

## BOARD OF ADJUSTMENT MINUTES

Administration Building  
508 New York Avenue  
Sheboygan, WI

**September 15, 2021**

**Called to Order: 1:01 PM**

**Adjourned: 2:30 PM**

MEMBERS PRESENT: Mark Pfaller, Jeff Stroub, Ed Harvey, BJ Reenders, Charles Born

MEMBERS ABSENT: Pete Scheuerman, Kelly Johnson

ALSO PRESENT: Attorney Crystal Fieber, Karsen Gosh, Kathryn Fabian, Daniel Francis

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

Karsen Gosh reported the meeting notice was posted on September 13, 2021 at 10:00 AM in compliance with the open meeting law.

Mr. Stroub made a motion to approve the minutes from the August 4, 2021 Board of Adjustment meeting. Motion seconded by Mr. Born and was approved.

There were no public comments regarding non-agenda items.

Mr. Pfaller opened the hearing for the variance request to the Sheboygan County Shoreland Ordinance for Daniel and Jean Francis (Case No. V-21-05-F) to construct a shed on a vacant property on Birch Tree Road (parcel #59016224370) within the shoreland jurisdiction of Crystal Lake, Section 5, Town of Plymouth.

Mr. Pfaller introduced to the record a survey provided by Mr. Francis and ensured all documents had been received. An overview of the procedures for the hearing was provided to the applicant.

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

Mr. Harvey mentioned that there was some confusion amongst some of the Board members as to why a variance was required and asked for Attorney Fieber and staff to clarify. Mr. Reenders noted that there had been neighbors in the area who had supported the variance in order to alleviate any outdoor storage on the property. Mr. Born mentioned that he had noticed there were other properties surrounding the Francis lot that contained similar free-standing sheds and garages to the one being proposed by Mr. and Mrs. Francis.

Mrs. Fabian, of the Planning & Conservation Department, gave an overview of her staff report and explained that the Shoreland Ordinance doesn't allow an accessory structure on a property without the presence of a principal structure. Mrs. Fabian also went on to further clarify a Board member's question that had been presented to her prior to the meeting about some of the calculations included in variance materials, explaining that when the application for a Shoreland Zoning Permit came in, it had originally included a percentage of impervious surface cover on the lot that exceeded the maximum 30% coverage allowable by the Ordinance. She had addressed this issue with the property owners and they have amended their plans accordingly and a variance is not required for the size of the shed, but the use alone.

Attorney Fieber concurred with Mrs. Fabian's statement and expounded upon the differences between considering an "area variance" and a "use variance." An unnecessary hardship standard when considering a use variance, determines whether there would be no reasonable use of the property without the variance. The property is zoned residential so the Board would need to determine if the property could be used for its intended purpose without a variance.

Mr. Born noted that there were likely an overlap of the same issues with at the Town of Plymouth level and that Mr. Francis had already worked with the Town to obtain a variance, which was included with the hearing documents.

Mr. Pfaller asked each of the Board members to address any closing questions they may have for the applicant. Mr. Stroub asked the applicant which mitigation practices he intends to implement on the property should the variance be granted. Mr. Francis confirmed he's not sure yet but will work with County staff before his Shoreland Zoning Permit is issued. Mr. Born asked the applicant to give a brief history of the property. Mr. Francis explained that he and his wife had purchased the both the property with the house and the vacant lot from his in-laws and it has been in the family for 80+ years. Historically, the two lots have always been sold together and used for parking. Attorney Fieber stated that it would be within the authority of the Board to make a condition of the variance that both lots remain together in the future, if the Board wishes to go that route.

Mr. Pfaller asked Mr. Francis if he had any final questions for the Board before the public hearing portion is closed. Mr. Francis asked, if the variance is approved, how soon could he begin construction. Mr. Pfaller answered that it would need to go through the County's permitting process first, but construction could begin after all permits are obtained.

#### **Deliberation & Vote:**

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 – yes, Mr. Stroub – yes, Mr. Harvey – yes, Mr. Reenders – yes, Mr. Born – yes.**

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

**ROLL CALL VOTE: Mr. Pfaller – yes, Mr. Stroub – yes, Mr. Harvey – yes, Mr. Reenders – yes, Mr. Born – no.**

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

**ROLL CALL VOTE: Mr. Pfaller – yes, Mr. Stroub – yes, Mr. Harvey – yes, Mr. Reenders – yes, Mr. Born – yes.**

***Is the variance not contrary to public interest?:***

**ROLL CALL VOTE: Mr. Pfaller – yes, Mr. Stroub – yes, Mr. Harvey – yes, Mr. Reenders – yes, Mr. Born – yes.**

**The variance request is approved without conditions.**

Chairperson Pfaller requested nominations for Chairperson, Vice-Chairperson, and Secretary. Hearing none, Mr. Pfaller requested a motion to retain the previous year's nominations. Mr. Harvey made a motion to re-elect Mr. Pfaller as Chairperson, Mr. Scheuerman as Vice-Chairperson, and Mr. Stroub as Secretary. Motion seconded by Mr. Stroub. Motion carried unanimously.

Attorney Fieber went over the proposed changes to the Board's Policies/Procedures regarding changes to closed session language made by the Attorney General's office. Mr. Harvey made a motion to approve the changes as presented. Motion seconded by Mr. Stroub. Motion carried unanimously.

Attorney Fieber commented that there may be more policy revisions forthcoming to reflect consistencies between the Board's policies, the Shoreland Ordinance, the variance application, and the staff report pertaining to the number of standards that are considered during variance hearings. Mr. Pfaller asked that if another variance comes in soon to disregard the current policies and ensure that all documents are consistent until the time comes to approve the changes to the Policies/Procedures at their next business meeting.

Mr. Born made a motion to adopt the 2021-2022 Calendar as printed. Motion seconded by Mr. Stroub. Motion carried.

There was a discussion between Board members, Mrs. Fabian, and Attorney Fieber on the level of accuracy and the quality of the application materials that the Board members receive. Some of the Board members have had difficulties deciphering the application documents and requested that better quality documents are distributed to them. Attorney Fieber suggested that Mrs. Fabian use her discretion to decide whether or not the information provided is sufficient.

Mr. Harvey made a motion to adjourn. Motion seconded by Mr. Stroub. Motion carried unanimously.

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Jeff Stroub, Secretary

Karsen Gosh, Recording Secretary