

SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS MINUTES

Administration Building
508 New York Avenue
Sheboygan WI

October 15, 2014

Called to Order: 1:00 PM

Adjourned: 3:16 PM

MEMBERS PRESENT: Mark Pfaller, David Gartman, Ken Moehring, Joseph Stodolka, Eugene Blindauer

ALSO PRESENT: Board First Alternate Jerry Rosche, Board Second Alternate Scott Miller, Kay Lorenz, Kathryn Fabian (Zoning Administrator), Matt Mrochinski (Code Administrator), Attorney Crystal Fieber (representing the Board), Adam Schneider, Jason Gudex, Doug Schwalbe, Mike Bruflat

Chairperson Pfaller called the meeting to order and called the roll.

Kay Lorenz verified that the agenda was posted on October 7, 2014 at 3:00 PM in compliance with the open meeting law.

Mr. Moehring made a motion to approve the minutes of the March 19, 2014 Board of Adjustments meeting. Motion seconded by Mr. Blindauer. Motion carried.

There were no public comments regarding non-agenda items.

Mr. Pfaller opened the hearing for the variance request of C & D Schneider LLC, Case #V-14-02-F to request a variance to the Sheboygan County Shoreland Ordinance for property located at W3126 State Highway 32, Section 15 in the Town of Herman.

Mr. Pfaller called Adam Schneider, Jason Gudex, Doug Schwalbe and Mike Bruflat forward to provide testimony. Adam Schneider introduced himself as well as Jason Gudex and Mike Bruflat who comprise the ownership group that is C&D Schneider LLC, the recognizable entity being Concept Works on State Highway 32. Mr. Doug Schwalbe of Keller Building Structures is the selected builder should the variance be granted.

Mr. Pfaller provided an overview of the procedures for the hearing and asked the applicant if he understood the procedures.

Mr. Pfaller reviewed the items of correspondence received with Mr. Schneider to confirm he had received and read them: Shoreland and Floodplain Zoning Permit Application; October 6, 2014 Staff Report from Kathryn Fabian; October 7, 2014 email from Jim Raquet. Town of Herman Supervisor; and October 13, 2014 email and letter from Dale Rezabek, Wisconsin Department of Natural Resources. Mr. Schneider acknowledged he had received and read each of the items of correspondence.

Mr. Pfaller asked for comments from the Board members regarding the site visit on Saturday, October 11, 2014 at 9:00 A.M. Mr. Pfaller apologized to the Board for his oversight and not being in attendance at the scheduled site visit, but indicated he did visit the site and meet with Mr. Schneider later that morning.

- Gene Blindauer – Mr. Schneider provided a tour of the existing plant, how the operations worked which is inherent in putting the addition on where they are proposing, and promotes their operations. We looked at the pond and where the run-off from the pond is located, as well as Fisher Creek. Both of these areas are dry in the summer. The only water we saw was in the man-made pond, which was very little. He explained where semis arrive and the room necessary for the semis to turn, determining where they can put the addition.
- David Gartman – Concur. As Vice-Chairman, Mr. Gartman called the site visit meeting to order. Mr. Schneider gave a thorough walk-through of the property and gave an overview of the entire operation from the parking lot all the way through the operation to the properties adjoining it. Everything that's covered in the packet we could see. Joe Stodolka – Made some observations during the tour for which he'll have questions for staff later. The property is being used for industrial purpose. The expansion doesn't seem to be completely out of line.
- Ken Moehring – They did a good job of presenting their case. He wasn't aware of the driveway on the east end of the new addition. It wasn't mentioned during the walk-through.
- Mark Pfaller – First impression was that it was clean and orderly. That is a good neighbor. It was well-organized considering the amount of waste that comes out of a woodworking facility. The pond looks like it's about 4' below the high water mark and is less than ¼ acre in size. On his own he walked back to where the creek was and his boots barely got wet. He then went back into the woods further and around the buildings and everything was well documented.
- David Gartman - Added there were stakes where the proposed building is going, but it would have been helpful on the site if there would have been identification of where backfill to the building, what the area being disturbed will be.
- Mark Pfaller - Looked through the windows at how the grade was going to be accomplished. Mr. Schwalbe commented when asked about foundation.

Kathryn Fabian and Matt Mrochinski did not have any additional comments.

Mr. Schneider provided an overview and history of the business. The expansion conversations are a by-product of growth. The business began in 1984 with two employees working out of the established dairy farm that Board members saw at the site visit. In 2009, they had seven on their payroll and they now have 30 on the payroll. They are a growing business in Sheboygan County and are shipping their product worldwide. The trend in the industry is that items are becoming bigger. To remain competitive, they need a facility that allows for process flow. Using a poster-sized plan, he walked through the design and workflow with the assistance of Mr. Schwalbe and answered questions. The area being disturbed will be minimal at approximately 24-30 foot range at most from the building. Mr. Schneider stated they won't have any issue conforming with the DNR's 35' ordinary high water mark boundary requirement. The company's mindset is to become more efficient and effective, create jobs, and improve their community.

