



VILLAGE OF WILLIAMS BAY

250 Williams Street | PO Box 580 | Williams Bay | WI | 53191 | vi.williamsbay.wi.gov

Phone: 262-245-2700

OFFICIAL MINUTES ZONING BOARD OF APPEALS MEETING 11/3/2025 MEETING MONDAY, NOVEMBER 3, 2025 AT 5:00 PM VILLAGE HALL COUNCIL ROOM 250 WILLIAMS STREET WILLIAMS BAY, WI 53191

THERE MAY BE A QUORUM OF VILLAGE TRUSTEES PRESENT, NO BOARD BUSINESS WILL BE CONDUCTED.

I. Call to Order

Trustee Vlach called the meeting to order at 5:00pm.

II. Roll Call

Present: Trustees George Vlach, Attorney Mark Schroeder, Commissioner Dennis Costello, Matt Robbins, Connie Gluth
Also Present: Zoning Administrator Allison Schwark, President Adam Jaramillo, Trustee Rob Umans, Commissioner Tom Lothian, Commissioner Mike Fieweger, Clerk Tina Kolls

III. Pledge of Allegiance

The Pledge of Allegiance was recited by all.

IV. Minutes

A. Zoning Board of Appeals Meeting Minutes of October 21, 2025

The motion to approve the Zoning Board of Appeals Meeting Minutes of October 21, 2025, as corrected, was initiated by Commissioner Robbins and seconded by Commissioner Costello. Unanimously carried.

V. Variance Application

A. Motion to Open Public Hearing - All interested in this matter are invited to attend

APPLICANT(S): Thomas and Laurie Beda (Owner)

TAX KEY NUMBER: WDA 00007

STREET ADDRESS: 7 Dartmouth Road, Dartmouth Woods Condominium, Williams Bay, WI 53191

Applicants request a variance to zoning code section 390-0209, SF-1 Low Density Residential District, to allow for a second story addition on a portion of the home that already exists within the required side yard setback of 30 feet, and shore yard setback of 150 feet.

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The motion to deny the request a variance to zoning code section 390-0209, SF-1 Low Density Residential District, to allow for a second story addition on a portion of the home that already exists within the required side yard setback of 30 feet, and shore yard setback of 150 feet was initiated by Commissioner Costello and seconded by Trustee Vlach. In favor Trustee Vlach and Commission Costello, in opposition Commissioner Robbins and Commissioner Gluth. Motion

Failed.

The motion to approve the request a variance to zoning code section 390-0209, SF-1 Low Density Residential District, to allow for a second story addition on a portion of the home that already exists within the required side yard setback of 30 feet, and shore yard setback of 150 feet was initiated by Trustee Vlach and seconded by Commissioner Robbins. In favor Commissioner Robbins and Commissioner Gluth, in opposition Trustee Vlach and Commission Costello. Motion Failed.

VI. Adjournment

The motion to adjourn was initiated by Commissioner Robbins and seconded by Commissioner Gluth at 05:42pm. Unanimously carried.

/s/ Tina Kolls, Village Clerk

These are not official Minutes until approved by the Governing Body.

Memo

To: Williams Bay Zoning Board of Appeals
From: Attorney Mark A. Schroeder
Date: November 3, 2025
Re: 7 Dartmouth Rd. (Beda Application for Variance)

I have been asked to provide a written response to the October 30, 2025 letter from the attorney representing Thomas and Lauri Beda regarding their application for a variance. The following are my comments regarding same.

Reference is made to 2011 Wisconsin Act 170. Relevant to this variance application, that act created Wis. Stat. Sec. 62.23 (7) (hb)b.2. That section relates to nonconforming structures and provides that no ordinance may limit or prohibit the repair, maintenance, renovation or remodeling of a nonconforming structure. In the current application for variance, the request is to be able to add a second story to a portion of the existing residential structure.

In determining whether the application falls within the coverage of the statute, I looked to the dictionary definition of the term "renovation". The *American Heritage College Dictionary Third Edition*, provides that the term "renovation" means to restore to an earlier condition as by repairing or remodeling. It would seem that in this instance, the term "expand" would be more applicable. Its meaning is to increase in size, volume, quantity or scope of; enlarge. As a result, in my opinion the above referenced statute is not applicable to the pending variance application.

There is next a contention that the variance application is governed by the provisions of Wis. Adm. Code Ch. NR 115. It is correct that NR 115 does contain provisions relating to nonconforming structures. However, for the reasons I will describe, it is my opinion that it does not apply to the village in this instance.

