

## SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS MINUTES

Administration Building  
508 New York Avenue  
Sheboygan WI

**June 17, 2015**

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

**Adjourned: 2:19 PM**

**MEMBERS PRESENT:** Mark Pfaller, David Gartman, Eugene Blindauer, Joseph Stodolka, Ken Moehring

**ALSO PRESENT:** Board First Alternate Scott Miller, Second Alternate Jerry Rosche, Corporation Counsel Carl Buesing, Code Administrator Matt Mrochinski, Kevin Widder, Nancy Rosche, Acting Recording Secretary Alayne Bosman

Chairperson Pfaller called the meeting to order and called the roll. Members Pfaller, Gartman, Blindauer, Stodolka and Moehring were present thus making seating of alternates unnecessary.

Alayne Bosman verified the agenda was posted on June 9, 2015 at 9:15 AM in compliance with the open meeting law.

Mr. Stodolka made a motion to approve the minutes of the May 20, 2015 Board of Adjustments meeting. Motion seconded by Mr. Blindauer. Motion carried.

There were no public comments regarding non-agenda items.

Mr. Pfaller opened the hearing for the after-the-fact variance request to the Sheboygan County Shoreland Ordinance from Kevin Widder, Case #V-15-03-F, for the property located at N7366 Abler Lane, Section 32, in the Town of Rhine.

Mr. Pfaller called Kevin Widder forward to provide testimony. Mr. Pfaller provided an overview of the procedures for the hearing and asked the applicant if he understood the procedures.

Mr. Pfaller acknowledged the items of correspondence received for the record to confirm Mr. Widder had received and read them: April 1, 2014 letter from Matt Mrochinski; May 13, 2014 email from Matt Mrochinski; August 7, 2014 email from Kathryn Fabian; January 22, 2015 letter from Matt Mrochinski; March 5, 2015 email to Matt Mrochinski from David Miller; April 28, 2015 letter from Matt Mrochinski; June 8, 2015 Staff Report from Matt Mrochinski; and June 15, 2015 letter from Dale Rezabek, Wisconsin Department of Natural Resources. Mr. Widder acknowledged he had received and read each of the items of correspondence that are part of the record.

Mr. Pfaller asked for comments from Board members regarding the site visit on Saturday, June 13, 2015 at 9:00 A.M.:

- Mr. Stodolka – I noted that the property is a sloped property on Crystal Lake and the slope was steeper near the road and less so near the house and down to the lake. There are steps of different materials and the overall area is well developed with home structures with decks and docks along the lake. The deck in question is partially screened by evergreens and when viewed from the water, the deck, patio, walkway and grill are all well-constructed. The materials used helped the improvements blend into the site. The deck and grill structures are mostly complete with some detailed finishing needed. Patio pavers are placed tight and replaced, in part, family pavers that were used before that and are still stacked and on the site. The grill structure is built on a cement

pad. My view of the area from the lake from the property owner's dock appeared not to be significantly impacted given the developed nature of the entire area.

- Mr. Gartman – I would like to thank Kevin for his hospitality and cooperation. The site visit was informative.
- Mr. Moehring – No comments at this time.
- Mr. Blindauer – No comments at this time.

Chairman Pfaller asked Mr. Widder to provide an overview of the project.

