

# VILLAGE OF EPHRAIM

FOUNDED 1853



## EPHRAIM BOARD OF APPEALS MINUTES Tuesday, April 30, 2024, 4:00 PM

**Present:** Chair-Karen McMurtry, Fred Bridenhagen, Sara Glenn, Keith Krist, Steve Sauter

**Staff:** Brent Bristol-Administrator, Andrea Collak-Clerk/Treasurer

**Guests:** Diane Taillon, BD Thorp, Michael McCutcheon, Monique McClean

1. **Call to Order:** The meeting was called to order by McMurtry-Chair at 4:00 PM.
2. **Quorum:** A quorum of the Ephraim Board of Appeals is present for this meeting.
3. **Compliance with open meeting law and public notice requirements**  
Bristol confirmed that the agenda was posted following open meeting law and that public notice requirements have been met.
4. **Changes in Agenda:** None.
5. **Announcement of Proceedings:**

### **Chair McMurtry read the Announcement of Proceedings Role of the Board**

The Village Board of Appeals is an appellate board required by state law in any municipality that has adopted a zoning ordinance. The board does not have the authority to amend or repeal any provision of the zoning ordinance. Its authority is limited to appeals regarding interpretations of ordinance provisions, and considerations of variances. The board functions like a court. Its purpose is to give a full and fair hearing to any person whose property interests are affected by these matters. Its job is to apply the zoning ordinance and appropriate legal standards to the facts of each case. The board meeting and public hearings are open to the public. A taped recording is being made of the proceedings.

### **The Appeal of the Board Decisions**

A decision of the board may be appealed by commencing an action in the circuit for this county within 30 days after the date of filing of the decision in the office of the board.

### **Instructions for Witnesses**

Anyone wishing to speak should wait until called upon as a witness; address your comments and questions to the chair and state: Your name and place of residence, your qualifications to speak on this matter, the source of your information, and whether you favor, oppose, or are only providing information in this matter and your concerns.

6. **Diane Taillon – 9980 Water St**
  - a) **Variance from 40' rear yard setback standard**

Public Hearing opened by Karen McMurtry. The notice was read into the record. This is case number 155, notices were sent out on April 19, 2024, and the hearing date is April 30, 2024, to hear and transcribe testimony both for and against, written and verbal. Public Hearing on zoning appeal application on property #121-24-0033A2, variance from 40' rear setback standard of Ephraim Zoning Code.

The property is zoned Commercial Center. The proposal is for the construction of a 64-square-foot addition to the subject property that encloses the SE corner of the building and connects two existing decks above. This new proposed work does not meet the 40' rear setback and requires a 5' variance.

Chair McMurtry asked the committee members if they inspected the site. Some of the committee members knew the property in question, and some passed by and visually inspected the property in question.

### **Statement by the Applicant**

Taillon stated that water had damaged the decks. Currently, there are two decks at this corner, and they not only do not connect but they are also of different heights all of which contributed to the water damage. Because these decks do not connect, one of them has no access to the stairway to the ground level. This addition does not conflict with neighboring properties, does not alter the basic nature of the site, does not harm public interests, and only requires one variance. The Hillside is a historic property that existed lawfully before the passage of the current zoning ordinance. The addition of the 8' x 8' corner at the southeast corner of the building is at the back of the building which the public does not see from Hwy 42 or Cherry Street. Safety is enhanced because the entire deck would now have access to the stairway from the second floor to the ground level.

### **Reading of the Staff Report**

The subject property, parcel #121-24-0033A2, is owned by Diane Taillon and is located at 9988 Water Street. The property is zoned Commercial Center and is used as a hotel.

Bristol in his notes stated that the proposal calls for a 64-square-foot addition on the SE side of the structure that will be enclosed by walls and connect the two existing decks above.

A regular zoning permit cannot be issued because the proposed project does not comply with the 40' rear setback requirement for new work in the Commercial Center.

The applicant is requesting:

- A 5' Variance from the 40' rear setback standard of the Ephraim Code of Ordinances.

### **Correspondence:**

Bristol reported that there was correspondence received concerning this matter.

**Sandy Van Sickle, 3035 Church Street**, has no objection to the proposed glass enclosure of the existing covered patio or the 64-square-foot addition at the SE corner of the Hillside. She is in support of the 4' and 5' variance needed for the applicant to complete the two projects.

**Charles and Kitty Boutell, 9976 Moravia Street**, have no objection to the structural changes that the applicant requested. However, they do not think that the request for a skylight should be accepted. Skylights are for Airports, not for an area like Ephraim. Their concern is that the skylights will take away the night's beauty. If this request is permitted, they are concerned that over time other people will be asking for skylights. Ephraim is a unique beauty compared to the rest of Door County. They asked the committee not to mess it up.

**Dorothy Schueffner, 9976 Moravia Street**, has no objection to the project in general. However, she is wondering what the impact of evening lights from the new enclosure with all the glass and very large skylight might be for the residents at Anderson Condos. Schueffner is suggesting Diane Taillon might address her plans for window treatments and/or louvered skylights if lights will be on after dark.

