

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

DATE: Wednesday, May 18, 2016

LOCATION: 250 Elm Street
Thiensville, WI

TIME: 6:00PM

I. PUBLIC HEARING CALLED TO ORDER

Administrator Robertson called the meeting to order at 6:00PM.

II. ROLL CALL

Chairman:

Members:

William Davis

James (Tony) Engle

Jesse Daily

Alternate:

Administrator:

Carole Olkowski (absent)

Dianne Robertson

Andy Match

Randy Pasternak

III. ELECT A CHAIRMAN

Jesse Daily volunteered to serve as Chairman.

MOTION by Member Pasternak, **SECONDED** by Member Match to elect Jesse Daily as Chairman of the Zoning Board of Appeals. **MOTION CARRIED UNANIMOUSLY.**

IV. PUBLIC HEARING WITH REFERENCE TO PROPOSED VARIANCE FOR 192 SOUTH MAIN STREET, FIDDLEHEADS COFFEE CAFÉ. THE APPLICANT IS SEEKING A VARIANCE TO EXPAND EXTERIOR PATIO SEATING AND CONSTRUCT A GAZEBO WITH A 0-FOOT SETBACK FROM THE PUBLIC RIGHT-OF-WAY WHICH IS LESS THAN ZONING ALLOWS WHICH IS 5-FEET.

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 seek a 0-foot setback from the public right-of-way. 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 Section 17.0311 F.(1)(a), which states "All new construction will require a minimum setback from the street right-of-way a distance equal to the average of the setback of buildings on both sides of the lot concerned, but not less than five (5) feet."

b. Applicant or representative presents their position

The applicant Ray Marcy was in attendance to present his position. He stated that a variance is being requested for the setback as defined. As mentioned earlier, there is a difference between the right-of-way line and the property line which is true of Fiddleheads as well as several others on South Main Street. The right-of-way line was self-imposed by the State of Wisconsin in the mid-1980's and this line actually cuts through their building at 192 South Main Street.

Mr. Marcy is requesting a variance to have the ability to build a gazebo right up to the right-of-way line. The gazebo will be well behind the property line. Fiddleheads has presented plans to the Plan Commission and the Historic Preservation Commission and has been granted unanimous approval.

i. Why variance is requested

The right-of-way created when Main Street was State Highway 57 caused this abandoned state highway to have a 66' wide right-of-way. While we do not propose building within the stated right-of-way, we do plan to perform construction operations with a lowered patio region. This is a two-fold solution to solve concerns by increasing the flood water capacity of the site as well as create accessibility to the proposed structure from the public walk.

ii. What are the hardships

Due to the floodway concerns covering the entire parcel, water flow and capacity must not be hindered by any proposed structures. The proposed structure eastern most boundary is confined to the boundary set by the existing main structure and cannot be moved further east. Additionally, to increase the water capacity of the site, we are matching the natural grade at the eastern most work point and leveling the grade to the west, causing this area to be lowered within the right-of-way.

iii. Other possible solutions

Main Street is not, and will not be, a state highway, but once a right-of-way designation is created they are seldom, if not never, abandoned by the state. It was already deemed in the public's interest to not tear down all properties on South Main Street and relocate Hwy 57. The proposed structure is located 5' 10", in excess of the setback requirement, east of the property line and beyond the unnecessarily imposed 66' right-of-way. Public access to the patios and gazebo structure to enjoy the Riverfront and wildlife with direct adjacency to the street front and public sidewalks is designed specifically for the benefit and betterment of the community. Therefore, placement of the lowered region within the right-of-way is in the community's best interest.

c. Comments from anyone present requesting to be heard

Susan Stockton Heatwole, 184 South Main Street, owns the property just north of Fiddleheads. Ms. Stockton Heatwole expressed that Fiddleheads has been a great neighbor, is a lovely place and feels that this proposed project is beautiful. Ms. Stockton Heatwole expressed the concern that these plans could be transferred to the north side of the building which would be on her property line and construction would occur without her knowledge.

Chairman Daily explained that what is being requested this evening is a variance for the project presented. If a future project is planned, the proper procedures would need to be followed and notice given. Administrator Robertson shared that what was published in the newspaper and sent to residents within 300 feet must be consistent and that this evening the only proposal is the gazebo to the south of the existing Fiddleheads building.

Ms. Stockton Heatwole also expressed concern about the gravel parking area between the existing building and her property identified on the survey map. Mr. Marcy explained that this is not a proposed gravel driveway and describes the space as not paved. Administrator Robertson explained that the Village does not allow gravel driveways.

Chairman Daily believes this project is a great idea.

Village Planner Jon Censky provided the report below.

Proposal:

The applicant is proposing a gazebo to be constructed directly south of their principal Fiddleheads structure and immediately adjacent to the public street right-of-way. The proposed gazebo will sit on a poured patio/tile surface that measures 26' x 26' in size and will be covered by a pitched roof with skylights on both sides. The gables of the pitched roof will be to the north and south. Because this site is located in the floodplain the applicant had to design the gazebo with removable store front windows to ensure that during a flooding event, waters can flow through without being obstructed. Access into the gazebo will only be provided by descending down a set of stairs from the existing deck of the principal Fiddleheads structure.

