

**VILLAGE OF GERMANTOWN
N112 W17001 MEQUON ROAD
GERMANTOWN, WI**

MEETING: BOARD OF ZONING APPEALS

DATE AND TIME: TUESDAY, JUNE 15, 2021 5:30 p.m.

**LOCATION: Germantown Village Hall Board Room
N112 W17001 Mequon Road**

NOTICE: Pursuant to the current recommendation of the Centers for Disease Control and Prevention limiting the size of public gatherings, capacity within the Board Room will be limited. Members of the body and citizens may also attend the meeting virtually through the WebEx platform, Meeting #: 182 061 9043 Password: 93v6WfX8pJX which can be accessed by phone at 408-418-9388 or by logging on at <https://villageofgermantown.my.webex.com/villageofgermantown.my/j.php?MTID=m633e8c9e6c634491b525c052cbe9a7a6> Citizens wishing to view the meeting are encouraged to watch the live broadcast of the meeting through Channel 25 on Spectrum cable, or the livestream on the Village's website. Citizens not wishing to attend the meeting personally or virtually may submit any public comments by sending an email to comments@village.germantown.wi.us by 4 p.m. on the day of the meeting so that it can be provided to the members of the body for their consideration.

- I. **CALL TO ORDER:** This meeting has been given public notice in accordance with Section 19.83 and 19.84, Wis. Stats, in such form that will apprise the general public and news media of subject matter that is intended for consideration and action.
- II. **ROLL CALL:**
- III. **APPROVAL OF MINUTES:** April 14, 2021
- IV. **PUBLIC HEARING, DELIBERATION AND ACTION:**
 - A. 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 Meghann Ybarra and Marty Ybarra, owners of the property located at W202N11860 Merkel Drive, who are requesting variances from Zoning Code Section 17.41(5) to allow the installation of a swimming pool in a street yard, and, from Section 17.50(2)(f) to allow a fence six (6) feet in height in a street yard along Merkel Drive.
- V. **NEXT MEETING DATE AND TIME IF NEEDED:**
Second Wednesday's of the month at 5:30 p.m.
- VI. **ADJOURNMENT**

UPON REASONABLE NOTICE, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service please contact the Village Clerk at (262)250-4740 at least 2 days prior to the meeting.

Notice is given that a majority of the Village Board may attend this meeting to gather information about an agenda item over which they have decision making responsibility. This may constitute a meeting of the Village Board per State ex rel. Badke v. Greendale Village Board, even though the Village Board will not take formal action at this meeting.

**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

NOTICE OF PUBLIC HEARING

VILLAGE OF GERMANTOWN

NOTICE IS HEREBY GIVEN that a Public Hearing will be held before the Board of Zoning Appeals, Village of Germantown, WI:

Germantown Village Hall Board Room
N112 W17001 Mequon Road
Germantown WI 53022

Date and Time: **TUESDAY, June 15, 2021 - 5:30 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 Meghann Ybarra and Marty Ybarra, owners of the property located at W202N11860 Merkel Drive, who are requesting variances from Zoning Code Section 17.41(5) to allow the installation of a swimming pool in a street yard, and, from Section 17.50(2)(f) to allow a fence six (6) feet in height in a street yard along Merkel Drive.

A copy of the application and supporting documents are on file in the Clerk's office and available for public inspection during the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday and can be viewed on the Village website under Legal Notices of

<http://www.village.germantown.wi.us/>

The meeting will be on June 15, 2021 at 5:30 pm. Due to the ongoing social distancing recommendations from the CDC, details of how to attend the meeting will be contained on the Agenda when it is posted.

Citizens wishing to submit any public comments may do so by sending them by email to: comments@village.germantown.wi.us no later than 4:00 pm on the meeting date listed above.

Dated this 18 day of May 2021.

