



Our intention is to have in-person meetings going forward. For the time being, we will hold the City Committee Meetings, Plan Commission, Council and most others at the Community Room at 933 Michigan Avenue. This in-person location will meet the legal requirement for our open meetings.

We will have a virtual option available, but the technology for the hybrid style meeting may not be reliable all of the time.

Members

- Gracia Day
- George Doxtator
- Ismaila Odogba
- Bob Woehr
- Lynn Markham (Alternate 1)
- Becky Kressin (Alternate 2)

AGENDA

ZONING BOARD OF APPEALS

Date	November	Location:	Community Room
and	3, 2021		933 Michigan Avenue, Stevens Point, WI
Time:	4:00 PM		
		<u>OR</u>	
		<u>Zoom Teleconferencing</u>	
			Meeting ID: 865 2809 0049 Passcode: 029712
		<u>By</u>	
		<u>Computer:</u>	https://us02web.zoom.us/j/86528090049?pwd=NFNwbkJwLytxZmZrUVlnQ
		<u>By Phone:</u>	+1-312-626-6799 (US Chicago)

Opening Section:

1. Roll Call

Discussion and Possible Action on the Following:

2. Report of the March 1, 2019 meeting of the Zoning Board of Appeals.
3. Presentation by City Attorney: Roles and duties of the Zoning Board of Appeals.
4. Decision form of the Zoning Board of Appeals.

Closing Section:

5. Adjourn

PLEASE TAKE NOTICE that any person who has special needs while attending these meetings or needs agenda materials for these meetings should contact the City Clerk as soon as possible to ensure that a reasonable accommodation can be made. The City Clerk can be reached by telephone at (715) 346-1569 or by mail at 1515 Strongs Avenue, Stevens Point, WI 54481.

Maps further defining the above area(s) may be obtained from the City of Stevens Point Department of Community Development, 1515 Strongs Avenue, Stevens Point, WI 54481, or by calling (715) 346-1567, during normal business hours.

PLEASE TAKE FURTHER NOTICE that a quorum of the Common Council may be in attendance at this meeting.

ZONING BOARD OF APPEALS REPORT

March 1, 2019 – 1:00 PM

Police Department, Room 122 – 933 Michigan Avenue, Stevens Point, WI 54481

PRESENT: Mr. Bob Woehr, Mr. George Doxtator, Ms. Lynn Schulist, Mr. Ismaila Odogba, Ms. Lynn Markham, and Mr. Jim Oliva.

ALSO PRESENT: Mayor Wiza, Zoning Administrator Kearns, City Attorney Beveridge, Attorney Alyson Dieckman, Attorney Dean Dietrich, Attorney Ellison, Secretary Mohr, Mrs. Lisa Worzalla, Mr. Kent Worzalla, Mr. Jordan Brost, Mr. Robert Posteluk, and Ms. Natalie Vivori.

INDEX:

1. Roll call

Discussion and possible action on the following:

2. Request from Kent Worzalla d/b/a Kent's Service Center & Towing, Inc. for an area variance to allow for reduced front (street) yard setbacks to construct accessory structures on the property at 104 Second Street North (Parcel ID 281240829230053)
 3. Board of Zoning Appeals Guidelines & Procedures
 4. Adjourn
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1. Roll call

Chairperson Woehr called the meeting to order at 1:00 PM, to which a quorum was present.

Zoning Administrator Kearns stated that Member Markham would have a vote due to the Member Boden's absence. Member Oliva would not have a vote.

Present: Woehr, Doxtator, Schulist, Odogba, Markham, Oliva

Excused: Boden,

Discussion and possible action on the following:

2. Request from Kent Worzalla d/b/a Kent's Service Center & Towing, Inc. for an area variance to allow for reduced front (street) yard setbacks to construct accessory structures on the property at 104 Second Street North (Parcel ID 281240829230053)

Chairperson Woehr made the following opening comments:

1. Noted that Member Oliva should bring forward questions during presentations and testimony, but asked that he only observe once deliberations had begun.
2. History of the request
 - a. July 2018 Meeting: Decision postponed to allow applicant to prepare revised site plan information, and to pursue potential options for a solution as discussed.

- b. Attempts were made to move forward with the request in September, December, and January, but meetings were postponed due to the applicant not being ready. Ultimately, counsel contacted the applicant's attorney and set the March meeting.
3. Stated that all members of the board had been afforded the opportunity to listen to the audio recording and read the minutes from the July meeting, and that all parties should refrain from duplicating information previously presented.

Chairperson Woehr asked the requesting party to issue testimony not previously presented.

Attorney Ellison, representation for Mr. Kent Worzalla, provided the following information:

1. Opening statement citing their intentions and reasoning for the variance request, stating that the parameters as modified by the Conditional Use Permit would create an unnecessary hardship on the permitted use of the property, and for the applicant.
2. Site plans for review, explanation of each, and distributed to each board member.
 - i. Existing Conditions Site Plan
 - ii. Existing Zoning Requirements Site Plan
 - iii. Existing and Proposed "Clearview Area", First Street / Maria Drive Site Plan
 - iv. Existing and Proposed "Clearview Area", Second Street / Maria Drive Site Plan
 - v. Proposed Conditions Upon Variance Request Site Plan
2. Noted unique property characteristics and limitations.
3. Stated Jordan Brost, Land Surveyor for Point of Beginning, prepared the site plans and was available for additional questioning.
3. History of the 10-foot property condemnation process, and efforts to reduce setbacks through the Conditional Use Process.
4. Explanation of current variance request: reduced parking setback to 0 feet, reduction of clearview requirements on the east and west to 10 by 10 feet, and a reduction to a 0-foot setback along Maria Drive in order to place model carports on the property line.
5. Identified that the requesting property was pressed to the max, and reducing the setbacks any further would make it impossible to maneuver vehicles within the lot. Applicant's property was also zoned for all current existing uses, enforcement of current setback standards would have implications on continuing those uses.

Attorney Ellison inquired on whether they could present a video to demonstrate the setback restrictions in action and how they would limit the applicant's property if forced to comply, with which Chairperson Woehr allowed them to proceed. Attorney Ellison called upon Mr. Robert Posteluk to present.

