

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
April 14, 2021**

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

ROLL CALL: Chairman White, Hansen, Schodron, Edwards, Huber, Yao. Director Retzlaff, and Clerk Braunschweig. Knop absent excused.

APPROVAL OF MINUTES: November 11, 2020 and March 10, 2021

Motion (Huber/Schodron) to approve the November 11, 2020 minutes. Motion carried unanimously.

Motion (Schodron/Hansen) to approve the March 10, 2021 Minutes. Motion carried unanimously.

PUBLIC HEARING.

Chairman White 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 a VARIANCE APPEAL filed by, Jodi Kanzenbach, property owner, who is requesting a variance from Section 17.46(7)(b) of the Village's Zoning Code to allow an awning sign in a business zoning district to be located 2'6" into the public right-of-way for the property located at N116W16137 Main Street, Germantown.

Chairman White described the meeting order and that normally the Village's information is given first and review of the Variance is given first and then the applicant may give sworn information.

Chairman White swore in Director Retzlaff.

Director Retzlaff gave history and background of the VARIANCE APPEAL filed by, Jodi Kanzenbach, property owner, who is requesting a variance from Section 17.46(7)(b) of the Village's Zoning Code to allow an awning sign in a business zoning district to be located 2'6" into the public right-of-way for the property located at N116W16137 Main Street, Germantown

A map location of the subject property was shown and discussed. A proposed sign would project into the right of way by 2 ½ feet. Ordinance 17.46 (7) (b) was reviewed.

A graphic of the street view was shown with the sign that was d by the damaged by weather.

The right of way extends to about a foot in front of the Barley Pop building. There is a foot between the building and sidewalk. A graphic of the sign was shown with the projection into the right of way.

A letter from the highway superintendent was pointed out with conditions.

The purpose of the right of way was pointed out.

Attorney Sajdak advised on the prohibition of signs in the right of way.

Hansen commented that this is a replacement due to damage by a storm. Other buildings that are similar with the zero lot sign, are treated similar as the buildings are very close. It is unknown how this sign came to be.

Director Retzlaff commented that if the face piece of a building came down and needed replaced would need similar process. The sidewalk serves as a median to the diagonal parking.

The sidewalk is at least four feet wide. The dimensions of the older sign was not known by the Village.

Chairman White swore in, Jodi Kanzenbach, of N116W16137 Main Street, Germantown.

Jodi Kanzenbach commented the old sign protruded out further. It was wood and projected out with chains. It came loose during a storm in 2019 and was probably there for a very long time. It did not take much to remove it. The wood had come away from building.

Chair White commented that the power for the Board of Zoning of Appeals is limited. The proposed sign is over three foot long. There are nine doors into the building. The sign is to define the entrance. The building has been around since the 1800s.

The sign will define the main entrance. In Spring of 2020, the business was shut down due to COVID. The business worked to have take out menu. Loss in business due to COVID. There were more customers from outlying communities, do not know the business and where to go. The doors are confusing this has made a difference in the business.

Hansen commented the definition to get people to the right door. Can the sign be right on the door? Are there other options such as on either side of the entrance.

The property location and map with building were shown with discussion of marking the main entrance. The code allows for up to 100 square feet of awning signage. Can any part of the sign project into the right of way. If the sign had not fallen down it would be a none issue, as a legal non-conforming structure / awning unless it were a safety issue. The additional photographs show that there is a planter hanging from the street light.

The letter from Highway Superintendent was reviewed. Jodi Kazenbach agreed that they are acceptable conditions.

Chair White opened the Public Hearing at 6:04 p.m.

Chair read the letter from Gehl Food and Beverage in favor of the awning.

Chair White swore in Rick Miller, of N120W15241 Friestadt Road. He commented that he is a trustee but here as a citizen. He gave history of the awning and another prominent business with a similar sign over the Main Street. Barley Pop is unique, used to be multi tenant. Everyone wants to go to the inside door. Definition of the entrance door is needed. Spoke positive in support of the awning.

Public hearing closed at 6:08 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.

Schodron commented that the request is not contrary to the public interest. White agreed.

Attorney Sajdak commented on policy. Encroachments typically have a document that the board approves.

