

## 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 6<sup>th</sup>, 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 19<sup>th</sup>, 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