

VILLAGE OF GERMATNOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
APRIL 13, 2022

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

ROLL CALL: Chairman White, Members Edwards, Huber, Hansen, Schodron, Assistant Planner Zandt, and Deputy Clerk/Deputy Treasurer Rozek

APPROVAL OF MINUTES: August 11, 2021

Motion (Huber/Schodron) to approve the August 11, 2021 as presented

Motion carried unanimously with Edwards and Hansen abstaining from vote for not being at the August 11, 2021 meeting.

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 Fred and Laura Wells, property owners, who are requesting a variance from Section 17.41(1)(b) of the Village's Zoning Code to exceed the permitted square footage of accessory structures in the Rs-1 Single-Family Residential District by 65 square feet in order to construct an 170 square-foot addition to the existing detached accessory building for the property located at W220N10800 Amy Belle Road, Colgate.

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

Chairman White swore in Associate Planner/ Zoning Adminstator Zandt.

Associate Planner Zandt gave background information about the application. The property is located on the east side of Amy Belle Rd, approximately ½ mile north of Willow Creek Rd. The parcel is setback approxiamtly 500 ft from Amy Belle Rd. In February 2022 the property owner was advised they would need to obtain a variance from the Board of Zoning Appeals (BOZA) in order to construct a proposed 170 sqft addition to te existing detached garage (accessory building) that would be 65 sqft larger than the maximum allowance of 864 sqft for this property. Section 17.41(1)(b) of the Zoning Code regulates the number and size of detached accessory buildings. Wells property is in a Rs-1 Planned Development District (PDD). This PDD is consistent with the Rs-1: Single-family Residential District as it allows up to two (2) detached buildings totaling not more than 2% of the total area of the property, or 864 sqft (whichever is larger) if there is no attached garage, which is the case with this property. Parcel 1 (Wells property) is 22,553 sqft, 2% of the parcel area is 451 total sqft. Since there is no attached garage, a maximum of 864 sqft applies to this property. Today current Village Code requires newly created lots in the Rs-1 District to be a minimum of 5 acres in size. With 5 acres, a property owner would be permitted up to two (2) accessory structures totaling no more than 4356 sqft. (i.e. 2% of the lot size). This lot was created as part of one of the first PDD's approved in the Village. Property location maps were reviewed. The proposed addition map was reviewed. The owner is seeking a variance from Section 17.41(1)(b) in an amount of 65 sqft in order to construct an addition to a detached garage (accessory building) for a total area of 929 sqft.

Discussion was had between the Board and Associate Planner Zandt over the creation of the PDD and the rules related to it.

Chairman White sworn in property owner Fred and Laura Wells W200N10800 Amy Belle Road. Laura Wells spoke that they are not sitting in a subdivision. The original middle buyer of lot 2 backed out of the purchase so the land was split between the remaining 2 lots and the rest of the land is shared by the two property owners. There are 3 tax keys and they receive 3 tax bills: 1 for their lot, 1 for half of parcel 2 and 1 for half of parcel 4.

Chairman White asked if the two owners ever came up with an agreement in selling parcel 2. Laura replied that there are covenants that cover parcel 4 and neither owner has interest in having parcel 2 developed.

Associate Planner Zandt added there would be a need to amend the PDD covenant to do that. Laura and Fred Wells proceeded to describe the topography of the properties as you proceed down the shared driveway.

Fred Wells then explained what they would like to do. They have a current older green house with glass panes that leak and would like to get rid of. Due to their kids being driving age they would like to use the space where the green house is and extend the garage to have the extra stall and extra storage. The current roof line is low, so the gable roof line would be extended for this. The footprint would not extend further into the yard than to the rock wall. The addition would face south hundreds of yards off road, and the neighbors wouldn't see it.

Chairman White asked for clarification that it would then be a 4 car garage.

Fred replied yes. It again would give them the extra stall, storage and removal of the green house. The Wells then provided pictures of what the neighbor sees from the driveway, they also talked with the neighbor who feel what they want to do isn't a problem. The Wells know about running into issues with the size of their lot, and talked about expanding and making it an acre, but they along with their neighbor have not interest in doing new surveys and feel this is the better way to go.

