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Zoning Board of Appeals

Testimony Re: Agenda Item #1; 5646 Lake Mendota Drive

I OPPOSE the granting of this variance and detail the grounds for my strong appeal to the board for rejection of this application in the context of the *Standards for Variance.*

My name is Steve Holtzman, a former alderman who represented this area from 1995 to 2005. I submit the following remarks at the behest of several former constituents who are afraid to speak out against a neighbor's interests. Those who strongly oppose the granting of this variance contacted me based on my prior involvement 21 years ago when an adverse possession suit was brought by the applicant and 6 other property owners contiguous to the public access rights-of-way providing access to the lake. This lawsuit, brought by the applicant over a 3½-year period, is a unique factor that was not addressed in the staff report; something I believe has an important bearing on the matter now before the board.

Comments Relative to the *Standards:*

1. *There are conditions unique to the property of the applicant that do not apply generally to other properties in the district.*

   An examination of the Mendota Beach plat shows lots as narrow as 40' with the majority of structures built before the existing code, several within the setback. Many structures were constructed before annexation by the city, also built before the present code and standards, again not a unique condition.

   The unique condition not raised in the staff report is the location adjacent to public right-of-way and the strong statements of public policy and concern for maintaining physical and visual access to the lake, discussed further in #4.

2. *The variance is not contrary to the spirit, purpose and intent of the regulations in the zoning district and is not contrary to the public interest.*

Ernest Warner surveyed this plat over a century ago. In addition to gifting Spring Harbor Park to the neighborhood, he created the public access lanes to the lake, intended as both access to water for fire safety and as avenues for public enjoyment of the lakes, affirmed by his grandson, Sen. Fred Risser in sworn affidavits submitted to the Court in cases referenced in #4. Public access to the lakes was a strong value when this neighborhood was created; and that value was reaffirmed by the city, state, court and neighborhood twenty years ago.

I submit that no other properties with this rich history exist in the city. And therefore, this application that will continue the visual impacts and actual encroachments that now diminish this public space (as detailed in #5) requires careful consideration. The case for the strong public interest in this matter appears in #4.

3. *For an area variance, compliance with the strict letter of the ordinance would unreasonably prevent use of the property for a permitted purpose or would render compliance with the ordinance unnecessarily burdensome.*

The property can be used and improved without a variance that only serves to continue the visual intrusion this property makes into the hotly disputed public domain. In view of the strong statement of public interest in maintaining the public's physical and visual access to the lake, the occasion of such extensive renovations is the time to eliminate the encroachment rather than extend it.

4. *The alleged difficulty or hardship is created by the terms of the ordinance rather than by a person who has a present interest in the property.*

The hardship here is not imposed by the terms of the ordinance. The hardship that now applies was brought about by the applicants' actions. The applicants aggressively pursued court action for 3½ years, first filing a suit for adverse possession (96CV001284); followed by their appeal of the District Court's rejection of the claim (97CV0627). This litigation spurred strong statements of the public interest in maintaining lake access in the adjacent property by the city

of Madison, the state of Wisconsin, the Courts and the Spring Harbor Neighborhood association.

The city devoted hundreds of hours of staff time to protect the public interest in the right-of-way adjacent to 5646 Lake Mendota Drive. After defending the initial action and later the appeal, city staff worked with neighbors to establish low impact standards for maintaining this neighborhood resource.

During the litigation, the state affirmed the public interest in such properties. First, on April 14, 1998, the Legislature passed 1997 Senate Bill 124, which added standards to adverse possession against a municipality that would have eliminated the applicants' claim from consideration. Then, on April 22, 1998, the Legislature passed 1997 Senate Bill 459, eliminating claims of adverse possession for a right-of-way that provides public access to a navigable lake.

Despite a very strong claim made by the plaintiffs, the city provided strong responses at every turn and prevailed. In a noteworthy portion of the Court's decision, it stated: "The Court feels very strongly that it would be manifestly unjust and greatly against public interest to even consider ...that the (lakeshore courts) now be turned over to the adjacent landowners."

Unlike a typical request for a variance, the hardship of a strong statement of public purpose by the city, District Court, Appeals Court, state and neighborhood association in keeping the public's visual and physical access open in the adjacent lot was fomented by the applicants' own actions.

5. *The proposed variance shall not create substantial detriment to adjacent property.*

If one would like to gauge the future detriment to the adjacent property if this variance is granted, one need only look at what's occurred in the 20 years since the Appeals Court rejected the applicant's claim for ownership of the public access strip.

- Several large bushes grow along the house and the walkway to the house, wholly located in the right-of-way;
- A new compressor unit for air conditioning was installed and sits fully within the public right-of-way;
- A vehicle parked in front of the garage extends into the public right-of-way;
- Stored pier sections encroach into the public right-of-way.

Neighbors agree that these conditions are a breech of the neighborhood standards agreed to and submitted to the city by Spring Harbor Neighborhood

Association president on June 30, 2000, and distributed by the City Engineer to city staff on July 14, 2000.

On their behalf, I ask the zoning administrator to mitigate these encroachments into the Laurel Crest right-of-way.

6. *The proposed variance shall be compatible with the character of the immediate neighborhood.*

Submitting these plans as a modification or remodel of an existing structure stretches one's imagination. In fact, this plan is a demolition and new construction with very few if any elements of the original structure being retained. The proposed structure will best conform with the character of the neighborhood when complying with existing standards for setback, thereby removing the visual intrusion into the setback that now diminishes the public interest in this important connection we all enjoy to Lake Mendota.