

NOTICE OF MEETING

SHEBOYGAN COUNTY BOARD OF ADJUSTMENT

Wednesday, August 16, 2023

1:00 PM

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

AGENDA

Call to Order

Certification of Compliance with Open Meeting Law

Public Input and Comments on Non-Agenda Items

Approval of Minutes of the June 21, 2023 Board of Adjustment Meeting

Consideration of Policy and Procedure Changes

Election of Officers

Approval of 2023-2024 Calendar

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.

BOARD OF ADJUSTMENT MINUTES

Sheboygan County Administration Building
508 New York Avenue
Sheboygan, WI

June 21, 2023

Called to Order: 1:13 PM

Adjourned: 2:03 PM

MEMBERS PRESENT: Mark Pfaller, Ed Harvey, Charles Born, Marjean Pountain

OTHERS PRESENT: Corporation Counsel Crystal Fieber, Kathryn Fabian (Planning & Conservation), Nick Tasche (Planning & Conservation), Aaron Brault (Planning & Conservation), Megan Nasgovitz (BOA Recording Secretary), Richard Windsor, Tony Burg and Kris Kreig

Chairperson Pfaller called the meeting to order and called the roll. Mr. Pfaller seated alternates Charles Born and Marjean Pountain.

Ms. Nasgovitz reported that the meeting notice was posted on June 6th, 2023 at 10:00 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 19th, 2023 Board of Adjustment meeting. Ms. Pountain seconded the motion. Motion carried with no opposition.

Mr. Pfaller opened the hearing for the application for a variance to the 75-foot setback from the ordinary high water mark (OHWM) of Elkhart Lake to allow for the construction of a new single family residence 35 feet from the OHWM failing to meet the requirements of Section 72.15(1)(a) of the *Sheboygan County Shoreland Ordinance*.

Mr. Pfaller provided an overview of the procedures for the hearing and asked the applicants if they understood the procedures.

Mr. Pfaller went through all the documents one by one ensuring that all parties had received them.

A0: Hearing Application

A1: March 21, 2023 letter from planning to Dr. Windsor

A2: Sheboygan County Conservation Department staff memo dated June 9, 2023

A3: Letter from DNR dated June 20, 2023

A4: Document submitted June 21, 2023 by Kris Kreig

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

- Ms. Pountain noted that they saw a very steep site which dropped down from road to the current structure and then from there a short distance to the lake. She stated that they saw where the lot lines were, and they were shown by the contractor where the proposed structure would fit in and how the driveway configuration would flow.
- Mr. Harvey said he observed what was mentioned by Ms. Pountain and that the principle obstruction was the steep slope from the road down. He stated that the lot was likely allowed to be built on initially due to the small size of the original structure.

- Mr. Born stated the he could not add much more other than to affirm that it was a very steep property and all of the homes were obviously built before the 75ft rule was in place.

Mr. Pfaller asked for comment from members of the audience. Kris Kreig, a neighbor, suggested that the garage be at the top of the hill near the road so the driveway would not come down so far. She expressed concern about her well head and the S-curve of the driveway as well as runoff going onto her property. Mr. Pfaller reiterated that the board is only looking at the variance from the setback and has no control over design issues. Ms. Krieg responded that she did not have a problem with the setback, but she wishes the project was taller not wider. Mr. Pfaller stated that this is a design issue which the board does not decide on.

Ms. Pountain asked if the design stayed within the footprint, could they build upwards to add stories. Ms. Fabian clarified that the height can only be a maximum of 35 ft and a variance would be required to exceed that height, which they are not asking for in the current plans.

Mr. Pfaller next called the applicant, Dr. Windsor, and his general contractor, Mr. Burg, to speak. Dr. Windsor requested a variance to the 75-foot setback due to the hardship of having a very steep hill on the property which is difficult for the driveway placement and for the septic companies to get down. He noted that the setback he is requesting is further back than where the current house is. He expressed that the current driveway is also too small to be accessed by emergency vehicles to respond should they need to, which is why they are widening it. He stated that plans have been made for keeping the greenspace and for proper drainage of the property. Mr. Burg added that these changes are being requested to lessen the grade of the driveway and make it more of a year-round home. Mr. Harvey asked about the setback of other properties along E Shoreland Rd. Mr. Windsor and Mr. Burg replied that most of the other properties on that street also had variances. Ms. Fabian clarified that many of the other properties were built closer than 75ft from the OHWM due to setback averaging. However, because there is a vacant lot next to this property, setback averaging cannot be applied in this case. Attorney Fieber interluded that the board needed to consider this property and what is happening on this property alone regardless of nearby properties.

