

Village of Elm Grove Board of Appeals Meeting Minutes

The meeting was called to order at 4:00 p.m.

ROLL CALL

FRANK LORENZ, Chairman  
RICHARD SCHAEFER  
AARON DUCH  
JOHN ALLEN  
DOUGLAS JACOBSON – absent  
GORDON GIAMPIETRO – via Zoom  
JESS RIPP

HECTOR DE LA MORA, VILLAGE ATTORNEY  
KATHERINE GEHL, ZONING & PLANNING ADMINISTRATOR  
SANDEE POLICELLO, VILLAGE CLERK

Attorney de la Mora gave an orientation to the Board as there are several new members.

MINUTES

The Minutes of April 11, 2023 were discussed. Mr. John Allen noted that the seconder of the motion to reconvene into Open Session was Mr. Frank Lorenz and not Mr. John Allen.

**MOTION BY ALLEN, SECOND BY DUCH, TO APPROVE THE MINUTES OF APRIL 11, 2023, AS AMENDED. ALL IN FAVOR. MOTION PASSED UNANIMOUSLY.**

HEARING – 1035 TERRACE DRIVE

Applicants: Anita and John Steindorf, Homeowners

The Clerk administered an oath to Anita Steindorf and Gary Urban, Hawks Landscape Inc.

Anita Steindorf, the property owner at 1035 Terrace Drive, is requesting a variance from sec. 335-17H. Within the RS-1 Zoning District, the maximum allowable building footprint per individual property is 20% of lot area and the maximum allowable impervious surfacing per individual property is 30% of lot area. The existing property is classified as legal non-conforming as the existing impervious surface exceeds the maximum allowable percentage as permitted by Code. The total square footage of the property in question is 17,825 square feet. The existing total impervious surface is 6,259 square feet, or 35.11%.

The homeowner is requesting to make landscaping changes which would decrease the total impervious surface to 6,224 square feet, or 34.92%. The applicant is proposing to renovate

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their backyard patio to expand their deck, to construct a walkway leading from their driveway to their deck, and to expand their existing patio. The proposed reconfiguration of the backyard landscaping would create a net decrease of .19% of the amount of total impervious surface.

Ms. Steindorf gave testimony that she moved into her home in 2000. She explained that at that time the backyard had a large grassy area, a large vestibular area, and a patio with pavers that led from the patio to the driveway. She installed additional lannon stone pavers. Ms. Steindorf noted that Hawks Landscape Inc. has prepared the proposed improvements.

Mr. Urban explained that the proposal involves adding a deck, patio, outdoor kitchen area, and backyard fireplace. Some existing pavers will be removed resulting in a slightly reduced patio size. The proposed level of impervious surface is 34.92%. The applicant explained that they are asking for this variance to improve the property. She believes they meet the preservation of intent requirement and explained that they were unaware they were non-conforming when the home was purchased was their exceptional circumstances. That applicant noted that she does not believe she meets economic hardship. Ms. Steindorf noted that she meets preservation of property rights because a neighbor, the Sheily's, were recently granted a similar variance – they reduced their overall impervious surface to 35%. Ms. Steindorf doesn't believe she is creating an absence of detriment as neighbors were sent a letter and no one has come forward to object to the plan.

Mr. Gordon Giampietro asked the homeowner to confirm that when the home was purchased she was non-conforming. Ms. Steindorf noted that is her understanding.

Mr. John Allen asked who did the calculations that are noted on the proposed landscaping plan. Ms. Steindorf said Hawks Landscape Inc. did them. Mr. John Allen asked what changes are being made to the existing landscaping. Ms. Steindorf said if you were to take the deck area indicated on the map and remove it, you would see a dotted line which is the existing patio; everything else is currently grass. The pavers in the semi-circle are existing pavers and are what she added after moving in. She explained that those pavers would be removed and replaced with a walkway. Mr. John Allen said it looks like the patio is increasing measurably, so he is wondering where else impervious surface is being reduced. Ms. Steindorf said she agreed with Mr. John Allen and asked Mr. Gary Urban to comment.

Ms. Katherine Gehl confirmed that the deck was not included in the impervious surface calculation. Mr. Urban said the deck was not included as it is permeable.

Chairman Frank Lorenz asked for clarification that they are slightly decreasing the impervious surface. Ms. Steindorf confirmed that as accurate.

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Mr. Jess Ripp inquired if there is a definition of impervious surface in the municipal code. Ms. Katherine Gehl said that any material that prevents rain, water runoff, melting snow to absorb into the ground below is considered impervious.

Mr. Gordon Giampietro asked if the proposed numbers of impervious surface are assumed correct. Attorney de la Mora said we should hear from the next witness regarding the calculations.

Mr. Gary Urban, landscape architect with Hawks Landscape Inc., referred to the drawing. Some of the current impervious surface will be removed where the new deck will be installed. 35 Steppers at approximately 1' x 1' are proposed to be removed on the south side of the home.

