

BOARD OF ADJUSTMENT MINUTES

Sheboygan County Administration Building
508 New York Avenue
Sheboygan, WI

September 21, 2022 Called to Order: 1:02 PM Adjourned: 3:20 PM

MEMBERS PRESENT: Mark Pfaller, Ed Harvey, Charles Born, Pete Scheuerman, Kenneth Sonntag

OTHERS PRESENT: Attorney Crystal Fieber, Kathryn Fabian, Megan Nasgovitz, BJ Reenders (board member), Marjean Pountain (2nd alternate), Paul Booher, David Huenink, Kristy Carmody, Steve Peskie, Christy Myers, Steve Myers, Doug Hamilton

Chairperson Pfaller called the meeting to order and called the roll. Chairperson Pfaller seated alternate Charles Born.

Megan Nasgovitz reported that the meeting notice was posted on September 12th, 2022 at 11:30 AM in compliance with the open meeting law.

There were no public comments regarding non-agenda items.

Mr. Scheuerman made a motion to approve the minutes from the June 15, 2022 Board of Adjustment meeting. Mr. Harvey seconded the motion. Mr. Sonntag abstained. Motion carried with no opposition.

Chairperson Pfaller opened the hearing for the application for a variance to the 75-foot setback from the ordinary high water mark of a navigable Lake Michigan tributary stream for the construction of a new residence and patio (Case No. V-22-03-F) failing to meet the requirements of Section 72.15(1)(a) of the *Sheboygan County Shoreland Ordinance*.

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

Chairperson Pfaller ensured that owners and designers had received the staff report, that the board members received the application as well as notes submitted by Ms. Carmody, and that a letter from Dale Rezabek of the WDNR was received by everybody.

Chairperson Pfaller asked for comments from the board members regarding the site visit:

- Mr. Sonntag noted that he was interested to find that the mound system is staying rather than putting in holding tanks, that the sites have indeed been combined into one, and that there is an existing retaining wall that sticks out of the lake frontage of the property.
- Mr. Scheuerman commented that all questions on site were answered by the designer, Ms. Carmody. He noted that they were able to see everything- the topography, the septic, and all the different factors about the property.
- Mr. Harvey added that there was discussion about a couple structures that are not going to change, there were some changes from the original plan sent, there were some

changes to the septic system, and the 75 ft. lake setback is not applicable as they are using setback averaging.

- Mr. Born said he observed the lot and existing dwelling, septic system, creek, seawall, and small building existing along the creek.

Chairperson Pfaller asked for public comments. Mr. Huenink, representing the Town of Holland, stated that they have reviewed the parcels and determined that they are existing non-conforming structures, because they were pre-existing. He said the Town of Holland supports merging the parcels and has no objections to the variance being requested by this board. Mr. Huenink also submitted a written letter for the file.

Chairperson Pfaller asked each of the board members to address any closing questions that they may have for the applicant:

- Mr. Born inquired whether when Mr. Peskie and Ms. Carmody designed the home they were aware of the setback and if so, couldn't they have designed it to stay within the setback? Mr. Peskie said because of the property layout, no matter where they built they would need to get a variance for something. Mr. Born then asked how far out of compliance the proposed new structure will be. Mr. Peskie said it will be 51.75 ft. from the ordinary high water mark (OHWM). Mr. Born confirmed this number with Ms. Fabian, Sheboygan County Planning, who noted that a patio is a structure that needs to meet the setback, so the proposed plans were actually only 40 ft. from the OHWM. Ms. Fabian showed on submitted C100 Site Plan where the patio and sunroom end in relation to the OHWM.
- Mr. Sonntag asked, referring to the C100 site plan, if the distance to the OHWM is measured from the middle of the sunroom. If so, what is the distance from the closest corner to the creek? He believes the southeast corner of the sunroom would be the closest corner. Mr. Peskie stated that the closest part of the sunroom is 51.75 ft. from the OHWM.
- Mr. Harvey asked where the setback is measured from. Ms. Fabian stated it is measured from the OHWM to the closest edge of the structure. Mr. Harvey then asked what about the floodplain? Ms. Fabian noted that the majority of the property is within floodplain, but that has its own set of requirements.
- Mr. Scheuerman asked of the current existing principle structure, have there been any structural issues with the building? Mr. Myers replied that over the 10 years they lived there, the foundation seems to have gotten worse. Mrs. Myers added that the basement supports were redone when the second story was added and after that the front windows were leaking because the foundation was sinking. Mr. Peskie said there are more cons to repair the old building than to build a new one and that there is nothing level on the interior of the house.

