

**VILLAGE OF PLEASANT PRAIRIE
ZONING BOARD OF APPEALS
9915 39th Avenue
Pleasant Prairie, WI 53158
November 18, 2014
6:00 PM**

Members Present: Christine Genthner, Chairperson; Deb Skarda; Mark Riley; Steve Kumorkiewicz and David Hildreth. Tom Glassman was excused.

Also Present: Village Staff: Peggy Herrick, Asst. Planner and Asst. Zoning Administrator; Ralph Nichols, Sr. Building Inspector; Sandro Perez, Inspection Superintendent; Don Koehne, Building Inspector; Jean Werbie-Harris, Community Development Director; Jan Petrovic, Clerical Secretary and Tim Geraghty, Village Attorney.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CORRESPONDENCE.**
- 4. CITIZEN COMMENTS.**

Christine Genthner:

At this time if anybody would like to come forward we will be opening the matter for a public hearing later, but if there's anybody who wishes to at this point come forward for citizens' comments it's next on the agenda.

- 5. CONSIDER THE MINUTES OF THE DECEMBER 17, 2013 BOARD OF APPEALS MEETING.**

Steve Kumorkiewicz:

I make a motion to pass it and adopt it as written.

Christine Genthner:

We have a motion to pass. Do I have a second?

David Hildreth:

You have a second.

Christine Genthner:

We have a second. Any additions, deletions or corrections before we take a vote? Seeing none, do you need a voice vote?

Jean Werbie-Harris:

Just a single vote.

Christine Genthner:

All in favor of approving the minutes from the December 17, 2013 Board of Appeals meeting say aye.

Voices:

Aye.

Christine Genthner:

Anybody opposed? Seeing none.

6. NEW BUSINESS

Christine Genthner:

We'll be opening this for a public hearing.

- A. PUBLIC HEARING AND CONSIDERATION OF A VARIANCE for the request of Jeffrey and Gail Groy, owners of the property located at 8727 Lakeshore Drive, for Variances from Sections 420-87-B (4) and 420-110-G (2) of the Village Zoning Ordinance to allow the wooden stairs, concrete steps and a sunroom all constructed without permits that do not meet the required setbacks to the Ordinary High Water Mark (OHWM) of Lake Michigan to remain on the property. The wooden stairs and concrete steps are approximately 10 feet from the OHWM and the sunroom addition is approximately 27 feet from the OHWM wherein pursuant to the Village Zoning Ordinance a 75 foot setback to the OWHM is required.**

The subject property is known as Lot 22, Block 1 of Carol Beach Estates Unit W located in a part of the U.S. Public Land Survey Section 17, Township 1 North, Range 23 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie and further identified as Tax Parcel Number 93-4-123-172-0165.

Christine Genthner:

With that the public hearing is open. My understanding that as Chairperson I am to read the petition and all of its attachments into the record as required by the ordinance. And I'm prepared to do that. I guess before I start that does the petitioner waive my reading of the entire document, or would the petitioner like me to read the entire document into the record.

Jeffrey Groy:

It will be entered into the record, though?

Christine Genthner:

Yes, my understanding is the entire packet, the petition and all the attachments, will be entered into the record as a formal exhibit. Before we go forward I am just going to make a statement. I don't believe I have a conflict, but just for the record I do know Ms. Groy. I believe I've only met Mr. Groy on one or two occasions over the years. My son went to for sure high school and I believe even junior high. So we have known each other through school events. And because we are both attorneys through legal events through the years. So I place that on the record. I'm not familiar with this project, I've not been in the home, I have no financial interest so I don't believe I have a conflict. But I raise that in case anybody has any concerns.

Seeing none at this point this is a public hearing. Does the petitioner like to come forward and make any statements? Before you get started, Mr. Groy, could you raise your right hand? Do you swear to tell the truth, the whole truth and nothing but the truth?

Jeffrey Groy:

Yes, I do.

Christine Genthner:

Alright, and can you state your name and address for the record?

Jeffrey Groy:

Jeffrey B. Groy. I'm currently residing at 1831 Fritz Road in Verona, Wisconsin. But I do own the property with my wife at 8727 Lakeshore Drive, Pleasant Prairie.

Christine Genthner:

Thank you. With that, is there anything you'd like to present?

Jeffrey Groy:

Yes, I'd like to summarize the petition.

Christine Genthner:

Alright, thank you.

Jeffrey Groy:

Good evening. I appreciate your willingness to hear the variance request especially on this cold night. I also would like to thank Jean and her staff and the building inspectors for their help and

assistance in this process. It's been very helpful. In fact, over the past four years I've probably received three or four permits from the Village and had the property inspected on numerous occasions. I'd like to say they've been very cooperative and helpful throughout those permit processes.

The variance request is unique in the sense that we're dealing with three structures. And I'm going to identify the three structures and then talk in detail about each one. First there's a wooden fence on the northeastern portion of the property that was built 45 years ago. The second is a concrete set of steps at the southeast part of the property that replaced a set of wooden steps built into the dirt back in 1970. So basically we have two steps that were at the property for 30 to 50 years. And the third structure is a room that I enclosed beneath a deck, a second story deck, that was a permitted structure. So let me talk about each of these in a little bit more detail and why this variance request involves special circumstances and unique conditions.

First the wooden set of stairs. They were built in 1965 or 1966. In the petition I have an affidavit from Mary Gendusa who in the affidavit says that her father built the steps. And we need the steps in the northeastern part of the property because there's about an 8 to 10 foot elevation change from near the house down to the lake. And it's just not accessible to reach that part of the property without the steps which is why they were built almost 50 years ago. I didn't get a permit for that because I didn't build the steps. They were built when I bought the property. I have a map and photos in the petition showing a for sale sign with the property with the fence. I do have better photos [inaudible] if that's helpful. I don't know how the quality is on the copies. This will show the fence in better detail, and I've got other pictures. This is [inaudible] steps.

Christine Genthner:

Do we have to have those marked?

Jean Werbie-Harris:

We should.

Christine Genthner:

Why don't we have the petition as Exhibit A since the petitioner agreed to waive it. And then do we want to have B and C?

Jeffrey Groy:

So we purchased the property and the wooden steps were there. Some of the steps and the railings were in bad condition so we have replaced the railings, we have replaced the steps and we painted the entire set of stairs. That's all we did. So we didn't get a permit to do that because I didn't think you needed a permit to maintain a structure that already existed on the property. It's needed. Our property differs from our neighbor's property. Richard is here, our neighbor to the north, and Howard Cooley is our neighbor to the south. Their properties from their house to their shoreline protection has a gradual slope so they don't need stairs. Our apparently is more level and then it just drops about 10 feet down to the shoreline protection. So there's no really way to access the eastern part of our property without a set of stairs safely.

The same with the concrete steps that we constructed. Those were constructed as part of the shoreline protection project we had permitted through the Village, the DNR and the Corps of Engineers. Prior to that shoreline protection there was a set of wooden steps basically four by fours built into the ground. They weren't very stable. They had started rotting. In fact, the first week after I bought the house I walked down it and slipped on it and fell because they were covered with moss and it was damp outside. So fortuitously as part of the construction of the shoreline protection they had to remove -- the contractor, Pete Bachurick [phonetic] had to remove those steps. And when they project was done they replaced them with the concrete steps you can see in the photo. Again, that section of the property required steps to access the beach and access that eastern part of our property. And basically without the steps it would be very difficult to use that part of the property. Those are the steps and the stairs.

The sun room which is the third structure we looked -- when I bought the house I didn't need to expand it. And after I met Gail and got married, she had three daughters, we then had a child so the house had a lot of people and we wanted to expand the house. Before doing the work on the second story we thought about trying to find a location on the property where we could build an additional room. And given how the house is set and the attached garage is, given the location of utilities, there's a well on the property, and given the septic tank and the drain field there's not a really feasible location to build another room especially if you comply with the 75 foot setback. The 75 foot setback starts almost at the western end of our house. So there isn't really any room to the sides of the house to add an extension. It had to be in the front of the house, and that's where the utilities, the well and the septic tank were.

So after trying to find a location for another room we decided to change the A frame shape of the house and make it just a regular square house. So we basically increased the footage of the upstairs from 500 square feet to 1,000 square feet by taking off the roof and making a little more conventional design. As part of that plan we also wanted to build a second story deck which we did. And it was permitted. Ralph inspected it on three occasions. It used the footings from a deck that had been built with the original house in 1965. Our second story deck is about 75 percent of the original deck that was built in 1975.

