

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

**DATE:** Tuesday, April 21, 2015

**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:	William Davis	Andy Match
	James (Tony) Engle (absent)	Randy Pasternak
	Carole Olkowski	
Administrator:	Dianne Robertson	
Asst. Administrator:	Colleen Landisch	
Clerk:	Amy Langlois	

**III. PUBLIC HEARING WITH REFERENCE TO PROPOSED VARIANCE FOR DOUGLAS AND EVA BORYS, 601 HEIDEL ROAD. THE APPLICANTS ARE SEEKING A VARIANCE TO THE REQUIREMENT OF A 25' REAR YARD SET BACK IN ORDER TO ADD A 15'x18' DECK OFF OF THE BACK OF THE HOUSE.**

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

Chairman Trilling read and explained the request for the variance. The reason for the request for a variance is to construct a 15'x18' deck off the back of the house. The Zoning Ordinance 17.0303 R-1 Single-Family Residential Zoning District requires a 25' rear yard setback. 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 17.0303(F)(3), which states "There shall be a rear yard of not less than 25 feet." The applicant's home is 8.75 feet from the lot line. The home is currently legal-nonconforming because it does not meet the rear yard setback. The Plan Commission cannot approve this permit unless the Zoning Board of Appeals grants a variance.

**Page 2**  
**Board of Appeals Minutes**  
**April 21, 2015**

b. Applicant or representative presents their position

Homeowners Doug and Eva Borys were in attendance to present their position. Mr. Borys addressed the Board explaining they would like to expand the outdoor enjoyment of their yard and did not realize they did not meet the code requirements until the building permit was pulled. He presented pictures of his yard.

Both Mr. and Mrs. Borys spoke to their neighbors and encouraged them to share their thoughts or concerns. Their immediate neighbor is Trustee David Lange and his wife Christine. The Lange's are encouraged by the applicants to save the line of arborvitae. All the neighbors are excited about the project because they feel it will improve their property as well.

Mrs. Borys shared that another neighbor was so supportive about the project that she wanted to write a letter in support. The neighbor across the street expressed that she doesn't really care what they are doing to their property.

Chairman Trilling inquired as to the height of the deck. Mr. Borys shared that it has a sliding glass door is about 2 feet above the year yard grade, currently there are 2 steps down to a concrete patio and that is not visible from the road. The deck proposed is to be rectangular in shape, 15 feet by 18 feet with railings.

Administrator Robertson reported that if the Zoning Board of Appeals approves the variance, that Mr. and Mrs. Borys will have to go before the Planning Commission to get the deck approved.

i. Why variance is requested

The house is situated in such a way on the corner lot that does not allow for regulation distance from the property line for a deck to be built. The home was built in 1959.

ii. What are the hardships

The house is situated in such a way on the corner lot that does not allow for regulation distance from the property line for a deck to be built. The home was built in 1959.

iii. Other possible solutions

The property nearest the proposed deck is the neighbor's garage and there is a retaining wall and a row of 8' arborvitae in between.

Chairman Trilling suggested making the deck about 18 inches less in width in order to have room to get a lawnmower between the neighbor's arborvitae and the new deck. Mr. Borys stated that he is able to fit a lawnmower between the proposed site and the arborvitae. A deck size of 14 feet by 18 feet suggested as an alternative to the dimensions proposed.

c. Comments from anyone present requesting to be heard

No one spoke at the hearing and no neighbors were in attendance.

**Page 3**  
**Board of Appeals Minutes**  
**April 21, 2015**

Village Planner Jon Censky provided the report below.

**Proposal:**

The applicant is proposing to construct a deck off the rear side of his home which will extend to a point less than a foot off the adjacent property line. However, according to Section 17.0303 R-1 Single-Family Residential Zoning District, the deck must be located at least 10 feet from the adjacent property line. Accordingly, the applicant must either relocate the deck to comply with Code requirements or, if justified, seek a variance from those requirements. Since there is no other practical location to place the deck where it would comply with the side yard requirements, the applicant has chosen to pursue the variance.

