



PLANNING STAFF REPORT

MEMO DATE: September 29, 2023

MTG. DATE: **OCTOBER 12, 2023**

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: **Miller Variance Request – 146 Clark Street**

BACKGROUND

Property Owner: Courtney Miller

Location: 146 Clark Street

Area: 0.1 acres

Agent: Courtney Miller – property owner

Existing Zoning: SR-4, Single Family Residential

Proposed Zoning: SR-4, Single Family Residential

OVERVIEW

The applicant, Courtney Miller, is seeking a variance to the front setback in the SR-4, Single-Family Residential district for her property located 146 Clark Street. The purpose of the variance is to construct an expansion to the front of her home.

BACKGROUND

Per 325-38(A)(6)(b)(4)(a), the minimum front setback in the SR-4 district is 25 feet. Currently, the home at 146 Clark meets the ordinance with a 27-foot setback. However, this leaves only 2 feet for any potential expansion toward the front of the property.

The ordinance allows some flexibility on front setbacks via 325-23(B)(9) which states “the required street yards may be decreased in any residential or business districts to the average of the existing street yards of the abutting structures on each side, but in no case less than 15 feet in any residential district.” However, 146 Clark derives no additional flexibility because the home immediately to the east is set back over 70 feet from the front property line (it appears the current house was likely originally the garage).

With no other remedies available in the zoning ordinance, the applicant is pursuing a variance per 325-113.

LOCATION MAP



STATUTORY REGULATIONS FOR GRANTING A ZONING VARIANCE

The criteria for granting a zoning variance is provided by Wisconsin State Statutes.

The Zoning Board of Appeals has several powers as defined by Wis. Stat. 62.23(7)(e)(7)(a), one of which is pertinent to this case: “to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to

special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.”

The statutes identify two types of variances, a ‘use variance’ and an ‘area variance.’ The application under consideration is for an area variance, defined by statute as “a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure.”

Per the statutes, “a property owner bears the burden of proving an unnecessary hardship, as that term is used in this subdivision (of the statutes), for an area variance by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner’s property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome.”

Furthermore, the statutes state “in all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

VARIANCE CRITERIA

The following overview considers the specific application relative to the statutory criteria outlined above.

1. Is there an unnecessary hardship?

From a broad perspective, the proposed hardship appears to be that the property owner cannot expand the home. It is debatable whether this is a hardship because there should not be an expectation of or entitlement to expansion that transcends the setback requirements in the ordinance. In fact, setbacks would be irrelevant if there was an entitlement to expansion.

However, this particular application is more nuanced. The home is in an older part of the Village that predates the current zoning ordinance, and likely predates any older zoning ordinances the Village may have had, meaning the homes were built prior to the existence of any setback requirement. Section 325-23(B)(9), which offers relief on front setbacks by averaging the setback of adjacent existing structures, was put into the ordinance largely to allow relief to the homes in the older parts of the Village that would otherwise not comply with the new setback. This relief takes on added importance since the older lots are typically much smaller than those in neighborhoods developed later. In many, or most, other locations on the older sections of Clark or Reynolds Streets the property owner would benefit from 325-23(B)(9). This property happens to be one that does not benefit due to the extraordinarily deep setback on the home immediately to the east. In fact, there was likely another structure on the adjacent property toward the front that may have provided benefit under this section.

Therefore, staff would argue that the hardship is not the inability to expand, but rather the inability to benefit from 325-23(B)(9) which was intended to provide front setback relief in older parts of the Village, due to the inconsistent placement of homes on those blocks.

2. *Would conformity with the zoning ordinance be unnecessarily burdensome?*

While there is an effort in the statutes to make the variance process as objective as possible, this remains a highly subjective question.

In staff's point of view, it is clear the inability to expand creates a burden on the applicants, and it is unnecessary due to the inconsistent applicability of 325-23(B)(9) due to the arbitrary placement of buildings in the neighborhood.

3. *Is the condition unique to the property and not personal to the property owner?*

While the rationale for wanting the expansion is personal to the owner, the inability to benefit from 325-23(B)(9) is unique to the property due to the placement of the adjacent structures.

4. *Is the hardship created by the property owner?*

The inability to expand the home in other directions is largely hindered by the small size of the lot, due to the age of the neighborhood. The placement of the adjacent structures was determined by those property owners many years ago, so the inability to apply the setback relief in 325-23(B)(9) is beyond the control of the applicant.

5. *Would granting the variance be contrary to the public interest?*

There are numerous structures on Clark and Reynolds that predate the zoning ordinance and do not meet the current 25-foot setback requirement. This is typical of a neighborhood of this era and in the opinion of staff this is not contrary to the public interest.

6. *If the variance is approved is the spirit of the ordinance observed, public safety and welfare secured, and substantial justice done?*

As noted above, the ordinance provides a mechanism to adjust the front setback that is largely in place to accommodate the older portions of the Village, that this particular property does not benefit from. Granting the variance would be in the spirit of this section of the ordinance, in the opinion of staff. Staff does not anticipate threats to public safety or welfare to occur if the variance is granted. Whether "substantial justice is done" is again a highly subjective question, but staff believes this would be the case.

STAFF RECOMMENDATION

As noted above, in staff's opinion the primary hardship is this property's inability to benefit from applying section 325-23(B)(9) to reduce the front setback. Section 325-23(B)(9) states

that when applied, the setback should be “in no case be less than fifteen feet in any residential district.”

Staff recommends the variance be **APPROVED WITH CONDITIONS**, with the following conditions:

1. The front yard setback shall be reduced to fifteen feet from the property line.