

VILLAGE OF ELM GROVE
BOARD OF APPEALS
Tuesday, October 29, 2019 * 5:00 p.m.

Present: Barry Book Chairman, John Finerty, John Allen, and Joe Puchner. Gordon Giampietro by phone.
Doug Jacobson and Frank Lorenz excused.
Village Clerk Mary Stredni, Zoning/Planning Administrator Tom Harrigan, and Village
Attorney Hector de la mora.

1. Roll Call

Chairman Book brought the meeting to order at 5:00 p.m. Mary Stredni took the roll.

2. Minutes

Puchner and Allen moved and seconded to approve the September 24, 2019 minutes. Motion carried.

3. Consideration, hearing, and action on request for appeal Variance – 12975 Elmwood Rd.

Mary S Stredni swore in Susan Baumann, Ron Klassen, and Tom Harrigan.

Baumann testified that she has a one car garage and cannot fit a lawn mower, snow blower, tools, etc. in the garage. In 2010 she fell and as a result still has major hand and back issues. The yard slopes down in the rear, making it difficult to place a shed in the back yard.

Puchner asked if she had looked at placing the shed further from the road. Baumann testified that it is as far back on the blacktop as possible. Klassen stated that if put to the side of the garage near the rear, would need to backfill and level off. Would take approximately 6 – 10 yards of fill.

Book clarified that the shed would sit on the blacktop portion of the driveway. Finerty inquired as to whether the shed would be illuminated at night. Baumann stated that no it would not.

Janice Jones, 12905 Elmwood, was sworn in. Testified that she is concerned with the placement of the shed as it is in her sight line. Her opposition is that she has been told that a shed in a front yard, next door to her property, will decrease the value of her property. Also concerned with the boundary line. Harrigan verified that there is no boundary issue. The shed will be entirely on the property owned by Baumann. Jones' house is at a minimum 20 feet from the lot line. Jones stated that she has no issue with the look of the shed.

Puchner verified that a variance is needed for both street yards as the property is on a corner.

Giampietro asked why the shed cannot be placed farther back on the property. Klassen stated that the portion of the property is only flat for a small part then slopes down three feet.

Book stated that there is no evidence that placing the shed in the front of the property will cause neighbor's property to decline in value.

Klassen testified that if the shed was placed farther back, it would need to be turned so that the doors could open and that is why more fill would be needed.

As there was no more testimony, Chairman Book closed this portion of the hearing.

4. Consideration, hearing, and action on request for appeal of Building Board decision – 13450 Brook Ave

Mary S Stredni swore in Gerard Rewolinski, Molly and Dick Berens, and Tom Harrigan. Rewolinski testified that it is his belief that the Building Board was subjective in the decision. Did not apply for a permit or for approval for the piers as he did not believe that they were needed and therefore the piers were installed. As soon

as he was notified that piers are considered a structure by the Village of Elm Grove, he completed the appropriate paperwork and applied for approval by the Building Board. The item went before the Building Board three times.

At the September 3, 2019 Building Board meeting, as there was no one present and the Board members had questions, the item was tabled. At the September 17, 2019 Building Board meeting, Rewolinski was present to answer questions. He provided photos and in his opinion the piers are constructed of materials that are similar to the homes' patio seat walls and columns. The pier caps match the caps on the patio seat wall and columns. Stated that he has a problem with the words 'similar, compatible, at variance' which the Building Board used as they are all subjective.

Provided examples throughout the Village of driveway piers which are not 'harmonious or similar'. Testified that the Building Board made a more subjective decision than based on the Code of Ordinances. Has signed letters from the neighbors who do not object to the driveway piers as they are not industrial looking and are 'harmonious'.

Attorney de la mora referred to the burden of review of the Building Board and cited §7-1 A-B:

- A. No building permit required under this code of Ordinances for any structure shall be issued unless the Building Board has first issued an explanatory decision consisting of a determination that, when erected, the proposed exterior architectural appeal and functional plan shall be either:
 - (1) So at variance with, nor so similar to the exterior architectural appeal and functional plan of structures under construction or existing in the immediate neighborhood, as to tend to pose an adverse impact on aesthetic values of the immediate neighborhood within the applicable zoning district; or
 - (2) So at variance with the intended character of the applicable district established by Chapter 335 Zoning, as may be amended or supplemented, as to tend to pose an adverse impact on the aesthetic values of the immediate neighborhood within the applicable zoning district.
- B. The determination required in §7-1A shall require no less than a majority vote.

§7-4 Filing of decisions

- C. In all instances the decision of the Building Board must contain explanatory findings with respect to these two questions:
 - (1) will the exterior architectural appeal and functional plan of the proposed structure be so at variance with or so similar to the exterior architectural appeal and functional plan of structures under construction or existing in the immediate neighborhood, as to tend to pose an adverse impact on aesthetic values in the immediate neighborhood within the applicable zoning district?
 - (2) Will the exterior architectural appeal and functional plan of the proposed structure be so at variance with the intended character of the applicable district as stated in Chapter 335, Zoning, as may be amended or supplemented, as to tend to pose an adverse impact on the aesthetic values in the immediate neighborhood within the applicable zoning district?

§7-5 Appeals

- B. On appeal, factual findings by the Building Board may be overturned only when, upon examination of the entire record, the evidence, including the inferences therefrom, is such that a reasonable person could not have reached the same decision from the evidence and its inferences. An interpretation of Chapter 335, Zoning, by the Building Board shall be upheld on appeal if it is reasonable and if it is not contrary to the clear meaning of the chapter.

Attorney de la mora questioned Rewolinski whether he knows that the piers were considered a structure and needed Building Board approval. Rewolinski stated that he did not ask if a permit

where needed; constructed the piers and then found out that the item did need to go before the Building Board.

Rewolinski stated that the Building Board was subjective in nature. There is no negative impact on the neighborhood. He referred to his letter dated October 14, 2019 which refers to §335-88(D)(j)[1] Accessory structures...shall be designed to be harmonious with the architectural character, concept and style of the primary structure. Materials shall be compatible with respect to size proportion, materials and colors of the principal structure. Stated that he and the applicants feel the piers, as designed, meet the integrity of the code in respect to compatibility, harmony, and community character.

Finerty asked if the problem was with the color of the piers. Rewolinski stated that they are cream/beige with a red band which is similar to the home.

Mr. Berens stated that if they have to remove the piers they will, but do not understand why they are not all right. Mrs. Berens stated that the photos of the pier may not show the color correctly. The red is the color of the house. The cream brick of the piers is the same as the sills on the windows.

As there was no more testimony, Chairman Book closed this portion of the hearing.

5. Convene into closed session

By roll call vote at 6:02 p.m. the Board convened into closed session pursuant to Wis. Stats. §19.85(1)(a) to deliberate the above referenced quasi-judicial hearings.

6. Reconvene into open session

The Board reconvened into open session at 6:26 p.m. Chairman Book stated that:

12975 Elmwood Road – the Board of Appeals grants the variance.

13450 Brook Ave – the Board of Appeals determined to remand the matter back to the Building Board as the minutes are not sufficient for the Board of Appeals to render any decision; the findings and reasons for the denial are not clear

7. Adjourn

At 6:27 p.m. Finerty and Allen moved and seconded to adjourn. Motion carried.

Respectfully submitted,

Mary S. Stredni
Village Clerk