

**Wednesday, November 13, 2024**

**5:00 PM**

**McFarland Municipal Center**  
5915 Milwaukee St, McFarland  
*Community Room*

AGENDA

The public may attend in-person or remotely through the Zoom webinar or telephone options listed below.

*Please Note: Virtual attendance is offered as a convenience, but technical difficulties beyond the Village’s control may prevent or limit its availability at any meeting. The public is encouraged to attend the meeting in person to assure full access to the proceedings.*

PLEASE CLICK THE LINK BELOW TO JOIN THE ZOOM WEBINAR: <https://us02web.zoom.us/j/87349634753>.

Or by Telephone: +1 (312) 626-6799

Webinar ID: 873 4963 4753

Press \*9 to raise/lower hand. Press \*6 to mute/unmute.

1. CALL TO ORDER, ROLL CALL.

2. PUBLIC APPEARANCES.

- a. This is an opportunity for members of the public to address the Board of Zoning Appeals for items that are not on the agenda. Please remember this is a hybrid meeting conducted in person and through the Zoom online meeting platform. Meeting attendees wishing to address the Board about items not on the agenda may do so at this time. Zoom attendees should type their name and address in the Question and Answer feature within the Zoom online meeting platform at this time. Members of the public who are present in person and wish to address the Board should fill out a public comment form and turn into the meeting chairperson. When you are called upon to speak, state your name, address, and provide your comments to the Board for their consideration. Please adhere to the 3-minute time limit. Additionally, you may send your public comments to [community.development@mcfarland.wi.us](mailto:community.development@mcfarland.wi.us) to be included as part of the meeting.

Members of the public may also speak during their selected agenda item as they designate on the public comment form or in the Question and Answer feature on Zoom.

3. APPROVAL OF MINUTES.

- a. Motion to approve the minutes of the November 8, 2023, Board of Zoning Appeals meeting.

4. ANNOUNCEMENT OF PROCEEDINGS

- a. Review of meeting proceedings.

5. PUBLIC HEARING

- a. Public hearing on an Area Variance requested by Clifford and Jean Gidlund, 4707 Yahara Drive, for a variance to the side yard setback requirements of Sec. 62-70 to construct a sunroom.

6. BUSINESS.

- a. Discussion and action on an Area Variance requested by Clifford and Jean Gidlund, 4707 Yahara Drive, for a variance to the side yard setback requirements of Sec. 62-70 to construct a sunroom.

7. SCHEDULE NEXT MEETING DATE.

- a. To be determined

8. ADJOURNMENT.

Any person who has a qualifying disability as defined by the Americans with Disabilities Act that requires the meeting or materials at the meeting to be in an accessible location or format should contact the McFarland Municipal Center at (608)838-3153, 5915 Milwaukee Street, McFarland, Wisconsin, or [village.clerk@mcfarland.wi.us](mailto:village.clerk@mcfarland.wi.us) by 2:00 p.m. at least 5 business days prior to the meeting so that any necessary arrangements can be made to accommodate each request. If the meeting or request is less than 5 business days from the meeting, requests for accommodations may still be made and reasonable efforts will be made to accommodate each request.

## **Board of Zoning Appeals**

### **Working Draft Minutes**

**November 8, 2023**

Members Present: Gordon Kinder, John Robertson, Ken Brost, Blake Draper  
Members Absent: Art Luetke, Joe Rademacher (Alternate), Jeff Sorenson (Alternate)

Staff Present: Andrew Bremer, Jim Trebian, Kong Thao

#### **1. CALL TO ORDER**

Kinder called the meeting to order at 5:00 p.m with a quorum of regular members present. No alternate members were in attendance at the meeting. There were no conflicts of interest with the Board members reported.

#### **2. PUBLIC APPEARANCES.**

Attendees in the meeting room did not wish to speak at this time. There were not attendees virtually.

#### **3. APPROVAL OF MINUTES.**

- a. Motion to approve the minutes of the October 3, 2023 Board of Zoning Appeals meeting. Motioned by Robertson and seconded by Brost to approve the October 3, 2023 Board of Zoning Appeals minutes. Motion passes 4-0.

#### **4. ANNOUNCEMENT OF PROCEEDINGS**

Bremer provided background on the purpose and authority of the Board of Zoning Appeals, the announcement of proceedings, and procedure for the meeting as included in packets.

#### **5. PUBLIC HEARING**

- a. Public Hearing on an Administrative Appeal filed by Chase Lumber concerning an order to remove several exterior shelving structures located at 5417 Long Street, McFarland, WI as an illegal expansion of a nonconforming use in the C-C Central Commercial zoning district.

Prior to Staff's Summary of the Appeal, Matthew Fleming, Murphy Desmond Lawyers, the attorney representing the Applicant (hereby referred to as Attorney Fleming), requested items 5a. and 7a. from the agenda item be combined to avoid repeated opening statements. Bremer affirmed there could be duplicate testimony, however, recommended maintaining the agenda as presented as they are two separate appeal applications, and each application was noticed as a separate public hearing. Kinder upheld the agenda for the meeting as presented for two separate public hearings. Bremer provided summary on the agenda item indicating with photos, approximate location and dates of the associated outdoor storage structures and order to remove.

Kinder opened the public hearing at 5:11 p.m.

**Applicant Opening Statement.** Attorney Fleming began his opening statement by referencing the Village Code's definition of structure, then stating the racks in question are not a permanent structure on the property and are movable as necessary. Attorney Fleming states the racks do not extend or expand the legal nonconforming use that exists on the property because of the existing use. Attorney Fleming references *Crowley v. Knapp*, 94 Wis. 2d 421 1980, a Supreme court case as a rebuttal to the Village Attorney's letter included in the packet.

**Staff Opening Statement.** Bremer stated the situation arose when Staff and the Building Inspector observed the construction of the structures without a valid building permit or site design review permit. A letter was sent on August 1<sup>st</sup>, 2023 notifying the owner that the structures constituted an unlawful expansion and an illegal expansion of the nonconforming use. Bremer affirms the associated racks fall within the Village's definition for a structure, with the opinion supported by the Village Attorney in his memo. Continuing, Bremer stated the structures do require a permanent location to be used and disassembly and relocation of the structures still maintains a permanent location when used on the property. Bremer references Village Ordinance and State Statutes related to prohibitions on the expansion of legal nonconforming uses and the exception regarding alterations to existing structures within the limits of the 50% assessed value, but not the allowance of new structures that expand a nonconforming use.

