



VILLAGE OF SHOREWOOD  
BOARD OF APPEALS MINUTES  
June 8, 2021

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**1. Call to Order**

Ms. Tidwall called the meeting to order at 5:30 p.m.

**2. Roll Call**

Members present: A Michael Paulson, Karen Tidwall, Kara Espera and Wendy Smith (alternate). A quorum was noted present.

Others present: Village Attorney Nathan Bayer, Building Inspector Justin Burris

**3. Statement of Public Notice**

Deputy Clerk Hall stated that the meeting had been posted and noticed according to law.

**4. Approval of May 4, 2021 meeting minutes**

Mr. Paulson moved, seconded by Ms. Espera to approve the May 4, 2021 meeting minutes.

Motion carried 4 – 0.

**5. Approval of May 11, 2021 meeting minutes**

Mr. Paulson moved, seconded by Ms. Espera to approve the minutes of May 11, 2021 with corrections to Pg. 2, 5<sup>th</sup> paragraph, delete “to move” and 6<sup>th</sup> paragraph, 1<sup>st</sup> sentence, delete “side”. Motion passed 4-0.

**6. Attorney to Review Standards by which the Board of Appeals must abide.**

Ms. Tidwall outlined procedures for the meeting and introduced Attorney Bayer who outlined the procedures by which the Board of Appeals (BOA) must abide and the legal standards involved.

Attorney Bayer explained the power of the Board of Appeals to grant variances is granted under §535-55 of the Village of Shorewood Municipal Code. The Board of Appeals can hear and grant variances that are not contrary to the public interest whereby owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purpose of the building code shall be observed and the public safety, welfare and justice secured. Some specific findings must be reflected in the minutes before a request for a variance can be granted. If you decide to grant a variance, you must find the following “(a) Exceptional circumstances. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot, parcel or structure that does not apply generally to other properties in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that this chapter should be changed. (b) Absence of detriment. The variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and the spirit of this chapter or the public interest.”

**6. Consideration of request for a variance of Village Code 225-7 F. (4) & 535.19 F. (5) for the placement of an A/C condenser in the North side yard of the home at residential property 4379 N Wildwood Ave.**

Ms. Tidwall opened the public hearing at 5:43 p.m. Joe Teglia, 4371 N Wildwood supported the change if allowed. Mr. Burris read a voicemail message left by Karine Mitchel, 4364 N Marlborough, who supported this change. Ms. Tidwall closed the public hearing at 5:46 p.m.

Justin Burris, Village of Shorewood Building Inspector was sworn in. Mr. Burris reviewed the packet materials noting that the property owners request a variance to place an A/C condenser located in the North side yard of the property. The proposed location violates both the Building Chapter and Zoning Chapter of the Village ordinances; specifically, **225-7 F. (4)** and **535-19 F. (5)**. Existing

conditions were pulled from GIS map because the Village was not provided with a property survey. Therefore, we do not have the information necessary to insure that if a variance were granted that we are meeting the distances the board would stipulate. The lot size, use and configuration are not unlike the majority of the lots in Shorewood. required. The examples provided of other A/C units that may or may not be meeting setbacks requirements could have been in place prior to the change in ordinance in 2008 or whether they were even permitted.

Mr. Paulson questioned what is the purpose of the requirement that A/C units may not be allowed in the side yard setback? Mr. Burris noted that all/any above-ground structures have to meet the 3' setback; if not required you could perhaps have things butted up against one another making them ineffective. Mr. Paulson also questioned if Planning and Development had granted any permission for an A/C condenser within the sideyard setback without going through the variance procedure? Mr. Burris responded no.

Mr. Wycklendt noted that the documents provided by Village staff showing the survey of the adjacent property shows that the fence is approximately 8' south of the lot line onto his property. The proposed location of the A/C and the fence adding the 8' onto it, would take it 70-71" away from his building making the requested variance even less.

Ms. Tidwall questioned what specifically does staff need to make the determination that the applicant asking in terms of the survey? Can you make a decision without the owners' survey? Mr. Burris said yes it could if the Board would specify not closer than X" from the lot line or if it is within the side yard setback up to but not beyond the property line.

Ms. Smith questioned whether granting a variance in this instance would lead to other A/Cs placed in a sideyard to also require a variance; is this expected to be a repeat request? Mr. Burris responded that it has been a repeated request lately. There have been other requests and some have been granted and some have been denied depending on circumstances.

Mr. Tidwell asked if another purpose of this provision due to aesthetics. Mr. Burris noted that it's less aesthetic versus use and space. Mr. Wycklendt noted that since it would be behind two fences would that not eliminate the issue of aesthetics.

Ms. Tidwall asked if there were any other options for placement of the A/C unit. Mr. Burris noted that the current A/C sits at the rear of the house.

