

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
August 21, 2013**

CALL TO ORDER: The meeting was called to order at 5:30 p.m. by Chairperson Pluta.

ROLL CALL: Chairperson Pluta, Members Kling, McDonnell, and Schleif; Alternate Member Ehler; Village Planner and Zoning Administrator Retzlaff; and Deputy Clerk Micka. Absent and excused: Member Riemer.

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

PUBLIC HEARING CONTINUATION FROM JULY 17, 2013 ON THE APPEAL OF HARRY & GISELA TAETZ: 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

Chairperson Pluta stated that an opinion was received from the Village Attorney as requested by the Board at the last meeting regarding the authority to allow the duplex use to continue as part of the variance appeal.

The appellants were asked if they wished to provide additional 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 bought the house in January and are requesting to add 5-1/2 feet in the front of both garages and entrances to the south.

Chairperson Pluta reviewed the Five Findings of Fact with the appellants, with Mrs. Taetz responding to each of the findings.

1. The variance *will/will not* be contrary to the public interest and *will/will not* be in accord with the spirit of the Zoning Code: The house is over fifty years old, there is a different code in place than when the house was originally built, they need an additional 5-1/2 feet on each side, and there are no homes to the right or left on Roberts Drive.
2. There *are/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: When entering the home through the main entrance, you step directly on the carpet in the living room, and there is no protection from the elements.

3. The variance *is/is not* necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district: Standards of today require more convenience and closet space.
4. The variance *will/will not* create substantial detriment to adjacent property, and *will/will not* be contrary to the public safety or interest: The exterior would be more presentable, there would be storage for garbage and recycling bins, and it would provide for a cleaner appearance.
5. A literal enforcement of the terms of the Zoning Code *would/would not* result in practical difficulty or unnecessary hardship to the appellant/applicant: It is difficult to get tenants.

The appellants were asked if there was any other information they wished to provide to the Board. Mrs. Taetz responded that the process should not be difficult, the house was built according to code, they are not sure when the code was changed, and none of the neighbors objected to the appeal.

Chairperson Pluta asked if there were any questions from the Board. The appellants were asked if there were tenants in the duplex at this time? Mrs. Taetz responded that there were tenants when they purchased the property in January, and both have since moved out.

Village Planner and Zoning Administrator Retzlaff was sworn in by Chairperson Pluta.

Planner Retzlaff read his memorandum that was provided to the Committee at the July 17th meeting. The owners are requesting a variance under Section 17.18(3) of the Zoning Code for a front yard building setback variance of 8'3" in order to construct a 187 sq. ft. addition to the existing duplex on the 0.35 acre parcel located in the Rs-5, Single-family Residential Zoning District where the minimum front yard building setback requirement is 35 feet.

The Board questioned the last paragraph of Planner Retzlaff's memorandum: "Board of Zoning Appeals (BZA) and legal counsel need to determine if the BZA has the authority to allow the duplex use to continue as part of this variance appeal pursuant to Section 17.28 of the Zoning Code".

Planner Retzlaff responded that Section 17.48(1) of the Municipal Code addresses non-conformity for the duplex that was built in 1959, prior to the current Rs-5 Zoning District designation in the neighborhood. The house cannot be extended, restructured, or altered in order to comply with the Zoning Code. The Board and/or legal counsel need to determine if the Board has the authority to grant the variance and allow the non-conformity to continue.

Chairperson Pluta stated that there are two issues for the Board to consider: the variance request, and if the non-conforming use should be continued.

Discussion followed, noting that the Board could grant the variance and grant/deny continuation of the non-conforming use. Chairperson Pluta explained the two issues to the appellants. The variance request to expand could be granted, but it is another question if they can continue the duplex status on the property. If the variance is granted, and the non-conforming status denied, the appellants would need to convert the property to single-family.

Mr. & Mrs. Taetz responded that they bought the property as a duplex, and questioned if the Board could grant the non-conforming use as long as they own the property. Planner Retzlaff responded that the zoning is for the property, not ownership.

Discussion continued:

- ✓ The home is a non-conforming use;
- ✓ The current set-back is less than what is allowed in the code;
- ✓ The code was most likely changed between 1959 when the home was built, and 1983;
- ✓ This property was swept up into single-family zoning;
- ✓ The other homes were built about ten years later;
- ✓ There was no change to the zoning when the appellants purchased the property;
- ✓ The previous owners did not tell the appellants that the property was non-conforming, and they may not have known; and
- ✓ The title insurance may not have alerted the appellants.

