



VILLAGE OF EDGAR

224 S. Third Avenue
P.O. Box 67
Edgar, Wisconsin 54426
Ph. (715) 352-2891
www.vil.edgar.wi.us

Zoning Board of Appeal Meeting Agenda Wednesday, April 17, 2024, 6:00 p.m. Edgar Village Hall

Members: President Lepak, Alan Butt, Greg Kornack, Mark Schroeder

0. PUBLIC HEARING to hear and consider the request by Steven & Janice Soczka to allow the construction of a shed on the property located at 427 N 1st Avenue; this construction would require a variance to Ordinance 13-1-200 ACCESSORY USE OR STRUCTRES of the Village Code of Ordinance, which allows only on attached or detached garage and one additional accessory building on the property; the request is to allow and additional accessory building on the lot. The hearing is being conducted pursuant to the provisions of Section 13-1-263 (Variances) of the Village Code of Ordinance.
1. Call to Order – Roll Call
2. Approval of Agenda
3. Discussion and possible approval of Variance Request from Steven & Janice Soczka to allow the construction of a shed on the property located at 427 N 1st Avenue which allows only on attached or detached garage and one additional accessory building on the property
4. Adjournment

Terry Lepak
Village President

Jennifer Lopez
Village Administrator/Clerk

The Edgar Municipal Building is accessible to the physically disadvantaged. If special accommodations for visually or hearing-impaired individuals are needed, please contact the Edgar Administrator-Clerk-Treasurer at 715-352-2891.
Members of the Edgar Village Board may be in attendance.



VILLAGE OF EDGAR

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DATE: April 8, 2024

TO: Jeffrey & Donna Denfeld
Mitchell & Heidi Mellenberger
Gary & Barbara Christiansen
Logan Sparks
Sandra Bergs
Peter Burger
Arlan Emon/Sally Boehm
Carol Franz
Richard & Linda Michalewicz

FROM: Jennifer Lopez, Village Administrator

SUBJECT: Zoning Variance Hearing Notice – 427 N 1st Avenue, Edgar, WI

VILLAGE OF EDGAR ZONING VARIANCE HEARING NOTICE

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Zoning Board of Appeal of the Village of Edgar, Marathon County, Wisconsin, at the Village Hall, 224 S Third Ave. Edgar, Wisconsin, on the 17th day of April, 2024 at 6:00 p.m. to hear and consider the request by Steven and Janice Soczka to allow the construction of a shed on the property located at 427 N 1st Avenue; this construction would require a variance to Ordinance 13-1-200 ACCESSORY USE OR STRUCTRES of the Village Code of Ordinance, which allows only on attached or detached garage and one additional accessory building on the property; the request is to allow and additional accessory building on the lot. The hearing is being conducted pursuant to the provisions of Section 13-1-263 (Variances) of the Village Code of Ordinance.

Jennifer Lopez
Village Administrator

If you have any questions or concerns, please attend the Public Hearing, or call the Village Hall at 715-352-2891

Village of Edgar – PO Box 67, Edgar, WI 54426

Variance Application

Fee - \$100.00

The application for variation shall be filed with the Zoning Administrator. Applications may be made by the owner or lessee of the structure, land or water to be affected.

Owner's Name: Steven & Janice Soczka

Property Address: 427 N. 1st Ave Edgar WI 54426

Description of the property: Single Home Dwelling

The Ordinance requires that the applicant must demonstrate that their property meets the following 3 requirements. Please describe and submit with application.

- (1) Unique Property Limitations.
- (2) No harm to Public Interests.
- (3) Unnecessary Hardship

I have attached a list of the following:

- A list of all abutting and opposite property owners of record (to be provided by the Village Administrator);
- A site plan showing an accurate depiction of the property (see attached graph paper for drawing your plans);
- If applicable, any additional information required by the Village engineer, Village Board, Zoning Board of Appeals or Zoning Administrator.
- Fee receipt in the amount of One-hundred dollars (\$100.00)

The Public Hearing would need to be noticed not more than 30 days before the Hearing and not less than ten (10) days before the hearing; our weekly newspaper has a deadline of Monday at 4:00 P.M. for the publication on the following Wednesday. The meeting would have to be scheduled at least 10 days after the newspaper publication.

This Variance Application does not preclude the applicant(s) from meeting applicable State and Federal Rules.

This Variance Application will become null and void if construction is not started within six months of the permit application being approved.

