

**VILLAGE OF GERMANTOWN  
BOARD OF ZONING APPEALS  
MEETING MINUTES  
May 10, 2017**

**CALL TO ORDER:** The meeting was called to order at 5:36 p.m.

**ROLL CALL:** Chairman White, Member Hansen, Member Schleif, alternate member Merry, Community Development Director (CDD)/Village Planner and Zoning Administrator Retzlaff, Clerk Goeckner and Deputy Clerk Bodoh. Absent and excused: Members Filla and Fritsche.

**APPROVAL OF MINUTES:** July 13, 2016

Clerk Goeckner explained minutes from July 13, 2016 were not completed by the former deputy in attendance at that meeting. The Clerk's office is in the process of finishing them for approval at the June 14, 2017 meeting.

Chairman White opened the Public Hearing at 5:39 p.m.

**PUBLIC HEARING:**

Chairman White read the public hearing notice. Hearing is to hear any and all parties, their attorneys or agents, for or against the **APPEAL** as filed by **JAMES AND SARA HEIMLER**, for the following: Seeking a building setback variance in order to add an attached 3-car garage that will encroach approximately 7.76 feet into the minimum 15 feet south side yard setback on the property located at **N102 W14744 Providence Court, Germantown, WI 53022 GTNV 381-079**

Chairman White swore in CDD Retzlaff.

Agenda amended to reflect correction of GTNV# to 351-079.

CDD Retzlaff stated on April 4, 2017, James and Sara Heimler at N102 W14744 Providence Court, submitted an application for building permit for 840 sq. ft. garage addition and conversion of existing garage to living space. April 4, 2017 denial letter explains Rs-5 Zoning District requires 15' side yard setback proposed garage addition encroachment of 7.76' into 15' setback.

Chairman White asked if anyone had questions for Mr. Retzlaff. Mr. Heimler stated he did not know role of Mr. Retzlaff. CDD Retzlaff stated he is Zoning Administrator for Village of Germantown.

Chairman White swore in Mr. Heimler.

James Heimler went thru five findings of fact that are required by Village, and stated all of these are true and is confident that granting a variance is legally justified. In reviewing Chapter 17.52 code of ordinances all of them are consistent with spirit of law and intent of code. Specifically no change in congestion, safety or efficiency of street, no change from fire, flooding or other dangers, no change from crowding or population concentration, no change in light, air or drainage. However, there is a favorable change in stabilizing property value in subdivision. Second favorable impact, preserve and promote beauty of Village, it will be more modern. This change favorably impacts the Village and increases value of home and brings value to

subdivision. There are also exceptional circumstances. We pulled an original survey that was on file with Village and worked with our builder to create plans. During this time we found that our house was placed 6' to the south from original plan. These misplaced footings offset our home by 6' on plan approved by Village. South side of house is uniquely restricted by offset of footings and is only practical place for an addition. Issue is house being in wrong spot and a pie shaped lot that is causing practical difficulty. Member Schleif asked; if house was built to original spec wouldn't you still be here seeking a variance? Mr. Heimler stated they reduced size of addition, but yes we would still be a little bit over. Brian Kuhs of Kuhs Quality Homes, Inc., Builder, was sworn in. Mr. Kuhs stated on survey he generated, is how they discovered house was built in wrong spot and that it was also put closer to road as well. If it was in correct spot we could have shaved off a couple inches to meet wall bracing requirements and would not be seeking a variance. Mr. Heimler stated fourth question is preservation of substantial property rights based on unique placement of footings to ensure our ability to use and enjoy our property to its fullest potential by upgrading my house, also keeping up with neighbors that are not restricted as we are. Mr. Heimler stated keeping up appearance of home and adding on additional square footage allows it to be consistent with other homes in subdivision. He researched and listened to previous meeting minutes from a hearing on July 16, 2014 where a similar survey mistake was made and quotes minutes from that meeting, *"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."*

Chairman White asked; how long he has lived in the house? Mr. Heimler stated 12 years.

Chairman White clarified with Mr. Heimler that he is the owner & mortgagor and not mortgagee. Chairman White asked if desire is for more living space and a bigger garage. Mr. Heimler stated family size increased, would like additional space for family, properties around us are growing and increasing size of their houses, wants to stay competitive with neighbors and increase value of our home. Mr. Heimler stated detailed plans have been reviewed with neighbors to south, Kevin and Paula McAllister, and does not create a substantial detriment to McAllister's' property who are here today and are in support of proposed plan.

Chairman White asked CDD Retzlaff if the neighbors sold 7.6 ft. we would have no problem and we do not have a concern about the space between the properties? CDD Retzlaff stated that would appear to be the case. Paula McAllister stated they are willing to do that. Chairman White stated that would probably be another whole list of approvals.

