

MINUTES OF THE BOARD OF APPEALS MEETING
Board of Appeals
6-18-14

The meeting of the Slinger Board of Appeals was called to order by Chairman Toraason at 300 Slinger Road, Slinger Wisconsin on Wednesday, June 18, 2014 at 5:30 p.m.

I. Roll Call & Notice of Meeting:	<u>Present</u>	<u>Absent</u>
Craig Wolf	x	
Rick Knipfer	x	
Chris Leis	x	
Eugene Mueller	x	
Larry Toraason	x	
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Also Present: Tammy Tennies, Clerk
Greg Darga, Village Building Inspector/Zoning Administrator
Margaret Wilber, Village Treasurer

Clerk Tennies took the roll call and stated that all posting and publication requirements had been met.

Clerk Tennies administered the Oath of Witness to all who wished to speak before the Board at this time. Sworn in were Zoning Administrator Greg Darga 300 Slinger Road and Gene Eggert 7429 Roosevelt Rd. Erin WI.

II. Public Hearing

A. Petition for Appeal

Chairman Toraason announced that Tom and Jill Rozenberger have petitioned for a variance to Section 5.04 E. 1. of the Zoning Ordinance for the property located at 301 Cedar Creek Road which requires residential driveways serving new homes to be paved within 12 months of first occupancy. The property owners are requesting a variance from the requirement to pave the 500 ft. long driveway serving their new home (Property owners Jill & Tom Rozenberger). Chairman Toraason asked the petitioners to present their request.

B. Opening Statement of Petitioner

Mr. Gene Eggert of Architectural Designs, Inc., on behalf of the Rozenberger's, appeared before the Board. He stated that the Rozenberger's inherited the property and planned on renovating the existing home that was 150+ years old, but found that the home could not be renovated, so they built a new home. Mr. Eggert stated that due to construction along Cedar Creek Road because of the bridge over Hwy 41 and the State widening the easement along Cedar Creek Road, the Rozenberger's had to change the location of their driveway and build their house 100ft further back from the road, creating a longer driveway. Mr. Eggert stated that the Rozenberger's like their gravel driveway and don't want to and don't see a need to change it. He also stated that more than half of their current driveway is in the road right-of-way and they are unsure if they have to pave it, if the Board decides to not grant the variance. It was also stated that the driveway is a shared entrance at this time. Mr. Eggert stated that the Rozenberger's are asking for a

variance to leave their driveway as it is.

C. Zoning Administrator's Determination

Chairman Toraason asked Zoning Administrator Darga to discuss the Village's position on this petition. Zoning Administrator Darga stated that he is following the zoning code 5.04 E.1 which states that all new residential homes must have a paved driveway with either asphalt or concrete, within 12 months of receiving occupancy. He did state that this house is not in a subdivision and that he is unsure of why the code reads like it does, but that it is a clear code with no leeway. Zoning Administrator Darga also clarified that the road right-of-way is maintained by the resident but not controlled by the resident.

D. Public Comment Period

Chairman Toraason opened the public comment portion of the meeting at 5:41 p.m. and asked if anyone else in attendance wished to make a comment during this time.

Clerk Tennes administered the Oath of Witness to all who wished to speak before the Board at this time. Sworn in was Mary Harth 843 Meadowbrook Dr. West Bend WI.

Ms. Mary Harth, 843 Meadowbrook Dr. West Bend WI, appeared before the Board. She stated that she is Tom Rozenberger's sister and this property and the current ski hill were all part of her family's farm many years ago. She discussed how the driveway has always been gravel and it looks good and is safer than asphalt, especially in winter. She also stated how the driveway had to be changed because of the bridge and the widening of the road.

There being no further public comment, Chairman Toraason closed the public comment portion of the hearing at 5:47 p.m.

E. Closing Statements

Chairman Toraason asked Mr. Eggert and Zoning Administrator Darga to present their closing statements.

Mr. Eggert commented on Zoning Administrator Darga's comment about the house not being in a subdivision. He stated that the Rozenberger's are in a more country setting and there are no other houses near them with paved driveways. Mr. Eggert stated that the Rozenberger's want to keep the gravel to preserve the history of their family's land.

Zoning Administrator Darga stated that he had no further comments to make on this matter.

III. Deliberation of Petition:

A. Discussion on the Requested Variance to Section 5.04 E. 1.

Chairman Toraason asked each Board member for their thoughts.

Board member Knipfer asked Mr. and Mrs. Rozenberger if they were aware of the zoning ordinance when they took out the building permit.

Clerk Tennes administered the Oath of Witness to all who wished to speak before the Board

at this time. Sworn in were Tom Rozenberger 301 Cedar Creek Rd. Slinger, and Jill Rozenberger 301 Cedar Creek Rd. Slinger

Mr. Tom Rozenberger, 301 Cedar Creek Rd. Slinger, appeared before the Board. Mr. Rozenberger replied to Board member Knipfer's question. He stated that their original house plans changed and the garage had to be moved to the other side of the house. He stated that because of that change, they needed to have tons of filled brought in. Mr. Rozenberger stated that the 8 axle trucks would have wrecked the driveway if it had been paved. He stated that the previous Zoning Administrator extended the time to put in the driveway because of this issue.