Mr. Burg addressed Ms. Kreig's earlier concern by stating that rules do not allow stormwater from their property to go onto neighboring properties, so it will not. He stated they will have a drainage plan that will take care of water runoff. Ms. Kreig interjected that she would like to see the plan. Mr. Pfaller stated to Mr. Burg that it would be nice if they could share that plan when they have it.

Mr. Harvey stated that his understanding of what the applicant said was that the elevation of the house was set to reduce how steep the driveway is. He pointed out however that the grade of the driveway in the plans is pretty much exactly what the current driveway slope is now. In some areas in the plan it would be close to a 30% slope, so they are not trying to reduce the steepness of the driveway to anything less than it is now, they are just trying to not make it worse. Mr. Burg confirmed that is correct.

Ms. Kreig stated that whether it is made of gravel or asphalt, the whole thing will be impervious surface. Ms. Pountain asked what the driveway planned to be constructed out of. Dr. Windsor replied that the plan is asphalt, and Mr. Burg added that they are considering using some pervious pavers where it is less steep by the garage. Mr. Pfaller noted that they would not exceed the 30% impervious surface rule. Mr. Pfaller asked if the applicant had anything else they would like to add. Dr. Windsor said he did not, and he thanked everyone for attending and

considering his request. Mr. Pfaller then asked the board members if they had any remaining questions or comments, which they did not.

Attorney Fieber closed the evidence portion of the hearing and moved into the debate portion. She stated that the petitioner has the burden of proof to show that a variance should be granted and went through the four standards that will be voted on.

Deliberation & Vote:

Are there unique or special conditions of the property that warrant a variance?

ROLL CALL VOTE:

Ms. Pountain – N, Mr. Pfaller – Y, Mr. Born - Y, Mr. Harvey – N

Is there an unnecessary hardship present?

ROLL CALL VOTE:

Mr. Harvey – N, Mr. Born – N, Ms. Pountain – N, Mr. Pfaller - Y

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

ROLL CALL VOTE:

Mr. Born – N, Ms. Pountain – N, Mr. Harvey – Y, Mr. Pfaller - Y

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

ROLL CALL VOTE:

Mr. Harvey – Y, Mr. Pfaller – Y, Mr. Born – Y, Ms. Pountain - N

Is granting this variance going to harm the public interest?

ROLL CALL VOTE:

Mr. Pfaller – N, Mr. Harvey – N, Mr. Born – N, Ms. Pountain - Y

Attorney Fieber announced that the variance request has not been granted.

Mr. Pfaller questioned the tie votes. Attorney Fieber stated that is where the burden comes falls on the applicant as they need a majority vote. She noted that the alternatives are to appeal the decision to the courts or to rework the plans with Ms. Fabian so a variance would not be needed. Mr. Harvey restated that they have the option to go to courts or to replan, but asked if they also have an option to replan in a way that would still require a variance and it will come back to this board. Attorney Fieber responded that the board would not be reconsidering what was being voted on today, so there would need to be a change, but if they came back with different house plans they could ask for a different variance. Dr. Windsor stated that he did understand and asked if the board could clarify what the specific objections were in order to make more favorable plans in the future. Mr. Pfaller said he could not offer guidance. Dr. Windsor thanked everybody again.

Mr. Born made a motion to adjourn. Motion seconded by Ms. Pountain. Motion carried with no opposition.

