

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
SEPTEMBER 11, 2019**

CALL TO ORDER: The meeting was called to order at 5:34 p.m.

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

APPROVAL OF MINUTES: August 14, 2019.

Motion (Fritsche/Hansen) to approve minutes as presented for August 14, 2019.

Discussion ensued of the objection letters that were on the dias in the August 14, 2019. Chairman White commented that the minutes accurately reflect the meeting. The objection letters are considered part of the record whether or not they were read aloud. When written comments are submitted they are considered part of the record. Because the individuals were not present to testify under oath, it is up to the Board to decide how much weight the written comments have. They should be noted that they exist but they are not required to be read. They would not have changed the decision. Motion Carried Unanimously to Approve the August 14, 2019 Minutes.

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 **Katelyn LeTourneau**, Agent for Darlene LeTourneau, property owner, who is requesting variances from the Village's Zoning Code (Section 17) to: (1) reduce the minimum front/street yard fence setback requirement from 2 feet to 6 inches under Section 17.50(2)(f)4.; and (2) increase the maximum height allowance for a fence in the front/street yard from 4 to 7 feet under Section 17.50(2)(f)3 *for the following property: N120W15515 Freistadt Road, Germantown (Tax Key# GTNV 232-991)*

Chairman White described the meeting order to Darlene LeTourneau, Kevin Schodron and the gallery that normally the Village's information and review of the Variance is given first and then Darlene LeTourneau and Kevin Schodron would have opportunity to give her point of view. Darlene LeTourneau and Kevin Schodron understood the order.

Chairman White swore in Director Retzlaff.

Director Retzlaff gave history and background of the Variance Appeal for N120W15515 Freistadt Road. Director Retzlaff referenced the Village letter dated August 7, 2019, and the denial of the 7 foot high fence on Freistadt Road. The building inspection letter stated that:

Your application proposes a 7' high fence in the front yard. Section 17 .50(2)(f)(3) of the Germantown Municipal Code reads, "Fences in front yards may not exceed 4 feet in height, except a maximum height of 6 feet on approval of the Plan Commission after consideration of visibility, privacy and access concerns."

Your application also proposes the fence to be located 6 inches off of the front yard lot line. Section 17.50(2)(f)(4) of the Germantown Municipal Code reads. "No fence shall be closer than 2 feet to a public right of way.

This is for the front yard of the property. A map and photograph of the property was shown. The approximate location of the proposed fence was shown.

Section 17 .50(2)(f)(3) of the Germantown Municipal Code reads, "Fences in front yards may not exceed 4 feet in height, except a maximum height of 6 feet on approval of the Plan Commission after consideration of visibility, privacy and access concerns."

This request is for a seven foot high fence by definition the side yard is considered a front yard.

Section 17 .50(2)(f)(4) of the Germantown Municipal Code reads, " No fence shall be closer than 2 feet to a public right-of-way."

The request is to locate the fence six inches from the right of way. The fence is supposed to be behind or south of the wall. There is property on the wall that is considered right of way.

By definition of the zoning code a corner lot has two street or front yards for establishing set-backs for fences.

The property line is south of Freistadt Road. The property line and right of way line are the same.

Kevin Schodron interjected that Darlene LeTourneau owns 10 feet of the line from the barn north and four feet, three inches is owned by Washington County

The limestone fence is twenty-four inches thick. The property line is four feet from the limestone.

If the fence is built and if the County wants to do something in the right of way, who is responsible to remove the fence? It would be responsibility of the property owner.

If Freistadt Road were to be widened, additional right of way would be required.

Jim Hanson questioned if the side or rear yard could have a higher height. The fence heights for front and side could be for vision, aesthetics, visibility, access, or privacy concerns.

Is there any County provision for the fence to be in the right of way. Director Jeff Retzlaff commented no.

There was a CSM created back in the 70s that shows the easement.

Chairman White swore in Kevin Schodron of N120W15515 Freistadt Road, Germantown. He is Darlene LeTourneau's son in law. Kevin Schodron commented that they had went to the County and within two hours they had permits from the County. The County Highway Supervisor told him that they could put the fence on the limestone and they are responsible for it. Kevin Schodron stated that the County has no issues with the fence or location of the fence.

There is only eight feet from the barn. Every fourth of July they have issues of people walking on the wall and broken bottles. The fence height requested is seven foot; however, he was not sure why it is stated that way. The quote is for a six foot fence. They want privacy.

Kevin Schodron showed a video of a person coming up to their front door and trying to open it at 2:57 a.m. The door was locked. There was evidence that the person had napped outside by barn and left belongings behind.

They have had property stolen such as concrete decorative cows. There was a fence there at one time but it was dilapidated and they removed it.

Chairman White questioned if the six-foot fence was the intention. Kevin Schodron stated he did not know why the application stated seven-foot fence. Kevin Schodron stated that they want a six foot dog eared cedar fence.

Knop commented that the retaining wall makes the yard unique for security. The fence could start at barn and go East to Pilgrim.

