

BOARD OF ADJUSTMENT MINUTES

Sheboygan County Administration Building
508 New York Avenue
Sheboygan, WI

June 15, 2022

Called to Order: 1:00 PM

Adjourned: 2:16 PM

MEMBERS PRESENT: Mark Pfaller, Ed Harvey, BJ Reenders, Charles Born, Pete Scheuerman

OTHERS PRESENT: Attorney Crystal Fieber, Kathryn Fabian, Megan Nasgovitz, Dennis Prigge, and Andy Kissel

Chairperson Pfaller called the meeting to order and called the roll. Chairperson Pfaller seated alternates BJ Reenders and Charles Born.

Megan Nasgovitz reported that the meeting notice was posted on June 3rd, 2022 at 11:30 AM in compliance with the open meeting law.

There were no public comments regarding non-agenda items.

Mr. Born made a motion to approve the minutes from the April 20, 2022 Board of Adjustment meeting. Mr. Reenders seconded the motion. Motion carries with no opposition.

Mrs. Fabian clarified that the reason for the hearing is that a patio was rebuilt outside of the footprint of the original patio, which is not allowed for nonconforming structures under the Sheboygan County Shoreland Ordinance. In the summer of 2019, a post-construction inspection on the property was completed after the issuance of a Shoreland Zoning Permit. It was during this inspection that the enlarged patio was discovered. In winter of 2019, a survey was completed showing exactly where everything was and the measurements of the structures. At this point, Mrs. Fabian sent a letter to Serenity Farm Landscaping for two violations – first, for increasing impervious surface more than 30% and second, for the patio not meeting the 75 ft setback from the ordinary high water mark. The letter listed several options on how to conform with the Shoreland Ordinance on both of the violations. In an onsite visit at the end of May 2022, it was found that about 150 sq. ft. had been added to the patio beyond the original footprint. It was also found that greater than 150 sq. ft. of impervious surface had been removed at the lake, making up for what was added. Due to this removal of impervious surface, the first violation had been rectified and does not need a variance. At this hearing, the only variance being considered is for the patio that does not meet the setback of 75 ft. from the lake.

Chairperson Pfaller opened the hearing for the after the fact variance request to the Sheboygan County Shoreland Ordinance for Serenity Farms Landscaping (Case No. V-22-02-F) to the 75-foot setback from the ordinary high water mark (OHWM) of Crystal Lake for the construction of a patio failing to meet the requirements of Section 72.15(1)(a)1. of the *Sheboygan County Shoreland Ordinance*.

Chairperson Pfaller introduced to the record the letters from Mrs. Fabian to Serenity Farm Landscaping from Fall 2019, Fall 2021 and Spring 2022; the property survey; and the staff report from June 3. Mr. Kissel and Mr. Prigge confirmed that they had received all these documents. An overview of the procedures for the hearing was provided to the applicant.

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

Mr. Reenders noted the site looks exactly like the survey. Mr. Scheuerman said he had more questions than comments. Mr. Harvey questioned why the two surveys provided have a different date. Mrs. Fabian and Mr. Kissel explained that AJ Kissel colored the second survey on what was likely a preliminary draft as it had not been stamped or signed. Mr. Harvey also questioned who measured the area near the water that was removed to offset the increase in impervious surface. Mrs. Fabian explained that during the site visit she attended with Mr. Kissel and Mr. Prigge, the area was measured by the dock installers. Mr. Born noted that he thought it looked like a nice property and it was well done.

Mr. Prigge, current property owner, and Mr. Kissel, Serenity Farm Landscaping, approached the Board to explain their request for a variance. Mr. Prigge noted that his father started the project but then fell ill before completion and has since passed. After construction, Mr. Prigge received a letter saying that the patio was too big. He then reached out to Mr. Kissel. Mr. Kissel apologized that the project became bigger than they expected and acknowledged that they should have consulted with Mrs. Fabian before extending beyond the plans that were proposed to the County.

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

Mr. Born asked if they have a building permit and a building inspector who notifies the County of the progress on the construction. Mr. Kissel stated he did not know for sure, but usually they have to apply for a permit. Mr. Born noted that much of this issue could have been avoided if they had a permit and someone was checking in on the progress as they would have known before it was completed.

Mr. Reenders asked if when applying for a Shoreland Permit, there is an actual drawing of the site plan that is submitted. Mrs. Fabian presented an image of the site plan submitted by Serenity Farm Landscaping with their application. Mr. Reenders also asked how the proposed layout compared to the final build. Chairperson Pfaller added that the drawing does not really make sense and does not tell us what is going on in terms of sq. ft. or measurements.