**Applicant Case.** Eli Bliffert, Vice President of Bliffert Lumber and Hardware, Owner of Chase Lumber and Fuel spoke for their application. Bliffert recited the oath. Attorney Fleming prompted Bliffert's testimony by asking a series of questions. Attorney Flemming asked Bliffert to state his name and employment. Further Attorney Flemming asked Bliffert about his presence for the meeting and understanding of the opening statements provided. Bliffert stated yes. Attorney Flemming asked what Bliffert's association was with the property and his understanding of the meeting concerning the Administrative Appeal. Bliffert stated they own and operate the lumber yard on the property. Attorney Flemming asked Bliffert to describe the uses regarding the lumber racks. Bliffert confirmed the racks are for the safe storage of lumber material on the property. Attorney Flemming asked to provide detail on the location where the racks were placed, how was the area historically been used, prior to the racks. Bliffert stated that in speaking with current employees at that location, there have been lumber where the racks were for more than 50 years. Attorney Flemming asked if he was present or involved in the construction of the racks. Bliffert affirmed he was present and involved during that process. Attorney Flemming asked if the racks were movable. Bliffert confirmed the racks to be movable and not permanent citing for example that relative to the activity at their location, they are moved according to the season or moved as needed. Attorney Flemming asked why the racks are located where they are currently. Bliffert stated the selected location is because of their convenience and safety to the area based on the activity on the property. Attorney Flemming asked if the racks can be moved and placed in other parts of the property. Bliffert affirmed that the racks are movable, not permanent, and can be moved every week

if desired. Attorney Flemming asked if the racks are commonly used among other lumber yard industries. Bliffert confirmed they are the most common racks used, and Bliffert uses them among his other 11 sites.

Zoning Administrator Cross Examination. Bremer inquired if there were existing racks on the property prior to Bliffert's acquisition of the property at the locations in question. Bliffert confirmed they were new racks.

BZA Questions. Brost asked Bliffert if they were aware the Village did not want the business at the location. Bliffert affirmed they knew about the nonconforming use of the property. Robertson asked Bliffert if he understood what legal nonconforming was. Bliffert affirms he does as he owns another parcel of land that is legal nonconforming in the City of Oak Creek. Draper asked Bliffert about the activity necessary to move the racks. Bliffert stated with the use of onsite forklifts.

There were no redirect questions from the Applicant or Attorney Flemming.

Zoning Administrator's Case. Bremer's comments highlighted several items included in the staff summary report addressing the applicant's rationale for allowing the structures to improve curb appeal, snow removal, safety as not sufficient to grant the appeal; the Village Attorney's letter, identifying the racks as structures, and requirements for site design review permit proceedings with the Plan Commission per each potential relocation of the structures. Bremer states the structures are what expand the nonconforming use and therefore his reasons for the Administrative Appeal's denial. There were no witnesses for the Zoning Administrator, but mention that the Village Building Inspector, Jim Trebian, was attending the meeting via ZOOM and is available for any questions or testimony if needed.

Applicant Cross Examination. Attorney Flemming asked Bremer if the Village did not want the business at the location. Bremer stated the question was a matter of opinion by the Board member and not reflective of the Village or its staff, followed by references to existing plans and existing zoning for the property which do not plan for a lumber yard at this location or allow it as a permitted or conditional use. Attorney Flemming asked if the future of the site is not for indefinite continued use of a lumber yard. Bremer affirmed. Attorney Flemming asked if it is the Village's intention to force the business off its site? Bremer stated no. Attorney Flemming asked if it is the Village's contention that any relocation on a legal nonconforming parcel constitutes a legal nonconforming use. Bremer stated the contention is the addition of the new structure represents an expansion of the nonconforming use which is not allowed under Village ordinances or State Statutes. Trebian recited the oath before Attorney Flemming asked Trebian if he heard Bremer's testimony on the Wisconsin commercial building code applies to the racks. Trebian stated he did not hear that testimony, but by ordinance and definition, the racks are a structure, but not stated as commercial building code. Attorney Flemming asked Trebian, to his knowledge, if there was any provision of the Wisconsin commercial building code provides standards for the racks. Trebian commented that he would be unable to answer

the question as it is a large code, and unaware he would be answering questions related to the commercial code.

**BZA Questions.** Brost asked Bremer about the implications of new zoning districts for existing businesses that are not included. Bremer stated that new zoning would render the existing business a legal nonconforming use and the business can continue to operate under the municipal ordinance and state statutes. Robertson asked if the outcome have been the same if the Owners completed the necessary forms (building permit and site design review permit). Bremer stated the actions would have still required a variance process. Draper asked Bremer to provide rationale as to why the racks are a structure. Bremer stated that the racks can be bolted to the ground if not already and referenced the Village Attorney's letter and their rationale as consistent with his opinion.

**Opinion Testimony.** Bremer stated the Department did not receive any letters or testimony prior to the publication of the meeting's packet or the meeting. There were no attendees in-person and virtual who wished to speak on the item.

**Opinion Testimony Rebuttal by Applicant and Zoning Administrator.** Attorney Flemming asked Bliffert to clarify if the racks were bolted or affixed to the ground. Bliffert stated the racks are not bolted to the ground, but they run a spike down when they are erected to help hold them up. Bremer asked Bliffert if the racks have the potential to be bolted down. Bliffert stated they can be bolted to concrete.

**Applicant's Closing Statement.** Attorney Flemming's closing statement included the discussion had with legal nonconforming use and its intended process while not intended to force a business out, the lengthy procedures with obtaining the permits as mentioned, the Village's ordinance definition, and that restating the racks are not permanent structures. Attorney Flemming states for the Board to affirm the applicant's appeal.

**Zoning Administrator's Closing Statement.** Bremer's closing statement included his shared opinion, supplemented by the Village Attorney's review, identifying the racks as structures by the definition, and therefore require a building permit for an accessory structure. Whether they are a principle structure or accessory structure, they require a building permit under the zoning code, and as such would require a site design review permit. To state the racks are not structures and not require permits, implies the any number of racks can be erected on the property. This could substantially change the property by increasing the nonconforming use on the property. With what was provided in the staff report, there is enough evidence for the administrative appeal to be denied.

Kinder closed the public hearing at 5:56 p.m.

## 6. BUSINESS.

a. Discussion and action on an Administrative Appeal filed by Chase Lumber concerning an order to remove several exterior shelving structures located at 5417 Long Street, McFarland, WI as an illegal expansion of a nonconforming use in the C-C Central Commercial zoning district.

The Board's discussion on the item included past storage activities on the property, continued operation of businesses, the interpretation of the racks and if they can be considered a structure, procedural duties of the Board as a body rather than a legislative approach, the opinions regarding what a permanent structures is, and the ambiguity of the subject.

Brost motioned to approve the administrative appeal filed by Chase Lumber concerning an order to remove several exterior shelving structures located at 5417 Long Street, McFarland, WI in the C-C Central Commercial zoning district. Robertson seconded the motion.