So we basically have an approved deck and a second story within 75 feet of the high water mark. And this is where I'm not sure I need a variance for the sunroom. I think I need a building permit or a conditional use permit. When we received the permit to build the second story deck that was a variance. We were allowed to build a structure within 75 feet of the high water mark. All we did now was enclose the second story deck. So I'm not sure why we need -- we have a variance, we have permission to build the second story deck. I'm not sure why we need a second variance to put windows and doors within that footprint of the second story deck.

But Jean suggested we need to do that. That's why we filled out the variance petition application and we're going through that process. But when I look at what we really need is a building permit, an after the fact building permit to put in the windows and the doors and the electric outlets and things like that. The property, as I mentioned, is unusual in shape and size. And we don't have another location where we could add a room like this. We basically enclosed the area below a deck that had been approved using footings from a deck that has been there since 1965. And so we haven't built in a new area of the property. We got permission to build the roof of the deck sunroom already because the second story deck serves as the roof for the sunroom.

So we have a permitted roof for the sunroom, but we don't have permission or approved walls and windows. We have very few walls, mostly windows and doors. So that's why I think we need more of a building permit than a variance. I don't think this has any impact -- the three structures doesn't have any impact on the public interest of our neighbors or of the public at large. I think the public interest is fine. The structures have been there since 1965 and 1987 in some form and we have received no complaints. And given the condition of the property and the way it's set and the size of it it's really the only location where we could put an extra room in the house. And since the roof was permanent I don't think we needed to get another variance.

If you grant the variance or if we don't need the variance and we need building permits we obviously are willing to file those building permits and go through the application process and the inspection process for the three structures. That's not in question. Also at some point I heard we may need to sign a release or a hold harmless agreement. If these structures are permitted and approved we'd be happy to do that, too, and release the Village from any potential liability. Does anybody have any questions about the application or the three structures we're trying to get a variance for?

Christine Genthner:

I don't see any right now but we might have some later.

Jeffrey Groy:

Okay, I appreciate your time.

Christine Genthner:

Thank you. Staff, do you want me to keep it open for other people or should I move to the staff? Any other public that would like to come forward at this time? Anybody else that would like to come forward? I don't see anybody else. Staff, do you have some findings and recommendations.

Jean Werbie-Harris:

I do.

Christine Genthner:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

Jean Werbie-Harris:

I do.

Christine Genthner:

Please state your name for the record then.

Jean Werbie-Harris:

My name is Jean Werbie-Harris. I am the Community Development Director and Zoning Administrator for the Village of Pleasant Prairie. And my address here is 9915 39th Avenue. The finding of facts that the staff has put together is somewhat detailed, and there are a lot of factors that we put into this report. What we ended up doing was taking the original application that was submitted by the Groys and inserting it into our staff comments and also inserting some of our comments and our questions and comments pursuant to the information that was submitted.

So for the record the findings of facts:

1. The request of Jeffrey and Gail Groy, owners of the property located at 8727 Lakeshore Drive, for variances from Sections 420-87-B (4) and 420-110-G (2) of the Village Zoning Ordinance to allow the wooden stairs, concrete steps and a sunroom all constructed without Village permits and do not meet the required setbacks to the ordinary high water mark, OHWM, of Lake Michigan to remain on the property. The wooden stairs and concrete steps are approximately 10 feet from the ordinary high water mark. and the sunroom addition is approximately 27 feet from the ordinary high water mark wherein pursuant to the Village Zoning Ordinance a 75 foot setback to the ordinary high water mark is required. Exhibit 1 of our packet contains the application and all the related materials.
2. The subject property is known as Lot 22, Block 1 of Carol Beach Estates Unit W Subdivision located in a part of the U.S. Public Land Survey Section 17, Township 1 North, Range 23 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie and further identified as Tax Parcel Number 93-4-123-172-0165.
3. The property is zoned R-5, Urban Single Family Residential District. Section 420-110 of the Village Zoning Ordinance sets forth requirements for single family homes within this district. A portion of the property adjacent to Lake Michigan is zoned FPO, Floodplain Overlay District. The 100 year floodplain elevation of Lake Michigan pursuant to the 2012 FIRM is 584.3 NAVD 88 and 584.6 NGVD 29. Those are two different elevation ways to look at elevations in Pleasant Prairie whether it's the 1988 or the 1929 versions. See Exhibit 2 for the current R-5, Urban Single Family Residential District requirements.
 - a. Section 420-110 G (2) of the Village Zoning Ordinance, Exhibit 2, sets forth the minimum shore setback of 75 feet from the ordinance high water mark of Lake Michigan except as provided in Section 420-139 B (2) (d) of the Village Zoning Ordinance.

Section 420-139 B (2) (d) of the Village Zoning Ordinance allows for the shore setback of a principal structure, the sunroom addition, to be reduced under certain circumstances. This section reads:

(d) The required shore setback for a principal structure located within a single-family residential district or in a licensed park may be decreased in any shoreland jurisdictional area to the average of the existing shore setback distance of the abutting principal structures on each side, but in no case shall the setback distance be reduced to less than 50 feet from the ordinary high water elevation mark of any navigable waterway or water. If one of the abutting lots to be used in averaging the setback is vacant, then to calculate the average shore setback the shore setback on the vacant lot shall be 75 feet. This provision would not apply where special conditions exist on the land. Examples of this include, but are not limited to, areas which have been filled and may be unsuitable for construction or areas which contain special flood hazard potential.

b. Based on the information on file with the Village the house to the south is located 85 feet from the ordinary high water mark of Lake Michigan, again, see Exhibit 3a, and the house to the north is 81 feet from the ordinary high water mark of Lake Michigan, see Exhibit 3b. Since both adjacent lots have their principal structure located greater than 75 feet from the ordinary high water mark, this property does not qualify for a reduced setback and the principal structure or any other additions are required to meet the required 75 foot shore setback.

4. Section 420-87 of the Village Zoning Ordinance sets forth the requirements for decks and porches including steps and stairs in the R-5-District. See Exhibit 4. Section 420-87 B (4) states that that a deck or porch including steps or stairs shall be set back a minimum of 75 feet from the ordinary high water mark, except as provided in Section 420-139 B (2) (f).

5. Section 420-139 B (2) (f) of the Village Zoning Ordinance allows for setbacks of the accessory deck or porch, including associated steps or stairs to be decreased in any single family district. This section reads as follows:

(f) Shore setbacks for accessory structures.

[1] The required shore setback for a deck or porch, including associated steps or stairs; swimming pools, including hot tubs; and/or detached accessory garages, gardening, tool or storage sheds and gazebos that are less than 600 square feet that are located within a single-family residential district may be decreased in any shoreland jurisdictional area as follows:

[a] To the average of the existing shore setback distance of the abutting principal structures on each side, but in no case shall the setback distance be reduced to less than 50 feet from the ordinary high water mark of any navigable water. If one of the abutting lots to be used in averaging the setback is vacant, then to calculate the average shore setback, the shore setback on the

vacant lot shall be 75 feet.

[b] To the setback of the existing principal structure, provided that said structure was legally constructed, but in no case shall the setback distance be reduced to less than 50 feet from the ordinary high water elevation mark of any navigable water.

- [2] The provisions in Subsection B(2) (f) [1] [a] and [b] above shall not apply where special conditions exist on the land, such as, but are not limited to, areas which have been filled and may be unsuitable for construction or areas which contain special flood hazard potential.

Therefore pursuant to Section 420-139 B (2) (f) [1] [a] the same setback for the deck/porch including steps and stairs does not qualify for a reduced shore setback as discussed in 3b above.

6. The following was the written narrative submitted by the petitioner as part of the application, again, referring back to Exhibit 1a. The Village staff has added comments that in the written version as well as your copy that you are looking at, the comments that are italicized, bolded and highlighted yellow those are the comments that the Village staff is making regarding the application in order to clarify some of the information as to what the Village believes to be true.

This variance petition application pertains to three structures located at 8727 Lakeshore Drive.

- A set of wooden stairs originally constructed in 1965 or 1966 located at the northeastern portion of the property,
- A set of concrete steps that replaced wooden board steps constructed in 1987 located at the southwestern portion of the property, and
- A sunroom built within the foundation of a former deck built in 1965 and constructed beneath a second floor deck that was permitted and approved by the Village in 2011.