Hansen commented on an easement to occupy that space. Attorney Sajdak commented that would be something the Village Board would approve.

The Village still has to approve conditions just in this case because it is in the right of way. This could be a fifth condition.

Huber agreed. This canopy will not endanger anyone.

There are exceptional extraordinary or unusual conditions or circumstances that apply specifically to the lot or parcel, use structure, or intended use that do not apply generally to other property or uses.

Huber commented it is an exceptional circumstance. White Agreed this is exceptional. Hansen commented LaChimena is in the encroachment. Hansen if you have a sign, is the only way to violate the ordinance. Schrodron this is unusual circumstances.

Hansen, commented this is not typical and unique. Consensus that business have the right to put an awning over their business.

The building is right on top of the right of way.

Hansen there are exceptional and unusual conditions. Huber there are exceptional conditions.

The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district.

The variance would be necessary for the preservation and enjoyment of substantial property rights. There was consensus of agreement among the Board.

Huber reported on the property rights to run a successful business, and direct customers.

Hansen if other businesses have signs, are we preventing a good way finding business. Way finding of other properties in the same district. White the question becomes what is the substantial property rights. What is considered for substantial business. Do not need the sign to operate restaurant. Right to sign. Can you install a sign to meet zoning code. Edwards agreed it is necessary for the preservation and enjoyment of substantial property rights. There was consensus of agreement among the Board.

The variance will not create a substantial detriment to adjacent property or contrary to public safety or interest.

White did not hear anything that it would be a substantial detriment to adjacent property or contrary to public safety or interest. Consensus among the board on the item.

Literal enforcement of the terms of zoning code would result in practical difficulty and unnecessary hardship.

There is consensus of practical difficulty. Affecting the tenants as well by going to the wrong door.

White it sounds like based on discussion and deliberations inclined to approve.

The Street Superintendent provided conditions for the Board to consider.

- 1) **The canopy design and size does not change from what is outlined in the zoning appeals application. Any change must again come back to the Highway Department for additional approval.**
- 2) **The sign shall not encroach into the right-of-way a distance greater than 3'6" measured from the building.**
- 3) **The owner shall be solely responsible for any and all damage that may occur to the canopy as a result of said canopy being hit or otherwise damaged by vehicles, snow removal equipment, maintenance equipment or any other vehicle legally traveling or persons walking within the Main Street right-of-way.**
- 4) **Shall the need arise for work to take place within the right-of-way in which the canopy requires removal, the owner shall remove said canopy in a timely fashion and incur all cost for removal and re-installation.**

Discussion ensued of adding the following language:

- 5) **Subject to Village Board approval of encroachment into the right of way and property owner agreement to the conditions.**

Huber commented for more clarity if it is necessary for the fifth condition for the unnecessary burden on the property owner. The Village regulates the right of way in many ways, fences, campaign signs, set back requirements for buildings. The issue the code provision that you cannot have a sign that encroached into the right of way. In this case it requires the variance and the approval of the Village to get make sure not impacting public issues.

Attorney Sadjak advised on the one condition.

White still needs the Village Board approval. Sadjak need the condition approved by the Village Board.

- 5) **Subject to Village Board approval of encroachment into the right of way and property owner agreement to the conditions.**

Motion White/Schrodron to grant the approval of the VARIANCE APPEAL filed by, Jodi Kanzenbach, property owner, who is requesting a variance from Section 17.46(7)(b) of the Village's Zoning Code to allow an awning sign in a business zoning district to be located 2'6" into the public right-of-way for the property located at N116W16137 Main Street, Germantown.

The board will grant the variance subject to the condition that the Village Board approve appropriate conditions allowing the encroachment into the right of way. Roll Call vote carried unanimously.

6:39 p.m.

THE PURPOSE of said hearing will be to hear any and all parties, their attorneys or agents, for or against a **VARIANCE APPEAL** filed by, Janis Johnson, property owner, who is requesting a variance from Section 17.41(1)(b) of the Village's Zoning Code to allow a 2,000 sqft detached accessory building that is 1,065 sqft larger than the maximum allowance of 935 sqft for the property located at W140 N11585 Country Aire Drive, Germantown.

Chairman White described the meeting order and that normally the Village's information is given first and review of the Variance is given first and then the applicant may give sworn information.

