



Village of Bayside  
9075 N Regent Rd  
June 2, 2021  
Remote Teleconferencing, 6:00 pm

## **BOARD OF ZONING APPEALS AGENDA**

**PLEASE TAKE NOTICE** Due to the Covid 19 Pandemic, the meeting of the Village of Bayside Board of Zoning Appeals will be held via remote teleconferencing at the above noted time and date, at which the following items of business will be discussed and possibly acted upon.

### **I. CALL TO ORDER AND ROLL CALL**

### **II. PUBLIC HEARING**

- A. The purpose of the public hearing is to consider the request for a variance by Jeffrey and Elizabeth Billings, for the property located at 9377 N Regent Road, to allow the recently installed fence to remain in place, contrary to Section 104-125(c).

1. Public Discussion
2. Board Discussion

### **III. APPROVAL OF MINUTES**

- A. May 5, 2021 Board of Zoning Appeals Public Hearing and Meeting.

### **IV. BUSINESS**

- A. Discussion/recommendation on the request for a variance by Jeffrey and Elizabeth Billings, for the property located at 9377 N Regent Road, to allow the recently installed fence to remain in place, contrary to Section 104-125(c).

### **V. ANY OTHER BUSINESS AS MAY PROPERLY COME BEFORE THE BOARD**

### **VI. ADJOURNMENT**

The Board of Zoning Appeals will utilize Zoom video conferencing software for this meeting. To join the Zoom meeting using a computer or tablet:

<https://us02web.zoom.us/j/82918657729?pwd=OEw4MFNCWHprc2VYQWdlcE1kSDB1UT09>

Meeting ID: 829 1865 7729; Password: 4260791; Phone: 312 626 6799

Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. Contact Village Hall at 414-206-3915. It is possible that members of and possibly a quorum of members of other Boards, Commissions, or Committees of the Village including in particular the Board of Trustees may be in attendance in the above stated meeting to gather information; no action will be taken by any other Boards, Commissions, or Committees of the Village except by the Board, Commission, or Committee noticed above. Agendas and minutes are available on the Village website ([www.baysidewi.gov](http://www.baysidewi.gov))

STATE OF WISCONSIN - VILLAGE OF BAYSIDE - MILWAUKEE & OZAUKEE COUNTIES

**NOTICE OF PUBLIC HEARING**

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In the matter of a request for a variance by Jeffrey and Elizabeth Billings, for the property located at 9377 N Regent Road, to allow an installed fence to remain in place, contrary to Section 104-125(c).

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**PLEASE TAKE NOTICE** that a public hearing will be held before the Board of Zoning Appeals of the Village of Bayside on June 2, 2021 at 6:00 pm via remote teleconferencing (see agenda for details). The purpose of the public hearing is to consider:

The request for a variance by Jeffrey and Elizabeth Billings, for the property located at 9377 N Regent Road, to allow the recently installed fence to remain in place, contrary to Section 104-125(c).

**PLEASE TAKE FURTHER NOTICE** that at such time and place, all interested parties will be heard via remote teleconferencing on this matter.

**DATED** this thirteenth day of May 2021.

  
Lynn Galyardt  
Administrative Services Director



**I. CALL TO ORDER**

Chairperson Dickman called the meeting to order at 6:01pm via remote teleconferencing.

**II. ROLL CALL**

Chair: Max Dickman  
Members: Darren Fisher  
Amy Krier  
Ben Minkin  
Eido Walny  
Dan Rosenfeld - Excused  
Barry Chaet - Arrived at 6:04pm

Also Present: Village Manager Andy Pederson  
Administrative Services Director Lynn Galyardt  
Deputy Clerk Cassie Schmidt  
There were four people in the audience.

**III. PUBLIC HEARING**

- A. The purpose of the public hearing is to consider the request for a special exception by Matthew and Claire Evans, for the property located at 309 E Fairy Chasm Road, to construct an 8'x10' shed that will encroach into the rear yard setback, contrary to Section 125-91(b)(5).**

Chairperson Dickman read the above meeting notice and called for public discussion at 6:03pm.

**1. Public Discussion**

Matthew and Claire Evans, property owners, appeared on behalf of the project.

