

**CITY OF CEDARBURG  
BOARD OF APPEALS  
June 5, 2014**

**APP20140605-1  
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Thursday, June 5, 2014, at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers.

Chairperson Vera Brissman called the meeting to order at 7:00 p.m.

Roll Call: Present - Chairperson Vera Brissman, Jay Stutz, Dick Dieffenbach

Excused - Kristofor Hanson, Steve Ehlers, Tom Mesalk (alternate), Doug Yip (Alternate)

Also Present - City Attorney Michael Herbrand, Building Inspector Michael Baier, City Clerk Constance McHugh, applicant Darryl Rauth, interested citizens

**STATEMENT OF PUBLIC NOTICE**

City Clerk McHugh 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* on May 15, 2014 and May 22, 2014 and mailed to properties within 300' of the subject properties on May 12, 2014.

**APPROVAL OF MINUTES**

Mr. Stutz pointed out that in paragraph 9 on page 4 of the February 13, 2013 minutes, 18” should be changed to 18’.

A motion was made by Mr. Dieffenbach, seconded by Mr. Stutz, to approve the minutes of the February 13, 2013 meeting as corrected and the minutes of the February 21, 2013 meeting as presented. Motion carried unanimously.

**REQUEST FOR AREA VARIANCE: N70 W6204 BRIDGE ROAD**

Chairperson Brissman declared the public hearing open regarding the petition of Darryl Rauth at N70 W6204 Bridge Road for an area variance to build a garage that will be setback 11.62 feet off the north property line abutting Alder Street; thereby encroaching into the required 25 foot setback requirement. For all double-frontage lots, accessory structures shall comply with the building setback requirements as stipulated in Section 13-1-105 of the City Code, which states lots abutting two opposite streets shall provide the street yard setback required by the district in which the lot is located from each street upon which the lot abuts. A variance granted by the Board of Appeals is required to build the garage in the proposed location.

Chairman Brissman asked members if they can hear this matter fairly and objectively without bias for or against any party. All members present said they could.

Building Inspector Baier said Mr. Rauth applied for a permit to build a garage that does not meet the 25 foot setback requirement; therefore, he denied the permit. Mr. Rauth then applied for a variance.

Attorney Herbrand said the applicant is seeking a variance from the strict enforcement of law. The Zoning Code requires a 25 foot setback. The applicant is seeking a variance to build the garage 11.62 feet from the north property line.

Chairperson Brissman said the Board of Appeals shall have the following powers in this case: to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secure, and substantial justice done.

Attorney Herbrand said the decision of the Board of Appeals must be based on the evidence presented this evening. According to the Zoning Code, no variance shall be granted unless the Board finds beyond a reasonable doubt that all of the following facts and conditions exist:

- a. Preservation of Intent.
- b. Exceptional Circumstances.
- c. Economic Hardship and Self-Imposed Hardship are not grounds for a variance.
- d. Preservation of Property Rights.
- e. Absence of Detriment.

Chairman Brissman said the issues to be decided are:

1. Did the Building Inspector act in a manner that was consistent with the City's ordinances and within its authority when he did not approve the application to build a new detached garage on the property?
2. Is the proposed building of a detached garage that encroaches into the setback contrary to the public interest?
3. Does the property have a special condition?
4. Would denial of the request for a variance result in unnecessary hardship?

Darryl Rauth, owner of the property at N70 W6204 Bridge Road, was sworn in by the Clerk.

Mr. Rauth said his intent is to build a three car garage. Currently his property is the only one on the block that does not have a garage. The property owner's two houses to the west were granted a similar variance to build a garage in 2010.

Building Inspector Baier presented a map showing the four parcels on Bridge Road that abut Alder Street, along with the structures on the parcels.

Mr. Stutz said the homeowner may comply with the setback requirements if a two car garage instead

of a three car garage were built. He asked for the reasoning behind a three car garage.

Mr. Rauth said it may be possible to comply by building a two car garage; however, he has two children and four cars and would like additional storage space.

Mr. Dieffenbach asked Mr. Rauth if he discussed this proposal with the neighbors.

Mr. Rauth said he did and the neighbors to the west and the neighbors across Alder Street on Mequon Avenue have no issues with the proposed garage.

City Clerk McHugh confirmed she received no negative responses from the notices that were mailed out to adjacent property owners.

Chairman Brissman asked if there is any way to situate the garage on the lot so that it complies with the setback requirements.

Mr. Rauth said that in order to comply with Code, he would need to take out the concrete on the property and situate the garage in such a way that it would block his views of other properties and block the views of surrounding property owners.

Judy Guse, W61 N715 Mequon Avenue, was sworn in by the City Clerk.

Ms. Guse said this is a unique situation in that Alder Street was proposed to be a road in the 1950s but is really just an alley. The right-of-way is 66 feet. Mr. Rauth will be building the garage 11.62 feet from the right-of-way.

Building Inspector Baier said Alder is a street, but functions more like an alley. Only the people living in the four homes use Alder Street in this unique situation. Mr. Rauth's garage, if built, would be the garage farthest from the north property line in comparison to the garages on the neighboring properties.

Ms. Guse confirmed that Mr. Rauth spoke to the neighbors about the proposal. She said the garage will be nice looking and she supports the proposal 100%. She said she can see no negatives.

Motion made by Mr. Dieffenbach, seconded by Mr. Stutz, to close the public hearing at 7:23 p.m. Motion carried unanimously.

Attorney Herbrand referred the Board to the findings in the Zoning Code that must be made in order for the variance to be granted. He suggested the Board discuss each finding separately.

- 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.

Mr. Herbrand said this request is for an area variance. The use is not in question.

*It was the consensus of the Board of Appeals that a garage is common in residential districts and would not be inconsistent with the purpose and intent of the regulations of the district.*

- b. Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions apply 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.

*It was the consensus of the Board that unique circumstances apply in this case because Alder Street really functions as an alley. In addition, other properties in the area have garages. Granting of the variance would not suggest 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.

*It was the consensus of the Board that it is not unreasonable to desire a three car garage. The current Code was put into place after the houses were built.*

- 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.

*The Board acknowledged that the surrounding properties have garages. It was the consensus of the Board that property rights would be preserved if the variance is granted.*

- 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.

*The Board found there would be no detriment to the adjacent properties if the garage was built, nor would a variance be contrary to the purpose and spirit of the Zoning Code or the public interest.*

Motion made by Mr. Dieffenbach, seconded by Mr. Stutz, to approve the request for the variance based on the findings discussed. Motion carried unanimously.

**BOARD OF APPEALS  
JUNE 5, 2014**

**APP20140605-5  
UNAPPROVED**

**ADJOURNMENT**

A motion was made by Mr. Stutz, seconded by Mr. Dieffenbach, to adjourn at 7:35 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC  
City Clerk