

**VILLAGE OF PLEASANT PRAIRIE  
ZONING BOARD OF APPEALS  
9915 39th Avenue  
Pleasant Prairie, WI 53158  
December 17, 2013  
6:00 PM**

Members Present: Christine Genthner, Chairperson; Deb Skarda; Mark Riley; Steve Kumorkiewicz and David Hildreth. Tom Glassman was excused.

Also Present: Jean Werbie-Harris, Community Development Director; and Jan Petrovic, Clerical Secretary.

- 1. CALL TO ORDER.**
- 2. ROLL CALL.**
- 3. CORRESPONDENCE.**
- 4. CITIZEN COMMENTS.**

Christine Genthner:

This is an opportunity for anybody to come forward. We will open the matter on the agenda for a public hearing, but if anybody wants to come forward on something other than that they're welcome to at this point.

- 5. CONSIDER THE MINUTES OF THE MAY 21, 2013 BOARD OF APPEALS MEETING.**

Steve Kumorkiewicz:

Make a motion to approve as written.

Christine Genthner:

I have a motion to approve. Do I have a second?

Mark Riley:

I'll second it.

Christine Genthner:

I have a second. Any discussion on the motion? Seeing none, then do we just need a -- we don't need a roll call vote for that do we? All in favor of adopting the minutes as drafted say aye.

Voices:

Aye.

Christine Genthner:

Anybody opposed?

**6. NEW BUSINESS**

- A. PUBLIC HEARING AND CONSIDERATION OF A VARIANCE, for the request of Bruce and Charmaine Schafernack on behalf of the Charmaine Schafernack Revocable Trust, owner of the property located at 10536 2nd Avenue, for a Variance from Section 420-46 B and 420-86 B (1) (b) [4] of the Village Zoning Ordinance to allow the existing 576 square foot detached garage and driveway to have a zero setback to the side property line wherein a five (5) foot setback is required.**

**The subject property is known as Lot 14, Block 30 of Carol Beach Estates Unit #3 located in a part of the U.S. Public Land Survey Section 29, Township 1 North, Range 23 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie and further identified as Tax Parcel Number 93-4-123-292-0070.**

Christine Genthner:

This is open for a public hearing. At this time do I -- start with staff. Staff, do you have facts you'd like to set forth at this time?

Jean Werbie-Harris:

I do.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Jean Werbie-Harris:

I do.

Christine Genthner:

And for the record please state your name.

Jean Werbie-Harris:

Jean Werbie-Harris, and I'm the Development Director and Zoning Administrator for the Village of Pleasant Prairie. As a matter for December 17, 2013, under the findings of fact for the

referenced item:

1. Bruce and Charmaine Schafernak on behalf of the Charmaine Schafernak Revocable Trust, owner of the property located at 10536 2nd Avenue are requesting a variance from Sections 420-46 B and 420-86 B (1) (b) [4] of the Village Zoning Ordinance to allow the existing 576 square foot detached garage and driveway to have a zero setback to the side property line wherein a five foot setback is required. Please refer to Exhibit 1 as part of the packet. If the variance is approved by the Village Zoning Board of Appeals then the Village Board at a subsequent meeting will consider allowing the detached garage and driveway to be located on the Village's property which is a 20 foot wide public walkway area adjacent to the Chiwaukee Prairie.
2. The subject property is known as Lot 14, Block 30 of Carol Beach Estates Unit #3 Subdivision. It's located in a part of the U.S. Public Land Survey Section 29, Township 1 North, Range 23 East of the Fourth Principal Meridian, in the Village of Pleasant Prairie, and it's further identified as Tax Parcel Number 93-4-123-292-0070.
3. According to the application which is Exhibit 1, the petitioners purchased the property in September of 2010 from Mrs. Willis C.M. VanDenBergh. They believed that Mrs. VanDenBergh purchased the home from her son Niels VanDenBergh prior to his death in 2010. Niels VanDenBergh had purchased the home from his brother Rolland VanDenBergh.
4. According to the application, Exhibit 1, upon the current owners consideration of purchasing the property, they indicated to the Village staff that they had questions about the garage and driveway location. Rolland VanDenBergh, the son of Willis C. M. VanDenBergh who was overseeing the sale of the home, assured them that they had a special agreement with the Village of Pleasant Prairie on the public walkway that allowed his family to build the garage and driveway. The existing staff is not aware of and could not locate any such agreements in the Village's property file. Mr. VanDenBergh provided a signed and dated Pleasant Prairie Residential Permit/Inspection Permit # 02-05-0011 and a Residential Receipt paid 5/1/02. The Pleasant Prairie Residential Permit / Inspection Log shows the original final inspection signed and dated May 23, 2003 by K.R., and that was Senior Building Inspector Ken Robers. Mr. Robers is no longer employed by the Village.

