

## SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS MINUTES

Administration Building  
508 New York Avenue  
Sheboygan WI

**December 16, 2015**

**Called to Order: 1:00 PM**

**Adjourned: 2:46 PM**

MEMBERS PRESENT: Mark Pfaller, Ken Moehring, Eugene Blindauer, Scott Miller, Joseph Stodolka

ALSO PRESENT: Board Second Alternate Jerry Rosche, Board First Alternate Dennis Frederick, Attorney Crystal Fieber, Attorney Tony Resimius, David Quasius, Planning & Conservation Director Aaron Brault, Nancy Rosche, Alayne Bosman

Chairperson Pfaller called the meeting to order and called the roll. All were present.

Alayne Bosman verified the agenda was posted on December 11, 2015 at 10:45 AM in compliance with the open meeting law.

Mr. Stodolka made a motion to approve the minutes of the August 19, 2015 Board of Adjustments meeting. Motion seconded by Mr. Blindauer. Motion carried.

There were no public comments regarding agenda or non-agenda items.

Mr. Pfaller opened the limited hearing for David Quasius (Case Number V-15-01-F) on remand from Sheboygan County Circuit Court (15 CV 305) – Acceptance of Additional Evidence related to Historical Significance and Deliberation of Unnecessary Hardship Standard for a variance of the *Sheboygan County Shoreland Ordinance* for the property located at W6631 County Road MM, Section 18, in the Town of Rhine.

Mr. Pfaller reviewed correspondence with Board members to assure they had been seen and read: 12/10/15 Memorandum from Attorney Crystal Fieber to Board members and 12/15/15 Letter from Dale Rezabek – Wisconsin Department of Natural Resources.

Since this is a re-hearing, Mr. Pfaller wanted to be assured that Board members had re-acquainted themselves with the information from the April 15, 2015 hearing. Mr. Stodolka indicated that, although he was not at the April hearing, he reviewed all the documents and the transcript, and has made a recent site visit.

Mr. Pfaller asked Mr. Stodolka to report on the site visit. Mr. Stodolka reported he made the site visit on December 11, 2015. He arrived at the property and noted a locked gate with a tall chain-link type fence to prevent public access at the front of the property. His first impression was of an old industrial site with the tall rock kilns and building to his right. He walked down along Highway MM and viewed the Sheboygan River to the northeast and southwest from the corner of the property. The river was flowing through a deep channel. He noted a large modern home that was built on the south shore of the river across from the Quasius property that appeared to be within the 75 foot setback or just at the 75 foot setback from the Sheboygan River. He was later told by Mr. Quasius that it was outside the 75 foot setback. The rest of the river appeared to be undeveloped other than the Quasius property and the newer large residence. The tall kilns and other industrial structures were to the north. He also viewed the old building in question. It appeared to be rather run down and in need of repair or replacement.

He noted its location as to the Sheboygan River and noted a steep embankment that led to the river many feet below the level of the building in question. There were several pieces of sculpture art scattered around the property. The electrical and gas service for the building had been disconnected and there was a wide area of level ground to the north of the building toward the kilns as well as to the west and east and south of the building. The area to the south is the area in question for the proposed construction encroachment into the 75 foot setback. The land in that area is level until it drops off into the river channel. When walking west from the building site, he could see a large, flat expansive lawn extending out from the west of the building with the quarry pond backed by the cliffs further on. It appeared to be a well-maintained area. There was ample flat, buildable land near the building in question and he could see some stakes in the ground to the south of the building. The 75-foot setback was not well-marked on the site nor were the lines and corners of the proposed development.

Mr. Pfaller acknowledged the new information received in the meeting packet. He asked Attorney Fieber to provide an overview of the information. She explained the Board received information related to the April 15, 2015 hearing: Correspondence between Planning & Conservation and Mr. Quasius related to the hearing, the original application, the petitioner's summary and final remarks prepared and provide by Mr. Quasius, legal notice, agenda, etc. The new items that weren't part of what Board members would have seen previously are the decision of the Board of Adjustments, transcript of the hearing, which is only a partial transcript relating to information presented at that hearing. The deliberations that the Board underwent were not included due to the purpose for being here today, which is to re-deliberate only one of those elements, the unnecessary hardship standard and whether that standard has been met. Also received was additional information related to the historic nature of the property that Mr. Quasius supplied to the Judge as part of the Certiorari action. That is evidence that the Board should consider during today's re-deliberation. There is some additional information that has come out since the Certiorari action and Attorney Fieber anticipates the Board will be receiving more information today.