Daniel Wycklendt, 4379 N Wildwood Ave., property owner was sworn in. Mr. Wycklendt noted that the current location of the unit (west side of the house) is that the structure absorbs a lot of heat, not trees to block the sun so the unit works harder. Putting the unit on the north side is 10 degrees cooler which allows for a smaller unit and less electricity, more attractive for self and neighbor, less noise. Not avoid costs because it actually costs more to move the location.

Ms. Smith questioned whether there was anything about the condition of the current placement that prohibits putting the A/C back in the same place? Mr. Wycklendt responded no.

Mr. Tidwall questioned if Mr. Wycklendt had identified any information regarding the environmental impact of one unit (current) vs. the proposed unit? Mr. Wycklendt noted that because of relocating it to the north side it would use 20% less power because it is not working as hard.

Ms. Espera motioned for discussion purposes only that the request for the variance of Village Codes 225-7F.(4) and 535.19F.(5) for the placement of an A/C condenser in the north side yard of the home at residential property 4379 N Wildwood Ave. be granted.

Mr. Paulson noted that clearly the equities lie with the applicant; it's a more efficient (environmental and financial) to place it in the proposed location; there is no detriment to adjacent properties and is not materially contrary to any access, space or use criteria. The logical place is to put the A/C where proposed. However, if we are to read the ordinance in its strictest sense, requiring

extraordinary circumstances in order to grant a variance, we would rarely, if ever, grant a variance. So, given the proximity of the two properties, the fenced in location and the dead space between the two buildings, the location of the neighbor's patio overlooking the current location and the interference this would create for the neighbors on their patio and the compliant space in the backyard for the applicant's patio use, the fact that this A/C takes away valuable space for use in that back patio, provides us with circumstances that impose some difficulty on the part of the applicant to remain compliant with the code without jeopardizing any of the fundamental purposes of the code given the minimal intrusion into the side setback if the unit were placed as close to the applicant's premise as close to possible on the north side, it would make sense to grant the request.

Ms. Tidwall noted that this is a close call due to the reasons noted by Mr. Paulson. Noted that absence of detriment has been proven since the neighbors on both sides of Mr. Wycklendt—Mr. Fox and Mr. Teglia— had no objection to locating the A/C unit on the north side yard setback location; aesthetics is not the issue because it would be located behind a fence; environmental and noise concerns appreciated. Requested location seems to be the most appropriate location for the A/C unit.

Mr. Paulson noted that the Board over the last 6 or 7 years has granted six or so variances for A/C units because of long runs of cabling/tubing, problems with location, etc. Not unheard of to grant variances when there is a good logical practical reason, i.e. open up yard space, looks better; we have granted them. This structure, A/C unit, the intrusion would be minimal with regard to the criteria for space and use in the side yard setback.

Mr. Wycklendt noted that the piping used to go to the condenser would run up the north wall, it would have to go around the side of the building to feed the A/C, an additional 10', in its current location making it subject to heat and direct sun.

Ms. Espera was in agreement with the comments of Mr. Paulson and Ms. Tidwall. Noted that the current neighbors have no complaints about the current location; however, concerned if a larger unit were installed in the current location what issue could arise.

Ms. Smith commented on whether it is an exceptional circumstance related to this particular parcels and whether granting the variance would not be so general or recurrent that it suggests that the chapter should be changed. Are we setting ourselves up to continue granting these variances? Is the solution to not grant variances, but to change the ordinance? Mr. Paulson noted that the concern is legitimate. If it's a difficult decision, wants to follow the law. Our goal is to be equitable and just. When a reasonable, just use of property that is not intruding on public use in any and the equities are in favor of granting it in favor of the applicant. The equities are clearly in favor of the applicant—economically and environmentally—we are not violating the fundamental purposes of the zoning code. There is a risk of the condensed nature of Shorewood, the size of the lots, proximity of property to lot lines, we do open ourselves up to repeated requests. However, the requests over the last few years are few and far between and staff has been good at working out resolutions for applicants and enforcing the code.

Ms. Tidwall noted that perhaps action to make a change to the ordinance may be needed somewhere down the line, but right now we are not there yet.

Ms. Tidwall moved, seconded by Ms. Espera to grant the request for the variance of Village Codes 225-7(4) and 535.19F.(5) for the placement of an A/C condenser in the north side yard of the residential property at 4379 N Wildwood Ave. be granted.

Mr. Paulson proposed a friendly amendment to include after the word yard, "setback with minimum practical intrusion". The Board unanimously consented to the friendly amendment.

Motion as amended was read: Ms. Tidwall moved, seconded by Ms. Espera to grant the request for the variance of Village Codes 225-7F.(4) and 535.19F.(5) for the placement of an A/C condenser in the north side yard setback ,with minimum practical intrusion, of the residential

property at 4379 N Wildwood Ave.

There was no further discussion on the motion as amended.

Motion passed 3-1 on a roll call vote with Ms. Smith voting nay.

Mr. Paulson moved, seconded by Ms. Tidwall to adjourn the meeting at 6:33 p.m.

Respectfully submitted,

Diane De Wind-Hall, Deputy Clerk