Mr. Robert Posteluk, part owner of TriMedia, provided an explanation of the process his company undertook to capture video footage with a drone. The video showed the property marked with all setbacks being required to be met by the City.

Member Markham asked for clarification if the vehicles positioned in the video would be within the required setbacks, to which Mr. Posteluk confirmed that the vehicles were configured to meet City setbacks.

Attorney Ellison noted that Mr. Worzalla would be narrating and identifying items within the video.

Mr. Worzalla briefly noted that Mr. Jordan Brost from Point of Beginning had measured and marked the property to indicate setback requirements and that vehicles had also been moved into position. The board made the following comments throughout the video:

1. Zoning Administrator Kearns asked what setbacks the vehicles were meeting that were parked along Maria Drive and First Street, to which Mr. Worzalla stated that the bumper of the cars were sitting along the 10-foot setback, and 5-foot setback from First Street.
2. Chairperson Woehr asked if the model carports had been moved to the required setback, to which Mr. Worzalla indicated that they had not, but rather they had placed barrels to indicate where they would need to be moved. The model carports in the video were on the property line.
3. Member Schulist asked if the vision triangle indicated was 20 feet by 20 feet, to which Mr. Worzalla confirmed accurate.
4. Member Markham asked if they could indicate where the 25-foot setback would be from Second Street, to which Attorney Ellison noted that due to the Conditional Use Permit, they were needing to meet 10 feet.
5. Zoning Administrator Kearns clarified for the board that the variance request was not a variance from the Conditional Use Permit, but rather the underlying zoning standards of needing to meet 25 feet from all streets.
6. Member Markham asked for clarification that if the Conditional Use Permit was used, the applicant would need to meet a 25-foot setback from First Street and Second Street, but be 10 feet off Maria Drive, to which the Zoning Administrator confirmed accurate for the structures.
7. Member Markham asked that the stop sign be indicated in the video coming from Maria Drive onto Second Street, to which the location was provided.

Mr. Worzalla asked if they could share additional photos of the property, to which the Chairperson allowed to be shown so long as the flash drive that contained the images were left with staff. Mr. Worzalla provided commentary for each images, a majority of them showing the loading and unloading of vehicles from a flatbed truck, and street view angles of the marked setbacks.

Chairperson Woehr, in regards to the site plans drawn up by the surveyor, asked for clarification on whether the vehicles indicated on the plans belonged to the applicant, and whether they were always on the property.

Mr. Worzalla explained that while they were not his own vehicles, he serviced the entire 26-truck Cintas fleet in the area, and had an average of 2-3 Cintas vehicles on the property at all times.

Attorney Ellison asked Mr. Brost to provide testimony on his services, as well as to expand on the site plans drafted.

Mr. Jordan Brost, Professional Land Surveyor for Point of Beginning and professional land surveyor for 7 years, explained that he contacted by the applicant to prepare the site plans before them. He also confirmed that he had assisted in laying out the markings indicated in the video based on the requirements and by using survey grade instruments. He entertained questions from the board as he reviewed the following:

1. Existing and Proposed "Clearview Area", First Street / Maria Drive Site Plan
2. Existing and Proposed "Clearview Area", Second Street / Maria Drive Site Plan
 - i. Member Doxtator requested clarification on the clearview area along the north right-of-way line in how they had determined the proposed area, to which it was explained that they had shifted the clearview area towards the east along the right-of-way.
3. Proposed Conditions Upon Variance Request Site Plan
 - i. Attorney Ellison briefly noted the difficulties and limitations the applicant would face if forced to meet the requirements, and referred to the proposed site plan as ideal.
4. Attorney Ellison asked Mr. Brost if, in his opinion, if a vehicle could be maneuvered with the setback requirements without a variance, to which Mr. Brost stated that it would, in his opinion, be near impossible.
5. Attorney Ellison asked Mr. Brost to confirm whether or not Mr. Worzalla had a greater clearview distance than the neighboring property owners, and even with a variance, would still hold a greater clearview distance than the neighboring property owners, to which Mr. Brost confirmed accurate.
6. Member Markham referred to the Existing Conditions Site Plan and asked what the dotted line along First Street and Second Street indicated, to which Mr. Brost stated it was the 5-foot parking setback.
7. Member Schulist asked for clarification on the 5-foot vehicle setback requirement for businesses or dealerships, to which Zoning Administrator Kearns stated that it varied based on the zoning district. Mr. Worzalla's property was zoned B-4, and the setback was 5 feet within the B-4 district.
8. Chairperson Woehr inquired on the contracted timeline, to which Mr. Brost explained that they had initially been contracted by the applicant in July 2018, however field work had not commenced until September, with the final drafting occurring mid-January.

Attorney Ellison added the following to his testimony on behalf of Mr. Worzalla:

1. Referenced to page 36 of the agenda packet, in which he had provided a written statement regarding the Plan Commission's comments of Mr. Worzalla property.
2. Current location of the model buildings created a safety barrier between pedestrians and moving vehicles on the property.
3. Reiterated unique property characteristics and limitations.
4. Argued against hardship being self-created, as the zoning purposes were not being disrupted, and the uses had been longstanding on the property. Additionally, negative impacts to the property and revenue resulting from the condemnation process.

5. Referenced Supreme Court and Waushara County case in providing flexibility when dealing with area variances, as well as taking into consideration the purpose of the ordinance.

Chairperson Woehr clarified that the use of the term 'condemnation' was inaccurate as the property was not condemned, it was sold by Mr. Worzalla to the City. City Attorney Beveridge confirmed the use of the term per Chapter 32 of City Ordinances

Chairperson Woehr asked Zoning Administrator Kearns if he had any additional questions regarding the testimony presented. If he had none, he asked that staff testimony be presented.

Zoning Administrative Kearns stated he had no further testimony, as it had already been presented and was available within the staff report. He made himself available for questioning, however noted that they had not had the time to review the site plans as they had recently received them, and it was their first time also seeing the video. He noted that City Attorney Beveridge may have additional comments to what had been presented.

Member Markham asked how clearview area was measured, to which Zoning Administrator Kearns explained that in most cases it was measured at the property line. Additionally, he explained the reasoning for differentiating clearview areas from adjacent properties.

Chairperson Woehr asked if the setbacks had been provided to the applicant during the condemnation process, to which City Attorney Beveridge confirmed that they had and referenced to the settlement agreement on pages 15-17 of the agenda packet.

