

BOARD OF ADJUSTMENT MINUTES

Sheboygan County Administration Building
508 New York Avenue
Sheboygan, WI

January 17, 2024

Called to Order: 1:00 PM

Adjourned: 2:12 PM

MEMBERS PRESENT: Mark Pfaller, Charles Born, Pete Scheuerman, BJ Reenders, Marjean Pountain

OTHERS PRESENT: Attorney Kelly Del Ponte, Kathryn Fabian (Planning & Conservation), Nick Tasche (Planning & Conservation), Aaron Brault (Planning & Conservation), Megan Nasgovitz (BOA Recording Secretary), Richard Windsor, Robert Windsor, Tony Burg, Jesse Burg, Paul Booher and Chris Krieg

Chairperson Pfaller called the meeting to order and called the roll. Mr. Pfaller seated alternates Charles Born and Marjean Pountain.

Ms. Nasgovitz reported that the meeting notice was posted on January 5th, 2024 at 3:30 PM in compliance with the open meeting law.

There were no public comments regarding non-agenda items.

Ms. Pountain made a motion to approve the minutes from the August 16th, 2023 Board of Adjustment meeting. Mr. Scheuerman seconded the motion. Motion carried with no opposition.

Mr. Pfaller opened the hearing for the application for a variance to the 75-foot setback from the ordinary high water mark (OHWM) of Elkhart Lake to allow for the construction of a new single family residence 35 feet from the OHWM failing to meet the requirements of Section 72.15(1)(a) of the *Sheboygan County Shoreland Ordinance*.

Mr. Pfaller provided an overview of the procedures for the hearing and asked the applicants if they understood the procedures.

Mr. Pfaller went through all the documents listed as follows one by one ensuring that all parties had received them:

- A1: Ms. Fabian's Staff Report
- A2: Burg Homes Construction Plans
- A3: Topographic Survey
- A4: Variance Application

Mr. Pfaller asked if the board members had any questions about the site that may not have been answered based on weather conditions at the site visit today, which none did. Mr. Pfaller then asked the board members if they had any additional comments regarding the site visit. Mr. Born noted that it was a steep lot with an existing structure on it, but no other board members had comments.

Mr. Pfaller then took comments from members of the audience. Neighbor Chris Krieg noted that she supports improving properties, and that she was denied a variance on her own property on

the other side of the lake when she tried to make improvements. She stated that when she looked at the plans, her first impression was that they were not Tony and Jesse's best work. She continued by saying that there are a lot of problems with run off on Shoreland Road, and if they are going to put so much fill in, she questioned what that was going to do to runoff. Ms. Krieg then questioned what their hardship is. She stated that she was told that she did not have a hardship on her property, so what do they have that could meet the requirement for hardship? She added that she would resent looking at a house designed as it is and the removal of trees required to build it. Ms. Krieg closed by stating that she could not get approval for a septic system because of the perviousness of the ground near the shoreline, and that Mr. Windsor's property is similarly limiting in that it is a small lot.

Mr. Pfaller responded that he looked at the plans and most the volume taken up in air now is going to be consumed by the house. He clarified that there is not going to be a great deal of fill there as the building would act as a wall for the slope. He also added that a new septic system will have to meet the criteria of the county, but that isn't under review here as a part of this hearing.

Mr. Pfaller next invited the applicant, Dr. Windsor, and his general contractor to speak. Mr. Jesse Burg noted that they have done many projects on the lake and this property has been a challenge as it is on a very steep slope. He agreed that water management was a big issue on this property, noting that they tried to mitigate that by not building right up to the property lines so that there was room on the sides to deal with the water management. He noted that for the driveway, they went to the lowest slope of the hill to have the best conditions possible for runoff of impervious surfaces. Mr. Burg also noted that they tried to raise the house more but there is a 35-foot height limit so they worked the grade backwards from there. Affirming what Mr. Pfaller noted earlier, he stated that there would not be that much fill actually being brought in. He closed by addressing Ms. Krieg's comment about her distaste for his plans by stating that design is in the eyes of the beholder, and not everyone will love every design.