Chairman White asked how long the Wells have lived on this property and if they built it. They responded 5 years and the previous owner was there for 40 years.

Member Hansen asked why the lots were not set up as 5 acres when the PDD was set up.

Laura replied she felt it was to pay the least amount in taxes. The 18 acres was under a different tax rate than the lots.

Associate Planner Zandt added this was an early rendition of what we see now as a conservation subdivision where lots are small and used as a tool to preserve more open space, in this case there is an agreement that the 18 acres is to remain open for recreational use only and not buildable.

Chairman White read a letter from Scott/Laura Segrin dated March 1, 2022 that they are aware of the proposed addition of 10ft of current garage and are in agreement with it.

Chairman White asked if anyone wanted to speak or be heard in favor or opposition. No one came forward.

Chairman White asked the Wells if they had any further comments. They had none.

Public Hearing closed at 5:57 pm with no additional comments or questions.

Chairman White explained the Board will now deliberate the findings in order to grant the variance.

The Findings, Conclusions, Decision and Order were deliberated.

Hanson feels it is not in contrary to public interest. Zoning, while unusual, is clear enough and they are getting a certain allowance for the accessory garage. What is more debatable is if it is in accordance to the spirit of zoning code.

White commented that it is very much in the spirit of the zoning code. The maximum coverage is designed to not overbuild your lot. They are sitting on 17.9 other acres that will never be built on and you are not able to tell lot lines.

Huber agrees the public interest in the spirit of the zoning code is to protect people from seeing large unsightly outbuildings in an area and that is not the case here.

The variance is an exceptional, extraordinary, or unusual condition or circumstance that apply specifically to this lot or parcel, use, structure or intended use that do not apply generally to other property or uses in the same district.

Schodron commented there are with how the property lines are laid out it is extraordinary circumstances. White agreed, adding in the shared 18.9 acre common area that can never be built upon and no really knows where the lot lines are. Hansen and Huber agree as well.

The variance would be necessary for the preservation and enjoyment of substantial property rights. Hanson said it is as Rs1 has much larger allowance for accessory garage and they are not doing anything different than other Rs1 properties would do.

White commented before tonight's meeting he read the appeal and felt this would be the sticking point and the hardest one for the Wells to overcome, but as Associate Planner Zandt pointed out that Rs1 now requires 5 acres, I come down to no one can truly tell if parcel 1 is 5 acres or not. They effectively have in excess of 5 acres and they would get 4300 sq ft in the addition that it is a tiny portion of that. I am not satisfied with that.

Hansen stated if it really was a conservation subdivision it would be a different conversation. It is a unique situation with how the parcels are laid out. Schodron agreed.

The variance will create substantial detriment to adjacent property and will be contrary to the public interest.

Schodron commented no, you can see very little of it from the driveway and the neighbor is in agreement with it.

White added that there is no impediment or public safety issues.

Hansen asked if someone else would buy the neighbors house is anything needed to be attached to this property to allow the variance of violating or exceeding the zoning on the accessory garage.

White understands it as if variance is granted it would run with the land. If the garage is tore down they can not rebuild it without another variance.

A literal enforcement of the terms of the Zoning code would result in practical difficulty or unnecessary hardship to the appellant/applicant.

Huber commented there would be some hardship. They could pursue getting lot lines redrawn, but there would be considerable expense and the neighbor may not want to share the cost and it would be unnecessary legal work to get lot lines redrawn. White agreed.

Hansen commented the key word is unnecessary. It is not necessary to have a literal interpretation of the code due to the situation of the common area, how the parcel sits, can't see lot lines, and the neighbor sits far away.

White stated I am persuaded by that.

Motion (Shodron/Hanson) to approve variance as requested. Motion carried unanimously by roll call vote

No meeting schedule for May.

Motion (Hansen/White) to adjourn meeting at 6:07 pm

Respectfully Submitted,

Jennifer Rozek, Deputy Clerk/Deputy Treasurer