

**CITY OF CEDARBURG  
BOARD OF APPEALS  
June 12, 2018**

**APP20180612-1  
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Tuesday, June 12, 2018 at City Hall, W63 N645 Washington Avenue, second floor, Council Chambers.

Chairperson Jay Stutz called the meeting to order at 7:00 p.m.

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

Excused - Tom Mesalk, Doug Yip

Also Present - Building Inspector Michael Baier, City Clerk Constance McHugh, City Attorney Michael Herbrand, 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 17, 2018 and May 24, 2018 and mailed to properties within 300' of the subject properties on May 14, 2018.

**APPROVAL OF MINUTES**

A motion was made by Mr. Foy, seconded by Mr. Olejniczak, to approve the minutes of the March 15, 2018 meeting as presented. Motion carried with Mr. Yip and Mr. Mesalk 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 tonight.

**REQUEST FOR AREA VARIANCES: PAUL SCOTT, N50 W5674 PORTLAND ROAD**

Chairperson Stutz declared the public hearing open regarding the petitions of Paul Scott for two area variances for construction of a detached two-car garage at N50 W5674 Portland Road. Section 13-1-46(f)(5) of the Zoning Code states that the sum total of the floor area of the principal building and all accessory buildings shall not exceed thirty-six (36%) of the lot area; and the lot coverage for the principal buildings and accessory buildings shall not exceed thirty percent (30%) of the lot area. The proposed garage exceeds the maximum floor area of 36%.

**BOARD OF APPEALS  
JUNE 12, 2018**

**APP20180612-2  
UNAPPROVED**

Section 13-1-46(f)(1) of the Zoning Code states no principal building or parts of a principal building shall exceed thirty-five (35) feet in height. No accessory building shall exceed twenty (20) feet in height. The plans submitted indicate the garage to be 20'8" in height.

Variances granted by the Board of Appeals are necessary to build the two-car garage as proposed.

Building Inspector Baier provided the Board with a lot, home, shed, and garage calculation sheet that showed the floor area exceeds the maximum allowed by 676 square feet, or 45%. The height of garage also exceeds the height limitation by 8".

Paul Scott, owner of N50 W5674 Portland Road, was sworn in by the City Clerk. Mr. Scott said he is looking to add value to the property by adding the amenity of a garage. A garage once existed on the property; however, it was removed by the previous owner due to disrepair. The slab from the existing garage is still in place. He is proposing to remove the existing shed and build a garage with a smaller footprint than the previous garage. He is trying to sell the home and prospective buyers have indicated they would like to see a two car garage. Mr. Scott further explained this is a 1908 farmhouse with limited storage available only in the basement and the shed, which will be removed. He said a new garage would bring value to the house and a new family.

Mr. Stutz questioned why a roof with a 12/12 pitch was selected. Mr. Scott responded that the garage as proposed is attractive, but the roof pitch could be modified if necessary.

Ms. Torres said she sees the need to have a garage, and the bonus room over the garage would also be beneficial. The height is a concern. She asked how many buildings in the area exceed the height limitation.

Mr. Scott said he has not done an inventory, but there is one neighboring property with a barn structure that exceeds the height limitation. He estimated there are at least three properties on the block with structures that exceed the Zoning Code in terms of height.

Mr. Foy asked if the previous garage exceeded the maximum floor area of 36%. Inspector Baier said he has no calculations to determine this. He said if a property has more building than is allowed and existed prior to the current regulations that have been established, it becomes nonconforming. In this case, because the previous garage was removed any new building would need to conform to the Zoning Code.

Mr. Foy said that last year when Mr. Scott appeared before the Board he indicated he made contact with several neighbors about his plans for the front of the house. He asked Mr. Scott if he contacted the neighbors about the proposed garage.

Mr. Scott said he did not talk to as many neighbors as last time because it does not impact as many people; but, the ones he did contact said they could see the value of building a garage.

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 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.
- 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.

Tracy Lalonde, W50 N636 Cedar Reserve Circle and Mr. Scott's realtor, said there has been a lot of interest in this house. There was an accepted offer that was contingent upon the garage being approved. The offer fell through because this meeting could not be scheduled soon enough. The buyer purchased another house. She said a garage is a need, not a want.

Motion made by Mr. Olejniczak to grant both variances as requested with the existing shed removed, based on the following:

- Preservation of intent is met;
- There are exceptional, extraordinary, or unusual circumstances or conditions that apply to the property (there was once an existing garage on the property and garages are valuable in Wisconsin winters);
- There is no economic or self-imposed hardship;
- There is substantial preservation of property rights;
- And there is an absence of detriment.

**BOARD OF APPEALS  
JUNE 12, 2018**

**APP20180612-4  
UNAPPROVED**

The motion was seconded by Mr. Foy. With Mr. Olejniczak, Mr. Foy, Ms. Torres, and Mr. Stutz voting aye and Mr. Mesalk and Mr. Yip excused, the motion carried.

**ADJOURNMENT**

A motion was made by Mr. Olejniczak, seconded by Mr. Foy, to adjourn at 7:35 p.m. Motion carried with Mr. Yip and Mr. Mesalk excused.

Constance K. McHugh, MMC/WCPC  
City Clerk