City Attorney Beveridge stated the following regarding the testimony presented:

1. Hardship: The zoning code does not prevent applicant from running several permitted uses, the applicant deciding to utilize the property for a large number of permitted purposes on one property in a limited space is a self-created hardship.
2. Unique property: The property is not the only property in the City bounded by three right-of-ways. It is a common enough configuration that there is a section of the zoning code that provides relief to the applicant, of which the applicant pursued and was granted a Conditional Use Permit through Plan Commission which grants the applicant the use of a 10-foot setback instead of 25 feet. First Street being unused provides a benefit to the applicant as it provides an area for them to utilize without through traffic.
3. Public interest: Requesting modifications from clearview requirements when those modifications pose a safety concern.
4. Substantial justice: The City negotiated an agreement with the applicant, with compensation, during the condemnation process in which setbacks had been provided within the issued settlement documents.

5. General comment about hardship being self-imposed as the applicant had expanded his business uses when the property itself was limited in size. Having to maneuver vehicles was a normal part of business, and both the existing zoning requirements and proposed requirements provided the applicant with the same amount of clearance to do so.

Attorney Ellison stated the following rebuttal:

1. If a variance was not granted, the applicant would not be able to service vehicles.
2. While constantly moving vehicles was an option, having to do so every time a vehicle was brought in for service would be overly burdensome for the applicant.
3. Fighting condemnation would have been overly burdensome for the applicant, and selling property was easier during a time of personal hardship for the applicant.
4. The applicant didn't have issues with running the business prior to the road reconstruction.

Mr. Worzalla recounted the history of his business, explaining that Stevens Point was one of two sites that the applicant had originally looked at for establishing his business. He reiterated hardships brought forth because of the condemnation process, as well as personal hardships at the time.

Attorney Dietrich, representing the board, acknowledged Mr. Worzalla's comments, however he stated that they were not there to litigate the condemnation process that had already occurred.

Chairperson Woehr asked that Mr. Worzalla keep his comments related to the variance request.

Mr. Worzalla rebutted the claim regarding knowing what had been included in the settlement agreement, reiterating the personal hardship he was experiencing at the time.

Attorney Dieckman, representing the board, reiterated that they were not in the proper forum to discuss the condemnation process, and recommended that the board move forward.

Attorney Ellison continued his rebuttal with the following:

5. The current location of the model carports were ideal, moving them would cause visibility issues for pedestrians and customers.
6. Similar neighboring properties were referenced, noting that parking setbacks were not being required as some were parked up to the sidewalk.
7. Reiterated that uses on the property were long standing. The applicant was not looking to expand uses, just continuing the use as it had been occurring.
8. Applicant keeps lot presentable to the public.

Mr. Worzalla stated that he had no issues running his business previously, noting that he had already made many modifications to the site, such as after the street reconstruction and condemnation. What was being

required of him, he explained, was not financially feasible for him as a business. He asked that a zero foot setback be granted, as well as the proposed and reduced clearview requirements.

Attorney Ellison further added that they had looked at several other options to alleviate the situation, such as pursuing a full or partial abandonment of an abutting street, or purchasing additional properties. No solutions were reached regarding these options, and the request for a variance was the applicant's last hope at continuing his business.

City Attorney Beveridge made a brief comment that there was no evidence to support the applicant needing to move a vehicle every single time another came into the property, noting that the images presented earlier, in his opinion, showed ample clearance room.

Zoning Administrator Kearns made a brief comment regarding the relief provided for a Conditional Use Permit, noting that another applicant with three streets bordering their property was recently granted the same relief as the applicant via the City Plan Commission.

Member Schulist asked if the other applicant had been granted the same 10-foot setback, with Member Markham additionally asking if it had been for only one street side, to which Zoning Administrator Kearns confirmed that to be accurate for both inquiries.

Member Odogba additionally asked if the use had been similar to the current applicant, to which it was stated that the use had been for warehouse storage.

Chairperson Woehr asked for comments from the board.

Member Doxtator had no further questions.

Member Oliva asked how long the truck rental use had been utilized, to which the applicant stated 25 years.

Member Schulist, in regards to safety, asked whether anyone could rent a large truck regardless of experience and if they could park or back them into the property, to which the applicant confirmed that to be accurate.

Member Schulist, in regards to the settlement agreement during condemnation, asked whether he had been given a verbal agreement that the model carports could be placed back into the same location, to which Mr. Worzalla confirmed that it had been a verbal agreement.

Member Schulist asked City Attorney Beveridge if he had any knowledge about a verbal agreement regarding the model carport locations.

Mr. Worzalla detailed existing issues with the sloped sidewalk that had been installed in the area that had been condemned, as well as requiring additional landscaping, to which Chairperson Woehr noted that those items had been previously discussed.

Member Schulist inquired on the financial aspect of Mr. Worzalla's request, to which it was noted by Chairperson Woehr that it was outside the purview of the board.

Attorney Dieckman stated that financial hardship was not a consideration.

Member Schulist asked what Mr. Worzalla did with the trucks or vehicles if his lot was full, to which the applicant stated that they were moved to a back penned area.

Member Oliva asked for clarification in terms of rental users parking the rented vehicles and whether they backed into spots themselves, to which Mr. Worzalla clarified that they did not back into the spaces as it was a pull-through area.

Member Odogba inquired on the pedestrian traffic on the sidewalk, specifically children, to which Mr. Worzalla briefly explained that he did not see many, and that many users crossed straight through his lot.

There was a brief discussion between the board and their counsel in regards to proceeding with deliberation in closed or open session, to which there was a general consensus on proceeding in open session and straight into deliberation.

Chairperson Woehr closed testimony and brought it back to the board for deliberation.

Member Doxtator stated his intention to deny the request based on testimony presented.

Chairperson Woehr stated that the applicant had been compensated for the loss of land, in addition to being granted relief under the Conditional Use Permit. While there seemed to be a hardship, it was self-created as the property continued to expand its uses beyond its capacity.

Member Schulist noted safety concerns with the south side of the property in terms of granting a zero-foot variance; however she noted uncertainty for First Street. She also stated that businesses sometimes outgrew their space, but that it didn't warrant a variance. If it did, the board would be meeting often.