NR 115.01 clearly states that it applies to counties in the drafting of their shoreland zoning ordinances. There is a note following that section which explains that 2011 Wis. Act created Wis. Stat. Sec. 59.692 (2m) which prohibits a county from enacting and any village from enforcing any provision in a county ordinance which is more restrictive than the standards in NR 115. Because it references enforcement of county ordinances, the question is why would this apply to the village.

In NR 115.02 it provides that the provisions of NR 115 apply to county shoreland ordinances and to annexed or incorporated areas. This is further explained in a note to that section which refers to 2013 Wis. Act 80, which created Wis. Stat. Sec. 61.353. It provides in subpart (2) of that statute that it applies to

shoreland annexed by the village after May 7, 1982, which property was previously subject to a county shoreland zoning ordinance. I am informed by the office of the village clerk that there are minutes from a village meeting in 1965 listing the property as being in the village. As a result, the provisions of NR 115 would not apply to the subject property.

In summary, it is my opinion that the provisions of NR 115 do not apply to the property which is subject to the present application for variance for the following reasons:

- (1) The provisions of Wis. Stat. Sec. 61.353 (2) do not apply to the subject parcel.
- (2) Williams Bay is not enforcing a county shoreland zoning ordinance.
- (3) NR 115.02 provides that all villages are required to comply with and obtain all necessary permits under local shoreland ordinances.

The next point raised challenges whether the village is applying the correct standards in reviewing the application for variance.

In the case of *State ex rel. Ziervogel v. Washington Board of Adjustment* (2004 WI 23), the court set forth general standards for review of an area variance, which is the type of variance at issue in this situation. Those standards are as follows:

1. Is the hardship based on conditions unique to the property rather than conditions personal to the property owner.
2. The variance cannot be contrary to the public interest.
3. The claimed hardship is to be evaluated in light of the purpose of the subject zoning restriction.
4. The requested variance cannot be contrary to the public interest.
5. The reason for the variance cannot be self-created.

The court went on to note that the reviewing body should determine whether compliance with the strict letter of the restriction involved would unreasonably prevent the owner from using their property for a permitted purpose, or renders such restrictions unnecessarily burdensome.

The standards for granting a variance are also set forth in Section 390-1215 of the Zoning Ordinance of the Village of Williams Bay. I would summarize them as follows:

1. The hardship is not one that affects the subject property different from that of other properties, as compared to one that affects all properties similarly.
2. Pecuniary hardship is not, in itself, grounds for variance.
3. It is not a self-imposed hardship.
4. A variance is granted to other properties are not the basis for variance.

5. A hardship would not exist except for the provisions of the zoning ordinance.
6. Can the property be developed similar to other properties in the zoning district.
7. Would a variance be of substantial detriment to adjacent properties.
8. Would a variance have a substantial impact on the character of the neighborhood or long-range planning matters.

It would appear to me that the standards set forth in the ordinance are consistent with the general standards set forth in the *Ziervogel* case. In any event, the BZA should be certain that its decision is consistent with the general standards of that case.

conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.

f. A variance granted under this subdivision runs with the land.

8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.

10. a. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

b. Notwithstanding subd. 10. a., a decision of the board of appeals on an application for an approval, as defined in s. 781.10

(1) (a), is subject to review under the procedures contained in s. 781.10.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(ea) *Filing fees.* The common council may by ordinance or resolution establish reasonable fees for the filing of a petition for amendment of the zoning ordinance or official map, or for filing an appeal to the board of appeals.

(em) *Historic preservation.* 1. Subject to subds. 2. and 2m., a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subds. 2., 2m., and 3., a city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. Subject to subds. 2. and 2m., the city may regulate, or if the city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archaeological landmarks and all property within each historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.

2. Before the city designates a historic landmark or establishes a historic district, the city shall hold a public hearing. If the city proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the city shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.

2m. In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

3. An owner of property that is affected by a decision of a city landmarks commission may appeal the decision to the common council. The common council may overturn a decision of the commission by a majority vote of the common council.

(f) *Enforcement and remedies.* 1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. In case of a violation of this section or of such ordinance or regulation such council may provide for the punishment by fine and by imprisonment for failure to pay such fine. It is also empowered to provide civil penalties for such violation.

2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or

Village of Williams Bay, WI
Monday, November 3, 2025

Chapter 390. Zoning

Article 12. Procedures

§ 390-1215. Variance.

