

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
AUGUST 22, 2012**

- I. **CALL TO ORDER:** The meeting was called to order at 5:35 p.m.
- II. **ROLL CALL:** Chairperson Pluta, Members Kling, Riemer, Schleif, Planner/Zoning Administrator Retzlaff and Clerk Goeckner. Absent and excused: Members McDonnell, Alternates Janzen and Ehler.

III. **PUBLIC HEARING:**

5:39 p.m. 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 John and Amy Stewart for a variance of Section 17.50(2)(b) relating to accessory uses and detached accessory structures which are permitted in the rear yard only. The variance is requested due to the placement of a shed in the front yard on the property located at W142 N10247 Berrywood Lane.

John Stewart was sworn in by Chair Pluta. Mr. Stewart stated he had come to the Inspector's office for a building permit for a shed. He was told a permit wasn't required as his shed would be 10 x 10 and that it could not be in his front yard. Mr. Stewart presented pictures of the shed (Exhibit #1). He did not realize that because his address is on Berrywood Lane that the Gatewood side of the house was also a front yard. He presented letters from his neighbors (Exhibit #2). Summarizing Exhibit #2 he stated they basically say they have no problems with the shed and think it is a nice compliment to the neighborhood. Mr. Stewart presented Exhibit #3 documenting the financial burden he has invested in the shed and the landscaping. The shed and labor to construct was purchased from MSOE as a fundraiser for scholarships. Mr. Stewart: The shed would have to be destroyed if he is not granted the variance as he does not feel it can be moved because it is built onto the foundation and the money put into this could not have it moved. Cheaper to buy a new shed and have it installed.

Chair Pluta – there are 5 things we evaluate your appeal on:

Is your appeal contrary to public interest?

Stewart: The letters of those obtained feel it enhances the value of the neighborhood and is attractive.

What is unusual or unique about this?

Stewart: The backyard from where we put the house is cut off the technical rear yard of my house. We purchased a larger lot for all the kids to play in. In hindsight we would have placed it differently to have a larger back yard.

Why is this necessary for preservation of property rights – why should we as the board grant the variance to enjoy all the property rights possessed by your neighbors?

Stewart: We already have one shed in the neighborhood so I do not see that it would depreciate the property in the neighborhood.

Member Kling spoke regarding the letter from Mark Atry as a member of the subdivision Architectural Committee consented. So there was approval by that committee? Stewart – it was a verbal approval from the 3 members at a subdivision party and had been explained to 2 members of the committee

The shed is attached to the slab by bolts. We added taller arborvitaes than originally planned. Spent \$9400 to build the shed and do the landscaping right so it would not be an eyesore for the neighbors.

No others testified on behalf of the appellant.

Presentation by the Village:

Planner/Zoning Administrator Retzlaff - Inspection services division received an anonymous complaint around May 7th or 9th on the Stewart property. Former inspector Downing inspected the property and found a shed in what is technically front yard of the Stewart property. A letter was sent, dated May 9th, indicating it was in violation of the zoning code and asked they contact him within 10 days to discuss. Subsequent I had conversations with Mr. Stewart about his options, of which one was the application for variance. Others were to remove or relocate the shed. Planner Retzlaff showed a diagram of the property and defined front yards. All of the area on Berrywood and Gatewood are deemed front yards on the corner lot. Accessory buildings are allowed in the rear yard and as it is in the front yard it violates the code. Photos shown were taken today.

Questions by the board:

Is the shed 40 feet from the street? Planner Retzlaff – No, it is approximately 25 feet from the street.

Chair Pluta: For the shed to be in compliance it would need to be at a minimum 63 feet from the street to be in the back yard. Planner Retzlaff – Yes. Once the dwelling was placed it establishes the yard lines.

Chair Pluta: And all corner lots in this subdivision have two front yards. Is there anything unique to this parcel compared to all corner lots in the subdivision?

Planner Retzlaff - There is nothing in my opinion that sets this lot apart from the others.

Chair Pluta: Based on your expertise in zoning, what is the purpose of restricting an accessory building in the front yard? Planner Retzlaff - Typically it is to govern aesthetics. Code is blind to the quality of the shed or the equipment or materials put into it. With that said the blanket is it needs to be in the rear or side yard.

Chair Pluta: Does anyone else wish to speak against the petition at this time?

Eric Esser: Part of the Homeowners Association Architectural Committee not necessarily speaking against the shed in principal. Mr. Esser was sworn in. The shed was discussed 8-10 months prior to installation. No drawings had been submitted to the architectural committee for the Association. Informal process. It wasn't so much of the shed or the covenants but it was the location. Mr. Esser verified the landscaping cost was approximately \$3500 plus tax. The landscaping has gone in since the Village issued the notice of violation. It looks nice but is a matter of the location in the front yard. One of my concerns would be setting a precedent for other people to put accessory buildings in their front yard. Chair Pluta clarified Mr. Esser testified the landscaping was put in after he was notified by the Village of the violation. Mr. Esser stated that was an effort to make it look better.

