

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
July 17, 2013**

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

ROLL CALL: Chairperson Pluta, Members Kling and McDonnell, Alternate Members Ehler and Janzen, and Deputy Clerk Micka. Absent and excused: Members Riemer and Schleif.

Chairperson Pluta read the policy and procedures of the Board of Zoning Appeals.

PUBLIC HEARING: Chairperson Pluta read the public hearing notice.

The purpose of said hearing will be to hear any and all parties, their attorneys or agents, for or against the APPEAL as filed by Harry & Gisela Taetz, property owners, for a variance from the front yard building setback requirement in the Rs-5, Single-family Zoning District [Section 17.18(3)] to reduce the front yard setback from 35' to 26'9" for the property located at:

N116 W15550-52 Roberts Drive

The public hearing was called to order at 5:36 p.m.

The appellants presented testimony. Mr. Harry Taetz, W165 N10445 Wagon Trail, and Mrs. Gisela Taetz, W165 N10445 Wagon Trail, were sworn in by Chairperson Pluta.

Mrs. Taetz stated that they would like to add an additional 5' on both garages to the south to provide protection from the elements upon entry to the dwelling from the living room. The property is a duplex, the owners do not live there, and they bought the property in January.

Chairperson Pluta asked the appellants how the variance set-back of 8'3" is in accordance with the purpose and intent of the zoning code? Mrs. Taetz stated that it would protect the residents from the elements upon entrance and would also contain the waste and recycling containers within the building. The Board noted that the current building is non-conforming, and the current southern boundary of the building is less than 35' (32'3"). It was questioned why the appellants felt they should have less setback than their neighbors. Mr. Taetz stated that they are the only property on that side to the next intersection. Mrs. Taetz stated that other neighbors have a separate entrance, and that the entrance for this property is right into the living room. The appellants were asked if they understood setbacks. Chairperson Pluta explained the reasons for setbacks in the Village Code. Mr. Taetz stated that there are no neighbors to the right or left on Roberts Drive, the house has no basement, there is a need for storage, and this request would allow for more storage in the garage.

Chairperson Pluta asked the appellants to state exceptional, extraordinary or unusual conditions or circumstances that apply to this structure that do not apply to other properties in the same area. Mrs. Taetz replied that they need more space, they wish to rent the property, it is the oldest house in the area, and they want to improve the look of the property.

Chairperson Pluta asked the appellants as the owners of the property, what special conditions exist that would cause practical difficulty or unnecessary hardship if the variance is not granted? Mr. Taetz stated the entrance from the road is into the living room, a foyer is needed, and there is no protection from the elements. He stated that the house was built in 1959.

Chairperson Pluta asked the appellants why the variance request is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the area? Mrs. Taetz replied that the property would be comparable to the other properties in the same area.

Chairperson Pluta asked the appellants to state how if the variance was granted, it would not create substantial detriment to adjacent properties, would not be contrary to the public interest, and would not endanger public safety? Mrs. Taetz stated they have no close neighbors. Mr. Taetz stated that they want to enhance the value of the property.

Chairperson Pluta asked for questions from the Board. There were no questions from the Board.

Chairperson Pluta asked if there was anyone that wished to speak on behalf of the appellant. There was no-one wishing to speak on behalf of the appellant.

Chairperson Pluta read the memorandum from Village Planner & Zoning Administrator Retzlaff, which included the following information:

Appeal/Request: Owners are seeking a variance from Section 17.18(3) of the Zoning Code for a front yard building setback variance of 8'3" that would enable them to construct a 187 sq. ft. addition (5'6" x 34') to the existing duplex on the 0.35 acre parcel located in Rs-5, Single-family Residential Zoning District, where the minimum front yard building setback requirement is 35' (reduced from 35' to 26'9").

Background: In May, 2013, the Inspection Services Division of the Community Development Department denied issuing a building permit for the proposed garage/enclosure addition.