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

Chairperson Pluta asked if there was anyone present that wished to speak against the appellants. There was no-one wishing to speak against the appellants.

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

The Public Hearing was closed at 6:00 p.m.

DELIBERATION AND ACTION BY THE BOARD:

Discussion followed:

- ✓ The two issues should be broken down separately;
- ✓ Village Attorney recommended separating each question;
- ✓ If there is any reasonable use of the property as a single-family home;
- ✓ The appellants purchased the property in good faith;
- ✓ Possible Zoning Code amendments that would change non-conforming uses into conforming;
- ✓ Due diligence should have uncovered that the current use is non-conforming;
and
- ✓ If the property can be rented as single-family.

Planner Retzlaff stated that the Zoning Code does not address renting as opposed to ownership.

Conclusions of Law:

1. Member Schleif: The variance *will not* be contrary to the public interest since it would beautify and improve the house and *will* be in accord with the spirit of the Zoning Code.
2. Member McDonnell: 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 the house does not have adequate storage, and 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 the property can be used as a single-family property. It was noted that the age of the property is unusual.
3. Member Kling: The variance *is* necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because of the age of the structure, the proximity to the road, and lack of adequate storage, and the zoning *is not* necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because it does not qualify.

4. Member Ehler: The variance *will not* create substantial detriment to adjacent property, and *will not* be contrary to the public safety or interest because of use and the surrounding zoning. Discussion followed, noting the surrounding zoning is single-family and the duplex was built before the single-family homes.

5. Chairperson Pluta: A literal enforcement of the terms of the Zoning Code *would not* result in practical difficulty or unnecessary hardship to the appellant/applicant because the building was leased to two separate tenants, and the zoning *would not* result in practical difficulty or unnecessary hardship to the appellant/applicant because there is a reasonable use of the property.

The appellants questioned why the rules are different. Chairperson Pluta explained the variance process to the appellants, the law allowed the non-conforming status, and the property was purchased with the zoning.

Motion McDonnell, second Ehler, based upon the findings there is sufficient grounds based on uniqueness to grant the appeal of Harry & Gisela Taetz for a variance of 5-1/2 feet as requested under Section 17.18(3) of the Municipal Code to reduce the front yard setback for the property located at N116 W15550-52 Roberts Drive to allow the appellants to add onto the structure.

Motion McDonnell, second Schleif, to amend the motion to include the point from the property line to the south from 32 feet 3 inches to 26 feet 9 inches.

Motion to amend carried without negative vote.

Roll call vote on motion as amended:

Ayes: 3. (Kling, McDonnell, Ehler). Nays: 2. (Schleif, Pluta).

Motion carried.

Motion Schleif, second Kling, to deny the continuation of the non-conforming use if the footprint of the building is changed per the application.

Roll call vote:

Ayes: 5 (Kling, McDonnell, Schleif, Ehler, Pluta). Nays: 0.

Motion carried.

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

Motion McDonnell, second Kling, to call a five minute recess of the meeting at 6:45 p.m. Motion carried without negative vote.

The meeting was reconvened at 6:50 p.m.

**CONTINUATION OF DELIBERATION AND ACTION BY THE BOARD REGARDING
THE APPEAL OF CODY GORDON, HEARING HELD ON JULY 17, 2013:**

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

Mr. Gordon reviewed his testimony from the July meeting, noting that he is requesting the variance to build an exterior attached deck to improve the look of the home, and for their enjoyment of the property. He noted that the current deck is unattractive to the neighbors. He reviewed the photographs presented at the July 17th meeting, and also presented a petition from the surrounding neighbors in support of the requested variance. The petition contained the signatures of owners from lots 29, 30, 31, 33, and 34. Chairperson Pluta entered the petition into the record as Exhibit B.

Discussion followed between the Board and Mr. Gordon:

- ✓ Are there other homes with temporary decks? This is very uncommon – there are about 30 homes around the pond, and 90-95% of the homes with half/full exposure have some type of deck that is larger than the deck on his property;
- ✓ Review of the Conceptual Plan;
- ✓ There is a home on Division Road that was there before the subdivision was built; and
- ✓ The property has an unfinished basement that he plans to finish, and the deck to the north would cover two of the windows.

