

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
NOVEMBER 14, 2012**

CALL TO ORDER: The meeting was called to order at 5:37 p.m.

ROLL CALL: Chairperson Pluta, Members Kling, Schleif, McDonnell and Alternates Janzen and Ehler. Planner/Zoning Administrator Retzlaff and Clerk Goeckner. Absent: Member Riemer

**CONTINUATION OF APPEAL OF RICHARD ZACHOWSKI AND LISA RIEGLEMAN,
FROM OCTOBER 17, 2012:**

Chairperson Pluta read the policy and procedures of the Board of Zoning Appeals. Richard Zachowski was sworn in. Property at N144 W20749 Pioneer Road, Richfield, WI. Mr. Zachowski summarized the appeal as presented initially on October 17, 2012 for placement of additional garage to build on his property. 3 additional photo boards presented. #1 is original. #2 shows location of house, topography and landscaping, #3 shows proximity to neighbor's house and hillside on other side, #4 are photos right off of Pioneer Road and depicts adjacent parcels where garages are reported to be forward of the primary structure. Summary of property: partially zoned wetlands, topography is steep elevation in relation to where he can physically put a garage. Expressed need for garage, top walleye fisherman with expensive boat and equipment.

Planner Retzlaff was sworn in. Apologized for being unavailable for the October 17th meeting and the delay in these proceedings. Zoning code provisions allow accessory buildings in the rear yard only, with a maximum 25' height. Front yard is defined as the area between the road right of way to the nearest point of the dwelling. The rear yard is rear property line to the nearest point of the building. Village of Germantown has a 25' wetland setback and does not allow development or moving of the earth at all. DNR has a 75' setback and permits required are subject to DNR approval. Topography is challenged and relatively steep and supports the argument there is an issue.

Discussion between Board and Planner Retzlaff of where garage could be legally located and need for a driveway to the garage and the need for something to traverse the steep grade. Planner Retzlaff stated it is not reasonable or logical to put it in the front yard as shown. That area would still require a variance and is a security issue because it is closer to the road.

Jeff Pharris – N144W20877 Pioneer Road Richfield WI, sworn in. Neighbor west of the subject property; spoke on behalf of Mr. Zachowski. Proposed structure is hidden from his property through the brush and he endorses putting the structure on this location.

Jerry Keifer – Contractor, sworn in. Other areas and positions considered for location and this proposal makes the most sense because of the drop off and required retaining wall height would compromise the integrity of the garage.

No others present to speak on the topic.

Mr. Zachowski expressed his appreciation for those coming out to present this and hopes the board sees it the way they do and that it would be the logical location for this structure.

Open testimony was closed at 6:05 p.m.

DELIBERATION AND ACTION BY THE BOARD ON ITEM III:

Discussion of building on wetlands, setback from house, cost to build in one area vs. another, proper design. Chair Pluta reminded the board their duty is to uphold the ordinance.

Member Kling: The variance will not be contrary to the public interest and will be in accord with the spirit of the zoning code because, based on the evidence at this meeting, I don't believe there is another buildable location on the property.

Alternate Member Janzen: There are exceptional, extraordinary or unusual conditions or circumstances that apply. The area is challenged. Proposed build is acceptable to the neighbor, landscape is adequate and it's not going to affect anyone or anything as proposed.

Member McDonnell: The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties. The property in question would not enjoy the same benefits as other properties without granting the variance.

Member Schleif: The variance would not create substantial detriment to adjacent property and will not be contrary to the public safety or interest because it is a long way from the road.

Member Ehler: A literal enforcement of the terms of the Zoning Code would result in a practical difficulty or unnecessary hardship to the applicant. He has met the requirement and there isn't another location where he can put this structure and we should grant a variance on that basis.

MOTION (McDonnell/Janzen) that a variance be granted to allow construction of the garage per the application that formed this hearing. Roll call vote, 4 in favor, 2 opposed (Kling, Pluta), motion carried.

MOTION (McDonnell/Kling) to recess for 5 minutes, all in favor, motion carried. 6:30 p.m.

Meeting reconvened at 6:35 p.m. all members present

PUBLIC HEARING:

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 **Heidi Schaefer/Signworks, Agent for Wisconsin Lutheran Christian Family Solutions, Property Owner**, requesting a variance from Section 17.46(7)(c) Village Code of Ordinances and to review the Village Attorney's opinion regarding this provision that would allow two monument signs for the office building and property located at W175 N11120 Stonewood Drive.

Heidi Schaefer/Signworks – 501 West Sumner Street, Hartford, WI was sworn in on behalf of the appellant. Requesting to go back to the original ordinance in place when the original signs were put up. Signs were stone with graphics installed by property owner when subdivision was put in. Only way to change the stone signs now would be to sandblast them. These stone signs were grandfathered in with prior ordinance. When Wisconsin Lutheran came to pull the permit, Lemke Stone had donated to them two monument stones. Without the knowledge of Wisconsin Lutheran, Lemke had pulled the stone monument signs and destroyed them. Now they are gone and because of that we were no longer grandfathered under the prior ordinance and are only allowed one sign. Presented with request is copy of proposed stones, one with the name of the building and the other to state the tenant of the building. Wisconsin Lutheran houses their counseling office and without the two stones those going to counseling office won't find it and get their help, which is the stated hardship.