Mr. Pfaller indicated we are dealing with the addition. He wonders as the business continues to expand, where will they go? Matt Mrochinski clarified that the 35 feet stated in the DNR letter refers to a vegetative buffer from the ordinary high water mark (OHWM) landward.

Mr. Moehring said the fact they want to keep vegetation natural is good. He questioned whether they would have to bring in fill for the driveway to get it up to grade. It was clarified by the builder it would likely be 4-5 feet on that side. He wondered if it was in the plan to continue on with that driveway. Mr. Schneider indicated that would be their preference.

Mr. Stodolka asked if they had considered other configurations such as slanting the addition slightly to reduce the amount of encroachment in the set-back area. Mr. Schneider indicated the concern is the need for semi's to back into the space. Mr. Schwalbe stated a change in the plan would interfere with the flow of trucks and they wouldn't be able to add another shipping dock in the future. They discussed other options for the plan, but didn't draw up any plans with different configurations of the addition.

Mr. Gartman asked how much of the proposed building would need to be scaled back if the variance was not granted. Mr. Schneider indicated they would have 3600 square feet to work with instead of 7200 square feet.

Mr. Blindauer didn't have any further comments.

Matt Mrochinski reiterates that some of the options just discussed were discussed during an onsite with Mr. Schneider and the DNR earlier in the year.

Mr. Stodolka asked about the set-back and stream leaving the pond and wondered at what point a manmade ditch became a navigable waterway. Kathryn Fabian indicates the DNR ultimately determines navigability. Matt further explained navigability. Mr. Pfaller referred to the April 24, 2014 letter from Kathy Kramasz from the DNR which is in the packet. He read the letter out loud.

Mr. Gartman relayed concerns about the sensitive area east of the proposed structure. The official survey shows there is 73 feet from the corner of the building to the ordinary high water mark on the connector stream between the pond and Fisher Creek. The building is in excess of 100 feet from Fisher Creek.

Mr. Moehring asked what Dale Rezabek means by recommending wetland delineation for the potential wetland located east of the barn. Matt Mrochinski provided an explanation.

Mr. Pfaller polled the Board regarding any desire to go into Closed Session. There was consensus amongst the members to decline Closed Session.

There being no further comments, Mr. Pfaller closed the Public Hearing at 2:07 p.m.

Deliberation:

Unnecessary Hardship:

Mr. Blindauer made a motion that there is a hardship in this case. Motion seconded by Mr. Moehring. Discussion ensued.

- Mr. Stodolka questions whether the hardship is unnecessary. There are many factors involved. The most difficult determination we will have today is whether it unreasonably prevent the property owner from using the property for permitted purposes, that being his expansion and increasing his footprint into the setback.
- Mr. Blindauer stated the encroachment is very minimal with the new building. Second, the natural topography of the land doesn't give them much choice to do anything else with it. If in the future they want to expand again that would limit them.
- Mr. Gartman wanted to clarify the impacts of the buffer the DNR recommends. Is it a self-created hardship? That is the key struggle.
- Mr. Moehring indicates if we live by the requirements of the DNR and the County that we are within that they can expand the building by following the recommendations.

- Mr. Pfaller stated that what they're up against is man-made stream created by someone else between 1967 and 1990. It's based on conditions that are unusual to the property because it was put there by someone else. It's not personal to the property owner and it's not a hardship that was self-created by this owner. Now that it is a navigable waterway, it can be mitigated fairly easily, especially since for 6-7 months of the year it is ostensibly dry. It seems the impact insignificant.
- Mr. Blindauer agrees because it is man-made. It is not natural.
- Attorney Fieber counseled the board on looking at hardship and how it relates to the specific property.
- Mr. Gartman commented on other options being considered to expand to the west.
- Mr. Blindauer commented he understands from walking through the plant how their process is set up and if they were to expand to the west, they'd have to reverse their entire assembly process.
- Mr. Moehring indicated they mentioned they were trying to maximize their growth to the east and that any future additions would have to go to the west.
- Mr. Gartman stated he is not convinced that expanding to make things quicker and easier is a hardship.

ROLL CALL VOTE:

Mr. Blindauer – yes, Mr. Gartman – no, Mr. Stodolka – no, Mr. Moehring – yes, Mr. Pfaller – yes. Motion carried.