Village Clerk

Published: May 26 and June 2

VILLAGE OF GERMANTOWN
OFFICE OF THE VILLAGE CLERK
N112 W17001 MEOUON ROAD/ P. O. BOX 337
GERMANTOWN WI 53022-0337

HOW TO APPEAL TO THE ZONING BOARD OF APPEALS

- Fill out an application form available from the Village Clerk and attach supporting documents. (Survey of property showing location of structures, rendering of buildings, renderings of signs, etc.)
- File your appeal within 30 days after the date of written notice of order or decision from which the appeal/application is taken.
- Submit an application fee of \$570. This fee is used to pay costs of notice publication, mailings and other administrative costs.
- Allow a minimum of three weeks for your hearing date to be set. The Board of Zoning Appeals has set monthly meetings. If your application falls within the required time frame for notice, your appeal will be heard at the next meeting. If not, your application will be held over to the next meeting. This is due to State Law requiring two publications of the public hearing in the official paper. The last date for publication cannot be less than 7 days prior to the hearing. The official paper is published on Wednesday.
- You will receive from the Board Secretary a notice of public hearing, indicating the date, time and place of your hearing.
- Appear, at the hearing to explain the application and to answer any questions. You may appear personally or by an agent, and/or with an attorney.
- You will receive an official notice of decision of your appeal by "certified mail" within five (5) days following the meeting. The notice will show the date of filing in the Board's office should you wish to appeal the decision to Washington County Circuit Court.
- If your appeal is granted, substantial work must commence within six (6) months of the filing of the decision, or the variance will expire.
- If your appeal is denied, you may commence action in circuit court within 30 days of date of filing or file a revised permit application in accordance with the building and/or zoning requirements with the Zoning Administrator or Building Inspector.

VILLAGE OF GERMANTOWN
OFFICE OF THE VILLAGE CLERK
N112 W17001 MEQUON ROAD/P. O. BOX 337
GERMANTOWN WI 53022-0337

BOARD OF ZONING APPEALS
NOTICE OF APPEAL OR APPLICATION

Case No. _____
Filing Date _____
Fee Paid \$ _____
Hearing Date: _____
Notice Mailed: _____
Notices Published: ____/____

To: Board of Zoning Appeals
Village of Germantown, Wisconsin

NOTICE IS HEREBY GIVEN that the undersigned hereby (appeals for relief from a decision of an administrative official) (applies for the following described right or privilege) :

- Appellant's or Applicant's Name: Meghann ybarra & Marty ybarra
Address: W202 N11860 Merkel Dr. Germantown WI 53022
Phone No.: 262-343-5636
- Appellant's or applicants' interest in property:
 Owner; Tenant; Mortgagee; Agent.
- Property Owner's Name: Meghann ybarra & Marty ybarra
Address: W202 N11860 Merkel Dr. Germantown WI 53022
Phone No.: 262-343-5636
- Address of property: W202 N11860 Merkel Dr. Germantown WI
Lot 1, Block 7, Tax Parcel No. GTNV202601 Zoning District: _____ 53022
- Present use of the property: Residential
- Proposed use of the property: pool & fence for privacy, safety, & dogs.
- Previous Appeal or Application (if any)? Yes () No
If YES, list date of hearing: _____ and Decision of previous hearing: _____

8. Identify the **PURPOSE** for this appeal or application. Please circle appropriate item below and provide the requested information. Attach a separate sheet, if necessary.

(a) Appeal of decision or order of Administrative Official and Request for Interpretation of Zoning/Building Code.

1. Date of decision or order:
Denial e-mail 4/26/2021
2. Description of decision or order: Denial due to location on property is street yard.
3. Decision or order is erroneous because:
Our lot is unusual in the shape being a triangle, we have no "back yard" but have an abundant side yard or "street yard". Lot across the street has pool & fence over

(b) Request for Variance of Zoning/Building Code.

