

**CITY OF CEDARBURG
BOARD OF APPEALS
JUNE 06, 2024**

**BOA20240606-1
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Thursday, June 6, 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

Excused - Megan Torres

Also Present - Building Inspector Jeffrey Thoma, City Clerk Tracie Sette, City Attorney Michael Herbrand, and Jadon Clark

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*.

APPROVAL OF MINUTES

A motion was made by Mr. Mesalk, seconded by Mr. Yip, to approve the minutes of the May 18, 2023 meeting as presented. Motion carried without a negative vote with Ms. Torres excused.

ANNUAL REVIEW AND CERTIFICATION OF CODE OF ETHICS

Board Members acknowledged that they received the City's Code of Ethics and have reviewed and understand it. All members in attendance said they had no conflicts of interest in terms of the matter before the Board.

DISCUSSION AND POSSIBLE ACTION ON ADOPTION OF RULES OF PROCEDURE

Attorney Herbrand explained that the Board of Appeals must adopt rules of procedures as groundwork for all Board of Appeals meetings moving forward. He highlighted various points of the final copy that was presented to the Board.

A motion was made by Mr. Mesalk, seconded by Mr. Schelwat, to adopt the Board of Appeals rules of procedures as presented to the Board. Motion carried without a negative vote with Ms. Torres excused.

PUBLIC HEARING – REQUEST FOR VARIANCE – PORTLAND ROAD 13-082-01-14-001

Mr. Olejniczak opened the Public Hearing at 6:12 p.m. Mr. Clark explained the situation with the property he intends to use as rental property. The lot is quite small, there is a gravel drive, and there is no accessory structure. The lot is considered a preexisting, nonconforming lot due to the size and age of the home, thus,

there is no allowable permit to obtain an accessory structure or create a permanent driveway. Mr. Clark expressed an interest in a small accessory structure (8x8 or 10x10) to use for storage. He also requested to pave the driveway right to the lot line and extend beyond the gravel to allow for possibly two (2) cars.

DELIBERATION AND ACTION ON THE REQUEST FROM JADON CLARK, PARCEL
13-082-01-14-001

Attorney Herbrand 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.

After a period of discussion, the Board agreed the owner is attempting to conform the property to the neighborhood and met all five (5) of the facts and conditions beyond a reasonable doubt in order to approve the variance for the driveway.

A motion was made by Mr. Mesalk, seconded by Mr. Schelwat to approve a variance for the driveway as was submitted. Motion carried without a negative vote with Ms. Torres excused.

A discussion ensued regarding the proposed accessory structure to house such items as a lawn mower, snow removal equipment, etc. It was agreed upon by the Board that chemicals (i.e. gas cans) should not be stored in the house, but rather outside in a separate accessory structure. The Board agreed that the request meets, beyond a reasonable doubt, the facts and conditions as stated above (a-e). A discussion ensued regarding the

appropriate allowable size of the structure focusing on an 8x8 or 10x10. The shed will not be placed on a concrete pad.

A motion was made by Mr. Schelwat, seconded by Mr. Yip, to approve the variance for an 8x8 accessory structure (limited to 8x8) and must contain a locking mechanism. Motion carried without a negative vote with Ms. Torres excused.

ADJOURNMENT

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

Tracie Sette
City Clerk