

STATE OF WISCONSIN
OZAUKEE COUNTY
LAND AND WATER MANAGEMENT
BOARD OF ADJUSTMENT

May 6, 2010 - 9:50 a.m.
Ozaukee County Administration Center
Port Washington, Wisconsin
Reported by: Liane M. Baranek, RMR

Board Members Present:

John P. Riordan, Chairman
Stephen L. Castner
Barbara J. Jobs
Catherine Stern
Marjie Tomter

Also Present:

Andy Holschbach, Land and Water Management

Agenda:

Request for Conditional Use Permit - Mark and Frances
Besztery, owners.
Present: Mark and Frances Besztery, Dave Karwacki

LIANE M. BARANEK, RMR
Baranek & Stanke, Court Reporters
262-284-3869
262-679-3069

P R O C E E D I N G S

1
2 MR. RIORDAN: We will reconvene the Board
3 of Adjustment now if everyone's ready. Our drawings
4 are in progress down there. Okay.

5 We met here at 8:45 a.m. in this room and
6 went out to see the site, and this is a public
7 hearing open to the public. Anyone may address the
8 board providing they are recognized by the
9 chairperson -- I am the chairperson -- that they
10 identify themselves by name and where they're from,
11 and print their name on the attendance sheet,
12 please.

13 Did everybody sign the attendance sheet
14 who's here? Okay.

15 Adequate time will be provided to address
16 the Board regarding the various requests. The
17 hearing is being recorded by a court reporter.
18 Therefore, I ask that you do not interfere,
19 interrupt or interject comments while another person
20 has the floor, so one person speaks at a time,
21 please.

22 Mr. Holschbach, have the press and various
23 public interested parties been notified of this
24 hearing?

25 MR. HOLSCHBACH: Yes, they have.

1 MR. RIORDAN: Thank you. And so our
2 single request today, I think we can move right into
3 that.

4 MR. HOLSCHBACH: Our request today is for
5 a conditional use permit by Mark and Frances
6 Besztery, owners, for filling, grading and
7 excavating within the Lake Michigan
8 shoreland-floodplain area of Ozaukee County to
9 create a yard grade, stone wall and access staircase
10 associated with the construction of a new residence
11 in accord with Section 7.709 of the county
12 ordinance.

13 The project will involve the placement of
14 approximately 1,650 square feet, or 141 cubic yards
15 of fill within the Lake Michigan floodplain. The
16 parcel is located in the Town of Port Washington in
17 the NE 1/4, NW 1/4, Section 1. Parcel address is
18 07-052-01-38.001.

19 MR. RIORDAN: All right. Then I think if
20 we could have the applicant just describe what
21 they're going to do. Just address the Board as to
22 what your application is about, although we've all
23 read it, so if you'll just be brief. You know we've
24 been out to see it. Any other comments you'd like
25 to make?

1 MR. BESZTERY: We're just trying to build
2 a lake house for our family. We're trying to not
3 destroy the trees on the property and keep it so it
4 fits in well with the community, try not to disrupt
5 the neighborhood that much.

6 I know there's going to be some trucks
7 coming in there and it's going to be a little hectic
8 for a while, but trying to work with everyone and
9 just trying not to step on anybody's toes as far as
10 building in the area down there. Trying to keep it
11 within all the guidelines and take your
12 recommendations into play.

13 Today we talked about adding like a
14 rainwater or stormwater area, to try and incorporate
15 that and make things green. That's about it.

16 MR. RIORDAN: All right. Thank you.
17 Andy, then we have your staff report. Would you
18 like to read through that for us?

19 MR. HOLSCHBACH: Sure. I'll get right
20 into the department findings:

21 1. The Lake Michigan floodplain elevation
22 affecting this property is 587.30 feet NGVD,
23 resulting in a large portion of the property being
24 situated in the Lake Michigan floodplain.
25 Residential development is an allowable use in the

1 flood fringe district per 7.0709 of the county
2 shoreland and floodplain zoning ordinance.
3 Developments may be permitted in the flood fringe
4 only if such developments do not cause an
5 obstruction to flood flows and do not increase the
6 regional flood height due to flood storage area lost
7 equal to or exceeding 0.01 feet, or one-hundredth of
8 a foot. The floodplain modeling utilized in the
9 development in the current FEMA Flood Insurance Rate
10 Maps assumes the flood fringe as a filled area, so
11 the proposed project will not adversely affect flood
12 storage. Although the Lake Michigan floodplain is
13 large enough that this individual project is not
14 likely to seriously reduce the flood storage
15 capacity of the total floodplain, each floodplain
16 project adds more fill. The cumulative effect of
17 similar projects can have significant and serious
18 negative impacts on the floodplain and the near
19 shore habitat.

