DANE COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE SEPTEMBER 28, 2006 MEETING

MEMBERS PRESENT: Louise Klopp, Al Long, Steven Schulz, Sue Studz.
OTHERS PRESENT: Kristine Schutte

I. CALL TO ORDER:
Chair Schulz called the meeting to order at 6:37 p.m. in Room 310 of the City-County Building.

II. PUBLIC HEARING FOR SEPTEMBER 28, 2006 APPEALS

1. #3437. Appeal by Arboretum Neighborhood Association to appeal the interpretation of the Dane County Zoning Administrator pertaining to the development potential of Lots #7, #8, #9, #10 and part of Lot #11, Block 2, Forest Park, Section 27, Town of Madison, as provided by Sections 10.05(4) and (5), 10.16(3) and 11.03(1), Dane County Code of Ordinances. The Zoning Administrator’s interpretation may permit one new single-family residence to be built on each of the five (5) lots described above.

COMMUNICATIONS:
• 06/15/2006 Letter of interpretation by Dane County Zoning Administrator Peter Conrad, RE; “Buildability” of Lots 7-10 and part of Lot 11, in the Plat of Forest Park, Town of Madison
• 07/14/2006 Letter from William P. O’Connor, appealing the Zoning Administrator’s interpretation.
• 09/26/2006 Memorandum of Law in Support of Zoning Administrator’s Determination, submitted by Attorney Andrew Phillips, Stadler, Centofanti & Phillips, S.C., Mequon, WI, representing GCK Investments (Respondents) – delivered by Schutte to BOA members at Public Hearing
• Materials Received at the 09/28/2006 Public Hearing
  Faxed Letter from Cami Peterson, Water Regulation and Zoning Specialist, Wisconsin Department of Natural Resources, dated 09/28/2006
  “Background” information submitted by registrant for the Appeal Ronald Kalil
  Brief “In re Appeal of Zoning Administrator’s Determination” submitted by William P. O’Connor, representing the Appellants
  Rebuttal, submitted by William P. O’Connor, representing the Appellants
• Emails received by the Zoning Division prior to the Public Hearing – copies available.

Finding of Fact:
1. Until recently, one homeowner held Lots 7, 8, 9, 10, and the easterly 19 feet of Lot 11, Block 2, Plat of Forest Park in common ownership and occupied the existing house located on Lots 8 and 9.
2. The property was bought by GCK Investments LLC. On 07/10/2006, Zoning Permit 2006-566 was issued to GCK Investments for a new single-family residence at 2415 Arboretum Drive on Lot 10 and part of Lot 11, Block 2, Forest Park. There has been no start of construction to date.
3. A letter dated 07/25/2006 from the Dane County Corporation Counsel’s office ‘stayed’ issuance of any further Zoning Permits pending the Board’s decision on the appeal.
4. Concern about the possible use of the lots described above for more than one new single-family residence prompted the Arboretum Neighborhood Association to request an interpretation in writing regarding the provision of the Dane County Zoning Ordinance that would allow this use.

SPEAKING IN SUPPORT OF THE APPEAL:
William P. O’Connor, attorney representing the Arboretum Neighborhood Association
Sara Hotchkiss, Madison, WI
SPEAKING IN OPPOSITION TO THE APPEAL (SUPPORTING THE ZONING ADMINISTRATOR’S INTERPRETATION):
Andrew Phillips, attorney representing GCK Investments
Dave Grauvels, Madison, WI
Devery Cash, Sun Prairie, WI
Gary Rehfeldt, attorney, Dane County Corporation Counsel, representing the Zoning Administrator

REGISTERING IN SUPPORT OF THE APPEAL:
John Hendrick, County Board Supervisor, District 6, Madison, WI
Thomas Farrell, Madison, WI
Elizabeth Farrell, Madison, WI
Marilyn Rhodes, Madison, WI
Janette Smart, Madison, WI
Martin Barrett, Madison, WI
David Egger, Madison, WI
Julie Egger, Madison, WI
Basil Tikoff, Madison, WI

Motion: Schulz/Studz to abey action on the appeal for 30 days.
Motion carried: 4 / 0

2. #3438. Appeal by James & Marjorie Bogacz for a variance from minimum required side yard as provided by Section 10.16(5)(a)2., Dane County Code of Ordinances, to permit second story addition to existing residence as proposed at 4230 Morris Park Road, being parts of Lots 5 and 6, Morris Park, Section 8, Town of Dunn.