Mark Pfaller, Chairman

Megan Nasgovitz, Recording Secretary

SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS

POLICIES AND PROCEDURES

Which Supplement and Elaborate on Those Adopted
by the County Board for the Board of Adjustments

Approved September 15, 2021 with revisions

(initially adopted by the Board of Adjustments on June 27, 2007)

In Accordance with Wis. Stat. § 59.694

SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS

POLICIES AND PROCEDURES

The Sheboygan County Board of Adjustments (the BOARD) is not an advisory body but rather a quasi-judicial body. The BOARD's function is not to advise people on what they can do within the Ordinances on which the BOARD hears appeals or applications. Under the variance procedures of the Ordinances, the BOARD can only grant a variance if a hardship is created by the particular Ordinance for a unique property and if the proposed use is within the spirit and intent of the Ordinance. [adopted 8/22/01]

The BOARD shall have the following powers: [adopted 10/27/10]

- (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the County Planning & Conservation Department or the Airport Department in the enforcement of Chapters 63, 70, 71, 72, 73, 75 and 78.
- (b) To authorize upon appeal in specific cases such variance from the terms of Chapters 63, 72, 73 and 75 of this Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of said Chapters will result in unnecessary hardship and so that the spirit of said Chapters shall be observed, public safety and welfare secured, and substantial justice done.
- (c) To allow alternate reclamation requirements to operators of nonmetallic mining sites pursuant to Section 78.18 of this Code.

I. MEETINGS

- A. The BOARD normally holds three types of meetings: 1) Meetings at which hearings are held; 2) on-site inspections; and 3) discussion meetings. [adopted 8/15/12]
- B. In addition to the meeting times listed below, the Chair or two members of the BOARD may call other meetings of the BOARD. [adopted 10/25/89]
- C. Time and Place of Meetings:
 - 1. Meetings at Which Hearings are Held
 - a. Normally, the BOARD will meet on the third Wednesday of the month beginning at 1:00 PM the Sheboygan County Administration Building to hold hearing(s) on any petitions that have been filed in sufficient time to allow the publication of a

Class 2 notice and to conduct its normal business. [adopted 8/15/12]

- b. Each year in August the BOARD will adopt a schedule for such meetings. The schedule will contain a list of the meeting dates and petition filing dates for the upcoming calendar year. [adopted 10/25/89]

2. On-Site Inspections

The BOARD will conduct on-site inspection meetings, on the third Wednesday of the month prior to the hearing. The BOARD will hold these meetings at the site(s) that are the subject of any new petitions that the BOARD will hear at the upcoming hearing meeting. [adopted 8/15/12]

3. Discussion Meetings

The BOARD may meet at the call of the Chair or two members to discuss such matters as may come before the BOARD. The BOARD will use these meetings for general policy reviews, discussion of Ordinance provisions, meetings with staff or technical experts, or similar. The time and place of these meetings will be established when called. [adopted 8/22/01]

II. NORMAL ORDER OF AGENDA

A. Meetings at Which Hearings are Held [adopted 1/24/07]

- 1. Call to Order (1:00 PM)
- 2. Roll Call
- 3. Seating of Alternates, if needed
- 4. Certification of Compliance with Open Meeting Law
- 5. Approval of Minutes of Previous Meeting(s)
- 6. Public Comment on Items Not on the Agenda
- 7. Hearings as Listed in Published Class 2 Notice (beginning immediately thereafter)
- 8. Other Matters as May Come Before the BOARD
- 9. Adjournment

B. Discussion Meetings [adopted 1/24/07]

- 1. Call to Order (1:00 PM)
- 2. Roll Call
- 3. Seating of Alternates, if needed
- 4. Certification of Compliance with Open Meeting Law
- 5. Approval of Minutes of Previous Meeting(s)
- 6. Public Comment on Items Not on the Agenda
- 7. Items or Issues for Discussion
- 8. Adjournment

III. COMMENTS TO AND CORRESPONDENCE WITH THE BOARD

- A. The BOARD will accept and review any letters or other correspondence received regarding its decisions. [adopted 10/25/89]
 - 1. The BOARD will not take official action, nor provide comments on Ordinance provisions outside of the context of the public hearing where a valid petition has been filed. [adopted 8/22/01]
 - 2. The BOARD will not take action, provide comments on Ordinance provisions, nor advise persons on whether proposed or already taken actions are consistent with the Ordinance or are likely to be granted a variance. [adopted 10/25/89]
- B. The procedures and standards to be used at hearings are found in Section V, PROCEDURES AND STANDARDS AT HEARINGS. [adopted 10/25/89]
- C. If a discussion meeting has been called, the BOARD will provide a time at which members of the audience may address the BOARD. When such audiences are held, they should not be viewed as providing for a question and answer session. The BOARD may establish a reasonable, maximum time limit for each such audience. [adopted 10/25/89]
- D. During On-Site Inspection meetings, the BOARD will hear from any interested person at the meeting. The BOARD will refrain from expressing opinions or engaging in a debate regarding Ordinance provisions or the petition before the BOARD. [adopted 10/25/89]