The structures are highlighted on the attached surveys, one dated September 16, 2014 as Exhibit 1b, one dated February 21, 2000 shows deck only and that's Exhibit 1c, and one dated September 3, 1987 shows deck only and that's Exhibit 1d. The three structures are located within 75 feet of the ordinary high water mark. Based on the 2014 Survey, Exhibit 1b, the stairs and steps are located approximately 10 feet from the ordinary high water mark, and the sunroom is constructed approximately 28 feet of the ordinary high water mark. But based upon the 2000 survey, the steps and stairs appear to be located approximately 25 feet of the ordinary high water mark, and the sunroom is constructed approximately 43 feet from the ordinary high water mark. The sunroom was constructed in 2012, and the survey from 2000 shows that the deck was constructed approximately 43 feet from the ordinary high water mark. For the reasons set forth below, and then this is

the Groy's petition, we the Groy's respectfully request a variance from Sections 420-87 B (4) and 420-110-G (2) of the Village Zoning Ordinance.

Again, pertaining to the narrative on wooden stairs:

First, as noted in the attached Affidavit from Mary Gendusa, the previous owner, see Exhibit 1e, the wooden stairs at the northeastern portion of the property were initially constructed at that location in 1965 or 1966. The stairs were built almost 25 years before the Town of Pleasant Prairie was incorporated into the Village of Pleasant Prairie. Therefore, we believe the stairs which have been at that location for almost 50 years are grandfathered from the current zoning requirements. Accordingly, we do not believe we even need to obtain a variance from Section 420-87 B (4). Again, Village comments in yellow. Although Pleasant Prairie incorporated into a Village in 1989, zoning regulations within the Town of Pleasant Prairie were governed by Kenosha County. In discussion with Andy Buehler, Director of Planning and Development for Kenosha County, he indicated that Kenosha County adopted a shoreland zoning basically or a shoreland ordinance on March 16, 1971; however the required 75 foot shore setback was adopted and effective in Pleasant Prairie on March 28, 1984. Therefore the wooden stairs are considered a legal, non-conforming structure.

Pursuant to Section 420-140 G of the Village Zoning Ordinance related to nonconforming structures states the following:

- G. Existing nonconforming structures. The use of a structure existing at the time of the adoption or amendment of this chapter may be continued although the structure's size or location does not conform to the established lot area and width, setback, height, parking, loading, or access provisions of this chapter. A nonconforming structure can be moved, altered or reconstructed as follows:
- (1) A nonconforming structure may be structurally altered within the limits of the existing building envelope.
 - (2) An addition to a nonconforming structure is allowed provided that the addition complies with the current requirements of this chapter.
 - (3) A nonconforming structure can be moved provided that the structure complies with the current requirements of this chapter.
 - (4) The only portion of a nonconforming structure that can be reconstructed, whether or not it is damaged or destroyed by natural calamity, is that portion used for the required ingress or egress into said building and further provided that there is no greater degree of encroachment into the setback or a greater degree of enclosure.

Therefore, these wooden steps can remain without a variance, but cannot be moved, altered or reconstructed.

When we, the Groy's, purchased the property in 2009 the stairs were pre-existing, as

noted on the right side under the tree in the photo below. Since purchasing the property, the only work we have done on the wooden stairs is to replace worn out boards and to paint them. This maintenance work is allowed.

Second, there is a substantial elevation change or a steep slope where the stairs are located. This is relatively unusual as the slope of the neighboring properties from their houses to the beaches does not have a steep elevation change. Therefore, this special or unique site condition requires having a reasonable and safe means to access this area of our property. Without having the wooden stairs we would be unable to safely access the eastern portion of our property that abuts the lake as well as access to the lake itself, the main factor in our purchasing this property. We would not have reasonable use of this portion of our property without the stairs.

Third, there would be an unnecessary hardship or practical difficulty that would result from not having the wooden stairs. This portion of the property is too steep to easily and safely traverse without stairs. Moreover, we, the Groy's, have young children and have older family members and friends visit us. Without safe and easy access to the eastern portion of the property and to the lake itself, our young children and visitors are at risk of injuring themselves. Therefore, without the variance we would experience unnecessary hardship.

Fourth, assuming we, the Groy's, need a variance, an assumption we do not believe is correct to allow the wooden stairs, granting the variance would not harm the public interest to our neighbors or the public at large. The steps have been there for almost 50 years without any harm to the public or without even any negative comments or concerns from our neighbors or the public. Moreover, these steps are located on private property that is completely fenced off on three sides with the lake preventing unauthorized access to the stairs on the fourth side. It is highly doubtful that any member of the public will object to the presence of the wooden stairs on our property.

Village comment, as stated above, these wooden steps can remain without a variance. But these wooden stairs cannot be moved, altered or reconstructed unless a variance is granted.

Now moving over to the other side, the concrete steps. First, as noted in the attached Affidavit from Mary Gendusa, the previous property owner, see Exhibit 1e, there were steps consisting of wood boards dug into the ground located at the southeastern portion of the property. Ms. Gendusa had these steps constructed in 1987. After purchasing the house we, the Groy's, immediately noted that the steps were eroding and breaking apart and would become very slippery and dangerous when wet which is a frequent occurrence with the mist and fog from the lake. In fact, the wood steps were difficult to walk on even when dry. We knew we would have to replace the steps to prevent our young children and guests from getting badly injured.

Village comments, these wooden steps that were removed and replaced with the concrete steps were also a legal non-conforming structure and could remain under the same legal nonconforming requirements stated above. However pursuant to Section 420-140 G of the Village Zoning Ordinance as noted above, the nonconforming wooden stairs cannot

be moved, altered or reconstructed. Therefore when they were removed, the wooden stairs could only be replaced in accordance with the current zoning requirements which require a 75 foot setback to the ordinary high water mark. The concrete steps were constructed without a permit and are an illegal structure.

Ultimately, the wood steps were destroyed as part of the permitted and extensive shoreline protection work the Village approved. So, to eliminate a dangerous condition and to replace steps that were destroyed as part of the permitted shoreline protection work, we, the Groy's, constructed the concrete steps. We did not understand that we needed a permit other than the shoreline protection permits and approvals we received from the Village, Wisconsin Department of Natural Resources and the Army Corps of Engineers to replace an existing set of steps. Accordingly, we did not believe we needed to obtain a variance from Section 420-87 G (4) of the Zoning Ordinance. Photos showing the wooden board steps and the concrete stairs are below.

Village comments, as stated below, PCR Construction indicated that they installed the concrete steps in late May/early June, 2012. Therefore they were not constructed as part of the 2010 shore protection work. In addition Paul Aiello of PCR Construction told the Building Inspection Department that he specifically asked the general contractor, Hagen, about permits for the concrete steps. Paul owned lakefront property in Kenosha County in the Town of Somers, and he did not think the stairs would be legal. Hagen the general contractor told PCR to go ahead, they had all required permits.

The Village did issued Stipulated Shoreland Permit #10-02, see Exhibit 5, for the property owners to install new armor stone revetment and groin. The plans and application do not represent the concrete steps as being a part of this project. See page 9 of the Exhibit 6 for the proposed shore protection. Excuse me, it should be Exhibit 5. In addition, the photos submitted to the Village with the Completion Report by Adrian Brown, the owner's engineer, see Exhibit 6, which include photos of the completed project do not show that the retaining wall and concrete steps were completed with the shore protection project. In fact Attachment 2 of Exhibit 6 indicates that these pictures were taken after one year.

Again, steps are required to be setback 75 feet from the ordinary high water mark, and if they would have been shown on the proposed plans the plans would not have been approved by the Village, under current zoning regulations. Again, a variance would have been needed.

Second, as with the northeastern side of the property there is a steep slope where the concrete steps are located. While initially the slope was steep, after completing the permitted shoreline protection work the area became even steeper mandating the need for steps to access this area of our property. Again, this is a special or unique condition which does not exist for many of our neighbors; it requires having a reasonable and safe means to access this portion of our property. Without having the steps we, the Groy's, would unable to safely access our entire property. Because of the location of the house, the steep slope and the shoreline protection we need both the stairs and the concrete steps. It is not feasible to access the east end of our property from just the stairs or just the steps. Without the concrete steps we would not have reasonable use of this portion of our

property.

Third, there would be an unnecessary hardship or practical difficulty resulting from not having the steps. This area of the property is too steep to easily and safely traverse without steps. Moreover, after completing the permitted shoreline protection project, the wood steps no longer existed. With young children and older family members and friends visiting us we, the Groy's, needed safe and easy access. We did not want anyone at risk of injuring themselves. As a result, without the variance, we would experience unnecessary hardship.