Member Odogba stated that the applicant had tried to work with the City based on the testimony, however the ordinance still had requirements.

Member Markham stated that the number of uses had increased over time, and all the uses did not fit how the applicant wanted, which was not a hardship but rather a personal preference. She stated a concern for personal safety along Maria Drive if the setback was reduced to zero, noting it had already been reduced to 10 feet from 25 feet along Maria Drive.

Chairperson Woehr asked that the aspects of the statute be referenced when making a motion. He reviewed the statute.

Attorney Ellison asked if the board would be making a determination on each requested reduction, to which it was noted that it would be a general motion to affirm or deny the request, adding that it was a single application.

Motion by Bob Woehr to deny the request from Kent Worzalla d/b/a Kent's Service Center & Towing, Inc. for an area variance to allow for reduced front (street) yard setbacks to construct accessory structures on the property at 104 Second Street North (Parcel ID 281240829230053) for the following reasons:

1. The property characteristics are not unique, other properties exist within the City that have constrained areas to work with, specifically businesses zoned B-4.
2. If a hardship exists, it is not due to the uniqueness of the property, but rather is due to the actions by the owner, making it self-created.
3. Public safety and welfare must be maintained; obstruction of vision triangles and clearview requirements would contribute to a safety concern for vehicle traffic and pedestrians.
4. Substantial justice has been done through the applicant's previous acceptance of compensation for property sold to the City, with having access to legal counsel.
5. The applicant's expansion of business operations on the site has potentially created a self-imposed hardship.

seconded by George Doxtator.

Roll Call:

Yeas: Markham, Schulist, Doxtator, Woehr

Nays: Odogba

Motion carried 4-1.

3. Board of Zoning Appeals Guidelines & Procedures

Chairperson Woehr noted that the agenda item was asked to be brought forward by Member Markham, and asked her to proceed with her comments.

Member Markham referenced to Zoning Board of Appeals Procedure Guidelines on page 73 of the agenda packet, specifically the section citing that every agenda will contain the appropriate notice that the board may at any time adjourn into closed session in accordance with Wisconsin Statute 19.85(1)(a). She questioned whether the board had the ability to do so as the statute required there be an opposing party, noting that they could go into closed session under an exception to consult with legal counsel.

Chairperson Woehr stated that they have always had opposing parties, the applicant and the Zoning Administrator, to which Member Markham stated that the Zoning Administrator could recommend to approve the variance, at which time they would not be opposing.

There was a brief discussion between legal counsel and the board in whether the Zoning Administrator counted as an opposing party. Additionally, on whether the board could cite 19.85(1)(a) or 19.85(1)(e) to go into closed session, and the agenda and legal requirements if looking to invoke it.

Member Markham noted concern with transparency for the applicant and the public, to which Attorney Dietrich stated that the suggestion to go into closed session was because it was difficult as the board's counsel to render legal advice in open session.

Member Schulist also noted concerns with attorney-client privilege during open session, with Attorney Dieckman adding that the board would be waiving their attorney-client privilege, and being in closed session would give the board additional protection.

City Attorney Beveridge noted potentially handing the case over to the applicant if they were privy to the legal discussion and arguments. The transparency aspect was important, he noted, and they could summarize their findings and provide an explanation for a determination in open session after the legalities had been discussed with counsel and the board within closed session.

Chairperson Woehr explained that it would be beneficial to include an agenda item for the board to possibly go into closed session as it would assist with keeping meeting structure, and prevent emotional testimony or interruptions from the audience. City Attorney Beveridge added that the board could also vote to deny going into closed session if it was not needed at that time.

The importance of having legal representation for the different parties was briefly discussed.

Member Markham referenced again to the Zoning Board of Appeals Procedure Guidelines, citing concern under the Meeting Sequence section that while all meetings were open to the public, they were not public hearings. She questioned whether it was fair to have an applicant call a witness to support them, but not allow testimony by a witness or neighbor who may be against the request, and because they were not called upon, would not be able to say their piece due to it not being a public hearing.

Chairperson Woehr stated his openness to allowing comment during testimony, however he cautioned whether they would be inviting emotional testimony rather than factual information relevant to the case and application.

City Attorney Beveridge noted that as a quasi-judicial proceeding, the parties involved had a right to present their case as they saw fit, including calling upon witnesses that may guide and set up their own case in a certain manner. The rights of the applicant and Zoning Administrator needed to be respected.

Zoning Administrator Kearns, in referencing a typical zoning request, explained that notifying neighboring property owners of a request often assisted with determining in whether a request was within the public interest or not. However, in the current forum, if a neighbor with concerns, especially a neighboring property owner who may be impacted by the request, came to the meeting and staff did not know who they were, nor did the applicant call upon them, the board would not be aware of potential negative impacts of granting a variance.

Member Odogba stated that the findings of fact by the Zoning Administrator carried more weight than that of testimony from the public.

Zoning Administrator Kearns didn't disagree with the comment, however he explained that the public interest aspect was harder to measure, so if they afforded the public to speak the board would have a better understanding on whether it met the criteria of not harming the public interest.

Chairperson Woehr was not against taking comment from the public, however he wanted to avoid arguments or back and forth commentary between parties, and the public.

Member Doxtator stated that the burden of proof was on the applicant. He noted the importance of keeping with a quasi-judicial hearing process rather than turning it into an open forum.

City Attorney Beveridge noted that bringing in comment from the overarching public could lengthen the time of meetings and become a financial burden on the applicant in regards to having their legal representation possibly sit through hours of public testimony.

Member Oliva noted that if the applicant had legal representation, there was the assumption that they had done the work in determining whether their request was against the public interest or not.

Zoning Administrator Kearns inquired on whether he would have the ability to call upon witnesses from the audience that identified as living near the requesting property, to which the board and legal counsel confirmed that he would have the power to do so.