IV. VALID PETITIONS

- A. For a petition to be valid it must be on the appeal/application notice forms on file in the Planning and Conservation Department, as may be amended from time to time by County staff, which shall include all information required by Ordinance or BOARD policy (see C & D below), and must be accompanied by the required filing fee. [adopted 10/25/89]
- B. The original and 9 copies of the petition along with 10 copies of any other information required by Ordinance or the adopted policies of the BOARD (see C & D below) shall be submitted to the Planning & Conservation Department in Room 335 of the Sheboygan Administration Building. [adopted 10/27/10]
- C. Petitioners should submit the following information along with the appeal/application notice and fee: [adopted 10/27/04]

1. Full size copies of a line drawing showing the project drawn to scale with the scale and all dimensions identified. The drawing should include the project's relationship to neighboring lots, roads, lakes, rivers, septic systems, wells, etc.
 2. Detailed floodplain boundaries, if applicable.
- D. The BOARD would find the following information helpful if it can be provided: [adopted 2/15/89]
1. Topographic map or slope determination, if applicable.
 2. Land elevations in relation to some permanent benchmark.

V. PROCEDURES AND STANDARDS AT HEARINGS

Petitioners have sometimes appeared at hearings unprepared to present their cases properly. The purpose of this Section is to explain the hearing process and the way the BOARD reaches its decision on petitioner. If you are considering filing a petition, the BOARD urges you to prepare thoroughly. [adopted 10/25/89]

- A. Procedures. The order of each hearing will be as follows: [adopted 8/22/01]
1. Reading of the petition.
 2. Reading of any letters or other correspondence and documents the BOARD has received regarding the petition.
 3. BOARD member summaries of observations at site visit(s).
 4. BOARD will ask Petitioners to the table to provide an overview and testimony regarding the petition.
 5. BOARD will ask staff for additional comments, with opportunity for BOARD member questions.
 6. Staff report and questions of staff by BOARD members.
 7. Petitioners provide any additional information they may have, followed by BOARD members questioning of the petitioners.
 8. The BOARD will ask for anyone else who wishes to comment on the petition to do so, with BOARD members having a chance to question those commenting.
 9. Petitioners asked for any additional comments followed by BOARD member questions.
 10. Closing of the hearing.

11. Petitioners return to seats.
12. Immediately after the close of the hearing the BOARD will discuss the petition and may make a decision on the petition. The Chair will entertain a motion and the BOARD will vote on the petition(s).
13. Corporation Counsel outlines legal standards for variance.
14. BOARD deliberates and votes.

B. Control of Testimony. The Chair of the BOARD has a role similar to the presiding Judge at a court hearing. To control decorum and to promote efficiency, the Chair may rule comments or questions out of order and may terminate testimony of a witness if the testimony becomes unduly repetitive or irrelevant. The rules of evidence in Circuit Court proceedings will not be strictly followed, but they are guides to presenting a persuasive case in an efficient manner. [adopted 10/25/89]

C. Closing of Hearings. Once the hearing is closed, the BOARD will not accept additional comments or questions from the floor unless the BOARD reopens the hearing. Once the BOARD has reached a decision, the BOARD speaks as a single entity. [adopted 8/22/01]

D. Legal Standards for Variances. The BOARD can grant variances only in accordance with State statutes as interpreted by the Wisconsin Appellate Courts. These laws state that the BOARD can grant a variance for a particular property only if the petitioner proves the following three standards to the satisfaction of the BOARD:

1. A literal enforcement of the Ordinance will result in unnecessary hardship on the applicant.

With respect to applications for AREA variances, to show unnecessary hardship, the applicant must show that without the variance, the applicant would be unreasonably prevented from using the property for a permitted purpose or would render conformity with the restrictions unnecessarily burdensome.

With respect to applications for USE variances, to show unnecessary hardship, the applicant must show that without the variance, the owner has no reasonable use of the property. If there is any reasonable use of the property, the variance must be denied.

