



AXLEY BRYNELSON, LLP

• • • • •
PETER J. CONRAD
(608) 260-2483
pconrad@axley.com

November 13, 2009

City of Madison Planning Commission
215 Martin Luther King, Jr., Boulevard
Madison, WI 53703

Re: Menzel Enterprises, Inc.
Our File: 12192.57819

Dear Commissioners:

We represent Menzel Enterprises, Inc. ("Menzel"). On behalf of Menzel, we object to the City's proposed ordinance amendment pertaining to sec. 28.10(4)(d)7, which would retroactively remove the 500-foot distance requirement between residential districts and auto storage yards for individuals and businesses that applied for a conditional use prior to January 1, 1995.

Essentially, this ordinance amendment stems from an erroneously issued CUP to property located at 1621 Beld Street. That property is zoned M-1. As you are aware, M-1 zoning allows automobile storage yards as a conditional use, **provided** the entire property on which the automobile storage lot is sited is located at least 500 feet from a residentially-zoned property. 1621 Beld Street obtained a conditional use permit for an automobile storage yard in 1994. However, that CUP was issued in direct violation of the Madison Zoning Code. Specifically, the property is located within 500 feet of residential-zoned property. Thus, the City was notified that the CUP was issued in violation of the Madison Zoning Code. Apparently, rather than enforcing its ordinance, the City is trying to grant a special privilege to this property, by exempting it, and only it, from the required 500-foot separation requirement.

We object to the proposed ordinance amendment for several reasons. First, to the best of our knowledge, the purpose of the ordinance amendment is to provide a benefit to one, and only one, property. The ordinance amendment is not proposed for the purpose of promoting the health, safety, morals or general welfare of the community as required by Wis. Stat. § 62.23(7). Rather, "This amendment corrects an error by City staff and Plan Commission in 1994 approving a conditional use without taking into account the proper distance requirement in the ordinance." Obviously, the City has made a determination that locating auto storage yards at least 500 feet from residential property promotes health, safety, morals or general welfare of the community. This amendment plainly runs contrary to that goal. Its only intention is to correct a past mistake. That is not a rational basis upon which the City can establish a zoning law. Quite frankly, this ordinance amendment is of questionable legality, and vulnerable to legal challenge.

November 13, 2009

Page 2

Next, we object to the ordinance amendment because it does not treat individuals and businesses in the City equally or fairly. First, the proposed amendment only benefits one property. Second, the City commonly encounters zoning violations. In this case, the City has chosen to change its laws to accommodate one property, rather than enforce its ordinance, as it does against others. We believe that this is not only a bad practice for the City, but unfair to its residents and businesses. Moreover, even if this is just a one-time case, that fact further supports the idea that this property is getting special treatment from the City without any rational basis. Frankly, we find it disconcerting that the City would consider changing its zoning laws in order to accommodate only one property to the exclusion of all other citizens' businesses within the City.

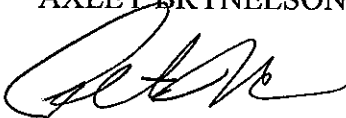
Third, this proposed ordinance amendment runs contrary to the City's proposed comprehensive plan. The future land use of the sole property benefited by the proposed ordinance amendment is identified in the City's comprehensive plan as medium-density residential. This property is also identified as a redevelopment area. An automobile storage yard is not consistent with medium density residential use. Therefore, if the City passes a zoning law that perpetuates the nonconformance with the City's comprehensive plan, it would plainly be an action that is inconsistent with that comprehensive plan.

Finally, we note that, regardless of whether the City tries to retroactively validate an illegally issued CUP to operate an automobile storage yard, automobiles can be stored on this property in a legal fashion. Specifically, like everyone else in the City, the property owner can construct a building and park vehicles inside. This would have the effect of requiring this property to be treated the same as all others within the City of Madison.

For the above-mentioned reasons, we strongly object to the proposed ordinance amendment.

Sincerely,

AXLEY BRYNELSON, LLP



Peter J. Conrad

PJC:egt