



Village of River Hills
7650 N Pheasant Ln
River Hills, WI 53217

Village Hall: 352-8213
Public Works: 352-0080
Police: 247-2302

BOARD OF APPEALS MINUTES

Wednesday, April 14, 2021 @ 3:30 pm

This meeting was a virtual meeting through Zoom – Meeting code 932 2052 1589, Passcode 475191
This meeting was recorded and a copy of that record can be requested.

- 1. Roll Call:** was answered at 3:30 p.m. by Chairman Steven Spector, Billie Smith, Don Daugherty, Chris Beidel and Alternate Kieran Donohue. Rosalie Gellman was absent and excused. Also present: Village Attorney Bill Dineen, Village Manager Tammy LaBorde, Deputy Clerk Stephanie Waala and Building Inspector Tod Doebler.
- 2. Approval of minutes for March 2, 2021.**

Motion by Daugherty and seconded by Smith to approve as submitted; motion carried unanimously.

- 3. Hearing for consideration and possible decision on the Appeal of Victor Harding, 7730 N River Rd regarding the Building Inspector's denial of a building permit application for installation of a second solar array that would have a side yard setback of 57 feet and rear yard setback of 30 feet. This is a violation of the Village of River Hills Ordinance Section 7.030 where the minimum side yard setback is 75 feet and the minimum rear yard setback is 75 feet.**

Appellant Victor Harding informs the board that in the Spring of 2020 he had a solar array installed that had been approved by the Building Board and the Board of Appeals granted a setback variance. After which time items in the home were converted to electric as well a purchase of electric cars, he decided to go electric neutral. A second smaller solar array was installed in front of the first array with the understanding that a variance had already been granted and this array was further into the lot so a second variance was not needed. Due to time restraints with the installer of the array the second array was installed before Building Board approval.

Board member Daugherty asks for clarification on the exact time the second array was installed. Mr Harding informs the board the second array was installed by September 1, 2020.

Mr Harding informs the board there were no objections from neighbors for the first array, but the Robbins objected to the second array which the Building Board required shielding to the neighbor when approving the second array. No other neighbors can see the array from their homes but could possibly if they walked to the edge of their properties. The hardships that were presented were for the first array are also the hardships being presented for the second array. It is unclear if the Robbins are objecting to the variance because the array is not on their lot line.

Board member Smith ask for clarification on what array is being spoken about. Exhibit L-3 references the arrays, the barn, and the tennis court and all distances within this section of the property. The second array is the one further to the south and should be labeled the second array. Mr Harding confirms the second array is the one further south.

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Board member Daugherty asks for clarification that the solar panels on the barn are not part of this variance request. Mr Harding confirms that is correct and those did not need a variance, but only Building Board approval.

Board member Smith asks for clarification that the second array is smaller only in height. Mr Harding confirms that is correct. Mrs Smith asks for clarification as to why Mr Harding felt he did not need a variance for the second array. Mr Harding informs the board he was in a time restraint to get it installed and there were no objections previously.

Board member Daugherty asks for clarification as to when the second array was contracted to be put in. Mr Harding informs the board that after August 25th it was contracted and then installed before September 1st.

Board member Smith asks for a cost estimate to move the array from its currently installed location to a different location. Mr Harding informs the board it would cost around \$6,000. At one of the Building Board meetings, he offered to move it to in front of the barn where it would not require a variance. The Building Board did not like that location and suggested it remain at its current location.

Board member Beidel asks for clarification that during the first arrays variance request there were only two locations that the array could be placed which were the current location and in the front yard. What has changed to now make the location in front of the barn an additional location. Mr Harding informs the board that was not an originally proposed location because it was a more visible view for the Robbins and it would require cutting down of two mature silver maple trees and it does not fit well on the property. The Building Board agreed with that decision to not have it in the location by the barn.

Board member Smith asks for clarification that the request for the hardship is the same for the second array as it was for the first array, but would like to focus more on the second arrays hardship. Mr Harding informs the board he doesn't think there is anywhere else he could build the second array. The Building Board did not like the alternative location of by the barn and the Board of Appeals did not like the alternative location by River Rd. The arrays are not being used to help WE Energies, but to help make his electric usage neutral over a year span. If approval is not granted then he cannot use the land the way he would like to, he will continue to have electric bills, and it is important for us and this country to move in this direction.

Board member Daugherty asks for clarification on the state statute and does it express local control. Mr Harding informs the board that no political subdivision may place any restrictions either directly or in affect on the installation of solar.