Draper voted aye with reasons citing the definition of a structure as reasonings why the rack is not considered a permanent structure, as they are not affixed or permanently attached to the ground. Robertson voted aye with reasons on interpreting the item as not a permanent structure because it can be moved, while the interpretation remains ambiguous. Brost voted aye with reasons that he did not interpret the racks as permanent structures. Kinder voted nay with reasons interpreting the racks as structures, the ambiguity of the racks, while also being avoidable as it was self-imposed given their proximity to the Village. Additionally, Kinder stated that the Village was not intended to relocate a non-conforming business, while the construction of any moveable or otherwise, does not align with the code. Motion passes 3-1 with Kinder voting nay.

## 7. PUBLIC HEARING

- a. Public Hearing on an Area Variance Application filed by Chase Lumber concerning the placement of several exterior shelving structures located at 5417 Long Street, McFarland, WI. Property zoned C-C Central Commercial zoning district.

A short recess was taken from 6:14pm - 6:17pm following item 6a.

Kinder opened the public hearing at 6:18 pm. Bremer provided a summary for the request and included the results from 6a. There were no attendees in the room wishing to speak and none attending on zoom. On behalf of the Owner, Attorney Flemming withdrew the Area Variance Application given the Administrative Appeal was approved. Staff accepted the withdrawal. Kinder closed the public hearing at 6:20 PM.

## 8. BUSINESS

- a. Discussion and action on an Area Variance Application filed by Chase Lumber concerning the placement of several exterior shelving structures located at 5417 Long Street, McFarland, WI. Property zoned C-C Central Commercial zoning district.

Agenda item withdrawn.

## 9. SCHEDULE NEXT MEETING DATE.

- a. To be determined.

10. ADJOURNMENT.

Brost motioned to adjourn, seconded by Robertson. Motion passed 4-0. Meeting adjourned at 6:21 p.m.

## Board of Zoning Appeals - Announcement of Proceedings

*This script is meant to be reviewed at the beginning of the Board of Zoning Appeals meetings so that applicants and members of the public who are not familiar with Board of Zoning Appeals learn 1) what a Board of Zoning Appeals is 2) what Wisconsin laws require that Board of Zoning Appeals base their decisions on and 3) what to expect during a Board of Zoning Appeals public hearing.*

The Board of Zoning Appeals (BZA) functions like a court, and must follow state laws and local zoning ordinances. The BZA cannot change or ignore any part of the zoning ordinance or state laws, but must apply the laws as written. The BZA may only grant a variance, special exception or administrative appeal if the applicant provides evidence showing that they meet all of the standards for that decision. The legal standards the BZA will use to decide on each Area Variance application have been provided to the applicant and are found within Sec. 62-366(e) of the Village of McFarland Municipal Code of Ordinances, and as provided on page three.

- Opening of Public Hearing.** The public hearing will be opened by the Chair.
  - Witness appearing during the public hearing will be asked to state their name, address, and the following oath:

*I solemnly and sincerely declare and affirm that the evidence I shall give will be the truth, the whole truth, and nothing but the truth.*

- Summary of Appeal.** Village Staff will summarize the appeal requested.
- Opening Statements.** Either party can waive their opportunity for an opening statement. Please adhere to a 5-minute time limit.
  - Applicant (or applicant's agent)
  - Zoning Administrator
- Applicant's Case.** The applicant shall present its case including the reasons and evidence to support why they think they meet the standards for approval of the application. Please adhere to a 15-minute time limit.
  - Witnesses. The applicant may call witnesses.
  - Zoning Administrator Questions. Village Staff may ask questions of the applicant or their witnesses (cross examination).
  - BZA Questions. The BZA may ask questions of the applicant, its agents, or Village staff (examine witnesses).
  - Applicant Redirect. Applicant may provide re-direct testimony of their witnesses.
- Zoning Administrator's Case.** The Village Zoning Administrator, or representative, will review the staff report in the meeting packet and summarize reasons and evidence to support or deny the application. Please adhere to a 15-minute time limit.
  - Witnesses. The Zoning Administrator may call witnesses. Any witnesses of the Zoning Administrator will be sworn in before testifying.
  - Applicant Questions. The Applicant may ask questions of Village Staff or their witnesses (cross examination).

- BZA Questions. The BZA may ask questions of the applicant, its agents, or Village staff (examine witnesses).
- Zoning Administrator Redirect. Village Staff may provide re-direct testimony of their witnesses.
- Opinion Testimony (general public).** The Board of Zoning Appeals may accept opinion testimony and written testimony from interested parties, which shall not be subject to cross-examination, however, any party may introduce any rebuttal testimony addressing any factual issues raised.
  - Written Testimony. Public statements provided to Village Staff prior to the meeting will be read or included in the meeting packet.
  - In-Person Testimony. Members of the public may present opinion testimony for or against the appeal application. Please adhere to a 3-minute time limit.
  - Virtual (Zoom) Testimony. Members of the public may present opinion testimony for or against the appeal application. Please adhere to a 3-minute time limit.
- Opinion Testimony Rebuttal**
  - Applicant. The Applicant may provide rebuttal testimony addressing any questions for factual issues raised during the opinion testimony.
  - Zoning Administrator. The Zoning Administrator may provide rebuttal testimony addressing any questions for factual issues raised during the opinion testimony.
- Closing Statements.** Either party can waive their opportunity for a closing statement. Please adhere to a 5-minute time limit.
  - Applicant
  - Zoning Administrator
- Close the Public Hearing.** The Chair will close the public hearing.
- Business.** The BZA will deliberate the application or appeal and decide<sup>1</sup> whether the applicant has met the standards for approval. Final decisions shall be made by a majority of the members present. In making its determination, the BZA shall state reasons for the BZA's determination.

The Board of Zoning Appeals shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

Following the meeting Village Staff will provide a written summary of the BZA's decision to the applicant. Any person aggrieved by any decision of the BZA may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the offices of the Board of Zoning Appeals.

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<sup>1</sup> Per Sec. 62-365(a) the BZA shall render its decision either at the termination of the hearing or within 30 days thereafter.

