

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

**DATE:** Tuesday, July 11, 2017

**LOCATION:** 250 Elm Street  
Thiensville, WI

**TIME:** 6:00 PM

**I. PUBLIC HEARING CALLED TO ORDER**

Chairman Daily called the meeting to order at 5:00PM.

**II. ROLL CALL**

Chairman:	Jesse Daily	
Members:	William Davis (excused)	Andy Match
	James (Tony) Engle	Randy Pasternak
	Carole Olkowski	
Administrator:	Dianne Robertson	
Attorney:	Robert Feind	

**III. PUBLIC HEARING WITH REFERENCE TO PROPOSED VARIANCE FOR 316 GREEN BAY ROAD, KURTIS WUEHR. THE APPLICANT IS SEEKING A VARIANCE TO BUILD A SHED THAT MEASURES 256 SQUARE FEET AT A HEIGHT OF 12 FEET 8 INCHES WHICH IS LARGER THAN ZONING ALLOWS. SECTION 17.0603 E. REQUIRES SHEDS TO NOT EXCEED 150 SQUARE FEET AND SHALL NOT EXCEED 12 FEET IN HEIGHT.**

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

Chairman Daily read and explained the request for the variance. The reason for the request for a variance is to build a shed that measures 256 square feet at a height of 12 feet 8 inches which is larger than zoning allows. 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. Board reviews particular section of the municipal code**

The Zoning Board of Appeals reviewed Village Zoning Ordinance 17.0603 (E), which states "Accessory Structures under 150 sq. ft. such as garden or utility sheds, shall be placed or erected in the rear yard provided that no single accessory structure shall exceed 150 square feet in area; no structure shall be closer than 5 feet to the principle structure, no accessory structure shall exceed 12 feet in height; no accessory structure shall be located closer than three (3) feet to any lot line; and all accessory structures shall occupy not more than 20 percent of the rear yard area. One accessory structure under 150 sq. ft. is allowed on a residential parcel."

**Zoning Board of Appeals Minutes**  
**July 11, 2017**  
**Page 2**

b. Applicant or representative presents their position

Erwin Wuehr, father and representative of the applicant Kurtis Wuehr, explained that the applicant's grandmother died unexpectedly and the grandfather is also deceased. The grandfather created large pieces of furniture including a corner piece and a dresser that are so large that they cannot get down the basement stairs since there are 3 steps down followed by a curve in the stairway. The applicant desires to keep the furniture pieces for his niece and nephews.

Mr. Wuehr showed a picture of the property when Kurtis purchased it. The entire back yard was full of trees. They spent a lot of time and money removing these trees and sodding the yard because it was full of weeds.

i. Why variance is requested

The applicants are requesting a variance to the 150 sq. ft. structure size and the 12 ft. height limit.

ii. What are the hardships

"The hardship responsible for this Request for Variance is due to the unfortunate and unexpected death of my grandmother. Her death presented a dilemma in that my grandfather, who preceded her in death, was a skilled craftsman and made all of the furniture that they owned and it is emotionally not possible to sell what he handcrafted. I am now in possession of many of those pieces of furniture and without an attic or other storage area within my home. This proposed storage shed would be used to store these pieces until my nephews and niece can take possession of them for their homes.

The property located at 316 Green Bay Road, is more than the typical property located within the Village in that the property is a double deep lot, as seen on the survey (attached). The property consists of the front portion in which the home is located as well as an additional 93 X 100 back portion which I have invested several thousands of dollars removing invasive plants (garlic mustard and buckthorn) as well as landscaping. Additionally a typical single lot in Thiensville is allowed the standard 150 square foot storage shed. In keeping with the spirit, purpose and intent of the regulations of the ordinance, I am requesting a single, larger shed instead of two individual sheds. This single shed would not be double the size (300 square feet), but rather only 106 square feet larger for property that is twice the size of a more standard Thiensville lot.

The hardship is due to physical limitations of the property rather than the circumstances of the appellant because (economic or self-imposed hardships do not meet this test): Please see explanation above.