Furthermore, the current property owners asked Mr. VanDenBergh to provide something in writing from the Village of Pleasant Prairie showing the approval of the special agreement he had mentioned with the Village. Mr. VanDenBergh provided the current owner a copy of the inspection log that had been signed by J.S., Building Inspector, Jeff Sorensen, dated 9/8/10 confirming the final inspection approval. The same J.S., Jeff Sorensen, initials are also shown on the bottom left of the document approving the staking of the garage on May 3, 2002. With this documentation the current owner believed that the home was free and clear of any issues with the Village and purchased the home. Mr. Sorensen is also no longer employed by the Village.

5. According to the Village records, the Village issued permit #02-05-0011, which is provided as Exhibit 2, to Niels VanDenBergh subject to the conditions he signed dated

April 16, 2002. Condition #2 indicated that the garage shall be set back five feet from side and rear property lines. In addition, according to the drawing submitted with the application, the detached garage and the driveway would be setback five feet from the side property line.

6. The Village does not require that a survey be submitted to verify setbacks for driveways and garages; however, during the required inspections, the property owner is responsible to have the property lines clearly marked for the Village Inspector to verify the setback locations. Both Inspectors who performed inspections related to the 2002 permit, Ken Robers and Jeff Sorensen , again are no longer employed by the Village so they could not be asked any information regarding this application or this situation. The Village staff believes that it is likely that the previous property owner showed the Building Inspector the wrong corner property stakes during the inspections. As noted in the Plat of Survey, or Exhibit 2, with the 2002 application, adjacent to the property line is a 20 foot wide public walk way. It is likely that the property owner showed the Inspector where the property stake at the southeast corner of the public walkway was located, not the subject property. And Peggy for the record is identifying where the stakes were that were provided. Again, probably that which was identified in red which is the property corner of the DNR not the property corner of the lot.
7. On March 13, 1991, the Village sent a letter to Mr. Rolland VanDenBergh responding to his request to vacate the 20 foot wide public walkway located south of the property. The letter explains that the Village Board denied his request to vacate that public walkway. And that's provided as Exhibit 3 in your packets.
8. According to the application, Exhibit 1, soon after purchasing the property, the current property owners obtained permits to make improvements and to bring the home and garage up to current codes and energy efficiencies. They also obtained permits to add a wood porch at the front and back door. See Exhibit 4 for a copy of the inspection report for these permits. Note the site plan submitted is the same site plan provided for the 2002 permit. Also note that all inspections for this work have not yet been completed to date, and the permit is still open.
9. According to the application, again Exhibit 1, to finish the home renovation plan, the current owners contacted Grow Rite Landscape to add a brick patio area on the backside of their home and to upgrade the driveway from asphalt to brick. Permit #13-08-132 was issued. Dan Thiele of Grow Rite followed up with Ralph Nichols Senior Building Inspector, and Ralph is with us today. Mr. Nichols told Dan Thiele to make sure they read the parameters of the permit to make sure that they conform to all conditions.

Mr. Thiele asked Mr. Nichols if there were any parameters that identified any violations, and Mr. Nichols stated that the driveway needed to be setback five feet from any property line. Mr. Thiele spoke to Mr. Nichols about the grandfathering of the property line based on the prior owner's approved permits from Pleasant Prairie for the garage and driveway. Mr. Nichols stated that Mr. Thiele should speak with Peggy Herrick Assistant Planner for Village Pleasant Prairie. A meeting with Jean Werbie-Harris, Community Development Director, was set up to discuss the permit on October 15, 2013. Mrs. Harris stated the Village does not recognize Mr. VanDenBergh's claims regarding the building and

driveway encroachment into the public walkway area. There was no evidence to substantiate a special agreement with Pleasant Prairie allowing him to build the garage or driveway based on the current location and that, in fact, the drawings submitted by the VanDenBerghs to the Village do not reflect the actual location of the current garage and driveway.

