

NOTICE OF MEETING

SHEBOYGAN COUNTY BOARD OF ADJUSTMENT

Wednesday, June 21, 2023

1:00 PM

Administration Building
508 New York Avenue
3rd Floor, Conference Room 302
Sheboygan, WI

AGENDA

Call to Order

Roll Call

Seating of Alternates

Certification of Compliance with Open Meeting Law

Public Input and Comments on Non-Agenda Items

Approval of Minutes of the April 19, 2023 Board of Adjustment Meeting

Public Hearing and Action on the following items:

Richard Windsor (Case No. V-23-02-F) application for a variance to the 75-foot setback from the ordinary high water mark of Elkhart Lake to allow for the construction of a new single family residence 35 feet from the ordinary high water mark failing to meet the requirements of Section 72.15 of the *Sheboygan County Shoreland Ordinance Onsite of the subject property (W6574 E Shoreland Rd, Town of Rhine) to occur on Wednesday, June 21, 2023 at 11:00 AM.*

Adjournment

Prepared by: Megan Nasgovitz, Recording Secretary

Approved by: Mark Pfaller, Chairperson

A majority of the members of the County Board of Supervisors or of any of its committees may be present at this meeting to listen, observe, and participate. If a majority of any such body is present, their presence constitutes a "meeting" under the Open Meeting Law as interpreted in *State ex rel. Badke v. Greendale Village Board*, 173 Wis. 2d 553 (1993), even though the visiting body will take no action at this meeting. Persons with disabilities needing assistance to attend or participate are asked to notify the County Planning & Conservation Office, 920-459-1370, prior to the meeting so that accommodations may be arranged.

Posted on 6/9/2023 at 10:00 AM

BOARD OF ADJUSTMENT MINUTES

Sheboygan County Administration Building
508 New York Avenue
Sheboygan, WI

April 19, 2023

Called to Order: 1:02 PM

Adjourned: 2:03 PM

MEMBERS PRESENT: Mark Pfaller, Ed Harvey, BJ Reenders, Pete Scheuerman, and Kenneth Sonntag

OTHERS PRESENT: Corporation Counsel Crystal Fieber, Kathryn Fabian (Planning & Conservation), Peggy Osthelder (BOA Recording Secretary), Chuck Born (1st alternate), Marjean Pountain (2nd alternate), Tammy Daane, Sawyer Daane, Sarah Lutze, Rich Lutze, Ramona Daane, Peter Daane, Paul Booher, David Huenink (Town of Holland), Peter J. Daane

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

Ms. Osthelder reported that the meeting notice was posted on April 6, 2023 at 1:00 PM 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 January 18, 2023 Board of Adjustment meeting. Mr. Harvey seconded the motion. Motion carried with no opposition.

Chairperson Pfaller opened the hearing for the application for an after-the-fact variance to the 75-foot setback from the ordinary high water mark (OHWM) of Lake Michigan for the construction of a deck at 41" from the OHWM. Said construction 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 went through all the documents one by one ensuring that all parties had received them.

- A1: Application to Sheboygan County Board of Adjustment dated March 22, 2023
- A2: Letter to the Daane Family Trust from Kathryn Fabian dated April 28, 2021
- A3: Letter to the Daane Family Trust from Kathryn Fabian dated September 29, 2021
- A4: Letter to the Daane Family Trust from Kathryn Fabian dated November 16, 2022
- A5: Staff Report by Kathryn Fabian dated April 6, 2023
- A6: Letter on Hearing from Town of Holland Chair David Huenink dated April 19, 2023
- A7: Email regarding variance from Tom and Nara Detienne dated April 18, 2023
- A8: Timeline of Daane Family Cottage and modifications submitted April 19, 2023
- A9: Daane Family Tree document submitted April 19, 2023
- A10: Twelve photos of Daane Family property shoreline and water levels submitted April 19, 2023

Town of Holland Chair Huenink read his letter out loud to the Daane Family present and the Board of Adjustment. Chairperson Pfaller read aloud the letter from Tom and Nara Detienne.

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

- Mr. Scheuerman stated that they were provided a tour of the property along with the cottage and both decks. The deck in question is on the West side of the house. The family provided the history of the deck's location.
- Mr. Reenders stated that the West side deck was modest and couldn't be seen from the lake.
- Mr. Sonntag stated that no one occupies the home on a full-time basis and the cottage is used mostly as a summer cottage. Shoreline is protected by stone.
- Mr. Harvey stated that he had the same observations about the small cottage. He noted there was a sand dune along it that was stabilized. He heard a long discussion on the history of the deck and buildings.
- Chairperson Pfaller echoed what the other Board members had stated.

Chairperson Pfaller asked for public comments.

Mr. Huenink stated that his only comment was placed into the record with this letter already.

Mr. Peter John Daane is a beneficiary of the Daane Family Trust and he was asked to speak on behalf of the family trust. The property and beach cottage were purchased by Mr. Peter M. Daane in 1950. Mr. Peter J. Daane provided the Board of Adjustment with a timeline and a family tree to provide an overview. Mr. Peter J. Daane then stated that he didn't receive the September 19, 2021 and the November 16, 2022 letters to the Daane Family Trust. Ms. Fabian provided a summary of these letters to the family.

