



**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, July 6, 2022 @ 4:00 pm**

1. **Roll Call:** was answered at 4:00p.m. by Chairman Steven Spector, Billie Smith, Don Daugherty, Chris Beidel and Kieran Donohue. Alex Hawley was absent and excused. Staff Present: Village Manager Tammy LaBorde and Deputy Clerk Stacie Nelson. Building Inspector Tod Doebler was present via zoom.

Others Present: Raymond Snisky, Attorney Alan Marcuvitz, and Gabrielle Davidson.

2. **Discussion/ Action approving of minutes from the June 21, 2022 meeting.**  
There was a correction to item #3 – change 26 feet to 50.6 feet and 43 feet to 43.8 feet. A section is to be added to include the motion to table until next meeting by Chris Beidel and seconded by Don Daugherty. Motion by Daugherty, seconded by Donohue to approve amended minutes; 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 43.8 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 7.0303 where the minimum side yard setback is 75 feet.**

Chairman Spector led the discussion regarding the review of the appeal of the Snisky property located at 7880 N. River Rd.

Attorney Marcuvitz discussed the email from Attorney Dineen regarding the side yard variance, that the only action for the board today is in regards to the side yard variance. He also clarified the front, side, and rear yard locations of the property.

Chairman Spector discussed a development from the Building Board President Tony Anea, that the Building Board denied the pool based on the large stone wall and pool slide. The Board discussed the new drawing that was presented on 6/13/22, which will be used by the Building Board for their approval. Upon further discussion this is the first time that the Board is hearing that the pool had been denied based on the stone wall and the pool slide.

Inspector Doebler mentioned that the Board asked Northern Exposure and the Snisky’s to come back with more information to examine. The information was not presented to add to what the

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Building Board had reviewed, instead the information was taken directly to the Board of Appeals. The information provided to the Board of Appeals is the information that the Building Board was requesting.

Chairman Spector verified with Mr. Snisky that they were not aware of the pool being denied. The Building Board was aware that a variance would need to be approved thru the Board of Appeals in order to continue the project. An internal discussion was had to get a variance approved first before going back to the Building Board. The Building Board asked for more details related to the elevation and a colored rendering regarding the slide and water feature, and once received it would be given to the Building Board to complete their review.

Inspector Doeblen said the plans were tabled at the Building Board until more information can be provided to them.

Board member Smith inquired as to which design would be submitted to the Building Board. Attorney Marcuvitz replied that the second design would be submitted due to all of the modifications. The Board of Appeals needs to consider the placement of the pool. The Snisky's will satisfy the Building Board's request with construction elements of the pool if the Board of Appeals grants the variance.

Board member Smith asked if the elements change or move due to recommendations by the Building Board, this then impacts the Board of Appeals. She stated that the Board cannot grant a variance in abstract. Attorney Marcuvitz agrees, asking for an area variance for the closest element of the pool to be indicated on the application before the Board of Appeals; if approved they must comply and will comply with construction elements within the space for the Building Board. If the Building Board asks for a greater variance, he stated that they are aware they will need to come back to the Board of Appeals.

Board member Smith clarified again that they are to use the exact design to be approved, if based on the 2<sup>nd</sup> plan, and if that changes, they will need to come back for any modifications. She stated they need to look at it entirely. Attorney Marcuvitz agrees and feels the changes will satisfy the Building Board or they will come back to the Board of Appeals.

Board member Smith asked everyone if they are ok based on the second plan along with the possibility of returning based on the Building Board's decision. An in-depth discussion was then had between Mr. Snisky, Board Member Smith and Attorney Marcuvitz regarding issuing a variance with all the variables and decisions to be made. Attorney Marcuvitz feels the current plan will be approved by the Building Board since the design has been improved. They plan to attend the next Building Board meeting on July 18, 2022.

Board member Daugherty questioned how is this the third meeting and we are now learning about information from the Building Board. We need to decide to keep moving forward and the process needs to be relooked at. Board member Smith mentioned that before plans are submitted to the Board of Appeals in the future, they need to know the Building Board status. Board member Beidel verified if we approve this variance, we are approving it based on the drawing dated 6/13/22.

Chairman Spector asked where is the unnecessary hardship and the practical difficulty? One neighbor is present. As per Attorney Dineen, the terms are synonymous. Do the neighbors understand if the pool is moved north closer to their patio, that an unnecessary hardship would be created?

Ms. Davidson spoke on behalf of her family and since the berm and trees will be added to make it aesthetically pleasing, they want to get along with their neighbors, the situation is a conundrum due to the location of the home. Their main concern was the resale value of their property. The setback north would be closer and they do not want that. The Davidson's are not going to pursue the matter any further.

Board member Daugherty questioned if any of the neighbors will have input at the Building Board level? Village Clerk Tammy LaBorde verified that the neighbors will be notified of the meeting.

Board member Donohue advised that the Building Board approve the design elements before sending it to the Board of Appeals for setback approval. He questioned if this the first time we have looked at something before it was approved as a building project and is this a rush to get it done now without the Building Board side completed.