I, Steven & Janice Soczka, hereby certify that I am Owner of Record of the named property, or that I have been authorized by the owner to make this application as their agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if this permit is issued, I certify that the Building Inspector or his representative shall have the authority to enter all areas covered by such permit at any reasonable hour for the purposes of inspecting said work.

Dated 4/1/2024

Signed Steven & Janice Soczka
Owner/Authorized Agent

For office use only:

Publication date for Variance	
Date presented to Board for approval, if necessary	
Date Variance Approved	
Approval Signature:	

Variance Application

Steven & Janice Soczka

The Ordinance requires that the applicant must demonstrate that their property meets the following 3 requirements.

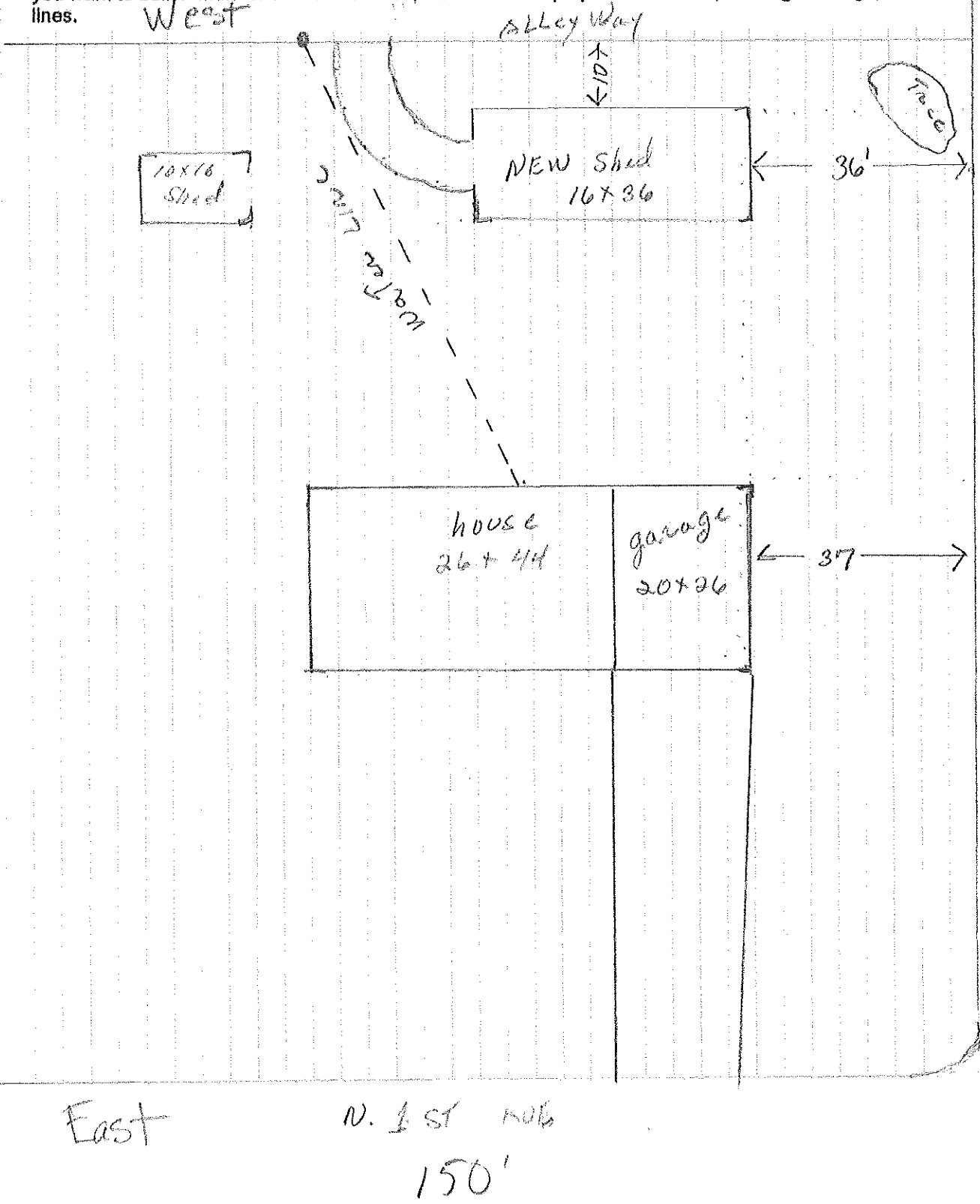
We are interested in adding a storage shed to our property to house our collector car, side by side ATV and woodworking equipment. Our current garage is 20' x 24' housing our car and truck with little extra room. There is a 10 x 16 garden shed on a cement slab in the southwest corner of the property in the back yard.

