

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

**DATE:** Thursday, June 4, 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 (excused)	Andy Match (absent)
	James (Tony) Engle	Randy Pasternak
	Carole Olkowski	
Administrator:	Dianne Robertson	
Asst. Administrator:	Colleen Landisch	

**III. PUBLIC HEARING WITH REFERENCE TO PROPOSED VARIANCE FOR JOAN AZINGER, 163 GREEN BAY ROAD. THE APPLICANT IS SEEKING A VARIANCE TO CONVERT AN OFFICE SPACE WITH 2 LARGE ROOMS AND ONE OPEN CONCEPT ROOM TO AN APARTMENT ON THE GROUND LEVEL IN THE REAR ADDITION OF THE BUILDING, WHICH IS NON-CONFORMING AND THAT THE LOWER APARTMENT WILL BE OCCUPIED BY A NON-OWNER, NON-PROPRIETOR, NON-COMMERCIAL TENANT, NON-EMPLOYEE OR NON-CARETAKER LOCATED IN THE SAME BUILDING AS THE BUSINESS.**

**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 to allow a first floor apartment in the B-1 Zoning District, in addition the occupant of the apartment will not be the owner, proprietor, commercial tenant or caretaker of the business. 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(B)(3), which states "Residential quarters for the owner, proprietor, commercial tenant, employee or caretaker located in the same building as the business", and also Village Ordinance 17.0308(B)(4) is requested, which states "Rental efficiency and one bedroom apartments on a *non-ground* level provided there shall be a minimum floor area of 350 square feet for an efficiency apartment, and 450 square feet for a one bedroom apartment."

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b. Applicant or representative presents their position

The applicant Joan Azinger was in attendance to present her position. She stated that she plans on purchasing this property to relocate her business from the Old Mill on Green Bay Road. The first floor is too large for just her business and she has a need for an additional apartment. The rear area looks like an apartment and is not conducive to a business. The rear area feels different, it is an addition that looks added on. Her business generates low traffic. She has one or two visits at a time for her acupuncture business. There are primary issues structurally. The current owner just rents the building out and has no plans to fix the structural problems. Ms. Azinger will add an additional door in the rear for a secondary access for the upstairs tenants.

i. Why variance is requested

The rear part of the main floor of 163 Green Bay Road is ill designed for office space with 2 large rooms, one open concept and one closed off. It is not suited for a viable office space, especially for a small business. A business large enough for this space would likely look for a more modern application.

ii. What are the hardships

Public access is difficult due to the driveway into the back of the building being 2 properties south rendering poor access to the rear of the building for customer base. Any business that might actually utilize the entire first floor would likely have street parking issues for multiple customers.

iii. Other possible solutions

This modification insures viability of the structure to be occupied and therefore contribute to the tax base. Repurposing this space extends the life of the space which no longer fits the use for the original design. A \$25,000 + reinvestment will bring new life to this building. This makes sense.

The exterior will not be modified and the interior modification would align with quiet use of the structure. In the long term this encourages a strong build up of community.

This repurposing does not block the in/out of the upper unit. Both the apartments and the office space in front would have exterior and interior exits in place.

c. Comments from anyone present requesting to be heard

William John, 151 Green Bay Road Mr. John's first floor commercial space is difficult to rent. Mr. John stated that he could obtain a renter as a living space but he has had only calls for a commercial space. Mr. John is in support of this variance.

Thomas Murphy, 161 Green Bay Road Mr. Murphy's building is physically connected to the property at 163 Green Bay Road. A prior owner, Betty Johnson, connected these two buildings in the 1970's in order to have a walk through for retail customers. Mr. Murphy has had problems with past tenants of 163 Green Bay Road. The problems included drug dealers, junked cars, garbage, animals/dog issues, and loud behavior while he is trying to conduct his business.

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Mr. Murphy's conference room windows face this area. Mr. Murphy is also concerned about the safety of his female employees. Mr. Murphy stated that there is a lot going on in such a small area. The former occupant, (CORE) was in the property for quite some time and the property has not been vacant for a very long. The commercial space should not be subdivided and should only have one tenant, therefore the window exposure is not a valid issue. Mr. Murphy is not in support of this variance.

Kathy Pehowski, 1005 6<sup>th</sup> Avenue, Grafton Ms. Pehowski is the listing agent for this property and is a friend of Ms. Azinger. Ms. Pehowski stated that it is important to maintain historical structures. The current owner is out of State. There are enough regulations in place to take care of tenant issues. Ms. Pehowski is in support of this variance.

Village Planner Jon Censky provided the report below.