10. The Plat of Survey dated October 21, 2013 as submitted with the variance application, Exhibit 1, shows the location of the existing garage and the proposed driveway which the owners intend to relocate further north so as to not encumber the entire public walkway area. Peggy is going to identify on the screen, again, where on the right the driveway is. Since they're now aware of the situation how they are going to modify the end of the driveway to try to pull it outside of the walkway area as much as possible as shown on the plat of survey.
11. According to the application, Exhibit 1, the current owners purchased this home in good faith that the property was free and clear of any encumbrances and by doing so moved forward with the much needed renovations to their property. By making these improvements, the owners believe that they have increased the value of the home which has been positive for the neighboring homes as well.
12. All of the abutting and adjacent property owners within 100 feet of the property were notified via regular U.S. Mail on October 31, 2013 of the public hearing that was originally scheduled for November 19, 2013. The November 19, 2013 Board of Appeals agenda was published in the *Kenosha News* on November 4, 2013. The November 19, 2013 meeting was rescheduled due to a lack of quorum. The State law required the notices to be resent. Therefore, all of the abutting and adjacent property owners within 100 feet of the property were re-notified via regular U.S. Mail on November 21, 2013 of the December 17, 2013 rescheduled public hearing, and the December 17, 2013 Board of Appeals agenda was re-published in the *Kenosha News* on December 3, 2013.
13. Under the State of Wisconsin Supreme Court case law pertaining to the granting of variances, a variance may be granted only if the applicant can show that the standards set forth in the statutes and interpretive case law for granting variances will be met. The statutes provide that a variance may be allowed when it will not be contrary to the public's interest; where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship noting that economic hardship is not grounds for a variance, so that the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done.

With that, that is the end of the staff presentation. I know that the petitioner does have a presentation and comments he would like to make.

Christine Genthner:

Since this is a public hearing does the applicant/petitioner like to come forward? Before you get started I'm going to ask you to state your name and your address and then I will swear you in.

Bruce Schafernak:

My name is Bruce Schafernak, and I live at 15625 Buckley Road, Libertyville, Illinois.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Bruce Schafernak:

Yes.

Christine Genthner:

Please go forward.

Bruce Schafernak:

Again, I think it was laid out pretty well here as far as the narrative that we supplied. Just asking for you all to see what we got ourselves involved in. And I've spoke with my neighbors about this, and everybody feels very comfortable with what we've been doing with the property itself. If I could walk over here real quick.

Jean Werbie-Harris:

Could you take the microphone with you, please.

Bruce Schafernak:

Prior to this we have another property actually next door here. And this is our current home. I have a business in Libertyville that's why I have a residence there. But we purchased this home I guess it's eight, nine years ago. And up until then this was supposedly a walkway that allowed the neighbors to get through here. This was all overgrown and actually used as a dumping ground for this person that lived here. So when the opportunity came up to purchase the home my thought was to protect my investment, number one, but then I do have elderly in-laws. And my thought was to renovate this house and use this as something that we can oversee them as they get older and that kind of thing.

So what we've done is not only improve the building, improve the value of the property, but we also then started to clean this up. We worked with the DNR, and they recognized that to reclaim this area was difficult when this individual lived here. So we pretty much cleaned all that up. And with their I guess blessing they moved their sign, and we kind of came to an agreement so that the neighborhood would have that free access in there. And so when this whole thing came up I mean obviously we want to -- we love Pleasant Prairie. We love to live here. We love to -- our plan is to stay here and keep that home. I don't know what else to say other than we've tried to do our best as far as follow the laws and the rules of the Village, and tried to improve the property for not only ourselves but also for the neighborhood, the value of the homes in the neighborhood.

Christine Genthner:

Thank you. Any questions by anybody on the Board?

Steve Kumorkiewicz:

Yeah, through the Chair. I'm at a loss yet why this [inaudible] want to build properly they've got the [inaudible] markings over there, it still is in the street actually. That's [inaudible]. How did that happen that the garage is built in the wrong place in the street? It's [inaudible].

Christine Genthner:

For the record can you state your name?

Ralph Nichols:

My name is Ralph Nichols, Senior Building Inspector for the Village of Pleasant Prairie.

Christine Genthner:

Do you swear to tell the truth, the whole truth and nothing but the truth?

Ralph Nichols:

I do. So your question is why was it not built in the correct spot?

Steve Kumorkiewicz:

Yes.

Ralph Nichols:

I do not know why it was not built in the correct spot. Jeff Sorensen and Ken Robers were the previous inspectors. I can only think as far as from my understanding is like them a marker was put out to indicate where our property line was, and they may have assumed, but that's not for me to really interject as what they were thinking at the time they accepted it. So, therefore, I don't know why that garage was moved over into that walkway. Were there some things that could be put in place to stop situations from this happening, perhaps surveys required in the near future. But currently they are not required. But providing us where those property corners are is something that's very pertinent. I just don't know why they didn't see those or what happened at that point in time. I don't even believe I was here.

Steve Kumorkiewicz:

Is there any possibility they were platted by the County years ago and they weren't [inaudible] for that platting when the County was doing the platting in Carol Beach years ago?

Ralph Nichols:

That I am not sure. I'm not sure if the County would have placed that stake there or not. But the surveyor who is licensed with the State of Wisconsin is the one who plants the stakes where they should be even if there are relocations of iron pipes.

