

**FINDINGS OF FACT AND DECISION
OF THE ZONING BOARD OF APPEALS
TOWN OF CEDARBURG, OZAUKEE COUNTY**

CASE: Ron Zeh
 Lot #16 Fawn Lane (Tax Key #03-017-01-016.00)
 CEDARBURG, WI 53012

HEARING: This matter came before the Board of Zoning Appeals on December 27, 2011, for public hearing and action on the request of Ron Zeh for Lot #16 on Fawn Lane with Tax Key #03-017-01-016.00 for one variance from the seventy-five (75) foot minimum side yard setback on the west side of the lot, and a second variance from the one-hundred foot (100) foot minimum section line road side yard setback on the east side of the lot, allowing for the construction of a new home on the lot with reduced side yard setbacks. Those board members present to hear the request were Chairman Dennis Rickard, Richard Larson, Robert Schroeder and Mike Cherveney. A quorum of the Zoning Board of Appeals was found to be present. Also appearing was the potential buyer, Dustin Halyburton (2432 Tanager Drive, Waukesha, WI), Peter Sylvester with Realty Executives, Town Attorney Brad Hoeft, and Director of Recreation & Planning Eric Ryer.

FINDINGS OF FACT

Chairman Rickard called the meeting to order and began the meeting with the Pledge of Allegiance and roll call.

Having heard the testimony and considered the entire record herein, the Town of Cedarburg Zoning Board of Appeals finds the following facts:

1. Ron Zeh, as applicant here, filed with the Office of the Zoning Board of Appeals a notice of appeal requesting two variances.
2. The applicant is the record owner of the subject property with Tax Key #03-017-01-016.00 in the Town of Cedarburg, which is the subject of the application.
3. The subject property is a vacant residential lot zoned TR Transitional Residential consisting of approximately 2.25 acres.
4. § 320-32 of the Town of Cedarburg Zoning Code provides for a minimum side yard setback of 75 feet in the TR district, and where lot is adjacent to section line road a minimum of 100 feet from planned right-of-way, as depicted on the Town Transportation Plan Map, with a requirement that the first 50 feet off the right-of-way be a planting strip.

5. One proposed variance would allow for a 45 foot variance on the west side of the lot for the construction of a new home, decreasing the west side yard setback to 30 feet from lot line.
6. The other proposed variance would allow for a 40 foot variance on the east side of the lot for the construction of a new home, decreasing the east side yard setback to 60 feet from lot line (section line road setback).
7. The prospective purchaser (Mr. Halyburton) spoke, explaining he is asking for the variances to construct a home for his family. He does not own the land at this time. Mr. Halyburton confirmed that he has worked with a builder to reach the configuration of the lot and requested variances. He then discussed with the Board where the home would be located on the lot using an aerial photo to help illustrate; the home footprint would be 75' by 75' wide, with the garage facing west.
8. Mike Cherveney clarified that Mr. Halyburton is aware the lot has a public bike path running through it. Mr. Halyburton said he is aware of the path. Chairman Rickard also verified the buyer and seller were aware of the easements and any other such actions placed upon the lot; the buyer and seller were aware, with Peter Sylvester (agent of Mr. Zeh) noting the sale was contingent upon the variances being granted.
9. With no other comment from the public, nor any written comment received by Town staff for or against the application, Robert Schroeder moved to close the public hearing. Richard Larson seconded and the motion passed unanimously.
10. Attorney Hoeft explained staff had pulled old Code books and found that the side yard setback in the TR district appeared to change from 25 to 75 feet as part of the recodification that occurred in 2004, however, there appeared to be no notation in the Code showing such an ordinance that would have made this change. Although this presented no conclusive evidence, Attorney Hoeft felt there may have been an error at the time of recodification in 2004 that inadvertently changed this setback. Attorney Hoeft advised the Board move forward considering the variances regardless of this issue, as the Board must follow what is currently in the Code. Attorney Hoeft further clarified that if variances are granted; construction of the proposed home would create a legal conforming structure, and would not constitute spot zoning.
11. Mr. Halyburton and the Board then discussed the planting strip, the bike path, and the topography in an effort to ensure Mr. Halyburton felt the lot presented a favorable location for their home. Mr. Halyburton had considered these issues and was confident the lot would be a good location for their home.
12. Robert Schroeder also confirmed that public notices had been sent out as required; staff confirmed such notices had been sent as required.

13. The Board asked what the neighbor to the west had in terms of landscaping to buffer the two homes from one another. Mr. Halyburton explained the neighbor to the west had apple trees and evergreens that would offer a buffer between the two properties.

15. With no additional discussion, the Board then deliberated on the following items as required by Section 320-135 D. (1)-(5), of the Town Code while deciding whether to grant the variance:

- (1) Denial of the variation may result in hardship to the property owner due to physiological consideration. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district, and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.

Mr. Rickard explained that the layout of the lot and current side yard setbacks in the TR district provides for a situation that would not allow for the construction of a home on the lot.

- (2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

Mr. Rickard reiterated the same conditions as above in item #1.

- (3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.

Mr. Rickard noted the purpose of the proposed variance is not to increase the property for financial gain.

- (4) The granting of the variation will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

Mr. Rickard felt the variance would not be detrimental to the public welfare as no negative reaction or comment was received from the public.

- (5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.

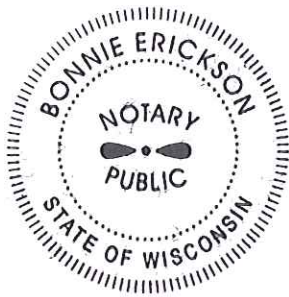
Mr. Rickard felt the variance would not undermine spirit and general and specific purposes of the Zoning Code.

DECISION

Based upon the findings of fact and the record made herein, the Town of Cedarburg Zoning Board of Appeals decided that Mr. Zeh's application met the aforementioned criteria for the requested variances.

Therefore, in deciding the minimum side yard setback variances: Robert Schroeder moved and Richard Larson seconded the motion to grant one variance from the seventy-five (75) foot minimum side yard setback on the west side of the lot decreasing the west side yard setback to 30 feet from lot line, and a second variance from the one-hundred foot (100) foot minimum section line road side yard setback on the east side of the lot decreasing the east side yard setback to 60 feet from lot line (section line road setback), allowing for the construction of a new home on the lot with reduced side yard setbacks. The motion carried unanimously.

DECISION DATED EFFECTIVE AS OF DECEMBER 27, 2011.



TOWN OF CEDARBURG
ZONING BOARD OF APPEALS

By: *Dennis Rickard*
Chairman Dennis Rickard

Attest: *Bonnie Erickson*

Decision Dated and Filed: *January 19*, 2012

Expiration date 4-7-2013