- A. Purpose. The purpose of this section is to provide regulations that enable the Village to hear and decide requests for permitted variation from the terms of this chapter as will not be contrary to the public interest, where, owing to special factors, a literal enforcement of the provisions of this chapter would result in practical difficulty or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done, as provided for by § 62.23(7)(e)7, Wis. Stats.
- B. Initiation of request. Proceedings for approval of a variance may be initiated by an application of the owner(s) of the subject property.
- C. Application. Variance applications shall be printed on an application form provided for the purpose and filed with the Village Clerk. Said application shall be accompanied by a fee as specified in §§ **390-1106** and **390-1107**. In addition to all information required on the application form, the applicant shall supply the following:
- (1) A map of the subject property showing all lands for which the variance is proposed, and all other lands within 200 feet of the boundaries of the subject property, together with the names and addresses of the owners of all lands on said map as the same appear on the current records of the Register of Deeds of Walworth County (as determined by the Village of Williams Bay). Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) that maintains that control. Said map and all its parts and attachments shall be submitted in a form that is clearly reproducible with a photocopier, and shall be at a scale that is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a North arrow shall be provided.
 - (2) A written description of the proposed variance describing the type of specific requirements of the variance proposed for the subject property.
 - (3) A site plan of the subject property as proposed for development. Said site plan shall conform to any and all the requirements of § **390-1206**.
 - (4) Written justification for the requested variance consisting of the reasons why the applicant believes the proposed variance is appropriate, particularly as evidenced by compliance with the standards set out in Subsection **D(2)(c)** below.

D. Review by Zoning Administrator.

CK.
H

*Village of Williams Bay, WI
Monday, November 3, 2025*

Chapter 390. Zoning

Article 11. Administration

§ 390-1105. Zoning Board of Appeals.

There is hereby established a Zoning Board of Appeals for the Village of Williams Bay for the purpose of hearing appeals and granting variances and exceptions to the provisions of this Zoning Ordinance.

A. Membership.

- (1) The Zoning Board of Appeals shall consist of five members appointed by the Village President and confirmed by the Village Board.
- (2) The Village President shall appoint a first alternate member and a second alternate member to act only when a regular member is absent or refuses to vote because of interest.
- (3) The second alternate member may act only when the first alternate is unable to act or is already sitting.
- (4) Terms shall be for staggered three-year periods.
- (5) The Village Clerk shall serve as the secretary.
- (6) Two members shall be Village Board members and three members shall be citizen members.
- (7) One member shall be a Village Plan Commissioner and one member shall be a registered architect, professional engineer, builder, real estate agent, or certified planner.
- (8) Official oaths shall be taken by all members in accordance with § 19.01, Wis. Stats., within five days of receiving notice of their appointment.
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]
- (9) The Zoning Administrator shall attend all meetings for the purpose of providing technical assistance when requested by the Board.
- (10) Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

B. Organization.

- (1) The Zoning Board of Appeals shall organize and adopt rules of procedure for its own government in accordance with the provisions of

this chapter.

- (2) The Zoning Board of Appeals shall hold meetings as prescribed in its rules of procedures and such meetings shall be open to the public.
- (3) Minutes of the proceedings and a record of all actions taken shall be kept showing the vote of each member upon each question, the reasons for the Board's determination, and its findings of fact. These records shall be immediately filed in the official records of the Zoning Board of Appeals and shall be a public record.
- (4) When a quorum is present, the concurring vote of the majority is required to correct an error, grant a variance, or make an interpretation.
- (5) Members shall serve without compensation.
- (6) Members shall be removable by the Village President for cause upon written charges and after public hearing.
- (7) The Village President shall designate one of the members Chairperson and the Zoning Board of Appeals may designate such other officers and employ such employees as it feels necessary.

C. Powers.

- (1) The Zoning Board of Appeals shall have the following powers:
 - (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator or Plan Commission.
 - (b) To hear and grant variances as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement will result in unnecessary hardship, so that the spirit and purposes of this chapter shall be observed and the public safety, welfare, and justice secured. Use variances shall not be granted.
 - (c) To hear and decide applications for interpretations of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.
 - (d) To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses, provided no structural alterations are to be made and the Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
 - (e) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of the Shoreland-Wetland Overlay Zoning District provisions.
- (2) The Board may reverse, affirm wholly, or partly modify the requirements appealed from, and may issue or direct the issue of a permit.
- (3) Conditions may be placed upon any building permit ordered or authorized by the Zoning Board of Appeals.

