



City of Madison

City of Madison
Madison, WI 53703
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Meeting Minutes - Approved ZONING BOARD OF APPEALS

*Consider: Who benefits? Who is burdened?
Who does not have a voice at the table?
How can policymakers mitigate unintended consequences?*

Thursday, March 21, 2024

5:00 PM

Virtual

CALL TO ORDER / ROLL CALL

Ostlind called the meeting to order at 5:11pm.

Staff Present: Katie Bannon, Nancy Kelso, Amanda Hoadley, Assistant City Attorney Amber McReynolds, and Assistant City Attorney Kate Smith

Board Members Present: 4 – Peter Ostlind, Angela Jenkins, David Waugh and Samuel Fritz

Board Members Excused: 2- Allie Berenyi and Craig Brown

APPROVAL OF MINUTES

A motion was made by Jenkins to approve the February 15, 2024 minutes; seconded by Waugh. The motion passed 3-0 by unanimous vote.

PUBLIC COMMENT

1. [61712](#) Zoning Board of Appeals Public Comment Period

There were no public comments.

DISCLOSURES AND RECUSALS

Waugh disclosed that he has had past contact with Marsha Rummel relative to her Alder campaign; however, that would not impact his decision.

Ostlind disclosed he has had both personal and professional association with Marsha Rummel; however, that would not impact his decision nor require his recusal from hearing the agenda item.

PETITION FOR VARIANCE, AREA EXCEPTIONS OR APPEALS

2. [82399](#)

Mike Booth, representative for the owner of the property at 1124 Colby St, requests a front yard setback variance to construct a vestibule building addition on a day care center and school. Alder District #13.

Bannon stated the request is for a front yard setback variance to construct a vestibule building addition on the existing school structure. Utilizing the submitted plans and photographs depicting what is existing and what is proposed for the site, Bannon described the overall building project noting the vestibule area is the portion of the project requiring a variance. Bannon explained the required front yard setback is 20 feet, however in this instance setback averaging can be used which would then provide a required setback of 14.39 feet. The proposal for the vestibule provides a setback of 10.1 feet, resulting in the request for a variance of 4.29 feet. Bannon further described features of the proposal to improve upon interior and exterior accessibility for the building which affects the vestibule location.

Mike Booth of OPN Architects, representative for the owner of the property at 1124 Colby St., stated the goal of the building renovation is to improve on security, energy sustainability, and handicap accessibility. Booth explained design changes that were made to reduce the amount of requested variance while still meeting code requirements. Booth stated it is his understanding that a vestibule is required by code for a space of this size.

Jim Hansen, CFO of Woodland Montessori School, stated the variance request is not driven by design preference but needed for safety, sustainability and accessibility, and explained how the proposal meets the six standards.

Brooke Norsted, Board President of Woodland Montessori School, further explained the desire to create one main entrance and the need for improved accessibility to better serve the current and projected future students enrolled at the school.

In his capacity as District Alder, Tag Evers addressed issues relative to standard 4 and spoke in support of the proposal.

Booth confirmed to the Board that a Landmark review was completed, and it was determined the property is not an historic site.

The Board questioned what design changes would occur if the vestibule were built to be building code compliant. Booth explained that to maintain what he understands to be a code required 7' depth for the vestibule and have an effectively sized accessible ramp, interior load-bearing walls would have to be moved, which would be quite burdensome given the age and structural style of the building. Additionally, Booth stated that locating the vestibule further in the building would take away space from classrooms, offices, and the reception area.

Bannon clarified for the Board the building code requirement for vestibule depth is a minimum of 5', also noting that a vestibule is only required by building and energy code when opening directly into a space of 3,000 square feet or more. Bannon explained that for this proposal, City Plan Review staff looked at the size of the immediate area of the entryway, which covers less than 3,000 square feet.

The Board questioned if alternate locations for the vestibule entrance had been considered. Booth explained that due to the grading and elevations on the property along with maintaining the current size of the playground area, the proposed location selected for the vestibule is their best option.

The Board discussed with the applicant possible options to further reduce the amount of variance, determining placement and alignment for the vestibule structure.

Ostlind closed the public hearing.

Fritz moved for approval of a variance for the proposed structure, the face of which shall not extend into the setback beyond the fascia of the roof of the open porch above; Jenkins seconded.

Review of Standards:

Standard 1: The Board stated that elevation changes on the lot which impede accessibility and having a commercial building within a primarily residential neighborhood present conditions unique to this property.

Standard 2: Noting the applicant's willingness to reduce the amount of requested variance, which improves on buffering and provides a more uniform presentation along the street front, the Board found the proposal is not contrary to the intent and purpose of the zoning code.

Standard 3: The Board determined that constructing a zoning code compliant vestibule would be unnecessarily burdensome as that would require moving existing load bearing supports and a substantial re-design of the proposed addition.

Standard 4: The Board stated that ADA compliance is a reasonable expectation for anyone utilizing this building, therefore any hardship or difficulty for zoning code compliance is created by the terms of the ordinance.

Standard 5: The Board found that with the agreed upon reduction of the requested variance, and noting the support from neighboring property owners, the proposal would not cause substantial detriment to adjacent properties.

Standard 6: Noting that this property is a commercial building placed in a residential neighborhood, it was stated that because the building façade of the proposed addition is characteristic of the existing structure the Board determined that the proposal meets this standard, with the assumption that any plan revisions needed for the reduced variance will maintain the character of the existing structure.

The Board voted 3-0 by unanimous vote to approve the variance request.

