

**CITY OF CEDARBURG
BOARD OF APPEALS
August 8, 2017**

**APP20170808-1
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Tuesday, August 8, 2017 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, Kristofor Hanson, Doup Yip, Aaron Olejniczak, Edward Foy (1st alternate), Megan Torres (2nd alternate)

Excused - Tom Mesalk

Also Present - City Attorney Michael Herbrand, Building Inspector Michael Baier, City Clerk Constance McHugh, applicant Paul Scott, 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 July 16, 2017 and July 24, 2017 and mailed to properties within 300' of the subject property on July 13, 2017.

APPROVAL OF MINUTES

A motion was made by Mr. Hanson, seconded by Mr. Olejniczak, to approve the minutes of the June 5, 2014 meeting as presented. Motion carried unanimously.

CERTIFY CODE OF ETHICS

The Code of Ethics was distributed to members prior to the meeting. Attorney Herbrand said the Ethics Code is distributed to all boards, committees, and commissions on an annual basis. He reminded members if they have a financial or personal interest in a matter they should recuse themselves from that matter. No action is necessary.

REQUEST FOR AREA VARIANCE: N50 W5674 PORTLAND ROAD

Chairperson Stutz declared the public hearing open regarding the petition of Paul Scott of N70 W5674 Portland Road, for an area variance to construct a roof structure to be added to the front of the house at N50 W5674 Portland Road. Section 13-1-46(g) of the City Code of Ordinances states there shall be a minimum building setback of twenty-five (25) feet from the right-of-way of all streets. The proposed roof structure would be nine (9) inches from the right-of-way line. A variance granted by the Board of Appeals is required to construct the roof structure as proposed.

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Building Inspector Baier said he denied the application of Mr. Scott because the proposed roof structure does not meet the setback requirements. According to plans presented, the proposed roof structure, or sunshade, will be located 9" of the property line. The setback is 25'. Inspector Baier said the house is a non-conforming structure. Any additions need to meet the current standards set forth in the Zoning Code. Section 13-1-142 of the Zoning Code states that additions and enlargements to existing substandard structures are permitted and shall conform to the established building setback lines along streets.

Mr. Hanson asked if the proposed roof structure will encroach onto the sidewalk. Building Inspector Baier said it would not.

Mr. Olejniczak said the plans show a raised flower garden in front of the house. He asked if this is pre-existing. Building Inspector Baier said planters or a flower bed will be placed or built between the house and sidewalk; however, approval of the Board of Appeals is not required for this.

Paul Scott, 100 Bayberry Lane, Grafton, was sworn in by City Clerk McHugh.

Mr. Scott said he bought this house approximately 2½ years ago. The house was in foreclosure and literally falling down. He said nearly everything in the house has been replaced and he has tried to add a lot of charm to the structure.

Mr. Scott said the challenge has been the front of the house. It was built in the 1930s and was originally a convenience store. Through the years it changed to a multi-family dwelling then to a single-family home. He said he does not want the front of the building to look like a storefront. Mr. Scott said he understands this is not a true hardship, but is asking for a help and understanding in this matter. He has shown the plans to the neighbors and there was no negative feedback. The proposed roof structure will shade the master bedroom, which is almost on the street. He said there will be no negative impact.

Mr. Scott further explained the roof structure will be 2' 8" from the wall of the house, which is 11" less than shown in the plans presented to the Board. It will be 18" from the property line, not 9" as previously indicated.

Chairman Stutz asked about the possibility of canvass awnings to shield the sun. Inspector Baier said a permit is not necessary for awnings as they are not a permanent structure.

Mr. Hanson asked if there are any similar structures in the City that encroach into the setback the same way as this house does. Inspector Baier said there are a number of nonconforming structures in the City, but he is not aware of anything that is similar to this.

Chairman Stutz asked if the other homes on the street are nonconforming structures. Inspector Baier said there are other homes on this street that are nonconforming, meaning they were built prior to the adoption of the Zoning Code.

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City Clerk McHugh said a letter had been received from the property owner at N50 W5688 Portland Road in support of the variance.

Mr. Hanson asked Mr. Scott what he will do in lieu of building the roof structure if the variance is not granted. Mr. Scott said the front of the building will be very flat, and the only thing that can be done would be some decorative woodworking.

Mr. Yip asked if the homeowner has given consideration to putting up curtains to block the sun. Mr. Scott said that curtains will be put up but the roof structure is still necessary.

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.

Attorney Herbrand referred the Board to the findings in Sec. 13-1-206 of 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.

Attorney Herbrand said this request is for an area variance. The use is not in question; therefore, this is not an issue.

- 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 the Board has heard there are unusual or extraordinary circumstances in this matter and the house has a pre-existing condition. He said the owner is attempting to deal with these circumstances.

Mr. Hanson said this structure seems to be a rarity in terms of how close it is to the sidewalk.

- 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 there is no hardship in the case.

- 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. Hanson said the roof structure would not infringe on property rights other property owners or their enjoyment thereof.

Mr. Olejniczak said one neighbor wrote in support of the variance and no negative comments were received. He said there will be a preservation of property rights.

- 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.

Ms. Torres said nothing in the proposal suggests a detriment to adjacent property owners will be created.

Mr. Hanson said the roof structure will be beneficial to the surrounding properties.

Attorney Herbrand said the Board consists of five members. One regular member is not present tonight but two alternate members are. Ms. Torres, second alternate, will not be a voting member. He said per the City Code, a vote concurring vote of four (4) members of the Board of Appeals is necessary to reverse the decision of the Building Inspector.

Motion made by Mr. Olejniczak, seconded by Mr. Hanson, to approve the request for the variance to construct a roof structure that will be 2' 8" off the wall of the house based on the findings discussed. With Mr. Olejniczak, Mr. Foy, Mr. Stutz, and Mr. Hanson voting aye, and Mr. Yip voting nay, the motion carried.

ADJOURNMENT

A motion was made by Mr. Foy, seconded by Mr. Olejniczak, to adjourn at 7:39 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC
City Clerk