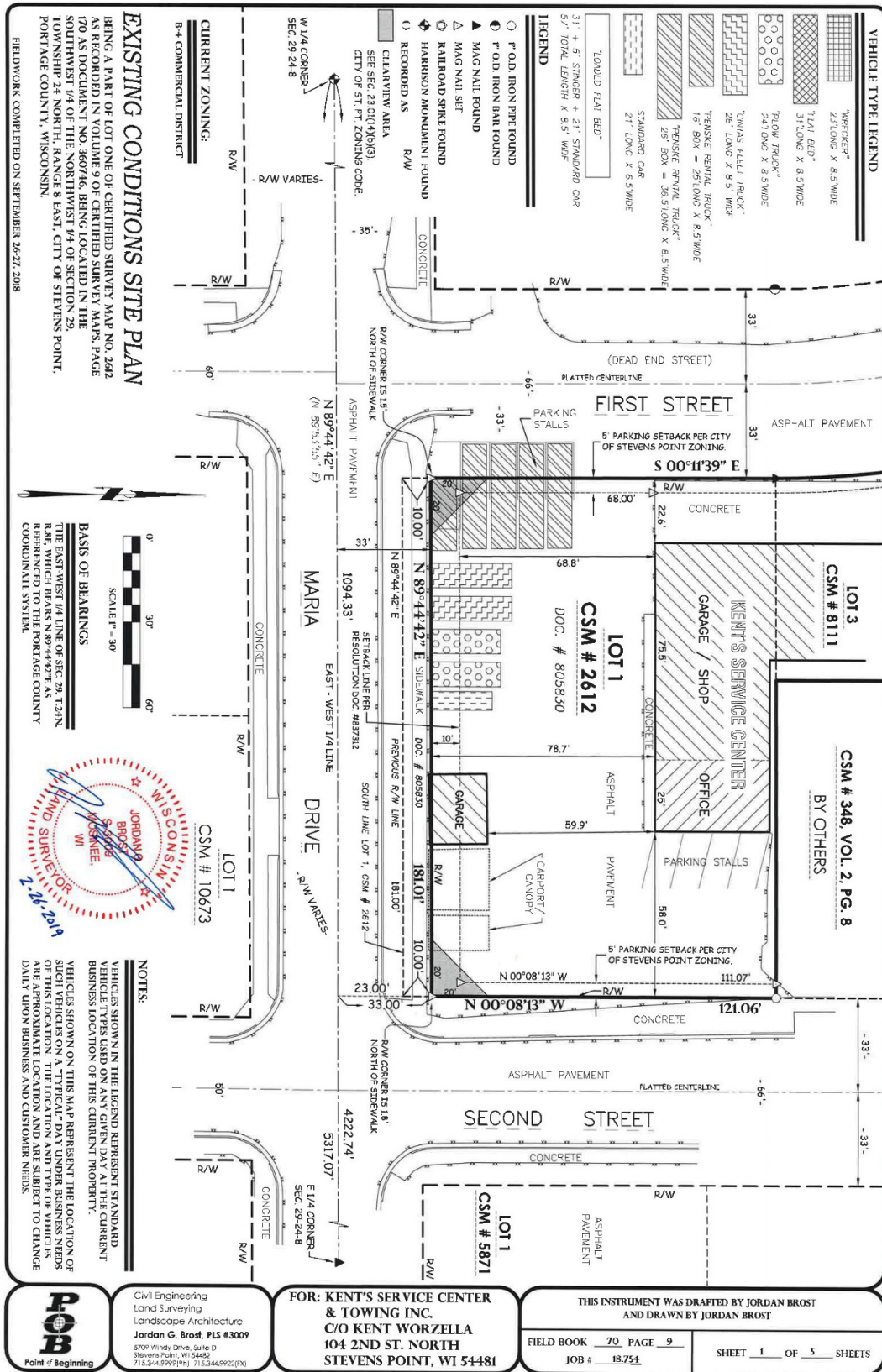
Chairperson Woehr had no concerns with the Zoning Administrator's office notifying property owners in a proximity of the request.

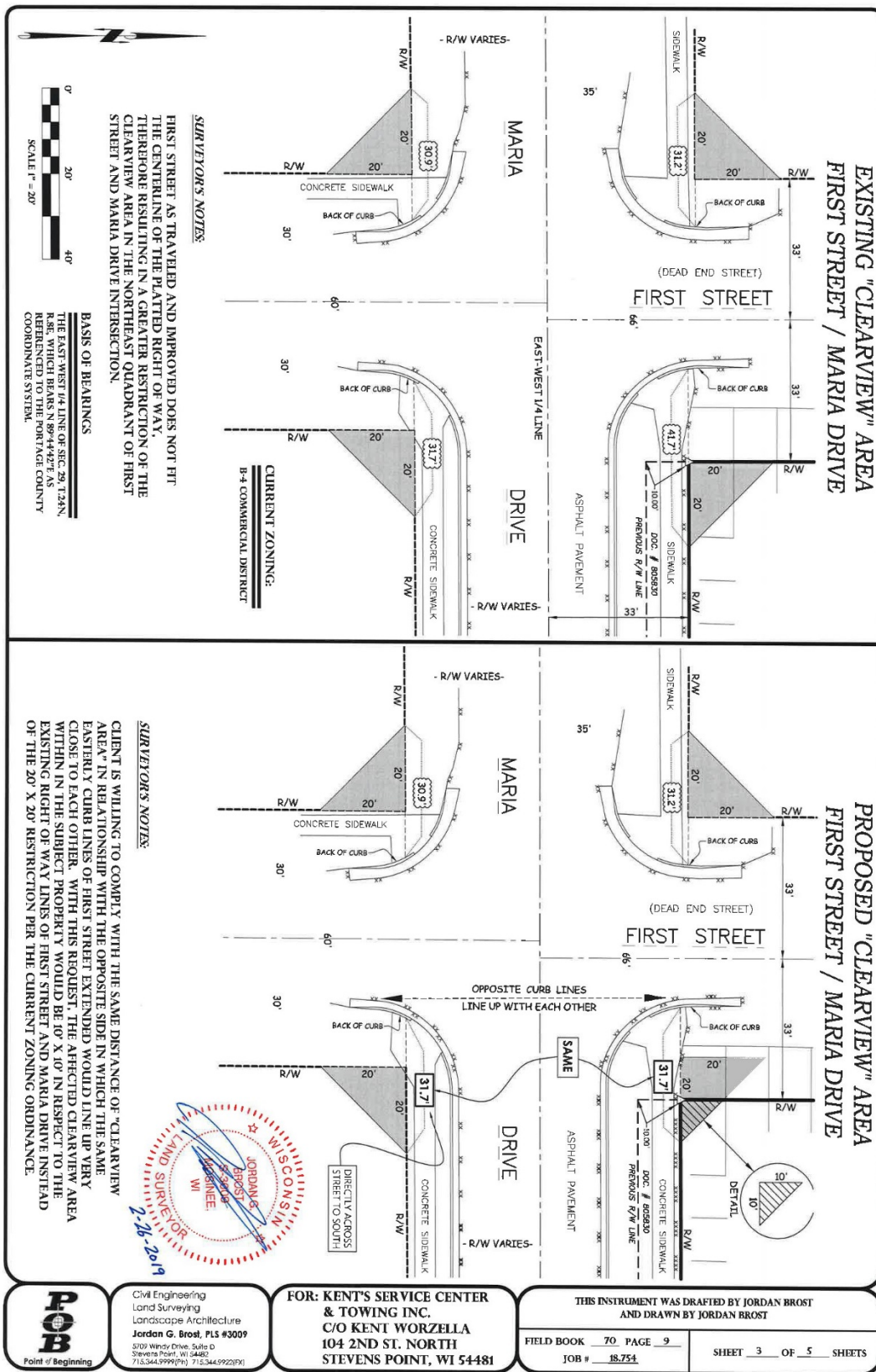
No action was taken.