Board member Fritz moved for a 5 minute recess; Jenkins seconded. The motion passed by unanimous approval at 7:10pm. Ostlind resumed the meeting at 7:15pm.

3. [81236](#)

Ron Enterprises Wisconsin LLC, owner of the property at 2906 Landmark PI, requests an appeal of the Zoning Administrator's determination as it pertains to an application for a certificate of occupancy for a nonconforming use. Alder District #10.

Ostlind explained the appeal process outlining time limits, presentation of subject matter, and opportunity for rebuttals and questions.

Dan O'Callaghan, representative for Ron Enterprises Wisconsin LLC, owner of the property at 2906 Landmark Place, noted that the Hose family has been operating Countryside Corporate Apartments since 1995. He explained the property had been under the jurisdiction of the Town of Madison and subject to Dane County's zoning ordinance until the Town of Madison was annexed by the City of Madison in October of 2022. O'Callaghan provided a timeline of the historical use of the property and the history of zoning ordinances and regulations applied to the property from the time of construction in 1967 to the present. O'Callaghan stated a notice of violation of City ordinance regarding allowed use was issued to Ron Enterprises on November 11, 2022. O'Callaghan explained that to resolve the violation, an application for a certificate of occupancy for a nonconforming use was submitted with the presented documentation; however, the application was denied by the City Zoning Administrator.

Zoning Administrator Katie Bannon explained how the City of Madison zoning code was applied to this property, noting that in the materials submitted for the certificate of occupancy for a nonconforming use there was not sufficient official documentation from Dane County Zoning specific to this property affirming legal non-conforming use. Assistant City Attorney Kate Smith explained nonconforming use as defined under Madison General Ordinance 28.195 and its application to this case. Bannon provided details and definition of terms from the Dane County zoning code, noting the changes in code taking place since 1995. Bannon stated in the absence of evidence that Dane County approved the use of the property for transient guests under their zoning code, City of Madison zoning code was applied. Bannon further explained under City zoning code rentals less than 30 days would make the use "hotel," which is not allowed in the SR-V2 zoning district. Therefore, Bannon denied the application.

O'Callaghan took the opportunity to respond to the statements made by Bannon and Smith.

The Board posed questions to the appellants, Zoning Administrator and Assistant City Attorneys for further explanation and clarification of their respective positions relating to submitted documents and the interpretation and application of City ordinance.

Ostlind closed the public hearing.

Waugh moved to affirm the Zoning Administrator erred in their determination as it pertains to an application for a certificate of occupancy for a nonconforming use; Fritz seconded.

After deliberations were completed and with no further discussion, the Board voted by roll call vote 2-1, to reverse the Zoning Administrator's determination. Discussion and reasons for the Board's decision are on the record of the

proceeding.

Board member Waugh moved for a 5 minute recess; Fritz seconded. The motion passed by unanimous approval at 10:35pm. Ostlind resumed the meeting at 10:40pm.

4. [82400](#)

Marsha Rummel and Isadore Knox, Jr. request a rehearing of an appeal of the Zoning Administrator's determination as it pertains to the timeliness of an appeal, Legistar file #81875. Alder District #13.

Ostlind explained the request is for a re-hearing for an appeal presented at the February 15, 2024 ZBA meeting. Ostlind explained the process outlining time limits, presentation of subject matter, and opportunity for rebuttals and questions. Ostlind noted that Zoning Administrator Katie Bannon has legal representation from Assistant City Attorney Kate Smith, and that Zoning Board of Appeals members have legal representation from Assistant City Attorney Amber McReynolds.

Isadore Knox Jr. stated they thought the evidence at the prior meeting was materially inaccurate and incomplete and the dates of determination were not clearly designated by the Board. Knox recapped their initial appeal of determination including the timeline for the information presented at the UDC and Plan Commission meetings from July to October of 2023. Knox restated they consider October 30, 2023 to be the date of the Zoning Administrator's determination.

Marsha Rummel expressed the opinion that an inappropriate standard of review was used at the prior meeting, stating the Zoning Administrator does not have the authority to make the initial timeliness determination or to withdraw an application. Knox restated their position that the 15 day limit for filing is not evenly enforced.

Assistant City Attorney Kate Smith stated it is explicit in the ZBA rules of procedure that no request for a rehearing shall be entertained unless substantial new evidence is submitted which could not have reasonably been presented at the previous hearing or which causes a reasonable belief that evidence presented at the prior meeting was materially inaccurate or incomplete. Smith noted the issue of the Zoning Administrator's authority was discussed and clarified at the February meeting, and stated the appellants have not submitted any substantial new evidence that would merit a re-hearing by the Board. Smith explained the options available to the appellants for further appeal of the Board's decision.

Rummel and Knox made rebuttal comments in response to Smith's statements.

Assistant City Attorney Amber McReynolds clarified what is meant by submitting substantial new evidence as required under the ZBA rules of procedure.

The Board questioned if the appellants have new evidence to submit, distinctive from what was previously presented. Rummel acknowledged they did not have new evidence to present.

Ostlind closed the public hearing.

Fritz moved to approve the petitioners' appeal for a rehearing of the Zoning Administrator's determination of timeliness of an appeal; Jenkins seconded.

After deliberations were completed and with no further discussion, the Board voted by roll call vote 1-2, denying the appeal. Discussion and reasons for the

Board's decision are on the record of the proceeding.

DISCUSSION ITEMS

5. [08598](#) Communications and Announcements

Kelso noted cases have been submitted for the April 18, 2024 meeting.

ADJOURNMENT

Jenkins moved to adjourn the meeting; Fritz seconded. By unanimous vote of 3-0 the Board adjourned at 11:54pm.