

BOARD OF ADJUSTMENT (BOA) MINUTES

Administration Building
508 New York Avenue
Sheboygan, WI

Wednesday, February 24, 2021

Called to Order: 1:00 PM

Adjourned: 3:58 PM

MEMBERS PRESENT: Mark Pfaller, Pete Scheuerman, Jeff Stroub, Dennis Frederick, Kelly Johnson, Charles Born

MEMBERS ABSENT: Joseph Stodolka

ALSO PRESENT: Attorney Paul Dirkse (representing the BOA), Attorney Oliver Bauer (representing the Department), Karsen Gosh, Kathryn Fabian, Kevin Stange, Aaron Brault, Tyler Betry, Henry Nelson, Rebecca Clarke, Jeff Schneiss, Shane Pionkowski, Peter Riese, Atty Joseph Voelkner (representing Marine Drive LLC), Guido Giori, Cynthia Walker, Steve Ray, Joseph Maniaci

Chairperson Pfaller called the meeting to order and called the roll. Mr. Pfaller seated alternate Kelly Johnson in place of Joseph Stodolka; Charles Born remained as an alternate.

Karsen Gosh reported the meeting notice was posted on February 12, 2021 at 12:30 PM in compliance with the open meeting law.

Mr. Stroub made a motion to approve the minutes from the August 19, 2020 hearing. Motion seconded by Mr. Frederick and approved unanimously.

There were no public comments regarding non-agenda items.

Mr. Pfaller called for a motion to approve the amended 2021 BOA schedule and calendar. A motion to approve was made by Mr. Scheuerman and seconded by Mr. Frederick. Motion carried unanimously.

SCHNEISS VARIANCE:

Mr. Pfaller opened the hearing for the variance request to the Sheboygan County Shoreland Ordinance for Jeff & Gail Schneiss (Case No. V-21-01-F) to construct a building addition on property located at parcel #59006070310 within the shoreland jurisdiction of Lake Michigan in the Town of Holland. Mr. Pfaller ensured all documents had been received and provided an overview of the procedures for the hearing, which the applicant confirmed they understood.

Shane Pionkowski gave an overview of the project on behalf of the applicant. He explained that the property possesses unique characteristics that make a variance necessary. The house currently sits within the required setback to the Ordinary Highwater Mark (OHWM) and is otherwise surrounded by wetlands. Mr. Pionkowski stated that the addition would be constructed no closer to Lake Michigan than it already sits and that no additional height would be added to the structure. Mr. Schneiss stated that his family intends to occupy the property full-time, however the age of the home requires the addition be made in order to comfortably accommodate them.

On behalf of the Department, Kathryn Fabian stated that the existing septic system on the property is likely original to the property and that the Schneiss family intends to replace the septic system; Kevin Stange stated that there is some additional information that would be required from the soil tester if approval is granted. Mr. Scheuerman inquired whether the additional information required by the Department could potentially hinder the proposal. Mr. Stange answered that it is possible, however a certified soil tester has located two potential sites for a compliant system.

Mr. Pfaller asked for comments from Board members regarding the site visit:

Mr. Scheuerman pointed out to the applicant, for future reference, that with their patio door opening out to the lakeward side of the property, a patio off of that exit would likely either not be allowed or require further Board approval. The applicants indicated they understood. Mr. Stroub asked if the driveway would remain gravel. The applicants stated that it would. Mr. Frederick and Ms. Johnson had no additional questions for the applicant.

Mr. Pfaller asked for public comment. Neighbor Peter Riese asked for clarification on the purpose of the meeting. Mr. Riese asked if this would be a precedent-setting case for Sheboygan County. Mrs. Fabian stated that it is not a common occurrence that a variance is requested for a Lake Michigan setback.

Deliberation on the Schneiss Variance Request:

Attorney Dirkse recited the standards of unnecessary hardship, spirit of the ordinance, substantial justice, and public interest. Mr. Pfaller asked the Board members if they understand the procedure.