Mr. Evans described the project as the replacement of an 8'x10' shed in the backyard. The existing concrete pad will be utilized, which encroaches into the rear setback. Mr. Evans spoke to all abutting neighbors, who expressed their support for the project by signing a letter.

**2. Board Discussion**

Chairperson Dickman stated the project seems reasonable since the applicants have neighbor approval, are using the same concrete pad, and it would be an undue burden to request the applicants to put the shed somewhere else.

Chairperson Dickman closed the public hearing 6:07pm.

- B. The purpose of the public hearing is to consider the request for a variance by Darrell and Connie Oyer, for the property located at 1460 E Bay Point Road, to install a 5-foot-tall wrought iron fence in the front yard, contrary to Section 104-125(j).**

Chairperson Dickman read the above meeting notice and called for public discussion at

6:07pm.

## **1. Public Discussion**

Darrell and Connie Oyer, property owners, appeared on behalf of the project.

Mr. Oyer described the project as the installation of a wrought iron fence in the front yard. The area is brushy, and this project would help clean the area up and increase the aesthetics of the neighborhood.

Manager Pederson stated the applicants went through a similar process back in 2015, obtaining approval from the Board of Zoning Appeals and the Architectural Review Committee for the existing gate and fence that is there. This project will be an expansion of that fence.

Chairperson Dickman questioned the rationale in terms of the unnecessary hardship requirement that is required for a variance.

Manager Pederson stated the hardship stated in 2012 was the intrusions into the property. The driveway is long, and the house sits closer to the lake, inhibiting the sightlines up the driveway.

Chairperson Walny questioned whether the existing gate has already taken care of those issues. Manager Pederson stated at the time the existing gate was approved, the vegetation inhibited the property owners from completing the project. Now that some vegetation has been removed, the project can be completed.

Chairperson Walny questioned where the new fencing is being proposed. Mr. Oyer stated that it is along the frontage on the road into the property from the easement line.

## **2. Board Discussion**

There was none.

Chairperson Dickman closed the public hearing at 6:16pm.

## **IV. APPROVAL OF MINUTES**

### **A. March 3, 2021 Board of Zoning Appeals Public Hearing and Meeting.**

Motion by Chairperson Chaet, seconded by Chairperson Walny, to approve the minutes of the March 3, 2021 Board of Zoning Appeals Public Hearing and Meeting. Motion carried unanimously.

## **V. BUSINESS**

### **A. Discussion/recommendation on the request for a special exception by Matthew and Claire Evans, for the property located at 309 E Fairy Chasm Road, to construct an 8'x10' shed that will encroach into the rear yard setback, contrary to Section 125-91(b)(5).**

Motion by Chairperson Minkin, seconded by Chairperson Chaet, to recommend to the Board of Trustees approval on the request for a special exception by Matthew and Claire Evans, for the property located at 309 E Fairy Chasm Road, to construct an 8'x10' shed that will encroach into the rear yard setback, contrary to Section 125-91(b)(5). Motion carried unanimously.

### **B. Discussion/recommendation on the request for a variance by Darrell and Connie Oyer, for the property located at 1460 E Bay Point Road, to install a 5-foot-tall wrought iron fence in the front yard, contrary to Section 104-125(j).**

Motion by Chairperson Chaet, seconded by Chairperson Minkin, to approve the request for a variance by Darrell and Connie Oyer, for the property located at 1460 E Bay Point Road, to install a 5-foot-tall wrought iron fence in the front yard, contrary to Section 104-125(j). Motion carried unanimously with Chairperson Walny abstaining.

**VI. ANY OTHER BUSINESS AS MAY PROPERLY COME BEFORE THE BOARD**

None.

**VII. ADJOURNMENT**

Motion by Chairperson Chaet, seconded by Chairperson Krier, to adjourn the meeting at 6:20pm. Motion carried unanimously.

Respectfully submitted,

Cassie Schmidt, Deputy Clerk | | May 17, 2021



## APPLICATION FOR VARIANCE TO THE ZONING CODE REQUIREMENTS

### Statutory Requirements

State law does not allow the Zoning Board of Appeals to approve a variance unless the situation meets all three of the specific tests listed below. State how and why your situation and request satisfies these tests.

