

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
February 20, 2013**

CALL TO ORDER: The meeting was called to order at 5:45 p.m. by Deputy Clerk Micka.

ROLL CALL: Members McDonnell and Schleif, Alternate Member Janzen, Attorney Sajdak, Planning and Zoning Administrator Retzlaff, and Deputy Clerk Micka. Absent and excused: Member Riemer. Absent: Chairperson Pluta (arrived at 6:25 p.m.) and Member Kling.

Motion Janzen, second Schleif, to appoint Member McDonnell as Chairperson Pro Tem. Motion carried without negative vote.

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

PUBLIC HEARING: Chairperson McDonnell 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 Life Church, Inc., property owner, for a variance of Section 17.45(1)(a) of the Code of Ordinances to allow for a reduction in the minimum required parking stall size from 180 sq. ft. to 162 sq. ft. (a variance of 18. sq. ft.) for the property located at:

W164 N11325 Squire Drive

The public hearing was called to order at 5:48 p.m.

Deborah Tomczyk, attorney for Life Church; Gary Pribanich, Executive Director of Business and Finance of Life Church; and Planner and Zoning Administrator Retzlaff were sworn in by Attorney Sajdak.

Planner and Zoning Administrator Retzlaff summarized his memo to the Board regarding the appeal requested by Life Church.

Appeal Request: The owners are seeking a variance from Section 17.45(1)(a) of the Zoning Code that provides for off-street parking requirements. The request is for a variance to reduce the minimum parking stall size from 180 sq. ft. to 162 sq. ft. (a variance of 18 sq. ft.)

Background: In December, 2009, approval was granted by the Village Board for Life Church to be removed from the Germantown Marketplace II Planned Development District (PDD). The Germantown Marketplace II PDD is a special zoning district that was specifically created to guide development within the PDD area. When the PDD was approved, the Village agreed to reduce parking stall requirements and allow the use of 9' x 18' parking stalls.

In May, 2012, the Village Plan Commission approved site and building plans for a 23,900 sq. ft. addition (including an 800 seat sanctuary) to the existing Life Church facility located on Squire Drive (north of the existing parking lot that was constructed when this area was part of the Germantown Marketplace II PDD). Approval was granted for Phase I of a possible 2-phase expansion proposed by the church. In terms of parking, Phase I included re-stripping the existing paved parking lot with the same size (9' x 18' or 162 sq. ft.) parking stalls as were originally approved and installed when the Germantown Marketplace II Shopping Center was developed.

Zoning Administrator Comments: While not finalized or approved by the Village, Phase II expansion will include the construction of new parking areas that would need to meet the Village's current parking stall size requirement of 180 sq. ft. (10' x 18' x 20'). A reduced parking stall size (9' x 18') would allow Phase II development with the same parking stall size as the existing parking area and provide other benefits as set forth in the appeal.

Deborah Tomczyk, attorney for Life Church, discussed the facts for the appeal, the legal requirements they must follow, and that parking stalls are the only issue. Ms. Tomczyk reviewed the history of the development and the original site development. Life Church started at Germantown High School in 2000, leased and then acquired the current site in 2004, and the expansion was started in 2010. In the 1990's, Life Church was part of the Germantown Marketplace Development zoned B-2. Parking stalls were 162 sq. ft. or 180 sq. ft. per Village Code. Nine parking stalls currently exist long term, an expansion was completed in 2009, as part of the B-2 zoning, and where a Conditional Use Permit was needed every year. The church would like to stay in Germantown and is a dynamic, growing faith community. Phase I was planned and is under construction, they are looking at Phase II for a future 1,800 seat sanctuary, and would require one stall for every three seats. The church shares parking with retail businesses, they will be adding landscaping, and the site plan was approved by the Plan Commission this past Monday. Parking stalls of 9' x 18' currently exist on Life Church and retail parking properties. She noted that most codes include less parking than required in Germantown. The history of the site is unique, and they plan to preserve landscaping to the north. The request before the Board is for new parking stalls only.

Ms. Tomczyk and Mr. Pribanich answered questions from the Board. The difference in the parking stalls is 637 spaces (9' x 20') vs. 660 spaces (9' x 18'). There are four buildings, and Life Church is the last two. The entire lot is available at non-peak times with the shared parking agreement, and the only day for busy parking is Sunday. Life Church would prefer to have the 9' x 18' parking stalls throughout the whole lot. There

are approximately 1,100 people that attend church, there is a need for Phase II in the near future, and this is consistent with the growth since 2000.

Chairperson McDonnell asked if there was anyone wishing to speak in favor of the requested variance. There was no-one wishing to speak.

Chairperson McDonnell asked if there was anyone wishing to speak in opposition to the requested variance.

Jim Dragich, W172 N13186 Division Road, was sworn in by Attorney Sajdak. He stated that other than large trucks, smaller cars with more miles per gallon are becoming normal, and he felt that the proposed size of the parking stalls was too large.