Board Members should be aware that this home is currently classified as legal non-conforming as it pre-dates the Village's adopted Zoning Ordinance and does not comply with both the street and rear yard dimensional requirements. More specifically, the Code requires a street-yard setback of 40 feet (For corner lots, the front street yard is on the street the structure faces) where this home is set back 36.52 feet. The code also requires side yard of 10 feet, a rear yard of 25 feet and the home is currently set back 8.75 feet from the north property line. The deck is proposed to be located 0.77 feet from the south property line and therefore the applicant is requesting a 9.23 foot variance from the 25 foot front street yard requirement. Ten foot setback is used vs 25 foot since this is a corner lot. Corner lots can use the side yard setback of 10 feet. According to **Section 17.1007 FINDINGS, No variance or special exceptions to the provisions of the Zoning Code shall be granted by the Board of Appeals unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of its proceedings:**

**A. Preservation of Intent. No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use, or conditional use in that particular district.**

**B. Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances generally applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and granting of a variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.**

**C. Economic Hardship and Self-Imposed Hardship Not Grounds for a Variance. No variance shall be granted solely on the basis of economic gain or loss. Self imposed hardships shall not be considered as grounds for the granting of a variance.**

**D. Preservation of Property Rights. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.**

**E. Absence of Detriment. That the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of the Ordinance or public interest.**

***Planner's Recommendation:***

Accordingly, an argument must be made to establish the uniqueness of the applicant's situation that separates it from other similarly zoned properties in order to prevent setting precedent. In this instance, Board Members can consider the following findings:

- *Preservation of Intent.* There is no impact on the intent of the Code with respect to the rear yard requirement as the owner currently enjoys a code compliant concrete patio at the same location. The use of the area is not changing.
- *Exceptional Circumstances.* The house is situated on a corner lot within a zoning district that requires large street yards and consequently sets the house so far back on the lot that the rear yard is so small it prevents them from the reasonable enjoyment of that yard possessed by others in the same zoning district.
- *Economic hardship and self-Imposed Hardship.* There is no economic or self-imposed hardship as the applicant was not responsible for the design/layout of the house or its location on the lot.
- *Preservation of Property Rights.* The design of the applicant's home is such that there is no other reasonable place to construct the deck where it can be easily be accessed from the home. Because of the required setbacks on this corner lot the applicant does not possess the same right to construct a deck on his property as others have in the same zoning district.
- *Absence of Detriment.* There is a retaining wall along the south property line which already establishes separation from the adjoining property and already minimizes the applicant's enjoyment of the rear yard. Moreover, since the applicant already enjoys the existing code compliant patio at the same location, the use of that area is not changing and therefore is no more detrimental than to the neighbor than the existing situation.

Based on these findings, this Planner recommends approval.

d. Other communications received

Administrator Robertson stated that there were no written communications received either in favor or opposed to this request.

Discussion was held as to the future of the Village and situations where there are problems with other homes that do not meet setbacks and would future variances be granted. Chairman Trilling shared that he does not feel that the request is devaluing anything from the area. Member Pasternak is also concerned about setting a precedent with similar nonconforming set backs.

**IV. CLOSE OF PUBLIC HEARING**

**MOTION** by Member Match, **SECONDED** by Member Olkowski to adjourn to close the public hearing 6:32PM. **MOTION CARRIED UNANIMOUSLY.**

**NO CLOSED SESSION WAS HELD**

**V. MOTION AND ROLL CALL VOTE ON APPEAL**

**MOTION** by Member Match, **SECONDED** by Member Davis to grant a variance to Douglas and Eva Borys for the property located at 601 Heidel Road as delineated below.

The Zoning Board of Appeals finds the following:

- Construct the deck as directed and approved at a future Plan Commission meeting.

**MOTION CARRIED UNANIMOUSLY.**

**VI. ADJOURNMENT**

**MOTION** by Member Davis, **SECONDED** by Member Pasternak to adjourn the meeting at 6:35PM. **MOTION CARRIED UNANIMOUSLY.**

Submitted,

Approved by,

Amy L. Langlois  
Village Clerk

Dianne S. Robertson  
Village Administrator