Steve Kumorkiewicz:

That was in October of this year.

Ralph Nichols:

That that stake was planted there?

Steve Kumorkiewicz:

Yes [inaudible] according to the date of the surveyor it was in October.

Bruce Schafernak:

We were asked by the Village to create a new plat of survey, and I think that's October. That's what happened in October.

Ralph Nichols:

Correct. They didn't plant that stake there just this past October.

Jean Werbie-Harris:

Right. And that stake actually, there's a sign on that stake right there, and what does that sign say, Bruce?

Bruce Schafernak:

This is what the DNR ended up -- this used to be all grown over here. There was a wood pile and [inaudible]. And so what we did is when we moved in we started clearing away, and the DNR came out and saw what we were doing. At first they asked us what we were doing [inaudible] in our conversation we told them our plan was to open this up because right now all of us on this side have to walk through [inaudible]. By rights this is where it should be but it was never allowed to be there because the owner was a very difficult property owner. So we cleared all this out and extended. The DNR actually put this stake in the ground and said this is where they'll [inaudible]. Went back and forth with the Village --

Jean Werbie-Harris:

It is actually their property line.



Bruce Schafernak:

This is their property line.

Jean Werbie-Harris:

It is their property line, and then the Village's land is all of this between this stake and that stake. That's the Village's 20 foot wide dedicated public walkway, never constructed but dedicated on the original plat for the subdivision.

Steve Kumorkiewicz:

Because that sign says State natural area.

Jean Werbie-Harris:

Correct. And so this is all the State natural area land from that stake going south.

Steve Kumorkiewicz:

Now they say they're going to open a walk in that area to compensate for this driveway?

Bruce Schafernak:

It is my understanding with the DNR that they were totally fine with what we had done as far as clearing out that space. And he re-established that line and said that's -- my wife does all the landscaping and cutting, and said just cut on this line and everybody will be happy. So we tried to come in between the two.

Steve Kumorkiewicz:

So it's a sign -- five feet, six feet?

Bruce Schafernak:

It's about right there from the grass now to where it is probably about eight feet, wouldn't you say, Ralph, something like that? And so our plan was to just do the driveway as it was, it had been there for years. And then when this came up my thought was let's stop the construction and then turn this as far north as possible. We stopped the work as soon as we found out [inaudible]. So we elected to do this to have your approval, is to move this as far north as possible and allow - - the walkway would still be sufficient for even vehicles to drive through. Like the DNR will come through there with their trucks and that kind of stuff.

Christine Genthner:

Just so I understand, sir, where you just had your hand it shows I guess it's a red coloring on top of the beige, that's the proposed new driveway?

Bruce Schafernak:

This is what I'm asking [inaudible] this is what it was currently planned for. This is what it's currently just straight. And so we stopped the construction here, and this is the proposed. Can we come to some agreement just to shift it so this opens this up even more as a walkway. Even though at this point it's probably close to ten feet at this point back here. When it tapers down here it's more like eight feet. So this will give us I think, give the Village more like 12 to 15 feet.

Christine Genthner:

What if the Village Board doesn't agree to allow them to use that portion?

Jean Werbie-Harris:

Then the driveway and the garage would need to be removed. The situation is that the variance would have to be granted first by the Board of Appeals because there's an encroachment, basically a zero lot line setback for this garage and the structure. But the Village Board would have to approve that this garage and the driveway would be located on Village property. Likely they would also require if they approved it an indemnification and waiver of liability because basically these structures are going to be on public land, and it could be technically a public walkway.

The one thing I had a question on is if Bruce and his wife maintain this eight to ten foot wide swatch typically a property owner would not walk up their driveway and into their garage. They would walk in the designated what looks like in the field to be the designated walkway. In Pleasant Prairie we have walkways throughout the community, and they vary anywhere from eight to ten feet wide. So it's very typical. This is a very wide walkway of 20 feet. And throughout Carol Beach as you transition from one subdivision to another going away from the lake sporadically these walkways exist. Some are maintained. Many are not. Most of them are just grass. But if the property owners have been working with the DNR -- have you been working with Marty Johnson?

Bruce Schafernak:

Yeah, and Doug. He's the guy that --

Jean Werbie-Harris:

Maintains them?

Bruce Schafernak:

Maintains that whole sector.

Jean Werbie-Harris:

Because we're introducing a couple more new walkways up in Carol Beach near the Unit W area as well, and they have to be maintained on a regular basis. The only other thing that we've asked

them to do at that north end, and the Board would likely require here, is that there be some type of entrance signage that specifically says that this is a public walkway just like it will in Unit W, and it has to be maintained. And in this case we would need to have an agreement from the property owner that they would continue to maintain it. Those would be some of the things the Village Board would look at.

