

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
DECEMBER 19, 2012**

CALL TO ORDER: The meeting was called to order at 5:43 p.m.

ROLL CALL: Chairperson Pluta, Members McDonnell and Schleif, Alternate Janzen, Planner/Zoning Administrator Retzlaff and Clerk Goeckner. Absent and excused: Members Kling and Reimer and Alternate Ehler.

CONTINUATION OF APPEAL OF HEIDI SCHAEFER/SIGNWORKS:

Continuation of item from November 14, 2012 meeting. Chair Pluta swore in the appellant, Heidi Schaefer/Signworks. Ms. Schaefer gave a recap of the appeal at issue. Issue is whether or not the stones which were removed could remain under grandfathering clause of old ordinance.

Dan Degner W175 N11112 Stonewood Drive, sworn in. Mr. Degner added the building is a multi-tenant building and expressed the presence of a sign is important to the use of the facility, specifically related to the counseling. Board members asked questions on how the areas are separated, the construction of the signs, lighting and landscaping of signs.

Planner Retzlaff was asked to present the Village's information. Mr. Retzlaff had nothing new to add. Board members asked questions of placing stones as structural element of landscape vs. signage, sign regulations, use of signage to direct clients or advertise, code allowance for one sign regardless of number of tenants/businesses in a building and accessory lighting.

Ms. Schaefer stated they are not opposed to what Planner Retzlaff is stating. What makes this a unique situation is the stones were there and they were taken away, otherwise they would have been grandfathered.

No further comments. Public hearing was closed at 6:10 p.m.

DELIBERATION AND ACTION BY THE BOARD ON ITEM III:

Chairman Pluta outlined what the board had learned. Village Attorney was unable to attend but had provided a written opinion regarding the issue. Attorney raises the question of whether the sign is a use as part of the use of the building or is it a structure. That decision determines the next steps. Discussion of use of business and need for a sign, definition of structure. **MOTION (McDonnell/Janzen) that signs are defined in code as structures to conclude the sign was a structure and as legal counsel has advised the removal means it is discontinued and would not be available for the grandfather clause under the code which would not allow for replacement with a new sign.** Discussion. **MOTION (McDonnell/Schleif) to amend motion to consider whether or not our sign under Village code is a sign as a structure or use. Roll call vote on amendment, amendment carried unanimously.**

Discussion on motion and amendment. **MOTION (McDonnell/Janzen) that pursuant to Village code we should consider the sign is a structure and withdraw the original motion and amendment. Roll call vote, motion carried unanimously.**

Discussion of how to handle the structure, restrictions applicable, 50% rule and how or if it applies. **MOTION (McDonnell/Schleif) based upon the opinion of legal counsel and our conclusion, the facts at issue indicate that signs are considered structures under ordinance 17.46(10) grandfathering provisions are not available to allow the replacement of both of the signs at issue. Roll call vote, motion carried unanimously.**

MOTION (McDonnell/Janzen) that the determination of the attorney with respect to Plan Commission, authority was correct and they did not have authority to approve two signs. Roll call vote, motion carried unanimously.

Five Findings of Fact:

#1 – Chairman Pluta – I feel if variance is granted it would NOT be contrary to public interest but will not be in the spirit of the zoning code.

#2 – Member Schleif – There are exceptional, extraordinary or unusual conditions or circumstances that apply specifically to this lot or parcel – there were signs there before and removed under unusual conditions. Also unique that signs went in before entity was even involved.

#3 – Member Janzen – The variance is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because it is a dead end street you can only get on from Mequon Road and you're going to see the sign from the street and this has one nice sign easy to see and does its job now.

#4 – Member McDonnell – The variance will NOT create substantial detriment to adjacent property and will not be contrary to public safety or interest as there is no evidence on these points presented. No one appeared in opposition of this.

#5 – Member Schleif – Based on several discussions and multifacets thereof, a literal enforcement of the zoning code will not be detrimental to them. It won't stop their business.

Discussion of practical hardship and difficulty of this circumstance. Practical difficulty has not been demonstrated. **MOTION (McDonnell/Schleif) based upon findings request for variance from 17.46(7)(c) to allow placement of two signs should be denied.**

Discussion of difficult decision. **Roll call vote, 3 in favor, 1 opposed (Pluta), motion carried to deny the variance.**

MOTION (McDonnell/Schleif) to recess for 5 minutes, motion carried unanimously. at 7:05 p.m. Board reconvened at 7:10 p.m.