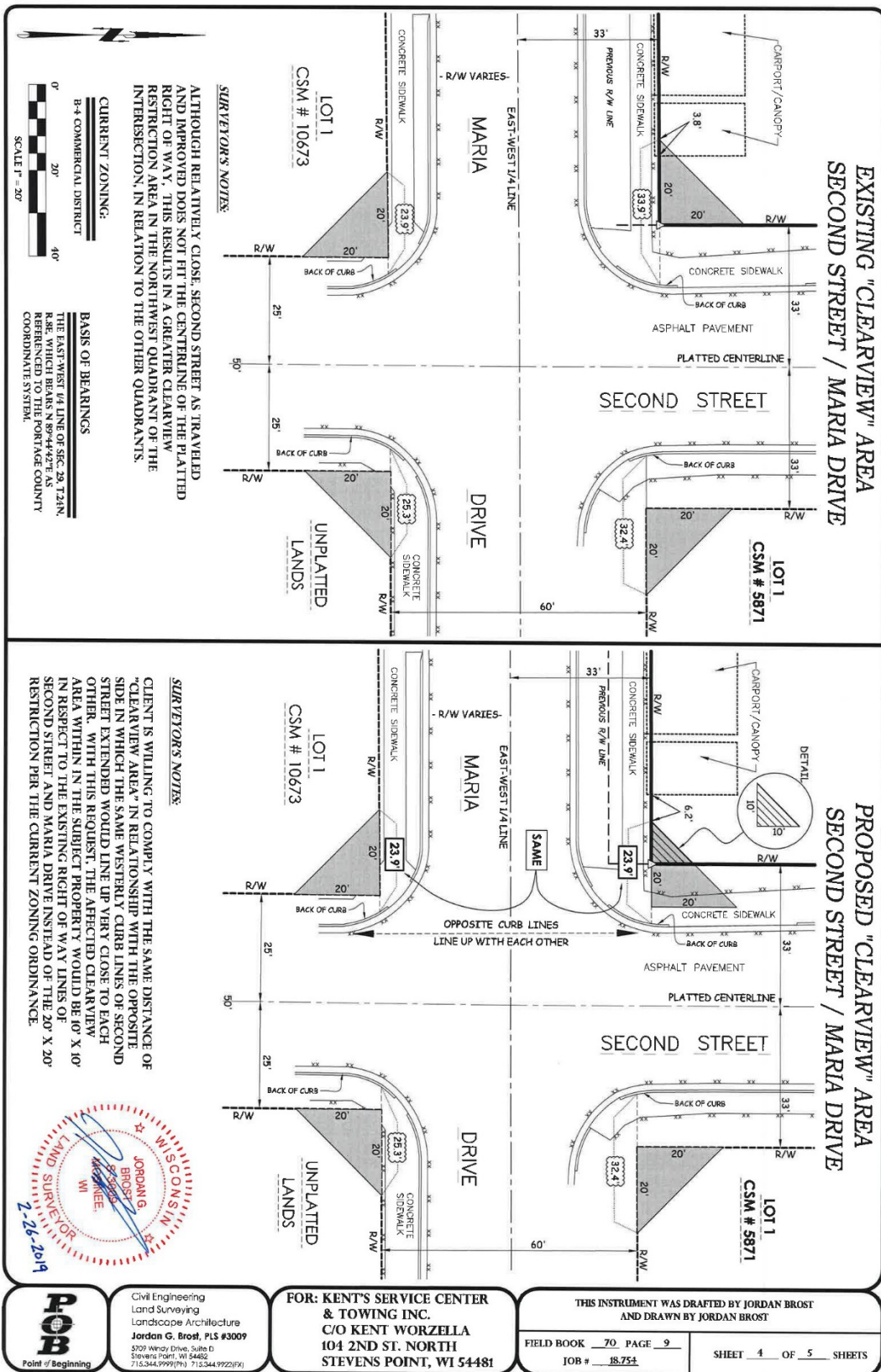
4. Adjourn.

