



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.”

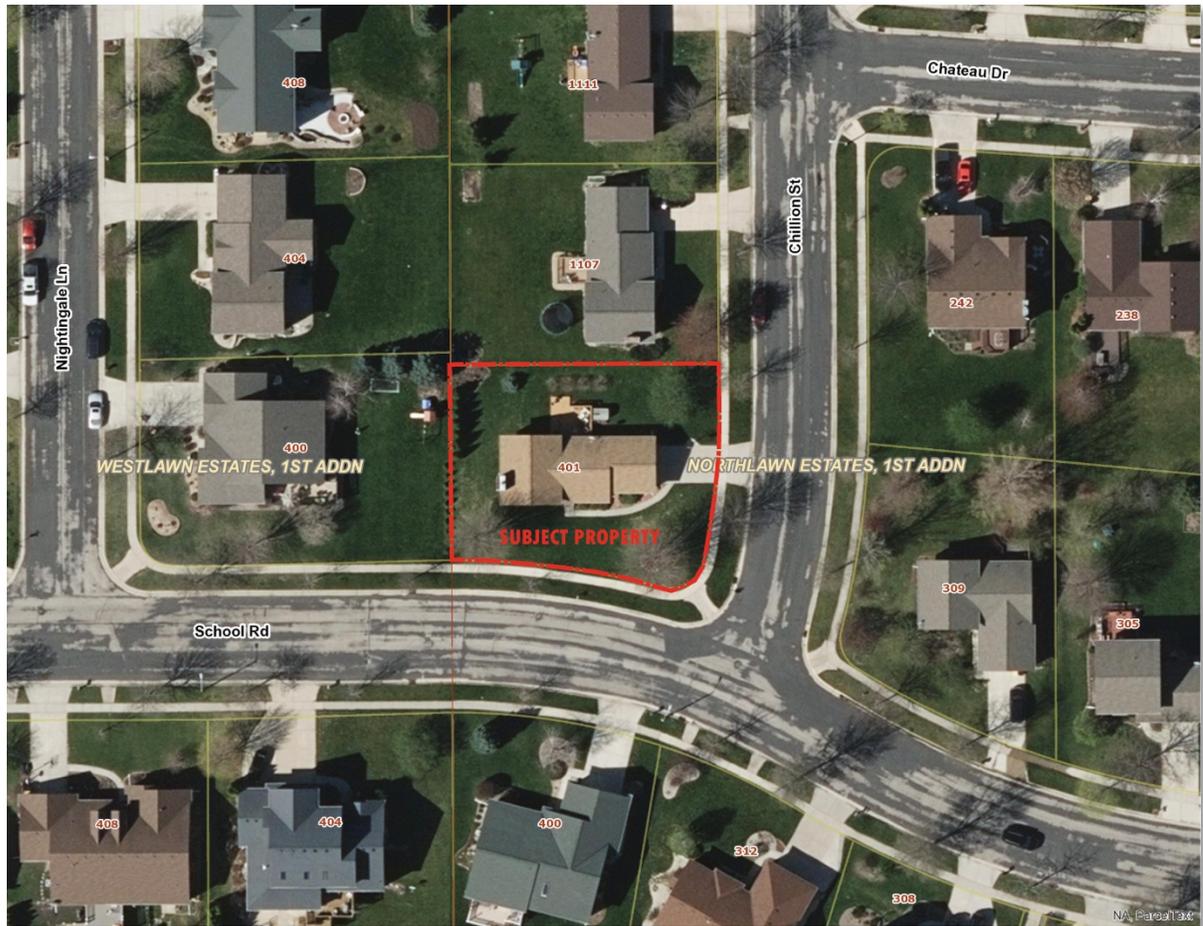
The request is for an area variance. Per 62.23(7)(e)(7)(a), an “area variance” means “a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction.”

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.