Chairman White reported that by code a corner lot has two front yards.

Kevin Schodron stated that security and safety is the main goal. And they want the property to look nicer.

Fritsche questioned the four-foot fence versus the six-foot fence. Will this keep people out, versus keeping people in so they do not fall on the retaining wall. They also have a puppy that fell off of the retaining wall. Schodron commented concern of the liability. They also want privacy. Schodron commented that the old fence was right behind the wall.

Chairman White swore in Darlene LeTourneau of N120W15515 Freistadt Road, Germantown. LeTourneau commented that the fence would bring privacy. Her bedroom is on the first floor. Can see right into her room from both ways.

Hansen commented on the fence height and location. The front yard is often lower because of vision triangles and line of sight.

Schodron commented that people already pull out and the fence would not hinder further.

Director Retzlaff pointed out that the County would play a role. The fence cannot be in the vision triangle.

Discussion of the vision triangle ensued. It was indicated that the County had already issued a permit.

Fritsche questioned if the board can approve something in between. Director Retzlaff commented that the board can approve something in between. Fritschke questioned if the fence height had to be six feet or could it be less. Schodron and LeTourneau replied the fence had to be at least six feet.

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

No one spoke.

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

No one spoke.

Chairman White commented that an email was received from Rick Miller in support of the requested variance.

Schodron commented that he talked to a neighbor that was in favor of the variance but could not be at the meeting due to work schedule.

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

The Public Hearing was closed at 6:20 p.m.

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

Chairman White suggested to review the requests separately.

The first variance request is to reduce the setback from two feet to six inches.

The variance will or will not 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.

Fritsche stated that the variance request to reduce the setback from two feet to six inches would not be contrary to the public interest.

White commented he agreed as there will still be considerable distance between the fence and wall.

Knop commented this is the lesser of the issue and not contrary. The setback area will not be contrary to the public interest.

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.

White commented that the retaining wall and right of way makes this property unique.

Fritsche commented, Why didn't the County install the fence.

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.

White commented on safety as an issue. The privacy argument does not win the day. The location on the road, the uniqueness of the retaining wall.

The house line of vision is much higher to see.

Knop commented that if the variance was not granted the space between the fence and barn would be wasted space; however, the fence could be configured differently. This yard is unique because of the retaining wall. Knop commented that 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. White commented that it is a close call because of the location of the barn and property line. At certain times of the year the property does get a high number of unwanted guests coming and going to Firemen's Park.

The variance will not create substantial detriment to adjacent property and will be contrary to the public interest.

There are no adjacent property owners except for County and Railroad.

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.

White commented that there is practical difficulty or unnecessary hardship. Fritsche commented that they are entitled to build a fence. Are they forced to build in a way that violates the ordinance or hardship. Fritsche questioned is it for necessity?

The damage and theft were commented on.

MOTION (White/Fritsche) to Grant the Variance and Reduce the Setback Requirement from two feet to six inches based on the findings of fact. Motion Failed. White and Fritsche voted aye; Hansen and Knop voted nay.

Chairman White stated outcome of the Setback variance to appellant.

The second part of the variance is in regard to the height of the fence, from four foot to seven foot. Schodron had commented on six feet; however, the application and notice state seven feet.

The variance will or will not 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.

White commented that the six-foot fence is not contrary to public interest. Fritsche agreed with White. The Plan Commission can approve a six-foot fence.

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.

White commented that it abuts a road and has a retaining wall that is very high. Knop commented that the uniqueness of the retaining wall safety and security. The retaining wall and elevation from the yard adds to the security. Knop commented that the four-foot fence is sufficient and the retaining wall works to their advantage. The code allows a six-foot fence through the plan commission. They could go to the Plan Commission for the six-foot fence. White commented that the Board of Zoning of Appeals could grant the fence. The application was for seven-foot fence.

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.

White commented that it could be a safety issue. He does not agree that the wall serves as a barrier. He commented it is something kids want to climb.

Knop commented that the variance is not necessary because the retaining wall is an advantage. The variance is not necessary because the retaining wall adds privacy that others do not have.

The variance will create substantial detriment to adjacent property and will be contrary to the public interest.

There are no adjacent property owners except for County and Railroad.

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.

White commented that it would because of safety and security. A four-foot fence is jumpable.

Discussion ensued that they could go back to plan commission and request a six-foot fence. White commented that the Board of Zoning of Appeals has the authority to grant the six-foot fence.

White commented he will make a motion and if that motion is denied then a motion can be made conditionally to send the request for six-foot fence to Plan Commission.

MOTION (White/Fritsche) to grant the Variance with respect to the fence be six foot and not seven. If denied than someone can make a motion to make the fence six foot conditional on Plan Commission. Motion Failed. White and Fritsche voted aye; Hansen and Knop voted nay.

Chairman White stated outcome of the Setback variance to appellant.
Chairman White stated next hearing will be as needed.

MOTION The meeting adjourned at 6:55 p.m.

Respectfully Submitted,

Deanna B. Braunschweig, WCMC/CMC