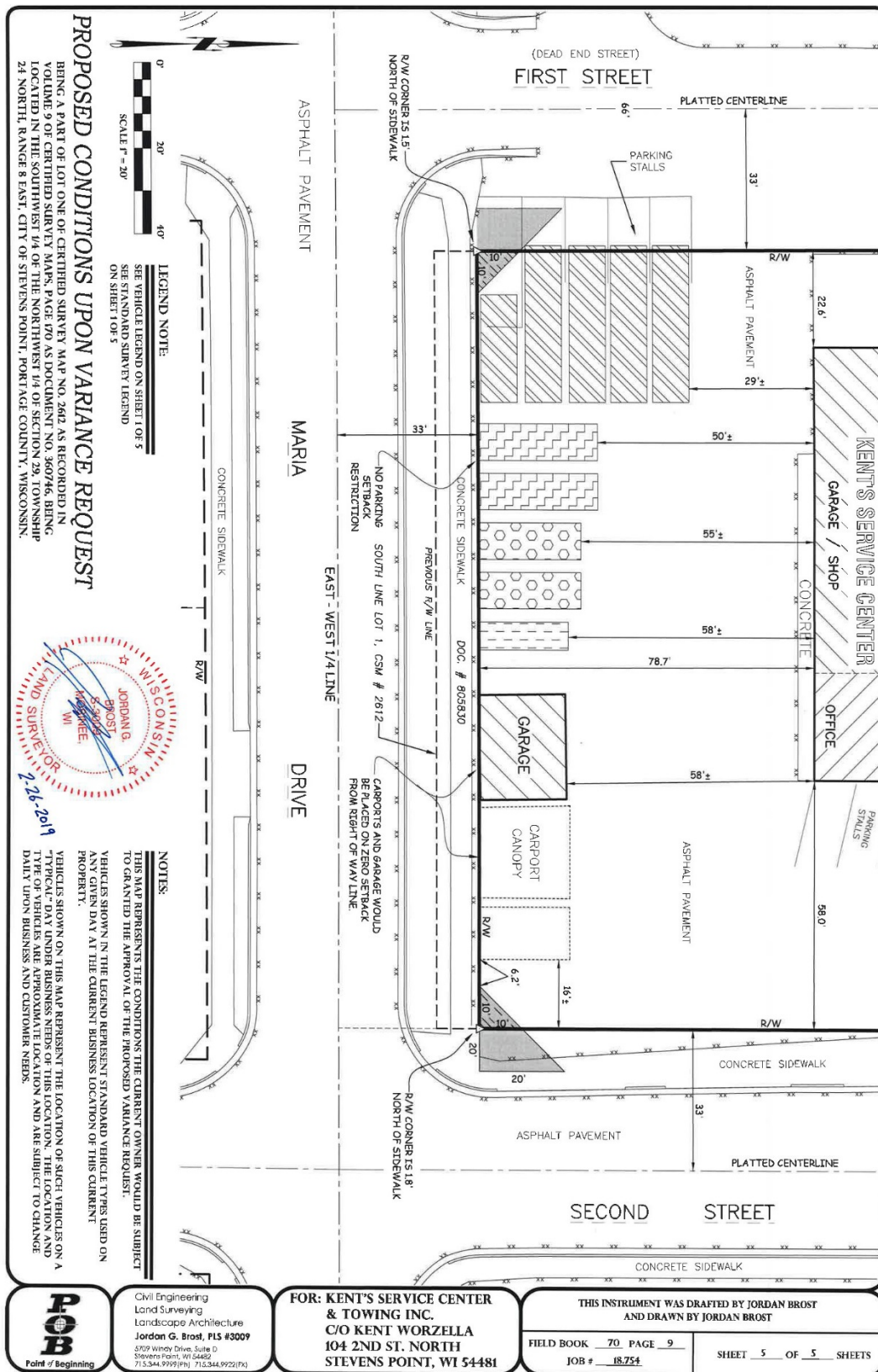
Meeting adjourned at 3:52 PM

Attachment relating to Agenda Item 2: Request by Kent Worzalla





















Zoning Board of Appeals Procedure Guidelines

Adopted: December 18, 2018

Revised: December 18, 2019

Preamble The Zoning Board of Appeals (the “Board”) is a quasi-judicial body, subject to certiorari review of its decisions by the circuit court. As such, members must ensure that their actions, comments, and decisions will withstand legal scrutiny ‘within the four corners’ of Wis. Stat. § 62.23(7)(e). This document is intended to provide guidelines for the Stevens Point Zoning Board of Appeals in discharging its statutory responsibilities.

Preparation Prior to Meeting Upon receipt of an application from any individual or party aggrieved by a decision of the city’s Zoning Administrator, a written request for a hearing by the Board will be completed by the aggrieved individual/party on forms provided by the Community Development Department. The application and any supporting documents, along with the Zoning Administrator’s written response to the information contained therein will be consolidated into a meeting packet to be provided to the Board. Staff of the Community Development Department will schedule a meeting of the Board for a time/date amenable to all persons concerned. The Community Development Department, in coordination with the Board’s chairperson, will prepare a meeting agenda and post the appropriate meeting notice in accordance with applicable law. During agenda preparation, if it appears that both the applicant and the Zoning Administrator will be represented by legal counsel, the Board chairperson may request that the City obtain legal counsel for the Board. All agendas will contain the appropriate notice that the board **may** at any time adjourn into closed session in accordance with Wis. Stat. § 19.85(1)(a) to deliberate at a quasi-judicial hearing. Board members must avoid ex parte communication with the applicant, City staff, and other Board members outside the legally noticed meeting.

Meeting Sequence All meetings of the board will be open to the public, but are not “public hearings.” The principal participants will be Board members, the applicant, the Zoning Administrator, and legal counsel of the aforementioned groups. Normally, testimony will not be sworn, however if sworn testimony is requested by either of the opposing parties, the chairperson may choose to administer oaths. Traditional rules of evidence will not be applied, but evidence shall be relevant and not duplicative of evidence already presented. The aggrieved individual/party will present its testimony first and may call witnesses. At the conclusion of testimony, the zoning administrator and board members will be afforded an opportunity to ask questions pertaining to the testimony. The Zoning Administrator will then present his/her testimony, with the applicant & Board members afforded an opportunity to ask questions pertaining to that testimony. The chair will then close testimony & begin deliberation among the Board members. During deliberations,

Board members may ask witnesses for additional clarification of their testimony, however opposing parties, witnesses, or members of the audience will not be allowed to participate in the discussions. During deliberations and when discussing motions which are on the floor, members should restrict their comments to the relevant standards enumerated in Wis. Stat. §62.23(7)(e)7.b.& d. (i.e. unnecessary hardship, public safety and welfare secured, substantial justice, unique conditions, etc.). Roll call votes will be taken on each issue, and the yeas & nays of each member recorded in the minutes.

In the event of a tie vote, the matter voted on shall remain open pending a recess by the Board. During such recess, a member who was absent from the meeting will be provided the written materials entered into the record on the matter and an audio or video recording of the proceedings. That member shall have an adequate amount of time to review such materials. Following that review, the Board shall re-convene with the previously absent member present. The previously absent member shall then cast a vote to break the tie.

