

VILLAGE OF WRIGHTSTOWN BOARD OF APPEALS MEETING

A Village of Wrightstown **Board of Appeals** meeting was held at Village Hall, 352 High St., the Conference Room C, on Tuesday, April 4, 2024 at 4:05 pm, following the posted Public Hearing.

Roll Call: Present – Board of Appeals Members: Glenn Buntin, Quinn Cavanaugh, Tim Dole, and Bernie Vickman.

Also Present: Administrator Travis Coenen, Planner Michael Leidig of Robert E Lee & Associates, Deputy Clerk-Treasurer Patti Leitermann, Charles Demske, Dale Demske, Nancy Demske, Adam Magnuson, Dan Meissner, and Chad Cornette.

BOARD OF APPEALS MEETING

Motion was made by B Vickman with a second made by T Dole to call the **April 4, 2024** Board of Appeals meeting to order. **Motion carried.**

Motion was made by G Buntin with a second made by B Vickman to appoint Q Cavanaugh as chairman for the proceedings. **Motion carried.**

This sign application for a variance from Municipal Ordinance 206 **§206-16**, of the Village of Wrightstown, received from Village of Wrightstown for Gnarly Cedar, 420 Washington Street, Village Parcel VW-131-1.

Applicant requests to adjust the typical minimum 35' OHWM Setback from 35' to 11'. This variance application is not requesting any additional tree removal from what is allowable in the Village Code.

Chapter 208. Shorelands and Wetlands Zoning
§ 208-16 Reduced building setbacks

A setback less than the normal seventy-five-foot setback required may be permitted for a principal building by the Zoning Administrator on the Fox River and natural navigable waters where there is at least one principal building within 300 feet on either side of the subject lot that is built less than the required setback. In such case, the setback shall be the average of the setbacks of the nearest principal building on each side of the proposed site, or, if there is an existing principal building on only one side, the setback shall be the average of the existing building's setback and the required setback. No structure shall be permitted closer than 35 feet to the ordinary high-water mark using setback average unless a variance is obtained from the Board of Appeals pursuant to § 208-42 of this chapter. This section does not apply to navigable agricultural and roadside ditches.

Planner Michael Leidig outlined Variance Review as follows:
A. **Variance Request** - 206-16 as stated above.

Applicant is seeking a variance from the Board of Appeals to adjust the typical minimum 35' OHWM Setback from 35' to 11'. This variance application is not requesting any additional tree removal from what is allowable in the Village Code.

- B. **Background** – Gnarly Cedar is seeking a variance to reduce the typical OHWM setback to allow for structures to be closer to the Fox River than would typically be allowed. Normally, this setback is 75' from the OHWM line; however, this can be adjusted through averaging and by planning and the Plan Commission down to a minimum of 35'. Currently, the existing building is just at the 35' setback line at its closest point. Some structures (small patios, gazebos, boat houses, etc.) are exempt from this standard; however, commercial and largescale applications such as this are required to meet the 35' setback. Applicants seek to have a patio area with chairs and tables for outdoor service along with fencing, landscaping, paved drive areas, a trash enclosure, and a building expansion in this typical setback. Encroachments into the typical setback vary from a few feet for the building to 24' for the fencing and patio.
- C. **Streets and Transportation** – There are no street or transportation concerns with this variance.
- D. **Sewer and Water** - The proposed variance is not proposed to impact any sewer or water utilities.
- E. **Zoning** - The parcel is currently zoned B-1 Business. However, the variance that is being applied for is not zoning specific. The variance would apply equally to any zoning on the property, and deals with the setbacks for structures, not for structures in particular zonings. This variance would travel with the land, so should the property be later sold, and the new owner agree to comply with all conditions laid out here, that owner may also encroach into the OHWM setback.
- F. **Variance Issuance Requirements** - Per Section 206-60 (C), The board of appeals shall not vary the regulations as set forth unless it shall make findings based upon the evidence presented to it in each specific case that:

1. Because of the particular surroundings, shape or topographical condition of the specific property involved a particular hardship to the owner would result, as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out. Hardship is defined generally as a condition that would unreasonably prevent the owner from using the property for a permitted use or be unnecessarily burdensome in view of the ordinance purpose.

The parcel is a unique shape which restricts the ability to construct improvements in the back yard because of the proximity to the OHWM. While the current building is compliant with the OHWM setback of 35', the applicant states that they must encroach into the setback for parking, trash enclosures, patio seating areas, fencing, and a proposed building expansion for storage. The Applicant's hardship statement is attached. Each of these encroachments into the typical setback vary in distance from a few feet (building expansion) to 24' for the patio and fencing.

2. Conditions upon which a petition for a variation is based are unique to the property for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

This property is unique in the Village of Wrightstown. The existing parcel's triangular nature, along with its proximity to the Fox River and limited width makes it different from any other current parcel in the Village, and more difficult to develop because of these conditions. Given the current uses in the Village and current parcel sizes, this variance is also unique to this property and not broadly applicable to other properties in the same zoning. This is not to say, however, that a parcel could not be rezoned and developed for a commercial use and put in a similar situation to this, but in that case, there may be other opportunities to avoid a similar situation, such as a greater parcel depth more conducive to a larger setback.

3. The alleged difficulty or hardship is caused by this chapter and has not been caused by any person presently having an interest in the property.

This lot was created, and building built prior to any person having a current interest in the variance and thus this section is satisfied.

4. Granting of the variation shall not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

The granting of this variance is not predicted to be detrimental to the public welfare or injurious to other property or improvements. The proposed variance is only predicted to benefit the proposed parcel, with no impact to adjacent parcels.

5. Proposed variation shall not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property value within the neighborhood.

Because the variance is seeking to allow for structures to be placed closer to the water line, and given that this is near a steep decline, there is a concern that these structures could creep too close to the increase in slope creating increased risk of failure. However, elsewhere in the Village Code there are requirements for a geotechnical study to be completed when structures are proposed to be this close to the critical slope and its recommendations must be followed as a requirement of approval of any site plan. This requirement is not being altered here. Ordinary High Water Mark setbacks are not intended to protect structures from the watercourse, rather it is intended to protect the water course from structures. Because of this, the applicant will need to follow these safety recommendations, and therefore staff does not have concerns regarding public safety due to this specific variance. Staff does not foresee this to be detrimental to the neighborhood in which the property is located.

G. Recommended Conditions of Approval – should the Zoning Board of Appeals vote to approve this variance, recommended conditions are listed below:

1. Existing vegetation in the 35' OHWM setback shall not be altered without prior approval of the Board of Appeals, except as provided in Section 208-22 (B).

2. All other Village, County, State, and Federal applicable rules and regulations shall be followed.

The Board of Appeals engaged in a discussion regarding the Variance Request and discussed the following:

- D Meisner talked about the geotechnical soil report, which has already been completed.
- B Vickman asked about closeness to the river. The patio will also be put towards the river.
- Q Cavanaugh commented that this will be a good use for the building.

Gnarly Cedar Variance Request, 420 Washington Street, Parcel VW-131-1 – Motion made by T Dole with a second made by B Vickman to approve the variance request. 4 Yes votes.
Motion carried.

ADJOURN – Motion made by T Dole with a second made by G Buntin to adjourn. **Motion carried.** (Adjourned at 4:26 pm)

Patti Leitermann, Deputy Clerk/Treasurer