Christine Genthner:

Okay, thank you. Mr. Riley.

Mark Riley:

I'm hearing different figures here, and I just want to verify [inaudible] correct. Their driveway leaves probably about a four foot remaining walkway to stay off of the driveway. And I'm hearing 12 feet, I'm seeing about 4.

Bruce Schafernak:

I think with the DNR they moved that one pin in so he made some adjustments -- the DNR made some adjustments on their side so they could --

Mark Riley:

And that in itself is confusing. If the yellow line, between the yellow and red line belong to Pleasant Prairie, nobody can move those anywhere. The 20 feet easement --

Jean Werbie-Harris:

It stays.

Mark Riley:

It's Village property.

Jean Werbie-Harris:

Correct, can't move.

Mark Riley:

And you had mentioned that the DNR gave you permission --

Bruce Schafernak:

No, all I did is we worked with them to clear that area.

Mark Riley:

But it's not their land, it's the Village's.

Jean Werbie-Harris:

Everything south --

Steve Kumorkiewicz:

South from the post, yes.

Mark Riley:

But he didn't clear anything south [inaudible].

Bruce Schafernak:

We cleared a lot. It went way beyond that. The pictures don't give it justice.

--:

These are more current pictures.

Bruce Schafernak:

These are the current pictures, yeah, because that was not necessary.

Mark Riley:

According to this plat that walkway -- the maximum that walkway could be is four feet out of the 20 to stay off his improvements, is that correct, not 12 feet? I mean plus or minus a half a foot.

--:

Plus or minus, yes, that's correct.

Mark Riley:

I'm using that 4.66 --

--:

And the 8.08, yeah.

Mark Riley:

Kind of scaling it. But I just want to be clear that it's not a 12 foot -- it's not going from 20 to 12.

It's going from 20 to pick a number, 5 feet.

--:

Five feet, yup.

Mark Riley:

And that's up to the Village whether they want to give up their land or not. I guess if you're going to give it up why don't you sell it to them?

Jean Werbie-Harris:

Well, we can't by plat sell it to them. And we wouldn't give it up either. It would only be an easement right that he would have to be able to use it. And I think that the other thing is at least we'll gain some additional walkway land down here. But my understanding is that the DNR is letting him mow or maintain some of that in order to give the perception that it's wider. So it will overlap our land into the DNR's land to make it look like there's a wider walkway.

Bruce Schafernak:

Prior to us clearing that whole path out, people would actually forge through the park, the prairie, and that was always a difficulty for the DNR. So as soon as we moved in this whole area we just cleared out, and there's probably five of us that use that walkway to walk out dogs from the house to the lake or around the block. But that's the extent of it. And two of us are the main users of it, my neighbor across the street and myself.

Mark Riley:

[Inaudible]

Bruce Schafernak:

Sure. If we are granted this space I would never have an issue with that. We don't plan on selling this property. This is going to be in the family forever. I understand what the concerns of the Village are for sure.

Jean Werbie-Harris:

If the Village grants the variance and the Board grants the approval for this easement, this would be a restrictive covenant that would be recorded with the property. So it would have to be very clear that this landowner would be responsible for it in perpetuity for maintaining this walkway so that it's accessible by the public. And my second comment is that, Bruce, are you maintaining this area as well which as the walkway adjacent?

Bruce Schafernak:

Yes.

Jean Werbie-Harris:

So there would be then a full maintenance of the walkway from one street to the other, from 2nd Avenue to 3rd Avenue. And, again, it could be signed as a public walkway where unfortunately it's not signed throughout down there because they're not being maintained properly throughout down there. So that would be an advantage to the community down there. I mean anybody in the Village could walk on this, but it likely will be the folks that live in that particular neighborhood.

Bruce Schafernak:

The only push back we ever had was with the DNR. And once he realized what we were doing then we worked as a partnership to kind of reclaim the land. You stay here, keep this. You can see there's a row of daffodils planted along the prairie. They're going to keep that there just to make sure that that line maintains. So it was in a good faith and partnership between the two to oversee that property and clean it up. And it has improved the neighborhood quite a bit in that corner. It's the first house you see when you're driving down that street. And so it has improved not only that property, the taxes will go up I'm sure on that property as well as the neighbors around us. There are very nice homes around there. And this house had fallen in disrepair and we're very proud of what we're doing.

Christine Genthner:

Any other questions for either the applicant or staff?

Steve Kumorkiewicz:

I want to be sure -- I'm sorry.

Deb Skarda:

I'm just trying to understand how far from the property corner the actual yellow dot there to the house it is.