Village's comments, again, it appears that the new shore protection completed in 2011 created the sandy beach area that they can now access by the concrete steps that were illegally constructed on the south side of the property. See the 2010 aerial photograph below that shows the property, the Tax parcel ends in 172-0165 for identification, prior to the new shore protection being installed with no beach on the property. See also page 8 of Exhibit 5 which indicates that prior to the 2010 shoreline permit there was not beach.

Fourth, these are as contained in the application, under Wisconsin law property owners have a statutory duty to make their property safe from known dangers and are liable if those known dangers are not repaired or maintained. Therefore, it would have been a violation of state law if we, the Groy's, had not replaced the slippery and broken wooden board steps because of the dangerous condition that they were in. Fortunately, we needed to replace them because the steps were destroyed during the permitted shoreline protection work.

Fifth, the granting the variance will not harm the public interest to our neighbors or to the public at large. Wooden steps have been there for almost 30 years without any harm to the public or even any negative comments or concerns from our neighbors or the public. Moreover, these steps are located on private property that is completely fenced off on three sides with the lake preventing unauthorized use of the steps on the fourth side. It is highly doubtful that any member of the public will object to the presence of the concrete steps on our property. Staff comment, typically no setback variance in and of itself would harm the public's interest.

The concrete stairs were built as part of the shoreline protection work to replace the wooden board steps that were destroyed by the heavy equipment used in the shoreline protection work. We, the Groy's, had the concrete stairs built in late May/early June 2012. PCR Construction built the concrete stairs. Staff comments, see Exhibit 6, the engineer stamped and dated the completion report on November 21, 2011. Therefore the statements related to the completion of the concrete stairs being built as part of the shore protection project conflicts with some earlier statements and/or the contractor's statement.

The third area for the request of the variance is the sunroom. We, the Groy's, had a sunroom built within the footprint of a deck that was constructed on the property in 1965, the "1965 deck we'll refer to it, and directly beneath a second story deck constructed in 2011 or the 2011 deck that was permitted and approved by the Village. Comment from the Village is as noted above a deck follows different requirements than an enclosed sunroom addition to a single family home. The structure is highlighted on the attached

surveys. In 2012, after the 2011 deck was completed and approved by the Village, we decided to enclose the space beneath the 2011 deck to create the sunroom.

Village comments, permits were obtained in 2011 for a second floor addition and a new upper level deck, Permit #11-08-008, and a final inspection was completed by the Building Inspection Department on January 16, 2012 for this deck and the second floor addition; therefore, it is the Village staff's belief that the owners were aware that permits were required for construction work. It appears that the sunroom enclosure work apparently began without permits after the permitted project was inspected and the final inspection was passed. The Village staff also believes that the concrete steps were installed when the sunroom addition that was constructed in 2012 as stated above by the applicant.

Therefore, the sunroom was constructed on the footings of a deck that had been there for almost 50 years and should be grandfathered from the existing Village Zoning Ordinance. As noted previously a deck follows different requirements than a sunroom addition to a single family home. Nevertheless, we, the Groy's, respectfully request a variance from Section 420-110-G (2) of the Village Zoning Ordinance for the following reasons, and this is for the sunroom.

First, as noted in the attached affidavit from Mary Gendusa, previous property owner, see Exhibit 1e, there was a deck originally constructed in 1965 at the east end of the house. See the photo below as well as the surveys. The 1965 deck was built almost 25 years before the Town of Pleasant Prairie was incorporated into the Village of Pleasant Prairie. The 1965 deck remained in existence until 2011. In 2011, we, the Groy's, constructed a deck on the second story of the house within the footprint of the 1965 deck. See the photo below.

In fact, the 2011 deck was smaller in size than the 1965 deck. This second story deck was permitted and approved by the Village Permit #11-10-008. During the construction of the 2011 deck, Mr. Ralph Nichols, Senior Building Inspector, inspected the second story deck no less than three times; one to inspect the existing footings, two to inspect the wood supports placed on top of the footings to support the upper deck and, three, to inspect the second story deck when completed. Now the Village comments related to this, there are no outstanding issues with this upper level deck or permit 11-10-08 which included the second floor addition, too. All required inspections were scheduled and passed. The last inspection for this deck and the second floor addition was done on January 16, 2012.

Since the 1965 deck was a legal nonconforming deck, it could remain under the same legal nonconforming requirements stated above, however pursuant to Section 420-140 G of the Village Zoning Ordinance as noted above, the nonconforming deck cannot be moved, altered or reconstructed. However, pursuant to Section 420-140 G (4), the only portion of a nonconforming structure that can be reconstructed, whether or not it is damaged or destroyed by natural calamity, is that portion used for the required ingress or egress into said building and further provided that there is no greater degree of encroachment into the setback or a greater degree of enclosure.

Since the deck provided ingress and egress to the home it could be rebuilt provided that there was no greater degree of encroachment into the required setbacks but could not be enclosed since that would be a greater degree of enclosure, again, pursuant to Section 420-140 G of the Ordinance as discussed above.

Approximately six months after completing the 2011 Deck, we, the Groy's, decided to enclose the area beneath the 2011 deck to create a sunroom. Therefore, we, the Groy's, believe that the sunroom, which was built within the footprint of a deck that has been at that location for almost 50 years and enclosed the area beneath a deck that was permitted and approved by the Village in 2011, is grandfathered from the current requirements including Section 420-110-G (2). We understand that the Village has allowed a number of homes on Lakeshore Drive to be demolished and then new houses built on the existing foundation or existing footings.

For example, the Village allowed the owners of 9927 and 9917 Lakeshore Drive to demolish and then build new houses or substantially renovate homes on existing foundations. The foundations are located within 75 feet of the ordinary high water mark. We are uncertain as why we are not allowed to do the same. The Village's staff response is as follows: The owners of the property at 9927 Lakeshore Drive was issued a permit in 2013 to add a second floor, Permit #13-05-143, and a rear deck, Permit #13-08-047. The existing home was not demolished to the foundation, and the new rear deck supports meet the required shore setback. As noted above there is an exception to that 75 foot shore setback. Therefore the property at 9927 Lakeshore Drive, the required shore setback could be reduced to 64.05. The house to the north is 53.1 feet from the ordinary high water mark, and the lot to the south is vacant, so 75 plus 53.1 divided by 2 give us a setback of 64.05 feet.

The owners of the property at 9917 Lakeshore Drive were also issued a permit in 2014 to replace floor joists and windows and to replace deck joints, no new foundation being added or replaced, 14-07-049 is the permit number. The house was not removed to the foundation and a new home was not constructed on this property.

Going back to their comments, second, there would be an unnecessary hardship resulting from not obtaining the variance. Given the locations of the house, detached garage, utilities servicing the house, and the septic system/drain field on the property, it would be extremely difficult to construct a similarly sized room on the property. In fact, it is unlikely that we, the Groy's, could find a suitable location for a sunroom on the property other than where we constructed it. Moreover, the sunroom was constructed on a portion of the property that had been a deck for approximately 50 years long before the passage of the Village Zoning Ordinance and is located directly beneath a deck that was permitted and approved by the Village in 2011. Therefore, attempting to construct a sunroom at the property in a location other than where we constructed it would result in an unnecessary hardship. These conditions are peculiar to this property based on the size and shape of the lot and based on the locations of the house, garage and related structures and utilities. Therefore, without the variance, we would experience unnecessary hardship.

Village comments, the ordinance provides requirements for all structures. This property, prior to the illegal construction of the sunroom, was a five bedroom home with about

2,000 square feet of living space, 1,119 square feet on the first floor, and 1,008 square feet on the second floor, which meets the minimum requirements related to house size in the R-5 District. This property or any other residential property does not require that homes have a sunroom or the ability to add a room if the setbacks cannot be met just because the property owners desires a room addition.

Third, the location, size and shape or physical characteristics of the parcel and the locations of the house, detached garage, utilities and septic system/drain field create unique limitations that restrict where we could build a sunroom. These special or unique site conditions limited our options. So, we located the sunroom where a deck had existed for approximately 50 years and enclosed an area beneath a new deck that the Village had just permitted and approved. Village comments, as stated above this property or any other residential property does not require that homes have a sunroom or the ability to add a room if the setbacks cannot be met just because the property owners desire a room addition.

Fourth, granting the variance will not harm the public interest of our neighbors or of the public at large. A structure has existed where the sunroom is now located for almost 50 years without any harm to the public. Moreover, the sunroom is located on private property protected by a newly constructed and substantial shoreline protection system. It is highly doubtful that any member of the public will object to the presence of the sunroom on our property. Village staff comments, as stated earlier a setback variance in and of itself would typically never harm the public's interest.

