

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
November 11, 2020**

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

ROLL CALL: Chairman White, Hansen, Schodron, Edwards, Huber, Knop, and Yao. Assistant Planner Zandt, Director Retzlaff, and Clerk Braunschweig.

APPROVAL OF MINUTES: July 8, 2020.

Motion (Knop/Hansen) to approve minutes as presented for July 8, 2020, corrected to state Yao was present and Knop was absent. 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 for or against a **VARIANCE APPEAL** filed by **Josh Wirth, Agent for Robert Bennett**, property owner, who is requesting a variance from Section 17.41(6)(a) of the Village's Zoning Code in order to construct a retaining wall with a maximum height of 9 feet approximately 4 feet away from the side yard property line vs. the minimum requirement of 9 feet. **W130N11617 Harvest Ridge Road.**

Knop commented he does know Bennett from profession relationship and requested to be recused. Knop was then excused from the meeting.

Chairman White described the meeting order and that normally the Village's information and review of the Variance is given first and then Josh Wirth and Robert Bennett would have opportunity to give their point of view. Josh Wirth and Robert Bennett understood the order.

Chairman White swore in Director Retzlaff.

Director Retzlaff gave history and background of the Variance Appeal for **W130N11617 Harvest Ridge Road**. The property location and map were shown. This is known as lot 37 in the Harvest Hills Subdivision. The grading plan of the property was shown. The ordinance 17.41 (6) (a) of the construction of a retaining wall was reviewed. The retaining wall plan was shown. The location of the pedestrian path in relation to the proposed retaining wall was reviewed. Photos of the existing site were shown. The request is to reduce the required setback from 9 feet to 4 feet for a wall with a maximum height of 9 feet above yard grade versus a minimum of 9 feet required.

Chairman White swore in Josh Wirth N116 W 12711 Elm Lane Germantown.

Josh Wirth reported that the reason for the change from a double wall to a single wall is for more access to the drive way and side entrance to the garage. The vehicles are large to be able to get in the side entrance of the garage. The change in grade will be 8 feet.

Discussion ensued of the wall height and grade in relation to the grade. The house is already framed. There will be a barrier or fence on top of the retaining wall for safety and security. The length of the driveway and space was discussed.

The building inspector had questioned the builder of the house on the lot prior to building.

Chair White swore in Robert Bennett N76W176224 Sherwood Dr Menomonee Falls.

The purchases were not apprised by the builder that this was going to be a problem. The property owners drive a truck. The developer sent a letter in support of the wall. Mr. Bennett did not have a copy of the letter. Mr. Bennett stated he was blindsided.

Huber questioned if it could be changed to a front facing garage.

The original topography of the lot had changed. Fill was brought in that raised the level of the house.

Chair White swore in Deborah Galey N76W176224 Sherwood Dr Menomonee Falls.

Deborah Galey commented that there was an original landscaper that was presenting a two tier design with tall grass. They have a different landscaper.

Chair White opened the Public Hearing at 6:18 p.m.
Public hearing closed at 6:20 p.m.

Chair White explained that the Board will deliberate the findings and that the Board of Zoning of Appeals does not routinely grant requests.

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

White commented that the request is in accordance with zoning code.

The variance is 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.

The zoning code is to not impose onto a neighbor, next to the pedestrian pathway would not impose onto a neighbor. If the wall would fall it would not fall into the neighbor's lawn but into the right of way. This would not be contrary to the zoning code and public interest. Discussion ensued if the wall would fall and it is near the pathway. It is in the public interest for good aesthetics. Consensus is that the variance would not be contrary to public interest and would be in accord with the spirit of the zoning code.

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.

Discussion ensued that the situation was avoidable. This particular area was paid attention too. Discussion that this is not in the control of the current owner, but created by the builder. The house is not finished and builder should have caught earlier. The ease of use of the garage. The extraordinary condition that allows the variance is the grade and elevation of the house. Nothing extraordinary about the lot itself but extraordinary with the house. The uniqueness is with the building. Edwards commented there are not extraordinary conditions. Schodron commented there are extraordinary conditions. Huber commented that there are extraordinary conditions created by the builder. Yao commented there not extraordinary conditions.

The variance would be necessary for the preservation and enjoyment of substantial property rights. There was consensus of agreement among the Board that the garage drive cannot be enjoyed without the variance.

Discussion that the variance would not create substantial detriment to adjacent property and would not be contrary to the public interest.

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

A literal enforcement of the terms of the Zoning Code would result in practical difficulty or unnecessary hardship to the appellant / applicant.

Comments that it would not result in difficulty or unnecessary hardship. Schodron commented that it would create in difficulty or unnecessary hardship. Yao commented it would be inconvenient for the homeowners. Huber commented it would be a difficult hardship for the homeowner. Two members commented it does create a hardship.

MOTION (White/Schodron) to grant the variance appeal filed by **Josh Wirth, Agent for Robert Bennett**, property owner, variance from Section 17.41(6)(a) of the Village's Zoning Code in order to construct a retaining wall with a maximum height of 9 feet approximately 4 feet away from the side yard property line vs. the minimum requirement of 9 feet.

White, Schodron, and Huber voted aye.

Edward and Hansen voted nay.

Discussion ensued that Yao is an alternate and would not cast a vote.

Motion Carried.

Chairman White stated next hearing will be as needed.

MOTION The meeting adjourned at 7:38 p.m. Hansen/Knop

Respectfully Submitted,

Deanna B. Braunschweig, WCMC/CMC