

Village of Elm Grove Board of Appeals Meeting Minutes

The meeting was called to order by the Clerk at 4:13PM.

ROLL CALL:

BARRY BOOK

JOHN FINERTY

JOSEPH PUCHNER

DOUGLAS JACOBSON

GORDON GIAMPIETRO – alt

FRANK LORENZ – alt

HECTOR DE LA MORA, VILLAGE ATTORNEY

TOM HARRIGAN, ZONING AND PLANNING ADMINISTRATOR

MICHELLE LUEDTKE, VILLAGE CLERK

MINUTES:

MOTION BY PUCHNER, SECOND BY LORENZ, TO APPROVE THE MINUTES FROM JANUARY 6, 2021.

ALL IN FAVOR. MOTION CARRIED.

HEARING 1 – 14655 Juneau Blvd:

Applicant(s): Jay and Sara Schwister – owners

Neighbor(s): Grant and Sharie Sinson 1080 Madera Cir

The Clerk swore in the applicant(s), neighbor(s), and Tom Harrigan, Zoning and Planning Administrator.

Mr. Schwister was trying to be as comprehensive as he could in the letter responding to the 5 findings required to grant a variance. He and his wife would appreciate the variance because of their unique site and their other neighbors have similar setups. He understands this isn't a hardship item as noted on the agenda. He did not believe he had a setback requirement for the fireplace. His neighbor had told him between 10 and 15 years ago that there was no permit needed for this type of work. He believes the neighbors across the street with a pool and pool house also did not have setback regulations. He didn't think he needed a permit to construct the fireplace.

Mr. Finerty asked about an attached exhibit for a Waukesha County GIS map. Mr. Finerty asked if he was east of San Jose Dr. The applicant confirmed he is the one immediately east. Mr. Finerty asked if there was a problem constructing his improvement on the existing improvement and then asked if the driveway was on San Jose or Juneau. The applicant replied San Jose was where the driveway was. The applicant clarified that they did not have anything existing. It was the neighbor to the east who has a fireplace on the rear yard lot line.

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Mr. Lorenz asked if anyone has objected to the fireplace. The applicant indicated no one has. There was a huge plastic tent for masonry in the winter. Someone must have reported it and a stop work was placed on the item. Mr. Lorenz asked if the contractor asked about setbacks. The applicant stated he was under the impression there was no setback and told the contractor so.

Mr. Harrigan added he did not receive a complaint about it. Our building inspector drove past and asked if this person had gone through the proper procedures with Mr. Harrigan. Mr. Harrigan did receive an email stating there were no objections to it.

Mr. Finerty asked where on the lot the improvement would be located. The applicant indicated it was already partially constructed on the Southeast corner of the lot. In this case, it would be his east boundary which is what he is considering his rear yard.

Mr. Book asked about the property to the west off of San Jose. What is the relevancy? The applicant indicated this is another accessory structure that has no setback. His neighbor put in an outdoor fireplace right on the property line. His contiguous neighbors did not adhere to the setbacks. Mr. Book asked if it was fair to assume they didn't go through the process. The applicant stated he was not aware of the west neighbor, but his other neighbor told him there was no setback.

Mr. Lorenz asked Attorney De La Mora about the size of the fireplace. Mr. Lorenz asked if a building permit was needed. Attorney De La Mora confirmed you would need one. Attorney De La Mora added the neighbor was under the assumption he did not need one. Ordinarily a structure of this sort would need a permit.

Mr. Lorenz asked about the neighbor to the west who has no objection – is he the only one with a view of the fireplace? The applicant indicated when the leaves are off the trees, other neighbors would be able to see it.

Mr. Harrigan confirmed there are exemptions for fireplace heights. From the ground level to the top of the fireplace without the chimney is about 7.5 feet. The building board applies a 10ft height limit. It would be considered acceptable from a dimensional exception.

Mr. Book asked about the February 17th email with the three compliance items. The applicant acknowledged the email. Mr. Harrigan confirmed that items 1 and 2 have been submitted.

Mr. Puchner asked if plans for the house renovation was submitted and why the fireplace was not included. The applicant indicated they were not submitted at the same time. It was handled as a separate project.