- Mr. Widder - First, the property is 15 degrees sloped where the variance is being requested which is not suitable for outdoor living and it is certainly not suitable for family members in wheelchairs. It is not suitable to sit on a chair. If you sit on a chair on 15 degrees, that chair would be pitched 4 inches from leg to leg. You reasonably can't sit on a chair at that angle safely. The space did not increase from what was there, the deck shrunk, what was referred to in some of the correspondence as a slight increase in impervious material is extremely negligible from a standpoint that it curved the path as opposed to making it straight. Everything was done with the idea of the ordinance because my neighbor to the east is higher in elevation than I am. When you took the site visit you can see that we took natural timber and logs, such as pine and cedar material, split them in half and laid them on the bank to act as habitat for animals and as an erosion barrier. We are very friendly to the environment; we don't want the environment to change. Everything that was done used natural materials. The creosote railroad ties are gone that were underneath the walkways and from the retaining wall. The intent was to improve.
- Mr. Buesing – As I understand it there are 6 things that were constructed, 3 of which Mr. Widder was eligible to receive an after-the-fact permit and 3 that needed a variance. The paver walkway, the retaining wall and the porch expansion can stay if an after-the-fact Shoreland Zoning Permit is applied for and received. The deck, the grill structure and the patio require the variance and an after-the-fact permit if the variance is granted. Comments should only relate to deck, grill structure and patio.
- Mr. Pfaller – the variance very specifically delineates the patio, deck and grill structure.
- Mr. Buesing – it sounds to me that when Mr. Widder was talking about the pitch and the inability to sit that some of this dealt with porch and so forth, so I want to make sure that his comments are solely related to the deck, grill structure and patio.
- Mr. Mrochinski confirmed that Mr. Widder did not apply for the after-the-fact Shoreland Zoning Permit yet. Applying for an after-the-fact Shoreland Zoning Permit is not a prerequisite for applying for a variance, but if Mr. Widder received the variance, we would expect an application for everything.
- Mr. Widder understands all of this.
- Mr. Buesing – what we really need to focus on is information relating to the deck, grill structure and patio and why you believe you are entitled to a variance for them.
- Mr. Widder – That is what I was addressing. You cannot sit on an area with a 15 degree pitch. The property doesn't allow for any other area to sit.
- Mr. Pfaller wanted to clarify that deck and patio were there previously.
- Mr. Moehring questioned item number 13 on the Certified Survey Map of the property.
- Mr. Widder said 13 and 15 existed for 40 some years, 14 was part of 15. Deck was made smaller in essence to stay within the same footprint because of the grill structure. In regards to the family stones, because of the way they were made you can't wheel anything on them. It gets very tipsy and it is not safe. It is not a safe place to be for someone in a wheelchair. Timbers and such came out and grass was planted to prevent erosion and to keep everything in place. The retaining wall should have been further, but the grill island is to keep the barrier there, and the deck helps the ground from sliding

down. Where the old grill was, that used to be part of a bench and it was destroyed by erosion over time and had to be cut out because it wasn't safe to sit on.

- Mr. Widder mentioned Dale Rezabek's letter. In one part of the letter Mr. Rezabek talks about the hardship being the construction, but the hardship is not the construction, the hardship is to have outdoor living on the site and have a flat area.
- Mr. Pfaller – What Mr. Rezabek is saying is the hardship is self-imposed.
- Mr. Widder read the portion of the letter he was referring to: "...prior to any construction completed in 2015, therefore the hardship is self-imposed by the applicant completing the construction". Mr. Widder said that was not the hardship.
- Mr. Buesing – what Mr. Rezabek is saying is that if this board decides that you are not entitled to a variance and you have to remove it at an expense to you, however many thousands of dollars, you can't say that is a hardship on me. It is self-imposed by you so you can't make that argument.
- Mr. Widder – I'm not making that claim. That isn't the point of my hardship. The hardship is being able to live on that land. You buy lake property to be around the lake and be outdoors.
- Mr. Moehring – From reading some of the articles that talk about the deck structure: Could Mr. Widder have resurfaced the deck with new boards and been okay? Mr. Mrochinski said that replacing the deck boards would have been considered ordinary maintenance.
- Mr. Moehring - What recourse would Mr. Widder have if he found the deck boards and everything underneath was rotten? Mr. Mrochinski said if 50% or more of the structural components would require replacement that would be considered new and a variance would be necessary. We require a permit for any structural work.
- Mr. Pfaller – What is the point of the 50%? So that you can be privy to what is going on on the lakes? Mr. Mrochinski – the 50% of the structural components is a benchmark to distinguish between repair and replacement. Mr. Pfaller asked whether the DNR has used this criterion for 40 or 50 years since the legislation was passed in the early 1960's? Mr. Mrochinski explained that the previous 50% criteria dealt with cost versus quantity of materials. Legislation was passed several years ago that prohibited the use of 50% of present equalized assessed cost of a structure in shoreland zoning. So 50% of value can no longer be used unless it's a floodplain matter; we now look at structural components.
- Mr. Pfaller – Why is the DNR setting these rules? Is it because they eventually want these things to vanish and for the lakefronts to be reverted back to nature? Mr. Mrochinski – I can only guess, Mark. Early on the intent of any zoning ordinance was that someday non-conforming structures would no longer exist. With the re-write of NR 115 the DNR realizes that is not realistic and they expect that a cottage or house will always be there. The ordinance allows for more options with respect to non-conforming principle structures and is limited with respect to accessory structures. That being said, maybe at some point legal non-conforming structures, if they aren't maintained, may go away from the lakeshore and it would revert back to being more natural. Mr. Buesing added that if it doesn't go as far as reversion, at least development will not encroach any closer to the lakeshore or be enhanced.
- Mr. Buesing made an inquiry on the subject. He asked Mr. Mrochinski how the department measures the 50% benchmark. For example, if there is a rotting deck being replaced at the rate of 1/3 every year for 3 years, does that person ever reach the 50% benchmark? Mr. Mrochinski said that had been discussed but it hasn't been a subject the department had to broach yet with an applicant.
- Mr. Widder commented that he had a lot of discussion with Mr. Mrochinski about that topic because the old red deck was made of 2 x 10's and was rotten underneath. Mr. Widder wondered if the 2 x 10's are part of the structure or part of the deck surface.

