

MINUTES
BOARD OF APPEALS
Monday, April 18, 2016
City Hall, Room 604
5:30 p.m.

MEMBERS PRESENT: Don Carlson – Chair, Greg Babcock - Vice-Chair, Rob Marx, and Thomas Hoy

MEMBERS EXCUSED: None

OTHERS PRESENT: Paul Neumeyer, Joel Ehrfurth, Ald. Jerry Wiezbiskie, Ald. Tom De Wane, Ald. Joe Moore, Atty. Ross Kornowske, John Michaud, Sherie Michaud, Brent DuBois, Roger Georgia, Joe Morgan, Mary Wilkosz, Greg Warner, Diane Heyrman, Cindy Capwell, Tom Heyrman, Sheryl Michaud, Corey Capwell, Jared Schmidt, Nikki Griffin, Debra Kelsey, Jim Ward, Nate Zepnick, Jaime Guzman, and Randal Frailing

D. Carlson called the meeting to order and asked if Members had gone out to the properties. R. Marx stated he went to the first and second addresses, T. Hoy stated he saw the ones from the last meeting, G. Babcock stated he saw every property except 2317 Lakeside Place, and D. Carlson stated he didn't go to any of the new properties. He then asked if any members had spoken to anyone regarding the variance requests. All stated no. D. Carlson then asked Members if anyone needed to abstain from voting. All stated no.

APPROVAL OF MINUTES:

Approval of the March 21, 2016, minutes of the Board of Appeals.

A motion was made by G. Babcock and seconded by R. Marx to approve the March 21, 2016, minutes of the Board of Appeals. Motion carried. (4-0)

OLD BUSINESS:

1. Joel Ehrfurth, Mach IV Engineering, on behalf of Corey W. & Kim C. Capwell, property owners, proposes to construct a B&B Inn in a General Commercial (C1) District at 2607 Nicolet Drive. The applicant requests to deviate from the following requirements in Chapter 13, Green Bay Zoning Code, Section 13-1820 (b), 20 ft. transitional yard and Section 13-1821, interior lot landscaping.

Joel Ehrfurth, Mach IV Engineering, stated this property is the old Carlton Inn and they are proposing to change it into a Bed and Breakfast (B&B) that has a liquor license to serve their guests only. They are requesting a side yard variance due to the width of the lot and the limited off street parking space. There is a shared driveway which they plan to disconnect, and traffic will be directed to the south side of the property. The Capwells will live in the lower level of the property and guests

will be staying upstairs. The first request is to reduce the northern transitional yard to accommodate parking areas. The second request is for a variance on the internal green space requirement of 10% on a commercial parking lot. They are proposing to eliminate green spaces or islands in the parking lot and use a permeable pavement system that will drain storm water.

Corey Capwell stated the current lot is very small. In the winter there isn't any room to push snow onto; they would have to hire somebody to haul it off site. It also may be difficult for a fire truck to get to the rear of the building. They plan to have a four star rated B&B, and in order to do that they need the variances they are requesting. They plan to host weddings in the future and parking spots must be available for guests. The proposed lot will not be near any residences; therefore, when guests leave later in the evening residents will not be bothered by car doors closing. The lot would have landscape surrounding it and would be about 4 ft. from the property line.

Ross Kornowske stated he is representing John and Sherie Michaud who are property owners at 2603 Nicolet Drive, which is south of the easement. He stated that the maps are incorrect, and believes the property lines are shifted by approximately 10 ft. The Michauds are opposed to the variances because they believe there is an ownership dispute regarding the 10 ft. easement strip. They have filed a notice of claimant and an affidavit of adverse possession with the Brown County Register of Deeds with the intent of having that strip rezoned as residential. If granted it would apply to the strip of land to the south as well.

John Michaud stated he has been taking care of that strip of land for close to 25 years, cutting the grass, trimming the weeds by the fence, and picking up trash from the restaurant. These are the reasons he wants to claim ownership of that land. This piece of commercial property is right in the middle of residential properties and having 100 or so people celebrating a wedding 60 ft. from his property would be infringing on his rights for a peaceful enjoyment and privacy of his property. Property values could also go down because this B&B will be like having a hotel next door. He would like to see a 20 ft. setback all around the building and keep the green space as it is.

Brent DuBois, 2591 Nicolet Drive, presented a petition of neighboring property owners who are opposed to the variances. The individuals who signed the petition aren't against development. They are aware it has been a commercial lot for 60 years; however, they don't believe it would be a hardship to the business if the variances aren't granted.

