

VIRTUAL ZONING BOARD OF APPEALS MEETING MINUTES
THURSDAY, DECEMBER 19, 2024
LARGE MEETING ROOM – SISTER BAY-LIBERTY GROVE FIRE STATION
2258 Mill Road, Sister Bay, WI
APPROVED VERSION

Agenda Item 1. Call Meeting To Order: The December 19, 2024 virtual meeting of the Sister Bay Zoning Board of Appeals was called to order by Chairperson Tom Sadler at 6:03 P.M.

Agenda Item 2. Roll Call: Chairperson Sadler and Board members Pat Wisner, Deb Duren, Hristo Blagoev, and Liz Hecht. Board member Terry Kelly arrived at 6:08 P.M.

Staff Members: Village Administrator/Zoning Administrator Julie Schmelzer, Administrative Assistant Janal Suppanz, and Village Attorney Randy Nesbitt.

Others: The Appellant, Ellen Roberts, Attorney Thomas Gartner, Attorney Dan Gawronski, Kurt and Laurel Harff, Mark Waeghe, and “Barb”.

Agenda Item No. 3. Approval of the Agenda:

Motion by Wisner, second by Hecht that the Agenda for the December 19, 2024 meeting of the Village of Sister Bay Zoning Board of Appeals be approved as presented. Motion carried – All ayes.

Agenda Item No. 4. Approval of the minutes for the last meeting of the Zoning Board of Appeals:

Motion by Sadler, second by Duren that the minutes for the September 30, 2024 meeting of the Zoning Board of Appeals be approved as presented. Motion carried – All ayes.

Agenda Item No. 5. Administrative Appeal – Douglas B. Roberts and Ellen B. Roberts; 10631 Little Sister Road; R-1 Zoning District:

Sadler, who is the Chair of the Village’s Zoning Board of Appeals, introduced himself as well as the other Zoning Board of Appeals members and the Village Attorney, Randy Nesbitt, and briefly explained the procedures that would be adhered to during this hearing. He also noted that the members of the Board of Appeals, who are bound by the provisions of the Wisconsin Statutes, are appointed by the Village Board, and they have been charged with hearing appeals of decisions that are made by the Village Administrator and/or the Village’s Plan Commission as well as requests for variances.

On November 6, 2024 Attorney Thomas Gartner filed an appeal of the decision of Julie Schmelzer, the Village Administrator/Zoning Administrator, that a Zoning Permit could not be issued for the home that Douglas and Ellen Roberts would like to construct at 10631 Little Sister Road because the height of that residence would exceed the allowable building height of 35 feet that is delineated in the Village’s Zoning Code. (That property is located in the R-1 - Single Family Residence Zoning District, and all the required documentation was filed in a timely fashion and was included in the digital packets for this meeting.)

Sadler explained that a Public Hearing would be conducted regarding this matter, and also indicated that anyone who was present who wished to testify in favor of Mr. and Mrs. Roberts’ appeal would be given an opportunity to do so after Attorney Gartner has presented Mr. and Mrs.

1 Roberts' case to the Board. After the Board has heard from everyone who is in favor of granting
2 the appeal, the Village Administrator as well as those who are opposed to it will be given an
3 opportunity to testify, and finally, each side will be allowed to briefly present rebuttal testimony;
4 after which the hearing will be closed and the members of the Board will commence their
5 deliberations.

