DANE COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE SEPTEMBER 30, 2010 MEETING

MEMBERS PRESENT: Alan Colvin, Al Long, Steven Schulz, Sue Studz, First Alternate Arlan Kay.
MEMBERS EXCUSED: Carlton Hamre
OTHERS PRESENT: Zoning Administrator Roger Lane, Assistant Zoning Administrator Kris Schutte

I. CALL TO ORDER:
Chair Schulz called the meeting to order at 6:32 p.m. in Room 357 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
Motion by Long/Studz to approve the Minutes of the July 22, 2010 Public Hearing of the Dane County Board of Adjustment and the Minutes of the September 16, 2010 Site Inspection meeting of the Dane County Board of Adjustment. Motion carried, 5/0.

NOTE: There was no Public Hearing meeting or Site Inspection meeting in August 2010, since no variance or administrative appeal applications were received.

IV. PUBLIC HEARING FOR SEPTEMBER 30, 2010 APPEALS
1. Appeal 3604 by Jeffery & Deanna Aussprung for variances from minimum lot area and minimum lot width at the building setback line for an existing substandard platted lot in the Shoreland District, as required by Sections 11.03(1) and 10.05(4) Dane County Code of Ordinances, to allow removal and replacement of a single-family residence at 4834 Morris Court, being Lot 11, Block 1, Morris Park and adjacent lands in the NE 1/4 SE 1/4, Section 33, Town of Westport.

VARIANCES REQUESTED: Purpose: Allow removal and replacement of a single-family residence on an existing substandard Shoreland district lot.
Lot Area Variance:
Minimum lot area required: 15,000 square feet (SF).
Actual lot area: 8,980 SF.
VARIANCE NEEDED: 6,020 SF.

Lot Width Variance
Minimum lot width at building setback line required: 100 feet.
Actual lot width: 48.96 feet at building setback line, as per 07/2010 survey / 48.9 feet as platted.
VARIANCE NEEDED: 51.04 feet / 51.1 feet.

IN FAVOR:
Jeff Aussprung, Waunakee, WI, owner
Dee Aussprung, Waunakee, WI, owner
Dan Paulson, Paulson & Associates, LLC, DeForest, WI, surveyor/engineer
Kevin Acker, Premier Builders, Waunakee, WI, building contractor
Richard Strohmeyer, The Bruce Company, Middleton, WI, landscaping contractor
Todd Boetzel, The Bruce Company, Middleton, WI, landscaping contractor
ZONING ADMINISTRATOR’S COMMENTS: Zoning Administrator Roger Lane discussed the purpose of Section 10.04(6) Dane County Code of Ordinances (DCCO), which prohibits changes to existing grade at and within 5 feet of property lines. He described how the Aussprungs’ proposal for retaining walls along and near side lot lines, and also within the 5 foot setback near the shoreline, would violate this section, and may adversely affect neighbors’ lots. He listed three options available to the Aussprungs, which could be addressed during the Zoning Permit application review process: 1) Obtain approval of both neighbors for proposed changes; 2) Reduce width of proposed house; 3) Redesign the grading of the lot. At a Board member’s request, Mr. Lane read Section 10.04(6) DCCO into the record, and stated it was adopted February 19, 2010. Board members made the point that this section is not subject to direct action of the BOA, but could be a condition of variance approval. The Zoning Administrator agreed the issue could be resolved when the Zoning Permit is issued if variances are granted.

OPPOSED: None

Motion: Studz/Kay to grant variance of 6,020 square feet from the minimum 15,000 square feet of required lot area and a variance of 51.1 feet as platted (51.04 feet as surveyed) from the minimum 100 feet of required lot width at the building setback line to permit removal and replacement of a single-family residence on an existing substandard Shoreland district lot as proposed, with CONDITION (as proposed by Kay and accepted by Studz): That changes to the existing topography at and within five (5) feet of the side property lines be resolved to meet requirements of Section 10.04(6) Dane county Code of Ordinances before a Zoning Permit may be issued.