The variance will not be contrary to the public interest as expressed by the objections of the Zoning Ordinance because:

**Zoning Board of Appeals Minutes**  
**July 11, 2017**  
**Page 3**

The proposed variance would not create substantial detriment to adjacent property, as seen in the attached photos, but rather it would be compatible with the character of the immediate neighborhood.”

iii. Other possible solutions

c. Comments from anyone present requesting to be heard

Kelsie Stone, 330 Green Bay Road is opposed to the variance. She stated that the structure is too large and would be an eyesore. They will see the structure from either side.

Gerald Huber, 203 Grand Avenue is opposed to the variance. He stated that his property is directly north and is concerned that the building would be used for business and this belongs in an industrial park.

Julie Dahms, 206 East Freistadt Road is opposed to the variance. Her property is next door and feels this would be an eyesore.

A letter dated July 3, 2017 from Ron and Pat Heinritz, 202 Grand Avenue, was read into the record in opposition to the request.

Mr. Erwin Wuehr stated that the four residents should realize that the property was an eyesore when Kurtis purchased it, not now and has no intention of doing any business on the property.

Village Planner Jon Censky provided the report below:

My review of your plans to construct a storage shed at the northeast corner of your rear yard located at 316 Green Bay Road indicates that the proposed shed exceeds the maximum size and height permitted by code. According to your plans, this shed will stand 12’8” high, measures 16’X16’ for an overall size of 256 square feet and will be located 3’ from the rear property line and 15’ from the north lines.

Please be advised that Section 17.0603 E. states “Accessory Structures under 150 sq. ft. such as garden or utility sheds, shall be placed or erected in the rear yard provided that no single accessory structure shall exceed 150 square feet in area; no structure shall be closer than 5 feet to the principle structure, no accessory structure shall exceed 12 feet in height; no accessory structure shall be located closer than three (3) feet to any lot line; and all accessory structures shall occupy not more than 20 percent of the rear yard area. One accessory structure under 150 sq. ft. is allowed on a residential parcel.”

Accordingly, I must deny your plans because the size and height of your shed exceed the maximum limits allowed by code.

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.

Attorney Feind explained the law in detail on the consideration and granting of variances that would observe the spirit of the ordinance. He also spoke of the "Proper Basis for Granting Variances" in the State of Wisconsin. Self-imposed hardships are not a reason to grant a variance.

**IV. CLOSE OF PUBLIC HEARING**

**MOTION** by Member Engle, **SECONDED** by Member Match to adjourn to close the public hearing 6:38 PM. **MOTION CARRIED UNANIMOUSLY.**

**V. CLOSED SESSION**

No closed session held.

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

**MOTION** by Member Engle, **SECONDED** by Member Olkowski to deny a variance to Kurtis Wuehr for the property located at 316 Green Bay Road as delineated below.

The Zoning Board of appeals establish that:

- *Preservation of Intent.* The Preservation of Intent has not been met. The Zoning Board of Appeals feels that the 150 square foot shed size is large enough for a residential district.
- *Exceptional Circumstances.* The Exceptional Circumstances has not been met. The parcel is not conducive to special circumstances that would need a variance.
- *Economic Hardship and Self-Imposed Hardship Not Grounds for a Variance.* The Economic hardship and self-imposed hardship not grounds for a variance has not been met. Attorney Feind clarified that it is a self-imposed hardship for anyone just wishing to have a larger shed. This is not a hardship in order to grant a variance in this situation.
- *Preservation of Property Rights.* The Preservation of Property Rights has not been met. The public comment from the adjoining property owners demonstrate the absence of preservation of property rights.
- *Absence of Detriment.* The Absence of Detriment has not been met. The public comment from the adjoining property owners demonstrate that a variance would not meet the absence of detriment.

**Zoning Board of Appeals Minutes**  
**July 11, 2017**  
**Page 6**

Based on these findings, the Zoning Board of Appeals denies the variance.

Ayes: Members Engle, Olkowski, Match, Pasternak and Chairman Daily.  
Naes: None

**MOTION CARRIED.**

**VII. ADJOURNMENT**

**MOTION** by Member Match, **SECONDED** by Member Pasternak to adjourn the meeting at 6:50 PM. **MOTION CARRIED UNANIMOUSLY.**

Submitted by,



Amy L. Langlois  
Village Clerk

Submitted and approved by,



Dianne S. Robertson  
Village Administrator