Mr. Pfaller asked Attorney Fieber to provide an overview of the purpose of the meeting and define unnecessary hardship. Attorney Fieber stated the Board is here again on remand. There is an order from a Judge which says the Board should consider the additional evidence related to the historical significance of the property and the Judge wanted to make sure that the Board was using the correct unnecessary hardship standard. She directed the Board to the original application in today's packet. She indicated we are looking at an area variance. Mr. Quasius is requesting a variance from the 75-foot setback. To be considered for a dimensional variance, there are four standards. We're only looking at the unnecessary hardship standard today. She read the standard: Owing to special conditions of the property, a literal enforcement of the ordinance will result in unnecessary hardship to the property. Special conditions of the property are unusual physical limitations that prevent the property to strictly comply with the ordinance requirement. These property conditions are not generally shared by other properties in the area and include such conditions as steep slopes, wetlands, restrictive easements, and similar. The circumstances of an applicant, for example, a growing family, a need for a larger garage, etc., are not special conditions of the property. Nearby ordinance violations, prior variances, or lack of objections from the neighbors do not provide the basis for granting a variance. Limitations that are common to a number of properties in the same general area should be addressed by amending the ordinance. Unnecessary hardship is when compliance with the strict letter of the restrictions would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with the restrictions unnecessarily burdensome. The Board of Adjustments must consider the purposes of the restrictions, the restrictions effects on the property, and the short-term, long-term and cumulative effects of the variance on the neighborhood, the community and the public interest. Also, the hardship cannot be something created by the current or previous owner of the property.

Mr. Pfaller asked the Board if there were questions for Attorney Fieber and whether the Board members understood the definition. No board member requested clarification of the definition nor had questions for Attorney Fieber.

Mr. Pfaller called David Quasius and Attorney Tony Resimius forward to provide the additional evidence. Mr. Pfaller provided an overview of the procedures for this limited hearing and asked the applicants if they understood the procedures. Mr. Quasius asked that the closed session language from the agenda be explained. Attorney Fieber provided the explanation.

Mr. Quasius indicated he was glad to be back before the Board with another opportunity because he failed the Board in April by not presenting his case strongly enough and with enough evidence regarding what he is doing to preserve the property. He provided a copy of his Opening Comments to the Secretary to be placed in the record and then read the Opening Comments out loud. A large map of the property was presented and also provided in the packets showing boundaries and buildings. The Opening Comments focused on the historical significance of the property and information learned about and received on that significance since the April hearing. During the closing he indicated that the State Historical Society's Field Officer, Richard Bernstein, recommended the best and only location for the addition is in the noncontributing area behind the Office Building toward the river where the variance is needed. Denying the variance would cause unnecessary hardship conflicting with the state goals, policy and public interest for the State of Wisconsin. He then listed the new items of evidence for the Board to consider which are listed at the end of the Opening Comments document.

Mr. Quasius provided the following to be entered into the record as evidence:

- A packet including a list of bullet points entitled, "Why This Variance Should Be Granted"; an 11 x 17 map from the National Register of Historic Places Registration form entitled, "Sheboygan Valley Land and Lime Company"; an 11 x 17 elevation map from the Sheboygan County Planning & Conservation Department; a copy of Wisconsin Statutes Chapter 44.30 Historic Preservation Program Public Policy; 6/17/15 letter from the Peggy Veregin of the Wisconsin Historical Society; 8/13/15 letter from Richard Bernstein, Field Services, Division of Historic Preservation-Public History, Wisconsin Historical Society; 7/31/15 email from Richard Bernstein; 8/17/15 letter from Beth Dippel of the Sheboygan County Historical Research Center; three printed pages relating to the property at W6631 County Road MM from the wisconsinhistory.org website referencing the three individual buildings/structures that are included in the architecture and history inventory.
- National Register of Historic Places Registration Form
- Chapter 44.30 of the Wisconsin Statutes – Historical Societies and Historical Preservation including, specifically, all of Subchapter I and Subchapter II – 44.30 through 44.36(5)(b).