**Paul and Colleen Mayer, 9976 Moravia**, owners of the condo at Anderson House Condominiums located directly East behind the Hillside have a concern about the effect of the large skylight on their view after dark. It would be nice to limit the amount of light coming through the skylight after dark. Hopefully, the hedge will remain along Moravia Street after the retaining wall reinforcement is done. It is great that the Hillside is planning to update the East side of their building. The Mayers are assuming that the design fits into the historical district feel.

**Julie and Jim Chosy, 9976 Moravia**, owners of the condominium at Anderson House Condominiums have a concern with the large size of the skylight on the proposed new enclosure. Given its size, the top of the structure may be more of a glass roof as opposed to a skylight, and it appears very modern in contrast with the traditional exteriors of buildings in Ephraim. They are concerned about light being emitted from the large, raised glass roof at night, as well as the possibility of noise when it rains. It appears from the drawing of the proposed new enclosure that such a large glass roof may not be necessary as the space will have ample outdoor light from the wall of glass doors/windows shown in the picture.

**It was confirmed that there was no ex-parte communication.**

**Witness or Visitor Statements:**

**Findings of Fact:**

Glenn has no issue with enlarging the deck but questions whether it is necessary to screen the area below. Taillon said it was not necessary and explained that the screen was supposed to hide garden equipment.

Bridenhagen feels that the application is not complete. It includes an inaccurate survey from 3 owners ago instead of the site plan. Bridenhagen does not believe there was any attempt at fixing the water problem. Other steps could be taken to eliminate the water issue. Bridenhagen does not see the hardship in it at all and is opposed to granting this variance.

Glenn asked whether the builder provided a plan of how the water would be diverted away from the building once the deck was completed. The construction plan/site plan would be helpful when making this decision.

Bridenhagen asked whether there are two units and one of them can not access the stairway from their deck. Taillon clarified that there is only one unit with two decks but cannot access the stairway from one of the decks.

Sauter noted that the requested variance has to meet the test of unnecessary hardship, the hardship due to physical limitations of the property, and not to be contrary to the public interest. Sauter believes that in this case there has to be a better argument for unnecessary hardship. Glenn agreed that the argument for unnecessary hardship is not present.

McMurtry would like to see a plan stating the reason why connecting those two decks would protect the building from water damage.

Bridenhagen stated that the applicant has the burden of proof to demonstrate all three criteria. Bridenhagen does not see decks going together helping in this situation.

The Board members agreed that the variance does not meet all three tests.

McMurtry asked the Board members whether more information from the applicant would be helpful to make the decision. McMurry does not want to deny the variance if more information can help to make an educated decision. Bridenhagen pointed out that this is the hearing and the burden of proof is on the applicant, not the Board. The Board should not settle for an incomplete application. McMurry said that the Board can table the decision until additional information is provided with a burden to prove still on the applicant.

Bridenhagen asked whether giving the opinions and statements regarding the burden of proof would relate to coaching of the applicant and contouring the applicant's decisions.

Sauter asked whether denying the variance would keep the applicant from coming back again and requesting the hearing. Sauter would like to table this case and see more information before making the final decision. Glenn agreed. Glenn does not see any harm in tabling this case. McMurry and Krist agreed.

The Board of Appeals members agreed to vote before filling out the conclusions of the law.

#### **Public Hearing Closed by Karen McMurry.**

**Conclusions of Law:** Conclusions were not stated for this case.

**Unnecessary Hardship:**

**Unique Physical Property Limitations:**

**No Harm to Public Interest:**

<p><b>McMurtry moved, Glenn seconded to table the requested 5' variance from the 40' rear yard setback standard of the Ephraim code of ordinances for Diane Taillon at 9980 Water Street as presented with no conditions, Sauter aye, Bridenhagen nay, Glenn aye, McMurry aye, Krist aye, and the motion carried 4:1.</b></p>
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#### **7. Diane Taillon – 9980 Water St**

##### **b) Variance from 40' rear yard setback standard**

Public Hearing opened by Karen McMurry. The notice was read into the record. This is case number 156, notices were sent out on April 19, 2024, and the hearing date is April 30, 2024, to hear and transcribe testimony both for and against, written and verbal. Public Hearing on zoning appeal application on property #121-24-0033A2, variance from 40' rear yard setback standard of Ephraim Zoning Code.

The property is zoned Commercial Center. The proposal is for the construction of a 152-square-foot glass enclosure of the existing covered patio on the east side of the building. The new proposed work does not meet the 40' rear setback and requires a 4' variance.

Chair McMurry asked the committee members if they inspected the site. Some of the committee members knew the property in question, and some passed by and visually inspected the property in question.