Zoning Administrator Comments: The existing duplex is a non-conforming use within the Rs-5, Single-family Zoning District, although records indicate that the structure was built as a duplex in 1959 prior to the current Rs-5 zoning district designation that was assigned to the neighborhood. The adjacent lots are all developed with single-family dwellings.

Section 17.48(1) addresses non-conforming uses of structures and provides that the lawful non-conforming use of a structure may continue although the use does not conform, and that the structure may not be extended, enlarged, reconstructed or structurally altered except when required to do so by law or order so as to comply with the Zoning Code. The variance and the proposed addition should be denied unless the use (two-family) is brought into compliance with the Rs-5, Single-family District (as a single-family use).

The Board of Zoning Appeals and legal counsel need to determine if the Board of Zoning Appeals has the authority to allow the duplex use to continue as part of this variance appeal pursuant to Section 17.48 of the Zoning Code.

The Board discussed that if the variance was granted, the appellants may lose the ability to rent the property. The property would defer to non-grandfathered use and become a single-family dwelling.

Discussion followed regarding if the Board of Zoning Appeals has the authority to allow the duplex use to continue as part of this variance appeal. Legal counsel and the Zoning Administrator were not present to provide input. The Board has two options: table the request until the Village Attorney provides an opinion, or continue with deliberations.

The appellants stated they intend to keep the property as rental property, and would like to have an opinion from legal counsel.

Motion Ehler, second McDonnell, to table the appeal of Harry & Gisela Taetz on the property located at N116 W15550-52 Roberts Drive, to determine if the Board of Zoning Appeals has the authority to allow the duplex use to continue as part of the variance appeal under Section 17.48 of the Zoning Code as determined by the Village Attorney.

Ayes: 5. (Ehler, Kling, McDonnell, Janzen and Pluta). Nays: 0. Motion carried.

Chairperson Pluta stated the hearing would reconvene at the next scheduled meeting of the Board of Zoning Appeals on Wednesday, August 21 at 5:30 p.m. The appellants will receive a meeting agenda in the mail.

PUBLIC HEARING: Chairperson Pluta read the public hearing notice.

The purpose of said hearing will be to hear any and all parties, their attorneys or agents, for or against the APPEAL as filed by Cody Gordon, property owner, for a variance from the rear yard building setback requirement in the Meadow Creek Crossing Subdivision Planned Development District (PDD) established by Resolution No. R3-02 to reduce the rear yard setback from 30' to 25' for the property located at:

W173 N10062 Meadow Creek Way

The public hearing was called to order at 6:10 p.m. Alternate Member Janzen recused himself from the hearing as he is a neighbor of the appellant.

The appellant presented testimony. Cody Gordon, W173 N10062 Meadow Creek Way, was sworn in by Chairperson Pluta.

Mr. Gordon summarized his request for a variance from the rear yard building setback in the Meadow Creek Crossing Subdivision, to allow him to build a composite deck to the rear of his house that would provide additional outdoor entertainment space and increase the value of his house.

Mr. Gordon distributed (3) 8-1/2" x 11" photographs of the rear of his property. Chairperson Pluta entered the photographs into the record as Exhibit A. The photographs submitted were: cantilever deck with grill; elevation of the same cantilever deck with the pool; and a more detailed photograph where the pool is not pictured.

Mr. Gordon stated he bought the home two years ago, it was a spec home, and a construction deck had been built at the rear home to meet code. The deck is unfinished and very restricting, is 4' depth by 12-1/2' wide and is showing wear. He would like to build a composite deck of 10' depth. Mr. Gordon reviewed the location of his neighbors, and stated that his neighbor to the right has also submitted the same variance request.

Chairperson Pluta asked the appellant how the variance would be consistent with the spirit, purpose and intent of the Code? Mr. Gordon replied that there are no safety issues on the right, it would not impede on anyone's rights, and aesthetically the deck is not appealing.

Chairperson Pluta asked the appellant to state the exceptional, extraordinary or unusual conditions or circumstances that apply specifically to the parcel that do not apply to other properties in the same area. Mr. Gordon replied that he is only able to go 12" based on depth and it is an extremely small deck with little room to grow. He stated he would like to build the deck for entertainment and aesthetics, the lot is average for the subdivision, and if the home would have been built knowing all the setbacks, it could have been moved to the rear. The Plat of Survey for the lot was reviewed and discussed.

