

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
February 19, 2014**

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

ROLL CALL: Chairperson Pluta, Member McDonnell and Alternate Member Ehler; and Deputy Clerk Micka. Absent and excused: Members Kling, Riemer and Schleif.

Chairperson Pluta read the policy and procedures of the Board of Zoning Appeals.

PUBLIC HEARING ON THE APPEAL OF PATRICK FROH: Chairperson Pluta 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 the APPEAL as filed by Patrick Froh, property owner, for a variance from the rear yard building setback requirement in the Meadow Creek Crossing Subdivision Planned Development District (PDD) established by Resolution No. R3-02 to reduce the rear yard setback from 30' to 23'9" for the property located at:

W173 N10024 Meadow Creek Way

The appellant, Patrick Froh, W173 N10024 Meadow Creek Way, was sworn in by Chairperson Pluta and provided testimony. He is requesting a variance of approximately 6 feet to allow a deck addition to his house. He stated that if he knew he would not be able to construct a deck on his property as he was told by the developer, he would not have built his home. The safety deck is not pleasing to look at, and he is looking at fulfillment of livelihood and enjoying his house. With the safety deck, he has to go through the front door or garage to get to his backyard. He travels a lot for his job, and has safety concerns for his family with only a front or garage door exit. Two of his neighbors have gone through this process, and he is asking for the same consideration. He stated that it is cost prohibitive to construct a paver patio with a stair built in.

Chairperson Pluta reviewed the Five Findings of Fact with the appellant, and Mr. Froh responded to each of the findings.

1. The variance *will/will not* be contrary to the public interest and *will/will not* be in accord with the spirit of the Zoning Code: Mr. Froh responded that it would be in the interest of the neighborhood since it would increase his taxes, he would be able to enjoy his house, and other neighbors have no issue with his request. He felt it was in the spirit of the zoning code because of the purpose of the setback.

2. There *are/are not* exceptional, extraordinary or unusual conditions or circumstances 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: Mr. Froh responded that there are exceptional, extraordinary or unusual conditions or circumstances as there is a steep grade on the back side of the property, and he has concerns with erosion and safety.

3. The variance *is/is not* necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district: Mr. Froh responded that the variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties since a variance was granted to his closest neighbors for the same purpose.

4. The variance *will/will not* create substantial detriment to adjacent property, and *will/will not* be contrary to the public safety or interest: Mr. Froh responded that the variance would not affect public safety because it is his property and affects his family and safety, and it is a detriment that he has a safety deck next to his neighbors beautiful decks.

5. A literal enforcement of the terms of the Zoning Code *would/would not* result in practical difficulty or unnecessary hardship to the appellant/applicant: Mr. Froh responded that a literal enforcement of the terms of the Zoning Code would result in practical difficulty or unnecessary hardship to the appellant since a deck is the safest and most secure way to gain access to the backyard and avoid slips on the slope in the backyard. As owner and caretaker of his house, when traveling he wants all options available for his family.

Testimony was provided from the Village. Chairperson Pluta read a memorandum from Planner Retzlaff and reviewed the attachments, which included Resolution R3-02, Conceptual Plan dated December 12, 2001, and a map of the properties.

Chairperson Pluta asked if there was anyone present wishing to speak on behalf of the appellant.

Emily Gordon, W173 N10062 Meadow Creek Way, was sworn in by Chairperson Pluta. She stated that she lives next door, Mr. Froh travels a lot, and it is appropriate to allow the deck to be built, since he has a lot of water issues.

Chairperson Pluta asked if anyone else wished to speak in favor of the appellant. No-one present wished to speak.

Chairperson Pluta asked if anyone else wished to speak against the appellant. No-one present wished to speak.

Chairperson Pluta asked if anyone wished to speak. No-one present wished to speak.

The Public Hearing was closed at 6:00 p.m.

DELIBERATION AND ACTION BY THE BOARD:

Discussion followed, and it was stated that there was an extensive record from the August 21, 2013 meeting. It was questioned if the record of the August 21, 2013 hearing could be incorporated into the record of this meeting.

Chairperson Pluta asked if any Board Members had an objection to incorporating the record from the August 21, 2013 meeting into the record. There were no objections.

Chairperson Pluta asked the appellant if he had any objections to incorporating the record from the August 21, 2013 meeting into the record. The appellant had no objection.

