

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
JULY 16, 2014**

CALL TO ORDER: The meeting was called to order at 5:35 p.m.

ROLL CALL: Chairperson Pluta, Members McDonnell and Miller. Planner/Zoning Administrator Retzlaff and Clerk Goeckner. Absent and excused: Members Kling **and** Schneider **and Schleif**.

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

PUBLIC HEARING:

Chair Pluta read the public hearing notice. The hearing is to hear any and all parties, their attorneys or agents, for or against the APPEAL as filed by **Beth Hackstein, Property Owner**, seeking a variance from the rear yard building setback requirements of Section 17.18(3) Germantown Municipal Code to reduce the minimum 35' rear yard setback by approximately 6.3 feet for purposes of constructing a deck on the existing residential dwelling on the property located at **W141 N10550 Wooded Hills Drive**.

The public hearing opened at 5:40 p.m.

The appellant, Beth Hackstein, W141 N10550 Wooded Hills Drive, Germantown, was sworn in. Building a deck, survey showed she had a setback of 30'. When applying for permit discovered the survey was incorrect and should have been a 35' setback. Deed also indicates setback is 35'.

Board members asked the owner about the survey and reviewed the documentation in regards to the setback. Owner initially discovered this based on scale in working it out with Contractor. Building Inspector agreed. When asked if the surveyor admitted he made an error the Owner stated the surveyor had corrected it. Seeking a 5'8" variance vs. a 6'3" variance. Owner was told by Tim O'Brien she could cantilever 2' over.

Chair worked through the five findings of fact with the owner, allowing her to speak to each for Appeals Board to make their findings. Findings in application:

- #1 What is the request of the variance? Variance of 5.8' to construct a deck.
- #2 How is the variance consistent with the spirit and the intent of the code? The angle of the house in relationship to the neighbors will not look like it extends beyond the neighbors. Neighbors deck is out of compliance as well as her deck does not go beyond his. The rear setback itself, there is no neighbor behind me – it is a retention pond. Deck will be in the rear of house, not the side where neighbors are.
- #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: Had a survey that was inaccurate because it did not dimension the lot, which was unique to her situation.

PUBLIC HEARING continued:

- #4 What special conditions exist which cause practical difficulty or unnecessary hardship, IF variance is NOT granted? Deck consists of a railing system out of stainless steel tubing and cables which are special order and have already been paid for which was a cost of \$7,000. Will cause a huge monetary setback if not granted.
- #5 Why is the variance necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the SAME district? The shape of several of the lots like hers create too restrictive of an area in the back yard to build a reasonable size deck. With a 4' stair it only leaves 5' deck area.
- #6 Explain how the variance will not create substantial detriment to adjacent property and will not be contrary to the public interest and will not endanger public safety and interest: The deck will not look too big and there is an outlot behind her and won't be encroaching on someone else's property.

Planner Retzlaff presented the Village's information. Hackstein property and balance are all zoned Rs-5 single-family. Further described zoning of neighboring properties. South of property is industrial. Actual variance request is the 5.8" which was submitted after the notice went out and is the correct amount on the latest survey. Permit was denied based on setback issue. Discussion followed regarding the requested variance.

Chair Pluta invited anyone in favor of the appeal to speak. No one present wished to speak.

Chair Pluta invited anyone opposed to the appeal to speak. No one present wished to speak.

Chair Pluta asked if anyone wished to speak. No one present wished to speak.

The Public Hearing was closed at 6:10 p.m.

DELIBERATION AND ACTION BY THE BOARD:

Discussion followed:

- Setback is 35' for Rs-5
- Unique circumstance
- Error and omission on part of the original surveyor
- Unique circumstance is potential miscalculation by surveyor which village had no part in
- No one directly in line – owner asking to infringe on a pond.

Conclusions of Law:

1. The variance will not be contrary to the public interest because it is and will be in accord with the spirit of the Zoning Code because it is not encroaching on another property, only on the setback. There are no safety issues and sound or noise to the adjacent parcel will not be a problem.

Conclusions of Law continued:

2. There are 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 the outlot, the curve, the circumstance the appellant has relating to the survey by which she would have made her decision to purchase or plan her deck, are all very unique.
3. The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because of the unique circumstances involved with the subject property and the nature of the survey. And to give her footing substantial to the others in the area.
4. The variance will not create substantial detriment to adjacent property, will not be contrary to the public safety or interest because there are no safety issues and there is no detriment to the adjacent pond or neighbors.
5. A literal enforcement of the terms of the Zoning Code would result in a practical difficulty or unnecessary hardship to the applicant because of the cost of the materials already purchased.

Chair Pluta asked the applicant if the deck has a cantilever and the applicant stated nothing is cantilevered over and nothing hanging over the setback.

MOTION (McDonnell/Miller) based upon findings request for variance from 17.18(3) to allow the variance from the rear yard building setback requirements should be granted for a variance of 5.8' from the 35' rear yard setback line. Roll call vote, 3 yes, 0 opposed, carried.

APPROVAL OF MINUTES: MOTION (Miller/Pluta) to approve the minutes of the February 19, 2014 meeting, carried.

ADJOURNMENT:

MOTION (Miller/McDonnell) to adjourn meeting at 6:22 p.m., motion carried.

Barbara K. D. Goeckner, MMC/WCPC
Village Clerk

Minutes approved on 11/18/2015 with corrections noted with overstrikes for omission and underscores for additions.