Unnecessary hardship is present in that a literal enforcement of the terms of the zoning ordinance would deny the applicant all reasonable use of the property because:

*see attached statement*

The hardship is due to physical limitations of the property rather than the circumstances of the appellant because (economic or self-imposed hardships do not meet this test):

*see attached statement*

The variance will not be contrary to the public interest as expressed by the objectives of the Zoning Ordinance because:

*see attached statement*

Applicant Printed Name

*Jeffrey S. Billings*

Applicant Signature

*May 7, 2021*

*Elizabeth Billings*

*Elizabeth Billings 5-7-2021*

### **Statement to Application for Variance to the Zoning Code Requirements**

This application is submitted in response to the letter we received on May 5, 2021 from Christopher J. Jaekels, attorney for the Village of Bayside, indicating that our fence project that was completed in the fall of 2020, as permitted by the Architectural Review Committee at its June 1, 2020 meeting, is in noncompliance of Section 104-125(c) of the Municipal Code. In his letter, Attorney Jaekels indicated that we would be required to: (1) move the fence to the original fence footprint; (2) remove it entirely; or (3) obtain a variance or special exception under Section 62.23 of the Wisconsin Statutes to allow the fence to remain in place.

As homeowners, we spent five months planning our fence project, seeking input from the Village and our neighbors regarding the project, requesting a variance from the Board of Zoning Appeals Committee and then, in response to their concerns from their May 11, 2020 meeting, modifying our plan and coming up with a proposal that allowed us to withdraw our request for a variance. During that process, we submitted a 48-page document with 13 exhibits (i.e. project proposal and scope of work, permit application, letters to our neighbors, pictures of existing fence in disrepair, certified survey map with both the proposed fence line and temporary fence requirements, fencing contract, material information on the fence, landscape improvement proposal including grading schematic, etc.) explained our situation, rationale and plan for the project and its benefits to the neighborhood on April 24, 2020, submitted 6 additional pages of materials related to the project, participated in the May 11, 2020 Board of Zoning Appeals Committee meeting and meetings of the Architectural Review Committee on May 11, 2020 and June 1, 2020, spoke with our neighbors to discuss their concerns and modified our plans accordingly to address concerns. Given the objections of two (2) of our neighbors, we spent 30 minutes before the June 1, 2020 Architectural Review Committee meeting walking our property with those two neighbors, explaining the project, the rationale, and the scope, and answering their questions. On June 1, 2020, we were granted a permit to construct the new fence, and from July 24 through October 1 we completed the fence project within the specifications of the permit. During this time, we did our best to keep our neighbors informed of key dates for the work and responded to any concerns that were expressed to us by our neighbors. Finally, given the importance of the Village's underground drainage pipes on our southern and western lots lines, at our own expense we paid Visi-Sewer (the Village's contractor) to inspect and video tape the drainage pipes to make sure that no damage had been done, and provided a copy of that satisfactory inspection to the Village per their request.

During this time, all of our contractors and my wife and I personally were harassed by various neighbors, our property was repeatedly trespassed upon by various neighbors and their friends, and ultimately criminal damage was done to our property during the project, when a party trespassed onto our property to insert a spray foam can duct taped into the "on" position into a 6-inch French drainpipe in our back yard, resulting in significant damage. We opened a criminal investigation with the Bayside Police department. At the Police's recommendation, we installed closed circuit cameras along our western, southern, and northern property lines that monitor our property 24 hours a day, and also provided the Police with a 38-page document detailing the various incidents, harassment, trespassing and other criminal and inappropriate behavior of our neighbors. For now, we have asked that the police not pursue any of these matters in the hopes that once our new landscaping was completed along the western property line (already under contract and scheduled for the first week of June 2021) everyone would come to realize the

benefit of the work that we did as homeowners and we could all move on as neighbors. At every turn throughout this horrible ordeal, we have acted with integrity and have remained friendly, professional, neighborly, and forgiving.