Board chairman Spector asks for clarification that the hardship is that it cannot be located anywhere else on the property. Mr Harding informs the board that that is correct and that Endries the contractor for the arrays is saying no additional arrays could be installed without blockage of trees.

Board member Beidel asks for clarification that during one of the Building Board meetings it was suggested to move the second array to be directly west of the first array. Mr Harding informs the board that even at that location a variance would be needed and it would then abut up next to his baseball diamond.

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Board member Smith asks for clarification on when would the approved landscape plan be installed. Mr Harding informs the board they could be installed as soon as the second array is approved.

Board member Daugherty asks for clarification for what was the basis for the belief that the second array did not need a variance. Mr Harding informs the board that discussions he had with the village as well as the motion from the first arrays variance approval. Then village attorney Bill Dineen informed him that it did need a second variance. Mr Daugherty asks for clarification on if there were intentions of a second array at the time of the approval for the first array. Mr Harding informs the board that at the time of approval of the first array he had not made a decision or even considered a second array.

Board member Beidel asks for clarification from some of the Building Board minutes that there was discussion about a third array, is there any intention to put up a third array. Mr Harding informs the board that no there will be no third array and that discussion was about moving the second array to over by the barn.

Board member Daugherty asks for clarification that there was no objection form the neighbors for the first array, but when the second array was to be installed were the neighbors informed. Mr Harding informs the board that no he did not inform the neighbors.

Board member Donohue asks for clarification that the Building Board would not allow the second array to be moved to the southside of the barn even though it would not need a variance then. Mr Harding informs the board that the Building Board did not approved the location by the barn because they did not want them spread out across the property.

Board chairman Spector asks for clarification on what would be appropriate trees for shielding the Robbins and the other neighbors. Mr Harding informs the board his suggestions was to put up the 5-foot trees 6 feet apart for a total of 8 trees. There is already shielding between the arrays and the Robbins home which lose their leaves in the winter. The Building Board then approved the 8-foot trees.

Board member Beidel asks for verification that if the current approved arborvitae were to be damaged then they would be replaced. Mr Harding has no objection.

Mr Wagner presents to the board his slide show presentation explaining their reasoning for the denial of variance to include that it does not meet the ordinance requirements, other location options do not infringe on neighbors and setback restrictions, desire to be electrical usage neutral is not a hardship.

Village Manager Tammy LaBorde informs the board the presentation presented by Mr Wagner was not provided to the board before the meeting and is requesting a copy be submitted to the village for record.

Mr Wagner asks Mr Robbins if early on if he had any conversations Mr Harding about the first array that was to be installed. Mr Robbins informs the board that he never had prior discussions with Mr Harding prior to the first array being installed. Neither was he invited to any discussions regarding the variance.

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Mr Wagner asks Mr Robbins if he had a discussion with Mr Harding about whether or not Mr Harding would be installing some type of screening. Mr Robbins informs the board that yes he had spoken with Mr Harding and Mr Harding had planted trees that were 6”-1’. The existing trees planted do not provide any screening.

Mr Wagner asks Mr Robbins if he feels there is somewhere else on the property that the second array could be located. Mr Robbins informs the board that yes he has 5 acres and there are many locations it could be installed.

Mr Wagner asks Mr Robbins if he has ever seen Mr Harding play baseball on his baseball field. Mr Robbins informs the board that no he has never seen him play baseball.

Mr Wagner asks Mr Robbins that there is already a panel why is he objecting to the second one. Mr Robbins informs the board that he was never consulted on the first array so he was unable to give an objection. The second panel is closer to their home and is just as large. The dead ash trees and green foliage is currently gone.

Mr Wagner asks Mr Robbins if he saw the proposal from Mr Harding on the location of the 8 arborvitae and does he feel they provide a complete screening from his property to the solar panels. Mr Robbins informs the board that yes he has seen the proposal and the arborvitae provides some screening but not from all locations on his property.

Mr Wagner asks Mr Robbins if he likes the look of the panels. Mr Robbins informs the board no.

Mr Wagner asks Mr Robbins if the sun reflects off of them. Mr Robbins informs the board no.

Mr Wagner asks Mr Robbins when he purchased his home in River Hills how important was the 75 feet setback. Mr Robbins informs the board it was important and they want to have their privacy and doesn’t want to see their neighbors.

