



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**
- Chair George Doxtator
  - Gracia Day
  - Lynn Markham
  - Ismaila Odogba
  - Chris Tiffany
  - Tom Schrader (Alt. #1)
  - Stephen Klein (Alt. #2)

## AGENDA

### ZONING BOARD OF APPEALS

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<b>Date</b> June 7, 2022 <b>and</b> 4:30 PM <b>Time:</b>	<b>Location:</b> Community Room 933 Michigan Avenue, Stevens Point, WI  <u>OR</u>  <u>Zoom Teleconferencing</u>  Meeting ID: 819 2740 3598   Passcode: 774676 <u>By Computer:</u> <a href="https://us02web.zoom.us/j/81927403598?pwd=b3J1VSt2anVhOTJ6cnFjWDJC">https://us02web.zoom.us/j/81927403598?pwd=b3J1VSt2anVhOTJ6cnFjWDJC</a> <u>By Phone:</u> +1-312-626-6799 (US Chicago)
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#### Discussion and Possible Action on:

1. Roll Call
2. Minutes of the November 18, 2021 meeting of the Zoning Board of Appeals.
3. Presentation by the City Attorney on the roles and responsibilities of the Zoning Board of Appeals.
4. 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.

**MINUTES  
OF  
STEVENS POINT ZONING BOARD OF APPEALS MEETING**

**HELD ON  
NOVEMBER 18, 2021**

A meeting of the Stevens Point Zoning Board of Appeals was called to order at 5:00 p.m. by Chair George Doxtator. In attendance at the meeting were Board of Appeals members George Doxtator, Gracia Day, Lynn Markham, Bob Woehr, and Ismalia Odogba (virtually). Also in attendance was legal counsel Dean Dietrich, the applicant for a hearing Jordan Ploman, and City representatives City Attorney Logan Beveridge and Zoning Administrator Adam Kuhn. Also in attendance were various members of the public.

The first agenda item was approval of the minutes of the January 30, 2019, meeting. A motion was made by Woehr and seconded by Markham to approve the minutes. Upon voice vote, the motion carried.

The next item of business was approval of the minutes of the November 3, 2021, meeting. A motion was made by Woehr and seconded by Day to approve the minutes. Upon voice vote, the motion carried.

The Chair indicated that the next item on the agenda was a request from the applicant Jordan Ploman for a use variance to exceed the allowed number of unrelated persons residing within a single-family residential use property at 1208 Reserve Street. The Chair referred to Board legal counsel for further directions regarding the hearing process.

The hearing began with an introduction of all parties that were in attendance for the hearing. Legal counsel Dietrich explained the process that would be followed in the conduct of the hearing. Legal counsel Dietrich also identified a number of exhibits that would be introduced into the record and considered part of the proceedings of the hearing. A list of Exhibits 1 – 12 are attached to these minutes. Legal counsel Dietrich also indicated that he had sent a communication to the Zoning Board members which included (1) a copy of Section 62.23(5)(3) of the Wisconsin Statute; (2) a copy of Section 23.05 – Board of Appeals, of the Stevens Point Zoning Ordinance; (3) a copy of the Procedure Guidelines adopted by the Zoning Board of Appeals; and (4) background information from the League of Wisconsin Municipalities regarding variances.

The hearing was then commenced with a presentation by the applicant. The applicant provided background regarding the request for the variance and reviewed the history of the purchase and remodeling of the property. The applicant called a neighbor (Troy Durkee) to give testimony regarding the variance request. Mr. Durkee testified about the applicant as a good neighbor. The applicant called his father (Travis Ploman) to give testimony regarding the variance request. The applicant then concluded his presentation to the Board of Appeals.

Zoning Administrator Adam Kuhn then made a presentation to the Zoning Board of Appeals with the background regarding the noncompliance order issued for the property. Zoning Administrator Kuhn reviewed the information in the report that was submitted to the Zoning Board of Appeals. City Attorney Beveridge provided additional information for consideration by the Zoning Board of Appeals.

Applicant Ploman was then given the opportunity to provide a closing statement to the Zoning Board of Appeals. Mr. Ploman summarized the basis for the request for the variance. City

Attorney Beveridge was then given the opportunity to provide closing statements to the Zoning Board of Appeals. Legal counsel Dietrich indicated that the various exhibits had been received into the record.

Legal counsel Dietrich then discussed the receipt of various statements from the public that had been provided to the Zoning Administrator and provided to him as counsel for the Zoning Board of Appeals. The Board of Appeals discussed whether or not to receive those items as part of the record of the proceedings. A motion was made by Markham and seconded by Day to allow the statements to be included as part of the proceedings. All Board members voted "YES".

The Board of Appeals then considered a motion to convene into closed session under Section 19.85(1)(a) of the Wisconsin Statutes for the purpose of deliberating regarding the evidence presented. A motion was made by Woehr and seconded by Doxtator to convene into closed session. A roll call vote was taken and the following Board members voted "YES": Doxtator, Day, and Woehr. The following Board members voted "NO": Odogba and Markham. The Board of Appeals then adjourned into closed session for deliberations at approximately 6:45 p.m.

The Zoning Board of Appeals reconvened into open session at approximately 7:15 p.m. A motion was made by Markham and seconded by Woehr to deny the use variance as requested by the applicant on the basis:

- That there was a reasonable use available for the property and therefore the applicant did not provide sufficient evidence and grounds for the granting of a use variance;
- The hardship that was alleged by the applicant was not unique to the property because the property met all lot standards and requirements for a properly zoned parcel in the R-3 District;
- The requested variance was found to not be in the public interest because of the potential for impact on the neighborhood by having more traffic and more vehicles within the neighborhood and the potential of a cumulative effect of expanding the allowable college rental units within the zoned district.

The motion also included a recommendation from the Zoning Board of Appeals that the City not proceed with any enforcement of the City Zoning Ordinance until December 31, 2021, in order to allow the residents to safely find another location for their living quarters and further that legal counsel would prepare an appropriate record of the decision made by the Zoning Board of Appeals.

Upon voice vote, the motion carried unanimously.

A motion was made by Doxtator and seconded by Day to adjourn at 7:30 p.m.

## EXHIBIT A

### EXHIBITS PRESENTED AT VARIANCE HEARING

Exhibit 1 – Excerpt from Zoning Code regarding R-3 single and tow-family residence district and R-2 single family residence district

Exhibit 2 – Application for zoning variance with attachments

Exhibit 3 – Administrative staff report regarding variance request

Exhibit 4 – Communication from Department of Community Development to property owner dated February 12, 2021

Exhibit 5 – Communication from Department of Community Development to property owner dated September 16, 2021

Exhibit 5a – Communication from Department of Community Development to property owner regarding noncompliance notice

Exhibit 6 – Property records regarding 1208 Reserve Street

Exhibit 6a – Communication from Zoning Administrator to Director of Community Development regarding information relating to property

Exhibit 7 – Communication from Department of Community Development to property owner regarding noncompliance notice relating to parked cars

Exhibit 8 – History of property ownership

Exhibit 9 – Submittal from local neighborhood resident

Exhibit 10 – Submittal from local neighborhood resident

Exhibit 11 – Email communication from local resident

Exhibit 12 – Email communication from local resident

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 subs. 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 subsds. 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

## 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.