Chairperson Pluta reviewed the Five Findings of Fact with the appellant, and Mr. Gordon responded to each of the findings.

1. The variance *will/will not* be contrary to the public interest and *will/will not* be in accord with the spirit of the Zoning Code: The neighborhood would like to see improvements, there are no safety issues, no-one is behind his property, and he would not be impeding on anyone's rights.

2. There *are/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: His home is larger with less space to the rear than other homes in the subdivision.

3. The variance *is/is not* necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district: His request for a variance is very basic.

4. The variance *will/will not* create substantial detriment to adjacent property, and *will/will not* be contrary to the public safety or interest: There are no safety issues, and the petition shows that the neighbors support the variance request.

5. A literal enforcement of the terms of the Zoning Code *would/would not* result in practical difficulty or unnecessary hardship to the appellant/applicant: He has explored other options, which are not ideal alternatives.

Discussion continued noting this was built as a spec home, the current deck was to be removed, a plat of survey was provided for the property, and the appellant's preference is to build a composite deck.

Village Planner and Zoning Administrator Retzlaff reviewed the memorandum that he provided to the Board at the July 17th meeting. The owner is requesting a variance from Section 1 of the Meadow Creek Crossing Planned Development District (PDD) that was established by Resolution No. 3-02, that established the yard and building setback requirements for all residential buildings in Meadow Creek Crossing Subdivision. The owner is requesting a rear yard building setback variance of 5 feet to construct an attached deck to the existing dwelling where the minimum rear yard building setback requirement is 30 feet.

Discussion followed between the Board and Planner Retzlaff:

- ✓ The setbacks do not apply if different types of material are used, such as a brick or concrete slab;
- ✓ 90% of the properties in the subdivision have decks, and there may have been only one other variance that was granted for a side yard setback;
- ✓ Most homes in the subdivision have decks, and the subject property has less depth on the lot;
- ✓ The subject property is one of the smaller lots in the subdivision;
- ✓ Negotiations for the PDD were held because of unique lots in the subdivision;

Discussion continued:

- ✓ The developer offered amenities (paths, ponds) in exchange for relaxing the requirements for smaller lots;
- ✓ If the deck is attached it is considered part of the building;
- ✓ If the structure is considered a deck or accessory – if detached and 6” away, it would be considered a deck;
- ✓ 30’ setback applies – when zoned into the PDD, the underlying district was assigned to it. If the resolution does not speak to a specific issue, the underlying regulations and restrictions apply; and
- ✓ The setbacks could be exceeded if there was a different type of construction.

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

James Bradley, W173 N10042 Meadow Creek Way, was sworn in by Chairperson Pluta. He stated that 5 feet is needed to meet the ground level, he questioned if a permit was needed if raising the elevation, and there are only 3 homes with 30’ easements on their whole property.

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

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

The Public Hearing was closed at 7:43 p.m.

DELIBERATION AND ACTION BY THE BOARD:

Discussion followed:

- ✓ Common sense vs. law: it is common sense to build a deck on the back of the house, but it requires a good argument to break the law;
- ✓ A better definition in the Zoning Code would be helpful for a deck and for grade supported patios;
- ✓ The builder made it impossible to build a deck; and
- ✓ There were detailed discussions held prior to the homes being built in the subdivision.

Conclusions of Law:

1. Member Kling: The variance *will not* be contrary to the public interest since the zoning was amended due to the PDD, and *will not* be in accord with the spirit of the Zoning Code because the spirit of the code is more rigid.
2. Member Ehler: 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 it is among one of the smallest lots that allows for a lot of space to the sides, and most do not have lot configurations.
3. Member McDonnell: The variance *is* necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because other properties have larger lots that are more generous and the zoning *is not* necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district.
4. Member Schleif: The variance *will not* create substantial detriment to adjacent property because it is out of sight and a petition was presented with the neighbors in support, and *will not* be contrary to the public safety or interest as there are no safety issues.
5. Chairperson Pluta: A literal enforcement of the terms of the Zoning Code *would not* result in practical difficulty or unnecessary hardship to the appellant/applicant and the zoning *would not* result in practical difficulty or unnecessary hardship to the appellant/applicant because there are other alternatives, which may not be preferred, and the house was placed in an unfortunate location by the builder, who led the owner to believe he could build the deck.

