

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
NOVEMBER 18, 2015**

CALL TO ORDER: The meeting was called to order at 5:30 p.m.

ROLL CALL: Chairperson White, Members Filla, Fritsche, Schleif and Hansen. Village Attorney Sajdak, Planner/Zoning Administrator Retzlaff and Deputy Clerk Dobratz.

Chair White read the policy and procedures of the Board of Zoning Appeals.

PUBLIC HEARING:

The hearing is to hear any and all parties, their attorneys or agents, for or against the APPEAL as filed by **Thomas Albiero DDS/Dental Professionals**, and agent for Thomas Albiero, Keith Templin, Chad Zambon, Cynthia Jakusz, and Fritz Gierach, Property Owners for: (1) of a decision by the Village of Germantown Zoning Administrator regarding the replacement of sign panels that constitute a code violation of Section 17.46(10) of the Zoning Code; and/or (2) for a variance from the provisions of Section 17.46(10) that require the background panel and other non-message components of internally-illuminated signs to be opaque or a dark color on the property located at **N112W16760 Mequon Road**

Chair White opened the Public Hearing at 5:35 p.m.

Community Development Director/Village Planner and Zoning Administrator Jeff Retzlaff was sworn in by Chairperson White. CDD Retzlaff presented the Village's information. A timeline of events with supporting documents were handed out to the committee. CDD Retzlaff testified regarding a sign permit application from Thomas Albiero agent for Dental Professionals and the owners of the property concerning a proposal to replace the sign panels on an existing pylon sign located on their property. The pylon sign for reasons of its height and setback is deemed to be an existing non-conforming structure and is subject to certain provisions in the Zoning Code. Sections of Codes and exhibits were further explained. In early June, Village staff observed the sign panels that had been installed as replacement, subsequent to the approval, didn't meet the opaque, non-translucent requirement and as a result, a Code Violation Notice was issued.

In summary, to cover bases, this was both an administrative appeal and a variance appeal. Mr. Albiero is asking the Board of Appeals to modify/overturn the decision of the Zoning Administrator that this is a code violation of section 17.46(10), which requires the opaque or dark background on the panels, to determine that sign panel replacement for an existing non-conforming sign is actually "maintenance" and not subject to 17.48(3) and not subject to the requirements of 17.46(10) and 17.46(13). As part of that, it also could be a variance appeal that would simply be to allow the ability to keep the sign panels that have been installed, leave them in place with a variance of 17.46(10)'s requirement for the opaque or dark background sign panels.

Member Fritsche asked the Zoning Administrator if he actually spoke to Mr. Albiero regarding the application and that it was not going to be followed within the code. He

PUBLIC HEARING Cont.:

explained it was put in writing to make it easier to document with a paper trail so it would be clear if he was told or not. Numerous conversations took place with Mr. Albiero both before and after the installation of the signs concerning the code requirements.

Member Hansen asked what the reason was for the code was change that requires backgrounds be opaque. The code requires the backgrounds be opaque, it's a violation of code to leave as is. There are a lot of nonconforming signs in the Village. When the sign code is changed, it has the effect of making a lot of the signs be non-conforming for one reason or another. The code has changed and need to be aware of it. In this case, the opaque or dark background requirement is a product of what the Plan Commission has been doing over the last seven or eight years with new signs. For purpose of reducing glare to require the backgrounds not be a glow bright light for eternally lite signs. This is the reason for the requirement. Existing nonconforming signs with translucent backgrounds are allowed until they come in for a change which is what happened in this case. Then owners/operators of the sign are notified what the requirements are and try to get them into compliance.

The Board asked about the translucent 2014 code changes. The glare at night is a concern and issue. Clarification of the portion of the sign that is in compliance and the portion of the sign that is not in compliance was shown. A change was made at the bottom portion of the sign. It is now lighted and that too is a problem.

The appellant, Thomas Albiero, 5341 Quaas Drive, West Bend, WI was sworn in. Mr. Albiero stated his argument is that this is maintenance.

