

VILLAGE OF FONTANA ON GENEVA LAKE
WALWORTH COUNTY, WISCONSIN
(Official Minutes)

ZONING BOARD OF APPEALS HEARING

Wednesday, December 6, 2006

Chairman Michele Teale called the Hearing of the Village of Fontana Zoning Board of Appeals to order at 4:05 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

Board of Appeals members present: Roll call vote: Teale, Pat Kenny, Andrew Gilchrist, Kim Hirn, Diane Lewis

Also present: Linda Domoracki, Village Administrator Kelly Hayden-Staggs, Village Clerk Dennis Martin, Assistant Zoning Administrator Bridget McCarthy, Zoning Administrator/Building Inspector Ron Nyman, Trustee Ron Pollitt, Ron Rullman, Village Attorney Dale Thope

Business

Attorney Thorpe explained the quasi-judicial hearing procedure and discussed changes in the state statutes that have been adopted during the last two years that have liberalized the standards for which variances can be granted. Thorpe discussed two published opinions that explain the statutory changes. Thorpe stated that if the Board members determined after the presentation of evidence that an unnecessary hardship has been created by the ruling in question, that the applicant did not act deliberately to create the hardship and that a ruling will not create an adverse condition or detriment to the property values of neighboring parcels, they could vote to approve a variance. Martin read the application into the record and stated that all owners of property located within 300 feet of the subject parcel were mailed public hearing notices. Martin then administered oaths to McCarthy, Nyman, Rullman and Domoracki before they presented evidence to the Board of Appeals. McCarthy submitted for the record the application to appear before the Board of Appeals filed November 6, 2006 by Pat and Gail Zeller; Village Exhibit 1 and Village Exhibit 2. McCarthy presented the nature of the case that has resulted in the construction of a single-family residence at 148 St. Andrews Trail that has an attached garage that is 2.31 feet too close to the right-of-way. The Village of Fontana zoning administrator mistakenly approved and issued permits for the project and the home was constructed before the error was discovered. McCarthy stated that the error would have been discovered and the setback issue would have been addressed prior to construction if the required Foundation Survey had been conducted; however, that step of the approval process was not enforced by the zoning administrator. McCarthy stated that the home was constructed and the error was discovered when as-built surveys were submitted during the Occupancy Permit approval process. McCarthy stated that after discussing with the developers and the property owners the options to rectify the situation, the Zellers were issued a Temporary Occupancy Permit with the understanding that the Board of Appeals hearing and subsequent decision were pending. McCarthy stated that the situation was not created by the applicants, it was created by the Village of Fontana Building and Zoning Department. McCarthy stated that if the garage is allowed to remain in the location that it was constructed, it will not create an adverse situation since only a very small portion of the garage is 2.31 feet over the 25-foot setback minimum requirement. Part of Village Exhibit 1 is a statement from the Abbey Springs Association that states the association has determined the location of the garage as constructed has not caused a detriment, and the garage actually is in line with the garages on the neighboring properties. In response to questions, McCarthy stated that the setback issue was never a topic of concern during the zoning administrator's reviews of the project plans. In response to a question about why a site plan indicated a 25-foot front setback for the garage, Rullman stated that the initially proposed location of the home was moved forward on the lot

during the Abbey Springs Association approval process because of the association's setback requirements from the golf course. McCarthy stated that the setback issue should have been clarified prior to the issuance of the Building Permit in March 2006. McCarthy stated that the error was not discovered until the Occupancy Permit approval process was initiated in October 2006. McCarthy stated that the only area of noncompliance for which the applicants are seeking a variance is for the corner portion of the garage to be 2.31 feet too close to the right-of-way. Rullman stated that as the project developer, he has been caught in the middle of the situation where the home has been constructed and the owners have taken occupancy. Rullman stated that he thought that his firm had received the necessary approvals from the Abbey Springs Association and from the Village of Fontana Building and Zoning Department, and that they had followed the appropriate process from beginning to end. Domoracki stated that the setback error was not made deliberately and that it was not the fault of the developers or the home owners. After asking if there were any other people who wanted to make a statement or present evidence to the Board of Appeals, Teale closed the public hearing at 4:47 pm.

Announcement for Board to Consider Going Into Closed Session – Chairman Teale

Teale stated that pursuant to Chapter 19.85 (1) (a) Wis. Stats. she would entertain a motion to go into closed session.

Lewis/Hirn 2nd made a MOTION to go into closed session to deliberate concerning the evidence presented regarding the application to appear before the Zoning Board of Appeals filed by Pat and Gail Zeller, 148 St. Andrews Trail, Tax Parcel No. SCDB 400148, and the Roll Call vote followed:

Kenny – Yes

Gilchrist – Yes

Hirn – Yes

Lewis – Yes

Teale – Yes

The MOTION carried on a 5-0 vote.

Gilchrist/Kenny 2nd made a MOTION to adjourn the closed session and to reconvene in open session at 5:01 pm, and the MOTION carried without negative vote.

Kenny/Hirn 2nd made a MOTION to approve a variance for the property located at 148 St. Andrews Trail, Tax Parcel No. SCDB 400148, for a portion of the attached garage to remain setback 22.1 feet from the right-of-way, and to direct Attorney Thorpe to prepare the Findings of Fact as drafted in the closed session, and the Roll Call vote followed:

Gilchrist – Yes

Hirn – Yes

Lewis – Yes

Teale – Yes

Kenny – Yes

The MOTION carried on a 5-0 vote.

Adjournment

Kenny/Lewis 2nd made a MOTION to adjourn the Zoning Board of Appeals hearing at 5:03 pm, and the MOTION carried without negative vote.

Minutes prepared by: Dennis L. Martin, Village Clerk

Note: These minutes are subject to further editing. Once approved by the Zoning Board of Appeals, the official minutes will be on file at the Village Hall.

Approved: _____