Chairperson Pluta asked the appellant what special conditions exist which would cause practical difficulty or unnecessary hardship if the variance is not granted? Mr. Gordon stated that the usability of the deck is not practical, he intends to stay in the home, the deck as built is useless, and there is no entrance to the rear yard.

The Board discussed alternate solutions to the variance. Mr. Gordon stated if the deck is built where he requested, it would cover one basement window. If the deck was built with other options, it would cover two basement windows.

Chairperson Pluta asked the appellant why the variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same area? Mr. Gordon stated that 90% of homes in the subdivision have a deck of equivalent size that he is requesting, a 12' x 4' deck would provide enjoyment, and his neighbors would prefer a structure more substantial than what is currently there.

Chairperson Pluta asked the appellant to state how if the variance was granted, it would not create substantial detriment to adjacent properties, would not be contrary to the public interest and would not endanger public safety? Mr. Gordon stated that he spoke with adjacent homeowners, there are no complaints, and there are no safety issues if the deck is built to code.

Chairperson Pluta asked if there was anyone present wishing to speak on behalf of the appellant.

James Bradley, W173 N10042 Meadow Creek Way, was sworn in by Chairperson Pluta.

Mr. Bradley stated that Mr. Gordon's property is the same as his property, there is a 30' setback, there are no public safety issues and no danger, and the request would provide aesthetic and resale value to the home.

Chairperson Pluta asked if there was anyone else wishing to speak in favor of the appellant. There was no one else wishing to speak.

Chairperson Pluta read the memorandum from Village Planner & Zoning Administrator Retzlaff, which included the following information:

Appeal/Request: Owner is requesting a variance from Section 1 of the Meadow Creek Crossing Planned Development District (PDD), a separate planned development zoning district established by Resolution No. 3-02, that would enable him to construct an attached deck to the existing dwelling on the subject parcel where the minimum rear yard building setback requirement is 30' (a reduction from 30' to 25').

Background: In June, 2013, the Inspection Services Division of the Community Development Department denied issuing a building permit for the proposed attached deck.

Zoning Administrator Comments: The adjacent property owner (located at W173 N10042 Meadow Creek Way) is also requesting a building setback variance for an attached deck.

The Board members reviewed Resolution No. 3-02. Discussion followed on Item No. 7 in the resolution regarding accessory structures, which stated "Permanent accessory structures must meet the provisions of Section 17.41, Germantown Municipal Code. No modifications from these provisions are approved with the General Development Plan".

The Board discussed that if there is a gap between the deck and the house, the structure becomes an accessory structure. The appellant was asked if he had considered a patio (paved area) in the same footprint, which would not require the same setbacks? Mr. Gordon replied that he considered that option.

Testimony from the Village was closed at 6:48 p.m.

Chairperson Pluta asked if there was anyone present wishing to speak against the appellant. There was no one else wishing to speak.

Chairperson Pluta asked if there was anyone present wishing to speak. There was no one else wishing to speak.

The Public Hearing was closed at 6:50 p.m.

Discussion followed by the Board. The primary reason of the variance request was to improve the enjoyment of outdoor space and enhance the value of the property. These were not compelling enough reasons to grant the variance.

The appellant was asked if the conditions and PDD were available when he purchased the property? Mr. Gordon replied that they were, and that he had reviewed the plat.

The appellant was asked if Resolution No. 3-02 was available when he purchased the property? Mr. Gordon replied that he was not sure.

Discussion continued by the Board. The appellant made it clear there are no safety issues, if this was within the spirit and intent of the code, and that the Board is required to enforce the code.

The Board reviewed the rules for accessory structures in the Germantown Municipal Code. Discussion followed: 1) options to detach the structure for a different style of construction; 2) the PDD is not the general zoning of the village, it is a custom zoning; 3) the Board of Zoning Appeals cannot change the zoning code, that requires legislative action by the Village Board; and 4) there is no provision for accessory structures under the PDD in the Municipal Code.