After all of this, it has now been brought to our attention that the Village and SafeBuilt (the Village's permit compliance vendor) issued our fence permit in error because our fence exceeds the 50% limit of the total horizontal linear footage of our property as indicated in Section 104-125(c) of the Municipal Code. If you review the SafeBuilt Village Code Review from May 22, 2020, it explicitly states that the fence will be  $748/1025 = 73\%$  of the total property perimeter, and SafeBuilt indicated that the fence was in compliance with Municipal Code. Our previous fence was 700 feet and the new fence is roughly 748 feet, so our grandfathered fence was already 68% of the horizontal linear feet of our yard. A literal interpretation would require us to bring the fence down to 512.5 feet, a 187.5-foot reduction in fence size from our grandfathered fence, something we never would have done. We spent 4 months completing the project pursuant to the permit that was granted, and spent well in excess of \$100,000 of our own funds on the project, relying throughout on SafeBuilt's determination that our project was in compliance with the Municipal Code and the Village's subsequent granting of the permit to move forward with our project.

In response to the three options presented in Attorney Jackel's letter, options (1) and (2) are not feasible. Option (2), removal of the fence, is not feasible because it would leave us in noncompliance with the Municipal Code regulations governing our inground pool. Option (1) is not feasible because putting the fence back in the original fence footprint would mean re-encroaching on 2 of our neighbors' properties to the north of our property. To remind everyone, through the survey process we discovered that our previous chain link fence, built by prior owners, encroached on the northside of our property up to 6.7 feet onto our neighbors' properties. Although there were a myriad of benefits in moving forward with our fencing project, the three reasons that ultimately caused us to move forward and incur the significant expense were: (i) to correct our encroachment on the north; (ii) to allow us to fence the nearly 12% of our backyard that was essentially unusable to the south and west because it was outside a 700 foot fence with no access; and (iii) the ability to improve drainage on our western property line that was negatively impacting our pool house/shed, our inground pool and our tennis court. Without these three key elements of the project, we never would have moved forward. Once the Village granted our permit and we were able to address these three issues, we relied on that permit and incurred significant expense that we would not otherwise have incurred but for the project. To ask us to undo the benefits of the project at this time would be create extreme and undue hardship. Therefore, forced with the only recourse left to us from Attorney Jaekels' letter, we are requesting a variance from the Board of Zoning Appeals Committee.



### **Statutory Requirements**

**State law does not allow the Zoning Board of Appeals to approve a variance unless the situation meets all three of the specific tests listed below. State how and why your situation and request satisfies these tests. Unnecessary hardship is present in that a literal enforcement of the terms of the zoning ordinance would deny the applicant all reasonable use of the property because:**

Absent a variance, the error by the Village and SafeBuilt puts us in a position where we will be denied all reasonable use of our property. We cannot eliminate the fence because of our inground pool, so option (2) is not viable. Option (1) is not viable because it would require us to move the fence to the original footprint (through a grandfathering rule) and the only way to do that is to re-encroach on our neighbors' properties (which would be illegal). Finally, forcing us to move the fence to come within the 50% horizontal linear foot rule of Section 104-125(c) of the Municipal Code would create a result where we actually lose access to additional fenced yard above and beyond the 12% of our yard that was already outside of the fence prior to the project. As a result, a literal enforcement of Section 104-125(c) of the Municipal Code after our reliance on the permit granted by the Village, would create a situation where much more than 12% of our yard (perhaps as much as 25% of our yard) was not reasonably usable.

**The hardship is due to physical limitations of the property rather than the circumstances of the appellant because (economic or self-imposed hardships do not meet this test):**

This hardship is due to an error by the Village and SafeBuilt and not the appellant. The all-in project costs for tree removal (about \$10,000), grading and drainage work (about \$40,000), fence product and installation (about \$70,000), and the new 180-foot landscaped western bed (about \$25,000 scheduled to be installed in June) are approaching \$150,000. I cannot imagine the costs of moving the fence to comply with Section 104-125(c) of the Municipal Code, but they would be significant.