**Statement by the Applicant**

Taillon noted that the dining room at the Hillside is small for the number of guests. She is requesting a variance from the rear setback of the property to enclose the patio by constructing a glass wall and skylight. She would at least like to enlarge the dining room if the skylight is not approved. Enclosing the patio while removing the wall that separates the patio and the dining room doubles the size of the room. This addition does not conflict with neighboring properties, does not alter the basic nature of the site, does not harm public interests, and only requires one variance. The Hillside is a historic property that existed lawfully before the passage of the current zoning ordinance. Even though COVID is somewhat in the past, the current dining room is small when all the guests convene for breakfast. Increasing the space will increase the distance between individuals.

**Reading of the Staff Report**

The subject property, parcel #121-24-0033A2, is owned by Diane Taillon and is located at 9980 Water Street. The property is zoned Commercial Center and is used as a hotel.

Bristol in his notes stated that the proposal calls for a 152-square-foot addition on the E side of the structure that will enclose the existing covered patio with glass walls and alter the existing deck above.

A regular zoning permit cannot be issued because the new work is subject to the current setback and the 40' rear yard setback is not met.

The applicant is requesting:

- A 4' Variance from 40' rear yard setback minimum of the Ephraim Code of Ordinances.

**Correspondence:**

Bristol reported that there was correspondence received concerning this matter.

**Sandy Van Sickle, 3035 Church Street**, has no objection to the proposed glass enclosure of the existing covered patio or the 64-square-foot addition at the SE corner of the Hillside. She is in support of the 4' and 5' variance needed for the applicant to complete the two projects.

**Charles and Kitty Boutell, 9976 Moravia Street**, have no objection to the structural changes that the applicant requested. However, they do not think that the request for a skylight should be accepted. Skylights are for Airports, not for an area like Ephraim. Their concern is that the skylights will take away the night's beauty. If this request is permitted, they are concerned that over time other people will be asking for skylights. Ephraim is a unique beauty compared to the rest of Door County. They asked the committee not to mess it up.

**Dorothy Schueffner, 9976 Moravia Street**, has no objection to the project in general. However, she is wondering what the impact of evening lights from the new enclosure with all the glass and very large skylight might be for the residents at Anderson Condos. Schueffner is suggesting Diane Taillon might address her plans for window treatments and/or louvered skylights if lights will be on after dark.

**Paul and Colleen Mayer, 9976 Moravia**, owners of the condo at Anderson House Condominiums located directly East behind the Hillside have a concern about the effect of the large skylight on their view after dark. It would be nice to limit the amount of light coming through the skylight after dark. Hopefully, the hedge will remain along Moravia Street after the retaining wall reinforcement is done.

It is great that the Hillside is planning to update the East side of their building. The Mayers are assuming that the design fits into the historical district feel.

**Julie and Jim Chosy, 9976 Moravia**, owners of the condominium at Anderson House Condominiums have a concern with the large size of the skylight on the proposed new enclosure. Given its size, the top of the structure may be more of a glass roof as opposed to a skylight, and it appears very modern in contrast with the traditional exteriors of buildings in Ephraim. They are concerned about light being emitted from the large, raised glass roof at night, as well as the possibility of noise when it rains. It appears from the drawing of the proposed new enclosure that such a large glass roof may not be necessary as the space will have ample outdoor light from the wall of glass doors/windows shown in the picture.

**It was confirmed that there was no ex-parte communication.**

**Witness or Visitor Statements:**

**Findings of Facts:**

Sauter does not see an unnecessary hardship stated in the application. A small dining room is not an unnecessary hardship.

A short discussion about the former use of the current dining room. Bridenhagen noted that it used to be a bedroom in the past.

Bridenhagen does not see anything historic about the skylight, but he is shocked that the applicant cannot enclose what is currently there. Bridenhagen believes that the skylight will create substantially more watershed through the winter because the sun will get to that point last. Taillon said that she does not need the skylight but would like to expand the dining room.

McMurtry noted that only the enclosure can be approved without the skylight feature.

Sauter said that the unnecessary hardship might be present, but it is not in making a little bigger dining room. It is desire. Glenn agreed. Having a larger space to eat in does not seem like an unnecessary hardship. Having safe access to the staircase in case of fire would be more necessary, concluded Glenn.

Sauter recommended tabling this request.

**Public Hearing Closed by Karen McMurtry.**

**Conclusions of Law:** Conclusions were not stated for this case.

**Unnecessary Hardship:**

**Unique Physical Property Limitations:**

**No Harm to Public Interest:**

<b>Sauter moved, Krist seconded to table the requested 4' variance from the 40' rear yard setback standard of the Ephraim code of ordinances for Diane Taillon at 9980</b>
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**Water Street as presented, Sauter aye, Bridenhagen aye, Glenn nay, McMurtry aye, Krist aye, and the motion carried 4:1.**

**8. Adjournment**

**McMurtry moved, Krist seconded to adjourn the Board of Appeals meeting at 4:45 PM, all ayes and the motion carried.**

Recorded by,

Andrea Collak - Clerk/Treasurer

DRAFT