

VILLAGE OF GRAFTON

RE-CONVENED ZONING BOARD OF APPEALS MINUTES

SEPTEMBER 17, 2009

**CASE NO. 230 TONY & LISA TAGLIAPIETRA
SITE ADDRESS: 1962 BLACKHAWK DRIVE**

The re-convened public hearing and meeting was called to order at 5:00 p.m., for review of Case No 230, by Chairman Al Jacoby.

Board members present: John TeStrake, Al Jacoby, Mike Effinger, Greg Eichstaedt and Matt Zipter.

Absent: Don Tomczyk

Staff/Officials Present: Building Inspector Tom Johnson, Assessment Technician Cindy Geiger.

NOTICE OF PUBLIC HEARING & REASON FOR APPEAL

Building Inspector Tom Johnson read the notice of the re-convened public hearing and cited the reason for the appeal which is a variance of Section 22.04.015, of the Grafton Municipal Code, relating to the location of an accessory structure within the shoreland zoning district setback. The property location is 1962 Blackhawk Drive. If granted this request, the appellant will be allowed to construct an accessory structure within the shoreland zoning district setback. All persons wishing to be heard are invited to be present. Written correspondence should be submitted to the Building Inspectors office at the Village Hall. Should you have any questions regarding the subject matter of the public hearing or the hearing process please contact 262-375-3505. This notice will be posted at the subject site and public traffic or utility poles unless otherwise indicated at the following locations: Blackhawk Drive and Falls Road, 17th Avenue and Valley Drive, 125' south of 17th Avenue and Wichita Lane WEPCO power pole #05-17132 Village of Grafton. John TeStrake, Secretary

Al Jacoby requested that Tom Johnson read the letter the Village of Grafton received from the Department of Natural Resources (DNR) on this matter.

“September 16, 2009.
John TeStake, Secretary.

RE: Shoreland Setback Variance, Tony & Lisa Tagliapetra, 1962 Blackhawk Drive.
Dear Mr. TeStrake: Please read this letter into the hearing record for the Tagliapieta setback variance. I apologize for not having been able to send a copy to the property owners in advance but I was out sick last week. Although not at this particular address, I was at another site in this same development just yesterday so have an idea of the development conditions.

The DNR has been charged by the legislature to assist municipalities in implementation of the shoreland zoning as part of our public trust duties. One of our responsibilities is to

provide comments on variance applications to ensure consistent application of the shoreland regulations and to help municipalities in the protection of the public navigable streams.

For a shoreland setback variance, the case law is very clear that the burden of proof is on the applicant to demonstrate that without the variance the applicant cannot make reasonable use of the property, that the hardship is the result of a unique property feature, and that the grant of the variance would not harm the public trust (and cumulative impacts must be considered). It is very difficult for a property owner to demonstrate that it is unnecessarily burdensome for them to now have a shed within the setback area, especially for new construction with an attached garage. The setback restrictions are described in the subdivision plat and each property owner in this area of Blackhawk Drive is subject to these restrictions so the property owner should have been aware of the setbacks when purchasing the lot. From the plat of survey and the photographs included with the application, it appears that there are relatively flat areas outside the 75' setback that could be utilized for the shed with minor grade changes. Another possibility is to place the shed next to or in front of the house. The hardship cannot be self-created and by the applicant's own words, a substantial amount of fill was brought into the backyard area during construction.

There is also the burden of proof of the unique property feature. It appears that most of the houses on the east side of Blackhawk Drive south of Falls Road have steeply sloping backyards. There is no demonstrated feature unique to this property that is not shared by the neighboring houses.

Granting a shoreland setback variance can be detrimental to the public trust from erosion during construction, increased stormwater run-off after construction, loss of a vegetated buffer that provides wildlife habitat and natural scenic beauty. There is also the consideration that repeated projects of the same type could impact the entire watershed area causing flooding problems, water quality issues, and habitat loss.

The 75' setback was created to preserve a buffer along shorelines. Numerous studies have demonstrated that what happens on the land in this buffer area has a significant impact on the water resource itself. A shed is not a requirement for a reasonable use, there is no unique property feature, and granting this variance would be contrary to the public trust responsibilities.

Please contact me at (920)892-8756 ext 3031
Sincerely, Kathi Kramase, Water Management Specialist, "

Mr. Johnson noted that Kathi Kramases' statement, "Another possibility is to place the shed next to or in front of the house", is incorrect, a shed in the front yard is not an option according to the Village of Grafton zoning code.

WRITTEN CORRESPONDENCE

Eight letters regarding the re-convened meeting were sent to adjacent property owners via regular mail. In addition, an information packet was mailed to the DNR.

BOARD OF APPEALS – MEMBERS QUESTIONS

Board members had no questions.

ANYONE WISHING TO SPEAK.

Lisa Taagliapietra (owner) was sworn in to testify.

Lisa Taggliapietra stated that it was obvious that after looking at the letter that the representative from the DNR never came to their back yard because there is a significant slope that is unlike anyone else’s on their side of street. She stated that every house has an exposed basement, but their exposed basement has a slope 10’ from building and that everyone else’s back yard is at that level. Al Jacoby stated that a few of the Board members visited the site and that it would be pretty difficult to approve the variance. He stated that right now the State of Wisconsin has some law suits going on with cases like this one. And that they are not going to pass. He said we were hoping to get the letter from the DNR prior to tonight’s meeting but that we just received it. He stated then appellant would probably say, "Let’s just forget the whole thing." Lisa Tagliapietra wanted to know if the concrete slabs neighbors are adding to their properties are permitted? The Building Inspector said yes, they are permitted. Tom Johnson stated that when properties are annexed after May of 1982, we are required to enforce the county’s ordinance with regard to shoreland setbacks, floodplains & wetlands. Properties that are annexed after that date are subject to the 75’ setback ordinance. We have to enforce the rules as the county would. The county does not allow these types of variances. They tried to give a shoreland variance in 2006 and in turned were sued by the DNR. The DNR prevailed.

Discussion then addressed other possible locations of the shed placement, possibly of attaching the structure to the garage.

VOTE ON APPEAL

Motion by Al Jacoby, seconded by Matt Zipter, to deny the variance request regarding the building of an accessory structure within the shoreland zoning district setback. Approved unanimously to deny the request.

ANY OTHER BUSINESS

None.

Motion by, Mike Effinger seconded by, John TeStrake adjourn at 5:24 p.m.
Approved unanimously.

A tape recording of this meeting is available.

Respectfully submitted,
Cindy Geiger
Recording Secretary