**Sec. 62-366(e) Standards for Granting Area Variances.**

- (1) Unnecessary hardship. Variances shall be granted only where the applicant demonstrates the existence of an unnecessary hardship. An unnecessary hardship exists where compliance with the strict letter of the restrictions governing the property would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. When considering any variance, the Board of Zoning Appeals shall determine whether the particular restriction in question is unnecessarily burdensome in light of the underlying purpose of that restriction. The purpose of the regulation shall be the primary concern, not the burden upon the property owner. Variances may not be granted where they are contrary to the public interest or where granting the variance would violate the spirit of the regulation. A use variance may not be granted unless it is proved that there can be no reasonable use of the property absent a variance. The Board of Zoning Appeals shall consider the following factors to determine whether an unnecessary hardship exists to justify issuance of an area variance:
  - a. The purpose of the zoning restriction in question;
  - b. The effect of the restriction on the property; and
  - c. The effect of a variance on the neighborhood and the larger public interest.
- (2) Hardship may not be self-imposed. Variances may not be granted to remedy self-imposed hardships.
- (3) Hardships must be unique to the property. Where the same hardship is imposed upon other properties in the zoning district, a variance shall not be granted.

  
**VILLAGE OF**  
**McFarland**  
**SUMMARY SHEET**

**MEETING DATE:** Wednesday, November 13, 2024

**SECTION:** Business

**DEPARTMENT:** Community Development

**CONTACT:** Andrew Bremer, Comm & Eco Dev Director

**AGENDA ITEM:** Public hearing on an Area Variance requested by Clifford and Jean Gidlund, 4707 Yahara Drive, for a variance to the side yard setback requirements of Sec. 62-70 to construct a sunroom.

**PREVIOUS ACTION:**

**ISSUE SUMMARY:**

Clifford and Jean Gidlund, 4707 Yahara Drive, are requesting an Area Variance to the minimum side yard setback requirements to construct a sun room addition to their single family home.

The addition would be located on the east side of the home where an existing deck is located.

The proposed sun room is approximately 20'W x 10'D. Refer to the Proposed Site Plan within the application. The property is zoned R-1B Single Family Residence. The minimum required side yard setback under Sec. 62-70 of the Zoning Code is 7 feet. A portion of the proposed sun room is 5'5" from the side lot line. Note, the applicant mistakenly completed Section B, Use Variance on their application but struck that section and completed the applicable Section C, Area Variance.

**Sec. 62-366(e) Standards for Granting a Variance**

Sec. 62-366(e) provides the standards by which an area variance may be granted. In order for an area variance to be granted, the Board of Zoning Appeals must determine that all the standards are met.

- The Purpose of the Zoning Restriction in Question. The BZA shall determine whether the particular restriction in question is unnecessarily burdensome in light of the underlying purpose of that restriction. The purpose of the regulation shall be the primary concern, not the burden upon the property owner. The granting of the variance should not be so general or recurrent in nature as to suggest the Zoning Code should be changed.
  - Applicant's Response. *"The variance will only be a minor change to the side yard setback. Without the variance the sun room cannot be built as designed, and the only lawful use would be as a deck."*
  - Staff's Response. The purpose of minimum side yard setback requirements includes regulating lot coverage, the intensity of use of lot areas and the size and location of all structures so as to prevent overcrowding and provide adequate sunlight, air, sanitation and drainage; to prohibit uses, buildings or structures incompatible with the character of development or intended uses within specified



zoning districts; and to protect the character and the stability of the residential districts within the Village and to promote the orderly and beneficial development thereof (Sec. 62-5 of the Zoning Code). The applicant has not provided justification regarding why the proposed sun room can't be redesigned to meet the minimum 7' side yard setback. In addition, granting of the variance based on the premise that it can't be built as designed would likely be so general or recurrent in nature as to suggest the Zoning Code should be changed. Other property owner's in the Village could simply make the same claim. It is the underlying purpose of the Zoning Code that building designs follow the code, not the other way around. In staff's opinion, the applicant's response does not meet the standard.

- The Effect of the restriction on the Property. An unnecessary hardship exists where compliance with the strict letter of the restrictions governing the property would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
  - Applicant's Response. *"Reasonable use of the property is still possible without the variance."*
  - Staff's Response. By the applicant's own admission, denial of the variance would not unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Single family residential is a permitted use in the R-1B district and denial of the area variance would not unreasonably prevent the owner from continuing to use the property as a single family residence. The ability to have a sun room is not necessary for the preservation and enjoyment of substantial property rights. In staff's opinion, the applicant's response does not meet the standard.
  
- The Effect of a variance on the neighborhood and larger public interest. The BZA shall determine that granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.
  - Applicant's Response. *"The granting will only put a structure 1.5 feet closer to the neighbor."*
  - Staff's Response. More accurately, only a portion of the proposed sun room will be 1.5 feet closer to the neighbor than allowed by right. The amount of the proposed sun room that conforms to the minimum 7-foot setback requirement is not shown in the Proposed Site Plan. However, it appears that the majority of the proposed sun room meets or exceeds the minimum 7' side yard setback requirement. In staff's opinion, it is reasonable to assume that the portion of the sun room that would be non-conforming to the side yard setback would not be detrimental to the public welfare or injurious to the adjacent neighbor to the east



(4711 Yahara Drive, Brautigam), although it should be noted that neighbor submitted a letter of opposition, but did not include why they are opposed to the granting of the variance. The submittal of a letter of opposition by adjacent property owners is not in itself sufficient justification to deny a variance request unless the BZA determines the public comment is relevant to the particular standards for granting or denying a variance under Sec. 62-366(e).

- Hardship may not be self-imposed. Variance may not be granted to remedy self-imposed hardships.
  - Applicant's Response. *"I was not aware of the exact location of the property line or what the setback regulation was at the time the sun room was designed."*
  - Staff's Response. It is the responsibility of the property owner, or their contractors, to understand where property lines are located and the minimum setback requirements under the Village's Zoning Code. The applicant has not provided sufficient justification regarding why the proposed sun room can't be redesigned to meet the minimum 7' side yard setback. Prior to submittal of the variance application, the property owner indicated to staff that their builder (Great Day Improvements) would not release them from their contract unless the Board of Zoning Appeals denied a variance request, and they were not interested in redesigning the sun room to meet the setback requirements. In staff's opinion, the applicant's response does not meet the standard.
  
- Hardship must be unique to the Property. Where the same hardship is imposed upon other properties in the zoning district, a variance shall not be granted. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district. The conditions upon which a petition for a variance are unique to the property for which the variance is being sought and that such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and vicinity.
  - Applicant's Response. *"The house is not built such that it is parallel to the property line."*
  - Staff's Response. Staff concurs with the applicant; however, as built, the orientation of the house actually provides more side yard space to construct a sun room addition as a portion of the west side of the house is non-conforming to the minimum 7-foot setback to the west side lot line. The lot meets the minimum width (50') and lot area (6,000 square feet) requirements of the R-1B district, so there are no unusual circumstances or conditions that apply to the lot that do not apply to other properties in the R-1B district. In addition, the ability to have a sun room is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the R-1B district or neighborhood. The applicant can continue to use the property for a permitted



use. In staff's opinion, the applicant's response does not meet the standard.