Chairperson McDonnell asked if there was anyone else wishing to speak.

There being no one else wishing to speak, testimony was closed.

DELIBERATION AND ACTION BY THE BOARD:

Prior to any deliberation or action, the Board will need to clarify if they are voting on the variance as requested, or on the entire property.

Motion Schleif, second Janzen, to include the entire property when making the decision on the appeal.

Roll call vote:

Ayes: Schleif, Janzen, McDonnell.

Nays: None.

Motion carried. Ayes: 3. Nays: 0.

Conclusions of Law:

1. Member Schleif: The variance **is not** contrary to the public interest and **will** be in accord with the spirit of the Zoning Code given discussion on the variance allowed for parking and the entire marketplace is 9' x 18'.

2. Member Janzen: There **are** 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 this is part of a commercial development that has had these parking requirements and this is a unique circumstance that is different from stand alone churches.

3. Chairperson McDonnell: The variance **is** necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same

district because it allows the church to create a berm with separation from activities of church and accommodate the needs of the church and the interest of property owners to the north.

4. Member Schlieff: The variance **will not** create substantial detriment to adjacent property, and **will not** be contrary to the public safety or interest because there is no change to the property and they are designing a new part to match what is there that allows for creating a larger berm.

5. Member Janzen: A literal enforcement of the terms of the Zoning Code **would** result in practical difficulty or unnecessary hardship to the appellant/applicant because of the need to provide additional parking and a larger buffer zone.

All members were in agreement with the Five Findings of Fact.

Motion Schleif, second Janzen, to grant the variance to Section 17.45(1)(a) of the Code of Ordinances to allow for a reduction in the minimum required parking stall size from 180 sq. ft. to 162 sq. ft. to Life Church, Inc. on the property located at W164 N11325 Squire Drive.

Roll call vote:

Ayes: Schleif, Janzen, McDonnell.

Nays: None.

Motion carried. Ayes: 3. Nays: 0.

Deputy Clerk Micka informed the appellants that they will receive written notification of the decision from the Village Clerk's Office.

Chairperson McDonnell declared a recess at 6:20 p.m.

Attorney Sajdak was excused from the meeting.

Chairperson Pluta arrived at 6:25 p.m.

The meeting was reconvened at 6:28 p.m.

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 Joseph Cresci, property owner, for a variance of Section 17.41(b) of the Code of Ordinances to allow for an increase in the maximum area allowed for a detached accessory building from 864 sq. ft. to 2,400 sq. ft. (a variance of 1,536 sq. ft.) for the property located at:

W172 N13088 Division Road

The public hearing was called to order at 6:30 p.m.

Joseph Cresci, W172 N13088 Division Road, the appellant, was sworn in by Chairperson Pluta. Mr. Cresci stated that he could build an attached garage without any size restrictions, but because of the mound system that is not an option. He would like to build a detached garage and pole barn on the property. His property is residential and is surrounded by commercial properties. Trees will be planted and landscaping completed so that the buildings will not be seen from the road. He has lived on the property for two years and has completed many improvements. He is requesting the variance for the detached buildings so that he can provide storage for his hobby of electric cars. Mr. Cresci drew a diagram on the board of the locations of the house, garage, mound system, and well. The only residential property is across the street, and he will plant blue spruce trees six feet high, since the trees that were there were taken down. The cost of the building is \$25,000 to \$35,000, and he would like to request a building larger than his request of 40' x 60'. The minimum size would be 40' x 50'. Mr. Cresci provided pictures of the property, and noted that if the tanks and well were not located on the property, he could build an attached garage.

It was questioned if a breezeway could be built and the garage attached. Planner Retzlaff reviewed the definition of attached structure to a building under Section 17.08(5)(a) of the Municipal Code.

Planner and Zoning Administrator Retzlaff summarized his memo to the Board regarding the appeal requested by Joseph Cresci.

Appeal Request: The owners are seeking a variance from Section 17.41(1)(b) of the Zoning Code that provides for the type and maximum size of residential accessory buildings. The owner seeks a variance that would enable him to construct a 40' x 60' or 2,400 sq. ft. detached accessory building on his 1.2 acre parcel located in a Rs-3, Single-family Residential Zoning District where the maximum size allowed under 17.41(1)(b) is 864 sq. ft. (a variance of 1,536 sq. ft.).

Background: In January, 2013, the Inspection Services Division of the Community Development Department denied issuing a building permit for a 40' x 60' detached accessory building given the requirements of 17.41(1)(b).