Roger Georgia, 2611 Nicolet Drive, stated he lives north of the property and uses the shared driveway. He believes the buyers should have educated themselves on what could be done on the property without having to ask for special privileges to change it, and he opposes granting them any variances. Mr. Georgia's daughter appeared and spoke on behalf of her parents and stated they purchased the property for its views and peace and quiet and would like to see that continue. They were all told the B&B will be small and quaint, but now they changed that to having

10 rooms available. She also stated that her father took care of that strip of land as well and inquired if he would own a piece of the property for doing so.

Joe Morgan, 2995 N. Nicolet Drive, stated he is the President of the Nicolet Drive Neighborhood Association, and is here to show support for all of the neighbors who oppose the granting of the variances.

Mary Wilkosz, 2815 Nicolet Drive, stated she does support the B&B; however, there is chronic speeding on Nicolet Drive and having weddings on a frequent basis where alcohol is served may increase the traffic problems on Nicolet Drive. There is a wildlife corridor in that location as well, and she believes that the scale of the project is going to destruct that.

Greg Warner, 2451 Remington Road, stated he believes they haven't proved it would be a hardship if they aren't granted this variance. It's more of what they want versus what they actually need. If the property is going to be a B&B, then they only need enough parking spots for how many rooms they have. In this case it's 10 and they already have 32 parking spaces. He believes the neighbors have been misled about the plans for the B&B. They want to cram too much onto a property that's too small, which is inconsistent with the neighborhood. By the City's own definition this is a hotel, not a B&B. They are going to have common rooms in which to hold wedding parties, and because of this it defines them as a hotel. Granting these ordinances will create hardships for the neighboring residents, such as loud and drunk guests, increased traffic, litter, drunk drivers, and decreasing the property values of the homes in the area. He distributed a study that reported having a commercial property next to residential properties will decrease the value of the residential property, thus creating a hardship for the home owner. The Capwells haven't met the burden of proof that they will encounter a hardship if the variance isn't granted; however, all the people here have proven it will be a hardship for them if it is granted.

Diane Heyrman, 2615 Nicolet Drive, stated nearly every resident on Nicolet Drive has signed the petition to deny granting the variances. The residents want to protect their properties as well as the shore line their homes are located on.

Cindy Capwell appeared and stated she wants to address the statements about property values being decreased due to the B&B. The property is zoned commercial and once housed a restaurant and bar that was open until 1:00 a.m.; therefore, neighboring residents must have been accustomed to the noise and traffic made by patrons seven days a week. The B&B will only have 10 suites and she doesn't understand how the people here tonight came to the conclusion that this will cause more noise than the restaurant and bar did that served over 400 people a week. When the property housed the Carlton Inn, there weren't any setbacks. Everything they are trying to accomplish is an improvement over what had been housed at this location. They have proved that snow removal will be a hardship if they aren't granted the variance. They also did their homework on the property and were aware of the setbacks. They met with City staff numerous times before purchasing the

property. If they were told it wasn't possible to get the variance they wouldn't have invested so much money into this property. It would be a huge hardship for them if they aren't allowed to build a B&B. Everything they are doing is to improve the property and make it better than it used to be for the neighboring residents.

Tom Heyrman, 2615 Nicolet Drive, asked the Board to read the documents that were submitted stating why the neighbors are objecting to the building of the B&B. He also stated that he didn't know where they think cars would park if they hold weddings that have 100 more guests there.

A concerned citizen questioned why they couldn't make special accommodations for snow plowing. This is Wisconsin and you learn how to deal with the snow like everyone else does. He also inquired if there were any studies that could be provided proving the concrete parking lot would drain storm water and what the life of the concrete would be. Joel Ehrfurth replied he could provide that proof.

A resident of 2651 Nicolet Drive inquired why they were informed at the January meeting that this will be a B&B and now she is hearing it never could have been a B&B. She stated that they are disappointed that they were misled, because they would have welcomed a B&B in the neighborhood.

A concerned citizen stated that he lives a half mile away from the property on Nicolet Drive and, although he is against granting the variances, he thinks an agreement should be reached for the B&B to open.

Sheryl Michaud stated when they purchased their home next door to the Carlton Inn they were aware it was a commercial property, and they were okay with that because the Inn closed around 10:30 p.m. It was located closer to the road, thus it was further from their home. She is not happy that they plan to expand the building closer to the bay, which would now make it closer to their home, just because of the parking they are asking for.

D. Carlson stated he would like to hear from several people at the meeting and asked P. Neumeyer to explain the degree to which this has gone through the planning process. He also asked Ald. Wiezbiskie and Ald. Tom De Wane to speak on behalf of the City's ordinances. Lastly he asked that the applicants appear once again to answer any questions the Board may have.

