



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, February 15, 2024

5:00 PM

Virtual

CALL TO ORDER / ROLL CALL

Ostlind called the meeting to order at 5:01pm.

Staff Present: Katie Bannon, Matt Tucker, Nancy Kelso, Cary Olson, City Attorney Michael Hass, Assistant City Attorney Amber McReynolds, and Assistant City Attorney Kate Smith

Board Members Present: 5 – Peter Ostlind, Allie Berenyi, Angela Jenkins, David Waugh and Craig Brown

APPROVAL OF MINUTES

A motion was made by Jenkins to approve the January 18, 2024 minutes; seconded by Berenyi. Brown noted he was not present at the January meeting and would abstain from voting on this motion. 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

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 item 3 on the agenda.

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

Jenkins disclosed that she has a personal acquaintance with Marsha Rummel; however, this would not impact her decision.

PETITION FOR VARIANCE, AREA EXCEPTIONS OR APPEALS

2. [81873](#)

Adam Ryan, representative for the owner of the property at 4621 Dutch Mill Rd, requests a variance for the location of outdoor storage on an industrial property. Alder District #16.

Bannon stated the existing site consists of a one-story building with street frontage along Dutch Mill Rd., E Broadway, and Ellestad Dr. Bannon noted the proposal is to acquire the lot to west and demolish the existing structure on that lot, which would result in additional street frontage along Ellestad Dr. Referencing the submitted site plan and photos, Bannon stated there are previously approved existing outdoor storage and inventory display areas on the site. Bannon explained there is a building addition proposed which does not require a variance; however, its planned construction is in the space of the current outdoor storage area, which results in the relocation of the outdoor storage area. Bannon stated that City ordinance does not allow outdoor storage to be located between a principal building and a street. Therefore, with the amount of street frontage on this lot, a variance is requested for the location of outdoor storage on an industrial property.

Adam Ryan of Quam Engineering, representative for the owner of the property at 4621 Dutch Mill Rd, stated the property is used for rental and sales of heavy equipment, utilizing the outdoor space for storage of that equipment. Ryan explained the proposal does not increase the size of the outdoor storage area, that it will be the same square footage that currently exists on the site. Ryan stated that the proposed location is the furthest away possible from Broadway Ave. and that the plans for landscaping and fencing will provide screening to the outdoor storage area to lessen the visual impact from the street.

Bannon clarified the zoning districts for the surrounding area.

Ostlind closed the public hearing.

Brown moved to approve the requested variance; Waugh seconded.

Review of Standards:

Standard 1: The Board stated that street frontage on three sides of the lot presented a unique condition to the property creating a difficult situation for outdoor storage.

Standard 2: The Board found this standard was met noting how the proposal to relocate the outdoor storage area and increase the screening improves on the existing site.

Standard 3: The Board determined that to be code compliant the storage area would likely need to be sited in the mid-section of the lot which would impact the intended use of the property.

Standard 4: The Board stated that the terms of the ordinance create hardship and difficulty due to the amount of street frontage and location of existing and planned buildings on the lot.

Standard 5: The Board found that the proposal would not cause substantial detriment to adjacent properties as the placement of the outdoor storage area provides sufficient buffering between properties and improves on the existing

condition of the lot.

Standard 6: Noting the lot is in an industrial zoned area, the Board stated that the proposal would be in keeping with the immediate neighborhood.

The Board voted 4-0 by unanimous vote to approve the requested variance.

3. [81875](#) Marsha Rummel and Isadore Knox, Jr. request an appeal of the Zoning Administrator's determination as it pertains to the timeliness of an appeal. Alder District #13.

Ostlind explained the appeal 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, that the Zoning Board of Appeals members have legal representation from Assistant City Attorney Amber McReynolds, and that there are three persons registered to speak on this item: appellants Marsha Rummel and Isadore Knox Jr., and Madison resident Linda Lehnertz.

While discussing the procedure to hear the appeal, Jenkins moved to allow video presentation for appellants Rummel and Knox; Berenyi seconded. The Board voted 4-0 by unanimous vote to approve the motion.

Berenyi moved to approve the hearing procedure; Waugh seconded. The Board voted 4-0 by unanimous vote to approve the motion.