Mr Wagner asks Mr Robbins if he had paid a landscaper to put together a landscaping plan for the Building Board. Also did he have all the other neighbors look at it as well and get their approval that it was satisfactory. Mr Robbins informs the board yes.

Mr Wagner asks Mr Robbins if he has a view on Mr Harding’s financial position of this entire process. Mr Robbins informs the board that a solar array should be in a location that affects the homeowner more and he does not want to see it. He is not receiving any financial gain but Mr Harding is and the costs are self-inflicted.

Board member Smith asks Mr Wagner about an email he sent the village on March 15, 2021 claiming that Mr Harding secretly built two 60’ solar panels. Clarification is needed on whether the first array was done in secretly. Mr Wagner informs the board the first array was not done secretly and he was over reaching.

Board member Smith asks for clarification on the claim from Mr Robbins that he was not notified of the hearings on the first arrays variance. Deputy Clerk Waala informs the board that a listing of the neighbors that were notified of the hearing was kept for the record in the file. The following individuals were notified of all hearings:

- 7800 N River Rd – Eldridge residence

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- 7808 N River Rd – Jacobs residence
- 7660 N River Rd – Stevens residence
- 7725 N River Rd – Joseph residence
- 1050 W Calumet Rd – Robbins residence
- 1025 W Calumet Rd – Buestrin residence

Mr Harding informs the board that the Robbins attended the December 26, 2019 meeting and that he met with them to go over the plans. Mr Robbins believes he was not at the Board of Appeals meeting but at the Building Board meeting.

Board member Smith asks Mr Robbins if he feels the Board of Appeals made an error in granting the variance for the first solar array. Mr Robbins informs the board that he does believe there was an error and that Mr Harding doesn't have any hardships to put it in the setback. Board chairman Spector states there was no opposition from any neighbors for the first array.

Board member Smith asks for clarification from Mr Robbins if he can differentiate between the first and second array when viewing them. That if the second array were to be removed the view would remain the same. Mr Robbins informs the board that he can when standing at an angle to the arrays, but not when looking directly on.

Board chairman Spector asks for clarification from Mr Robbins that he did not object to the first array. Mr Robbins informs the board he was not informed of the first meeting. Mr Wagner informs the board that Mr Buestrin was at the Board of Appeals meeting and expressed his concerns. Mr Robbins objected to the array at the Building Board level only.

Board member Daugherty asks for clarification from Mr Robbins that no matter what happened with the first array he has waived any right to object to the first array at this time and the only objection is to the second array. Mr Robbins informs the board yes he understands.

Board member Smith asks for clarification from Mr Robbins if the removal of buckthorn and ash trees was done from his property or from Mr Hardings property. Also will he be considering putting new landscaping to replace the buckthorn and ash taken out. Mr Robbins informs the board that both Mr Harding and himself have both removed buckthorn and ash trees. At some point he will put in landscaping.

Board member Smith asks for clarification on the landscape plan from Franzen there is a proposed solar array by the tennis court. Mr Wagner informs the board the landscape plan was part of a previous proposal for the second array at an alternative location.

Board member Smith asks for clarification on which landscape plan was presented to Katie Falk and the neighbors. Mr Wagner was unable to clearly present the document that was in question. After sometime it was determined the document in question was page 57 of the 65 page appeal from Mr Wagner. Mr Wagner informs the board that both landscape plans were presented to the neighbors and Katie Falk due to not knowing which location would be approved.

Board member Smith asks for clarification of the allusion that there was favoritism to Mr Harding due to being on the Building Board. Was there any evidence presented to favoritism? Mr Wagner informs the board he feels this topic has more to do with their appeal to the Building Boards decision.

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Board member Donohue asks for clarification of the landscape drawing created by Franzen. If the second array were to be located by the barn and not require a variance then there would not be an objection to shielding. Mr Wagner informs the board that at the location by the barn they would still make objections to the aesthetics and request landscaping.

Board member Daugherty asks for clarification on the landscape drawing created by Franzen. Is the proposed plan satisfactory to the appeal? Mr Wagner informs the board that if the variance is granted then they would move to their objection to the Building Board approval. Mr Dineen informs the board if the variance is denied then the Appeal of Mr Wagner would be moot. Mr Wagner asks for clarification on the question. Mr Daugherty asks for clarification on the presentation for denial of the variance there was no alternative option. Would if the variance were to be granted with the inclusion of the landscape plan would that be satisfactory. Mr Robbins informs the board that the Franzen landscape plan would be satisfactory.