Although economic hardships are not said to meet this test per the parenthetical above, a similar matter was addressed in *Ascent Developer, LLC v. City of Menomonie Board of Zoning Appeals, Timber Ridge Homes, LLC*, 2007 WI App 48. A copy of that case is attached for reference, but in that case Timber Ridge mistakenly built part of two residential duplexes within the front setback from the road right-of-way. James Dahl, the city building inspector, had approved the footings for the duplexes before the concrete footings were poured. However, the mistake was not discovered until after Timber Ridge completed the majority of the construction. Correction of the mistake would have cost Timber Ridge over \$100,000. Therefore, Timber Ridge sought, and was granted variances from the board that would permit the duplexes to remain despite the zoning ordinance violation. Accent then filed a certiorari action with the Dunn County Circuit Court to overrule the Board of Zoning Appeals. On March 29, 2006, the court issued a written decision, affirming the board's decision granting the setback variances to Timber Ridge. Accent then appealed that decision and lost again at the Court of Appeals level. *See id.* (citing

*State v. Outagamie Cty. Bd. of Adjustment*, 2001 WI 78, ¶ 53 (“the hardship is unique to the property and not ‘self-created’ to the extent that the Warnings built their home (with the nonconforming basement floor) pursuant to and in reliance upon a building permit duly issued by the Town of Bovina.”)).

The facts of that case and this case are strikingly similar, and at every level of review (the Board of Zoning Appeals, the Circuit Court and the Appeals Court) the variances were upheld. In the present case, SafeBuilt indicated that the permit was in compliance and the Village granted the permit. We relied on it, and any subsequent retroactive cost or action that undoes the primary benefits of the project clearly would impose a hardship.

**The variance will not be contrary to the public interest as expressed by the objectives of the Zoning Ordinance because:**

This permitting process took months and our neighbors had notice of our plans and intentions with the project long before the application was filed. Our six neighbors had the opportunity to object at three separate public hearings, and two of them did so. Their concerns were discussed and addressed by us, the Village and its officers, the Zoning Board, and the Architectural Review Committee. This is unlikely to be a situation that will be repeated or can be relied on by future homeowners, and penalizing the homeowner who did everything correctly and followed all required procedures, relied on SafeBuilt and the Village’s determinations with respect to the project, and ultimately spent nearly \$150,000 to improve the homeowner’s property cannot be said to be contrary to public interest.

300 Wis.2d 561  
Court of Appeals of Wisconsin.

ACCENT DEVELOPERS, LLC, Petitioner--Appellant,  
v.  
CITY OF MENOMONIE BOARD OF ZONING  
APPEALS, Respondent--Respondent,  
TIMBER RIDGE HOMES,  
LLC, Intervenor--Respondent.

No. 2006AP1268.

Submitted on Briefs Jan. 29, 2007.

Opinion Filed Feb. 27, 2007.

#### Synopsis

**Background:** Property owner sought variances from the board of zoning appeals that would permit its residential duplexes to remain despite zoning ordinance violation. Board granted the variances. Landowner, which owned adjacent lots, filed certiorari action. The Circuit Court, Dunn County, Rod W. Smeltzer, J., affirmed the board's decision granting the setback variances, and landowner appealed.

**[Holding:]** The Court of Appeals, Cane, C.J., held that property owner's hardship was not solely self-created, and thus, owner was entitled to setback variances.

Affirmed.

**Procedural Posture(s):** On Appeal.

West Headnotes (5)

[1] **Zoning and Planning** ⇌ Variances and exceptions

414 Zoning and Planning  
414X Judicial Review or Relief  
414X(C) Scope of Review  
414X(C)3 Presumptions and Burdens  
414k1682 Variances and exceptions  
(Formerly 414k678)

When reviewing board's grant of a variance, appellate court must accord a presumption

of correctness and validity to a board of adjustment's decision.

[2] **Zoning and Planning** ⇌ Determination supported by evidence

414 Zoning and Planning  
414X Judicial Review or Relief  
414X(C) Scope of Review  
414X(C)4 Questions of Fact  
414k1697 Determination supported by evidence  
(Formerly 414k702)

Appellate court will not disturb the findings of zoning board if any reasonable view of the evidence sustains such findings.