Recess was given for Director Retzlaff to retrieve files.

6:48 p.m. reconvened from recess.

Director Retzlaff is still sworn and under oath.

Director Retzlaff gave history and background of the **VARIANCE APPEAL** filed by, Janis Johnson, property owner, who is requesting a variance from Section 17.41(1)(b) of the Village's Zoning Code to allow a 2,000 sqft detached accessory building that is 1,065 sqft larger than the maximum allowance of 935 sqft for the property located at W140 N11585 Country Aire Drive, Germantown.

A map location of the subject property was shown and discussed.

The ordinance was reviewed. The zoning is Rs-2 district. The Applicable zoning code was reviewed. There is one detached building already. The maximum detailed area is 935 square feet. The proposed building and elevations was shown. The location of the subject proposed was shown.

The history of the number of building area was extremely restrictive years ago. Most homes were building garages larger than two car garages regardless of property size. Staff and plan commission changed the ordinance 2008 that granted larger accessory depending on the property size. 2008 adopted 1%. 2012 multiple buildings. The code was changed to allow two attached garages with the provision that the second garage had no restriction. In 2017 the code was changed to allow more area for detached area and increased from 1% to 1.75 %. Properties in RS-1 and Rs-2 were allowed more accessory building area than in the code. 1.75% of the total parcel area. The Rs-1 minimum parcel of 5 acres.

If attached no limitations.

Chair White swore in Janis Johnson, W140N11585 Country Aire Drive.

Chair White swore in Bradley Johnson, Apache Court, Germantown.

Bradley read a letter to the board from the Johnson family that is included in the packet for the Board.

The trailers and equipment are part of a former business. The equipment is now used for personal use. Expensive and hard to fit in the current building. Some of the pieces of equipment are setting out in the elements without cover. A skid steer is used to clear the drive. This would be stored. The larger building would allow a larger work space.

The property location shows the equipment outside. There is a retention pond across the street. The house was moved in 1988 from 145 and Donges Bay, as a parsonage. The house was going to be burned down. It was moved. They ended up with 2.3 acres from the 1800s. Is any of the equipment used for business or commercial? No personal only.

Bradley stated that this is personal use. He does not live there. The equipment is Janis's but used by the family that live elsewhere. Janis will leave to family. The daughter and son use the equipment.

Hansen, if removed the other building and only used the larger. Bradley commented the other building is fine; however from the 90s and smaller doors and dated. The dimensions are narrow. There is not an attached garage. Kept as original as possible.

Retzlaff no limit on the attached garage. The attachment is defined in the code essentially that two conditions. Two shared walls for at least two feet and they are connected by enclosed corridor and the length does not exceed twice the width. Has to be enclosed with walls and foundation. Anywhere to extend? There is an apple orchard in a u shape. Extend to the west but worry about the mound system. There is about a car length to the current detached building.

The equipment is owned by Janis but the equipment is used by Bradly. Bradley uses the equipment on the property. The husband was a landscaper. This is not a business.

Huber commented the equipment to just maintain the property. There is a mustang, equipment skid steer, lawn mowers. The materials are needed for the property.

Chair White opened the public hearing at 7:10 pm

Chair White swore in Bruce Bergardy N120W Freistadt Road neither for or against the building. Referenced his family buildings. He has 40 acres and parents have 14 acres. The building drawing is 60x40 with 14 foot sidewalls; could park a semi in the building. This is Rs-2. This may be opened up to other Rs-2 buildings that want other sized buildings.

Director Retzlaff commented on sound issues of the meeting. On-line confirmed that the letter is in the packet. Last speaker very quiet. And far from microphone.

Director Retzlaff is correct. It is a larger building the applicant indicated in letter to be redrawn to match what is granted. The request is for a 2,000 square building and not held to that design. The building permit would have to comply to 2,000 square feet. There is a hight provision.

Spirit of the zoning code questioned. Hansen Rs-2 limited to square footage.

Director Retzlaff offered to read the zoning code. Rs-2 for residential zoning code was read. Single family development.

Huber would not be in accord with zoning code. Rs-2 intended for residential.

Hansen they have commercial grade equipment for personal use. If not granted for what allowed find offsite storage.