Village Attorney Sajdak stated based on the forms that have been filed for this administrative appeal it is primarily around the issue of maintenance. As it relates to that variance appeal, there are effectively two types of variances that exist. Area variances and use variances and the standards are different depending on which type of variance you are looking for. It is his opinion, this is a use variance. Area variances typically relate to things like set-backs or the size of a building, those types of things as opposed to some physical actual use of the property which is more of what we have here. By case law, a use variance can only be granted to the extent the applicant would show there is no reasonable use otherwise available to him.

Thomas Albiero provided testimony giving history on the sign which has been maintained since 1983. A lot of repairs have been done over the years, the upper part of sign was flex fabric was starting to crack. On May 9th they had an open house and wanted the signage up for the opening. Reason it didn't click with him is because there are many other signs that have lite backgrounds so it seemed normal. He assumed that opaque meant you couldn't see the wiring and bulbs going through it, just a clean look. It didn't dawn on them that opaque meant no light will shine through. The design would have been changed if they had realized it. It would have been \$6,500 to replace the sign because of the flex fabric and no way to modify it. The Ordinance online was updated from when the application was submitted. The reasons to consider the variance is the maintenance is 27 years old. The style of the text was changed to be more readable, other than that it was just basically repairing the sign.

PUBLIC HEARING Cont.:

The other point is this was an easy mistake to make because of the other signs around and he acknowledges a mistake was made. It was an easy mistake to make. Feel there is no harm to anyone, it is in retail office area. It serves the purpose of showing office space, it doesn't stand out as glaring and have had comments that it looks much nicer than it did before. They have been active in the community since 1983, just making a point that history is they typically have done what was best for Germantown, try to do good things for the community. They aren't trying to sneak something in, had they really understood what was going on, they would have simply designed it differently. Issue now is its up and expensive to replace, it's not a nuisance to anyone.

Board members asked about the light facing the sign and about the maintenance of the sign as a replacement, the material. Owner stated the light is a parking lot light and it is theirs. The sign material is fabric and the new material is also flex fabric.

Chair White asks the owner about clarifying exceptional circumstances. The owner didn't understand it and thought they were complying. He thought opaque meant that you don't see the guts behind it. At the time they totally didn't understand it.

Chair White asked CDD Retzlaff to return to answer a question on maintenance of a non-conforming use in 17.48 (3), that talks about the things you can't do to a non-conforming use. Which one did they do? CDD Retzlaff stated they didn't do any of them. In 17.46(13) Existing Signs, code was read and clarified. Initial email to Mr. Albiero on March 12th described what could be done for maintenance within the provisions of the code. Discussion followed regarding the code violation.

Mr. Albiero commented the sign manufacturer didn't see the permit and wasn't involved. The sign is on a timer, goes until 11:00 p.m. and in the winter goes on in the morning. Inquired if it would help if they would shorten the time the sign went on, if it would be a possible remedy. Mr. Albiero understands the rules and hoping for the benefit of the doubt.

Chair White invited anyone in favor of the appeal to speak. No one present wished to speak.

Chair White invited anyone opposed to the appeal to speak. No one present wished to speak.

Chair White asked if anyone wished to speak. No one present wished to speak.

The Public Hearing was closed at 6:16 p.m.

Village Attorney Sajdak explained under the code, all five findings need to be made in order to grant a variance. Recognizing that exceptional circumstances and hardship language deals more with area based type variances. By case law, use variance talks about whether there is any reasonable use of the property unless a variance is granted versus on an area variance which is without the variance that it imposes exceptional or unnecessary hardship upon the property owner. Nonconforming uses are generally disfavored in the law and the idea is to eliminate as opposed to continue those uses.

DELIBERATION AND ACTION BY THE BOARD:

Discussion followed:

- Chair White stated two issues have to be decided upon. The first one has to do with whether or not a violation before considering the variance. Was the replacement of the particular panels maintenance or was it a violation of 17.46(13), replacement of the sign face was not replaced with something that was nearly identical.
- Replacement sign is similar, there was a maintenance component to it.
- The new sign is not translucent and is not the same nor identical.

