

**SUMMARY NOTES
OF THE MEETING OF THE
ZONING BOARD OF APPEALS
WEDNESDAY, SEPTEMBER 6, 2017
VILLAGE OF NORTHFIELD**

On Wednesday, September 6, 2017, the Zoning Board of Appeals met at 7:00 p.m. in the Village Hall First Floor Board Room located at 361 Happ Road to consider one (1) issue:

Members in Attendance:

Cheryl Charnas, Chairperson
J. Patrick Doherty
Bert Getz, Jr.
James Appel
Robert Hayward
Christine Geraghty

Members Absent:

Richard Crotty

OTHERS PRESENT: Building Commissioner Ron Johnson, Trustee Thomas Roszak and others (see attached sign-in sheet).

Chairperson Cheryl Charnas called the meeting to order at 7:00 p.m. by introducing the Zoning Board of Appeals members.

Chairperson Charnas requested a motion on the consideration of the April 5, 2017, summary notes. A motion was made by Member Patrick Doherty and seconded by Member James Appel to approve the April 5, 2017, summary notes.

The following vote was taken:

AYES: 6

**Cheryl Charnas, Chair
J. Patrick Doherty
Bert Getz, Jr.
James Appel
Robert Hayward
Christine Geraghty**

NAYS: 0

ABSTAIN: 0

ABSENT: 1

Richard Crotty

Motion Carried

1. **274 CRESTWOOD VILLAGE** - Consideration of a request for a west side yard variation from Appendix A, Article XVIII, Section 18.2 of the Village of Northfield's Zoning Code:

- A) A west side yard 9.00 foot variation from the required 15.00 feet resulting in a 6.00 foot west side yard setback to allow for a hot tub.

The petitioners, Allan Cale and Margo Carvell, were present and outlined their request for a west side yard setback variation in order to allow for a hot tub on the back patio. They have lived at Crestwood Village for 14 years and plan on staying for a long time.

In 2012, they appeared before the Zoning Board of Appeals for basically the same request. There were four members present at the meeting and the variance was not granted. Since that

time, he has had several health conditions. He has been diagnosed with arthritis of the spine, which causes daily pain and has had two surgeries for a torn disc on his spine. His doctor has prescribed hot tub hydro therapy to bring extra circulation to his leg which has had spinal nerve damage to his thigh from the surgeries. A letter from his doctor was included in the packet to the Zoning Board of Appeals members.

Mrs. Carvell has avascular necrosis of the hip along with spondylothesis and arthritis in her back which leads to chronic pain and the hot tub would bring great relief to help manage the pain. Her doctor has recommended this action and considers her use of a hot tub as a medical necessity. A letter from her doctor was included in the packet to the Zoning Board of Appeals members.

They feel the other alternatives are too expensive or impractical. One alternative suggested was to put a jacuzzi style bath tub in the bathroom. Since the townhouse has old plumbing it would take approximately 30 minutes to fill this tub. During that time, the water would not stay hot because jacuzzi tubs do not heat the water, only circulate it. Additionally they would be filling it twice a day, which would be a big waste of water and cost them a fortune in water bills. Also, the size of the bath tub would not be long enough to lie down in comfortably to take advantage of the therapeutic value of the water or to do the stretching exercise that the doctor recommends while in the tub.

The other alternative would be to go to a health club twice a day. The time, energy and expense in doing that are prohibitive with their lifestyle and there is much controversy as to the quality of the water and the cleanliness of a public hot tub. Three years ago, he had lung cancer and had to have most of his left lung removed. As a result, he has shortness of breath, is more susceptible to pneumonia, recurring lung cancer and other lung problems. The air quality in an indoor hot tub carries continuous fumes from the chlorine and other chemicals that are used and can cause hot tub lung which is an inflammation in the lung from something inhaled.

The Carvell's back yard is only 25' x 25'. There is no possibility of putting the hot tub anywhere that will be within the 15 foot yard distance as required by the Village Code. The back yard patio is completely surrounded by a solid 48" wood fence. The proposed hot tub has a maximum height of 29" so it is well out of sight of anyone except for people walking directly behind their property.

They have talked to their neighbors and they are all fine with the proposed hot tub. The Crestwood Homeowners Association has given them approval to install the hot tub with the condition that if they would ever sell the unit or move, then the hot tub must be removed. Previously the Crestwood Village Board voted 3-1. This time the Board voted 4-0 with the same members present. The previous member who was against the hot tub changed his vote this time based on more detailed information and understanding the facts.

The hot tub is not a permanent installation. It is a free standing with a wood style finish that will work on a 120 volt electric line which circulates and heats the same water continually. The 200 gallon tub will need to be emptied and refilled once every six months. A hose would be attached and drained into the laundry room drain.

The location of the hot tub seemed to be an issue when they went before the Board in 2012 as it needed a variance for the rear yard and side yard. It was also too close to the back fence. In response, they have moved the hot tub closer to the townhome and are now requesting the variance on the west side yard only.

