

**VILLAGE OF GERMANTOWN  
N112 W17001 MEQUON ROAD  
BOAD OF ZONING OF APPEALS  
GERMANTOWN, WI  
FEBRUARY 9, 2023**

**CALL TO ORDER:** This meeting was called to order at 5:31 p.m. by Chairman White.

**ROLL CALL:** Chairman White, Members Hansen, Edwards. Huber and Yau. Planning/Zoning Administrator Retzlaff, and Clerk / Treasurer Braunschweig.

**APPROVAL OF MINUTES:** November 9, 2022

The minutes were reviewed. White commented he has corrections.

Motion (White/Hansen) to approve the November 9, 2022 Minutes with corrections.

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 Rebecca Kirst, Allan Builders, LLC, Agent for Maxwell and Dawn Rivera, property owners, who is requesting a variance from the Village's Zoning Code (Section 17) to reduce the front/street yard building setback from 112' to 58.3' for the property located at W129N11638 Hazel Heights (Lot 5 of the Harvest Hills Subdivision).

Chair White commented, it appeared that this request met the codes criteria for granting a variance but not presented with sufficient evidence the board chose to defer a decision to give the applicant a chance to present additional evidence that the variance is necessary that it would not result in impractical difficulty.

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

Chair White swore in Attorney Brian Sajdak. He is the Village Attorney but not acting as an attorney. Sajdak reviewed the request showing the property location and final plat. The building envelope was shown. The setbacks were shown.

He explained that the request is to to reduce the front/street yard building setback from 112' to 58.3' for the property located at W129N11638 Hazel Heights (Lot 5 of the Harvest Hills Subdivision).

The property is in the Harvest Hills subdivision. The Property Location map was shown. Aerial's of the property were shown. The prescribed set back of 112 feet was illustrated. Two other properties had requested a variance as well. The requested setback variance illustration was shown with comparison to the prescribed set back. The topography of the lot was illustrated. The mound location was shown with a building envelope to the right or southeast of mound location. Photographs from the cul de sac were shown in relation to the Nelson, Nash, and Revera properties. A graphic from Elm Lane was also shown. The Nash property was shown, and the Nelson property were shown. A graphic 40 foot into the lot was shown. An Elm Lane graphic was shown. The set back for the Nash property is 47 feet and Lot 4 set back is 98 feet.

The Village code requires a 45 foot setback but because of the pie shaped setback, you need to place 150 feet in width across rather than the 112.

The request shown the requested setback. The topography of the lot was shown. The lot drops off to the back of the lot, ten foot drop in elevation and fairly steep.

The developer identifies and tests the site to support a septic system and the developer identified the location in the blue.

The slope

The views of the neighboring properties were shown; Nelson and Nash properties. Nash to the North and Nelson to the South.

A view from Elm Lane was shown (no access from Elm Lane).

Looking to reduce the setback from 112 to 58 feet.

Additional new slides were then shown.

Chairman White swore in Dave Vorpapel of Victory Companies N118 W2574 Bunson Drive, Germantown.

Discussion of the alternative locations for the mound were walked through.

Additional schematics and drawings were commented on. Discussion ensued of a mini system, soil testings and comparisons of other properties.

Jerry Heffler came to the podium. As a septic expert.  
Jerry Heffler W11520 Mariana Avenue of Xionia Wisconsin.

The mound is located where it is because of previous standing water and other fill. The soil testing the mound has to be as long as possible because of the slope. Otherwise driving the water to a narrow area and it will leak out on the other side. This soil is not acceptable for a mini system. The soil is tight and down 18 inches. Has to hold it back and make it as long as possible. Originally longer yet; however, Mr. Hffler shortened. The front location has down slope toward the house. The downslope of the house has to be at least 15 feet undisturbed. The front location would not work.

The drawing is the best spot. There was a test to the lower corner and that did not work.

The Nelson property mound is

The Nash property mound is close to this one but upslope a little further.

The Northeast corner takes right off and takes 15-20 % for a short period.

The mound had to move back. The contour of 907-908 has standing water. Tried to drain it and move out further but the water is trapped.

Exhibit 1 A was reviewed.

Is it not possible to build in front of the house. Mr. Heffler, commented yes for a four bedroom system. Not supposed to fill in and would devalue property.

Exhibit 1 A not workable due to the close proximity of the foundation .

Exhibit 2 A showed the shorter one but is not ideal. It meets code but the longevity is short and the downslope is down or wet because the same amount of water going down. Will become concentrated and wet.

Discussion ensued of a holding tank. Always an option; however, Washington County will not if you can put in a system. Normally the County does not like a holding tank?

Discussion ensued of the why it needs to be in that direction? Can it be turned to the property line. Have to run with the contour of the topography of the property for the best distribution. The location as identified in the original plat as there is not enough space. ?

The preapproved mound location water will run into the house and driveway. The mound will stick up to the roof line of the house. There has been disturbance in the soil from development.

Did not work in the front due to the size of the house.

The front location might work for a smaller house.

Would have to retest the soil.

White grass is where the water has been standing for along time and was pointed out on the slide by Mr. Heffler.