2. The hardship is due to special conditions unique to the property.

The hardship must be based on conditions unusual to the property, not personal to the property owner, and the hardship cannot be self-created. A reduction in the value of the property if a variance is not granted does not constitute an unnecessary hardship.

3. Granting the variance is not contrary to the public interest.

The BOARD must be able to find all three conditions in order to grant a variance. If the BOARD is unable to find any one of the conditions, the variance cannot be granted by the BOARD.

- E. Where the BOARD is reviewing an appeal application where it is alleged there is error in an order, requirement, decision or determination made by the County Airport Division or County Planning & Conservation Department in the administration of the County Code, the function of the BOARD is to correct any error in the decision or appeal. The BOARD may make the order, requirement, decision or determination as ought to be made and to the end shall have all the powers of the officer from whom the appeal is taken.
- F. In the event that there is a conflict between these policies and procedures and the policies and procedures required under Wis. Stat. § 59.694, or in the event that there is a conflict between these policies and any subsequent judicial interpretation of those policies or the applicable law to be applied by the Board using these policies, Wis. Stat. § 59.694 and the most current judicial interpretation shall control.

VI. ELECTION OF OFFICERS

- A. The BOARD will elect its officers each year at its August meeting. [adopted 8/22/01]
- B. Nominations for each office will be taken in turn from the members present. A member need not be present to be nominated. [adopted 10/25/89]
- C. A simple majority vote of those members present will be sufficient for the election of an officer. A member need not be present to be elected. [adopted 10/25/89]

VII. NOTIFICATION OF BOARD DECISIONS

- A. Notice to Administrative Official

1. The BOARD will notify the administrative official by letter of its order to issue or deny a permit or to table a petition, as appropriate. [adopted 12/20/89]
2. The letter of decision will be dated within 10 days of the close of the hearing at which the BOARD makes its decision. [adopted 12/20/89]
3. The letter of decision will note: [adopted 8/22/01]
 - a. The basis on which the BOARD approved, denied, or tabled the appeal or application;
 - b. Any conditions or stipulations which the BOARD attached to the approval or tabling;
 - c. State that the decision of the BOARD to grant or deny can be appealed to the circuit court by the administrative official, petitioner, or other parties in interest, if they are aggrieved by the BOARD's decision within 30 days of the date of the letter;
 - d. Inform all parties that because the decision can be appealed to the Circuit Court within 30 days after the decision, any work completed on the project during that time frame is at the owner's risk.

B. Notice to the Parties in Interest

1. The BOARD will notify the parties in interest within 10 days of the close of the hearing at which the BOARD made a decision to grant, deny, or table a petition. [adopted 12/20/89]
2. Parties in interest are the: [adopted 12/20/89]
 - a. Petitioner;
 - b. Town Clerk of the Town where the property which is the subject of the petition is located;
 - c. Department of Natural Resources (DNR), where required by State law;
 - d. Owners of property within 200 feet of the property which is the subject of the petition.
3. The BOARD will notify the petitioner, Town Clerk, and DNR by sending them a copy of the letter to the administrative official including any attachments to that letter. [adopted 12/20/89]
4. The BOARD will notify the owners of property by a dated notice that: [adopted 12/20/89]
 - a. Bears the same date as the letter to the administrative official;
 - b. Identifies the decision by petitioner's name, property location, hearing date, petitioner's request, and case number;

- c. Indicates that the BOARD has reached a decision to grant, deny, or table the petition, as appropriate;
- d. States that the BOARD's written decision can be reviewed at the BOARD's office;
- e. States that if the property owners are aggrieved by the BOARD's decision to grant or deny, they can appeal to the Circuit Court, but that the appeal must be made within 30 days from the date of the notice.

VIII. Per Diem Payments

- A. Meetings at Which Hearings are Held [adopted 1/24/07]
Alternates shall be paid a per diem if they are present at a hearing/meeting for roll call whether or not they are seated.
- B. Discussion Meetings [adopted 1/24/07]
Alternates shall be paid a per diem if they are present at a hearing/meeting for roll call whether or not they are seated.
- C. On-Site Inspections [adopted 1/24/07]
Board members and alternates who attend the onsite inspection before the meeting will receive mileage payments based on their submitted insurance coverage.