Mr. Harvey asked if the drawing of the site plan submitted by Serenity Farm Landscaping with the application implied to Mrs. Fabian that the patio was going to be removed. Mrs. Fabian noted that she received a project description along with the drawing explaining exactly what the plan was for the area and that the dimensions of the new deck would match the current dimensions. She also received sketches of the deck and gazebo that were to be replaced. Mr. Harvey also asked if the original deck was out of compliance with the 75 ft setback. Mrs. Fabian noted that there are multiple decks, some of which were included in the permit- however they created more patio than originally existed, which was not shown on the permit application.

Mr. Scheuerman asked if there was a permit to remove and replace the patio. Mr. Kissel stated that he thought there was a permit, but he was not sure specially if it was to replace the patio. Mr. Scheuerman also asked if, regardless of the outcome of the variance request, the property owner would be required to obtain an after the fact demolition permit. Mrs. Fabian and Attorney Fieber both confirmed this was generally the case, and in these cases, there is often an additional fine for obtaining a permit after the fact.

Chairperson Pfaller asked if anyone else had any questions or wanted to add anything to clarify. Mr. Kissel noted that once the retaining walls were replaced, the concrete behind the house was in very bad shape, which is why they replaced it, assuming it was considered part of the project. Mr. Prigge noted that repairs to the hillside needed to be made every 10-12 years over the course of owning the property for 40 years. Mr. Kissel noted that they were going to leave the patio, but when they saw that it was falling apart they thought they might as well fix it while they were there.

Chairperson Pfaller closed the public discussion at 1:50 PM

Deliberation & Vote:

Chairperson Pfaller clarified with Attorney Fieber that the vote will be just on the 75 ft setback. From a processing standpoint, Attorney Fieber will describe what standards need to be met, noting that the standards do not change if the project is already there, they are the same before or after the fact.

Mr. Born stated he does not believe anyone intentionally did anything wrong, but it was too bad that they did not have the appropriate permitting. Mr. Born reminded the committee that Mrs. Fabian was there 4/9/18 before the project started. There was a definite plan- Serenity Farm Landscaping deviated from the plan. In 2020 the world changed, everything was not checked on and now we are here. Regardless, it is not fair when one property owner follows the rules and others do not.

Mr. Harvey reiterated that he believes that intentions were good, but the addition would not have been allowed if the initial plan had said they were doing it. He also noted that it is difficult when trying to adjust or vary a permit that was never issued. He believes this could have been easily avoided with better communication prior to and during construction

Mr. Scheuerman stated that whether or not a variance is granted, they are going to need an after the fact demolition permit. He noted that projects do sometimes get away from themselves, and usually there is a fine associated with failing to get a permit. He echoed the previous board members thoughts that this was not malicious. He believes it was an oversight, but there are a lot of neighbors who will see what was done and want to do it too.

Mr. Reenders stated he feels similar to the rest of the Board. The Shoreland Ordinance is very strict, and demands strict adherence. The goal is preservation of the shoreland, and he does not see any problems with erosion, but all the same, it was not followed.

Mr. Pfaller stated that he thinks Serenity Farm Landscaping did a nice job, and he understands the process can sometimes get away from you. He noted that once a decision is made here, it is back into the hands of the County. Mr. Pfaller closed by noting that the Board has to be careful about what kind of precedent they are setting for the future.

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 - No , Mr. Harvey - No , Mr. Reenders - Yes , Mr. Scheuerman – No, Mr. Born - No

Attorney Fieber stated that the Board has found that there are not special conditions, so the variance cannot be granted. However, we will still go forward with the remainder of the voting process.

Does unnecessary hardship exist?

ROLL CALL VOTE: Mr. Born -No, Mr. Harvey- No, Mr. Reenders – No, Mr. Scheuerman - No Mr. Pfaller - No

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

ROLL CALL VOTE: Mr. Pfaller - No, Mr. Harvey - Yes , Mr. Reenders - Yes, Mr. Scheuerman – No, Mr. Born - No

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

ROLL CALL VOTE: Mr. Pfaller - No, Mr. Harvey - No, Mr. Reenders - No, Mr. Scheuerman – No, Mr. Born - No.

Is the variance contrary to public interest?

ROLL CALL VOTE: Mr. Pfaller - Yes, Mr. Harvey - No, Mr. Reenders - No, Mr. Scheuerman – No, Mr. Born - N.

The variance request is denied finding that several of the criteria have not been met.

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

Mark Pfaller, Chairman

Megan Nasgovitz, Recording Secretary