Mr. Peskie added that if the board is concerned about how the patio space is encroaching into the setback, they are open to discussion on removing that. He noted they are requesting reduction from the setback because there are a lot of setbacks to the site with the lake, the creek, the sanitary system and the neighbors, so without one they would be unable to build anywhere.

Chairperson Pfaller asked Mr. Peskie and Ms. Carmody how they got to this specific design and did they consider other alternatives? Mr. Peskie responded that they would have had to get a variance for some component of any design, so they went with what would be the easiest. He

further stated that the existing house was already too close to the other property and since it is a permanent home for the Myers, they added a garage. He stated that they kept the design modest, with only having two bedrooms and an office. The existing house also has two bedrooms, so the existing septic system will be able to accommodate the new house. Mr. Pfaller asked if the county had looked at the property on the other side of Cottage Drive. Ms. Fabian responded that a soil test was done, and the septic system cannot go there.

Last comments:

Mr. Sonntag noted that the setback of 75 ft. is predominant in almost all lakefront properties, so they are really benefitting from the setback averaging. He noted that the creek makes this property unique, because it requires additional setbacks that most homeowners do not have in this area. He then questioned whether it was necessary to have both the deck and the sunroom when it infringes further than what is necessary to have a nice home.

Mr. Harvey noted that in an area that was originally seasonal cottages, we are now trying to retrofit it to a neighborhood of large impressive homes. He noted that a building needs to be removed and replaced and there are issues. Some issues, he noted, are the creek itself and its role in drainage and periodic fluctuation which is something that needs to be considered by the board.

Mr. Scheuerman stated that he appreciates the other comments. He also noted that a 75 ft setback on a lot this size is tough, but questioned whether they should be inching into what is being regulated for a patio and a sunroom.

Mr. Born stated that they aren't here to judge the law, they are here to uphold the law. He noted that the DNR goes within 100 year floods when they make setbacks, so that is not what they are here to judge. He shared that in his experience as volunteer firefighter, it is hard when you put structures that are too big on small lots because there isn't enough room to manage emergencies effectively. He closed saying the 75 ft. setback is the law, so if they don't want to follow the rules that results in a variance for 40 ft. which is setting a new precedent.

Chairperson Pfaller requested the board members to please read his highlighted notes from Ms. Fabian's staff report that were passed out at the beginning of the meeting. He noted that this lot will allow a building based on the plans. It will need a variance from somewhere to facilitate a building on that property, but the board needs to consider how broad this request is and if a request for a lesser amount is a possibility. He stated that they are setting a precedent, so they have to consider the ramifications of their determinations.

Mr. Peskie stated that it was their hope today to leave with a yes, but they hear some of the concerns and if the patio space is a concern, it can be omitted. Corporate Counsel Fieber clarified that the board does have the ability to approve just the house without the patio today. The minimum variance needed is allowed to be determined by the board, so they could set a number of feet that is allowable for the setback.

Mr. Scheuerman asked if they had come to Ms. Fabian and asked to build exactly within the footprint of the existing structure, would they be allowed to do that without a variance? Ms. Fabian responded that, yes, they could rebuild within the footprint and vertically expand up to 35 ft. without a variance.

Chairperson Pfaller asked each board member if they felt like they had enough information to make a decision to which everyone individually responded yes.