Unnecessary Hardship:

Ms. Johnson noted that the property possessed unique limitations that qualify as a hardship. Mr. Scheuerman asked Mrs. Fabian for clarification on where the 75 foot setback would be measured from. She indicated the measurement is taken from primary the toe of the dune. Mr. Frederick stated that he felt that this proposal would be the least invasive to the property. Mr. Stroub had no additional comments.

ROLL CALL VOTE: Mr. Stroub – yes, Mr. Frederick – yes, Mr. Scheuerman – yes, Ms. Johnson – yes, Mr. Pfaller – yes. Carried unanimously.

Spirit of the Ordinance:

Attorney Dirkse re-stated the Spirit of the Ordinance standards.

ROLL CALL VOTE: Mr. Stroub – yes, Mr. Frederick – yes, Mr. Scheuerman – yes, Ms. Johnson – yes, Mr. Pfaller – yes. Carried unanimously.

Substantial Justice:

Attorney Dirkse re-stated the Substantial Justice standards.

ROLL CALL VOTE: Ms. Johnson – yes, Mr. Scheuerman – yes, Mr. Frederick – yes, Mr. Stroub – yes, Mr. Pfaller – yes. Carried unanimously.

Contrary to public interest:

Attorney Dirkse re-stated the Public Interest standards, and provided clarification at the request of Mr. Scheuerman.

ROLL CALL VOTE: Ms. Johnson – yes, Mr. Scheuerman – yes, Mr. Frederick – yes, Mr. Stroub – yes, Mr. Pfaller – yes. Carried unanimously.

As all 4 of the necessary standards were met, the variance request was approved.

MARINE DRIVE LLC APPEAL:

Mr. Pfaller opened the hearing for the appeal of Marine Drive LLC (Case No. R-20-01-S) to challenge a decision of the Department which prevents it from constructing a detached guest house and connecting it to the existing at-grade system which serves the principle residence on property located at N717 Marine Drive [PDF] in the Town of Holland.

Mr. Pfaller ensured all documents had been received and provided an overview of the procedures for the hearing and asked the applicants if they understood the procedures. Mr. Pfaller asked the applicants (appearing remotely) to give the Board a summary of the project.

Attorney Joe Voelkner gave an overview of the project. Mr. Voelkner pointed to a memorandum from the State Department of Safety and Professional Services (DSPS) that referenced the sizing requirements for multiple dwellings attached to one septic system. Mr. Gliori of Marine Drive LLC gave an overview of his proposed project, stating that the guest house would be used as an accessory space with occasional visits from guests.

Mr. Stroub inquired whether there were multiple owners. There are not. Mr. Stroub asked if all three original platted parcels had been combined. Mr. Pfaller clarified that all three original properties have been combined since Marine Drive LLC acquired the property.

Mr. Voelkner discussed the option of a deed restriction for the property owners to prevent them from changing the use. Mr. Scheuerman asked Department staff how, if imposed, a deed restriction could be enforced should the property be sold in the future. Mr. Stange stated that while a deed restriction would be recorded with the Register of Deeds, it would be difficult to enforce. Mr. Voelkner argued that that situation is not something that the Board could base their opinion on as the intentions of any future owners cannot be predicted.

In rebuttal, Attorney Oliver Bauer stated that the State Administrative Code section DSPS 383.43 gives multiple references to a Flows and Loads Affidavit that is recorded with the Register of Deeds to indicate that the septic system onsite is appropriately sized for a certain number of occupants versus the number of bedrooms in the dwelling, with the main point being that the Code specifically points to this affidavit applying to a singular dwelling.

Mr. Stange stated that the Department's responsibility is to protect the environment. Alternative options were given to the property owner to allow for the adequate treatment of the wastewater that is proposed to be discharged to the current system.