- 1. Unique Property Limitations.** The house has a mushroom style roof that would need to be rebuilt to add an extra garage stall onto the house. The cost would be prohibitive due to the style of the roof.
- 2. No harm to Public Interests.** We are unaware of any harm to public interests.
- 3. Unnecessary Hardship.** We believe the cost of rebuilding the roof on the house to add an additional car stall is an unnecessary hardship as our property is large enough to accommodate a shed in the back yard. The addition of a shed will increase the value of the property. The color of the shed would match the house and be landscaped, it will not be an eyesore.

BUILDING PLOT PLAN FORM

Use this page if: This building permit application is for a new home, addition, garage, fence, sign, pool, deck, shed or any other structure that will require the use of land space on the property.

In the space below, sketch a *layout (birds eye view)* of the property. The drawing should be as close to "scale" as possible. Show the lot, with dimensions; adjacent streets and alleys; and **existing buildings** (with dimensions and identification ie. house, garage). Then, outline the location and size of the structure you want to build. Indicate the distance in feet between the proposed structure, existing buildings, and lot lines.



Sec. 13-1-200 Accessory Uses or Structures.

(a) Building Permit Required for Accessory Buildings.

(1) Permit Required.

a. No owner shall, within the Village of Edgar, build, construct, use or place any type of an accessory structure or building, including prefabricated accessory buildings, until a building permit shall have first been obtained from the Building Inspector. Application for an accessory structure permit shall be made in writing to the Building Inspector, along with the required permit fee.

b. With such accessory building application, there shall be submitted the following information:

1. A complete set of building plans and specifications;

2. Three (3) copies of a site plan or drawing accurately showing the location on the entire lot of the proposed accessory structure with respect to distances to adjoining alleys, streets, property lines, easements, and other structures. The dimensions shall be shown of the lot, proposed accessory structure, principal structure (house), and any other accessory structures on the lot. A public street right-of-way is a property boundary line. The site plan must be drawn to scale, such as a scale of 1 inch = 20 feet; and

3. A plat of survey, as prepared by a Wisconsin Registered Land Surveyor, shall be required if the property is located within or abuts a shoreland, wetland, floodplain, navigable waterway, or verification is difficult. If applicable, the Ordinary High Water Mark [two (2) feet above the 100-year floodplain elevation] and Wetland Delineation shall be shown.

c. The required building plans and specifications shall include the following information:

1. Floor plans, exterior dimensions, and a statement indicating the use of the accessory structure, including any second story area.

2. Height of the accessory structure measured from the site lot grade to the peak of the roof peak and the building's exterior dimensions.

3. Information and renderings illustrating design characteristics for all four sides of the proposed detached accessory structure, along with a current photograph of the principal structure on the parcel.

4. Sufficiently detailed information on the type of construction and materials to be utilized, including that which is proposed to be used with the outside walls and roofing and the finish and color of such materials.

5. Description of the flooring and foundation to be used.

6. In the case of a premanufactured residential accessory building, a copy of the manufacturer's plans, specifications and instructions.

(2) Applicability to Temporary, Movable and Permanent Buildings. For purposes of this Zoning Code, no regulatory distinction is made between temporary, permanent, prefabricated or movable accessory buildings (such as those mounted on skids); all such accessory structures require an accessory building zoning permit and shall comply with the standards of this Zoning Code. Sheds built off-site and moved onto a lot and prefabricated accessory structures require a permit.

(b) Principal Structure/Use to be Present.

(1) Establishment of Principal Use Requirement. An accessory use or structure in any zoning district shall not be established prior to the principal use or structure being present or under construction, unless a special limited-duration, one-time waiver is granted by the Village Board due to unique circumstances or one of the limited exceptions in Subsection (b) (2) below exists.

(2) Special Circumstances When an Existing Accessory Structure is Present. A detached accessory structure that becomes the only structure on a lot as a result of a land division, a property line adjustment, or a demolition of the primary structure may remain on the lot if the owner has executed a contract with the Village and placed a deed restriction on the parcel with the County Register of Deeds as follows:

a. For a land division, the contract and deed restriction must require the owner to remove the accessory structure if, within two (2) years of final plat or certified survey map approval, a principal structure has not been built and received final inspection. The contract shall be executed with the Village and the deed restriction placed on the parcel with the County Register of Deeds prior to the final land division approval.

b. For a property line adjustment, the contract and deed restriction must require the owner to remove the accessory structure if a principal structure has not been built and received final inspection within two (2) years. The two (2) years period begins on the date the property line adjustment legally occurs, at which time the contract shall be executed with the Village and the deed restriction placed on the parcel with the County Register of Deeds.

c. For a demolition of a primary structure, the contract and deed restriction must require the owner to remove the accessory structure if a principal structure has not been built and received final inspection within two (2) years. The two (2) years period begins on the date of the final Village inspection of the demolition. The contract and restrictive covenant shall be executed with the Village and the deed restriction placed on the parcel with the County Register of Deeds prior to the issuance of the demolition permit by the Village.

