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City of Ashland, Wisconsin

601 Main Street West Ashland, WI 54806 www.coawi.org

ZONING BOARD OF APPEALS MEETING

May 5, 2021 at 5:00PM via Go To Meetings

The meeting can be joined from a computer, tablet or smartphone at <https://global.gotomeeting.com/join/512450285>. The meeting can also be accessed by phone at [1 866 899 4679](tel:18668994679) using Access Code: 512-450-285.

AGENDA

1. Call to Order and Roll Call
2. Approval of the Agenda
3. Public Comment (non-agenda items)
4. Action Items:
 - a. Public Hearing and vote regarding an Area Variance request for minimum lot size requirement reduction for the property located at 1621 Sanborn Avenue, parcel #201-04880-0000, in the Public/Institutional (PI) zoning district. Property Owner: St. Agnes Cemetery Association.
5. Announcement/Reports/Comments/Questions
6. Adjournment

It is possible that a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information or speak about a subject, over which they have decision-making responsibility. Any governmental body at the above stated meeting will take no action other than the governmental body specifically referred to above in this notice. The City of Ashland does not discriminate on the basis of sex, race, creed, color, national origin, sexual orientation, age or disability in employment or provision of services, programs or activities. NOTE: Upon reasonable notice, the City of Ashland will accommodate the needs of disabled individuals through auxiliary aids or services. For additional information or to request this service, contact Megan McBride at (715) 682-7041.

STAFF REPORT - Zoning Board of Appeals – May 5, 2021

Agenda Item # 4a:	An Area Variance request for minimum lot size and dimensions requirement reduction
Property Owner:	Saint Agnes Cemetery Association
Site Address:	1621 Sanborn Avenue
Parcel No:	201-04880-0000
Zoning District:	Public/Institutional (PI)

Applicant's Request for an Area Variance:

The applicant, Our Lady of the Lake Catholic Communities on behalf of Saint Agnes Cemetery Association, is requesting an area variance to allow a reduction in the minimum lot size and dimensions required for a property in the Public/Institutional (PI) zoning district.

Background

Parcel #201-04880-0000, 1621 Sanborn Avenue, is currently the location of Saint Agnes Cemetery, as well as a single-family home located on the northeastern corner of said parcel. The minimum required parcel area in the Public/Institutional zoning district is one (1) acre, which could not be achieved to allow subdivision of the existing single-family home without the inclusion of existing grave sites on the single-family parcel. A Certified Survey Map (CSM) for subdivision of an existing lot which results in the creation of a new parcel is unlawful if a legally nonconforming lot is created. Therefore, an Area Variance for reduced minimum parcel size and dimensions is the only legal option available to the property owner for separating the existing single-family home into an independent, saleable parcel.

Alternatives to a Variance request which were evaluated by staff included rezoning of the property and a Unified Development Ordinance (UDO) text amendment. Rezoning of the property would not achieve the intended goal of allowing a legal subdivision of the property, as the adjacent zoning district is the Future Development (FD) zone, with a larger minimum lot size of five (5) acres. Additionally, said rezoning would not be compatible with the existing cemetery use and therefore continue to prohibit said subdivision of the property. A UDO text amendment within the Public/Institutional (PI) zoning district would similarly create additional nonconforming uses, thereby increasing the nonconformity and prohibiting this as a means of facilitating a legal subdivision of the property as well.

As noted in the enclosed Cover Letter, the single-family home on site was historically used as an on-site resident for a Sexton of Our Lady of the Lake Catholic Communities, but no longer is used as such. The Church would like to obtain a Variance in order to subdivide the property, separating the existing single-family home from the institutional use of the cemetery and thus allowing sale of the home.

Attachments

1. Applicant Cover Letter
2. Aerial Map of 1621 Sanborn Avenue

3. Aerial Map of 1621 Sanborn Avenue with New Proposed Parcel Lines
4. Zoning Map of 1621 Sanborn Avenue and Surrounding Area

Public Hearing Notice

The required Class 1 Public Hearing Notice was issued in the designated newspaper (the Ashland Daily Press), and was also posted at Ashland City Hall, the Vaughn Public Library, and Ashland County Courthouse.

Standards for Review & Potential Actions

The City of Ashland's *Unified Development Ordinance 781, Section 3.10: Variance*, creates the legal framework for actions and decisions made by the Zoning Board of Appeals. Specifically, the Board of Appeals has the powers to:

- Hear and grant requests for area variances and use variances from the provisions of the Unified Development Ordinance 781 (listed below).
- Conduct a public hearing.
- Approve, approve with conditions, or deny the variance request based on the approval criteria specified, and designate such conditions that will secure substantially the objectives of the regulations or provisions in the application of which the variance is granted as to light, access to direct sunlight for solar energy systems, air, character of the neighborhood, conformity to the Comprehensive Plan, and, generally, the public health, safety, comfort, convenience, and general welfare.