The sunroom was built in February through May 2012 using generally the same contractors and vendors who remodeled the second story and built the second story deck. Village comments, as noted above the final inspection with permit 11-08-008 was completed on January 16, 2012; therefore this sunroom addition began less than 30 days from the completion of the previous construction work on the property. I, Mr. Groy, served as the general contractor. Employees of Hagen Contractors helped with the construction of the structure and installation of the form insulation, windows, doors and tile floor. Andrews Heating and Cooling LLC, who installed our new furnace and our air conditioner and new second floor vent system during the second floor remodel in 2011 installed the heating vents. Alaskan Fireplace Company of Sturtevant installed the gas fireplace. Village comments, these contractors who had just completed a remodel of the property and the owner were aware that construction projects, electric, heating and cooling work requires permits and inspections.

Conclusion

Because of the length of time the stairs and steps have been located on our property, because of the unique property conditions that exist and because of the unnecessary hardship that would result from not having the stairs and steps, we, the Groy's, respectfully request the Board approve our request for a variance. Granting this variance will not harm the public interest of our neighbors or of the public at large. We will certainly file an application for an after the fact building permit for the wood steps and concrete steps.

The sunroom was built within the footprint of a deck that had existed for approximately 50 years. The roof of the sunroom has already been permitted and approved by the Village. The roof of the sunroom was built pursuant to an amended permit and inspected on numerous occasions during its construction. Again, pursuant to the Village Building Inspection Department, the deck as approved with permit 11-08-008 and was just for a deck, not for a roof for a living space.

We, the Groy's, then simply enclosed an area of the property in which the Village had already permitted and approved the construction of a new structure. Because of the unique physical characteristics of the property and the existing structures and utilities located on the property, there is no other feasible area to build a sunroom on the property. As a result, we believe we meet the criteria for obtaining a variance for the sunroom. Denying the variance would result in unnecessary and unreasonable hardship. Granting the variance will not harm the public interest of our neighbors or the public at large. As with the steps and stairs, we will certainly file an application for an after the fact building permit for the sunroom.

Since 2009 when we, the Groy's, purchased and moved into 8727 Lakeshore Drive, we have converted what was a visual eyesore of a shoreline protection hazard into an aesthetically and structurally improved shoreline protection system that is similar to others built on most of the adjoining and nearby properties. We also significantly improved the house itself, enhancing the property values of not only our property but also the neighboring properties as well. In May 2010, before we undertook the work on the house, we received a Notice of Assessed Value from the Village that assessed the value of the improvements at \$79,400 in 2010. In May 2014, we received another Notice of Assessed Value showing the value of the improvements at \$261,400. Specifically, there was an increase in the value of the improvements of \$47,700 directly related to the addition, the sunroom, deck, patio, revalue. It is ironic that one Village office is requiring us to pay more taxes on structure that another Village office wants us to remove.

And these are comments, and this is a direct quote from our Village Assessor, Rocco Vita. According to the Village Assessor, Rocco Vita, "pursuant to Wisconsin law and WI Department of Revenue procedures, property assessments of buildings reflect an estimate of the market value of that building at a point in time. Further, the value is based upon the physical components and characteristics of the building such as the building's size, number of floors, bathroom and bedroom count, as well as the overall quality of construction and physical condition of the building.

Furthermore, each component of a residential dwelling has a value that contributes to the total building value. This contributory value exists regardless of the legality of the improvement. The fact that our office is statutorily required to attach a value to a legal or illegal building improvements in no way validates the legality of the improvement. As long as the improvement exists, the contributory value of the improvement will exist. If the improvement is required to be removed, the contributory value of the improvement will be removed as well."

And the remainder of the application reads our efforts have benefitted the Village and its residents by increasing the property values of our property for which we, the Groy's, are

paying significantly higher property taxes and of the surrounding area. The property is now a beautiful improvement to the neighborhood. We, the Groy's, therefore respectfully request that the Board approve our request for a variance so that we can live and quietly enjoy our property. Thank you for your kind consideration and for granting the variance. And, again, there's actually three variances that we'll be looking at this evening.

7. See attached code violation letters sent to the applicant regarding these issued dated July 16, 2013, Exhibit 7, and August 8, 2014, Exhibit 8.
8. All of the abutting and adjacent property owners within 100 feet of the properties were notified via regular U.S. Mail on October 30, 2014, and the Board of Appeals agenda was published in the *Kenosha News* on November 4, 2014.
9. Under the State of Wisconsin Supreme Court case law pertaining to the granting of variances, a variance may be granted only if the applicant can show that the standards set forth in the statutes and interpretive case law for granting variances will be met. The statutes provide that a variance may be allowed when it will not be contrary to the public's interest; where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship. Note, however, that economic hardship is not grounds for a variance, so that the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice is done.

Okay, just for the record there might have been a typo with the numbering of the permit that they had gotten for that addition upstairs. It should read 11-10-008, not 11-08-008.

Christine Genthner:

Thank you. Is there anything else that staff would like to present at this time?

Jean Werbie-Harris:

The one question I had is we have with us three of the building inspectors, the inspection superintendent and two building inspectors with the Village inspection department. Ralph Nichols was referenced in the staff comments. I didn't know if you had any questions for him pertaining to any of the inspections that he might have completed out on that site.

Christine Genthner:

Anybody on the Board have any questions? The matter is still open for a public hearing. Is there anybody who would like to offer any additional information in light of the information we received from staff?

Deb Skarda:

I have a question for Ralph. Ralph, when you did the inspection who was there with you? Was it the contractors, the homeowner?

Christine Genthner:

Please state your name for the record.

Ralph Nichols:

Ralph Nichols.

Christine Genthner:

And you are with what department?

Ralph Nichols:

With the building inspections department, Village Hall, 9915 39th Avenue.

Christine Genthner:

Thank you. Do you swear to tell the truth, the whole truth and nothing but the truth?

Ralph Nichols:

I do.

Christine Genthner:

Thank you. Please go forward.

Ralph Nichols:

What was the question?

Deb Skarda:

When you did the inspection do you remember who was there the day you did the inspection, was it homeowner, contractors?

Ralph Nichols:

Contractors. It was Hagen contractor, John Hagen, a representative of his, and the electrical contractor, HVAC contractor was not around.

Deb Skarda:

Okay, thank you.

Christine Genthner:

With that I believe the petitioner had some additional information. Mr. Groy, you're still under oath.

Jeffrey Groy:

Yes, ma'am. One comment I noticed in the staff recommendation, although Jean didn't read it, was saying we won't experience hardship if the concrete steps are removed because we could access the entire property with the wooden stairs, and that's not really true. There is a number of days when the beach is inundated with water. So when we go down that set of stairs, the wooden steps, we couldn't go over to the other side of the property because you can't walk along the beach when it's full of water. So there is a hardship if the concrete steps get moved, we can't access the southeastern portion of the property on many days.

Christine Genthner:

I have a question. When you bought the property there was no beach?

Jeffrey Groy:

That's right. There were big Johnson blocks, big concrete blocks, 200 of them just dumped in the water. They were put there in 1965. The beach was eroding very quickly, and they were afraid they were going to lose the house. So Peter Bachurick [phonetic] who built our shoreline protection had also built theirs. He just basically brought in these huge concrete blocks and dumped them in the water. You can see it from that aerial photo that they show it. You can see all these concrete blocks up into the water. We had all those removed. We had all these concrete blocks removed. [Inaudible].

Christine Genthner:

Mr. Groy, you were showing on the screen there what you had removed as part of the --

Jeffrey Groy:

Right. All these concrete -- these are big huge concrete blocks and limestone. We had that all removed because there was no beach. It looked terrible. These are a row of a retaining wall of concrete blocks, and there's a wooden deck that goes behind the retaining wall. And there's the wooden steps build into the ground you can see. We had that removed. The equipment to remove it was brought in and placed right here, a crane, literally three years. He removed all the concrete blocks and then brought in the granite shoreline protection rocks.

Christine Genthner:

So on the screen you just showed us the two sets of steps that are in question here can you just point those out?

Jeffrey Groy:

You can't see the ones on the northern part, but they were sort of going down to this wooden deck. But here's the steps that were built into the ground.

Christine Genthner:

And the northern one is the one that are now the concrete steps?