(3) Zoning District Requirements To Be Complied With. Any accessory use or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided.

(c) Number of Permitted Garages and Accessory Buildings on Residential Lots. An accessory use or structure in a residential district may be established subject to the following regulations:

(1) Accessory Building Number Limits. In any residential district, in addition to the principal building, one (1) detached or attached garage, one (1) additional accessory building (such as a garden shed) and two (2) children's play structures may be placed on a lot, except as provided in Subsection (c)(2) below.

(2) Limitation on Number of Detached Garages and Accessory Buildings.

a. Residentially zoned parcels with a single garage attached to the dwelling are permitted to have an additional one (1) or two (2) car detached garage on the parcel. If a detached garage is erected, no other detached accessory buildings may be constructed or maintained on the parcel.

b. Residentially zoned parcels with more than a one (1) stall garage attached to the dwelling are permitted to have an additional one (1) stall detached garage on the parcel. If a detached garage is erected, no other detached accessory buildings may be constructed or maintained on the parcel.

c. Garages attached to dwellings shall be three (3) stalls or less, provided the square footage requirements of Subsection (d)(4) are met. Dwellings with an attached three (3) stall garage are not permitted to have an additional detached garage on the parcel.

(d) Standards for Attached Accessory Buildings/Garages.

(1) Setback Requirements. All accessory buildings which are attached to the principal building, including attached garages, shall comply with the height and yard/setback requirements of the principal building. An accessory structure or use shall not be forward of the front line of the principal structure.

(2) Determination of Attached Status. When accessory buildings are attached to the principal building, including attached garages, by a breezeway, passageway or similar means, or are separated by a nominal gap, they are considered to be a part of the principal building and shall comply in all respects with the height and yard/setback requirements and local building code requirements for the principal building.

(3) Carports. For purposes of this Section, a carport, as defined in Section 13-1-300(a), shall be considered to be an attached garage.

(4) Attached Garage Square Footage Limits.

a. The maximum square feet of attached garage floor area shall be limited to the smaller of either one thousand (1,000) square feet or the first floor dwelling unit area in the case of a single family residence.

b. The maximum square feet of attached garage floor area shall be limited to the smaller of either six hundred (600) square feet or the first floor dwelling unit area in the case of a duplex, two-family dwelling, or multi-family dwelling.

(e) Standards for Detached Accessory Buildings/Garages; Lot Area Coverage; Square Footage.

(1) Size Restrictions. In the aggregate, detached accessory buildings and structures, including detached garages, shall not occupy more than forty percent (40%) of any required rear yard area, or be larger than one thousand two hundred (1,200) square feet, whichever is more restrictive, on residential lots of fifteen thousand (15,000) square feet or less. On lots of fifteen thousand (15,000) square feet or larger, detached accessory buildings and structures shall not exceed thirty percent (30%) of any required rear yard area of one thousand five hundred (1,500) square feet, whichever is more restrictive.

(2) Front or Side Yard Placement Prohibited. No detached accessory building shall occupy any portion of the required front or side yard. Only rear yard placement is permissible. An accessory structure or use shall not be located forward of the front line of the principal structure.

(3) Height. Single-story detached garages and other single-story detached accessory buildings shall be fifteen (15) feet or less in height. Two-story detached garages and other detached accessory buildings shall be twenty-five (25) feet or less in height. Accessory buildings in commercial and industrial districts shall not exceed twenty-five (25) feet in height.

(4) Setback Requirements. Detached accessory buildings and garages shall have a seven (7) foot setback from side or rear lot lines, except where the zoning district classification requires a specific setback standard. However, where a rear lot abuts an alley, accessory buildings not attached to the principal building shall be located so as to be not closer than six (6) feet to the rear lot line, except that when the accessory building is a garage that has its entrance facing the alley, the rear yard setback shall be twenty (20) feet for the garage.

