

**CITY OF CEDARBURG
BOARD OF APPEALS
November 30, 2017**

**APP20171130-1
UNAPPROVED**

A regular meeting of the City of Cedarburg Board of Appeals was held Thursday, November 30, 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, Tom Mesalk, Doup Yip, Aaron Olejniczak, Edward Foy (1st alternate), Megan Torres (2nd alternate)

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 November 9, 2017 and November 16, 2017 and mailed to properties within 300' of the subject properties on November 6, 2017.

APPROVAL OF MINUTES

A motion was made by Mr. Olejniczak, seconded by Mr. Foy, to approve the minutes of the August 8, 2017 meeting as presented. Motion carried unanimously.

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.

Inspector Baier said he received an application from First Church of Christ, Scientist for a new sign to be located in the vision triangle. The application was denied as the Zoning Code prohibits signs in the 50' vision triangle.

Mr. Olejniczak asked Inspector Baier to comment on other signs in the area in terms of compliance with the Zoning Code.

Inspector Baier said he measured the Scott Pump sign and it is compliant with the Code. The sign

for Speedway was approved by the Plan Commission and Design Review Board in 1986 but is located in the vision triangle. He said he has no explanation as to what occurred in 1986.

Mr. Mesalk asked how far north the sign would have to be located to be out of the vision triangle. Inspector Baier said he does not know the answer to this.

Michael Hazelwood, 801 W. 1st Avenue, Port Washington, and Board Chairman, was sworn in by the City Clerk. He said this is a request to appeal the denial of the proposed identification sign by the Building Inspector. He said the Church can legally maintain the existing sign in the same location in perpetuity, but feels an upgrade to the sign will better serve the members of the Church and aesthetically improve the look of the site for the community. He said the reasons for the appeal are as follows:

- Compliance with the 50 foot setback requirement places the sign in the middle of the existing driveway or so far from the corner as to make the placement of a new sign ineffective in any other location;
- The gas station directly across the street on Washington Avenue has a much larger sign which appears to violate the same vision triangle setback requirement for which the Church is seeking a variance;
- The manufacturing company on the corner diagonally opposite the church replaced its existing sign with a larger sign earlier this year. This replacement sign also appears to violate the same setback requirements;
- It is reasonable to conclude that these two signs have set a precedent supporting this sign location;
- This corner is at an intersection controlled by stop and go lights; therefore, safety is not and apparently has not been at risk;
- The current sign has existed at this location for over 50 years and has never been blamed because of an obstructed sight line;
- Correspondence from the City Planner dated 04/29/2014 and addressed to the City Engineer and Building Inspector states clearly the other signs at this intersection obstruct vision to a greater extent;
- The existing sign is grandfathered and could continue in this location in perpetuity.

Mr. Mesalk said the Board needs to know if the sign could be moved farther to the north; thereby, solving the issue.

Mr. Foy asked what the specific request before the Board is, i.e., is the issue one of location, setbacks, or size of the sign.

Attorney Stadler said the issue is whether the sign should be permitted in the vision triangle. Under the current Zoning Code, the sign is not permitted in the 50' vision triangle. The Board of Appeals must look at issues such as the interest of the public and what the spirit of the regulation is.

Tom Lubner of Primecast Advertising at 1008 Arrowhead Road, Grafton, was sworn in by the

City Clerk. He said the current sign is 3' 3" x 6'. The proposed sign will be 4' x 7' and will be placed in the same location as the current sign, although a new foundation will be put in to the north of the sign. He said it is possible to install the sign approximately 1' to 2' to the north; however, it will not be out of the vision triangle. He said no problems will be created by installing the new sign as the current sign has existed for 50 years.

Inspector Baier agreed that moving the sign to the north by 1' to 2' will not remove it from the vision triangle. The size of the sign is not an issue, just the location.

Mr. Mesalk said he would like an answer to his original question of how far north would the sign have to be moved to be out of the vision triangle.

Mr. Lubner said it would probably have to be located 10' to the north; but moving it this far will place it in the driveway.

Chairman Stutz said City Clerk McHugh received an email from Police Chief Thomas Frank today regarding the sign. The email read as follows: "In the past three years we have had approximately 36 vehicle crashes at that intersection ranging from minor to serious. It does not appear that the current sign had any significant factor in any of the crashes by reviewing our dispatch CAD notes but I did not have the time to pull each crash report to carefully review them. I queried two patrol officers on the topic and they could not remember a crash at the location where the sign was a factor. With that being said, I believe the vision triangle ordinance is a good law and helps to improve traffic safety. I drove the intersection myself today and the current sign has minimal impact but could potentially be a factor for a westbound driver on Pioneer to have a momentary obstructed view of a vehicle traveling south on Washington giving warning if the vehicle was failing to stop for the traffic signal".