Spirit of the Ordinance:

Mr. Stodolka made a motion that it is within the spirit and intent of the ordinance with conditions that will be set out prior to the approval of the variance. Motion seconded by Mr. Blindauer. Discussion ensued relating to legalities of adding the conditions with this motion or with the final motion granting the variance for the purpose of maintaining or redeveloping the natural vegetation within a buffer zone between the development and the waterway.

ROLL CALL VOTE:

Mr. Blindauer – yes, Mr. Gartman – no, Mr. Stodolka – yes, Mr. Moehring – yes, Mr. Pfaller – yes. Motion carried.

Substantial Justice:

Mr. Stodolka made a motion to find that substantial justice would be done by granting the variance. Motion seconded by Mr. Blindauer.

- Mr. Stodolka feels this goes along with spirit and intent of the ordinance. This is in no way precedent-setting, it is limited to the totality of the circumstances of this property.
- Mr. Gartman stated there are several criteria and the issue he is struggling with is spirit of the ordinance which ties into the hardship.
- Mr. Moehring stated there is substantial justice because they want the vegetation to still be lining the creek at a minimum of 35'.
- Mr. Pfaller added that they are very good neighbors and very good stewards of the land. This business needs to be there, it needs to continue on that piece of property. They have indicated they will mitigate the issue as best they can.

ROLL CALL VOTE:

Moehring – yes, Mr. Stodolka – yes, Mr. Gartman – yes, Mr. Blindauer – yes, Mr. Mr. Pfaller – yes. Motion carried.

Not contrary to public interest:

Mr. Stodolka made a motion that granting the variance will not be contrary to the public interest as long as conditions that we impose for the variance are met. Motion seconded by Mr. Blindauer.

- Mr. Moehring stated there is support from the neighbor directly south and from the township.
- Mr. Gartman indicated this hasn't been an issue for me.
- Mr. Blindauer stated it is strictly positive

ROLL CALL VOTE:

Mr. Blindauer – yes, Mr. Gartman – yes, Mr. Stodolka – yes, Mr. Moehring – yes, Mr. Pfaller – yes.

Variance is Granted with Conditions

Mr. Stodolka made a motion to grant the variance being conditioned on the property owner complying with the conditions, requirements and restrictions that may be placed on them by the Department of Natural Resources or the Sheboygan Planning & Conservation Department regarding and as to vegetation, water management, and erosion control, in particular that a 35' buffer zone be required from the ordinary high water mark to reduce the impacts of run-off from impacting the pond and drainage connect to Fisher Creek. Motion seconded by Mr. Gartman.

- Mr. Gartman is satisfied with the motion as long as the 35' buffer zone requirement is included.
- Mr. Moehring agrees with the motion.
- Mr. Blindauer agrees with the motion.

ROLL CALL VOTE:

Mr. Moehring – yes, Mr. Stodolka – yes, Mr. Gartman – yes, Mr. Blindauer – yes, Mr. Pfaller – yes.

The Board took a short recess at 2.53 pm. Attorney Fieber will be excused for the remainder of the meeting.

The meeting re-convened at 3:02 p.m.

Chairperson Pfaller requested nominations for Chairperson. **Mr. Gartman made a motion to nominate Mark Pfaller for Chairperson.** Motion seconded by Mr. Moehring. Motion carried unanimously. Mark Pfaller was elected Chairperson for the next year.

Chairperson Pfaller requested nominations for Vice-Chairperson. **Mr. Blindauer made a motion to nominate David Gartman for Vice-Chairperson.** Motion seconded by Mr. Stodolka. Motion carried unanimously. David Gartman was elected Vice-Chairperson for the next year.

Chairperson Pfaller requested nominations for Secretary. **Mr. Stodolka made a motion to nominate Eugene Blindauer for Secretary.** Motion seconded by Mr. Moehring. Motion carried unanimously. Eugene Blindauer was elected Secretary for the next year.

Mr. Blindauer made a motion to approve the 2014-2015 Calendar as printed. Motion seconded by Mr. Moehring. Motion carried unanimously.

The Board reviewed the “Sheboygan County Board of Adjustments Policies and Procedures” adopted October 16, 2013. There were no modifications or corrections made. **Mr. Gartman made a motion to adopt the October 16, 2013 Policies and Procedures as presented for the coming year.** Motion seconded by Mr. Stodolka. Motion carried unanimously.

Mr. Blindauer made a motion to allow Board members to attend training in the coming year. Motion seconded by Mr. Moehring. Motion carried unanimously.

Mr. Stodolka made a motion to adjourn. Motion seconded by Mr. Gartman. Motion carried.

Kay Lorenz
Recording Secretary

Eugene Blindauer
Board Secretary