

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

DATE: January 9, 2019

LOCATION: 250 Elm Street
Thiensville, WI

TIME: 6:00 PM

I. PUBLIC HEARING CALLED TO ORDER

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

II. ROLL CALL

Chairman:	Jesse Daily	
Members:	William Davis	Andrew Match
	James (Tony) Engle	M. Randy Pasternak
Alternate:	Carole Olkowski	
Administrator:	Dianne S. Robertson	
Attorney:	Tim Schoonenberg	

III. PUBLIC HEARING FOR THE PURPOSE OF HEARING A REQUEST FROM MICHAEL KOEPKE, 127 SOUTH MAIN STREET APPEALING THE DECISION OF THE PLAN COMMISSION TO DENY A REVISED PLAN FOR A NEW GARAGE

A. Administrator to read notice

Administrator Robertson read and explained the notice. Mr. Koepke is appealing the decision of the Plan Commission to deny a revised plan for a new garage. The notice was sent to all property owners within 300 feet, posted on Village bulletin boards and published in the official newspaper, as required by law.

- a. Attorney Schoonenberg discusses Village Code and process for the appeal

Attorney Schoonenberg explained the process for this appeal and stated that the Board of Appeals shall have the following powers:

Section 17.1004 POWERS

- A. Errors. To hear and decide appeals where it is alleged there is error in any order, requirements, decision, or determination made by the Zoning Administrator.
- E. Permits. The Board may reverse, affirm wholly or partly or modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision or determination as ought to be made.

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Attorney Schoonenberg indicated that the Board does have a lot of discretion to change the order or modify the order. There is another part of the Code that states the Board can add conditions to the decision that is made this evening. In the past, you may have heard a variance that findings of a hardship must be evident. The role of the Board is a little different this evening and will act as an appeal board hearing anew the issues that the Plan Commission heard. A lot of the facts that the Plan Commission made their decision on can be adopted, which are already on record, but new evidence presented this evening can be used to base a decision on.

Since this is not a decision on variance or special exception, the Board does not have to have findings of hardship, and the Plan Commission's basis for their decision was based on having architectural control powers along with other zoning powers. Those extend to the Board with their decision tonight.

Attorney Schoonenberg's recommendation is, once all the evidence is presented by the appellant and anyone else, the Board move to Closed Session to deliberate to find facts on the reasons for the Board's decision. A simple majority is required for any motion to pass.

If the appellant wants to appeal the Board's decision, he has 30 days from the written notice he will receive to petition Circuit Court.

b. Applicant or representative presents their position

Michael Koepke, 127 South Main Street, addressed the Board. Mr. Koepke indicated that he lost an architect after having his garage approved, and a different garage was built. The new garage is 20% smaller. Mr. Koepke used the architectural guidelines provided by the Village. Every material used is compliant with those guidelines. Mr. Koepke admittedly made a mistake by moving forward with the unapproved garage without approval and is asking the Board to show him where in his garage is something wrong that is not according to the architectural guidelines. Mr. Koepke then asked the Board if they had any questions.

Member Davis asked for clarification and inquired if on the west side of the garage there is a three-foot setback from the property line. Mr. Koepke confirmed. Member Davis asked if there is parking for 9-10 cars. Mr. Koepke confirmed 9 cars. Who owns this property was asked? Mr. Koepke stated that the Village owns this property, and Mr. Koepke considers himself a co-leaser of this property with Mr. Mueller. Mr. Mueller leases this lot from the Village. Beyond this is a three-foot grass strip with a drive. Mr. Koepke believes that this is owned by the utility company with an easement for Suburban Motors.

There are two doors on the east side and one on the west side of the garage. Member Davis inquired what the intent is for accessing the garage from the leased property. Mr. Koepke stated that if the lease goes away, he would not access the garage from the west door. The door on the west side would be opened to clean out the garage and to let in some sun.

Member Davis indicated that right now for Mr. Koepke to access the garage the way the plans are set up, he would have to come into the drive which is north of the parking area, turn right then left into the garage.

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Member Engle indicated that there is rock when coming out of the garage. Member Engle addressed Mr. Mueller stating that he had commented about maintaining that and making sure it is not just rock. Mr. Mueller did not want to comment about this as he does not know if he will have a lease on the parking lot from the Village. Mr. Mueller stated that part of his parking lot was damaged during the construction of Mr. Koepke's garage. Mr. Koepke stated that he would clean and fix it up but there was a stop work order so he did not continue to work on the property.

There is an opening on the back of the garage at this time but no door has been installed.

Chairman Daily inquired of a sub-lease that Mr. Mueller has provided to Mr. Koepke on October 10, 2018 that has not been executed by signature by Mr. Koepke. It is Chairman Daily's understanding that Mr. Mueller is the sole leasee on that public lot and asked how Mr. Koepke is substantiating that he is a co-leasee.

Attorney Schoonenberg reported that the lease was amended to allow the sub-lease originally at Mr. Mueller's request. The Village's concern was to have Mr. Koepke just as liable as the original leasee. Attorney Schoonenberg believes that Mr. Koepke does have a decent argument that he has a right from the Village to use the parking lot. There is no right in the lease for ingress or egress to either property. The lease is for the sole purpose of parking.