“An ‘area variance’ allows the Zoning Board of Appeal greater flexibility and discretion in granting the variance request in that the Board does *not* have to conclude that no reasonable use of the property exists without the variance, rather the Board has to find that regulation unnecessarily burdens or unreasonably prevents the proposed activity. In addition, the Board must find that variance request relates to a unique property condition and that granting the variance will cause no harm to the public interest” (UDO Section 3.10C).

Conditions & Final Decision

In granting a variance under the provisions of the Unified Development Ordinance 781, the Zoning Board of Appeals shall designate such conditions that will secure substantially the objectives of the regulations or provisions in the application of which the variance is granted as to light, access to direct sunlight for solar energy systems, air, character of the neighborhood, conformity to the master plan, and, generally, the public health, safety, comfort, convenience, and general welfare.

Background on Relevant U.D.O. Regulations

Applicable Standards for the Single-Family Residential (R-1) Zoning District (Section 4.3C, 2)

Setback requirements for principal building. The minimum setback requirements for principal buildings from parcel lines shall be as follows, except as may be modified pursuant to Section 6.1:

B.: Setbacks.

a. Minimum principal building setback from front parcel line.

(1) All residential use. Twenty-five (25) feet.

(2) Other principal use. Thirty-five (35) feet.

b. Minimum principal building setback from corner street side parcel line.

(1) All residential uses. Twenty (20) feet.

(2) Other principal use. Thirty (30) feet.

c. Minimum principal building setback from interior side parcel line.

(1) All residential uses. Eight (8) feet.

(2) Other principal use. Fifteen (15) feet.

d. Minimum principal building setback from rear parcel line.

(1) All residential uses. Thirty-five (35) feet.

(2) Other principal use. Thirty-five (35) feet.

Area Variance Approval Criteria:

Review of the decision criteria established by Wisconsin case law below, shall indicate whether the requested Area Variance may or may not be granted. No variance from the terms of the provisions of the Unified Development Ordinance 781 shall be authorized unless all of the following facts and conditions exist:

- a. **Exceptional Circumstances** *That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or classes of uses in the same zoning district.*

Does this condition exist? Yes

The subject parcel is unique given the pre-existing institutional/cemetery use on the property as well as an existing single-family home. The historic, permitted use of the home as the Sexton's residence facilitated the existing proximity of the home to the cemetery, thus requiring the issuance of a Variance as requested in order to separate the lots for future use and salability of the single-family home as a private residence unrelated to the cemetery use.

- b. **Natural Causes** *That the alleged difficulty or hardship has not resulted from the fault or actions of the applicant.*

Does this condition exist? No

The existing hardship resulted from a permitted use, and therefore is a nonconforming use through no fault or action of the applicant. However, the resulting hardship and desire for subdivision and sale of the single-family home has resulted from changes in the owner's use of the property, which would be considered "circumstances of the applicant." The Wisconsin Supreme Court stated in *Snyder v. Waukesha County Zoning Board*, 1976 that hardship must specifically be the result of conditions unique to the property itself such as steep slopes or wetlands, and cannot result from a change in circumstances of the applicant. Therefore, the request would not meet this condition of variance issuance.

- c. **Preservation of Property Rights** *That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity including, but not limited to, the use of solar energy systems.*

Does this condition exist? Yes

Separation and subsequent sale of the existing single-family home on the property would not be allowed without the requested Area Variance request. A basic property right for single-family homes which otherwise meet provisions of the City's Unified Development Ordinance, Property Maintenance standards, and other applicable codes is the ability to sell said property. However, the property owner does retain the right to rent the existing home while maintaining property ownership.

- d. **Absence of Detriment** *That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purposes of the Unified Development Ordinance 781 or the public interest.*

Does this condition exist? Yes.

Granting of the requested Variance and subsequent subdivision of the property to separate the single-family home as its own parcel would have no impacts to surrounding properties or the broader community.

- e. **General Nature** *No variance shall be authorized unless the Zoning Board of Appeals specifically finds the condition, situation, or intended use of the subject property is not so general or recurrent in a nature as to make reasonably practicable the formulation of a general regulation to cover such cases.*

Does this condition exist? Yes

The requested variance is unique in nature, and related to two (2) pre-existing uses rather than facilitation of a new use or development. There would be few to no other similarly eligible requests located within the City, as the historic use of the property for the cemetery and accessory residence for the Sexton would not be applicable elsewhere.