Marsha Rummel and Isadore Knox, Jr. request an appeal of the Zoning Administrator's determination as it pertains to the timeliness of an appeal. Knox stated their appeal was filed on November 20, 2023 to be placed on the ZBA agenda for the scheduled meeting of January 18, 2024 and entered into Legistar on January 3, 2024, noting that issue of timeliness in filing was not questioned until January 10, 2024, 51 days after filing. Referencing the ZBA Rules of Procedure (that every appeal shall be taken within 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), Knox stated it is hard to know when to file an appeal when filing deadlines are not publicly available. Knox acknowledged their appeal was filed 20 days after the Plan Commission meeting of October 30, 2023, which they consider to be the date of the Zoning Administrator's determination. Knox expressed the opinion that the 15 day limit for filing is not evenly enforced, citing as example prior appeals presented to the ZBA that were filed more than 15 days after notice of determination.

Rummel maintained that based on the information contained in the letter of January 10, 2024 from Zoning Administrator Katie Bannon, along with the ZBA Rules of Procedure, the Zoning Administrator's determination date pertaining to a development at 1609 S. Park St. and the deadline for filing the appeal were not clearly defined.

Assistant City Attorney Kate Smith clarified that appellants Rummel and Knox are before the Board as City of Madison residents and not in any capacity as City Alders. Smith explained the decision before the Board is to determine if the Zoning Administrator made an error when calculating the number of days between when the determination regarding zoning approval of the Park St. development was made and the filing deadline for appeal of that determination.

Zoning Administrator Katie Bannon explained how she determined how this appeal did not meet the ZBA's requirement for a timely appeal. Bannon stated she received the appeal application via email on November 20, 2023. After questions about whether or not the appellants were required to pay the application filing fee were resolved, the fee was paid on December 20, 2023.

Bannon noted that according to code applications are not considered complete until the filing fee is paid. Bannon further explained the ZBA Rules of Procedure affecting this appeal. Bannon stated that a date of determination was not provided as part of the appeal but was made in the summer of 2023. Bannon provided a summary of the Park St. development, outlining the processes and timelines of the City's Urban Design Commission (UDC) and Plan Commission to show how and when the Zoning Administrator's determination was made. Bannon noted that the development project was first presented to the UDC at the July 26, 2023 meeting, that Alder Rummel is an appointed Council member of the UDC and was in attendance at that meeting. Bannon stated the Zoning Administrator's determination had been made by that time, was publicly available and discussed at that meeting. Bannon provided further details regarding the exchange of information relative to this development between the UDC and Plan Commission, the Zoning Administrator's determination, and the participation of Alders Rummel and Knox in public meetings from July through October of 2023.

The Board asked for further clarification regarding other appeals presented to the ZBA that were filed more than 15 days after notice. Bannon stated the majority of appeals that come to the ZBA are the result of zoning code enforcement cases where the recipient of the code violation disagrees with how the ordinance has been applied to their particular property. Bannon explained various approaches taken by the Building Inspection and Zoning divisions to resolve code violations with property owners in the time between issuance of a notice of violation and filing an appeal. Bannon noted that in this instance there was no direct communication from the appellants to her or the department prior to the appellants filing.

Appellants Rummel and Knox made their rebuttal remarks, further explaining their position on this matter.

Board member Jenkins moved for a 5 minute recess; Waugh seconded. The motion passed by unanimous approval at 6:36pm. Ostlind resumed the meeting at 6:41pm.

Linda Lehnertz spoke in support of the appellants' position.

Rummel and Knox spoke in response to Lehnertz' statement.

Smith and Bannon spoke in response to Lehnertz' statement.

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

Bannon clarified for the Board that in the processes for UDC and Plan Commission reviews there were minor design changes to the development project. Bannon stated that those changes still met zoning code compliance; therefore, no additional zoning review was required. Bannon reiterated the timeline of when the zoning determination was made and publicly available, along with outlining the meeting dates of the UDC and Plan Commission.

Smith clarified that the UDC and Plan Commission have their own appeal process and the Zoning Board of Appeals does not have oversight over those appeals.

Ostlind closed the public hearing.

Berenyi moved to approve the petitioners' appeal of the Zoning Administrator's determination of timeliness of an appeal; Brown seconded.

After deliberations were completed and with no further discussion, the Board voted by roll call vote 0-4, denying the appeal. Discussion and reasons for the Board's decision are on the record of the proceeding.

DISCUSSION ITEMS

4. [08598](#) Communications and Announcements

Kelso noted the submission deadline for the March 21, 2024 meeting is Thursday February 22nd.

ADJOURNMENT

Waugh moved to adjourn the meeting; Brown seconded. By unanimous vote of 4-0 the Board adjourned at 8:02pm.