

**CITY OF CEDARBURG  
BOARD OF APPEALS  
MAY 18, 2023**

**BOA20230518-1  
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Thursday, May 18, 2023 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, Edward Foy, Douglas Yip, Tim Schelwat

Excused - Megan Torres

Also Present - Building Inspector Jeffrey Thoma, City Planner Jon Censky (arrived 6:48 p.m.), City Clerk Tracie Sette, City Attorney Michael Herbrand, Brendan and Tierra Ryan, interested citizens

**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 mailed to property owners within 300' of the subject property.

**DISCUSSION AND POSSIBLE ACTION ON ELECTION OF CHAIRPERSON, VICE-CHAIRPERSON, AND SECRETARY**

A motion was made by Mr. Mesalk, seconded by Mr. Foy, to elect Mr. Olejniczak as Chairperson. Motion carried without a negative vote with Ms. Torres excused.

A motion was Mr. Olejniczak, seconded by Mr. Mesalk, to elect Mr. Foy as Vice-Chairperson. Motion carried without a negative vote with Ms. Torres excused.

A motion was made by Mr. Olejniczak, seconded by Mr. Mesalk, to elect Mr. Schelwat as Secretary. Motion carried without a negative vote with Ms. Torres excused.

**APPROVAL OF MINUTES**

A motion was made by Mr. Mesalk, seconded by Mr. Yip, to approve the minutes of the May 28, 2020 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 draft that was presented to the Board. He will deliver a finished copy of the procedures for final adoption at the next Board of Appeals meeting.

**PUBLIC HEARING – REQUEST FOR VARIANCE – HIGHLAND DRIVE PARCEL 13-050-17-01-004**

John Mayberry voluntarily withdrew his request to appear before the Board of Appeals. The Board did not hear any testimony related to the Highland Drive request.

Mr. Olejniczak moved to recess at 6:18 p.m., and to reconvene at 6:30 p.m., to accommodate the next Public Hearing, noticed to begin at 6:30 p.m.

**PUBLIC HEARING – REQUEST FOR VARIANCE – COLUMBIA ROAD PARCELS 13-026-08-001.00 AND 13-040-0132.00**

The Public Hearing was opened at 6:31 p.m. by Chairperson Olejniczak. Brendan Ryan delivered his opening statement explaining how he purchased the home with the intent of opening a pet business. He explained the maximum number of dogs that would ever be outside at one time would be ten. He included five drawings/surveys of the property with his initial request, explaining the setbacks, fencing, and other details of the proposed business. At the meeting, he distributed an additional drawing containing more detail. Upon analysis of this drawing by the Board of Appeals, it was determined the actual variance request will be reduced to a 75 ft setback from surrounding residential uses, versus the original 81 ft request, from surrounding residential uses. Mrs. Ryan explained they were informed of a petition that was circulated in response to this request. She opined the information the petitioners received may have been incorrect regarding the details of the proposed business. She further explained that the property is unique which limits the type of business that could be conducted there. She reported to the Board that if a variance is not granted, they may need to sell the property.

Attorney Herbrand explained that a residential use is measured by the property line, not the structures located on a property.

Mr. Olejniczak invited public comments.

Matt Lusk – N72 W5371 Georgetown Drive

Mr. Lusk opposed the variance citing the number of dogs already in the neighborhood. He was also concerned that dogs may tend to bark more often when separated from their owners.

Ulrike Bufton – N65 W6477 Cleveland Street

Ms. Bufton owns rental properties near the site of the variance request and opposed the variance. She must disclose the potential future dog business to future area renters which is not appealing. She also cited dog waste and impending odor could also cause problems.

Deb Dassow – N73 W5341 Georgetown Drive

Ms. Dassow expressed concerns about the noise, traffic, and potential smell of a dog facility.

Jeff Whaley – N73 W5381 Georgetown Drive

Mr. Whaley expressed concerns about the dog facilities' potentially negative impact on property values.

Cathy Czech – N117 W5835 James Circle

Ms. Czech spoke in favor of the dog business citing a lack of business services in the City.

Justin Johnson – N70 W5450 Bridge Road

Mr. Johnson presented a petition containing 38 signatures of neighbors opposed to the dog facility.

Jody Washatko – W51 N664 Highland Drive

Ms. Washatko spoke about the need for more businesses and less housing in the City.

Maria Jarvey – W52 N744 Windsor Drive

Ms. Jarvey opposed the dog facility citing safety and noise concerns. She did not get a change to sign the petition.

Bob Hendrickson – W52 N743 Windsor Drive

Mr. Hendrickson opposed the dog facility citing noise concerns.

**DELIBERATION AND ACTION ON THE REQUEST OF BRENDAN RYAN, COLUMBIA ROAD PARCELS 13-026-08-001.00 AND 13-040-0132.00**

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.

Attorney Herbrand further explained the actual reason for the variance is to approve a reduced setback of 75 ft.

Mr. Olejniczak and Mr. Mesalk agreed that the preservation of intent was not indicated by the property owners and thus feel the variance should not be granted.

Mr. Mesalk explained further that the petition by the surrounding property owners and opinions of those who live nearby that this proposal may create substantial detriment to adjacent property owners. Thereby disproving the absence of detriment.

Mr. Foy also expressed the failure to meet the preservation of intent by the property owners due to the fact that the setback definition of separating the incompatible uses is being reduced by at least 20%.

A motion was made Mr. Mesalk, seconded by Mr. Yip to deny the variance request from Brendan Ryan for all reasons discussed during deliberations. Motion carried on a roll call vote with Mr. Mesalk, Mr. Olejniczak, Mr. Foy, Mr. Yip, and Mr. Schelwat voting aye and Ms. Torres excused. (5-0)

### **ADJOURNMENT**

A motion was made by Mr. Mesalk, seconded by Mr. Foy, to adjourn at 8:07 p.m. Motion carried with Ms. Torres excused.

Tracie Sette  
City Clerk