- Purpose must not be financially motivated. The purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property.
  - Applicant's Response. *"The purpose of the variance is to build a sun room to be able to enjoy the property more."*
  - Staff's Response. While the addition of the sun room would likely increase the assessed value or income potential of the property, the desire for the sun room addition does not appear to be exclusively based on these reasons. The property is owner-occupied and there is no requested or permitted Tourist Rooming House Permit related to this variance request to increase the income potential of the property. However, as noted earlier, prior to submittal of the variance application, the property owner indicated to staff that their builder would not release them from their contract unless the Board of Zoning Appeals denied a variance request. Therefore, there does appear to be some financial motivation not to expand additional funds in an attempt to design the sun room to meet the minimum setback requirements.

**Public Comments**

The packet includes five letters of opposition to the proposed area variance request from adjacent property owners.

**FINANCIAL/BUDGET IMPACT:**

**VILLAGE PLAN REFERENCE:**

The property is identified within the Single Family Residential future land use category in the Village's 2017 Comprehensive Plan.

**ORDINANCE REFERENCE:**

62-12(e)(4) Permitted obstructions in required side yards  
62-70 Bulk Standard-Residential Districts  
Sec. 62-366(e) Standards for Granting a Variance

**BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:**

This agenda item is for discussion only. Action on the variance application will be considered under Agenda Item 6.a.

**ATTACHMENTS:**

1. 4707 Yahara Drive BZA Application\_08.30.24
2. Clif Gidlund email regarding Building Code Variance Requests\_08.08.2024
3. Brautigam Variance Opposition - 10.9.24
4. Hardiman Variance Opposition - 10.7.24
5. Justesen Variance Opposition - 10.8.24
6. Kress Variance Opposition\_10.07.24



7. McElroy Variance Opposition\_10.08.24

**Application for Administrative Appeal,  
Use Variance, and Area Variance**

**TO: The Board of Zoning Appeals, Village of McFarland, WI**

*Per Sec. 62-363(e), a filing fee of \$450.00 is required with each application submittal. The Applicant is responsible for publication fees and notification charges, plus actual legal, engineering and financial consulting costs incurred by the Village, to be billed later. No permits can be issued until all monies owed are paid. Filing fee is non-refundable.*

NOTE: The Village recommends all Applicants read the "Letter to Applicants" as supplemental to the purpose and intent of this application. Applicants are encouraged to submit additional pages to answer application questions in full as needed.

|   |                                     |
|---|-------------------------------------|
| <b>Name of Appellant/Applicant</b>                            | Clif and Jean Gidlund               |
| <b>Address</b>  | 4707 Yahara Dr, McFarland, WI 53558 |
| <b>Owner's name/address<br/>(if different than Applicant)</b> | Clif and Jean Gidlund               |
|   | 4707 Yahara Dr, McFarland, WI 53558 |
| <b>Phone</b>  | (715) 298-0267                      |
| <b>Email</b>  |                                     |
| <b>Address of Property</b>                                    | 4707 Yahara Dr, McFarland, WI 53558 |
| <b>Parcel No.</b>   | 154/0610-033-4111-6                 |
| <b>Lot #</b>  |                                     |
| <b>Lot Size</b>   | 6,660                               |
| <b>Current Use of Property</b>                                | Single-Family                       |
| <b>Proposed Use of Property</b>                               | Single-Family (No Change)           |
| <b>Zoning Classification</b>                                  | Residential                         |

Applicants should complete Sections #1, #3, and #4 and either Sections 2A, 2B, or 2C on the following pages.

- 1) **Prior Appeals/Variations.** Has there been a past appeal or application with respect to this property?  Yes  No (If yes, provide a summary of the previous appeal below.)

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Disposition of previous appeal: \_\_\_\_\_

Date of decision in previous case: \_\_\_\_\_

How does this appeal differ from the previous request?

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- 2) **Stating the purpose and grounds of your appeal.**

Check the box (A, B or C) which best meets the relief request of your appeal then answer only those questions within that section. You may include an attached sheet with your response if there is not enough space.

**(A) Administrative Appeal.**

This request is for a review of zoning ordinance and/or petition of order, requirement, decision, or determination of administrative official. Please include any additional documentation, letters or forms you received which is associated with this appeal. Use the lines provided below stating the reasons why you claim this order, requirement, decision, or determination is erroneous.

1) Date of notice of such decision received by applicant: \_\_\_\_\_

2) In the lines below, provide a summary of the order of administrative official from which appeal was taken:

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3) In the lines below, provide reasoning why the requirement, decision, or determination is erroneous.

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*IGNORE*

(B) Use Variance

Any use variance granted shall be limited to the specific use described in the BZA decision and shall not permit variances in yard, area, or other requirements of the districts in which located.

- 1) Is this property located in a designated Floodplain or Wetland and Conservancy District?  Yes  No
- 2) Has the applicant previously applied for a zoning amendment or a conditional use permit?  Yes  No  
(If yes, provide the following information in the lines below.)

Date when request was determined: \_\_\_\_\_

Was this request approved?  Yes  No

Describe the specific proposed use of the subject property for which a use variance is requested:

*A sunroom to be built on the EAST side of the house where an existing deck is. The sunroom would be 3 feet wider than the existing deck*

- 3) Describe why no lawful and feasible use of the subject property can be made in the absence of such a variance.

*Without the VARIANCE the sunroom cannot be built, and the only lawful use would be as a deck.*

(C) Area Variance.

An area variance is a request for a modification(s) to a dimensional, physical, or locational requirement such as setback, frontage, height, bulk, or density restriction for a structure.

Describe the area variance you are requesting, including the specific section(s) of the Zoning Code:

*A VARIANCE of the side yard setback from 7 feet to 5.5 feet.*

**Sec. 62-366(e) Standards for Granting a Variance.** In the lines below, answer each question thoroughly for each item listed. For the Board- of Zoning Appeals to grant a variance, it must find that all conditions are met.

**1. Unnecessary Hardship.**

- a. The Purpose of the Zoning Restriction in Question. The Board of Zoning Appeals shall determine whether the particular restriction in question is unnecessarily burdensome in light of the underlying purpose of that restriction. The purpose of the regulation shall be the primary concern, not the burden upon the property owner. The granting of the variance should not be so general or recurrent in nature as to suggest the Zoning Code should be changed. Describe why granting of the variance will not undermine the general intent and purposes of the Zoning Code and the specific purpose of the regulation in question?

The VARIANCE will only be a minor change to the side yard setback. Without the VARIANCE the sunroom cannot be built as designed, AND the only lawful use would be as a deck.