There are very few children that live in Crestwood Village, however, no child would ever be allowed in the tub without an adult present and since it has a locking top, no child could get in on their own.

Chairperson Charnas said she was at the previous meeting in 2012 and this was a much more robust presentation this time.

Member Doherty asked to make an observation. Clearly the need for the variance is a medical reason where hydrotherapy is necessary in their case. They have examined all the alternatives and have the doctor's letters supporting the need. The homeowner association sees no problem and neither do the nearby neighbors. He has been on the Zoning Board of Appeals for 11 years, prior to that the Village Board 4 years and before that the Plan and Zoning Commission, he has rarely seen a presentation as well thought out, articulate and nicely done.

Member Hayward asked if they looked at an alternative size hot tub like perhaps a one person for example.

Mr. Carvell said they have and the biggest problem with the smaller size is the water pressure of the jets is one third of the hot tub they are proposing. The pressure that comes out of the jets is a huge therapeutic part of the healing process. They both have medical needs and would like to use the hot tub together if they could.

Member Hayward questioned if they had given any thought to seeking a change through the zoning code. If there is a notion that some of the code is written unfairly for townhomes, then maybe a change to the zoning code might be relevant.

Mr. Carvell said they never even thought about it or even considered that would be an approach to take. They were originally going to just buy a hot tub and put it in, not knowing about the code regulations.

Mrs. Carvell added the townhome board of directors suggested they go to the Village to request a variance.

Member Geraghty asked how the hot tub will be secured and locked when not in use.

Mr. Carvell answered the covers on most hot tubs, including the one they plan to purchase, are padded and insulated to keep the heat in. The cover goes over the top and down the sides. It wraps around very tight and is hinged on one end. A paddle lock will be used to lock the cover when not in use. So you need either the key or combination in order to open the cover.

Member Hayward asked if he was reading the code correctly, in order to install an inground swimming pool, a 10 foot setback is required whereas a hot tub requires a 15 foot setback.

Building Commissioner Ron Johnson stated that is correct.

There being no further discussion, the following motion was made:

A motion was made by Zoning Board of Appeals Member Patrick Doherty, seconded by Member James Appel to approve the following:

A) A west side yard 9.00 foot variation from the required 15.00 feet resulting in a 6.00 foot west side yard setback to allow for a hot tub

for the property located at 274 Crestwood Village consistent with the site plan and Architectural exhibits received on May 1, 2017.

Subject to the following development conditions:

- 1) An approval pursuant to any requested review by a Village consultant, staff member, Board or Commission shall be an approval of only those items specified in any motion, resolution, ordinance or written report. Under no circumstances shall such an approval be deemed to be the approval of any other matter by virtue of the fact that those other matters may appear on the supporting documents such as a site plan, engineering plan, or plat that was the subject of the review. Neither shall any such written approval be deemed to be an approval of any matter, which is within the jurisdiction of any other Village consultant, staff member, Board or Commission or any County, State or Federal Agency.**
- 2) The petitioner shall comply in all respects with the ordinances of the Village of Northfield and nothing in this variance shall be construed as a waiver of any of those requirements.**
- 3) This variation will be in effect until September 6, 2018. Any variation granted hereunder for any purpose shall lapse and be of no further force and effect unless a building permit has been issued by the Village for such purpose within one year after the effective date of the variation.**

Member Hayward asked if he could add to the motion the variance is based on a medical need and the fact that the homeowners association has regulations tied to the future applicability of the variance. His view is the code is written clearly in regards to setbacks for hot tubs and if townhomes want to change the code, there is a way to change it. Obviously the Board is considering a unique situation here and does not want to open Pandora's box. From a precedential stand point, it will be hard to find someone with similar circumstances that include: 1) it's going to be a townhome; 2) it's going to be a hot tub; 3) it's a substantial medical need; and 4) there has to be a homeowner association approval with specific provisions that provide for the removal of the hot tub in the future if the homeowner association so chooses. For him, that establishes a high bar for anyone to come before the Board to argue a precedent.

Chairperson Charnas summarized the amended motion by stating based on the medical needs of the petitioners and prior approval of the homeowners association, the Zoning Board of Appeals moves to approve the variance.

Member Doherty approved the amended motion.

Member Appel seconded the amended motion.

The following vote was taken:

AYES: 6

Cheryl Charnas, Chair

J. Patrick Doherty

Bert Getz, Jr.

James Appel

Robert Hayward

Christine Geraghty

NAYS: 0

ABSTAIN: 0

ABSENT: 1

Richard Crotty

Motion Carried

Member Getz wanted to make a point. If you are on a property with a lot of land, you have more room to work with for the location of a hot tub, then if you were in a townhome. He is not sure if that was the exact intent of the 15 foot code setback. If someone wants to change the code for townhomes, they can certainly try because it is a big difference for someone on a large piece of land.

Mr. Carvell said even a one person hot tub would still require a setback variance for their property.

There being no further discussion upon a motion made Member Appel and seconded by Member Getz, the Zoning Board of Appeals adjourned their meeting at 7:30 p.m.

cas 9/11/17

Approved 11/1/17