Mound system in front of the house will not work. Exhibit 2A is the most ideal; however will still have complications.

Dave Vorpapel reviewed the slides. Exhibit 1A and the relationship to the back of the house and physically fits the mound but does not show the 15 feet behind that is not to be disturbed.

Exhibit 1B shows the original setback and the proximity of the mound.

Exhibit 2A shows smaller mound and constructing the house in the setback but no room to place mound on hill. The mound cannot be moved to the upper right hand corner. The downslope area that should be disturbed is in that close proximity in the 15 foot downslope area. It will leak out if in this area. Needs 18 inches of usable ground or leaks out.

Exhibit 3A illustrates the exposure from the back of the house. Use this technique to conceal the view but not the use. Option to make work for drainage.

The sketch grade lines show what is necessary and achieves the slope in the back yard. Illustrates the grades in this sketch are respective of the neighbors.

Exhibit 3B shows the grades with 56.3 set back.

Exhibit 4A shows the mound in the upper location. The illustration shows that the house would be lower than the mound and the elevation is at the soffit line of the house. This is shown at the yard grade.

The slides show the physical challenges of the lot. Lot 10 and Lot 11 on Taylor Trail were pointed out.

Dave Vorpagel read past minutes. He commented that lot 11 seems very similar to the current request.

Sajdak commented that problem is that the owner wants to build this particular home. Could build a different home and would eliminate these problems.

Dave Vorpagel responded that the home is designed to meet the HOA requirements.

Discussion ensued to flip the home in another direction. The overall foot print and shape is V shaped and the back line of the house could be an issue. The close proximity of the mound system was pointed out.

How much space would you need to get the proper space to excavate and not disturb.? The additional concern is the grading away from the house and working with the existing grade.

Is it necessary to accomplish from a mound system to have that variance?

The slope of the rear yard elevation will be steepest slope of the lot. Some Counties allow 30% slope and due to the nature of a lake property.

2 A was not a workable situation due to the grade.

The 85 foot mound initially, 77 foot mound is compromised.

Not changing the location of the bottom.

2 A

Keep the house there to keep for OSHA shorter more maintenance.

2A does not work close to house. Shorten the length of the mound. As you shorten the mound same amount of water over a narrow patch area. Changes the longevity. Now putting the affluent and creating a bio mat creating a wet area. And if the mound is long and the affluent is down a chance to dry out more. Is there a code issue on the dimensions. 85 foot is ideal and can go down to 77 feet. Only allowed to shorten so much. Cannot go any shorter. The difference is longevity. Cannot grade around the house. The house will be up high to get grade and will be above the grade. Windows will be high. Not very high. At least 10-15 feet. Code will allow the 77 feet.

Exhibit 1 B illustrates the 85 or 77 foot mound and how the house is on top of where the mound is and where to put the retaining wall.

Exhibit 3A illustrates the shift the house forward and gives adequate grade with 20% slope and puts the house uphill. Works to grade over the mound and conceal the mound.

Exhibit 3 B reflects a very flat line. The proposed elevation and footing line to be within existing grade. The footing elevation will change.

2.5% front slope and grade. House close by has similar grade.

The maximum slope in the back of the house, 2.5% slope would put the house in the middle of the road.

Could be done but it would cost more money. Exhibit 1B. If kept as existing elevation, what prevents from bringing the house down to place in existing grade. The right side elevation . .

The front of this house and highpoint of lot, water coming to the front of the house. Address with grading and swales.

Logical reasons to move it forward.

Does the Village review at the development or when built. When applied for a building permit, if the surveyor matches than reviewed.

Two or three in this subdivision are not favorable. Engineering dept reviews. There is a substantial difference in what was approved.

3A was shown.

Sajdak commented on the other two lots that have a variance. The previous are in two different subdivisions and same zoning. The two lots are a little bit different. Sajdak showed the other two lots and pointed out the drainage easement and the other lot has a significant slope / drop off.

Chair White opened the public hearing asking if there was anyone in support or against the requested variance.

Amy Nash, lot 6, xxxx address. And live to the North of the subject property. She spoke against the variance. She is Disappointed that they did not bring septic information.

Lot 11 does have a compact lot. Their house is down and drive way slopes down. Through grading and fill. The 112 setback could be brought up. Does not agree with 112. 100 feet, 58 feet unnecessary and does not cause hardship. Amy had a similar grade and create a little more work. Lot 11 has a compact and downslope and front mound system. Goes  $\frac{3}{4}$  way to their window line. Others in subdivision have followed the guidelines.

Would the variance is unnecessary and would be so close to their house. Zero reason to be so close to their house and Nelsons. Not impossible to do.

Mike Nelson will move to lot 4 w/129n11695 Hazel Heights. He spoke against the variance. Does not have to be the full amount.

Janet Radtke Hazel Heights and next door to the Nelsons. She is against the variance. She is looking for alternatives to design differently to maintain the set back. Not opposed to the 112 foot but that far close to the road aesthetically now on top of the road. The purpose of the zoning to maintain continuity and aesthetically. She commented that she had a property with a holding tank and had it pumped.