- b. The Effect of the Restriction on the Property. An unnecessary hardship exists where compliance with the strict letter of the restrictions governing the property would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Describe the effect of the zoning restriction on your property and how this impacts the reasonable use of your property or would render conformity unnecessarily burdensome?

Reasonable use of the property is still possible without the VARIANCE.

- c. The Effect of a Variance on the Neighborhood and Larger Public Interest. Describe why granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

The granting will only put a structure 1.5 feet closer to the neighbor

2. **Hardship May Not Be Self-Imposed.** Variances may not be granted to remedy self-imposed hardships. Describe why you feel the hardship is not self-imposed?

I WAS NOT AWARE OF THE EXACT LOCATION OF THE PROPERTY LINE OR WHAT THE SETBACK REGULATION WAS AT THE TIME THE SUNROOM WAS DESIGNED.

3. **Hardship Must Be Unique To The Property.** Where the same hardship is imposed upon other properties in the zoning district, a variance shall not be granted. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district. The conditions upon which a petition for a variance are unique to the property for which the variance is being sought and that such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and vicinity. Describe the circumstances that exist which make this issue unique to the property?

THE HOUSE IS NOT BUILT SUCH THAT IT IS PARALLEL TO THE PROPERTY LINE

4. **Purpose Must Not Be Financially Motivated.** Describe why the purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property?

THE PURPOSE OF THE VARIANCE IS TO BUILD A SUNROOM TO BE ABLE TO ENJOY THE PROPERTY MORE.

- 3) **Site Inspection.** Do you grant permission for the Board of Zoning Appeals and staff, either individually or as a group, to enter onto the subject property for a site inspection?  
 Yes  No
- 4) **Site Plan.** Per Sec. 62-363(c) of the Municipal Code of Ordinance, each application for appeal must be accompanied by a scale drawing showing the location and size of property, existing improvements, all abutting properties, and improvements thereon and the requested change or addition.

**DISCLAIMER**

I hereby swear that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

  
\_\_\_\_\_  
Signature of Applicant

8/30/2024  
\_\_\_\_\_  
Date

**PROPOSED SITE PLAN**



**BIRRENKOTT SURVEYING**  
 P.O. Box 237  
 1677 N. Bristol Street  
 Sun Prairie, WI. 53590  
 Phone (608) 837-7463  
 Fax (608) 837-1081

**PLAT OF SURVEY**

**SURVEYOR'S CERTIFICATE:**

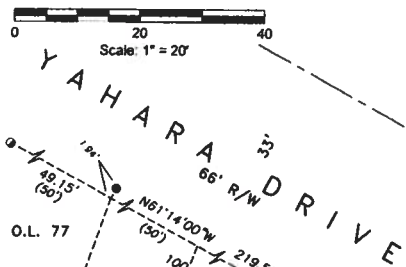
I, Mark A. Pynnönen, hereby certify that this survey is in compliance with the Wisconsin Administrative Code, Chapter A-E7. I also certify that I have surveyed and mapped the lands described hereon and that the map is a correct representation in accordance with the information provided and is correct to the best of my knowledge and belief.

*Mark A. Pynnönen* 5/31/2024

Mark A. Pynnönen  
 Wisconsin Professional Land Surveyor No. S-2538

**Description:**

Outlot 81, Assessor's Plat of the Village of McFarland, Village of McFarland, Dane County, Wisconsin; AND Part of Vacated Yahara Drive described as follows: Commencing at the West ¼ Corner of Section 3, Town 6 North, Range 10 East; thence North 88°50'18" East, 1288.01 feet; thence South 00°30'14" East, 1254.33 feet; thence North 89°54' West, 260.40 feet to the point of beginning, thence North 89°54' West approximately 29.2 feet to the South right-of-way line of Yahara Drive; thence southeasterly along the old south right-of-way line to the northwesterly corner of Outlot 81; thence Northerly to the point of beginning.



| LINE | BEARING     | DISTANCE |                  |
|------|-------------|----------|------------------|
| L1   | N84°26'05"W | 25.25'   | (N89°54'W 29.2') |
| L2   | S61°14'00"E | 28.70'   | (Southeasterly)  |
| L3   | N00°07'51"W | 11.36'   | (Northwesterly)  |
| L4   | N61°14'00"W | 21.30'   |                  |



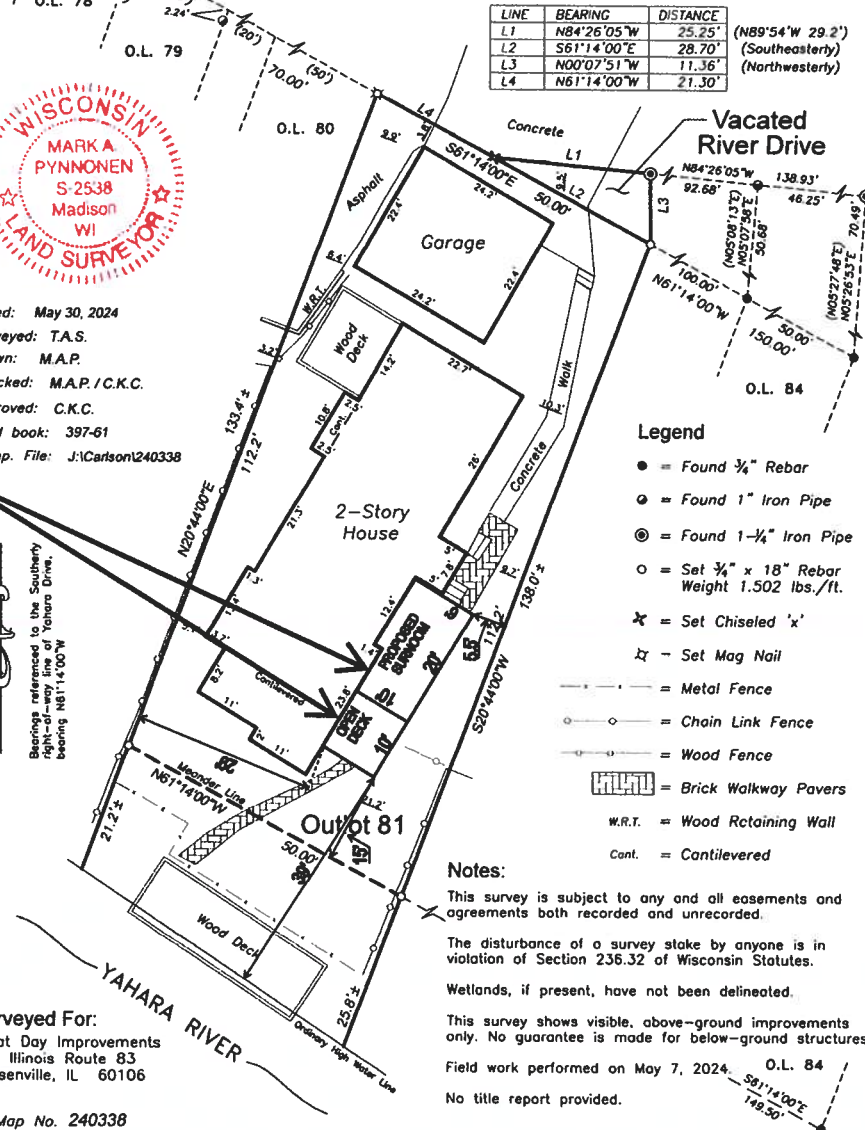
Dated: May 30, 2024  
 Surveyed: T.A.S.  
 Drawn: M.A.P.  
 Checked: M.A.P./C.K.C.  
 Approved: C.K.C.  
 Field book: 397-61  
 Comp. File: J:\Carlson\240338