- (4) The Board may request assistance from other Village officers, departments, commissions, and boards.
 - (5) The Chairperson may administer oaths and compel the attendance of witnesses.
- D. Review by court of record. Any person or persons aggrieved by any decision of the Zoning Board of Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Zoning Board of Appeals.



Kathryn Sawyer Gutenkunst, Esq.

ksg@axley.com

262.409.2292

October 30, 2025

Via Email: mschroeder@janesvillelaw.com

Attorney Mark A. Schroeder

Consigny Law Firm, SC

303 E. Court Street

Janesville, WI 53545

Re: Beda Property – 7 Dartmouth Road

Dear Mark:

I appreciate the opportunity to explain what I believe are jurisdictional issues that cannot be resolved or corrected unless the village updates the village zoning code to comply with amendments to §62.23, Wis. Stat., that were enacted more than 1 year ago.

At the outset, the fundamental rule of law governing municipal authority in Wisconsin is that the authority to act must be found in a statutory grant of authority. As the Supreme Court noted in *Willow Creek Ranch, LLC v. Town of Shelby*, municipalities have only so much power as conferred upon them by the legislature or necessarily implied from the powers conferred. (See, 2000 WI 56 ¶17).

Wis. Stat. §62.23 (7) is the grant of authority that allows the village to zone lands within the village. As I have often explained to clients, “but for” the authority granted by §62.23, local municipalities would have no authority to zone or enforce use restrictions.

In the matter now before the BOZA, my client owns a condominium unit in a condominium plat approved by the Village in 1983. In 2012, the village amended the zoning code to establish a minimum 75-foot shoreland setback from the lake. My client’s deck is located 39.7 feet from the shoreline (survey provided to BOA), and as a result of the zoning code amendment establishing a 75-foot shoreland setback, my client’s unit became a non-conforming structure.

2011 Wisconsin Act 170, which became effective April 17, 2012, amended the nonconforming use section of the general zoning enabling statutes for counties, cities, villages, and towns and the nonconformity provisions in the state shoreland zoning program. The Act amended the general zoning enabling statutes to specify that a county, city, village, or town may

not enact an ordinance that prohibits, or limits, based on cost, the repair, maintenance, renovation or remodeling of a nonconforming structure.

The Act defines a "nonconforming use" as "a use of land, a dwelling, or a building that existed before the current zoning ordinance was enacted or amended but does not conform with the use restrictions in the current ordinance." "The Act defines "nonconforming structure" as "a dwelling or other building that existed lawfully before the current zoning ordinance was enacted, but does not conform with one or more of the development regulations in the current zoning ordinance." The term "development regulations" means "the parts of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard."

2011 Wisconsin Act 170 also amends the statutes related to county shoreland zoning to prohibit counties, cities, and villages from enacting shoreland zoning provisions regulating nonconforming structures that are more restrictive than the provisions adopted by the Wisconsin Department of Natural Resources for nonconforming structures or for the construction of structures on substandard lots contained in Ch. NR 115, Wis. Adm. Code.

Counties, cities, and villages cannot enforce ordinances that are more restrictive than the following standards in the current NR 115 for nonconforming structures, which in relevant part provides as follows:

- a. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under NR 1154 may be maintained and repaired within its existing building envelope. Maintenance and repair include such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.
- b. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under NR 115 may be expanded vertically, provided that all of the following requirements are met:
 - i. The use of the structure has not been discontinued for a period of 12 months or more.
 - ii. The existing principal structure is at least 35 feet from the ordinary high-water mark.
 - iii. Vertical expansion is limited to 35 feet within 75 feet of the ordinary high-water mark of navigable waters.
 - iv. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted.

The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.

v. All other provisions of the shoreland ordinance shall be met

- c. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under NR 115, may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in NR 115, and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph but may be required under other parts of NR 115.

The village zoning code has not been amended or updated to reflect the changes in authority to zone and restrict remodeling and expansion of structures that do not conform with the 75-foot shoreland setback. Rather, the village continues to enforce the zoning code which existed prior to the enactment of 2011 Act 170, and in so doing, is acting beyond the authority granted by the legislature.

Even in the absence of NR 115, the village code has never been updated to incorporate the changes in authority to zone which resulted from creation of Wis. Stat. §62.23 (7) (hb) which reads as follows:

(hb) *Repair, rebuilding, and maintenance of certain nonconforming structures.*

1. In this paragraph:

a. “Development regulations” means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.

b. “Nonconforming structure” means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.

