

Regarding: **Ordinance Definitions
(Legistar #17835)**

Date: Aug 4, 2010
 Prepared By: Amy Scanlon

General Information:

After an initial overview of the ordinance, staff has flagged the following terms that could be added (or edited) to the definitions section of the Landmarks Ordinance. This is not an exhaustive list, but one to get the Commission thinking about potential changes. The list includes some existing definitions that could be revisited, potential new definitions, or terms that could be combined and/or deleted. Where terms are defined in the current zoning code, those definitions are provided as a reference.

* Terms added to this list since the discussion on 7/26/10 are shown with an asterisk.

“Accessory Building”

Used in 33.19 and defined in the Zoning Code, 28.03 (2):

Accessory Building Or Use. An accessory building or use is one which:

1. Is customary and clearly incidental to the principal building or principal use;
2. Serves exclusively the principal building or principal use;
3. Is subordinate in floor area, extent or purpose to the principal building or principal use served or is a secondary dwelling unit;
4. Contributes to the comfort, convenience or necessity of occupants of the principal building or principal use served; and
5. Is located on the same zoning lot as the principal building or principal use served, with the single exception of such accessory off-street parking facilities as are permitted to locate elsewhere than on the same zoning lot as the building or use served.

An accessory building or use includes, but is not limited to, the following:

1. A children's playhouse, garden house or private greenhouse;
2. A garage, carport, compost bin, shed or building for storage incidental to a permitted use;
3. Incinerators incidental to a permitted use;
4. Storage of goods used in or produced by permitted manufacturing activities on the same zoning lot with such activities, unless such storage is excluded by the district regulations;
5. The production, processing, cleaning, servicing, testing, repair or storage of merchandise normally incidental to a permitted retail service or business use if conducted by the same ownership as the principal use;
6. Off-street motor vehicle parking areas and loading facilities; and
7. Signs, as permitted and regulated in each district incorporated in this ordinance.

8. Keeping of chickens, as permitted and regulated in each district incorporated in this ordinance.
9. Secondary dwelling units.
10. Yard sales.

(Am. by Ord. 9747, Adopted 4-4-89; Ord. 13,605, 5-21-04; ; ORD-05-00011, 2-15-05; ORD-05-00022, 2-24-05; ORD-06-00153, 11-23-06)

PLEASE NOTE: the Draft Zoning Code (May 2010) shows a definition revision for “Accessory Building” as follows:

Accessory Building or Structure. A subordinate building or structure, the use of which is clearly incidental to that of the main building and which is located on the same lot as the principal building, and is subordinate to the principal building in height and floor area.

“Addition”

Used in 33.19, but undefined in both Ordinances.

PLEASE NOTE: the Draft Zoning Code (May 2010) shows a definition for “Addition” as follows:

Addition. Any walled and/or roofed expansion to the perimeter and/or height of a building in which the addition is connected by a common load-bearing wall or foundation.

“Alteration”

Used in 33.19, but undefined in both Ordinances.

*** “Betterment”**

Used in 33.19 (in the definition of “improvement”), but undefined in both Ordinances.

“Building Height”

Used in 33.19 and defined in the Zoning Code, 28.03 (2):

Building Height. Building height is the vertical distance from the curb level, or the approved ground level, opposite the center of the front of a building to the highest point of the roof in the case of a flat roof, to the deck line of a mansard roof, and to the mid height of the highest gable, hip, gambrel or pitched roof. (For purposes of this definition, the mid height shall be calculated by using the highest ridge and its attendant eave. The eave point used shall be where the roof line crosses the side wall.) (Am. by Ord. 10,484, 8-13-92)

PLEASE NOTE: the Draft Zoning Code (May 2010) shows an additional clause as follows:

- (a) In the case of alterations, additions or replacement of existing buildings, height shall be measured from the natural grade prior to construction.

“Development Parcel”

Not used in 33.19 or defined in either Ordinance; however, “development” is defined in the Zoning Code, 28.03 (2):

Development means any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials. (Am. by Ord. 8627, 7-2-85)

“Environment”

Used in 33.19, but undefined in both Ordinances.

“Existing Building”

Used in 33.19, but undefined in both Ordinances.

“Gross Volume”

Used in 33.19, but undefined in both Ordinances.

* **“Hardship”**

Used and undefined in both Ordinances.

PLEASE NOTE: *The use of the word “hardship” for zoning is very specific to the Zoning Board of Appeals the staff has attached an email exchange between the Zoning Administrator and the City attorney about variance standards effecting hardship. The last paragraph could be written to refer to LMC standards instead of zoning standards.*

“Improvement”

Used and defined in 33.19(2):

Improvement means any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

“Improvement Parcel”

Used and defined in 33.19(2):

Improvement parcel is the unit of property which includes a physical betterment constituting an improvement and the land embracing the site thereof, and is treated as a single entity for the purpose of levying real estate taxes. Provided, however that the term “improvement parcel” shall also include any unimproved area of land which is treated as a single entity for such tax purposes.