Mr. Quasius read out loud the bullet points from "Why This Variance Should Be Granted". He provided an overview of the site map with borders and explained the three buildings/structures included in the inventory with the Wisconsin Historical Society. He talked about the "contributing" area identified by the Wisconsin Historical Society. The blue area identified on the map behind the Office Building is the site that both Richard Bernstein and Beth Dippel suggested would be the least intrusive into the contributing area and would help preserve the historic nature of the site.

Mr. Pfaller invited Board members to ask questions and make comments:

- Mr. Stodolka: Asked Mr. Quasius if there is anything legally preventing him from building in the historic zone? Does he need a variance or authorization from the State? Mr. Quasius answered he doesn't believe he needs a variance from the State. Mr. Stodolka asked, based on that answer, whether legally Mr. Quasius could go out to the property and knock down the kilns and build whatever he wanted on the property outside the setback zone? Mr. Quasius answered there is no strict rule that says he could not do so, but it would be against State policy. Mr. Stodolka asked whether that policy had been incorporated into any laws other than Chapter 44? Attorney Resimius stated it is incorporated into the entire structure of the Wisconsin Historical Preservation. He further stated that in the shoreland zoning ordinance there is a definition of a historic structure which also applies to this structure. Mr. Stodolka asked Mr. Quasius to clarify the date the property had been placed on a Wisconsin Historic list. The answer provided was 1976. He further asked Mr. Quasius to clarify whether the modern construction was added on to the "dynamite building" before or after the property had been placed on the historic list. Mr. Quasius answered before—it was listed first and additions were made to the building afterward by his parents. Mr. Stodolka indicated one of the questions that kept coming to him when Mr. Quasius was discussing the historical nature of the property is: why build the addition at all if he is so intent on preserving the property? Mr. Quasius answered that the property needs to have a custodian. His parents looked after it, maintained the structures, and these are now the best preserved kilns in the Midwest. Mr. Quasius stated he has been in charge of the property for the past two years since his mother passed away and it is full-time work. He feels it would be a detriment to the structures if someone wasn't there full-time. Mr. Stodolka noted that in the original petition Mr. Quasius talked about building the room addition for the bedroom and caretaker space. When Mr. Stodolka saw the diagram of the construction and encroachment, he noted the vast majority of the encroachment is based on the large garage and that was explained at the April hearing. In that April hearing the architect discussed designing the garage so it wouldn't encroach on the setback. Mr. Stodolka asked if designing a smaller garage had been considered. The answer was yes, but what is proposed is the best and most functional design. Mr. Stodolka asked since Mr. Quasius is re-doing most of this and the teepee room is not a historical structure, could that room be changed during the remodeling and instead build out from there? Mr. Quasius indicated they would be going against the recommendation of the State as it is in the contributing area. Attorney Resimius reiterated that they are here today to present new evidence so continue to reference Richard Bernstein and the State Historical Society because this is the location—shown in blue on the map—they have recommended to best preserve the historic nature of the property. He stated when Mr. Quasius talks about the views that means views are as it historically existed, leading to contributing and non-contributing areas. The area in blue is requested not as a personal preference but a result of a recommended area to best preserve the historic nature of the property. He mentioned Mr. Stodolka referenced variances related to the rest of the property and pointed out that part of the instructions read by Attorney Fieber earlier indicate what the Board is considering are special conditions of the property. It reads: Property conditions are not generally shared by other properties in the area. He stated he assumed the Board would acknowledge that this very unique kiln historical property has conditions not shared by those in the area. That goes to the special conditions which is much wider than other variances or laws. Mr. Stodolka stated he disagreed with that statement.
- Mr. Miller: He referred to the July 31, 2015 email from Mr. Bernstein which indicates that he estimates that other parts of the property, such as the quarry site, adjoining field and the site of the old blacksmith shop may also be eligible for listing to the National Register. Mr. Bernstein further states in the email that each of these sites might yield

important information and historic artifacts that could help tell the story of the lime kiln and the people who worked there. Mr. Miller asked if that is the case then why is this not also the case for the location Mr. Quasius proposes to build? Mr. Quasius provided an explanation. Attorney Fieber interjected that we're talking about whether the construction towards County Road MM off of the teepee room, sort of to the north, and if it was built there, why is that different in terms of the views than where it's proposed? Mr. Miller stated it's not so much the views, but the issue of artifacts that may be found. Mr. Quasius referred to the map and areas of historical significance.

