



## Office of the City Attorney

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PARALEGAL  
Ryan M. Riley

February 13, 2024

Dear Zoning Board of Appeals,

Thank you for your attention and time. Below is a brief summation of the City's position, which will be supplemented by a PowerPoint presentation prepared by Zoning Administrator Katie Bannon and oral testimony.

### **I. Procedural Posture**

Marsha Rummel and Isadore Knox ("the appellants") are appealing several determinations made by Zoning Administrator Katie Bannon in the summer of 2023 in connection with a project located at 1609 S. Park Street. On November 20, 2023, Marsha Rummel emailed an appeal application to Zoning Administrator Katie Bannon ("Administrator"), with the email stating that [they] did not pay the fee because "the ordinance does not apply to us [the appellants]."<sup>1</sup> Staff considers appeal applications complete when the fee is paid. The appellants paid on December 20, 2023, only after being informed by the Office of the City Attorney that they were not entitled to forgo the fee because they hold public office.

The appeal form listed several determinations made by the Administrator and relied on by City staff when preparing reports and public meeting presentations dating back to the Urban Design Commission on July 26, 2023. The final public meeting on 1609 S. Park Street was held on October 30, 2023, when the Plan Commission voted to grant a Conditional Use Permit ("CUP") for the project. Under MGO Sec. 28.123(5)(b),

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<sup>1</sup> The November 23, 2023 email is in the Zoning Administrator PowerPoint presentation attached to Legistar file [81875](#).

CUP decisions are made by the Plan Commission and appealable to Common Council. The ZBA has no jurisdiction or oversight of the CUP process.

No determination by the Administrator was made at the October 30<sup>th</sup> Plan Commission meeting. No change in the Administrator's decision regarding the topics alleged in the November appeal letter were made after the Urban Design Commission on July 26, 2023. The November appeal letter does not provide any definitive dates and the materials submitted by the appellants in November were not supplemented prior to the fee being paid in December 2023.

Under MGO Sec. 28.202(2)(i), the Zoning Administrator is required to "receive, file and forward to the Zoning Board of Appeals all applications for appeals, variances or other matters on which the Zoning Board of Appeals is required to act under this ordinance." MGO Sec. 28.202(5) explains that appeals must be timely as provided by the ZBA procedural rules. Under the ZBA Policy and Procedures Manual Rule B.1:

**Time of Appeal.** Every appeal shall be taken within fifteen (15) days from the date of notice of refusal of a permit or from the date of the making of any order, ruling, decision or determination from which an appeal is taken. Where official notice is mailed, the time to appeal shall begin running from the postmark date. A written appeal, specifying the grounds therefore, must be filed within fifteen (15) days with the Zoning Administrator. The date of the decision of the Zoning Administrator or other such officer shall not be counted, but the date of filing the appeal and Sundays and holidays shall be counted, except that if the last day falls on a Sunday or legal holiday, the time for filing shall be extended to the next secular day.

The Administrator determined that the appeal was not timely since it clearly fell outside the prescribed period and therefore denied forwarding the appeal to the ZBA. The appellants were informed of this decision on January 10, 2024. The appellants are contesting the timeliness determination. They emailed the Administrator on January 18, 2024 that they wanted to appeal the issue and submitted additional materials specific to timeliness (attached to Legistar File No. 81875).

## **II. Scope of Jurisdiction**

The ZBA has jurisdiction to “to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this chapter.” The appeal here is whether or not Administrator Bannon made a legal error when determining the appeal was not timely under the rules adopted by the Zoning Board of Appeals in their Policy and Procedure Manual as prescribed by Madison General Ordinances.

### **III. Argument**

The issue before the ZBA is simple. The Administrator did not make an error in determining the appeal was untimely under the plain reading of the Madison General Ordinance and ZBA Policy and Procedures manual.

First, all determinations alleged in the November document were made months prior to the Plan Commission meeting. The appellants did not allege the date of the determinations in their appeal letter. Even giving the most generous read to the appellants that the determination was made at the Plan Commission meeting, the appeal was filed outside the fifteen days. *The appellants concede in their own filings that their appeal was filed 20 days after the Plan Commission meeting.*

Second, it is absurd to even consider that the Administrator determinations were made at the Plan Commission meeting on October 30, 2023. Multiple staff reports, communications and public presentations clearly rely on the determinations made by the Administrator mid-summer 2023. No new determinations were made after the July 23, 2023 Urban Design Commission. The public meeting presentation and Legistar file contained the Staff Report which relied on these interpretations. An appeal filed on November 20, 2023 was *months* after the Zoning Administrator made the determinations which the appellants now want to contest.

Finally, appellants argue that they should be granted an additional ten days under ZBA Rule B.3 because Linda Lehnertz emailed Administer Bannon asking for the appeal form – “Alder Rummel had one of her constituents request the appeal form on our behalf. The form was requested on Sunday, November 12<sup>th</sup>” (per the appeal materials sent January 18, 2024). This argument is absurd. ZBA Rule B.3 reads:

**Insufficient Form.** Any communication purporting to be an appeal or application to the Board for a permit shall be regarded as a mere notice of intent to seek relief until it is made in the form required. Upon receipt of

any such communication, the writer shall be supplied with the proper forms for presenting his or her appeal and if he or she fails to supply the requested data in the proper form within ten (10) days in addition to the fifteen (15) days specified in Subsection (1) of this section, his or her case may be dismissed by the Board for lack of prosecution.

The email sent by Linda Lehnertz to Administrator Bannon contained zero identifying information. The email is attached to this letter as an exhibit. The email does not say she is inquiring on behalf of Alder Rummel. It does not say she will be filing an appeal. It does not even list the address of the project or any identifying information that would connect an email asking about a form to 1609 S. Park Street.

#### **IV. Conclusion**

There is no basis for the ZBA to find that the Administrator made an error in counting the days and determining the appeal was untimely and therefore should not be forwarded to the ZBA. The appellants themselves concede their appeal was late but ask for special understanding that they were busy with the City's 2024 budget and should be given special discretion by the ZBA outside of its adopted Policies and Procedure Manual. Just like they were not given a special exemption from paying fees, the appellants should also not be given special exemption as alders to not have to meet the timeliness requirement.

Sincerely,

*Kate M. Smith*

Kate Smith  
Assistant City Attorney  
Representative for Zoning Administrator Katie Bannon

**From:** [Bannon, Katherine J](#)  
**To:** [Smith, Kate](#)  
**Subject:** FW: ZBA appeal  
**Date:** Monday, February 12, 2024 2:16:17 PM

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**From:** Linda <lehnertz.l@att.net>  
**Sent:** Sunday, November 12, 2023 3:37 PM  
**To:** Bannon, Katherine J <KBannon@cityofmadison.com>  
**Subject:** ZBA appeal

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Hi Katie,  
I searched for the form used to appeal a determination of the Zoning Administrator. I cannot find the form online. Could you email me that form (or a link to where I can find it)?  
Also, that form states there is a \$200 filing fee. This fee is not listed under MGO 28.206. Which ordinance requires the \$200 fee?  
Thanks,  
Linda