

VILLAGE OF FONTANA ON GENEVA LAKE
WALWORTH COUNTY, WISCONSIN
(Official Minutes)

ZONING BOARD OF APPEALS HEARING

Wednesday, September 29, 2021

Chairperson Peg Pollitt called the Hearing of the Village of Fontana Zoning Board of Appeals to order at 10:00 am in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

Board of Appeals members present: Roll call vote: Derek D’Auria, Peg Pollitt, Jim Feeney, Curtiss Behrens

Also present: Bruce Adreani, James Duquette, Kathy Gutenkunst, Mike Leiser, Theresa Loomer, Bonnie Schaeffer, Mike Slavney, Nancy Smith, Randall Smith, Stephanie Smith, Tom Smith, Dale Thorpe, Wes Webendorfer

Business

Approval of Minutes

The minutes were distributed to Board Members via email.

Feeney/D’Auria 2nd made a MOTION to approve the minutes from November 17, 2020, and the MOTION carried without negative vote.

Public Hearing held for the limited purpose of “examining and considering Randall and Nancy Smith’s variance application relative to the purpose of the 50-foot Minimum Shore Yard Setback as set forth in Ord. Section 18-32” of the Fontana Municipal Code as to the property located at 637 Cherry Drive, Fontana, WI, Tax Parcel No. SCB 00005.

The public hearing was opened at 10:01 am. Attorney Dale Thorpe explained the original variance was granted on September 15, 2020, and an appeal was filed by a neighbor resulting in a hearing. On July 19, 2021, Judge David Reddy provided an oral ruling, remaining the case to the Zoning Board of Appeals for the purpose of examining and considering the purpose of the fifty foot minimum shore yard setback. The public hearing being held today is only to examine and consider the purpose of the shore yard setbacks and not change any prior decisions. Attorney Thorpe read the oral ruling from Judge Reddy dated July 19, 2021, as well as the information pertaining to today’s public hearing from the transcript. Attorney Thorpe took a few minutes to review the rules and procedures for the Zoning Board of Appeals Members and referenced unique Board of Appeals cases. Village Planner Mike Slavney was present and shared a memo dated September 23, 2021, which described the purpose of the fifty-foot shore yard setback. The memo dated September 23, 2021, from Village Planner Mike Slavney was labeled as Village Exhibit No. 1. Attorney James Duquette was present and representing his clients Randall and Nancy Smith. Attorney Duquette briefly reviewed the context of the variance and the ruling. Attorney Duquette stated the ruling is not asking the Zoning Board of Appeals to overturn or reverse the variance granted, but to consider and examine the purpose of the shore yard setbacks. Duquette explained the current home is less than ten feet from the shore yard and the proposed home would have a shore yard setback of thirty feet. Reference was made to Mike Slavney’s memo which stated a buffer from twenty-five foot to seventy-five foot between sensitive resources and development is effective. Attorney Duquette stated the requested thirty-foot setback is within the buffer. There is no evidence to prove that the current home which is ten feet from the shore yard is environmentally problematic. By moving the proposed home back to thirty feet it would be further away and within the range specified in the Village ordinance. Duquette

suggested there needs to be a balance between protecting the water and unique property limitations. Attorney Wes Webendorfer stated he is here today representing the Fontana Trust, Bruce Adreani and Michael O'Halleran. Webendorfer stated the judge has not asked for any direction to be taken today, but on behalf of his clients they recommend denying the requested variance. The proposed variance application undermines the purpose of the fifty-foot shore yard setback stated in the ordinance. Attorney Webendorfer stated the purpose of the ordinance is to protect and conserve the water and carry out and uphold the comprehensive plan. Webendorfer provided a GIS aerial map labeled as Fontana Trust/O'Halleran Exhibit No. 1, a tax plat from the Village website labeled as Fontana Trust/O'Halleran Exhibit No. 2 and a Village Zoning map labeled as Fontana Trust/O'Halleran Exhibit No. 3. The sensitive nature of the area is demonstrated by Fontana Trust/O'Halleran Exhibit No. 3, which shows the proposed area to be included in the Environmental Corridor. Webendorfer stated the demolition and land disturbance will cause erosion and stormwater problems, which undercuts the purpose of the setback. Webendorfer stated the applicants have options if the variance is not approved. Attorney Kathy Gutenkunst stated she is also here today representing the Fontana Trust, Bruce Adreani and Michael O'Halleran. Gutenkunst presented three photos of rain events that were labeled Fontana Trust/O'Halleran Exhibit No. 4. Attorney Gutenkunst explained that Mr. Adreani's home is located downstream and lower than the Smith residents and by moving the home back and building a bigger home more storm water will be generated. Attorney Webendorfer stated the photos presented in Fontana Trust/O'Halleran Exhibit No. 4 are not from standard rainfalls and were taken during a time when construction was taking place nearby. Mike Leiser, 632 Middleton Drive, stated he is in favor of the Smith's variance application and feels as though it would create better environmental conditions. Tom Smith, 574 Middleton Drive, stated an adjacent house was a complete tear down and when rebuilt it only has a eight foot setback from the shore yard. Attorney Gutenkunst explained the house referred to in the previous comment was built in 1996. The public hearing was closed at 11:33 am.

Consider action – Examination and consideration of Randall and Nancy Smith's variance application relative to the purpose of the 50-foot Minimum Shore Yard Setback as set forth in Ord. Section 18-32 of the Fontana Municipal Code.

Attorney Dale Thorpe stated the Board can choose to affirm their decision stating the variance is consistent with the purpose of the minimum fifty-foot shore yard setback or choose to reverse their decision stating the variance is not consistent with the purpose of the minimum fifty-foot shore yard setback. Jim Feeney stated he felt moving the home further from the creek is environmentally a better choice. The discussion amongst the board was the previous decision upholds the ordinance and there is no evidence that proves any negative impact.

Feeney/Pollitt 2nd made a MOTION to affirm the decision to grant the variance as issued on September 15, 2020, and the MOTION carried unanimously on a 4-0 vote.

D'Auria/Feeney 2nd made a MOTION to authorize the chairperson to sign written findings consistent with the decision made and read into the record without further meeting, and the MOTION carried without negative vote.

Adjournment

Feeney/D'Auria 2nd made a MOTION to adjourn the Zoning Board of Appeals meeting at 12:06 pm, and the MOTION carried without negative vote.

Minutes prepared by: Stephanie Smith, Deputy Clerk/Treasurer

Note: These minutes are subject to further editing. Once approved by the Zoning Board of Appeals, the

official minutes will be on file at the Village Hall.

Approved: 12/07/2021