Member Schleif stated house is usable without this addition, if we give a variance it goes on forever and if McAllister's sell their house then new owners may not like it, it is easier if you buy 7.6 ft. from neighbors. Mr. Heimler stated bottom line is this house is in wrong place. His house is 50' away from the neighbors and he's building on existing driveway. Member Schleif stated he is saved by both driveways being side by side of that buffer zone.

Chairman White stated he is right about all factors he talked about. However, we have limited power by Wisconsin state law and our power is derived by ordinances. Inconvenience to owner does not give us power to grant a variance. We have to find that enforcement of ordinance would create hardship or practical difficulty to owner and it cannot be personal convenience,

growing family doesn't give us power to grant this variance. Do you have any ideas on how your use of property is limited? Mr. Heimler stated house is in the wrong place. We are trying to build and stay in pace with our neighbors, 4-5 families built on to their houses. His house is the smallest house on the court. He should be able to keep pace with neighbors and add more value to home. Member Hansen asked: with a pie shaped lot did he consider moving addition back to allow for more room in going back toward bigger part of lot? Mr. Heimler stated we considered that and we would have to push back garage and it will not look good. He will let builder speak on difficulty with that. Member Schleif asked: what if you move the wall in 6'? You are free to build on the back of house. Mr. Heimler stated it is not practical or cost effective. Mr. Kuhs stated if we move garage back to meet front setback we would only be a foot and a half past front of the house, or 2 car garage with other garage staggered back, then would have driveway going around to back of house. Would have to make garage bigger to shift load bearing wall. We have discussed several options. Aesthetically this option looks best from road, appearance would not look like an addition. Mr. Heimler stated there are two windows on south side that should not be covered for ventilation. If window was removed it would impact natural light and ventilation. Chairman White asked: would it fit with a side entry on garage. Mr. Kuhs stated no, not with swale next to driveway and it's not practical.

Chairman White asked if there is anyone else that would like to speak in favor of or against this application.

Chairman White swore in neighbor Paula McAllister, N102 W14733 Providence Court. She wanted to speak to feeling side of board. They have a need for bigger things and they want to stay where they are for many more years. They are completely supportive of the Heimler's addition.

Chairman White swore in neighbor Kevin McAllister, N102 W14733 Providence Court. Mr. McAllister stated he would like his neighbors to stay and would like board to grant said variance. Mr. McAllister stated this comes down to one simple fact; we wouldn't be here if original builder didn't put house in wrong location. Chairman White asked: you do not have any problem with their garage being 7 ft. closer to property line? Mr. McAllister stated absolutely not.

Chairman White asked if there is anyone else that wishes to be heard in regard to this appeal?

No one else spoke.

Public Hearing was closed at 6:20 p.m.

**DELIBERATION AND ACTION BY THE BOARD:**

Discussion of five criteria. All five have to be proven in order to grant request.

Variance:

1. *Variance (will/will not) be contrary to the public interest and (will/will not) be in accord with the spirit of the Zoning Code.* Chairman White stated we have enough space between structures and spirit of zoning is upheld. All agree it will not.

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.* Member Schleif stated from information provided house is in wrong spot. Chairman White stated if house would have been built in right place garage would be in right spot. Member Hansen questioned; is it important to have a three car garage instead of a two car garage? Is the only way to have a garage, is to impede on the setback? All agree there are.
3. *Variance is not necessary for preservation and enjoyment of substantial property rights.* Schleif stated right to a three car garage is not necessarily given. Member Hansen asked is he only owner in area with a two car garage? Member Schleif asked: are we able to break law for a third stall? Chairman White stated he has clearly been able to use his property and has for the last 12 years. All agree it is necessary.
4. *Variance (will/will not) create substantial detriment to adjacent property, and (will/will not) be contrary to public safety or interest.* All agree it will not.
5. *A literal enforcement of terms of Zoning Code (would/would not) result in practical difficulty or unnecessary hardship to applicant.* Chairman White stated it is opposite of zoning code, that is not the issue, we agree we are not granting it on a personal convenience, that is not a hardship. Member Hansen stated we have to go by what the code says. Member Schleif stated this is not a self-imposed hardship. Member Hansen stated he didn't cause house to be built in wrong spot.

Reopen hearing at 6:36 p.m.

Mr. Kuhs states difference between two car and three car garage, we are still and will still be over line due to fact we have to keep that window. That doesn't solve the problem of the variance.

Closed the hearing at 6:38 p.m.

Member Hansen stated hardship is caused by footing being in wrong spot, if footing was in right place he would be able to do it. Member Hansen stated he is permitted to have a three car garage and if footing was in correct spot he would be able to build a three car garage. Chairman White stated footing in wrong place is true hardship.

All agree it would.

