

**CITY OF CEDARBURG
BOARD OF APPEALS
JULY 15, 2024**

**BOA20240715-1
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Monday, July 15, 2024 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers and online via Zoom.

Mr. Aaron Olejniczak called the meeting to order at 6:00 p.m.

Roll Call: Present - Tom Mesalk, Aaron Olejniczak, Douglas Yip, Tim Schelwat, Megan Torres

Also Present - Building Inspector Jeffrey Thoma, City Clerk Tracie Sette, Tony Enea & Julie Tucker-Voeller of Ruvn Brothers Artisan & Trades

STATEMENT OF PUBLIC NOTICE

City Clerk Sette acknowledged that the Board of Appeals agenda was posted and distributed in compliance with the Wisconsin Open Meetings Law. Notice of the public hearing was published in the *News Graphic* and notices were mailed to all homeowners residing within 300 feet of the property.

APPROVAL OF MINUTES

A motion was made by Mr. Mesalk, seconded by Mr. Yip, to approve the minutes of the June 6, 2024 meeting as presented. Motion carried without a negative vote.

PUBLIC HEARING – REQUEST FOR VARIANCE – N30 W6880 LINCOLN BOULEVARD

Mr. Olejniczak opened the Public Hearing and invited Mr. Enea of Rubin Brothers to present his testimony. He stated he did not believe they were requesting a variance to the total lot coverage, rather only the Floor Area Ratio. He read the City’s ordinance, section 13-1-240, pertaining to gross floor area and feels that the attic space which contains 7 feet, 10 inches of headroom space, should already be figured into the floor area ratio.

Sec. 13-1-240 Floor area—Gross. The sum of the gross horizontal areas of all floors measured in square feet, not including basement floor, measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings. The floor area of a building includes elevator shafts and stairwells at each floor, floor space used for mechanical equipment (except equipment—open or closed—located on a roof or in a basement), penthouses, attic space having headroom of seven feet, ten inches or more, interior balconies and mezzanines, enclosed porches, and floor area devoted to accessory uses.

Mr. Enea distributed another drawing with calculations obtained by using the CAD system, resulting in a request for a variance to add 272 square feet of living space, rather than the 785 square feet that was the total in question. He further explained the following:

- 328 square feet of existing space will be remodeled
- 272 square feet of current attic space will be converted to living space

- 185 square feet of new space will also be incorporated in the plan.

After further discussion, it was determined that the request for variance should be for 457 square feet which includes 272 square feet of current attic space plus 185 square feet of new space.

Mr. Enea explained all the surrounding neighbors are in favor of the proposed plan. The proposal includes a new reading space and additional bathroom.

Pat Cannon, N30W6830 Lincoln Blvd – spoke in favor of the project and explained that he is the closest neighbor.

Mr. Olejniczak closed the Public Hearing at 6:48 p.m.

DELIBERATION AND ACTION ON THE REQUEST FROM RUVIN BROTHERS ARTISANS & TRADE ON BEHALF OF OWNERS DAVID AND BRITT FRANK

Mr. Olejniczak summarized all the facts and conditions that must exist beyond a reasonable doubt for a variance to be granted:

- 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 district.
- b. Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the property that do not apply generally to other properties in the same district, and the granting of the variance should not be of such general or recurrent nature as to suggest that the Zoning Code should be changed.
- c. Economic Hardship and Self-Imposed Hardship Not Grounds for 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 the variance. A recent change in State law requires that the property owner must demonstrate that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome.
- d. Preservation of Property Rights. The variance must be necessary for the preservation and enjoyment of the substantial property rights possessed by other properties in the same district and same vicinity.
- e. Absence of Detriment. No variance shall be granted that will create substantial detriment to adjacent property or that will materially impair or be contrary to the purpose and spirit of the Zoning Code or the public interest.

During deliberations, the Board discussed that unfinished attic space has never been considered usable living space with regard to square footage. Thus, finishing the attic adds square footage to the property.

Mr. Enea claimed they were following what was allowed per City Code.

The Board discussed how a potential variance does not add to the preservation and enjoyment of the property and there were no exceptional, extraordinary or unusual circumstances that apply to the property.

A motion was made by Mr. Olejniczak, seconded by Ms. Torres, to deny the proposed variance. Motion carried without a negative vote.

ADJOURNMENT

A motion was made by Mr. Mesalk, seconded by Ms. Torres, to adjourn at 6:50 p.m. Motion carried without a negative vote.

Tracie Sette
City Clerk