

**CITY OF CEDARBURG  
BOARD OF APPEALS  
March 15, 2018**

**APP20180315-1  
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Thursday, March 15, 2018 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers.

Chairperson Jay Stutz called the meeting to order at 7:03 p.m.

Roll Call: Present - Chairperson Jay Stutz, Aaron Olejniczak, Edward Foy (1<sup>st</sup> alternate), Megan Torres (2<sup>nd</sup> alternate)

Excused - Tom Mesalk and Doug Yip

Also Present - Special Counsel Ron Stadler, Building Inspector Michael Baier, City Clerk Constance McHugh, 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 February 22, 2018 and March 1, 2018 and mailed to properties within 300' of the subject properties on March 9, 2018.

**APPROVAL OF MINUTES**

A motion was made by Mr. Olejniczak, seconded by Mr. Foy, to approve the minutes of the November 30, 2017 meeting as presented. Motion carried with Mr. Yip and Mr. Mesalk excused.

**REQUEST FOR AREA VARIANCE: N63 W108 WASHINGTON AVENUE**

Chairperson Stutz declared the public hearing open regarding the petition of First Church of Christ, Scientist for an area variance to replace an existing sign at N63 W018 Washington Avenue. Section 13-1-80(b) of the Zoning Code requires that in the case of arterial streets intersecting with other arterial streets or railways, the corner cutoff distance establishing the triangular vision clearance space shall be fifty (50) feet. The proposed sign is to be located within the vision triangle. A variance granted by the Board of Appeals is required to place the sign in the location proposed. This hearing is continued from the November 30, 2017 meeting, at which time the Board of Appeals requested additional information from the applicant.

Paul Gutelius, 1597 Woodland Drive, Grafton, was sworn in by the City Clerk.

Mr. Gutelius said at the last meeting the Board made a motion to postpone a decision until such time as an architectural plan is prepared with respect to the 50' vision triangle and showing all four

corners of the intersection, including setbacks and placement of the sign. The following three attachments were provided to the Board:

- An overview of the street corner showing the sign, the vision triangle and various measurements;
- A more detailed view at the same location;
- A simulation of the proposed new sign showing the fonts, dimensions and specifics of its construction. The base will mimic the stonework on the church.

Mr. Gutelius said the proposed sign will be 21' from the south sidewalk and 8'6" from the north south sidewalk. Although the sign will be placed 4' to the north of the current sign, it will still be in the vision triangle.

Ms. Torres said that her concern is that the proposed sign is slightly larger than the existing sign and will have a solid base. The base could slightly inhibit vision. The spirit and intent of the ordinance is to preserve traffic and pedestrian safety. She said while it may not be terribly significant, she would hate to do anything that would even slightly increase the risk or detriment to pedestrians or vehicles.

Mr. Stutz said the sign will be moved 4' to the north. The Police Chief had a concern that a sign in the vision triangle may be a concern for vehicles heading west on Pioneer Road. He said moving it to the north may help to alleviate this concern.

Motion made by Mr. Foy, seconded by Ms. Torres to approve the request for the variance.

Mr. Olejniczak addressed 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.

*Mr. Olejniczak said he does not think the request preserves the intent.*

- 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.

*Mr. Olejniczak said this was discussed at the last meeting and the Board realizes the Speedway sign across the street is not in compliance with the Code. He said based on the Police Chief's comments this is not something that would 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.

*Mr. Olejniczak said this weighs in favor of not granting the variance because there is a self-imposed hardship.*

- 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.

*Mr. Olejniczak said this does weigh in favor of granting the variance.*

- 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.

*Mr. Olejniczak said there is an absence of determinant in this case.*

Mr. Olejniczak said on the balance it appears the findings in Sec. 13-1-206 of the Zoning Code do not weigh in favor of granting the variance.

Ms. Torres said she is inclined to agree with the preservation of intent and spirit of the ordinance allowing a variance. A slightly larger sign with a solid base seems to contravene that intent. She said she is troubled by the Speedway sign and the fact there is no history on the approval process for the sign or why a variance for this sign may have been granted.

Mr. Olejniczak agreed this is a very difficult decision in trying to follow the letter of the law and the intent of the ordinance as the Board of Appeals is required to do.

With Mr. Foy and Mr. Stutz voting aye and Ms. Torres and Mr. Olejniczak voting nay, the motion to grant the variance failed on a tie vote.

### **ADJOURNMENT**

A motion was made by Mr. Foy, seconded by Mr. Olejniczak to adjourn at 7:18 p.m. Motion carried with Mr. Yip and Mr. Mesalk excused.

Constance K. McHugh, MMC/WCPC  
City Clerk