- f. **Minimum Variance Required** *The Zoning Board of Appeals shall find that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. The Zoning Board of Appeals shall be satisfied by the evidence heard before it that the granting of such variance will alleviate a hardship approaching confiscation as distinguished from a special privilege sought by the owner.*

Does this condition exist? Yes

Staff proposes that the existing single-family home be subdivided to conform with the appropriate corresponding zoning regulations, which would be that of the Single-Family Residential (R-1) zoning district. This would facilitate some level of consistency with the existing adjacent single-family lot and conformance with existing standards for other single-

family homes in the City, while allowing for reasonable continued use of the property as a single-family residence.

g. Unnecessary Hardship

- 1) *No Variance shall be granted unless the property owner can show that compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.*

Does this condition exist? Yes

It is not possible for the subject parcel to be subdivided to separate the existing residential and institutional uses without the inclusion of grave sites within the private single-family parcel. The requested variance to reduce required minimum parcel size and dimensional requirements (including setbacks) would ensure the home complies with parcel dimensions and standards for the Single-Family Residential (R-1) district.

- 2) *No Variance shall be granted unless the property owner can show that the condition causing such unnecessary hardship is unique to the property for which a Variance has been applied. The unique condition is one that is not a condition in common with neighboring properties and relates not to the owner, but to the physical characteristics of the property, such as slope, soil type, or wetlands.*

Does this condition exist? No

The hardship imposed by the current zoning restrictions which preclude the property owner from subdividing and selling the existing single-family home does not result from physical characteristics of the property. However, the conditions do result from a past permitted use of the site and the ongoing institutional/cemetery use on the property, which is unique to this property and zoning district and therefore results in a non-natural unnecessary hardship.

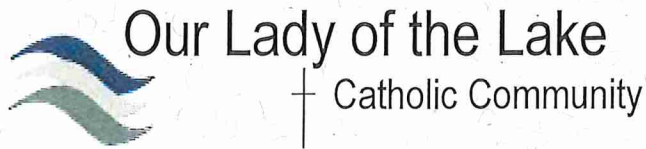
Conditions

Recommended conditions of approval of this Area Variance request shall include:

- The property owner shall complete a Certified Survey Map (CSM) and submit all necessary materials as outlined in the Unified Development Ordinance (UDO) Section 3.39 for subdivision of the lot in accordance with this Variance request; AND
- The resulting single-family parcel created through said CSM shall comply with all dimensional and setback requirements of the Single-Family Residential (R-1) zoning district in the City of Ashland.

Staff Recommendation

Based on the decision criteria outlined in the City's Unified Development Ordinance and applicable Wisconsin state statutes and associated case law, staff recommends DENIAL of the requested Area Variance based on failure to meet the standards of items "b" and "g,2". If the Zoning Board of Appeals should approve the requested Area Variance, staff recommends that it be contingent upon the aforementioned conditions.



March 17, 2021

Megan McBride
Director of Planning & Development
City of Ashland
601 Main Street West
Ashland, WI 54806

Greetings Megan and Zoning Board:

Attached is a completed Variance Application, ariel view of the property in question and a check for the processing.

We would like to re-zone the house located on the cemetery property and sub-divide the parcel of land on which it sits.

As of right now, the house sits on 10 acres, zoned as cemetery. We would like to re-zone to single family residential with a lot size of 65' wide by 133' deep, this would be up to the exiting fence line, but would not include the fence. With the variance area we were hoping to waive the required lot size to allow the minimum lot size for zoning in this area.

We would like to sell the house since there is no longer a Sexton that lives there and we are down to one Priest, who resides at the Rectory located on the property of Our Lady of the Lake Church. We have also decided that Churches should not be landlords, nor do we want to be.

With the Boards approval we would like to have the re-zoning and land descriptions completed at your earliest convenience because we have interested families in the property.

If you have any further questions, or we are missing something, please let me know.

Kind regards,

Karen Swanson

Business Administrator

Our Lady of the Lake

715 685 1725

kswanson@ourladycc.org

Aerial Map of 1621 Sanborn Avenue

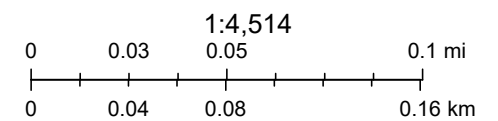


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Parcel Mapping

Parcel Labels



City of Ashland Public Works Department, GIS Division, PICTOMETRY INTL

Department of Public Works Engineering
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3. Aerial Map of 1621 Sanborn Avenue with New Proposed Parcel Lines

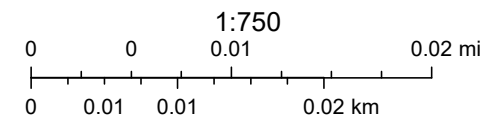


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Parcel Labels

— Parcel Mapping



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Zoning Map of 1621 Sanborn Avenue and Surrounding Area