[3] **Zoning and Planning** ⇌ Unique or peculiar hardship in general

**Zoning and Planning** ⇌ Self-created hardship; prior knowledge

414 Zoning and Planning  
414IX Variances and Exceptions  
414IX(A) In General  
414k1477 Hardship, Loss, or Injury  
414k1481 Unique or peculiar hardship in general  
(Formerly 414k496)

414 Zoning and Planning  
414IX Variances and Exceptions  
414IX(A) In General  
414k1477 Hardship, Loss, or Injury  
414k1482 Self-created hardship; prior knowledge  
(Formerly 414k497)

A board of zoning appeals may grant a variance based on special conditions where a strict enforcement of the provisions would result in an unnecessary hardship, and additionally, the hardship must be unique to the property and not self-created. W.S.A. 62.23(7)(e).

1 Cases that cite this headnote

[4] **Zoning and Planning** ⇌ Building or setback lines

414 Zoning and Planning  
414IX Variances and Exceptions  
414IX(A) In General  
414k1489 Architectural and Structural Designs  
414k1492 Building or setback lines

(Formerly 414k504)

Property owner's hardship was not solely self-created, and thus, owner was entitled to setback variances with respect to residential duplexes which were mistakenly built within the front setback from road right-of-way; property owner's faulty measurements were substantial cause of duplexes' construction within front setback, but city bore some responsibility because its building inspector inspected and approved the footings and he did not detect the setback violation, owner relied on inspection and approval to continue building process, there would be unreasonable hardship for owner to demolish and rebuild duplexes, and the hardship was unique to owner's property. <sup>7-9</sup> W.S.A. 62.23(7)(e).

[5] **Zoning and Planning** ⇌ Building or setback lines

414 Zoning and Planning

414IX Variances and Exceptions

414IX(A) In General

414k1489 Architectural and Structural Designs

414k1492 Building or setback lines

(Formerly 414k504)

When presented with property owner's request for setback variances, board of zoning appeals appropriately considered the role its official played in property owner's mistakenly building residential duplexes within front setback from road right-of-way; city bore some responsibility because its building inspector inspected and approved the footings, and he did not detect the setback violation.

**Attorneys and Law Firms**

**\*\*195** On behalf of the petitioner-appellant, the cause was submitted on the briefs of William G. Thiel, of Weld, Riley, Prens & Ricci, S.C. of Eau Claire.

On behalf of the respondent-respondent, the cause was submitted on the brief of Michael J. Modl and Mitchell R. Olson of Axley Brynson, LLP of Madison.

On behalf of the intervenor-respondent, the cause was submitted on the brief of Peter M. Reinhardt and Bridget M. Finke of Bakke Norman, S.C. of Menomonie.

Before CANE, C.J., HOOVER, P.J., and PETERSON, J.

**Opinion**

¶ 1 CANE, C.J.

**\*563** Accent Developers, LLC appeals the City of Menomonie Board of Zoning Appeals grant of an area variance to Timber Ridge Homes, LLC. Accent argues the board erred as a matter of law in granting the variance because Timber Ridge's hardship was self-created and the evidence in the record does not support the board's decision. We disagree and affirm the Board's decision.

**BACKGROUND**

¶ 2 Timber Ridge constructed two residential duplexes in the City of Menomonie. Timber Ridge mistakenly built part of each duplex within the front setback from the road right-of-way. James Dahl, the city building inspector, had approved the footings for the duplexes before the concrete footings were poured. However, the mistake was not discovered until after Timber Ridge completed the majority of the construction. Correction of the mistake would have cost Timber Ridge

**\*564** over \$100,000.<sup>1</sup> Therefore, Timber Ridge sought variances from the board that would permit the duplexes to remain despite the zoning ordinance violation.

¶ 3 On January 6, 2005, the Board of Zoning Appeals held a hearing on the variances. The board took evidence from Timber Ridge and all interested parties in attendance, including Accent, which owned adjacent lots. At the hearing, Timber Ridge through its agent testified it assumed based on other experiences that the building inspector would have let it know of any violations. Indeed, Dahl admitted he missed the setback violation. At the conclusion of the hearing, the board voted in favor of granting the variances and issued a resolution to that effect dated January 6, 2005.

¶ 4 Accent then filed a certiorari action with the Dunn County Circuit Court. On March 29, 2006, the court issued a written **\*\*196** decision, affirming the board's decision granting the setback variances to Timber Ridge. Accent appeals the board's decision.