The B-4 Highway Business District requires principal structures be set back 5 feet from the public right-of-way whereas the proposed building is only setback about 1 to 2 feet. In fact, the poured patio and fence actually encroach into the right-of-way. Since the applicant has already considered modifying his plans to meeting the setback requirement and has determined that such a modification would have too great an impact on this project, he has decided to seek a variance to the building setback requirement.

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.* The intent of the Zoning Code is preserved because the proposed gazebo is designed and located in accordance with FFO (Floodfringe Overlay District) as regards to the location of the structure on the site and to its design with removable walls which will allow flood waters to pass thru without being obstructed.
- *Exceptional Circumstances.* This property is unique because of its lack of depth compared to its extensive width coupled with the fact that it is entirely within the FFO. Consequently, the only reasonable area that will support a gazebo is the area under consideration herein.
- *Economic hardship and self-Imposed Hardship.* There is no economic or self-imposed hardship as the applicant must maintain the historic character of the area by locating the gazebo in line with existing, long standing buildings directly to the north.
- *Preservation of Property Rights.* The proposed location of the applicant's gazebo is consistent with the location of structures from this site northward through the historic heart of the Village of Thiensville thus allowing the applicant to enjoy the same rights as those property owners along the east side of Main Street.
- *Absence of Detriment.* This gazebo is in line with the east wall of the adjacent principal structure whose porch, in fact, extends into the right-of-way. Accordingly, this gazebo is not a change to the character of the area and would not be detrimental to the neighbor.

Based on the aforementioned, Board Members can justify approval of the proposed request.

V. Other communications received

Administrator Robertson stated that no other communication has been received regarding this variance.

VI. CLOSE OF PUBLIC HEARING

MOTION by Member Engle, **SECONDED** by Member Davis to close the public hearing at 6:13PM. **MOTION CARRIED UNANIMOUSLY.**

VII. CLOSED SESSION

No closed session was held.

Member Match shared his concern of flooding and believes that it is a matter of when, not if, flooding will occur. Member Match inquired as to if there was any concern regarding the materials used on the floor or walls in order to not pollute the area.

Mr. Marcy replied that he has met with engineer Terry Tavera of Ruckert-Mielke. Mr. Tavera represents the Village regarding this issue. The structure is designed within the guidelines the Village engineer has suggested. This structure will be a four-season venue.

Chairman Daily inquired as to if the structure will be used in the winter months. Mr. Marcy shared that this will be used year round. On three sides, the primary opening are garage doors so when the weather dictates, these doors can be down. There will be a fireplace and radiant heat through the floors.

Member Davis asked if the poured slab will extend toward the sidewalk. Mr. Marcy explained that there will be a walkway from the existing building to the gazebo. There will be several feet between the sidewalk and the gazebo and this will be lower than the sidewalk. A fence will be installed as well as steps. The reason this is suppressed, is to allow for water. The space will also be landscaped for a garden-like feel.

The gazebo meets code for accessibility. The main entrance into the gazebo will be on the north just outside the main café and down a few steps.

This measures just under 600 square feet and can seat 25-30 people comfortably. There will also be a handicapped accessible door on the southeast side.

Member Davis shared that the existing building is nice and feels that the proposed gazebo will be just as nice.

VIII. MOTION AND ROLL CALL VOTE ON APPEAL

MOTION by Member Match, **SECONDED** by Member Engle to grant the variance being sought by Fiddleheads Coffee Café based on the Village Planner's recommendations.

- *Preservation of Intent.* The intent of the Zoning Code is preserved because the proposed gazebo is designed and located in accordance with FFO (Floodfringe Overlay District) as regards to the location of the structure on the site and to its design with removable walls which will allow flood waters to pass thru without being obstructed.
- *Exceptional Circumstances.* This property is unique because of its lack of depth compared to its extensive width coupled with the fact that it is entirely within the FFO. Consequently, the only reasonable area that will support a gazebo is the area under consideration herein.
- *Economic hardship and self-Imposed Hardship.* There is no economic or self-imposed hardship as the applicant must maintain the historic character of the area by locating the gazebo in line with existing, long standing buildings directly to the north.
- *Preservation of Property Rights.* The proposed location of the applicant's gazebo is consistent with the location of structures from this site northward through the historic heart of the Village of Thiensville thus allowing the applicant to enjoy the same rights as those property owners along the east side of Main Street.
- *Absence of Detriment.* This gazebo is in line with the east wall of the adjacent principal structure whose porch, in fact, extends into the right-of-way. Accordingly, this gazebo is not a change to the character of the area and would not be detrimental to the neighbor.

Ayes: Chairman Daily and Members Davis, Engle, Match and Pasternak

Naes: None

MOTION CARRIED.

IX. ADJOURNMENT

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

Submitted,



Amy L. Langlois
Village Clerk

Approved by,



Dianne S. Robertson
Village Administrator