

SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS MINUTES

Administration Building
508 New York Avenue
Sheboygan WI

June 19, 2013

Called to Order: 1:03 PM

Adjourned: 2:12 PM

MEMBERS PRESENT: Mark Pfaller, Eugene Blindauer, Joseph Stodolka

MEMBERS ABSENT: David Gartman, Ken Moehring

ALSO PRESENT: Board Alternate Jerry Rosche, Kay Lorenz, Matt Mrochinski, Kathryn Fabian, Corporation Counsel Carl Buesing, David Trochta, Lynn Trochta, Samuel Schmitt and Theodore Fintelmann

Chairperson Pfaller called the meeting to order and called the roll. Alternate Jerry Rosche was seated due to David Gartman being absent and Ken Moehring recusing himself from the hearing.

Kay Lorenz verified that the meeting notice was posted on June 12, 2013 at 9:00 AM in compliance with the open meeting law.

Jerry Rosche made a motion to approve the minutes of the August 15, 2012 Board of Adjustments meeting. Motion seconded by Joseph Stodolka. Motion carried unanimously.

There were no public comments regarding non-agenda items.

Mr. Pfaller provided instructions and ground rules for the hearing.

Mr. Pfaller opened the hearing for the David & Lynn Trochta appeal Case# V-13-01-F stating that the Board would consider the application for a variance submitted David & Lynn Trochta for the property at N8186 Franklin Road, Section 19, Town of Herman, said development failing to meet the requirements of Sections 72.18 of the *Sheboygan County Shoreland Ordinance*.

Mr. Pfaller noted the receipt of the Department's report on the issue.

Mr. Pfaller reported on the site visit on Saturday, June 15, 2013 at 9:00 A.M. Jerry Rosche stated he was impressed with the lot slope, the property is well kept, the yard is drained to Franklin Road except in the SE corner where a culvert is located, there is tree growth around the property. Discussed the septic system and that it would be brought up to code at the time construction would take place. Eugene Blindauer commented that the septic itself was not part of this project. Joseph Stodolka did not have any further comments.

Mr. Pfaller stated the Board received an email on June 18, 2013 from Kathy Koeser, Town of Herman Clerk's office, on behalf of Town of Herman Supervisor Jim Raquet. He read the email out loud.

Mr. Pfaller read out loud an email from Heidi A. Kennedy from the Wisconsin DNR sent to Matt Mrochinski dated June 4, 2013. Mr. Trochta questioned the wording in paragraph two relating to "if the rule changes go through..." Matt Mrochinski provided an explanation.

Mr. Pfaller asked David & Lynn Trochta to come forward to provide testimony regarding the decision of the County Planning & Conservation Department. David & Lynn Trochta provided background on their proposed project – a 22' x 25' addition on the north side of their home which would involve moving the driveway.

Mr. Trochta asked for clarification of the concept of rain gardens. Mr. Pfaller provided an explanation.

Mr. Trochta mentioned the culvert is not on his property and wondered whether the water is his concern once it leaves his property. Mr. Pfaller provided an explanation. Mr. Trochta indicated they have decreased the size of the original proposed driveway from 22' to 16' and have changed the sidewalk to pervious pavers. Joseph Stodolka asked if there was a plan to put a culvert under the driveway along the road. Mr. Trochta indicated no. Mr. Stodolka asked if Mr. Trochta built the mound or rocks to the north of the culvert to slow down the water. Mr. Trochta stated yes, he did add that. Joe asked about the septic system and Mr. Trochta indicated his recent scheduled inspection determined there was a crack. The drainage field is still working, but he needs a new tank. Matt Mrochinski and Kathryn Fabian did not have any additional comments.

Jerry Rosche provided additional comments on rain gardens and asked if there were size standards. Matt indicated there are and provided further explanation. Mr. Pfaller asked whether the County has an inspection process at the completion of the project similar to what the Town of Herman would do to assure compliance. Matt Mrochinski assured the Board that the County completes a post construction inspection prior to completion of the project to assure the conditions of the approved variance have been met.

