

**VILLAGE OF THIENSVILLE
PUBLIC HEARING
ZONING BOARD OF APPEALS
MINUTES**

DATE: Tuesday, May 20, 2014

LOCATION: 250 Elm Street
Thiensville, WI

TIME: 6:00PM

I. PUBLIC HEARING CALLED TO ORDER

Chairman Trilling called the meeting to order at 6:00PM.

II. ROLL CALL

Chairman: Neil Trilling

Members: Carolyn Abraham (excused) James (Tony) Engle
William Davis Andy Match

Carole Olkowski

Administrator: Dianne Robertson

Attorney: Robert Feind

III. PUBLIC HEARING WITH REFERENCE TO PROPOSED VARIANCE FOR 128-136 N. MAIN STREET, DR. GARY LEWIS & ANDREA MAYERSON. THE APPLICANTS ARE SEEKING A VARIANCE TO SETBACK REQUIREMENTS TO ALLOW CONSTRUCTION OF A NEW STRUCTURE IN THE FLOODPLAIN.

A. Clerk or secretary to read notice and explain the requested variance

Administrator Robertson read and explained the request for the variance. The reason for the request for a variance is due to the 15' setback from the building line requirements in the floodplain. The B-1 Central Business Zoning District setbacks are 0' for the side and at the discretion of the Plan Commission in the front. If this development were not in the floodplain there would be no need for a variance. The notice was sent to all property owners within 300 feet and published in the official newspaper, as required by law.

a. Board reviews particular section of the municipal code

The Zoning Board of Appeals reviewed Village Zoning Ordinance 17.0308, which describe the setback requirements in the B-1 Central Business Zoning District and Village Zoning Ordinance 17.0443(a)(1), which describe the setback requirements in the Floodplain Ordinance.

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b. Applicant or representative presents their position

Dr. Gary Lewis & Andrea Mayerson were in attendance. Administrator Robertson gave an overview of the proposed development, which includes a retail setting on the first floor, doctors offices on the second floor and open space on the third floor for physical therapy or individual offices for rent. The small site has quite a few limitations. There are a lot of mixed uses within the building itself. The property is in the floodplain.

The building will be out of the floodplain. Considerations were: this is redevelopment of a distressed site, adding more green space, being conscious of the adjacent property owners, where is water coming from, where does on site storm water go, timing of the project, purchase of the property, zoning and use, and parking concerns. They are creating additional green space and permeable surfaces from what is there currently; adding trees, shrubs, flowerbeds and retaining walls around the perimeter of the site.

Dr. Gary Lewis & Andrea Mayerson confirmed and agreed with this report.

i. Why variance is requested

The building floor elevation will be placed 2' above the floodway to remove the building from the floodplain. The 15' areas to the east from north to the south lot line will be a minimum of 1' above floodplain to comply with the ordinance and existing and future dryland access. The south side yard will contain a 15' easement dedicated to the Village for a walking path to a walking bridge that will extend to 149 Green Bay Road. Dryland access will be provided in the rear from the Fiddleheads property at 120 N. Main Street to 142 N. Main Street, which will be out of the floodplain when the building is elevated 2' above the floodplain or is redeveloped. The west, or street side and side yard 15' setback cannot be compliant due to the overall depth of the site and the main roadway being located in the floodplain, as well as accessibility.

ii. What are the hardships

The rear 35' of the lot is within the floodway, thereby limiting the overall depth of the site parallel to the street. The building is placed outside of the floodplain and 100 year floodfringe. The building depth and width are determined by function and if it were it to be elongated to meet 15' front yard setback, the parking would be eliminated. To maximize the parking area, the applicants felt it responsible, as a retail and business establishment, to provide the most possible parking for the site with overall ease of access and disability compliance.

iii. Other possible solutions

The variance is not requested with regards to Zoning District requirements but instead per the Floodland District requirements for setbacks. The requested setbacks per the submitted site plan are within the setbacks for the B-1 Zoning District with 0'-0' side yard and 5' front yard to the lot line.

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The request is for a 15' setback from the back of the building and where the grade starts to drop off. That would be dryland access and a drive access leading to the northern properties at some point in the future. That changed the front setback from 8' to 5' in order to maintain the 15' back setback; otherwise it would have been 12'. The side yard 0' variance is an effort to provide the easement. A 5' variance is requested for the west side wall (street front); 6 1/8' from the lot line to the building; to design the foundation wall to be resistant to floods and to be floodproofed.

