



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

Tuesday, June 21, 2022 @ 4:00 pm

- 1. Roll Call:** was answered at 4:02p.m. by Chairman Steven Spector, Chris Beidel, Billie Smith, and Don Daugherty. Alex Hawley and Kieran Donohue were absent and excused. Staff Present: Village Manager Tammy LaBorde, Deputy Clerk Stacie Nelson, and Building Inspector Tod Doebler.

Others Present: Raymond Snisky, Milana with Northern Exposure Landscaping, Attorney Alan Marcuvitz, Gabrielle Davidson, Mike Davidson and Gordon Davidson.

- 2. Approval of minutes from the June 12, 2022 meeting.**

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

- 3. Continued Review for Action on Appeal of Raymond and Kaci Snisky, 7880 N. River Rd. regarding the Building Inspector's denial of a building permit application for installation of a swimming pool and related outdoor improvements and landscaping that would have a side yard setback of 43 feet and rear yard setback of 49 feet. There also is a portion of the patio to the south which encroaches closer without any dimensions. This is a violation of the Village of River Hills Ordinance Section 7.030 where the minimum side yard setback is 75 feet.**

Attorney Marcuvitz stated that the Village Attorney, Bill Dineen, reviewed the variance request and due to the home being built prior to May 1995, there is no variance required for the side yard if the homeowner chooses to move the location of the pool. If the homeowner chooses to keep the pool as designed in the backyard, a variance would still be needed.

Board member Smith inquired about the sidewall if it would be staying or being demolished. Attorney Marcuvitz stated that the side wall would be staying.

Chairman Spector questioned the new updated layouts for the pool. Milana from Northern Exposure provided full scale plans for everyone to review.

Gabrielle Davidson asked about the zoning change in 1995 which Attorney Marcuvitz explained that prior to May 1995, the setback was 20 feet and after May 1995 the setback changed to 75 feet. Since the home was built in 1995 but the original plans were submitted and approved prior to May of 1995, the old setback is followed.

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Milana reviewed the layout of the updated plans which moved the pool and landscape features closer to the house. The addition of a berm and 13 trees put on the berm will assist as a sound barrier along with blocking view. The trees will create a barrier of up to 15 feet at full size. The new design layout changes the variance request to 50.6 feet from the original 43.8 feet.

Chairman Spector asked if the pool could still be moved slightly north in order to prevent a variance. Mr. Snisky explained due to the layout of the home and the children, the suggested location would not be practical to have near the garages. Attorney Marcuvitz stated that how the home is situated on the lot is the practical difficulty. There was a discussion regarding hardship and practical difficulty.

Milana explained if they moved the pool near the garages as suggested, there would be no variance required but it ultimately ends up being closer to the Davidson's home.

Mike Davidson stated that Gordon Davidson has been living in his home for over 55 years. The home that was previously on the Snisky property was a white farmhouse. When this home was built back in 1995, he is not sure how the home was built and something must have been overlooked. After walking the property, the Davidson's are opposed to having this any closer to the patio than they are now.

Board member Smith reminded everyone that if the pool was moved to the side its closer to the Davidson home with no variance required. Both options are close to the Davidson property, the factor now is location with or without a variance.

Mike Davidson thinks the backyard would not be as close as the side yard but would like to have time to evaluate this option. Mike would also like to see a diagram from the side view. He is willing to challenge the side yard variance and would also like to consult his own Attorney.

Board members Daugherty and Beidel both assisted with the side view mapping to show the Davidson's how the side view would be infringing on their property.

Board member Beidel stated that there is no unnecessary hardship but questioned if there is practical difficulty.

Board member Daugherty would like to discuss practical difficulty with Village Attorney Dineen.

Attorney Marcuvitz defined practical difficulty and advised that the Board consult with Village Attorney Dineen as the ordinance can be interpreted differently. The reason the statute and ordinance use more than the phrase hardship is because of practical difficulty. Referencing the Village ordinance Section 7.1004(B)(2.), the section leading up to it; *"...where, owing to special conditions peculiar to a specific lot or tract of land, a literal enforcement of the provisions of this ordinance will result in practical difficulty, or unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done..."*

This is not a conjunctive; it does not say practical difficulty and unnecessary hardship it says practical difficulty OR unnecessary hardship. Attorney Marcuvitz's understanding of practical

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difficulty is the shape, size, topography of the lot and the improvements of the lot make it difficult to do what is proposed to be done. The question is, where should the pool be to be a benefit to those who live in the home. This is practical difficulty. An effort has been made to make minimal impact to neighbors. Moving the pool would alter the screening and potentially make more noise. They are not against taking more time to review with the neighbors and the Village Attorney. We should be depending on the opinion of our Village Attorney.

Board Member Daugherty mentioned the variance language about practical difficulty or unnecessary hardship. The Board has to show that an unnecessary hardship exists, according to the ordinance, this inconsistency in the statute needs to be clarified.

Board member Smith asked Attorney Marcuvitz if the spirit of the ordinance is being observed and substantial justice done. The spirit of the ordinance is we don't build next to our neighbors and we have space. With a neighbor opposing this, is the spirit being observed and are we doing substantial justice. Attorney Marcuvitz advised we discuss with Village Attorney Dineen.

Attorney Marcuvitz believes a new proposal would be ideal along with clarification from Village Attorney Dineen regarding the interpretation of practical difficulty. Multiple board members would also like clarification from Village Attorney Dineen.

Chairman Spector questioned the proposal with variance versus side yard with no variance and the location to the neighbors.

Motion by Beidel, seconded by Daugherty to postpone this decision so the Board can talk to the Village Attorney and give all parties appropriate time that they need. The Board needs to discuss the issue of practical difficulty with Attorney Dineen and how it ties into unnecessary hardship; motion carried unanimously.

The Davidson's are encouraged to seek legal advice regarding the situation per Board member Daugherty. Village Attorney Dineen is welcome to the next meeting if available. If not present, his emails are always clear and to the point.

Chairman Spector would like everyone to come back on either July 6 or July 7.

4. Adjourn

Motion by Daugherty, seconded by Smith to adjourn the meeting until the first week in July at 4:52p.m.; motion carried unanimously.

Created by Stacie Nelson, Deputy Clerk on June 23, 2022.