



**VILLAGE OF SHOREWOOD
BOARD OF APPEALS MINUTES**

September 10, 2019

1. Call to Order

Mr. Paulson called the meeting to order at 5:32 p.m.

2. Roll Call

Members present: Adam Burns, Michael Paulson, Jon Toutenhoofd and April Toy (5:40 p.m.). A quorum was noted present.

Others present: Village Attorney Nathan Bayer, Building Inspector Justin Burris, and Village Clerk Sara Bruckman.

3. Statement of Public Notice

Village Clerk Sara Bruckman stated that the meeting had been posted and noticed according to law.

4. Approval of June 11, 2019 Minutes

Mr. Burns moved, seconded by Mr. Toutenhoofd to approve the minutes of the June 11, 2019 meeting. Motion carried 3-0.

5. Approval of August 13, 2019 minutes

Mr. Toutenhoofd moved, seconded by Mr. Burns to approve the minutes of the August 13, 2019 meeting. Motion carried 3-0.

- 6.** Mr. Paulson outlined procedures for the meeting. The Village Attorney will outline the legal standards involved for the Board of Appeals (BOA) procedure. Mr. Paulson summarized the BOA's procedures. The BOA essentially acts like a court. We have to follow state law and the Village's zoning ordinance but we are a creature of state statutes. We can't change or ignore any part of the zoning ordinance or state laws that apply to us. We must apply as written. We can only grant a variance or, in this case, an appeal of the applicant supplies evidence and the evidence shows that it meets all of the legal standards for granting that variance or appeal. The Village attorney will describe what the specific legal standards are. The procedure is informal, but we have to follow law and procedures. All witnesses will be sworn in. The hearing will be open, in any of the matters, to Village staff describing the application and the reason that the decision was made and then BOA members will ask questions of staff to insure complete record and then the applicant and any witnesses who want to testify to provide evidence about why they believe they meet the legal standard for the appeal. Members of the BOA can ask questions of any of the witnesses. When all questions have been answered, the hearing will be closed. Then the Board will discuss this matter and at that time decide the matter. A decision will be made tonight in open session. After the meeting, Village staff will take the appropriate action to implement the Board's decision and provide the necessary documentation. The Board's decision can be appealed by starting action with Milwaukee County Circuit Court within 30 days after this decision. The meeting is recorded and if necessary it may be used as part of the judicial review.

Attorney Bayer explained the power of the Board of Appeals to grant variances is granted by 535-55 of the Village of Shorewood Municipal Code. The Board of Appeals can hear and grant variances that are not contrary to the public interest whereby owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purpose of this chapter shall be observed and the public safety, welfare and justice secured. Attorney Bayer explained Zoning Code 535-58, which states, "No variance to the provisions of this chapter shall be granted by the Board unless it finds that all of the following facts and conditions exist and so indicates in the minutes of its proceedings: (a) Exceptional circumstances. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot, parcel or structure that does not apply generally to other properties in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that this chapter should be changed. (b) Absence of detriment. The variance will not

create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and the spirit of this chapter or the public interest.”

Board of Appeals members had no questions of the Village Attorney.

7. Public Hearing: Appeal of denial by the Village Building Inspector to construct a new single family home that does not meet the established front yard zoning setback at residential property 4450 N. Lake Dr.

Mr. Paulson opened the Public Hearing at 5:35 p.m. He noted that members of the audience who wished to speak to the actual “consideration of the item” that will be taken up next could wait until then to testify, they did not have to do so in the Public Hearing.

Mr. Paulson closed the Public Hearing at 5:35 p.m.

8. Consideration of Appeal of denial by the Village Building Inspector to construct a new single family home that does not meet the established front yard zoning setback at residential property 4450 N. Lake Dr.

Mr. Justin Burris, Village of Shorewood, Building Inspector was sworn in. The property owners of 4450 N. Lake Dr. were granted a variance on August 13, 2019 to construct a new single family residence in a location that maintains the existing front yard setback, but does meet the minimum front yard setback requirement for the block. The property owners are seeking a new variance wherein the house would be located closer to Lake Dr. with a setback 71.5’ feet. Staff does not support the variance for the following reason. The setbacks of the existing homes along Lake Dr. are graduated, with the property to the south having a setback that is 25.17’ less than 4450 N. Lake Dr., and the property to the north having a setback that is 41.89’ greater than 4450 Lake Dr. If the home were moved 17.5’ feet closer to Lake Dr. it would affect the graduated setback between the three properties by 35.42’ feet leaving a staggered appearance, inconsistent with the existing graduated appearance that aligns with the street.

