

# Shorewood Board of Appeals Meeting Minutes

November 8, 2016

3930 N. Murray Avenue, Shorewood, WI 53211

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## 1. Call to Order.

The meeting was called to order at 5:40 p.m.

## 2. Roll Call.

Jeff Schmeckpeper, chair	aye
Beth Aldana	aye
Lance Mueller	aye
Kathy Nusslock	aye
Michael Paulson	aye

## 3. Statement of Public Notice.

Planning Director Ericka Lang stated that the meeting was published and posted according to local and state requirements.

## 4. Approval of October 11, 2016 meeting minute transcription.

Planning Director Ericka Lang asked to correct an address identified in the agenda item regarding 1701-03 E. Menlo. The neighboring property that received a variance for a parking slab without having to build a garage was for 1627-29 E. Menlo Blvd.

Mr. Paulson moved to approve the clarification and minutes, seconded by Mr. Mueller. Motion to approve 5-0.

## 5. Attorney to Review the Standards by which the Board of Appeals must abide.

Village Attorney Nathan Bayer reviewed the standards for agenda item #6, which is a request for a variance, granting only if exceptional circumstances and absence of detriment.

## 6. Public Hearing: Appeal of building inspector notice to remove an accessory shed within the side yard zoning setback at residential property 4141 N. Woodburn St.

Planning Director Ericka Lang and Building Inspector Justin Burris were sworn in. Mr. Burris introduced the item. The Village received a Board of Appeals application on October 19, 2016 from residential property owner Alex and Laurie Hansen Cardona, requesting a variance for keeping a storage shed in the side yard zoning set back.

The lot is a corner parcel at Olive and Woodburn. The shed is located at the rear interior of the property aside the detached garage. The shed dimension is 8'x13' and the space between the garage and the interior side yard is 11 feet. There is approximately 1'7" distance between the south side of the shed to the interior property boundary, putting 1'3" of the shed within the zoning side yard setback. The shed is considered a temporary structure and does not have a concrete pad.

The property is zoned R-6 One and Two-Family Residence District No. 1 with a minimum 40-foot

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lot width and minimum lot are of 4500 sqft.

Per 535-19F(5)[c] the side interior setback is 3 feet.

Mr. Schmeckpeper let members know there were three neighbors' letters in the meeting packet: Marlene Cook at 4133 Woodburn; Jay Blind at 1301 Olive; and, Sarah and Ben Dembroski at 4201 Woodburn. All residents are in support of the current shed location.

Applicant and property owner Ms. Hansen Cardona was sworn in. She explained that a patio was constructed earlier in the year at which time village staff confirmed a building permit is not needed to erect a shed that does not have a foundation. A variance is requested because of how small the backyard is: the shed would encompass most of the backyard area.

Ms. Linda Freese at 4137 North Woodburn Street was sworn in. Ms. Freese contacted the building inspector with questions about the neighbors shed. The inspector measured the location of the shed from her property and discovered her fence was actually on the Cardona's property, so the fence was moved. Ms. Freese stated that the shed is too large and shouldn't have to view the shed every time in her rear sunroom or backyard. Her fence is four feet in height and the Cardona's is shorter.

Mr. Burris stated that Ms. Freese did have a permit for her fence, installed in 2014. The village's policy at that time did not have inspectors measure the location of fences- it was the responsibility of the homeowners. After measuring the shed and fence locations, it was determined Ms. Freese's fence was encroaching on the Cardona's property so the village generated a correction notice for the fence to be moved as well as the shed.

Mr. Lee Frederick, 4945 North Bartlett Avenue in Whitefish Bay was sworn in. He is frequently in Ms. Freese's backyard. It is a plastic shed that is higher than the garage roof. It is not a small structure.

Ms. Cardona clarified the height of the shed is 8'7" and not as high as the garage.

Mr. Schmeckpeper does not see any uniqueness of the property to justify a variance. Ms. Nusslock is troubled with application and was told a temporary structure and didn't require a building permit and the term of setbacks, but struggling that a building permit not required because temporary structure and by inference.

Mr. Burris stated that at the time of the patio project and prior to this appeal, the property owners were given an explanation about the three-foot zoning setback as the patio must also comply with the setback. The inspectors always explain about setbacks in conjunction with any structures.

Mr. Schmeckpeper moved that the findings were not made and to deny the appeal application. Seconded by Ms. Nusslock.

Roll Call:

Jeff Schmeckpeper	Yes
Kathy Nusslock	Yes
Lance Mueller	Yes
Beth Aldana	Yes
Mike Paulson	Yes

Motion to deny approved 5-0.

