




Department of Planning & Community & Economic Development

Building Inspection Division

Madison Municipal Building, Suite LL-100
215 Martin Luther King, Jr. Boulevard
P.O. Box 2984
Madison, Wisconsin 53701-2984
Phone: (608) 266-4551
Fax (608) 266-6377
www.cityofmadison.com

DATE: March 6, 2014
TO: Plan Commission
FROM: Matt Tucker, Zoning Administrator 
SUBJECT: Conditional Use Complaint, CareNet project, 1360 MacArthur Road

On January 31, 2104, City staff received a complaint from a citizen, Mr. Hilton Jones, regarding the approved Conditional Use at the subject property. The complaint alleges a building permit for the Conditional Use was not secured within the required 12 months from the date of the Plan Commission approval of the project, as required in Sec. 28.183(9)(a), and thus the Conditional Use approval has expired. The complaint further argues that the building permits have been issued in error, and should be revoked. A copy of the complaint is included with this letter (attachment #1).

Zoning Ordinance Continuing Jurisdiction review summary

The Plan Commission maintains continuing jurisdiction over approved Conditional Uses. Per Section Sec. 28.183(9)(c), of the Zoning Ordinance, upon written complaint from a citizen, the Plan Commission shall review the request and determine if a reasonable probability exists that the property is in violation of one or more of the conditions of approval. The complaint review and necessary finding that the Plan Commission must make follows:

The Plan Commission shall initially determine whether the complaint indicates a reasonable probability that the subject conditional use is in violation of a condition of approval. If the Plan Commission determines there is a reasonable probability of a violation, it shall conduct a hearing after giving notice as provided in Subsection (4), above.

A copy of Sec. 28.183(9)(c), *Conditional Use, Continuing Jurisdiction*, is attached (attachment #2).

History and background of CareNet Conditional Use review and Building Permit issuance

The Conditional Use request for the project was approved by the Plan Commission on January 14, 2013. The letter of approval was issued one day after the Plan Commission approved the Conditional Use (January 15, 2013), as is standard operating procedure.

The Conditional Use approval decision from the Plan Commission was appealed on January 23, 2013. The Madison Common Council addressed the appeal on February 26, 2013, and voted to overturn the Plan Commission action.

The footing/foundation building permit for the project was issued on January 15, 2014 (copy attached, attachment #3). The remainder of the building permit was issued on January 23, 2014 (copy attached, attachment #4).

Complaint review

The complaint alleges the Conditional Use 12 month permit clock started on January 14, 2013, and subsequently expired on January 14, 2014. As noted above, this Conditional Use was appealed to the Madison Common Council, with said appeal being decided at the February 26, 2013, Common Council meeting.

After discussing the complaint with the Madison City Attorney's office, it is the City's position that a Conditional Use under appeal is not considered *approved* or *final* until the appeal has been addressed by Common Council. In this case, the Council did not render their final decision on the appeal until February 26, 2013. So, the zoning office uses the final disposition of the appeal as the date establishing the "approval date" for the Conditional Use (February 26, 2013). Indeed, the very essence of an appeal is to preserve the status quo until a final decision can be made. In this case, a building permit could not have been issued until the conditional use was finally approved by the Common Council. To consider the timeline as suggested by the complaint would have allowed the applicant only approximately 10.5 months to obtain a building permit, which would be inconsistent with the rule in the Zoning Ordinance that allows applicants 12 months to receive a building permit after approval of the conditional use. Interpreting otherwise would lead to absurd results. For example, under complainant's interpretation, one could argue that in order to preserve the 12-month rule, the applicant could have obtained a building permit during the pendency of the appeal and begun construction before the Common Council could have made a final decision. Had that happened, the complainant surely would have argued the applicant couldn't start construction until the Council made a decision. Second, under complainant's interpretation, applicants whose Conditional Use approvals are appealed would likely be allotted different amounts of time to obtain a building permit. While in this case the applicant would have been left with approximately 10.5 months, the time would vary depending on the ability of the Common Council to hear the appeal. Such varied timeframes would treat applicants for conditional use unfairly – some would have 12 months, others 10.5, others maybe less.