- Mr. Moehring: Commented that the site view where the pictures were taken is blocked by the kitchen and teepee room. There isn't a good view of the main/original office from the view Mr. Quasius is discussing because there is already new construction in that location, built after 1963 and before 1977. Mr. Quasius stated he feels the Historical Society is trying to minimize the impact on the site and that by putting this addition behind the building near the river it will more or less disappear. He explained that if you put the addition off the teepee room, it will stand out. Attorney Resimius referred to the August 13<sup>th</sup> letter from Richard Bernstein where it states, "In addition, siting any new construction closer to CTH MM would also help preserve the view-sheds to and from the quarry pond to the lime kilns and the lime kiln office."
- Mr. Blindauer: Stated he was in favor of the variance from the beginning. The addition would not be as unsightly if placed where proposed. He stated he personally has an issue with the floodplain and the way the hardship is worded. The DNR has relaxed some of the wording in the law. It's minimally intrusive over the setback and that particular area is lower than the river bank, so the setback is useless in that sense. The floodplain ordinance is based on a property flooding one time within 100 years. These buildings have been here for more than 100 years already and there hasn't been a flood. It's proven itself in the test of time that the floodplain setback really doesn't pertain to this area. Even if we abided by this 75 feet, if there was a flood it would go way beyond it anyway simply through the topography of the property.
- Mr. Stodolka: Doesn't understand how whether or not the issue about a floodplain is germane because he understands the purpose of the setback shoreland ordinance is for the public's interest in navigable water including promotion of safe and healthful water conditions, controlling pollution and protecting fish and aquatic life and natural beauty. He understands the discussion regarding the natural beauty not being affected, but as far as what floods and doesn't flood is not applicable.
- Mr. Blindauer: Responded that is what this Board is about. The literature received by the Board states the Board of Adjustments will address floodplain areas and construction. That is why there are different setbacks to different bodies of water.
- Mr. Moehring: Asked Mr. Quasius about one of the bullet points mentioned in the document, "Why this variance should be granted" where it was demonstrated that several designs were presented to the Board and over the course of the past meeting we talked about going to the opposite, south end of the building. Mr. Quasius indicated in his initial presentation he was trying to preserve the quarry, site views and buildings as much as possible. That location had been taken off the table because it would be too intrusive. He focused the plan on the back side which is the most logical location for the addition.
- Mr. Miller: Stated it comes down to whether or not we can use the quarry side to build on. The DNR letter points to other options. If we deem that we take away other options then we have no choice. The adaptive re-use is very important as well. Mr. Miller agrees that if Mr. Quasius wasn't living there the property would likely go to ruins. If the Board allows Mr. Quasius to build it comes down to where he will build to make it livable. Two bedrooms and a garage are very reasonable. He stated that if all other options are removed then he agrees with the hardship. The Historical Society wants the views and

other potential historical value on that side. He agrees with the views. Where the addition is proposed—if looking at the big picture—is the least obtrusive. He feels Mr. Quasius is doing everything possible to retain the value of the historical nature of the property. He stated that Mr. Quasius has presented his case well this time.