Deliberation & Vote:

Attorney Fieber asked what the board believes is the minimum setback that would be unnecessarily burdensome, the 51 ft. or the 40 ft.? For the purpose of voting, she noted that it is important to clarify if the board wishes to evaluate the variance at a 51 ft. setback or a 40 ft. setback. Mr. Scheuerman asked what the current setback of the existing principal structure is to the creek. Ms. Fabian responded that it is greater than 75 ft. Ms. Fabian then showed on the original survey submitted where the setbacks are located. Mr. Scheuerman noted that they could build to the south or the west without needing such a large variance. Mr. Pfaller asked Mr. Scheuerman if he still wanted to limit the setback to 75 ft. Mr. Scheuerman responded that there is a lot of area within the red hatched area that they could build in, as well as within the footprint of the existing residence that they wouldn't need a variance for. Mr. Sonntag inquired if they eliminated the screened porch from the plan how far of a setback would be required. Mr. Peskie said it would be about 63.5 ft. from the OHWM. Mr. Born noted that 63.5 ft. would be a smaller and maybe more reasonable variance. Mr. Scheuerman clarified with Ms. Fabian how the patio was regulated. Ms. Fabian responded that a deck, pavers, or anything that has form is considered a structure. If you used pea stone or mulch, it wouldn't be considered a structure, but anything else is subject to the setback.

Chairperson Pfaller took a roll call vote on if the board wish to place a dimensional limitation on the variance?

Mr. Sonntag- Y, Mr. Harvey- Y, Mr. Scheuerman- Y, Mr. Born- Y

Mr. Born suggested that the board start voting based on a 63.5 ft. setback. Mr. Scheuerman stated that we are seeing a change in the neighborhood. These structures were built as vacation cottages back in the day, often added on to unregulated, and now we are entertaining putting very large homes on these lots, so it's hard to look at 40, 51, of 63 ft. setbacks when there is still area on the property that could be used. Mr. Sonntag stated that he would be fine with a 63.5 ft. or 50 ft. setback as long as the southeast corner is at least that distance, which it doesn't look like from the drawing. Mr. Harvey noted that setback averaging is applicable on any lake, and questioned whether it was legal or possible to use the setback for the house across the creek to do setback averaging from the creek? Ms. Fabian clarified that there has to be an existing development pattern. When you are looking up and down lake Michigan you clearly have adjacent structures, but for the creek there is not an existing development pattern. Additionally, two structures are needed to do setback averaging, but there is only one in this case.

Chairperson Pfaller requested a motion for the minimum relief necessary for granting the variance. Mr. Sonntag moved to enforce a 50 ft. setback from the OHWM, which is the same setback as from Lake Michigan due to setback averaging. Chairperson Pfaller seconded the motion. Mr. Born stated that his motion would have been at 63.5 ft., and that he would vote no to a 50 ft. setback. Mr. Scheuerman noted that he completely understands and respects Mr. Sonntag's motion, but going back to earlier in the discussion, there is a cottage there now, so maybe this is a cottage setting and we cannot have that big of a house on this lot. He stated that he also would not be able to support 50 ft. setback. Chairperson Pfaller took a rollcall vote on the motion on the floor: Mr. Sonntag- Y, Mr. Harvey-N, Mr. Scheuerman- N, Mr. Born-N Motion failed.

Mr. Sonntag motioned to enforce a 63.5 ft. setback from the OHWM of the Lake Michigan tributary stream. Mr. Scheuerman stated that there is so much area available on the property within the setbacks that they aren't building on. By allowing incrementally larger and larger houses we aren't following the ordinances. In this case, the house is being removed. They aren't adding on. There wasn't damage done. They just want a bigger house. He questioned whether that was an acceptable reason to grant a variance. Chairperson Pfaller took a rollcall vote for the motion on the floor:

Mr. Harvey- Y, Mr. Scheuerman- N, Mr. Sonntag- Y, Mr. Born- Y. Motion carried.

Attorney Fieber stated that a setback has been established at 63.5 ft. from the OHWM as the minimal relief necessary, and they will be voting based on that number.