Mr. Pfaller reviewed a few key points in the June 10, 2013 Staff Report. The addition of this impervious surface is 37.15% only of the 300' that is within the ordinary high water mark of the river. Mr. Pfaller indicated after seeing the property during the inspection there is not an alternative location for this addition.

There were no other questions or additional information to offer by the applicants.

Deliberation:

Unnecessary Hardship:

Jerry Rosche made a motion that the Board find that literal enforcement of the ordinance in question will result in unnecessary hardship. Motion seconded by Gene Blindauer. Discussion ensued. Eugene Blindauer – the topography of area is such that there is no other place to construct the addition. Joseph Stodolka – he sees it's an unnecessary hardship for the expansion of their living quarters, but not necessarily an unnecessary hardship for the use of the property. Jerry Rosche – the current home and addition is in the jurisdiction of shoreland zoning. The balance of the property is not under that jurisdiction. Mark Pfaller commented this has to do with allowing certain property rights. The use of the property is not lost if we don't approve this. Vote on the motion: Pfaller – yes. Rosche – yes. Blindauer – yes. Stodolka – no. The motion carries 3 to 1.

Spirit of the Ordinance:

Joseph Stodolka made a motion that granting the variance will observe the spirit of the ordinance with appropriate mitigations. Motion seconded by Eugene Blindauer. Discussion ensued. Joseph Stodolka – looking at staff report and comments from the DNR, it is laced with comments regarding mitigation and he feels granting this would be in the spirit of the ordinance with the appropriate mitigations. Corporation Counsel Buesing clarified that with the mitigation,

you're getting what the ordinance intends with its expressed terms. Roll Call vote: Rosche – yes. Blindauer – yes. Stodolka – yes. Pfaller – yes. Motion carried unanimously.

Substantial Justice:

Joseph Stodolka made a motion that by granting a variance with appropriate mitigation to the property as required by the Planning & Conservation Department, substantial justice to the property will be achieved with the appropriate mitigation. Motion seconded by Jerry Rosche. Discussion ensued. Joseph Stodolka – for the full and best use of this property, it would be an injustice to deny the applicants this variance to improve their property. Based on that, with the appropriate mitigations, substantial justice would be done. Mark Pfaller – agrees with Joseph Stodolka's comments. Roll Call vote: Rosche – yes. Blindauer – yes. Stodolka – yes. Pfaller – yes. Motion carried unanimously.

Not contrary to public interest:

Joseph Stodolka made a motion that by granting a variance with appropriate mitigation to this property as required by the Planning & Conservation Department, it will not be contrary to public interest. Motion seconded by Jerry Rosche. Discussion ensued. Joseph Stodolka – is concerned we would grant the variance without knowing what the appropriate mitigation would be and would have to rely on the Planning & Conservation Department to follow through with what they feel is appropriate and follow through with them. The variance and mitigation requirements would be deeded to the property and any future owner would be required to maintain the mitigation that is there. Roll Call vote: Rosche – yes. Blindauer – yes. Stodolka – yes. Pfaller – yes. Motion carried unanimously.

Variance is Granted:

All four elements are present and move the variance be granted on condition upon compliance with all terms and conditions in mitigation by the Planning and Conservation Department. Motion seconded by Eugene Blindauer. Discussion ensued. Eugene Blindauer – feels we've covered what we need to and the Planning & Conservation Department will meet with the Trochta's to determine what they need to do to take care of that portion of their lot that is over and above. Planning & Conservation staff will assure it has been completed properly. Joseph Stodolka – presented a copy of the Planning & Conservation Department's Mitigation Handbook to read through as a start to determine what they need to do. Roll Call vote: Rosche – yes. Blindauer – yes. Stodolka – yes. Pfaller – yes. Motion carried unanimously.

Eugene Blindauer made a motion to adjourn. Motion seconded by Jerry Rosche. Motion carried.

Kay Lorenz
Recording Secretary

Eugene Blindauer
Board Secretary