

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
AUGUST 14, 2019**

CALL TO ORDER: The meeting was called to order at 5:33 p.m.

ROLL CALL: Chairman White, Hansen, Fritsche, Knop, Community Development Director (CDD)/Village Planner and Zoning Administrator Retzlaff, and Clerk Braunschweig.

APPROVAL OF MINUTES: December 13, 2017.

Motion (Fritsche/Knop) to approve minutes as presented for December 13, 2017. Motion Carried Unanimously.

PUBLIC HEARING:

Chairman White read the public hearing notice. Hearing is to hear any and all parties, their attorneys or agents, for or against the **VARIANCE APPEAL** filed by **Chris Dienberg**, property owner, who is requesting *variances from the Village's Zoning Code (Section 17) to: (1) reduce the minimum side yard building setback requirement from 20 feet to 3 feet under Section 17.17(3); and (2) waive the time limit provisions for the use of temporary structures under Section 17.41(7)(b) for purposes of erecting and permanently using a 24' x 24' temporary storage canopy on the north side of the following property: W218N9743 Happy Hollow Lane, Colgate, (Tax Key# GTNV 313-001).*

Chairman White described the meeting order to Mr. Dienberg and the gallery and normally the Village's information and review of the Variance is given first and then Mr. Dienberg would have opportunity to give his point of view. Mr. Dienberg understood the order.

Chairman White swore in Director Retzlaff.

Director Retzlaff gave history and background of the Variance Appeal for W218 N9743 Happy Hollow Lane. He distributed a memo and packet for presentation.

In November of 2016, Dienberg was issued a temporary use permit (TUP#1) for a 24'x24' temporary canopy structure to be located on the side north yard of the property in front of the attached garage. The temporary use permit was valid for one year and expired on November 30, 2017. A copy of temporary use permit #1 was in the packet.

In January of 2018, the Village received a complaint in regards to the property and a code violation notice was issued. A copy of the code violation was in the packet.

In February 2018, Dienberg applied for and was issued a 2nd temporary use permit (TUP#2) valid for six months with an expiration date of May 31, 2018. Dienberg was told to come up with a permanent solution. Additional information about the maximum size of accessory buildings was provided. A copy of temporary use permit #2 was in the packet. Dienberg was also advised that the code had changed and he will need to find a permanent solution.

In May 2018, Dienberg applied for a third temporary use permit. In October 2018, the TUP#3 was issued for an additional six months with an expiration date of April 2019. A copy of temporary use permit #3 was in the packet.

A survey of the Dienberg property was reviewed. The survey showed the on-site septic system location.

The owner is seeking a variance to reduce the minimum side yard building setback requirement from 20 feet to 3 feet, section 17.17 (3). Director Retzlaff added the additional variance requirement of the continued use of the temporary canopy for covered storage and to waive the time limit provisions for the use of temporary structure under 17.41 (7) (b) and allow the permanent use of the 24'x24' canopy in the side yard location.

The distinction between a temporary and permanent structure was clarified as temporary structure in 17.41 (7). A copy was included in the packet.

17.41 (7) Temporary Storage Structures (a):

For purposes of this section, a "temporary storage structure" is defined as a detached building or other enclosed and/or covered structure intended for the shelter, storage and/or conveyance of vehicles, equipment, building materials, household or personal items, junk and trash, etc. on a short-term basis (less than 180 days). Examples of "temporary storage structures" include, but are not limited to, portable storage containers sold or rented under the business name "UNITS" and "PODS" and all other similar structures, freight-type shipping containers, metal-frame and/or fabric-covered canopies, vehicle shelters or carports, "hoop" buildings, and dumpsters.

Director Retzlaff reported that these are rare permits and rare occurrences.

There was a code change and this does not fit the new code after the second temporary use permit was issued.

The accessory use provision was vague in regards to temporary structures. The new code better defines the temporary structure zoning code and there is additional language. The canopy did fit the old definition of the code. The six months permit is under the new code provisions.