Attorney Sajdak advised that the concern of the equipment and use goes to a different question but what type of operations are going on there. If it is for landscaping business that is a different issue as running business out of home. Spirit of zoning code how much of a lot cover in a Rs-2 in district

Are exceptional extraordinary or unusual conditions or circumstances that apply specifically to the lot or parcel, use structure, or intended use that do not apply generally to other property or uses.

White this parcel is surrounded by agricultural. If there are a bunch of Rs-2 lots and covered by outbuildings will not look as rural setting. But here it is completely surrounded by agricultural. Schodron Agrees.

Director Retzlaff commented on other characteristics, topography making unique to others.

Hansen commented on the wetlands and mound system.

Is the variance necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district.

Schodron other properties in same district how do we define by zoning or area. Schodron surrounding is agricultural. Zoning then Rs-2. Residential zoning. Not necessary could build outbuilding storage.

Huber not necessary. White agreed. This is for the convenience of owners.

The variance will not create a substantial detriment to adjacent property or contrary to public safety or interest.

White did not hear anything that it would be a substantial detriment to adjacent property or contrary to public safety or interest. Consensus not a detriment.

Literal enforcement of the terms of zoning code would result in practical difficulty and unnecessary hardship.

Hansen This is convenience not difficulty or hardship. Not ideal of how to store now.

Huber not a hardship. Schodron if used on one property why multiple trailers. Unnecessary hardship.

Motion (Hansen/Edwards), to Deny VARIANCE APPEAL filed by, Janis Johnson, property owner, who is requesting a variance from Section 17.41(1)(b) of the Village's Zoning Code to allow a 2,000 sqft detached accessory building that is 1,065 sqft larger than the maximum allowance of 935 sqft for the property located at W140 N11585 Country Aire Drive, Germantown. Roll Call Vote to deny carried unanimously.

Janis questioned to speak again; Attorney Sadjak commented there would be a motion of reconsideration to allow to add.

Meeting adjourned 7:42 p.m.

Chairman White stated next hearing will be as needed.

Respectfully Submitted,

Deanna B. Braunschweig, WCMC/CMC

From: [Jeff Retzlaff](mailto:Jeff.Retzlaff@village.germantown.wi.us)
To: aschmuck@safebuilt.com
Cc: [Germantown Inspections](#); [Lori Johnson](#); [Deanna Braunschweig](#)
Subject: W202 N11860 Merkel Drive; Swimming Pool & Fence Permit DENIAL
Date: Friday, April 23, 2021 3:57:52 PM

Allan:

I have reviewed the building permit application and proposal to install a swimming pool and fence in light of the Village's Zoning Code. I have determined that the proposed pool location and fence height do NOT comply with the Zoning Code.

Specifically, the pool is proposed in what is defined as a street yard for this triangular parcel and not in the side or rear yard as required under Section 17.41(5). The proposed 6' high fence along Merkel Drive exceeds the maximum 4' height allowance for fences in a street yard under Section 17.50(2)(f). With respect to the fence height, under Section 17.50(2)(f) the owner can apply to the Plan Commission for the additional 2' height to a maximum height of 6', but unless and until the PC grants the 6' fence height, a building permit cannot/should not be issued.

The subject parcel is oddly shaped and the house location on the parcel does not leave much room for accessory structures that can be code compliant. The property owner can appeal for a variance from the Board of Zoning Appeals seeking relief from these sections of the Zoning Code. The owner can/should use this letter as the "permit denial" required as the basis for any such appeal.

I would note that the parcel on the west side of Merkel Drive across the street from this parcel has an in-ground swimming pool located in what is defined as a street yard. Looking in the property files for this property I found that the property owner in that case did, in fact, appeal to the BOZA back in 1986 and was granted side and street yard variances enabling that pool to be installed where it is. While history of another property with a similar situation is not a predictor of what might happen in the future with other, similar situations, the two parcels are similar in that they both are odd-shaped triangles that result in limited yard area unlike other parcels in the neighborhood.

Please forward this email to the property owner as part of your communication to them. I put the file and application on your desk.

Thanks.

Jeff

Jeffrey W. Retzlaff, AICP
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Village Planner/Zoning Administrator
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