Mr. Peter J. Daane then took the Board through the photos of the Daane Family property provided. The pictures were taken at different time periods to demonstrate the changing water levels at this beach property. Mr. Peter J. Daane noted that some photos taken in 2019 showed the damage to the old deck's steps leading to the beach due to high water levels. He then explained the next few pictures show the historical water heights. The beach was unusable at this time. In 2021, the Daane family also received notice that their septic system hadn't been inspected or emptied in several years this was due to the cottage not being used during the time of high water levels. The last two photos show the steep slope west of the cottage to demonstrate the reasoning behind why the deck was constructed where it was.

Mr. Peter J. Daane noted that he was first to communicate with Ms. Fabian, and had agreed that they family would tear down deck as the cost of materials for the deck is under \$1,000. However, his brother, Mr. Todd Daane, wanted to keep the deck, and he began discussions with Ms. Fabian on keeping the deck. Unfortunately, Mr. Todd Daane passed away in December, 2021. Mr. Peter Daane then decided to make the application to the Board of Adjustment. Mr. Peter J. Daane stated that he respected the ordinance. However, he stated that the deck isn't visible to neighbors, doesn't obstruct the view, or create a pollution hazard. Mr. Peter J. Daane noted that ripping out the deck wouldn't advance the purpose of the original ordinance.

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

- Mr. Scheuerman stated he agreed the Shoreline Ordinance can be difficult to navigate, but rules are rules.
- Mr. Harvey responded that, in all likelihood, any individual violation doesn't do a lot to advance the public good. However, does complying with this mean we shouldn't have a rule or do we need a rule and the application of this rule is for the public good as a whole?
- Mr. Daane responded that the cottage was already grandfathered in prior to the rule being in place and that the deck was built behind the cottage. Thus, this Board could consider this exception due to the grandfathered status of the cottage itself.
- Mr. Reenders asked if the deck would have been approved if they applied for a permit due to setback averages. Ms. Fabian clarified that averages are only applied to principal structures not decks.
- Attorney Fieber asked if the old deck had been taken down. Mr. Peter J. Daane confirmed that the old deck is still there and is currently in use now that the sea walls have been installed.
- Chairperson Pfaller asked about the structure/use of the deck and house. Mr. Peter J. Daane said the east deck was just used for watching the lake. The new, west deck provides a flat deck space for the family to safely grill and enjoy the outdoor space.
- Mr. Born stated that he didn't see footings or roof on the west deck, and questioned if this structure could almost be considered floating structure. Mr. Sonntag noted that it hasn't moved so couldn't reasonably be considered floating.
- Mr. Peter J. Daane asked what the family could have put in its place. Ms. Fabian noted that they could have added mulch then top soil for a better, level lawn or used pea gravel to level the space which isn't considered a structure.
- Mr. Scheuerman asked if open cinderblocks with pea gravel poured inside instead of deck would be an option. Ms. Fabian stated that this was correct.
- Mr. Reenders asked if averaging setbacks worked for additions to the structure. Ms. Fabian replied that averaging was for new structures and not additions to old structures. However, there is a provision for additions that makes them allowable up to 200 square feet. The deck in question is 284 square feet. However, the principle structure would need to be at least 35 feet from the ordinary high water mark which this cottage is not. Thus, they would not be able to add an accessory structure to it.
- Mr. Richard Lutze asked if the west deck was mounted on peer blocks, would that be permissible. Ms. Fabian stated that no, it is still considered a structure.
- Mr. Peter J. Daane stated that growing grass there wasn't an option for this property but pea gravel and blocks may have been achievable. He then asked what would be achieved by making the Daane Family rip out the deck and add pea gravel.

Chairperson Pfaller closed the public portion of the meeting and prepared the board for voting.

Deliberation & Vote:

Attorney Fieber stated that question for the Board today is whether to grant a variance on the new deck, on the street facing side of the property. Attorney Fieber then gave an overview of the criteria that the Board will vote on.

Does this property have unique or special conditions that prevent compliance with the ordinance?

ROLL CALL VOTE:

Mr. Scheuerman – Y, Mr. Pfaller – Y, Mr. Sonntag - Y, Mr. Harvey – Y, Mr. Reenders- Y

Does an unnecessary hardship exist?

ROLL CALL VOTE:

Mr. Scheuerman – N, Mr. Pfaller – Y, Mr. Sonntag - N, Mr. Harvey – Y, Mr. Reenders- Y

Will granting the variance maintain the spirit and intent of the ordinance?

ROLL CALL VOTE:

Mr. Scheuerman – N, Mr. Pfaller – Y, Mr. Sonntag - Y, Mr. Harvey – N, Mr. Reenders- Y

Does the granting of this variance give the property substantial justice?

ROLL CALL VOTE:

Mr. Scheuerman – Y, Mr. Pfaller – Y, Mr. Sonntag - Y, Mr. Harvey – Y, Mr. Reenders- Y

Is granting this variance going to harm the public interest?

ROLL CALL VOTE:

Mr. Scheuerman – N, Mr. Pfaller – N, Mr. Sonntag - N, Mr. Harvey – N, Mr. Reenders- N

Attorney Fieber announced that the variance request has been granted. She noted that the variance is to allow the structure to exist. She asked if anyone has any questions or disputes, to which there were none.

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

Mark Pfaller, Chairman

Peggy Osthelder, Recording Secretary