

VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
JUNE 15, 2011

CALL TO ORDER

Clerk Knaack called the meeting to order at 5:35 p.m.

ROLL CALL

Members present: Chairman Pluta, Members Riemer, McDonnell and Bojarski. Absent: Member Schleif. Also present were Attorney DeStefanis, Clerk Knaack, and Alternate member Janzen. Alternate member Foster arrived at a later time.

PUBLIC HEARINGS:

5:30 P.M. THE PURPOSE of said hearing will be to hear any and all parties, their attorneys or agents, to allow for a variance for a deck that fails to meet the required setback. The property is zoned Rs-4 PDD in the Meadow Creek Crossing Subdivision. This particular PDD requires a rear yard setback of 30 feet. The proposed deck encroaches in the rear yard setback by 12'2". Property owner Chris & Melissa Kliczack, W174 N10179 Tanglewood Drive Germantown, WI.

Village Planner Retzlaff gave a very brief outline of the case.

Melissa Kliczack was sworn in. She stated the following:

- They purchased the house after it was built.
- They were not aware of the setback restrictions
- They are looking to make the best of their property
- This is a corner lot and there is no place else to place the deck

Chris Kliczack was sworn in. He stated the following:

- He is on the Board for Meadow Creek and all members of the Board were present when his proposed deck was discussed and did nothing formal to confirm or deny

Member Foster arrived at this time. (6:00 p.m.)

Dan Terrill of Brew City Builders was sworn in.

He stated the following:

- He is a professional deck builder
- The house is on the setback area
- The back of the house has a half exposed basement and goes downhill
- The proposed deck would be facing the garage of the neighbor to the west
- There would only be seven feet ten inches left to build a deck

Let the record show a copy of the landscape design was marked Exhibit A and shown to the members of the Board.

Planner Retzlaff gave a presentation to the Board on the information received in the packet for the meeting. He stated it is a corner lot. He stated the land slopes downward from the northeast to the southwest corner.

Russell Cramer appeared before the Board and stated his house faces Tanglewood and has no objection about the deck.

With no one else appearing for or against, the Public Hearing was closed at 6:25 p.m.

Discussion took place regarding the proposed deck.

- The buyer should have been knowledgeable regarding the setback
- A corner lot makes it unique
- There is no room for a large deck
- The grading is an eight foot drop
- Plats are on record for a reason
- Maybe the current design of the deck is too large
- Will this be an issue in the future
- There is an element of practical difficulty

The Board had the following findings:

- It would be contrary to the public interest and will not be in accord with the spirit of the Zoning Code because the code calls for a 30 foot setback and this could become an issue in the future.
- There are not exceptional conditions or circumstances because it is a well designed subdivision and everything is a matter of record
- There is a concern to make all lots the same and the Board must look to the future

Motion by McDonnell second by Foster to deny the request for a variance for a deck which would encroach in the rear yard setback by 12'2".

Motion by Pluta second by Reimer to amend the motion to limit an infringement on the setback to up to 9 feet as opposed to 12'2". All present voted aye to amend.

Roll call vote was taken on the motion as amended. All present voted aye. Motion carried.

The hearing adjourned at 7:20 p.m.

6:00 P.M. THE PURPOSE of said hearing will be to hear any and all parties, their attorneys or agents, to allow for a variance for a deck that fails to meet the required setback. The property is zoned Rs-5 PDD in the Tree Tops Subdivision. This particular PDD requires a rear yard setback of 30 feet. The proposed deck encroaches in the rear yard setback by 11' – 12' +/-.
Property owner Melvin & Patricia Tasker, N97 W14909 Burning Bush Court
Germantown, WI.

The Public Hearing was called to order at 7:25 p.m.

Planner Retzlaff gave a presentation on the variance requested.

Patricia Tasker was sworn in. She stated the following:

- The home was built in 2004 and the landscape plan approved in 2005.
- The landscaper applied for a permit and it was approved in 2005
- It is all green/open space where the deck will be built
- All landscaping was done with the deck in mind
- 3 sides of the home are visible
- A permit was granted in 2005 and now they want to finish the plan
- The common outlot is maintained by the Association budget
- A higher end subdivision expects nicer amenities

Color photos labeled Exhibit A and Exhibit B were entered into the record

Planner Retzlaff stated the first permit was issued on the interpretation that decks are not part of the principal structure. It is his interpretation that an attached deck is part of the principal structure. There are two parts of the application – interpretation and the need for the variance. There is nothing in the Village Code that says an attached deck is not part of the principal structure per Section 17.41(3). There are no clear definitions dealing with decks. If it is detached it is not part of the structure, the same for garages.

Discussion took place regarding the proposed deck.

- The permit was issued and plans were made around it
- The owners followed the rules, they applied and were granted a permit

The Board had the following findings:

- The variance will not be contrary to public interest and will be in accord with the Zoning Code because it doesn't impede on any other persons property
- There are exceptional conditions because it is a unique location – the entrance to Tree Tops subdivision and adjacent to an outlot
- There is adequate space for the deck
- Money had been spent for landscaping by the owners
- The variance will benefit the subdivision
- Restricting the size would limit property re-sale compared to other properties
- There are no public safety issues
- The owners had worked with a landscaper and there is a plan in place

Motion by McDonnell second by Bojarski that the denial was grounded in error, however they believed the Planner was correct in his interpretation. Roll call vote was taken, all present voted aye. Motion carried.

A letter of support from Christopher and Kimberly Molnar was read into the record and labeled Exhibit C.

Motion by Janzen second by McDonnell to grant the variance requested for a deck that encroaches in the rear yard setback by 11'- 12'+/-.

Motion by Pluta second by Reimer to amend the motion to state up to 12'. All present voted aye to amend.

Roll call vote was taken on the motion as amended all present voted aye. Motion carried.

APPROVAL OF MINUTES: September 22, 2010

Motion by McDonnell second by Reimer to approve the minutes. All present voted aye. Motion carried.

ADJOURNMENT

Motion by Janzen second by Pluta to adjourn at 8:30 p.m. All present voted aye. Motion carried.

Respectfully submitted,

Elizabeth Knaack
Village Clerk