

STATE OF WISCONSIN BOARD OF APPEALS MILWAUKEE COUNTY
VILLAGE OF RIVER HILLS

IN THE MATTER OF THE APPEAL OF
VICTOR HARDING FROM THE
MARCH 16, 2021 BUILDING
INSPECTOR'S DENIAL OF A SECOND
SOLAR PANEL SYSTEM
AT THE HARDING PROPERTY, 7730
NORTH RIVER ROAD.

DECISION

The Board of Appeals of the Village of River Hills, Wisconsin held a virtual hearing in this matter (through Zoom) Wednesday, April 14, 2021 commencing at 3:30 PM pursuant to proper notice. The hearing was recorded (audio and video) and a copy of the recording is on file with the secretary of the Board of Appeals.

Five members of the Board of Appeals were present: Steven Spector, Chair and three regular members of the Board, Billie Smith, Don Daugherty, Chris Beidel and alternate member Kieran Donohue.

Present were Victor Harding ("Harding") and Stephen Robbins and his Attorney Roy Wagner (collectively "Robbins") in opposition to the Harding appeal. Village Attorney William Dineen was also present.

This is an appeal by Harding of the March 16, 2021 Building Inspector's decision to deny a request by Harding for the installation of a 2nd solar array because it would be in violation of the required rear and side yard setbacks. The Appeal was filed by letter to the Board of Appeals dated March 30, 2021 along with the filing fee.

The hearing in this matter was conducted immediately before a separate but related hearing on the Robbins appeal of a Building Board decision approving the 2nd solar array. Since much of the evidence related to that appeal was also considered in this appeal the record for both proceedings are virtually the same. Harding's appeal, of the Building Inspector's denial, seeks a variance from the setback regulations, and therefore requires the Board to hear evidence and make findings.

The record in this matter included as submitted by Harding, documents that were submitted with his earlier appeal seeking a Variance for a solar array (1st solar array) and the Board of Appeals granting a Variance in February of 2020 to allow installation of the 1st solar array within 10 feet from the side yard line and 30 feet from the rear yard line. The Deputy Clerk of the Village filed with the Board of Appeals the minutes of prior various Building Board

meetings at which the 2nd solar array was considered, along with copies of the materials submitted to the Building Board by Harding and by Robbins, as well as Harding's response to the Robbins appeal (dated April 2, 2021) and additional materials from Robbins attorney received via email dated April 12, 2021. In addition, a Memorandum from the Village Attorney dated April 11, 2021 along with sections of the relevant ordinances was filed with the Board of Appeals and copies were served upon Robbins and Harding.

Harding presented information in support of the variance and argued that the same information that he submitted to the Board of Appeals for the 1st solar array established the basis for a grant of a variance for the 2nd solar array. In addition to all the materials presented in advance of the hearing, Harding stated that there were no other alternatives for the location of the 2nd solar array, that he has a septic system in the front yard and that other locations would require removal of trees. Harding admitted that he installed the 2nd solar array without first seeking a variance. His submittals included information provided by his contractor that other locations would require trees to be removed. Harding also stated that his 2nd solar array would as set forth on his Exhibit L-3 would be 8 feet in height whereas the 1st solar array is 10 feet in height. The 2nd solar array is 54 feet in length as is the 1st solar array. He presented pictures of the 1st and 2nd solar array for the proposition that putting the second solar array where he did would benefit the neighbors because other locations would make both arrays visible from neighboring properties and that screening of both of the arrays at his proposed locations would be easier to accomplish.

Robbins presented argument that the variance was not necessary and that Harding could locate the 2nd solar array at various other locations on the property. Robbins also presented evidence that he can see the solar array and because of its size it appears as commercial and not in harmony with the neighborhood. Robbins was critical of Harding's landscaping proposal and argued it provided insufficient screening. He also stated that the landscape plan that he obtained would be satisfactory to him if Harding implemented it. Robbins also submitted two letters from another neighbor (Buestrin) who was now opposed to the 2nd solar array location proposed by Harding. In response Harding stated that Buestrin could not or would not be able to see the 2nd solar array.