20 2. The property owners have located the
21 proposed house outside of the 100-year floodplain.
22 There is room on the property to move the residence
23 closer to the road, but this would require removing
24 a majority of the mature trees from the property.
25 Due to the proposed first floor elevation, egress

1 from the lakeside of the residence is not possible.

2 3. The existing drainage in the project
3 area appears to flow easterly across the project
4 area.

5 4. The proposed fill will not
6 significantly impact stormwater drainage patterns.
7 This issue will be addressed in association with the
8 zoning and stipulated permits for construction of
9 the residence.

10 5. The proposed project should not
11 adversely affect water quality if properly managed
12 through the use of erosion control provisions at
13 least as effective as those developed by the
14 Wisconsin DNR under Subchapter V of Chapter NR 151,
15 Wisconsin Administrative Code.

16 6. Per Kathy Kramasz, Wisconsin DNR water
17 management specialist, this project will require a
18 Chapter 30 grading permit because there will be
19 greater than 10,000 square feet of grading within
20 the defined shoreland area which is 500 feet from
21 the ordinary high water mark. The applicant is
22 working with the DNR to obtain said permit, which is
23 also a requirement of the stipulated permit for this
24 project.

25 7. Also per Kathy Kramasz, Wisconsin DNR

1 water management specialist, the wetland delineation
2 performed as part of the lot creation is still
3 valid. No portion of this wetland will be affected
4 by the projects permitted through this department.

5 8. The filling will not significantly
6 reduce wildlife habitat for the area.

7 9. The fill project as proposed will not
8 remove floodplain from the property. Any future use
9 of the filled area will be subject to floodplain
10 development standards.

11 And the staff recommendations. Should the
12 Board decide to grant the conditional use permit to
13 allow the filling, grading and excavation of
14 approximately 141 cubic yards of fill in the Lake
15 Michigan floodplain, the department recommends the
16 following conditions of approval:

17 1. Only clean fill be used. The fill
18 shall not contain hazardous or putrescible materials
19 or demolished building materials, including
20 concrete, lumber, rubble or asphalt.

21 2. A stormwater management plan shall be
22 implemented which has been approved by the Land and
23 Water Management Department to ensure stormwater is
24 properly managed and the adjacent properties are not
25 negatively impacted by stormwater.

1 3. Erosion control provisions at least as
2 effective as those in the technical standards
3 developed by the Wisconsin DNR under Subchapter V of
4 Chapter NR 151, Wisconsin Administrative Code, shall
5 be installed immediately downgrade from the project
6 site to prevent sediment delivery off the property
7 or onto the adjacent properties. These controls
8 must be maintained until the soil is adequately
9 revegetated or otherwise protected to prevent
10 erosion. Once the vegetation is adequate to prevent
11 erosion, the barriers shall be removed.

12 4. All required state, federal and local
13 permits must be acquired.

14 5. Notify the department within ten days
15 of project completion to request a certificate of
16 zoning compliance.

17 6. The conditional use permit shall be
18 valid for one year from the date of issuance with
19 renewal or extension only upon review and approval
20 by this Board.

21 7. Any significant changes and/or
22 revisions to the proposed project must be submitted
23 to the Land and Water Management Department for
24 review and approval before being implemented.

25 The Board and applicant must be aware that

1 if the project is approved, an appeal period extends
2 for 30 days after this hearing. During that period,
3 any interested party can appeal the decision, either
4 approved or denied, to circuit court. Any work done
5 prior to permit issuance is at the applicant's own
6 risk.