**Proposal:**

The applicant is requesting a variance to convert the rear ground-floor tenant space of this building from commercial use to a residential apartment and if successful and receives the variance she will then pursue purchase the building. This type of request is somewhat unusual in that the intent is to put the property into a use that is not otherwise permitted under zoning. However, this is a request that is recognized by Wisconsin Courts. More specifically, the courts generally recognize two types of zoning variances: **Area variances** which provide a landowner relief from a physical dimensional restriction such as a building height or setback, and **Use variances** that permit the property to be used in a manner otherwise prohibited under zoning. According to Ziervogel v Washington County Board of Adjustment, 269 Wis. 2d 549 (2004) and in his analysis of this decision, Attorney Michael Herbrand of Housman and Fiend L.L.P. Attorneys At Law, advises that "the determination of unnecessary hardship for a use variance invokes the question: without the variance is there no reasonable use of the property? The Court held that the unnecessary hardship determination when considering an area variance was whether or not a strict enforcement of the code would unreasonably prevent the owner from using the property for a permitted use". That standard is not as difficult to argue as the "no reasonable use". With this request, the applicant argues that the rear portion of the first floor is not suited for commercial uses as it does not have the front window exposure which is critical to survive in this economic climate and therefore would be better as a residential use. To support this argument the applicant points out that the space has been vacant for some time and will likely remain vacant well into the future unless a variance is granted. Moreover, this building was originally designed,

and has subsequently been added on to, as a single family residence and therefore the interior layout does not lend itself well for commercial uses occupying the rear tenant space.

**Planners Comments:**

The applicant does raise a legitimate point about the design of this building and the limits on its use. With the precarious state of our economy and the location of this site in an area where traffic volumes are relatively low when compared to typical commercial corridors, residential use of the back ground floor tenant space is appropriate to maintain a fully occupied building. Accordingly, this variance should be granted subject to the following:

- The variance shall be conditioned on the applicant purchasing the property within 9 months of the date of the hearing or it shall automatically be rendered null and void.
- The variance shall be issued for the applicants request only and shall be rendered null and void upon the future sale of this property.

**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.

d. Other communications received

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

**IV. CLOSE OF PUBLIC HEARING**

**MOTION** by Member Pasternak, **SECONDED** by Member Engle to adjourn to close the public hearing 6:37PM. **MOTION CARRIED UNANIMOUSLY.**

**V. CLOSED SESSION**

**MOTION** by Member Pasternak, **SECONDED** by Member Olkowski to adjourn to Closed Session at 6:37PM pursuant to Chapter 19.85(1)(a) deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body and to reconvene into open session at the conclusion of that deliberation.

**VI. ROLL CALL TO BE TAKEN**

**Ayes:** Members Engle, Olkowski, Pasternak and Chairman Trilling

**Naes:** None

**MOTION CARRIED.**

**VII. CLOSED SESSION**

**VIII. RECONVENE IN OPEN SESSION**

**MOTION** by Member Pasternak, **SECONDED** by Member Engle to adjourn to reconvene in open session at 7:27PM. **MOTION CARRIED UNANIMOUSLY.**

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

**MOTION** by Member Engle, **SECONDED** by Member Olkowski to grant a variance to Joan Azinger for the property located at 163 Green Bay Road as delineated below.

- *Preservation of Intent.* There is no impact on the intent of the Code because the use of the area is changing by granting this variance only temporarily to this particular applicant's ownership.
- *Exceptional Circumstances.* The applicant is willing to invest in the property by making a major investment to benefit the zoning district and the community and by also bringing the property to code.
- *Economic hardship and self-Imposed Hardship.* There is no economic or self-imposed hardship as the applicant was not responsible for the design, layout or deteriorating condition of the building or its location on the lot.
- *Preservation of Property Rights.* The applicant shall maintain and improve the building by making a major investment and bringing the property to code, which benefits the surrounding properties.
- *Absence of Detriment.* The applicant does raise a legitimate point about the use of the building and limits on its use. This variance is not contrary to the purpose and spirit of the ordinance or public interest since this variance is granted to this applicant only.

Based on these findings, the Zoning Board of Appeals approves the variance subject to the following:

- The variance shall be conditioned on the applicant purchasing the property within 9 months of the date of the hearing or it shall automatically be rendered null and void.
- The variance shall be issued for the applicants request only and shall be rendered null and void upon the future sale of this property.
- The variance shall be conditioned on obtaining a building permit from the building inspector.

**Ayes:** Members Engle, Olkowski, Pasternak and Chairman Trilling  
**Naes:** None

**MOTION CARRIED.**

**X. ADJOURNMENT**

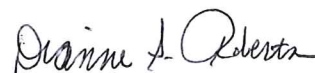
**MOTION** by Member Engle, **SECONDED** by Member Pasternak to adjourn the meeting at 7:33PM. **MOTION CARRIED UNANIMOUSLY.**

Submitted,



Amy L. Langlois  
Village Clerk

Approved by,



Dianne S. Robertson  
Village Administrator