1. Describe the requested variance and dimension of variance:
30' x 52" above ground pool with loft privacy fence. Dimensions are located on zoning plat of survey.
2. Explain how the Variance, IF granted, is consistent with the spirit, purpose and intent of the Code:
We have followed and checked to make sure we comply with all other codes. For example distance from lot line well, building/home. We intend to comply to create a safe environment for our family and community
3. Describe the exceptional, extraordinary or unusual conditions or circumstances that apply specifically to this lot/parcel, use, structure, or intended use that **DO NOT** apply generally to other properties or uses in the SAME district:
Our lot is 1 of 2 that is oddly shaped with most of yard being side/street yard. Lot across street is identical and was granted permission for pool & fence in 1986.
4. Describe what special conditions exist which cause practical difficulty or unnecessary hardship, IF variance is NOT granted:
Due to Covid, no public pool, & the need for safe activities for our children. No pool would hinder from access to pool accidentally. A fence would keep kids, deep, & public safe
5. Explain why the variance **IS NECESSARY** for the preservation and enjoyment of substantial property rights possessed by other properties in the SAME district:

③ That is located on a similar portion of their lot due to its similar triangle shape.

The original homeowners were originally denied pool/fence for same reasons but appealed with success in 1986.

The parcel/property across the street has the same lot shape & likeness. They were granted an appeal approval for pool & fence in 1986. It is located in what is considered street yard. This pool will give our family ^{over}

6. Explain how this variance, IF granted, WILL NOT create substantial detriment to adjacent property, WILL NOT be contrary to the public interest and WILL NOT endanger public safety and interest:

There are no neighbors to the North or East of the lot. A fence locked gate & or removable ladder would promote safety as well as privacy. Safety is our number 1 goal for our kids & community. It will be discrete and tasteful. ~~many~~

(c) Request for interpretation of regulations of the Zoning Code or the District boundaries of the Zoning Map.

1. List applicable section(s) of the Zoning Code: 17.41(5)
17.50(2)(f)
2. Describe proposed use/activity/construction: pool: swimming,
Fence: privacy, safety, pets to stay in
yard.
3. Explain reasons supporting requested action: 17.41(5)
17.50(2)(f) only yard is side yard due
to lot shape.
4. Has request been referred to Plan Commission? Yes () No (X)
If YES, give recommendation of Plan Commission: _____

(d) Permission for Temporary Use Permit.

1. Describe use requested: N/A
2. Proposed commencement date: N/A
3. Proposed termination date: N/A

(e) A determination that an unspecified or unclassified use is permitted in a Zoning District.

1. Describe use requested: NA

2. Attach copy of recommendation of Village Plan Commission.

(f) Permission to substitute a MORE restrictive non-conforming use for an existing non-conforming use.

1. Attach copy of recommendation of Village Plan Commission.
2. Attach copy of certification of Zoning Administrator to legality of present non-conforming use.

⑤. Safe and local enjoyment, exercise, & fun for many years. The fence will provide privacy from hikers @ Homestead hollow who can see into our back yard + home because it backs up to our property. It also provides safety to our two dogs and kids. It will promote peace and quiet with our dogs who tend to cry out when on long ropes.


3. Date of commencement of present use: _____
4. Value of improvement on date use became non-conforming (attach documentation supporting value): \$ _____
5. Present value of all existing improvements, additions and alterations since date use became non-conforming (attach documentation): \$ _____

REQUIRED DOCUMENTATION

Each appeal or application must be accompanied by:

- A. Current plat or survey of the lot/parcel, with complete details of the site, dimensioned, elevation data, easements, existing and proposed physical features, yards and setbacks, etc.
- B. Attachments as outlined above.
- C. Filing fee(s)
- D. Copy of decision or order which is the basis of this appeal/application.
- E. Name and Address of counsel IF appellant/applicant elects to be represented by counsel.
- F. Any additional fee of \$ _____ to cover the administrative costs if a contested case is requested.

I hereby certify that the above application and/or appeal and all attachments hereto are true, correct and complete to the best of my knowledge and belief.

Dated: April 27, 2021 
Signature of applicant or appellant

17.52 - BOARD OF ZONING APPEALS.