The Conditional use letter from January 15, 2013, was not revised to reflect the Common Council appeal decision date, but the fact this letter was not revised does not supersede the date the zoning office would use to memorialize the start date to the 12 month period by which a building permit must be obtained for the approved Conditional Use. The approval letter itself does not establish the clock, but it merely represents the pertinent information relevant to the request, for the ease of the applicant.

The building permit was issued on January 14, 2014, which is within 12 months of the established approval date (February 26, 2013). The City believes the building permit issued in compliance with the approved Conditional Use, and is valid.

Findings and recommendation

In consideration of the information above, staff is of the opinion that this property is operating in compliance with the standards and conditions of approval associated with this approved Conditional Use

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at this time, and recommends the Plan Commission find that the complaint does not reflect reasonable probability that the subject Conditional Use is operating in violation of the standards for Conditional Use or the conditions of approval for this Conditional Use.

CC: Mr. Hilton Jones

Mayfair Park Neighborhood Association

Ald. Joe Clausius, 17th District

Mr. Kevin Page, Kothe Real Estate Partners

Attachments

Att # 1

Dear Steven Cover (Director of Planning and Community, and Economic Development) and the City of Madison Plan Commission,

Concerning the conditional use permit for 1360 MacArthur Road, Madison, WI

This letter serves as a formal written complaint concerning the conditional use permit for the property located at 1360 MacArthur Road, Madison, WI.

This property was granted a conditional use permit on Jan 14 2013 by the plan commission. Per municipal code 28.183 (9) (a), the applicant of this conditional use permit must "obtain" a valid building permit within 1 year of approval or the conditional use permit is deemed no longer valid. Based on public record a building permit was not obtained for this property by Jan 14 2014, 1 year post approval of the conditional use.

I will bring to your attention that a building permit was erroneously granted in violation of city code on Jan 23 2014, as the applicant's conditional use permit had expired without extension on Jan 15 2014. I am requesting that this building permit be revoked immediately and any future construction halted until the matter is resolved appropriately and legally. I am also requesting that, due to the expiration of the previous conditional use permit, the Plan Commission conducts a hearing to further evaluate the delayed progress of this project along with the issuance of a building permit in error after the previously approved conditional use permit had expired. I am also requesting on behalf of the Mayfair Park Neighborhood Association that the conditional use permit for this property be revoked at this time. It is believed that this violation indicates the likelihood of many future violations to the currently expired conditional use permit and demonstrates the disregard of the applicant for the laws of our city.

I respectfully request that I be notified of future actions concerning this matter so I can keep the neighborhood association informed.

Sincerely,

Hilton Jones
Mayfair Park Neighborhood Association President
hmjones3@gmail.com
1353 MacArthur Road

CITY OF MADISON

JAN 31 2014

Planning & Community
& Economic Development

Sec 28.183(9)(c) Continuing Jurisdiction.

1. The Plan Commission retains continuing jurisdiction over all conditional uses for the purpose of resolving complaints against all previously approved conditional uses. This authority is in addition to the Zoning Administrator's authority under Sec. 28.202.
2. Any citizen, the Zoning Administrator, or other official may file a written complaint with the Plan Commission that one or more conditions of a conditional use permit have not been completed, or are being violated.
3. The Plan Commission shall initially determine whether the complaint indicates a reasonable probability that the subject conditional use is in violation of a condition of approval. If the Plan Commission determines there is a reasonable probability of a violation, it shall conduct a hearing after giving notice as provided in Subsection (4), above.
4. The Plan Commission may, in order to bring the subject conditional use into compliance with the conditions previously imposed by the Plan Commission, modify the existing conditions and impose additional reasonable conditions. If no reasonable modification of the conditional use can be made that are consistent with the standards in Subsection (6), above, the Plan Commission may revoke the conditional use permit and direct the Zoning Administrator and the City Attorney to seek elimination of the subject use.
5. An appeal from a decision of the Plan Commission under this paragraph may be taken to the Common Council as provided by Subsection (5)(b), above.