Chairman Daily inquired if having the opening to the garage on the west may take away from any parking spaces in the lot. Mr. Koepke stated that if there were cars parked in the lot and there was no space, he would park elsewhere.

Mr. Koepke stated that aesthetically from the bike path the door on the back looks better and wanted the option to open it up.

Chairman Daily inquired if the Village restricts any other leasees onto the parking lot stating that parking is limited in the Village and wondered if Mr. Mueller could sub-lease out to another entity in the Village. Attorney Schoonenberg stated that this could happen only with the Village's consent.

Administrator Robertson shared that the Village bought this lot to have access to the old lumberyard should that be redeveloped. Mr. Mueller's lease is for parking only so he comes in through his driveway and parks – no ingress or egress is allowed through the lease. The lease does not allow coming in off of Buntrock Avenue into the parking lot. There is a One-Way sign used for deliveries off Main Street.

Mr. Mueller indicated that he paved the portion of the lot he uses when it was owed by We Energies. It was a piece of dirt when he leased it from We Energies. He paved it, lit it, put up a fence and maintains it.

Member Davis asked Mr. Mueller if he had any problem with Mr. Koepke accessing his garage from the parking lot. Mr. Mueller did not wish to get into any discussions regarding Mr. Koepke.

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Chairman Daily inquired of the document regarding maintenance of the lot from Mr. Mueller to Mr. Koepke and asked Mr. Koepke why he hadn't signed it. Mr. Koepke does not believe any of it is true and stated that he has an easement to use the southerly 10 feet of the parking lot and stated that every time Mr. Mueller drives into his driveway, he goes onto Mr. Koepke's property and does not have a problem with that but Mr. Mueller has a problem with Mr. Koepke going onto his property. That is the problem that the two parties are facing. Mr. Koepke stated that if he were to put up bollards or something to block he would not be able to use his garage and Mr. Koepke does not want to do that.

Mr. Mueller believes that what is being talked about is totally irrelevant and stated that his driveway through the back of his yard to the parking lot is not on the easement. The easement is the southerly 10 feet of his parking lot. If going beyond what the original driveway was, you would run into the Mueller swing set, a tree and a chain-link fence that was removed to get through to the parking lot. Mr. Mueller also mentioned that he paid for half of the paving between the two garages.

Chairman Daily stated that obviously there were modifications made from the original garage plans that were approved at the last Zoning Board of Appeals meeting and does believe the garage looks very nice but Mr. Koepke has gone beyond the original scope of what was approved and would like to see the two neighbors work together.

Attorney Schoonenberg noted before moving on that the Board can only make a decision based on the Plan Commission decision, and the Historic Preservation Commission still has to give its approval for a Certificate of Appropriateness and the Board this evening does not have the ability to alter that. Mr. Koepke will still need to go before the Historic Preservation Commission for approval.

c. Comments from anyone present requesting to be heard

There were no comments from anyone present.

d. Other communications received pertaining to this request

Administrator Robertson read a letter submitted by Ronald Heinritz, Chairman of the Historic Preservation Commission. In summary, the letter indicates that the garage that has been built is out of compliance with the design plans that were submitted and approved. No Certificate of Appropriateness's have been approved for the construction of a new garage, demolition of the existing garage or the renovation to street side, east elevation and addition to the south elevation.

IV. CLOSED SESSION

MOTION by Member Engle, **SECONDED** by Member Match to adjourn to Closed Session at 6:21 PM 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.

V. ROLL CALL TO BE TAKEN

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

Naes: None

MOTION CARRIED.

VI. CLOSED SESSION

VII. RECONVENE IN OPEN SESSION

MOTION by Member Match, **SECONDED** by Chairman Daily to reconvene in Open Session at 6:55 PM. **MOTION CARRIED UNANIMOUSLY.**

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

Naes: None

MOTION CARRIED.

VIII. MOTION AND ROLL CALL VOTE ON APPEAL

The Zoning Board of Appeals makes the following findings of fact:

1. The structure as built, except for the western garage door, meets the original intent of the original plans.
2. The current size of the structure is less intense than the original plans.
3. This decision does not supersede the requirement that the appellant obtain a Certificate of Appropriateness from the Historic Preservation Commission.

MOTION by Member Engle, **SECONDED** by Member Match to modify the Plan Commission decision approving the modification subject to the opening on the west side of the building be filled with a faux door, window or continued siding subject to Plan Commission and Historic Preservation Commission architectural approval

Ayes: Member Davis, Engle, Match, Olkowski and Pasternak

Naes: None

Abstain: Chairman Daily

MOTION CARRIED.

IX. ADJOURNMENT

MOTION by Member Davis, **SECONDED** by Member Pasternak to adjourn the meeting at 7:00 PM. **MOTION CARRIED UNANIMOUSLY.**

Submitted by,



Amy L. Langlois
Village Clerk

Approved by,



Dianne S. Robertson
Administrator