- (1) **MEMBERSHIP.** See section 1.30(1) of this Code.
- (2) **ORGANIZATION.** The Board of Zoning Appeals shall organize and adopt rules and procedure for its own government in accordance with the provisions of this chapter.
 - (a) *Meetings.* Meetings shall be held at the call of the chairman and shall be open, to the public.
 - (b) *Minutes.* Minutes of the proceedings and a record of all actions shall be kept by the secretary showing the vote of each member upon each question, the reasons for the Board's determination and its findings of fact. These records shall be immediately filed in the office of the Board and shall be a public record.
 - (c) *Concurring Vote.* (Am. Ord. #12-09) The concurring vote of a majority of the quorum of the Board shall be necessary to correct an error; grant a variance; make an interpretation; and permit a utility, temporary, unclassified or substituted use.
- (3) **POWERS.** The Board of Zoning Appeals shall have the following powers:
 - (a) *Errors.* To hear and decide appeals when it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator.
 - (b) *Variances.* To hear and grant appeals for variances as will not be contrary to the public interest when, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship so that the spirit and purpose of this chapter shall be observed and the public safety, welfare and justice secured. Use variances shall not be granted.
 - (c) *Interpretations.* To hear and decide applications for interpretations of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.
 - (d) *Substitutions.* To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
 - (e) *Permits.* The Board may reverse, affirm wholly or partly modify the requirements appealed from, and may issue or direct the issuance of a permit.
 - (f) *Assistance.* The Board may request assistance from other Village officers, departments, commissions and boards.
 - (g) *Oaths.* The Chairman may administer oaths and compel the attendance of witnesses.
- (4) **APPEALS.** (Rep. & Recr. Ord. #2-94; Am. Ord. #19-96) Appeals of any administrative determination of the Zoning Administrator, the Building Inspector or the Plan Commission concerning the literal enforcement of this chapter and chapters 14 and 18 of this Code may be made by any person aggrieved or by any officer, department or board of the Village. Such appeals shall be filed with the Secretary within 30 days after receiving actual or constructive notice of the administrative decision or order or the granting of a permit by the Zoning Administrator, Building Inspector or Plan Commission. Such appeals and applications shall include the following:
 - (a) Name and address of the applicant.
 - (b) What administrative determination is being appealed and the basis for the appeal.
- (5) **HEARINGS.** The Board shall fix a reasonable time and place for the required public hearing and shall give notice as specified in section 17.53 of this chapter. At the hearing, the appellant or applicant may appear in person or be represented by an agent or attorney.
- (6) **FINDINGS.** No variance to the provisions of this chapter shall be granted by the Board unless it finds, beyond a reasonable doubt, that all the following facts and conditions exist and so indicates such in the minutes of its proceedings.

- (a) *Preservation of Intent.* No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use or conditional use in that particular district.
 - (b) *Exceptional Circumstances.* There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district, and the granting of the variance should not be of so general or recurrent nature as to suggest that this chapter should be changed.
 - (c) *Hardships Not Grounds for Variance.* No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
 - (d) *Preservation of Property Rights.* The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
 - (e) *Absence of Detriment.* No variance shall be granted that will create substantial detriment to adjacent property or that will materially impair or be contrary to the purpose and spirit of this chapter or the public interest.
- (7) **DECISION.** The Board shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, the Zoning Administrator and the Plan Commission.
- (a) *Conditions.* Conditions may be placed upon any zoning permit ordered or authorized by the Board.
 - (b) *Variations, Substitutions or Use Permits.* Variations, substitutions or use permits granted by the Board shall expire within 6 months unless substantial work has commenced pursuant to such grant.
- (8) **REVIEW BY COURT OF RECORD.** Any person aggrieved by any decision of the Board may present to a court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Board.

State law references—Zoning board of appeals, Wis. Stats. §§ 61.35, 62.23(7)(e).

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
Director, Community Development Department
Village Planner/Zoning Administrator
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1-262-250-4735