(5) Setback from Principal Structure. An accessory building shall not be nearer than ten (10) feet to the principal structure unless the applicable building code regulations in regard to one (1) hour fire-resistive construction are complied with. In no event can the accessory uses or structures be forward of the front line of the principal structure.

(6) Setback from Other Accessory Buildings. No detached accessory building shall be located within five (5) feet of any other accessory building.

(7) Placement Where Utility Easements Exist. Where there is an existing utility easement, no detached garage or accessory building may be located closer than three (3) feet to such utility easement. In newly platted land divisions, detached garages and accessory buildings shall be located ten (10) feet from the utility easement.

(8) Exterior Finishes. Galvanized unpainted exterior finishes are not permitted on detached accessory structures. All accessory structures and garages shall be constructed of durable materials and shall not utilize fabric/plastic/rubber materials used in such a fashion or manner so as to be a substitute for building walls and/or roof or roofs of said accessory structure or garage.

(9) Lot Area Coverage Determination. The dimensions of any swimming pool, children's play structure, detached garage, detached wind and solar energy conversion units, and other detached accessory buildings/ structures shall be included in the determination of available lot area coverage for accessory structures.

(10) Required Roof Overhangs. All detached structures over one hundred fifty (150) square feet in size, in a residential district, must have a minimum one (1) foot overhang with fascia and soffit on all sides, unless an alternative option is approved by the Village Board.

(11) Setback/Yard Requirements. Except where a zoning district requires specific setback standards, detached accessory structures shall not be closer than three (3) feet to any lot line.

(f) Use Restrictions - Residential District. Accessory uses or structures in residential districts shall not involve the conduct of any business, trade or industry except for home occupations as defined herein and shall not be occupied as a dwelling unit. Accessory buildings shall not be used for residential purposes.

(g) Corner Lots. When an accessory structure is located on the rear of a reversed corner lot, it shall not be located beyond the front yard required on the adjacent interior lot to the rear, nor nearer than three (3) feet to the side line of the adjacent structure.

(h) Landscaping Uses and Lawn Accessories. Accessory decorative lawn accessories, structures and vegetation used for landscaping may be placed in any required yard area. Permitted landscaping structures and vegetation include flag poles, ornamental light standards, lawn furniture, sun dials, fountains, statuary, bird baths, walks, paths, paved terraces, ornamental pools, trees, shrubs and flowers and gardens, provided newly placed vegetation and accessories are located no closer than three (3) feet to a property or right-of- way line.

(i) Temporary Accessory Uses. Temporary accessory uses such as real estate sale field offices or shelters for materials and equipment being used in the construction of the permanent structure may be permitted by the Zoning Administrator.

(j) Garages in Embankments in Front Yards. Where the mean natural grade of a front yard is more than eight (8) feet above the curb level, a private garage may be erected within the front yard, provided as follows:

- (1) That such private garage shall be located not less than five (5) feet from the front lot line;
- (2) That the floor level of such private garage shall be not more than one (1) foot above the curb level; and
- (3) That at least one-half (1/2) the height of such private garage shall be below the mean grade of the front yard.

(k) Outdoor Lighting. Outdoor lighting installations shall not be permitted closer than three (3) feet to an abutting property line and, where not specifically otherwise regulated, shall not exceed fifteen (15) feet in height and shall be adequately shielded or hooded so that no excessive glare or illumination is cast upon the adjoining properties and shall not register more than one-half foot candles at the property line.

(l) Retaining Walls. Retaining walls may be permitted anywhere on the lot, provided, however, that no individual wall shall exceed six (6) feet in height, and a terrace of at least three (3) feet in width shall be provided between any series of such walls.

(m) Children's Play Structures. For purposes of this Section, children's play structures, including play houses, tree houses or elevated play structures and climbing gyms, shall be considered accessory structures and shall comply with the dimensional requirements of this Section, specifically height and setback standards, whether such play structures are placed on a foundation or not. Swing sets, slides and sandboxes are not considered children's play structures for purposes of this Section. A building permit is not required for the construction of a play structure. Play structures shall not be used for storage or be constructed out of materials that would constitute a nuisance.

(n) Terrace Area Restrictions. In addition to the definitions and restrictions contained in Title 6, Chapter 2 of this Code of Ordinances, no person shall place any accessory structure or use, including landscaping ornaments, stones and basketball backboard/hoops, in the terrace area.

(o) Offensive Uses Prohibited. No accessory use shall be dangerous, obnoxious or offensive to persons residing in the vicinity, nor shall it impair the use, enjoyment or value of any property.