Jeffrey Groy:

These are the concrete steps here. These got removed because they brought in the cranes, they brought in the trucks with the rocks, they brought in the excavator and put it on the beach. That's how they accessed the beach from here, and so that just got smashed. And then as part of the construction they raised the elevation of this area so it would be consistent with the house and with the other side just as additional protection from the waves.

Christine Genthner:

Thank you. Anything else?

Jeffrey Groy:

And so on that side, like I said, there's many days when the beach is inundated with water. So if we just had the steps we'd have a hardship because we couldn't access the southeastern portion of the property because there's no way to cross the property. If you go down the steps on the northeast side you end up on the beach, that's where the steps are going to. And there is an area that we built, you can see it from one of the photos, on the northeast it's sort of a beach, an elevated sandy area to access that area on days when you can't access the beach. We can't keep anything on the beach because it could get washed out. We did have an area built where we could have some sand brought in, and we need the steps to access that on many days, the concrete steps.

Christine Genthner:

Thank you. Is there anything else you would like to add?

Jeffrey Groy:

And, again, I'd like to emphasize the sunroom, the variance. I don't think we have an issue about building a structure within 75 feet of the ordinary high water mark. When we got permission to do the second story deck that was a variance to construct a structure.

Jean Werbie-Harris

But that was to construct a deck, not an enclosure.

Jeffrey Groy:

Correct, not a sunroom. But it was allowed us to construct a structure within the 75 feet high water mark.

Christine Genthner:

We still have a public hearing. Is there anybody else who'd like to present information? Ms. Werbie?

Jean Werbie-Harris:

I've got two things I'd like to say. First of all just as a point of clarification that ordinary high water mark that delineated -- sure, Peggy is going to show you on the screen because our laser is not working. That's a riparian line. The area below that is a water of the state. It's beach that could be used by that adjacent landowner, but it's not land that he can own. It's area of the state because it's below the high water mark. So it was a beach area that was created as part of the shore protection, but it's not technically his property. It's considered water of the state at that location.

Christine Genthner:

I have a question on the ordinary high water mark. How do you determine that and does it move? Because at some point I think the information is we are only X number of feet away and now we are X number of feet away. So how do we determine that to begin with? It seems to be the point of reference we have to start with, but how do we determine that and at what time? Mr. Groy, I'm going to have staff talk first, and I'll let you address that also, okay?

Jean Werbie-Harris:

The Wisconsin Department of Natural Resources will typically identify that ordinary high water mark. Is it the same and consistent every year? It can change during cyclical periods where the lake levels are high and the lake levels are low. It's not always year after year forever at that exact same location. And my understanding is it's the constant wave runoff action that kind of defines a mark on the shore, on the rip rap or the embankment that identifies where that is. But it's identified by the Wisconsin Department of Natural Resources and it can change over time.

David Hildreth:

What's the degree of variability on that change over the years?

Jeffrey Groy:

Can I answer that? It's one of the reasons I added the survey.

Christine Genthner:

Mr. Groy, let's just let Ms. Werbie-Harris finish first, and then I'll let you address that also, okay?

Jeffrey Groy:

Alright.

Christine Genthner:

Alright, proceed.

Jean Werbie-Harris:

So one of the things that we've learned over the last several years is that where there is good, stable shore protection that's typically when that ordinary high water mark will be a lot more stable and it won't be moving around a lot. If there's no shore protection and a lot of erosion takes place then that mark of that ordinary high water mark can move more frequently because of the wave action and the deterioration of the shore and the deterioration of the land adjacent to the lake.

David Hildreth:

But to that extent is it 10 to 20 feet over a very low time, 15 to 50 or 5 to 10, 5 to 50?

Jean Werbie-Harris:

I can't respond to that.

Jeffrey Groy:

I can.

Christine Genthner:

Mr. Groy, you're still under oath so go ahead.

Jeffrey Groy:

I attached three surveys to my petition, a 2014 survey and a 2000 survey. As we noted based on the 2014 survey the steps were about 10 feet from the ordinary high water mark. But in the 2000 survey they were 25 feet from the ordinary high water mark. So a 15 foot change. Likewise the sunroom was 28 feet from the ordinary high mark in 2014, and in 2000 it was 43 feet from the ordinary high water mark. So it does have some variability over time.

Christine Genthner:

Yes, please state your name for the record and your department first.

Peggy Herrick:

Sure, Peggy Herrick, Assistant Planner and Assistant Zoning Administrator for the Village of

Pleasant Prairie.

Christine Genthner:

Ms. Herrick, do you swear to tell the truth, the whole truth and nothing but the truth?

Peggy Herrick:

I do.

Christine Genthner:

The public hearing is still open, what would you like to --

Peggy Herrick:

I would first like to say that I am also friends with Mrs. Groy. I have known her for quite some time. Our daughter did go to preschool together, so I just want to make that on the record that I've been to their house on person occasions in the past when our daughters did go to school years ago. But I have not discussed the case with them after the petition has been submitted to the Village. I just wanted to add that Mr. Groy indicated that they got a variance for the deck that was constructed with the permit from 2011 I believe. A variance was not granted. They were able to build that deck, and they used the same foundations that were established in the lower deck so they did not need a variance. And a permit was just issued by both the zoning department and the building inspection department without a variance because it was just an upper level deck. So I just wanted to make that clarification.

Christine Genthner:

The public hearing is still open. Is there anybody else at this time that has any questions?

Mark Riley:

I just wanted to ask the Village Attorney a legal question. Is ignorance of the law recognized by the courts on the offense or defense, whatever side you're on? Is that normally taken into consideration? I'd just like a legal opinion whether that has any weight or not if you don't know about building permits.

Tim Geraghty:

Generally it's not a defense to violation of any municipal ordinance whether you know of the law or not. There are certainly certain criminal laws where intent or knowledge is an element, but I'm not aware of intent or knowledge of the law being an element of any Village zoning or planning or use ordinance. And so whether you know the ordinance or the requirements or not wouldn't matter.

Mark Riley:

Thank you.

Christine Genthner:

I do have one question with regard to staff. And I think I'm confused with regard to the first steps we're talking about. If the maintenance is permitted what is the issue that is before us? If all the Groy's did as I understand it is maintenance and maintenance is allowed, what is it we are supposed to decide with regard to the first step of wooden steps. Somehow I'm missing --

Jean Werbie-Harris:

Sure. When we had our initial meetings and discussions with the petitioner, the applicant, we had not done any amount of significant research at that point with respect to the facts of finding. So at that point, you know, just to be on the safe side we wanted to make sure that they made an application for any and all setback variations that we believed at that time that they may have needed. So we didn't want them not to include that in their petition. Because it's a wooden set of stairs and they did minor maintenance on those stairs, they did not enlarge them, they didn't replace them, they were just maintaining that same set of stairs in the same location no variance was needed. And we came to that conclusion when we did this analysis on the steps on the north side.

Christine Genthner:

So today do we just have to make a finding with regard to [inaudible] described on our findings no variance is needed? When we get to that stage potentially what staff is --

Jean Werbie-Harris:

Yes, that would be my recommendation just to make it clear for the petitioner, now for the record and in the future in case they needed to do any additional maintenance on those steps.

Christine Genthner:

With regard to the concrete steps, and this is for staff, is there a way for the petitioner to access that portion of the beach if the concrete steps were removed? The wood steps were there before as I understand it, correct?

Jean Werbie-Harris:

I doubt they'd be able to access. There was no beach there before. There's quite a few lots along Lake Michigan that have that shore protection, they don't have beach in front. But with the beach they would not be able to access without the steps in my opinion. Possibly Ralph Nichols our building inspector, senior inspector, maybe has an opinion on that as well. In my opinion they would need to have some steps to access the beach that they created.

Christine Genthner:

Mr. Nichols, you're already under oath. Do you have anything you want to add?

Ralph Nichols:

They probably wouldn't have any access to that beach if they had no steps there.

Christine Genthner:

We're still open for public hearing. Does anybody else have any questions before we move to the staff recommendation? Ms. Werbie-Harris?

Jean Werbie-Harris:

I guess I have to ask the question to the petitioner. Why didn't you obtain a building permit before you enclosed the sunroom? Knowing that you needed all these permits and all these inspections for the furnace and for everything why would you not have obtained permits for all those mechanicals and stuff just so you knew it would be a safe space and room for your family?

Christine Genthner:

For the record it's Mr. Groy and you're still under oath.

Jeffrey Groy:

2014 I can't answer that. Looking now there's no question. Back then I don't know why I was thinking we didn't need a permit to just enclose it. I don't know how to answer that. I don't know why.

