

ZONING BOARD OF APPEALS

Thursday, September 24, 2020
P.M.

5:30

Due to the COVID-19 pandemic, this meeting will take place virtually via Zoom. Please join the meeting from your computer, tablet or smartphone by visiting <https://zoom.us/j/95956087871>

You can also participate via phone by dialing 1 312 626 6799 and use Meeting ID: 959 5608 7871 # When asked for your Participant ID, just press #

You may also choose to participate by providing public comment prior to the meeting via email to Village Clerk Lisa Kalata: lkalata@village.cottage-grove.wi.us

1. Call To Order
2. Determination Of Quorum And That The Agenda Was Properly Posted.
3. PUBLIC APPEARANCES-Public's Opportunity To Speak About Any Subject That Is Not A Specific Agenda Item.
4. Discuss And Consider Minutes From November 6, 2019 Meeting.

Documents:

[11-6-19 ZBA MINUTES.PDF](#)

5. Discuss And Consider Request From Becky Cardarella For A Setback Variance To Construct A Screen Porch At 401 School Road.

Documents:

[CG_401SCHOOL_ZBA_2020-09-18.PDF](#)
[APPLICATION.PDF](#)
[SITE SKETCH.PDF](#)

6. Future Agenda Items.
7. Adjournment

This agenda has been prepared by Staff and approved by the Chair of the Zoning Board of Appeals for use at the meeting as listed above. Any item on the agenda is subject to final action. Notice: Persons needing special accommodations should call 608-839-4704 at least 24 hours prior to the meeting. It is possible that members of and possibly a quorum of members of other governmental bodies may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

VILLAGE OF COTTAGE GROVE
Zoning Board of Appeals
Wednesday, November 6, 2019

MINUTES

1. Call to order

The November 6, 2019 meeting of the Zoning Board of Appeals was called to order at 5:30 p.m. by Ruth.

2. Determination of quorum and that the agenda was properly posted.

It was determined that there was a quorum of members present and that the agenda was properly posted. In attendance were Mark Hepfinger, Phyllis Jones-Morrison and Sheri Severson. Absent and excused was Tom Sullivan. Also, in attendance were Planning Director Erin Ruth, and Village Attorney Leighton Boushea.

3. PUBLIC APPEARANCES – *Public’s opportunity to speak about any subject that is not a specific agenda item.*

None

4. Election of Chairperson

Motion by Jones-Morrison to nominate Mark Hepfinger, seconded by Severson. **Motion** carried with a voice vote of 3-0-0.

5. Overview of Zoning Board of Appeals Powers and Duties.

Attorney Boushea indicated that the duties of the Zoning Board of Appeals are to make decision when an applicant files an appeal to the current zoning codes that does not allow them to do what they are requesting. Ruth provided a staff report that laid out the case and recommendation for the board.

6. Discuss and Consider Request from Donna and Jeffrey Neustadter for a Variance to a Rear Setback for Their Residence at 307 Tanglewood Court.

Donna and Jeffrey Neustadter were present to give a brief overview of why they feel there is a hardship for the setback on their lot at 307 Tanglewood Court. They would like to replace an existing deck with a three-season porch, however the setback does not allow for this and they feel there is a hardship because of the shape of the lot. **Motion** by Severson to accept the recommendation by staff to agree that they have a unique hardship and allow the variance, seconded by Jones-Morrison. **Motion** carried with a voice vote of 3-0-0.

7. Future Agenda Items

None

9. Adjournment

Motion by Jones-Morrison to adjourn at 5:46 p.m., seconded by Severson. **Motion** carried with a voice vote of 3-0-0.

Lisa Kalata, Clerk
Village of Cottage Grove
Approved:

These minutes represent the general subject matter discussed in this meeting but do not reflect a verbatim documentation of the subjects and conversations that took place.



