

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

ZONING BOARD OF APPEALS HEARING

**Tuesday, August 18, 2020**

Chairman Peg Pollitt called the Hearing of the Village of Fontana Zoning Board of Appeals to order at 3:32 pm in the Village Hall, 175 Valley View Drive, Fontana, Wisconsin.

**Board of Appeals members present:** Roll call vote: Derek D'Auria, Peg Pollitt, Jim Feeney, Curtiss Behrens

**Board of Appeals member absent:** John O'Neill

**Also present:** Christina Green, Bonnie Schaeffer, Stephanie Smith Tara Ramljak, Dale Thorpe, John Tracy

**Business**

**Public Hearing Continued from June 23, 2020: Application Filed by Mary Kay Brandt, 1006 Briarwood Drive Fontana, WI 53125 for construction of a single-story residence at 204 Abbey Springs Drive, Parcel No. SCDB 500204, and was denied by the Village of Fontana Zoning Administrator on January 13, 2020 due to noncompliance with setbacks in ordinance No. 12-15-04-01.**

The public hearing was continued from the June 23, 2020 and July 30, 2020 meeting dates. Attorney Thorpe stated he handed out copies of the five exhibits that comprise the written record to the Board of Appeals members. Attorney Green stated at the June 23<sup>rd</sup> meeting the board members requested a doctor's report which was handed out at the July 30<sup>th</sup> meeting. Attorney Green stated at the most recent meeting on July 30<sup>th</sup> there were some questions raised about whether the architect determined the house to be ADA compliant. Green provided a letter from the architect stating that ADA compliance does not apply to private residences and regardless the architect has changed the door sizes throughout the house to be three feet, create pocket doors where possible and modified the screen porch by taking two-feet and adding it to the main area to allow for easier access. The letter from Aspect Design, Inc. signed by Jeffrey Letzter dated August 7, 2020 was marked as Applicant Exhibit No. 3. Green handed out an updated house plan that reflects the changes made to the screened porch area. Attorney Thorpe questioned the updated house plans and Green stated the variance being requested and the footprint has not changed at all. The updated house plans from Aspect Design, Inc. dated August 5, 2020 was labeled as Applicant Exhibit No. 4. Green stated she has provided all additional information that was requested and wanted to take a minute to touch on the standards from FHA and ADA. The standards according to FHA and ADA are that the person to be accommodated has a disability and that the accommodations are reasonably necessary to accommodate the disability and if both standards are met the burden shifts then to the municipality. Green explained the doctors letter proves her disability and she also handed out copies of the applicants handicapped parking sticker and stated the applicant is requesting a modest ranch home to accommodate her disability and the applicant is requesting a modest five-foot variance off the back of the house to be able to build a ranch home on a lot in Abbey Springs. Green handed out a twenty-page joint statement of the Department of Housing and Urban Development and the Department of Justice State and Local

land use laws and practices. Green cited six ways a state or local government violates the Fair Housing Act by failing to grant a request for a reasonable accommodation as follows: the persons requesting the accommodation or the persons expected to reside in the home are persons with a disability, the state or local government knows or should be expected to know of their disability, an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities, the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling, the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request and the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. Green stated they have encountered unreasonable delays in the request. The original building permit application was submitted in October of 2019 and then from October 2019 to January 2020 to wait for a denial and then months of delays due to COVID-19. The applicant's disability parking identification was labeled as Applicant Exhibit No. 5 and a joint statement of the Department of Housing and Urban Development and the Department of Justice twenty-page hand out was labeled as Applicant Exhibit No. 6. Attorney Thorpe stated the board members were just handed twenty-three pages of documentation that is going to take time to digest and read. Green stated she had read the important parts of the documentation provided. Attorney Thorpe stated the house plans distributed tonight are not the original plans that were denied by Village staff. Green explained it does not matter the variance request does not change and she would withdraw Applicant Exhibit No. 4. Applicant Exhibit No. 5 was changed to No. 4 and Applicant Exhibit No. 6 was changed to No. 5. Chairperson Pollitt asked if there were any questions before the hearing was closed. Attorney Thorpe questioned the connection between the five-foot variance requested and the disability. John Tracy stated that to have a master bedroom and bathroom in a ranch home there is no other way to make it fit without the variance requested. Attorney Thorpe stated that there seems to be no evidence to connect her disability to the variance requested. Green explained the applicant is entitled to a reasonable accommodation to enjoy her home the same way a person without a disability would enjoy their home. Feeney stated everyone has a different opinion of what is reasonable, and it is difficult to pinpoint one definition. The public hearing was closed at 4:08 pm. Attorney Thorpe stated the board members have eight original exhibits in front of them and now is the chance to read through everything prior to voting. The applicant is requesting a variance from Ordinance 12-15-04-01 pertaining to the Abbey Springs Planned Development which states that the required rear yard setback is fifteen feet. The request is to construct a new single-family residence located ten-feet from the rear lot line for approximately 40.1-feet of the proposed structure and five-feet from the rear lot line for approximately five-feet of the proposed structure.

Feeney/D'Auria 2<sup>nd</sup> made a MOTION to approve the variance based on the evidence that the applicant has proven an unnecessary hardship, and the MOTION failed for lack of approval with Pollitt and Behrens opposed.

Feeney/D'Auria 2<sup>nd</sup> made a MOTION that the requested accommodations as set forth in the application would be determined to be reasonably necessary to afford the applicant an equal housing opportunity and the minimum reasonable accommodations have been requested, and the MOTION failed for lack of majority with Pollitt and Behrens opposed.

D’Auria/Feeney 2<sup>nd</sup> made a MOTION that applicant has the accommodations requested and will not unreasonably undermine the basic purpose of the Village of Fontana zoning ordinance, and the MOTION passed 3-1 with Behrens opposed.

Feeney/D’Auria 2<sup>nd</sup> made a MOTION that the disability-based accommodations sought by the applicant is beyond the limited statutory authority of the board of appeals, and the MOTION carried without negative vote.

Behrens/D’Auria 2<sup>nd</sup> made a MOTION to request that the Village of Fontana Board of Trustees consider the possibility of adopting appropriate ordinances where disability based accommodations may be administered and approved through the Village of Fontana Zoning Ordinance directly and not through a variance procedure that is not designed by Wisconsin Statue to address the relief sought, and the MOTION carried without negative vote.

**Adjournment**

Feeney/D’Auria 2<sup>nd</sup> made a MOTION to adjourn the Zoning Board of Appeals hearing at 4:37 pm, and the MOTION carried without negative vote.

Minutes prepared by: Stephanie Smith, Deputy Clerk/Treasurer

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: 11/17/2020**