Chairman Pluta inquired about other signage in area, clarified the applicant is seeking a variance from the zoning code but also asking for review of the attorney opinion. Can the parcel have two signs and second – the Village Attorney reviewed the decision made by the Plan Commission and overturned their decision stating they don't have the authority to grant a variance from that Code section. Do we agree with the Village Attorney's interpretation – if we disagree – whether or not we can grant that variance.

Discussion: Lemke proposal requiring removal and replacement would have been a break anyway. Expanded footings. Signs the same size as what was there. Need to address the Attorney's decision as made on the Plan Commission decision – they said only one sign unless the Village Attorney says it is okay to have two signs.

Dan Degner, CEO of Christian Family Solutions, W75N11120 Stonewood Drive, sworn in. Plan Commission approved us having two signs if the Village Attorney substantiated the Plan Commission has the ability/authority to grant two signs and override the ordinance allowing one sign. Lemke Stone donated very nice stone signs. I had a health situation in June and it was while I was out that Lemke showed up, feeling bad and just wanted to get this done for me because of what I was going through. They just figured it would be okay. We are Christian Family Solutions and most we help are Lutheran and Christian. We save community resources. If the signs hadn't been removed we would have two signs today. We are a multi-tenant building.

Planner Jeff Retzlaff presented information on behalf of the Village. Zoning of property is Zoning is B4 professional office surrounded by professional office and neighborhood commercial to the north. As has been discussed the appellant acquired the property in 2011. In December of 2011 they obtained zoning compliant permit. Housing corporate office with understanding there will be multiple offices under WLCFS. In June applied for permit and proposal to allow 2 monument signs. First sign as proposed in renderings to Plan Commission in same location as pre-existing sign on property, along Stonewood Drive. Second sign presented similar to this, located as preexisting sign – a little further down from sign #1. The two previously existing signs were deemed legal non-conforming. After installed and then permitted in 2001, the Village revised sign ordinance in 2006. B-4's were allowed only 1 sign per road frontage per property. Once the pre-existing signs were removed, the legal non-conforming status vanished and no longer applied. Now they were required to comply to current sign requirements. I understand the reason behind what happened. Ultimately WCLFS is responsible for what was done. In July a review application had been filed. After lengthy discussion they added a 5th condition. The July

minutes were included in the applicant's packet. Condition #5 to allow two signs if the Plan Commission is allowed to grant two signs. Clear by PC discussion that they were in a bit of a struggle on how to grant two signs in light of the code provisions that now applied to them. Subsection 7a – it is this provision that specifically gives the Plan Commission flexibility to grant other signage if deemed necessary or appropriate. Thought was if Plan Commission was allowed to grant more on the building, maybe they have the same authority to grant monument signage. When you read other section (c) you don't see that flexibility. This is where the Plan Commission stated it is fine, if the attorney agrees. Application made to Plan Commission was a proposal for two signs to replace two previously existing signs that had been removed. Document included in handout is e-mail from the Attorney to Planner Retzlaff. The conclusion is the Plan Commission does not have the authority to grant two monument signs.

DELIBERATION AND ACTION BY THE BOARD:

Member McDonnell - This issue about how the grandfathering operates in my judgment hasn't been answered by the Village Attorney because it wasn't asked of him. That is an important legal issue I would like to see an answer to.

Chairman Pluta asked if the original stones were in place when the application was made. Planner Retzlaff stated to his knowledge no.

Discussion of need for further information from the Attorney and whether Attorney interpreted the ordinance correctly with regard to Plan Commission.

Chairman Pluta – Did the Attorney interpret the ordinance correctly with regard to Plan Commission. Second, did the Village ask the right question? Third, do we grant the variance and without the answers to the first two questions. We have to clear up the legal matter before we can decide the ordinance.

Planner Retzlaff – I appreciate what Member McDonnell is asking for, but for me it is a moot point. The signs were removed and the legal non-conforming status vanished at that point.

Discussion: Are there valid reasons to grant a variance or not. **MOTION**

(McDonnell/Schleif) the Village Attorney to be asked the questions: Where the owner did not approve the removal of the signs, did the section 17.46(13) of the last clause except the replacement of the sign face does this provision apply in this instance?

MOTION (McDonnell/Schleif) to amend to 'did the grandfathering provisions of 17.46(13) apply'. Discussion of question to attorney regarding removal of stones by theft, wind etc. and application of non-conforming in each case. **Roll call vote, all in favor, motion carried.**

Information will be communicated to the Village Attorney. Next regular meeting is scheduled for December 19th at which time this topic will be taken up again. Request for Village Attorney to be present at that meeting.

Approval of Minutes :

MOTION (Kling/Janzen) to approve minutes of August 22, 2012 and October 17, 2012, motion carried unanimously.

ADJOURNMENT:

MOTION (Schleif/Kling) to adjourn meeting at 7:58 p.m., motion carried unanimously.

Barbara K. D. Goeckner, MMC/WCPC
Village Clerk