Mr. Aaron Duch inquired regarding the pavers, which will most likely be a clay paver with sand. He asked if it is considered impervious surface if sand is used. Mr. Gary Urban does not believe that would meet the definition of a permeable surface. He prefers not to install that type of walkway to preserve the trees in the area.

Mr. Gordon Giampietro spoke regarding criteria of burden of proof. He asked if there is a dispute in the percentages presented. When Attorney de la Mora asked if he had any calculations that would back up the percentage figures, Mr. Gary Urban referred to the information on the landscaping plan.

Mr. John Allen asked if the Village computes those calculations independently or if they rely on the submitted documents. Mr. Gary Urban noted that they used a certified survey map.

Attorney de la Mora read the definition of "permeable surface" from the code, section 335-94.

Attorney de la Mora asked Ms. Katherine Gehl to look up and add to the record the rationale regarding the restriction relative to impervious surface. Ms. Katherine Gehl read the impervious surface limitation from the code, section 335-17 (H).

Attorney de la Mora said the Village attempts to limit runoffs onto neighboring properties by enforcing the impervious surface limitations to enable properties to absorb water.

Ms. Katherine Gehl stated the impervious surface ordinance was established prior to 2000 and because changes are being proposed, it would need to come down to the current standard of 30% to be conforming.

Mr. Gordon Giampietro asked if the Shiely determination is part of the record. Attorney de la Mora said based on that record being able to be retrieved, they can look at it.

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Attorney de la Mora said approximately 15 years ago there was a lawsuit by the Attorney General brought against Milwaukee Metropolitan Sewerage District (MMSD) and most of the communities serviced by MMSD with regard to stormwater runoff. The settlement agreed to by all of the sued parties required them to enforce regulations relative to impervious surface. This was done because communities were not routinely enforcing storm water runoff regulations. The Village at that point started to vigorously enforce impervious area limitations in connection with new development plans. We have had cases where people have reduced planting areas and replaced them with paved surfaces and those cases have been vigorously enforced despite being contested.

Mr. Jess Ripp said this is a common occurrence – if a non-conforming building has a fire, the repairs need to meet current Code requirements.

Mr. Gordon Giampietro stated he agrees; however, the applicant is making an improvement to the permeable surface of the property.

Ms. Katherine Gehl said the existing use can be continued even though it does not fully conform to the Code; however, the existing amount of impervious surface is being reduced.

Mr. John Allen said the new plan is making a very minimal change to the impervious surface percentage.

Ms. Steindorf said she did some calculations – homes are allowed to be 20% of the lot area and her home is less than that area. She would like that to be considered by being allowed to put an addition to the home that involves the proposed deck.

Mr. Aaron Duch asked Ms. Steindorf how she would proceed if the variance was not granted. Ms. Steindorf said they would leave what they have currently.

**MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY MR. GIAMPIETRO, SECOND BY MR. ALLEN. ALL IN FAVOR. MOTION PASSED UNANIMOUSLY.**

CONVENED INTO CLOSED SESSION

**MOTION BY MR. GIAMPIETRO, SECOND BY MR. ALLEN, TO CONVENE INTO CLOSED SESSION.**

**ROLL CALL VOTE:  
AYE-FRANK LORENZ  
AYE-RICHARD SCHAEFER  
AYE-AARON DUCH**

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**AYE-JESS RIPP  
AYE-JOHN ALLEN  
AYE-GORDON GIAMPIETRO**

**ALL IN FAVOR. MOTION PASSED UNANIMOUSLY.**

**CLOSED SESSION BEGAN AT 4:59 P.M.**

RECONVENED INTO OPEN SESSION

**MOTION BY MR. LORENZ, SECOND BY MR. ALLEN, TO RECONVENE INTO OPEN SESSION.  
ALL IN FAVOR. MOTION PASSED UNANIMOUSLY.**

**RETURN INTO OPEN SESSION AT 5:15 P.M.**

OPEN SESSION

**MOTION BY MR. GIAMPIETRO, SECOND BY MR. LORENZ, TO APPROVE THE VARIANCE  
REQUEST.**

The basis for the decision includes the preservation of the intent of the applicable code section, exceptional circumstances, consideration of the precedent of the Shiely case and the absence of detriment.

Mr. Gordon Giampietro stated the Board of Appeals believes the variance should be granted as with similar facts in the Shiely decision.

**VOTE:**

**AYE-FRANK LORENZ  
AYE-AARON DUCH  
AYE-JESS RIPP  
AYE-JOHN ALLEN  
AYE-GORDON GIAMPIETRO**

**NAY-RICHARD SCHAEFER**

**MOTION CARRIES: 5 - 1**

ADJOURNMENT

There was no further business.

Wednesday, May 24, 2023

4:00 PM

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**MOTION BY MR. ALLEN, SECOND BY MR. RIPP TO ADJOURN THE MEETING. ALL IN FAVOR.  
MOTION PASSED UNANIMOUSLY.**

**MEETING ADJOURNED AT 5:17 P.M.**

Minutes transcribed by: Sandee Policello

Minutes Approved on: July 24, 2023