- Mr. Mrochinski confirmed that he discussed this issue with Mr. Widder. Mr. Mrochinski said that Mr. Widder considered everything that made up the old deck to be structural, therefore his contention is every deck board was structural. Now, if only the support posts and the framing are structural, there are fewer pieces. Mr. Mrochinski did not agree that the 2 x 10 deck boards are structural. The way that the frame was built possibly required a beefier board to prevent sag but just because it is a 2 x 10 versus a normal deck board does not constitute it as structural. That being said, irrespective to the argument, the old deck is gone and in place there is an entirely new deck.
- Mr. Widder added that the 2 x 10's are what held the joists together and there were no outside boards that held it together.
- Mr. Pfaller – I think that Mr. Mrochinski is right. From an architectural and an engineering perspective, the top boards would not be considered structural.
- Mr. Gartman – No other questions or comments at this time.
- Mr. Blindauer – No other questions or comments at this time.
- Mr. Stodolka – I have questions about the overall site plan for Mr. Mrochinski. There is one underlying thing that is common in all of the correspondence: Mr. Widder may have been able to do all of this work by following the standard procedures in acquiring a permit provided the deck portion was a less than 50% rebuild. However, it was noted by Mr. Mrochinski and Mrs. Fabian, when they were at a site visit next door, that the work was done without a permit.
- Mr. Stodolka asked Mr. Mrochinski if the Board could grant a variance for deck and patio and not the grill area. Mr. Mrochinski – The board would have to decide that because the expansion of the deck doesn't meet the setback. Mr. Buesing – Asked whether it would unbalance the integrity of the remaining structures if the grill structure had to be removed. Mr. Mrochinski – my observation is that the grill station is a separate structure on a concrete slab with decking on each side and removing the grill structure, I do not believe, would affect the integrity of the deck.
- Mr. Moehring – Is the grill structure integrated into the retaining wall? Would you have to extend the retaining wall if the grill structure was removed? Mr. Widder – If I receive permission to do so. Mr. Stodolka – Would extending the retaining wall be part of the permit application process? Mr. Mrochinski – Yes, the retaining wall would need to be included in the permit application.
- Mr. Pfaller – When a motion comes in, you could accept the variance excluding the grill structure. Is that correct, counsel? Mr. Buesing – Depending on the pleasure of the Board, you could divide the various component pieces into separate motions. If there are 3 components in question (deck, patio and grill structure) and there are 4 criteria that need motions, there would need to be 12 motions made. Mr. Pfaller – The motion could exclude the grill structure if that is what the Board so desires.
- Mr. Gartman – Was impervious surface area increased or did it stay the same? Mr. Mrochinski – The family stone area was considered impervious. During our initial discussions we talked about picking up the family stones, re-leveling them and setting them back in place; it was never a matter of whether or not they were impervious or pervious. Mr. Widder – Just to clarify, if the grill structure came out, that would decrease the amount of impervious surface. Mr. Pfaller – It depends what is underneath it – you said it was concrete. Mr. Widder – That is correct. Mr. Pfaller – Then it would need to come out. Mr. Mrochinski confirmed that would decrease the amount of impervious surface if the entire grill structure was removed. Mr. Stodolka – What if the deck was extended to finish off that area? Mr. Mrochinski – Structures such as decks, constructed with the standard 3/16 – ¼ inch spacing between the boards and allows the precipitation that falls on it to drop below and be absorbed by the ground would be considered pervious.
- Mr. Moehring – In regards to the more than 0% but less than 5% increase in impervious surface, does that involve the grill structure or the deck? Mr. Mrochinski – Both. Mr.

