

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

IN THE MATTER OF THE APPEAL OF
STEPHEN AND ELIZABETH ROBBINS
FROM THE MARCH 15, 2021
BUILDING BOARD APPROVAL 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 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.

Also present were Stephen Robbins and his Attorney Roy Wagner (collectively "Robbins"). Victor Harding was present and Village Attorney William Dineen was also present.

This is an appeal by Robbins of the March 15, 2021 Building Board decision to approve a request by Harding for the installation of a second solar array 30 feet from the location of a solar array previously approved ("2nd solar array"). The Appeal was hand delivered to the Board of Appeals on March 29, 2021 along with the filing fee.

The Deputy Clerk of the Village filed with the Board of Appeals the minutes of 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. The Board was supplied with copies of the recording (audio and video) of the Building Board meeting of March 15, 2021 and a copy of a draft of the March 15, 2021 minutes of that Building Board meeting (which have yet to be approved as the official minutes). 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.

The hearing in this matter was conducted immediately after a separate but related hearing on Harding's appeal seeking a Variance for 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. During the hearing of this matter the Board determined that the scope of review of the Building Board decision was by way of certiorari based upon the recommendation of the Village Attorney and as detailed in the Village Attorney's Memorandums.

The Robbins presented information to establish that they had standing to appeal as immediately adjacent neighbors of Harding and argued that the Building Board's decision had a detrimental impact upon them and their property. In addition to all the materials presented in advance of the hearing and restating their written arguments Robbins presented excerpts of the recorded March 15, 2021 Building Board meeting. Essentially, Robbins argued that the Building Board did not comply with the Village ordinances and that the decision was arbitrary, citing to the provisions of the Building Board ordinance. Essentially, Harding in addition to the materials he presented in advance of the hearing argued that the Building Board's decision was consistent with and did comply with the Village ordinances.

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 Section 7.0905 that require the Building Board to make the findings that are set out below. The Board discussed the record and could not find that there was substantial evidence in the record to show the Building Board made the required findings. The Board was concerned that while the record did establish that the Building Board did require the largest of the arbor vitae proposed by Harding they could not find that the Building Board made any findings related to the effect of the 2nd solar array upon the outlook of the neighbors. The Board concluded that the record did not show that the Building Board made the findings required in 7.0905 C, specifically: 1) that the exterior architectural appeal and functional plan of the 2nd solar array is in harmony with the purpose and intent of the Ordinance; 2) approval of the plan will promote the general welfare, good order and prosperity of the Village; and 3) that approval of the plan will maintain and preserve the character of the Village.

The Board understands that the Building Board may have been trying to reach a compromise and that the decision to approve the Harding 2nd solar array conditioned upon planting the tallest and most expensive of the arbor vitae as set forth in the materials that Harding submitted to the Building Board might be construed to be taking into

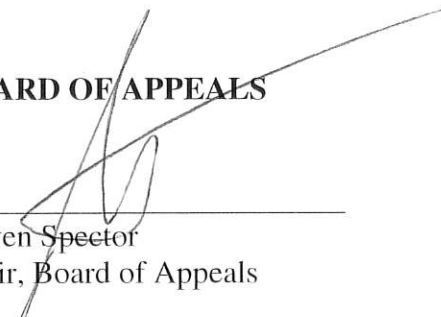
consideration the neighbor's concerns; however, since the Board must review the record and there are no findings to establish that the Building Board considered the review criteria required in the ordinance or made the specific findings set forth above, the Board felt it was compelled to reverse the decision of the Building Board as it was error for the Building Board not to make the required findings.

There was some discussion regarding reviewing the criteria and imposing conditions; however it was decided that would require the Board to take on the duties of the Building Board and therefore it was decided to reverse the Building Board's decision and remand the matter back to the Building Board for further consideration consistent with the Board's decision requiring that the Building Board specifically address the relevant criteria under the ordinance, especially the effect of the 2nd solar array upon the outlook from adjacent or neighboring properties and make the required findings.

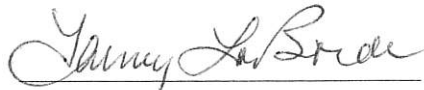
After considerable deliberations the Board then reconvened in open session to announce its decision granting the Robbins appeal and remand the matter to the Building Board for further action consistent with this Decision.

April 27, 2021

BOARD OF APPEALS



Steven Spector
Chair, Board of Appeals



Tammy LaBorde
Village Clerk