Board member Smith asked if we do not approve, if they move further north, the design may change at the Building Board level, and if so, the Board of Appeals should be notified. Board member Daugherty mentioned that the pool can be conforming by moving north but will be closer to the Davidson's.

Chairman Spector asked if the unnecessary hardship is on the neighbors, the Davidson's. The hardship is moving the pool north as it would be visually unappealing, and closer to their patio.

Board member Smith mentioned that we have never found an unnecessary hardship on a neighbor. She recalled a situation regarding a chicken coop at a nearby property. Discussion was then had regarding that situation. This is the first time that we have to be very explicit that the unnecessary hardship is on the neighbors and not the home owners, and this sets a clear precedence.

Chairman Spector read the Board of Appeals Powers from the ordinance Section 7.1004 B. 2. and it clearly says "To authorize, upon appeal in specific cases.....and the records of the Board shall clearly show in what particular and specific respects an unnecessary hardship is created." and it does not specify that the unnecessary hardship is for the homeowner.

Chairman Spector claimed that each situation is different. The neighbor may have the hardship here. Board member Smith proposed that one hardship is the neighbor's position.

Attorney Marcuvitz explained that both elements are here, if you read Attorney Dineen's opinion carefully, practical difficulty that's caused here is where the home was originally built on the property, which under the ordinance makes normal amenities that you would normally be able to build in complete compliance with all of the area requirements. When practical difficulty equals unnecessary hardship and vice-versa, practical difficulty here is the basis to grant the variance.

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Balancing public interest, reflected by the participating neighbor, choosing by a correctly placed pool which would intrude on their privacy and property, they would prefer to have the absence of that impact. If the Board could phrase a motion based on practical difficulty and public interest, the variance can be granted.

Board member Donohue inquired if the pool is being moved, is a level to push the Board to issue the variance. Attorney Marcuvitz stated that no, that is not the intent.

Board member Smith questioned if the neighbor's hardship & homeowners' hardship would need to be discussed separately?

Board member Beidel cannot find hardship on the homeowner, based on the ordinance, just because he did not build the house does not make it a self-imposed hardship. Unnecessary hardship is a higher standard than practical difficulty, even though they are synonymous. Its easier to satisfy practical difficulty.

Board member Smith suggested that they vote in two parts; the owner has a hardship based upon practical difficulty, if it does not pass, they go to a second vote with the neighbors having an unnecessary hardship. Chairman Spector verified that there would be two motions, two votes if need be.

Board member Smith started to explain motion #1; to approve the plans dated 6/13/22, the exact plans to be built, the hardship is as stated by Attorney Marcuvitz by not having modern conveniences around the backyard.

Board member Daugherty stated certain practical difficulties or unnecessary hardships refers to the homeowner requesting a variance. What has been presented along with input from the neighbors, a pool will be built, maybe not contrary to interest but the alternative is less attractive. Special conditions exist due to previous builders. Practical difficulty is for the Snisky's having to comply to a setback - having the pool set back along the north side of the property the parents will not be able to see the kids in the pool. For those safety reasons, the variance should be granted.

Chairman Spector cites the implicity of the ordinance and leans toward the homeowner, but never says explicitly. This situation of unnecessary hardship could be for a concerned neighbor. In this situation, we have a neighbor who is really close, so we have to work together, and need to be more flexible.

Board member Daugherty explained that the neighbor's concerns should not be dismissed, but in his own opinion, the unnecessary hardship and practical difficulty language leans toward the homeowner not the neighbor.

Board member Beidel stated that any motion subject to this second drawing dated 6/13/22, except trees, we specify that the building itself is to the drawing and the Building Board has to take care of shading issues. The motion we make is on the structure itself.

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Motion by Board member Daugherty, seconded by Donohue that because of where the pool is situated in the back corner of the yard, the testimony from Mr. Snisky and his neighbor, the legal input from his counsel and Attorney Dineen, we have the necessary showing of practical difficulty and unnecessary hardship, and that a variance should be granted. The motion does not relate to the aesthetics of wall height or landscape issues, which the Building Board should and will consider. Chairman Spector asked if everyone understands the motion that was presented by Board member Daugherty. On roll call, motion fails 1 -Aye (Daugherty) and 4- Nay (Donohue, Beidel, Smith, Spector).

Motion by Board member Smith, seconded by Daugherty to grant a variance based on the plans submitted dated 6/13/22, that an unnecessary hardship would be the fact that the pool without a setback would be closer to the neighbors, and the unnecessary hardship is on the neighbor to the east. On roll call, motion carried 3-Aye (Daugherty, Smith, Spector) and 2 -Nay votes (Beidel, Donohue).

If they move the pool north toward the Davidson's it is not ideal, the variance has to be granted as it would be further away. To be more specific the variance is based on the condition that the second drawing dated 6/13/22 is what the Building Board would approve. If there is a denial or change in the plan at the Building Board level, the Snisky's will have to come back to Board of Appeals.

**4. Adjourn**

Motion by Daugherty, seconded by Donohue to adjourn the meeting at 5:55p.m.; motion carried unanimously.

Created by Stacie Nelson, Deputy Clerk on July 21, 2022.