Bruce Schafernak:

It's a long driveway.

Deb Skarda:

I guess I mean from the --

Bruce Schafernak:

This corner to the house?

Deb Skarda:

Right, how far is that?

[Inaudible]

Jean Werbie-Harris:

Bruce, I need to have you take the microphone.

Christine Genthner:

This is being recorded so we want to make sure we can hear you.

Bruce Schafernak:

I wonder if there's a better picture. There's an actual photograph. Do we have any of those on the slide?

--:

Probably roughly 20 feet to the house from the property line.

--:

To the side property line?

Jean Werbie-Harris:

From the corner to the front of the house it's 48.5 feet.

Deb Skarda:

At least visually what I'm trying to figure out is if the driveway and the garage were not there at all and the property line was where it was supposed to be how much space really is there?

Peggy Herrick:

From the end of the house to here is probably about 20 feet, maybe a little less than 20 feet.

Deb Skarda:

So if you think, and just in my mind absolutely worst case scenario which is take down the driveway, take down the garage, would there even be enough space to build another garage somewhere on the property and put a driveway in where they could actually get into the back yard?

Bruce Schafernak:

One of the problems you would have first of all is a lot of money has gone into this first of all, but I know that's not the hardship. Relocating this back here, and this is a very old home, so actually this house is on a septic field. So not only would I have the deconstruction or reconstruction would be for a garage is like \$25,000. I don't know what I have there, but then I'm certain I would have to put a holding tank back there which would be additional. I don't even know what that is. Again, that's up for you to decide really.

Mark Riley:

I guess the question would be is the Village willing to have a five foot -- is five feet enough width for a walking path? That's really what [inaudible] to decide on is, are you going to accept a five foot versus a 20 foot walking path.

Jean Werbie-Harris:

That's really a decision for the Village Board. Typical concrete sidewalks in the Village are five feet. So that will be up to the Village Board to decide. We have five foot wide sidewalks.

Steve Kumorkiewicz:

We have several of those in the subdivision going to the bike trail, yes.

Jean Werbie-Harris:

I have a question. You were just talking about possibly needing a holding tank. Do you have a septic system back there that's in the way?

Bruce Schafernak:

There's a septic system currently on the property. So if we had to relocate a garage to the back side of the house I don't know that we'd have any driveway anywhere to get there. But that would be on top of a septic field. So we would have to remove the septic field and actually put a tank in its place. That's just an additional --

--:

The septic system is tight to the garage?

Bruce Schafernak:

No, it's behind the garage. It goes straight out and behind the garage, between the garage and the back property line.

[Inaudible]



Jean Werbie-Harris:

Take the mic.

Bruce Schafernak:

We'd have to take this and then take this from this point five feet in here. And at that point I think you've got to worry about once you start digging in there I would think that the County is going to ask what's going on as far as disrupting that soil.

Deb Skarda:

When I was asking the question when I look at the property line I even wondered if there was enough -- where your new deck is if there was even enough space to put a driveway between the deck and the property line.

Bruce Schafernak:

I don't think there is, no.

Deb Skarda:

So that's why I was asking the question.

[Multiple Conversations]

Peggy Herrick:

No, that deck was put on [inaudible] can't put a driveway in between the deck here and this property line. That was a new deck that was put on.

Bruce Schafernak:

That's a new deck so we'd have to cut that.

Deb Skarda:

I guess my question would be, knowing that that deck was just put on six months ago, right?

Bruce Schafernak:

Last year.

Deb Skarda:

Is that something that should have been --

Bruce Schafernak:

Caught?

Deb Skarda:

-- identified at that point in time?

Peggy Herrick:

The permit application did not indicate that shape of a deck. It indicated the deck was going to come right off this property line. It's in one of the exhibits. And they used the same drawing that was submitted when this garage and driveway was originally done. So the initial permit for this deck did not have it encroaching this way. It had it coming straight off [inaudible].

Steve Kumorkiewicz:

So we don't have too much of a choice in this case, but we don't want to set up a precedent. That's my problem. In the future somebody comes in with that and, oh, we'll build here.

Jean Werbie-Harris:

I'm sorry, was there a question directed at staff?

Steve Kumorkiewicz:

Yes. My problem is I don't want to set up a precedent with that. We get another situation similar to this because somebody built a garage or whatever in a right of way or Village property or whatever and we're going to be in the same place where we are today. I want to be sure there is no repetition of this and we're not setting up precedent.

Jean Werbie-Harris:

Each circumstance is based on a particular set of finding of facts. And it's based on specifically what we're telling you tonight. I plan on working with the new inspection superintendent to set up some different procedures for inspections. And especially down in Chiswaukee Prairie maybe they take the plans with them and they verify things a little different, or we get as built surveys for garages whenever you're adjacent to public areas. I mean we can put in some different steps in order to make sure that something like this doesn't happen.