COMMUNICATIONS:
08/09/2006 Letter from Rosalind Gausman, Clerk, Town of Dunn acknowledging receipt of information regarding the Bogacz variance appeal.
09/27/2006 Letter from Rosalind Gausman, Clerk, Town of Dunn – “Town Board…recommends approval of this variance contingent upon the property owner being required to keep the surface water from this property from going on to the adjacent properties."

VARIANCE REQUESTED: 1.6 foot variance from minimum required side yard (5.0' - 3.4' = 1.6').

IN FAVOR: Jack Gugger, President, Gugger Home Improvement Companies, contractor for the Bogacz’s project, described it as creating no change in the existing house footprint. New post holes would be dug for the proposed deck.

OPPOSED: None

Motion: Long/ Klopp to grant a variance of 1.6 feet from the north lot line to allow construction of a second story above the existing first floor of the house, with Town Condition, interpreted as no additional water runoff to adjacent properties due to the construction of the addition.
Finding of Fact:
1. Existing house with partial second story is 40 years old, according to agent.
2. Parcel on which house is built is North 42 feet of Lot 5 and South 2 feet of Lot 6, both lots in the Morris Park Subdivision. The overall width of the Bogacz’s parcel is 42.00 feet at the Morris Park Road right-of-way and 43.87 feet at the meander line. (Note 2.0 foot “jog” near northeast corner of detached garage.)
3. Minimum side yard is 5.0 feet for lots less than 50 feet wide. North side of existing house is 3.4 feet from north property line (as per survey revised 08/10/2006), but is closer to the north line of Lot 5. No information was submitted by applicant regarding legal status of the property, but the Board may assume the parcel is legal unless proven otherwise.
4. Owners propose to complete the second story so it extends over the main 30.6’x26.5’ section of the house, requiring variance from north side yard setback. Owners also propose a 6’x20’ (120SF) lake side deck that will meet the minimum average setback from the Ordinary Highwater Mark and will not need a variance.

Conclusion:
1) The hardship is not self-imposed, and no additional side yard encroachment will result.
2) Existing house location on substandard width lot is a unique physical limitation of the property.
3) Public interest is served by Town Condition regarding no additional runoff.

Motion Carried: 4 / 0

3. #3439. Appeal by Dennis & Donna Laufenberg for a variance from minimum required setback from Ordinary Highwater Mark, and for extension of one-year period to obtain permit under Variance 3387, granted October 27, 2005, as provided by Sections 11.03(2) and 10.26(9), Dane County Code of Ordinances, to permit replacement of home destroyed by tornado as proposed at 3766 Halverson Road, in the SE 1/4 SE 1/4, Section 27, Town of Dunn.

COMMUNICATION:
08/15/2006 Letter from Rosalind Gausman, Clerk, Town of Dunn acknowledging receipt of information from the applicant regarding the variance described above.
09/19/2006 Letter from Rosalind Gausman, Clerk, Town of Dunn: “No objections were received. The Town Board recommends approval…” of the request for a variance to rebuild the tornado-damaged house, including the proposed 10’x60’ deck.

VARIANCES REQUESTED:
1) Needs variance of 28 feet from minimum 75 foot required setback to Ordinary Highwater Mark of the navigable stream. (75’ – 37’ to deck = 38’)
2) Section 10.26(9)” Expiration of authorization” provides one year from the date a variance is granted for the applicant to apply for a zoning permit for the construction allowed under the variance. The section also provides that “the board of adjustment, upon request, may extend such authorization for a specific period without the necessity of another public hearing.” Laufenberg is asking for an extension. It was considered prudent to include this in the Public Hearing Notice.