“Landmark Site”

Used and defined in 33.19(2)

Landmark site means any parcel of land of historic significance due to a substantial value in tracing the history of aboriginal man, or upon which an historic event has occurred, and which has been designated as a landmark site under this section, or an improvement parcel, or part thereof, on which is situated a landmark and any abutting improvement parcel, or part thereof, used as and constituting part of the premises on which the landmark is situated.

“New Building”

Used in 33.19, but undefined in both Ordinances; however, “building” is defined in the Zoning Code, 28.03 (2)

Building. A building is any structure built for the support, shelter or enclosure of persons, animals, chattels or movable property of any kind, and which is permanently affixed to the land. When any portion thereof is completely separated from every other portion by masonry or fire wall without any window, which wall extends from the ground to the roof, then such portion shall be deemed to be a separate building

PLEASE NOTE: the Draft Zoning Code (May 2010) shows a definition for “Building” as follows:

Building. A structure with a permanent location on the land, having a roof that may provide shelter, support, protection or enclosure of persons, animals or property of any kind.

“New street façade”

Used in 33.19, but undefined in both Ordinances.

“New Structure “

Used in 33.19, but undefined in both Ordinances; however, “structure” is defined in the Zoning Code, 28.03 (2). Please refer to the definition of “structure” below.

“Primary Buildings”

Used in 33.19, but undefined in both Ordinances; however, “principal building” is defined in the Zoning Code, 28.03 (2):

Building, Principal. A principal building is a non-accessory building in which is conducted the principal use of the lot on which it is located.

“Structure”

Used in 33.19 and defined in the Zoning Code, 28.03 (2):

Structure. A structure is anything constructed or erected, the use of which requires more or less permanent location on the ground, or attached to something having permanent location on the ground, and in the case of flood plain areas, in the stream bed or lake bed. (Am. by Ord. 7094, 9-12-80)

“Visually Compatible” and/or “Compatible”

Used in 33.19, but undefined in both Ordinances.

“Visually Related Area”

Used and defined in 33.19(2):

Visually related area for a corner parcel shall be defined as the area described by a circle drawn on a two hundred (200) foot radius, the center being the center of the corner parcel, i.e. the intersection of diagonals from the principal corners of

that parcel. (Am. By Ord. 8690, 10-10-85 & 11-14-85; Am. By Ord. 13,001, 2-8-02)

Visually related area for a parcel within a block (not a corner parcel) shall be defined as the area described by a two hundred (200) foot circle drawn from the centerpoint of the streetside (front) lot line. (Am. by Ord. 8690, 10-10-85 & 11-14-85; Am. by Ord. 13,001, 2-8-02)

Tucker, Matthew

Subject: FW: variance standards in zervogel

After the last ZBA meeting, I asked Asst. City Attorney Katherine Noonan to provide guidance in regard to the standards of approval for a variance relative to recent court cases. She has provided some language from the most recent case law that came out of a supreme court case, "Zervogel." She has added her comments in blue typeset.

Matt Tucker

From: Noonan, Katherine
Sent: Wednesday, September 17, 2008 4:23 PM
To: Tucker, Matthew
Subject: variance standards in zervogel

matt - below is some language from the zervogel decision. i included some that deals with the standards for area variances and also some language regarding deliberation by the board.

some language on the standards:

“Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome... [v]ariance requests are always evaluated in light of the purpose of the zoning ordinance and the public interests at stake. Accordingly, whether the standard is met in individual cases depends upon a consideration of the purpose of the zoning restriction in question, its effect on the property, and the effect of a variance on the neighborhood and larger public interests. The established requirements that the hardship be unique to the property and not self-created are maintained and the burden of proving unnecessary hardship remains on the property owner.”

zervogel did not change much in terms of how the city of madison traditionally has considered variances. those communities that used the "no reasonable use of the property" standard would see bigger changes in their analysis of applications. as you can see, the court recognizes the larger issue of the purpose of the zoning code and the public interest as the background for considering specific requests. the one standard in our ordinance that is of least value is the one regarding exclusive economic self interest. i think it is met fairly easily for many of the reasons for the variance, e.g., wanting to remain in a particular neighborhood, even though there likely will be some economic gain when the property is sold. the courts have never specifically stated that an income producing property is not eligible for a variance due to a motivation to increase rental income. i think it is ok to consider this issue, but would not hinge my decision on it.

some language on the deliberation of the board:

“It is axiomatic that all zoning restrictions impose some burdensome effect on property and all variances run contrary to the purpose of the ordinance to some degree. The inquiry should focus on how they do so, and to what extent, in light of the circumstances of each individual case. The board must determine whether a hardship unique to the property has been demonstrated and whether the relief requested is consistent with the public interest such that the variance should be granted, or whether a variance would subvert the purpose of the zoning restriction to such an extent that it must be denied.”

this language reinforces the importance of the overall purpose of the zoning regulations for which a variance is requested.

ends.