PLANNING STAFF REPORT

MEMO DATE: September 18, 2020

MTG. DATE: **SEPTEMBER 24, 2020**

TO: Village of Cottage Grove Zoning Board of Appeals

CC: Matt Giese – Village Administrator
Lisa Kalata – Village Clerk
Larry Konopacki – Village Attorney

FROM: [Erin Ruth, AICP – Village Planning Director](#)

RE: **401 School Road – Setback Variance Request**

OVERVIEW OF ZONING BOARD OF APPEALS POWERS AND DUTIES

Per 62.23(7)(e)(7)(a), the Zoning Board of Appeals has the following power that is applicable to this request: “to authorize upon appeal in specific cases such variance from any terms in the ordinance as will not be contrary to the public interest, when owing to special conditions, a literal enforcement of the provisions of the ordinance will result in a practical difficulty or unnecessary hardship, so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.”

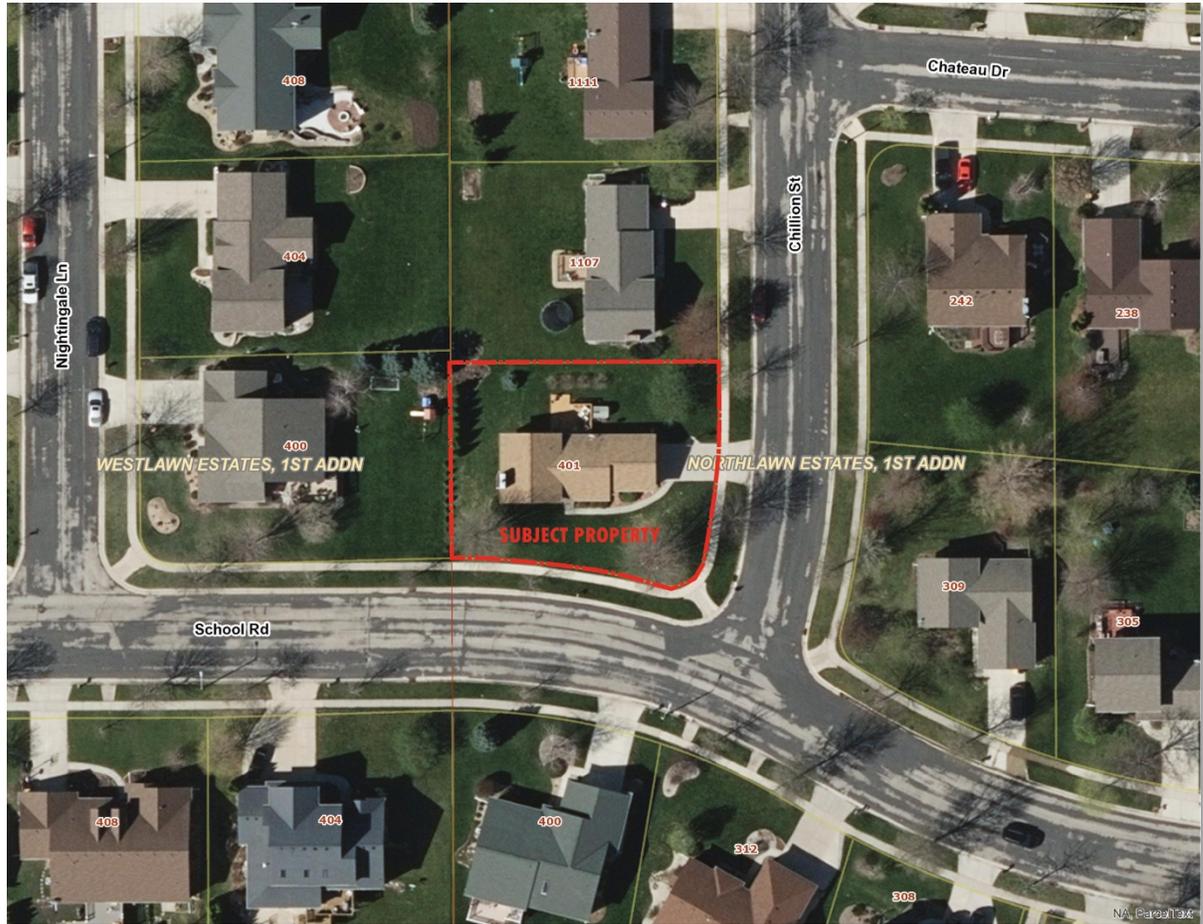
The request is for an area variance. Per 62.23(7)(e)(7)(a), an “area variance” means “a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction.”