Finding of Fact:
1. Assistant Zoning Administrator (AZA) Schutte presented a Zoning Staff Report.
2. COMMUNICATIONS:
   a. Town of Westport: 07/29/2010 Acknowledgment; No Town Board action required, as per Thomas Wilson, Town Attorney/Administrator/Clerk/Treasurer: “The Town has no objection to this variance. In this instance, the Town feels this variance request is unnecessary and a hardship on the landowner.”
   b. WDNR – No comment received.
3. The Aussprungs’ property is zoned R-3 Residential, and is located in the Shoreland district of Lake Mendota. Native American burial mounds may be located in this area. If artifacts or remains are discovered during site work, the owner or contractor must stop work and contact the Wisconsin State Historical Society.
4. The Aussprungs recently purchased this property, described as a lot in the Morris Park Subdivision, platted in 1907, plus at least two parcels of vacated right-of-way of Morris Court. The total lot area, at 8,980 square feet (SF), does not meet the minimum 15,000 SF required in the Shoreland district for a sewered lot. Lot width at 48.9 feet as platted or 48.96 feet as per a July 2010 survey, does not meet the minimum 100 feet required in the Shoreland district.
5. The parcel includes an existing house and a boathouse. The house encroaches into the minimum 5 foot side yards on both sides, but meets all other setbacks. Most of the lot is steeply sloped, with some parts at more than 12% slopes shown on Dane County maps.
6. The Aussprungs have been advised that no changes to existing grade at and within five (5) feet of the side property lines are permitted without an exception from the Director of Dane County’s Land and Water Resources Department, as part of the required Shoreland Erosion Control Permit process, and/or from the Zoning Administrator, as part of the Dane County Zoning Permit review.
7. The houses on both sides of the Aussprungs’ lot were built in 1996, at a time when no variances were needed for building on Shoreland lots that did not meet minimum lot width and area requirements. Though both lots are more than 15,000 square feet in lot area, the north neighbor has only 90 feet of lot width, and the house is located 10 feet from the Aussprungs’ north property line, according to the Zoning Permit. The south neighbor’s house is located 30 feet from the Aussprungs’ south property line, according to the Zoning Permit.
8. According to Aussprung, the existing house at 4834 Morris Court, built in the 1950s, is unlivable, with mold, inoperable plumbing, and no on-site parking. He referred to photos showing the dilapidated condition of the house interior, which he distributed to Board members at the Site
Inspection. Contractors have told him the home is not suitable for remodeling/restoration.

9. The Aussprungs would remove the existing house, and build a new one-story house with a walkout lake side lower level and a 3-stall garage, complying with current Building Code standards. The proposed house also would comply with minimum setbacks and maximum lot coverage regulations, correcting the nonconforming side yards of the existing house. Proposed lot coverage, including the boathouse, would be 29.9%.

10. Aussprung is unable to obtain any additional land from neighbors, and referred to a signed statement he obtained from the Lumleys, owners of the property abutting his lot on the south.

11. Aussprung described his intentions to control site erosion and runoff with underground drains from downspouts to a rain garden, and to preserve and restore shore cover vegetation. He described his restoration of the existing boathouse, in compliance with all County regulations.

12. Board members’ concerns regarding the walk-out lower level, proposed retaining wall installation, restoration of the lake shore, native planting plans, and changes in grade along side lot lines were addressed by the applicants and their contractors.

13. REBUTTAL: After the Zoning Administrator’s comments, the Aussprungs were given the opportunity to comment. Mr. Paulson explained he had reviewed the draft ordinance before Section 10.04(6) DCCO was created, and told the Board the Aussprungs’ proposal met the intent of the ordinance by limiting runoff onto neighbors’ lots. Paulson said he conferred with Dane County Land & Water Resources Department staff to avoid adverse runoff and control erosion appropriately during design of the site grading plan.

14. Mrs. Aussprung observed the mold and deterioration of the existing house appears to be due, in part, to runoff from the lot to the north; Mr. Aussprung contended his proposed changes to existing topography would correct current runoff patterns, which flow both downhill to the south and downhill toward the lake.

15. Mr. Aussprung and his contractors expressed willingness to work with the County to minimize the height of some of the proposed retaining walls, and emphasized that the site grading plan would slow runoff.

Conclusions:

1) Unnecessary Hardship: It would be unnecessarily burdensome to prohibit use of this property for its permitted residential purpose. The existing house is unsuitable for continued residential use.

2) Unique Limitations of the Property: The substandard size lot was created in 1907, before Zoning and Shoreland regulations were in effect, and no additional land to increase lot size is available.

3) No Harm to Public Interests: The proposed new house would increase compliance with all current setbacks. The intentions stated by the owners and shown on plans they submitted, including setback of more than 75 feet from Ordinary High Water Mark, treatment of steep grades, and use of rain gardens and buried downspouts, address the purposes of Shoreland zoning. The provisions of Section 10.04(6) DCCO are intended to protect Shoreland property owners, and may be addressed and approved during the Zoning Permit application process.

Motion carried: 5 – 0.