PUBLIC HEARING:

Public hearing was called to order at 7:11 p.m., for Paul & Christine Ryan, an administrative appeal of an error in the Zoning Administrator's determination that improvements made to the second floor of an attached garage constitute the creation of a separate dwelling unit I

violation of the Village's Zoning Code for property located at W168N12394 CENTURY LANE:

Paul Ryan, W168N12394 Century Lane, sworn in. Built an addition onto their home, project was inspected five times by the Village. On the sixth inspection a new inspector found an email from Planner Retzlaff stating we could not have a kitchen. Attached unit is considered a Mother-in-law suite with a shared stairwell, goes into the garage and comes up to a landing. Board members asked questions about addition, clarification that it cannot have a kitchen, addition is for home office space and is attached to garage, original plans show no kitchen, appeals has two sets of plans – approved and proposed. Builder submitted 4 or 5 sets of plans, somewhere in process it didn't have the kitchen. Discussion of plan dates, approval, builder conversations, requirements of Mother-in-law suite, separate entrance.

Christine Ryan, W1658N2394 Century Lane, sworn in. Addition was initially to give more elbow room in the house, family has grown, no office space in the home. She is college instructor working out of her home. We thought we had approval, looking for how to proceed. Discussion of appeal to overturn Zoning Administrator's decision, review of plans and dates.

Planner Retzlaff, Zoning Administrator was sworn in and presented summary of Appeal/Request and Exhibits. Former Inspector (Tom Downing) and he had discussed plans showing a separate dwelling unit as interpreted by both of them when reviewing code and withheld approval of permit pending further discussion with Mr. Ryan. Retzlaff presented documentation of ongoing plan submittal, application, permit, dates of plans, inspection tickets and dates. Final inspection for occupancy permit with inspection by current inspector when actual construction of rooms with upper part did not comply with plans that had been approved with application. Exhibits include letter sent to Mr. Ryan stating why occupancy permit would not be issued and reasons for denial and courses of action he could file, letters between Planner Retzlaff and Mr. Ryan discussing appeal and explaining process for applying and further discussion regarding removal of bathroom and other requirements as well as definitions from Zoning Code of Dwelling Unit (26), Dwelling, Single-Family (28), Mother-In-Law Suite (51a). Retzlaff has historically and consistently since he has been with village, as well as the former inspector, interpreted a dwelling unit to include a bathroom, a kitchen and a space to sleep. The rooms they have constructed constitute a Mother-in-law suite. Stated requirements for a Mother-in-law suite which includes applying for a Conditional Use Permit to be approved by Plan Commission and recommended to Village Board as proposed with some condition to assure compliance with specific requirements. This may be what they have, but that review has not taken place and they have not applied for a CUP. Discussion by board on what the appeal request is, what a dwelling unit is, rooms included, definitions, closets, labeling based on contents of room – sink, oven, counter etc. Planner Retzlaff – interpretation is based on administering the code and enforcing it. Discussion of what is in plans and what is in place, what could be changed, what has been considered, timing. Homeowner stated they are looking for additional kitchen space.

Diane Takala W1568 N12350 Century Lane sworn in. Owns property adjacent directly south to the Ryan's. Property is zoned as single family, single dwelling and hopes to retain this. Concerned this action could lead to zoning change from single family zoning, and it being a living dwelling unit separate from existing dwelling and becoming a rental unit.

Christine Ryan – Wasn't intended for a rental or Mother-in-law suite, trying to create more living space and no desire to rezone.

Public hearing closed at 8:25 p.m.

DELIBERATION AND ACTION BY THE BOARD:

Applicant request to appeal decision of zoning official and nothing in writing to request variance from ordinances. **MOTION (McDonnell/Schleif) to confine discussions and decision to the appeal from October 5, 2012 decision of the zoning administrator as to what constitutes a dwelling unit and based on that, the as built addition to the dwelling in question constituted two dwelling units and was denied an occupancy permit, by roll call vote, motion carried unanimously.**

Discussion. **MOTION (McDonnell/Schleif) to approve Planner Retzlaff's definition of a dwelling unit to include a bathroom, kitchen and sleep area and based upon that his decision to deny the occupancy permit for the improvement in question.** Discussion. **Roll call vote, motion carried unanimously.** Request to overturn decision has been denied.

APPROVAL OF MINUTES: Minutes were not available for approval.

ADJOURNMENT:

MOTION (McDonnell/Jansen) to adjourn meeting at 8:35 p.m., motion carried unanimously.

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