OVERVIEW

The Village has received an application for a setback variance that needs to go before the Zoning Board of Appeals. The applicants wish to replace an existing deck on their home located at 401 School Road with a screen porch of the same dimensions. The existing deck violates the rear setback as would the new screen porch. The home and deck were built by previous property owners.

The property is zoned SR-4 and is subject to the regulations in 325-38(A)(6) of the Village’s zoning ordinance.

LOCATION MAP



The subject property is zoned SR-4, Single-Family Residential. The minimum rear setback per 325-38(A)(6) is 30 feet from the rear property line to the house or attached garage.

The applicants applied for a building permit from the Village's Building Inspector who referred the issue to the Zoning Board of Appeals.

CONSIDERATIONS FOR REVIEW

The following issues should be considered by the Zoning Board of Appeals, as defined by the statutes:

- 1. Is the Board of Appeals empowered to consider whether to grant the requested variance to the rear setback?***

Yes, the requested variance to the setback falls within the definition of an 'area' setback as noted above. Per Wisconsin Statute, the Zoning Board of Appeals is empowered to grant such a variance.

2. Will the variance be “contrary to the public interest” per 62.23(7)(e)(7)(a)?

In the opinion of staff, it does not appear that the variance would be contrary to the public interest. The completed porch would be 15' from the property line. If the house had been oriented differently and the north was the side yard, the setback would be 8'.

3. Is this a case where “a literal enforcement of the provisions of the ordinance will result in a practical difficulty or unnecessary hardship” per 62.23(7)(e)(7)(a)?

The question of hardship is addressed in #5 below.

4. Can the variance be granted such that “the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.”

In identifying the “spirit of the ordinance” staff recommends reviewing the intent of the Zoning Ordinance per 325-3, as follows: “the intent of this chapter is to regulate and restrict the use of structures, lands, and waters; regulate and restrict lot coverage, population distribution and density, and the size and location of all structures so as to lessen congestion in and promote the safety and efficiency of the streets and highways; secure safety from fire, flooding, panic, and other dangers; provide adequate light, air, sanitation, and drainage; prevent overcrowding; avoid undue population concentration; facilitate the adequate provision of public facilities and utilities; stabilize and protect property values; further the appropriate use of land and conservation of natural resources; preserve and protect the beauty of the community; and implement the Comprehensive Master Plan.”

In the opinion of staff, it does not appear that the requested variance is contrary to the intent of the Zoning Ordinance. Furthermore, it does not appear that the variance would endanger public safety and welfare.

The remaining issue is what constitutes “substantial justice done.” In the opinion of staff, the emphasis the statute places on proving a hardship indicates that proving such a hardship exists is a component of “justice done.”

5. Has the applicant proven a hardship, as defined by Wisconsin Statutes?

Ultimately, it is the role of the Board of Appeals to make this determination. As noted above, the statutes provide several indications of what constitutes a hardship.

First, does the applicant demonstrate “that strict compliance with the zoning ordinance would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily

burdensome?” As currently oriented on the site a conforming porch or deck would not be possible on the site as the house is already at the setback line. Many homes in the neighborhood do have such structures and can accommodate them in conformance with the ordinance. Issues with the setback are to some degree driven by the shape of the lot as discussed in more detail below.

Second, can it be demonstrated “that the unnecessary hardship was not created by the property owner?” It is clear the hardship was not created by the current property owner. They did not build the home at its location and to the current dimensions, and they did not create the shape of the lot. The non-conforming deck was built prior to their ownership and they had no knowledge that the deck was non-conforming at the time of purchase.

Finally, is the proposed hardship “based on conditions unique to the property?” This would appear to be the key question in determining whether a hardship exists. If the variance is granted, it should not create a precedent that is easily replicated by other lots in the Village. Preferably, in the opinion of staff, the variance should rely on some form of objective information that could be compared in future similar cases.

Per 274-45(E) of the Subdivision Ordinance, when discussing lot dimensions states “a proportion of 2:1 (depth to width) shall be considered a desirable ratio under normal circumstances.” Therefore, one objective measurement is the depth to width ratio of the subject parcel compared to others. Based on the ordinance it could be argued the further the depth to width ratio is from 2, the less “desirable” the lot would be.