17.41 (7) Temporary Storage Structure (b) was reviewed:

- (b) *Temporary storage structures intended for may be permitted in any single-family or 2-family zoning district (including the Rs-1 through Rs-7 and Rd-2 Districts), provided that:*
 - 1. *Temporary storage structures may be installed on a property for a period not to exceed 30 consecutive or cumulative days without a permit or approval from the Village if said structure is used for storing or moving vehicles, equipment, building materials, household or personal items while the property owner is moving to/from the property, the property is being renovated, or for any emergency or other reasonable purpose deemed acceptable by the Zoning Administrator. Temporary storage structures allowed under this provision may be located in a front, side or rear yard of a property with a minimum setback of 10 feet from property lines;*
 - 2. *Temporary storage structures installed on a property for a period greater than 30 but less than 90 consecutive or cumulative days may be allowed with a "Temporary Storage Structure-Zoning Permit" issued by the Village. Temporary storage structures allowed under this provision may be located only in a side or rear yard of a property with a minimum setback of 10 feet from property lines;*
 - 3. *Temporary storage structures installed on a property for a period greater than 90 but less than 180 consecutive or cumulative days may be allowed as a "temporary use" subject to the temporary use permit requirements under [section 17.07\(2a\)](#). Temporary storage structures allowed under this provision may be located only in a side or rear yard of a property and meet all applicable building setback requirements.*

Property owners/tenants who want to install a temporary storage structure on a property for a period greater than 180 consecutive or cumulative days can only do so if more than one temporary use permit is issued by the Village pursuant to section 3. above.

4. *Temporary storage structures allowed under this provision may be located only in a side or rear yard of a property and meet all applicable building setback requirements. The reduction of the set back from the required twenty feet to three feet.*

Discussion of the placement of the septic system was noted and the impact of the placement of the septic and driving over it.

The canopy is considered temporary by its design.

Chairman White swore in Chris Dienberg of W218N9743 Happy Hollow Lane, Colgate.

Chairman White explained that by Wisconsin law the board's powers are limited. The process and powers by the board are based on the land itself and to explain what is unique about the property.

Mr. Deinberg gave history that he purchased a RV in 2016. He had originally looked at building a building. He discussed with the building department. Because of the setbacks of 325 square feet, the RV would not fit into the building. He discussed the canopy with the building inspection department. His adjacent neighbor did approve of the canopy. The structure is installed in concrete with steel roof and steel tubing. Nothing is flammable.

If placed in the front yard or back yard was ok but there is a drainage pipe that comes from the north of the garage that he does not want to drive over. The canopy is by a tree line. The adjacent neighbor was ok with it. He has been renewing the temporary use permit every year until the ordinance change. He did ask originally to build a garage but was turned down. He was told the canopy would be fine. The house is placed in the back of the lot due to the placement of the septic.

When the original temporary use permit was issued, he did understand it was temporary. The garage would be too small for the RV because of the setback requirement.

The canopy is 20-gauge tubing steel, with a 50 year roof, professionally painted and was run by the building inspection department.

The drainage pipe is to the North of the garage and he has a septic field in front of the house. The house is in the back of the lot. The yard has a steep grade.

Cannot drive on the septic field. The field is 50 feet. The yard has a steep grade.

The canopy is where the boat and trailer are stored. Did not have intention to purchase the RV when the house was purchased. He was looking at 30x50 building.

Dienberg did not look into moving the pipe.

Director Retzlaff reported that single family residentials have built accessory buildings that fit in the setback. The number of setback variances issued by this board are relatively few.

Chairman White asked for anyone to speak in favor of the variance to please come forward.

Mark Stoiber of W218N9769 Happy Hollow Lane, Colgate came to the podium. Chairman White swore Mark Stoiber in. Mark Stoiber commented in favor of the variance and he has no problem with the canopy. It looks nice and is not falling apart.