Attorney Fieber recited the standards of unnecessary hardship, spirit of the ordinance, substantial justice, and public interest.

Owing to special conditions of the property, will a literal enforcement of the Ordinance result in an unnecessary hardship to the property owner?

ROLL CALL VOTE: Mr. Pfaller - Y, Mr. Harvey - Y , Mr. Sonntag - Y , Mr. Scheuerman – N, Mr. Born - N

Will granting the variance observe the spirit/intent of the Ordinance?

ROLL CALL VOTE: Mr. Pfaller - Y , Mr. Harvey - Y , Mr. Sonntag - Y , Mr. Scheuerman – N, Mr. Born - N

Does granting the variance result in substantial justice to the property?

ROLL CALL VOTE: Mr. Pfaller - Y , Mr. Harvey - Y , Mr. Sonntag - Y , Mr. Scheuerman – Y , Mr. Born - Y

Is the variance contrary to public interest?

ROLL CALL VOTE: Mr. Pfaller - Y , Mr. Harvey - N , Mr. Sonntag - N , Mr. Scheuerman – Y, Mr. Born - N

The variance request has been granted.

Chairperson Pfaller called for a 10-minute break. Hearing reconvened at 2:42 pm.

Chairperson Pfaller opened the hearing for the application for a variance from Section 73.10(3)(b)1 of the Sheboygan County Floodplain Ordinance which requires fill to be placed one foot (1') or more above the regional flood elevation extending at least fifteen feet (15') beyond the limits of a proposed new residence.

Chairperson Pfaller ensured that owners and designers have received the staff report, board members received the application and notes submitted by Ms. Carmody, and a letter from Dale Rezbeck of the WDNR was received by everybody.

The previous record of the site visit shall be incorporated for this variance hearing as well.

Mr. Peskie stated that this variance requests a reduction of grade height, which is required to be one foot above floodplain elevation. He added that with the current plans, this is able to be accomplished on three sides of the building. However, along the lot line they are asking for a reduction of fill or grade so as to not infringe on the neighbor's lot line at the northern edge where it could not be graded to the property line appropriately. Mr. Peskie pointed out this area on site plan C100.

Chairperson Pfaller questioned why they were unable to mitigate that? Mr. Peskie stated that to do so, they would have to raise grade on the neighbor's property. Chairperson Pfaller questioned why they did not choose to install a retaining wall? Mr. Peskie noted that if they went that route, it would be worse for the property and they would still need a variance. Chairperson Pfaller asked Ms. Fabian if the area is not to grade, what would happen. Ms. Fabian stated that the reasoning for the 15 ft. of fill is to keep the floodwaters away from the structure, otherwise water could get to the foundation of the structure. Chairperson Pfaller asked Ms. Fabian if the neighboring property would be affected by a retaining wall. Ms. Fabian stated that she is not an engineer, so she couldn't say for sure. Mr. Peskie asked if a retaining wall could be allowed on the property line. Mr. Hamilton, Town of Holland Supervisor, stated that there would be a setback from the property line so the town would not allow it. Chairperson Pfaller asked if the building is being raised, where is the floodwater being sent? He inquired whether it was being directed towards the neighbor's property. Mr. Peskie responded that if there is a flood, the water is going to the lake, the creek, the neighbor's property, and everywhere else it can. Mr. Harvey clarified that the grade of the building itself is compliant. Mr. Peskie answered that the first floor elevation is compliant, but the grade around the building is not compliant because there is not the 15 ft. of fill around the building. Mr. Peskie showed on Site Plan C100 where the plans are compliant with the 15 ft. fill requirement. Chairperson Pfaller noted that the northside is the only area that is not compliant as about 2 ft. of foundation will be exposed. Ms. Fabian added that the elevation of the first floor of the structure needs to be at 590.2' and the fill needs to extend 15 ft. around the structure to an elevation of at least 589.2'.