6
7 *At 6:06 P.M. Sadler called the Public Hearing on the appeal that was filed by Attorney Gartner on*
8 *behalf of Mr. and Mrs. Roberts to order, and then requested that Suppanz read the Notice of Public*
9 *Hearing that was published and posted aloud, and she complied with that request.*

10
11 *Attorney Gartner was subsequently sworn in by Attorney Nesbitt, and he explained that he would*
12 *be representing Mr. and Mrs. Roberts at this hearing and would be serving in an "of counsel"*
13 *capacity on behalf of the law firm of Michael, Best & Friedrich. He went on and explained that he*
14 *would be joined by Attorney Dan Gawronski of Michael, Best & Friedrich as well as Mark Waeghe,*
15 *the builder who has been hired to construct Mr. and Mrs. Roberts' new home.*

16
17 *Attorney Gartner stated that he believes this is technically "a very simple case" as the Sister Bay*
18 *Zoning Code contains a clear and unambiguous definition of "building height", which clearly sets*
19 *forth how building height is to be measured. That definition is also referenced in an illustration*
20 *which graphically depicts exactly how such measurements are to be made, and it is Mr. and Mrs.*
21 *Roberts' position that their proposed building elevation drawings clearly show that the height of*
22 *their new home will be 27' 5", (give or take 1 ¼") as there might be a slight height deviation once*
23 *the final grade is established, but no matter what, the height of their new home will not exceed*
24 *the maximum allowable building height of 35'. He then requested that the Board members refer*
25 *to the Notice of Appeal that was filed with respect to this issue as well as Exhibit A (the decision*
26 *that was received from Schmelzer that is dated October 30, 2024), Exhibit B (the definition of*
27 *"Building Height" that appears in the Village's Zoning Code), Exhibit C ("Illustration No. 6" that*
28 *also appears in the Zoning Code), and the related elevation drawings and floor plans that have*
29 *been labeled Exhibit D. In conclusion he indicated that because the measurements submitted to*
30 *the Village are consistent with the provisions of the Zoning Code, the Roberts are contending that*
31 *the Zoning Board of Appeals must find that the Village Administrator erred by determining that*
32 *the height of their new home will exceed 35'.*

33
34 *Mr. Waeghe was sworn in by Attorney Nesbitt and he confirmed that he is the builder who will be*
35 *working on Mr. and Mrs. Roberts' new home. He went on and indicated that based upon his*
36 *understanding of the provisions of the Village's Zoning Code and the prescribed methodology to*
37 *be utilized when making building height calculations, the highest point of Mr. and Mrs. Roberts'*
38 *new home, excluding the chimney, will be 27' 5". He also indicated that the grade at the*
39 *foundation line of the new home will be a couple inches below the top of the foundation and will*
40 *slope outward, which could add approximately 1 ¼" to the home, but the grade will actually vary*
41 *depending upon the type of landscaping that is utilized.*

42
43 *Sadler asked what the measurement will actually be at the back of Mr. and Mrs. Roberts' new*
44 *home, and Mr. Waeghe responded that he does not know what that measurement will be as it*
45 *was determined by the draftsman that worked on the plans originally, but it appears to have been*
46 *taken from the patio grade, which is essentially the floor grade of the basement.*

1 *Attorney Gawronski was sworn in by Attorney Nesbitt, and he stated that it is his understanding*
2 *that the measurement from the basement walkout grade to the highest elevation on the back of*
3 *Mr. and Mrs. Roberts' new home will be 37' 11". He also pointed out that copies of letters which*
4 *were sent by Lance and Bridget Crane, T.A. and R.M. Downey, David and Carole Frykman, Nicholas*
5 *and Katherine Gerrits, John and JoEllen Stollenwerk, David and Randall Johnson, Paul and Cathy*
6 *Luber, and Michael and Sarah Mercurio, were all included in the digital meeting packets. (In their*
7 *letters all of the previously mentioned individuals indicate that they own property on Little Sister*
8 *Road and support the Roberts' appeal. They also indicate that they not only believe Mr. and Mrs.*
9 *Roberts' home is "consistent" with the existing neighboring homes, but also believe it will be "a*
10 *wonderful addition to their neighborhood".)*

11
12 *Attorney Gartner stressed that the height at the rear of the building is irrelevant as the Village's*
13 *Zoning Code clearly states that measurements must be made from the "front of the building", and*
14 *then indicated that the appellants did not wish to present any further testimony at this time.*