2. An ordinance may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

My client applied for a variance because the zoning administrator concluded that the proposed renovation of the condominium unit which expands the unit vertically was prohibited because the renovation was within the 75-foot shoreland setback. That conclusion is erroneous for several reasons:

First, the term “setback” as defined in §62.23 and the zoning code is determined from the setback line to the outer structure of the building. The vertical dimension of the building is not a factor.

Second, if that conclusion were accepted, then the requirement to obtain a variance violates §62.23(7)(hb) which does not allow the enactment of a zoning ordinance which prohibits the renovation of a non-conforming structure.



Attorney Mark A. Schroeder

10/30/2025

Page 4

Finally, I would be remiss in not pointing out that the application of the code in this and other variance applications runs afoul of the definition of “unnecessary hardship” which must be established by any Applicant. The code requires the zoning administrator to evaluate the application and file the evaluation with the Board of Appeals. One of the criteria required to be evaluated is whether the variance complies with the Comprehensive Plan. That answer has nothing to do with the existence or nonexistence of an unnecessary hardship.

The issue I raise, namely, whether the village zoning code as drafted or as applied to my client, comports with the authority to zone granted by the legislature. The answer is clearly “No”.

This matter takes on additional significance in light of the recent decision of *Wildwood Estates, LLC v. Village of Summit*, 2025 WI App 47, ---Wis. 2d ---, 25 N.W.2d 581. In *Wildwood* the Village of Summit adopted a short-term rental ordinance. The court found that the ordinance was a zoning ordinance whose adoption required the holding of a public hearing. The failure to follow the procedure by which the legislature authorizes local municipalities to adopt zoning ordinances, the ordinance was void. But more significant, Summit was found to have violated the constitutionally protected right of the property owner by restricting use of property. The trial court awarded the property owner all legal fees, and that determination was upheld on appeal. In my opinion, the continued effort to enforce an ordinance prohibited by both NR 115 and §62.23(7b) places the village in the same unfortunate situation as occurred when the village of Summit attempted to restrict use of land by zoning ordinances that exceeded or failed to comply with the legislative grant of authority to zone.

Thank you so much for your time and attention to this matter.

Sincerely,

Axley LLP

A handwritten signature in cursive script that reads 'Kathryn Sawyer Gutenkunst'.

Kathryn Sawyer Gutenkunst

KSG/ajh

cc: Mr. Thomas Beda

Mark Schroeder

From: Kathy Sawyer Gutenkunst <KSawyer-Gutenkunst@axley.com>
Sent: Thursday, October 30, 2025 3:23 PM
To: Allison Schwark; Mark Schroeder
Cc: Amber J. Hainz
Subject: FW: Beda: KSG ltr to Mark Schroeder dated 10.30.25 - 7 Dartmouth Rd
Attachments: KSG ltr to Mark Schroeder dated 10.30.25.pdf

Importance: High

 You don't often get email from ksawyer-gutenkunst@axley.com. [Learn why this is important](#)

Allison and Mark-

Attached please find correspondence sent to attorney Schroeder earlier today. Sorry you were not copied on the initial email Allison.

In terms of the record BOA member Costello had multiple people draw on a photo he presented which I assume was taken from either the applicant's packet or the Wolfs.

I would ask that the photo as marked upon by the multiple persons and viewed by all the BOA members be added to the record if that has not already happened. I would also appreciate receiving a copy of the same before the meeting set for this coming Monday evening November 3, 2025.

Thank you both for your continued efforts on this matter.

Kathy

Kathryn Sawyer Gutenkunst
Attorney

AXLEY LLP
N17W24222 Riverwood Dr. Ste 250 | Waukesha, WI 53188
Phone: 262.409.2292 | Fax: 262.524.9200
Email: KSG@axley.com | bio | axley.com

Legal Assistant: Amber Hainz
Phone: 262.409.2295 | Email: AHainz@axley.com

From: Amber J. Hainz <AHainz@axley.com>
Sent: Thursday, October 30, 2025 2:09 PM
To: mschroeder@janesvillelaw.com
Cc: Kathy Sawyer Gutenkunst <KSawyer-Gutenkunst@axley.com>
Subject: Beda: KSG ltr to Mark Schroeder dated 10.30.25 - 7 Dartmouth Rd

Hello Attorney Schroeder,

Please see the attached correspondence from Attorney Gutenkunst.