Moehring – So by removing the grill structure it would only reduce it by a small amount?  
Mr. Mrochinski – We do not know what the previous impervious surface amount was prior to the new development. We could guess based upon pictures, but it would just be a guess.

- Mr. Stodolka – Based on the map, the grill structure is 20 square feet. Mr. Mrochinski – Yes.
- Mr. Widder – No other comments at this time

There being no further comments and no desire by the Board to go into closed session, Mr. Pfaller closed the Public Hearing relating to the variance request at 1:49 p.m.

### **Deliberation:**

#### ***Unnecessary Hardship:***

Counsel read the definition of Unnecessary Hardship from the Shoreland Zoning Ordinance. Mr. Pfaller asked the Board to refer back to last month's meeting minutes to read how the motions were worded. Mr. Pfaller clarified by saying if the variance is not granted, Mr. Widder will have undue hardship. Mr. Stodolka – If we're discussing the variance and the old deck and old pavers were there, I would have no problem saying that it would be an undue hardship, as to the deck and patio, and to have them replaced because they were in existence and falling apart. But as to the grill structure with the cement foundation, I feel that it is not an undue hardship to deny it as to that. Mr. Buesing – By majority vote of the committee, you can move to divide the question into individual component pieces. Mr. Pfaller – I do not want to do that. Mr. Moehring - What we are hearing is that there is such a slight change in impervious surface, whether the grill structure is there or not, we aren't talking about a huge increase in impervious surface. It seems that there was more change in the pathway than in the upper deck and patio area. Mr. Buesing – I think you are making an argument with respect to the harm and the intent of the ordinance and it doesn't go to the first question. Mr. Gartman - What I got out of Mr. Stodolka's last comments is that he feels that Mr. Widder took it a little farther than what would have just been a replacement. I just heard Counsel and County talking earlier about how certain things in need of work could have been done with a permit. Mr. Stodolka – I still think the work that Mr. Widder did would have required a variance and a hearing in front of the Board for the deck and the patio. However, my motion is to find that it would be an unnecessary hardship as to the deck and patio area, but that there is not an unnecessary hardship as to the grill structure that was built.

#### **Mr. Stodolka made a motion that there is an unnecessary hardship as to the deck and patio area but not an unnecessary hardship as to the grill structure.**

Motion seconded by Mr. Gartman. Discussion ensued.

- Mr. Blindauer – I think we are nitpicking this. Basically, it was an existing structure, other than the grill area that you are talking about, and one thing I have an issue with is the 50% replacement. In a situation like this, where there is wood patio and everything is rotted, you aren't going to take less than half of the rotten material out this year and wait to do the rest at a later time. In other words, you could never complete the project. If half of the deck is rotten, so is the other half and how do you decide where to stop working? Mr. Widder is not doing this because he wanted to; he did it because it he had to. The hardship is that he had to improve it because the deck rotted away. Mr. Pfaller said that was a good point.
- Mr. Moehring – I'm struggling with the separation part of it. I think there is a hardship because of slope and rotting structures. I don't think the grill has that much impact on the overall picture, as a matter of fact, it probably acts as more of a retaining wall and Mr. Widder is able to make use of that area.