Neighbor Cynthia Walker expressed concerns about the future enforcement of a deed restriction and inquired about the reason none of the alternatives for treating the waste suggested by the Department are currently being pursued. Mr. Gliori answered that his concern for utilizing the second identified suitable site for another septic system would mean the elimination of a replacement site for future use. Mr. Stange stated that septic system rejuvenation is becoming a more common practice.

Mr. Pfaller closed the public hearing and asked the Board if they would like to go into Closed Session. The Board declined.

Deliberation on the Marine Drive LLC Appeal:

Attorney Dirkse explained that the Board members are voting to determine whether or not the County was in error in denying the submitted sanitary permit to Marine Drive LLC for the construction and connection of a detached guest house to the existing septic system. Mr. Pfaller asked the Board members if they had any further comments prior to their decision. There were none.

ROLL CALL VOTE: Mr. Stroub – no, Mr. Frederick – no, Mr. Scheuerman – no, Ms. Johnson – no, Mr. Pfaller – no. Rejected unanimously.

The appeal is denied.

MARINE DRIVE LLC VARIANCE:

Mr. Pfaller opened the hearing for the variance request to the Sheboygan County Sanitary Ordinance for Marine Drive LLC (Case No. V-21-02-S) to construct a detached guest house and connect it to the existing at-grade system which serves the principle residence on property located at N717 Marine Drive within the shoreland jurisdiction of Lake Michigan in the Town of Holland.

Mr. Voelkner went over the variance request as it was submitted to the Board.

Mr. Pfaller asked if County staff had any comments. Mr. Stange indicated that per Section 70.34 of the Sheboygan County Sanitary Ordinance, the Board of Adjustment can only grant a variance to provisions within the Ordinance which are more restrictive than what is required by the Wisconsin DSPS. The only provision within the Ordinance that is more restrictive than the DSPS requirements is Section 70.08(4) where the County prohibits the installation of a holding tank for new residential structures. Mr. Stange stated that the applicant is not seeking a variance from Section 70.08(4).

Cynthia Walker stated her concerns that granting a variance would affect water quality in the area.

Mr. Pfaller asked Mr. Stange to clarify how a septic system is determined to be compliant. Mr. Stange led the discussion describing how a septic system is determined to be appropriately sized per the State's uniform regulations and answered the Board's questions.

Mr. Pfaller closed the public portion of the hearing and opened up the discussion to the Board members. Ms. Johnson asked for clarification about whether the variance, if granted, would carry over to future property owners as well. Should the variance be granted, it would pertain to the current and all future owners of the property. Attorney Dirkse asked County Staff to clarify to the Board if this variance is under the jurisdiction of the Board of Adjustment to approve. Attorney Bauer stated that the County Sanitary Ordinance grants the Board of Adjustment jurisdiction to grant variances only to specific sections of the County Sanitary Ordinance that are more restrictive than the State Plumbing Code, which is not the issue here. Mr. Stroub inquired whether a condition may be applied to the motion to approve to seek further approvals. Mr. Dirkse confirmed that a contingency may be made if approval is granted.

There was a lengthy discussion about the authority of the Board of Adjustment to consider the variance that is being brought before them, and whether Section 70.34 of the Sheboygan County Sanitary Ordinance granted the Board of Adjustment the ability to rule on any variances besides Section 70.08(4). Mr. Pfaller asked Mr. Voelkner to clarify whether or not his client wanted a holding tank. Mr. Voelkner replied that they did not.

Mr. Frederick made a motion that the Board does not have the authority within Section 70.34 to consider the variance and with the additional knowledge that the applicant does not wish to seek a variance to Section 70.08(4), the Board is unable to consider the variance.

ROLL CALL VOTE: Mr. Frederick – yes, Mr. Stroub – yes, Mr. Scheuerman – yes, Ms. Johnson – yes, Mr. Pfaller – yes. Motion carried unanimously.

Mr. Scheuerman made a motion to adjourn. Motion seconded by Mr. Johnson. Motion carried unanimously.

Jeff Stroub, Secretary

Karsen Gosh, Recording Secretary