Joan Christenson N102 W14281 Gatewood Place was sworn in

I am the Stewart's nearest neighbor to the shed in question. Asking the board to not approve it to remain in place. It will set a negative precedent. If both corner lots north of her install a shed she would potentially be viewing three sheds from her front yard and sheds do not belong there. Having a utility shed next door is a hindrance to selling home. The bolts could be unscrewed so the shed could be moved. If it is moved they still have to meet the covenants and the roof line doesn't meet the architectural specifications as it doesn't match the roof line of their house.

Chair Pluta: It sounds like the Stewart's tried to talk to the neighbors about the shed. Did you know about the shed being installed at all prior to the building of it? Ms. Christenson – No. There were also letters of negative response that he did not bring. I wrote one and he did not bring it. Chair Pluta asked if she had it and she stated she does not. Chair Pluta said they cannot enter what they cannot see.
No one else wishing to testify against the appellant.

John Stewart – There is a ravine and run off in our back yard and we cannot put the shed there. Flooding has been 2 ½ feet deep in the past there. We have a deck and a play set in the back yard, the trees have grown up. I would have to be within 10 feet of the house. It cuts the yard off that much. There is probably only 15 feet in the landscaping. Chair Pluta – You would have to take out the landscaping to put it in the rear yard? Mr. Stewart – Yes. As mentioned by Eric (Esser), we are a very close knit neighborhood and everyone pretty much knew what everyone else was doing. The other gentlemen on the architectural committee said they were going to have a meeting and talk about it but that was declined. The slab was poured in the beginning of April and the construction was done on May 3 or 4 of 2012. The next week was Mother's Day weekend and the weekend after that was final exams. The 3rd or 4th was the only weekend the students were available. Drawings were given to one of the guys from the architectural committee the Wednesday before the Saturday. The landscaping was originally part of the shed to begin with, with additional money to make them taller. We just couldn't spend more to go taller. I think if the variance is granted it will mend a lot of fences.

Other testimony

Harold Foss N143W10259 Gatewood Place was sworn in.

This has certainly divided the subdivision. I had to go through a lot to build a deck on my house. I knew what the requirement was before I put one nail in that deck. If he had gone through all the ropes. It is sad to see our subdivision torn apart by something that was overlooked. He was the Association President and others had to jump through hoops for pools etc.

Mr. Esser – We asked for things to be brought to their table so they could vote on it. What's good for one is good for the other – shed or no shed.

Other:

Karyn Tylicki N143W10231 Gatewood Court

We are the other house in the subdivision with the unattached garage in our yard. We did have to go through a lot of hoops to make sure everything was right. We talked to the Village several times before we moved forward and we talked with the review board to make sure it was right. The day the shed started to be built on the property the neighbors started to realize what was happening and addressed him directly and John said 'we can't possibly stop now we have everyone here'. In the beginning a handful of neighbors spoke to him and suggested he stop because things were not followed. We do feel it would detract from the value of Joan's property. We would not have gotten to this point if they had taken the initial steps.

Mr. Stewart:

I'm not going to go into he said she said – I am in violation from the Village and that was my misunderstanding when I went in to get a permit and I was told I didn't need one. As far as I am concerned I pay taxes on Berrywood Lane and that's my address, not Gatewood. Now that I know I would not have built it because I would not been able to put it in my rear yard. We leave it in your hands to see if it is an eyesore or if it will drop values.

Testimony was closed at 6:31 p.m.

IV. DELIBERATION AND ACTION BY THE BOARD:

Chair Pluta: The sequence and timing of events seem to indicate not all the proper steps were taken. Being a professional engineer I think I could help you move your shed – I don't believe it can't be moved.

Any other comments before we go into the 5 findings? None.

Member Schleif: A variance would be contrary to public interest. It is within 40' setback from the road and it is not in accord with the spirit of the zoning code.

Member Kling: There are not unusual or specific circumstances that do not apply or do not apply to other structures in comparison in the same district.

Member Riemer: This variance is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district. He assumed no permit cleared the way for him. I don't think we should give him the opportunity to keep the shed the way it is.

Chair Pluta: #4 The variance will create substantial detriment to adjacent property. It is in the 40' set back. It will cut down on some site lines. I think it does create some detriment to adjacent properties. It is a shed of higher quality and the landscape is great but still an eyesore from the property next to it.

Member Kling: I don't see it as a substantial detriment. I don't see it as aesthetically displeasing.

Member Schleif: You can create a hardship for yourself by not understanding all the laws, the literal zoning code.

#5 – nothing.

Motion (Schleif/Riemer) that the requested variance of Section 17.50(2)(b) of the Germantown Municipal Code relating to the accessory uses and detached accessory structures which are permitted in the rear yard only, shall be denied based on the findings of fact as indicated by the Members of the Board during discussion. By roll call vote, motion carried unanimously.

Chair Pluta – I appreciate your willingness to put up a nicer shed and to landscape it properly. Our job is to enforce the zoning laws of the Village. We are absent of the unique circumstances to grant the variance.

V. Approval of Minutes :

MOTION (Kling/Schleif) to approve minutes of July 18, 2012 with a correction on Page 2, second to last paragraph should say 'he did not know', motion carried unanimously.

VI. ADJOURNMENT:

MOTION (Schleif/Reimer) to adjourn meeting at 6:42 p.m., motion carried unanimously.

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