Zoning Administrator Darga stated that it has been over two years since the Rozenberger's received occupancy and this matter just got over looked with the transition of building inspectors.

Board member Knipfer stated again that the Rozenberger's knew that they would have to pave the driveway and although they may like how it looks or want to preserve it because of its historical factor, they need to follow the zoning ordinance or try to get it changed. He also stated that in regards to the road right-of way, normally the persons involved in changing it will restore it to its previous condition.

Board member Mueller stated that the houses around the Rozenberger's are family members and that they also have a ski hill adjacent to their property, so the neighbors are not affected by the gravel driveway. He stated that the gravel driveway is important to them and they should be able to keep it like the family has had it. Board member Mueller also stated he is unsure whether the Village required that the property owners pave to the road or just to the road right-of-way.

Board member Leis stated that he is struggling with preservation of intent on this matter.

Board member Mueller noted that he recalls there being a mudslide in the 1990's and that keeping the driveway gravel would help with rain and run off. He stated that the gravel driveway is maintained, drains well and is safe.

Board member Wolf inquired on whether the turn-around was considered part of the driveway. It was noted that the turn-around is part of the driveway. He also discussed the surveys and how the driveway and right-of-way have changed over the years. Discussion was also held on the shared driveway with lot #2.

Chairman Toraason stated that because this was a new home and not a remodel, it was stated on the occupancy permit that the driveway has to be put in within 12 months of occupancy.

Mrs. Jill Rozenberger stated that they were told by the previous zoning administrator to leave the gravel driveway.

Zoning Administrator Darga stated that regardless of what might have been said by the past zoning administrator, the Rozenberger's would not only forfeit their \$1000 building bond, but they would be issued a fine for not complying with the Village's code. He stated that the Village could

complete the work and bill the Rozenberger's.

Discussion was held on the definition of a driveway. Zoning Administrator Darga stated that the code currently does not define what a driveway is. The Board asked Zoning Administrator Darga if this issue could be brought to the Planning Commission for clarification. Zoning Administrator Darga stated that he will have staff put it on the July agenda of the Planning Commission meeting.

B. Findings of Fact

Chairman Toraason stated the Board would now deliberate on this request and read the findings of fact that are used to make any determination on variance requests as listed in Village of Slinger Zoning Code Section 12.07. He explained that five findings need to be deliberated: Preservation of Intent, Exceptional Circumstances, Economic Hardship and Self-Imposed Hardship, Preservation of Property Rights and Absence of Detriment.

Chairman Toraason stated that in regards to preservation of intent, the intent is that all new houses have a paved driveway of either asphalt or concrete. He stated that a gravel driveway is not permitted thus the request to not pave the driveway is not preserving the intent.

Chairman Toraason stated that in regards to exceptional circumstance the surveys indicate that because of the widening of Cedar Creek Road and the construction of the bridge the Rozenberger's driveway was altered and lengthened, yet they knew at the time of taking out a building permit that they would have to pave a driveway. Discussion was held again concerning the definition of a driveway. Zoning Administrator Darga stated that typically it is from the garage to the road.

Chairman Toraason stated that in regards to economic hardship and self-imposed hardship, the Rozenberger's have only stated that they would prefer not to pave their driveway, which is not a self-imposed hardship.

Chairman Toraason stated that in regards to preservation of property rights, this variance does not show that it is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

Chairman Toraason stated that in regards to absence of detriment, there is no detriment to adjacent property owners.

C. Additional Conditions (if necessary): None

D. Action to Approve, Modify, or Deny the Requested Variance to Section 5.04 E.1.

Motion Mueller to approve a variance to Section 5.04 E. 1. of the Zoning Ordinance for the Property Located at 301 Cedar Creek Road which requires residential driveways serving new homes to be paved within 12 months of first occupancy. There being no second, the motion failed for lack of a second.

Motion Knipfer/Toraason to deny the requested variance to Section 5.04 E. 1. of the Zoning

Ordinance for the property located at 301 Cedar Creek Road which requires residential driveways serving new homes to be paved within 12 months of first occupancy. A roll call vote was taken. Yea's Knipfer, Leis and Toraason; Nay's Mueller and Wolf. Motion carried 3-2.

E. Notice of Appeal Rights

Chairman Toraason informed Tom and Jill Rozenberger that they could appeal this decision. Treasurer Wilber stated that staff would gather the findings of fact and within two weeks the Rozenberger's would be mailed these documents. It was discussed that there is a 30 day period in which the petitioner may file an appeal.

IV. Adjourn Meeting

Motion Toraason/Leis to adjourn at 6:31 p.m.; carried.

Tammy Tennies, Clerk

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