7 Any questions about any of that?

8 MR. RIORDAN: Do you have a copy of this
9 as the applicant?

10 MR. BESZTERY: Yes.

11 MR. RIORDAN: What was just read? Okay.
12 Is there anyone from the public who would like to
13 add or comment? Any Board member who would have
14 questions? No Board members have questions.

15 MS. STERN: There was a gentleman that
16 came in. I don't know that he's part of this group
17 or--

18 MR. RIORDAN: Yes. Dave is a neighbor and
19 he has no questions he said.

20 MS. STERN: Are you okay?

21 MR. KARWACKI: Yes. I have no questions.
22 Evidently a hundred yards, that's about six
23 truckloads. That's not a terribly large amount.
24 It's a hundred cubic yards.

25 MR. HOLSCHBACH: 141 cubic yards. It's a

1 small area.

2 MR. RIORDAN: Approximately 1650 square
3 feet equalling 141 cubic yards of fill.

4 MS. STERN: John, I have a question.

5 MR. RIORDAN: Cathy.

6 MS. STERN: All these little things that
7 we always do, you know, to make things work, every
8 time we fill in -- this time it's only 141 yards,
9 okay, but then the next time we do another 141
10 yards, my concern is how long are we going to keep
11 adding and filling in areas of floodplain?

12 This is just a little one. I don't know,
13 when you drop that much fill into their yard to
14 build their house, where does the water go then? I
15 mean does it go to the neighbor's then or is it just
16 going to pool right out in front there and they'll
17 have a lake right beyond their rock wall?

18 MR. HOLSCHBACH: Well, in their case the
19 drainage is towards Lake Michigan. That's the
20 natural flow of water, and I know the soils there
21 are, you know, a sandier type soil so you do get a
22 lot of percolation into the soil, but certainly when
23 you, you know, when you create impervious area that
24 water no longer can just soak in within that area so
25 you are creating more runoff so, you know, one of

1 the requirements here is that they do a stormwater
2 management plan, and we talked real briefly out in
3 the field this morning about doing some rain gardens
4 potentially to collect some of the roof water and to
5 at the same time make it aesthetically pleasing for
6 you, so you're right. I mean all these little fill
7 projects are, you know, are a concern.

8 MS. STERN: Part of my point is if you
9 have a glass of water and you keep adding in a
10 teaspoon, the first teaspoon isn't bad, and the next
11 teaspoon -- pretty soon you've filled it up. Where
12 has the water gone?

13 MR. HOLSCHBACH: One thing about the State
14 of Wisconsin, though, Wisconsin's floodplain rule,
15 it doesn't look at the cumulative ongoing impact of
16 all these little projects.

17 MS. STERN: We've talked about this
18 before, but I just want you to know that I am still
19 really concerned about that.

20 MR. RIORDAN: I share your concern, Cathy,
21 and I think for the applicant's point of view just
22 on this point, it's in the department findings, the
23 last two sentences which I'll read: Although the
24 Lake Michigan floodplain is large enough that this
25 individual project is not likely to seriously reduce

1 the flood storage capacity of the total floodplain,
2 each floodplain project adds more fill. The
3 cumulative effect of similar projects can have
4 significant and serious impacts on the floodplain
5 and the near shore habitat, and I have expressed the
6 concern many times.

7 We've discussed this before that no one is
8 doing the metrics, is accountable for this because
9 there are many municipalities involved; there's one
10 county involved, there are many other counties
11 involved, there are different states involved,
12 there's another country involved, so it's a big
13 question.

14 MS. TOMTER: I think we have to keep in
15 mind that I totally agree; you know, I'm not big
16 into building, but they're not extending the
17 footprint of the house into the floodplain, nor are
18 they putting up any kind of an impermeable surface
19 in the floodplain, there's no concrete patio, so I
20 mean worst case scenario, they're putting more dirt
21 into the floodplain and so that dirt will still
22 absorb the water.

23 This isn't as bad as a lot of other
24 situations that could be happening, and they've been
25 pretty conservative I think about keeping their home

1 back out of the floodplain and seem to be pretty
2 conscientious of the environment around it, so I
3 don't think, you know -- and this beach is built now
4 at this point. I didn't see any other empty lots on
5 that beach so we're not adding a whole lot more.