# DISCUSSION

[1] [2] ¶ 5 When reviewing a board's grant of a variance, we "must accord a presumption of correctness and validity to a board of adjustment's decision." *State v. Outagamie County Bd. of Adj.*, 2001 WI 78, ¶ 25, 244 Wis.2d 613, 628 N.W.2d 376. We will not disturb the findings of such a board "if any reasonable view of the evidence sustains such findings." *State v. Waushara County Bd. of Adj.*, 2004 WI 56, ¶ 13, 271 Wis.2d 547, 679 N.W.2d 514.

[3] ¶ 6 A board of zoning appeals may grant a variance based on special conditions where a strict enforcement of the provisions would result in an unnecessary hardship. *WIS. STAT. § 62.23(7)(e)*; *State ex rel. Ziervogel v. Washington County Bd. of Adj.*, 2004 WI 23, ¶ 7, 269 Wis.2d 549, 676 N.W.2d 401. Additionally, the hardship must be unique to the property and not self-created. *Ziervogel*, 269 Wis.2d 549, ¶¶ 7, 20, 676 N.W.2d 401.

¶ 7 In *Outagamie County*, our supreme court affirmed a variance stating "compliance with the strict letter of the ... Ordinance would be unnecessarily burdensome under the circumstances of this case." *Outagamie County*, 244 Wis.2d 613, ¶ 51, 628 N.W.2d 376. The court also concluded the hardship was unique to the property and not self-created to the extent that the homeowners built the home in reliance upon a building permit lawfully issued by the city. *Id.*, ¶ 53, 628 N.W.2d 376. The court noted the evidence supported the board's approval of the ordinance. In particular, the town building inspector had previously granted a building permit for a single-family home without advising the owners of the need for a floodplain zoning permit from the county, and without such a permit being obtained. *Id.*, ¶¶ 11–12, 628 N.W.2d 376.

[4] ¶ 8 We conclude *Outagamie County's* circumstances are analogous to the present case. Here, the \*566 board recognized Timber Ridge's hardship was not *solely* self-

created. The record contains ample evidence and discussion of external causes of Timber Ridge's hardship. Admittedly, Timber Ridge's faulty measurements were a substantial cause of the duplexes construction within the front setback. However, the board recognized during its hearing that the City bore some responsibility because its building inspector inspected and approved the footings, and he did not detect the setback violation. At least one member of the board stated that the City might have some culpability for not discovering the violation before approving the inspection. Timber Ridge, through its agent, testified that it relied on the inspection and approval to continue the building process. The board concluded there would be an unreasonable hardship for Timber Ridge to demolish and rebuild the duplexes, the hardship was not solely self-created, and the hardship was unique to Timber Ridge's property. Therefore, the board properly granted the variances.

[5] ¶ 9 Accent argues it was inappropriate for the board to have considered the role its official played when evaluating the unnecessary hardship. To support its argument, Accent principally relies upon *Willow Creek Ranch, LLC v. Town of Shelby*, 2000 WI 56, 235 Wis.2d 409, 611 N.W.2d 693. The cases Accent relies upon hold a municipality cannot be estopped from enforcing its zoning laws based on the mistaken representations of its officers. *Id.*, ¶ 50, 611 N.W.2d 693. These cases do not hold a board may not consider the role its officials played in the zoning \*\*197 violation, when deciding whether to grant a variance. Therefore, we hold the board appropriately considered the role its official played in Timber Ridge's zoning violation.

\*567 ¶ 10 Because there was a reasonable basis for the board to have concluded the hardship was not self-created and a strict enforcement of the ordinance would result in an unnecessary hardship, we affirm.

Judgment affirmed.

## All Citations

300 Wis.2d 561, 730 N.W.2d 194, 2007 WI App 48

## Footnotes

- 1 Interestingly, at Timber Ridge's variance hearing, Accent did not request the zoning ordinances be enforced. Instead, Accent indicated to the board that "they did not want to put Timber Ridge Homes in a position of having to tear down the constructed duplexes." Rather, Accent requested a similar variance be granted for its adjacent property. It is unclear from Accent's brief exactly what remedy it hopes to accomplish by this appeal.

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