Mr. Scheuerman clarified that there is a wave run up, so the floodplain concern is Lake Michigan, not from the west. Ms. Fabian confirmed that was the case. Chairperson Pfaller asked Ms. Fabian how the proposed plan would affect the neighbors. Ms. Fabian responded that if they are not changing the grade on the neighboring property, she didn't think they would impact it. However, she noted again that she is not an engineer and has not seen the final grading plan. Mr. Peskie stated that they would be utilizing a swale to help mitigate the water to the creek or lake rather than the neighbor's property. Attorney Fieber rephrased for clarification that the swale would help to mitigate water from storm run up away from both of these properties. Mr. Peskie confirmed this and stated that was why they did not do a berm or a retaining wall. Mrs. Myers added that the neighbor was initially concerned about what they were going to do and requested that they use a swale. She noted that he was happy with the proposed plan. Chairperson Pfaller asked Mrs. Myers in the 10 years that they have lived at this property, have they ever seen any drainage issues along the north property line? Mrs. Myers responded that no, she hadn't. She added that there is a French drain system on the property currently to help drainage. Chairperson Pfaller asked Mr. Reenders if he saw the drainage system outfall. Mr. Reenders responded that no, he did not see it, but when they did the survey much of the property was covered by snow and ice.

Chairperson Pfaller instructed Mr. and Mrs. Myers that when they submit documents to make sure that they show the swale. Ms. Fabian added that this would also be required in the final grading plan.

Chairperson Pfaller asked each of the board members to address any closing questions that they may have for the applicant:

Mr. Born- none

Mr. Sonntag- none

Mr. Harvey- none

Mr. Scheuerman none

Chairperson Pfaller closed the public discussion at 3:08 PM

Deliberation & Vote:

Attorney Fieber recited the standards of unnecessary hardship, unique property conditions, public interest, and purpose of the ordinance. Noting that we just went through these in the previous hearing.

Owing to special conditions of the property, will a literal enforcement of the Ordinance result in an unnecessary hardship to the property owner?

ROLL CALL VOTE: Mr. Pfaller – Y , Mr. Harvey – Y , Mr. Sonntag – Y , Mr. Scheuerman – Y , Mr. Born - Y

Are there unique property conditions not common to adjacent lots?

ROLL CALL VOTE: Mr. Born – Y , Mr. Harvey – Y , Mr. Sonntag – Y , Mr. Scheuerman – Y , Mr. Pfaller – Y

Is the variance contrary to public interest?

ROLL CALL VOTE: Mr. Pfaller – N , Mr. Harvey – N , Mr. Sonntag – N , Mr. Scheuerman – N , Mr. Born – N

Will granting the variance be consistent with the purpose of the floodplain ordinance?

ROLL CALL VOTE: Mr. Pfaller – Y , Mr. Harvey – Y , Mr. Sonntag – Y , Mr. Scheuerman – Y , Mr. Born – Y

The variance request is granted.

Chairperson Pfaller requested nominations for Chairperson. Mr. Sonntag made a motion to nominate Mark Pfaller for Chairperson. Motion seconded by Mr. Scheuerman. Motion carried. Mark Pfaller was elected Chairperson for the next year.

Chairperson Pfaller requested nominations for Vice-Chairperson. Mr. Sonntag made a motion to nominate Pete Scheuerman for Vice-Chairperson. Motion seconded by Mr. Born. Motion carried. Pete Scheuerman was elected Vice-Chairperson for the next year.

Chairperson Pfaller requested nominations for Secretary. Mr. Scheuerman made a motion to nominate Ken Sonntag for Secretary. Motion seconded by Mr. Born. Motion carried. Ken Sonntag was elected Secretary for the next year.

Ms. Fabian added that we need to clarify who the alternates are in terms of first and second. Attorney Fieber stated that she will look into it and clarify with the County Administrator.

Mr. Born made a motion to adopt the 2022-2023 Calendar as printed. Motion seconded by Mr. Sonntag. Motion carried with no opposition.

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

Mark Pfaller, Chairman

Megan Nasgovitz, Recording Secretary