6 MR. RIORDAN: And the county zoning
7 ordinance, if I understand correctly, Andy, says
8 that in new development. This is not new
9 development; is that correct? It's an established
10 subdivision already.

11 MR. HOLSCHBACH: Right. In the
12 establishment of new subdivisions, those
13 subdivisions are to be designed in such a fashion
14 that there will be no filling of a floodplain.

15 The only time an applicant could
16 potentially fill in a situation like that is if you,
17 the Board, still would give them approval, but our
18 ordinance was, when it was revised last, did include
19 some additional language that would encourage and
20 ensure that future developments do not involve
21 filling of the floodplain.

22 MR. RIORDAN: Any other comments from
23 Board members?

24 MS. JOBS: I'm in total agreement with
25 what Marjie said. Looking at this project I guess

1 in retrospect with some of the other ones, the
2 building is not in the floodplain.

3 MR. RIORDAN: Steve, any way in, or does
4 anyone want to propose a motion to either approve or
5 deny the request?

6 MR. CASTNER: I'll be glad to make a
7 motion.

8 MR. RIORDAN: Anyone else have something
9 to say?

10 MR. CASTNER: I'll move approval of a
11 conditional use permit according to the application
12 and the conditions set forth in the department
13 findings and staff recommendations.

14 MS. TOMTER: I would second that motion.

15 MR. RIORDAN: We have a first and a
16 second. I'll call for a vote. Maybe we can start
17 with you.

18 MR. CASTNER: Aye.

19 MS. TOMTER: Aye.

20 MS. STERN: Aye.

21 MS. JOBS: Aye.

22 MR. RIORDAN: I'm going to say no, but
23 just because of this one sentence that no one's
24 keeping track, and that concerns me a lot from our
25 stewardship standpoint, but it's 4 to 1. The permit

1 is approved. Okay. Thank you very much. Good luck
2 to you.

3 Then moving on. Communications and
4 miscellaneous. Does anyone have any communications?

5 MR. HOLSCHBACH: I do not have any
6 additional communications or any miscellaneous
7 information to share with you this morning.

8 MR. RIORDAN: Any other matters allowed by
9 law?

10 MR. HOLSCHBACH: We need to approve the
11 March 4th, 2010 record.

12 MR. RIORDAN: Has everyone had a chance to
13 look at the record from March 4th, the minutes of
14 the meeting?

15 MS. JOBS: I'll move to approve if you're
16 at that point.

17 MR. CASTNER: Second.

18 MR. RIORDAN: Let's have a roll call.

19 MR. CASTNER: Aye.

20 MS. TOMTER: Aye.

21 MS. STERN: Aye.

22 MS. JOBS: Aye.

23 MR. RIORDAN: Unanimous. Adjournment. If
24 there's no other business, let's have a vote to
25 adjourn.

1 MS. STERN: I so move.

2 MS. JOBS: I'll second.

3 MR. RIORDAN: All in favor say aye.

4 (Vote taken - Unanimous.)

5 MR. RIORDAN: All opposed, nay. The ayes
6 have it. Thank you very much.

7 (Proceedings concluded at 10:10 a.m.)

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1 STATE OF WISCONSIN)
2 OZAUKEE COUNTY) ss.
3)

4 I, LIANE M. BARANEK, Notary Public in and
5 for the State of Wisconsin, do hereby certify that the
6 foregoing proceedings were taken before me at the time
7 and place set forth in the caption thereof; that the
8 foregoing proceedings were reported by me
9 stenographically in shorthand; and that the foregoing
10 proceedings constitute a true and accurate transcription
11 of my original machine shorthand notes taken upon the
12 hearing to the best of my ability.

13 I FURTHER CERTIFY that I am not a relative
14 or employee or counsel to any of the parties hereto, nor
15 a relative or employee of their counsel, and have no
16 interest in the outcome or events of said action.

17 IN WITNESS WHEREOF, I have hereunto
18 affixed my official signature and seal of office, this
19 13th day of May, 2010 at Port Washington, Wisconsin.

20
21 _____
22 LIANE M. BARANEK
23 Notary Public
24 State of Wisconsin

25 My Commission Expires:
November 10, 2013.

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