(p) Prohibited Dwelling Use. No accessory dwelling unit in any Residential District shall be used or let for living purposes, whether for compensation or not.

(q) Gardening. Home gardening is a permitted accessory use on any residential lot with a dwelling or the principal use on any vacant lot or parcel.

(r) Dog Houses/Runs. Dog houses and/or runs shall comply with the setback requirements in Section 13-1-202.

(s) Agricultural Structures. Agricultural structures in properly zoned agricultural districts such as barns, silos and windmills shall not exceed in height twice their distance from the nearest lot line.

(t) Tents; Fabric-Covered Structures; Hoop-Supported Structures.

(1) Prohibited Use as Permanent Accessory Structure. No tent, plastic or fabric-covered structure, or a structure supported by hoops or a tubular frame, also known as a "polystructure", may be used as a permanent accessory structure in a non-agricultural district without Village Board approval; such structures may be erected and used no more than one hundred eighty (180) days per year without being removed. An exception is that a plastic or fabric-covered hoop-supported or tubular greenhouse may be maintained if used exclusively for personal greenhouse use.

(2) Anchoring Requirement. Any permitted tent, plastic or fabric-covered structure, or a structure supported by hoops or a tubular frame shall be fastened or anchored in a stable manner to the ground.

(3) Limitations on Utility Service. No plumbing, electrical, heating or other utility service may be installed in a tent, plastic or fabric-covered structure, or a structure supported by hoops or a tubular frame except for seasonal use in personal greenhouses. A tent shall not be used as a dwelling other than for temporary recreational use.

(4) Compliance with Accessory Building Requirements. Any tent, plastic or fabric-covered structure, or a structure supported by hoops or a tubular frame, shall comply with the dimensional and yard/setback requirements of this Section.

(u) Design Standards for Detached Accessory Buildings; Architectural Requirements. Except where more restrictive requirements exist for accessory structures elsewhere in this Section, the following standards shall be complied with for residential detached accessory structures in platted subdivisions only exceeding one hundred and fifty (150) square feet:

(1) Architectural Consistency Requirements in All Residential Zoning Districts.

a. Accessory buildings shall have a design composition which is architecturally consistent with the principal building, and shall incorporate similar complimentary design elements and colors where visible to the public; the roof pitch and roof line of an accessory building shall be the same or similar to that of the principal building. This Subsection is not applicable to greenhouses.

b. Accessory building walls clad with a singular exterior surface material shall provide some additional architectural design element(s) to break up the visual plane of the wall. This may be done by the addition of windows, gable end wall treatments, siding design and accent panels, protruding pilasters, or other architectural design treatments consistent with the principal building design.

c. In all residential districts in addition to the above requirements, detached accessory structures shall utilize similar exterior wall siding materials as then exist on the principal residential structure on the property. In the case of principal residential structures in all residential districts utilizing exterior brick, stone or masonry, similar brick, stone or masonry materials shall be used on the front portion of the exterior walls of the detached accessory structure or any publicly visible elevation. At a minimum, a thirty (30) inch high masonry base should be included on elevations visible from public view. Masonry, stone or brick accents or trim elements matching similar components on the principal residential structure are acceptable to complement a residence constructed with brick, stone or masonry siding materials. For the remainder of the accessory structure located in a residential district with a brick, stone or masonry residence, siding materials shall resemble siding materials utilized on at least one (1) other non-brick/masonry residential structure found on an adjacent or on the same block in the residential neighborhood, if any, provided that such comparison structure must meet the minimum design standards of this Section.

(2) Exterior Finishes and Materials.

a. The exterior walls of accessory structures shall be clad with: cement fiber siding; engineered composite siding; wood; wood shakes; wood clapboards; vinyl, steel or aluminum beveled siding; brick, stone or other masonry-type veneer materials; non-reflective painted metal cladding; or similar materials approved by the Building Inspector. The color and texture of exterior wall materials shall be similar to the color used on the exterior of the principal residential structure where visible to the public. Accessory structures in residential districts visible to the public shall utilize exterior wall materials of similar type, color and texture as found on the principal structure on the lot. Pole-type construction accessory structures in a Residential District may only be permitted if the criteria herein can be met.

b. Roofs of all accessory structures on residential parcels shall be covered with asphalt shingles; wood or shake shingles; standing painted metal siding; tile roofing; or slate roofing. Accessory structures in residential districts shall have roof lines and angles similar to the roof lines and angles of the principal residential structure on the property. No flat roofs shall be permitted on accessory structures (boathouses excepted) unless the principal residential structure has a flat roof covering more than half of the residence, excluding a garage or carport flat roof feature attached to the principal residential structure.