Stormwater – Roof water and site water will remain on the property and drain to a trench drain at the curb line. Roof drainage will be captured and tied underground to the storm inlet on the north edge of the property at the curb.

c. Comments from anyone present requesting to be heard

Village President Van Mobley stated that this is a wonderful project and thanked Administrator Robertson for all the hard work on the Pigeon Creek Project, which made this development possible.

d. Village Engineer presents his opinion

Administrator Robertson read Village Engineer Michael Campbell's opinion into the record. His opinion is as follows:

1. The lot is located in the flood fringe area of Pigeon Creek. The process to construct in the flood fringe is regulated by the Village Floodplain Zoning Code.
2. The lot is less than one-half acre in size and is in the B-1 Zone. Therefore, there is no side yard setback required, but there is a minimum rear setback of 25 feet which is not a problem because that area is in the floodway.
3. The Village is in the process of filling a portion of the property for the easement and constructing a retaining wall as shown on Exhibit 1. The property owner will be filling in the remainder of the area needed. The WDNR has granted a grading permit for this work.
4. The Floodplain Ordinance requires fill be placed one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure. Because of the proposed building location, this requirement would need to be waived through the variance provisions of the ordinance similar to the variance granted for Fiddleheads. The proposed building is closer than 15 feet from the front property line and for portions of the side yard.
5. An emergency services access will be required behind the building similar to Fiddleheads and Reuters as shown on Exhibit 2. This would allow the lands to be removed from the floodplain zone in the future. This access could be provided with any drivable service such as a pavement or open cell paver bricks which can be planted with grass.
6. The first floor of the building must be set at least two feet above the 100 year base flood elevation. No crawlspace or basement should be allowed.

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7. Construction drawings showing proposed elevations will need to be submitted for the building for Village review before any variance is granted (this has been received). It is recommended that those plans also be reviewed by WDNR for concurrence with any variance request. (this has been reviewed and approved by WDNR)

Administrator Robertson read the certified statement from Randy Elliott, P.E. of Pierce Engineers, Inc. that was reviewed by Village Engineer Michael Campbell, P.E.:

The proposed building to be designed at 128-136 N. Main Street in Thiensville, WI will consist of approximately 15,500 sq. ft. It is a wood frame type VB building with a concrete slab on grade floor construction and poured concrete foundation walls. The 100 year floodplain elevation is 659.9 +/- and the slab on grade elevation is proposed at 662', therefore all the building components will be out of the 100 year floodplain except the poured foundation walls and footings. The foundation walls and footings that are within the floodplain are designed in accordance with Section 17.0475 of the Village of Thiensville zoning ordinance. Any fill placed in the parking lot and around the proposed structure shall conform to requirements of NR 116 with respect to proctor densities meeting 95% of maximum standard proctor dry density as outlined and confirmed by geotechnical engineer hired by building owner. All other items including but not limited utilities, mechanical equipment, plumbing, and landscape retaining walls will be designed by others.

Administrator Robertson read the opinion of the Village Attorney Robert Feind:

Dr. Gary Lewis and Andrea Mayerson responded to the Village's request for proposals for the development of the above Village owned parcels of land. The proposal was chosen as the best of the three proposals presented. The proposed development falls under Section 17.0443(c) of the Village Code which requires that structures in the flood fringe shall meet the requirements of Section 17.0443(a) pertaining to residential uses which requires a 15' front yard and side yard setback. The parcel at 128-136 N. Main Street has the same characteristics of the recently developed parcel located at 120 N. Main Street, i.e. the close proximity to N. Main Street and the adjacent properties will not allow for a full 15 foot setback. That property received a variance to allow development.

It should be noted that the proposed structure meets all setbacks required in the B-1 zoning district. The variance is only necessary as a result of the location in the floodplain. The Village Engineer Mike Campbell has provided a letter to the Village dated March 24, 2014, which indicates that emergency service access be required behind the building similar to the access provided on the parcels to the south. The access should be a drivable surface such as pavement or open cell paver bricks which can be planted with grass. Mr. Campbell also indicates that the first floor of the building must be set at least two feet above the 100 year base flood elevation and that no crawlspace or basement should be allowed in the building. These items may be noted in your findings.

In making your determination to grant a variance, you must consider the requirements of Section 17.0473(d) of the floodplain ordinance and find that the applicant has convincingly demonstrated that (a) the literal enforcement of the ordinance provisions will cause an unnecessary hardship,

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(b) that the hardship is due to adoption of the floodplain ordinance and unique property conditions; (c) that the variance is not contrary to the public interest; and (d) that the variance is consistent with the spirit and intent and purpose of the ordinance. In addition, you must find that (a) the variance will not cause any increase in the regional flood elevation, (b) that the lot is less than one-half acre, and (c) that there is showing of sufficient cause which shall be the minimum relief necessary. Further the variance shall not cause increase risk to public safety or nuisances and shall not increase the cost for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.

A. Preservation of Intent

The proposed use is consistent with the B-1 Zoning classification.

B. Exceptional Circumstances

The configuration and size of the lot does not allow conformance to Section 17.0443(a)(1) without greatly reducing the area available for off-street parking and deliveries.

“Fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure”.

C. Economic Hardship

Dr. Lewis and Andrea Mayerson do not own the property yet. Without the variance, they will not locate on that site. There is no self-imposed hardship.

D. Preservation of Property Rights

It is anticipated that the entire strip of properties along Main Street from 108 North Main Street to 142 North Main Street will eventually be redeveloped in a similar fashion within this commercial district with the building face adjacent to the sidewalk and with parking in the rear.

This development is consistent with the Town Center Plan.