Christine Genthner:

Is the sunroom year round?

Jeffrey Groy:

Yes. It can be, yes. And that's why we're willing to file the after the fact permit applications and go through the inspections.

Mark Riley:

As long as you're up there I'd like to ask you a question about the sunroom. If their deck was built above and there was foundations put in below it to hold the deck up, the deck was supported by posts?

Jeffrey Groy:

Yes.

Mark Riley:

So I'm assuming there was foundations under the posts.

Jeffrey Groy:

Footings, footings from the original deck that were at least four feet deep. We couldn't find the bottom of the footings for each of the poles supporting the deck.

Mark Riley:

Did the footings go around the whole perimeter of that deck?

Jeffrey Groy:

Yes, it did.

Mark Riley:

And who put the deck on?

Jeffrey Groy:

Mary Gendusa's father in 1965 had it done. I don't know if he built it, but the deck was built in 1965. And we as part of the inspection Mr. Nichols made us dig and expose all the footings, and we couldn't find the bottom of the footings. We went down four feet.

Mark Riley:

So you had frost walls in all the way around. So somebody built that upper deck with the intention on filling that in.

Jeffrey Groy:

No, no, no, we didn't --

Mark Riley:

No, no, not you. The person that built that deck originally --

Jeffrey Groy:

The original deck?

Mark Riley:

The original upper deck -- the original upper deck or the one that was put on before you owned

the property you would not put frost walls underneath posts to a deck unless you are planning on filling that in with walls. That's speculation. I'm in construction. You just wouldn't do something like that.

Jeffrey Groy:

There wasn't an upper deck before.

Jean Werbie-Harris

No, he put the upper deck on.

Christine Genthner:

One at a time otherwise our record is going to be all over.

Jeffrey Groy:

I put the upper deck on. Originally it was a ground -- we have a picture of it, it was just a ground level deck.

Mark Riley:

And there was foundations underneath the ground --

Jeffrey Groy:

No, there were footings. There wasn't a foundation.

Mark Riley:

A footing is a foundation.

Jeffrey Groy:

What?

Mark Riley:

A footing is a foundation.

Jeffrey Groy:

Sorry.

Ralph Nichols:

There were footings. Yes, there were footings there extending out from the foundation of the

existing house to those posts or piers on the outside closest to ordinary high water mark. But there was no upper deck at that time. There was only just that one level deck. The upper deck was installed at the time the addition on the upper side was built.

Christine Genthner:

I think we had another question.

David Hildreth:

Just for a point of clarity, the upper deck was put on first --

Jeffrey Groy:

Yes.

David Hildreth:

-- with permits?

Jeffrey Groy:

Yes.

David Hildreth:

Subsequent to that but within a short period of time it was enclosed.

Jeffrey Groy:

Yes.

David Hildreth:

But without the permits?

Jeffrey Groy:

Correct.

David Hildreth:

And the reason for that again is the permits for the deck but no permits for the enclosure?

Jeffrey Groy:

Hindsight I don't know why. But I would do it now, I'd go get a permit. I don't know why.

David Hildreth:

Okay.

Steve Kumorkiewicz:

I've got a question for Mr. Groy. What kind of floor do you have right now in that addition?

Jeffrey Groy:

In the sunroom?

Steve Kumorkiewicz:

In the sunroom, yes.

Jeffrey Groy:

There's a foam insulation, and then a stone or tile floor.

Steve Kumorkiewicz:

You don't have concrete?

Jeffrey Groy:

Concrete, no. There were wood beams put in and then foam and regular insulation put in. And then wood and stone.

Steve Kumorkiewicz:

You didn't put a concrete floor over there?

Jeffrey Groy:

No.

Steve Kumorkiewicz:

Now I've got a question for Jean. Jean, in the case of this addition Mr. Groy put in is it supposed to have a concrete floor or no, the sunroom? What kind of floor is it supposed to have by ordinance?

Jean Werbie-Harris:

I'll refer to the senior building inspector.

Ralph Nichols:

For the record Ralph Nichols. You would not have to have a concrete floor in order for it to be enclosed and even heated.

Steve Kumorkiewicz:

Okay, so that room is not heated?

Ralph Nichols:

It is heated. It has runs, supply runs, one or two going out into that area. That's why it's insulated in the bottom with styrofoam insulation. I'm not too sure exactly what's -- if it has the proper ceiling as far as it goes for a treated piece of wood underneath that decking to encapsulate it. Because you should have the structure to be treated underneath and then put the foam insulation since it's within 18 inches of the grade.

Steve Kumorkiewicz:

So that part of the ordinance is not in compliance? Right now he doesn't comply?

Ralph Nichols:

Right now it may or may not be complying with the building code, correct. I am unsure.

Jeffrey Groy:

This is Jeff Groy. That would be resolved as -- we have photographs. Making sure it was properly constructed would be the next step. If the variance was granted we would file a permit application. They would come out and inspect it and to whatever they need to do to make sure it was done properly. We have photos showing what was done. I took photos almost every day for all of the work we've done at the house.

Steve Kumorkiewicz:

If it has to be changed assuming that you get a variance. You are not in compliance with the code. Are you going to do that, comply with the code and remove --

Jeffrey Groy:

Yes. If we have to replace the floor or something to make it compliant, yeah, we would do that.

Steve Kumorkiewicz:

Thank you.

Christine Genthner:

Thank you. The public hearing is still open. Is there anybody else who has any questions before we proceed with staff recommendation? And I believe that has to be in the public hearing section also, correct. But any other questions for staff or the petitioner before we proceed? With that, staff, do you have a recommendation? And Ms. Werbie-Harris are you going to present it so you're still under oath?

Jean Werbie-Harris:

Yes.

Christine Genthner:

Thank you.

Jean Werbie-Harris:

Under staff recommendation, based on the findings of fact and the variance application filed, the Village staff finds that the wooden steps on the north side of the property that were legally constructed can remain without a variance, but cannot be moved, altered or reconstructed.

The application may or may not meet the requirements for granting the variance for the sunroom addition and the concrete steps on north side of the building that were illegally constructed.

Although as earlier stated the requested variances do not harm the public's interest, this is only one criteria that is required to be satisfied to grant a variance. The petitioners have failed to prove an unnecessary hardship and have not met the standards set forth in Section 18-43 of the Village Code entitled, "Standards and guidelines" for granting of a variance. In addition, the hardships presented are as a result of the self-inflicted actions of the petitioner. This house is a five bedroom home and meets the minimum floor area requirements of the R-5 District. In addition, the existing wooden steps provide access to the beach area and therefore they can reasonably access the property. In addition, the beach area that they are stating that they need to have concrete steps access to was self-imposed since the new shore protection they owners installed in 2010/2011 which created the beach that the concrete steps access. As I indicated earlier this evening, I do believe that unless there are some type of steps they would not be able to access that beach area.

If the Board of Appeals denies the variance request, the Board of Appeals shall determine a date certain when the illegal improvements would need to be removed. In addition, proper permits shall be submitted prior to their removal and all required inspections shall be completed.

However, if the Board finds that the application and the facts presented warrant the granting of the variance from the setback of the ordinary high water mark for the sunroom addition and the concrete steps, then the following conditions shall apply:

1. The required building/zoning and erosion control permit applications and detailed drawings shall be submitted with construction plans for the sunroom and the concrete

steps. In addition, we would need photographs as well that were taken during that construction.

2. After the issuance of the required permits, all required inspections shall be scheduled with the Building Inspection Department. This may require that walls, floors and roofing may need to be opened to ensure all work complies with the applicable building codes.
3. The variance does not waive any other requirements, which are imposed by the Village's Zoning or Land Division or Development Control Ordinances, Building or Municipal Codes.
4. The Village staff shall prepare the required Variance Grant Document that shall be executed by the property owners, and the owners shall pay the required recording and filing fees for variance to be recorded at the Kenosha County Register of Deeds office. This variance shall be recorded prior to issuance of any building or zoning permits that would be needed on the property. In addition, it's likely that the permit fees would probably be tripled because of the fact that the permits were not issued in a timely manner prior to construction.

Christine Genthner:

Thank you. With that do we close the public hearing? With that then I will close the public hearing. Do I have a motion by any Board member? Mr. Riley?