P. Neumeyer stated that last year the applicants asked to rezone four properties, at the suggestion of City staff. The zoning affected a 10 ft. property that the Regents had. It also affected properties on either side and property to the north, which were commercial zoning in the past, but were changed to residential at one time. Staff reviewed their site plan and found the transitional yard on the north side was insufficient because it needed a 20 ft. setback since its commercial adjoining residential, and their internal lot landscaping for the proposed parking lot was substandard. When you have more than 25 parking spaces, 10% interior lot

landscaping is required. Staff approved the zoning changes the Capwells are seeking.

Ald. Wiezbiskie appeared and stated the zoning on this property was a mess and the speeding on Nicolet Drive is atrocious. He is comfortable with the surface for the suggested parking lot. He believes a B&B would be a quiet commercial business because they aren't opening up a bar. He isn't happy that weddings may be held there, but doesn't believe that guests will add more problems to the traffic problems that already exist. He opined that he sees this being a hardship for both sides.

Ald. Tom De Wane appeared and stated he was originally happy when he heard about the B&B, but until recently he was unaware of the zoning problems. He suggested that the Capwells and owners of the neighboring properties meet with P. Neumeyer and discuss various options for the setbacks and green spaces in the parking lot. He doesn't believe there will be a lot of noise coming from this B&B.

Ald. Wiezbiskie encouraged those neighboring property owners who are present tonight to attend the meeting Ald. Tom De Wane suggested.

D. Carlson invited the applicants to come forward and inquired what they will do if the variances are denied. C. Capwell stated they could shrink the dimensions of the B&B and add a third floor and build it closer to the road, with parking in front of the building. He doesn't want parking in the rear because that would ruin the view, and he basically purchased the land due to the phenomenal view. He reported he doesn't really want to build a third floor because it wouldn't blend in with the neighborhood. The B&B is essentially their home as they will occupy the first floor of the building. He stated that it was his understanding that the future development overlay of the whole district, which includes his property and UWGB, is future commercial property. P. Neumeyer confirmed that from the Regents property to the north would be potential commercial zoning.

R. Marx stated that part of the issue is that the reception area is taking away from area that could be used for rooms, and if the size is reduced it will meet the requirements of the ordinance. He stated there are other options that could be pursued to build the B&B and, therefore, he doesn't see any hardships or reason to grant these variances.

T. Hoy stated he has two problems, the first is in regard to the title and who is the owner of the property. He would like to wait until the court case is concluded before making a decision. The second is that he agrees with the Aldermen that a meeting should be held to discuss this situation before a final decision is made because they may be able to negotiate a compromise; therefore, he doesn't believe a decision should be made tonight. He suggested deferring this item.

D. Carlson stated he doesn't want to see this deferred.

G. Babcock stated they have received a lot of material and he hasn't read through all of it. He agrees with T. Hoy that this item should be deferred or at least held up.

D. Carlson stated that the people who attended this meeting put in a lot of work to present their ideas and opinions to us. He recommends denying the variance and letting them negotiate among themselves. The applicant stated he could make changes to his plans to be in compliance; therefore, he would like the applicant and surrounding home owners to meet and come to a conclusion that would please all parties.

P. Neumeyer clarified that a recommendation for a denial would prevent the applicant from coming back for one year.

Board members stated if a conclusion cannot be met between the applicants and neighboring property owners then the variances will be denied at the next meeting.

A motion was made by T. Hoy and seconded by G. Babcock to postpone this request until the next meeting. Motion failed. (2-2 vote with D. Carlson and R. Marx voting nay)

A motion was made by R. Marx and seconded by T. Hoy to table the request until the next meeting. Motion carried. (4-0)

2. Aaron Breitenfeldt, Robert E. Lee & Associates, Inc., on behalf of McDonald Lumber Company, proposes to fill and construct a "lay down yard" in a General Industrial (GI) District at 2221 Angie Avenue. The applicant requests to deviate from the following requirement in Chapter 13, Green Bay Zoning Code, Section 13-1714, surfacing.

Jared Schmidt, Robert E. Lee & Associates, Inc., stated that New Water is in support of the use and the variance to allow the storage lot. McDonald's is willing to install a berm to screen the gravel when driving past the property. He discussed the costs and types of asphalt surfacing. They are looking at using 4 acres now, but may go up to 10 if needed. There is also a railroad spur on the property leading to McDonald's that they will access. J. Schmidt distributed photos and information regarding what McDonald's plan to use the land for. They will also meet with the DNR to go over their requirements.

Ald. Joe Moore stated he would support granting this variance.