Attorney Stadler reviewed the standards to be used in determining whether a variance should be granted. For an area variance, a variance can be granted if strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose, or if strict compliance would render conformity with the zoning ordinance unnecessarily burdensome. The Board must also consider the purpose of the zoning restrictions, the impact of the variance on the property, the impact of the variance on the neighborhood, and the public interest.

According to Sec. 13-1-206 of 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.

Mr. Olejniczak addressed exceptional circumstance. He said the sign at Speedway is not in compliance with the Zoning Code but the sign at Scott Pump is. Granting this variance would result in a second nonconforming sign in this area. He said an agreement could be made that the Zoning Code should be changed; however, the Police Chief has indicated the vision triangle ordinance is a good law and helps to improve traffic safety.

Mr. Mesalk said he would like to see an aerial view with setbacks shown.

Motion made by Mr. Mesalk that the Board of Appeals 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 motion was seconded by Mr. Olejniczak.

Attorney Stadler said it appears the Board needs more specificity as to what the Church wants in terms of the variance. i.e., how far does the Church want to locate the sign into the vision triangle.

Mr. Mesalk moved to amend his motion to have the property owner provide a site plan with the proposed siting of the signage, as well as the setbacks shown on the plan, including location of the current sign in relation to the vision triangle, and the overall dimensions of the proposed sign. Mr. Yip seconded the amendment.

With Mr. Mesalk, Mr. Yip, Mr. Olejniczak, and Mr. Stutz voting aye and Mr. Foy (1st alternate) voting nay, the amendment carried.

With Mr. Mesalk, Mr. Yip, Mr. Olejniczak, and Mr. Stutz voting aye and Mr. Foy (1st alternate) voting nay, the motion as amended carried.

A follow-up meeting will be scheduled after the information is received from the Church.

REQUEST FOR AN AREA VARIANCE – N69 W6507 BRIDGE ROAD

Chairperson Stutz declared the public hearing open regarding the petition of Tony Duckert for an area variance for construction of a garage at N69 W6507 Bridge Road. Section 13-1-101(g) of the Zoning Code states that accessory uses and detached accessory structures are permitted in the rear yard only and shall not exceed twenty (20) feet in height. The proposed garage will exceed the 20 foot height limitation by approximately 5 feet. A variance granted by the Board of Appeals is required to build the garage as proposed.

Inspector Baier said he received an application for construction of a detached garage on the property at N69 W6507 Bridge Road. According to the Zoning Code, accessory structures shall not exceed 20 feet in height. The plans submitted indicate the proposed structure to be 24 feet 3 3/16 inches in height; therefore, the permit was denied.

**BOARD OF APPEALS
NOVEMBER 30, 2017**

**APP20171130-5
UNAPPROVED**

Tony Duckert, N69 W6507 Bridge Road, and Architect Don Stauss, 8215 W. Donges Bay Road, Mequon, were sworn in by the City Clerk.

Mr. Duckert said he is proposing to add a second garage to the property to accommodate longer vehicles. The proposed garage will have the same proportions as the existing garage, including the roof pitch.

Mr. Stauss said the plans for the new garage are compliant with the Zoning Code, with the exception of the height. He is asking for consideration to increase the maximum height to 25' so that the garage addition retains the look of the existing garage and house. The increase in height is just for aesthetics only.

Mr. Mesalk said the Board granted a variance several years ago for a similar request for a property located on Evergreen Blvd. and Western Road. He said increasing the height from 20 feet to 24 feet 3 3/16 inches is not material and it enhances the property to have the proposed garage match the same roof pitch as the existing garage.

Motion made by Mr. Mesalk, seconded by Mr. Foy, to approve the request for a variance that would allow the height of the garage to exceed the 20 foot height requirement by 3 feet 3 3/16 inches.

Mr. Mesalk and Mr. Foy withdrew the motion and the second to the motion.

Motion made by Mr. Mesalk, seconded by Mr. Foy, to approve the request for a variance that would allow the height of the garage to be a maximum of 25 feet. With Mr. Mesalk, Mr. Yip, Mr. Olejniczak, Mr. Stutz, and Mr. Foy (1st alternate) voting aye, the motion carried unanimously.

ADJOURNMENT

A motion was made by Mr. Mesalk, seconded by Mr. Olejniczak, to adjourn at 7:50 p.m. Motion carried unanimously.

Constance K. McHugh, MMC/WCPC
City Clerk