Mr. Pfaller remarked that in the plans it looked like the runoff flows east off of the driveway, so the water that currently is going towards Ms. Krieg's property would be moving away from her with the new design. He asked Mr. Burg what will be the difference now as opposed to when the house is done in terms of water mitigation. Mr. Burg responded that they are going to manage it, push it away from the houses, and install a rain garden to slow it down on the way to the lake. Mr. Pfaller asked if the water mitigation in the proposed design would then be better than what it is currently, to which Mr. Burg responded yes. Mr. Burg added that the proposed house would also be further from the lake than it currently is.

Mr. Pfaller then asked Ms. Fabian if she had any comments about water mitigation to add. She noted that the department has not looked at runoff and impervious surface in detail, but if the variance was granted, the department would review all criteria and they would likely need to do some mitigation to reach the impervious surface requirements.

Mr. Pfaller noted that impervious surface and runoff are not a part of this variance application, but addressing the topic could perhaps give some peace of mind that this is being taken care of and this is a step being considered by the county. Mr. Burg added that there is plenty of space on the property to stay within the allowable percentage, and that they are definitely designing with water in mind and managing the water well.

The board members were then given an opportunity to ask questions of the applicant. To begin, Ms. Pountain inquired of Mr. Burg about the proposed landscaping that will be there. Mr. Pfaller

interjected that this is good information, but what we are here to consider is the 75-foot setback. Mr. Scheuerman noted that the engineer, architecture and county staff would address those issues of drainage and natural greenery, noting that they should consider substantial justice to property. Ms. Del Ponte interjected that substantial justice is not necessarily voted on today as the criteria have changed from four questions to three, but they could still consider that within the other questions. Mr. Scheuerman then asked when the house to the east was it built. Ms. Krieg responded that it was built in 1952. Mr. Reenders, when asked for questions or comments, noted that the drainage does seem to change with the updates they have made to the plans, making it an improvement. Mr. Born stated on his turn that what they have to decide pertains to the law on the 75-foot setback. He noted that the neighbor is at only a 35-foot setback and if you go up and down the lakefront there are very few houses that are actually setback 75 feet or more. He asked Ms. Fabian if she knew of any houses on Shoreland Road that were actually 75 feet from the OHWM. Ms. Fabian responded no, adding that they have all used setback averaging or built in the same footprint as an existing dwelling. She further explained that in order to use setback averaging the properties on both sides of a parcel must have a residence, but as Mr. Windsor doesn't have a residence on both sides, setback averaging cannot be used. If there was a residence on both the properties east and west of him, they would be allowed to use setback averaging and would not have to ask for a variance. Ms. Del Ponte reminded the board that they are considering this property specifically, so they should be considering if there are any unique circumstances here.

Mr. Pfaller next asked Ms. Fabian if the county had any comments. She reiterated that as had been noted by others, if there were any issues involving septic, impervious surface, or mitigation that would fall on the county and any height or road setbacks would be the town. Mr. Windsor was not seeking at a variance for any of those items in this hearing today. She stated that the variance they are seeking, and is to be voted on today, is only for the 75-foot setback from the OHWM. She also reminded the board that voting has changed due to the criteria being changed by the board years ago and those changes not matching what is in the state ordinance. The updated ordinance with the new voting was detailed with them at the last meeting by Sheboygan County Corp Counsel Fieber, who rewrote the voting criteria to ensure our ordinance complied with state codes. Ms. Fabian closed by saying that the 35-foot setback is what they are requesting and all the board needs to consider is if it meets the hardship requirements.

Mr. Pfaller asked if Mr. Windsor would like to add anything. Mr. Windsor stated he wanted to touch on the hardship noting that as they saw today during the site visit that they can not use the property well. He stated that the slope inhibits how they can use the property as people don't want to risk their plows, trucks can't get down to pump septic tanks, and emergency vehicles can't make it down the current driveway. He stated that the current plan makes the property safer and accessible for everyone, solving a lot of the hardships associated with the property.

Mr. Pfaller then asked the board members if they had any remaining questions or comments, which they did not.