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Mr. Giampietro asked if the contractor was the same. The applicant indicated they were different. The applicant added the contractor is Precision Restoration is completing the fireplace and started November or December of 2020 including the pouring of a footing below the frost line.

Mr. Book asked about the contractor asking for a permit. The applicant told the contractor there were no setbacks. His conversation with this neighbor was between 10-15 years ago.

Mr. Finerty asked about the exhibit in green and gold – looks like a landscaping plan. Is this the current plan? Are these improvements already there? The applicant indicated this is the current plan and that it would tie into the current house. The applicant indicated Mr. Harrigan stated some of the items on there would need to be reviewed. Mr. Finerty asked about where the stove would be located. Mr. Harrigan clarified that this item is on the southeast side of the lot and had already been constructed. Mr. Finerty added that this picture does not show the entire house and how it relates to Juneau. The applicant explained the exhibit and confirmed Juneau is not located on the exhibit. Mr. Finerty asked about the area to the right of the house – what is the masonry grill station. The applicant indicated this is not the improvement we are discussing.

Mr. Book asked Mr. Harrigan or Attorney De La Mora – looking back on the email from Mr. Harrigan. Is it accurate to say #3 should come first? Mr. Harrigan confirmed that since this is already constructed, the building board would not be able to take action on that. Attorney De La Mora indicated fast track applicants go through when there is nothing there already. With the structure there currently, the Village had no choice but to issue that stop work order that was pending this appeal. Mr. Book asked if it was fair to say that this isn't a petition for a variance but rather an appeal. Attorney De La Mora indicated it is a little of both. The work taking place was not in conformance with the ordinance. The application would relax the ordinance. This would be both a variance and appeal. This meeting would allow for the continuation of the work which is currently stopped.

Attorney De La Mora indicated that this construction as the applicant's home has been going on for about three years. Are they residing in the home? The applicant indicated no. When the work was commenced were they in town? Yes. They live about two miles away in a townhome. In reference to the renderings – have they had the chance to speak with neighbors to the east and south? They have not. Have they seen those plans? They applicant was not sure. Would it be fair to say that since the stop work order was issued, they have not talked to the neighbors? The applicant was not sure if it was appropriate. He didn't understand the process.

Mrs. Schwister indicated she would like to add that it was a reasonable assumption on their part based on their neighbors it would not appear there were any setback rules or permits needed.

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Dr. Sinson – 1080 Madera – neighbor of them have made any complaints about this. They have worked hard to adhere to the rules of the village. He doesn't have any vote in the decision, but looking at the big picture here – he would want to know some information. They have had one or two interactions with the Schwister family. The Schwister family have had detailed recollection of the ordinance of Elm Grove and would have known about the setbacks. Much of this hangs on the neighbor who doesn't live there any longer. If they decide this is ok, they have no issue. If he was in the position of the BOA, he would want to know that.

Attorney De La Mora would like to ask a question to the neighbor. Does he as a neighbor have an objection to the structure and the foundation at this point in time? Dr. Sinson does not have a specific objection. What we do on our own property is what we decide and what is permitted.

No comments from Mrs. Sinson

CONVEINE INTO CLOSED SESSION

MOTION BY GIAMPIETRO, SECOND BY PUCHNER, TO CONVIENE INTO CLOSED SESSION.

**ROLL CALL VOTE-
YAY-BARRY BOOK
YAY-JOHN FINERTY
YAY-JOSEPH PUCHNER
YAY-DOUGLAS JACOBSON
YAY-GORDON GIAMPIETRO - alt
YAY-FRANK LORENZ – alt**

MOTION CARRIED.

RECONVIENED INTO OPEN SESSION

The findings of fact were as follows:

Attorney De La Mora excused himself at 5:10pm.

- a. Deny the request
 - i. Structure in clear violation of setback requirements; and
 - ii. Reliance on hearsay of neighbor as opposed to consulting with staff is unreasonable; and
 - iii. This is a self-imposed hardship

ADJOURNMENT

There was no further business.

Wednesday , April 21 , 2021

4:00 PM

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MOTION BY LORENZ, SECOND BY JACOBSIN, TO ADJOURN THE MEETING.

ALL WERE IN FAVOR. MOTION CARRIED. MEETING ADJOURNED AT 5:11pm.

Minutes transcribed by: Michelle Luedtke

Minutes Approved on: June 14, 2021