Mr. Toutenhoofd questioned if the applicant had maintained the existing setback would there be a need for a variance? Mr. Burris explained no because they would be meeting the zoning setbacks, certainly circumstances would need to be taken into account for foundation.

Stephanie Engelking, architect at Wade Weissmann, was sworn in. Ms. Engelking explained they view the hardship on the 4450 N. Lake Dr. property after studying the entirety of the Lakeshore Drive. Ms. Engelking explained if you count the number of houses, there are 10 properties that make up this block of Lake Dr. She explained the zoning ordinance is written that you would have to average all properties on your block in order to determine where an individual property owner’s setback would be. Ms. Engelking also noted, along Lake Dr. the average number of homes on each block in the Village is four and the 4400 block has ten, which far exceeds the number of houses that the architect needs to note in order to determine the setback requirement. Ms. Engelking explained with the map included in the packet, they are proposing the blue zone being a block and the green zone being a block, that is based on a ratio that has been studied and determined which calculates the longest block dimension to the shortest block dimension in Shorewood. Ms. Engelking explained another table included in the packet, explains if you take the northern to the southern edge of a block and you create a ratio between the shortest distance which is 3.4 times smaller than the longest distance on the block. The average in Shorewood is 1.5, meaning the longest dimension to the shortest dimension is 1.5 on the block. She explained if the block could be divided into two, they could come up with a more equal ratio to the rest of Shorewood which is 1.7 and 2.0. Ms. Engelking explained specifically to the graduated setbacks, the top chart (provided in the packet) the 4400 block is at 37.33ft for a setback. Moving up, the setback goes up to 88.14 ft., then back down to 70 ft., back up to 80 ft., back down to 64 ft. She explained the applicant is asking for change of 15 ft. to 71.6 ft., which is in a better relationship to the properties on South Lake Dr. than the properties on North Lake Dr., which have a much better overall parcel area in length.

There were no questions from the Board.

Mr. Paulson closed hearing at 5:48 p.m.

Mr. Paulson explained the Board of Appeals does not have the authority to re-write an ordinance. He explained he understands the argument, the argument as a policy argument if drafting the ordinance would be very persuasive. He explained that is not the role of the Board of Appeals, the role is to grant a variance only if the standards that are applicable to the granting of the variance are met. Mr. Paulson went on to explain, one of those standards because of the unique characteristics of a particular property absence of a variance would impose a reasonable hardship on the land owner and an unnecessary hardship under Wisconsin Law, that compliance with the ordinance would prevent the owner from using the property. Mr. Paulson explained the Board of Appeals already granted the variance from the 105 ft. basic setback requirement to equate to the existing setback on the property. He explained the request at the August 10 meeting was to ask for a variance at that time demonstrated that you thought you could make use of the property at that particular setback, it would not be unreasonably burdensome to comply if the variance were granted. He explained having granted that particular variance almost by definition you said you can use your property in a reasonable manner and there was nothing unreasonably burdensome on you to build to that particular setback. Mr. Paulson explained he did not hear or find any argument that it is necessary to grant a variance to further reduce the setback, he does not find evidence to support the necessary hardship.

Mr. Toutenhoofd questioned if there was extra burden with the additional amount of homes on the 4400 block?

Mr. Burris explained the burden is what is unique about the property, not the block. It is what is unreasonably burdensome to meet the setback on this lot and to look at how the setback is established is a policy that would have to be rewritten in a different format and a variance would be granted based on the policy and has to be unique to the lot.

Motion

Mr. Paulson moved, seconded Mr. Toutenhoofd to grant a variance to permit the property owners at 4450 N. Lake Dr. to have a front yard setback 71.5 feet. Motion fails by a roll call vote 2-2 for lack of a majority vote with Mr. Paulson and Mr. Burns voting nay.