**7. Public Hearing: staff request for reconsideration of granted variance for constructing a parking slab without required garage at rental property 1701-03 N. Menlo Blvd.**

Attorney Bayer stated that the courts in Wisconsin interpreted Shorewood's chapter 535 granting the Board of Appeals authority to reconsider if there was an error. The question is if there was a mistake of fact. First, the village will offer why a mistake of fact or mistake of how the facts were applied to the variance or if there's new evidence that can be applied to the decision. The village is seeking reconsideration at this board instead of circuit court.

Ms. Lang explained there was a mistake of facts. There are new materials provided in packet showing a detached garage overlaid on the property survey. At the previous meeting members discussed that a garage could not fit because of the slope of the backyard. Measurements show a garage can fit. Another mistake is the assumption that there will be a loss of parking spaces. Members also said that the whole block on the south side of East Menlo Boulevard is unique.

Mr. Burris stated that the lot is 47.5 feet by 110 feet deep, larger than 90% of the 40-foot wide residential lots in the village, and the driveway is 12 feet (house to side property boundary) which usually are 8-9 feet wide. Staff overlaid a detached garage and proposed parking slab on the property survey, showing both very similar in area. The survey shows 17 feet from the house to a detached garage without the garage going into the slope in the backyard. Staff contacted a reputable garage builder to determine if a garage would fit in this location. The email in your packet confirms a 20'x22' garage can fit and allow easy access for cars. The minimal standard two-car garage is 20'x20'. The preferred standard is 20'w x 22'd. The garage builder recommended a garage 22'w x 20'd with an 18-foot door versus the standard 16-foot wide door. The garage dimensions were reversed to allow a larger car to easily enter and exit on the west side of the garage. It would be difficult for vehicles to access a parking slab on the west side of a two-car garage, but a parking slab would easily fit adjacent the back of the house.

Appeals applicant Mr. James Curro was present. He agreed a garage can fit on the property, but it would eliminate parking spaces alongside the garage. He disagreed a 20'x22' garage can fit and the driveway is 9 feet wide. He also feels the back slope is greater than 8 feet [staff determined 8 feet from a contour map]

Ms. Lang requested proof of some of Mr. Curro's dimensional conclusions and stated that there is 17 feet measured from the back of the house to where a garage could start.

Ms. Aldana reviewed the previous meeting transcript and noted it was accepted that a two-car garage could fit. Mr. Mueller agreed. Mr. Paulson added that the decision for the variance was only about the loss of parking.

Mr. Burris referenced the zoning code and surrounding parking requirements. Per §535-47 only two spaces in an approved garage is required in the R-6 District for a two-family dwelling. Two more spaces could be added outside of the garage.

Mr. Schmeckpeper stated that the procedures for as long as he has been on the board that the village presents basic facts and the board hears the appellant and makes a decision. He doesn't remember any instance where the village advised the board, opposing or recommending a position. By taking a position, the village has deprived itself from making a case. The fact that the village did not have

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the opportunity to present its views on the loss of parking, he is inclined to allow reconsideration. In the future, if the village has a position, it needs to make it explicit and explain why the first time the board takes up the issue.

Ms. Nusslock inquired if it is a detriment to lose parking and questioned what is the proper application of the facts. She agrees the village has not had an opportunity to present about the argument.

Ms. Aldana noted it would be hard to find that it is a detriment to reduce the number of parking spaces. If in code compliance is there a detriment?

Mr. Paulson said it seems to be a sufficient factual confusion to the extent of loss of parking and application of law and impact on parking.

Mr. Mueller said there was evidence and testimony that there would be a loss of parking spaces and feels the village had the opportunity to respond.

Mr. Burris reminded members that the overlay survey shows that the same number of parking spaces could be maintained with a two-car garage.

Attorney Bayer stated that members need to first answer the question if there was a mistake of fact, how the facts were applied or new evidence.

Mr. Paulson said that it seems there's a sufficient basis for reconsideration regarding facts of parking spaces and moved to reconsider, seconded by Mr. Schmeckpeper.

The attorney reviewed other applications for reconsideration.

Roll Call:

Mike Paulson	Yes
Beth Aldana	No
Jeff Schmeckpeper	Yes
Kathy Nusslock	No
Lance Mueller	No

Motion failed.

**8. Adjournment.**

Mr. Paulson moved to adjourn the meeting at 8:15 p.m., seconded by Ms. Aldana. Motion to adjourn 5-0.

Recorded by,



Planning Director Ericka Lang