**1 STORY SUNROOM ADDITION  
 20'W X 10'D  
 ON A NEW DECK  
 & A NEW 10'W X 10'D  
 OPEN DECK ADDITION**

Bearings referenced to the Southerly right-of-way line of Yahara Drive, bearing N81°14'00"W

Surveyed For:  
 Great Day Improvements  
 891 Illinois Route 83  
 Bensenville, IL 60106

Office Map No. 240338



**Legend**

- = Found 3/4" Rebar
- = Found 1" Iron Pipe
- ⊙ = Found 1-1/4" Iron Pipe
- = Set 3/4" x 18" Rebar Weight 1.502 lbs./ft.
- \* = Set Chiseled 'x'
- ☆ = Set Mag Nail
- = Metal Fence
- = Chain Link Fence
- = Wood Fence
- [Pattern] = Brick Walkway Pavers
- W.R.T. = Wood Retaining Wall
- Cant. = Cantilevered

**Notes:**

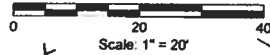
This survey is subject to any and all easements and agreements both recorded and unrecorded.  
 The disturbance of a survey stake by anyone is in violation of Section 236.32 of Wisconsin Statutes.  
 Wetlands, if present, have not been delineated.  
 This survey shows visible, above-ground improvements only. No guarantee is made for below-ground structures.  
 Field work performed on May 7, 2024.  
 No title report provided.

**EXISTING SITE PLAN**



**BIRRENKOTT SURVEYING**

P.O. Box 237  
1677 N. Bristol Street  
Sun Prairie, WI. 53590  
Phone (608) 837-7463  
Fax (608) 837-1081



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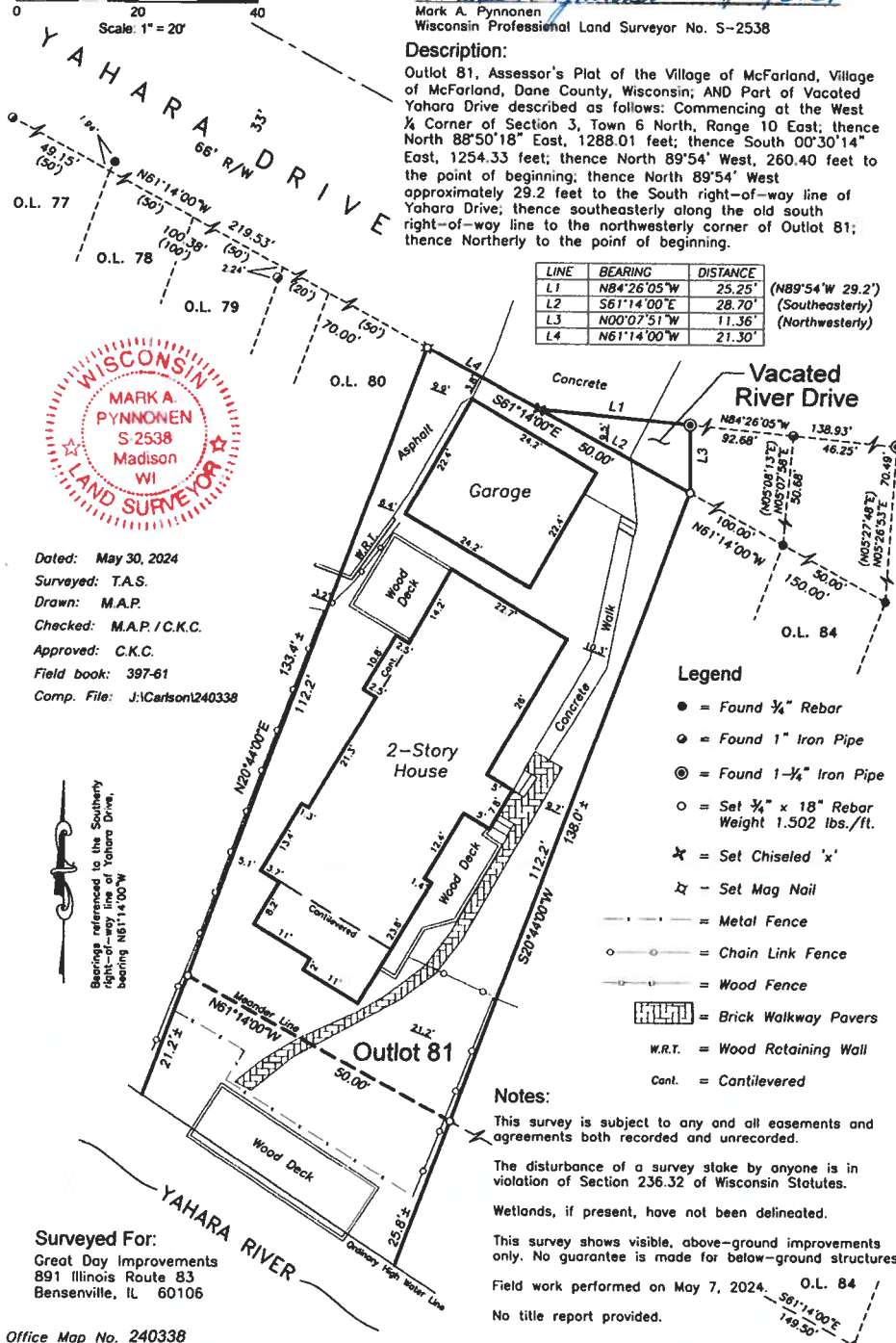
*Mark A. Pynnönen* 5/31/2024

Mark A. Pynnönen  
Wisconsin Professional Land Surveyor No. S-2538

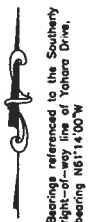
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Dated: May 30, 2024  
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Approved: C.K.C.  
Field book: 397-61  
Comp. File: J:\Carlson\240338



- Legend**
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  - = Found 1" Iron Pipe
  - ⊙ = Found 1-¼" Iron Pipe
  - = Set ¼" x 18" Rebar Weight 1.502 lbs./ft.
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  - = Chain Link Fence
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  - [Pattern] = Brick Walkway Pavers
  - W.R.T. = Wood Retaining Wall
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**Notes:**

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Field work performed on May 7, 2024.