MOTION (Fritsche/Schleif) based on the testimony that has been provided and the discussion that followed, it is this body's determination that the Zoning Administrator's determination in this case was correct. Roll call vote, 4 yes (Filla, Fritsche, Schleif, White), 1 opposed (Hansen), carried.

Variance:

- The variance will not be contrary to the public interest because the intent of the opaque/dark background was to reduce glare. The change in the code was to diminish the glare of lighting in residential areas. It is a retail area, very few residential properties that would be negatively impacted by this particular sign in this location regardless of the level of the lighting. The timer of the sign could be a condition and there isn't a clear definition of what the glare is.
- Need to find that something is unique compared to other properties. It was a good faith mistake but a mistake doesn't make it extraordinary or unique for this particular part.
- A variance is not for changing the code. The maintenance of it doesn't make it exceptional.
- It is a lot of money but it is a fixable problem. The ordinance exists for a reason. The Zoning Administrator did a good job of explaining, just a misunderstanding. No other hardship from the testimony given besides the additional \$6,500.00 cost to replace the sign. Seems it is purely an economic hardship issue.
- Failing to grant the variance doesn't prevent them from having a sign. The variance is necessary for them to be able to use the property is not the case. The signage not meeting the code is the whole issue. No testimony of being forced to change the material to be at a disadvantage.
- The variance will not create substantial detriment to adjacent property, will not be contrary to the public safety or interest, no finding of detriment.

Chair asks for clarification of the difference between use and area variance. Village Attorney Sajdak explains that you have a line of case law, current form of that case law is that the courts say when looking to grant a variance and looking to make the determination of whether or not the circumstances exist to grant that variance, that determination is going to vary depending on which type of variance you are looking for. For an area variance, you are looking at whether or not without granting the variance there is any unnecessary hardship that results. Area variance would be anything that is the bulk regulations, like setbacks, it's a physical attribute of the property that needs to have a variance granted to it in order to allow it. Gives examples of area variances.

Use variance is the actual physical usage of the property. Residential vs. commercial, commercial vs. industrial. A sign fits more in this type, its physical use of that land. Something that is putting the land to use of that governs what is there. When dealing with

DELIBERATION AND ACTION BY THE BOARD Cont.:

use variance, looking at those variances you need to show circumstances to grant the variance would be such that without the variance there is no reasonable use of the property that would otherwise be available. It's a higher burden, intentional when dealing with more bulk type issues of residential vs. industrial within the same zoning classifications. It may be unnecessarily harsh when dealing with a use variance for a sign, but that is the way the case law guides us. Have no other reasonable use of the property unless that variance is granted to do what they are looking to do. Fits within that exceptional circumstances category, it's the courts attempt to try to further help boards.

Discussion followed:

- It's a use variance, all five criteria are not met and can't grant the variance.
- The Boards power is limited by ordinances, not an easy way to grant variances.
- Unfortunately it is not typical and does not match the other signs on Mequon Road.
- Ultimately all the signs would be changed to match the ordinance and the standard would be set.

MOTION (Schleif/Fritsche) move that we deny the variance from the provisions of Section 17.46(10) that require the background panel and other non-message components of internally-illuminated signs to be opaque or a dark color on the property located at N112 W16760 Mequon Road, Germantown, WI. 5 ayes (Fritsche, Hansen, Schleif, Filla, White), 0 opposed, carried.

APPROVAL OF MINUTES:

Schleif stated he was also absent and excused from the July 16, 2014 meeting and wants that noted. **MOTION (Schleif/Fritsche) to accept the minutes of the July 16, 2014 meeting as corrected, carried.**

Discussion of a future meetings moving to the second Wednesday of each month. December 16th, 2015 has two applicants. This body can chose to change the date going forward or on a case by case basis. Board chooses to meet on the second Wednesday of each month moving forward in 2016.

ADJOURNMENT:

MOTION (Schleif/Filla) to adjourn meeting at 7:10 p.m., motion carried.

Jilline Dobratz
Deputy Clerk