

**CITY OF CEDARBURG
BOARD OF APPEALS
July 30, 2019**

**BOA20190730-1
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Tuesday, July 30, 2019 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers.

Mr. Tom Mesalk called the meeting to order at 7:00 p.m.

Roll Call: Present - Tom Mesalk, Aaron Olejniczak, Edward Foy, Megan Torres (1st alternate)

Excused - Chairperson Jay Stutz, Doug Yip

Also Present - Building Inspector Michael Baier, City Clerk Claire Woodall-Vogg, City Attorney Michael Herbrand, interested citizens

STATEMENT OF PUBLIC NOTICE

City Clerk Woodall-Vogg 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.

APPROVAL OF MINUTES

A motion was made by Mr. Foy, seconded by Mr. Olejniczak, to approve the minutes of the June 12, 2018 meeting as presented. Motion carried with Mr. Yip and Chairperson Stutz excused.

ANNUAL REVIEW 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.

REQUEST FOR AREA VARIANCE: DEAN FITTING, CEDAR COURT PARCEL 13-135-02-07-000

Mr. Mesalk declared the public hearing open regarding the petition of Dean Fitting for an area variance to waive the requirement of three (3) foot terracing at the property on Cedar Court, 13-135-02-07-000.

Section 13-1-101(c) of the Zoning Code states that "[r]etaining walls are permitted on the property lines in the yards of residential districts, but shall not exceed a height of three (3) feet and shall not be closer than two (2) feet to any public right-of-way. The total height of a retaining wall in any yard may exceed three (3) feet provided that the wall shall be terraced in a manner that for each three (3) foot section of wall there shall be a three (3) foot horizontal terrace to the next three (3) foot section of wall.

A variance granted by the Board of Appeals is necessary to waive the requirement of the three (3) foot terracing.

Attorney Herbrand reviewed the findings in Sec. 13-1-206 of the Zoning Code that must be made in order for the 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 Chapter 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.

Don Stauss, architect for the Fitting residence to be built, was sworn in by City Clerk Woodall-Vogg. Mr. Stauss explained that this is an infill lot that has been very hard to sell over the years. Mr. Fitting and Mr. Stauss have already appeared before the Plan Commission and met all zoning requirements as currently drawn. In discussions with City Engineer Tom Wiza, Building Inspector Michael Baier, and City Planner Jon Censky, the Fittings were asked to bury a storm water discharge line that runs along one corner of the lot. The City will grant an easement in order for the line to be buried. All parties were in agreement that it would be much easier to access the line in the future if there were not two levels of three (3) foot terracing, but instead one seven (7) foot retaining wall.

Mr. Mesalk asked if the owners have agreed to the easement to bury the line. Building Inspector Baier said that it would be part of the agreement for a building permit to be issued, and Mr. Stauss confirmed that the Fittings agreed to the easement.

Building Inspector Baier stated that the City is in full agreement with the proposed variance so that the storm water discharge line would be easier to access if it ever needs to be repaired or replaced. He stated that

Planner Censky had spoken to the neighbor directly west of the property; the owner did not have any issues or concerns with the wall. Clerk Woodall-Vogg confirmed that the Clerk's Office had not received any concerns or inquiries from the neighbors who were notified.

Mr. Olejniczak asked for clarification on the intent behind having the three (3) foot terracing regulation in the Code. Inspector Baier stated that the regulation is more for landscaping and safety purposes, eliminating high drops near public walkways. He said it is not for structural concerns.

Ms. Torres stated that safety seems to be a concern with a seven (7) foot retaining wall. Mr. Mesalk stated that neither the Chief of Police nor the Fire Chief expressed any concerns over the variance request.

Mr. Foy asked for clarification on the location of the retaining wall on the property. Mr. Stauss said that the retaining wall will be at the back of the property, not seen or easily accessed from the public right-of-way.

Mr. Foy asked if the size of the lot is also playing into this particular request. Mr. Stauss stated that it is not a driving factor, but that the Fittings would appreciate the extra four (4) feet that the variance would allow for buliding. It would give them some flexibility on very tight building plans.

Mr. Mesalk confirmed with Mr. Stauss that the owners plan to plant Boston ivy along the wall to make it more aesthetically pleasing.

Motion made by Mr. Olejniczak to grant the variance waiving the three (3) foot terracing requirement as requested, based on the following:

- Preservation of intent is met;
- There are exceptional, extraordinary, or unusual circumstances or conditions that apply to the property (the storm water discharge drain and the need to access it in the future);
- There is no economic or self-imposed hardship;
- There is substantial preservation of property rights;
- And there is an absence of detriment.

The motion was seconded by Mr. Foy. Motion carried with Mr. Yip and Chairperson Stutz excused.

ADJOURNMENT

A motion was made by Mr. Olejniczak, seconded by Mr. Foy, to adjourn at 7:19 p.m. Motion carried with Mr. Yip and Chairperson Stutz excused.

Claire Woodall-Vogg
City Clerk