No title report provided.

**Surveyed For:**  
Great Day Improvements  
891 Illinois Route 83  
Bensenville, IL 60106

Office Map No. 240338

**From:** [Clif Gidlund](#)  
**To:** [Andrew Bremer](#)  
**Subject:** Building Code Variance Requests  
**Date:** Thursday, August 8, 2024 3:14:31 PM

---

Dear Mr. Bremer,

I am not sure if you are the person that can help me, but if you are not maybe you could refer me to someone that can.

I am inquiring if you are involved in any way with the variance request process. My wife and I signed a contract with Great Day Improvements to build a sunroom. The plan that was made is in violation of the side yard setback requirements. We are not interested in changing the plan, so we are trying to cancel the contract. They will only do so if there is a letter saying that the variance will not be granted. The plan for the sunroom as drawn only has a 5 foot setback at the side yard instead of the required 7 foot setback.

In order to avoid going through the variance process is it possible to have a letter issued that would state that a variance would not be issued?

Thank you very much,

Sincerely,

Clif Gidlund  
4707 Yahara Drive  
McFarland, Wi  
715-298-0267  
Sent from my iPad

**From:** [Hannah Brautigam](#)  
**To:** [Community Development](#)  
**Cc:** [Dylan Drobny](#)  
**Subject:** Request for Variance by Clifford and Jean Gidlund  
**Date:** Wednesday, October 9, 2024 2:04:12 PM

---

Community Development Department  
Village of McFarland  
PO Box 110  
McFarland, WI 53558

Board of Zoning Appeals,

I am writing regarding a request for a variance to the side yard setback by Clifford and Jean Gidlund, 4707 Yahara Drive, McFarland, WI.

We are next door neighbors to the property and we are opposed to granting the variance.

Please kindly confirm receipt of this email.

Sincerely,  
Hannah Brautigam and Dylan Drobny

**From:** [Mike Hardiman](#)  
**To:** [Community Development](#)  
**Subject:** Variance Request at 4707 Yahara Dr  
**Date:** Monday, October 7, 2024 8:58:03 PM

---

I'm writing to oppose the side yard set back variance requested by Clif and Jean Gidlund. My wife Lisa and I currently live at 4723 Yahara Dr and are the prior owners of both 4707 Yahara Dr and the neighboring property at 4711 Yahara Dr.

The properties are already so close that each can readily see the other through the windows. The requested need for the variance is not something that we would consider a hardship to the Gidlunds should it be declined. We are good friends with the Gidlunds and believe they would be the first to agree that it is a want, not a need. The current set back requirements are quite reasonable and my wife and I believe they should be respected to enable a semblance of privacy for adjoining neighbors, especially when the homes are side by side.

Thank you for allowing input.

Mike Hardiman  
Lisa Pentony  
4723 Yahara Dr  
608-228-0298

Community Development Department  
Village of McFarland  
PO Box 110  
McFarland, WI 53558

Received

OCT 08 2024

Village of McFarland

Board of Zoning Appeals,

I am writing regarding the request for a variance to the side yard setback, by Clif and Jean Gidlund, 4707 Yahara Drive, McFarland, WI.

I am a next door neighbor to the property and I am opposed to granting the variance.

A handwritten signature in black ink that reads "Randy Justesen". The signature is written in a cursive style with a large, sweeping initial "R".

Randy Justesen  
4703 Yahara Drive

**From:** [Kress, Mary E](#)  
**To:** [Community Development](#)  
**Subject:** 4707 Yahara Dr. McFarland Wi  
**Date:** Monday, October 7, 2024 8:51:15 AM

---

Hello

We live at 4625 Yahara Dr. McFarland Wi. We do not agree with the variance at 4707 Yahara Dr.

We do not want it to be granted

Thanks

Bruce & Mary Ellen Kress

**From:** [Scott Mc](#)  
**To:** [Community Development](#)  
**Subject:** re: request for variance for 4707 Yahara Dr. (Gidlund)  
**Date:** Tuesday, October 8, 2024 10:38:32 AM

---

I am writing to express opposition to the proposed variance for the side yard setback at 4707 Yahara Drive.

As a nearby resident who chose to live in McFarland largely because of the proximity to the Yahara River, I appreciate every little glimpse of the river that I can catch during my daily experience. I feel that reducing the already narrow spaces between the structures along the river would be a loss for the community and should only be considered for more dire circumstances.

thank you for your consideration,

Scott McElroy  
6213 Rivercrest Dr, McFarland, WI 53558

  
VILLAGE OF  
**McFarland**  
**SUMMARY SHEET**

**MEETING DATE:** Wednesday, November 13, 2024

**SECTION:** Business

**DEPARTMENT:** Community Development

**CONTACT:** Andrew Bremer, Comm & Eco Dev Director

**AGENDA ITEM:** Discussion and action on an Area Variance requested by Clifford and Jean Gidlund, 4707 Yahara Drive, for a variance to the side yard setback requirements of Sec. 62-70 to construct a sunroom.

**PREVIOUS ACTION:**

**ISSUE SUMMARY:**

Item 5.a provides background regarding this agenda item.

**FINANCIAL/BUDGET IMPACT:**

**VILLAGE PLAN REFERENCE:**

**ORDINANCE REFERENCE:**

**BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:**

Recommend motion:

*Motion, second, to deny the area variance requested by Clifford and Jean Gidlund, 4707 Yahara Drive, for a variance to the side yard setback requirements of Sec. 62-70 to construct a sun room for the following reasons:*

- 1. Granting of the variance based on the premise that it can't be built as designed would likely be so general or recurrent in nature as to suggest the Zoning Code should be changed.*
- 2. The applicant has not provided justification regarding why the proposed sun room can't be redesigned to meet the minimum 7' side yard setback.*
- 3. Denial of the variance would not unreasonably prevent the owner from using the property for a permitted purpose or would not render conformity with such restrictions unnecessarily burdensome.*
- 4. The ability to have a sun room is not necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the R-1B district or neighborhood.*
- 5. The hardship is self-imposed as the applicant did not consult the Zoning Code or survey the lot prior to designing the sunroom.*

**ATTACHMENTS:**



None