9. **Public Hearing: Appeal of the denial by the Village Building Inspector to construct a new attached garage that does not meet the established front yard zoning setback at residential property 4424 N. Lake Dr.**

Mr. Paulson opened the Public Hearing at 5:58 p.m. Attorney Bayer clarified that the Public Hearing portion is for the public who are not direct parties involved.

Mr. Paulson closed the Public Hearing at 5:59 p.m.

10. **Consideration of the appeal of the denial by the Village Building Inspector to construct a new attached garage that does not meet the established front yard zoning setback at residential property 4424 N. Lake Dr.**

Attorney Bayer explained Village Ordinance Chapter 535-34(e) addresses Special Exceptions for non-conforming structures and this a request to increase the non-conforming footprint of a structure. He explained subject to the provisions of applicable state law, the Board of Appeals, upon application as required herein, may grant a special exception to the provisions of Subsection A hereof after considering:

(a) The effect the granting of the exception will have on the appearance and character of applicant's property, adjacent properties and neighboring properties.

(b) The effect the granting of the exception will have on the value of applicant's property, adjacent properties and neighboring properties.

(c) Whether the granting of the exception will serve the public interest in improving and preserving the value of the property.

(d) Such other matters as the Board of Appeals deems relevant and material.

Mr. Burris was reminded that he was still under oath. Planning and Development received a building application on August 19, 2019 from Deep River Partners, Ltd. proposing to construct an attached two-story garage addition at 4424 N. Lake Dr. Planning and Development denied the building application August 20, 2019 because the minimum established setback for the property is 105' feet, based on the average of the existing setbacks on N. Lake Dr. between E. Kensington Blvd. and E. Lake Bluff Blvd., and the proposed setback of the addition has not been met. Deep River Partners submitted the Board of Appeals application at the same time as the building permit application. Mr. Burris explained the setback of the existing house is 68.7' feet making it legal non-conforming. The proposed addition would be within and/or behind the setback of the existing house, but not meet the minimum setback established by the zoning chapter. Staff is neutral on the matter of this appeal understanding the desire of the homeowner to increase the covered parking area, and conforming to the minimum setback would not be possible in that end.

Nicholas Blavat, Deep River Partners, was sworn in. This is a historic home built prior to the Village's zoning code. The uniqueness of this lot is the density of the block ranging 38 ft. to 193 ft. The lot is a combined two parcel lot and where this density changes, one setback is closer to the street and one is farther which is creating an odd abutment to the lot. Mr. Blavat explained this is a transition portion of the neighborhood and we plan on staying in the character of the fabric of the block, however, we want to maintain the current project and do a feasible addition for the property owner.

Mr. Toutenhoofd questioned if the neighbors to the south have been notified?

Mr. Burris explained not by the architect but they have been given notice by the Village.

Mr. Blavat explained we are at the fork of starting to create this project and want to be on good terms with the community and client.

Mr. Paulson clarified the applicant is requesting a variance to maintain existing setback of 68.7 feet, is going to maintain the current existing structure just expanding that nonconforming use.

Mr. Paulson explained it is reasonable to grant a special exception in this case. The record by staff and the owner representative would not have a negative impact or a detriment on the property. If there is going to be any expansion at all they would need a Special Exception with the uniqueness of the lot shape and remodeling will improve the value of that property.

Motion

Mr. Paulson moved, seconded by Mr. Toutenhoofd that the special exception be granted to the residential property owners at 4424 N. Lake Dr. to expand their current nonconforming property up to and including a setback of 68.7 feet. Motion approved unanimously by a roll call vote.

13. Adjournment – Mr. Burns moved, seconded by Ms. Toy to adjourn at 6:09 p.m. Motion carried 4-0.

Respectfully submitted,

Sara Bruckman, CMC/WCMC
Village Clerk

Marian and Bill Nasgovitz\
4470 N. Lake Drive
Shorewood, WI 53211
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September 10, 2019

Dear City of Shorewood,

As neighbors we are writing to support the appeal of Kris and Anna Baritt for a setback variance at 4550 N. Lake Drive.

This move seems consistent with the feel of the neighborhood and it would preserve our sightlines. We feel the curb appeal will improve with this proposed sighting.

Provided the footprint of the house does not change from the plans we were shown, we fully support their efforts to gain a setback variance.

Please feel free to reach out with any questions or concerns.

Sincerely,

Marian and Bill Nasgovitz