2. Appeal 3605 by Molly Coyle for variances from minimum lot area and minimum lot width at the building setback line for an existing substandard platted lot in the Shoreland District, as required by Sections 11.03(1) and 10.05(4) Dane County Code of Ordinances, to allow removal and replacement of a single-family residence at 2916 Waubesa Avenue, being Lot 20, Waubesa Beach Second Addition, Section 5, Town of Dunn. (Appeal number corrected from 3505 to 3605 on 09/16/2010.)

VARIANCES REQUESTED: Purpose: Allow removal and replacement of a single-family residence on an existing substandard Shoreland district lot.

Lot Area Variance:
Minimum lot area required: 15,000 SF.
Actual lot Area: 10,961 SF.
VARIANCE NEEDED: 4,039 SF
Lot Width Variance
Minimum lot width at building setback line required: 100 feet.
Actual lot width: 79.11 feet at building setback line.
VARIANCE NEEDED: 20.89 feet.

IN FAVOR: Molly Coyle, Madison, WI

ZONING ADMINISTRATOR’S COMMENTS: Zoning Administrator Roger Lane explained the Zoning Division’s administration of the Flood Storage District (FSD), adopted in January 2010. It prohibits filling in certain Flood Fringe areas identified by the WDNR. In response to a Board member’s question, he differentiated between building permitted in non-FSD Flood Fringe areas (requiring raising the structure and filling around it to protect it from flooding), as opposed to unbuildable FSD properties, where flood storage volume must be preserved. Mr. Lane explained that the County’s computerized mapping of the FSD elevation must be verified by a detailed, accurate topographic survey. AZA Schutte verified that the most current survey showed that Ms. Coyle’s proposed house will be “out” of, or higher than, the FSD elevation. Mr. Lane recommended that an erosion control fence be placed at the FSD elevation during construction, as a physical barrier showing that no fill is permitted on the “shore” side of the fence.

OPPOSED: None

Motion: Studz/Schulz to grant a variance of 4,039 square feet (SF) from minimum 15,000 SF of lot area and a variance of 20.89 feet from minimum 100 feet lot width at the building setback line, both as required for a sewered lot in the Shoreland district, to allow removal and replacement of a single-family residence on an existing substandard Shoreland district lot, as proposed.

Finding of Fact:
1. Assistant Zoning Administrator (AZA) Schutte presented a Zoning Staff Report.
2. COMMUNICATIONS:
   a. Town of Dunn: 08/06/2010 Acknowledgment; 09/20/2010 Action (as per 09/22/2010 email from Town Clerk Cathy Hasslinger: Town Board recommends approval, “conditioned upon meeting all setback requirements and preventing storm water runoff generated on this property from draining on the neighbors. Discussion included a review of site plans and no negative input from neighbors.”
   b. WDNR – No comment received.
3. Ms. Coyle recently purchased this property, which is zoned R-3 Residential, and is located in the Shoreland and Flood Storage District of Lake Waubesa. It includes a 22 foot x 34 foot house and 24 foot x 28 foot detached garage with 13 percent more or less existing lot coverage. The detached garage at 1.7 feet from the side lot line does not meet the minimum 10 foot side yard, but existing buildings meet other minimum setbacks and yards.
4. Ms. Coyle’s’ lot is in the Second Addition to Waubesa Beach subdivision, platted in 1911. At 10,961 square feet (SF), it does not meet the minimum 15,000 SF lot area, and with lot width at the building setback line of 79.11 feet, it does not meet the minimum 100 feet at the building setback line, both as required in the Shoreland district for a sewered lot.
5. Ms. Coyle described the existing house’s deteriorated condition, with interior mold and asbestos, and slab-on-grade construction, making it unrestorable. She stated no additional lot width or area is available from abutting lots.
6. Ms. Coyle proposes to remove the existing house and garage, and build a new 2-story, 4-bedroom house over a crawl space, with a 3-stall garage, screened porch, and wrap-around lake side deck with steps. Proposed lot coverage would be less than 26%. The new house, including the deck and steps, would meet the minimum 75 foot setback from the Ordinary High Water Mark, as well as minimum front and side setbacks.
7. Ms. Coyle told Board members the proposed new house would comply with zoning and Shoreland setbacks, and with current building codes, would be energy efficient, and consistent with the improving character of the surrounding neighborhood.
8. The lot is identified on official Dane County Maps as being in the Flood Storage District (FSD), but a current survey has verified that the proposed house would be located in a Non-FSD portion of
the lot, above the 847.0 feet Above Mean Sea Level (AMSL) elevation of the FIRM Base Flood Elevation for Lake Waubesa (which is also the elevation of the FSD). The lot is buildable as long as no floor level, crawl space, or entrance is at or lower than 847.0 feet AMSL. A finished floor elevation, and elevation of utilities in the crawlspace of 849.1 ft. AMSL (the Flood Protection Elevation) is recommended, and a crawl space floor elevation of 847.1 ft. AMSL (higher than the Base Flood Elevation) is recommended.