At the conclusion of the parties' presentations, the Board went into closed session for deliberations pursuant to Wis. Stat. 19.85(1) (a) for the purpose of deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before the Board. The Board discussed the record and arguments presented and reviewed the requirements of the Village code particularly the provisions of Sections 7.1004 and 7.1008 that govern variance appeals that include the requirement that an "unnecessary hardship" exists, and the records of the Board shall clearly show in what particular and specific respects an unnecessary hardship is created.

The Board discussed the record and found that Harding has produced evidence that the location of the 2nd solar array as proposed by Harding would be consistent with the unnecessary hardship provision of the ordinance in that Harding stated that he had a septic system in his front yard and that location in the front yard would be detrimental and would be more visible, and he presented evidence from his contractor that other locations would require removal of 4 or 5 mature trees. Harding also stated that he has a baseball field that precluded moving the 2nd solar array to the west, and that would still have been within the rear yard setback area. Robbins disputed much of what Harding offered but stated if there was proper screening of the 1st and 2nd solar array he would be satisfied.

The Board concluded that the record did show that there was substantial evidence to support the necessary finding of unnecessary hardship and that Harding's evidence showed unusual circumstances that supported granting a variance. The Board determined that the evidence that Harding submitted in support for the 1st solar array was also supportive of the variance for the 2nd solar array.

Then the Board considered the four findings required under Section 7.1008. The Board considered and found that the variance to allow the 2nd solar array at the proposed location would not be inconsistent with purpose and intent of the zoning regulations. Allowing a solar array as an accessory structure to provide energy for a single family residence is not inconsistent with the purpose and intent of the zoning regulations. Variances are intended to provide flexibility to the area requirements and granting a variance for a 2nd solar array would not allow a use that is not permitted.

The Board also found that there are unusual circumstances applying to this matter in that there is already a solar array and that locating the 2nd solar array near the 1st solar array makes this an unusual situation not generally found on other properties.

The Board then considered and found that while Harding should not benefit from installing the 2nd solar array before seeking a variance and that requiring him to move it would cause a self-imposed economic hardship, that such economic hardship is not the basis let alone the sole basis for determining that Harding should be granted a variance for the 2nd solar array.


Finally, the Board considered and determined that a variance would not create a substantial detriment to adjacent property or be contrary to the purpose or intent of the Zoning ordinance. The Board heard evidence to the contrary on this required finding. Robbins presented argument and testimony that allowing the 2nd solar array would be detrimental to his property. However, the Board believed that proper landscaping or screening of the solar arrays would address Robbins concern and diminish the detriment. Robbins consistently argued that he could see the array, yet he also argued for moving the array further from the lot line where he would

still be able to see it or move it someplace out of his sight lines. As with the other appeal (Robbins appeal) the Board considered whether requiring conditions would be appropriate in this case; however the Board of Appeals is not the Building Board and the matter has been returned to the Building Board for its determination. Ultimately, the Board, determined that granting the variance for the 2nd solar array was not detrimental to Robbins, as the detriment to him is the visibility of the 2nd solar array and the issue of screening the 2nd solar array will need to be determined by the Building Board.

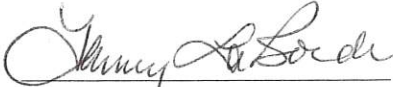
After the considerable deliberations the Board then reconvened in open session to announce its decision granting the Harding appeal to locate the 2nd solar array as proposed in his Exhibit L-3 and direct the Building Inspector not to grant the building permit until the Building Board has approved the plans for the 2nd solar array.

April 27, 2021

BOARD OF APPEALS



Steven Spector
Chair, Board of Appeals



Tammy LaBorde
Village Clerk