The only thing that concerns me is that in 1991 I sent a letter to the family saying you can't encroach in this area. And yet here we are how many years later, 22 years later, and a garage and driveway were built in that area. That's not this gentleman's responsibility. I mean in good faith he tried to do some investigations, and possibly we should have done some additional research at the time when he was asking the question. If the question is asked did it pass inspections, I have an inspector who is not a zoning administrator by training that says, well, yeah, I inspected it and it was fine. And he was pointed to show here's the stake. I mean the inspector may not have the expertise to know about Chiswaukee Prairie, about the walkways, about certain things. And so

they just went and saw the stake and said, yup, it meets that setback. And so there are some unfortunate circumstances for this particular case that lend you to make the decision that you're going to make tonight.

Mark Riley:

Are surveys required when somebody buys a property?

Jean Werbie-Harris:

Sometimes depending on the bank.

Mark Riley:

And what about title insurance?

Jean Werbie-Harris:

It depends on the bank. I'm not sure what was required for the property owner in this case. He could respond.

Bruce Schafernak:

Nobody asked -- I don't have a mortgage. I purchased it based on my knowledge of this guy being a neighbor, and I had a relationship with his brother and his mother who I purchased the home from. She's in her 80s, and they were looking to sell the house. I think looking at this now, I mean hindsight, I should have probably just bulldozed the house. That would be the only way of actually getting a garage on that property. Bulldozed the house but I already redid everything. I just don't know what to say.

Mark Riley:

The title insurance is an insurance plan for a buyer to protect themselves from some things [inaudible].

Bruce Schafernak:

Sure.

Christine Genthner:

Any other questions from the Board to either staff or the applicant?

Jean Werbie-Harris:

One comment I have is that the DNR who has the greatest I think concern with respect to protection of the prairie down there sounds like they have been cooperative and are willing to work with the property owner. And the property owner has taken upon himself to try to create a

public walkway space. Wherein the Village does not have the staff or resources in order to maintain these walkways in this area. The original plat is very unclear as to who maintains them and who can use them and such. And if they're able to work with the Wisconsin DNR and maintain those walkways in order for people to have access to the prairie I think that that's a very positive aspect to this.

Again, I don't see that this situation has come up frequently. I can't recall if we've ever been before the Board of Appeals, not in the last 25 years, with a similar situation. So I do consider it more of a unique situation. But, again, it's up to the Board of Appeals. The staff does have a recommendation which we would be happy to read into the record. And I actually have a few additional comments when we do get to that point.

Christine Genthner:

Before we get to that do we have any other questions of the staff or applicant before we have Ms. Werbie-Harris read the recommendations into the record? That needs to be part of the public hearing also, correct?

Jean Werbie-Harris:

Yes.

Christine Genthner:

The recommendations. Thank you. Anybody else who'd like to come forward at this time and address the Board. Seeing nobody else that has come forward at this time then does staff have a recommendation?

Jean Werbie-Harris:

We do.

Christine Genthner:

Would you like to proceed? You're already under oath.

Jean Werbie-Harris:

Yes. Based on the findings of fact and the information presented at the public hearing this evening, and the variance application as filed, the Village staff finds that the application may meet the requirements for the granting of the requested variance since an unnecessary hardship or practical difficulty has been created not by this property owner. The current owners believed the property was free and clear of any encumbrances and were not provided with any additional information from the Village to the contrary. And by doing so moved forward with much needed renovations to the property, and therefore is not self-imposed by this landowner since the previous property owners were not in compliance and illegally constructed the garage and the driveway in the public walkway on the Village's property.

If the Board of Appeals finds that the application and the facts presented warrant the granting of the variance requested, then the following conditions are recommended by staff and should apply:

1. If the variance is approved by the Village Zoning Board of Appeals, then the Village Board, at a subsequent meeting, would need to consider allowing the detached garage and driveway to be located on the Village's property. In consideration of allowing the garage and driveway to remain in the public walkway, the owners will be required to sign an indemnification and waiver of liability agreement in favor of the Village. If the Village Board does not allow the garage and driveway to remain on the Village's property then the garage and driveway would then need to be removed.

In addition and a part of that comment the staff would also recommend that there be a restrictive covenant that is filed and recorded in the property that explains in detail the ongoing maintenance and mowing for the public walkway from 3rd Avenue to 2nd Avenue, and that that area be signed as a public walkway.