Attorney Del Ponte closed the evidence portion of the hearing and moved into the deliberation portion. She stated all of the criteria for voting for each question and explained that she would go into detail on all three as they deliberated on each question.

Deliberation & Vote:

Is there an unnecessary hardship present?

ROLL CALL VOTE:

Mr. Born – N

Ms. Pountain – N

Mr. Pfaller – Y

Mr. Reenders – Y

Mr. Scheuerman –N

Following the vote, Attorney Del Ponte asked the board members if they wanted to elaborate on their reasoning as there was no deliberation before the vote. Mr. Born stated that he said no because there is an existing structure that could legally be rebuilt in the same footprint and before they designed the house they were aware of the setback. Attorney Del Ponte confirmed that was accurate, but reiterated that the question that we are trying to answer in this part of the vote is if there is a hardship on the applicant. Mr. Reenders stated that he voted yes, it is a hardship because the ordinance does not provide an alternative when there are vacant lots next door as opposed to residences where you can use the setback averaging. He added that the zoning ordinance does not have a solution for this scenario which makes the hardship unique to this property. Mr. Pfaller suggested that they revote as they did not deliberate before the vote as they usually do. He asked Attorney Del Ponte if that would be acceptable, and she confirmed that it would.

2nd VOTE Is there an unnecessary hardship?

ROLL CALL VOTE:

Mr. Born – N

Ms. Pountain – N

Mr. Pfaller – Y

Mr. Reenders – Y

Mr. Scheuerman – N

Based on the failing vote, the variance is not granted. However, board members were asked again to give their reasoning for the sake of the record. Mr. Born reiterated that the house could be rebuilt in the same footprint and they knew the rules before they designed the house, so it was a known hardship. Mr. Scheuerman stated that there is an existing home, so creating a bigger house to fix the issue of the driveway seems like a self-imposed hardship. Mr. Pfaller stated that if the property does not get a variance for something nothing can happen to it at all. Mr. Windsor can't use it much of the year and it isn't serviceable. He stated that the property does more harm to the town than if were completely rebuilt based on the dangerous conditions of the driveway due to the slope of the property. He added that none of the properties on Shoreland Road meet the 75ft setback. This property just can not use setback averaging as the others did, so they have a unique circumstance. Mr. Reenders expanded on his previous answer stating that the board is only looking at a setback and Mr. Windsor could expand his house if it meets other county criteria, what they are voting on is not an impervious question of expanding the house. He added that 35 feet is further back than the existing house and that holding a 75-foot setback leaves almost no space for the house. With all the setbacks factored in, they would only have about 6 feet of buildable space without a variance. Ms. Pountain stated that she agrees with Mr. Born. She further stated that there is a big difference between 35 feet and 75 feet and that the house is more than doubling in size. She stated that the original house was designed as a seasonal cottage, not a yearlong residence and that there are things that could be done that are less invasive to allow emergency vehicles. She also stated that Mr. Windsor owns significant property across the road where he could build. Attorney Del Ponte reminded the board that we are only considering this property in the vote.

Although the variance already does not pass, the board voted on the remainder of the criteria.

Are there unique conditions specific to the property?

ROLL CALL VOTE:

Mr. Born – Y

Ms. Pountain – Y

Mr. Pfaller – Y

Mr. Reenders – Y

Mr. Scheuerman – Y

Is granting this variance going to be contrary the public interest?

ROLL CALL VOTE:

Mr. Pfaller – N

Mr. Born – N

Ms. Pountain – Y

Mr. Reenders – N

Mr. Scheuerman – Y

Mr. Pfaller announced that the variance request has not been granted, but that it may be appealed.

Mr. Pfaller closed the hearing portion of the meeting and asked the board members if there was any other topic that they would like to discuss before the meeting as closed. Mr. Scheuerman noted that he was pleased with the change of time for the site visit, and other board members agreed.

Mr. Scheuerman made a motion to adjourn. Motion seconded by Mr. Reenders. Motion carried with no opposition.

Mark Pfaller, Chairman

Megan Nasgovitz, Recording Secretary