

**CITY OF CEDARBURG
BOARD OF APPEALS
SEPTEMBER 25, 2024**

**BOA20240925-1
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Wednesday, September 25, 2024 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers and online via Zoom.

Mr. Thomas Mesalk called the meeting to order at 6:00 p.m.

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

Excused - Aaron Olejniczak

Also Present - Building Inspector Jeffrey Thoma, City Clerk Tracie Sette, City Attorney Johnathan Woodward, Attorney Chris Jaekels, Attorney Jacque Condon

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 VICE-CHAIRPERSON

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

APPROVAL OF MINUTES

A motion was made by Mr. Yip, seconded by Mr. Schelwat, to approve the minutes of the July 15, 2024 meeting as presented. Motion carried without a negative vote with Mr. Olejniczak excused.

PUBLIC HEARING – REQUEST FOR APPEALS – HAMILTON ROAD- PARCEL 13-051-01-05-000

Attorney Jaekels explained this hearing is a judicial hearing and not a public hearing. There will be no comments allowed from the public.

Attorney Jacques Condon appeared before the Board to appeal an order, for his client Oliver Fiontar LLC, to cease use and vacate the property at N37 W6584 Hamilton Road. The Building Inspection office presented evidence, and the appellant's representative, Attorney Condon, raised an objection regarding witness information. The objection was overruled, allowing Officer Casey Ward to testify under oath.

Officer Casey Ward testified about a visit to the former Amcast factory on June 26, 2024. He observed juveniles trespassing, an old van, motorcycles, and various items on the premises. The site has been visited several times, with a reduction in trespassing incidents since security improvements were made.

Building Inspector Jeffrey Thoma confirmed that no occupancy permits had been issued to Oliver Fiontar LLC since 2018. The property is currently zoned for residential use, but a commercial building exists on the site.

City Attorney Woodward clarified the standards for a variance, and the Board deliberated on the Cease Use and Vacate order, concluding that the order was valid under residential statutes.

A motion was made by Ms. Torres, seconded by Mr. Schelwat, to deny the Cease Use and Vacate order appeal. Motion carried without a negative vote with Mr. Olejniczak excused.

PUBLIC HEARING – REQUEST FOR VARIANCE – SAINT JOHN AVENUE; PARCEL 13-077-01-10-000

John Hill presented the request for a variance for a garage project at the property located at W65 N673 Saint John Avenue. The request was for a 2-car garage to replace the small, original, one car garage. The home itself places the property over the square footage of allowable structures. The Board deliberated the following points to arrive at a decision. The Board decided the applicant met all five points of findings:

- 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.

A motion was made by Ms. Torres, seconded by Mr. Yip, to approve the requested variance. Motion carried without a negative vote with Mr. Olejniczak excused.

PUBLIC HEARING – REQUEST FOR VARIANCE – WASHINGTON AVENUE; PARCEL 13-022-09-022-00

Peter Wegner presented the request for a variance explaining the home has no basement and is situated on one (1) acre of land. The owners have occupied the property for nearly 40 years. The request is for a third accessory structure which would not exceed the square footage limit for the property. The third structure would be utilized for an arts and crafts room. The requested accessory structure would be constructed on a gravel pad. The Board decided the applicant met all five points of findings:

- 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.

A motion was made by Mr. Mesalk, seconded by Mr. Yip, to approve the requested variance. Motion carried without a negative vote with Mr. Olejniczak excused.

ADJOURNMENT

A motion was made by Mr. Mesalk, seconded by Ms. Torres, to adjourn at 7:06 p.m. Motion carried with Mr. Olejniczak excused.

Tracie Sette
City Clerk