9. No filling is allowed when landscaping in the FSD. A proposed “wet meadow planting” area near the shoreline would benefit water quality and reduce runoff from the lawn. A WDNR Permit for removing concrete and riprapping shoreline, as well as a Shoreland Erosion Control Permit, has been issued.

10. Zoning Ordinance and Shoreland Ordinance restrictions prohibit changes to existing grade at and within 5 feet of side property lines.

11. No rebuttal was needed.

Conclusions:
1) Unnecessary Hardship: It would be unnecessarily burdensome to prevent the continued residential use of this property. The existing house is unsafe and unlivable, and has exceeded its useful life expectancy. The variances balance Chapter 10 - Zoning property rights with the purposes of Chapter 11 – Shoreland district.

2) Unique Limitations of the Property: The lot was created in 1911, and no additional lot width or area is available. Part of the lot is not buildable, being located in the Flood Storage District.

3) No Harm to Public Interests: The applicant requests minimal relief, as no other variances are required. The proposed house would meet all setbacks, including the 75 foot setback from Ordinary High Water Mark, correcting existing nonconformities. The house would be located beyond the Flood Storage District boundary. The applicant intends to improve Shoreland vegetation and beauty.

Motion carried: 5 – 0.

V. OTHER BUSINESS:
1. Reports, including distribution of materials, if any, discussion, and possible action regarding the following topics:
   a) Status of reappointment of members and alternates.
      AZA Schutte distributed a memorandum from County Executive Kathleen Falk, announcing the reappointment on September 16, 2010 of Board members Hamre and Studz to three-year terms expiring June 30, 2012, and the reappointment of First Alternate Kay to a two-year term expiring June 30, 2012. Schutte also distributed updated contact information for use by the Board and Zoning staff, as well as a list of Board members for public information. The Board took no action.

   b) Status of changes to Chapter 78 – Airport Height Regulation, Dane County Code of Ordinances.
      AZA Schutte distributed copies of “Ordinance Amendment 18, 2010-11 (OA 18, 10-11) -- Amending CHs. 2 and 78, Regarding Height Regulations in Vicinity of the Airport.” She explained the process of adoption to the Board. Board members observed that ordinance changes allowing Airport staff approval of temporary cranes exceeding Airport Height Limitation Zone elevations would streamline the application process for permits and aid business and construction. Chair Schulz reported that the Dane County Towns Association Executive Board, of which he is a member, reviewed the proposed ordinance amendment and recommends approval. The Board took no action.

   c) Status of properties affected by prior actions of the Board of Adjustment.
      No reports. The Board took no action.

2. Distribution of materials, discussion, and possible action regarding agendas for the October 14, 2010 Site Inspection and October 28, 2010 Public Hearing of the Dane County Board of Adjustment, if any.
   AZA Schutte reported that two applications were received after the deadline for the October Public Hearing, and that, after receiving approval from Chair Schulz, she informed the applicants that their
appeals would be heard October 28, 2010. One appeal for a temporary construction crane in the AHLZ needs action before the next Board of Adjustment hearing on November 18, 2010. Since there is no assurance that OA 18, 10-11, giving administrative approval for such temporary structures to Airport staff, would be effective, it was deemed prudent to schedule an appeal. The second applicant hopes to begin construction, and has provided all information requested by Zoning staff, including a survey.

All Board members present indicated they could attend both the Site Inspection and Public Hearing meetings in October. Schutte will confer with Chair Schulz on the agendas.

AZA Schutte reported that the applicant for Administrative Appeal 3603 continues to request abeyance. The Zoning Ordinance and the Board’s Rules and Procedures do not address this situation specifically. Schutte will continue to contact the applicant regularly and keep Board members informed.

VI. ADJOURNMENT:
Motion: Studz/Colvin to adjourn. Motion carried: 5 - 0 at 8:38 p.m.

Respectfully submitted,

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

MINUTES FILED WITH THE COUNTY CLERK: October 26, 2010.

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

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

THE MINUTES OF THE September 30, 2010 BOARD OF ADJUSTMENT MEETING WERE APPROVED BY THE BOARD OF ADJUSTMENT ON ______________ AS PRESENTED. / AS AMENDED TO INCLUDE THE FOLLOWING:

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