

**BOARD OF APPEALS
May 28, 2020**

**BOA20200528-1
UNAPPROVED**

A regular meeting of the Board of Appeals, City of Cedarburg, Wisconsin was held on Thursday, May 28, 2020 via Zoom.

The meeting was called to order by Aaron Olejniczak at 7:00 p.m.

Roll Call: Present - Tom Mesalk, Aaron Olejniczak, Edward Foy, Megan Torres, Douglas Yip, Thomas Schelwat

 Also Present - Building Inspector Michael Baier, City Clerk Sette, City Attorney Michael Herbrand

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.

APPOINTMENT OF CHAIRPERSON

A motion was made by Mr. Mesalk to appoint Aaron Olejniczak Chairperson of the Board of Appeals, seconded by Ms. Torres and carried by unanimous roll call vote (Yip-aye, Foy-aye, Torres-aye, Mesalk-aye, Schelwat-aye, Olejniczak-aye). Mr. Olejniczak accepted the appointment.

APPROVAL OF MINUTES

A motion was made by Mr. Mesalk, seconded by Ms. Torres, to approve the minutes of the July 30, 2019 meeting as presented and carried by unanimous roll call vote (Yip-aye, Foy-aye, Torres-aye, Mesalk-aye, Schelwat-aye, Olejniczak-aye).

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.

PUBLIC HEARING: REQUEST FOR LOCATION VARIANCE AT N52 W649 HIGHLAND DRIVE

Mr. Olejniczak declared the public hearing open regarding the petition of Michael Doll for a location variance for the construction of a detached garage and studio at W52 N649 Highland Drive. Section 13-1-101(g) of the Zoning Code states that accessory uses and detached accessory structures are permitted in the rear yard only. The proposed garage and studio will be located in the front/side yard. Building Inspector

Baier explained the permit application was denied due to the request to be installed in the side yard. Attorney Herbrand reviewed the key findings in Sec. 13-1-206 of the Zoning Code that must be made 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.

Michael Doll began his testimony by explaining how his request measures up to the five key findings of Sec. 13-1-206 of the Zoning Code.

- 1) Preservation of Intent:
 - a. Mr. Doll explained his need for a second garage which would contain office space since both he and his wife work from home.
- 2) Exceptional Circumstances:
 - a. Mr. Doll explained how his parcel of land is unique and contains steep elevations. It is his intent to maintain the architecture of the property.
- 3) Economic Hardship and Self-Imposed Hardship not Grounds for Variance:
 - a. Since Mr. and Mrs. Doll both work from home now, it has become unnecessarily burdensome to create two home offices with the available space in the existing house structure.
- 4) Preservation of Property Rights:
 - a. Mr. Doll explained how his contributions in developing the park south of his property is beneficial to those in the City as well as neighbors.
- 5) Absence of Detriment:
 - a. Due to the nature of Mr. Doll's unique property, there is no apparent detriment to any adjacent property.

Michael Doll spoke with both Police Chief Frank and Fire Chief Vahsholtz and confirmed they did not have any issues with the planned accessory structure. Mr. Doll also confirmed he has researched every angle of his property to see if a different solution could have been contrived. There is no other place to include this type of space and adding on to the house would destroy the architecture and presence of the home. Most of the structure will be hidden from the street.

Building Inspector Michael Baier provided an explanation to the Board of Section 13-1-1 regarding the original purpose of this Code.

Mr. Doll explained the driveway has changed the topography of the parcel since purchasing the property.

Mr. Doll reached out to the surrounding neighbors to gain feedback. There was no opposition from neighbors. There will be no neighboring house abutting the area where the new structure will be built.

There have been no objections received by the Building Inspection office or the City Clerk's office.

Mr. Doll assured the Board there will be no water/sewer installed and thus no bathroom will be installed. This will prevent the structure from potentially being utilized as separate living quarters.

There were no public comments.

Deliberation and Action on the Request of Michael Doll, N52 W649 Highland Drive

Mr. Olejniczak began deliberations by summarizing the testimony. He stated it appears preservation of aesthetics is the clear intent. He went on to confirm:

- Preservation of intent has been met.
- Exceptional, extraordinary, or unusual circumstances or conditions apply to the property.
- There is no economic or self-imposed hardship.
- There is substantial preservation of property rights.
- There is an absence of detriment.

Mr. Foy motioned to grant the variance to Mr. Doll and was seconded by Mr. Yip. Motion carried by roll call vote with one nay-vote. (Yip-aye, Foy-aye, Torres-aye, Mesalk-no, Schelwat-aye, Olejniczak-aye)

ADJOURNMENT

A motion was made by Mr. Mesalk, seconded by Mr. Foy, to adjourn the meeting at 7:44 p.m. Motion carried without a negative vote.

Tracie Sette
City Clerk