDITION.

Board members and AZA Schutte discussed the Zoning Administrator’s recommendation. AZA Schutte confirmed that the shed may be used as a conforming boathouse, under provisions of the Zoning and Shoreland Ordinances. Mr. Zeier stated his intention to do so.

Hamre amended his Motion to delete the Zoning Administrator’s recommendation that the shed be removed.

Board members discussed whether the proposed 8-foot deck and 6-foot stairs were the applicant’s personal preference, and therefore a self-imposed hardship. AZA Schutte explained the deck’s history, and showed that the 63.8 foot setback from OHWM would allow approximately a five-foot walkway on the lake side of the house. Mr. Holzhauer was allowed to state his reasons for designing
the proposed deck near the center of the two lot property to provide optimized views and privacy. There was no second to Hamre’s Motion. **Motion withdrawn** by Hamre.

**Motion:** Long moved to grant a variance of 3.8 feet from the required minimum averaged setback of 63.8 feet from the Ordinary High Water Mark, to allow the 8-foot deck shown but not the 6-foot stairs shown on the site plan submitted with the variance application, with **CONDITION** that the shed be removed and with the Town of Dunn’s **CONDITION** that stormwater runoff generated on this property be prevented from draining to neighbors’ properties and to the lake.

Board members discussed the status of the existing shed as a non-conforming use. Schutte confirmed that the shed as a non-conforming use could be converted to a legal boathouse use. There was no second to Long’s Motion. **Motion withdrawn** by Long.

**Motion:** Studz/Hamre to grant a variance of 3.8 feet from the required minimum averaged setback of 63.8 feet from the Ordinary High Water Mark, to allow the 8-foot deck shown but not the 6-foot stairs shown on the site plan submitted with the variance application.

**Finding of Fact:**
AZA Schutte read a Staff Report into the record, including the following facts:

1. The Zeiers own property located in the R-3 Residential zoning district and Shoreland district of Lake Waubesa. A single-family house on this property (over 40 years old, according to the agent) is located on two lots of a plat recorded in 1911, before Shoreland zoning was adopted by Dane County in 1970. The one-story house with finished lower level has four bedrooms and two baths. On the lake (east) side of the house, a deck extends from the main level, with stairs 55 feet from the Ordinary High Water Mark (OHWM). A below-grade entrance serves the lower level.

2. At 116 feet, the combined width of the Zeiers’ two lots, exceeds the minimum 100 feet required at the building setback line in the Shoreland district, and does not need a variance. At 14,462 square feet (SF), the combined lot area of the Zeiers’ two lots does not meet the minimum 15,000 SF required in the Shoreland district. The existing house complies with front and side yard setbacks and maximum lot coverage, but part of the existing deck and steps encroach into the averaged minimum 63.8 feet setback from the OHWM.

3. A 12 foot x 18 foot accessory building shown as a “Shed” on the site plan submitted with the Appeal is located between the house and lake. Historically, this building was first called a "gazebo" and then a “boathouse." AZA Schutte noted that the only permitted uses for accessory buildings in the portion of the Shoreland setback area between the Ordinary High Water Mark and 35 feet landward are boathouses, boathoists and piers, and that a maximum of 200 square feet of “minor structures” are permitted from 35 feet from the OHWM line to the house. Therefore, the portion of the existing “Shed” within the 35-foot setback from OHWM area may be used legally only as a boathouse, as defined in Section 10.01(6a) and 11.015(2) of the Dane County Code of Ordinances (DCCO).

4. In 1995, a variance for setback from OHWM was granted to allow a deck to be added with a condition that the “gazebo” be removed. The “gazebo,” which is the structure currently shown as a “Shed,” was not removed. Zoning Division records do not include any permits for the gazebo/shed; the Board of Adjustment’s reason for requiring its removal in 1995 was “visionary obstruction to lake.” A new owner enclosed the deck in 1997 without a permit, then applied for variances and was denied twice. After the amount of enclosure was reduced, the Variance was granted and a Zoning Permit was issued. Zoning Division records show the gazebo or shed was apparently considered to have been converted to legal boathouse use, although no Zoning Permit was issued.

The Zeiers and their agent addressed the Board:

5. They considered remodeling their deteriorating second home, but chose to rebuild, reusing the existing concrete foundation, to reduce land disturbance in the Shoreland district. The proposed footprint of the new habitable area would not extend beyond the existing house footprint. An attached
one-story, three-car garage would be added on the south side of the existing house. The new house would be two stories high as seen from the street, with a walk-out lower “third” level on the lake side.