Board chairman Spector asks for clarification on was their analysis/statistical information from Endries Electric to locate the array somewhere else on the property. Mr Harding informs the board that in the front of that yard there are septic fields, view from River Rd, trees would need to be cut down in other locations, and the proposed location is the best location.

Board member Beidel asks for clarification on the claim of these arrays being commercial. Is there a difference and what is making them feel this is commercial. Mr Wagner informs the board that on one of the informational sheets from Mr Harding the arrays are labeled as commercial. Mr Dineen informs the board that the label of the array does not and should not be considered when making these decisions. Mr Harding lives on a single-family lot zoned residential therefore he can only use his property for single family residential purposes.

Resident Randy Knafllic, 7815 N River Rd, informs the board of his like for solar arrays and believes the village is moving in the right direction to attracting the younger generation by having more solar arrays within the village.

The hearing ended at 5:25 p.m.

- 4. The Board of Appeals may convene into closed session per Wis. Stat. 19.85(1)(a) for purpose of deliberating concerning a case which the subject of any judicial or quasi-judicial trial or hearing before the Board and after the closed session it may reconvene in open session to announce its decision per Wis. Stat. 19.85 (2).**

After discussion among the board, it was determined to go into closed session after hearing the second appeal.

- 5. Hearing for consideration and possible decision on the Appeal of Stephen and Elizabeth Robbins, 1050 W Calumet Rd, who are appealing the approval by the Building Board at its March 15, 2021 meeting an application for placement of a commercial solar panel system at the Harding residence, 7730 N River Rd.**

Mr Wagner presented his power point about the why the Building Board should be reverred on Harding solar application approval based on Mr Harding did not follow the law, its decision was arbitrary, and not supported by the evidence.

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Board member Smith asks for clarification on the letter from Katie Falk is that was it the addition of the second array was the basis of her findings or was it both arrays. Mr Wagner informs the board it was in response to the second array. Board chairman Spector asks for clarification on what other evidence they have besides the Katie Falk letter where there has been decline in property values. Mr Wagner informs the board the village ordinance does not require additional documentation from a real estate agent and or homeowner to make such a claim.

Board member Beidel asks for clarification that the claims are subjective and dependent upon the personal opinion of a neighbor is the case so would this affect all approvals of arrays within the village. Mr Wagner informs the board that the Building Board is an aesthetic board and therefore is subjective.

Board member Beidel asks for clarification that currently only two neighbors can see the array and that in order for the other neighbors to see it they would have to clear cut their woods. Mr Wagner informs the board they may not be able to see it now but may be able to in the future and that is why the Building Board has landscaping installation and maintenance requirements.

Building Board member Steve Simon informs the board that the Building Board thoroughly reviewed and he has personally met with Mr Robbins and Mr Harding to walk their properties. Mr Dineen informs the board the decision of the Building Board is based solely on the record and if Mr Simon wishes to give opinion other than the record then the board will be advised to disregard.

Mr Harding informs the board that the Building Board met and considered all the factors over 6 meetings which the Robbins were present at. Katie Falk and all other neighbors were never present to be questioned in person.

The hearing ended at 6:05 pm

- 6. The Board of Appeals may convene into closed session per Wis. Stat. 19.85(1)(a) for purpose of deliberating concerning a case which the subject of any judicial or quasi-judicial trial or hearing before the Board and after the closed session it may reconvene in open session to announce its decision per Wis. Stat. 19.85 (2).**

Motion by Smith and seconded by Daugherty to move into closed session for reasons stated on the agenda at 6:07p.m.; motion carried unanimously.

Motion by Smith and seconded by Daugherty to reconvene to open session at 7:43 p.m.; motion carried unanimously.

Motion by Smith and seconded by Beidel to grant Victor Harding's appeal; motion carried unanimously. A written decision setting forth the basis of the decision will be prepared as soon as possible and distributed.

Motion by Daugherty and seconded by Smith to grant the Robbins appeal and reverse the Building Board decision and remand it to the Building Board for further proceedings consistent with the Village ordinances and specifically to address the neighbor concerns raised regarding the second array; motion carried unanimously. A written decision setting forth the basis of the decision will be prepared as soon as possible and distributed

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7. Adjourn

Motion by Daugherty and seconded by Smith to adjourn at 7:46 pm; motion carried unanimously.

Created by Stephanie Waala, Deputy Clerk, on April 27, 2021.