E. Absence of Detriment

The majority of surface run-off from the site will be directed to the storm sewer in Main Street. The remainder will sheet flow to the Pigeon Creek without spilling on to adjacent properties.

There will be a temporary grade difference between this newly developed property and the adjacent property to the north until that property is filled and redeveloped.

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F. Additional Requirements in Flood Land Districts

1. There is no filling and development in the Floodway District.
2. There is no change in boundaries of the floodway or floodplain fringe overlay district.
3. The degree of flood protection for the development meets the requirements of the Floodplain Zoning Ordinance.
4. The provisions of Chapter NR 116 are proposed to be met.

G. Other Comments-Dr. Lewis & Andrea Mayerson FEMA Floodplain Impact Analysis

1. This reach of Pigeon Creek is impacted by the backwater from the Milwaukee River, which sets the Q₁₀₀ Water Surface Elevation (WSEL) of 659.9.
2. The Q₁₀₀ WSEL caused by the Pigeon Creek flood capacity is at elevation 657.2 per the FEMA 1997 Flood Insurance Study (FIS). With the construction of the Pigeon Creek Flood Mitigation Project, the Q₁₀₀ WSEL will be further reduced to 655.6+-.
3. The floodplain fill proposed at 128-136 North Main Street by Dr. Gary Lewis and Andrea Mayerson will not cause an increase in the Q₁₀₀ WSEL. This land was assumed to have no flood storage value in the hydraulic model calculations. In addition, the fill is minuscule when compared to the flood storage volume of 45 Ac-Ft that the Village recently created upstream at Wauwatosa Road and Bonniwell Road.
4. The DNR has reviewed the submittal and per their comment in a letter dated 5/20/2014, they are “not opposed to granting the requested variance from Section 17.0443”.

Based upon the above findings, the village administrator recommends that the Board of Appeals approve the required variance.

e. Village Attorney presents his opinion

Attorney Robert Feind stated that he totally agreed with Village Engineer Michael Campbell’s opinion. In addition to the engineer’s comments Mr. Feind pointed out that the former dry cleaners at 136 N. Main Street is being treated for a very small amount of contaminants and there was no excavation of the contaminated soil underneath the building. The Village installed 2 small monitoring points outside of the building footprint and the DNR will allow allowed for closure of the remediation efforts. However, if the contaminated soil is disturbed, it must be carefully tested and removed to a special landfill or else stockpiled in a different area of the lot. It is definitely in the public interest to avoid disturbing the contaminated soil to the greatest extent possible.

Attorney Feind also pointed out that the only logical path for emergency vehicles to reach the premises is on Main Street, which is also located in the floodplain. The dryland access was created for the purposes of providing this access to emergency vehicles. In addition the board should also consider the fact that the DNR is not opposed to granting the variance.

f. Other communications received

Administrator Robertson stated that the only communication received was from Nathan Zoch of the Wisconsin Department of Natural Resources. The contents of the letter state that the Department is not opposed to granting the requested variance from section 17.0443, specifically the provision of 17.0443(a)(1) requiring a minimum of 15 feet of perimeter fill around the footprint of the structure. The Department received a certified statement from Randy Elliott, P.E. stating that the foundation would be designed to comply with the floodproofing requirements in section 17.0475. The floodproofing requirements identified in the ordinance were established to provide a comparable level of protection to floodfringe developments that are unable to meet the minimum standards. The floodproofing requirements must be conditions if a variance is granted. An additional condition regarding dryland access identified in sections 17.0443(3) & (4) is needed since Main Street is below the Baseline Flood Elevation.

IV. CLOSE OF PUBLIC HEARING

MOTION by Member Engle, **SECONDED** by Member Olkowski to adjourn to close the public hearing 6:25PM. **MOTION CARRIED UNANIMOUSLY.**

NO CLOSED SESSION WAS HELD

V. MOTION AND ROLL CALL VOTE ON APPEAL

MOTION by Member Match, **SECONDED** by Member Engle to grant a setback variance to Dr. Gary Lewis and Andrea Mayerson for the property located at 128-136 N. Main Street as delineated below.

The Zoning Board of Appeals finds the following:

- The Zoning Board of Appeals adopts Village Engineer Michael Campbell's letter dated March 24, 2014 and agrees with all findings. Letter Attached
- The Zoning Board of Appeals adopts Village Attorney Robert Feind's letter dated April 3, 2014 agreeing that the soils in the remediation area be disturbed as little as possible. Letter Attached
- Addresses the DNR dryland access concern that the area will be served by the Thiensville Police and Fire Departments and subject to their certification. Letter Attached
- The floodproofing requirements in section 17.0475 must be complied with.
- Approve the setbacks as amended of
 1. 0' south side
 2. 5' front side
 3. 15' rear side
 4. 0' north side
- Subject to complying with the village engineer's site plan approval.

MOTION CARRIED UNANIMOUSLY.

VI. ADJOURNMENT

MOTION by Member Olkowski, **SECONDED** by Member Match to adjourn the meeting at 6:29PM. **MOTION CARRIED UNANIMOUSLY.**

Submitted and approved by,

Dianne S. Robertson
Village Clerk