Mark Riley:

Yeah, I'd like to make a motion to follow the Village's recommendation to deny all the variances. I would comment on them for your sake, Jeff, one-by-one if you have an interest in hearing them. Name the one you want my rebuttal on because there's so many things out here. I guess in summary I would say that I think it would be unfair for you to get these variances because you will have then by not following the law unjustly enriched yourself on this property because this property is more valuable with the beach and beach access. Any other person following the laws would not be in the position that you're in now. So that would be my number one main reason. But if you want to bring up any one of the single items I would be happy to address them one at a time.

But I am making the motion to follow the staff's recommendation of not granting the variances. And since it's winter and it would be difficult to remove this stuff during the winter I would say at least one year -- or I would say one year would be the time frame that you asked for, Jean.

Christine Genthner:

For clarification, though, on the motion is the motion as to the concrete steps and the sun room only?

Mark Riley:

No, all recommendations made by the Village I'm making a motion to follow the

recommendations of the Village to remove the sun porch, remove the concrete steps, and I believe the wooden steps are grandfathered in and are in compliance, and basically the staff is saying what they can and can't do on those.

Christine Genthner:

That's what I wanted to clarify. That with regard to the denial it is the concrete steps and it's the sunroom, and the recommendation of staff with regard to the wooden steps --

Mark Riley:

Leave them alone.

Christine Genthner:

Leave them alone unless they're reconstructed.

Mark Riley:

They're in compliance, and they have to follow the [inaudible].

Christine Genthner:

Okay, thank you. I just wanted the clarification. Since we have a motion do I have a second before we take any additional comments on it? So I have a motion.

Steve Kumorkiewicz:

I second.

Christine Genthner:

Okay, so we have a first and a second on the motion. Next would be is there any discussion on that motion before we take a vote?

Steve Kumorkiewicz:

I consider the [inaudible] in line [inaudible] the motion.

Christine Genthner:

Procedurally I see Mr. Groy wanted -- technically the public hearing is closed. I don't know -- I know that Mr. Groy approached the podium and had some -- was going to address I think in response to Mr. Riley's question, but the hearing is actually closed at this point in time. Procedurally I guess I would defer to staff as to whether we have to reopen the hearing for Mr. Groy to address, or if the Board can ask a question?

Tim Geraghty:

If you reopen the hearing what Mr. Groy says becomes part of the record. If you didn't open the hearing and you're just letting him ask questions of the Board then it wouldn't be part of the record. So I would recommend reopening the hearing to allow Mr. Groy to address that.

Christine Genthner:

Alright, and the Board's position on that? It looks like everybody is in agreement. Alright, at this point in time we will reopen the public hearing for Mr. Groy to provide any additional information in response to the motion.

Jeffrey Groy:

I just wanted to pursue what Mr. Riley said in terms of the concrete steps, unjust enrichment because I have access to the beach. But with the wooden steps I have access to the beach, too. It's just on some days I couldn't access all my property. I could access the beach every day.

Mark Riley:

Alright, in Kenosha there's actually beaches that you can't access from the properties. They're impossible. There's cliffs. You can't access.

Jeffrey Groy:

Right, I understand that.

Mark Riley:

You can't put an elevator in, you just can't access them. So you bought the property knowing that you either had access or didn't have access. And your next step was to go to the Village and ask for a permit to put those in.

Jeffrey Groy:

Well, I had access when I bought the property --

Mark Riley:

Then you still have access.

Jeffrey Groy:

-- to the beach.

Mark Riley:

Then you still have access. You have the same access now as you did then.

Jeffrey Groy:

But I had a set of steps, wooden steps --

Mark Riley:

But you chose to take those out.

Jeffrey Groy:

Well, I needed to take those out. They came out as part of the shoreline protection.

Mark Riley:

Again, I'm in construction and we protect things two inches away from our construction. Those certainly could have been protected.

Jeffrey Groy:

Well, the crane was on top of them.

Mark Riley:

I'm in construction. We work two inches from building structures.

Jeffrey Groy:

But those steps would be four feet under the ground now.

Mark Riley:

You can do shoreline protection from the water, I've done it. Never entered the land. I've done it on many properties. I did it on Howard Cooley's property. We access it from the lake. We never came on land.

Jeffrey Groy:

But that's how we did it.

Mark Riley:

I understand, but one doesn't justify the other. That's my opinion.

Jeffrey Groy:

We had a set of stairs --

Mark Riley:

You could have left them.

Jeffrey Groy:

But we couldn't have. We covered up that area. We built up the property so that the shoreline protection would be more supported.

Mark Riley:

That as your choice. You made that choice knowing you would lose your stairs.

Jeffrey Groy:

Well, I didn't think I'd lose them. I think I'd need to replace them. I understand. Okay. It's not unjust enrichment. I'm not changing my position --

Mark Riley:

I understand. But every problem you ran into you took care of it yourself instead of going through the proper procedures.

Jeffrey Groy:

Yeah, for the stairs I didn't think I needed a permit to replace them.

Mark Riley:

That's why I asked him if ignorance of the law is a defense and he said no.

Jeffrey Groy:

What about the sunroom? You said you had points related to the sunroom.

Mark Riley:

The sunroom in no stretch of the imagination when they gave you a permit to put that upper deck on did they give you any variance or any permit to put that sunroom on? That you did all on your own?

Jeffrey Groy:

Correct. But the issue of building a structure within 75 feet of the ordinary high water mark is resolved because I got a permit to build --

Mark Riley:

You didn't get a variance. My understanding is the deck was built legally.

Jeffrey Groy:

Correct.

Mark Riley:

And you didn't need a 75 foot variance on the deck but you do on the structure below it.

Jeffrey Groy:

Okay.

Mark Riley:

Unless I'm wrong.

Jeffrey Groy:

So is that the only issue?

Mark Riley:

Well, I have a lake property. I know all about the 75 foot. I wanted to put a fire pit in in the front right by our lake and I couldn't do it because you can't build any structures 75 feet. And it's done for the public who are viewing the land from the water is my understanding. So you're just not allowed to build anything within 75 feet. That's the law. And you don't get to change our laws. Well, some people in government get to, but not everybody gets to change the laws as they see fit for their property. Just think if everybody up and down the lake decided they wanted to built boathouses and they felt it was good to do it and their neighbors didn't care. There's a law. They put them in place and they've got to be followed.

Jeffrey Groy:

Alright, thank you.

Christine Genthner:

Thank you, Mr. Gory. With that I think we can close the public hearing. We have a motion, we have a second. Again, any additional discussion on the motion before we take a vote? And, again, procedurally then, Ms. Werbie-Harris, do we take any action whatsoever on those wooden steps that remain since it doesn't need a variance?

Jean Werbie-Harris:

I would for the record indicate in your conclusion, in your action, that a variance would not be needed on those wooden steps. They can be maintained, but they cannot be enlarged or modified in any way. And for that reason no variance is needed for them, and they can continue as they are.

Christine Genthner:

And then the motion and the second is to deny the request for the variance as to the concrete steps and to the sunroom. Alright. Any additional discussion? With that then I believe unless staff has anything else procedurally we need to do I think we just move to a vote. I support the motion as it relates to the concrete steps and the sunroom to deny the request for the variance.

Deb Skarda:

I support the motion.

David Hildreth:

I'm in support.

Steve Kumorkiewicz:

I support the motion.

Christine Genthner:

With that then the action by the Board, Mr. Groy, is to deny the request for the variance as to the steps and to the sunroom.

David Hildreth:

Do we have to state for the record the time frame?

Christine Genthner:

Oh, that's right, I'm sorry.

Mark Riley:

I made a motion for one year.

Christine Genthner:

Is that also part of the second?

Steve Kumorkiewicz:

Yes.

Christine Genthner:

Alright, is there any discussion on the one year time period by any of the other board members.

--:

No, I think it's appropriate.

Christine Genthner:

Should we take a separate vote then on the one year time period? I support the one year time period for removal of anything not in compliance with the ordinances.

Deb Skarda:

I support the one year.

Mark Riley:

Support one year.

Steve Kumorkiewicz:

Support one year.

David Hildreth:

Support one year.

Christine Genthner:

Ms. Werbie-Harris?

Jean Werbie-Harris:

And then just as a point of clarification the Village inspection department does require the petitioner to obtain razing permits in order to remove structure from the property. So they'll need to work with the inspection department in order to do that.

Christine Genthner:

With that I don't think there are any other items on the agenda.

7. ADJOURNMENT.

Christine Genthner:

Do I have a motion to adjourn?

Steve Kumorkiewicz:

So moved.

Deb Skarda:

I'll second.

Christine Genthner:

All in favor say aye.

Voices:

Aye.

Christine Genthner:

Thank you.

Non-Adopted Transcript