6. The new house and garage would meet front and side yard setbacks, and with lot coverage of 23.5% of the two lots, including the shed, would comply with the maximum 30% lot coverage requirement. However, a proposed 16 foot x 34 foot deck would ‘wrap around’ the southeast corner of the house on the lake side, replacing and relocating the existing deck and stairs. The Zeiers request that the new 8-foot deck and 6-foot wide stairs extending from the deck toward the lake be one foot closer to the OHWM (54 feet) than the existing stairs, to allow adequate use and preserve the view and their privacy on the lakefront side of the rebuilt house. To comply with the minimum averaged setback from OHWM, the deck would be reduced to a 5+- foot-wide walkway.

7. The Zeiers indicated their willingness to:
   a. Record a Deed Restriction combining the two lots for Zoning purposes to comply with Section 10.16(3)(b) DCCO;
   b. Bring the lowest floor level (which is currently lower than the 100-Year Floodplain for Lake Waubesa), and surrounding ground into compliance with Dane County Floodplain rules;
   c. Respect the ten-foot easement along the south property line which allows lake access for the owners of a parcel across Waubesa Avenue; and
   d. Amend existing runoff patterns to protect the neighbors’ lots and the lake.

8. Board members discussed the effect on averaging the setback from OHWM for the two adjacent neighbors if the 9.8 foot variance from setback from OHWM were granted, and made the point that a completely new house on this lot could meet the minimum 75 foot setback from OHWM, or the proposed house without the deck and stairs on the east side as shown could meet the minimum averaged setback of 63.8 feet from OHWM.

Conclusions:
1. Unnecessary Hardship: The variance preserves the rights of the property owner while increasing the setback of the proposed deck.
2. Unique Limitations of the Property: Historical use of the property is maintained.
3. No Harm to Public Interests: Removing the stairs from the proposed design minimizes relief and increases the averaged setbacks for adjacent structures.

Motion carried: 5 – 0.

V. OTHER BUSINESS:
1. Zoning Administrator’s and Assistant Zoning Administrator’s Reports, including distribution of materials, if any, discussion, and possible action regarding the following topics:
   a. Final version of amended Dane County Board of Adjustment Rules and Procedures, as approved at the 09/24/2009 Board meeting: Schutte distributed copies to the Board members present and told the Board the new Rules would be posted on the County’s web site. Chair Schulz thanked Board members and Schutte for their contributions to the new version. No action was taken by the Board.
   b. Ordinance Amendment regarding temporary structures in the Airport Height Limitation Zone: Schutte had no report. No action was taken by the Board.
   c. Announcement of appointment of Second Alternate Bill (William C.) Olson, Town of Springdale: Schutte distributed the announcement and told the Board that Mr. Olson planned to attend a future meeting. No action was taken by the Board.
   d. Training opportunities for Board of Adjustment members: Schutte explained that there were no Zoning Division budget funds available for the next available Zoning Board Workshop scheduled for October 29, 2009 in Green Bay, but that she had received approval from Zoning Administrator
Lane to try to organize a workshop locally for Dane and surrounding Counties, cities and villages. No action was taken by the Board.

2. Discussion, and possible action regarding Agendas for the regularly scheduled meetings of the Dane County Board of Adjustment: November 12, 2009 Site Inspection and November 19, 2009 Public Hearing. (Note the November Public Hearing is held on the second Thursday of the month, rather than on the third Thursday, due to the Thanksgiving holiday.) Schutte reported that four applications for the November meeting had been received: Two in Westport and two in Dunn. No action was taken by the Board.

VI. ADJOURNMENT:

Motion: Studz/Schulz to adjourn. Motion carried: 5 -- 0 at 8:02 p.m.

Respectfully submitted,

Kristine L. Schutte, Dane County Assistant Zoning Administrator, Recording Secretary

MINUTES FILED WITH THE COUNTY CLERK: October __, 2009.

MINUTES FILED IN THE OFFICE OF THE DANE COUNTY PLANNING AND DEVELOPMENT DEPARTMENT, DIVISION OF ZONING:

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

THE MINUTES OF THE October 22, 2009 BOARD OF ADJUSTMENT MEETING WERE APPROVED BY THE BOARD OF ADJUSTMENT ON _______________ AS PRESENTED. / AS AMENDED TO INCLUDE THE FOLLOWING:

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