Decision to be in Writing and Filed with Zoning Administrator The Board shall render its decisions in writing using a standardized form which may be updated from time to time. Such form shall reference the applicable legal standards and provide for a description of the evidence entered into the record before the Board that supports its findings regarding such standards. The Board may, during its deliberations on matters before it, reach a general consensus on the content of the form, followed by the introduction of a motion to adopt the findings as written. Upon a majority vote of the Board to adopt it, the written form shall constitute the findings and decision of the Board. Such findings and decision shall be filed with the Zoning Administrator within 5 days of their adoption, and such filing shall constitute the filing of the decision in the office of the board of appeals as identified in Wis. Stats. § 62.23(7)(e)10.

| Post Meeting As soon as practicable, draft meeting minutes will be prepared by Community Development Department staff and distributed to Board members who attended the meeting for review and corrections. Upon receipt of the member's responses, minutes will be finalized for approval at the next meeting of the Board.

ments have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the amendments or a description of the property affected by the amendments and a statement that a map may be obtained from the city council. If the council does not receive recommendations and a report from the plan commission, board of public land commissioners or plan committee within 60 days of submitting the proposed amendments, the council may hold hearings without first receiving the recommendations and report.

2m. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if a proposed amendment under subd. 2. would make any change in an airport affected area, as defined under sub. (6) (am) 1. b. and the owner or operator of the airport bordered by the airport affected area protests against the amendment, the amendment shall not become effective except by the favorable vote of two-thirds of the members of the council voting on the proposed change.

NOTE: Subd. 2m. is shown as affected eff. 1–1–19 by 2017 Wis. Act 243. Prior to 1–1–19 it reads:

2m. a. In case of a protest against an amendment proposed under subd. 2., duly signed and acknowledged by the owners of 20 percent or more either of the areas of the land included in such proposed amendment, or by the owners of 20 percent or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20 percent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of three-fourths of the members of the council voting on the proposed change.

b. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if a proposed amendment under subd. 2. would make any change in an airport affected area, as defined under sub. (6) (am) 1. b. and the owner or operator of the airport bordered by the airport affected area protests against the amendment, the amendment shall not become effective except by the favorable vote of two-thirds of the members of the council voting on the proposed change.

3. The council may repeal or repeal and reenact the entire district plan and all zoning regulations in accordance with subd. 1. The council may repeal or repeal and reenact a part or parts of the district plan and regulations in accordance with subsd. 2. and 2m.

4. The city council shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed zoning action that may be taken under subd. 1. a. or b. or 2. that affects the allowable use of the person's property. Annually, the city council shall inform residents of the city that they may add their names to the list. The city council may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the city's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the plan commission, the board of public land commissioners, or city plan committee of the city council completes action on any tentative recommendations that are noticed under subd. 1. a., proposed changes to a proposed district plan and regulations that are submitted under subd. 1. b., or proposed amendments that are submitted under subd. 2., and the city council is prepared to vote on the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, the city council shall send a notice, which contains a copy or summary of the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, to each person on the list whose property, the allowable use of which, may be affected by the tentative recommendations or proposed changes or amendments. The notice shall be by mail or in any reasonable form that is agreed to by the person and the city council, including electronic mail, voice mail, or text message. The city council may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this subdivision may take effect even if the city council fails to send the notice that is required by this subdivision.

(da) *Interim zoning.* The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim zoning ordinance

to preserve existing uses while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment.

(de) *Conditional use permits.* 1. In this paragraph:

a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.

b. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

2. a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.

3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.

4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.

5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

(e) *Board of appeals.* 1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.

2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses

or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.

3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.

7. a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the gen-

eral purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.

f. A variance granted under this subdivision runs with the land.

8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.

10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(ea) *Filing fees.* The common council may by ordinance or resolution establish reasonable fees for the filing of a petition for amendment of the zoning ordinance or official map, or for filing an appeal to the board of appeals.

(em) *Historic preservation.* 1. Subject to subds. 2. and 2m., a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city



Board of Zoning Appeals Decision Form

Application/petition # _____ Filing Date: _____

Hearing Date: _____

FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

1. Applicant or appellant is (name and address, owner/lessee): _____

2. The property is presently in used for _____,
and has been so used continuously since _____.
3. The property includes a nonconforming **structure/use** described as

4. The property has been the subject of a prior **appeal/variance** or other municipal approval described
as _____
5. The applicant or appellant proposes (brief project description/attach plans): _____

6. The applicant or appellant requests:

☐ an appeal of the zoning
administrator's determination

☐ a use variance
☐ an area variance

under Section _____ of the zoning ordinance.

The details of the proposed construction and property that relate to the grant or denial of the application or appeal are (refer to the language/standards of the ordinance):



CONCLUSIONS OF LAW

Based on the above findings of fact the Board concludes that:

1. Appeal/Interpretation – The order of the zoning administrator **(is/is not)** in excess of his/her authority because (or)

The zoning administrator's interpretation of Section _____ of the zoning code **(is/is not)** a correct interpretation because _____

2. Variance – The variance **(does/does not)** meet all three of the following tests:

Unnecessary hardship

- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests. This standard reflects the new Ziervogel and Waushara County decisions.
- For a use variance, unnecessary hardship exists only if there is no reasonable use of the property without the variance.



A. Unnecessary hardship (**is/is not**) present because

B. The hardship (**is/is not**) due to physical limitations of the property rather than the circumstances of the appellant because

C. The variance (**will/will not**) harm the public interest because



ORDER AND DETERMINATION

On the basis of the above findings of fact, conclusions of law and the record in this matter the board orders:

1. Appeal/Interpretation – The zoning administrator’s order/interpretation of the zoning code or map is **(affirmed/modified/reversed)** and the administrator is ordered to:

2. Variance – The requested variance is **(denied/granted/granted-in-part/postponed)**; provide additional comment if necessary:

Any privilege granted by this decision must be exercised within _____ months of the date of this decision after obtaining the necessary building, zoning and other permits for the proposed construction. This period will be extended if this decision is stayed by the order of any court or operation of law.

Appeals. This decision may be appealed by a person aggrieved by this decision or by any officer, department, board or bureau of the municipality by filing an action in certiorari in the circuit court for Portage County within 30 days after the date of filing of this decision. The municipality assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

Board of Zoning Appeals Commissioner Signature

(Print Name)

Date

Drafted By: _____