15
16 *Sadler asked if anyone else would like to comment in favor of granting Mr. and Mrs. Roberts'*
17 *appeal, and when no one responded he noted that Schmelzer would then be given an opportunity*
18 *to present rebuttal testimony.*

19
20 *Schmelzer was subsequently sworn in by Attorney Nesbitt, and she explained that the plans for*
21 *Mr. and Mrs. Roberts' new home were originally prepared by the employees at Great Northern*
22 *Construction. There have been allegations that the Roberts' home will be a one story building, but*
23 *there is a set of stairs in the home, and the previously mentioned plans clearly indicate that it will*
24 *contain two floors. Portions of the home are also "stepped" or "sloped". She then read a prepared*
25 *statement aloud, and a copy of that document is hereby attached and incorporated by reference.*
26 *In conclusion Schmelzer pointed out that Sister Bay is a community that prides itself on being a*
27 *very scenic area, and also noted that Village officials have "gone on record" as stating that they*
28 *definitely want to protect the fantastic views that can be afforded from many different vantage*
29 *points throughout the Village. To that end the maximum allowable building height that is allowed*
30 *in the Village is "35' period". Village officials did determine that "averaging" could be done across*
31 *the front of buildings because they realize there are topographical variances, but in this case Mr.*
32 *and Mrs. Roberts' home was designed in such fashion that it simply does not satisfy the provisions*
33 *of the Zoning Code, and, therefore she could not grant the required approvals that would*
34 *ultimately lead to the issuance of a related Zoning Permit.*

35
36 *Sadler asked if the Zoning Board of Appeals members had any questions for Schmelzer, and when*
37 *no one responded he asked if anyone else who was present would like to testify against the*
38 *granting of the previously mentioned appeal. No one responded, and, therefore, he asked if*
39 *Attorney Gartner, Attorney Gawronski, or Mrs. Roberts would like to present any rebuttal*
40 *testimony.*

41
42 *Attorney Gartner noted that he firmly believes Mr. and Mrs. Roberts have a vested right in being*
43 *able to rely on the Village's Zoning Code "as it is written", and reiterated that the previously*
44 *mentioned definition of "building height" clearly states that any measurements that are taken of*
45 *a building must be made from the highest point at the "front" of that building. In conclusion he*
46 *noted that whether the Roberts' home is stepped or terraced, or contains one or two stories, the*
47 *maximum height requirements that are clearly delineated in the Zoning Code will not be*

1 exceeded. The Zoning Board of Appeals has been charged with determining whether Schmelzer's
2 interpretation of the height of Mr. and Mrs. Roberts' new home will be "consistent" with the
3 definition of that term "as it appears in the Zoning Code at this time", and the Roberts are
4 contending that Schmelzer's interpretation is clearly erroneous. They also believe that since the
5 previously mentioned illustration is included in the Zoning Code, it must be taken into
6 consideration when the Board members conduct their deliberations.

7
8 Attorney Gawronski pointed out that the stairs that Schmelzer referred to lead to an unfinished
9 basement, and Mr. Waeghe confirmed that fact. He also noted that no "segment" of the proposed
10 building will be over 35' high.

11
12 Sadler asked if Schmelzer would like to present any rebuttal testimony, and she stressed that
13 Illustration No. 6 was merely intended to be utilized as a "guide", but also noted that there is no
14 reference to that illustration in the Zoning Code. She then read the definition of Building Height
15 that appears in the Zoning Code aloud, and pointed out that the previously mentioned plans
16 indicate that a "segment" of the rear elevation "is hitting on 37'6". She also indicated that there
17 is no definition for the term "segment" in the Zoning Code, and stated that she does not
18 understand how anyone cannot consider the lower level of Mr. and Mrs. Roberts' home to be
19 "living area" as the rooms depicted on the previously mentioned plans have clearly been labelled
20 "Bedroom 3", "Bedroom 4", "Rec. Room", and "Bar Area".