- Mr. Stodolka: One of the lines in the definition of unnecessary hardship is that the hardship cannot be something created by the current or previous owner of the property. The uniqueness of the property does not lie in its natural state, but from previous construction on the property, i.e. the kilns and early structures. The property minus the prior construction is similar to much of the surrounding land bordering the Sheboygan River. Regardless, even if the Board was to consider the prior construction as making the property unique, he doesn't believe that its uniqueness and the historical significance requires the Board to find an unnecessary hardship in this case. There are ways to construct a garage in a residence on the site that does not violate the 75-foot setback or unnecessarily impact existing structures. The prior owners of the property had use and enjoyment of the property, and the current owners can continue to do so without construction into the 75-foot setback. Is it unnecessarily burdensome to require the property owner in this case to avoid construction of the room addition and garage within the 75-foot setback of the Sheboygan River? The owner and his representative have stated that other alternatives have been considered that would allow building outside the setback and they had been dismissed due to being too expensive, blocking views, encroaching on the setback from the kilns and the views, and the floorplan would not flow as well or block the old wall. After reviewing all of the evidence that has been presented, including the evidence presented today, Mr. Stodolka does not find that it would be unreasonably burdensome for the owners to modify their construction plans to not violate the 75-foot setback. The reasons given by the property owner to encroach into the setback instead of the other alternative construction Mr. Stodolka still feels are personal preferences. Personal preferences including that of setting the priorities of the Historical Society over that of the setback ordinance, and he finds that the alternatives are not unnecessarily burdensome, but are personal inconveniences. The shoreline ordinance is where the protection is of the public's interest in navigable water, including promotion of safe and healthful water conditions, controlling pollution and protecting fish and aquatic life and natural beauty. These are not something to be lightly discarded. Because of this, Mr. Stodolka cannot find that it would be an unnecessary hardship of the property owners if the Board denied their request for a variance and allow them to go forward with the construction of this room addition and garage as it encroaches on the 75-foot setback of the Sheboygan River. He stated he will vote no when asked if there is an unnecessary hardship in this case.
- Mr. Blindauer: The fact that someone will be living on the property will prevent disrepair. The Quasius' should be able to live where they want on that property just like any other land owner.
- Mr. Pfaller: Stated the issue of a caretaker of the property is important, but he's not sure it trumps the 75-foot setback that is a rule that he has, for a number of years, reflected on. It's important for environmental reasons. In this case, it seems that setback line and where it exists in relationship to the addition becomes relatively benign, relaxes. He indicated the presentation was excellent and it helped him have a better understanding. He will vote yes because the value of putting the addition where proposed is the right thing to do. Encroachment will be minimal. Attorney Resimius stated the Chairman reflected his thoughts and he couldn't have said it any better.
- Mr. Miller: As far as the 75-foot setback, there is a reason to have Boards like this because there is no law that can encompass every situation. There are exceptions to every rule, every law. When all is considered regarding the 75-foot setback and the impact being very minimal, he stated his views might be different if there was a major

impact. He stated there are exceptions and that is part of the reason he will be voting yes as well.

Mr. Pfaller asked Mr. Quasius if he had anything to add. Mr. Quasius stated he covered everything and appreciates the thought process that is going through each members mind. He hopes he presented enough information to be able to have the variance granted. It's a matter of preserving the property in its best form for future generations to enjoy.

Mr. Pfaller asked what would happen if the dam at the Marsh went away? What would happen to this addition? Mr. Quasius indicated that if the dam was gone it would drain the Marsh to a bog. With the channel that had been dug out many years ago and the berm being so high, the water would continue down past the property and would not affect the property. Planning & Conservation Director Aaron Brault interjected that the County conducted a Dam Failure Analysis looking at what the flood shadow would be if the Marsh dam failed for some reason. He stated Mr. Quasius' property, according to the modeling, should not be affected. Mr. Pfaller asked if Mr. Quasius has ever seen the water come up that high or seen any plant life in the area that would indicate it's more of a wetland. Mr. Quasius stated no. The berm is 15 feet high. Even in the worst spring storms we've experienced, the water level has never gone up any higher than six feet on the river.

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 2:38 P.M.

**Deliberation on Unnecessary Hardship:**

Attorney Fieber read the definition of the unnecessary hardship standard.

**Mr. Blindauer made a motion that denying the variance would cause an unnecessary hardship to the owner.** Motion seconded by Mr. Miller.

ROLL CALL VOTE: Mr. Blindauer – yes, Mr. Miller – yes, Mr. Moehring – no, Mr. Stodolka - no, Mr. Pfaller – yes. Motion carried 3-2.

**Attorney Fieber stated that, based on the simple majority vote, the unnecessary hardship standard has been met.** The other three standards were previously found by the Board, so all four have now been satisfied and **the variance request is being granted.**

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Following the recent resignation of member David Gartman, Chairperson Pfaller requested nominations for Vice-Chairperson. Mr. Blindauer made a motion to nominate Scott Miller for Vice-Chairperson. Motion seconded by Mr. Moehring. Roll call vote: Blindauer – yes; Miller – yes; Stodolka – yes; Moehring – yes; Pfaller - yes. Motion carried. **Scott Miller was elected Vice-Chairperson.** Newly appointed First Alternate member, Dennis Frederick, was welcomed.

**Mr. Blindauer made a motion to adjourn.** Motion seconded by Mr. Miller. Motion carried.

Alayne Bosman  
Recording Secretary  
on behalf of Kay Lorenz

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Eugene Blindauer  
Board Secretary