- Mr. Stodolka – One of the reasons I wanted to omit the grill structure is because it obstructs the view from the lake and the old deck didn't obstruct the view. The 50% rule just means that he needs to apply for a variance, it does not mean that we can't grant a variance because it is over 50%. I can see granting the variance as to the deck and patio area because they were there and they improve the area. I do have a problem with the grill structure because it sticks out and the pictures show that.
- Mr. Blindauer – In regards to what you can and cannot see, this is all personal interpretation. To me, I don't know what else I would expect to see or not to see around a lake. To me, having a grill is part of the structure and that's what you do when you are around a lake. Mr. Buesing – From a legal perspective, if you were to make that statement and use that as the basis for granting this variance the DNR may have an extraordinarily easy time appealing the decision. I don't think there is an unnecessary hardship for a person that has a lakefront property not to be able to have a permanent grill structure. A permanent grill structure is not necessary but rather a preference.
- Mr. Gartman – This is why we have a good discussion; to get more clarity as we move along. Our goal is not realize that these things are after-the-fact. When you go to the site visit you try to take that factor out, but you can't totally do it. I agree with Mr. Stodolka that separating the grill station out might be necessary in this instance.

ROLL CALL VOTE: Mr. Blindauer – yes, Mr. Gartman – yes, Mr. Moehring – yes, Mr. Stodolka – yes, Mr. Pfaller – yes. Motion carried.

***Spirit of the Ordinance:***

Counsel read the definition of Spirit of the Ordinance from the Shoreland Zoning Ordinance.

**Mr. Stodolka made a motion that allowing the variance as to the deck and the patio does promote the purpose of the spirit of the ordinance, but does not as to the grill structure.**

Motion seconded by Mr. Moehring. Discussion ensued.

- Mr. Blindauer – I am comfortable with that.
- Mr. Gartman – Agreed.

ROLL CALL VOTE: Mr. Blindauer – yes, Mr. Gartman – yes, Mr. Moehring – yes, Mr. Stodolka - yes, Mr. Pfaller – yes. Motion carried.

***Substantial Justice:***

Counsel read the definition of Substantial Justice from the Shoreland Zoning Ordinance.

**Mr. Stodolka made a motion that granting the variance would be consistent with Substantial Justice to the property with respect to the deck and the patio area, but not with respect to the grill structure.**

Motion seconded by Mr. Blindauer. No discussion ensued.

ROLL CALL VOTE: Mr. Blindauer – yes, Mr. Gartman – yes, Mr. Moehring – yes, Mr. Stodolka - yes, Mr. Pfaller – yes. Motion carried.

***Contrary to public interest:***

Counsel read the definition of Public Interest from the Shoreland Zoning Ordinance.

**Mr. Stodolka made a motion that granting the variance does not harm the public interest as it relates to the deck and patio area, but does so as it relates to the grill structure.**

Motion seconded by Mr. Gartman. No discussion ensued.

ROLL CALL VOTE: Mr. Blindauer – yes, Mr. Gartman – yes, Mr. Moehring – yes, Mr. Stodolka - yes, Mr. Pfaller – yes. Motion carried.

Mr. Buesing summarized the rationale of the votes. In agreeing to the notion of unnecessary hardship, the Board accepted the rationale of the applicant that because of the 15 degree slope of the property there were issues that needed to be addressed in order for Mr. Widder to make the most of his outdoor living and use a property on a lakefront. In the absence of granting a variance Mr. Widder would be suffering from the hardship of not getting the full benefit of the lakefront property. Mr. Stodolka added that the property owner had similar use in the past because of the existing deck and patio area and this was just an improvement.

Mr. Buesing continued, with respect to the spirit of the ordinance and substantial justice, the applicant made reference to the building material and that he was trying to have the improvements blend and be consistent with his neighbors. The consensus of the Board was that they accepted that rationale except with regards to the grill structure, which was not consistent with that approach. Similarly, with the harm to the public interest, the grill structure was not part of the blending or in symmetry with the neighboring properties nor was it consistent with the desire to have unimpeded shoreland views.

No objection was made to this summary.

**The variance request is granted for the deck and patio area, but not for the grill structure.**

**Mr. Stodolka made a motion to adjourn at 2:19 PM.** Motion seconded by Mr. Gartman  
Motion carried.

Alayne Bosman for Kay Lorenz  
Recording Secretary

---

Eugene Blindauer  
Board Secretary