Zoning Administrator Comments: The Village's accessory building regulations were comprehensively revised in 2008. With respect to the Rs-3 district, the changes eliminated the previous "one-size-fits-all" approach that allowed accessory buildings up to 864 sq. ft. regardless if they were attached or detached, and regardless of the size of

the parcel. The new regulations adopted in 2008 incorporated two important revisions: 1) attached garages are no longer limited to 864 sq. ft. in area; attached garages have no size limitation; and 2) larger detached buildings are now allowed on larger parcels. The current building area allowances in Section 17.41(1)(b) allow for larger buildings based on a 1% sliding scale where the allowable size of a detached building increases as the parcel size increases. For existing dwellings that do have an attached garage, the maximum area allowed for other detached buildings is 1% of the lot area, or 192 sq. ft., whichever is greater. For existing dwellings that do not have an attached garage, the maximum area allowed is 1% of the lot area, or 864 sq. ft., whichever is greater. With respect to the Cresci parcel (an existing dwelling that does not have an attached garage), the maximum area allowed is 1% of 1.2 acres (523 sq. ft.) or 864 sq. ft., whichever is greater.

The Board had several questions for the Planner. It was noted that the sketch was not to scale. The setbacks are front 45', rear 35', and side 20'. There is a provision in the code that materials must be comparable to the existing garage to be expanded and enlarged if non-conforming, as long as the addition does not make the situation worse. It was noted that Highway G is the front yard.

Planner Retzlaff noted that there have only been a few situations for existing non-conforming, and on one the addition was allowed to encroach. The building is on the southeast side and the holding tanks are in the buildable area of the lot. A garage can exist on the parcel, but a breezeway would need to be built on the back of the house. The appellant noted that it is impossible to build a breezeway with the septic setbacks and well setbacks.

The Board discussed other zonings, residential zoned Rs-3 is across the road, and the lot is surrounded by industrial properties.

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

Jim Dragich, W172 N13186 Division Road, was sworn in by Chairperson Pluta. He has two properties adjoining this property, Mr. Cresci is a good neighbor, there are pole buildings behind the property, his hobby is collector cars, the area was heavy industrial, the Village annexed it from the Town, there was an old quarry, this is an old area of the Town of Rockfield, and the house is located in the middle of the industrial area.

Patrick Josten, W172 N12882 Division Road, was sworn in by Chairperson Pluta. He owns the property next to Mr. Cresci, has no problem with the proposal, he is a good

neighbor, has worked to clean up the property and made it look more appealing, their driveways are together, and the pole buildings do not bother him.

John Parish, N132 W17225 Rockfield Road, was sworn in by Chairperson Pluta. A tavern is on the southwest corner, he taught Mr. Cresci in middle school, he is very focused, and is very serious about his hobby.

Betty Cresci, N130 W17290 Camelot Drive, was sworn in by Chairperson Pluta. She is Mr. Cresci's grandma, he is a hard worker, it is nice to have a building of his own, and his hobby is collector cars.

Dino Cresci, N130 W17290 Camelot Drive, was sworn in by Chairperson Pluta. He is Mr. Cresci's father and has some cars, other options were checked on, and he now has his own property for his hobby.

Chairperson Pluta asked if there was anyone else wishing to speak.

There being no one else wishing to speak, testimony was closed.

Discussion followed by the Board noting the property has unusual circumstances and it is not practical to build an attached garage on the property.

DELIBERATION AND ACTION BY THE BOARD:

Conclusions of Law:

1. Member McDonnell: The variance **is not** contrary to the public interest and **will** be in accord with the spirit of the Zoning Code based on discussion on the zoning of the adjacent properties.
2. Member Schleif: There **are** 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 of the placement of the house on the property.
3. Member Janzen: The variance **is** necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because of the location of the holding tanks and the well.

4. Chairperson Pluta: The variance **will not** create substantial detriment to adjacent property, and **will not** be contrary to the public safety or interest because of all the previous reasons discussed.

5. Member McDonnell: A literal enforcement of the terms of the Zoning Code **would** result in practical difficulty or unnecessary hardship to the appellant/applicant because this property cannot construct a garage, where other properties are able to construct any size garage.

All members were in agreement with the Five Findings of Fact.

Motion Janzen, second Schleif, to grant the variance to Section 17.41(b) of the Code of Ordinances to allow for an increase in the maximum area allowed for a detached accessory building, from 864 sq. ft. to 2,688 sq. ft., which would allow for a variance in the amount of 1,824 sq. ft.

Roll call vote:

Ayes: Schleif, Janzen, McDonnell, Pluta.

Nays: 0.

Motion carried. Ayes: 4. Nays: 0.

Chairperson Pluta informed the appellants that they will receive written notification of the decision from the Village Clerk's Office.

APPROVAL OF MINUTES OF November 14, 2012 and December 19, 2012: Motion McDonnell, second Schleif, to approve the minutes of November 14, 2012 and December 19, 2012. Motion carried without negative vote.

ADJOURNMENT: Motion Schleif, second McDonnell, to adjourn the meeting at 7:33 p.m. Motion carried without negative vote.

Respectfully submitted,

Christine M. Micka, CMC/WCMC
Deputy Village Clerk