c. Galvanized, reflective or unpainted corrugated exterior metal siding or roof finishes are not permitted on detached accessory structures. Any metal walls or roofing shall be not less than 26 gauge, roll-formed ribbed sheeting with a factory-applied non-reflective finish with a manufacturer's warranty of not less than twenty (20) years for the metal and finish. The use of used metal siding/roofing is not permitted.

d. The use of decorative stone, stone veneer, and brick is required on accessory structures in residential districts per Subsection (g)(l)c above and is encouraged with other non-agricultural accessory structures on parcels with a primarily residential purpose.

e. For structures twenty (20) feet in length or greater, roof design shall include architectural distinction to interrupt the visual continuity of the roof. The inclusion of a roof cupola, roof dormers or roof line changes would act as acceptable architectural elements.

f. Detached accessory structures shall not have a rooftop deck (boathouses excepted).

g. All accessory structures and garages shall be constructed of durable materials and shall not utilize fabric/plastic/rubber materials or membranes used in such a fashion or manner so as to be a substitute for building walls and/or roof or roofs of said accessory structure or garage.

h. Detached accessory structures should have windows established on at least two

(2) walls.

(3) Anchoring. Accessory buildings with foundations shall be secured with anchor bolts. Accessory buildings not located on a foundation shall be provided with suitable anchoring to the ground.

(4) Lot Area Determination. The dimensions of any swimming pool, children's play structure, detached garage, dedicated sports court, detached gazebo or pergola, and other detached accessory buildings/ structures shall be included in the determination of available lot area coverage for accessory structures. Patios and decks are not included in such determinations.

(5) Required Roof Overhangs. All detached structures over one hundred fifty (150) square feet in size, in a residential district, must have a minimum one (1) foot overhang with fascia and soffit on all sides, unless an alternative option is approved by the Village Board. No portion of the accessory building, including roof eaves, shall extend across a property line.

(6) Placement on Easements. Accessory structures are prohibited from being placed within any recorded easement.

(v) Decks; Patios; Gazebos; Pergolas. The following require an accessory building zoning permit and shall comply with the following requirements:

(1) Decks. Decks which are constructed six (6) inches or more above lot grade, and which are attached to or closer than eight (8) feet to the principal structure, shall be considered a part of the principal structure and shall comply with the setback requirements for principal structures in that zoning district. Freestanding decks separated from the principal shall be located a minimum of eight (8) feet from the principal structure and shall comply with the setback requirements for accessory structures in that zoning district. Decks constructed less than six (6) inches above lot grade shall comply with the setback requirements for patios.

(2) Patios. Patios, constructed at or below lot grade, shall comply with the setback requirements for accessory structures in that zoning district.

(3) Gazebos; Pergolas. A gazebo or pergola connected with a deck which is attached to the principal structure shall comply with the setback requirements for principal structures in that zoning district. Freestanding gazebos or pergolas shall comply with the setback requirements for accessory buildings in that zoning district. A gazebo or pergola shall not exceed two hundred forty (240) square feet in size.

(w) Air Conditioning Compressors. Central air conditioning compressors are permitted in the rear yard or side yard without a permit, provided that the compressor shall be located a minimum of five (5) feet from a lot line. Where it is determined that it is impractical to locate a central air conditioning compressor in the side or rear yards due to unique practical limitations with a lot, the Building Inspector may permit placement in the street yard provided that the air conditioning compressor is screened from view.

Sec. 13-1-263 Variances.

(a) Purpose.

(1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him/her undue hardship or create conditions causing greater harmful effects than the initial condition.

A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.

(2) The Zoning Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection than the flood protection elevation for the particular area or permit standards lower than those required by state law.

(3) For the purposes of this Section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district.

(b) Application for Variances. The application for variation shall be filed with the Village Administrator. Applications may be made by the owner or lessee of the structure, land or water to be affected. The application shall contain the following information:

- (1) Name and address of applicant and all abutting and opposite property owners of record.
- (2) Statement that the applicant is the owner or the authorized agent of the owner of the property.
- (3) Address and description of the property.
- (4) A site plan showing an accurate depiction of the property.
- (5) Additional information required by the Village Administrator, Building Inspector, Village Engineer, Zoning Board of Appeals and/or Zoning Administrator.

(c) Public Hearing of Application.