Chairman White asked for anyone to speak in opposition of the variance to please come forward.

Jane Kyle of W220N9706 Amy Belle Road, Colgate came to the podium. Chairman White swore Jane Kyle in. Jane Kyle commented in opposition of the variance. She is the neighbor by the garden. She looks out her kitchen window and sees the brown canopy. She stated this is not temporary. He has a four-car garage. She commented on the temporary use permits and the expiration of the permits. There have been time periods without a permit. She commented on the code violations. There is a yellow pick-up truck and boat and RV in front. The vehicles change all the time. He has ATVs and Snowmobiles at times. She requested that the variance not be approved. She would approve if he did not have so many other vehicles in the yard.

Lynnae Langmann of N99W21950 Indian Parkway, Colgate came to the podium. Chairman White swore Lynnae Langmann in. Lynnae Langmann commented in opposition of the variance. She commented on the neighbor was not aware of the situation. There have been issues with the structure and the ordinance has not been followed. The current garage has a lift. There are five or more vehicles coming and going and they are not consistent vehicles. Pictures were shown and shared. If approved would set a precedent in the Village of Germantown. Langmann questioned if the building inspection inspected or viewed the structure. Temporary does not require cement. This was built with the intent to be ignored by the Village. She requested the variance not be approved.

Director Retzlaff commented he does not have any proof of inspections of the structure. A temporary structure is normally not inspected.

There were five additional comments not in favor of the variance on the dias for the Zoning board of Appeals.

Chairman White asked if there were any other comments for or against the variance or otherwise?

There were no additional comments.

Chairman White asked, does if the temporary structure has to comply with the setbacks? Director Retzlaff commented it does not.

Are there other options for the property owner? Does the homeowner have the ability to expand one of the bays of the garage to make it larger for the RV? The garage could be expanded. Director Retzlaff commented that the garage could be made larger as long as it complies to the setbacks.

Deinberg commented that he could only expand 6 feet to the North and ten feet to the south.

Deinberg commented he did work with the Mike the Guttman the building inspector. A permit was not issued.

Chairman White asked if there were any other comments for or against the variance or otherwise?

The Public Hearing was closed at 6:40 p.m.

The Findings, Conclusions, and Decision and Order were deliberated.

The variance will be contrary to the public interest and will not be in accord with the spirit of the zoning code because temporary means temporary and is defined in the code. To permit temporary and then to count it as permanent is contrary to the zoning code. The size is contrary to the spirit of the zoning code and the set back is a legitimate concern.

There are not exceptional, extraordinary or unusual conditions or circumstances that apply specifically to this lot or parcel, use, structure, or intended use that do not apply generally to other property or uses in the same district because there are always these types of structures. The plumbing pipes may in some ways be unusual but knowing that they are situated in everyone's yard that does not have Village water / sewer does not make it unusual. The RV is not enough of an unusual condition.

The variance is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because he can still use the property. Other property owners would have the same challenges. He can still use his property.

The variance will create substantial detriment to adjacent property and will be contrary to the public interest. There is not a public safety component. It is clear that there are property owners that would not approve. The variance is against the ordinance.

The literal enforcement of the terms of the Zoning Code would not result in practical difficulty or unnecessary hardship to the applicant as he can still use the property.

There is not a financial hardship.

MOTION (Fritsche/Hansen) to Deny the Variance Requests based on the findings of fact, for the reduction of the minimum side yard building setback requirement from 20 feet to 3 feet and to waive the time limit provisions for the use of a temporary structure storage canopy on the North side of the property located at W218N9743 Happy Hollow Lane, Colgate WI 53017.

Roll Call Vote:

Ayes: Fritsche, Hansen, White, Knop

No: None

Chairman White stated outcome to appellant.

Chairman White stated next hearing will be September 11, 2019.

MOTION The meeting adjourned at 6:51 p.m.

Respectfully Submitted,

Deanna B. Braunschweig, WCMC/CMC

Village Clerk