IN FAVOR: Dennis and Donna Laufenberg
OPPOSED: None

Motion: Klopp/Studz to grant a variance of 38 feet from setback to Ordinary High Water Mark of navigable stream north of house to allow reconstruction of house destroyed by 08/15/2005 tornado, including 10 foot deep deck along full rear wall of house; and also extend deadline for Variance 3387 for one year (applicants must obtain Zoning Permit by October 27, 2007).
Finding of Fact:
1) 08/15/2005 Tornado destroyed all but the foundation of the Laufenberg’s house. Note that the County Board and County Executive had earlier passed a Resolution providing accommodation to those whose buildings or properties were damaged by the August 15, 2005 tornado.
2) Action of Board re: Appeal 3387 -- October 27, 2005 BOA Public Hearing: To grant, with Condition, a 13.7 foot variance from road right of way as requested for reconstruction of house over existing footprint of residence, with Condition: If the ditch in the rear yard is determined to be a navigable stream, and also requires a variance, the Board shall reconsider this application within one year and request that there be no additional fee for the new variance. Any fee for a navigable stream determination under Section 12.05 (13) shall be paid at the time of the request for such determination.
3) Stream in rear yard does not appear on Dane County Zoning maps or on the FEMA Flood Insurance Rate Map. However, a 04/21/2006 Navigability Determination by Zoning Administrator Pete Conrad verified that the stream behind (north of) the tornado-damaged house is navigable. Note that he also determined that drainage from the culvert under Halverson Road to the east of the house is not a navigable stream under the definition of “navigability” in Section 11.015(11) of the Dane County Code of Ordinances.
4) The home as it existed before the tornado included a deck along the north wall of the house extending 10 feet from the wall toward the stream. The deck was destroyed in the tornado.
5) The north wall of the foundation remaining after the tornado destroyed the home is located 47 feet more or less from the top of the stream bank as per measurements by the owner.
6) 10/27/2006 One year deadline under Appeal 3387 for Zoning Permit to rebuild home.

Conclusion:
1. Unnecessary hardship caused by stream not previously considered as officially navigable.
   Previous variance to road right-of-way allowed reconstruction of home.
2. Destruction by tornado created unique physical limitations of the property.
3. Extending the deadline for reconstruction serves the public interest.

Motion carried: 4 / 0

III. APPEALS FROM PREVIOUS HEARINGS

1. #3430, Purcell, Town of Christiana, Section 13, from the July 27, 2006 and the August 24, 2006 Public Hearings:
   Appeal by Gregory & Marcie Purcell for a variance from minimum required setback from Wetlands boundary as provided by Section 11.06(5), Dane County Code of Ordinances, to permit new single-family residence or addition/alteration of existing residence as proposed at 95 County Highway B, being Lot #1, CSM 4284 in the NW 1/4 SE 1/4, Section 13, Town of Christiana.

   VARIANCE REQUESTED:
   Needs variance of 23 feet more or less to rebuild or enlarge existing home
   (Minimum 75 foot setback from delineated Wetlands boundary minus 52 feet more or less feet more or less setback for proposed new home).

   IN FAVOR: Greg Purcell, Chris Miller
   OPPOSED: None

   Motion: Studz/Long to grant a variance of 23 feet from the minimum setback to the delineated Wetland boundary to allow new house construction as proposed.

   Finding of Fact:
   New Information for August P.H.:
   1. Existing house and deck have a total footprint area of 1273 SF, with 500+- SF currently extending into the Wetlands setback.
2. Contractor Chris Miller has submitted a new proposed house footprint, and new floor plans. This house uses the entire existing building footprint and extends to the east only. With an attached garage, the proposed house would be 3500+- SF, but would not extend closer to the Wetlands boundary than the deck on the existing house.

3. The proposed floor area exceeds the 150% rebuild area permitted \([\frac{3500}{1273} \times 100 = 275\%]\) of the existing house footprint or an excess of 125%). However, Zoning Administrator Peter Conrad has determined that the variance to be addressed is for the setback from the Wetlands boundary rather than for the 150% increment permitted for "[a]dditions to existing legal non-conforming buildings" as per Section 11.06(5)(c).

4. Owners will remove three existing non-conforming sheds located either within the 75 foot setback from Wetlands or in the Wetlands themselves.

**Conclusion:**
1. Unnecessary Hardship: Applicants have reduced their request, requesting minimum relief.
2. Large Wetlands area on this property creates a unique physical limitation of the property.
3. Proposed new house will eliminate encroachment into highway setback; and existing non-conforming sheds will be removed, serving public interest.

**Motion carried:** 4 / 0

**IV. APPROVAL OF MINUTES**
Schutte explained that Minutes of the August 17, 2006 Site Visits and the August 24, 2006 Public Hearing of the Dane County Board of Adjustment were not available for Board action, due to Zoning Division staffing issues.

**Motion** by Schulz/Studz to abey approval of the minutes of the August 17, 2006 Site Visits and the August 24, 2006 Public Hearing until the October, 2006 Board meeting.

**Motion carried**, 4 / 0.

**V. ADJOURNMENT:**

**Motion:** Studz / Klopp to adjourn. **Motion carried:** 4 / 0 at 11:22 p.m.

Respectfully submitted,

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

MINUTES FILED WITH THE COUNTY CLERK: November 16, 2006