***MOTION (Merry/Schleif) moved to grant the variance as shown on the prints, by roll call vote, 4 Ayes, 0 Nays, 2 absent, carried.***

Chair White stated outcome to appellant.

Discussion of appeal and decision.

Hearing finalized at 6:43 p.m.

**PUBLIC HEARING:**

Chairman White read public hearing notice. Hearing is to hear any and all parties, their attorneys or agents, for or against the **APPEAL** as filed by **RYAN BLANK**, for the following: Seeking a building setback variance in order to construct a detached garage that exceeds the allowable size by 158 square feet on the property located at **N112 W21905 Bark Lake Rd, Germantown, WI 53022 GTNV 193-001**

Chairman White opened the Public Hearing at 6:54 p.m.

Chairman White swore in CDD Retzlaff and property owner Mr. Blank.

CDD Retzlaff stated building application was received March 26, 2017 for accessory building. April 6, 2017 application was denied due to size of detached garage being in excess by 158 sq. ft. Request meets setback ordinance, lot however exceeds max allowed square footage of 466 and request is to build a detached garage of 624 sq. ft.

Chairman White asked owner if he is in agreement that his lot size is just over an acre? Mr. Blank stated yes.

Member Schleif asked CDD Retzlaff if it is zoned Rs5 and Rs7, are percentages different? CDD Retzlaff stated yes difference is you are allowed two buildings in Rs7. Mr. Blank stated preservation of intent to accomplishment for a detached garage and does meet all of setbacks, and is over 20' off lot line. It's not feasible to attach to house. Chairman White asked CDD Retzlaff is ratio 1% of parcel size? CDD Retzlaff stated yes, more acreage you have bigger you are able to build. Village was getting quite a few requests for variance so they came up with a sliding scale of 1% of the property size. Attached garage size does not follow the 1% scale. Chairman White asked what the definition of attached and detached is. CDD Retzlaff stated sharing a common wall or connection by way of enclosed corridor. Mr. Blank stated subdivision requirement is that you have to store everything. Mr. Blank stated he's asking for an additional 3' and there is plenty of space between property and appearance wise it will fit very well, and will match stone on house. Chairman White asked CDD Retzlaff if he could boot strap common lot to add on additional sq. footage? CDD Retzlaff stated no that is not possible. Mr. Blank stated it's owned by subdivision. Member Hansen asked when was home built? Mr. Blank answered 2009. Chairman White asked if there is anything you can point to that is lot specific that makes it impossible for you to have what you want to use garage for? Mr. Blank stated he talked to all neighbors but two and they are all in agreement with his proposed garage. Chairman White stated he struggles with what is extraordinary justification to allow the variance. What is extraordinary about lot to allow variance? Our power is limited and have to stay with zoning codes. Mr. Blank stated he doesn't want to attract theft by storing his boat and kayaks in woods. Chairman White asked CDD Retzlaff if he can have more than one building? CDD Retzlaff said no, for 1-3 acres he is only allowed one accessory shed.

Chairman White asked if anyone has any additional questions for Mr. Blank.

Member Hansen asked; what is size of your lot in comparison to others in subdivision? Mr. Blank stated his lot is comparable with others in neighborhood. Member Schleif asked; when did you build the house? Mr. Blank stated 2009. Mr. Blank stated being limited to that

size doesn't allow me to secure my property. Other subdivision owners are building on and because they are attaching with a breezeway it will be allowed. Mr. Blank stated aesthetically it will not look good attached to house.

Chairman White asked; if anyone wished to speak in favor of appeal? No one present spoke.

Chairman White asked; if anyone opposed to appeal wished to speak? No one present spoke.

Public Hearing was closed at 7:30 p.m.

**DELIBERATION AND ACTION BY THE BOARD:**

Discussion of five criteria. All five have to be proven in order to grant request.

Variance:

1. Variance (will/will not) be contrary to the public interest and (will/will not) be in accord with the spirit of the Zoning Code. All agree will not.
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 because: All agree is not.
3. Variance is not necessary for preservation and enjoyment of substantial property rights. All agree it is not.
4. Variance (will/will not) create substantial detriment to adjacent property, and (will/will not) be contrary to public safety or interest. All agree it is not.
5. A literal enforcement of terms of Zoning Code (would/would not) result in practical difficulty or unnecessary hardship to applicant because: All agree it does not.

***MOTION (Schleif/Hansen) based on testimony provided and discussion, it is this body's determination that we deny the variance from regarding the facts in this case, by roll call vote, 4 Ayes, 0 Nays, 2 absent, carried.***

Hearing closed at 7:38 p.m.

Chairman White stated outcome to appellant.

Chairman White Stated our next hearing will be June 14, 2017.

**MOTION (Schleif/Hansen) to adjourn meeting at 7:44 p.m., carried.**

  
Cheryl Bodoh, Deputy Clerk