401 School Road is 115’ deep and 96’ wide at its widest point for a ratio of 1.2 to 1. This is due to the front of the lot bulbing out at the southeast corner. This bulbed area is not really usable as building space,

The lot directly to the west has a ratio of 1.5 to 1, the lots to the north have a ratio of 1.3 to 1, and the typical lots on the west side of the block have a ratio of 1.6 to 1.

Therefore, one could argue that the 401 School Road lot is unique from the others on the block in the degree to which it varies from the ‘preferred’ 2 to 1 ratio and that this unique scenario contributes to a hardship that requires a variance.

While the home could have been oriented differently at the time of initial construction such as facing the building toward Chillion Street it still likely would have been a more difficult configuration to work with than most other lots in the neighborhood.

STAFF RECOMMENDATION

Staff recommends that the variance request be APPROVED.

VILLAGE OF COTTAGE GROVE
REQUEST FOR ZONING VARIANCE

APPLICANT: Becky Cardarella

APPLICANT ADDRESS: 401 School Rd.
Cottage Grove

TELEPHONE: 608-235-3774

EMAIL ADDRESS: contractor: jim@renovation-advocate.com

PROJECT LOCATION: Jim Edwards 608-669-1976
401 School Rd.

DESCRIPTION OF REQUESTED VARIANCE:

TURN EXISTING DECK INTO A SCREENED IN
PORCH, SAME SIZE, SAME LOCATION ON HOUSE.

APPLICATION SUBMITTAL REQUIREMENTS:

1. Fee of \$350. Projects requiring engineering review will require an additional \$250 deposit toward review fees.
2. Provide any additional site plans or images necessary to convey the nature of the request.

9-5-20
Date

Becky Cardarella
Applicant Signature

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For office use only:

Date Received:
Zoning Board of Appeals Meeting Date:



Jim Edwards <jim.homeadvocate@gmail.com>

variance

Erin Ruth <eruth@village.cottage-grove.wi.us>
To: Jim Edwards <jim@renovation-advocate.com>

Fri, Sep 4, 2020 at 12:14 PM

Hi Jim,

I did a quick analysis on the 401 School Road lot.

In the previous variance request we reviewed, which was for a similar type of setback violation, we performed an objective analysis to attempt to determine how unique the shape of the lot was.

One way to do that is simply by comparing the ratio of the depth to width of the lot. Our subdivision ordinance suggests that a depth to width ratio of 2:1 is preferable, though in actual practice these ratios may vary.

401 School Road is 115' deep and 96' wide at its widest point for a ratio of 1.2 to 1.

The lot directly to the west has a ratio of 1.5 to 1, the lots to the north have a ratio of 1.3 to 1, and the typical lots on the west side of the block have a ratio of 1.6 to 1.

So one could argue that the 401 School Road lot is unique from the others on the block in the degree to which it varies from the 'preferred' 2 to 1 ratio and that this unique scenario contributes to a hardship that requires a variance.

Given that data I would be comfortable recommending a variance if the owner chooses to pursue one.

Hopefully that is helpful.

Erin Ruth, AICP

Director of Planning & Development

Village of Cottage Grove

221 E. Cottage Grove Road

Cottage Grove, WI 53527

608.839.4704

Receipt No: 7.004120

Sep 9, 2020

REBECCA CARDARELLA

Previous Balance:	.00
GEN FUND LICENSES & PERMITS	
ZONING PERMITS & FEES	350.00
ZONING VARIANCE	

Total:	-----	350.00
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CHECK	
Check No: 2707	350.00

Payor:	
REBECCA CARDARELLA	

Total Applied:	-----	350.00
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Change Tendered:	-----	.00
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09/09/2020 12:48 PM

VILLAGE OF COTTAGE GROVE
 210 PROGRESS DRIVE SUITE 2
 COTTAGE GROVE WI 53527 608-839-5813

401 SCHOOL RD., COTTAGE GROVE, WI

$\frac{1}{8} = 2 \text{ ft.}$