Motion McDonnell, second Ehler, to incorporate into the record the testimony and findings from the August 21, 2013 meeting and to grant the variance of 6 feet 3 inches for the rear yard setback requirement in the Meadow Creek Crossing Subdivision Planned Development District (PDD) established by Resolution No. R3-02 to Patrick Froh on the property located at W173 N10024 Meadow Creek Way.

Roll Call Vote:

Ayes: 2. (McDonnell, Ehler). Nays: 1. (Pluta)

Motion carried.

Following is the record from the August 21, 2013 meeting minutes to be incorporated in the minutes of the February 19, 2014 meeting:

CONTINUATION OF DELIBERATION AND ACTION BY THE BOARD
REGARDING THE APPEAL OF CODY GORDON, HEARING HELD ON JULY 17, 2013: Chairperson Pluta 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 the APPEAL as filed by Cody Gordon, property owner, for a variance from the rear yard building setback requirement in the Meadow Creek Crossing Subdivision Planned Development District (PDD) established by Resolution No. R3-02 to reduce the rear yard setback from 30' to 25' for the property located at:
W173 N10062 Meadow Creek Way

The appellant, Cody Gordon, W173 N10062 Meadow Creek Way, was sworn in by Chairperson Pluta and provided testimony.

Mr. Gordon reviewed his testimony from the July meeting, noting that he is requesting the variance to build an exterior attached deck to improve the look of the home, and for their enjoyment of the property. He noted that the current deck is unattractive to the neighbors. He reviewed the photographs presented at the July 17th meeting, and also presented a petition from the surrounding neighbors in support of the requested variance. The petition contained the signatures of

owners from lots 29, 30, 31, 33, and 34. Chairperson Pluta entered the petition into the record as Exhibit B.

Discussion followed between the Board and Mr. Gordon:

- Are there other homes with temporary decks? This is very uncommon – there are about 30 homes around the pond, and 90-95% of the homes with half/full exposure have some type of deck that is larger than the deck on his property;
- Review of the Conceptual Plan;
- There is a home on Division Road that was there before the subdivision was built; and
- The property has an unfinished basement that he plans to finish, and the deck to the north would cover two of the windows.

Chairperson Pluta reviewed the Five Findings of Fact with the appellant, and Mr. Gordon responded to each of the findings.

1. The variance will/will not be contrary to the public interest and will/will not be in accord with the spirit of the Zoning Code: The neighborhood would like to see improvements, there are no safety issues, no-one is behind his property, and he would not be impeding on anyone's rights.
2. There are/are not exceptional, extraordinary or unusual conditions or circumstances 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: His home is larger with less space to the rear than other homes in the subdivision.
3. The variance is/is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district: His request for a variance is very basic.
4. The variance will/will not create substantial detriment to adjacent property, and will/will not be contrary to the public safety or interest: There are no safety issues, and the petition shows that the neighbors support the variance request.
5. A literal enforcement of the terms of the Zoning Code would/would not result in practical difficulty or unnecessary hardship to the appellant/applicant: He has explored other options, which are not ideal alternatives.

Discussion continued noting this was built as a spec home, the current deck was to be removed, a plat of survey was provided for the property, and the appellant's preference is to build a composite deck.

Village Planner and Zoning Administrator Retzlaff reviewed the memorandum that he provided to the Board at the July 17th meeting. The owner is requesting a

variance from Section 1 of the Meadow Creek Crossing Planned Development District (PDD) that was established by Resolution No. 3-02, that established the yard and building setback requirements for all residential buildings in Meadow Creek Crossing Subdivision. The owner is requesting a rear yard building setback variance of 5 feet to construct an attached deck to the existing dwelling where the minimum rear yard building setback requirement is 30 feet.

Discussion followed between the Board and Planner Retzlaff:

- The setbacks do not apply if different types of material are used, such as a brick or concrete slab;*
- 90% of the properties in the subdivision have decks, and there may have been only one other variance that was granted for a side yard setback;*
- Most homes in the subdivision have decks, and the subject property has less depth on the lot;*
- The subject property is one of the smaller lots in the subdivision;*
- Negotiations for the PDD were held because of unique lots in the subdivision;*
- The developer offered amenities (paths, ponds) in exchange for relaxing the requirements for smaller lots;*
- If the deck is attached it is considered part of the building;*
- If the structure is considered a deck or accessory – if detached and 6” away, it would be considered a deck;*
- 30’ setback applies – when zoned into the PDD, the underlying district was assigned to it. If the resolution does not speak to a specific issue, the underlying regulations and restrictions apply; and*
- The setbacks could be exceeded if there was a different type of construction.*

Chairperson Pluta asked if there was anyone present that wished to speak on behalf of the appellant.