Discussion followed regarding if the Board should table the request, or continue with deliberation. If the request was tabled, the Village Planner and Village Attorney could provide options and guidance to the Board. If the variance was denied, there is an appeal process. The appellant was asked if he wished to continue or table the request? After discussion on the appeal process, the appellant requested that the variance request be tabled.

Motion McDonnell, second Kling, to table the appeal of Cody Gordon on the property located at W173 N10062 Meadow Creek Way in order to obtain appropriate advice from the Village Planner and / or Village Attorney on various issues discussed, including what would be permissible for a paver or concrete patio as opposed to a deck, what the situation would be if this was built as a detached accessory structure, would they have a larger buildable area given potentially more flexible setback requirements for accessory structures, which could allow the structure to be built closer to the lot line.

Ayes: 4. (Ehler, Kling, McDonnell, and Pluta). Nays: 0. Motion carried.

The Board requested that Planner Retzlaff be present at the next meeting to provide the Village's position on the appeal.

PUBLIC HEARING: Chairperson Pluta read the public hearing notice. The purpose of said hearing will be to hear any and all parties, their attorneys or agents, for or against the APPEAL as filed by James Bradley, property owner, for a variance from the rear yard building setback requirement in the Meadow Creek Crossing Subdivision Planned Development District (PDD) established by Resolution No. R3-02 to reduce the rear yard setback from 30' to 23' for the property located at:
W173 N10042 Meadow Creek Way

The public hearing was called to order at 7:10 p.m. Alternate Member Janzen recused himself from the hearing as he is a neighbor of the appellant.

The appellant James Bradley, W173 N10042 Meadow Creek Way, provided testimony. Gail Bradley, W173 N10042 Meadow Creek Way, was sworn in by Chairperson Pluta. The Bradley's stated that they are requesting a variance from the rear yard building setback requirement in the Meadow Creek Crossing Subdivision to build a deck, the same request as Mr. Gordon.

Chairperson Pluta asked the appellants if they wished the Board to continue with the hearing and deliberation, or if they wished their request to be tabled? Mr. Bradley requested that his request be tabled.

Mr. Bradley stated that Member Janzen had approached him and his neighbor, they had a full discussion of the appeal, and Mr. Janzen told them they would not be granted a variance. Mr. Janzen also did not disclose that he was a member of the Board of Zoning Appeals.

Mr. Janzen stated he did not tell the appellants they would not be granted a variance, and Mr. Bradley again stated that Mr. Janzen did tell him he would not receive a variance.

Chairperson Pluta stated that he was made aware of the conflict with Mr. Janzen for the hearings by the Village Clerk and he has not had any discussions with Mr. Janzen regarding any of the appeals. The other members of the Board confirmed that they did not have any discussion with Mr. Janzen regarding any of the appeals.

Motion McDonnell, second Kling, to table the appeal of James Bradley on the property located at W173 N10042 Meadow Creek Way in order to obtain appropriate advice from the Village Planner and / or Village Attorney on various issues discussed, including what would be permissible for a paver or concrete patio as opposed to a deck, what the situation would be if this was built as a detached accessory structure, would they have a larger buildable area given potentially more flexible setback requirements for accessory structures, which could allow the structure to be built closer to the lot line.

Ayes: 4. (Ehler, Kling, McDonnell, and Pluta). Nays: 0. Motion carried.

APPROVAL OF MINUTES OF FEBRUARY 20, 2013: *Motion McDonnell, second Kling, to approve the minutes of February 20, 2013. Motion carried without negative vote.*

ADJOURNMENT: *Motion McDonnell, second Janzen, to adjourn the meeting at 7:22 p.m. Motion carried without negative vote.*

Chairperson Pluta informed the appellants that they will be notified of the next meeting, and they may wish to have letters of support from neighbors and provide information on other options for their requests.

Respectfully submitted,

Christine M. Micka, CMC/WCMC
Deputy Village Clerk