21
22 *On several occasions Attorney Gawronski attempted to make interjections while Schmelzer was*
23 *presenting her rebuttal testimony or ask her questions, and at one point he indicated that he*
24 *wanted the record to show that Schmelzer had referred to an "incorrect number". Schmelzer raised*
25 *objections to all of this behavior, and her objections were ultimately upheld by Sadler.*

26
27 *At 7:04 P.M. Sadler declared that the Public Hearing was officially closed.*

28
29 **Agenda Item No. 6. – Administrative Appeal Discussion and Action:**

30 Discussion took place regarding Mr. and Mrs. Roberts' appeal, and during that time Sadler
31 requested that each of the Board members voice their opinions about this issue and the testimony
32 that had been presented this evening, and they all complied with that request.

33
34 *A motion was made by Wisner, seconded by Sadler that the Zoning Board of Appeals finds that*
35 *Julie Schmelzer, the Village of Sister Bay Administrator/Zoning Administrator, did not err when she*
36 *decided that a Zoning Permit could not be issued for the home that Douglas and Ellen Roberts*
37 *would like to construct at 10631 Little Sister Road, as the height of the proposed residence would*
38 *exceed the allowable building height of 35 feet that is delineated in the Village's Zoning Code.*
39 *Now, therefore, the Zoning Board of Appeals hereby upholds said determination.*

40
41 *A roll call vote was taken on that motion, and the Board members voted in the following fashion:*

42
43 *Sadler – Aye; Blagoev – Aye; Hecht – Nay; Duren – Nay; Kelly – Nay; Wisner – Aye.*

44
45 *At that point Sadler declared that since there had been a "tie vote" the previously mentioned*
46 *motion had failed.*

1 A motion was then made by Kelly, seconded by Duren that the Zoning Board of Appeals finds that
2 Schmelzer erred when she decided that a Zoning Permit could not be issued for the home that
3 Douglas and Ellen Roberts would like to construct at 10631 Little Sister Road as the height of the
4 proposed residence would exceed the allowable building height of 35 feet that is delineated in the
5 Village's Zoning Code. Now, therefore, the Zoning Board of Appeals hereby grants Mr. and Mrs.
6 Roberts' appeal.

7
8 Another roll call vote was taken, and the Board members then voted in the following fashion:
9

10 Sadler - Nay; Blagoev - Nay; Hecht - Aye; Duren - Aye; Kelly - Aye; Wisner – Nay
11

12 Since there was also a "tie vote" on that motion, Sadler declared that it had likewise failed.
13

14 Sadler asked if any of the Board members felt that further discussion on this issue would be fruitful,
15 or, if they didn't deem that action to be necessary, if any of them would consider changing their
16 vote on either of the previously mentioned motions, but no one responded. At that point Nesbitt
17 explained that because both of the previously mentioned motions had failed, and it did not appear
18 that any of the Board members were interested in having further deliberations or would change
19 their minds, a motion to adjourn would be in order.
20

21 Suppanz stated that it is her understanding that if the meeting is adjourned at this point a Findings
22 of Fact and Conclusions of Law will still be required, but in light of the circumstances, that
23 document must reflect that the because there were "tie votes" on both of the previously
24 mentioned motions the members of the Zoning Board of Appeals determined that they will not be
25 in a position to reach a decision on the previously mentioned appeal, and, therefore, a formal
26 Decision document will not be drafted and/or filed. Attorney Nesbitt confirmed that that would
27 be the proper course of action.
28

29 **Adjournment:**

30 At 7:19 P.M. a motion was made by Duren, second by Kelly that the December 19, 2024 meeting
31 of the Village of Sister Bay Zoning Board of Appeals be adjourned. Motion carried – All ayes.
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33 Respectfully submitted,

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35 Janal Suppanz,
36 Administrative Assistant
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