James Bradley, W173 N10042 Meadow Creek Way, was sworn in by Chairperson Pluta. He stated that 5 feet is needed to meet the ground level, he questioned if a permit was needed if raising the elevation, and there are only 3 homes with 30’ easements on their whole property.

Chairperson Pluta asked if there was anyone present that wished to speak against the appellant. There was no-one wishing to speak against the appellant.

Chairperson Pluta asked if there was anyone present that wished to speak. There was no one wishing to speak.

The Public Hearing was closed at 7:43 p.m.

DELIBERATION AND ACTION BY THE BOARD:

Discussion followed:

- *Common sense vs. law: it is common sense to build a deck on the back of the house, but it requires a good argument to break the law;*
- *A better definition in the Zoning Code would be helpful for a deck and for grade supported patios;*
- *The builder made it impossible to build a deck; and*
- *There were detailed discussions held prior to the homes being built in the subdivision.*

Conclusions of Law:

- 1. Member Kling: The variance will not be contrary to the public interest since the zoning was amended due to the PDD, and will not be in accord with the spirit of the Zoning Code because the spirit of the code is more rigid.*
- 2. Member Ehler: There are not exceptional, extraordinary or unusual conditions or circumstances 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 because it is among one of the smallest lots that allows for a lot of space to the sides, and most do not have lot configurations.*
- 3. Member McDonnell: The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because other properties have larger lots that are more generous and the zoning is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district.*
- 4. Member Schleif: The variance will not create substantial detriment to adjacent property because it is out of sight and a petition was presented with the neighbors in support, and will not be contrary to the public safety or interest as there are no safety issues.*
- 5. Chairperson Pluta: A literal enforcement of the terms of the Zoning Code would not result in practical difficulty or unnecessary hardship to the appellant/applicant and the zoning would not result in practical difficulty or unnecessary hardship to the appellant/applicant because there are other alternatives, which may not be preferred, and the house was placed in an unfortunate location by the builder, who led the owner to believe he could build the deck.*

Mr. Gordon questioned the difference between his request and the variance that was granted at the February Board meeting. Chairperson Pluta responded that each case is unique and it is the duty of the Board to enforce the code.

Discussion followed, noting that the Board needs to meet all five findings in order to grant a variance, Mr. Gordon's case had a unique disadvantage due to the prior building setup with the PDD, and Mr. Gordon knew the situation when he bought the home.

Discussion followed:

- ✓ *How the unique and extraordinary circumstances relate to the spirit of the code;*
- ✓ *Developer and contractor knew the conditions and restrictions of the PDD;*
- ✓ *Size of lot and grade factors;*
- ✓ *Neighbor's farm field east of the development was not part of the subdivision;*
- ✓ *If the neighbor to the east filled his property and raised the grade after the PDD was adopted in February, 2002, a unique situation could exist;*
- ✓ *The PDD was adopted based on the farm grading at the time;*
- ✓ *The difference between parcels 32, 33, 34 and parcels 36, 37, 41, and 43;*
- ✓ *Rs-2 zoning next to parcels 36, 37, 41, and 43, with the same grade as part of the PDD;*
- ✓ *If filling was done after the PDD, it changed the grade of the subject parcels; and*
- ✓ *The change in grade would make it difficult to construct a walk-out patio or concrete slab.*

This ends the record of August 21, 2013.

Chairperson Pluta informed the appellant that he will receive written notification of the Board's decision from the Village Clerk's Office.

APPROVAL OF MINUTES OF August 21, 2013: *Motion McDonnell, second Ehler, to approve the minutes of August 21, 2013. Motion carried without negative vote.*

ADJOURNMENT: *Motion McDonnell, second Ehler, to adjourn the meeting at 6:06 p.m. Motion carried without negative vote.*

Respectfully submitted,

Christine M. Micka, CMC/WCMC
Deputy Village Clerk