

**VILLAGE OF GERMANTOWN
BOARD OF ZONING APPEALS
MEETING MINUTES
June 10, 2020**

CALL TO ORDER: The meeting was called to order at 5:34 p.m.

ROLL CALL: Chairman White, Hansen, Knop, Edwards, Huber, Yao, Community Development Director (CDD)/Village Planner and Zoning Administrator Retzlaff, Assistant Planner Zandt, and Clerk Braunschweig.

APPROVAL OF MINUTES: September 11, 2019.

Motion (Knop/Hansen) to approve minutes as presented for September 11, 2019.

Motion Carried unanimously.

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 **VARIANCE APPEAL** filed by **Todd and Anisia Peterman, Agents for David Leszczynski**, property owner, who is requesting the following variances from the Village's Zoning Code (Section 17) to: (1) reduce the front/street yard building setback from 120' to 65' for Woodland Ponds Estates Lot 10 for the property located at N118 W12745 Taylor Trail (Lot 10 of Woodland Ponds Estates Subdivision), Parcel Number GTNV 241-074. The property is zoned Rs-3 Residential.

Chairman White described the meeting order to **Todd and Anisia Peterman** and the gallery that normally the Village's information and review of the Variance is given first and then Darlene **Todd and Anisia Peterman** would have opportunity to give her point of view. **Todd and Anisia Peterman** understood the order.

Chairman White swore in Assistant Planner Zandt and Director Retzlaff.

Planner Zandt gave history and background of the Variance Appeal for N118 W12745 Taylor Trail. In April the inspection services informed the applicant that the permit would be denied and advised the applicant to complete a Variance Application requesting to reduce the front setback from 120' to 65".

The final plat of Woodland Pond Estates shows a 120' setback from the front property line of Lot 10. The Rs-3 District requires a minimum lot width of 150'. The front setback when the minimum lot width is met, is 45'. Lots adjacent to cul-du-sac bulbs are often pie shaped and do not meet the minimum lot width of 150' adjacent to the road. The front setback is determined to be at the location the lot widens to meet the 150' width minimum. On Lot 10 of Woodland Pond Estates, the lot width reaches 150' at the point 120' back from the front lot line.

If the proposed variance to the lot frontage at setback requirement, is approved, all required setbacks in the Rs-3 Single Family Residential District would still be met.

The property location map was shown. It is part of the woodland ponds subdivision and zoned Rs-3 and in a cul du sac. The Final Plat of Woodland Ponds Estates was shown. The set back a cul du sac lot is pie shaped with a width of 67 feet at the road. The lot widens to 150 feet. 150 feet is the minimum lot. The drainage easements and retentions pond were shown. The existing setback and requested setback were shown. Site photos were shown. There is a downward slope. Retention pond site photos were shown. Grade / Slope of the property driveway area was pointed out. It is a difference between an 8% grade and 6% grade.

Chairman White swore in **Todd and Anisia Peterman** of W168N10262 Bittersweet Trail Germantown.

There is an accepted offer to purchase for the lot contingent on the Variance. They want to buy lot and build house.

Anisia Peterman commented that there were significant inconsistencies in documentation. Three different documents that showed set back at 45. The Perc Test and Soil Test have been performed. She commented that they were lead to believe house would fit the way they want it to fit and understood there is a code for cul de sac. She commented on safety concerns.

Todd Peterman commented that the preliminary plat was approved by the Plan Commission and then it changed. He commented on safety concerns on the slope of the driveway. He commented on the proximity of the retention pond and flooding concerns.

If the current setbacks were followed the east corner of house would be right by drainage easement. The request is to reduce the front setback. The lot is unique.

Hanson questioned if it was possible to set the house higher. Todd Peterson did not know.

Chair white swore in Property Owner David Leszczynski of 3223 Fleur De Lis Drive, Mequon. Leszczynski commented on lot 11 and that they will also want a variance. He commented that the ordinance is written to avoid "flag lots". Leszczynski commented that he reviewed Mequon, Menomonee falls, and Richfield, none have this restrictive of a code.

Chair White opened the Public Hearing at 6:14 p.m.

Chair White read the Brandon and Elizabeth Hellerson comments that they do not have concerns with the request.

Chair White read the comments from Jesse and Jessica Schaetzel that they are in full support of the variance request.

The variance will or will not be contrary to the public interest and will not be in accord with the spirit of the zoning code because temporary means temporary and is defined in the code.

Shari Waggoner of the Harvest Hills subdivision, 3955 Fox Ridge Drive Hubertus made comments from the virtual webex meeting link. She commented that she does not foresee an issue as long as the guidelines are followed.

Public hearing closed at 6:20 pm

Chair White explained that the Board will deliberate the findings and that the Board of Zoning of Appeals does not routinely grant requests.

The Findings, Conclusions, and Decision and Order were deliberated.

White commented that the request is in accordance with zoning code.

This is the rationale to prevent flag lots. We are still talking about meeting side setbacks. Front yard setbacks is a minimum. The setback is 45 feet. Does not see anything that is contrary to public interest or zoning code. There was consensus of agreement among the Board.

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 there are always these types of structures.

Knop commented that there are expected conditions here because of pie shape of the plat and the easement on the sides and south side of the lot. The easement is an underground piping system. Could be flooding. For safety reasons the home be away from swales or drainage areas for safety.

Huber agreed. White agreed. The lot is unique pie shape, the drainage and slope is another unique feature of the lot.

Hanson questioned if the house could be designed different to meet deed restrictions. Drive way could be designed with a lower slope.

Hanson: Commented this is the hardest. Agree with the easement and not use back end of property. There are exceptional circumstances.

The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district because he can still use the property.

Huber commented on the ability to have a patio or deck if the house is back so far not to have a back yard features.

Hanson commented that the design could be in a way that is a shoe horn that does not match the rest of neighbor

In addition to the back yard. Building right on top of the underground drainage is problematic.

Unlikely to dig up. If this fails. The other retention pond could fail on lot 12 and could overflow his retention pond.

The variance would be necessary for the preservation and enjoyment of substantial property rights. There was consensus of agreement among the Board

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

Huber commented on the privacy between the lots and that log 11 remains to be seen.

White envisioned a whole bunch with this one close to the road. There is only 3 lots and one north of building pad.

Hanson commented that without the larger set back could be a detriment on the on neighboring property.

The variance will not create substantial detriment to adjacent property and will not be contrary to the public interest.

Hansen commented: Is there a way to construct as you want to construct as long as the zoning codes are met. Is there a hardship. Financial does not count. Not a consideration here. Safety is the hardship.

White commented that he is most troubled by idea to comply with zoning code on top of drainage easement. Not our goal or purview to design a different house or put on a different lot.

Hansen: As long as it meets minimum lot size and deed restrictions different to meet zoning and code. Probably yes. Justify different. The hardship is tough to meet.

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

Knop: The unnecessary hardship is clear because of drainage area. The solution is simple to move the house forward.

Hansen Commented on safety and the icy driveway and drainage easement.

White commented on the potential for flooding.

MOTION (Knop/Huber) to grant the Variance with respect to reduce the front street yard building set back from 120' to 65'. Motion Carried Unanimously.

Chairman White stated next hearing will be as needed.

MOTION The meeting adjourned at 6:38 p.m. Hansen/Knop

Respectfully Submitted,

Deanna B. Braunschweig, WCMC/CMC