A4 #3



City of Madison

Building Inspection Unit
215 Martin Luther King Blvd.
Madison WI 53719

PERMISSION TO START CONSTRUCTION

THIS IS A PROCEED AT YOUR OWN RISK FORM WITH ALL RESPONSIBILITY ON THE OWNER AND DESIGNER FOR ANY CHANGES REQUIRED TO BE MADE ONCE THE FULL BUILDING PLANS HAVE BEEN SUBMITTED, REVIEWED, AND "CONDITIONALLY APPROVED".

PROJECT ADDRESS:	PROJECT NUMBER:
1360 MacArthur RD	BLDCES-2014-00051
OWNER:	
CARE NET PREGNANCY CENTER	
CONTRACTOR:	
LANDGRAF CONSTRUCTION INC	
PROJECT TYPE:	
Early Start Program	
PROPERTY USE:	CLASS OF CONSTRUCTION:

YOU WILL NEED TO CALL YOUR INSPECTOR LISTED BELOW FOR A FOOTING AND ALSO A FOUNDATION WALL INSPECTION.

INSPECTOR:	PHONE NUMBER:
William Henry	(608) 266-5910

THIS PERMIT ALLOWS FOR THE SITE LISTED TO BE EXCAVATED, FOOTINGS TO BE FORMED, FOUNDATION WALLS TO BE FORMED AND POURED, CONCRETE FLOORS TO BE POURED AND THE FOUNDATION TO BE FILLED. PENALTY FEES WILL BE ASSESSED IF CONSTRUCTION PROCEEDS PAST THE FOUNDATION.

APPROVED BY:	DATE:	AMOUNT:
Alan Harper	01/15/2014	\$50.00

Att. # 4

CITY OF MADISON BUILDING INSPECTION 215 Martin Luther King Jr. Boulevard P.O. Box 2984 Madison, WI 53701-2984	<h2 style="margin: 0;">Madison Uniform Building Permit Application</h2>	Permit No. BLDNCC-2014-00049
		Parcel No. 081033208085
PROJECT LOCATION Construction		
Building Address 1360 MACARTHUR RD	Phone	Lot No. 0
Zoning District CC-T	Lot Area 0 SF	Subdivision CERTIFIED SURVEY MAP NO 10739 AS RECORDED IN DANE COUNTY REGISTER OF DEEDS IN VOL 64 PAGE
PERMIT REQUESTED		
Contractor's Name LANDGRAF CONSTRUCTION INC	Mailing Address 5964 EXECUTIVE DR MADISON, WI 53719	Phone (608) 274-4700
		Project Owner
Owner's Name CARE NET PREGNANCY CENTER	Mailing Address 1360 MACARTHUR RD MADISON, WI 53714	Phone Fax
		Building Inspector Assigned William Henry (608) 266-5910 WHenry@cityofmadison.com
PROJECT		
THIRTY SIX UNIT APARTMENT & SHELL DAYCARE AREA		
USE	PROPERTY USE	CONST. TYPE
Non-Residential		
CONST. CLASS	FOUNDATION	STORIES
		USE (Res.)
		UNITS Added or Deleted
		PERMANENT
AREA	ELECTRICAL	
sq. ft. 44799	Entrance Panel Size:	Service:
		CHECKED
BRIEFLY DESCRIBE PROJECT:		
EAGLE HARBOR APARTMENTS: THIRTY SIX UNIT APARTMENT & SHELL DAYCARE AREA		
NOTE: Mechanical Supplement sheets provided with this application must be completed and returned to the Inspection Unit by the appropriate Plumbing, HVAC, and Electrical contractors prior to start of work. No inspection will be made until received.		ESTIMATED COST: <div style="text-align: right;">\$0.00</div>
FEES		
Sewer Connect Fee		5.00
Commercial Building Plan Review Fee for Madison		1,344.00
State Building Plan Review Fee for New and Additions		210.00
First Certificate of Occupancy		10.00
New Residential Building and Additions Inspection Fee		4,060.00
Zoning Approval Fee for New Commercial Construction		896.00
Commercial Building Inspection Fee		166.00
Total		6,691.00
CONDITIONS OF APPROVAL This permit is issued to the following conditions. Failure to comply may result in suspension or revocation of this permit or other penalty.		
PERMIT ISSUED BY:	DATE:	ZONING APPROVAL:
Alan Harper	01/23/2014	Jenny Kirchgatter
STATE SEAL NO.		