(1) The Zoning Board of Appeals shall conduct at least one (1) public hearing on the proposed variation. Notice of such hearing shall be given not more than thirty (30) days and not less than seven (7) days before the hearing in one (1) or more of the newspapers in general circulation in the Village, and shall give due notice to the parties in interest, the Zoning Administrator and the Village Board. At the hearing the appellant or applicant may appear in person, by agent or by attorney. The Zoning Board of Appeals shall thereafter reach its decision within thirty (30) days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator and Village Board.

(d) Action of the Zoning Board of Appeals. For the Zoning Board of Appeals to grant a variance, it must find that:

(1) Denial of variation may result in hardship to the property owner due to physiographical consideration. 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 and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.

(2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

(3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.

(4) The granting of the variation 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.

(5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.

(e) Conditions. The Zoning Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established by this Chapter. Per Sec. 62.23(7)(e)7.e., Wis. Stats., the Village Board authorizes the Zoning Board of Appeals to impose an expiration date for a variance if such date relates to a specific date by which action or work authorized must be commenced or completed. In the absence of a different expiration date being established at the time of granting a variance, no order of the Zoning Board of Appeals granting a variance shall be valid for a period longer than eighteen (18) months from the date of such order unless within such period the erection or alteration of a building is started or the use is commenced per the variance approval.

(f) Standards for Qualifying For A Variance. To qualify for a variance, the applicant must demonstrate that their property meets the following three (3) requirements:

(1) Unique Property Limitations.

a. The applicant must show that the property has conditions that are unique or special to that property, that such unique physical characteristics prevent compliance with the regulations of this Zoning Code. Examples, but not limited to, of such conditions are physical limitations unique to the property such as wetlands or exceptionally unique steep slopes.

b. The following are non-exclusive examples of items Wisconsin courts have decided cannot be a basis for granting a variance under the "unique property limitation" test:

1. Financial considerations of the applicant.
2. The personal circumstances of the applicant (i.e. need for an expanded garage, a growing family, an unemployed family member returning home, etc.).
3. The existence of nearby Zoning Code violations.
4. Lack of objections from neighbors.

(2) No Harm To Public Interests. To qualify for a variance, the applicant must demonstrate that the proposed variance is not contrary to the public interest. In applying this test, the Zoning Board of Appeals must consider the impacts of the variance proposal, and, if setting a precedent, the cumulative impacts of similar projects on the interests of the neighbors, the overall Village of Edgar and the general public. Such factors are generally identified in Section 13-1-4.

(3) Unnecessary Hardship.

a. To qualify for a variance, the applicant must demonstrate that the special condition(s) of the property creates an unnecessary hardship. When determining whether an unnecessary hardship

exists, the property as a whole shall be considered rather than a portion of the property.

b. The following are non-exclusive examples of items Wisconsin courts have decided cannot be a basis for granting a variance under the "unnecessary hardship" test:

1. Conditions which are self-imposed or created by a prior owner (i.e. owner expands home and then argues there is no suitable location for a proposed new garage).

2. Economic or financial hardship to the applicant (i.e. construction of a new garage in a complying location would cost more than placing the garage in a location requiring a variance).

3. Lack of objections from neighbors.

c. Due to Wisconsin court decisions, the "unnecessary hardship" determination requires that the Board of Appeals apply different tests for use variances and area variances:

1. For a use variance, unnecessary hardship can be determined to exist only if the property owner can show that he/she would have no reasonable use of the property without a variance. A use variance would permit a property owner to put property to an otherwise prohibited use.

2. For an area variance, unnecessary hardship can be determined to exist only if the property owner can show that compliance with the requirements of the Zoning Code would unreasonably prevent the property owner from using the land for a permitted purpose (leaving the property owner without any use that is permitted for the property under the Zoning Code) or would render conformity with such zoning restrictions unnecessarily burdensome. Area variances are intended to provide an increment of relief (usually small) from a physical dimensional requirement of the Zoning Code such as building height or setback requirements. In applying the test for an area variance, the Zoning Board of Appeals shall consider the purpose of the Zoning Code, the Zoning Code's restrictions on the applicant's property, and the cumulative effects granting of a variance would have on the neighborhood, community and on the public interests.

3. Unless the Zoning Board of Appeals finds that a property cannot be used for any permitted purpose, area variances shall not be granted for greater than a forty percent (40%) deviation in the area, setback, height or density requirements specified in this Chapter.

(Note: The above standards reflect the Wisconsin Supreme Court's decisions in *State ex rel. Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Board of Adjustment*, 2004 WI 56, __ Wis. 2d __, 679 N.W.2d 514).