Mr. Gordon questioned the difference between his request and the variance that was granted at the February Board meeting. Chairperson Pluta responded that each case is unique and it is the duty of the Board to enforce the code. Discussion followed, noting that the Board needs to meet all five findings in order to grant a variance, Mr. Gordon's case had a unique disadvantage due to the prior building setup with the PDD, and Mr. Gordon knew the situation when he bought the home.

Discussion followed:

- ✓ How the unique and extraordinary circumstances relate to the spirit of the code;
- ✓ Developer and contractor knew the conditions and restrictions of the PDD;
- ✓ Size of lot and grade factors;
- ✓ Neighbor's farm field east of the development was not part of the subdivision;
- ✓ If the neighbor to the east filled his property and raised the grade after the PDD was adopted in February, 2002, a unique situation could exist;
- ✓ The PDD was adopted based on the farm grading at the time;
- ✓ The difference between parcels 32, 33, 34 and parcels 36, 37, 41, and 43;
- ✓ Rs-2 zoning next to parcels 36, 37, 41, and 43, with the same grade as part of the PDD;
- ✓ If filling was done after the PDD, it changed the grade of the subject parcels; and
- ✓ The change in grade would make it difficult to construct a walk-out patio or concrete slab.

Motion Ehler, second Schleif, to grant the variance of 5 feet for the rear yard setback requirement in the Meadow Creek Crossing Subdivision Planned Development District (PDD) established by Resolution No. R3-02 to Cody Gordon on the property located at W173 N10062 Meadow Creek Way.

Roll Call Vote:

Ayes: 4. (Kling, McDonnell, Schleif, Ehler). Nays: 1. (Pluta)

Motion carried.

Chairperson Pluta informed the appellant that he will receive written notification of the Board's decision from the Village Clerk's Office.

CONTINUATION OF DELIBERATION AND ACTION BY THE BOARD REGARDING THE APPEAL OF JAMES BRADLEY, HEARING HELD ON JULY 17, 2013:

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 appellant James Bradley, W173 N10042 Meadow Creek Way, provided testimony. He stated his appeal is the same as Mr. Gordon, he has a deck off the back of the house, he spoke with neighbors and submitted a petition in support of the variance containing the signatures of 10 neighbors that view the back of his house, and he took the builders word that they would be able to build the deck as requested.

The Board asked Mr. Bradley for clarification on his request: the requested variance is for 7 feet, not 5 feet. Mr. Bradley stated that 5 feet would be sufficient.

Village Planner and Zoning Administrator Retzlaff was asked to provide information on the variance request. Mr. Retzlaff stated that he had nothing to add to the information he previously provided to the Board.

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

Cody Gordon, W173 N10062 Meadow Creek Way, spoke in favor of granting the variance to Mr. Bradley.

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

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

The Public Hearing was closed at 8:35 p.m.

Discussion followed:

- ✓ If the 2 feet difference in the variance is an issue;
- ✓ Variance requests are for each parcel;
- ✓ The need for consistency; and
- ✓ Each request is handled individually.

Motion McDonnell, second Kling, to grant the variance of 7 feet for the rear yard setback requirement in the Meadow Creek Crossing Subdivision Planned Development District (PDD) established by Resolution No. R3-02 to James Bradley on the property located at W173 N10042 Meadow Creek Way.

Roll Call Vote:

Ayes: 4. (Kling, McDonnell, Schleif, Ehler). Nays: 1. (Pluta)

Motion carried.

Chairperson Pluta informed the appellant that he will receive written notification of the Board's decision from the Village Clerk's Office.

APPROVAL OF MINUTES OF July 17, 2013: *Motion McDonnell, second Ehler, to approve the minutes of July 17, 2013. Ayes: 4 (Kling, McDonnell, Ehler, Pluta). Nays: 0. Abstain: 1 (Schleif). Motion carried.*

ADJOURNMENT: *Motion Schleif, second McDonnell, to adjourn the meeting at 8:40 p.m. Motion carried without negative vote.*

Respectfully submitted,

Christine M. Micka, CMC/WCMC
Deputy Village Clerk