2. All required inspections shall be completed for the open permit as discussed in Exhibit 4.
3. If both the variance and the Village Board approval is granted, then the driveway application shall be amended and installed as shown on the survey dated October 21, 2013.
4. The variances do not waive any other requirements, which are imposed by the Village's Zoning or Land Division or Development Control Ordinances, Building or Municipal Codes.
5. If the variance is granted, then the Village staff will prepare the required Variance Grant Document that shall be executed by the property owners, and the owners shall pay the recording and filing fees for the variance to be recorded at the Kenosha County Register of Deeds Office. This would then become a permanent restrictive covenant on the Village's land as an easement that would be granted to the property owner. The Village would not be providing any land to the property owner. And the Village would not be giving up -- no prescriptive easement rights could be acquired by the landowner. This would be still Village land that the landowner would have an easement on.

Christine Genthner:

Thank you. Before I close the public hearing do we have anything on the staff recommendations?

Mark Riley:

I'll ask about the easement, is that a permanent easement? Or how would you state that easement? Is it permanent?

Jean Werbie-Harris:

An easement in perpetuity, yes. Perpetual easement would be granted.

Mark Riley:

[Inaudible] the land?

Jean Werbie-Harris:

No, because then they could seek title to the land and take it as their property if it would be more than 20 years of their maintenance. We would not do that. You can't have any type of inverse condemnation on Village owned land. So it would always remain as Village land. There would have to be some provisions, and I'm not sure until I talk to the Village attorney, what we'd write into the indemnification. For example if the garage ever burned or was destroyed by fire it would not be able to be rebuilt at that location. It would have to be moved onto the property owner's property. So we would put provisions like that in the easement.

Steve Kumorkiewicz:

I thought of the question I wanted to ask. What happens in that case? It is burning --

Jean Werbie-Harris:

Again, because this is a unique circumstances and it's being placed on Village owned property, and I have to talk to our Village attorney just to make sure that this would not fall under the new statues for nonconforming uses or that burned or destroyed by fire that could be rebuilt, this would be a unique circumstances because it would actually be on Village land. So, again, if something would happen and it is destroyed for some reason, it would have to be moved off of the walkway onto their property.

Mark Riley:

The garage would be?

Jean Werbie-Harris:

The garage.

Mark Riley:

What about the drive?

Jean Werbie-Harris:

Well, you'd have to get access to the garage I mean through the driveway. I don't know that the driveway could remain as it is.

Christine Genthner:

Any other questions based upon staff's recommendation and the comments? Seeing none then I will close the public hearing. At this time do I have a motion?

Deb Skarda:

I will make a motion, correct me if I do my [inaudible] incorrect, but to support the staff's recommendation granted that we get clarity with the Village lawyer in regards if there was any sort of permanent damage to the garage.

Christine Genthner:

Is there a second on that motion before I ask for discussion?

Steve Kumorkiewicz:

I'm going to second that motion.

Christine Genthner:

Now that we have a first and a second is there any discussion on that motion? I do have a question. If we're asking for clarity I don't know that we can approve tonight.

Jean Werbie-Harris:

The approval of the variance could be subject to the Village Board's approval. Because if the Village Board does not approve, and I bring that clarification and the indemnification or restrictive covenant -- I have to bring that all to the Board and they need to approve it. If they don't approve it then the variance would be null and void.

--:

So it's subject to the Village Board's approval?

Jean Werbie-Harris:

Correct.

--:

Alright, that's what's important to know then, right?

Christine Genthner:

I don't know that that amended it, but is that consistent with what you're looking for in your motion?

Deb Skarda:

Yes [inaudible] in my mind that's where I wanted to make sure that there was that clarity.

Steve Kumorkiewicz:

[Inaudible] subject to.

Christine Genthner:

So with that motion subject to approval by the Village Board the motion would be to support the staff recommendation to approve with the conditions as outlined by Ms. Werbie-Harris, correct?

Deb Skarda:

Yes, that would be correct.

Christine Genthner:

And is that the second?

Steve Kumorkiewicz:

Yes.

Christine Genthner:

Alright, we have a first and a second. Any additional discussion on the motion? Seeing none then roll call vote. I approve and support the motion.

Deb Skarda:

I support.

Mark Riley:

I do not support.

Jan Petrovic:

Tom Glassman is excused. Steve Kumorkiewicz?

Steve Kumorkiewicz:

I support.

David Hildreth:

I'll support.



Christine Genthner:

With that we have one no, and based upon the quorum I believe that the motion has passed. With that then it would be presented to the Village Board at the appropriate time. I don't believe there's anything else on the agenda is there?

**7. ADJOURNMENT.**

Christine Genthner:

With that, all in favor of adjourning say aye.

Voices:

Aye.

**Meeting Adjourned: 6:54 p.m.**