A motion was made by T. Hoy and seconded by G. Babcock to approve the variance request. Motion carried. (4-0)

NEW BUSINESS:

3. McAllister Properties, LLC, property owner, proposes to expand an existing driveway in a Low Density Residential (R1) District at 405-407 North Maple Avenue. The applicant requests to deviate from the following requirement in Chapter 13, Green

Bay Zoning Code, Section 13-1705(b), and parking shall lead directly to a garage or parking space.

Nikki Griffin distributed a copy of the site plan. She stated that in order to get quality tenants, you must provide them with ample parking space. Their hardship is that there isn't enough parking for the current tenants in this duplex. They would also like to ask if they could create a parking space in front of the house as well. Only two cars can be parked in the driveway, and the tenants have three cars. She did receive special permission for one vehicle to park overnight in the street, but that permission will expire soon. When they purchased the house they believed they would have access to the alley, but they are unable to do so.

A motion was made by R. Marx and seconded by G. Babcock to approve the request to expand the existing driveway with a 5 ft. taper. Motion carried.

4. Adam P. Kelsey, property owner, proposes to construct a detached garage in a Low Density Residential (R1) District, located at 1210 Meacham Street. The applicant requests to deviate from the following requirements in Chapter 13, Green Bay Zoning Code, Section 13-615, Table 6-4, maximum size of an accessory building, and Section 13-613(c) accessory structure shall be subordinate to the principal use.

Debra Kelsey stated she is here to represent her son, Adam. A. Kelsey owns three vehicles and he carpools, so quite often there are more cars than the driveway can park, and they don't allow cars overnight in the street. The driveway is currently a single lane and it cannot be widened. The surrounding neighbors signed a petition approving the garage.

P. Neumeyer stated that an accessory structure, such as a garage, cannot be built bigger than the home. In this case the house is 800 sq. ft. and the proposed garage would be 1,000 sq. ft.

D. Kelsey stated her son owns a boat that he's currently paying storage fees for, and he also has two large trucks and a trailer; that is why he wants a large garage.

Discussion included the size issue of the proposed garage, setback requirements, and improving the looks of the neighborhood.

A motion was made by T. Hoy and seconded by G. Babcock to approve the request to construct a detached garage in a Low Density Residential (R1) District, located at 1210 Meacham Street. Motion carried. (4-0)

5. James G. Ward III, property owner, proposes to retain an existing fence in the front yard located in a Low Density Residential (R1) District at 2317 Lakeside Place. The applicant requests to deviate from the following requirement in Chapter 13, Green Bay Zoning Code, Section 13-531 (a), side yard setback.

Jim Ward stated the Board has his application and he has signatures from more neighbors approving the fence he wants to build. He wants to replace the existing 6 ft. fence, which is falling apart, with another 6 ft. fence; however, he was informed the fence could only be 3 ft. in height according to the City ordinance. The street he lives on is very quiet so it wouldn't impede traffic if it were 6 ft. high. He described where the fence would be placed and the materials he will be using.

Ald. Moore stated this address was in his district and he would approve of the fence height.

A motion was made by R. Marx and seconded by G. Babcock to grant the variance as requested. Motion carried. (4-0)

6. Nate Zepnick, on behalf of Habitat for Humanity, property owner, proposes to construct a new home at 408 Columbia Avenue located in a Low Density Residential (R1) District. The applicant requests to deviate from the following requirement in Chapter 13, Green Bay Zoning Code, Section 13-604, Table 6-2, rear yard setback.

Nate Zepnick stated they are asking for a variance to change the rear setback from 25 ft. to 22 ft. 8 in.

A motion was made by R. Marx and seconded by T. Hoy to grant the variance as requested. Motion carried. (4-0)

7. Jaime D. Guzman, property owner, proposes to install an above ground pool located in a Low Density Residential (R1) District at 604 12th Avenue. The applicant requests to deviate from the following requirement in Chapter 13, Green Bay Zoning Code, Section 13-521, maximum fence height in the front yard setback.

Jaime Guzman stated he doesn't have enough room for a pool in the backyard according to the City ordinances, because it needs to be 10 ft. away from any structure. He would like to place the pool near his garage, which would also be away from neighbor's windows.

Randal Frailing, 610 12th Avenue, stated he lives next door and approves of the pool placement.

A motion was made by G. Babcock and seconded by T. Hoy to approve the variance as to the described location in the backyard. Motion carried. (4-0)

A motion was made by R. Marx and seconded by G. Babcock to adjourn the meeting at 8:09 p.m. Motion carried. (4-0)

Meeting adjourned.