If my lot and builder, try to come up with a compromise and turn the house or redesign. Now houses and set back, very close to the road.

Chair White gave Mr. Vorpapel final words.

Went to last slides. All at a cost. Displayed the impracticality. Could have more of a side or rear entry as an alternative and bring the drive to the south side and would be icy in the winter and difficult to clear and the aesthetic appearance.

The compact version of the mound system

85 foot long mound and going to 77 foot mound. A mini mound system, not aware of new technology other than a pre treat type system that is dictated by the soil. Takes a sandy soil. Lot 29 had a mini mound system fail and had to be rebuilt and put on another lot. Why does it work on lot 11 and not on

this lot.

The property location satellite image was shown. Mr. Vorpagel pointed out that the proposed is in line with the other properties. The Nash's property garage is on their side. The Nelson's is right near.

The Washington County Code prohibits new installation of holding tanks unless no other suitable area on site by certified persons.

Anyone in favor or opposed.

Chair White closed the public hearing.

The variance will or will not be contrary to the public interest and in accordance with the spirit of the zoning code.

Discussion of the intent to have separation of the set back. If it was not pie shaped would be 45 feet. It is a pie shaped lot and the code does have a reason for putting in the code. The closeness and the side setbacks are met.

Is within the spirit of the zoning code.

**Are there exceptional extraordinary or unusual conditions or circumstances that apply specifically to this lot or parcel that do not apply to other.**

The issues are the slope, standing water, soil, lot size. Not extraordinary. If did not have these conditions would not have this discussion. Design issue. Other lots did not discuss. Could be exceptional. Cannot put the mound system in the back, have to move it up. Some lots have front mound systems.

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

Other people have the mound in front. The County issue of holding tank was answered and addressed. The question of the compact and mini septic was not fully addressed. The mini system is different technology. Not necessary to have the exemption to the setback. Not convinced that there is not another solution.

Could grant with conditions. How would we pick that number. Have engineering review. Not convinced of the 58 feet. Put on the Village Engineering to look at. Every distance that you push it back increase the grade in the back of the house.

Chair White re-opened the hearing to hear Mr. Vorpagel.

In interest of coming back, would move from 58 foot to 66.3 foot setback, could make that work.

Chair White closed the hearing.

If the criteria were met granting the variance subject to engineering reviewing for max setback. Sajdak commented from a staff level, staff is one engineer and he is swamped. Plan review is very cursory.

Discussion ensued of rotating the garage.

Commented that they could come back with another proposal or redesign the house.

Discussion ensued of the setback and judgement of what is enough.

**If the Variance is not granted will cause unnecessary hardship.**

Redesign of house or set back farther. Practical or unnecessary. Try something else. Established that financial hardship is not considered by this question and does not meet this question. Is it a hardship to ask someone. Not a hardship to look at a different house design.

**The variance will not create substantial detriment to the adjacent property and will be contrary to the public safety or interest. Is not contrary to public safety; not a substantial detriment.**

The physical location is not a substantial detriment. They are meeting the site setbacks. The neighbors do not like it. The lot to the south would be less than ideal. Can see it as undesirable but not substantial detriment. State criteria of sloping to define the setback. The Village does not have a code for the slope requirements. More than 58 feet would work. If the variance is denied need clarification of what is acceptable. The 112 did not seem workable. Neighbors were understandable of some variance but not the 58 feet. Difficult for the Board to come up with a number versus the board determining a number. Need to compromise and see what the true minimum number is.

Guidance to the owner:

Revise the plan and have an engineer review. Give the engineer criteria to meet the intent.

Maintainable safe slopes. Engineer to review to that criteria.

Safe driveway slope and safe to the back property. No redesign of house. Could need a retaining wall rather than a slope. Could state to redesign the house which could be a hardship. Is it a self-created hardship?

**A literal enforcement of terms of zoning code would not result impractical difficulty or unnecessary hardship. The literal enforcement would create a hardship.**

**Motion (Hanson) to approve the variance subject to final grade and design approval by village engineer, maintaining safe slopes for the driveway and surrounding grades.**

**Sajdak commented that this is an impossible standard to identify whether it is met.**

**No second. Motion failed.**

**Motion (White/Edwards) VARIANCE however to the set back requirement to no less than 66.3 from the write away. Front set back. Motion carried, White, Edwards, Hanson voted yes. Huber voted no.**

**APPEAL** filed by Rebecca Kirst, Allan Builders, LLC, Agent for Maxwell and Dawn Rivera, property owners, who is requesting a variance from the Village's Zoning Code (Section 17) to reduce

the front/street yard building setback from 112' to no less than 66.3' for the property located at W129N11638 Hazel Heights (Lot 5 of the Harvest Hills Subdivision)  
**66.3 was provided by the applicant during the meeting. They could**

**NEXT MEETING DATE AND TIME IF NEEDED:**

Second Wednesdays of the month at 5:30 p.m.

**ADJOURNMENT**

**Motion** Huber to adjourn at 7:50 p.m.

Motion Carried unanimously.